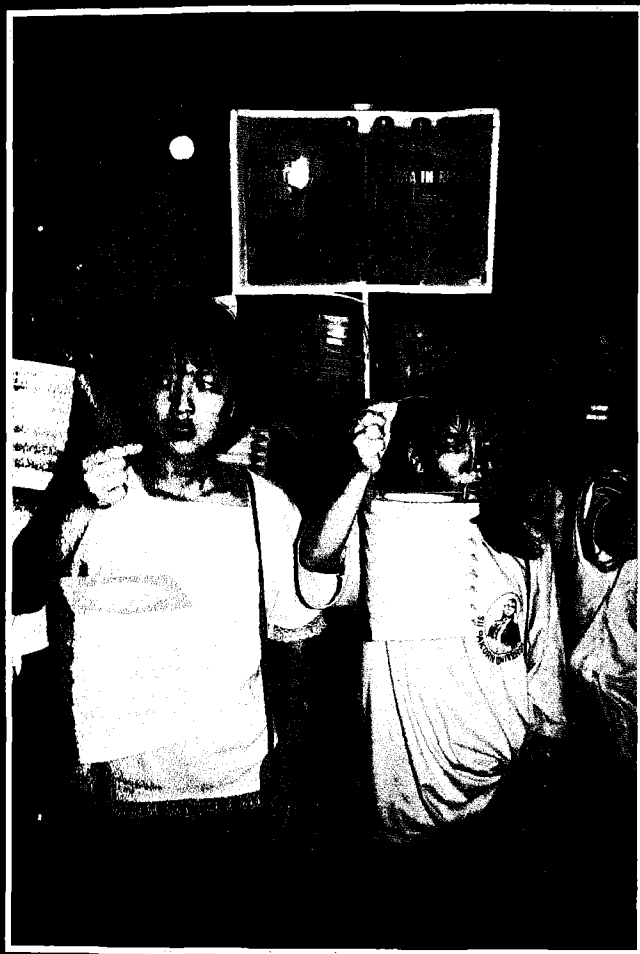


# **THE BURMESE WAY: TO WHERE?**

**Report of a Mission to Myanmar (Burma)**



**INTERNATIONAL COMMISSION OF JURISTS**  
**Geneva, Switzerland**

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# **THE BURMESE WAY: TO WHERE?**

**Report of a Mission to Myanmar (Burma)**

by

Makhdoom Ali Khan, Pakistan

on behalf of

**THE INTERNATIONAL COMMISSION OF JURISTS**

Geneva, Switzerland

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## Abbreviations and Terms

### NAMES

#### Current Name

Ayeyarwady  
Bago  
Barmar  
Kayin  
Mawlamyine  
Myanmar  
Patheingyi  
Rakhine  
Sittoung  
Tanintharyi  
Yangon

#### Former Name

Irrawaddy  
Pegu  
Ethnic Burman  
Karen  
Moulmein  
Burma  
Bassein  
Arakanese  
Sittang  
Tenasserim  
Rangoon

Karenni  
(also known as Kayah)

### BURMESE

Lon Htein  
Pyithu Hluttaw  
Tatmadaw

### ENGLISH

Security Police  
People's Assembly  
Armed Forces

### ABBREVIATIONS

ABSDF

All Burma Students' Democratic  
Front

AFPL

Anti-Fascist People's Freedom  
League

AMDNSC

Anti-Military Dictatorship National  
Solidarity Committee

BCP UG	Burmese Communist Party Underground
BSPP	Burma Socialist Programme Party
DAB	Democratic Alliance of Burma
DDSI	Directorate of Defence Services Intelligence
FAO	Food and Agriculture Organisation
ICJ	International Commission of Jurists
ICRC	International Committee of the Red Cross
IDC	Immigration Detention Centre
IMF	International Monetary Fund
KNU	Kayin (Karen) National Union
LDP	League for Democracy and Peace
NCGUB	National Coalition Government of the Union of Burma
NDF	National Democratic Front
NGOs	Non-governmental organisations
NLD	National League for Democracy
NPFY	National Politics Front for Youth
NUP	National Unity Party
PND	Party for National Democracy

SLORC	State Law and Order Restoration Council
UNDP	United Nations Development Program
UNESCO	United Nations Educational, Scientific and Cultural Organisation
UNFDAC	United Nations Fund for Drug Abuse Control
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Childrens Fund
WHO	World Health Organisation



# Preface

Myanmar (Burma), an isolated country for the last 29 years, was the focus of international attention in 1988. Demonstrations by students, monks and other citizens, calling for the end of one-party rule, handing over of power to an interim government and the holding of elections, led to thousands of deaths.

In September 1988, General Saw Maung announced that the military had taken over power and a nineteen-member State Law and Order Restoration Council (SLORC) was formed which assumed all legislative, executive and judicial power. Curfew was imposed, gatherings of more than 5 people were prohibited, demonstrators were shot and streets cleared of all protesters and opposition. Thousands of students fled to the borders while others sought refuge in neighbouring countries. SLORC also announced that free and fair elections would be held in May 1990.

In a letter of 5 February 1990 to the Government of Myanmar, the International Commission of Jurists (ICJ) welcomed the government's announcement to hold elections and asked it to allow the ICJ to send a mission to Myanmar after the elections.

Not having received a reply, the ICJ, on 27 March 1990, requested the government to respond to its letter of 5 February. On 6 April, the Permanent Representative of Myanmar to the United Nations in Geneva replied to the ICJ, stating that the letter had been "transmitted to the authorities concerned for their consideration" and that he would communicate with the ICJ as soon as he received news from Yangon (Rangoon). The ICJ has not received any further communication from the Government of Myanmar.

In the meantime, although the citizens of Myanmar were denied the minimum freedom necessary for a free and fair election, the main opposition party, the National League for Democracy (NLD), scored an overwhelming victory in the elections of May 1990, winning 80% of the seats. However, power has not yet been transferred to the democratically elected representatives of the people.

It is the normal practice of the ICJ to issue reports on countries only after full discussions with the government. It will not, however, refrain from reporting on a country simply because the government denies access or refuses to engage in such discussions. Not having received a response to its two letters, the ICJ, therefore, sent a mission to Myanmar without specific government approval.

The mission was undertaken by Mr Makhdoom Ali Khan, barrister and advocate of the Supreme Court of Pakistan, in January-February 1991. The restrictions on visas to Myanmar and the difficult conditions on the borders of Myanmar and Thailand made it impossible for the ICJ to send a large delegation. Mr Khan met Myanmar refugees in Thailand and travelled in Myanmar on a tourist visa.

A number of citizens of Myanmar and Thailand and various officials agreed to grant interviews to Mr Khan on the specific condition that their names would not be mentioned. The citizens were apprehensive that if they were quoted in any report or publication, it would threaten their security as well as that of their families. Others, such as diplomats, officials and members of NGOs, made it clear that they were already under pressure from the authorities of the governments of the countries in which they were working and their names must, therefore, not be mentioned. Such publication, they were convinced, would cause problems for them in their work.

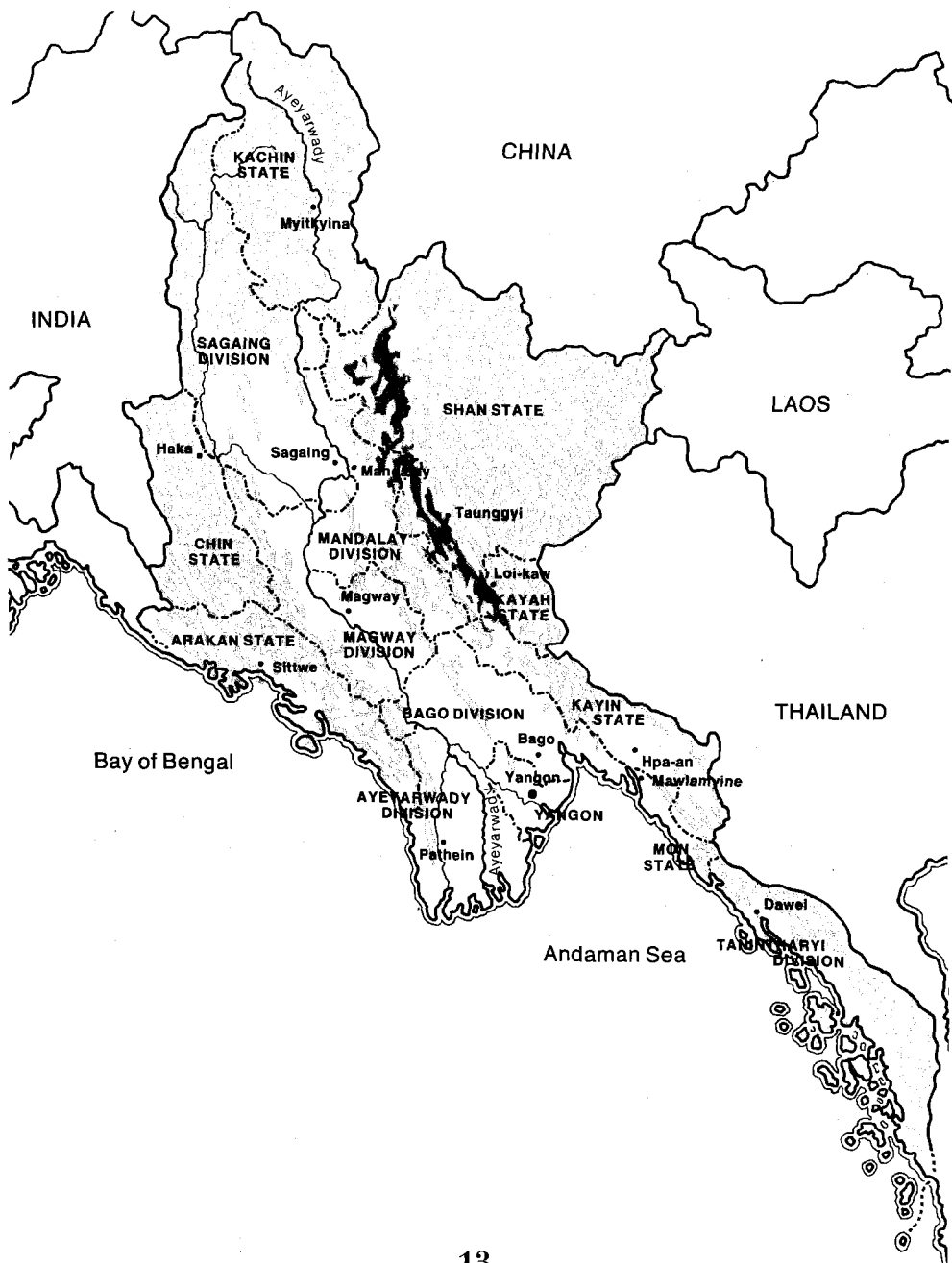
The ICJ is very grateful to and wishes to thank all those who assisted the mission and gave it information. Without their assistance the mission would not have been possible. For the reasons stated above their names have not been mentioned here.

The ICJ also wishes to express its gratitude to DANIDA (Denmark), EKD (Germany), NOVIB (Netherlands) and SIDA (Sweden) whose financial contributions enabled us to undertake this project and publish the report.

Geneva, December 1991

**Adama Dieng**  
Secretary General

# MYANMAR



# Chapter 1

## Introduction

Almost half of Myanmar (Burma)<sup>1</sup> is situated outside the tropics but, because of its configuration, it is generally considered to be a primarily tropical country. Its shape is roughly that of a diamond, with a long tail running south along the Malay Peninsula. Its total length from north to south is 2,052 km; its width at the widest part, across the centre at about the latitude of Mandalay, is 931 km from east to west. Much of the greater part of its territory, lying between latitudes 28 degrees 50' and 16 degrees north, forms a compact unit surrounded on three sides by a great horseshoe of mountains which focuses on the triple river system of the Ayeyarwady (Irrawaddy), Chindwin and Sittoung (Sittang). About 49% of the country is forested.<sup>2</sup>

The geographical situation of Myanmar makes it virtually impenetrable. For more than three decades now it has been politically isolated from the rest of the world as well, by a conscious policy pursued by General Ne Win and the ruling junta. The rulers of Myanmar, to the best of their abilities, try to prevent the flow of information into and out of the country. When the information relates to happenings within Myanmar, their task is facilitated by the forests and mountains, with few passes, which form natural barriers and separate it from its neighbours.

The Government not only censors sensitive political information but also controls access to basic data about the country. The entry of journalists is prohibited and visas are available only to those who declare that they are not journalists. Tourists are granted visas for very short periods, usually four to seven days. The visa policy is constantly changed and one is never sure till the last minute whether a visa will be granted or not.

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<sup>1</sup> The name of the country was changed from Burma to Myanmar in 1989. The English spelling of many towns, divisions, states, rivers and nationalities was also changed.

<sup>2</sup> Lawasia Regional Country Report, 1990, pp. 42-45.

Those granted visas are generally expected to book guided tours. They are moved from city to city and place to place at great speed under the constant observation of the official tourist guides. Great care is taken to ensure that one does not spend more than a day at a time in one city and that time is consumed in visits to "places of interest". Every effort is made to ensure that tourists are not on their own for long. Mingling with the citizens of Myanmar is discouraged. The citizens are apprehensive of talking to tourists and do not want to be seen with foreigners. They live under the constant fear of the ubiquitous secret service and will talk only when they are sure that other Barmars (ethnic Burmans) are not around. Such opportunities are few and far between.

There are, however, times when the wraps come off and one gets a peep into the discontent that may be seething under the very calm surface. At a temple near Inya Lake, a girl talking to a few foreigners with whom she had, with time, started feeling comfortable, remarked that nine was an unlucky number. "On the contrary", said a visitor, "it's a lucky number in Myanmar. Otherwise why should you have currency notes in multiples of nine?" "Lucky for Number One", she said, "Unlucky for the rest of us." At Pagan, inside the bus, a person quietly remarked: "This is the Ananda temple. Anywhere else in the world it would be world-famous. Tourists would come from all over to see it. It has the misfortune to be situated in Myanmar. Here gold turns to dust. No one knows about it". In Yangon (Rangoon), at the hotel where reservations had been botched, the clerk was exasperated. "I am sorry. This, I know, won't happen anywhere. But this is Myanmar. Here the government controls everything. Nothing here is done right." Any attempt to probe further will elicit no response. The person immediately becomes conscious of his indiscretion and turns inscrutable. Tourists too do not make a full effort. They can never be sure whether the remark truly reflects feelings, has been made for the benefit of the tourist or to provoke an indiscretion.

Conversations over the phone are restrained for fear that these may be tapped, and those who agree to meet foreigners at their residence will be careful to inform them that they should take a taxi to a nearby public place and then, ostensibly casually but actually very carefully, find their way to the residence of their host. Even diplomats are cautious in their approach, as the

Government can harass their local employees, who at times are the primary link between them and the citizens of Myanmar, and a valuable source of information. All, ranging from diplomats of powerful super-powers to ambassadors of Third World countries, requested anonymity. "Please do not even quote me as a Western diplomat", said one, "there are so few of us here. If it is absolutely essential to quote, just say diplomat. I would prefer, though, if you did not even say that."

Once one has been able to establish contact and the citizens of Myanmar develop confidence, they are more forthcoming than the diplomats. In private they talk freely about the political repression which the regime has unleashed, the country's economic mess and their fear that there are no short-term solutions. The regime, though highly unpopular, they acknowledge, is too firmly entrenched to be dislodged. And in the end there is always the hope, hope without any rational basis, that somehow by a miracle, through international sanctions, superpower intervention or a third factor a change will come about. The pathos of this hope leaves an outsider sad.

## Chapter 2

### 1947-1991: A Historical Summary

Till 2 March 1962, when General Ne Win deposed Prime Minister U Nu, the Government of Myanmar was based on the Constitution of 1947<sup>1</sup>. This Constitution was the product of a broad-based consensus between most of the ethnic minorities and the Barmars<sup>2</sup>. It provided for a federal system of government with power divided between the legislative, executive and judicial institutions of states and the Union and State governments. The judiciary was to be independent and the states autonomous.

Certain states, under the constitution, could even secede from the Union<sup>3</sup>. The rights of the ethnic minorities were, however, given more respect in constitutional theory than in practical politics. This proved to be one of the main causes of ethnic discontent. However, it was the Communists and not the minorities who were the first to take up arms against the government.

On 28 March 1948, after a raid on its headquarters, the Communist Party of Myanmar went underground and resorted to armed struggle<sup>4</sup>. The Kayins (Karens), the Karennis (also known as Kayahs), the Pa-Os and the Mons subsequently joined the armed struggle. In 1958, the Shans, too, took up arms and by 1961 the Kachins were up in arms against the Government of Myanmar as well<sup>5</sup>.

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<sup>1</sup> The Constitution was adopted on 24 September 1947 by the delegates to the Constituent Assembly.

<sup>2</sup> Two-thirds of the population are Barmar (ethnic Burmans) and live primarily in central Myanmar. The ethnic minorities include the Shan, the Rakhine (Arakanese), the Kayin (Karen), the Mon, the Kachin and the Chin. Smaller minority groups include the Karenni (also known as Kayah) and Pa-o.

<sup>3</sup> Article 201. Article 202 stipulated that the right of secession was not to be exercised within ten years from the date on which the Constitution came into operation.

<sup>4</sup> Bertil Lintner, *The Rise and Fall of the Communist Party of Burma* (1990).

<sup>5</sup> Bertil Lintner, *Land of Jade: A Journey Through Insurgent Burma* (1990), p.257. See also generally for an account of a journey through the hill tribe areas of northern Myanmar.

Even during these troubled times the Supreme Court of Myanmar maintained judicial neutrality and a high standard of justice. The government, in the face of these insurrections, did not have much time for observing legal limits and procedural safeguards. The Court, however, insisted that the law be complied with in letter and in spirit. The press, too, was lively and by and large free. The literacy rate was high and the country was rich in economic resources.

## **The Ne Win Regime, 1962-1988**

The March 1962 coup by General Ne Win changed all this. The President, Prime Minister U Nu and the Chief Justice of the Supreme Court, U Myint Thein<sup>6</sup> as well as Cabinet Members and other leaders were thrown in jail. Sao Shwe Thaik, a Shan leader, who had served as the first President of Myanmar from 1948 to 1952, and his son Sai Myee, were gunned down at their home by raiding soldiers. On 8 March 1962 the Revolutionary Council dissolved the Parliament. On 30 March 1962 the Supreme Court and the High Court were abolished and were replaced by the Chief Court of Myanmar. The lower courts, too, were replaced by a new tier of tribunals and courts. This new set of courts consisted of three members, who in most cases were military officers. General Ne Win's Cabinet consisted of 15 Army officers and one officer each from the Navy and the Air Force. There was not a single civilian in it.

