

PETITION TO:

UNITED NATIONS

WORKING GROUP ON ARBITRARY DETENTION

Chairperson-Rapporteur: Ms. Leïla Zerrougui (Algeria)
Vice-Chairperson: Mr. Tamás Bán (Hungary)
Ms. Soledad Villagra de Biedermann (Paraguay)
Ms. Manuela Carmena Castrillo (Spain)
Mr. Seyed Mohammed Hashemi (Islamic Republic of Iran)

**HUMAN RIGHTS COUNCIL
UNITED NATIONS GENERAL ASSEMBLY**

In the Matter of
Aung San Suu Kyi,
Citizen of Myanmar (Burma)¹

v.

Government of Myanmar (Burma)

**URGENT ACTION
REQUESTED**

And Petition for Relief Pursuant to Resolutions 1997/50, 2000/36, 2003/31²

Submitted By:

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¹ The country of Burma's name was changed to "Myanmar" by the unelected military regime. Burma is the name preferred by the leaders of Burma's democracy movement, the legitimate winners of the 1990 elections. They do not accept that the unelected military regime has the right to change the official name of the country to suit its own ends. In this Petition, references to Burma relate to what the United Nations refers to as Myanmar.

² These were resolutions adopted by the UN Commission on Human Rights extending the mandate of the Working Group on Arbitrary Detention. As of today, the Commission on Human Rights has been abolished pursuant to UN General Assembly Resolution 60/251. Under this Resolution, the Human Rights Council "shall assume . . . all mandates, mechanisms, functions and responsibilities of the Commission on Human Rights . . ." G.A. Res. 60/251, ¶ 6 (Mar. 15, 2006).

BASIS FOR “URGENT ACTION” REQUEST

Aung San Suu Kyi is currently being held under house arrest in Rangoon, Burma. Ms. Suu Kyi, who has spent more than 10 of the last 16 years in detention, has been held in her Rangoon residence without contact with the outside world for more than three years, with the exception of her recent meeting with UN Under-Secretary-General Ibrahim Gambari. She is denied visitors and has no outside telephone contact. Ms. Suu Kyi was arrested in May 2003 following an assassination attempt known as the Depayin Massacre during which more than seventy of her supporters were murdered. The attack was orchestrated by a group associated with the Union Solidarity Development Association (“USDA”), an organization created by the military regime. Although Ms. Suu Kyi survived the attack, her safety continues to be threatened. First, she is at risk of harm because she is the democratically-elected leader of Burma and has been the target of an assassination attempt orchestrated by a government-affiliated group. Second, she is allowed only infrequent and irregular visits from her doctor, thereby placing her at further risk of harm.³

Accordingly, the Petitioner hereby requests that the Working Group consider this Petition pursuant to the Working Group’s “Urgent Action” procedure.⁴ In addition, the Petitioner requests that this Petition be considered a formal request for an opinion of the Working Group pursuant to Resolution 1997/50 of the Commission on Human Rights as reconfirmed by Resolutions 2000/36 and 2003/31.

MODEL QUESTIONNAIRE⁵

I. IDENTITY OF THE PERSON ARRESTED OR DETAINED

- 1 & 2. Name:*** Aung San Suu Kyi.
- 3. Sex:*** Female.
- 4. Birth date or age (at time of detention):*** 60-years-old.
- 5. Nationality/Nationalities:*** Citizen of Burma.
- 6. Identity documents (if any):*** Passport from Burma.

³ UN Under-Secretary-General Ibrahim Gambari reported that Ms. Suu Kyi requested more frequent contact with her doctor. See “U.N. Official Visits Suu Kyi, Asks Ruling Junta to Free Her,” *Los Angeles Times*, May 25, 2006. Just last week, for example, Ms. Suu Kyi was stricken with a stomach virus, hospitalized briefly, and then returned to her home. See “Myanmar Police Chief Confirms Suu Kyi Had Stomach Ailment, Not Serious,” *Associated Press*, June 10, 2006.

⁴ Report of the Working Group on Arbitrary Detention, E/CN.4/1998/44 (December 19, 1997), Annex 1 at ¶ 22-24.

