

Opinion No. 44/2008 (Myanmar)

Communication addressed to the Government on 30 June 2008

Concerning Mr. U Ohn Than

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

1. (Same text as paragraph 1 of Opinion No. 17/2008.)
2. The Working Group regrets that the Government has not provided information concerning the allegations of the source during the 90-days term established in its methods of work.
3. (Same text as paragraph 3 of Opinion No. 17/2008.)
4. The case summarized below was reported to the Working Group as follows: Mr. U Ohn Than (hereafter Mr. Than), a citizen of Myanmar, aged 61, son of U Tha Nu, an officer in the Forest Department, was arrested on 23 August 2007. On this date, sometime after 1 p.m., Mr. Than was taken from the street outside the former Embassy of the United States of America in Yangon, by a group of men in plain clothes. Mr. Than was born in Ngathinechaung Tsp, Irrawaddy Division. Graduated in Forestry from Rangoon University, he served as Deputy Manager under the State Timber Corporation (STC).
5. Mr. Than's arrest was made during a silent and solo protest where he expressed legitimate dissatisfaction about the dramatic hike in fuel prices. He appealed for United Nations intervention into the situation in Myanmar, requesting it to supervise free elections to set up a people's parliament. It was reported that Mr. Than had previously staged similar protests, most recently on 22 February and 25 April 2007.
6. Mr. Than was taken by a group of men in plain clothes, who did not identify themselves, and put into a vehicle. According to information received, at least two policemen claim to have been involved, Police Constable Bo Bo Soe, (Police ID La-211326, Kyauktada, Township Police) and Police Deputy Superintendent Thein Naing (Kyauktada Township Police). In addition, there were two others whom have identified themselves as working with the police and local councils under the "Swan-arshin", a group that has no public face in Myanmar or legal standing under the Criminal Procedure Code (CPC) with which to carry out arrests of this sort.
7. Mr. Than was taken to the Kyaikkasan Interrogation Camp, a special military facility, instead of to a police station as required under normal procedure and in violation of Section 59 of the CPC. This was done apparently with the authorization of the police officers concerned. Furthermore, Mr. Than was not held for a period of less than 24 hours, as required by Section 61 of the CPC.
8. Mr. Than was held in Kyaikkasan camp without reference to any law. A case was not filed against him in court until five months later. After his transfer to Insein Prison, he was placed in solitary confinement, banned from taking exercise and denied family visits for 160 days. On 30 January 2008, he was charged with sedition under Penal Code Law No. 124/a before Yangon Western District Court (Separate Courthouse), on Felony No. 12/2008. On 2 April 2008, he was sentenced to life imprisonment for provoking disaffection towards the Government, with a fine of 1,000 Kyats and six months' additional imprisonment in case he failed to pay the fine. Since his sentence, he has been moved three times and is now being held in Khamti prison in Sagaing Division in north-western Myanmar.
9. During his trial in closed court, Mr. Than was unable to call witnesses to aid in his defence; this according to source, being in violation to Section 2 (e) of the Judiciary Law of 2000, and of Section 352 of the CPC. The only witnesses for the prosecution were

Government officials and police, including the two persons who identified themselves before the court as members of the “Swan-arshin” groups operating with the police under orders of township councils. There were no independent witnesses.

10. Only five of the witnesses were related to the 23 August 2007 protest, and they were the following persons: (a) Police Superintendent Soe Naing (Police ID No. La-147569, Kyauktada Township Police); (b) Police Constable Bo Bo Soe (Police ID La-211326, Kyauktada Township Police); (c) Police Deputy Superintendent Thein Naing Oo, Papedan Township Police; (d) U Nyi Lin Hpyoe, real estate agent (National ID No. 12KaTaTa (Naing) 008822; Swan-arshin member); (e) U Khin Maung Myint, trader, (National ID No. ERGM-022560, Swan-arshin member). Other witnesses were called to testify in relation to the two other protests earlier in the year at which Mr. Than had been present but not arrested or charged.

11. The source adds that Mr. Than has been suffering from hypertension and kidney problems and needs urgent medical attention. In prison, he has contracted cerebral malaria, which if untreated, is almost always fatal. His cerebral malaria is said to be at an advanced stage. In an attempt to cover up the critical state of his health, prison authorities reportedly wrote to Mr. Than’s family in his name, saying the he no longer needed visitors and requesting that they transfer money to him instead.

12. The source adds that this was the sixth time Mr. Than was arrested, always due to his peaceful political activities. He has spent at least 14 years in jail in total. He was first imprisoned from 1988 to 1996. In 1988, he was sentenced to eight years in prison under the Emergency Provision Act Section 5 (J). In 1997, he was again arrested and sentenced to seven years imprisonment for delivering a pamphlet entitled “A call for the fight for Burma’s human rights”. Mr. Than was released in 2003 and again arrested in 2004 for staging a solo protest outside the United Nations Development Programme compound. He was then condemned to two years’ imprisonment under Section 505 (b). He was arrested again in February and April 2007.