Between 1962 and 1974 the Revolutionary Council issued more than 100 decrees which had the force of law and abolished many laws which it considered to be in conflict with the "Burmese Way to Socialism". During this period the government operated without a Constitution. Many procedural and substantive laws with a distinct tilt towards common law remained on the statute books, however.

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<sup>6</sup> The Chief Justice was released in 1968, much after the release of the President and the Prime Minister. The reasons for his imprisonment were never disclosed. No charges were brought against him and he was never produced before a court. He had known General Ne Win earlier and after he was released the Judge met the General on several occasions. He was also invited by the General to dinner. On such occasions the conversation was about the old times. The Chief Justice was never told and never inquired about the reasons of his arrest and long detention. The Judge considered it to be bad form to bring up the issue with the General on social occasions.



The experience with the "Burmese Way to Socialism" destroyed free enterprise and ruined the economy.

The press too was brought under control within a few years of the coup. Private newspapers were banned by 1966 and foreign journalists were expelled from the country.

Bertil Lintner writes:

"Burma's previously lively press was effectively brought under state control within a few years of the coup. Prior to the military takeover Burma had more than 30 newspapers. Apart from the leading ones in Burmese and English, there were also five in Chinese, two in Hindi and one each in Urdu, Tamil, Telugu and Gujarati. The prestigious Nation had been closed already in May, 1963... In September the Government set up the Loktha Pyithu Nezin to compete with the still existing private newspapers. An English-language version, the Working People's Daily, soon followed. At the same time... Vanguard was nationalised along with the Guardian, but the latter was already being secretly financed by the military."

In August 1964 "the editor and owner of the mass-circulation Kyemon (Daily Mirror) was arrested for publishing an article considered seditious. The newspaper was nationalised on 1 September, followed by the Botataung on 11 September. Eventually, in December 1966, it was announced that private newspapers were to be banned altogether and with immediate effect the government discontinued annual re-registration of all Chinese and Indian-language newspapers. Printing, the government said, must henceforth be done only in Burmese or in English.

"The government did not stop there. A major irritant for the military had been the presence of foreign correspondents in Rangoon. The correspondent of Reuters was the first to be expelled after the coup - followed by the local representative for the Associated Press.

"Visits by foreign journalists were banned... The foreign news agencies were forced to appoint Burmese citizens as their correspondents - and to have these approved by the government. Although several of the local 'foreign correspondents' in Rangoon were competent journalists, they were restricted by government regulations and often compelled to write to please the authorities. Through this unique arrangement, the military regime managed to get its own version of the news from Burma out under internationally respected bylines...."<sup>7</sup>

Since 1962, the government has controlled publications by the Printers and Publishers Registration Law which established boards to monitor and censor writings, lyrics and film scripts minutely. Even the words of songs have to be submitted to the Press Scrutiny Boards. These boards determine the text, language and subject of publication as well as the numbers printed.

In an attempt to impose national unity from the top, General Ne Win curbed all diversity. After the schools were nationalised, minority languages were very rarely, if at all, taught beyond the fourth grade. The writings of ethnic minority writers were invariably blocked by the Press Scrutiny Boards. The distribution of religious literature, including the Bible, was restricted.

In order to promote the Myanmar language, the English language was sacrificed. In 1966, the Chair of English at Yangon University was abolished and English was reduced to the status of a minority language. However, one can still find a number of people fluent in the language inside Myanmar. Even in small villages there are persons who can understand English. This is surprising, particularly as the official figures in 1987 report a decline in the literacy rate from 67% in 1978 to 18.7% in 1987. The people disagree with the official figures and apparently such a low figure was reported by the regime to secure the Least Developed Country status.

Any protest against the politics or policies of the Ne Win regime was brutally crushed. The regime wanted to send a clear message. It did not care for public opinion. It would not hesitate to use extreme violence to curb all dissent and public protest. It would retain power at all costs. On 7 July 1962,

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<sup>7</sup> Bertil Lintner, **Outrage: Burma's Struggle for Democracy** (1989), pp. 61-62.

troops opened fire on students who were peacefully demonstrating and, according to government figures, 22 students were killed (other sources stated the number of those killed to be 160). On 8 July 1962 the Yangon University Students' Union building was dynamited and universities throughout the country were closed. These were reopened in September 1964.

On 28 March 1964, the Law to Protect National Unity was promulgated. This law banned all political parties except the Burma Socialist Programme Party (BSPP) and confiscated all their property and assets. One-party rule was thus formally established and remained in effect till 1988.

To legitimise one-party rule, on 22 August 1971, after the First Congress of BSPP, plans were announced for drafting a new constitution. A State Constitution Drafting Commission was established, with General San Yu as its Chairman. In its second meeting, on 22 December 1971, the Commission decided that the people wanted a unitary state. The first draft of the constitution was prepared. It was approved by BSPP and released to the public on 23 April 1972. On 24 January 1973 a second draft was prepared by the Commission, and in July the final draft was approved. In August 1973 the Central Committee of BSPP approved this draft and it was submitted to a national referendum held from 15 to 31 December 1973. As is usual in such referendums, the draft was approved by 90.19% of the votes cast. On 3 January 1974 the new constitution was promulgated.

Elections were held from 27 January to 10 February 1974 for the Pyithu Hluttaw (People's Assembly). On 2 March 1974, the Revolutionary Council was dissolved and a new government was established. The Pyithu Hluttaw elected the Council of State, whose Chairman, General Ne Win, became the President. It also elected the Council of People's Judges, the Council of People's Attorneys and the Council of People's Inspectors.

The Constitution was carefully drafted to ensure that every executive, legislative and judicial institution of the government at every level remained within the complete control of BSPP. Myanmar became a centralised unitary state with all activities being controlled by BSPP.<sup>8</sup> The Government of Myanmar became "the rule of one man's whims".

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<sup>8</sup> David I. Steinberg, **Burma's Road Toward Development: Growth and Ideology Under Military Rule** (1981), pp. 63-70.

On the political front, while a semblance of law and order was maintained, discontent simmered under the surface. The workers struck in June 1974. These strikes were brutally put down. Normalcy was restored, but only for a while. In December 1974, riots broke out again when the government decided to bury U Thant, a former Secretary General of the United Nations, in an obscure cemetery. The people prevented the government from burying U Thant at the cemetery of its choice. They buried him at the site of the dynamited Students' Union Building but even after the burial, rallies against the government continued. On 11 December 1974, the University of Yangon was stormed by the military. Many students were killed, many more were arrested. The remains of U Thant were taken away. The local population now took to the streets and Ne Win responded by declaring Martial Law.

Schools and universities were shut. Schools were reopened in June 1975. The strength of the students was dissipated by introducing correspondence courses and every effort was made to scatter the students in general and their leaders in particular. The Military Administration continued till August 1976. Universities remained shut till January 1976. When these were reopened, the students were soon back in the streets. The government used the usual methods of a large number of arrests and other violent tactics to crush them. Universities were again shut down. The government set up many regional colleges to disperse the students. After this goal was achieved, universities were reopened in January 1977. The government had won the day. Repression had worked. For the next ten years the students did not formally protest against the regime. An uneasy calm prevailed.

## **The Events of 1988**

The cause for the next demonstrations against the government was the demonetisation of currency notes in September 1987 without any hope being offered of refund or compensation. All currency notes above the value of about \$2.00 were demonetised and virtually 70% of all currency in circulation was rendered valueless<sup>9</sup>. "[T]he demonetisation of the banknotes... turned out to be a tragedy. It was announced that compensation could only be made to people who could prove that they had earned their money 'by honest

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<sup>9</sup> David I. Steinberg, *The Future of Burma: Crisis and Choice in Myanmar* (1990), p.22.

means'. In Burma where the blackmarket accounts for the greater part of the entire economy, that was virtually impossible. Many traders lost their entire capital; some even committed suicide. At the same time, shortages of domestic goods were reported and it was clear that the economy was in shambles."<sup>10</sup> There were some student protests as well. The government closed all educational institutions by announcing early October holidays. Though there was no massive reaction at the time, this gross injustice wiped out many people's savings of a lifetime and heightened tension.

In March 1988, an altercation took place between a group of students of the Yangon Institute of Technology and some local youth. On 13 March 1988, the Lon Htein (Security Police) fired on demonstrators from the Institute protesting against the handling of the dispute by the government. At least one student, Maung Phone Maw, was killed and several were wounded. A local situation was thus aggravated and soon escalated into demonstrations against the government. The government forcibly suppressed the demonstrators and many were killed. Hundreds of students were arrested and at least 21 were suffocated to death while locked inside a police van outside the Insein Central Prison. The people of Yangon joined the riots and the Lon Htein tried to put them down brutally. People were beaten, tortured, suffocated to death in police vans and shot. Female students were raped by the police.

As the demonstrations continued, a large number of people were arrested and about a hundred were killed. On 21 June 1988 the government imposed a ban on all public gatherings. In spite of the ban, protests against the Government erupted in the towns of Mawlamyine (Moulmein), Prome, Bago (Pegu) and other places. The universities were shut but student cells in several places were active and plans were being made for a massive nationwide demonstration against the government on 8 August 1988.

These events compelled the Central Executive Committee of BSPP to call an extraordinary congress of the party on 23 July 1988. In this congress General Ne Win accepted responsibility for the events and announced his resignation from politics and his position as chairman of BSPP. He also

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<sup>10</sup> Bertil Lintner, *Land of Jade*, p.181.

announced that five other senior leaders had expressed their desire to resign. The five senior leaders were San Yu, Vice Chairman, BSPP and State President; Aye Ko, General Secretary, BSPP; Sein Lwin, Joint Secretary General, BSPP; Kyaw Htin, Defence Minister and Tun Tin, Finance Minister. General Ne Win threatened that if the demonstrations continued the army would shoot to kill. After this speech he left the meeting.

The Congress accepted Ne Win's resignation as Chairman of the BSPP but not from membership of the party. Vice Chairman San Yu was permitted to resign. The Congress did not accept the resignations of the four other leaders. The proposal by General Ne Win to hold a referendum to choose between a single or multi-party system was also rejected. Sein Lwin, who was very unpopular as he was regarded responsible for the excesses committed in 1962 as well as 1988, was placed at the helm of affairs as President and BSPP Chairman. The demonstrations continued.

The popular uprising culminated in a nationwide strike on 8 August 1988. Soldiers opened fire on unarmed demonstrators and between 8 and 12 August about 3000 people were killed. But the protest movement continued. Rioting stopped on the night of 12 August when Sein Lwin resigned. The people, however, continued to demonstrate for the end of one-party rule, handing over of power to an interim government and holding of multi-party elections. A general strike was effective, with provision made to ensure that the essential services were not disrupted.

On 19 August 1988, Dr. Maung Maung replaced Sein Lwin as



*Students from Thailand and Myanmar join a candlelight march in Bangkok on 8 August 1989, the first anniversary of the killings in Myanmar.*

President as well as party Chairman. The various measures initiated by him to placate the people, including the lifting of Martial Law in Rangoon on 24 August 1988, the withdrawal of the army and the release of political prisoners on 25 August 1988, had no effect and demonstrations continued. The demonstrators were joined by a large number of Buddhist monks. They, too, wanted a change of government. The demonstrators were not peaceful either. With every passing day they became more violent. They, too, killed a number of people in the most gruesome fashion for their suspected collaboration with the regime. "Public executions - mostly beheadings - of suspected DDSI agents became an almost daily occurrence in Rangoon."<sup>11</sup>

Students formed associations like the All Burma Federation of Students Union.

On 27 August 1988, U Tin Oo, the former Defence Minister who had been dismissed and incarcerated in 1976, addressed a gathering of about 4,000 people. On 28 August 1988, U Nu, the Prime Minister, who had been deposed by Ne Win in 1962, established a political party, the League for Democracy and Peace (Provisional), in violation of Ne Win's 1974 Constitution which mandated a one-party system.

On 2 September 1988, the Bar Council declared that the 1962 coup violated the 1947 Constitution and the regime which had come to power as a result of that coup was unconstitutional and illegal.

On 9 September 1988, U Nu declared that as the coup of 1962 was unlawful, he was still the legitimate Prime Minister under the 1947 Constitution. He formed an interim government and announced a Cabinet. The formation of the interim government was opposed by prominent opposition figures such as Aung San Suu Kyi and Aung Gyi. The opposition was thus divided and the regime indirectly helped.

The government announced that a second emergency session of BSPP had been convened for 12 September 1988, which was to be followed by a session of the Pyithu Hluttaw. The BSPP Congress as well as the Pyithu

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<sup>11</sup> Bertil Lintner, *Outrage*, p. 166

Hluttaw session agreed that fair and free multi-party elections ought to be held. On 16 September 1988 a BSPP proclamation permitted civil servants, police and members of the armed forces to retire from the party.

## **SLORC**

On 18 September 1988, in a stage - managed coup, the Defence Minister, General Saw Maung, announced that the military had taken over power. A nineteen-member State Law and Order Restoration Council (SLORC) was formed which assumed all legislative, executive and judicial power.

Gatherings of more than five people were prohibited<sup>12</sup>, curfew was imposed and demonstrators were shot. The Tatmadaw (armed forces) cleared the streets of all protestors and opposition. House-to-house searches were carried out and a number of those apprehended were summarily executed. Thousands of students who were in the vanguard of the protest movement fled to the borders and formed the All Burma Students' Democratic Front (ABSDF). Some joined the insurgent groups amongst the ethnic minorities and others sought refuge in neighbouring countries.

SLORC enforced the Emergency Provisions Act, 1950, which makes a wide range of actions criminal, including spreading of "false news items or a rumour to excite disaffection", acting to make, "someone disloyal to the State" or committing, "an offence with the intent to cause disintegration of the moral character of the people that cause harm to the security, the law and order and rehabilitation of the State".

On 19 September 1988 the Law Protecting National Unity, 1964, which banned all political parties except BSPP, was repealed. The 1974 law which protected BSPP and its organs was revoked as well. The Pyithu Hluttaw, the Council of the State, the Council of Ministers and all organs of State power, except the Election Commission established under the 1974 Constitution, were abolished. The institutions which were abolished also included the Council of People's Justices and the Council of People's Attorneys.

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<sup>12</sup> SLORC Order 2/88.



On 20 September 1988, SLORC set up its own nine-member government. All people who had gone on strike were ordered to return by 26 September 1988 or suffer suspension from duties. Hundreds of civil servants who had participated in the demonstrations were purged or arrested or both. Those who returned were required to answer elaborate questionnaires about their role in the uprising.

### **The Legal System**

A Supreme Court was established and an Attorney General was appointed. The People's Courts at the lower levels were abolished and replaced by Divisional and Township Courts, where the judges sit singly and not in groups of three.

On 31 August 1989, SLORC replaced the leadership of the hitherto outspoken Bar Council. It is now headed by the Attorney General and staffed by government officials.<sup>13</sup>

The military is in complete control of the civilian courts. The United States State Department 1989 Country Report on Myanmar states that the court officials had to submit daily trial reports to the military for review. The military also shut the courts down from November 1988 to 31 March 1989. Asia Watch reported that 62 civil judges were "relieved of their duties," in 1989 by SLORC "for setting bail and refusing to exceed the legal maximum sentence in cases involving political prisoners".<sup>14</sup>

On 17 July 1989, SLORC established military tribunals<sup>15</sup> and empowered these to conduct summary trials.<sup>16</sup> These tribunals have so far not tried civil cases. The decision to refer a criminal case to a military tribunal or an ordinary court rests with the Government. Usually cases with political

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<sup>13</sup> Bertil Lintner, "Consolidating power", *Far Eastern Economic Review*, 5 October 1989.

<sup>14</sup> Asia Watch, "Human Rights in Burma (Myanmar)", May 1990, p.12.

<sup>15</sup> State Law and Order Restoration Council, Martial Law Order 1/89, 17 July 1989; *Working People's Daily*, 18 July 1989.

<sup>16</sup> State Law and Order Restoration Council, Martial Law Order 2/89, 18 July 1989; *Working People's Daily*, 19 July 1989.

overtones are marked to these tribunals to ensure exemplary and prompt punishment.<sup>17</sup> Those who have defied the orders of SLORC, the government or military commanders are tried exclusively by these tribunals, which are comprised of three officers.<sup>18</sup> Students, political leaders and activists, writers, journalists and others regarded by the government as politically opposed to it have been tried and sentenced with indecent haste. Before these tribunals the burden of proof is on the accused. The minimum sentences are for three years' hard labour. Many political activists have been given sentences ranging from twenty years to life imprisonment.

### **Political Changes**

On the political plane the changes were equally cosmetic. SLORC promised free and fair elections, but in a statement issued on 23 September 1988, General Saw Maung, Chairman, SLORC, made it clear that three conditions had to be met before elections were held:

“(a) Maintenance of law and order, prevailing peace and tranquility in the country;

(b) Providing secure and smooth transportation;

(c) The State Law and Order Council will strive for better conditions of food, clothing and shelter of the people and render necessary assistance to the private sector and the cooperatives to do so.”<sup>19</sup>

On 24 September 1988, with the basic objective of achieving a “genuinely democratic government”, the three main opposition leaders launched a political party, the National League for Democracy (NLD). Aung Gyi was elected Chairman, Tin U, Vice Chairman and Aung San Suu Kyi, General Secretary. On the same day, BSPP was dissolved though shortly afterwards

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<sup>17</sup> Section 5 (a), Martial Law Order 2/89, 18 July 1989.

<sup>18</sup> Lawyers Committee for Human Rights: “Military tribunals in Myanmar: A summary of concerns”, 10 February 1991, p. 2.

<sup>19</sup> State Law and Order Restoration Council Chairman, Commander-in-Chief of the Defence Services, General Saw Maung's Addresses, p. 29.

it was resurrected under the name and style of the National Unity Party (NUP). U Nu, with the help of some others, set up the League for Democracy and Peace (LDP).

On 27 September 1988 SLORC promulgated the "Political Parties Registration Law" with the avowed aim of paving the way for multi-party democratic elections. The political parties were entitled to a number of privileges, including telephone connections and petrol quotas. Within a short time more than a hundred parties had registered. Some were NUP offshoots and a large number had been set up for no other reason except to secure the telephone and petrol concessions.

On 19 October 1988, by Declaration No. 8/88, SLORC stated that it had, "permitted the registration of political parties for holding the multi-party democracy general elections and allowed these political parties to organize and carry out their activities in accordance with the situation permitted for enforcement of rule of law and order...". SLORC claimed that some of the political parties were abusing this freedom and therefore imposed restrictions on their activities.<sup>20</sup>

SLORC promised to hold elections after it came to power and it kept that promise. The government, however, denied the citizens the minimum campaigning freedoms necessary for a free and fair election.<sup>21</sup>

Aung San Suu Kyi was banned from campaigning in January 1990 on the allegation that she had unlawful association with insurgent organisations. A number of parties, including the People's Progressive Party, were banned by the army and the ban was endorsed by the Election Commission on the ground that they had pro-communist sympathies. Three leaders of the People's Progressive Party, namely U Hla Shiwe, U Khin Maung Myint and U Nyo Win, were arrested.

