

**OPINION No. 7/2008 (Myanmar)****Communication addressed to the Government on 10 May 2007.****Concerning Mr. Ko Than Htun and Mr. Ko Tin Htay.****The State is not a Party to the International Covenant on Civil and Political Rights.**

1. (Same text as paragraph 1 of Opinion No. 14/2007.)
2. The Working Group conveys its appreciation to the Government for having provided it with information concerning the allegations of the source.
3. (Same text as paragraph 3 of Opinion No. 15/2007.)
4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government. The Working Group transmitted the reply provided by the Government to the source, and has received its comments.
5. The cases were reported to the Working Group as follows: Mr. Ko Than Htun is a citizen of Myanmar, resident of Nyaungdone, in the delta region west of Rangoon. On the night of 20 March 2007, a group of police officers and local officials came to his house. They searched the premises and found a parcel containing videos and other items. The videos contained footage of the wedding of the daughter of Senior General Than Shwe, the Chairman of the State Peace and Development Council and commander-in-chief of the Myanmar armed forces. The video had been edited to contrast the, according to the source, “opulent lifestyle of the military elite” with images of poverty among other parts of the population, such as begging children. Different versions of the wedding video have reportedly been widely distributed throughout Myanmar.
6. The following day the police returned to Mr. Ko Than Htun’s home and confiscated all the CDs on the ground that they did not comply with censorship regulations. Mr. Ko Than Htun was taken to the police station and charged with possessing illegal videos. He successfully applied for bail and was allowed to return home. During the evening of the same day the police returned to his home, searched it again and took Mr. Ko Than Htun into custody, again only for a few hours. In the morning of 22 March 2007, however, the police came a third time and again took

Mr. Ko Than Htun to the police station. This time he remained in detention and was charged with violation of the video censorship regulation.

7. Mr. Ko Tin Htay is a citizen of Myanmar. He is the former chairman of the Democratic Party for a New Society, which supported the National League for Democracy in the 1990 general elections. On 22 May 2007, around noon, a police deputy superintendent entered the house of Mr. Ko Tin Htay and searched it for videos. The police officer did not show a search warrant. He stated that the search was carried out on the basis of information obtained in the case of Mr. Ko Than Htun. The police viewed all the CDs found in Mr. Ko Tin Htay's house, which turned out to be all karaoke CDs. In the afternoon Mr. Ko Tin Htay was called to the police station. There the police accused him of being involved in politics and, in violation of criminal procedure law, took down a signed statement from him. He was taken into custody and charged with violation of the video censorship regulation. His application for bail was refused.

8. On 23 March 2007 the local council, which is a local government body, but also has the authority to give orders concerning criminal cases, met and decided that Mr. Ko Than Htun and Mr. Ko Tin Htay should be charged with seeking to incite unrest under the penal code. The local council requested the local police chief to take the case to court.

9. The first hearing was held on 29 March 2007. The statement obtained from Mr. Ko Tin Htay at the police station on 22 March 2007 was used as evidence against him. The prosecution also produced a photograph of General Aung San, the leader of the independence struggle of Myanmar and father of Daw Aung San Suu Kyi, to show that Mr. Ko Tin Htay is politically active.

10. Hearings continued on 6, 9 and 10 April. The defendants' lawyers applied for bail, which was not granted as inciting fear among the public is a non-bailable offence.

11. On 25 April 2007, Mr. Ko Than Htun and Mr. Ko Tin Htay were found guilty of inciting public fear and of violations of video censorship regulations. Mr. Ko Than Htun was sentenced to four and a half years of imprisonment, Mr. Tin Htay to two years imprisonment, both with hard labour.

12. The source alleges that Mr. Ko Than Htun and Mr. Ko Tin Htay have been sentenced to terms of two and four-and-a-half years of imprisonment respectively for possessing videos showing the wedding of the daughter of the government leader. These videos did have a political message, as they denounced the allegedly "opulent lifestyle of the military elite" by comparing it to the poverty of other parts of the population. The videos cannot, however, be said to have in any way incited violent unrest or intended to "incite public fear". The conviction and detention of Mr. Ko Than Htun and Mr. Ko Tin Htay is therefore – according to the source – in retaliation for the peaceful exercise of their right to freedom of expression (protected by article 19 of the Universal Declaration of Human Rights), which includes the "freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers".

