

OPINION No. 9/2004 (MYANMAR)

Communication addressed to the Government on 27 October 2003.

Concerning: Daw Aung San Suu Kyi.

The State is not a party to the International Covenant on Civil and Political Rights

1. (Same text as paragraph 1 of opinion No. 20/2003.)
2. The Working Group conveys its appreciation to the Government for having forwarded the requisite information in good time.
3. (Same text as paragraph 3 of opinion No. 20/2003.)
4. In the light of the allegations made, the Working Group welcomes the Government's cooperation. It transmitted the Government's reply to the source of the communication, which has made known its comments thereon.
5. According to the information received, Daw Aung San Suu Kyi, General Secretary of the political party National League for Democracy (NLD) and a Nobel Peace Prize laureate, was arrested on 31 May 2003 at Yawayoo, in northern Myanmar, following grave incidents near Depayin, Sagaing division.
6. Daw Aung San Suu Kyi was reportedly taken to Insein prison and later to a military guest house in the north of Yangon. She is being held in detention and without charge. She has no access to relatives or lawyers. She has been allowed to be visited only by independent observers.
7. The source adds that Daw Aung San Suu Kyi is allegedly being held in detention under sections 7-9 and 10-15 of the 1975 State Protection Law. It was reported that under this law, anyone perceived to be a threat to State security can be detained without charge, trial or judicial appeal for up to five years.
8. The Government replied to the Working Group in three separate communications. The first, dated 27 June 2003, refers to the Group's urgent appeal of 2 June 2003. The second, dated 1 September 2003, appears to be essentially a reply to another urgent appeal sent by the Group on 18 July 2003. The third is a note verbale dated 14 May 2004 containing the reply to the Working Group's communication of 27 October 2003.
9. According to the Government's reply, Daw Aung San Suu Kyi has not been arrested, but has only been taken into protective custody, for her own safety. This protection, in the Government's view, was made necessary by an incident which occurred on 30 May 2003 between supporters and opponents of Daw Aung San Suu Kyi.
10. The Government also describes Daw Aung San Suu Kyi's activities between June 2002 and April 2003, stating that it had facilitated her work as General Secretary of the National League for Democracy by granting her the status of distinguished person. However, as a result

of the activities of her supporters and members of the party, unlawful and violent acts had recently taken place, causing disturbances which endangered the process of national reconciliation.

11. The Government states that Daw Aung San Suu Kyi has been visited by the Special Representative of the United Nations Secretary-General and the Special Rapporteur of the Commission on Human Rights for Myanmar. She has also held meetings with representatives of her party, and she has been given medical care, including hospitalization in a private hospital in Yangon in September 2003.

12. According to the Government, it could have instituted legal action against her under the country's domestic legislation. However, it has preferred to adopt a magnanimous attitude, and is providing her with protection in her own interests.

13. The source contests the information supplied by the Government, stating that Daw Aung San Suu Kyi is under arrest and that the alleged protective custody in her home has been imposed on her totally against her will. The source adds that the telephone line to the place where she is being held has been disconnected. It is not possible to hold a person in protective custody for a year. According to the source, she is being detained solely in order to prevent her from playing an effective role as leader of the opposition.

14. The Working Group has already published two opinions (decision No. 8/1992 and opinion No. 2/2002), in which it declared the detention of Daw Aung San Suu Kyi to be arbitrary. At present Daw Aung San Suu Kyi continues to be deprived of her liberty without charges or a trial, and to be subject to restrictions of all kinds in her communications and visits, which are permitted at the Government's discretion.

15. Accordingly, the situation in which Daw Aung San Suu Kyi finds herself is a violation of article 9 of the Universal Declaration of Human Rights which cannot be justified on the grounds that her detention is for her own benefit, for her protection or for the purpose of preventing confrontations or incidents of any other kind. No one may be arbitrarily deprived of his or her liberty. This is the third time since 1990 that Daw Aung San Suu Kyi has been placed under house arrest, without having been charged or brought to court.

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

The deprivation of liberty of Daw Aung San Suu Kyi is arbitrary, being in contravention of article 9 of the Universal Declaration of Human Rights, and falls within category I of the categories applicable to the consideration of the cases submitted to the Working Group.

17. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation and bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights and to take the appropriate initiatives with a view to becoming a State party to the International Covenant on Civil and Political Rights.

Adopted on 28 May 2004