



(D.3)

The Landmark Trial of Daw Aung San Suu Kyi

B.K.Sen

In legal history we see many trials that are both historical and political. The recent trial of Daw Aung San Suu Kyi was one such trial. From a legal standpoint, the trial has surpassed expectations of dishonesty and unfairness. Never had the judiciary in any country been so under the control of its military rulers. Never had there been such a sham trial where a representative of the military government entered a courtroom to reverse the court's verdict. Although it is known throughout the world that the military in Burma is manipulating the judiciary and undermining its independence, Suu Kyi's trial pushes these issues to the forefront. The long story of Suu Kyi's non-violent struggle for democracy has become more complicated and more important after this landmark trial. Both Suu Kyi and the democracy movement are now facing new challenges in the future.

On August 11, 2009, the trial court passed a verdict of guilty and gave Suu Kyi a sentence of 3 years, a sentence of rigorous imprisonment considering the offense of accepting an uninvited intruder. By executive fiat, the sentence was reduced to 1 year and 6 months of house detention. This sentence reduction is not a gift to the democracy movement; the sentence assures that Suu Kyi will remain immobile through the parliamentary election that is scheduled for 2010.

Perhaps the most incredible part of the sentencing was that the Home Minister himself stepped forward in the court in order to deliver the sentence "reduction." The Minister read out an order from junta's leader Sr. Gen. Than Swe that her sentence was to be reduced to 18 months and that she would be sent home from prison to be under



house arrest. Of course, 18 months from now will be in 2011, by which time the much labored general election will be over and the junta will be well saddled in power through the sham election. For argument's sake, if the junta loses the election, the situation of 1990 May election may well repeat itself. The junta may refuse to transfer power and suppress all movements and even prepare for a coup. During that period Suu Kyi will still be immobilized while serving her



house arrest. The junta's game plan to hold on to power by any means necessary may succeed.

On October 2, 2009, Suu Kyi's appeal was turned down by the Divisional Court. Dismissing the appeal, the court ruled that the 1974 constitution - which the defense had cited as the over-reaching frame for her trial - is legally invalid. However, the court upheld the validity of the State Protection Law which was invoked to set the terms of her previous house arrest. The NLD lawyers representing Suu Kyi saw this as a very controversial ruling that could be challenged. Their reasoning was that the invalidation of the 1974 constitution, which the government demanded during hearings, would imply a constitutional vacuum. This would then strengthen the case against any state protection law, however enacted or promulgated. The hope of the NLD lawyers was that a successful appeal in the form of a revised petition before the apex court would not only exonerate Suu Kyi of any wrongdoing but also undermine the basis of the executive order on her current detention.

Fundamental confusion has been created as to the legal position of Suu Kyi. The question is whether Suu Kyi is now detained under the State Protection Law or whether she is now serving the un-commuted part of the verdict. The Home Minister's notification of the sentence reduction included notice that the regime would also "suspend" the remaining half of her sentence. This statement



could mean that the Minister was declaring that Suu Kyi was free, but that a new order had been clamped down to fill the legal vacuum. The new 18-month house arrest sentence would then be under the State Protection Law. The Minister also emphasized that the SPDC would be willing to consider an amnesty or a pardon to Suu Kyi for her "good conduct" during her house arrest sentence. The junta engaged in such

roundabout moves regarding her sentence in order to create this bizarre alternative punishment. The reading of the sentence was framed as a conciliatory gesture of modest proportions to Suu Kyi, yet the junta was allowed a wide opportunity to enact its mischief.

Through these legal moves, the sham legal process against Suu Kyi was made to appear legitimate. Regarding her initial "transgression," the security forces did not prevent an intruder from barging into her house despite closely guarding it all time. These guards had not been punished, and the intruder - after standing trial and being convicted - was allowed to be deported to the United States. The peculiar circumstances surrounding Suu Kyi's arrest, trial,



and sentence cannot hide the overall plan of the junta to continue to detain the democracy leader. This landmark trial has demonstrated that the judiciary in Burma is under the thumb of the junta and that democratic checks and balances were completely ineffective in maintaining the independence of the judiciary.

There has been an important development since the trial. Suu Kyi sent a letter to Than Shwe declaring that she would work to reduce international sanctions on Myanmar. She also asked in the letter to meet the representatives of the United States, European Union, and Australia, which was granted. In this context, a minister designated by the junta to "liaise" with Sue Kyi met her twice in quick succession after her judicial appeal was denied on October 2. This turn has given rise to speculation about a change in major policy from sanctions to engagement. Now the international community is aware of the possibility of three-way engagement between the junta, Suu Kyi, and the United States. Democracy advocates are still unsure whether this dialogue will result in true regime change and improvements for the people of Burma.

The Obama Administration has decided to engage with Myanmar's generals in a recent shift of its policy toward the regime. The Assistant Secretary of State for East Asian and Pacific Affairs, Kurt Campbell, held the administration's first meeting with a Burmese minister in New York. Campbell announced that he would work closely with India and China regarding Myanmar, and stopped in New Delhi on his way to Yangon for a meeting with Suu Kyi. The U.S. visit to Burma happened at a politically significant time, following the 15th ASEAN summit where ASEAN leaders noted that "general elections to be held in Myanmar in 2010 must be conducted in a fair, free, inclusive, and transparent manner in order to be credible to the international community." Some say that Myanmar has given indications that it is ready to open up the 2010 elections, showing that the upcoming elections will become central in the discussion of sanctions versus engagement. In this sense, the Suu Kyi trial is a catalyst for the emergence of significant events. The trial has brought the democracy icon again into the limelight. The suffering of the Burmese people shown through the trial will only be mitigated if international dialogue is opened in a credible and transparent manner.

* * * * *