⁵ Lack of access to the Petitioner renders it impossible to obtain all of the information requested in the Working Group’s model questionnaire at this time. The Working Group has consistently stated that inability to provide all of the information requested in the model questionnaire “shall not directly or indirectly result in the inadmissibility of the communication.” See, e.g., Report of the Working Group on Arbitrary Detention, E/CN.4/1997/4 (Dec. 17, 1996), Annex 1, at ¶ 8. As such, the information in this Petition is based on news reports and information obtained from the member of Aung San Suu Kyi’s family who authorized submission of this Petition.

7. Profession and/or activity (if believed to be relevant to the arrest/detention):

Aung San Suu Kyi is General Secretary of the National League for Democracy (“NLD”).

8. Address of usual residence: 54 University Avenue
Bahau 11201
Rangoon, Burma

II. ARREST

1 & 2. Date and Place of arrest: Aung San Suu Kyi’s detention under house arrest was renewed on May 27, 2006, in Rangoon, Burma. See “Statement of Facts,” below.

3. Forces who carried out the arrest or are believed to have carried it out: Burmese security forces.

4. Did they show a warrant or other decision by a public authority? No.

5. Authority who issued the warrant or decision: As noted above, no warrant or decision was presented.

6. Relevant legislation applied (if known): Aung San Suu Kyi is being detained, as previously, under Article 10(b) of the 1975 State Protection Law. See “Detention,” below.

III. DETENTION

1 & 2. Date and duration of detention: The Petitioner has been under house arrest for over three years. While initially detained in May 2003, Ms. Suu Kyi’s detention was renewed on May 27, 2006.

3. Forces holding the detainee under custody: Burmese security forces.

4. Places of detention (indicate any transfer and present place of detention): Currently, the Petitioner is being held at her home in Rangoon, Burma.

5. Authorities that ordered the detention: Burmese security forces.

6. Reasons for the detention imputed by the authorities: The petitioner is alleged to be undermining the State Peace and Development Council. See “Statement of Facts” below.

7. Relevant legislation applied (if known): The Petitioner has not been charged with a crime, and the legal justification for her house arrest is in dispute. Ms. Suu Kyi is being held under Article 10(b) of the 1975 State Protection Law.⁶

⁶ State Protection Law, *Pyithu Hluttaw* Law No. 3, 1975. Article 1 describes the State Protection Law as the “Law to Safeguard the State Against the Dangers of Those Desiring to Cause Subversive Acts.” Article 10(b) states “[i]f necessary, the movements of a person against whom action is taken can be restricted for a period of up to one year.”

IV. DESCRIBE THE CIRCUMSTANCES OF THE ARREST AND/OR THE DETENTION AND INDICATE PRECISE REASONS WHY YOU CONSIDER THE ARREST OR DETENTION TO BE ARBITRARY.

Statement of Facts

This Statement of Facts details what is known about the circumstances surrounding the arrest and continuing detention of the Petitioner, as well as the current political climate in Burma.

Introduction - Years of Repression

Repressive military governments dominated by members of the Burman ethnic group have ruled the ethnically Burman central regions and some ethnic-minority areas continuously since 1962, when a coup led by General Ne Win overthrew an elected civilian government. Since September 1988, when the armed forces brutally suppressed massive pro-democracy demonstrations, a junta composed of senior military officers has ruled by decree, without a constitution or legislature. In 1997, the junta reorganized itself and changed its name from the State Law and Order Restoration Council (“SLORC”) to the State Peace and Development Council (“SPDC”). In an effort to further consolidate power, in 2001 Prime Minister Khin Nyunt was ousted and replaced by Soe Win, who has close ties to the leadership of the military junta.⁷ The government continues to be headed by armed forces commander General Than Shwe who is the leader of the SPDC.

In 1990, the SLORC permitted a relatively free election for a parliament to which it announced it would transfer power. Voters overwhelmingly supported anti-government parties, with the National League for Democracy and its allies winning 392 of 485 (81%) of the parliamentary seats. Throughout the 1990’s, the junta systematically violated human rights in Burma to suppress the pro-democracy movement, including the NLD, and to thwart repeated efforts by the elected representatives to convene. Instead, the junta convened a government-controlled “National Convention” intended to approve a constitution that would ensure a dominant role for the armed forces in the country’s future political structure. Since 1995, the NLD has declined to participate in this National Convention, perceiving its agenda to be tightly controlled by the junta. In 2005 and 2006, the NLD and other political parties declined to participate in the reconvened National Convention because the SPDC sought to control the agenda by selecting the delegates and restricting their freedom of movement and speech. To date, the government has failed to put forward a new constitution. It is widely believed that SPDC intends to force a constitution that would cement its power in the future.

