



Human Rights Council
Working Group on Arbitrary Detention**Opinions adopted by the Working Group on Arbitrary Detention at its seventieth session, 25–29 August 2014****No. 24/2014 (Myanmar)****Communication addressed to the Government on 25 June 2014****concerning La Ring****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 15/18 of 30 September 2010. The mandate was extended for a further three years in resolution 24/7 of 26 September 2013. In accordance with its methods of work (A/HRC/16/47 and Corr.1, 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 States 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. The source reports that Mr. La Ring, a national of Myanmar and an ethnic Kachin, originally worked as a farmer in Kachin State. Mr. La Ring reportedly became internally displaced as a result of the armed conflict between the Myanmar army and ethnic factions and went to live in a camp for internally displaced persons. After moving to the camp, he worked as a herdsman.

4. It is reported that, on 5 June 2012, Mr. La Ring left the camp to do his work as a herdsman after obtaining prior permission from the Camp Supervisor. He was reportedly arrested by members of the 37th battalion of Myanmar Army during his lunch break. The source conveys that many other Kachin men living in the camp were also arrested at about the same time, including Laphai Gam, the subject of Opinion No. 50/2013 issued by the Working Group.

5. The source is unaware whether a warrant was shown for Mr. La Ring's arrest and therefore is unaware of the legal basis relied upon at the time of his arrest. Mr. La Ring has reportedly been charged with being associated with the Kachin Independence Army pursuant to section 17 of The Unlawful Associations Act, 1908. The source asserts that Mr. La Ring is in no way associated with the Kachin Independence Army and maintains that the Myanmar authorities arrested him 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. Mr. La Ring is reportedly being held in incommunicado detention but the source believes that he might be in the Myitkyina prison in Kachin State.

6. The source submits that since his arrest, Mr. La Ring:

- (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
- (g) Has not been afforded an opportunity to complain about the conditions of his detention.

7. Moreover, the source asserts that any lawyer who seeks to defend Mr. La Ring in a domestic tribunal is liable to be arrested and incarcerated for doing so.

8. The source reports that, after his arrest and whilst in detention, Mr. La Ring has been subjected to torture. He has been kicked and beaten, and the torturers allegedly placed a wooden stick across his shin and then stamped on each end of the stick, causing agonising pain. The source is unaware whether Mr. La Ring has been accorded medical treatment and whether he has sustained fractures or more permanent injuries. The source conveys its concern that Mr. La Ring may be subject to inhuman and degrading treatment, torture or other physical or mental harm and that measures are needed to ensure respect for his physical and mental integrity.

9. The source submits that Mr. La Ring was arrested and purportedly charged with an offence under section 17 of the Unlawful Associations Act, 1908, which allows the Government to imprison anyone who has been a member of, or contributes to, or receives or solicits any contribution towards any association “(a) which encourages or aids persons to commit acts of violence or intimidation or of which the members habitually commit such acts; or (b) which has been declared unlawful by the President of the Union”. The source asserts that section 17 falls short of international human rights standards. It purports to confer wide and untrammelled powers on the Executive to declare any association unlawful, and subjects the rights and freedoms of the peoples of Myanmar to greater restrictions than are strictly necessary to meet the requirements of morality, public order and general welfare.

10. The source submits that the arrest and continued detention of Mr. La Ring are in breach of the Universal Declaration of Human Rights, in particular article 7, on equality before the law, as his detention is discriminatory, being on account of his ethnicity; article 13, on freedom of movement and residence, as his detention prevents him from travelling within the country to fraternize with other Kachin people; article 14, on the right to seek asylum in other countries, as his detention has denied him the right to seek asylum elsewhere; article 18, on freedom of thought and conscience, as his detention is on account of his belief in the rights of the Kachin people, 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, as 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, as his detention prevents him from having an influence on political and human rights matters within Myanmar.

11. The source submits that the circumstances of Mr. La Ring’s arrest and detention are in breach of article 10 of the Universal Declaration of Human Rights and 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.

