



## **FREEDOM NOW**

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August 11, 2009

Ms. Manuela Carmena Castrillo  
Working Group on Arbitrary Detention  
Office of the High Commissioner for Human Rights  
United Nations, Geneva  
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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, and June 18, 2008, which resulted in the issuance of Opinion Nos. 2/2007 and 46/2008 respectively.

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.

Your sincerely,

Jared Genser

Attachment

**PETITION TO:**

**UNITED NATIONS**

**WORKING GROUP ON ARBITRARY DETENTION**

Chairperson-Rapporteur: Ms. Manuela Carmena Castrillo (Spain)

Vice-Chairperson: Mr. Malick El Hadji Sow (Senegal)

Mr. Roberto Garretón (Chile)

Mr. Aslan Abashidze (Russian Federation)

Ms. Shaheen Sardar Ali (Pakistan)

**HUMAN RIGHTS COUNCIL  
UNITED NATIONS GENERAL ASSEMBLY**

In the Matter of

**Aung San Suu Kyi,**

Citizen of Burma (Myanmar)<sup>1</sup>

v.

Government of Burma (Myanmar)

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**URGENT ACTION  
REQUESTED**

And Petition for Relief Pursuant to Resolutions 1997/50, 2000/36, 2003/31, and 6/4<sup>2</sup>

*Submitted By:*

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August 11, 2009

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<sup>1</sup> 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.

<sup>2</sup> Resolutions 1997/50, 2000/36, and 2003/31 were adopted by the UN Commission on Human Rights to extend the mandate of the Working Group on Arbitrary Detention. Resolution 6/4, which further extended the mandate of the Working Group, was adopted in September 2007 by the Human Rights Council, which "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 in Insein prison in Rangoon, Burma. Ms. Suu Kyi, who has spent nearly 14 of the last 20 years in detention, has been detained in her Rangoon residence in virtual isolation for the past six years and for the last several months in Insein prison since her arrest on May 14, 2009. She has been denied visitors, including UN Secretary-General Ban Ki-moon, and has minimal outside contact. As a prisoner of conscience and the democratically-elected leader of Burma, Ms. Suu Kyi’s safety is threatened by the military junta, particularly as she has in the past been the target of an assassination attempt orchestrated by a government-affiliated group (during which more than 70 of her supporters were murdered). This danger is heightened as the junta approaches its declared 2010 elections. Further, Ms. Suu Kyi is allowed only infrequent and irregular visits from her doctor, even when faced with serious medical ailments, thereby placing her at further risk of harm.<sup>3</sup>

Accordingly, the Petitioner hereby requests that the Working Group consider this Petition pursuant to the Working Group’s “Urgent Action” procedure.<sup>4</sup> 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 QUESTIONNAIRE<sup>5</sup>

#### ***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):*** 63 years old.<sup>6</sup>

***5. Nationality/Nationalities:*** Citizen of Burma.

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

<sup>3</sup> Then-UN Under-Secretary-General Ibrahim Gambari reported that Ms. Suu Kyi has requested more frequent contact with her doctor. *See U.N. Official Visits Suu Kyi, Asks Ruling Junta to Free Her*, LA TIMES, May 25, 2006. This infrequent access to medical care has continued during Ms. Suu Kyi’s latest detention. Immediately prior to her current term of detention, Ms. Suu Kyi’s doctor was arrested as he arrived at her home, and Ms. Suu Kyi was denied medical treatment until the following day, when a medical assistant placed her on an intravenous drip. This assistant was then denied a follow-up visit until three days later. *See Aung Hla Tun, Myanmar’s Suu Kyi Defiant Ahead of Trial*, REUTERS, May 21, 2009; *Myanmar Allows Medic to See Suu Kyi: Witnesses*, AFP, May 12, 2009; *Myanmar’s Detained Suu Kyi “Not in Good Health,”* AFP, May 8, 2009. Once moved to Insein Prison, Ms. Suu Kyi was reportedly denied medical care until her political party, the NLD, publicly expressed “grave concern” for her health. *Supporters Say Suu Kyi Needs Urgent Medical Care*, AP, May 29, 2009.

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

<sup>5</sup> 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.

<sup>6</sup> Ms. Suu Kyi turned 64 on June 19, 2009, during her detention in Insein Prison.

**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  
Bahan 11201  
Rangoon, Burma

**II. ARREST**

**1 & 2. Date and place of arrest:** Aung San Suu Kyi has been under detention by the military junta for nearly 14 of the past 20 years. On five previous occasions, the Working Group has found this detention to be arbitrary in character and in contravention of fundamental rights and freedoms.<sup>7</sup> Ms. Suu Kyi’s most recent term of detention began in May 2003, when she was placed under a five-year term of house arrest in Rangoon, Burma. On May 14, 2009, while serving an illegal one-year extension of this term of house arrest,<sup>8</sup> Ms. Suu Kyi was arrested, taken to Insein prison in Rangoon, and charged with a new offense. See “Statement of Facts,” below.

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

**4. Did they show a warrant or other decision by a public authority?** Unknown.

**5. Authority who issued the warrant or decision:** Unknown.

**6. Relevant legislation applied (if known):** Aung San Suu Kyi is alleged to be detained under Article 22 of the 1975 State Protection Law.<sup>9</sup> This law was adopted in accordance with Article 167 of Burma’s 1974 Constitution, which itself was annulled when the military took power in 1988, and further invalidated by the alleged adoption the new Constitution in the May 2008 referendum.<sup>10</sup>

**III. DETENTION**

**1 & 2. Date and duration of detention:** See “Date and place of arrest,” above. The Petitioner was arbitrarily detained in May 2003 and placed under a five-year term of house arrest. This term of house arrest was illegally renewed for one year on May 28, 2008, and expired on May 27, 2009, while Ms. Suu Kyi was under detention at Insein prison. On

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<sup>7</sup> G.A. Res. 217A (III), U.N. Doc. A/810 at 71 (1948) [hereinafter “Universal Declaration”]. See Opinion Nos. 8/1992, 2/2002, 9/2004, 2/2007, and 46/2008.

<sup>8</sup> See Opinion No. 46/2008.

<sup>9</sup> 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 22 states, “Any person against whom action is taken, who opposes, resists, or disobeys any order passed under this Law shall be liable to imprisonment for a period of three years to five years, or a fine of up to 5,000 kyats, or both.”

<sup>10</sup> Article 167 states: “(a) Laws may be enacted imposing necessary restriction on the rights and freedoms of citizens to prevent in infringements of the sovereignty and security of the State . . . (b) Such a preventive e law shall provide that the restrictive order shall only be made collectively by a body and that the order shall be regularly reviewed and modified as necessary . . .” (sic).

August 11, 2009, Ms. Suu Kyi was given a three-year term of imprisonment at hard labor, which was subsequently commuted to 18 months back under house arrest.