Since 1988, the junta has doubled the size of the armed forces, from about 175,000 to more than 350,000 men and as many as 70,000 children, and has increased the government’s military presence throughout the country, especially in ethnic minority areas from which government forces were not excluded by cease-fire agreements. The government reinforces its firm military rule with a pervasive security apparatus led by the military intelligence organization, the Military Affairs Security (“MAS”). The MAS, which replaced the Office of Chief Military Intelligence in 2004, has assumed a similar role to its predecessor, and

⁷ See *Burma: Country Reports on Human Rights Practices 2005*, U.S. Department of State, Bureau of Democracy, Human Rights and Labor, U.S. Department of State, Mar. 8, 2006 (hereinafter State Department Report).

continues to wield sweeping powers⁸. Control is buttressed by arbitrary restrictions on citizens' contact with foreigners, surveillance of government employees and private citizens, harassment of political activists, intimidation, arrest, detention, and physical abuse.⁹

The government justifies its security measures as necessary to maintain order and national unity. According to the UN Commission on Human Rights, the government has committed numerous, serious human rights abuses including the ongoing detention of more than a thousand political prisoners.¹⁰ In 2005 there were several reports of pro-democracy activists who died while in custody under suspicious circumstances.¹¹ Since 1996, the SPDC has destroyed over 2,500 villages and forcibly relocated numerous members of minority ethnic groups. As many as one million people have been displaced by the regime's practices, particularly among the Karen, Karenni, Shan and Mon ethnic groups.¹²

There is no way for citizens to challenge judicially the actions of the military regime. The judiciary is controlled by the government, and there is no guarantee of a fair public trial. The accused are often denied legal representation, and their trials are often held in secret.¹³ Once incarcerated, security forces reportedly abuse prisoners, even to the point of death.¹⁴ Even prisoners who complete their prison sentences have no guarantee of release. The Penal Code allows the government to extend a prisoner's sentence after the expiration of the original sentence, and the government makes regular use of this provision.¹⁵ Out of concern for the terrible humanitarian and human rights situation in Burma, in September 2005, former President of the Czech Republic Václav Havel and Archbishop Emeritus of Cape Town and Nobel Peace Prize Laureate Desmond Tutu commissioned a report on the threat the Government of Burma poses to its own people and to regional peace and security.¹⁶

⁸ Recent MAS activity includes the arrest of U Khun Htun Oo, a member of parliament-elect from the Shan Nationalities League for Democracy, reportedly because of discussions about the National Convention. In November 2005, Htun Oo was sentenced in a secret trial to 93 years in prison. *See id.*

⁹ *See Report 2006 on Myanmar, Amnesty International* (2006), available at <http://web.amnesty.org/report2006>, last visited June 8, 2006; *See also Human Rights Watch: World Report 2005: Burma* (hereinafter Human Rights Watch Report), available at <http://hrw.org/wr2k5>, last visited June 8, 2006.

¹⁰ The Commission on Human Rights has expressed grave concern at the continuing violations of human rights in Myanmar including extrajudicial, summary, or arbitrary executions, and enforced disappearances, torture, abuse of women and children by government agents, wide disrespect of the rule of law including politically motivated arbitrary arrests and detentions, abuse of judicial process, and violations directed at minority ethnic groups. *See UN Economic and Social Council, Commission on Human Rights* (62nd Session, Agenda Item 9), *Question of the Violation of Human Rights and Fundamental Freedoms in Any Part of the World – Situation of Human Rights in Myanmar*, E/CN.4/2006/117, Feb. 27, 2006. *See also* State Department Report, *supra* note 7.

¹¹ On October 4, 2005, Htay Lwin died while in custody. Although his wife was told that he committed suicide inside the jail, his skull showed evidence of injury, his body was covered with bruises and there were stitches in both eyes, on his neck and abdomen. State Department Report, *supra* note 7.

