

**OPINION No. 38/2000 (MYANMAR)**

Communication addressed to the Government on 20 January 2000

Concerning U Pa Pa Lay

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 Commission on Human Rights resolution 1991/42. The mandate of the Working Group was clarified and extended by resolution 1997/50, and reconfirmed by resolution 2000/36. Acting in accordance with its methods of work, the Working Group forwarded the above-mentioned communication to the Government.
2. The Working Group regrets that the Government has not replied within the 90-day 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, in 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. According to the communication, U Pa Pa Lay, a citizen of Myanmar born in 1947 and a comic performer by profession, was arrested at his home in Mandalay, Myanmar, on 7 January 1996 by officers of Military Intelligence Unit No. 16. He was reportedly charged under section 6 of the 1950 Emergency Provisions Act, which provides a seven-year prison sentence and a fine for anyone who instigates or intends to spread false news, knowing that it is untrue. U Pa Pa Lay was first held in Mandalay prison, then reportedly transferred to Kyein Kran labour camp near Myitkyina in April 1996. On an unspecified later date, he was transferred to Myitkyina prison.
5. On 4 January 1996, the forty-eighth anniversary of the independence of Myanmar, 2,000 members of the National League for Democracy (NLD) attended an independence day celebration at the home of its leader Daw Aung San Suu Kyi. The celebration

included a performance by the Anyeint group, a traditional entertainment group. U Pa Pa Lay was a member of this group, also known as Myo Win Mar (Our Own Way). His performance with fellow performer U Lu Zaw reportedly included jokes and songs of a satirical nature, criticizing the authorities. In the evening of 7 January 1996, both men were arrested along with eight other members of the group, who were subsequently released without charges. U Pa Pa Lay and U Lu Zaw were charged under section 6 of the 1950 Emergency Provisions Act with spreading false news and sentenced to seven years in prison on 18 March 1996. According to the source, U Pa Pa Lay was convicted merely because he chose to exercise his right to freedom of expression.

6. It is submitted that the trial of U Pa Pa Lay was conducted at Mandalay prison without any legal representation. According to NLD sources, some party members and their lawyers went to the courtroom to attend the trial, only to find the courtroom closed. A judge and a prosecutor went to Mandalay prison to conduct the trial in the absence of any defence attorney or witnesses. According to the source, U Pa Pa Lay has no possibility to appeal his sentence, which is considered final.

7. 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.

8. On the basis of the foregoing, the Working Group notes that the detention of U Pa Pa Lay on 18 March 1996 and the sentence of seven years' imprisonment under section 6 of the 1950 Emergency Provisions Act on the spreading of false news are based solely on the grounds that he took part in celebrations organized on 4 January 1996 by the NLD to mark the forty-eighth anniversary of the independence of Myanmar and that, as a member of the Anyeint traditional group, he gave a performance during those celebrations that included jokes and songs of a satirical nature criticizing the authorities. His detention on those grounds is therefore of an arbitrary nature, since he merely acted in accordance with his right to freedom of expression, a right guaranteed by article 19 of the Universal Declaration of Human Rights (category II).

9. This violation is aggravated by the fact that the trial of U Pa Pa Lay was conducted by a judge and a prosecutor at Mandalay prison in the absence of any defence attorney or witnesses. Moreover, U Pa Pa Lay has been unable to appeal since the sentence is deemed final. In the opinion of the Working Group, these are violations of the right to a fair trial (Universal Declaration of Human Rights, arts. 9 and 10) and are of such gravity as to confer on the detention of U Pa Pa Lay an arbitrary character (category III).

10. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation and bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights, and to take initiatives with a view to becoming a party to the International Covenant on Civil and Political Rights.

Adopted on 28 November 2000