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 Insein prison 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 have violated the terms of her house arrest. See “Statement of Facts,” below.

7. ***Relevant legislation applied (if known):*** Aung San Suu Kyi is alleged to be detained under Article 22 of the 1975 State Protection Law.<sup>11</sup>

**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.

Background on Aung San Suu Kyi

Although this Petition deals exclusively with Ms. Suu Kyi’s current detention, it is helpful to know of her past political activism to understand the SPDC’s perception of her.<sup>12</sup>

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, 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 from British colonial rule. 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 worldwide 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 nearly 14 years of captivity, the Working Group on Arbitrary Detention has released five opinions declaring her detention to be arbitrary and in contravention of Articles 9, 10, and 19 of the Universal Declaration of Human Rights.<sup>13</sup>

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<sup>11</sup> See *supra* note 9.

<sup>12</sup> For more detail, see Petition to United Nations Working Group on Arbitrary Detention In the Matter of Aung San Suu Kyi, June 16, 2006.

<sup>13</sup> See Opinion Nos. 8/1992, 2/2002, 9/2004, 2/2007, and 46/2008.

## Jurisdiction

On August 11, 2009, Ms. Suu Kyi was given a three-year term of imprisonment at hard labor, which was subsequently commuted to 18 months back under house arrest. In the past 17 years, the Working Group has released five opinions declaring each of Ms. Suu Kyi's detentions to be arbitrary.<sup>14</sup> This new order of detention has not yet been considered by the Working Group.

## Current Arrest and Detention

At the time of the current arrest and detention, Ms. Suu Kyi was detained under house arrest at her home in Rangoon, Burma. Ms. Suu Kyi has spent nearly 14 of the last 20 years under detention by the Burmese military junta. Her most recent five-year term of house arrest began on May 30, 2003,<sup>15</sup> and was illegally renewed for an additional year on May 28, 2008.<sup>16</sup> The term of this detention was to end on May 27, 2009.

On the evening of May 3, 2009, an American citizen, John Yettaw, covertly entered the grounds of Ms. Suu Kyi's home. There are conflicting reports about how Mr. Yettaw gained access to the property. Early reports stated that Mr. Yettaw, a 53-year old unemployed former military serviceman, swam 1 1/4 miles across Inya Lake, which backs up to Ms. Suu Kyi's house. He reportedly accomplished this swim using homemade flippers and flotation devices.<sup>17</sup> Other reports indicate that Mr. Yettaw told authorities that he "walked through" the lake, possibly along the lakeshore.<sup>18</sup> According to the Burmese police complaint, Mr. Yettaw had made a similar swim on November 30, 2008, and left behind a copy of the Book of Mormon after Ms. Suu Kyi refused to see him.<sup>19</sup> Mr. Yettaw later testified that after his November swim, Burmese police caught, questioned, and released him.<sup>20</sup> On this occasion, Mr. Yettaw said that "four or five" policeman saw him crossing the lake en route to Ms. Suu Kyi's house, and took no action against him other than throwing rocks.<sup>21</sup> At the time, Burmese security around Inya Lake and the front of Ms. Suu Kyi's home was very tight.<sup>22</sup>

At approximately 5:00 am on May 4, Mr. Yettaw was discovered at the back of Ms. Suu Kyi's house by Ms. Suu Kyi's two friends and companions, Ms. Khin Khin Win and Ms. Win Ma Ma, a mother and daughter who are members of her party, the NLD.<sup>23</sup> Mr. Yettaw,

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<sup>14</sup> *See id.*

<sup>15</sup> For more detail, *see* Petition to United Nations Working Group on Arbitrary Detention In the Matter of Aung San Suu Kyi, June 18, 2008.

<sup>16</sup> As explained in Opinion No. 46/2008, Ms. Suu Kyi was held under the 1975 State Protection law, which allows individuals to be detained for up to five years, renewable on an annual basis. Ms. Suu Kyi's house arrest was renewed for a sixth time on May 28, 2008. As the Working Group found, "a plain reading of the 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 arrest for five years. Therefore, the most recent extension on 28 May 2008 amounts to a *prima facie* violation of the Union of Myanmar's own laws." Opinion No. 46/2008, at ¶ 12.

<sup>17</sup> *American: God Asked Me to Protect Suu Kyi*, CNN, May 5, 2009; *Intruder Had "Vision" Suu Kyi in Danger — Lawyer*, REUTERS, May 21, 2009.

<sup>18</sup> Yeni, *Confusing Testimony, Conflicting Reports Emerge from Yettaw Trial*, IRRAWADDY, May 28, 2009.

<sup>19</sup> *Trial of Suu Kyi Begins in Myanmar*, REUTERS, May 18, 2009.

<sup>20</sup> *American: God Asked Me to Protect Suu Kyi*, CNN, May 5, 2009.

<sup>21</sup> *Id.*

<sup>22</sup> *See, e.g.*, F. de Burgo-Naughton, *The Lady by the Lake*, NEWSWEEK, June 19, 2009 (describing the roadblocks, police, and military presence surrounding Ms. Suu Kyi's home); *Burma Police Enter Suu Kyi House*, BBC NEWS, May 7, 2009 (noting that "[t]he area is tightly-guarded and swimming in Inya Lake is prohibited").

<sup>23</sup> *See Myanmar's Suu Kyi Defiant Ahead of Trial: Lawyer*, REUTERS, May 17, 2009. Khin Khin Win and Win

who is reportedly diabetic and suffers from asthma, told Ms. Suu Kyi's companions that he was exhausted and hungry, and they gave him food and reported his presence to Ms. Suu Kyi.<sup>24</sup> Ms. Suu Kyi then asked Mr. Yettaw to leave, but he refused, stating that he had leg cramps and was exhausted.<sup>25</sup> Ms. Suu Kyi gave Mr. Yettaw "temporary shelter" in a ground-floor room, while she returned to her bedroom upstairs.<sup>26</sup> She later testified that she did not report Mr. Yettaw to Burmese authorities because she did not want to get either Mr. Yettaw or the guards around her house in trouble.<sup>27</sup> Instead, she planned to report Mr. Yettaw's visit to her doctor, Tin Myo Win, on his next allowed visit on May 7.<sup>28</sup> Ms. Suu Kyi had reported Mr. Yettaw's previous attempted visit in 2008 through Dr. Myo Win, and had faced no questions from the junta at that time.<sup>29</sup>

Prior to May 4, Ms. Suu Kyi had had no contact with Mr. Yettaw, who testified that he had broken into Ms. Suu Kyi's home because he "had a dream" that Ms. Suu Kyi would be assassinated, and "came to warn her."<sup>30</sup> On a video shot by Mr. Yettaw inside Ms. Suu Kyi's home upon his arrival and later shown at trial, Mr. Yettaw said that he had asked Ms. Suu Kyi for permission to take her picture, and she had refused.<sup>31</sup> He stated in the video, "She looks frightened, and I am sorry about this."<sup>32</sup>