13. The source concludes that the courts punished Mr. Than for exercising his right to freely express his opinion against the policies implemented by the Government. The court did not allow Mr. Than to be assisted by a defense lawyer or to call on independent expert witness to evaluate the legality of his detention.

14. The source concludes that Mr. Than’s right to a fair trial was seriously violated. In addition, no process for review of his conviction has been authorized.

15. In its letter dated 30 June 2008, and in the note verbale dated 3 November 2008, the Working Group informed the Government about the Working Group’s intention to consider the case of detention of Mr. U Ohn Than during its fifty-third session. No response from the Government was received during the 90-day term established by the Working Group’s methods of work.

16. The Working Group considers it is in a position to provide an Opinion on the deprivation of liberty suffered by Mr. U Ohn Than.

17. The Working Group notes that Mr. Than was arrested by a group of men, most of whom were members of the government-linked paramilitary group “Swan-arshin”. He was apprehended for staging a solo protest by holding a poster demanding a call for a free and fair election, under the direct supervision of the United Nations, for a people’s parliament.

18. The Working Group further notes that Mr. Than was held incommunicado for 160 days. He was detained for carry out similar activities to those for which he had already spent more than 14 years in prison. The trial of Mr. Than was held in a closed session without any assistance of legal counsel or the hearing of independent witnesses. Most of the witnesses for his prosecution were persons who had participated in his apprehension.

Mr. Than was unable to present witnesses and denied a defence lawyer. On 2 April 2008, he was convicted to life imprisonment. Mr. Than has no possibility for appeal. The Working Group considers that his trial was grossly unfair.

19. The Working Group further notes that Mr. Than is suffering from cerebral malaria in the remote Khamti prison, a disease which has a high fatality rate. If untreated, cerebral malaria is almost always fatal. His family has not been able to meet him. The source has suspicion that, in an attempt to cover up the critical state of his health, prison authorities do everything to not allow visits to him, including members of his family.

20. The Working Group considers that, in the case under consideration, several provisions of the international instruments relied upon by the Working Group in the examination of the cases brought to its attention have been violated.

21. In the light of the foregoing the Working Group expresses the following Opinion:

The detention of Mr. U Ohn Than is arbitrary, being in contradiction of articles 8, 9, 10, 11, 19 and 21 of the Universal Declaration of Human Rights and falls within categories II and III of the categories applicable to the consideration of the cases submitted to the Working Group.

22. The Working Group reminds the Government that under the United Nations Standard Minimum Rules for the Treatment of Prisoners, the authorities have a duty to provide the services of a qualified medical officer within the prison facilities; to transfer prisoners and detainees who require specialist treatment to specialized institutions or to civil hospitals; and to provide prisoners and detainees with adequate food of nutritional value adequate for health and strength.

23. Consequent upon this Opinion, the Working Group requests the Government to order the immediate and unconditional release of Mr. U Ohn Than so as to bring this situation into conformity with international human rights standards and principles.

24. Lastly, the Working Group further requests the Government to consider the possibility of becoming a State party to the International Covenant on Civil and Political Rights.

Adopted on 26 November 2008

Opinion No. 45/2008 (India)

Communication addressed to the Government on 27 August 2007

Concerning Messrs. Manzoor Ahmad Waza; Nisar Ahmad Wani; Sh. Farooq Ahmad Kana; Mohammed Yousuf Mir; Mehraj-ud-Din Khanday; Nazir Ahmad Dar; Mohammed Younis Bhat; Umar Jan; Reyaz Ahmad Teeli and Abdul Qadeer

The State is a party to the International Covenant on Civil and Political Rights.

1. (Same text as paragraph 1 of Opinion No. 17/2008.)
2. Despite their belated filing, the Working Group welcomes the cooperation of the Government, which has submitted information concerning the allegations of the source.
3. (Same text as paragraph 3 of Opinion No. 17/2008.)
4. The case summarized below was reported to the Working Group on Arbitrary Detention as follows: Messrs. Manzoor Ahmad Waza, Nisar Ahmad Wani, Sh. Farooq Ahmad Kana, Mohammed Yousuf Mir, Mehraj-ud-Din Khanday (a minor), Nazir Ahmad Dar, Mohammed Younis Bhat, Umar Jan, Reyaz Ahmad Teeli, all Kashmiri, and Mr. Abdul Qadeer from Tajikistan, have all been taken into preventive detention at different,