



# General Assembly

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## Human Rights Council Working Group on Arbitrary Detention

### Opinions adopted by the Working Group on Arbitrary Detention at its sixty-ninth session (22 April-1 May 2014)

#### No. 6/2014 (Myanmar)

#### Communication addressed to the Government on 23 January 2014

#### Concerning Mr. Brang Yung

**The Government has not replied to the communication.**

#### **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, which extended and clarified the Working Group's mandate in its resolution 1997/50. The Human Rights Council assumed the mandate in its decision 2006/102 and extended it for a three-year period in its resolution 24/7 of 26 September 2013. In accordance with its methods of work (A/HRC/16/47, annex), the Working Group transmitted the above-mentioned communication to the Government.

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 or her sentence or despite an amnesty law applicable to the detainee) (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 State concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

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(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 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; or 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. According to the source, Brang Yung, a national of Myanmar and an ethnic Kachin, worked as a herdsman in Kachin State. Brang Yung, together with his wife and three children, moved from his home village of Waing Maw Township to the internal displacement camp run by Shwe Tset Kachin Baptist Church in Myitkyina when fighting broke out between the Myanmar army and the Kachin ethnic factions.

4. It is reported that, on 9 June 2012, Brang Yung and another Kachin herder, Laphai Gam, set out for Tar Law Gyi village to work as cattle herders. Laphai Gam is the subject of the Working Group's opinion No. 50/2013.

5. On 12 June 2012, Brang Yung and Laphai Gam were both arrested by the Myanmar army. The source indicates that many other Kachin men living in internal displacement camps were also arrested on the same date. Brang Yung was initially taken to a monastery in Tar Law Gyi village and later, on 2 July 2012, sent to Myitkyina prison.

6. The source does not know whether any warrant was shown for Brang Yung's arrest and therefore is unaware of the legal basis relied upon at the time of his arrest.

7. Brang Yung was reportedly accused of being associated with the Kachin Independence Army and was later tried in court pursuant to article 17 of the Unlawful Associations Act, 1908. The source asserts that Brang Yung is in no way associated with the Kachin Independence Army and maintains that the Myanmar authorities arrested Brang Yung not on the basis of a charge fairly or properly put to him but so that he could be tortured and a confession extracted from him in detention. The source submits that the Myanmar authorities, with little or no evidence, indiscriminately target Kachin individuals on suspicion that such persons must necessarily be in sympathy with the Kachin Independence Army.

8. The source submits that since his arrest, Brang Yung: (a) has been held incommunicado, without access to a lawyer or his family; (b) has not had the right of access to an independent and impartial judicial tribunal; (c) has not had a fair hearing, represented by counsel, to secure his release; (d) has not been accorded regular prison visits from his family; (e) has not had access to adequate medical facilities or treatment since his torture and incarceration; (f) has not been allowed to read newspapers or other information material; and (g) has not been afforded any opportunity to complain about the conditions of his detention. Moreover, the source asserts that any lawyer who seeks to defend Brang Yung in a domestic tribunal is liable to be arrested and incarcerated for doing so.

9. The source submits that whilst in detention Brang Yung has been subjected to torture, inhuman and degrading treatment, or other risk, as confirmed by an eyewitness. This includes being subjected to forcible dancing; being made to have sex with another male, ethnic Kachin prisoner; and having his genitals burned with candle fire. Reportedly, sneering comments were also made about Brang Yung's Christian faith and he was forced

to stand in the position of a crucifix. He was stripped naked and made to kneel on gravel stones. The source conveys its concern that measures are needed to ensure respect for his physical and mental integrity.

10. The source submits that the arrest and continued detention of Brang Yung are in breach of article 13, on freedom of movement and residence, of the Universal Declaration of Human Rights because his detention prevents him from travelling within the country to fraternize with other Kachin people; article 18, on freedom of thought and conscience, because his detention is due to his belief in the rights of Kachin people, Christianity, the rule of law, democratic values and dialogue; article 19, on freedom of opinion and expression, freedom to hold opinions without interference and freedom to impart information and ideas, because his detention prevents him from expressing his views, from promoting human rights and equality in respect of the Kachin people, from making any criticism of the Myanmar authorities and from imparting his honest opinion to others; and, article 21, on the right to take part in the government of his country, because his detention ensures that he has no influence on political and human rights matters within Myanmar.

