

The Parliament of the Commonwealth of Australia

Joint Standing Committee on Foreign Affairs, Defence and Trade

**A Report on Human Rights and the Lack of Progress Towards Democracy
in Burma (Myanmar)**

October 1995

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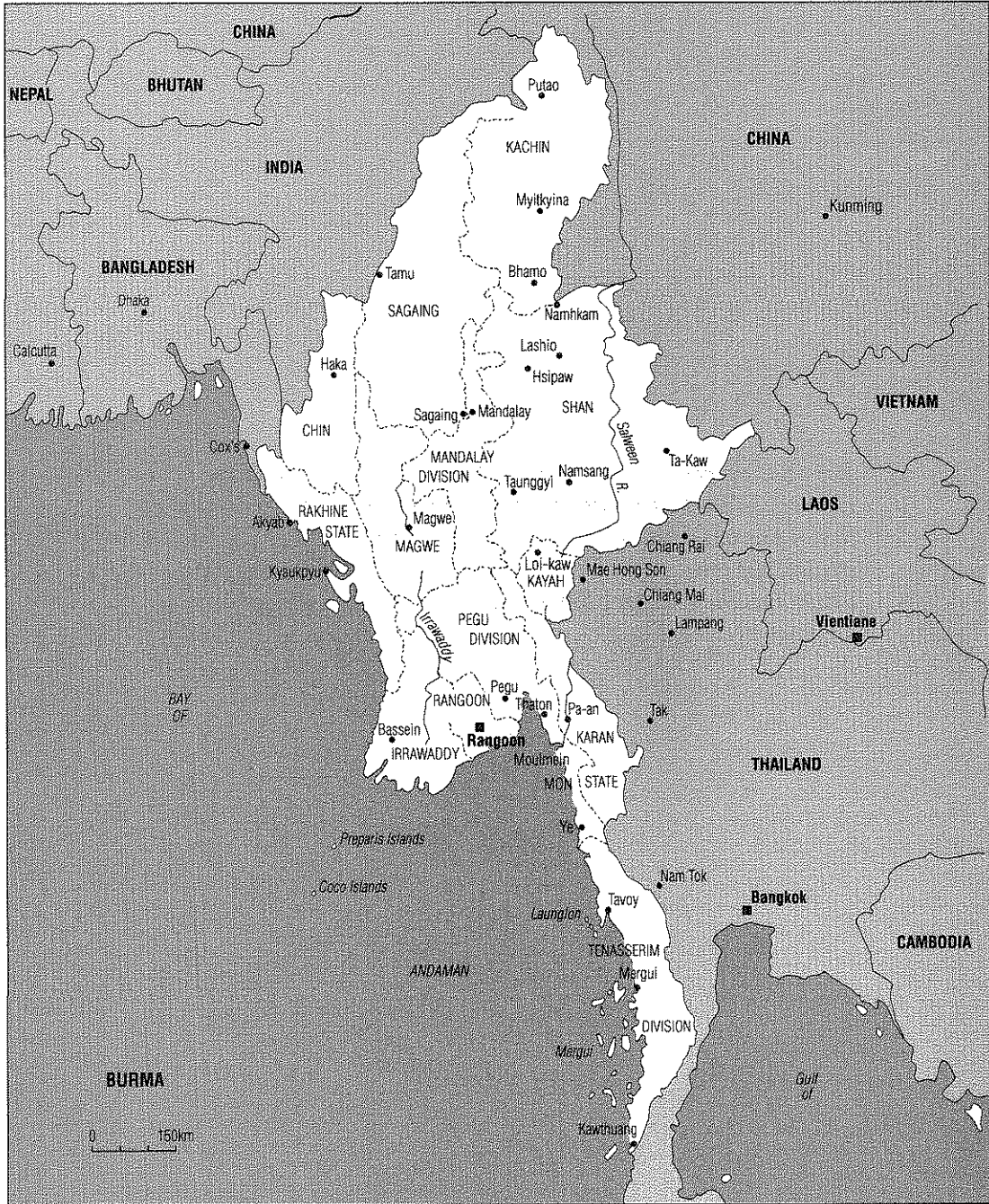
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We give express charge that in our marches through the country there be nothing compelled from the villages, nothing taken but paid for, none of the people upbraided or abused in disdainful language; for when lenity and cruelty play for a kingdom, the gentler gamester is the soonest winner. (William Shakespeare, King Henry V)

