

**OPINION No. 13/2001 (MYANMAR)**

Communication addressed to the Government on 11 April 2001

Concerning Aye Tha Aung, Cin Shing Thang, Do Htaung, Duwa Zaw Aung, Khun Myint Tun, Kyin Thein, Min Soe Lin, Saw Naing Naing, Saw Mra Aung, Saw Oo Rah and Toe Po

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 resolutions 1997/50 and 2000/36, and reconfirmed by resolution 2001/40. Acting in accordance with its methods of work, the Working Group forwarded the above-mentioned communication to the Government.
2. The Working Group conveys its appreciation to the Government for having provided the requisite information in good time. The Government's reply was transmitted to the source, which sent its comments thereon to the Working Group.
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 international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).
4. The Working Group transmitted the reply provided by the Government to the source and received its comments. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto, as well as the observations by the source.

5. According to the source, the following persons have been unlawfully deprived of their liberty by the authorities of Myanmar:

Aye Tha Aung, a politician was reportedly arrested on 24 April 2000 at his residence by military intelligence personnel. It is believed he was given three consecutive seven-year prison terms for violating publications (sections 17 and 20 of the 1962 Printers and Publishers Act) and emergency (section 5 (j) of the 1950 Emergency Provisions Act) laws and possibly also in respect of section 17 (1) of the 1908 Unlawful Association Act. He was allegedly denied any legal defence. Further, he was allowed only one family visit between his arrest and sentencing.

Cin Shing Thang, a High Court advocate and a politician, was reportedly arrested in September 1998 at his residence by military intelligence personnel. He has not been given a trial at all and is currently being held in the Ye Mon military camp.

Do Htaung, a medical practitioner and a politician, was reportedly arrested on 21 May 1996 by military intelligence personnel under section 5 (j) of the 1950 Emergency Provisions Act. He is believed to be serving a seven-year sentence and is being held in Kalay Prison.

Duwa Zaw Aung was reportedly arrested in August 1999 by military intelligence personnel. It is believed he was given a term of seven years' imprisonment for his writing to religious leaders on political matters.

Khu Myint Tun, who graduated with a degree in Geology from Rangoon University in 1983, was reportedly arrested in May 1996 by military intelligence personnel, charged with disturbing State peace and stability and sentenced to seven years in jail under section 5 (j) of the 1950 Emergency Provisions Act. Later, he was sentenced to an additional three years' imprisonment for breaching the 1985 Video Act, because he had given a journalist from the Australian Broadcasting Corporation a video cassette of Aung San Suu Kyi's weekly speeches.

Kyin Thein, a politician with a degree in Geography, was arrested in 1996 by military intelligence personnel and was sentenced to seven years in prison under section 5 (j) of the 1950 Emergency Provisions Act.

Min Soe Lin, who has a medical degree from the Rangoon Institute of Medicine, was arrested on 6 November 1997 and was charged under section 5 (j) of the 1950 Emergency Provisions Act. In 1998, he was reportedly sentenced to seven years in prison.

Saw Naing Naing, who has a post-graduate diploma in Management and Administration from Rangoon University, was reportedly arrested on 13 September 2000 at his residence by military intelligence personnel. It is believed he was sentenced to 21 years' imprisonment under section 5 (j) of the 1950 Emergency Provisions Act, section 17 of the 1962 Printers and Publishers Registration Act and section 17 (1) of

the 1908 Unlawful Associations Act. He was held in incommunicado detention between the time of his arrest and his conviction in December 2000. It was said he was given a military trial, held in secret within Insein Prison. A previous detention of this person in 1990 was considered to be arbitrary by the Working Group (Opinion 38/1993).

Saw Mra Aung, a politician, was reportedly arrested in September 1998 and has been detained without charge. It is believed that the reason for his detention is that he, together with three other political leaders, asked the Government on 6 June 1998 to undertake a dialogue with democratic activists, for the sake of the country's future. He is being detained without charge and without trial, despite being 82 years old.

