OPINION No. 25/2000 (MYANMAR)

Communication addressed to the Government on 5 May 2000

Concerning James Mawdsley

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

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended by resolution 1997/50 and reconfirmed by resolution 2000/36. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.

2. The Working Group regrets that the Government has not replied within the 90-day deadline.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

   (i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);

   (ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

   (iii) When the complete or partial non-observance of the international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government. In the absence of any information from the Government, the Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. The essential facts and allegations as stated by the source may be set out succinctly as follows.

6. Mr. James Mawdsley is a British citizen and human rights activist who is currently held in solitary confinement at Kyaing Ton Prison, about 400 miles north-east of Yangon. According to the source, he was first arrested on 17 September 1997 for spraying a pro-democracy slogan
on a wall and handing out pamphlets outside Public High School No. 6 in Yangon. He was arrested but not charged, and deported to Bangkok on 18 September 1997.

7. On 30 April 1998, Mr. Mawdsley was arrested in Moulmein, a coastal town in southern Myanmar, when playing pro-democracy songs on a tape recorder and calling for the release of student leader Min Ko Naing. He was allegedly not told the reasons for his arrest. After several hours of questioning, he was placed in a van, blindfolded, and allegedly tortured for 15 hours. He was then transferred to Yangon to face charges of entering the country illegally and of associating with terrorist groups. The latter, more serious, charge was eventually dropped. Mr. Mawdsley pleaded guilty to entering the country illegally under section 13 (1) of the Immigration Act. On 13 May 1998, he was sentenced to five years’ imprisonment. After 99 days of detention, his sentence was commuted in accordance with section 401 (1) of the Code of Criminal Procedure, and he was deported on 6 August 1998.

8. On 31 August 1999, at around 8 a.m., Mr. Mawdsley entered Shan State, Myanmar, from Thailand, and went to the border town of Tachilek. Soon thereafter, he was arrested at the market while distributing leaflets which called for civil disobedience against orders considered to be cruel and unjust. He was not presented with an arrest warrant or any other decision emanating from a judicial authority justifying his arrest. He was charged with having committed illegal acts after having entered Myanmar illegally (section 13 (1) of the Immigration Act) and for allegedly printing and distributing “anti-Government literature” (section 17 of the Printing and Publishing Act).

9. Mr. Mawdsley reportedly was detained incommunicado and without access to legal advice or representation, in spite of his numerous requests for legal assistance. His trial took place only hours after his arrest, namely from 4.00 to 6.45 p.m. in the Tachilek Township Court. No transcript was allegedly taken of the proceedings, and Mr. Mawdsley affirms that he was unaware that the proceedings he attended on 31 August 1999 in fact constituted his trial. Furthermore, he claims that at no time was he told the reasons for his arrest or informed of his rights.

10. In addition, it is argued that Mr. Mawdsley was denied his right to access to consular services, in violation of article 36 (1) (c) of the Vienna Convention on Consular Services, to which Myanmar is a party. It was not until 14 September 1999 that he was first allowed a visit from the British Consulate.

11. At the conclusion of the trial, Mr. Mawdsley was immediately sentenced to 12 years’ imprisonment - 5 years for committing illegal acts upon entering the country illegally, and 7 years for the offences of publishing and distributing leaflets. At the time of the first visit from the British Consulate, he learned that the earlier (1998) 5-year sentence for his activities in April 1998 had been reinstated, bringing the total to 17 years’ imprisonment. It is argued that there are no effective avenues for appealing this sentence, and that Mr. Mawdsley will be forced to spend his prison term in solitary confinement.

12. From the facts as disclosed above by the source, Mr. Mawdsley was doing no more than expressing his opinions. Distribution of leaflets and calling for civil disobedience against orders considered to be cruel and unjust is a legitimate form of freedom of thought. Mr. Mawdsley has not advocated the use of violence. Peaceful expression of opposition to any regime cannot give rise to arbitrary arrest. Freedom of thought and expression are both protected by articles 18
and 19 of the Universal Declaration of Human Rights. Those provisions have been clearly violated by the State in arresting Mr. Mawdsley, as alleged.

13. There is another aspect which requires consideration in this case. The allegations, unrebutted, demonstrate the violation of all norms of fair play and justice. Mr. Mawdsley was not informed of the reasons for his arrest; he was detained incommunicado without legal advice or representation; his trial was a mockery of all legal principles applicable in jurisdictions where the rule of law prevails. He was not even aware of the nature of the proceedings which constituted his trial. Surprisingly, at the time of his conviction, when he was sentenced to 12 years in relation to his activities in August 1999, his earlier sentence for activities in 1998 was revised and he is now to serve a sentence of 17 years. The five-year sentence now added is for an offence for which the sentence had been commuted and Mr. Mawdsley deported. This mode of sentencing is also contrary to all considerations of due process. Consequently, the procedural infractions in the arrest, trial and mode of sentencing are such as to make Mr. Mawdsley’s detention arbitrary, on this count alone.

14. In the light of the above, the Working Group renders the following opinion:

   (a) The deprivation of liberty of James Mawdsley is arbitrary and in contravention of articles 9, 10 and 19 of the Universal Declaration of Human Rights and falls within categories II and III of the categories of cases submitted for the Group’s examination;

   (b) The revival of the earlier sentence of five years in a subsequent trial is also arbitrary and falls under category I of the categories applicable to the consideration of cases submitted to the Working Group.

15. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation and to bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights, and to take the appropriate initiatives with a view to becoming a State party to the International Covenant on Civil and Political Rights.

   Adopted on 14 September 2000