

OPINION No. 4/2006 (MYANMAR)

Communication: addressed to the Government on 23 January 2006.

Concerning: Ms. Su Su Nway.

The State has not ratified the International Covenant on Civil and Political Rights.

1. (Same text as paragraph 1 of Opinion No. 38/2005.)
2. (Same text as paragraph 3 of Opinion No. 38/2005.)
3. The Working Group welcomes the cooperation of the Government for having provided it with the necessary information. The Working Group believes that it is in a position to render an Opinion on the facts and circumstances of the case.
4. The allegations of the source can be summarized as follows: Ms. Su Su Nway is a 34-year-old citizen of Myanmar, usually resident in Htan Manaing Village, Kawmoo Township, Rangoon Division. She is a youth member of the opposition National League for Democracy. It was reported that in January 2005 she successfully sued the local authorities because of their forced labour practices. This was a historic case in Myanmar, as it was the first time such a case was brought to court and won by the plaintiff.

(a) The local authorities of Htan Maniang Village soon began to severely harass Su Su Nway, including through public taunts, in an attempt to make her flee the village. At the end of April 2005, they filed criminal charges against her, accusing her of “besmearing their reputation” and swearing at them under articles 506 and 294B of the Myanmar Penal Code. She proclaimed her innocence;

Su Su Nway was arrested on 13 October 2005, the day her trial began. Villagers seeking to be witnesses in her favour of were intimidated by the local authorities, who stated that those intending to testify would have to “pay a visit to the police station” before appearing as witnesses. One man was detained for 24 hours for attempting to support Su Su Nway. The source contends that Su Su Nway had not been informed in a timely manner about the charges against her and was thus unable to effectively prepare her defence. She pleaded not guilty to the charges, but the clerks entered a guilty plea for her. In mid-trial the original township judge,

Judge Mya Mya, was replaced by Judge Htay Htay Win from Henzada Township. No reasons were given explaining that change. The accused also faced harassment and taunts from the authorities during the trial. Su Su Nway suffers from a chronic heart condition and slipped and fell during the trial, hurting herself, but the local nurse treating her was intimidated by the authorities and thereby prevented from continuing treatment of Su Su Nway.

(b) In the end, Su Su Nway was found guilty of “besmearing the reputation” of the village authorities and of swearing at them under the same articles of the Penal Code. She was sentenced to 18 months imprisonment. An appeal against this judgement was pending before the Supreme Court at the time when the communication was lodged (25 October 2005);

(c) Su Su Nway is currently detained at Insein Prison, Rangoon Division. She has been denied medicines since she has been in detention. She reportedly was hospitalized from 4 to 7 January 2006. She is also reportedly suffering from anaemia.

5. In its reply the Government confirmed the factual allegation of the source. It informed the Working Group that the appeal of Ms. Nway had been dismissed by the Supreme Court.

6. The Working Group finds convincing the allegation of the source that the criminal proceedings initiated against Ms. Su Su Nway was motivated by her suing the local authorities for their forced labour practice. This is clearly shown by the dates: whereas the judicial action against the authorities was brought about in January 2005, the criminal action against Ms. Su Su Nway was instituted three months after she had won her case. Moreover, the criminal offences against Ms. Su Su Nway - besmearing the reputation of, and swearing at the authorities - are, in the absence of any convincing argument by the Government to the contrary - indicative of the intention of the Government to unduly restrict the freedom of opinion and expression of someone, who dared to take an action against the authorities of the State. Her detention, therefore, is incompatible with her freedom of opinion and expression. Likewise, the serious procedural flaws referred to by the source and not contested by the Government confer an unfair character to the proceedings against her. These procedural flaws can be summarized as follows: intimidation of witnesses in favour of the person charged, the recording of her guilt when in fact she pleaded not guilty, the substitution of the judge during trial, and the lack of information of the charges against her in due time.

7. In the light of the foregoing, the Working Group renders the following Opinion:

The detention of Ms. Su Su Nway is arbitrary, being in contravention of articles 9, 10 and 19 of the Universal Declaration of Human Rights, and falls within categories II and III of the categories applicable to the consideration of cases submitted to the Working Group.

8. Consequent upon this Opinion, the Working Group requests the Government to take the necessary steps to remedy the situation of Ms. Su Su Nway in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration and to duly consider the signature and ratification of the International Covenant on Civil and Political Rights.

Adopted on 9 May 2006.