MAP OF BURMA



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Terms of Reference

1994-1995

To inquire into and report on the human rights situation and lack of progress towards democracy in Myanmar (Burma).

This matter was referred to the Human Rights Sub-Committee of the Joint Standing Committee on Foreign Affairs, Defence and Trade by a resolution of the Senate on 2 March 1994.

Membership of the Committee

37th PARLIAMENT

Senator S Loosley (Chairman) (to 19 May 1995)
The Hon. L R S Price, MP (Chairman) (from 7 June 1995)
Hon M J R MacKellar, MP (Deputy Chairman) (to February 1994)
Mr R G Halverson, OBE, MP (Deputy Chairman) (from 23 February 1994)

Senator M Beahan (to February 1994)
Senator V W Bourne
Senator D G C Brownhill
Senator C Chamarette (to September 1993)
Senator H G P Chapman
Senator B K Childs
Senator N A Crichton-Browne
Senator K J Denman (from February 1994)
Senator B Harradine
Senator G J Jones
Senator D Margetts (from September 1993)
Senator D J MacGibbon (to August 1993)
Senator The Hon M Reynolds
Senator Baden Teague (from August 1993)
Senator S West (from 6 June 1995)
Mr R A Atkinson, MP (from February 1994)
Mr A R Bevis, MP (to May 1994)
Hon N Blewett, MP (to February 1994)
Mr G Campbell, MP

Hon M J Duffy, MP (from February 1994)
Mr L D T Ferguson, MP
Mr E J Fitzgibbon, MP
Mr G D Gibson, MP
Mr E L Grace, MP
Mr D P M Hawker, MP
Mr N J Hicks, MP
Mr C Hollis, MP
Mr R H Horne, MP (from June 1995)
Mr D G Jull, MP (from June 1994)
Hon R J Kelly, MP (to 30 January 1995)
Hon J Kerin, MP (to December 1993)
Mr J V Langmore, MP
Hon L S Lieberman, MP
Hon J C Moore, MP (to June 1994)
Mr L J Scott, MP (from 6 June 1995)
Hon D W Simmons, MP
Rt Hon I McC Sinclair, MP
Mr W L Taylor, MP

A/g Secretary: Mr P Stephens (to May 1994)
Secretary: Mrs J Towner (from May 1994)

Membership of The Human Rights Sub-Committee

37TH PARLIAMENT

Senator S Loosley (Chair) (to 19 May 1995)
The Hon L R S Price (Chair) (from 21 June 1995)
Hon M J R MacKellar, MP (Deputy Chairman to February 1994)
Senator Baden Teague (Deputy Chair) (from 18 February 1994)

Senator M E Beahan (to 1 February 1994)
Senator V W Bourne
Senator C M A Chamarette (to 30 September 1993)
Senator K J Denman (from 10 February 1994)
Senator B Harradine
Senator the Hon M Reynolds
Mr L D T Ferguson, MP (to 19 August 1993)
Mr G D Gibson, MP
Mr C Hollis, MP
Rt Hon I McC Sinclair, MP

Secretary: Ms Margaret Swieringa

Sub-Committee Staff:

Ms Patricia Ahlgren (to March 1995)
Ms Alison Carson (from April 1995)