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<sup>20</sup> State Law and Order Restoration Council, Declaration No. 8/88.; *Working People's Daily*, 20 October 1988.

<sup>21</sup> Bertil Lintner, "The election charade: Government eliminates liberal poll contenders", *The Far Eastern Economic Review*, 18 January 1990; Bertil Lintner, "Poll controls: Military authorities restrict election campaigning", *The Far Eastern Economic Review*, 12 April 1990. Also Colin Smith, "Burma's elections: A private affair", *The Times of India*, 22 May 1990; Sam Seibert and Ron Moreau, "Stacking the deck: Burma's military rulers are prepared for an election - but not for an opposition victory", *Newsweek*, 28 May 1990.

All political campaigning had to be done within the parameters of Martial Law Order 3/90, issued on 23 February 1990. It required that all speeches and publications be approved by the local township authorities. The parties were permitted one ten minute statement on television and fifteen minutes on radio. These were pre-censored and were further edited prior to publication in the press. A number of candidates were arrested.

The elections held on 27 May 1990 were not rigged, however. About 72.59% of eligible voters went to the polls on election day. NLD won 392 out of the 485 seats. In a post - election press conference, a military spokesman recognised the mandate of NLD and stated that the newly elected parliament would be free to frame a constitution.

### **Transfer of Power to Elected Representatives**

In a press conference on 5 July 1989, General Saw Maung stated that power would be handed over to the elected representatives of the people after the election. He stated:

"I shall hand it [power] over according to law. If a government could be formed with a majority vote, then hand over. I agree. At a recent press conference former Prime Minister U Nu said if a certain number of members are returned it must be handed over to the government. This is true. Why should I deny it? I must hand over. Form, and if you can form a (government), there will be a hand over."<sup>22</sup>

On 9 January 1990, he stated:

"We will hold the Hluttaw elections. Then the political parties will be settled in the Hluttaw...As soon as the election is held, form a government according to law and then take power. That is our responsibility. But the actual work of forming a legal government after the election is not the duty of the Tatmadaw."<sup>23</sup>

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<sup>22</sup> State Law and Order Restoration Council Chairman, Commander-in-Chief of the Defence Services, General Saw Maung's Addresses, p. 156.

<sup>23</sup> Ibid., pp. 322 - 323.

On 27 March 1990, on the 45th anniversary of Resistance Day (Armed Forces Day), General Saw Maung made it plain that constitution-making was a task to be left to the political parties and the politicians, after the elections were over. He said:

“Some say it is necessary to draft a temporary constitution, to form a provisional government to effect transfer of power and only then to take time and draw up a proper constitution. In what ways they want to do is up to them.”<sup>24</sup>

Prior to the elections SLORC had, however, not clearly stated whether the body which was being elected would be a constituent assembly or a parliament or both. Specific questions asked by journalists on these issues were vaguely answered. This created an extraordinary situation; even on the day when the people went to the polls it was not clear for what office they were voting. SLORC had deliberately created this situation. It was now ready to deal with the results of the elections. If its supporters won it would transfer power. If they lost, such transfer could be indefinitely postponed. It was not that NLD leaders or observers of the electoral process did not understand what the regime was up to. They had no choice. The politicians thus went quietly along, hoping that the results of the elections might even change SLORC attitudes. This was not to happen. Apprehensions were, however, expressed by human rights activists and observers of the election process of Myanmar even before the elections were held. They contended that this vagueness was deliberate. The Washington - based International Human Rights Law Group pointed out:

“It is unclear precisely what authority candidates elected in the May 1990 election will exercise. At the outset, the government announced that candidates in the May 1990 elections were running for seats in the Pyithu Hluttaw, or People’s Assembly, the sole organ of legislative authority within Myanmar. However, later announcements by highly placed officials within the present government intimated that those who are elected will form a constituent assembly to draft a new constitution instead.

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<sup>24</sup> Ibid., Vol II, p. 62.

Conflicting statements from Myanmar government spokesperson have put in question whether the SLORC government will turn over power to the newly-elected representatives after the May 1990 elections, or whether they will continue governing until the new assembly drafts and adopts a new constitution. Thus, it is possible that, for several years after the elections, Myanmar still may not be governed by a democratically elected government and the will of the people expressed in the 1990 election will be ignored.”<sup>25</sup>

After the clear NLD victory in the elections, these apprehensions proved correct. Even during the election campaign, as an NLD victory became clear, SLORC started changing its position. On 12 April 1990, Major General Khin Nyunt said:

“The cabinet cannot be formed just after the election. The constitution is to be drawn up in compliance with the wishes of the indigenous people. Only when the constitution is apt and appropriate will the cabinet be able to form a strong government. And only when the strong government comes into power will it be able to lead the state.”<sup>26</sup>

After the results were announced, SLORC initially made some encouraging statements,<sup>27</sup> but soon backtracked on these.<sup>28</sup> Once again vague statements were made and a number of not very plausible reasons given.

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<sup>25</sup> International Human Rights Law Group, “Report on the Myanmar Election”, Washington, 19 May 1990.

<sup>26</sup> *The Burma Review*, Issue XX, October 1990, p. 6.

<sup>27</sup> In its 93rd News Conference, held on 2 June 1990, the Information Committee of SLORC stated that “the constitution would be drawn up by the representatives of the parties elected, that power would be handed over according to law to the strong government formed in accordance with the constitution thus drawn up and that it could not be said how long the drafting of the constitution would take.” Press Release No. 50, Permanent Mission of the Union of Myanmar, Geneva, 8 June 1990; p. 2. See also “Burmese junta accepts electoral defeat”, *International Herald Tribune*, 29 May 1990.

<sup>28</sup> “Burmese general digs in”, *International Herald Tribune*, 1 June 1990; Josef Silverstein, “The Burmese people have spoken, but does the military hear?”, *International Herald Tribune*, 7 June 1990; Editorial, “Winners in waiting”, *The Guardian*, 20 June 1990; Rodney Tasker

SLORC Declaration No. 1/90 stated that "a political party cannot automatically get the three aspects of State power - the legislative power, the executive power and the judicial power - just because a Pyithu Hluttaw has come into being and that they can only be obtained on the basis of a constitution". It was accepted that "the representatives elected by the people are those who have the responsibility to draw up the constitution of the future democratic State". In the same Declaration, it was stated that a broad-based national conference would be convened so that all factors that should be taken into consideration in drawing up the constitution could be obtained and discussed.<sup>29</sup> It was stated that SLORC will "hand over power in due course to a strong and stable government that is to be formed in accordance with a new constitution to be drafted".<sup>30</sup>

SLORC has ignored NLD's requests for a dialogue after the elections. It refuses to give up control or even begin the process of transformation from a military regime to a democratic government. Until a new constitution is adopted, SLORC claims that it alone has the right to rule. It is not willing to allow the elected representatives of the people to govern either under the 1974 Constitution or under an interim Constitution.<sup>31</sup>

The People's Assembly Election Law does not specify when the new Assembly is to be convened. SLORC has identified a number of difficult and time consuming steps that must be taken before the Assembly can meet. The Election Commission must submit a list of elected members to the SLORC Chairman and must issue certificates of recognition to those members. The elected delegates must then submit election expense accounts and overcome any challenge to their election. After that the Assembly must convene a national convention containing representatives of all political parties and

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and Bertil Lintner, "The plot thickens: Military rulers seek to stall power transfer", *The Far Eastern Economic Review*, 21 June 1990; Rodney Tasker, "Military manoeuvres: Generals force democracy to mark time", *The Far Eastern Economic Review*, 12 July 1990.

<sup>29</sup> Press Release No. 53, Permanent Mission of the Union of Myanmar, Geneva, 3 August 1990.

<sup>30</sup> Statement by the Delegation of the Union of Myanmar at the 45th session of the United Nations General Assembly, New York, delivered by U Ohn Gyaw, Chairman of the Myanmar Delegation (9 October 1990), Press Release No. 57, Permanent Mission of the Union of Myanmar, Geneva, p. 8.

<sup>31</sup> Declaration 1/91, paras. 20 and 21.

national convention containing representatives of all political parties and ethnic groups and achieve a broad consensus on a new constitution which must be acceptable to SLORC. Only after the approval of that document - possibly by plebiscite - will SLORC begin to prepare for the transfer of power.<sup>32</sup>

It was said that the Election Commission had not completed the scrutiny of the returns of expenses filed by the candidates and a number of election petitions are pending.<sup>33</sup> SLORC claims that a National Convention must be called to reach a consensus on a draft constitution and that the draft must be approved by it. A government should be formed and then power handed over to it.<sup>34</sup> It is not clear even in this programme whether the government will be formed by the majority party or whether a new election will be held for this purpose, as the programme is constantly being altered. No time schedule has been specified for the framing of the constitution and the transfer of power and none is likely to be given in the near future.

### **The Provisional Government**

The ethnic minorities have now been waging a civil war against the government for many decades. One of their main weaknesses was their disunity. That has been overcome, to some extent, by the formation of the National Democratic Front (NDF) and more recently its association with a group of elected NLD members who fled to the Thai-Myanmar border and have proclaimed a Provisional Government in exile, the National Coalition Government of the Union of Burma (NCGUB). On 22 February 1991 the NDF, the ABSDF, the NLD "liberated area" organisation and other forces opposed to SLORC formed the Anti-Military Dictatorship National Solidarity Committee (AMDNSC). The

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<sup>32</sup> International Human Rights Law Group: "Post-election Myanmar: A popular mandate withheld", Washington, 31 October 1990.

<sup>33</sup> Statement by the Delegation of the Union of Myanmar at the 45th session of the United Nations General Assembly, New York, delivered by U Ohn Gyaw, Chairman of the Myanmar Delegation (9 October 1990), Press Release No. 57, Permanent Mission of the Union of Myanmar, Geneva, p. 8.

<sup>34</sup> Ibid., p. 9.



policies of the Provisional Government, however, do not inspire much confidence and many of the members of the Government live in the naive belief that their cause being just, it will attract international support, which in turn will oust SLORC. Many people in Myanmar do not feel that the formation of the Provisional Government will serve any purpose or that such a government will be able to push SLORC out. With their activities confined to remote areas far away from the main centres of population in Myanmar and being pitched against the Myanmar army which outclasses them militarily, the chances of the Provisional Government and the ethnic insurgents succeeding are remote.

Although a working relationship has been attained between the Barmars and the ethnic minorities, which is a good sign for the future of communal relations in Myanmar, yet many Barmars regard the formation of the Government as a desperate measure which is not likely to achieve much or even create long-term communal unity. The Provisional Government is dominated by the military wing and politicians have little say in decision-making.

While the people are unhappy with SLORC, they also appear to be slowly reconciling themselves to their fate. SLORC has shown them its might and has demonstrated that it will not hesitate to kill. The army is a privileged class and remains united.<sup>35</sup> The opposition remains fractured and has not been able to come up with any viable response. There is no likelihood of the insurgents scoring a major victory in the foreseeable future, either. On the contrary, during the dry season most of them live in fear of an offensive by the government troops, whose effectiveness has improved with Thai support and the willingness of the Thai Government to turn a blind eye when these troops use Thai territory to overrun insurgent bases.

Barring the totally unexpected, there is little chance of a transfer of power from SLORC to the democratically elected representatives of the people in the near future.

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<sup>35</sup> Bertil Lintner, "Dissent in the Ranks," *Far Eastern Economic Review*, 17 August 1989.

Suu Kyi's words, however, kindle hope:

"It is not easy for a people conditioned by fear under the iron rule of the principle that might is right to free themselves from the enervating miasma of fear.... Yet even under the most crushing state machinery courage rises up again and again, for fear is not the natural state of civilised man".<sup>36</sup>

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<sup>36</sup> Madelaine Bunting, "The Oxford Wife Who Took On a Dictator", *Dawn*, 18 October 1991 (*Dawn/The Guardian News Service*, Review of Martin Smith, **Burma, Insurgency and the Policies of Ethnicity**, Zed Books, London).

## Chapter 3

### The Rule of Law and the Legal System

#### **An Independent and Responsible Judiciary 1947 - 1962**

*On 24 September 1947, all the major ethnic and political groups, represented in the Constituent Assembly, through their delegates, adopted a new constitution for the Government of Myanmar. The main task before the framers was to draft a constitution which could provide a viable system of government for a newly independent country while at the same time accommodating the often disparate demands of the various ethnic minorities and political groups. The Supreme Court and the High Court were also established.*

*The Constitution was stated to be federal in nature but federalism was nowhere defined in the Basic Law and the principles of federalism were often adhered to more in theory than in practice. The states were not given equal rights. The Union Government exerted complete financial and political dominance over the states, which laid the basis for constant Union-state acrimony. By 1958, the ethnic grievances and insurgencies had become so acute that U Nu appointed a caretaker government with General Ne Win at the helm.*

On 24 September 1947, all the major ethnic and political groups, represented in the Constituent Assembly through their delegates, adopted a new constitution for the Government of Myanmar.

The main task before the framers was to draft a constitution which could provide a viable system of government for a newly independent country while at the same time accommodating the often disparate demands of the various ethnic minorities and political groups. The authors of the constitution sought to state in this document the national goals, the limits of government and the rights of the individuals. They also wanted to establish a

structure of federal government which could unite a culturally, ethnically, politically and socially diverse people.

The object of unity could be achieved by allowing the various constituent units and nationalities a large amount of autonomy. These financially, culturally and political autonomous units and nationalities could then have been brought together in a federation which held them together as one country without completely dominating their will or swamping their culture.

As in most newly independent countries, in Myanmar the founding fathers opted for a system which, though federal in name and appearance, sought to impose central control on a diverse people and disparate regions in the name of unity. The long-range solution which produced unity through the experience of working together and improved understanding by the intermingling of peoples and cultures did not find favour with them.

The structure of government followed the British Parliamentary model. The titular head of the State was the President. He was elected for a period of five years, indirectly, by both Chambers of Parliament sitting in joint session, through a secret ballot. He could seek re-election only once. The two Chambers of Parliament were directly elected by the people. The Chamber of Deputies consisted of 250 members, while the Chamber of Nationalities consisted of 120 members. Parliament was elected for a period of four years but could be dissolved earlier by the President on the advice of the Prime Minister.

Elections to the two chambers were regulated by law. The Chamber of Deputies was elected by territorial constituencies delimited on the basis of population. The allocation of seats in the Chamber of Nationalities was made according to the Second Schedule of the Constitution. It gave 25 seats to Shans, 12 to Kachins, 8 to Chins, 3 to Karennis, 24 to Kayins (reduced to 15 in 1951) and 53 to the remaining territories of the Union.

The Prime Minister was nominated by the Chamber of Deputies and was responsible to it. The real power of the government was vested with the Prime Minister and his Cabinet who formed the Union Government. The Prime Minister was obliged to keep the President informed on all domestic and international matters of policy.

The President appointed the Ministers of the Union Government, the Attorney General and other specified high officials on the recommendation of the Prime Minister. The judges and chief justices of the Supreme Court and the High Courts were appointed by the President in consultation with the Prime Minister. All executive functions of the government were performed by the Ministers and the officers of their respective departments in the name of the President. Every bill of Parliament to become law had to be signed by the President, but if the bill had not been signed seven days after its presentation to the President, it became an act in the same manner as if it had been signed.

The Constitution provided for the establishment of the High Court and of the Supreme Court, but the details of their functions and organisation were left to be determined by the Union Judiciary Act, 1948. The functions and organisation of the lower courts were defined by the Burma Courts Act, 1950.

The Supreme Court was the highest court of the land and the final court of appeal. The High Court exercised exclusive original jurisdiction in all matters arising under any treaty made by the Union, in all disputes between the various units, or between a unit and the Union and in matters where the validity of a law was in issue and in all such other matters as provided by law. All capital sentences passed by subordinate courts required confirmation by the High Court. The High Court and the Supreme Court acted independently and impartially. Josef Silverstein writes:

“...the Supreme and High courts established an enviable record for independence of action and created respect for their jurisdiction. During the first decade of independent government, when the Union and the constitution stood in danger of being overthrown, and afterward, the Supreme Court worked unremittingly to establish a tradition of due process of law in Burma...The courts refused to be intimidated by outside influences, and the justices were determined to establish beyond doubt that the courts were independent and responsible.

Unfortunately, a dearth of qualified persons prevented the court system as a whole from maintaining the high standards of the

Supreme and High courts. As a result, incompletely trained and, in many cases, politically motivated magistrates and judicial officials filled the lower courts; their handiwork often had to be corrected by an overcrowded, overworked review tribunal system.”<sup>1</sup>

Section 141 of the Constitution provided that all judges would be independent in the exercise of their judicial functions and subject to the laws and the constitution. Section 144 provided that neither the salary of a judge of the Supreme Court or the High Court nor his rights and privileges would be varied to his disadvantage after his appointment. The judiciary, by and large, lived up to the constitutional mandate of judicial independence.

Dr. Maung Maung, who later joined General Ne Win and also became the Chief Justice of the country and later its President for a short time, wrote that even in times which were pregnant with danger for the independence of the judiciary, the “Supreme Court, in all those troubled years, continued to protect the rights of the citizen. It issued writs to set men free who were detained on illegal grounds by the Union Government; it quashed orders issued by the Government which offended the constitution...The Government was often angry, and it often winced with pain, but generally it took the decisions gracefully”.<sup>2</sup>

The government generally did not interfere in the performance of the judicial functions by the judges. Observers noted that there was no direct interference with the process of justice, though the government by indirect means may sometimes have influenced the judiciary. Indirect influence was mainly used in the case of the lower courts. The judges of the Supreme and High Courts were independent and less vulnerable to political influence than the presiding officers of the lower courts.<sup>3</sup>

The Constitution was stated to be federal in nature but federalism was nowhere defined in the Basic Law and the principles of federalism were often adhered to more in theory than in practice. The states were not given equal

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<sup>1</sup> Josef Silverstein, **Burma: Military Rule and the Politics of Stagnation** (1977), p. 57.

<sup>2</sup> Maung Maung, **Burma's Constitution** (1959), p. 154.

<sup>3</sup> Maung Maung Gyi, **Burmese Political Values: The Socio-Political Roots of Authoritarianism** (1983), pp. 142-147.

rights. Every state had the right of secession but this was expressly denied to the Kachin and Karen states and the Shan and Karenni states were required to wait till 4 January 1958 before they could exercise this right.