Saw Oo Rah, a politician, was allegedly arrested in December 1996 and charged with financially supporting the outlawed Karenni National Progressive Party (KNPP) and writing a book entitled "The crisis of Kayah State and causes of civil war in Burma". He was reportedly charged under the Association with Illegal Organizations Act, the 1962 Printing and Publishing Act and section 5 (j) of the 1950 Emergency Provisions Act. Later, he was sentenced to 17 years' imprisonment. It is said that he was not given any legal representation at his trial. He is reportedly suffering from serious diabetes and kidney problems.

Toe Po, a politician, was reportedly arrested in September 1998 in Rangoon because he met with some student activists. He was charged under section 5 (j) of the 1950 Emergency Provisions Act and sentenced to seven years' imprisonment.

6. The source alleges that section 5 (j) of the 1950 Emergency Provisions Act is too nebulous to be upheld as a valid criminal law and gives the prisoner no chance of receiving a fair trial. It is said that virtually any conduct could be found to fall within its vague provisions and that it is not clear what conduct is supposed to fall within the section.

7. It is also said that the 1962 Printers and Publishers Registration Act establishes machinery for blanket registration of anyone printing and publishing written material, and for State censorship of printed material, which is in contradiction to article 19 of the Universal Declaration of Human Rights. It is also pointed out that the Unlawful Associations Act is a 1908 statute, which predates the Universal Declaration of Human Rights.

8. Finally, it is alleged that these persons have not used or threatened or advocated the use of violence and that they have merely engaged in activities deriving from their freedom of expression, freedom of association and freedom to engage in peaceful political activity.

9. In its reply the Government confirms that out of the individuals referred to by the source, Aye Thar Aung, Do Htaung, Khun Myint Tun, Kyin Thein, Min Soe Lin, Saw Naing Naing, Saw Oo Rah and Toe Po are in detention, all of them serving a prison term to which they have been sentenced by courts. It also sets out the laws on the basis of which they were found guilty. Those laws are the same or similar to those mentioned by the source, namely the 1962 Printers and Publishers Registration Act and the 1950 Emergency Provisions Act.

10. In contrast, the Government asserts that the remaining persons referred to by the source have been released. It states that Duwa Zaw Aung, who was serving a 21-year prison term, was released on 13 August 2001 subsequent to the commutation and reduction of his sentence; Cin Shing Thang and Saw Mra Aung, who reportedly had been kept in a government guest house for questioning, are said to have been set free on 14 June 2001.

11. The Working Group forwarded the Government's reply to the source. The source confirmed that these three persons were in fact released, and added that, on 10 September 2001, a fourth detainee, Kyin Thein was also released.

12. The Working Group notes that as in the case of communications submitted to it in respect of alleged arbitrary detention of individuals involved in politics in Myanmar (see for example, Opinions No. 52/1992 and No. 38/1993), the law - most often the same section 5 (j) of the 1950 Emergency Provisions Act - is invoked against them because they have contested the political regime in power, without resorting to violence. From the information available to it, the Working Group is satisfied that the individuals referred to in the communication are detained solely for having peacefully exercised their rights to freedom of opinion and expression as guaranteed by article 19 of the Universal Declaration of Human Rights.

13. In the light of the foregoing, the Working Group expresses the following opinion:

- (i) Since Duwa Zaw Aung, Cin Shing Thang, Saw Mra Aung and Kyin Thein have been released in the meantime, the Working Group decides, pursuant to paragraph 17 (a) of its methods of work, to file their case, without taking position as to whether their detention was arbitrary or not.
- (ii) The detention of Aye Thar Aung, Do Htaung, Khu Myint Tun, Min Soe Lin, Saw Naing Naing, Saw Oo Rah and Toe Po is arbitrary, being in contravention of article 19 of the Universal Declaration on Human Rights, and falls within category II of the categories applicable to the consideration of cases submitted to the Working Group.

14. Consequent upon this opinion, the Working Group requests the Government of Myanmar to take the necessary steps to remedy the situation of the above-mentioned persons in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration on Human Rights. The Working Group encourages the Government to ratify the International Covenant on Civil and Political Rights.

15. The Working Group also decides to transmit this opinion to the Special Rapporteur of the Commission on Human Rights on the situation of human rights in Myanmar.

Adopted on 12 September 2001