CONCLUSIONS

- 1 Reports continue to be made of gross human rights abuses in Burma, 'consistently and on a wide scale.'¹ The concessions which the Government of Burma has made, and made only under great international pressure - the abolition of military tribunals, the release of some of the high profile political detainees and the cessation of official executions - are important but since they rely on the will or the whim of the Government there is no certainty that these abuses will not occur in as great a measure at any time. No structural changes have been made which might assist in the long term protection of human rights. This requires the perpetrators of abuses to be brought to justice, the establishment of an independent judiciary and a free press, a recognition of the rights of a democratic opposition and the subordination of the army to an elected civilian government. There is no sign of any intention on the part of the State Law and Order Restoration Council (SLORC) that they will implement democratic changes which would ensure this kind of accountability.
- 2 The gap between the statements made by various representatives of the Burmese Government and the actual conditions of life for ordinary Burmese people appears to be very wide. For the most part, the worst conditions are not matters that can be attributed to poverty or levels of development or different, Asian, values. They are often attributable to government policy or to the direct actions of the government or individual military commanders. They result from a lack of accountability. Where there is no domestic accountability then the only possibility for the protection of people who are abused by their government is through the international system, flawed as it is.
- 3 This Committee reiterates the view it put in its last report on *A Review of Australia's Efforts to Promote and Protect Human Rights*, on the problems that arise for states because of the demands by minority groups for self-determination and independence. The Committee believes this issue alone represents one of the major security issues facing the world today. It is particularly pertinent to the countries of the region where there are numerous examples of pressure being applied to central governments for self-determination. In 1994, the Committee argued:

that governments cannot maintain national cohesion by force and the continual oppression of minorities. It supports the proposition that effective and successful multi-racial/multi-ethnic states need to express their diversity in institutions and political structures which genuinely accommodate the aspirations of their minorities. Failure to make that

1 Conclusion drawn by Mr Yozo Yokota, the Special Rapporteur appointed by the UN Human Rights Commission in accordance with Resolution 1994/85, in his report to the Commission on Human Rights.

accommodation, and worse, the abuse and oppression of minorities, gives moral force to claims for independence and secession.²

The Committee looked in particular at the problems of the border regions of Burma where war has been endemic for nearly forty years. The problems associated with the border regions of Burma are complex and longstanding. However they clearly illustrate the interconnectedness of human rights, political democracy, peace, security and development. The current Burmese regime is a source of instability in the region. Its lack of accountability and legitimacy allows for corruption and oppression; there is no forum, independent of the government, to bring to account, consistently and impartially, those who, through normal human venality, abuse, steal and oppress their fellow citizens. There is no place for the aspirations of minority groups who have a well founded suspicion of the power of the majority to find expression. Corruption and violence appear to be endemic and, so long as they exist, they encourage the evils of trafficking in arms, drugs and people and the outflows of refugees. Burma's problems then spill over into neighbouring countries and spread from there to the wider world.

- 4 Therefore it is in the interests of the region and Australia that there should be a solution to the problems Burma faces. Despite the ceasefires and the acclaimed success of the military operations, the situation on the borders continues to be fragile and precarious. For there to be a secure peace there must be a political solution to the demands of the border peoples. This will necessitate proper, not token and selected, representation at the National Convention. Without proper representation at this Convention there can be no lasting accommodation in the new constitution of minority rights and little likelihood that such a constitution will find long term acceptance, thereby providing the basis for stability in the country.
- 5 On the question of political rights, this Committee rejects the proposition that any of the actions for which political prisoners have been detained could be construed as a threat to national security. In reality it would appear that the laws are simply used against people exercising their legitimate rights to free speech, free association and peaceful political action - criticism of the actions of the SLORC, rightful protest about the failure of the SLORC to respect the election victory of the NLD, criticism of the dubious procedures of the National Convention and free dialogue and cooperation with the Special Rapporteur as agreed to by the Government. The laws are vague and at times amendments have been made by decree and punishments have been applied retrospectively. Procedures have not been open and the Government has not produced concrete evidence upon which judgements have been made. No distinction is made between the security of the State and the 'security of the SLORC'. Consequently procedures have not been in accord with natural justice and the 'prevailing laws' not in accord with the international obligations of Burma as a member of the United Nations to observe Articles 11, 19, 20 and 21 of the Universal Declaration on Human Rights.
- 6 This Committee deplores the deliberate and systematic destruction of political parties under the guise of legal process. It deplores the manipulation of the National Convention in order to produce an anti-democratic constitution which, if not modified, will entrench