Political autonomy is impossible without a measure of financial independence. The states were kept tied to the wheels of the Union's financial chariot. They all had to look towards the Union for financial support. Even in terms of political power, the real authority remained vested with the Union government, with nominal and incidental powers given to the states.

The complete financial and political dominance of the Union Government over the states laid the basis for constant Union-State conflict. Had the powers been distributed more equitably, working relationships and arrangements might have developed with time. The unequal power distribution pattern aroused suspicions and created acrimony.

By 1958, the Union-State tensions, ethnic grievances and insurgencies had become so acute that U Nu appointed a caretaker government with General Ne Win at the helm. In February 1960 elections were held. During the campaign U Nu's party, the Pyidaungstu, won. U Nu had promised to amend the Constitution to recognise Buddhism as the state religion. He had also promised more autonomy to the Mons and the Rakhines. The Shans and the Karennis now made a demand for secession, a right granted to them by the Constitution.

## **The Burmese Way to Socialism 1962-1988**

*Eventually the various tensions and the failure of the Government to create political stability provided the opportunity for a take-over, and on 2 March 1962 General Ne Win staged a coup and seized power. A number of laws regarded as being opposed to the "Burmese Way to Socialism" were abolished and new laws enacted. Restrictions were imposed on the press and subsequently all political parties except BSPP were banned. All powers were assumed by the Revolutionary Council, which conferred all legislative, executive and judicial authority on General Ne Win. Foreign business*

*as well as all property was nationalised. The State took control of everything. The army was put in charge even of commerce and industry. In foreign affairs a policy of self-imposed isolation was pursued and tourist visas were limited to 24 hours.*

*The Revolutionary Council established a new set of courts and tribunals, as well as the People's Justice System, judicial powers being vested in people's judges, 90% of whom did not have and did not receive any legal training at all. All judicial proceedings at the central as well as local levels were presided over by elected lay judges. Professional jurists served in an advisory capacity to the judges, their sole function being to express the whim or dishonesty of the judge in legal language. Corruption was rampant.*

*At all levels, the judiciary was an integral part of the government machine. Its members were chosen for their affiliation to BSPP. Neither legal education nor competence nor independence was a criterion for appointment to judicial office.*

Eventually, the worsening Union-State relations, the insurgencies of the ethnic minorities and the failure of the government to create political stability provided the opportunity for a take-over and on 2 March 1962, General Ne Win, the Chief of Staff of the Armed Forces, staged a coup and seized power.

The Revolutionary Council had announced its goals on 30 April 1962 in a declaration called "The Burmese Way to Socialism". It promised to bring the exploitation of man by man to an end and establish a Socialist economy based on justice. A number of laws which were regarded as being opposed to the "Burmese Way to Socialism" were abolished and new laws enacted. Restrictions were imposed on the press and, subsequently, all political parties except BSPP were banned.

On 9 May 1962 the existing political and administrative system of the country at both the Union and the State level was replaced with a system of security and administrative committees. These security and administrative committees were set up at various levels. The committee at the lower level



was responsible to the committee at the higher level. All committees within a state were responsible to the committee at the State level, which was responsible to the Security and Administrative Central Committee at the centre.

The committees at all levels were staffed by representatives from the military, the civil services and the police. In the Central Committee, the Chairman was always from the military. After ten years, in 1972, the Revolutionary Council decreed that the committees should have civilian members as well, which were to be drawn from BSPP, the People's Peasant Council and the People's Workers Council. The entire government of Myanmar, both administratively and politically, was thus, through these committees, brought theoretically under a single authority, i.e., the Central Committee, and in effect one man: General Ne Win.<sup>4</sup>

All powers were assumed by the Revolutionary Council, which conferred all legislative, executive and judicial authority on General Ne Win. From 1962 to 1974 the General ruled by decree. Foreign business as well as all property was nationalised. The State took control of everything. The army was put in charge even of commerce and industry. In foreign affairs a policy of self-imposed isolation was pursued and tourist visas were limited to 24 hours.

The Revolutionary Council established a new set of courts and tribunals, generally composed of three members who were in most cases from the military. A new procedure was also adopted for establishing People's Courts, which normally were not composed of lawyers or judicial officers.

On 7 August 1972, the People's Justice System was adopted. With the abolition of the districts, the roles of the judicial officers at that level disappeared. Village, ward, township and state or divisional Security and Administrative Committees were given judicial powers as well. Local people with little or no legal training were appointed to the Security and Administration Committees and were instructed to establish a system of people's courts. All professional judges were removed, retired or replaced by the people's judges, 90% of whom did not have any legal training at all and did not receive any specialised training or education before being appointed to judicial office.

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<sup>4</sup> Josef Silverstein, **Burmese Politics: The Dilemma of National Unity**, pp. 230-236.

The People's Courts were composed of two members and one chairman. They sat at the ward/village level, township level, divisional level and central level. Initially these courts were entrusted with criminal cases only but on 29 June 1973 the adjudication of civil cases was also made their responsibility. The working of these courts was in the hands of local individuals and matters were decided without much regard for the rules of evidence and procedure, particularly at the village and township levels.<sup>5</sup> The Chief Court, which was again renamed the Supreme Court, continued to be staffed by professional judges, however.

On 3 January 1974 a new Constitution was promulgated. Elections were held in January-February 1974 for the Pyithu Hluttaw. On 2 March 1974, the Revolutionary Council was dissolved and a new government was established. The Pyithu Hluttaw elected the Council of State whose Chairman General Ne Win became the President. It also elected the Council of People's Judges, the Council of People's Attorneys and the Council of People's Inspectors. The Constitution was carefully drafted to ensure that every executive, legislative and judicial institution of the government at every level remained within the complete control of BSPP.

The concepts of judicial impartiality, neutrality and independence were foreign to such a system. The highest judicial authority in the country, the Council of People's Justices, which supervised all judicial organs and courts, was not independent of the executive or the legislature. The nine justices of the Council were selected for a period of four years by the Pyithu Hluttaw from among its members, and had to report to the Assembly on the cases they decided. The first chairman of this Council was a former army officer and one of its eight members was a lawyer. The office of the Attorney General was replaced by the Council of People's Attorneys. Even at these highest of judicial levels, legal education or judicial experience was not a necessary condition of appointment. All judicial proceedings at the central as well as local levels were presided over by elected lay judges. Professional jurists served in an advisory capacity to the judges.

Many of these were former judges of the lower courts who had been allowed to continue in administrative positions. They remained present during

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<sup>5</sup> Robert H. Taylor, *The State in Burma* (1987) pp. 338-340.

the hearings and advised the lay judges about the law and the manner in which the case might be decided.

In the beginning, the quality of justice was not markedly affected, as the advisors were legally trained and quite competent. After three to four years, however, the lay judges realised that they did not have to concern themselves with legal niceties. Many of them were corrupt and wanted to decide in favour of those who were prepared to pay. The professionals were mere wordsmiths, there to use their craft to rationalise and legitimise the whim or the caprice of the judge.

The advisers were thus reduced to the status of glorified clerks, their sole function being to express the whim or caprice or dishonesty of the judge in legal language. Corruption was rampant. If speedy justice was one of the aims for establishing these courts, that too was not secured. Large backlogs accumulated and decisions on cases were considerably delayed. Adjournments were frequent, as whenever a law point was strongly raised, the judges adjourned the matter to consult their advisers, though ultimately they were often not persuaded by legal arguments.

The judges were told that they were “from the people” and must be accessible to the people. They were supposed to meet the litigants in private to understand the nature of the dispute and resolve it justly without bothering too much about the legal formalities. As a former judge of the pre-Ne Win years remarked jokingly: “In a sense we went back to the Magna Carta. The people were judged by their peers.”

This fraternisation with litigants also suited the judges. They were now in a position to ask the litigants for money directly. There was no need to negotiate the deal through intermediaries and no risk of a loss of revenue through the presence of third parties.

For hearing of appeals and for presiding over trials, a rotating panel of three judges from the nine-member Council of People’s Justices constituted the Central Court. Below the Central Court were the state and division courts, township courts, and village and ward courts. Whenever the number of elected members of the local Judges’ Committees was not sufficient to form the courts, members from the local People’s Councils were taken to

form the courts under the direction of a member of the relevant Judges' Committee. If there was a shortage of personnel in the People's Councils, other suitable citizens could be inducted.

The Council of People's Attorneys was in charge of prosecution. Its subordinate units were the central law office, the state and division law offices and the township law offices. The members of the council were elected for a four-year term by the Pyithu Hluttaw. The personnel of the law offices were appointed by the council.<sup>6</sup>

The judiciary, was therefore an integral part of the government machine. Its members were chosen for their affiliation to BSPP. No legal qualification was required for appointment even to the highest judicial office. Neither legal education nor competence nor independence was a criterion for appointment to judicial office.

## **SLORC Rule : Draconian Laws and Military Tribunals 1988 - Present**

*On 18 September 1988, SLORC abolished all government bodies established under the 1974 Constitution, including the judicial system. SLORC assumed not only executive and legislative authority, but also judicial powers delegated to civilian courts staffed by unqualified personnel. The courts function as an adjunct to SLORC with little independence. The general fear of SLORC and its complete control over every institution makes judicial independence and the independence of lawyers impossible. The skills and ethical standards of the lawyers have also declined in the long years of BSPP and now SLORC rule. Corruption is widespread and the quality of service has declined.*

*On 17 July 1989 SLORC conferred executive and judicial powers on military tribunals in three major military regions of the country. By 9 August 1989, 15 military tribunals had been established. The tribunals are not constrained by any constitutional norms or limits, they may try civilian as*

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<sup>6</sup> Burma: A Country Study (1983), pp. 184-190.

*well as military cases, are not open to the public and their decisions and sentences are final. The accused is not presumed innocent. In principle a right of appeal exists but in practice the military authorities have hampered the appeal process by non-cooperation with and intimidation of lawyers.*

*The verdicts of these military tribunals are unjust, the sentences passed by them excessive, and their proceedings contravene the fair trial procedure mandated by the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.*

On 18 September 1988, SLORC abolished all government bodies established under the 1974 Constitution, including the judicial system. With a stroke of the pen, the perverse legal system created by General Ne Win was done away with. The judges were told not to come to work and they submitted. When the ICJ asked how the judges responded to such summary justice, the answer was: "they just stopped coming to their offices".

SLORC assumed not only executive and legislative authority but also judicial powers. On 26 September 1988, however, it delegated some judicial powers to civilian courts under the Judiciary Law of 26 September 1988, with the Supreme Court at its apex. The Supreme Court consists of a Chief Justice and not more than five judges. It hears appeals from decisions of the state and divisional courts and exercises original jurisdiction in certain matters, but not all its judges are lawyers or persons with a legal education, nor have they been provided with any security of tenure or with any protection against removal. An office of the Attorney General was also established (the incumbent Attorney General is a bureaucrat with some legal education).

Civilian courts were also created at the township, division and state levels, and judicial officers appointed to them; but not all of these are law graduates. These judicial officers have been given refresher courses by the office of the Attorney General and the justices of the Supreme Court, and there are indications of efforts being made to appoint persons with a legal background to these courts. The reason for not appointing qualified personnel of known integrity and independence is said to be twofold. First, General Ne Win has so thoroughly destroyed the legal profession and the judiciary that not many such persons are available.

In the whole of Myanmar, it would be difficult today to find even half a dozen persons who possess the qualifications of the pre-Ne Win era for appointment to high judicial office. The other reason is that SLORC is not prepared to take the risks which would be inherent if the judiciary were allowed to function and grow as an independent institution. If the courts are staffed by independent qualified persons and are allowed to function freely, they may exercise some check on executive action and over a period of time even attempt to impose some limits on the operations and authority of SLORC. They may assert their independence. Such a development might allow the courts to grow into meaningful fora of dispute resolution and bring the judiciary in collision with SLORC.

The lawyers in Myanmar interviewed by the ICJ were of the view that at least on the theoretical plane, some of the changes made by SLORC were for the better, as these have created a system which, in structure and shape if not in power, authority and independence, resembles the pre-1962 judicial structure. They are quick, however, to point out that these changes are formal. In practice the courts function as an adjunct of SLORC with little independence. The general fear of SLORC and its complete control over every institution makes judicial independence and the independence of lawyers impossible.

The skills and ethical standards of the lawyers have also declined in the long years of BSPP and now SLORC rule. Corruption is widespread and the quality of service has declined.

The People's Courts, which were presided over by three members and advised by one judicial officer, have been abolished but lawyers claim that the rates of bribery, instead of going down, have gone up. The new judges demand a higher sum on the ground that litigants now have to bribe only one person as opposed to the three judges and one adviser they had to bribe under the Ne Win system. As the entire transaction is a one-window affair, they must therefore pay at least twice as much as they used to pay earlier to an individual member of the people's courts. In these circumstances, the judiciary even in its present form does not command the respect of either the lawyer or the litigant. Justice in Myanmar is what SLORC wants, and in cases in which SLORC is not interested, it is a purchasable commodity.

People have little confidence in the courts or their independence. Although the Code of Criminal Procedure can be used to question an illegal detention, this recourse is not made use of. Lawyers dare not file habeas corpus petitions, as this would place their own life and liberty at risk.

Lawyers within Myanmar were able to point out only three instances where this legal provision had been invoked since 1962. All three were cases where the persons concerned had been detained for very long periods of time without any authority in non-political cases. Even in these cases no finding was recorded as the establishment itself dropped the charges and released the prisoner.

Amnesty International has reported that thousands of persons were detained in Myanmar for participating in the 1988 demonstrations or for participation in political activities, and since then many more have been arrested and detained on charges which are extremely vague. Many have never been formally charged or tried. These persons are detained for long periods, they are interrogated at length and are often tortured in order to extract confessions and answers to the queries of investigators.<sup>7</sup>

There are reports of villagers, as well as people from the urban centers, being picked up and forced to work as porters, in inhuman conditions, for the army. To all these people the law affords no relief. So thoroughly has the legal system been discredited and so useless has it become that not a single person has even made an attempt to seek relief through the courts of law.

There are reports that more than half a million people were forcibly removed from their homes, their houses were demolished and they were compelled to move away to far-off places. Many of these persons were squatters but there were those who claimed that they had title. Even those who had initially been squatters or were in unlawful occupation had been living in these houses for decades, and very many of them had subsequently acquired title by adverse possession and could not have been summarily ejected under the law. Not a single person challenged these forced relocations in court and no one even claimed compensation.

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<sup>7</sup> See list of Amnesty International publications on pg.53.

When the government acquired the property of a number of people for widening of roads, no one went to the courts to claim compensation. Under the relevant law a person can claim compensation from the Government for such compulsory acquisition at 15% above the market rate. The people did not approach the courts because they view these institutions as an adjunct of the military regime and there is no hope of securing an honest or independent decision from them. They also fear that any attempt to challenge the authority of SLORC, even before its handpicked judges, may attract the wrath of the military and lead to arrest, a long period of detention and torture.

Those who had been tried in criminal cases by the civilian courts state that the judges were acting under orders. Although the 1988 Judicial Law provides that, except when prohibited by law, judicial proceedings must be in public and the defendant has the right to argue his case and make appeals, in reality cases have been tried in a summary manner and verdicts were apparently determined beforehand. In cases where they had received orders to convict, judges warned lawyers that an overzealous conduct of the case might prove detrimental to the interest and liberty of the lawyer.

The government always claims that there are no political prisoners and its actions are according to law. Many of those sentenced have been tried under the ordinary penal statutes, though these laws have been put to uses for which they were never intended. Others have been punished under special laws. In many cases, the confession on which the convictions were based were extracted through torture. The regime maintains that all such persons are ordinary criminals and refuses to accept that they have been punished for their politics.

On 17 July 1989, SLORC, with a view to more effectively carrying out its "security tasks, ensuring the rule of law and prevalence of peace and tranquility", conferred "the executive and judicial powers" on military tribunals in three major military regions of the country. The Command Commanders were authorised to exercise the powers directly or to delegate the same.<sup>8</sup>

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<sup>8</sup> SLORC Martial Law Order 1/89, 17 July 1989; *Working People's Daily*, 18 July 1989.



The Command Commanders are authorised to have the offender tried either by courts formed under the existing law or by military tribunals formed by them. Cases concerning defiance of orders issued by SLORC, by the Government or by the Command Commanders are tried exclusively by the military tribunals. Apparently, the tribunal is the sole and final judge of which witnesses are necessary and which are not. The decision and sentences of the tribunals are final. Sentences of death and life imprisonment, however, must be approved by the Command Commanders. In other matters, the Command Commanders can be requested to revise the sentence or decision of the tribunal.<sup>9</sup>

The tribunals have not, as yet, tried civil cases. So far as ordinary criminal cases are concerned, it is within the discretion of the Command Commanders to have the accused tried by the civil courts or the military tribunals. By 9 August 1989, 15 military tribunals had been established in the three Command regions.<sup>10</sup>

Till 27 July 1990, SLORC had not made clear whether it had rejected or accepted the 1974 Constitution. On that date, however, it made clear that it did not observe any constitution.<sup>11</sup> The military tribunals are, therefore, not constrained by any constitutional norms or limits.<sup>12</sup>

The tribunals consist of a chairman and two members. The chairman is a lieutenant-colonel and the two members are the junior officers from any one of the three branches of the armed forces. A number of ad hoc military committees were established to try cases at the township level. The persons charged before the military tribunals are tried summarily without any regard to the procedures which are generally considered essential for the due process of law. The tribunals are quite free to accept or reject evidence and do not show much concern for the quality of evidence. The accused is not presumed innocent. The tribunal can reject "unnecessary witnesses" if it is established that a crime has been committed. In such circumstances, sentence may be announced even without examining the prosecution witnesses.

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<sup>9</sup> SLORC Martial Law Order 2/89, 18 July 1989; *Working People's Daily*, 19 July 1989.

<sup>10</sup> *Working People's Daily*, 22 July 1989 and 9 August 1989.

<sup>11</sup> SLORC Declaration No. 1/90, 27 July 1990; *Working People's Daily*, 12 November 1990.

<sup>12</sup> For a detailed discussion on the military tribunals see Lawyers Committee for Human Rights: "Summary injustice: Military tribunals in Burma", 1991.

The tribunals are not open to the public and usually a defence lawyer is not allowed. Even when a defendant is allowed to engage counsel, the role of the latter is limited and subdued because of the fear of what he/she may have to suffer if the defence is conducted vigorously. There is no real right of appeal from decisions of these tribunals and the appeals to the Military Commander or the Commander in Chief, as the case may be, depending on the nature of the sentence, are more in the nature of mercy petitions. There is no right of hearing and no reasoned orders are passed by the appellate authorities. There are no reported instances of anyone being acquitted by these military tribunals.