Mr. Yettaw remained at Ms. Suu Kyi's home on May 4. He initially told Ms. Suu Kyi he would leave that evening under the cover of night, but then pleaded to stay another day due to continuing health problems.<sup>33</sup> At approximately 11:45 pm on May 5, Mr. Yettaw left Ms. Suu Kyi's home.<sup>34</sup> At dawn on May 6, Mr. Yettaw was pulled from Inya Lake by Burmese security forces and arrested.<sup>35</sup>

Mr. Yettaw left behind a number of items at Ms. Suu Kyi's house, including two black chadors, two black scarves, colored pencils, and sunglasses.<sup>36</sup> When later asked whether she had accepted these items as gifts, Ms. Suu Kyi stated that she did not know if Mr. Yettaw had forgotten to take the items or left them.<sup>37</sup>

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Ma Ma lived periodically with Ms. Suu Kyi since 1997, but "have been permanent residents since [she] began her current term of house arrest in September 2003." Saw Yan Naing, *Authorities Isolate Suu Kyi's Companion in Hospital*, IRRAWADDY, Sept. 10, 2009. Although Khin Khin Win and Win Ma Ma chose voluntarily to live with Ms. Suu Kyi, and, before this incident, had never been formally arrested or detained, they reportedly had been prohibited by the junta from leaving the house. *See id.*

<sup>24</sup> *Intruder Had "Vision" Suu Kyi in Danger — Lawyer*, Reuters, May 21, 2009; *Neighbors Describe Man at Center of Suu Kyi Case*, CNN, May 14, 2009.

<sup>25</sup> *Intruder Had "Vision" Suu Kyi in Danger — Lawyer*, REUTERS, May 21, 2009; *Myanmar Allows Diplomats and Press at Activist's Trial*, N.Y. TIMES, May 21, 2009.

<sup>26</sup> *Aung San Suu Kyi Denies Charges*, BBC, May 26, 2009; *Pro-Democracy Leader Goes on Trial in Myanmar*, N.Y. TIMES, May 19, 2009.

<sup>27</sup> *Suu Kyi Denies Junta Charge*, AP, May 27, 2009.

<sup>28</sup> *Suu Kyi Blames Security Lapse*, STRAITS TIMES, May 28, 2009.

<sup>29</sup> *Id.*

<sup>30</sup> *Myanmar Democracy Activist Held In Prison*, AP, May 15, 2009; *Suu Kyi Pleads Not Guilty In U.S. Intruder Case*, REUTERS, May 22, 2009.

<sup>31</sup> *Intruder Had "Vision" Suu Kyi in Danger — Lawyer*, REUTERS, May 21, 2009.

<sup>32</sup> *Id.*

<sup>33</sup> *Suu Kyi Blames Security Lapse*, STRAITS TIMES, May 28, 2009.

<sup>34</sup> *Aung San Suu Kyi Denies Charges*, BBC, May 26, 2009.

<sup>35</sup> *Myanmar's Detailed Suu Kyi "Not In Good Health,"* AFP, May 8, 2009.

<sup>36</sup> *Myanmar Again Closes Trial of Democracy Activist*, N.Y. TIMES, May 21, 2009.

<sup>37</sup> *Suu Kyi Denies Junta Charge*, AP, May 27, 2009.

After Mr. Yettaw was arrested, police visited Ms. Suu Kyi's home, and "seemed to accept" her explanation of events.<sup>38</sup> However, on May 7, Burmese security denied Dr. Myo Win entry to her house when he arrived for a scheduled visit, and he was later taken from his home and arrested on unspecified charges.<sup>39</sup> On May 8, medical assistant Mr. Pyone Moe Ei was allowed to visit Ms. Suu Kyi at her home, and found that she had been unable to eat for three or four days, and was suffering from dehydration and low blood sugar.<sup>40</sup> She was placed on an intravenous drip.<sup>41</sup> Mr. Pyone Moe Ei was denied permission to visit Ms. Suu Kyi on May 9, and was not allowed entry to her home for a follow-up visit until May 11.<sup>42</sup>

On the morning of May 14, Ms. Suu Kyi and her two companions were taken from her home by armed convoy to Rangoon's Insein Prison.<sup>43</sup> There, all three were charged with breaching the terms of Ms. Suu Kyi's house arrest in violation of Article 22 of the 1975 State Protection Act.<sup>44</sup> The law states that "any person against whom action is taken, who opposes, resists, or disobeys any order passed under this Law shall be liable to imprisonment for a period of three years to five years, or a fine of up to 5,000 kyats, or both."<sup>45</sup> Ms. Suu Kyi's companions were also charged under Section 109 of the Penal Code for aiding and abetting another in committing a crime.<sup>46</sup>

### Analysis

The deprivation of the Petitioner's freedom (house arrest)<sup>47</sup> falls within Categories I, II, and III of the Working Group's classification of cases. This case involves Category I because Ms. Suu Kyi was sentenced for violating the terms of her previous detention, and the Working Group has repeatedly found that this previous detention constituted arbitrary Category I detention (meaning that any charges based on this detention must necessarily "lack any legal basis").<sup>48</sup> Additionally, there can be no legal justification for Ms. Suu Kyi's detention under the law, because no controlling body, acting in good faith, could find that Ms. Suu Kyi's actions violated the terms of her house arrest. Further, as the Working Group held in Opinion Nos. 8/1992, 2/2002, 2/2007, and 46/2008, 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 Opinion Nos. 9/1992, 2/2002, 2/2007, and 46/2008, the case involves Category III because the military junta is violating many of the international norms relating to the right to a fair trial.

For the reasons stated below, the arrest and detention of Ms. Aung San Suu Kyi violates the fundamental rights and freedoms established in the Universal Declaration of

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<sup>38</sup> *Suu Kyi Blames Security Lapse*, STRAITS TIMES, May 28, 2009.

<sup>39</sup> *Myanmar Junta Frees Suu Kyi's Doctor*, AP, May 16, 2009; *Myanmar's Detained Suu Kyi "Not in Good Health"*, AFP, May 8, 2009.

<sup>40</sup> *Doctor Visits Myanmar's Ailing Aung San Suu Kyi*, AP, May 11, 2009; *Myanmar's Detained Suu Kyi "Not in Good Health"*, AFP, May 8, 2009.

<sup>41</sup> *Myanmar's Detained Suu Kyi "Not in Good Health"*, AFP, May 8, 2009.

<sup>42</sup> *Doctor Visits Myanmar's Ailing Aung San Suu Kyi*, AP, May 11, 2009.

<sup>43</sup> *Aung San Suu Kyi Taken to Jail to Face Trial*, TELEGRAPH, May 14, 2009.

