

## MEMORANDUM

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RE: Expiration of Ms. Suu Kyi's Final Term of House Arrest

### Question Presented

May the Burmese junta further extend Ms. Suu Kyi's term of house arrest beyond May 25, 2008, under State Protection Law 1975, its current rationale for her detention?

### Answer

No. Under Article 10(b) of State Protection Law 1975, read in conjunction with Article 14 and the 1991 amendments to the law, a person who is a "threat to the sovereignty and security of the State and the peace of the people" may be detained for up to five years, by no more than one year at a time. Ms. Suu Kyi was initially detained in May 2003. And her prior term of house arrest was extended for one year on May 25, 2007. Therefore, she must be released from house arrest at the end of the day on May 24, 2008.

### Analysis

After her release from 19 months of house arrest on May 6, 2002, Aung San Suu Kyi traveled to 95 townships to promote the activities of the National League for Democracy (NLD) by reopening NLD offices and installing new officers.<sup>1</sup> On May 30, 2003, Ms. Suu Kyi was traveling en route to Mandalay when a group known to be affiliated with the Union Solidarity and Development Association, a "social welfare movement" formed by the Burmese junta, attacked Aung San Suu Kyi and her convoy in an apparent assassination attempt.<sup>2</sup> Three thousand people descended on her motorcade, attacking Ms. Suu Kyi's supporters with pointed iron rods, iron bars, bamboo sticks and wooden bats. The attackers concentrated their assault on Ms. Suu Kyi's car, causing fatal injuries to many members of her security detail. More than 70 people were killed in the premeditated attack while authorities and police stood by.<sup>3</sup>

Aung San Suu Kyi and other members of the NLD were detained following the attack. Ms. Suu Kyi was held under Article 10(b) of the State Protection Law, which permits the authorities to detain anyone considered a threat to state security for up to five years, renewable

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<sup>1</sup> See *Preliminary Report of The Ad Hoc Commission on Depayin Massacre*, AD HOC COMMISSION ON DEPAYIN MASSACRE, July 4, 2003.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

on an annual basis, without charge or trial.<sup>4</sup> Although such detention may be permissible under Burmese law, the UN Working Group on Arbitrary Detention has indicated on four prior occasions – in Opinions No. 8/1992, 2/2002, 9/2004, and 2/2007 – that the application of this law in particular, as well as other Burmese laws<sup>5</sup>, in an attempt to justify extended house arrest was a clear violation of international law. Nevertheless, in this instance an analysis of Burmese law alone makes clear that the junta’s continued detention of Ms. Suu Kyi’s beyond May 24, 2008, would be a *primaefacie* violation of its own law.

Under Article 10, “in the protection of the State against dangers,” the junta, and in particular a “Central Board” including the Ministers of Defense, Foreign Affairs, and Home & Religious Affairs have “the right to implement the following measures through a restrictive order: . . . (b) If necessary, the movements of a person against whom action is taken can be restricted for a period of up to one year.”<sup>6</sup> Article 14 states that “[t]he Cabinet may grant prior approval to continue the detention or restriction of rights of a person against whom action is taken for a period . . . up to three years.”<sup>7</sup> In amendments to the State Protection Law, the time limit was subsequently raised to five years.<sup>8</sup>

Although Ms. Suu Kyi was initially detained on May 30, 2003, under Article 10(b), the junta has extended her terms of house arrest prior to their expiration, which has moved the date of expiration of this particular term of house arrest to earlier in the month of May. In particular, her fifth term of house arrest was last extended by the junta on May 25, 2007, for a period of one year.<sup>9</sup> As a result, her house arrest expires at the end of May 24, 2008.

Therefore, Ms. Suu Kyi should be released from her final term of house arrest in time to be able to attend the donor conference in Rangoon on Sunday May 25th.

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<sup>4</sup> See *State Protection Law*, Pyithu Hluttaw Law No. 3 (1975).

<sup>5</sup> While other laws have been invoked during prior terms of house arrest, the exclusive basis for Ms. Suu Kyi’s current term of house arrest was explained by the junta to be Article 10 of the State Protection Law. See Opinion No. 2/2007 (*Aung San Suu Kyi v. Myanmar*), UN WORKING GROUP ON ARBITRARY DETENTION, at ¶ 5.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> See *State Law and Order Restoration Council (SLORC) Notification No. 11/91*, Aug. 9, 1991.

<sup>9</sup> See *Burma Extends Suu Kyi’s Detention*, BBC NEWS, May 25, 2007.