

TRIAL OF DAW AUNG SAN SUU KYI

By the National Coalition Government of the Union of Burma

Court: Special Court inside Insein Prison
Judges: U Thaung Nyunt (Northern District - Rangoon)
U Nyi Nyi Soe (Western District - Rangoon)

Plaintiff: Special Branch Police Lt Col Zaw Min Aung, two others

Defendants: 1. Daw Aung San Suu Kyi
2. Daw Khin Khin Win
3. Daw Win Ma Ma
4. John William Yettaw

Charges: *Under Article 22 (State Protection Law or Law to Safeguard the State against the Dangers of Those Desiring to Cause Subversive Acts): "Any person against whom action is taken, who opposes, resists or disobeys any order passed under this Law shall be liable to imprisonment..."*
-- Daw Aung San Suu Kyi

Under Article 109 (The Penal Code): "Whoever abets any offense shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code of the punishment of such abetment, be punished with the punishment provided for the offense. Explanation: An act or offense is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment."
-- Defendants 2, 3 & 4

Under Article 13 (1) (Immigration Act -- Emergency Provisions) and under Article 28 (Yangon City Development Committee Law) "for breaching the restriction on swimming in Inya Lake"
-- Defendant 4

Defense Team: U Kyi Win (For Daw Aung San Suu Kyi)
Daw Khin Htay Kywe (For two companions of Daw Aung San Suu Kyi)
U Hla Myo Myint, and U Nyan Win (Assist both the lawyers above)

High Grade Pleader U Khin Maung Oo (For John William Yettaw)

Daw Aung San Suu Kyi Testifies

Dressed in simple traditional clothing and looking "very composed and forceful", as described by a diplomat, Burma's democracy icon and Nobel Peace Laureate Daw Aung San Suu Kyi testified before the Special Court sitting in the maximum security Insein Prison in Rangoon on 26 May.

She told the court attended by about 100 people, including 40 foreign diplomats and 35 local journalists, including those who worked for foreign news agencies, that she did not violate the terms of her house arrest.

Daw Aung San Suu Kyi confidently answered all the 10 questions she was asked for about 25 minutes. She said she had never seen the US citizen, John Yettaw, before he swam across Inya Lake and entered her home uninvited. She was informed about his intrusion around dawn on 4 May by her two of her live-in aides.

"I sat and talked with him" but do not know the intentions of John Yettaw, she said, and that the court should direct the question of intentions to John Yettaw.

Daw Aung San Suu Kyi said she did not know why Yettaw had left an unusual collection of items at her home, including two burqas (loose garments worn by Muslim women), and a head torch and that she did not even know his name until after his arrest.

When questioned about her allowing Yettaw to stay and giving him food, Daw Aung San Suu Kyi said she had given him "temporary shelter".

In earlier sessions, her defense lawyers had said her deep compassion for others prevented her from reporting the intruder to the authorities. "She was concerned for his welfare and also feared that police guarding her place may get punished".

She said Yettaw left her place shortly before midnight, heading for the lakeside and did not know which way he went because it was dark.

Her testimony will continue on 27 May.

Daw Aung San Suu Kyi greeted a few foreign diplomats as she was leaving the court. She told them, "I'm happy for support from the outside world."

House Arrest Lifted

A senior policeman informed Daw Aung San Suu Kyi that the restriction orders against her under the Law Safeguarding the State from the Dangers of Subversive Elements had been lifted. She was handed the papers notifying her to that effect while the court was in session, according to her lawyer and spokesperson for the National League for Democracy U Nyan Win.

Daw Aung San Suu Kyi has already spent 13 years of the past 19 years in detention since 1990 when her party NLD won national elections.

Police Brigadier General Myint Thein came to the prison and read out an order cancelling the continued restriction order, released and dated today. They gave one copy to Daw Aung San Suu Kyi, he told reporters.

Even though she is officially free from detention, she is still being detained in Insein Prison to face the current charges.

Her lawyers had argued that her six years under house arrest were due to expire Wednesday, and pointed to a UN panel's ruling that her house arrest was already illegal under both Burmese and international law.

Apparently to show that the regime was doing the Nobel Peace Laureate a favor, Police Brig Gen Myint Thein had told journalists hours before the lifting of the restrictions that the regime could still detain her for another six months because the earlier part of the six years she had been detained were under a different law. "Her current detention period would only have expired on 27 November and not tomorrow as many believed", he said.

Myint Thein who is the head of the Special Branch added, "The government was considering releasing her on May 27, before this Yettaw incident happened."

U Nyan Win said, "We don't know whether we should be happy or sad, because she is still in detention on these charges".

Lines of Defense by the NLD

Charges Under Non-existent State Constitution

The NLD has insisted that criminal charges should never have been filed against Daw Aung San Suu Kyi since the principal violators of the law were John Yettaw and the security personnel who were guarding the premises of Daw Aung San Suu Kyi's home.