¹² *See Ending the Waiting Game: Strategies for Responding to Internally Displaced People in Burma*, Refugees International Report, June 1, 2006.

¹³ *See* "Country Profile 2004: Myanmar (Burma)," *The Economist*.

¹⁴ *See* State Department Report, *supra* note 7.

¹⁵ *Id.*

¹⁶ *Threat to the Peace: A Call for the UN Security Council to Act in Burma*, September 20, 2005. The lead co-author of this report was Jared Genser, who is submitting this petition. The representation of President Havel and Bishop Tutu by Mr. Genser and the law firm in which he practices concluded in February 2006.

Background on Aung San Suu Kyi

Although this petition deals exclusively with Ms. Suu Kyi's current house arrest, it is helpful to know of her past political activism to understand the SPDC's perception of her.

Aung San Suu Kyi has been the face of the pro-democracy movement in Burma. She is the General Secretary of the National League for Democracy ("NLD"), the leading opposition party in Burma. Ms. Suu Kyi is the daughter of Aung San, founder of the Anti-Fascist People's League which led the struggle for the country's independence. Aung San was assassinated in 1947. Ms. Suu Kyi grew up in India with her mother, the Burmese ambassador to the country. She graduated from Oxford University in the United Kingdom in 1967. Since 1988, Ms. Suu Kyi has been struggling to bring democracy to Burma. The following is a timeline of major events¹⁷ since the Burmese army stepped up its military offenses:

1988

August 8: Mass demonstrations demanding an end to the military dictatorship in place since 1962 are staged across the country after months of turmoil. Troops open fire on crowds, leaving many dead.

September 18: Military takes charge with the creation of the SLORC, which authorizes the creation of opposition parties.

September 30: The National League for Democracy, led by Aung San Suu Kyi, daughter of independence hero Aung San, is formed.

1989

July 20: Aung San Suu Kyi is placed under house arrest.

1990

May 27: NLD and its allies wins 392 of 485 seats in parliamentary elections. The SLORC refuses to hand over power.

1991

October 14: Aung San Suu Kyi wins the Nobel Peace Prize.

1992

[Date Unknown]: Working Group issues Opinion No. 8/1992 finding that Aung San Suu Kyi is being arbitrarily detained in violation of international law.

1995

July 10: Aung San Suu Kyi is released after six years under house arrest.

1998

June 24: Aung San Suu Kyi demands that the SPDC allow the parliament elected in 1990, which never met, be convened by August 21.

1999

March 27: Aung San Suu Kyi's husband, Dr. Michael Aris, dies of prostate cancer in the United Kingdom. Upon learning of his illness, Aris had sought in vain to be granted a visa

¹⁷ See "Timeline: Burma," *BBC News*, Feb. 17, 2006.

on humanitarian grounds so he could visit with his wife in Burma one last time. The military junta refused to grant the visa.

2000

August 24: Aung San Suu Kyi is confronted by the military authorities when she leaves Rangoon for a meeting with NLD's youth wing in Kawhmu, in defiance of an order confining her to the capital.

September 2: Military authorities announce that Aung San Suu Kyi has been "escorted" home and raid the NLD headquarters, placing senior members under house arrest.

September 14: Ms. Suu Kyi's house arrest is lifted.

September 22: Aung San Suu Kyi is placed under house arrest again for attempting to travel to the northern city of Mandalay on party business with senior NLD members.

2002

May 6: After nearly twenty months, Ms. Suu Kyi's house arrest is lifted.

June 19: Working Group issues Opinion No. 2/2002 finding that Aung San Suu Kyi had been arbitrarily detained under international law.

2003

May 30: Aung San Suu Kyi and her convoy are attacked en route to Mandalay in an assassination attempt known as the Depayin Massacre. More than seventy of her supporters are killed. Ms. Suu Kyi is again placed under house arrest.

2004

May 28: Working Group issues Opinion No. 9/2004 finding that Aung San Suu Kyi is being arbitrarily detained in violation of international law.

November 27: Military authorities extend the period of Ms. Suu Kyi's house arrest for one year.

2005

November 27: Military authorities extend Ms. Suu Kyi's house arrest for six months.

2006

May 24: Ms. Suu Kyi receives a rare visit from UN Under-Secretary-General Ibrahim Gambari who calls for her release and reports that she is allowed only infrequent visits from her doctor.

