

OPINION No. 16/2004 (MYANMAR)

Communication addressed to the Government on 5 March 2004

Concerning: the case of Maung Chan Thar Kyaw

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

1. (Same text as paragraph 1 of opinion No. 20/2003.)
2. The Working Group regrets that the Government has not replied within the 90-day deadline.
3. (Same text as paragraph 3 of opinion No. 20/2003.)
4. According to the information received, Maung Chan Thar Kyaw, a 15-year-old child, a recent high school graduate, living in Monywa township, was arrested on 3 June 2003 and accused of having thrown rocks at police officers who were securing an area after a confrontation with members of the National League for Democracy. The confrontation took place on 30 May 2003. In spite of the fact that he emphatically denied the act, he was charged under section 333/114 of the Penal Code.
5. On 7 July 2003, Maung Chan Thar Kyaw was found guilty of obstructing the police. Under section 47 (d) of the Child Law, the Monywa township court sentenced him to be committed to the custody of the Nge Awsan Training School juvenile detention camp in Yangon division where he must stay until 4 October 2005, when he turns 18. According to the source, when he turns 18 he could be charged again, this time as an adult, and transferred to a common prison.
6. According to the information received, Maung Chan Thar Kyaw had no legal counsel, nor were his parents permitted to assist him. He appeared before the court alone, in contravention of section 42 (c) of the Child Law and article 37 (d) of the Convention on the Rights of the Child. The deputy township law officer appeared as witness for the prosecution.
7. The source further reports that the judgement relied exclusively upon the testimonies of government officers. No witnesses were called on behalf of the accused. However, the prosecution was allowed to call 24 witnesses, including four police officers, two ward Peace and Development Council chairmen and four medical doctors who had treated the police officers for their injuries and were themselves not witnesses to the alleged incident.
8. According to the source, the court's sentence of the accused was based entirely on the characterizations of persons appearing for the prosecution and on a report by a juvenile probation officer.
9. According to the source, his arrest, detention and trial are in contravention of the Child Law and the Convention: he was kept in detention since the time of his arrest and for the duration of the trial; he was charged with non-bailable offences which should not have been

applied to a child offender, he appeared before the court alone, he was sentenced without consulting his parents or others willing to appear on his behalf and without due regard to a range of lesser sanctions available under the law.

10. The Government, which had the possibility to respond, did not contest the allegations.

11. The Working Group believes that having legal assistance and having family members attend the trial are essential rights of due process and defence, in particular when the defendant is a child. These rights were not observed in this case, nor was the right to call witnesses on his behalf under the same conditions as witnesses against him. The failure to observe these international norms relating to the right to a fair trial are of such gravity as to confer on the deprivation of liberty of Maung Chan Thar Kyaw an arbitrary character.

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

The deprivation of liberty of Maung Chan Thar Kyaw is arbitrary, being in violation of articles 9, 10 and 11 of the Universal Declaration of Human Rights, and falls within category III of the categories applicable to the consideration of cases submitted to the Working Group.

13. 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.

Adopted on 15 September 2004