<sup>44</sup> *Q+A: Suu Kyi Trial Heads to Inevitable Verdict*, REUTERS, May 28, 2009.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> 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.

<sup>48</sup> See Opinion Nos. 9/2004 and 46/2008.

Human Rights, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment,<sup>49</sup> and the Standard Minimum Rules for the Treatment of Prisoners,<sup>50</sup> and constitutes Category I, Category II, and Category III arbitrary detention.

**I. The Detention Constitutes Category I Arbitrary Detention Because Ms. Suu Kyi's Original Detention Was Arbitrary, and Further, No Controlling Court Could Find that Ms. Suu Kyi Violated the Terms of Her House Arrest**

Under Article 9 of the Universal Declaration, “[n]o one shall be subjected to arbitrary arrest, detention, or exile.” The Working Group considers a deprivation of liberty to be Category I arbitrary detention “[w]hen 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 sentence or despite an amnesty law applicable to him)” (emphasis added). Ms. Suu Kyi’s current detention constitutes Category I detention because Ms. Suu Kyi was sentenced for violating the terms of her house arrest, and in Opinion Nos. 9/2004 and 46/2008, the Working Group held that this house arrest constituted Category I arbitrary detention. Additionally, this original order of house arrest was based on Burma’s 1974 Constitution, which is no longer valid. Thus, any further charges based on this original detention lack “any legal basis justifying the deprivation of liberty,” and constitute Category I detention. Further, there can be no legal justification for Ms. Suu Kyi’s detention under the law, because no controlling body, acting in good faith, could find that Ms. Suu Kyi’s actions violated the terms of her house arrest.

The military junta allegedly arrested and detained Aung San Suu Kyi based on Article 22 of Burma’s 1975 State Protection Law, which allows the junta to order the imprisonment of “any person against whom action is taken, who opposes, resists or disobeys any order passed under this Law.”<sup>51</sup> The junta has justified the use of Article 22 by alleging that Ms. Suu Kyi violated the terms of her house arrest, thereby “oppos[ing], resist[ing] or disobey[ing]” an order passed under the law. Ms. Suu Kyi’s house arrest was originally issued pursuant to Articles 7 and 10 of the 1975 State Protection Law, which allow the junta to order, without charge or trial, the detention or restricted residence of anyone they believe is performing or might perform “any act endangering the sovereignty and security of the state or public peace and tranquility.”<sup>52</sup> At the most fundamental level, this law, which was authorized by Article 167 of the 1974 Constitution, is no longer valid because the Constitution was annulled when the military took power in 1988.<sup>53</sup> Even if that was not adequate to invalidate the law, the junta has argued that a new Constitution was adopted in the May 2008 referendum.

Further, as the Working Group has found in five previous opinions, Ms. Suu Kyi’s original detention under the 1975 State Protection Law was arbitrary.<sup>54</sup> The Working Group has explained, “No controlling body, acting in good faith, would find or believe that [Ms. Suu

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<sup>49</sup> 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) [hereinafter “Body of Principles”].

<sup>50</sup> 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) [hereinafter “Standard Minimum Rules for the Treatment of Prisoners”].

<sup>51</sup> The 1975 State Protection Law, *supra* note 9.

<sup>52</sup> *Id.*, at Article 7.

<sup>53</sup> *See supra* note 10.

<sup>54</sup> *See* Opinion Nos. 8/1992, 2/2002, 9/2004, 2/2007, and 46/2008.

Kyi] is a potential danger to the State.”<sup>55</sup> During the entire six-year span of Ms. Suu Kyi’s house arrest, “No warrant or decision was presented to Ms. Aung San Suu Kyi. No reasons were given to her for the extension of her house arrest, and she [was not] charged with any offence.”<sup>56</sup> Additionally, at the time Ms. Suu Kyi allegedly violated the terms of her house arrest, she was serving the sixth year of detention under a law which allowed a maximum of five years in detention, which the Working Group had ruled illegal.<sup>57</sup> In fact, the Working Group has found that Ms. Suu Kyi’s house arrest not only violated fundamental rights and freedoms in the Universal Declaration, the Body of Principles, and the Standard Minimum Rules for the Treatment of Prisoners, but also violated domestic Burmese law.<sup>58</sup>

The military junta has based Ms. Suu Kyi’s current arrest and detention on her alleged violation of the terms of this original detention. Because this original detention was plainly arbitrary — based on the fact that the authorizing law is no longer valid, and the Working Group’s previous rulings — any charges flowing from the violation of the terms of this detention consequently “lack any legal basis justifying the deprivation of [Ms. Suu Kyi’s] liberty,” and therefore, constitute Category I arbitrary detention. As a group of five independent UN human rights experts — including Working Group Chairperson-Rapporteur Castrillo — concluded on June 16, 2009, because Ms. Suu Kyi’s original arrest was arbitrary, she “needs to be released immediately and unconditionally.”<sup>59</sup>

Further, even if this were not the case, Ms. Suu Kyi’s current arrest and detention constitutes Category I arbitrary detention because no controlling body, acting in good faith, could find that her actions violated the terms of her house arrest. Although it is unclear precisely which terms Ms. Suu Kyi allegedly violated, presumably, she is accused of violating a prohibition against communication with outside parties via phone or letter. However, there is no evidence to show that Ms. Suu Kyi or her companions knew Mr. Yettaw or welcomed his visit. To the contrary, all evidence clearly demonstrates that Mr. Yettaw was an uninvited trespasser on Ms. Suu Kyi’s property, and that Ms. Suu Kyi and her companions had no communications with Mr. Yettaw until he breached security at the property (and was no longer an “outside party”). Under these circumstances, nothing in the terms of Ms. Suu Kyi’s house arrest would prohibit her from communicating with Mr. Yettaw.

First, all reports reaffirm that Mr. Yettaw was an uninvited trespasser: Ms. Suu Kyi did not invite Mr. Yettaw to her home, and indeed, did not know Mr. Yettaw at all. Furthermore, Ms. Suu Kyi and her companions had no way of preventing Mr. Yettaw from breaching security at her home — it is the Burmese junta, and not Ms. Suu Kyi and her companions, that control security at Ms. Suu Kyi’s home. Indeed, among other charges, Mr. Yettaw was charged with “illegally entering a restricted zone.”<sup>60</sup> Reinforcing the exclusive control the junta had around Ms. Suu Kyi’s home, National Police Chief Khin Yee

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<sup>55</sup> Opinion No. 2/2002.

<sup>56</sup> Opinion No. 46/2008.

