

# No. 25/2011 (Myanmar)

## Communication addressed to the Government on 23 February 2011

**Concerning: Thagyi Maung Zeya and Sithu Zeya**

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

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the former Commission on Human Rights. The mandate of the Working Group was clarified and extended in Commission resolution 1997/50. The Human Rights Council assumed the mandate in its decision 2006/102. The mandate was extended for a further three-year period in Council resolution 15/18 of 30 September 2010.
2. The Working Group regards deprivation of liberty as arbitrary in the following cases:
  - (a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his sentence or despite an amnesty law applicable to him) (category I);
  - (b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);
  - (c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);
  - (d) When asylum-seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);
  - (e) When the deprivation of liberty constitutes a violation of the international law for reasons of discrimination based on birth; national, ethnic or social origin; language; religion; economic condition; political or other opinion; gender; sexual orientation; disability or other status, and which aims towards or can result in ignoring the equality of human rights (category V).

#### **Submissions**

##### *Communication from the source*

3. The source informs that Thagyi Maung Zeya, 58 years old, is an artist, and Sithu Zeya, aged 20 years, son of Thagyi Maung Zeya, is a university student.
4. The source reports that on 15 April 2010, a series of explosions occurred at the annual water festival in Yangon. According to official numbers, 10 people were killed and 168 injured. At the time of the incident, Sithu Zeya was taking photographs and a video of the festivities; when the blasts occurred he began taking shots of the dead and wounded. The source reports that security forces on the scene arrested Sithu Zeya at around 3:45 p.m. and took him into custody. Following interrogation, the police allegedly claimed that Sithu Zeya intended to send the photographs to Democratic Voice of Burma, the exiled, anti-government media agency, and that his father also

maintained contact with the agency. As a result, his father, Thagyi Maung Zeya, was detained and charged with the same offence as his son.

5. Sithu Zeya's case was brought before the Yangon Eastern District Court and Mingalar Taung-nyunt Township Court (case Nos. 466 and 467/10, decided on 21 December 2010, Township Judge U Tin Htun Oo, Serial No. Ta/2165 presiding). Sithu Zeya was sentenced to five years' imprisonment on the grounds of violating section 13(1) of the Immigration (Temporary) Act of 1947, and three years' imprisonment for violating section 17(1) and (2) of the Unlawful Associations Act of 1908. Similarly, in the case pending before the Yangon Eastern District Court, Sithu Zeya is charged with violating section 33(1)(a) and (b) of the Electronic Transactions Law of 2004, which provides for a minimum and maximum sentence of seven years and 15 years in prison, respectively.

6. According to the source, although Sithu Zeya was arrested on 15 April 2010, the authorities did not open the case against him until 4 May 2010, and did not bring the case before a court until 14 June 2010. The source maintains that in accordance with domestic law, the police should have made a First Information Report and only thereafter should they have arrested Sithu Zeya. The source argues that for 19 days, Sithu Zeya was illegally detained. Reportedly, he was detained at the Yangon Division Police Headquarters rather than at the township police station which had jurisdiction over the area where he had been arrested. Sithu Zeya was not charged in court within 30 days of arrest, as prescribed by section 167 of the Criminal Procedure Code.

7. The source further reports that Sithu Zeya was allegedly tortured for four days while in detention, and that a confession that was forcibly extracted from him was used to bring the charges against him and his father. The alleged acts of torture included being hit on the soles of the feet, forced to crouch and stand in stress positions for extended periods, hanged upside down, and denied food. The police allegedly threatened Sithu Zeya that if he did not confess, they would also arrest and charge his mother. It is reported that after approximately one month in detention, an immigration department official allegedly came to the prison and threatened Sithu Zeya with further acts of torture.

8. Regarding the detention of Thagyi Maung Zeya, the source reports that he was drugged during interrogation. Reportedly, as a result, he experienced strange physical sensations throughout the 20 days in custody for interrogation, including lack of hunger or drowsiness, infrequent urination, and a willingness to agree with everything that the police put to him. However, when he made the allegations in court, they were not put on the official record.

9. The source contends that the only reason for Thagyi Maung Zeya and Sithu Zeya's detention was the fact that they were taking photographs. The source contends that there is no material evidence against Thagyi Maung Zeya and Sithu Zeya to convict them, and the police cases were exclusively based on confessions extracted through the alleged use of torture and drugging. According to the source, the investigating police repeatedly admitted in court that they did not have evidence, but that facts emerged during the investigation to justify charging Thagyi Maung Zeya and Sithu Zeya.

