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June 18, 2008

Ms. Manuela Carmena Castrillo
Working Group on Arbitrary Detention
Office of the High Commissioner for Human Rights
United Nations, Geneva
8-14 Avenue de la Paix
1211 Geneva 10
Switzerland

Dear Ms. Castrillo:

Please find the enclosed petition to the Working Group on Arbitrary Detention entitled “In the matter of Aung San Suu Kyi, Citizen of Burma (Myanmar) v. Government of Burma (Myanmar).” We hereby request that the Working Group examine this petition pursuant to Resolution 1997/50, as affirmed by Resolutions 2000/36, 2003/31, and 6/4, and under its “Urgent Action” Procedure.

This petition is submitted on behalf of the same member of Ms. Suu Kyi’s family who authorized the submission of the prior petition submitted on June 16, 2006, which resulted in the issuance of Opinion No. 2/2007.

We look forward to working with you and the Working Group. Thank you for your prompt attention to the attached petition and the accompanying materials.

If you need any further information with respect to this matter, please do not hesitate to contact me.

With warm regards,

Jared Genser

Attachment

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PETITION TO:

UNITED NATIONS

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**HUMAN RIGHTS COUNCIL
UNITED NATIONS GENERAL ASSEMBLY**

In the Matter of

Aung San Suu Kyi,

Citizen of Burma (Myanmar)¹

v.

Government of Burma (Myanmar)

**URGENT ACTION
REQUESTED**

And Petition for Relief Pursuant to Resolutions 1997/50, 2000/36, 2003/31, and 6/4²

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June 18, 2008

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 Resolutions 1997/50, 2000/36, and 2003/31 were adopted by the UN Commission on Human Rights extending the mandate of the Working Group on Arbitrary Detention. Resolution 6/4, also extending the mandate of the Working Group on Arbitrary Detention, was adopted by the Human Rights Council which, in accordance with UN General Assembly Resolution 60/251, has "assume[d] . . . 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 12 of the last 18 years in detention, has been held in her Rangoon residence without contact with the outside world for more than five years, with the exception of recent meetings with UN Under-Secretary-General Ibrahim Gambari and representatives of the State Peace and Development Council (“SPDC”). 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, 2003/31, and Human Rights Council Resolution 6/4.

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): 62-years-old.

5. Nationality/Nationalities: Citizen of Burma.

6. Identity documents (if any): Passport from Burma.

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

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. In 2006, 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.

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

8. **Address of usual residence:** 54 University Avenue
Bahan 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 28, 2008, 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 alleged to be detained under Article 10(b) of the 1975 State Protection Law. But under Burmese law, the maximum time period for her detention has expired under this law has expired. See “Detention,” below.

III. DETENTION

1 & 2. Date and duration of detention: The Petitioner has been under house arrest for over five years. While initially detained in May 2003, Ms. Suu Kyi’s detention was renewed on May 28, 2008.

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 1988, a junta composed of senior military officials have ruled by decree, without a constitution or legislature. Pro-democracy demonstrations have been brutally repressed and popular elections have been ignored.⁷ 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.⁸ Since 1996, the junta 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.⁹

After the National League for Democracy ("NLD") and its allies won a majority of seats in legislative elections held in 1990, the junta repeatedly blocked their efforts to convene parliament. 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. The NLD and other parties boycotted the process after it became clear that the junta would control the agenda, select the delegates, and restrict their freedom of movement and speech. True to form, the final draft constitution, released in April 2008, provided for a permanent military presence in parliament and effectively barred Ms. Suu Kyi from holding high office.¹⁰ The draft was not widely circulated and citizens could only obtain copies by paying a fee of 1,000 kyat – a price well above the means of most Burmese.¹¹ Despite pleas from outside nations and organizations, the junta held a referendum on the draft on May 10, 2008, only weeks after its release and days after a cyclone had displaced or killed hundreds of thousands of Burmese citizens.¹²

⁷ For more detail see Petition to United Nations Working Group on Arbitrary Detention In the Matter of Aung San Suu Kyi, June 16, 2006.

⁸ 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.

