

Decision No. 13/1994 (Myanmar)

Communication addressed to the Government of Myanmar
on 22 April 1994.

Concerning: Dr. Ma Thida, Dr. Aung Khint Sint, Moe Tin and
Kyaing Ohn, on the one hand, and the Union of Myanmar, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.
2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the cases in question within 90 days of the transmittal of the letter by the Working Group.
3. (Same text as para. 3 of Decision No. 10/1994.)
4. In the light of the allegations made the Working Group welcomes the cooperation of the Government of Myanmar. The Working Group transmitted the reply provided by the Government to the source and the latter has provided the Working Group with its comments. The Working Group believes that it is in a position to take a decision on the facts and circumstances of the cases, in the context of the allegations made and the response of the Government thereto, as well as the comments by the source.
5. In rendering its decision, the Working Group, in a spirit of cooperation and coordination, has also taken into account the report of the Special Rapporteur of the Commission on Human Rights, Mr. Yokota, pursuant to Commission resolution 1992/58.
6. According to the communication, a summary of which has been transmitted to the Government:
 - (a) Dr. Ma Thida, aged 27, a female short-story writer and member of the opposition National League for Democracy and Dr. Aung Khint Sint, a doctor who has written on medical issues and an NLD MP were allegedly arrested on 7 and 3 August 1993, respectively, on charges under the Emergency Powers Act, and are being detained in Insein Prison in Rangoon. According to the source Dr. Ma Thida was convicted of endangering public tranquillity, of having contact with unlawful associations, and distributing unlawful literature. It was reported that Dr. Ma Thida and Dr. Aung Khint Sint were both sentenced on 15 October 1993 to 20 years in prison each. According to the source, precise details of the evidence used to convict them were not available. It was also reported that in the Insein Prison conditions are poor and a number of political prisoners have died from lack of medical attention.
 - (b) Moe Tin, journalist and poet as well as the literary advisor of Aung San Suu Kyi with the National League for Democracy, was allegedly

arrested in December 1991 and was believed to be detained in prison. According to the source he was detained solely because of his opinions. He was sentenced to four years in prison in July 1992.

(c) Kyaing Ohn, a former collaborator of "Bot athung" and member of the National League for Democracy and an elected member of parliament, was allegedly arrested in 1990 and was believed to be detained in prison. According to the source, the detainee was accused of being linked with the National League for Democracy. It was reported that he was sentenced to seven years hard labour on 17 October 1990.

7. In its reply, the Government of Myanmar, while citing a different sentence for Ohn Kyaing from that provided by the source, holds that none of the persons in question has been arbitrarily detained. They were all convicted, following perfectly legal actions and a proper trial, under section 5 (j) of the Emergency Provisions Act for having broken the law, in particular, either by reproducing or distributing seditious books and pamphlets published by terrorist groups with the aim of creating unease and bringing the Government and the armed forces into discredit (in the case of Ma Thida and Ohn Kyaing), or (in the case of Tin Moe) by printing literature directed against the Government and the army in the magazine Pay Hpoo Hlwar, of which he was the editor. However, it will be noted that according to the Government of Myanmar, in addition to the term of 7 years' imprisonment, Ohn Kyaing was also sentenced to 10 years' imprisonment at a later trial for involvement in the drafting, by the National League for Democracy (the opposition), of a leaflet entitled "The three paths to power". In the case of Dr. Aung Khint Sint, the Government merely states that he was prosecuted and tried by a civil court, which found him guilty without giving further details, and that it consequently considers that a judgement made by a court legally constituted in a State Member of the United Nations should not be called into question on the pretext of investigating arbitrary detention.

8. As can be seen, and as regards the substance of the matter, the Government of Myanmar does not deny that the detention of the above-mentioned persons is connected solely with their activities in opposing the current regime in that country, and there is nothing to indicate that in taking those actions they resorted to or incited violence. What they are ultimately accused of is having freely and peacefully exercised their right to freedom of opinion and expression guaranteed under article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights. It is no accident that the Working Group has already had occasion to note in its earlier decisions (59/1992 Nay Min, 38/1993 Win Tin and seven others) that it was emergency legislative provisions, and particularly section 5 (j), which were cited against them, as occurs each time that proceedings are instituted against members of Parliament, political leaders, writers, journalists and so on.

9. In the light of the above the Working Group decides:

The detention of the above-mentioned persons, is declared to be arbitrary being in contravention of article 19 of the Universal Declaration of Human Rights, and article 19 of the International Covenant

on Civil and Political Rights and falling within category II of the principles applicable in the consideration of the cases submitted to the Working Group.

10. Consequent upon the decision of the Working Group declaring the detention of Dr. Ma Thida, Dr. Aung Khint Sint, Moe Tin et Kyaing Ohn to be arbitrary, the Working Group requests the Government of Myanmar to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 28 September 1994.