

OPINION No. 3/1999 (MYANMAR)

Communication addressed to the Government on 8 July 1998

Concerning U Tun Win, Kyi Min, U Hlaing Aye, U Myint Aung, U Aung Soe, U Kyaw Myint, U Thein Kyi, U Than Naing, U Myint Thein, U Aung Myint Thein, U Tha Aung, U Aung San Myint, U Aung Naing and U Tar

The State is not a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended by resolution 1997/50. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.
2. The Working Group regrets that the Government did not reply to the Group's request for information within the imparted deadline.
3. The Working Group regards deprivation of liberty as arbitrary in the following cases:
 - (i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);
 - (ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);
 - (iii) When the complete or partial non-observance of the relevant international standards set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned relating to the right to a fair trial is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).
4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government. In the absence of any information from the Government, the Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case, especially since the facts and allegations contained in the communication have not been challenged by the Government.
5. According to the communication, the above-mentioned leaders of the National League for Democracy (NLD) party were elected in popular elections for various posts in several

different regions of the country. They were detained in the night of 25 June 1998 and warned that they could not leave their districts or municipalities, except for those elected in the Yangon area. In order to secure their release under these restrictive conditions they were required to guarantee that they would fulfil the obligation not to leave their municipalities, and they were warned that if they did so they would be sentenced to a year's imprisonment under the Emergency Powers Act. They are required to present themselves twice daily to the police or judicial authorities and in some cases to the military authorities.

6. In accordance with orders from the Party, some of the elected representatives have left the "restricted" areas.

7. The Government did not answer the Working Group's communication.

8. In the Working Group's opinion, the restriction on leaving a specific area imposed by an administrative authority and not based on a court sentence handed down in a fair trial on the basis of an offence attributed to an individual constitutes an arbitrary deprivation of liberty falling within category III of the Working Group's methods of work, when the injured party has not been given the right to exercise his right of defence.

9. On the other hand, the grounds on which the liberty of the above-mentioned persons has been restricted in the case in question is simply the legitimate exercise of a political option, which has furthermore received support from the electors in elections.

10. The source does not indicate whether the persons referred to in the communication still have their freedom "restricted", or are among those who disobeyed the order not to leave their municipality and as a result are prisoners.

11. The Group notes however that, on the basis of the source's information which has not been contested by the Government, that the above-mentioned individuals and other elected NLD representatives were taken to police stations and held there overnight for two nights. This deprivation of liberty is violative of articles 19 and 21 of the Universal Declaration of Human Rights and falls under category II of the categories applicable to the examination of cases by the Working Group. If these individuals were to be deprived of their liberty if they trespass the terms of the restraining order, this would constitute an arbitrary deprivation of liberty also violative of articles 19 and 21 of the Universal Declaration of Human Rights.

12. In the light of the foregoing, the Working Group renders the following opinion:

The deprivation of liberty of U Tun Win, Kyi Min, U Hlaing Aye, U Myint Aung, U Aung Soe, U Kyaw Myint, U Thein Kyi, U Than Naing, U Myint Thein, U Aung Myint Thein, U Tha Aung, U Aung San Myint, U Aung Naing and U Tar is arbitrary, as being in contravention of articles 19 and 21 of the Universal Declaration of Human Rights and falls within category II of the categories applicable to the consideration of the cases submitted to the Working Group.

13. Consequent upon the opinion rendered, the Working Group requests the Government:

(a) To take the necessary steps to remedy the situation, and bring it in conformity with the standards and principles set forth in the Universal Declaration of Human Rights;

(b) And to take the adequate initiatives with a view to becoming a State Party to the International Covenant on Civil and Political Rights.

Adopted on 20 May 1999