

DECISION No. 8/1992 (MYANMAR)

Communication addressed to the Government of Myanmar on 14 October 1991.

Concerning: U Nu and Aung San Suu Kyi on the one hand and Myanmar on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it (E/CN.4/1992/20, chapter II), and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.
2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the cases in question within 90 days of the transmittal of the letter by the Working Group.
3. (Same as in Decision No. 1/1992.)
4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government of Myanmar. The Working Group believes that it is in a position to take a decision on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto.
5. It is alleged in the communications submitted by the source that U Nu, the 84-year-old former Prime Minister of Myanmar, has been detained under house arrest, together with his wife, since 29 December 1989 for refusing to resign from a "parallel government", formed by him in August 1988 on the ground that he had been elected in the last national elections of 1960. According to the source, U Nu is held under the administrative detention provisions of the 1975 State Protection Law. It is further alleged that he has not been charged or tried and has no opportunity to challenge his detention before a court and that he has never been brought before a judge. He is reported to be held in almost complete isolation from the outside world.
6. Aung San Suu Kyi has reportedly also been detained under house arrest without charge or trial since 20 July 1989. According to the source, she is one of the founders of the National League for Democracy (NLD), which was formed in 1988. As General Secretary of the NLD, she allegedly called for non-violent resistance to martial law imposed on the country after September 1988. Aung San Suu Kyi is reported to be held under the administrative detention provisions of the 1975 State Protection Law. She is said to be detained under constant armed guard at her family home, in almost complete isolation from the outside world.
7. According to the source, U Nu and Aung San Suu Kyi are prisoners of conscience, detained solely for the peaceful exercise of their rights to freedom of expression and assembly, rights which are guaranteed under articles 19 and 20 of the Universal Declaration of Human Rights.

8. By letter dated 30 December 1991, addressed to the Chairman of the Working Group, the authorities of Myanmar replied to the allegations contained in the above-mentioned communication, stating that U Nu and Daw Aung San Suu Kyi were placed under restraint in accordance with section 10, subsection (b) of the 1975 "Law to Safeguard the State against the Dangers of those desiring to cause Subversive Acts". This 1975 State Protection Law was enacted in January 1975 by the First Pyithu Hluttaw (National Assembly) at its first special session. The main objective of the said Law is to prevent the infringement of the sovereignty and security of the State or public peace and tranquillity. It is aimed at taking action only against those desiring to cause subversive acts against the State.

9. After explaining in detail the provisions of the 1975 State Protection Law, the Myanmar authorities point out that Daw Aung San Suu Kyi was placed under restraint on the morning of 20 July 1989 for infringement of the 1975 State Protection Law. In particular, she created situations that endangered the State; she tried to cause division between the Tatmadaw (armed forces) and the people, and engaged in activities (inciting) hatred of the people towards the Tatmadaw. She allegedly did this in various speeches and press conferences during which she described the army and Government as "Fascist" and falsely accused the army of having killed eight youths, whereas, in reality, the army, during an operation against KIA (Kachin Independence Army) insurgents, captured eight insurgents. Later, in attacking an enemy camp where some 20 KIA insurgents and 10 insurgent youths had taken refuge, four KIA insurgents and three insurgent youths were killed. Two insurgent youths who were captured earlier (among the eight) and who had guided the Tatmadaw to that KIA camp were also killed. This allegation, contrary to fact, demonstrates that Daw Aung San Suu Kyi deliberately told a lie so that the people would have resentment against the Tatmadaw, causing division between the people and the Tatmadaw and also, at the same time, to demoralize the Tatmadaw, thus adversely affecting its fighting capabilities.

10. As regards U Nu, the authorities state that he was placed under restraint for having issued an announcement declaring that he had resumed the power of Prime Minister with effect from the morning of 9 September 1988. This was followed by his press release 1/88 of 22 September 1988 in which he stated that he had formed the Government of the Union of Myanmar on 19 September 1988, led by him. The press release also stated that the Government of General Saw Maung was illegal; that his (U Nu's) Government was legal since it was internationally recognized. The press release also declared that the Tatmadaw need not take orders from the military government as the people had turned against the military government and that the Tatmadaw should take orders from his (U Nu's) Government. On 23 September 1988, he issued a "Statement to the Tatmadaw" and signed it as Prime Minister U Nu. The statement mentioned that "the legal government led by U Nu has been reconstituted on 19 September 1988 and that the members of the Tatmadaw should part with the military dictators and that they should embrace the people". U Nu's statements that he had formed a parallel government are in a way more serious and worse than the actions of insurgents who had taken up arms against the Government. His actions amounted to grave subversive acts against the Government. The authorities concerned made two requests on 29 November 1989 and 22 December 1989, respectively, to U Nu, asking him to abolish his so-called parallel government. U Nu refused to abolish or resign from his

parallel government, thus infringing section 124 (a) of the Penal Code as well as section 5 (a), (b) and (j) of the 1950 Emergency Provisions Act. Although much sterner action could have been taken against U Nu, in accordance with the above-stated laws, the authorities concerned decided to take a much more lenient action under section 10, subsection (b), of the 1975 State Protection Law. This much more lenient action was taken against him in view of the political role he has played for the country and in consideration of his advanced years and on humanitarian grounds.