At a military press conference held at the end of 1989, it was stated that more than a hundred people had been sentenced to death since July 1989.<sup>13</sup> Amnesty International reported that SLORC admitted that 100 people were sentenced to death in the three months after the military tribunals began to operate, 24 of them by military tribunals.<sup>14</sup>

In principle, right of appeal exists against the orders passed by the tribunals in some cases and in other cases a revision can be filed. Sentences up to three years imprisonment may be appealed to the regional commander within 30 days. Sentences of over three years' imprisonment, life imprisonment and death can be challenged by a revision to the army commander-in-chief within 30 days. In practice, the military authorities have hampered the appeal process by non-cooperation with and intimidation of lawyers.<sup>15</sup> The right of appeal and revision is illusory, as the Commanders do not consider the merits of an individual case and usually rubber stamp the findings of the trial court.

SLORC has used a combination of old laws as well as newly promulgated ones to curb democratic norms and fundamental freedoms. It has used the Emergency Measures Act, 1950, which stipulates seven years' imprisonment for anyone spreading news or stories "disloyal to the State". Under the State Protection Law, 1975, the authorities can detain without trial

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<sup>13</sup> "Military Tribunals", Information Department, ABSDF.

<sup>14</sup> Amnesty International, *"Myanmar: In the National Interest"* (London, 1990), p. 16.

<sup>15</sup> United States State Department, Country Report on Human Rights Practices, 1990.

for up to three years a person who, in their belief, "endangers the security or sovereignty of the state". Order 2/88 imposed a night curfew and a ban on public gatherings of more than five people. Order 8/88 banned all activities, speeches, literature and propaganda "aimed at dividing the Defence Forces". Order 16/89 amended the Printers and Publishers Registration Law, 1962, to increasing the maximum punishment to seven years' imprisonment and a kyat 30,000 fine. Martial Law Order 3/89 permits martial law regulations to be used against political parties, publishers and organisations publishing documents without registering with the Ministry of Home and Religious Affairs.

The Working People's Daily reported that Than Zaw, Nwe Thagi, aged 27 years and Moe Kyaw Thu, aged 17 years, were sentenced to death by the Rangoon Military Tribunal No. 1. For the offence of shouting anti-regime slogans in front of the Shwe Da Gon Pagoda on 17 July 1989, seven students - San Maung, Zaw Win Aung, Kyaw Win Moe, Htay Lwin, Khin Maung Tin, Thet Naing and Kyaw Lwin Nyunt - were sentenced by the Rangoon Military Tribunal No. 2, under Section 5 (j) of the Emergency Provisions Act, 1950, to five years' rigorous imprisonment.

On 6 October 1989, the Working People's Daily reported that U Baw Thaw was sentenced to twenty years' imprisonment with hard labour for the offence of attempting to disintegrate the army under section 5 (a) (b) of the Emergency Provisions Act, 1950. He had written a letter to a close friend, Captain Than Nyunt, during the demonstrations of 9 September 1988.<sup>16</sup>

After severe torture, Nay Min, a lawyer, was sentenced to fourteen years' imprisonment under Section 5 (e) (j) of the Emergency Provisions Act, 1950. He was charged with sending false news and rumours to the BBC.

U Tin Oo, a former general in the army and Chairman of the NLD, was sentenced to three years' imprisonment with hard labour. He was charged with inciting unrest and attempting to divide the army.<sup>17</sup>

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<sup>16</sup> In June 1991, U Baw Thaw, also known as Mao Thawka, aged 64, died in a Yangon hospital, *Bangkok Post*, 13 June 1991.

<sup>17</sup> His sentence has now been increased to 17 years, *Bangkok Post*, 1 June 1991.

Hta Hta Htet, a female second year mathematics student, was sentenced to three years' imprisonment. The charge was leading a demonstration. Another female student of ninth standard was imprisoned for three years. The charge was having contacts with underground organisations.

U Tha Du, a comedian, was sentenced to five years imprisonment for making jokes about SLORC.

These are just a few examples. A large number of people have been sentenced to such long terms of imprisonment and even death on charges which are extremely vague and are based on extremely flimsy evidence.

The verdicts of these tribunals are unjust and the sentences passed by them excessive, and their proceedings contravene the fair trial procedure mandated by the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

The end of these tribunals, draconian laws and SLORC rule is, however, not in sight. The Chairman of the delegation of the Union of Myanmar stated before the 45th session of the United Nations General Assembly on 19 October 1990 that SLORC rule will continue until "such time as a firm constitutional government comes into existence". SLORC is doing everything within its power to drag its feet and delay the establishment of such a constitutional government.

## Chapter 4

### Human Rights Violations

#### Arrests and Torture

*Killings, long detentions, torture, summary trials and imposition of stiff sentences continue. Even the smallest disturbance is brutally curbed. The allegations of torture and ill-treatment of those detained or imprisoned are categorically rejected by the regime. However, although no independent observer is allowed access to the prisons and detention centres, it has been documented that persons held in detention centres by the authorities have been tortured. The methods include beatings, electric shock, sleep deprivation, cigarette burns and being forced to stand neck-deep in water.*

The human rights record of the Ne Win regime was never enviable. SLORC has done even worse. When it assumed power on 18 September 1988, the army was sent into the streets to brutally crush all resistance. Gatherings of more than five people were prohibited.<sup>1</sup> The streets were cleared of all demonstrators, house to house searches were conducted and those involved with the freedom movement were either brutally shot or thrown into jails. There are reports, which the ICJ could not confirm, about a number of mass graves. Many of those detained or imprisoned were tortured.<sup>2</sup> Killings, long detentions, torture, summary trials and imposition of stiff sentences continue.

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<sup>1</sup> SLORC Order 2/88.

<sup>2</sup> A number of organisations have published reports about the killing, torture and incarceration of individuals in Myanmar. This report does not propose to repeat those individual accounts in this report as well. Such reports, handouts, etc. include:

Amnesty International: "Extrajudicial execution and torture of members of ethnic minorities", 1988; "Burma, extrajudicial execution, torture and political imprisonment of members of the Shan and other ethnic minorities", August 1988; "Prisoners of conscience, a chronicle of developments since September 1988", November 1988; "Burma, the 18 September 1988 military takeover and its aftermath", December 1988; "The Kayin State in the Union of Myanmar, allegations of ill-treatment and unlawful killings of suspected political opponents and parties seized since 18 September 1988", August 1989; "Myanmar, prisoners of conscience and

The regime takes no chances. Even the smallest disturbance is brutally curbed. The most insignificant protest is nipped in the bud. Making a noise is a disturbance. An individual who shouts a political slogan on a street can be slapped in jail for three to five years.

In interviews, the ICJ was told by the Myanmar students in Thailand, that torture was selectively used. While students, monks, political workers and lesser known citizens were tortured, the more well-known persons were left alone. Further investigations revealed that this was not an entirely accurate statement. For example, Maung Ko, a member of the NLD Central Committee, was arrested in September, 1990. In November his body was handed over to his family. He had been tortured and then strangled. The authorities claimed that he had hanged himself. He was in a four foot high cell with a bamboo roof. He had been given nothing save a rubber blanket by the authorities. How he managed to commit suicide by hanging under those conditions, the authorities would not say.

U Nay Win, a well-known novelist and local correspondent of the Japanese newspaper Asahi Shimbun, also died in Insein Jail in November 1990. He was arrested because SLORC regarded his reporting as too sympathetic to NLD. SLORC claimed he died of cirrhosis of the liver. On 31 January 1991, SLORC announced that U Tin Maung Win, the NLD Member of Parliament for Kayan, Yangon, had died of leukemia in Insein

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torture", May 1990; "Myanmar campaign - torture testimonies", 10 September 1990; "Myanmar, in the national interest: Prisoners of conscience, torture, summary trials under martial law", October 1990; "Myanmar, recent developments related to human rights", November 1990; "Myanmar prisoners of conscience, torture, extra-judicial executions", November 1990; "Myanmar, update on human rights violations", December, 1990; "Continued killings and ill-treatment of minority peoples", August 1991; "Urgent Action" releases on Burma, 24.5.90, 2.8.90, 9.8.90, 2.10.90, 11.9.90, 18.5.90, 6.10.90, 12.10.90, 1.11.90, 2.11.90, 5.11.90, 7.11.90, 9.11.90, 19.11.90, 28.11.90, 6.2.91.

Asia Watch, "Burma (Myanmar): Worsening repressions", 11 March 1990; "Human rights in Burma", May 1990; "Burma: Post-election abuses", 14 August 1990; "Burma : Time for sanctions", 15 February 1991.

Burma Underground Rights Movement For Action Report, January 1991.

Dawn: "News Bulletin", Volumes 1 and 2.

Lawasia: "Burma 1988", Human Rights Newsletter.

Lawyers Committee for Human Rights: "Human rights in Burma (Myanmar) since the May 1990 national election", 18 October 1991; Lawyer to Lawyer Network: "Lawyers in Burma (Myanmar)", October 1990.

Jail. On 16 February 1991 SLORC announced that U Maung Gyi the NLD Member of Parliament for Kyauktada, Pegu, had died a week back in Insein Jail. The cause of his death was not stated. Western diplomats in Thailand and diplomats in Myanmar believe that the authorities have since then become more cautious and now cover their tracks better.

The allegations of torture and ill-treatment of those detained or imprisoned are categorically rejected by the regime. No independent observer is, however, allowed access to the prisons and detention centres. It is reported that Professor Sadako Ogata, the Independent Expert appointed by the United Nations Commission on Human Rights in 1990 to investigate human rights conditions in Myanmar, was not allowed to visit any prison or detention centre, including the Insein prison near Yangon.<sup>3</sup>

Others have documented the fact that persons held in detention centres by the authorities have been tortured. The methods include beatings, electric shock, sleep deprivation, cigarette burns and being forced to stand neck-deep in water.<sup>4</sup>

SLORC recently published a book entitled *Web of Conspiracy: complicated Stories of Treacherous Machinations and Intrigues of BCP UG [Burmese Communist Party Underground], DAB [Democratic Alliance of Burma, and Some NLD [National League for Democracy] Leaders to Seize State Power*. It contains an official accounting of several hundred persons who have been arrested and detained by SLORC for alleged anti-government activities. Although the book contains extensive personal information on persons detained, little or no information is provided on the detainees' legal status. Photographs accompanying each case history in *Web of Conspiracy* often

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<sup>3</sup> Professor Yozo Yokota replaced Professor Ogata as the Independent Expert in 1991. His appointment was initially rejected by SLORC but in October 1991 he was finally allowed to visit Myanmar. It is reported that he did visit Insein Jail.

<sup>4</sup> Asia Watch, "Human Rights in Burma", May 1990, pp. 17-19. Also see Asia Watch, "Burma: Post-election abuses", pp. 3-6 and reports mentioned earlier on p. 53

show possible signs of abuse in detention, such as swollen eyes and lips. Burmese in exile have noted that friends appearing in photographs in the book are almost unrecognizable because of their physical condition.<sup>5</sup>

## Parents, Teachers and Students Warned

*Universities were shut down when SLORC seized power in 1988 and reopened only in May 1991. Students, parents and faculty were warned that "harsh measures" would be used to crack down on riots or demonstrations. In February 1991, medical schools were opened after remaining shut for almost three years. The military required students, parents and teachers to give signed guarantees that there would be no recurrence of the campus disorders of 1988. In the primary schools, which reopened in May 1989 after remaining closed for almost a year, all teachers and students had to sign forms that they will neither join a political party nor go against SLORC.*

Universities were shut down when SLORC seized power in 1988 and reopened only in May 1991. Yangon division Commander, Major General Myo Nyunt, was quoted as telling a gathering of students, parents and faculty at the Yangon Arts and Sciences University that Myanmar was still under the martial law imposed during the coup in 1988 and the authorities would be forced to use "harsh measures" to crack down on riots or demonstrations.<sup>6</sup> Earlier, on 15 February 1991, medical schools were opened after remaining shut for almost three years. The military required students, parents and teachers to give signed guarantees that there would be no recurrence of the campus disorders of 1988. SLORC appears to regard universities as centres of potential trouble which should be kept shut rather than places of education which must function for a better future.

Primary schools were re-opened in Myanmar on 19 May 1989, after remaining closed for almost a year. The regime announced that "terms, vocabulary and usages not in conformity with existing situations shall be

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<sup>5</sup> Lawyers Committee for Human Rights: "Human rights in Burma (Myanmar) since the May 1990 national election", 18 October 1991.

<sup>6</sup> *The Nation*, 15 May 1991.



deleted.” All teachers and students had to sign forms that they will neither join a political party nor go against SLORC. Administrators were warned that if anything happened they would be jailed.

## **Curfew Imposed**

*In Yangon, Mandalay and all other major cities visited by the ICJ, a curfew was in operation from 2300 hours to 0400 hours. As the army starts to come out on the streets at about 2200, it is generally not considered safe to go out after that hour.*

In Yangon, Mandalay and all other major cities which the ICJ was able to visit, a curfew was imposed from 2300 hours to 0400 hours, even now, after more than three years of SLORC rule. As the army starts coming out on the streets around 2200 hours, it is generally not considered safe to go out after that hour. Even for indoor meetings, political parties have to receive prior permission from the authorities.

Eye witnesses in Yangon tell of “riot-control drills”, including bayonet charges performed in full view of the public, just before any dates when civil unrest is expected.<sup>7</sup>

## **Freedom of the Press, of Expression and Information**

*The government-owned Working People's Daily, published in the Myanmar and English languages, remains the only newspaper in a country which, before Ne Win seized control, had a lively and independent press of more than 30 newspapers. Although anyone can apply for permission to publish a newspaper, the restrictive nature of the legislative and executive control effectively hampers such requests. Writings, film scripts, lyrics and even the words of songs have to be submitted to the Press Scrutiny Boards.*

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<sup>7</sup> Bertil Lintner, “Burmese army gains muscle”, *Dawn*, November 1991 (*Dawn/The New York Times Special Features in Jane's Defence Weekly*).

*Criticism of the Government is a violation of the law and people who express opinions transgressing the law are punished. The Government does not dispute this position. Newspaper operators who work with even the slightest degree of integrity and independence find it extremely difficult to keep clear of this law.*

*On 2 October 1990, General Saw Maung made it clear that he had no intention of tolerating any freedom of expression or religious freedom in Myanmar. He categorically stated that SLORC "will not tolerate any organisation or individual if it is against us..."*

The government-owned Working People's Daily, published in the Myanmar and English languages, remains the only newspaper in a country which, before Ne Win seized control, had a lively and independent press of more than 30 newspapers. The authorities point out that under the Printers and Publishers Registration Law 1962, anyone can apply for permission to publish a newspaper. No one has come forward with such a request.

What is not stated, however, is that the restrictive nature of the legislative and executive control leaves little room for anyone daring to make such an application. Writings, film scripts, lyrics and even the words of songs have to be submitted to the Press Scrutiny Boards established under the 1962 Law. The decisions of the Board can be referred to the Minister of Home and Religious Affairs, Information and Culture for review and final decision.

The manner in which SLORC stamped out dissent and clamped down on publications which had flowered during the 1988 movement also does not give anyone any confidence to attempt to bring out a newspaper. Criticism of the government is a violation of the law and people who express opinions transgressing the law are punished. The government does not dispute this position. Newspaper operators who work with even the slightest degree of integrity and independence find it extremely difficult to keep clear of this law.

Freedom of information is also curbed by the unusual uses to which the Official Secrets Act can be and has been put. A particular event may illustrate the point. It is quite common for politicians, if they desire to have a letter translated into a foreign language, to ask a citizen of Myanmar working

for a foreign Embassy who is fluent in the language to do the translation. On 5 September 1990 a letter was sent by SLORC to the political parties. The letter, addressed to the Central Committee of NLD, was handed over to an employee of the British Embassy for translation into English on 6 September 1990. The authorities chose to treat the act as a breach of confidentiality. It was announced on 7 September 1990, that NLD spokesman U Kyi Maung and NLD Secretary, U Chit Khaing had been arrested for "handing over classified state secret documents of national interest to unauthorised persons". On 19 November 1990, a military tribunal sentenced Chit Khaing to seven years and Kyi Maung to ten years' imprisonment. Both men are in their seventies. It is reported that subsequently Chit Khaing's sentence was increased to fourteen years and Kyi Maung's to twenty years.<sup>8</sup>

It was also announced that four NLD leaders, Ohn Kyaing, Thein Dan, Ye Myint Aung and Sein Hla, had been arrested in Mandalay on 8 August 1990 for sending out false news - a reference to a report - that on that day four people had been killed by soldiers during a demonstration.<sup>9</sup> Ohn Kyaing and Thein Dan were sentenced to seven years' imprisonment by a military tribunal.

Nay Min, a 42-year old lawyer accused of sending false news and rumours to the BBC and of possession of literature which criticised the government, was sentenced to fourteen years hard labour by a military tribunal.<sup>10</sup>

On 19 November 1990, Nita Yin Yin May, believed to be in her early forties, a Myanmar national employed by the British Embassy, was sentenced on completely vague charges, by a military tribunal to three years' imprisonment. After the authorities had detained Chit Khaing and U Kyi Maung, they also picked up Nita and one Myanmar national who worked for the United States Embassy, as well as another who worked for the Australian Embassy. These two were released shortly afterwards, as was Nita. She said

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<sup>8</sup> *Bankok Post*, 1 June 1991.

<sup>9</sup> Amnesty International, "Urgent Action", 11 September 1990.

<sup>10</sup> Amnesty International, "Urgent Action", 6 October 1989.

that she had been asked all sorts of questions about her professional activities. She had also been asked about the document handed over by NLD for translation. She frankly told them about it.

Three hours after her release, she was detained again. The British Embassy protested. No one received a clear answer about the reasons. On 16 November 1990, the British Ambassador left for three weeks' holiday. By 19 November 1990 Nita had been convicted and sentenced. No one knew why. Later the authorities orally informed her that she had been convicted under Section 6 of the Official Secrets Act.

On 2 October 1990, General Saw Maung made it clear that he had no intention of tolerating any freedom of expression in Myanmar. He categorically said that SLORC "will not tolerate any organisation or individual if it is against us. Such things are called evil influences and interferences". On religious freedom, he said, "To put it in a nutshell, all religions in general prohibit opposing the government".<sup>11</sup>

So far as free speech is concerned, the position of SLORC has always been unequivocal. By Declaration 8/88 it had forbidden political parties from making "personal attacks on any individual person or any political party". It was "forbidden to organise, agitate, give talks, spread false and malicious rumours and write such materials with the intention of bringing about the disintegration of the Tatmadaw".<sup>12</sup> Even during the election campaign NLD was denied permission under the Press Law to use duplicating machines. It had to type and retype any paper which it wanted to circulate.

## **Crackdown on Political Leaders and Parties**

*The NLD leadership and the political opposition are being obliterated by outright killings, detentions and by imposition of long sentences of imprisonment. A number of NLD members who were elected are in jail. Some have sought refuge with the insurgents or in neighbouring countries.*

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<sup>11</sup> *Working People's Daily*, 4 October 1990.