11. The source submits that the circumstances of Brang Yung's arrest and detention are in breach of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by the General Assembly in its resolution 43/173 of 9 December 1988, in particular principles 1, 3, 4, 6, 7 (3), 10, 11, 13, 15, 17, 18, 19, 20, 21, 24, 25, 27, 28, 29, 32, 33 and 36.

#### *Response from the Government*

12. The Working Group regrets that the Government has not responded to the allegations transmitted by the Group on 23 January 2014.

13. Despite the absence of any information from the Government, the Working Group considers that it is in a position to render its opinion on the detention of Mr. Brang Yung, in conformity with paragraph 16 of its methods of work.

#### **Discussion**

14. The Government has chosen not to rebut the *prima facie* reliable allegations submitted by the source.

15. The Working Group notes that the Government, in its response to the urgent appeal of December 2013, had informed the Group that there were two cases against Mr. Brang Yung pending at that time: one under the Unlawful Associations Act and another under the Explosive Substances Act.

16. Subsequently, Mr. Brang Yung was convicted to five years' imprisonment under the Explosive Substances Act and to two years' imprisonment under the Unlawful Associations Act.

17. The Working Group recalls that it is a well-documented fact that for many years there has been and there remains deep ethnic tension among the minority communities vis-à-vis the majority group in Myanmar, resulting in fighting and arbitrary arrests, detention and other human rights abuses.

18. Mr. Brang Yung belongs to the minority Kachin ethnic group and army operations have resulted in numerous arrests of ethnic Kachins as well as alleged torture of them to extract confessions.

19. In this regard, Mr. Tomás Ojea Quintana, Special Rapporteur on the situation of human rights in Myanmar, in his statement of 21 August 2013, emphasized that "over the years there have been serious allegations of human rights abuses against villagers from

Kachin”. Mr. Ojea Quintana also expressed his concern at the continuing practice of torture in places of detention. Such being the prevalent situation, the Government would be expected to submit a robust rebuttal of the source’s allegation of torture to clarify the situation. To the contrary, the Government has ignored that serious allegation.

20. In the present case, in violation of article 10 of the Universal Declaration of Human Rights, Mr. Brang Yung was deprived of his right to effective defence; since his arrest, he has been held incommunicado without access to a lawyer. The Government has not rebutted the allegation that Mr. Brang Yung was arrested in order for a confession to be extracted from him under torture in detention.

21. The Working Group considers that the non-observance of the Universal Declaration of Human Rights relating to the right to a fair trial in the case under consideration is of such gravity as to give the deprivation of liberty of Mr. Brang Yung an arbitrary character. Therefore, the deprivation of liberty of Mr. Brang Yung falls within category III of the categories applicable to the consideration of cases submitted to the Group.

22. The Working Group also considers that, in violation of articles 2 and 7 of the Universal Declaration of Human Rights, Mr. Brang Yung was targeted for prosecution as he belongs to the minority Kachin ethnic group. Members of this group have been subjected to numerous arrests as well as alleged torture to extract confessions. Thus, the deprivation of liberty of Mr. Brang Yung also falls within category V of the categories applicable to the consideration of cases submitted to the Group.

#### **Disposition**

23. In the light of the foregoing, the Working Group on Arbitrary Detention renders the following opinion:

The deprivation of liberty of Mr. Brang Yung is arbitrary, being in contravention of articles 2, 7, and 10 of the Universal Declaration of Human Rights; it falls within categories III and V of the categories applicable to the consideration of the cases submitted to the Working Group.

24. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation, which include the immediate release of Brang Yung and the provision of adequate reparation to him.

25. In accordance with article 33 (a) of its revised methods of work, the Working Group considers it appropriate to refer the allegations of torture to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, for appropriate action.

26. The Working Group encourages the Government of Myanmar to ratify the International Covenant on Civil and Political Rights.

*[Adopted on 23 April 2014]*