11. According to the Government of Myanmar, legal action is taken against Daw Aung San Suu Kyi and U Nu under section 10, subsection (b) of the 1975 State Protection Law. Under this provision, arrest or detention is avoided and only restriction of movements and outside contacts of the person concerned is imposed.

12. In conclusion, the Government of Myanmar affirms that Daw Aung San Suu Kyi and U Nu were placed under restraint for infringements of section 10, subsection (b), of the 1975 Law to Safeguard the State against the Dangers of those desiring to cause Subversive Acts (the 1975 State Protection Law). They were not arbitrarily detained as alleged.

13. It appears from the Government's reply that it confirms that U Nu and Daw Aung San Suu Kyi have been placed under house arrest for having criticized the Government of Myanmar and, in the case of U Nu, for having wished its replacement by the parallel government set up by him.

14. It has not been reported that, by doing so, U Nu and Daw Aung San Suu Kyi have resorted to violence, or have incited to violence, or that they have threatened, in any way whatsoever, the national security or the public order. It therefore appears that the measure applied to them is based solely on the fact that they had freely and peacefully exercised their rights to freedom of opinion, expression and association, rights that are guaranteed under articles 19 and 20 of the Universal Declaration of Human Rights and articles 19 and 21 of the International Covenant on Civil and Political Rights.

15. The Working Group considers that the measure of house arrest applied, particularly with regard to Daw Aung San Suu Kyi, who is restricted to her family home, which she cannot leave due to the constant presence of an armed guard, is a deprivation of liberty equivalent to a detention, which, in addition, has an arbitrary character, falling within category II of the principles applicable in the consideration of the cases submitted to the Working Group, since this measure is based, as mentioned above, on the exercise by that person of her rights and freedoms guaranteed by articles 19 and 20 of the Universal Declaration of Human Rights and by articles 19 and 21 of the International Covenant on Civil and Political Rights.

16. In addition, it is clear that both U Nu and Daw Aung San Suu Kyi have been held since 1989 without charge or trial, that they have never had access to counsel, that they could never challenge their deprivation of liberty before a court, and that they have been held in almost complete isolation from the outside world. It therefore appears that articles 9, 10 and 11 of the

Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights have been violated. These articles contain guarantees of the right to a fair trial by providing that no one shall be subjected to arbitrary arrest, detention or exile, and that everyone charged with a penal offence shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal, to be tried without undue delay, and to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing. Similar guarantees are also embodied in principles 17, 18 and 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

17. As regards the case of U Nu, the Working Group took note with appreciation of the information provided to it by the Government of Myanmar by letter dated 3 June 1992, and reiterated in a statement made before it by the Permanent Representative of Myanmar to the United Nations Office at Geneva on 29 September 1992, confirming the release of U Nu from house arrest on 25 April 1992. Nonetheless, in view of the special circumstances of the case as described above, and in keeping with paragraph 14 (a) of its methods of work, which provides, "if the person has been released, for whatever reason, since the Working Group took up the case, the case is filed; nevertheless, the Working Group reserves the right to decide, on a-case-by-case basis, whether or not the deprivation of liberty was arbitrary. Notwithstanding the release of the person concerned". The Working Group therefore considers that it may take a decision on whether or not the deprivation of liberty of U Nu was arbitrary.

18. In the light of the above the Working Group decides:

The detention of U Nu and Daw Aung San Suu Kyi is declared to be arbitrary, being in contravention of articles 9, 10, 11, 19 and 20 of the Universal Declaration of Human Rights and articles 9, 14, 19 and 21 of the International Covenant on Civil and Political Rights and falling within categories II and III of the principles applicable in the consideration of the cases submitted to the Working Group.

19. Consequent upon its decision declaring the detention of U Nu and Daw Aung San Suu Kyi to be arbitrary, and taking into account the release of U Nu from house arrest, the Working Group requests the Government of Myanmar to take the necessary steps to remedy the situation in order to bring it into conformity with the norms and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

DECISION No. 9/1992 (CUBA)

Communication addressed to the Government of Cuba on 14 October 1991.

Concerning: Alexis Maestre Savorit on the one hand and the Republic of Cuba on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it (E/CN.4/1992/20, chapter II), and in order to carry out its task with discretion, objectivity and independence, forwarded to the