<sup>57</sup> *See id.*

<sup>58</sup> *See id.*

<sup>59</sup> On June 16, Chairperson-Rapporteur Castrillo, together with the Special Rapporteur on the independence of judges and lawyers, Mr. Leandro Despouy; the Special Rapporteur on the situation of human rights in Myanmar, Mr. Tomás Ojea Quintana; the Special Rapporteur on the situation of human rights defenders, Ms. Margaret Sekaggya; and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Mr. Frank La Rue, released a statement condemning the trial of Ms. Suu Kyi. “Press Release: UN Experts Urge Fair and Open Trial for Aung San Suu Kyi,” UN (June 16, 2009) [hereinafter “UN Human Rights Press Release”].

<sup>60</sup> *Myanmar Democracy Activist Held in Prison*, AP, May 15, 2009.

announced that 20 security officials had been given either three-month prison sentences or demoted and transferred from their positions after Mr. Yettaw's unannounced visit.<sup>61</sup>

Under these circumstances, it is plainly arbitrary to punish a prisoner for communicating with an uninvited intruder who has breached the place of detention. As the five UN human rights experts concluded in the June 16 release, "If the State assumes the responsibility to prevent access to the house of Aung San Suu Kyi . . . how can she then be held criminally liable for an unwanted intrusion?"<sup>62</sup>

Second, once Mr. Yettaw illegally breached Ms. Suu Kyi's property, the terms of Ms. Suu Kyi's house arrest no longer prevented her from communicating with him, as he was no longer an "outside party," and this communication did not take the form of a phone call or letter. Even so, once Mr. Yettaw was discovered, Ms. Suu Kyi and her companions took all reasonable steps to minimize their contact with him. Undisputed testimony shows that Ms. Suu Kyi asked Mr. Yettaw to leave the property immediately, and that he refused, pleading infirmity. Mr. Yettaw pledged to leave that same evening. Ms. Suu Kyi, who, according to Mr. Yettaw's videotaped narrative, appeared "frightened," allowed Mr. Yettaw to stay in a ground-floor room; however, she refused his requests to take her picture, and retreated to her upstairs bedroom. There is no evidence of further interaction between Mr. Yettaw and Ms. Suu Kyi on that day, until Mr. Yettaw again refused to leave that evening, citing ongoing health concerns. Again, there is no evidence of further interaction between Mr. Yettaw and Ms. Suu Kyi until he departed late the following night.

As Ms. Suu Kyi and her companions were presumably incapable of physically forcing Mr. Yettaw to leave the grounds, their only "choice" to avoid communicating further with Mr. Yettaw would have been to alert the guards around Ms. Suu Kyi's house. Ms. Suu Kyi elected not to do so, fearing that both Mr. Yettaw and the guards would face punishment. As noted above, the Working Group has found on five previous occasions that Ms. Suu Kyi's detention is arbitrary.<sup>63</sup> Under the circumstances, it was reasonable for Ms. Suu Kyi to attempt to avoid subjecting others to similar arbitrary punishment. Further, Ms. Suu Kyi had planned to alert the junta to the security breach through her doctor's regular visit, as she did when Mr. Yettaw attempted to visit in November 2008. Because Ms. Suu Kyi faced no inquiry or arrest based on this previous attempted visit, she had reason to believe that this method of reporting was acceptable to the junta. Finally, because Mr. Yettaw testified that guards had, in fact, seen him cross the lake, there was reason to believe that the junta knew of Mr. Yettaw's presence and had chosen not to act. It was therefore reasonable for Ms. Suu Kyi to wait for Mr. Yettaw to leave before reporting his presence to the guards. Thus, even though not legally obligated to do so, Ms. Suu Kyi and her companions took all reasonable steps to minimize their contact with Mr. Yettaw.

Thus, because Mr. Yettaw was an uninvited trespasser, and Ms. Suu Kyi had no control over the security surrounding her home, the terms of Ms. Suu Kyi's house arrest would not prohibit her from communicating with Mr. Yettaw once he breached security and entered her property (and even so, Ms. Suu Kyi and her companions took all reasonable steps to minimize their contact with Mr. Yettaw). As such, no controlling body, acting in good faith, could find that these acts violated the terms of Ms. Suu Kyi's house arrest.

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<sup>61</sup> See *U.S. Man in Myanmar Suu Kyi Trial Suffers More Fits*, AFP, Aug. 7, 2009.

<sup>62</sup> UN Human Rights Press Release, *supra* note 59.

<sup>63</sup> See Opinion Nos. 8/1992, 2/2002, 9/2004, 2/2007, and 46/2008.

## **II. The Detention Constitutes Category II Arbitrary Detention Because the Petitioner is a Prisoner of Conscience**

The Working Group considers a deprivation of liberty to be Category II arbitrary detention “[w]hen 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.”

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 18<sup>64</sup> and 19<sup>65</sup> of the Universal Declaration. In a prior case involving Burma, the Working Group concluded, “[p]eaceful expression of opposition to any regime cannot give rise to arbitrary arrest.”<sup>66</sup> The junta has previously been censured by the Working Group for detaining those publicly opposing the regime.<sup>67</sup> Although the Burmese junta has nominally tried to cloak Ms. Suu Kyi’s detention under a provision of Burmese law, Ms. Suu Kyi has been detained for her opposition to the regime and her possible role in influencing the 2010 elections.

## **III. The Detention Constitutes Category III Arbitrary Detention Because the Burmese Junta is Violating Many International Norms Relating to the Right to a Fair Trial**

The Working Group considers a deprivation of liberty to be Category III arbitrary detention “[w]hen 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 so as to give the deprivation of liberty an arbitrary character.”

On June 16, Mr. Leandro Despouy, the Special Rapporteur on the independence of judges and lawyers, concluded that “the trial of Aung San Suu Kyi and her aides has been marred by flagrant violations of substantive and procedural rights.”<sup>68</sup> The arrest and detention of the Petitioner violated each of the following rights as described in the Body of Principles, the Universal Declaration, and the Standard Minimum Rules for the Treatment of Prisoners. Together, these violations are sufficiently grave as to constitute Category III arbitrary detention.

### **A. The Petitioner Has Been Denied Communication with the Outside World**

Under Principle 15 of the Body of Principles, “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

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<sup>64</sup> “Everyone has the right to freedom of thought, conscience and religion . . .” Universal Declaration, Article 18.

<sup>65</sup> “Everyone 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.” Universal Declaration, Article 19.

<sup>66</sup> See *James Mawdsley v. Myanmar*, Opinion No. 25/2000, at ¶ 6.

<sup>67</sup> “[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.

<sup>68</sup> UN Human Rights Press Release, *supra* note 59.

opportunity to communicate with the outside world, subject to reasonable conditions . . . .” Similarly, Article 37 of the Standard Minimum Rules for the Treatment of Prisoners states that “[p]risoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits.”