May 26: UN Secretary-General Kofi Annan calls on Senior General Than Shwe to "do the right thing" and release Aung San Suu Kyi's. The detention order of Aung San Suu Kyi expires with no official announcement of her status. Ms. Suu Kyi is not released from house arrest.

May 27: The military junta extends Ms. Suu Kyi's house arrest for another year.

Jurisdiction

With the expiration of Ms. Suu Kyi's detention on May 26, 2006, Working Group Opinion No. 9/2004 expired as well. The new order of detention issued by the military junta on May 27, 2006¹⁸, has not yet been considered by the Working Group.

Current Arrest and Detention

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 NLD by reopening NLD offices and installing new officers.¹⁹

On May 30, 2003, Ms. Suu Kyi was traveling en route to Mandalay when a group known to be affiliated with the USDA attacked Aung San Suu Kyi and her convoy in an apparent assassination attempt. 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.

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 1975 State Protection Act, which permits the authorities to detain anyone considered a threat to state security for up to five years, renewable on an annual basis, without charge or trial.²⁰ There is no opportunity for domestic judicial review of her detention. Ms. Suu Kyi's detention was most recently renewed on May 27, 2006. Since her initial term of house arrest begun on May 30, 2003, Ms. Suu Kyi has been denied all access to NLD leaders and the press. UN Under-Secretary-General Ibrahim Gambari has been her only foreign visitor.²¹ She has no access to relatives or lawyers and her communications and visits are permitted at the government's sole discretion.

Analysis

For the reasons stated below, the arrest and detention of Ms. Aung San Suu Kyi violate rights and fundamental freedoms established in the Universal Declaration of Human Rights²², the Body of Principles for the Protection of All Persons under Any Form of

¹⁸ Ms. Suu Kyi's detention expired on May 26, 2006, with no official announcement on her status. Thus, "[o]fficials [had] to deliver a new order" to hold her past the expiration of her detention. "No Sign Myanmar's Suu Kyi Freed as Detention Order Expires," *Associated Press* (May 26, 2006).

¹⁹ See "Preliminary Report of The Ad Hoc Commission on Depayin Massacre," *Ad Hoc Commission on Depayin Massacre*, July 4, 2003.

²⁰ *Id.*

²¹ See State Department Report, *supra* note 7. UN Under-Secretary-General Ibrahim Gambari was allowed to meet with Ms. Suu Kyi for forty-five minutes on May 24, 2006 during a three-day visit to the country. See "U.N. Official Visits Suu Kyi, Asks Ruling Junta to Free Her," *Los Angeles Times* (May 25, 2006).

²² G.A. Res. 217A (III), U.N. Doc. A/810 at 71 (1948) ("Universal Declaration").

Detention or Imprisonment²³, and the Standard Minimum Rules for the Treatment of Prisoners.²⁴

The deprivation of the Petitioner's freedom (house arrest²⁵) falls within Categories I, II, and III of the Working Group's classification of cases. As the Working Group held in Opinion 9/2004, this case involves Category I because the Government cannot invoke any legal justification for her detention since no charges have been brought against her. As the Working Group held in Opinions 8/1992 and 2/2002, the case involves Category II because the Petitioner is a prisoner of conscience who has been detained because of her political beliefs. Finally, as the Working Group also held in opinions 9/1992 and 2/2002, the case involves Category III because the military junta is violating many of the international norms relating to the right to fair trial by refusing to bring any charges against the Petitioner that could be tried in a court of law.²⁶

I. The Arrest Violated Fundamental Freedoms and Rights

Under Article 9 of the Universal Declaration of Human Rights, “[n]o one shall be subjected to arbitrary arrest, detention, or exile.” Aung San Suu Kyi is being held under the 1975 State Protection Law which allows the authorities to order the detention or restricted residence without charge or trial of anyone they believe is performing or might perform “any act endangering the sovereignty and security of the state or public peace and tranquility.”²⁷

But even according to Burmese authorities themselves, their extended detention of Aung San Suu Kyi does not meet this very low and subjective threshold. At a conference on May 23, 2006, Major General Khin Yi, who serves as the nation's Police Chief, told a conference of regional police that the release of Ms. Suu Kyi would likely have little effect on the country's political stability and that there would not be rallies and riots if Ms. Suu Kyi was released since public support for her has fallen.²⁸ Furthermore, as the Working Group previously noted, Ms. Suu Kyi “is a known advocate of political change exclusively by peaceful means . . . no controlling body, acting in good faith, would find or believe that she is a potential danger to the State.”²⁹

²³ Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, G.A. Res. 43/173, annex, 43 U.N. GAOR Supp. (No. 49) at 298, U.N. Doc. A/43/49 (1988) (“Body of Principles”).