Without their commitment of criminal offenses, Daw Aung San Suu Kyi could never have met the uninvited intruder into her home, claims the NLD.

"In fact", Lawyer U Nyan Win explained to journalists at the NLD headquarters on 25 May, "the restrictions imposed on Daw Aung San Suu Kyi are under the provisions of 1974 State Constitution of the Burma Socialist Program Party which is non-existent today as admitted even by the chairman of the ruling State Law and Order Restoration Council (SLORC -- prior to being renamed as the State Peace and Development Council) in 1991.

"Even though a SLORC order issued in 1988 states that all laws, unless abrogated, remain in force, the SLORC chairman had admitted in his address to the 46th Armed Forces Day that no state constitution exists today." Besides, "there is nothing to show that it is in force today and everyone knows that the supremacy of constitution is not being experienced, practiced or observed these days," added U Nyan Win.

"The NLD, therefore, stresses that since the restrictions imposed are based on articles under the socialist constitution which no longer exists, the restrictions are automatically null and void."

In other words, Daw Aung San Suu Kyi could not have violated the restrictions which were illegally enforced in the first place.

The SLORC chairman in his address during the 46th Armed Forces Day speech had said the military was ruling the country "under martial law" because "no state constitution is in force in the country today".

Questioning Legality of Special Court in Insein Prison

Since the first day of the trial at a Special Court inside Insein Prison, the NLD had requested that the hearing be held in an "open court" and that the court be located within the local limits of whose jurisdiction the alleged crime was committed.

But the Special Court rejected the request.

Presenting its case from a legal perspective, NLD stated in its Statement on 20 May that "Article 2(e) of the State Peace and Development Council Law No 5/2000 or The Judiciary Law, 2000, clearly states that 'justice shall be dispensed in open court unless otherwise prohibited by law'".

"Furthermore, Section 177 of the Code of Criminal Procedure, which was prepared and published in book form by the Union of Myanmar Supreme Court with regard to the jurisdiction of the courts in inquiries and trials, states that "Every offence shall ordinarily be inquired into and tried by a Court within the local limits of whose jurisdiction it was committed."

Section 352 of the same law also states that "The place in which any criminal Court is held for the purpose of inquiring into or trying any offense shall be deemed an open Court, to which the public generally may have access, so far as the same can conveniently contain them".

The NLD also cited two precedents against holding courts in prison and declared that it "objects to the judicial proceedings in the case against leader of the NLD and party General Secretary Daw Aung San Suu Kyi and her companions since they do not conform to the abovementioned provisions and procedures, and demands that justice be dispensed in open court in a fair manner".

Outside the Insein Prison

On 26 May, young NLD women wearing "Sein Chae" flowers in their hair and young men on their breasts waited outside Insein Prison to show solidarity with their detained leader.

In Burmese, "Sein Chae" flowers represent Tuesday -- the day of the week that Daw Aung San Suu Kyi was born.

NLD Central Executive Committee members U Win Tin and U Ohn Kyaing were there the whole day together with the supporters and NLD youths.

Waiting nearby were men posing as trishaw drivers who refused to take any passengers. These trishaw drivers, according to NLD youths, are members of the junta-backed paramilitary Swan Arr Shin group -- the equivalent of Nazi Germany's Sturmabteilung or Brown Shirts -- said to be from North Okkalapa Township.

The military regime had recruited neighborhood thugs, ex-convicts, sidewalk vendors, and others under its mass organization, Union Solidarity Development Association, to brutalize NLD members and pro-democracy activists. These Swan Arr Shin ("Powerful Ones") groups allow the military to make calls from behind the scene when keeping the NLD and other activists under control.

About 10 riot police trucks were also seen crisscrossing the area once every half an hour. Some trucks were seen carrying fully armed people in black uniforms. Observers believe they may be units specially trained to control mobs.

Authorities are also on the lookout for "freelance" journalists who have steadily been feeding information to the media outside Burma. Cellular phone usage particularly around Insein Prison is being monitored at specific times to uncover the sources.

Scattered rains continually drenched the waiting NLD members.

Daw Aung San Suu Kyi's Prior Arrest

She was arrested on 30 May 2003 while campaigning in Upper Burma where tumultuous crowds turned out to greet her everywhere she went. The authorities arranging for pro-junta mobs, backed by troops, to attack her entourage near Depayin in which scores of NLD members and followers were killed and maimed, arrested her for undermining national security.

She had been under detention, first in Insein Prison then mostly at her family home in Rangoon adjacent to the Inya Lake for the past six years before her current trial.

News sources: freelancers inside the country, NLD, www.myanmar.com, www.dvb.no, www.mizzima.com, and various Burmese language blogs