12. The source further submits that Mr. La Ring was arrested on account of the mere fact of belonging to the ethnic Kachin minority. He was charged with being a member of the banned Kachin Independence Army on the grounds of his male gender and a confession obtained under torture. The source asserts that the mass arrests in June 2012 of Kachin men living in the camp and the subsequent treatment of such arrestees strongly indicate that their detention was on account of their ethnic origin.

13. On the basis of the above, the source submits that Mr. La Ring’s deprivation of liberty falls within categories I, II, III and V of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

Response from the Government

14. On 25 June 2014, the Working Group communicated the allegations of the source to the Government of Myanmar, requesting it to provide the Working Group with detailed information about the current situation of Mr. La Ring and to clarify the legal provisions justifying his continued detention.

15. However, the Government has chosen not to respond, despite its burden to rebut the allegations. Even though the Government has failed to respond, the Working Group considers that it is in a position to render its opinion, in accordance with paragraph 16 of its methods of work.

Discussion

16. It is a well-documented fact that for many years there have been, and continue to be, deep social tensions in Myanmar between minority communities and the majority group, especially the Government, which is fully supported by the National Army. That conflict has resulted in fighting and various human rights abuses as established in numerous documents submitted to the Human Rights Council (see A/HRC/RES/25/26), including prior Opinions of the Working Group (see A/64/334, A/67/333 and A/HRC/WG.6/10/MMR/2).

17. Mr. La Ring belongs to the minority Kachin group, and it is well established that the operations of the National Army have resulted in numerous arrests of Kachins. Such operations have led to the torture of Kachins in order to extract confessions.¹

18. The Working Group herein reinstates its position on the burden of proof as stated in its Opinion No. 41/2013 (Libya), paras. 27 and 28. The absence of a response by the Government is therefore interpreted as agreement with the statement of facts provided in the application. The facts as alleged by the source are thus not disputed.

19. In addition, those facts are further corroborated, notably with the fact finding by the Special Rapporteur on the situation of human rights in Myanmar, who stated that “over the years there have been serious allegations of human rights abuses against villagers from Kachin.”² The Special Rapporteur also expressed his concern at the continuing practice of torture in places of detention.

20. The role of the Army in the arrest and detention of Mr. La Ring raises serious issues, as the Working Group maintains its consistently held position that the trial of civilians before military courts is in violation of customary international law, as confirmed by the constant jurisprudence of the Working Group (see A/HRC/27/48, para. 66). That position is further elaborated in the broader context of military justice in general in the report of the Special Rapporteur on the independence of judges and lawyers (A/68/285).

21. The Working Group has repeatedly maintained in its Opinions that it does not constitute a level of jurisdiction in addition to those established by the domestic law of a country to resolve a dispute involving the deprivation of liberty of a person. Its mandate is to give an opinion as to whether or not the detention is arbitrary. In order to do that, it must examine whether the guarantees for a fair trial and due process have been respected.

¹ See Working Group Opinion No. 50/2013 (A/HRC/WGAD/2013/50).

² Press Statement, 21 August 2013, Yangon International Airport, Myanmar.

Disposition

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

(a) The deprivation of liberty of Mr. La Ring as reported by the source in paragraphs 4 and 5 above is arbitrary, being in contravention of articles 7, 9, 13, 14, 18, 19 and 21 of the Universal Declaration of Human Rights. It falls within categories I and II of the categories referred to by the Working Group when considering cases submitted to it;

(b) The Working Group further determines that Mr. La Ring's arrest and detention as established by the source in paragraphs 4, 7 and 8 above is also considered arbitrary under category III of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it, as it breaches articles 9 and 10 of the Universal Declaration of Human Rights and of the Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment, as enshrined in General Assembly resolution 43/173 of 9 December 1988;

(c) Finally, the Working Group finds that Mr. La Ring's arrest and detention in the circumstances set out in paragraph 17 above fall within category V of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it, as it breaches article 7 of the Universal Declaration of Human Rights.

23. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation, which shall include the immediate release of Mr. La Ring and adequate reparation, including compensation, to be made to him.

24. In accordance with paragraph 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.

25. The Working Group reminds the Government that its national laws should comply with all obligations under international law, in particular international human rights law.

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

[Adopted on 26 August 2014]