2 Joint Standing Committee on Foreign Affairs, Defence and Trade, *A Review of Australia's Efforts to Promote and Protect Human Rights*, p. 211.

in power a military regime which has usurped power and denied the will of the people of Burma which was clearly expressed at a free and fair election.

- 7 In Burma, there is a long history of authoritarian rule and isolation from international contact and international scrutiny. Today, since the SLORC deprived the elected government of power in 1990, most of the gross human rights abuses committed by the Government result from that act of illegality, the opposition it has engendered and the systematic attempts of the SLORC to destroy the National League for Democracy and any political opposition to its rule. The Government lacks accountability; its rule is arbitrary; it has dispensed with a rule of law and has resorted to rule by decree. There has been little progress towards democracy.
- 8 If political reform, embodying transparency, accountability and participation, is the vital ingredient in creating the conditions for real economic growth, a sound basis for investment in the country and guaranteed, productive use of aid, then political reform must be a central objective of Australia's foreign policy towards Burma. The benchmarks encompass this principle. The Committee believes that the benchmarks represent useful guides towards democratic development. Obviously it is not intended that all benchmarks will be absolutely achieved before there is some reestablishment of official contacts with Burma.
- 9 The Committee believes however that more genuine progress in establishing a dialogue with Aung San Suu Kyi and the NLD and a change to the procedures of the National Convention are an essential starting point before any further concessions are made to the SLORC. In this regard it is important that Australia continue to seek the support of regional neighbours in urging change in Burma.
- 10 Therefore the Committee draws attention to recommendation number 27 urging regional countries to use their good offices to press the Government of Burma towards democratic change.
- 11 The latest statements from the SLORC that they do not need to negotiate with any one are not reassuring. They appear to reveal that the regime has no commitment to democratic development in Burma. Such hardline attitudes offer little scope for confidence on the part of the international community that there will be any change to the practices, outlined in this report, that have been so widely condemned. While such contempt is directed at the consensus resolutions of the United Nations, there can be no change to the policies of major international institutions, whether financial or political, to include Burma more fully.
- 13 The Committee hopes that the SLORC will take up the offer of Aung San Suu Kyi for dialogue and so recognise the will of the Burmese people so clearly expressed in 1990.

Mathematical Analysis

The first part of the analysis involves the study of the function $f(x) = x^2 + 2x - 3$. This is a quadratic function, and its graph is a parabola opening upwards. The vertex of the parabola is located at $(-1, -4)$. The x-intercepts are $(-3, 0)$ and $(1, 0)$, and the y-intercept is $(0, -3)$. The function is increasing on the interval $(-1, \infty)$ and decreasing on the interval $(-\infty, -1)$.

The second part of the analysis involves the study of the function $f(x) = \frac{1}{x}$. This is a rational function, and its graph is a hyperbola with two branches. The x-axis is a horizontal asymptote, and the y-axis is a vertical asymptote. The function is increasing on the interval $(-\infty, 0)$ and decreasing on the interval $(0, \infty)$.

The third part of the analysis involves the study of the function $f(x) = \ln(x)$. This is a logarithmic function, and its graph is a curve that passes through the point $(1, 0)$. The y-axis is a vertical asymptote. The function is increasing on the interval $(0, \infty)$.

The fourth part of the analysis involves the study of the function $f(x) = e^x$. This is an exponential function, and its graph is a curve that passes through the point $(0, 1)$. The x-axis is a horizontal asymptote. The function is increasing on the interval $(-\infty, \infty)$.

