



PROCEDURES SPECIALES ASSUMÉES PAR
LE CONSEIL DES DROITS DE L'HOMME

SPECIAL PROCEDURES ASSUMED BY THE
HUMAN RIGHTS COUNCIL

Mandate of the Working Group on Arbitrary Detention

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REFERENCE: G/SO 218/2

29 May 2007

Dear Mr. Genser,

I would like to refer to the thirty-eight session of the Working Group on Arbitrary Detention, in which the Working Group adopted several Opinions on cases of detention submitted to it. The Working Group decided, inter alia to transmit its Opinions, after having transmitted them to the governments concerned, to the sources of information which had submitted the cases for the Group.

In accordance with the Working Group's decision I am sending you, attached herewith, the Opinion No. 2/2007 on one case submitted by your organization. This Opinion will also be reproduced in the Working Group's report to the next session of the Human Rights Council.

Yours sincerely,

A handwritten signature in cursive script, reading "Miguel de la Lama".

Miguel de la Lama
Secretary

Working Group on Arbitrary Detention

Attached: Opinion No. 2/2007 (Myanmar)

Mr. Jared Genser
President
Freedom Now

OPINION No. 2/2007 (MYANMAR)

Communication addressed to the Government on 10 July 2006.

Concerning Ms. Aung San Suu Kyi

The State has not ratified the International Covenant on Civil and Political Rights.

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified by resolution 1997/50, and extended by Commission's resolution 2003/31. It was later assumed by the Human Rights Council in its Decision 1/102 of 30 June 2006. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.
2. The Working Group regards deprivation of liberty as arbitrary in the following cases:
 - I. When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act (category I));
 - II. When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);
 - III. When the complete or partial non-observance of the international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).

3. The Working Group welcomes the cooperation of the Government by providing the requested information on the facts alleged and the applicable law. The reply of the Government was forwarded to the source, which did make comments on it. The Working Group believes that it is in a position to render an Opinion on the facts and circumstances of the case.

4. The information submitted to the Working Group is summarised as follows:

(a) Ms. Aung San Suu Kyi, a citizen of the Union of Myanmar, General Secretary of the National League for Democracy (NLD) and Nobel Peace Prize laureate, is being held under house arrest in Rangoon. She spent more than 10 of the last 16 years in detention and has been held in her Rangoon residence without contact with the outside world for more than four years. She is denied visitors and has no outside telephone contact.

(b) Ms. Suu Kyi was arrested in May 2003 following an assassination attempt during which more than 70 of her supporters were murdered. The attack was reportedly orchestrated by a group associated with the Union Solidarity Development Association ("USDA"). Although Ms. Suu Kyi survived the attack, her safety continues to be threatened because in that she is allowed only infrequent visits by her medical doctors.

(c) On 24 May 2006, Ms. Suu Kyi received a rare visit from United Nations Under-Secretary-General Ibrahim Gambari who called for her release. The source submits that the detention order of Ms. Suu Kyi expired with no official announcement of she will be released from house arrest. On 27 May 2006, the authorities extended Ms. Suu Kyi's house arrest for another year.

(d) The source contends that Ms. Suu Kyi is being 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.

(e) According to the source, there is no opportunity for domestic judicial review of Ms. Suu Kyi's detention. Since her initial term of house arrest begun on 30 May 2003, Ms. Suu Kyi has been denied all access to NLD leaders and the press. She has no access to relatives or lawyers and her communications and visits are permitted at the Government's sole discretion.

(f) The source asserts that on 23 May 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.

(g) The source further submits that 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.

(h) The source affirms that there can be no legal justification for Aung San Suu Kyi's detention under the law, because her release would not endanger State sovereignty or public peace and tranquility. Because she is not a threat to the country's political stability, her continued detention is arbitrary.

(i) The source concludes that Ms. Suu Kyi is being held because of her political views. It is not a coincidence that she is the Secretary General of the NLD. 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.

5. The reply of the Government to the allegations of the source can be reproduced as follows. In 2003, during her trips to various townships in Myanmar, Ms. Aung San Suu Kyi carried out activities detrimental to the peace and tranquility of the livelihood of the local community. She delivered speeches to discredit the Government to impair the dignity thereof and also conducted campaigning with the intention of harming the integrity of the Union and solidarity of the national races. As her conduct constitute a threat to the security of the State and public peace and

tranquility, she was retained under section 10 of the Law to safeguard the State against the dangers of those desiring to cause subversive acts.

The Government went on by explaining that the Central Body formed under the Law passed restriction orders to restrain Aung Suu Kyi from 28 November 2003 to 27 November 2004. After expiration of the one-year restraint, the Central Body obtained the prior sanctions from the Council of Ministers to extend the restraint on a yearly basis until now.

The Government concludes by pointing out that under the law the authorities are empowered to restrain individuals without trial.

6. When considering the communication, the Working Group started from the following considerations.

This is already the fourth occasion when the Working Group on Arbitrary Detention called to address the deprivation of liberty under the form of house arrest of the same individual, namely Ms. Aung San Suu Kyi (see Opinions 8/1992, 2/2002 and 9/2004). The basic facts in the previous Opinions and the present communication are either identical or very similar: A leading opposition figure in the Union of Myanmar is repeatedly paralyzed in her participation in the political life of her country by the application against her of subsequent arrest house arrest orders. Apart from their possible detrimental health and psychological effects, the measures systematically taken against her are tantamount to deprivation of liberty (see Deliberation 001 of the Working Group referred to the former Opinions), and are aimed to prevent her to exercise her right to freedom of opinion and expression. Moreover, the system of "restraints" hampered Ms. Suu Kyi to enjoy the safeguards of a fair trial against arbitrary detention, because as the Government itself clarified, house arrests are ordered without trial. The unsubstantiated hints of the Government to "activities detrimental to the peace and tranquility" and to Ms. Suu Kyi's "campaigning with the intention of harming the integrity of the Union" are irrelevant to justify her detention, because not even the Government asserts that Ms. Aung San Suu Kyi has ever resorted to violence or incited to hostility or violence.

The Working Group notes that the obvious unwillingness of the Government to comply with the Working Group's Opinions and recommendations to put an end to the house arrest of Ms. Aung San Suu Kyi is particularly worrying.

7. In the light of the foregoing the Working Group renders the following opinion. The deprivation of liberty of Ms. Aung San Suu Kyi is arbitrary being in contravention of Articles 9, 10 and 19 of the Universal Declaration on Human Rights and falls under category II and III of the categories applicable to the consideration of cases submitted to the Working Group.

8. Consequent upon the Opinion rendered the Working Group repeatedly requests the Government to remedy the situation and to bring it into conformity with the provisions of the Universal Declaration of Human Rights.. The Working Group believes that under the circumstances the adequate remedy would be the immediate release of Ms. Aung San Suu Kyi.

Adopted on 8 May 2007