

Human Rights Committee

Detention of DAW AUNG SAN SUU KYI

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The trial and sentencing of Daw Aung San Suu Kyi cannot be legally justified in any court of law, including Burma/Myanmar.

Daw Aung San Suu Kyi, 64, leader of the Burmese democracy movement, has been detained by the ruling State Peace and Development Council's (SPDC) in her home for 14 of the last 20 years. Her previous detention order was to expire on 27 May 2009. By this time, the SPDC had exhausted all legal means to keep her detained.

On the night of 3 May 2009, John William Yettaw, an American citizen, swam across Inya Lake to Daw Aung San Suu Kyi's guarded residence. He was allowed to rest there until 5 May because he was exhausted. He was arrested by Burmese/Myanmar authorities as he swam back.

On 14 May 2009, Daw Aung San Suu Kyi and her two lady companions were transferred to Insein Prison and charged with breaking the conditions of her house arrest under Section 22 of the State Protection Act of 1975, also known as the Law Safeguarding the State Against the Danger of Subversive Elements.

Under Burmese law, it is mandatory to register overnight visitors with the authorities and foreigners are not allowed to spend the night in a Burmese home.

Daw Aung San Suu Kyi's trial began on 18 May 2009 at a special session of the Yangon Northern District Court in Insein Prison. The trial lasted until 31 July. The court permitted 14 prosecution witnesses but only two for the defense despite several appeals by defense lawyers for additional witnesses.

On 11 August 2009, she was found guilty and sentenced by the court to 3 years in prison¹.

Daw Aung San Suu Kyi's sentence was immediately commuted by the Chair of the SPDC Senior-General Than Shwe to 18 months house arrest with the possibility of a further reduction for good behaviour. Her being the daughter of independence hero General Aung San who sacrificed his life for the nation was cited as one of the reasons for the leniency shown to her. Other reasons cited were:

- to maintain peace, tranquillity, and stability;
- to ensure there is no personal malice; and
- to ensure that there are no obstructions in the path to democracy.

Daw Aung San Suu Kyi is reported to have said that her sentence is, "Totally unfair and totally illogical." Her lawyers have launched an appeal against her sentence and the Yangon Divisional Court agreed on 4 September 2009 to hear the appeal². The case will be heard on 18 September.

John Yettaw was sentenced to a total of seven years in prison with four years of hard labour³. Yettaw was released after US Senator Jim Webb (Democrat) from Virginia personally requested Senior-General Than Shwe to free him. Yettaw was deported in Webb's company on 16 August⁴.

ANALYSIS:

1. When the SPDC charged and sentenced Daw Aung San Suu Kyi, she was a prisoner under their control. She cannot be held responsible for the security failure of her guards.
2. The security breach allowed the SPDC to find a 'legal' way to further detain Daw Aung San Suu Kyi and ensure that she will not be able to play any role in the 2010 elections.
3. This incident also allowed Senior-General Than Shwe to establish a direct link with the Obama administration through Webb, who is Chair of the SubCommittee on East Asia and Pacific Affairs of the Senate Foreign Affairs Committee. He is against sanctions.
4. The direct link with the USA enabled the SPDC to ignore China's wishes regarding the Kokang (MNDAA), Wa (UWSA), and Mongla (NDAA) ethnic nationalities. The territory of five ethnic nationality groups that have cease-fires with the SPDC straddle the China-Burma border. When Vice-Chair of the SPDC and Commander-in-Chief of the Burma Army Vice-Senior General Maung Aye visited China in June, he was requested to maintain stability along the border. In other words, he was asked not to use force against the cease-fire groups.
5. Although the SPDC has been forced to depend on China, it is not happy because too great a dependence will make the SPDC vulnerable to Chinese pressure. When Burma/Myanmar became a subject of concern of the UN Security Council, the SPDC started cultivating Russia. It is much happier now that it has the USA as a counterweight to China.
6. Unless the ethnic nationalities agree to support its Road Map and the 2010 elections, the SPDC will use force. This means a scorch earth policy in ethnic nationality areas that will produce hundreds of thousands of refugees fleeing into neighbouring countries.
7. If the ethnic nationalities agree to participate in the 2010 elections, the SPDC will be able to show that the elections are inclusive and have the support of the majority of the population.
8. Given the fact that the Burmese democracy movement could not have stopped the election process even before this development, it will be even more difficult now to effectively boycott the elections. A different strategy to take advantage of the elections is needed.
9. The SPDC is correct in calculating that if Daw Aung San Suu Kyi were allowed to influence the 2010 elections, they would find it very difficult to ensure the victory of their candidates.
10. Nobody is happy with the military regime. If given a chance to really express their will, the people would still vote for democracy as they did in 1990.

11. Although the SPDC will manipulate the 2010 elections, it could be an opportunity to use the elections to promote democracy by ensuring that they are ‘free and fair’.
12. Finally, in spite of the distastefulness of the sentence against Daw Aung San Suu Kyi, there is a ray of hope. If Than Shwe realises that he may not be able to control the outcome of the elections and wanted reconciliation, he could start a personal dialogue with Daw Aung San Suu Kyi as General Aung San’s daughter. Aung San made sacrifices for the nation. Surely, Than Shwe should be able to appeal to her to compromise for the nation’s sake.

Thank you.

¹ Sentenced together with Daw Aung San Suu Kyi to 18 months house arrest were:

- Daw Khin Khin Win, 65; and her daughter
- Daw Win Ma Ma, 41.

They are members of the National League for Democracy (NLD) who had previously volunteered to live with Daw Aung San Suu Kyi during her house arrest. They were charged with helping Daw Aung San Suu Kyi violate the conditions of her house arrest. Their sentence is not being appealed.

² The main argument for the appeal will be based on the fact that the 1975 security law was in the 1974 constitution which was suspended when the State Law and Order Restoration Council (pre-SPDC) seized power in 1988.

³ Of the seven, one year was for swimming illegally; three years for violating immigration laws and three years for violating the conditions of Daw Aung San Suu Kyi’s house arrest.

⁴ Yettaw first tried to visit Daw Aung San Suu Kyi on the night of 30 November 2008. He was turned away by Daw Aung San Suu Kyi’s companions but left a copy of the “Book of Mormon” for her to read. According to news reports, he was apprehended that time by authorities on his return swim but was let go after he claimed that he had fallen into the lake by accident. In an interview with Newsweek (21 August 2009), Yettaw claimed that on the night of 3 May 2009, an armed security guard saw him, shook his hand, and let him in. The article also reports that two men claiming to be from the NLD had previously met with Yettaw in Mae Sot, Thailand, on the Burmese border and had invited him to come and meet Daw Aung San Suu Kyi. There is no independent confirmation of these claims.