

OPINION No. 12/2001 (MYANMAR)

Communication addressed to the Government on 21 May 2001

Concerning Paw Oo Tun

The State has not signed and ratified 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 it with information concerning the communication.
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. According to the source, Paw Oo Tun, known as “Min Ko Naing”, born in October 1962 in Rangoon, studied at Botataung Regional College in Rangoon, where he majored in Zoology. He continued his studies at the Rangoon Arts and Science University. He was said to be an active student leader and was elected chairman of the All Burma Federation of Student unions (ABFSU). As such, he participated in demonstrations against Order 2/88, which prohibited, inter alia, gatherings of more than four persons.
5. Paw Oo Tun was arrested on 23 March 1989 in Rangoon by military intelligence personnel, who did not show a warrant or other decision by a public authority for his arrest. He was arrested shortly after visiting the house of the leader of the National League for Democracy, Aung San Suu Kyi.

6. On 17 December 1991, a military court sentenced him to a term of 15 years in prison, with hard labour, after having found him guilty of disturbing public order, peace and tranquillity; of repeatedly violating Order 2/88 forbidding gatherings of more than four people; and of forming student unions, prohibited under the Law to Protect National Unity of 1964. He was sentenced under section 5 (j) of the 1950 Emergency Provisions Act and section 17 (1) and (2) of the Unlawful Associations Act 1908.

7. The source alleges that his trial was not public. It was held within Insein Prison. Paw Oo Tun was denied any legal defence representation at his trial and other proper safeguards for his defence. Inter alia, he was denied the right to call witnesses in his defence.

8. Paw Oo Tun was allegedly kept in solidarity confinement and subjected to torture and beatings during the first few years of his imprisonment.

9. Pursuant to paragraph 2 (c) of Order 1/93, all sentences passed between September 1998 and December 1992 were commuted to a term of 10 years. In addition to this commutation, prisoners are entitled to remission from that 10-year sentence, of at least four days per month, plus 15 days per year, i.e. at least 63 days per year. Taking account of the commutation of his sentence to a 10-year term and the periods of remission to be applied, Paw Oo Tun should have been released in or about March 2000, at the latest. His prison term has therefore expired. He has already served his full sentence and is legally entitled to immediate release. Early in 2000, the prison authorities advised his parents that he would be released in March 2000, but no release was effected.

10. According to the source, Paw Oo Tun is being kept in detention merely for peaceful assertion of his beliefs about freedom of thought, expression, association, such as on the right to form student unions, on governmental reform and on better education. His detention is said to be contrary to articles 18, 19, 20, 21 and 28 of the Universal Declaration of Human Rights. He has not used or threatened or advocated violence, but has only advocated the use of peaceful political and social actions permissible under the freedoms protected under international law.

11. It is also asserted that, in this case, a number of provisions of the international instruments relied upon by the Working Group in the examination of communications brought to its attention have been violated, in particular articles 9 and 10 of the Universal Declaration of Human Rights.

12. In its reply the Government explains that while serving his 15-year prison term, a new action was taken against Paw Oo Tun on 21 July 1999, based on the Law to Safeguard the State against the Dangers of those Desiring to Cause Subversive Acts. It does not comment on the allegation of the source that Paw Oo Tun's prison term has already been served and that, therefore, he is being kept in detention without any legal basis.

13. In the light of the information available to it, and bearing in mind that the Government has not denied the allegation that Paw Oo Tun is being kept in detention for the peaceful expression of his beliefs about the freedoms of thought, opinion and association, such as the right to form student unions, without resorting to or threatening to use violence, the Working Group finds that he is being detained merely for having advocated the use of peaceful political actions

manifesting his opinion and conviction in matters of public interest, which is compatible with the freedoms protected by international law. The Working Group also finds that the prison term to which he was sentenced was fully served by March 2000.

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

- (i) The deprivation of the liberty of Paw Oo Tun is arbitrary, being in contravention of articles 9, 19 and 20 of the Universal Declaration of Human Rights and falls within categories I and II of the categories applicable to the consideration of cases submitted to the Working Group.
- (ii) The Working Group decides, furthermore, to transmit the information concerning the alleged ill-treatment of Paw Oo Tun to the Special Rapporteur on the question of torture.

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

16. 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