10. The source contends that, apart from the fact that the charges brought against Thagyi Maung Zeya and Sithu Zeya were formulated on the basis of forcibly extracted confessions, paragraph 612(10) of the Myanmar Court Manual states that following a confession before a judge, the accused should be sent to a separate remand section of the prison to await trial and sentencing. However, Sithu Zeya was sent back to the Yangon Police Headquarters for further interrogation and was allegedly tortured. The source also argues that the police case against Thagyi Maung Zeya and Sithu Zeya consisted of photocopied documents and incorrectly or incompletely filled out records, which the courts should have declined to accept as evidence. Although this argument was raised in court by Sithu Zeya's lawyer, it was rejected on the basis that there was sufficient information in the required documentation.

11. In the light of the foregoing, the source submits that Thagyi Maung Zeya and Sithu Zeya's deprivation of liberty is arbitrary on the grounds that the legal basis justifying their detention relies on confessions extracted by means of alleged acts of torture and drugging. Moreover, the source submits that the trials of Thagyi Maung Zeya and Sithu Zeya are in total or partial non-observance of domestic and international norms related to the right to a fair trial.

*Response from the Government*

12. In its reply of 4 April 2011, the Government stated that Sithu Zeya was detained for interrogation on 15 May 2010 when he was taking photographs of the bomb blasts, including the security forces.

13. During the interrogation, the officials found that Sithu Zeya had illegally visited Mae Sot City, Thailand, in October 2009. He had undergone media training with Democratic Voice of Burma (DVB) media agency, and returned to Myanmar illegally.

14. The officials also found that he had sent information relating to domestic matters through e-mail to the National Coalition Government of the Union of Burma (NCGUB) - which has been declared an unlawful and terrorist organization by the Government -, DVB media and other exiled groups in March 2010. They claim that he had exaggerated the information sent in order to undermine public order and stability. He received financial support from exiled, anti-government groups and sent information to DVB media via his father, Thagyi Maung Zeya.

15. Based on Sithu Zeya's confessions, his father, Thagyi Maung Zeya, was detained for interrogation on 16 March 2010. The officials found that Thagyi Maung Zeya had visited Mae Sot City, Thailand, illegally in September 2008 and in January, May, and September 2009, respectively, and returned to Myanmar illegally. During the visits, he apparently met with representatives of NCGUB, DVB media and other exiled groups. He had sent information which undermined the maintenance of public order and stability, and he received funds from exiled, anti-government groups.

16. The case against Sithu Zeya was brought by the Mingala Taungnyunt police station on 4 May 2010, after it had found evidence of connections with an unlawful organization (section 17(1) of the Unlawful Associations Act), committing offences, such as illegal border crossings (section 13(1) of the Immigration Act (Emergency Provision Act)] and distributing via e-mail information undermining the maintenance of public order (section 33(b) of the Electronic Transactions Law].

17. On the same day, the Bahan police station brought the case against Thagyi Maung Zeya, also based on violation of section 33(b) of the Electronic Transactions Law, section 13(1) of the Immigration Act (Emergency Provision Act) and section 17(1) and (2) of the Unlawful Associations Act. Thagyi Maung Zeya was charged in the Yangon Western District Court with violating section 17 (1) and (2) of the Unlawful Associations Act on 14 June 2010; and with violation of section 13(1) of the Immigration Act (Emergency Provision Act) and section 33(b) of the Electronic Transactions Law on 22 July 2010. He was sentenced to a total of 13 years' imprisonment by the court.

18. Regarding the legal proceedings against Sithu Zeya, two cases of violating section 17(1) of the Unlawful Associations Act and section 13(1) of the Immigration Act (Emergency Provision Act) were brought before the Mingala Taungnyunt Township Court on 1 June 2010. A case relating to violation of section 33(b) of the Electronic Transactions law was brought before the Yangon Eastern District Court on 9 August 2010. He was sentenced to 5 years' imprisonment. The case relating to violation of section 33(b) of the Electronic Transactions Law is still pending before the Yangon Eastern District Court.

19. The Government concludes that Sithu Zeya and Thagyi Maung Zeya were detained for violation of existing laws, rather than for their activities relating to the sending of the information to DVB media.