In direct contravention of these articles, the junta has detained Ms. Suu Kyi in virtual isolation from the outside world. Although Ms. Suu Kyi was permitted to meet with then-UN Under-Secretary-General Ibrahim Gambari on seven occasions, for the past six years, she has been denied access to virtually everyone else except for domestic help and sporadic visits with her doctor and lawyers. In fact, “even visiting senior diplomats are routinely denied access to her.”<sup>69</sup>

The junta’s isolation of Ms. Suu Kyi has continued during her most recent detention. While Ms. Suu Kyi was held at Insein Prison, she was allowed only one brief visit with individuals other than her lawyers (three foreign diplomats).<sup>70</sup> When the junta briefly opened Ms. Suu Kyi’s trial to selected spectators on May 20, it was Ms. Suu Kyi’s first public appearance in over a year.<sup>71</sup> Further, when UN Secretary-General Ban Ki-moon visited Burma on July 3 and July 4, 2009, he twice asked General Than Shwe to visit Ms. Suu Kyi, and was twice denied.<sup>72</sup> Sequestering Ms. Suu Kyi and denying her virtually all communication with the outside world plainly violates Principles 15 and 19 of the Body of Principles, and Article 37 of the Standard Minimum Rules.<sup>73</sup>

## **B. The Petitioner Has Been Denied a Public Hearing**

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” (emphasis added). In violation of this article, trial judges rejected an application by Ms. Suu Kyi’s lawyers for a public trial.<sup>74</sup> The Burmese public has been denied access to the courtroom, which is under heavy security by armed soldiers. Further, the junta has repeatedly barred access to diplomats and journalists seeking to attend the trial.<sup>75</sup> The junta has opened the trial on only

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<sup>69</sup> Seth Mydans & Mark McDonald, *Myanmar Again Closes Trial of Democracy Activist*, N.Y. TIMES, May 22, 2009.

<sup>70</sup> The junta allowed a brief meeting on May 20 with Singapore, Thai, and Russian diplomats. *See Myanmar Lets Diplomats Visit Suu Kyi, Opens Trial*, AP, May 20, 2009.

<sup>71</sup> Matthew Weaver, *Burma Junta Bars Media and Diplomats from Aung San Suu Kyi Trial Again*, GUARDIAN, May 21, 2009.

<sup>72</sup> *UN Chief Outlines Vision for Myanmar*, WALL ST. J., July 4, 2009. In response, the Secretary-General expressed his “deep disappoint[ment]” and noted that “Daw Aung San Suu Kyi must be allowed to participate in the political process without further delay.” *Id.*

<sup>73</sup> This violation is the same as in previous decisions of the Working Group. The Working Group’s first opinion concluded: “It is clear that Aung San Suu Kyi [has] been held . . . in almost complete isolation from the outside world.” *U Nu and Aung San Suu Kyi v. Myanmar*, Opinion No. 8/1992, at ¶ 16. Sixteen years later, the Working Group’s most recent opinion observed, “Since her initial term of house arrest began, Ms. Aung San Suu Kyi has only been given minimal access to the outside world.” Opinion No. 46/2008, at ¶ 5.

<sup>74</sup> Richard Lloyd Parry, *Lawyers for Aung San Suu Kyi Protest Innocence as Trial Begins*, TIMES (UK), May 19, 2009.

<sup>75</sup> *See, e.g.*, Seth Mydans & Mark McDonald, *Pro-Democracy Leader Goes on Trial in Myanmar*, N.Y. TIMES, May 19, 2009 (noting that “[s]everal foreign diplomats were prevented from entering the court”); Seth Mydans & Mark McDonald, *Myanmar Again Closes Trial of Democracy Activist*, N.Y. TIMES, May 22, 2009; *Myanmar’s Suu Kyi Defends Herself in Court*, AP, May 26, 2009 (noting that “reporters and diplomats . . . were allowed into the courtroom . . . the second time during the trial that such rare access has been granted.”).

four occasions for a limited number of hours, and each time, only allowed entry to a small, hand-selected group of diplomats and/or Burmese journalists.<sup>76</sup>

In addition to conducting largely secret proceedings, the junta has closely censored media reports of the trial. Burmese journalists have been told not to deviate from official reports of the trial proceedings,<sup>77</sup> and on one occasion, officials from the NLD received a “formal warning” from Burmese authorities for criticism of the trial that was leaked to a Burmese blogger.<sup>78</sup> As noted by Mr. Despouy, “Transparency in the administration of justice is a pre-requisite of any State governed by the rule of law.”<sup>79</sup> Similarly, Mr. Frank La Rue, Special Rapporteur on freedom of opinion and expression, has concluded that “[n]ational and international media should be granted full access to the trial.”<sup>80</sup>

### **C. The Petitioner Has Not Been Heard by an Independent and Impartial Tribunal**

The right to be judged by “an independent and impartial tribunal” is enshrined in Article 10 of the Universal Declaration, and is one of the Declaration’s most fundamental rights. Ms. Suu Kyi’s conviction, against all evidence, is unsurprising, as “the [Burmese] judiciary is far from independent . . . [and is] characteristic of a military dictatorship.”<sup>81</sup> As reported in September 2008 by the Special Rapporteur on the situation of human rights in Myanmar, Mr. Tomás Ojea Quintana, “under the current functioning, the judiciary is not independent and is under the direct control of the Government and the military.”<sup>82</sup> This lack of an independent judiciary also violates Ms. Suu Kyi’s right to a “fair trial” under Article 10, discussed further below.

### **D. The Petitioner Has Been Denied a Fair Trial**

Article 10 of the Universal Declaration holds that “[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” (emphasis added). In violation of this right, Ms. Suu Kyi has been denied the opportunity to be heard before an impartial tribunal in a public hearing (see above), as well as the opportunity to present witnesses in her defense. Of the five defense witnesses offered by Ms. Suu Kyi’s

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<sup>76</sup> See Aung Hla Tun, *Intruder Had “Vision” Suu Kyi in Danger — Lawyer*, AP, May 21, 2009 (noting that “29 diplomats and 10 Burmese journalists” were allowed to attend a 45-minute hearing on May 20); *Aung San Suu Kyi Denies Charge*, BBC NEWS, May 26, 2009 (reporting that “[i]n a rare concession by the regime, diplomats and some Burmese journalists were allowed to attend the trial”); *Junta Allows Only One-Sided Coverage of Aung San Suu Kyi’s Trial*, REPORTERS WITHOUT BORDERS, May 28, 2009 (noting that “no foreign reporter has been allowed in[to the trial] and the Burmese media are not able to cover [the trial] freely”); *Closed-Door Suu Kyi Trial Resumes in Myanmar*, AP, July 10, 2009 (noting that British Charge D’Affaires was denied entry to the trial, and “[r]eporters and the public were kept away”); *Burma Trial Reaches Final Stages*, BBC, July 24, 2009 (noting that “[s]ome European diplomats were reportedly given permission to attend the court session, but no foreign journalists”); *Aung San Suu Kyi Fears Trial Verdict Will Be “Painfully Obvious,”* TELEGRAPH, July 29, 2009 (noting that “[d]iplomats from the US, Japan, Singapore and Thailand were allowed to attend the last day of the trial on Tuesday”).