²⁴ Standard Minimum Rules for the Treatment of Prisoners, adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders (Geneva, 1955), and approved by the Economic and Social Council Resolutions 663 C (XXIV) (July 31, 1957) and 2076 (LXII) (May 13, 1977) (“Standard Minimum Rules for the Treatment of Prisoners”).

²⁵ According to “Deliberation 01” of the Working Group, “[w]ithout prejudging the arbitrary character . . . of the measure, house arrest may be compared to deprivation of liberty provided that it is carried out in closed premises which the person is not allowed to leave.” See Report of the Working Group on Arbitrary Detention, Question of the Human Rights of All Persons Subjected to Any Form of Detention or Imprisonment, E/CN.4/1993/24, Jan. 12, 1993, at ¶ 20.

²⁶ In essence, the facts of this case are virtually identical to the previous case of Ms. Suu Kyi's house arrest that was examined by the Working Group in 2003. In that case the Working Group found “[t]he detention of . . . Aung San Suu Kyi . . . to be arbitrary, being in contravention of article 9 of the Universal Declaration of Human Rights . . . and falling within Category I of . . . the Working Group.” See *Daw Aung San Suu Kyi v. Myanmar*, Opinion No. 9/2004, at ¶ 16.

²⁷ The 1975 State Protection Law, *supra* note 6, at Article 7.

²⁸ See “Burma's Police Chief Says Aung San Suu Kyi's Possible Release Will Not Impact Burma,” *VOA News*, May 23, 2006.

²⁹ *Aung San Suu Kyi v. Myanmar*, Opinion No. 2/2002, at ¶ 6.

There can be no legal justification for Aung San Suu Kyi's detention under the junta's law if Petitioner's release does not endanger state sovereignty or public peace and tranquility. Because the Petitioner is not a threat to the country's political stability, her continued detention is arbitrary and in violation of Article 9 of the Universal Declaration of Human Rights.

Moreover, the arrest and detention of the Petitioner violated the following rights as described in the Body of Principles, each of which reinforce its arbitrariness:

A. The Petitioner Was Not Informed of the Reasons for Her Arrest

Under Principle 10, "[a]nyone who is arrested shall be informed at the time of his arrest of the reason for his arrest . . ." Ms. Suu Kyi was not informed why she was being arrested and no charges have been filed against her. Therefore, the Burmese junta violated Principle 10.³⁰

B. The Petitioner Has No Effective Remedy to Challenge Her Detention

Under Principle 11, "[a] person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority." Ms. Suu Kyi has been given no such opportunity and, therefore, the Burmese junta violated Principle 11.

C. No Records Have Been Given to the Petitioner

Under Principle 12, "(1) There shall be duly recorded: (a) the reasons for the arrest; (b) the time of the arrest . . . (c) the identity of the law enforcement officials concerned . . . (2) Such records shall be communicated to the detained person . . . in the form prescribed by law." Ms. Suu Kyi has never been provided with such information. Therefore, the Burmese junta violated Principle 12.

D. The Petitioner Was Never Informed of Her Rights

Under Principle 13, "[a]ny person shall, at the moment of his arrest and at the commencement of detention or imprisonment, or promptly thereafter, be provided . . . with information on and an explanation of his rights and how to avail himself of such rights." To this day, Ms. Suu Kyi has never been informed of her rights.

