

OPINION No. 12/2008 (Myanmar)**Communication addressed to the Government on 18 October 2007.****Concerning Ms. Mie Mie (Thin Thin Aye), Mr. Htay Kywe and Mr. Ko Aung Thu.****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 light of the allegations, the Working Group appreciates the cooperation of the Government. 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.

(a) Mr. Htay Kywe, aged 39, a former leader of the pro-democracy student protests in 1988; reportedly in poor health, was sentenced to 15 years of imprisonment in 1991 under national security provisions, including the 1950 Emergency Provisions Act. His sentence was later commuted to 10 years of imprisonment, but he continued to be held for more than three years beyond the expiry of his sentence in 2001, under the 1975 State Protection Law.

(b) Ms. Mie Mie (also known as Thin Thin Aye), aged 35, was also a leader in the 1988 protests when she was still a high school student. She was a member of the Burma Federation of Student Unions and the Democratic Party for a New Society. In 1989, she was detained for four months because of her political activities. She was again arrested during the large student demonstrations in 1996 and sentenced to seven years of imprisonment.

(c) Mr. Ko Aung Thu, aged 43, was arrested for the first time in March 1988. In 1990, he was arrested again and sentenced to five years' imprisonment.

(d) According to the information received, these three prominent activists were involved in the early protest marches in August 2007 and went into hiding as the authorities launched a manhunt for those they perceived as the movement's leaders, in particular Htay Kywe. On 21 August 2007, 13 key activists of the 1988 Generation Students Group were arrested. Shortly before his arrest, Htay Kywe said that "the international community must stand clearly to prevent further human rights violations".

5. The three above-mentioned persons were arrested in the early hours of 13 October 2007 in the city of Yangon by a group of approximately 70 members of the security forces, who raided the house where they all were in hiding. They were arrested together with other two other members of the 1988 Generation Students Group and the owner of the house. Concern was expressed for the risk of torture and ill-treatment of these people.
6. Mr. Htay Kywe, Ms. Mie Mie and Mr. Aung Thu are believed to be the last high-profile members of the 1988 Generation Students Group who were still at large. Their arrests are part of a continuing crackdown by the authorities who have continued to arrest activists even after the United Nations Security Council's statement of 11 October 2007, deploring the violent crackdown and stressing the importance of the early release of all political prisoners. They had been in hiding since the nationwide demonstrations, which began on 19 August 2007, prompted the repression against those perceived to be the leaders of the protest movement.
7. According to the source, these persons have been arrested for their peaceful activism for human rights and democracy, particularly for taking part in peaceful demonstrations calling for a reduction in commodity prices, the release of political prisoners and a process of national reconciliation. It is feared that they were arrested without a judicial warrant and are being held in incommunicado detention. They have not been granted access to lawyers, their families or to medical treatment.
8. Following such allegations, the Government replied on 14 April 2008, stating that the three concerned persons were indeed detained following a regular judicial procedure based on Section 4 of the Law on the production and distribution of tracts aimed at inciting to undermine national unity. The Government further stated that regular medical and family visits were authorized; that medication is procured at the charge of the detention facility authorities, and that all three are detained in separate cells with shower and latrines.
9. Having taken note of Government comments, the source confirmed its prior allegations, while informing that the concerned persons were being held in incommunicado detention, and that they should all be considered political prisoners. The source furthermore requested for their immediate and unconditional release.
10. In addition, the source maintains that, contrary to the statement of the Government, all the concerned persons are deprived of medical attention and care. The families of the detained persons attempt to purchase the necessary medications. The director of the detention centre, during a press conference, labelled the concerned persons as « terrorists ». The detainees do not have access to a lawyer, and it is envisaged that they will be judged in secrecy, or closed doors, inside the prison.
11. The Working Group considers that the Government, in its reply, has not provided concrete responses to the allegations from the source, nor adequate information on the cases and on the eventual administrative or judicial proceedings. The Working Group notes that, in its reply, the Government simply puts forward that the concerned persons were arrested because the production of distribution of tracts aimed to undermining the national unity and that they are currently being held in good detention conditions. The Government does not contest the reason for their arrest as being related to their political activities; nor that the detainees were and are still kept in secrecy and incommunicado detention.

12. The Working Group considers that these three persons were detained simply for their peaceful expression of their ideas and political beliefs. Their detention is contrary to their rights to freedom of opinion and expression and peaceful assembly, recognized in the Universal Declaration of Human Rights. The Working Group calls the Government to provide them with immediate medical treatment, access to lawyers and to their relatives.

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

The deprivation of liberty of Ms. Mie Mie, Mr. Htay Kywe and Mr. Ko Aung Thu, is arbitrary, being in contravention of articles 9, 10, 11, 18 and 19 of the Universal Declaration of Human Rights and falls within category II of the applicable categories to the consideration of the cases submitted to the Working Group.

14. Consequent upon the Opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation of these three persons, and to bring it in conformity with the standards and principles set forth in the Universal Declaration of Human Rights.

15. The Working Group calls the Government to consider the possibility to take adequate initiatives with a view to becoming a State Party to the International Covenant on Civil and Political Rights.

Adopted on 9 May 2008