<sup>12</sup> *Working People's Daily*, 20 October 1988.

*The number of elected NLD members is also being slowly and systematically reduced by disqualifying them on vague charges of forming a parallel government and conspiring with insurgent organisations. A number of these (PND, AFPL, LDP, NPFY) have recently been banned, and many believe that this is a prelude to the banning of NLD.*

*Sixty-four elected members of the Pyithu Hluttaw remain imprisoned, some without charge or trial and others with heavy sentences after summary trials. A number of sentences have even been increased.*

*Daw Aung San Suu Kyi, winner of the 1991 Nobel Peace Prize and Secretary General of the NLD, was detained on 20 July 1989 and remains in detention. In August 1991, SLORC announced revision in the law which permits detention without trial and under which she is held under house arrest. The new law increases the period of detention without trial from three to five years. Her release in the near future is unlikely.*

The NLD leadership and the political opposition are being obliterated by outright killings, detentions and by imposition of long sentences of imprisonment. A number of NLD members who were elected are in jail. Some have sought refuge with the insurgents or in neighbouring countries.

Daw Aung San Suu Kyi, winner of the 1991 Nobel Peace Prize and Secretary General of the NLD, was detained on 20 July 1989 and remains in detention. Officials maintain that she has no one but herself to blame. They say that she had been warned many times not to transgress the legal limits. She is, they allege, a highly charged person and ignored these warnings.

The authorities allege that she had contacts with underground students, acted at the dictation of foreign powers and that her actions were confrontational in nature. It is claimed that she is treated gently and is well looked after.

The fact is that she is not allowed to meet visitors, including the members of her family. The Independent Expert appointed by the United Nations Commission on Human Rights, Mr. Yozo Yokota, was refused permission to visit her during his mission to Myanmar on 21 to 26 October 1991. The

authorities have extended the period of her detention and there are no indications of her being set free. All this pressure is exerted to compel her to leave the country. The authorities have repeatedly stated that she is free to leave, but this brave woman has refused to succumb to the pressure of SLORC and has refused to leave.

In August 1991, SLORC announced revisions in the law which permits detention without trial and under which Aung Saw Suu Kyi is held under house arrest. The new law increases the period of detention without trial from three to five years.<sup>13</sup>

So effectively has SLORC sealed off Myanmar from information from the outside world that when the ICJ asked diplomats in the country whether the 1990 Sakharov Prize awarded by the European Parliament to Suu Kyi had any impact, it was told that there was no question of it having any impact as most people did not know about it. No one whom the ICJ met, including lawyers and judges, knew about it.

The people in general venerate Aung San Suu Kyi, intensely dislike the army and desire change. This augurs well for the future of democracy in Myanmar. But SLORC is not unaware of these feelings and is, therefore, unlikely to release Aung San Suu Kyi in the immediate future.

Sixty-four elected members of the Pyithu Hluttaw remain imprisoned, some without charge or trial and others with heavy sentences after summary trials. A number of sentences have even been increased.<sup>14</sup> The Chairman of NLD, Tin Oo, was initially sentenced to three years' imprisonment. In 1991 his sentence was reportedly increased to 17 years.<sup>15</sup> Kyi Maung and Chit Khaing, prominent NLD leaders, have been sentenced to long periods of

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<sup>13</sup> Lawyers Committee for Human Rights: "Human rights in Burma since the May 1990 national election", 18 October 1991.

<sup>14</sup> See the resolution adopted by the Inter-Parliamentary Council on 12 October 1991 at its 149th session, 86th Inter-Parliamentary Conference, Chile, 7-12 October 1991. See also the Report of the Committee on the Human Rights of Parliamentarians, 12 October 1991, 86th Inter-Parliamentary Conference, Chile 7-12 October, 1991, pp. 69-88.

<sup>15</sup> *Bankok Post*, 1 June 1991.

imprisonment and a large number of elected members of Parliament and hundreds of NLD officials have been arrested. A number of NLD offices have been raided and its supporters detained. It is apparent that the government has no intention of transferring power in the near future. NLD supporters and workers are continuously harassed. The ICJ found that NLD offices in different places were deserted at all times of the day. Neither the workers of the party nor the citizens visit these offices for fear of detection and persecution.

The number of NLD members elected by the people is also being slowly and systematically reduced by disqualifying them on vague charges of forming a parallel government and conspiring with insurgent organisations.<sup>16</sup>

The Party for National Democracy (PND) was banned on 20 December 1990 because its chairman, Sein Win, had fled to the Thai border and set up a parallel government, the National Coalition Government of the Union of Burma (NCGUB), together with some MPs elected from the NLD. SLORC de-registered the Anti-Fascist People's Freedom League (AFPL) on 1 February 1991, and arrested its Secretary-General, Cho Cho Kyaw Nein. On 4 February 1991, it de-registered the League for Democracy and Peace (LDP) founded by U Nu. The National Politics Front for Youth (NPFY), which had won three seats in the 27 May 1990 elections, has been banned. Many believe that this is a prelude to the banning of NLD.

## **Arrest of Monks**

***The regime has not even spared the monks. On 20 October 1990 SLORC banned and dissolved all Sangha (Buddhist Order of monks) organisations except the nine sects formed under their control and supervision. The Order also stipulated that political parties were "prohibited from carrying out activities for the benefit of their party by misusing religion". Political parties disobeying the Order were to be punished. On 21 October***

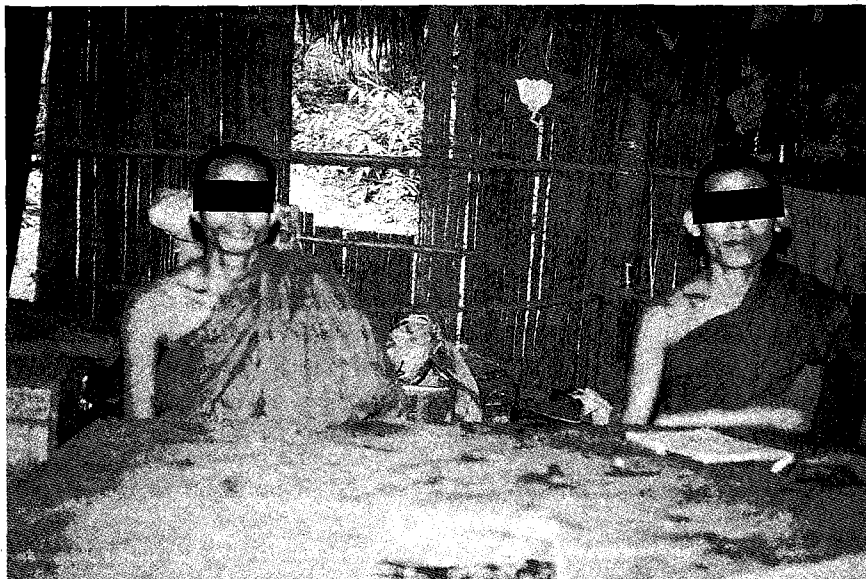
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<sup>16</sup> See Election Commission Announcement No. 903 of 26 December 1990, disqualifying U Win Ko, U Tun Oo, U Sein Win, U Than Kyune, U Hla Pe, U Peter Limbin, U Bo Hla Tint and U Thein Oo.

***1990 army commanders were authorised to bring monks before military tribunals for activities disruptive to Buddhism. The tribunals could deliver sentences ranging from three years' imprisonment to death. Immediately thereafter, troops surrounded monasteries in Mandalay and Yangon.***

The regime has not even spared the monks. By Order 6/90, promulgated on 20 October 1990, SLORC banned and dissolved all Sangha organisations of the monks except the nine sects of Sanghas and Sangha Organisations formed under their control and supervision. The Sangha Samaggi Organisation, the Young Sangha Organisation, the Presiding Sayadaws Sangha Organisation and similar Sangha organisations were abolished. The order also stipulated that political parties were "prohibited from carrying out activities for the benefit of their party by misusing religion". Political parties disobeying the Order were to be punished.

This was SLORC's response to the protest by monks which began when monks refused to minister to soldiers after troops in Mandalay broke up a demonstration in August 1990, killing two monks and two others. Order 7/90, issued on 21 October 1990, authorised army commanders to bring monks



*Monks who have fled to the Thai - Myanmar border*



before military tribunals for activities deemed disruptive to Buddhism. The tribunals could deliver sentences ranging from three years' imprisonment to death. Immediately thereafter, troops surrounded monasteries in Mandalay and Yangon.

On 25 April 1990, the Bangkok Post reported, quoting Phra U.H.M. Chan, a monk who had fled Myanmar, that two hundred Myanmar monks were in jail and a further three hundred were being detained for trial. Some of the monks, he said, had already been sentenced to ten to twenty years' imprisonment. On 1 September 1991, the Myanmar army arrested Sayadaw U Ottama, the abbot of the monastery in Chaung Zon township, and two other monks on charges of assisting the insurgent All Burma Students Democratic Front. Sayadaw U Ottama was reportedly disrobed and severely mutilated with a razor blade while interrogated in Tavoy.<sup>17</sup>

On 31 October 1990, SLORC, by Order 20/90, established one Sangha Organisation in the Union of Myanmar comprising all orders of the Sangha. This Organisation had been formed in 1980 by General Ne Win to regulate the clergy in a predominantly Buddhist nation. The nine sects of the Sangha approved by SLORC were listed in the Order. No new sect could be formed, the recognised Sanghas were given the right to discipline monks and novices and any speech or action against the Sangha Organisation was prohibited. Monks or novices who disregarded these laws were to be punished with imprisonment ranging from six months to three years.

## Forced Relocations

*SLORC has also relocated more than half a million people. They were moved from their homes in the cities without notice and without compensation to areas which were sometimes more than ten to fifteen kilometres outside the cities. The Government justified this action on the ground that it was removing squatters and cleaning up the cities. Not all the people moved were squatters, however. Some claimed that they had title deeds. The*

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<sup>17</sup> Lawyers Committee for Human Rights: "Human rights in Burma since the May 1990 national election", 18 October 1991.

*fact that most of these people, even if they did not have title deeds, had been living in these houses for decades and may have acquired title through adverse possession was conveniently overlooked.*

*Most of the people were moved to lands which were old paddy fields, were flooded during the rainy season and were often infested with malaria. The areas had not been prepared to receive people and there was no water, sewage connection or electricity; there were no schools, hospitals or other amenities. Most of those moved were poor and had jobs in the cities and were further burdened by the costs of fares. In many cases, these areas were not linked with the city centres or job centres by any means of transportation. In some cases, the persons who had been moved to these places had to spend hours travelling to and from work.*

*Those who showed reluctance to moving were threatened with force. Those who protested were arrested. The relocations were carried out for the reasons stated by the Government and also for other reasons. A number of settlements which had been active in the 1988 pro-democracy movement were razed to the ground, the people moved out, and where there had been a dense population there is now plain ground.*

When the ICJ asked about forced relocations, a foreigner living in Myanmar offered an explanation: "If you had read your guidebook you would know this is nothing new. Burmese kings were constantly moving their populations." Indeed, this is true.

A minority leader at Manerplaw, on the Thai-Myanmar border, offered a different perspective: "The Burmese army has been moving the populations of villages, in the areas of the ethnic minorities, from one place to another since independence. Forced relocations are not a new phenomenon. Only now what has been happening in the forests and villages of Myanmar for decades has become more visible. SLORC has replicated in the cities what the army was doing in the villages for a long time. The world has started taking notice now."

It is difficult to say how many people have been forced out of their homes and moved to far-away places. People inside Myanmar put the

figure beyond a million. Diplomats talk about hundreds of thousands of people being moved from the heart of urban centres to the outskirts of these towns. The United States State Department 1990 Country Report on Myanmar states that "it is difficult to estimate accurately the number forcibly resettled but a figure in excess of 500,000 is reasonable". The relocations have taken place in most major cities: Yangon, Mandalay, Patheingyi (Bassein), Prome and Taunggyi.

The government justifies these relocations on the ground that those moved were squatters. The action, it asserts, was necessary to clean up the cities and make beautification and development possible. Not all those moved were squatters, however. Not all lived in shanty towns or bamboo huts. A number of people had title deeds to their properties. Most of the others had acquired title through adverse possession under the laws of Myanmar. Though some settlements were on government land, a number of other people had moved into properties vacated by Indians, decades ago, and were now the owners, in fact as well as in law. Such legal niceties, however, could not stand in the way of SLORC once it had made up its mind. Concrete houses as well as bamboo huts were bulldozed. Those who had title by adverse possession, those who had title deeds and those who had no title were all treated equally unjustly. They were all compelled to move at very short notice.

Those who demonstrated reluctance in moving were threatened with the use of force. Those who protested were arrested. The Government of Myanmar has characterised these measures as standard economic development tools to clean up the cities and provide housing to squatters. The relocations have been carried out for the reasons stated by the Government as well as for reasons not so stated. A number of settlements which were active in the 1988 pro-democracy movement have been razed to the ground and the people moved out. Some of the first victims were those living near the offices of the Defence Ministry in Yangon. Many of them had participated in the 1988 movement. The dense population, the network of winding narrow streets, is now plain ground.

Hundreds of families were evicted from Bahan Township in Yangon in early 1990. Aung San Suu Kyi had announced her candidature in the May 1990 elections from this area. More than 500 houses in the area were

demolished.<sup>18</sup> Not all relocations are political. The price of real estate in the urban centres is high, and there are allegations that the Tatmadaw officers have made money in real estate speculation in areas vacated as a result of the relocation programme.

People who lived in the heart of urban centres were moved to new towns, sometimes as far as a hundred miles away from their places of residence and work. The new towns have not been developed, however. Many of them are not connected with the city by transport. There are no sewage facilities, no water connection, no schools, no hospitals or doctors, no electricity and no places of work nearby. Many of those re-settled spend more than half their wages travelling to and from work. Many of these new towns were in the middle of abandoned rice paddy land and are flooded in the rainy season. The occupants, exposed to the elements and deprived of all sanitation and medical facilities, fall victim to various diseases.

The military claims that it gave people money and materials to build new houses, and transported their building materials and household effects. While in some cases people confirm that the army provided transport for them and their families, they deny having been given either money or building material to construct the new houses. Virtually all those whom the ICJ interviewed denied having received any compensation for the loss of their home.

In the new town of Shwe Pyi Tha near Yangon, people claim that they had to pay kyat 3,000 to 5,000 to obtain a piece of land. The cost of building a small ten foot square bamboo hut is as high as kyat 1,000. Since most of these people are on subsistence wages, they had to borrow money at high rates of interest. Their average daily income is kyat 15. A round trip to Yangon alone costs kyat 10 a day. This creates a cycle of adversity and suffering which is difficult to break.

Those who could not afford the expense of Shwe Pyi Tha moved to Aye Mya Tha Ya, another new town, 150 miles from Yangon. The cost of

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<sup>18</sup> Bertil Lintner, "Clearing Out the Opposition", *Far Eastern Economic Review*, 25 January 1990.

buying land, building a house and going to town to work leaves little money even for the daily bread, and there is nothing left for the schooling of children. In many cases the children had to be taken out of schools and sent to work to make the two ends meet.<sup>19</sup>

A person in Pagan showed the ICJ a place which was now open land. "I used to live here. In June 1990, the whole village was moved. We were given no money as compensation and little help from the government. We were given some money for transportation. The authorities gave us no notice. They demolished our houses and we carried the bamboos and our belongings to where we were ordered to go. We are very poor people. It was raining. We were tired. Children cried, women wept but the authorities were not moved. We were moved to a place across the river. Ours was not the only village to be moved. Others were moved as well." The justification for the move was to clean up a city which is of great tourist interest.

The usual notice given to those moved was seven to ten days, insufficient time for a person to make the necessary arrangements to move house. In some cases in Pagan, a questionnaire was circulated asking the people where they would like to go to. Some wrote New York, Chicago, Washington. They were moved to worse places. The authorities first disconnected the electric and water supplies, then bulldozed the houses. "Except in a few cases," said a diplomat, "facilities had not been set up in the new towns. Living conditions were worse than sub-human. I have seen people cooking while standing in waist deep water."

The same diplomat claimed that the object of relocating these people may not have been a bad one. The military is in a hurry to develop roads and other facilities. Everywhere one sees projects under way. The relocations became inhuman because these were so poorly planned and badly executed. "You see, SLORC is quite short on imagination. It is working on old blue prints. In 1958 also a lot of people were moved to satellite towns. Yangon has spread since then and the satellite towns are now integrated with the city. The intention this time too may have been to discourage squatters, develop

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<sup>19</sup> Burma Underground Rights Movement for Action, "Life in Burma's New Towns", August 1990.

a better city and house people in proper places with proper facilities. But it all went awry. Instead of achieving these results, SLORC compounded the problem of the people and violated human rights.”

Another person in Myanmar explained the relocations as an attempt to set up cleaner new cities and clear up unpleasant squatter settlements. The manner in which the people were moved, he conceded, was extremely brutal. People were moved at very short notice and dumped on open lands in rural areas without any facilities. He doubted if the relocations were politically motivated. “You see, your approach is wrong. You do not understand them. They are a bunch of fascists. They have a fascist approach. They think of public works. They don’t think of people. They have little education, are simple-minded and think of things in absolutely black and white terms. They may not have done much in areas they have cleared. There may not be many facilities available in the new areas. But these SLORC chaps don’t think in such terms. The adverse effect on the education of children, the likelihood of these people being gripped by disease, the social and moral implications of these moves do not feature in SLORC thinking. They are oblivious to all this. They are not wicked. They are ignorant. A lot of the harm they do is simply due to misplaced zeal.” A spokesperson for SLORC told a news conference in Yangon, “About 50,000 households have been relocated in the new towns, where they are to have their own lands for their homes”.<sup>20</sup>

Own lands for own houses indeed - but at an exorbitant price, far away from all sources of life and livelihood, devoid of all facilities ranging from education and health to water and sanitation, and in the middle of abandoned rice paddy fields in waist-deep water. Whether it be misplaced zeal or deliberate cruelty, more than half a million people have been uprooted from their homes and forced to live in sub-human conditions.

Article 148 of the 1974 Constitution of Myanmar grants a citizen the right to settle and reside in any place within the State. Article 161 guarantees protection to the property, residential buildings and lawful possessions of citizens. But SLORC claims it is not bound by the 1974 Constitution.

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<sup>20</sup> “Military Regime Uproots 50,000 Families”, *Bangkok Post*, 21 April 1990.