20. On the day of the bomb blasts (15 March 2010), the police had arrested Sithu Zeya as a suspect in the case. He was detained for 24 hours (until 16 March 2010) without a warrant, and this is lawful under the Code of Criminal Procedure, articles 54 (1) and 61. From 16 March 2010 to 14 May 2010, after obtaining a remand order from Mingala Taungnyunt Township Court, he was detained for a total of 29 days for questioning relating to the offences under the Code of Criminal Procedure, articles 307, 302, 326 and 114. After finding violations of the above-mentioned provisions, the cases against him were brought before the court on 4 May 2010.

21. Under the Code of Criminal Procedure, article 167(2) concerning the detention of an accused, where the offence is punishable by more than seven years' imprisonment, an accused person can be detained for 30 days after obtaining a remand order from the court. An accused person shall be brought to court within 30 days on the basis of one criminal offence. According to the Government's response, Sithu Zeya had committed several other criminal offences, therefore the officials sought respective remand orders so as to investigate each case thoroughly. The Government concludes

that, for that reason, it was not required to charge him in court within 30 days, and the authorities find that there is no illegal detention in the present case.

22. The Government also refutes the allegations of the use of torture during the interrogation of Sithu Zeya. The Government maintains that he made the confessions voluntarily after realizing that the evidence was undeniable, and repented the acts that he had carried out in violation of the existing laws.

23. The Government maintains that the officials put forward his case to the court in line with the existing procedures and rules of evidence.

24. Accordingly, the Government disagrees that the defendant was detained and charged unlawfully. The officials took legal action against him for violating the existing domestic laws.

*Comments from the source*

25. The source maintains that the court verdicts convicting the two accused were based solely on police testimonies and confessions obtained through the use of torture and duress. The accused, Sithu Zeya, retracted the confession that he alleged was obtained through the use of torture; however, the court ignored this retraction for the purposes of reaching a guilty verdict. Consequently, the convictions are unlawful and the periods of imprisonment ordered on the basis of these convictions are also invalid.

26. The source notes that the Government has not denied, and has indeed argued, that the imprisonment of the two detainees is justified under domestic law for the alleged offences of taking photographs and video footage of a bombing incident, travelling to a neighbouring country to obtain training for the purpose of journalism work, having obtained financial and material support for such training, and using the Internet to send information without the approval of the Myanmar authorities. Neither of the accused was imprisoned for having any direct involvement in the bombing incident. The contents of the police and court records support this position. Although the obtaining of media training abroad and video recording of incidents in Myanmar may be disagreeable to the Government, the peaceful exercise of the right to freedom of expression is protected by international human rights law. Consequently, the offences for which the detainees have been imprisoned cannot be considered to constitute justification for imprisonment in terms of the mandate of the Working Group, irrespective of other factors.

### **Discussion**

27. In its reply, the Government confirms that the main reasons for the detention and conviction of Thagyi Maung Zeya and Sithu Zeya were sending information relating to domestic matters via e-mail to opposition groups and the media; exaggerating the information in order to undermine public order and stability; and receiving financial support from exiled opposition groups.

28. In previous cases concerning Myanmar, the Working Group emphasized that sanctioning any such activities can never stand the test against the rights and freedoms as contained in the Universal Declaration of Human Rights (see, for instance, opinions No. 43/2008, para. 23; No. 12/2008, para. 12; No. 25/2000, para. 12).

29. Indeed, as was stressed in the Working Group's opinion No. 25/2000, peaceful expression of opposition to any regime cannot give rise to arbitrary arrest. It is apparent from both the source's communication and Government's reply that the two men were detained and convicted for peaceful exercise of their rights to freedom of opinion and expression, and freedom of peaceful association, as provided for in articles 19 and 20 of the Universal Declaration of Human Rights.

### **Disposition**

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

The deprivation of liberty of Thagyi Maung Zeya and Sithu Zeya is arbitrary, being in contravention of articles 19 and 20 of the Universal Declaration of Human Rights, and falling within category II of the categories applicable to the consideration of the cases submitted to the Working Group.

31. Consequent upon the opinion rendered, the Working Group requests the Government of Myanmar to take the necessary steps to remedy the situation of Thagyi Maung Zeya and Sithu Zeya and to bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights.

32. The Working Group believes that, taking into account all the circumstances of the case, the adequate remedy would be to release Thagyi Maung Zeya and Sithu Zeya and to accord them an enforceable right to compensation.

33. The Working Group encourages the Government to consider the possibility of acceding to the International Covenant on Civil and Political Rights.

[Adopted on 30 August 2011]