⁹ See Ending the Waiting Game: Strategies for Responding to Internally Displaced People in Burma, Refugees International Report, June 1, 2006.

¹⁰ See "New Burma Constitution Published," *BBC News*, April 9, 2008.

¹¹ *Id.* 1,000 kyat is equivalent to about \$1 and, according to the State Department, the average income in Burma is about \$200 a year. See Background Note: Burma, U.S. Dept. of State, Bureau of East Asian and Pacific Affairs, Dec. 2007.

¹² See "Burma Starts Vote as Aid Trickles In," *Washington Post*, A17, May 11, 2008.

Reports from Human Rights Watch and the NLD indicate that voter fraud and intimidation were widespread.¹³

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.¹⁴ In the aftermath of the Saffron Revolution's large pro-democracy demonstrations in September 2007, a dozen or so protestors and a Japanese journalist were killed and hundreds were arbitrarily arrested.¹⁵ Prison sentences of 20 years or more were routine for those who marched or had a small role in planning protests.¹⁶ The junta's drastic reaction led the UN Security Council to release a statement "strongly deplor[ing]" the violence used against the pro-democracy groups and calling for the release of all political prisoners as well as "a genuine dialogue" between the government and Ms. Suu Kyi.¹⁷ As of this date, the Burmese Government has held only token negotiations with opposition leaders and has refused to release prisoners.¹⁸ Most recently, the government delayed the entry of foreign aid workers and requisitioned food contributions offered to assist survivors of Cyclone Nargis, which devastated large portions of Burma.¹⁹ Almost one million of Burmese citizens have yet to receive any assistance more than six weeks after the Cyclone.²⁰

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.²¹ Once incarcerated, security forces reportedly abuse prisoners, even to the point of death.²² 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.²³ 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

¹³ See "Burma 'Approves New Constitution,'" *BBC News*, May 15, 2008.

¹⁴ 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 *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).

¹⁵ See Report of the Special Rapporteur on the Situation of Human Rights in Myanmar A/HRC/7/24, March 7, 2008. The Special Rapporteur found evidence of over 718 arrests and 31 deaths connected to the protests. The report also compiled a list of approximately 75 individuals associated with the uprising who are still missing. The 718 people detained are often held in "appalling" detention facilities and are given no access to representatives from the International Committee of the Red Cross.

¹⁶ *Id.*

¹⁷ See S/PRST/2007/37, Oct. 2007.

¹⁸ See "Suu Kyi 'Not Satisfied' by Talks," *BBC News*, Jan. 30, 2008.

¹⁹ See "UN Plans Anti-Dengue Operation," *Associated Press*, June 16, 2008.

²⁰ *Id.*

²¹ See "Country Profile 2004: Myanmar (Burma)," *The Economist*.

²² See State Department Report, *supra* note 14.

²³ *Id.*

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.²⁴

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.²⁵

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. Her defiant response to continued detention has made her a world-wide symbol of non-violent resistance to military autocracies. In 1991, she was awarded the Nobel Peace Prize. Despite her frequent arrests, Ms. Suu Kyi continues to speak out against the junta and play an active role in opposition whenever she is able. During Ms. Suu Kyi's twelve years of captivity, the Working Group on Arbitrary Detention has released four opinions declaring her detention to be arbitrary and in contravention of Articles 9, 10, and 19 of the Universal Declaration of Human Rights.²⁶

Jurisdiction

With the expiration of Ms. Suu Kyi's detention on May 25, 2008, Working Group Opinion No. 2/2007 expired as well. The new order of detention issued by the military junta on May 27, 2008,²⁷ 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.²⁸

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

²⁴ *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 Archbishop Tutu by Mr. Genser and the law firm in which he practices concluded in February 2006.

²⁵ For more detail see Petition to United Nations Working Group on Arbitrary Detention In the Matter of Aung San Suu Kyi, June 16, 2006.

²⁶ See Opinions 8/1992, 2/2002, 9/2004, and 2/2007.

²⁷ Ms. Suu Kyi's detention expired May 25, 2008 with no official announcement on her status. In order to hold her past the expiration date, Burmese officials had to issue a new order on May 27, 2008. See "Suu Kyi House Arrest Extended", *BBC News*, May 28, 2008.