<sup>77</sup> See *Junta Allows Only One-Sided Coverage of Aung San Suu Kyi’s Trial*, REPORTERS WITHOUT BORDERS, May 28, 2009.

<sup>78</sup> Hla Hla Htay, *Suu Kyi Party Warned Over Trial Criticism*, Myanmar State Media, AFP, June 7, 2009.

<sup>79</sup> UN Human Rights Press Release, *supra* note 59.

<sup>80</sup> *Id.*

<sup>81</sup> 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.

<sup>82</sup> *Report of the Special Rapporteur on the Situation of Human Rights in Myanmar*, submitted in accordance with Human Rights Council Resolution 7/32, A/63/341, Sept. 5, 2008, at 21.

legal team, the trial court permitted only two witnesses to testify.<sup>83</sup> The court allegedly justified the rejection of the remaining three witnesses on the grounds that their testimony was aimed at “vexation or delay or for defeating the ends of justice.”<sup>84</sup> In contrast, the trial court approved 23 prosecution witnesses, and 14 took the stand.<sup>85</sup>

Noting that it “is not in accord with [Burmese] law to reject defense witnesses like this,” Ms. Suu Kyi’s legal team appealed the witness ban.<sup>86</sup> On appeal, the Divisional Court ruled to allow the testimony of a second defense witness, legal expert Khin Moe Moe, “but maintained the disqualification of prominent journalist and former political prisoner Win Tin and party vice chairman Tin Oo, who is under house arrest.”<sup>87</sup> Burma’s highest court upheld the lower court’s rejection of the remaining two witnesses.<sup>88</sup> At the close of the trial, the lower court denied another defense request to present witness testimony from a fifth witness, a foreign ministry official, judging this testimony “not important.”<sup>89</sup> In all, then, the court rejected three of the five defense witnesses. Such a one-sided proceeding does not constitute a “fair hearing” under Article 10.

#### **E. The Right to Counsel Has Been Violated**

After Ms. Suu Kyi’s arrest, she requested that her lead counsel, U Kyi Win, ask another prominent Burmese lawyer, Aung Thein, to join her legal team. On May 14, Mr. Thein, who had previously served as counsel to a number of political activists, applied to the court to represent Ms. Suu Kyi.<sup>90</sup> On May 15, Mr. Thein’s law license was revoked by authorities.<sup>91</sup> This violates Principle 17(2) of the Body of Principles, which guarantees a detained person “a legal counsel of his own choice.” Further, after Ms. Suu Kyi’s defense team appealed the court’s rejection of defense witnesses, the wife of one of her lawyers, a government employee, was abruptly fired without explanation.<sup>92</sup> This was widely seen as an attempt to intimidate Ms. Suu Kyi’s lawyers, thereby further denying her choice of counsel in violation of Principle 17(2).

#### **F. The Petitioner Has Been Denied the Right to Communicate With Counsel and Prepare a Defense**

Under Principle 18 of the Body of Principles, a detainee has a fundamental right to communicate with her attorney and prepare her defense. A detainee is “entitled to

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<sup>83</sup> *Myanmar Hits Back at Critics of Suu Kyi Trial*, REUTERS, May 28, 2009.

<sup>84</sup> *Myanmar’s Suu Kyi Blames Security Breach*, AP, May 28, 2009.

<sup>85</sup> *Trial of Myanmar’s Aung San Suu Kyi to Resume*, AP, July 23, 2009.

<sup>86</sup> Aung Hla Tun, *Myanmar Court Delays Suu Kyi Trial, Witness Ruling*, REUTERS, June 5, 2009.

<sup>87</sup> *Last Witness Testifies in Suu Kyi Trial in Myanmar*, AP, July 10, 2009.

<sup>88</sup> Daniel Schearf, *Burma Court Rejects Aung San Suu Kyi Witness Appeal*, VOA, June 29, 2009.

<sup>89</sup> *Aung San Suu Kyi Fears Trial Verdict Will Be “Painfully Obvious,”* TELEGRAPH, July 28, 2009.

<sup>90</sup> *See Myanmar Bars Lawyer from Aung San Suu Kyi Trial*, AFP, May 17, 2009. Most recently, Aung Thein defended U Gambira, a monk who helped lead the peaceful “Saffron Revolution” in September 2007. After being denied the ability to adequately represent Gambira in court, Aung Thein withdrew his representation with the consent of his client, and as a result, was sentenced to four months in prison for contempt of court. Another attorney, Khin Maung Shein, withdrew his representation of political activists after being denied permission to ask questions on behalf of his clients, and was also sentenced to four months in prison. *See Saw Yan Naing, More Burmese Defense Lawyers Jailed for “Contempt of Court,”* IRRAWADDY, Nov. 7, 2008. *See also Report of the Special Rapporteur on Myanmar*, A/HRC/10/19, Mar. 11, 2009, at ¶ 26-28 (reporting on Aung Thein and Khin Maung Shein’s sentencing, and noting that “[i]n Myanmar, the right to legal counsel is not fully respected”).

<sup>91</sup> *Myanmar Junta Frees Suu Kyi’s Doctor*, AP, May 16, 2009.

<sup>92</sup> Aung Hla Tun, *Suu Kyi Says Junta’s Charges are Political*, REUTERS, June 11, 2009.

communicate with his legal counsel [and]. . . shall be allowed adequate time and facilities for consultation with his legal counsel,” and “the right of a detained person to be visited by and to consult and communicate, without delay or censorship . . . with his legal counsel may not be suspended or restricted save in exceptional circumstances.”

Although Ms. Suu Kyi has been permitted a three-person legal team, she has been allowed to consult with her counsel only sporadically. Ms. Suu Kyi was charged on May 14, and was allowed only one hour to visit with her lead attorney, U Kyi Win, on May 16 before the trial began two days later.<sup>93</sup> It does not appear that Ms. Suu Kyi was allowed to visit with counsel between May 18 and May 25. On May 25, the prosecution abruptly cancelled its remaining witnesses, forcing Ms. Suu Kyi to testify on May 26 without prior discussion with her counsel.<sup>94</sup> The court then denied a defense request to consult with Ms. Suu Kyi privately.<sup>95</sup> Ms. Suu Kyi was not granted another private meeting with counsel until Saturday, May 30, *after* the prosecution’s witnesses had concluded testimony and the defense had called its one allowed witness.<sup>96</sup>

During the month of June, when Ms. Suu Kyi’s legal team appealed the trial court’s decision to reject three of the four defense witnesses, Ms. Suu Kyi appears to have been allowed to consult with counsel only three times.<sup>97</sup> On at least one occasion (June 19, Ms. Suu Kyi’s birthday), authorities specifically refused to allow counsel to meet with Ms. Suu Kyi.<sup>98</sup> Similarly, when Ms. Suu Kyi’s trial resumed in July, she appears to have been allowed to consult with counsel only twice.<sup>99</sup> Counsel described the necessity of “negotiating” with the junta in order to obtain permission to meet with Ms. Suu Kyi, and permission to meet was again specifically refused at least once.<sup>100</sup>

Under these circumstances, the junta’s actions violate Ms. Suu Kyi’s right to communicate with counsel and prepare her defense in accordance with Principle 18. In fact, given the severity of this deprivation, these actions arguably constitute a denial of Ms. Suu Kyi’s right to be represented by counsel under Principle 17. 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 alone render detention arbitrary.<sup>101</sup>

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<sup>93</sup> Aung Hla Tun, *Myanmar’s Suu Kyi Defiant Ahead of Trial: Lawyer*, REUTERS, May 21, 2009.