E. The Petitioner Has Been Denied Communication with the Outside World

Under Principle 15, "communication of the detained . . . person with the outside world . . . shall not be denied for more than a matter of days." In addition, Principle 19 states that "[a] detained . . . person shall . . . be given adequate opportunity to communicate with the outside world, subject to reasonable conditions . . ." Although Ms. Suu Kyi met with UN Under-Secretary-General Ibrahim Gambari on May 24, that was Petitioner's first visit by anyone other than her doctor and domestic help for almost three years. Apart from this one

³⁰ The Working Group has stated failure to inform an accused of the reasons for arrest is one aspect of the right to fair trial. See *Niran Malaolu v. Nigeria*, E/CN.4/2000/4/Add.1, Opinion No. 6/1999, at ¶ 8(a), 10.

exception, she has otherwise been denied all contact with the outside world. This is a violation of Principles 15 and 19.³¹

II. The Failure to Hold a Trial Violates Fundamental Freedoms and Rights³²

Under Article 10 of the Universal Declaration, “[e]veryone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.” The Burmese junta violated each of the following rights that are essential to due process:

A. No Trial has Been Held

The right to be judged by an independent and impartial tribunal is one of the most fundamental rights. It is specifically enshrined in Article 10 of the Universal Declaration. Ms. Suu Kyi has been denied the right to challenge her house arrest in court. This is not surprising, however, as “the judiciary is far from independent . . . [and is] characteristic of a military dictatorship.”³³

B. The Right to Counsel and to Prepare a Defense Has Been Violated

Ms. Suu Kyi is being detained since her arrest without the ability to meet with legal counsel. She continues to be denied access to counsel. Given this circumstance, the junta’s actions violate Article 10 of the Universal Declaration, and Principles 17(1) (right to have counsel)³⁴, 17(2) (right to counsel of own choosing), 18(1) (right to consult with counsel), 18(2) (right to be allowed time to consult with counsel), 18(3) (right to communicate with counsel confidentially), and 18(4) (right to interview with counsel outside of hearing of guards) of the Body of Principles, as well as, associated principles related to this right.

The Working Group has previously held that the freedom to have and choose one’s lawyer is one of the essential guarantees of a fair trial that, if seriously violated, could cast doubt on the fairness of an entire trial.³⁵ The fact that Ms. Suu Kyi has never been given access to a lawyer, let alone been given a trial, should qualify as such a serious violation.³⁶

³¹ This violation is precisely the same as in the previous decision of the Working Group. “It is clear that Aung San Suu Kyi [has] been held . . . in almost complete isolation from the outside world.” *See U Nu and Aung San Suu Kyi v. Myanmar*, Opinion No. 8/1992, at ¶ 16.

³² In the case of *James Mawdsley v. Myanmar*, the Working Group stated “[t]he allegations, unrebutted, demonstrate the violation of all norms of fair play and justice.” Mr. Mawdsley was not informed of the reasons for his arrest, was detained *incommunicado*, denied access to a lawyer, and put on trial without attention to due process concerns. Opinion No. 25/2000, at ¶ 7. The lack of due process here is even more egregious than in the case of Mr. Mawdsley. Ms. Suu Kyi has not even been charged with a crime and has been given no opportunity to challenge her house arrest through any judicial process.

³³ *See Report of the Special Rapporteur on Myanmar*, submitted in Accordance with Commission on Human Rights Resolution 1999/17, E/CN.4/2000/38, Jan. 24, 2000, at ¶ 22.

³⁴ *See also Basic Principles on the Role of Lawyers*, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, Aug. 27 – Sept. 7, 1990. Article 1 states: “[a]ll persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings.”

³⁵ The Working Group has noted “[t]his violation [failure to provide legal counsel] is of such gravity as to confer an arbitrary character on the [petitioners’] detention.” *Youssef Al-Rai and Ashafer Al-Rai v. Palestine*, Opinion No. 14/1999, at ¶ 9; *see also Jose Gusmao v. Indonesia*, Opinion No. 12/1999, at ¶ 18(c).

³⁶ Just as in the previous case the Working Group has examined, Ms. Suu Kyi’s right to a fair trial has been violated again. *See U Nu and Aung San Suu Kyi v. Myanmar*, Opinion No. 8/1992, at ¶ 15-16.