²⁸ See "Preliminary Report of The Ad Hoc Commission on Depayin Massacre," *Ad Hoc Commission on Depayin Massacre*, July 4, 2003.

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.²⁹ There is no opportunity for domestic judicial review of her detention. Ms. Suu Kyi's detention was most recently renewed on May 28, 2008. Since her initial term of house arrest began on May 30, 2003, Ms. Suu Kyi only been given minimal access to outside world. It is believed that UN Under-Secretary-General Ibrahim Gambari has been her only outside visitor, besides her doctor, a person who delivers food to her, and a rare diplomat.³⁰ 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 violates the rights and fundamental freedoms established in the Universal Declaration of Human Rights,³¹ the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment,³² and the Standard Minimum Rules for the Treatment of Prisoners.³³

The deprivation of the Petitioner's freedom (house arrest)³⁴ 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 and, as of May 2008, the Government has no basis to hold her under Burmese law. As the Working Group held in Opinions 8/1992, 2/2002, and 2/2007, 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, 2/2002, and 2/2007, the case involves Category III because the military junta is violating many of the international norms relating to the right to a fair trial by refusing to bring any charges against the Petitioner that could be tried in a court of law.³⁵

²⁹ *Id.*

³⁰ See State Department Report, *supra* note 14. UN Under-Secretary-General Ibrahim Gambari has met with Ms. Suu Kyi three times in the past two years. The first was for forty-five minutes on May 24, 2006. The second was for an hour in November 2006. The third was in October of 2007 during "negotiations" held between Suu Kyi and the SPDC. See "U.N. Official Visits Suu Kyi, Asks Ruling Junta to Free Her," *Los Angeles Times* (May 25, 2006); "UN Official Sees Burma's Suu Kyi" *BBC News* (November 11, 2006); "Suu Kyi Meets Burmese Minister," *BBC News* (October 25, 2007).

³¹ G.A. Res. 217A (III), U.N. Doc. A/810 at 71 (1948) ("Universal Declaration").

³² 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").

³³ 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").

³⁴ 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.

³⁵ In essence, the facts of this case are virtually identical to the previous case of Ms. Suu Kyi's house arrest that

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.”³⁶

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.³⁷ 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.”³⁸

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.

Even if Ms. Suu Kyi’s release could be said to endanger state sovereignty or public peace and tranquility, however, individuals detained under the State Protection Law may only be kept for five years renewable on an annual basis. Ms. Suu Kyi’s detention commenced in May 2003 and has been extended for each of the past five years. A plain reading of 1975 State Protection Law clearly shows that such extensions were only permissible until late May 2008 – the point where Ms. Suu Kyi had been under house for five years. Therefore, the most recent extension on May 28 and the continued detention of Ms. Suu Kyi is a *prima facie* violation of Burma’s own laws.

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 restrained for a period of up to one year.”³⁹ Article 14 states that “[t]he Cabinet may grant prior approval to continue the detention or restriction of rights of a person against whom

was examined by the Working Group in 2006. In that case the Working Group found “[t]he detention of . . . Aung San Suu Kyi . . . to be arbitrary, being in contravention of articles 9, 10, and 19 of the Universal Declaration of Human Rights . . . and fall[ing] under category II and III of . . . the Working Group.” See *Daw Aung San Suu Kyi v. Myanmar*, Opinion No. 2/2007, at ¶ 7.

³⁶ The 1975 State Protection Law, *supra* note 6, at Article 7.

³⁷ See “Burma’s Police Chief Says Aung San Suu Kyi’s Possible Release Will Not Impact Burma,” *VOA News*, May 23, 2006.

³⁸ *Aung San Suu Kyi v. Myanmar*, Opinion No. 2/2002, at ¶ 6.