<sup>94</sup> *Aung San Suu Kyi Denies Charges*, BBC NEWS, May 26, 2009.

<sup>95</sup> *Myanmar’s Suu Kyi: I Did Not Violate House Arrest*, CNN, May 26, 2009.

<sup>96</sup> Aung Hla Tun, *Suu Kyi’s Health Improves, Ready for Verdict*, REUTERS, May 30, 2009.

<sup>97</sup> *Myanmar’s Suu Kyi Seeks High Court Appeal: Lawyer*, AFP, June 11, 2009 (noting that Ms. Suu Kyi was allowed to meet with counsel on June 10); *Myanmar’s Suu Kyi Says Thanks for Birthday Wishes*, AP, June 23, 2009 (noting that lawyers had been permitted to meet with Ms. Suu Kyi on June 22); Salai Pi Pi, *Aung San Suu Kyi Supports Ban’s Agenda: Lawyer*, MIZZIMA, July 3, 2009 (reporting that Ms. Suu Kyi was allowed to meet with her legal team on June 30).

<sup>98</sup> *Myanmar’s Suu Kyi Says Thanks for Birthday Wishes*, AP, June 23, 2009.

<sup>99</sup> *Aung San Suu Kyi to Meet Legal Team Again*, MIZZIMA, July 15, 2009 (describing a scheduled meeting on July 17); *Myanmar Grants Lawyers Access to Aung San Suu Kyi*, AP, July 23, 2009 (noting that the junta had allowed counsel to meet with Ms. Suu Kyi “a day before her trial is set to resume for final arguments”).

<sup>100</sup> *Aung San Suu Kyi to Meet Legal Team Again*, MIZZIMA, July 15, 2009 (quoting counsel Nyan Win as stating that the legal team “ha[d] confirmed the meeting on Friday. But we are still negotiating with authorities”); *Access to Suu Kyi Denied*, STRAITS TIMES, July 22, 2009 (reporting that on July 22, “authorities . . . denied permission for Ms. Suu Kyi’s lawyers to meet her to finalise the draft of their 23-page closing argument”).

<sup>101</sup> 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).

## **G. Petitioner Has Been Denied Access to Medical Care**

Principle 24 of the Body of Principles holds that “medical care and treatment shall be provided [to a detained person] whenever necessary.” Similarly, Article 24 of the Standard Minimum Rules for the Treatment of Prisoners states that medical staff “shall see and examine every prisoner as soon as possible after his admission and thereafter as necessary,” and Article 25 reiterates that “[t]he medical officer . . . should daily see all sick prisoners, all who complain of illness, and any prisoner to whom his attention is specially directed.”

In violation of these principles, the junta has permitted Ms. Suu Kyi only sporadic visits from medical professionals during the past six years, despite Ms. Suu Kyi’s need to address a number of serious health ailments. This pattern has continued during Ms. Suu Kyi’s most recent detention. As previously discussed, when Dr. Myo Win arrived at Ms. Suu Kyi’s home on May 7 for his scheduled visit, he was denied entry, and was instead detained by authorities on unspecified charges.<sup>102</sup> Ms. Suu Kyi was not allowed a visit by medical personnel until the following day, when a medical assistant placed her on an intravenous drip due to dehydration, low blood pressure, and the inability to eat for several days.<sup>103</sup> The medical assistant was denied access for a follow-up visit until May 11.<sup>104</sup> By May 27, witnesses reported that Ms. Suu Kyi appeared “pale and weak,”<sup>105</sup> and she reportedly had suffered from painful leg cramps that prevented her from sleeping.<sup>106</sup> NLD leaders had to publicly voice their “grave concern” for Ms. Suu Kyi’s health, resulting in an international outcry, before the junta allowed Ms. Suu Kyi a visit by prison medical staff on May 30, bringing some relief.<sup>107</sup> The junta has therefore repeatedly violated Principle 24 and Articles 24 and 25 throughout Ms. Suu Kyi’s detention.

Thus, as described above, the arrest and detention of the Petitioner violated a number of fundamental rights and freedoms as described in the Universal Declaration, the Body of Principles, and the Standard Minimum Rules for the Treatment of Prisoners. Together, these violations are sufficiently grave as to constitute Category III arbitrary detention.

## **Conclusion**

For the reasons stated herein, and as reaffirmed by the five UN human rights experts in the June 16 release,<sup>108</sup> the Petitioner should be immediately released from house arrest.

## ***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.***

<sup>102</sup> Aung Hla Tun, *Myanmar’s Suu Kyi Defiant Ahead of Trial*, REUTERS, May 21, 2009. Dr. Myo Win was released on May 16.

<sup>103</sup> *Myanmar’s Detained Suu Kyi “Not in Good Health,”* AFP, May 8, 2009.

<sup>104</sup> *Myanmar Allows Medic to See Suu Kyi: Witnesses*, AFP, May 12, 2009.

<sup>105</sup> *Suu Kyi Marks 6 Years in Detention*, AP, May 27, 2009.

<sup>106</sup> Aung Hla Tun, *Suu Kyi’s Health Improves, Ready for Verdict*, REUTERS, May 30, 2009.

<sup>107</sup> *Id.* Throughout, the junta insisted that Ms. Suu Kyi was “in good health” and was being “provided with adequate health care.” *Supporters Say Suu Kyi Needs Urgent Medical Care*, AP, May 29, 2009.

<sup>108</sup> See UN Human Rights Press Release, *supra* note 59.

As described above, the Petitioner was tried, convicted, and sentenced to 18 months under house arrest. While an appeal may technically be allowed under Burmese law, it is highly unlikely to result in an appropriate remedy: as described above, Ms. Suu Kyi has been detained by the junta as a prisoner of conscience, and the Burmese judiciary “is not independent and is under the direct control of the Government and the military.”<sup>109</sup> Thus, the Petitioner does not have an effective internal remedy.

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

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<sup>109</sup> See Report of the Special Rapporteur on the Situation of Human Rights in Myanmar, *supra* note 82.