C. House Arrest Without Trial Violates the Petitioner’s Right to Be Presumed Innocent

The SPDC has introduced no evidence against the Petitioner and yet, it holds her under house arrest. As a practical matter, house arrest without trial is, in fact, a presumption of guilt. Of course, guilt of what remains the question as the Petitioner has not even been charged with a crime. Therefore, the SPDC’s actions violate Article 11(1)³⁷ of the Universal Declaration, Principle 36 of the Body of Principles, and Paragraph 84(2) of the Standard Minimum Rules for the Treatment of Prisoners that enshrine the right to be presumed innocent.³⁸

III. The Petitioner Is Being Held Because of Her Political Views

It is no coincidence the Petitioner is the Secretary General of the National League for Democracy. By singling out Ms. Suu Kyi for arrest and detention on the basis of her thought, conscience, opinion, and expression, as embodied by her work for the NLD, the junta has violated Articles 18³⁹ and 19⁴⁰ of the Universal Declaration. In a prior case involving Burma, the Working Group said “[p]eaceful expression of opposition to any regime cannot give rise to arbitrary arrest.”⁴¹ The junta has previously been censured by the Working Group for detaining those publicly opposing the regime.⁴² This is again what the junta is doing in the case of Ms. Suu Kyi even though the Burmese junta has tried to cloak her detention under a provision of Burmese law.⁴³

Conclusion

1. For the reasons stated herein, the Petitioner should be immediately released from house arrest.
2. Alternatively, if the junta wishes to charge the Petitioner with a crime, it must do so and then hold a trial that conforms with the internationally-recognized standards for a fair trial discussed above and embodied in the Universal Declaration and Body of Principles.

³⁷ Under Article 11, “[e]veryone charged with a penal offense has the right to be presumed innocent until proved guilty according to law in a public trial.”

³⁸ Furthermore, the Working Group recently reaffirmed that the inability of a government to produce any independent evidence that the defendant has committed the crimes alleged compels the release of the defendant. *See Father Hillary Boma Awul and Others v. Sudan*, Opinion No. 29/1999, at ¶ 13.

³⁹ Article 18 of the Universal Declaration states “[e]veryone has the right to freedom of thought, conscience and religion”

⁴⁰ Article 19 of the Universal Declaration states “[e]veryone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”

⁴¹ *See James Mawdsley v. Myanmar*, Opinion No. 25/2000, at ¶ 6.

⁴² “[T]he Government of Myanmar does not deny that the detention . . . is connected solely with their activities in opposing the current regime” *Dr. Ma Thida and Others v. Myanmar*, Opinion No. 13/1994, at ¶ 7.

⁴³ The Working Group has held “[a]lthough the detention may be regarded as being in conformity with national legislation, it is not in keeping with the relevant standards set forth in the Universal Declaration of Human Rights.” *Felix Carcases and Others v. Cuba*, Opinion No. 1/1998, at ¶ 13(b); *see also Liu Xiaobo v. China*, E/CN.4/2000/4/Add.1, Opinion No. 17/1999, at ¶ 11.

V. INDICATE INTERNAL STEPS, INCLUDING DOMESTIC REMEDIES, TAKEN ESPECIALLY WITH THE LEGAL AND ADMINISTRATIVE AUTHORITIES, PARTICULARLY FOR THE PURPOSE OF ESTABLISHING THE DETENTION AND, AS APPROPRIATE, THEIR RESULTS OR THE REASONS WHY SUCH STEPS OR REMEDIES WERE INEFFECTIVE OR WHY THEY WERE NOT TAKEN.

The Petitioner is unable to seek representation because she is denied access to the outside world. Regardless, even if she were allowed to secure legal representation, under Article 20 of the State Protection Law, only an administrative appeal to the executive branch of the government is allowed. Therefore, this law denies all imprisoned under Article 10(b) the opportunity to appeal an adverse finding to a Burmese court.

The National League for Democracy has announced its intention to file a legal appeal directly to Burma's Prime Minister Soe Win on behalf of Ms. Suu Kyi.⁴⁴ However, given this appeal must be made to the Burmese junta that already decided to arbitrarily detain her, it is not expected to be objectively considered.

VI. FULL NAME AND ADDRESS OF THE PERSON(S) SUBMITTING THE INFORMATION (TELEPHONE AND FAX NUMBER, IF POSSIBLE).

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⁴⁴ See "Burma's NLD Vows Legal Appeal of Aung San Suu Kyi Detention," *Voice of America*, May 31, 2006.