13. In its reply, the Government informs that: On 20 March 2007 at 10.30 p.m., the police officials entered and searched Mr. Ko Than Htun's house and discovered a DVD whose contents aim to discredit the Government based on the wedding and

seized the said DVD; the police officials searched again Mr. Ko Than Htun's house on 21 March 2007 at 10.30 p.m. and discovered VCDs and videos which have been produced without license and they were seized accordingly.

14. The Governments indicates that according to the statement made by Mr. Ko Than Htun, the police officials entered and searched Mr. Ko Tin Htay's house on 22 March 2007 at 10:30 p.m. and found several VCDs. While the police tried to check these VCDs with the VCD player, he destroyed one of them, which was presumed to contain a film to discredit and impair the dignity of the Government. Therefore the police officers seized the VCD before the witnesses.

15. It was also indicated by the Government that the searches at Mr. Ko Than Htun's and Mr. Ko Tin Htay's houses by police officials were authorized by search warrants issued by the authorities concerned and also accompanied by witnesses. Thereafter, the authorities concerned filed the cases against Mr. Ko Than Htun and Mr. Ko Tin Htay with the Nyaungdone Township Court under sections 32 (b) and 36 of the Television and Video Law and section 505 (b) of the Penal Code.

16. On 25 April 2007, after hearing the witnesses and the defendants, the Court sentenced Mr. Ko Than Htun to two years of imprisonment under section 32 (b), six months of imprisonment under section 36 of Television and Video Law and two years of imprisonment under section 505 (b) of the Penal Code. The Court also sentenced Mr. Ko Tin Htay to two years of imprisonment under section 505 (b) of the Penal Code. The Government acknowledges that the advocates of Mr. Ko Than Htun and Mr. Ko Tin Htay lodged appeals with the Maubin District Court on 1 June 2007 and that these applications have been rejected.

17. The Working Group observes that it has been confirmed both by the source and by the Government that Mr. Ko Than Htun and Mr. Ko Tin Htay were arrested because of the possession of DVDs and VCDs which were considered as intending to discredit the Government and that they have been sentenced on the basis of these facts in applying provisions of the Penal Code of Myanmar and of the Television and Video Law.

18. The Working Group considers, that although the publication and distribution of discrediting or uncomplimentary film footage of this type might turn out to be disagreeable to the Government, the peaceful exercise of the right to freedom of opinion and expression of ideas is protected by human rights norms of international law, namely article 19 of the Universal Declaration of Human Rights. This right does not only guarantee the unimpeded dissemination of ideas and opinions by any means of communication, which will be favourably received or considered unobjectionable by the Government concerned, but also of opinions and ideas that criticize, challenge, or even upset public figures, especially when put in a political context.

19. The Government has argued that, because the film is presumed to discredit and impair the dignity of the Government, Mr. Ko Than Htun and Mr. Ko Tin Htay were criminally punished for seeking to incite unrest by disseminating it. In the view of the Working Group, it is difficult to understand how the peaceful exercise of the right afforded by article 19 of the Universal Declaration of Human Rights could at all induce or provoke violence, which could be attributed to them, or how such conduct could amount to a criminal offence.

20. The Government has not argued that the unauthorized distribution of footage showing the daughter of a senior Government member during her wedding violates her right to privacy or that of other persons featured in picture. The Working Group holds the view that there is no indication that the competing right to privacy is capable of limiting the non-violent exercise of the right afforded by article 19 of the Universal Declaration of Human Rights in the present case, given that the publication of the video by Mr. Ko Than Htun and Mr. Ko Tin Htay contained a political statement by contrasting the life style of a family member of Senior General Than Shwe with images of poverty prevailing in the country.

21. For all these reasons, the Working Group renders the following Opinion:

The deprivation of liberty of Mr. Ko Than Htun and Mr. Ko Tin Htay is arbitrary, being in contravention of article 19 of the Universal Declaration of Human Rights, and falls within category II of the categories applicable to the consideration of the cases submitted to the Working Group.

22. The Working Group, having rendered this Opinion, requests the Government to take the necessary steps to rectify the situation, in order to bring it into conformity with the norms and principles set forth in the Universal Declaration of Human Rights, and encourages the Government to take the necessary measures to accede to the International Covenant on Civil and Political Rights.

Adopted on 8 May 2008