## Forced Portering

*The military has for a very long time been using the villagers of the area as porters in its campaigns against the communist and ethnic insurgents. Now those arrested in the cities are also impressed into porter service. These porters, who include children, pregnant women, and the sick or elderly, carry food, supplies, arms and ammunitions for the army. They are paid nothing. They are used as human mine sweepers and to trigger ambushes. They are fed poorly, if at all, and when they fall ill they are left unattended. Few last for more than two to three weeks.*

Misplaced zeal cannot be pleaded as a defence for forced portering. Right from the early days of conflict between the ethnic insurgents and the Myanmar army, the leaders of the ethnic minorities have alleged that the army extorted money from the villagers and those who failed to pay were impressed into its service as porters. Refugees from the Tavoy area of Tanintharyi (Tenasserim) Division say that the army enforces a quota of one porter per family. Porters who subsequently manage to escape, report having been abducted from homes, fields, markets and wedding parties. "In many minority areas the conscription of porters is so commonplace that it has become an ordinary, though dreaded, expectation of life." In Lolikaw, Karenni State, the army took 1500 porters from their homes between 27 June and 29 June 1989, to prepare for an offensive against the rebels.<sup>21</sup> After SLORC seized power it started using the inhabitants of cities and political prisoners as porters as well.

Porters are given little to eat or drink and virtually no rest. They carry supplies, munitions and wounded for the army. They are placed at the head of army columns and are deliberately used to trigger ambushes and detonate mines. When they are wounded, fall ill or are totally exhausted, they are left behind by the army. Those who can, find their way back home. Those who cannot, die. Few last more than two to three weeks.

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<sup>21</sup> Dr. Em Marta, "Forced Labour in Burma", United Nations Working Group on Slavery, 1 August 1990.

On 26 October 1989, the Far Eastern Economic Review reported that in July and August 1989, "hundreds of political prisoners in Burma were used as porters for the Burmese Army during a counter-insurgency campaign in northern Shan State". Subsequently they were forced to search for precious stones and pan for gold in the Namtu-Mong Yen area of the State. At least 100 were reported to have died from illness, exhaustion and beatings since July 1989.

In impressing people as porters, the army shows no mercy to children, pregnant women and the sick or elderly. There are a number of reports of soldiers and commanders of the army executing porters in panic or on the slightest excuse. According to a minority spokesperson, "It is estimated that over 1000 porters lost their lives from land mines, crossfire, disease, exhaustion and execution at the hands of the Burmese Army during the 1989-1990 dry season offensive. Many more have been handicapped and emotionally scarred for life."<sup>22</sup>

In 1989, a diplomat in Yangon said, "We understand that political prisoners were conscripted to serve as porters in the north. There, they were given nothing to eat, made to walk barefoot, abused and taunted".<sup>23</sup>

The Kachins said that the prisoners were bound together by chains hand-to-hand, foot-to-foot and each was forced to haul heavy loads of rice over a distance of 40 kilometres of rough jungle terrain from Mongmawo-Mongyin to Namtu. They were stripped of their shoes and clothes and beaten.<sup>24</sup>

In April 1990, about twenty porters drowned in the Salween river when the Myanmar Army attempted to capture the west bank of the river

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<sup>22</sup> Statement presented by Dr. Em Marta, Secretary, Department of Foreign Affairs, Kayin National Union, to the United Nations Working Group on Indigenous Populations, Geneva, Switzerland, 23 July to 4 August 1990: "The war of annihilation against the indigenous people of Burma and the raping of their heritage forests".

<sup>23</sup> Quoted in Denis Gray, "Rangoon marching dissidents to death", *The Nation*, 13 September 1989.

<sup>24</sup> Ibid.



to link up with the Thai trading post of Mae Sam Laeb on the east bank. They had been chained in pairs and had been forced to carry supplies and munitions. When they reached the river, they tried to escape. Some were shot, some drowned.<sup>25</sup>

About 200 porters who crossed the Moei River on 22 July 1990 from Thay Baw Bo in Myanmar to Baan Muen Rue Chai in the Phop Phra District in Thailand said that they were forcibly conscripted in Myawaddy, Kawkareik in early July 1990. They were forced to carry heavy artillery shells to Pa Loo and Thay Baw Bo the base of the Myanmar army's 7th battalion of the 33rd Division. A Thai official said that the youngest of the group was a 13-year old boy, Maung Win. The oldest, Maung Oo, was 39 years old.<sup>26</sup>

Amnesty International has published eyewitness accounts of soldiers killing porters and has cited allegations of killing of porters and members of ethnic minorities.<sup>27</sup>

The Organisation and Information Committee of the Democratic Alliance of Burma (DAB) stated that two porters who escaped from the army told them that they had been sentenced under the Suspect Act, 1954, to work at the borders as porters. The law has been used to provide porters to the army. One had been picked up while walking in the streets, while the other had been taken from his home on the pretext of conducting a census.<sup>28</sup>

A few porters interviewed by the ICJ confirmed some of these reports. One of them was picked up in Yangon for breaking the curfew. Another was detained for loitering. They said that they were made to carry rice for the soldiers. They walked all day save for a break of fifteen minutes for lunch, when they were given plain rice with water. They were beaten by soldiers when they fell behind. There were over 50 porters in the custody of about 70 soldiers. A porter who fell ill or was unable to walk any more was

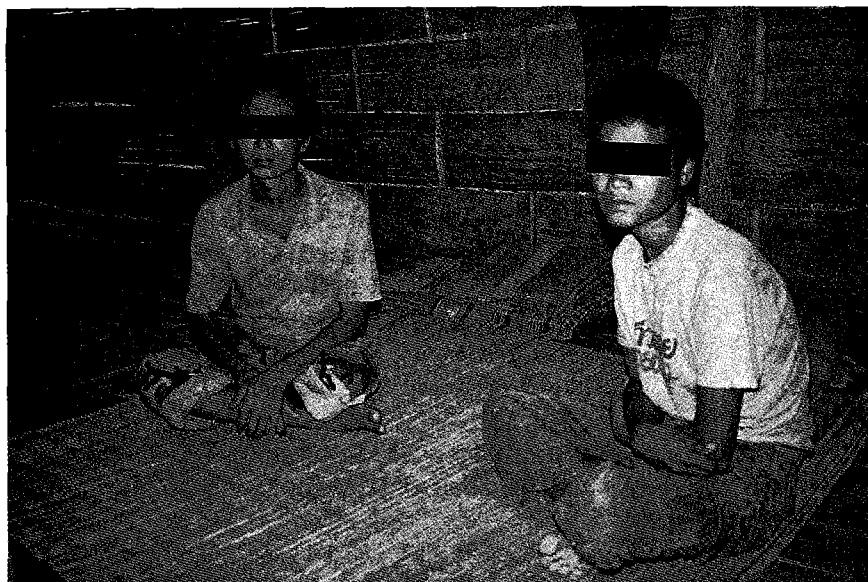
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<sup>25</sup> "Violence in Burma as elections near", *The Hindustan Times*, 11 May 1990.

<sup>26</sup> *The Nation*, 24 July 1990.

<sup>27</sup> For a number of such eyewitness accounts see Amnesty International, "Burma: Extrajudicial Execution and Torture of Members of Ethnic Minorities" (London, May 1988), pp. 25-29.

<sup>28</sup> The Alliance Bulletin No. 6, July 1989.



*Porters interviewed by the ICJ*

beaten but when he could not move at all he was left behind without any food or water.

In the Mon areas every household has to pay, the Mon leaders claim, kyats 30 a month. The money is collected by the headman of the village, who uses it to hire porters whom he selects. At other times the army picks up young men directly to serve as porters. Those who want to avoid porter service allegedly have to pay kyats 1,000.

Diplomats point out that though the Myanmar army routinely uses porters all along the border, they are not the only ones to do so. The areas in control of the insurgents are reportedly governed or administered no better than those under the control of the Myanmar army. Both sides are said to extort money from their subjects. Some insurgent leaders at Manerplaw admitted to taxing villagers. Both sides also allegedly force village populations from one area to another. Both sides, particularly the KNU, reportedly impress villagers into porter service. The charges are denied, however, by the leaders of the ethnic minorities and the insurgents.

## Refugees

*People are forced to flee the country to avoid persecution. A large number of refugees live in refugee camps on the Chinese and Thai borders. There are refugees in camps in Bangladesh and India as well. None of these countries, except for the People's Republic of China, is a party to the 1951 International Convention Relating to the Status of Refugees. The refugees are regarded as illegal immigrants and are at the mercy of the discretionary powers of the executive authorities in the host countries.*

People are forced to flee the country in order to avoid persecution. A large number of refugees live in refugee camps on the Chinese and Thai borders. There are refugees in camps in Bangladesh and India as well. None of these countries, except the People's Republic of China, is a party to the 1951 International Convention Relating to the Status of Refugees. The refugees are regarded as illegal immigrants and are at the mercy of the discretionary powers of the executive authorities in the host countries.

As many of the ethnic minorities live on both sides of the borders, the refugees from the minority communities can find refuge with members of their respective tribes living across the border and are therefore in a better position than the Barmars and students. As time passes and there is no solution in sight, frustrations grow. Many of the students who practiced and preached non-violence are turning to violent means and either joining insurgent groups or forming such groups on their own. ABSDF has also taken up arms and education ranks very low on its list of priorities.

## Chapter 5

### The Environment and the Economy

*In order to bolster its dwindling financial reserves, SLORC has granted concessions to a number of oil companies, is encouraging private investment and has granted major logging and fishing concessions to its neighbours, mainly the People's Republic of China and Thailand. The forest destruction on both borders is intense, but brings in much-needed foreign exchange to SLORC and also helps destroy the forest cover which makes many of the insurgent activities possible. The impact on the environment of the area and the people who have always lived in the forest appears not to concern the Governments of Myanmar, the People's Republic of China and Thailand. While Myanmar has still more forest than any other South-east Asian country, if current policies do not change, they will lead to a deforested, impoverished, barren and economically devastated country.*

*Despite condemnation of SLORC's human rights record, the United Nations is actively engaged in development programmes inside Myanmar. A number of countries and foreign companies are also doing brisk business in investment and trading relating to aircraft, arms, automobiles, banking and finance, consumer goods, electronics, hotel tourism, machinery, mining, oil and gas, shipping, textiles etc. These activities bring in the needed foreign exchange and benefit SLORC by creating a false prosperity. To achieve this very end and to make consumer goods available to the people, SLORC turns a blind eye to the smuggling of goods across its borders. Nothing is done to check the growth of corruption on the black market, where dollars and pounds can be sold at a rate nine times higher than the official rate.*

It is essential to understand that the kyat, the currency of Myanmar, has at least three exchange rates. At the official rate, kyats 5.68 equal US \$1. At this rate everything is too expensive. A bottle of water costs kyats 15 (US \$2.64), a bottle of soda is priced at kyats 20 (US \$3.52) and beer is kyats 35 (US \$6.16). An egg sells for three kyats (US \$0.53). One can sell a pack

of Dunhills or any imported cigarettes for kyats 50, a bar of Cadbury for kyats 65, a Johnny Walker Red Label for kyats 800. On the black market one can sell a US dollar for kyats 60 to 70. At this rate, things in Myanmar are cheap.

Then there is the official and unofficial price of everything. At the official rate things are not available and services cannot be performed. At the unofficial rate all commodities are available and one can give every possibility a run. At the controlled rate of four kyats a litre, one has to queue for petrol and one receives only a small amount as a fixed quota, which is inadequate even for minimum needs. On the black market, petrol is kyats 60 a litre and available in plenty. From obtaining a passport to securing a job, there are two ways of getting things done in Myanmar. The official and cheap way (nothing gets done this way) and the unofficial way, which is very expensive but is the way to make things work. Even when one goes through a check-post one has a choice between a body search and paying kyats 100.

There is a lot of construction activity in the urban centres of Myanmar. SLORC claims that it wants to develop the country and to develop it fast. The real reason for all this construction activity, one is told, is that all the major construction companies are either partly owned by senior military officers or have these officers on their payrolls. The regime claims that it is liberalising. It points out that people are now issued passports and allowed to go out far more liberally than in the past. The real reason, one was informed, is that General Saw Maung wants to get rid of the trouble-mongers. "If they want democracy let them go and look for it in another country", appears to be the attitude now.

A diplomat said that corruption existed at every level. Both the civil and military bureaucrats make money. A citizen said that since 1988 the rates and the level of corruption have increased. Another citizen said:

"Much of it is not corruption, really. If you want to get things done in a hurry, you have to pay. You cannot call it corruption. In a centrally-controlled country with power vested in a few people and limited resources, the officials see no reason why they should not get paid, particularly as they are paid so poorly by the government, for doing things expeditiously and efficiently. The official

involved with development believes that he too must profit from what he is creating. Business is doing well, so he must have a share”.

In Yangon there are no high-rises, no office rush, hardly any traffic, no foreigners on the streets and no western dress. There are no Hiltons, no fast-food restaurants, no girls on sale. The conspicuous consumerism of neighbouring Thailand is conspicuously absent. At night it appears a nice, clean, content place.

In the morning when one goes out, the nice, clean, content images of the evening do not survive. There are beggars everywhere. Children, young men and elderly beg for money or anything else they can get. One is constantly accosted by those who want to buy foreign things - cigarettes, T-shirts, whisky, sunglasses, chewing gum. Everything is in demand so long as it is foreign. Sealing the country off from the rest of the world has made the citizens of Myanmar famished for contact. SLORC, which so ruthlessly suppresses the slightest deviation from its draconian laws in the realm of politics, looks the other way. It allows the blackmarket to flourish. It is keen to create a false sense of prosperity.

In the cities close to the Thai border, where consumer goods are smuggled in by the truck-load, there are no takers for cigarettes and T-shirts. Here, people in jeans and shirts are visible and tourists have to use cash. No one wants foreign goods here. They are all available in the market. The ICJ visited a cheroot factory. Women were working in an oppressive, smelly room with no fans and improper ventilation for twelve hours. They work from six in the morning till six in the evening. They are paid three kyats for making a hundred cheroots. A girl makes about a thousand cheroots in a day and receives kyats 30.

The average wage of a working person keeps him/her deeply mired in poverty. Government servants, too, complain that salaries are inadequate. In 1990 the Government doubled the salaries but the civil servants complain that the rise was inadequate. Even after a 100% increase, the salaries have not kept pace with inflation. Government servants do not do too badly, however. Corruption keeps them in money. The ordinary farm

hands or industrial workers have not even corruption to fall back upon. Quite often they are a victim of it.

Unless the economy recovers on a grand scale there is little hope for them. The regime knows that if the economy collapses, its political power will come under severe challenge. Thus, while on the one hand it wants to keep Myanmar isolated and sealed off from the rest of the world, on the other hand it needs foreign economic aid and investment to bolster the economy. It is selling and is prepared to sell everything to retain political control. The political opposition, the Myanmar citizens in exile, students and the ethnic minority leaders all oppose trading with, aid to or investment in Myanmar. If the economy takes a dive, they believe, SLORC may relax its grip. They argue that those who aid, trade or do business with SLORC are helping it entrench itself.

What they say makes sense.<sup>1</sup> In 1988, the economic collapse of the regime seemed imminent. Towards the end of 1988, Myanmar was tottering at the brink. Almost all of its foreign aid programmes had been suspended, trade was down to a trickle and its foreign debt had risen to US \$5.98 billion. At the end of 1987, it required US \$238 million a year just to service this debt. On 18 September 1988, its foreign-exchange reserves were down to less than US \$10 million. Out of these, half were in credit notes which the regime was not sure it could encash.

SLORC revived its fortunes by deals in drugs, award of oil and gas concessions and exploration contracts to the companies of many developed countries, through trading with its neighbouring countries and even through the aid received from the United Nations. It sold its timber reserves, its forests, fisheries, mines and labour to neighbouring countries, particularly China and Thailand in exchange for foreign exchange and arms.<sup>2</sup> All along the Sino-

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<sup>1</sup> Others, such as Professor Robert Taylor of the School of Oriental and African Studies in London, disagree. They argue that the soldiers are nervous. "They are not going to give up their rice bowls until they see there is enough rice to go around for everybody." This leads him to suggest that the current international boycott of aid is helping to keep the army in power. See David Spark, "Is there any hope of change in Burma?", *Dawn*, 11 November 1991 (*Dawn - Compass News Feature Service*, Review of Harriet O'Brien, **Forgotten Land**, Michael Joseph, London).

<sup>2</sup> Burma Update No. 11, 18 May 1990.

Myanmar border, the ICJ was told, one can see construction projects. The citizens of Myanmar are given passes for up to six months to go and work in China.

It is alleged that the army has formed an alliance with the former Communist Party and is actively involved in the drug trade. The military has not taken any action against the famous drug baron Khun Sa and it was reported that Burma produced more than 2600 metric tons of opium in 1989.<sup>3</sup>

Since December 1988, SLORC has opened the country to investment in virtually every venture. In order to attract more capital, an extremely liberal new foreign investment law was enacted which allowed 100% foreign-owned firms to invest in Myanmar and permitted 35% or more foreign investment in joint ventures. The law also guaranteed that foreign-owned assets would not be nationalised. Foreign investors were allowed to repatriate profits and tax exemptions were provided for a minimum of three years. SLORC's new foreign investment law and policies were the antithesis of the "Burmese Way to Socialism" in which the regime owned and controlled everything. Under the new foreign and private investment law, contracts have been made ranging from logging of forests and fishing in coastal waters to building hotels and establishing factories, from producing, sewing and finishing cheap clothing to oil and gas explorations agreements. By one estimate, more than 200 such contracts were signed in a very short period of time. So desperate was the regime for cash and foreign exchange that it even sold off a portion of its Tokyo Embassy to add to its foreign exchange reserves.

Some unprecedented business deals were signed between the Myanmar authorities and several Thai companies. "B & F, Thai Sawad, Thai Pong, Santi Forestry, Chao Phya and Irrawaddy and Sirin Technology got permission to fell 50,000 logs a year inside Burma for a period of three years. Two Thai fishery companies, the Atlantis Corp. and Mars & Co., received permission to catch 250,000 tons of fish each in Burma waters. A small firm, the Thip Tharn Thong, signed a contract to barter US \$10 million worth of used cars and machinery in exchange for Burma gems, jade and pearls".<sup>4</sup>

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<sup>3</sup> *Far Eastern Economic Review*, 22 February 1990.

<sup>4</sup> Bertil Lintner, *Outrage*, p. 221.



By 9 February 1989, according to a news report, some 211 fishing vessels from eight different Thai, Malaysian, Singaporean, South Korean and Hong Kong companies were catching fish and prawns. The government received about US \$17.7 million from these concessions.<sup>5</sup> The life, lifestyle and livelihood of the local fishermen were badly affected. They protested but no one listened. They asked the insurgents for help. A Thai trawler was blown up. The response was greater co-operation between the Governments of Thailand and Myanmar and a stepping up of military operations against the insurgents.