³⁹ See *State Protection Law*, Pyithu Hluttaw Law No. 3 (1975).

action is taken for a period . . . up to three years.”⁴⁰ In amendments to the State Protection Law, the time limit was subsequently raised to five years.⁴¹

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 extended on May 25, 2007, for a period of one year.⁴² As a result, her house arrest expired at the end of May 24, 2008 and her detention ceased to be legal under Burmese law.⁴³

In its response to our prior 2006 petition to the Working Group, the Government declared that the Central Body had not issued its order restraining Ms. Suu Kyi until November 28, 2003, and that the subsequent extensions applied to that date instead of late May.⁴⁴ If that were correct, Ms. Suu Kyi could, at least under Burmese law, be legally kept under house arrest until November 27, 2008. Nevertheless, even if such an argument were made, it would be invalid.

The 1975 State Protection Law is unclear as to whether detention begins when a person is arrested or the moment that an order is issued. The act defines “commit,” “central board,” and “person against whom action is taken” but not “detain.” It would be inconsistent with basic principles of rule of law for a detention to begin only when an order is issued under this law and not when a person’s liberty or freedom of movement is restricted.⁴⁵

Ms. Suu Kyi’s movement has been forcibly restricted since she was taken into “protective custody” on May 30, 2003. Therefore, it is reasonable to conclude that, under the 1975 State Protection Law, Ms. Suu Kyi has been detained since May 30, 2003, and must be released, in accordance with law, no later than May 30, 2008.

More to the point, the junta has already demonstrated that it intends to violate its own laws by extending Ms. Suu Kyi’s detention for another year.⁴⁶ While the State Protection Law is overbroad and vague on several points, it is clear that a person may be held for a maximum of five years.⁴⁷ The one year extension will keep Ms. Suu Kyi imprisoned well beyond the junta’s own five-year mark of November 27, 2008, and thus violates the 1975 State Protection Law.

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:

⁴⁰ *Id.*

⁴¹ See *State Law and Order Restoration Council (SLORC) Notification No. 11/91*, Aug. 9, 1991.

⁴² See “Burma Extends Suu Kyi’s Detention,” *BBC News*, May 25, 2007.

⁴³ Of course, even if one concedes that the junta had the authority to extend from the initial date of arrest (May 30, 2003) Ms. Suu Kyi’s fifth term would still have lapsed by the date of this petition and her detention would still be illegal under Burmese law.

⁴⁴ See Opinion 2/2007 ¶ 5.

⁴⁵ E.g. *Black’s Law Dictionary 8th Edition* (2008) (defining “detention” as the act of holding a person in custody: confinement or compulsory delay); Article 9, *International Covenant on Civil and Political Rights* (equating detention to a loss of liberty); Deliberation 01 of the Working Group *supra* note 34 (“house arrest may be compared to deprivation of liberty”).

⁴⁶ See “Suu Kyi House Arrest Extended,” *BBC News*, May 28, 2008.

⁴⁷ The 1975 State Protection Law, *supra* note 6, at Article 14 *as amended* by SLORC in 1991.

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 10.⁴⁸

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 has met with Mr. Gambari on several occasions, the Petitioner has been denied access to virtually everyone else except for her doctor and domestic help for almost three years. This is a violation of Principles 15 and 19.⁴⁹

⁴⁸ 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.

⁴⁹ 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.

II. The Failure to Hold a Trial Violates Fundamental Freedoms and Rights⁵⁰

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.”⁵¹

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)⁵², 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.⁵³ 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.⁵⁴

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

⁵⁰ 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.

⁵¹ 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.

⁵² 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.”

⁵³ 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).

⁵⁴ 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.

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)⁵⁵ 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.⁵⁶

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 18⁵⁷ and 19⁵⁸ 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.”⁵⁹ The junta has previously been censured by the Working Group for detaining those publicly opposing the regime.⁶⁰ This is again what the junta is doing in the case of Ms. Suu Kyi even though the Burmese junta has nominally tried to cloak her detention under a provision of Burmese law.⁶¹

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.

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.*

⁵⁵ 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.”

⁵⁶ 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.

⁵⁷ Article 18 of the Universal Declaration states “[e]veryone has the right to freedom of thought, conscience and religion”

⁵⁸ 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.”

⁵⁹ See *James Mawdsley v. Myanmar*, Opinion No. 25/2000, at ¶ 6.

⁶⁰ “[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.

⁶¹ 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.

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.

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

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