

OPINION No. 2/2002 (MYANMAR)

Communication addressed to the Government on 24 August 2001

Concerning: Aung San Suu Kyi

The State has not signed nor 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 and extended by Commission resolution 1997/50, and reconfirmed by resolution 2000/36. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.

2. The Working Group conveys its appreciation to the Government for having provided the requested information in good time.

3. 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).

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government. The Working Group transmitted the reply of the Government to the source, which provided it with its comments. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto.

5. According to the information submitted to the Group, Aung San Suu Kyi, a citizen of Myanmar, born on 19 June 1945 in Yangon (formerly Rangoon), domiciled at 54, University Avenue, Yangon, leader of the political party the National League for Democracy, was arrested on 22 September 2000 in Yangon by military intelligence personnel. No arrest warrant was shown during her arrest, which took place as she was about to board a

train to Mandalay. It is believed that she was arrested on charges of attempting to violate a travel ban preventing her from leaving Yangon and on charges relating to sections 7-9, or sections 10-15, of the 1975 State Protection Act.

6. The source pointed out that sections 7-9 of the 1975 State Protection Act purport to allow for restrictions to be imposed on the fundamental rights of a citizen if he or she has performed, or is performing, or is believed to be performing, an act endangering State sovereignty and security, as well as public law and order. In order for sections 10-15 to be applied, there has to be a potential danger to the State from that person. Aung San Suu Kyi is a known advocate of political change exclusively by peaceful means. According to the source, no controlling body, acting in good faith, would find or believe that she is a potential danger to the State.

7. Aung San Suu Kyi was placed under house arrest on 22 September 2000, without being formally charged with any offence, and without standing trial. She was prevented from leaving her house and from receiving any visitors except with express authorization from the Government. Her telephone was cut off. It was reported that a German delegation was not allowed to visit her in April 2001. Similarly, the request of the Vice-President of the Philippines, Teofisto Guingona, to visit her was refused. Aung San Suu Kyi has been held for the most part incommunicado. However, the Special Rapporteur on the situation of human rights in Myanmar, Mr. Pinheiro, and a European Union delegation were authorized to meet her in early 2001.

8. Aung San Suu Kyi had previously been placed under house arrest on 20 July 1989. Her case was then submitted to the Working Group on Arbitrary Detention, which in its Decision 8/1992 ruled that the measure of house arrest then applied was a deprivation of liberty equivalent to detention which, in addition, was of an arbitrary character, falling within categories II and III of the principles applicable in the consideration of the cases submitted to the Working Group. Aung San Suu Kyi was not released until 1995.

9. The source considers that the travel ban and the measure of house arrest applied are due to the exercise by Aung San Suu Kyi of her rights and freedoms as guaranteed by articles 13, 19, 20 and 21 of the Universal Declaration of Human Rights. The reason for such measures is to prevent her from and punish her for exercising the rights to which she is entitled under international law.

10. In addition, the source considers that given that Aung San Suu Kyi was placed under house arrest without bringing charges against her or without trial, articles 8, 9, 10 and 11 of the Universal Declaration of Human Rights have also been violated. She is believed by the source not to have had any access to the facilities due to detainees, such as, but not limited to, knowledge of the charges, the right to legal counsel, the right to judicial review of the arrest and detention, the right to the presumption of innocence, the right to adequate time and facilities for defence, the right to a fair trial before an independent and impartial tribunal, the right to a speedy trial and the right to cross-examine witnesses.

11. In its comments the Government asserted that the allegations of the source are factually incorrect. It denied that Aung San Suu Kyi was and is still under arbitrary detention. It informed the Working Group that she was engaged in a dialogue with the Government a year ago. Since then she has often received visits by several foreign dignitaries. The Government

emphasized that the Special Rapporteur on the situation of human rights in Myanmar was received by Aung San Suu Kyi in her house and attested that she was in good health. Moreover, the Government contends that Aung San Suu Kyi received delegations from the United States of America, Japan, the United Kingdom and the European Union. She has also been meeting regularly with leaders of the National League for Democracy.

12. The Government did not contest, however, the allegation of the source that Aung San Suu Kyi was taken into custody on 22 September 2000, more than 14 months ago, without any warrant and that she is prevented by military intelligence personnel from leaving her house, without any judicial or other decision against her having been taken to this effect. The Government failed to indicate the legal provisions justifying such measures.

13. Based on the comments of the Government it appears that it does not consider the current situation of Aung San Suu Kyi as amounting to deprivation of liberty. Yet, the Working Group has had the opportunity to make its position clear in this regard in a number of cases, including in its earlier Decision (8/1992) concerning the house arrest imposed on Aung San Suu Kyi, as well as in its Deliberation 01 in which it stated in unambiguous terms that 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.

14. On the basis of the information provided by the source and not contested by the Government the Working Group concludes that the circumstances of house arrest imposed on Aung San Suu Kyi amount to deprivation of liberty.

15. This deprivation of liberty is, in the view of the Working Group, arbitrary. However, the source believes that Aung San Suu Kyi was arrested on charges relating to several provisions of the 1995 State Protection Act. The Government neither confirmed nor refuted this assumption. Therefore, the Working Group considers that there is no legal basis whatsoever for her arrest and detention. The Government has also not contested that Aung San Suu Kyi is in custody without having been charged and without being given the opportunity to have her case heard by a competent authority in a fair proceeding.

16. The Government has further not disputed that the house arrest of Aung San Suu Kyi is largely motivated by her political convictions and activities.

17. In the light of the foregoing, the Working Group renders the following opinion:

The deprivation of liberty of Aung San Suu Kyi is arbitrary, being in contravention of articles 9, 10, 19 and 20 of the Universal Declaration of Human Rights, and falls within categories II and III of the categories applicable to the consideration of cases submitted to the Working Group.

18. The Working Group is concerned that the Government not only did not comply with its Decision 8/1992 to remedy the situation of Aung San Suu Kyi, who was released from house arrest only in 1995, but again arbitrarily deprived her of her liberty from 22 September to 6 May 2002.

19. However, although the deprivation of liberty of Aung San Suu Kyi constitutes arbitrary detention, in accordance with its Deliberation 01, and on the basis of paragraph 17 (a) of its working methods, the Working Group decides to file the case.

20. The Working Group also requests the Government of Myanmar to remedy the situation of Aung San Suu Kyi in order to bring it into conformity with the norms and principles set forth in the Universal Declaration of Human Rights and to consider ratifying the International Covenant on Civil and Political Rights.

Adopted on 19 June 2002