After 18 September 1988, many governments withheld aid to Myanmar till such time as the human rights situation improved. Most of them, however, were later found trading with SLORC, at times directly and openly, but more often surreptitiously. On 8 September 1989, the European Community expressed its concern about the deteriorating human rights situation in Myanmar. On 11 July 1991, the European Parliament passed a resolution condemning "the atrocities committed by SLORC against its own people", urged the "need to establish a complete arms embargo on Burma while gross abuses of human rights continue" and stressed "its concern that China appears to be supplying SLORC with US \$1.3 billion worth of weapons".

SLORC's major trading partners are China, Japan, Korea, Singapore, Taiwan and Thailand. The government sold logging and fishing rights to Thai companies, logging rights and rights of jade exploration to the Chinese and oil-exploration rights to a number of multinationals. Shell Explorations of Holland, BHP of Australia, Croft Exploration of Britain, Petro Canada Resources owned by the Government of Canada, Indemitsu Oil Development of Japan, Yukongko of South Korea, Amoco, Exxon and Unocol of the United States and Elf of France signed oil-exploration and production-sharing contracts with the Myanmar Oil and Gas Enterprises. It is reported that each company paid a license fee of US \$5 million.<sup>6</sup>

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<sup>5</sup> *Working Peoples Daily*, 15 February 1989.

<sup>6</sup> Burma Alert No. 1, 3, 5 and 6, 1990.

The regime has also entered into a number of deals for the purchase and sale of other commodities as well as for the purchase of arms. Many countries, including Belgium, Britain, China, Holland, Israel, Italy, Pakistan, Singapore, Sweden, West Germany, Yugoslavia have reportedly sold arms directly or indirectly to the Myanmar regime since 1988.

A number of countries and foreign companies are engaged in investment and trading relating to aircraft, arms, automobiles, banking and finance, consumer goods, electronics, fisheries, hotel tourism, machinery, mining, oil and gas, shipping, textile, timber etc.<sup>7</sup>

In March 1990 it was reported<sup>8</sup> that Kirkland Reserves, a British company, had been awarded an oil- and gas-exploration and production-sharing contract. It is reported that Pepsi Cola has been building a US \$3 million factory in the outskirts of Yangon which is likely to be completed shortly. BHP Petroleum of Australia was reported to have signed another oil-exploration and production-sharing contract. Idemitsu Oil Development Company of Japan also signed a second contract. The petroleum authorities of Thailand took a 10% interest in a petroleum concession in Myanmar and agreed to invest baht 30 - 40 million in the project. Petro Canada paid Canadian \$6 million as a signing bonus to the regime for its oil-exploration contract and agreed to invest Canadian \$22 million in that project.<sup>9</sup>

Eleven Japanese trading companies, which were allowed by Ne Win to maintain a presence in Yangon in 1965, are also operating. The most prominent of these are Nissho Iwai, Mitsui & Co., Mitsibushi Corp., Kinsho Mataichi and Marubeni Corp. They are mainly engaged in the purchase of teak wood, of which Myanmar is the world's principal supplier.<sup>10</sup>

On 1 January 1991, the daily Nation reported that China and Burma have signed a US \$1.2 million arms deal in which China was to sell twelve

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<sup>7</sup> See issues of Burma Alert 1990 and Burma Alert 1991 for details of these transactions and lists of foreign firms.

<sup>8</sup> Burma Alert, No. 3, 1990.

<sup>9</sup> Burma Alert, 1990 and 1991.

<sup>10</sup> *Far Eastern Economic Review*, 8 August 1991, p. 57.

F-6 fighters to Myanmar. The Nation reported that pursuant to an agreement signed between the top military leaders of the two countries three months earlier, Myanmar was to receive a long list of war weaponry and materials. As part of the programme, 400 - 600 officers of the Myanmar Army were also to be trained in Chinese cities. China had also agreed to provide 60 medium size tanks, 25 anti-aircraft guns with multiple barrels, a number of 120 mm and 105 mm Howitzers, 6 thirty-knots patrol boats, 12 F-7 fighters, a number of shoulder-fired HTM 5-A missiles and 9 armed personnel carriers.

China has become Myanmar's major arms supplier - with this tiny poverty-stricken nation making annual arms purchases in the US \$1 billion range.<sup>11</sup>

Myanmar also bought a squadron of G-4 Super Galeb light strike and training aircraft from Yugoslavia. Myanmar pilots have been training in the planes since June 1991.<sup>12</sup>

Analysts say toughening of the armed forces is part of a strategy to preserve the military's supremacy and control the population. Myanmar army helicopters have been seen over the border areas and Chinese-made armoured vehicles, equipped with cannon and machine guns, now routinely patrol the roads along the frontier. In interviews with Jane's Defence Weekly, refugees in the border area claim that their villages have been demolished and their land confiscated to make room for new army camps and installations.<sup>13</sup> A Dhaka-based Western diplomat said, "The number of government troops in the border area has more than doubled over the past year and is now believed to be close to 10,000".<sup>14</sup>

The Nation, on 8 June 1991, reported that Pakistan had recently provided artillery and ammunition to Myanmar. The arms deals included howitzers, mortars and spare parts. The report also mentioned that Pakistani military advisers were in Myanmar training Myanmar troops.

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<sup>11</sup> Bertil Lintner, "Burmese army gains muscle", *Dawn*, November 1991 (*Dawn/The New York Times Special Features Service in Jane's Defence Weekly*).

<sup>12</sup> Ibid.

<sup>13</sup> Ibid.

<sup>14</sup> Ibid

The regime is not interested in real development, a permanent change in the economic conditions of the people or in the elimination of poverty. It is interested in and has found ways to generate sufficient funds to survive. It has found a number of trading partners to make a variety of lucrative deals.

From \$10 million in September 1988, Myanmar's foreign-exchange reserves rose to \$150 million in June 1989, reaching an official peak of US \$550 million in September 1990. The International Monetary Fund (IMF) estimates that foreign-exchange reserves in January 1991 totalled US \$310 million. Unofficial estimates, compiled by embassies in Rangoon and including military rake-offs from the timber, gem and narcotics trades, indicate that Burma's total foreign-exchange holdings may be as high as US \$850 - 900 million.<sup>15</sup>

The United Nations programmes in Myanmar have also helped the regime to resolve the economic crisis. The aid by United Nations agencies is all the more surprising as the United Nations Commission on Human Rights had in 1989, 1990 and 1991 called on the Government of Myanmar to respect human rights and grant fundamental freedoms to its people. The decision by the United Nations Development Program (UNDP) to grant US \$2.5 million for reforestation and US \$12.5 million for development of border areas in Myanmar was strongly condemned by ABSDF. It pointed out that past experience confirmed that all economic aid to Myanmar was used to build up military strength or line the pockets of the officials. It asserted that in the past medical supplies by the World Health Organisation (WHO) and the United Nations Childrens Fund (UNICEF) had been diverted and pointed to the staffing of the Myanmar Red Cross by army officers as an example of the regime's mentality.<sup>16</sup>

UNDP is spending, amongst other things, money on study of traffic problems in Yangon, a city which has hardly any traffic, let alone traffic problems.

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<sup>15</sup> *Far Eastern Economic Review*, 8 August 1991, p. 57.

<sup>16</sup> *Bangkok Post*, 10 October 1990.

The United Nations Fund for Drug Abuse Control (UNFDAC) operates with a narcotics programme in Myanmar. Diplomats and politicians are skeptical about this programme, pointing out that it is hardly likely to be successful in a country where virtually all the top military officials are also involved in the production, manufacture and trafficking of drugs. A diplomat pointed out that she had heard of one place, at least, where narcotics had never been grown, where UNFDAC was running a crop subsidy programme.

Besides these, a number of other United Nations agencies, including UNICEF, the Food and Agriculture Organisation (FAO) and the United Nations Educational, Scientific and Cultural Organisation (UNESCO) are also actively involved in Myanmar.

All this and more provided SLORC with the breathing space it wanted. It survived, and trade in the north is now booming. There have been a few good harvests and the rice farmer is happy. Yet the inflation rate is high, the rate of literacy is declining and the rate of child mortality is going up. While the sewage overflows and people live in insanitary conditions, the authorities paint pavements to give an impression that the country is developing.

The strains on the economy may have been dissipated but have not been eliminated. In 1988, the army totalled 185,000 to 190,000. In late 1990, it numbered an estimated 230,000. In early 1991 it was believed to be closer to 280,000. The aim, according to well-informed sources in Yangon, is to reach 300,000 before the end of the year. "We have reports indicating that the final goal is a 500,000 strong, well-equipped military machine", said one Rangoon-based source.<sup>17</sup> This increase in the size of the army was in spite of the fact that the economy of Myanmar was in deeper trouble than was apparent, according to the figures released in 1990. The rate of growth in the gross domestic product in 1988-89 was minus 11.4%. It had remained negative for three consecutive years, beginning in 1986-87. The price of all the basic commodities had increased and, according to the figures released by the Myanmar

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<sup>17</sup> Bertil Lintner, "Burmese army gains muscle", *Dawn*, November 1991 (*Dawn/The New York Times Special Features Service in Jane's Defence Weekly*).

Ministry of Planning and Finance, the production of a number of important commodities had declined between 1984 and 1989. These commodities included butter, soap, cotton, yarn, gunny bags, fertilizers, sugar, cement, plywood, paint, tin concentrates and refined lead. The price of all basic commodities, including rice, cooking oil and food items registered an increase.

The Government sought to resolve this problem by creating a false prosperity, by encouraging the black market economy and turning a blind eye to the smuggling of consumer items into Myanmar. As a result, Myanmar now has a flourishing black market. In some places 70% to 80% of the goods available have been smuggled and are extremely expensive for the average citizen.

Since it took power, SLORC has plundered the forests and waterways of Myanmar. Some of these policies suit the immediate neighbours of the country. By November 1988, Thailand had depleted its forest cover from two-thirds of its total area to less than one-third. In that month, heavy rains in the south of Thailand led to soil erosion and massive mud slides, killing 351 people and destroying about US \$20 million worth of property. The then Prime Minister of Thailand, Chatichai Choonhavan, undertook to hold off on the deforestation and on 28 November 1988 stopped the issue of new logging concessions. He asked the Cabinet to revoke the existing logging permits nationwide. Conservationists were happy. The timber barons were upset.

On 14 December 1988, the then Thai Army Commander, General Chaovalit Yongchaiyut, went to Yangon. A number of deals were struck. SLORC, in need of money, sold off timber, gems and fish. The Thai timber barons, deprived of the use of the remaining forest cover of Thailand, now had Myanmar's forests to plunder.

By early December 1988, a large number of Thai logging companies were making deals with the regime in Myanmar. By February 1989, twenty concessions had already been contracted along the Thai-Myanmar border, with a total export of 160,000 tons of teak logs and 500,000 tons of other hardwood logs. Myanmar's Timber Corporation estimated a revenue of US \$12 million a year from logging.

A further twenty concessions were granted in 1989, to a number of companies both with and without experience in forestry. Many of these companies had major shareholders connected with politicians of the ruling coalition or with senior military men.<sup>18</sup> One report stated that there were 46 concessions granted.<sup>19</sup>

It was expected that the concessions awarded in 1989 would generate US \$200 million in 1989 for SLORC.<sup>20</sup> The Minister for Fisheries and Livestock Breeding, Agriculture and Forestry, Lt. Gen. Chit Shwe, announced that Myanmar had the potential to produce 8 million cubic meters of teak and hardwood logs.<sup>21</sup>



*Trees cut and piled ready to be trucked*

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<sup>18</sup> Hamish McDonald, "Partners in plunder," *Far Eastern Economic Review*, 22 February 1990.

<sup>19</sup> Environment Research Division, Manila Observatory, "A Report on the Forestry Activities of Burma and the Stability of Moulmein Watershed and Tenasserim Region", November 1990.

<sup>20</sup> ABSDF, Dawn, "Destruction of the Forests," Bangkok, 1990.

<sup>21</sup> Environment Research Division, op.cit p. 2.

A visit to parts of the Thai-Myanmar border makes the nature of the destruction apparent. All along the Thai side of the border there are huge timber yards full of teak logs and several other kinds of timber. On the roads leading to border towns there is a constant movement of loaded timber trucks. On the Myanmar side, one can also see the logging operation in progress. Large numbers of trees have been cut and piled high at several places, ready to be trucked. Virtually everything has been logged away. In a letter written on 14 June 1990 to the Thai Prime Minister, the environmental organisation Greenpeace expressed the apprehension that at the current rate of destruction the forests of Myanmar may not last for many years.

On 5 February 1990, the Rain Forest Action Network of California had already expressed the fear that if indiscriminate cutting of trees and the destruction of 20 to 30 young trees while felling one large tree was not stopped immediately, the tropical forests in Myanmar would not have more than two years left. It called for a United States ban on the import of all teak and other hardwood products from Myanmar.

On 14 June 1990, Greenpeace reiterated what it had said earlier. However, the UNDP office in Yangon, headed by Michael Gautier, claimed, after a year of logging by the Thai companies, that the slash and burn activities of the local communities were responsible for much of the damage to the forests. It denied the destructive effects of Thai logging activities in Myanmar.

So far as SLORC is concerned, these concessions serve a dual purpose. They generate much-needed revenue while at the same time destroying the forest cover of the areas. The Myanmar military has been using the Thai logging roads to increase their attacks on ethnic groups such as the Kayins and the increased fighting near the border has forced thousands of Kayins and other citizens of Myanmar to flee to Thailand.

The economic collaboration between the Thais and SLORC has also brought them together to pool their efforts in wiping out insurgents and ethnic minorities who live in these border forests, many of whom are active against the military regime in Myanmar. The Thais cooperate with the army of Myanmar because they can thus avoid making payments to the insurgents



and will have one less party to deal with and pay. On a number of occasions the Thai Government has looked the other way while the Myanmar military used Thai territory to attack insurgent bases from the rear. Many of these bases, which were considered safe fortresses and had been in the control of the minorities for decades, have now, with Thai cooperation, been overrun. The destruction of the forests and the depletion of the fish stock as a result of fishing licenses being granted to Thai and Japanese companies in the Martaban Gulf, are destroying the environment, homes and foodstocks of the ethnic minorities and have lead to several clashes between them and the concession operators.

The ICJ was not able to visit the Sino-Myanmar border but persons who had been to the border speak of phenomenal destruction of forests and logging all along that border. It is also said that the destruction of forests on the Thai-Myanmar border pales in significance when compared with what is happening on the borders with China. The ICJ was told that one sees piles and piles of timber about to be trucked into China and there is a steady stream of timber trucks on the Chinese roads leading to and from the border with Myanmar. Observers in China's Yunnan province say that between 80 and 100 timber trucks from Myanmar cross the Chinese border each night, a far greater number than those crossing into Thailand on behalf of Thai companies that have secured the lion's share of officially acknowledged timber concessions.<sup>22</sup>

It is reported that the Chinese are logging not only huge and medium-size trees but even that small trees and bamboos are being cut. Literally everything is cut from a fifteen-cm girth tree to a massive tree; from teak and hardwood to a bamboo stick. The devastation in the northern Shan State of Myanmar is, reportedly, unbelievable. It is said that it is easier for the logging companies to operate in that area because there is no fighting in any part of the Shan State at the moment and, unlike the Thai-Myanmar border, the insurgents are not active there. In some areas the destruction is so great that the monks have intervened, pleading with the authorities to leave some trees for shade. Even by a conservative estimate, if the destruction goes on at this rate, the damage may be irreparable in a few years' time.

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<sup>22</sup> *Far Eastern Economic Review*, 8 August 1991, p. 57.

While Myanmar has still more forests than any other South-east Asian country, if current policies do not change, they will lead to a deforested, impoverished, barren and economically devastated country. If something is not done to stop the damage to the environment of Myanmar immediately, the country's face may be changed forever. This, and a once proud people begging everywhere and for everything, may prove to be the most lasting legacies of SLORC.

# **Conclusions and Recommendations**

SLORC continues General Ne Win's policies. The only change is an increase in brutality. General Ne Win is widely believed to be omnipotent. He may have formally stepped down from power in 1988 but no one in Myanmar believes that he is not in control. People are reluctant or even afraid to call him by name. He is referred to as "Number One", the "Old Man", the "Top" and by the more daring, in private only, as the "Butcher".

## **Recommendations to the International Community**

Neither under the general principles of law nor the constitutional law of Myanmar has SLORC any right to hold power after the people have expressed their wishes in favour of a NLD Government. Continued SLORC rule also violates Article 21(3) of the Universal Declaration of Human Rights, which declares that the will of the people as expressed in a genuine election shall be the basis of the authority of government.

Though there is little chance of a transfer of power to the democratically elected representatives of the people in the near future, the international community cannot turn a blind eye to the excesses of SLORC and turn its back on the people of Myanmar. The international community must make the following demands:

1. that SLORC immediately lift restrictions on all political parties, including the NLD, and transfer power to the elected representatives of the people;
2. that there be immediate release of Aung San Suu Kyi and all elected representatives of the people, as well as of those who have been

detained or imprisoned for exercising their internationally-guaranteed democratic rights of free expression, assembly and association;

3. that torture, forced portering, forced relocations and other violations of human rights be stopped immediately;
4. that the International Committee of the Red Cross be given access to Myanmar prisons;
5. that military tribunals be abolished and all those who have been sentenced by such tribunals be tried by civil courts;
6. that conditions be created wherein an independent judiciary can function free from interference by the other branches of government or the military.

Until such time as these demands are fulfilled, the international community should impose strict economic sanctions, including an arms embargo, on the Government of Myanmar. Myanmar, in 1962, was the richest land in South-east Asia and could probably afford isolation. Twenty-nine years of Ne Win and SLORC rule have reduced it to a "least developed country", as designated by the United Nations. The Government of Myanmar will find it increasingly difficult to ignore international opinion if sanctions are honestly and effectively imposed.

The Governments of Bangladesh, India, the People's Republic of China and Thailand should grant asylum to the refugees fleeing persecution in Myanmar. These governments should allow the United Nations High Commissioner for Refugees to provide protection to these refugees.

The international community should provide financial assistance for the education and training of the political dissidents and the members and supporters of the Provisional Government in fields such as politics, economics, finance, management, administration, law and diplomacy. Education and training will help the citizens of Myanmar in their struggle for democracy. They are in much need of such skills. Even after they succeed, the task will not be an easy one. Virtually every institution which can

sustain democracy has been dismantled in the last thirty and more years of direct and indirect military rule. The new government will face a variety of problems, ranging from evolving a constitutional consensus and rebuilding society to control of the narcotics trade and development of the economy. The dissidents will need these skills even more at that time than they need them now.<sup>1</sup>

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<sup>1</sup> Josef Silverstein, "Burma's Six Domestic Challenges in the 1990s" (19 October 1990).

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