

**General Assembly**Distr.: General
20 May 2014

Original: English

**Human Rights Council
Working Group on Arbitrary Detention****Opinions adopted by the Working Group on Arbitrary
Detention at its sixty-ninth, 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, and Corr.1), 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 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 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 the 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 set out with another Kachin herder, Laphai Gam, 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 conveys 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 sent to Myitkyina prison on 2 July 2012.

6. The source is unaware 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 in detention. The source submits that the Myanmar authorities indiscriminately target Kachin individuals with little or no evidence 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: (i) has been held incommunicado, without access to a lawyer or his family; (ii) has not had the right of access to an independent and impartial judicial tribunal; (iii) has not had a fair hearing represented by counsel to secure his release; (iv) has not been accorded regular prison visits from his family; (v) has not had access to adequate medical facilities or treatment since his torture and incarceration; (vi) has not been allowed to read newspapers or other information material; and (vii) 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 being arrested and incarcerated for doing so.

9. The source informs 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 involved forcible dancing; being made to have same sex with another male, ethnic Kachin prisoner; and having his genitals burnt with candle fire. Sneering comments were reportedly 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

naked 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 the Universal Declaration of Human Rights: article 13, “freedom of movement and residence”, because his detention prevents him from travelling within the country to fraternise with other Kachin people; article 18, “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, “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, “right to take part in the government of his country”, because his detention ensures that he had 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, 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 the 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 Working 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 under the Explosive Substances Act to five years imprisonment 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 continues to remain, a deep ethnic tension among the minority communities vis-à-vis the majority group in Myanmar, resulting in fighting and arbitrary arrests, detention as well as other human rights abuses.

18. Mr. Brang Yung belongs to the minority Kachin ethnic group and army operations have resulted in numerous arrests of the ethnic Kachins as well as alleged torture against 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, emphasised that “over the years there have been serious allegations of human rights abuses against villagers from Kachin...” Mr. Ojea 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 to the source's allegation of torture to clarify the situation. To the contrary, the Government ignores this serious allegation.

20. In the present case, in violation of article 10 of the UDHR, Mr. Brang Yung was deprived of his right to effective defence; since his arrest, he was held incommunicado without access to a lawyer. The Government has not rebutted the allegation that Mr. Brang Yung was arrested in order to extract a confession under torture in detention.

21. The Working Group considers that the non-observance of the UDHR 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 Working Group.

22. The Working Group also considers that Mr. Brang Yung, in violation of articles 2 and 7 of the UDHR, 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 against them 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 Working 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 was arbitrary, being in contravention of articles 2, 7, and 10 of the UDHR; 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 Mr. Brang Yung and the provision of adequate reparation to him.

25. In accordance with article 33(a) of the Revised Methods of Work of the Working Group, 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]