The fifth part of the analysis involves the study of the function $f(x) = \sin(x)$. This is a trigonometric function, and its graph is a periodic wave. The x-axis is a horizontal asymptote. The function is increasing on the interval $(-\frac{\pi}{2}, \frac{\pi}{2})$ and decreasing on the interval $(\frac{\pi}{2}, \frac{3\pi}{2})$.

The sixth part of the analysis involves the study of the function $f(x) = \cos(x)$. This is a trigonometric function, and its graph is a periodic wave. The x-axis is a horizontal asymptote. The function is decreasing on the interval $(0, \pi)$ and increasing on the interval $(\pi, 2\pi)$.

RECOMMENDATIONS

Chapter One

No recommendations

Chapter Two

The Committee recommends that:

- 1 the Australian Government urge the Government of Burma to ratify the major human rights covenants, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).
- 2 the Australian Government urge the Government of Burma to relinquish government control over the media and to encourage a free and vigorous press, in compliance with the recommendations of the UN Special Rapporteur .
- 3 the Australian Government should urge the Government of Burma, in accordance with its obligations as a member of the UN and using the UN human rights conventions as a framework, to:
 - (a) include within its new constitution specific guarantees for the protection of the rights to freedom of expression, religion, association, assembly and the press; and
 - (b) repeal all laws which prohibit free association and particularly the free participation in the political life of the country (SLORC Orders 2/88, 4/91, the *1950 Emergency Provisions Act*, the *1957 Unlawful Associations Act*, the *1962 Printers and Publications Act* and the *1975 State Protection Law*.)
- 4 the Australian Government urge the Government of Burma to ensure that all trials are conducted according to internationally accepted standards of justice - that they are open and accessible, that all defendants have counsel of their choice, and that sentences are commensurate with the offence.

- 5 the Australian Government urge the Government of Burma to:
- (a) ratify the Convention against Torture and Cruel, Inhuman and Degrading Punishments (CAT);
 - (b) eliminate from its prisons all practices involving physical abuse or torture;
 - (c) institute proceedings against all officials guilty of the abuse of prisoners;
 - (d) give training to prison officers, police and military personnel in the standards expected of such personnel in the human rights instruments and humanitarian law; and
 - (e) allow representatives of the International Committee of the Red Cross full, private access to prisoners in Burmese gaols.
- 6 the Australian Government urge the Government of Burma to:
- (a) bring the conduct of its military officers into compliance with accepted standards of behaviour in accordance with the Geneva Conventions and the international human rights conventions;
 - (b) take proceeding against members of the military guilty of arbitrary killing, rape or the beating of civilian porters or villagers; and
 - (c) control the military to ensure that there is no confiscation of property.

Chapter Three

The Committee recommends that:

- 7 the Australian Government urge the Government of Burma to:
- (a) comply with the standards it has agreed to under the Geneva Conventions, in respect to the treatment of civilians during armed conflict, and under ILO Convention 29 in relation to forced labour;
 - (b) institute the necessary legal changes to the *Village Act and the Town Act* to prevent the continuation of the practice of forced labour in Burma;
 - (c) agree to the provision of expert advice by representatives of the ILO for the institution of improved laws and systems relating to labour practice in Burma; and

(d) comply with the requests of the ILO Committee on the Application of Standards to institute new laws relating to the existence of free trade unions in Burma - allowing the formation of unions independent of the government, the right of workers to join unions of their own choice, the right to strike and the release of union officials currently in prison for union activity sanctioned under ILO Convention No 87.

- 8 Australian delegates to the ILO continue to raise these issues and press the Government of Burma for reform of its labour laws to bring them into line with the requirements of the ILO.

Chapter 4

The Committee recommends that:

- 9 the Australian Government:

(a) contribute to the United Nations Drug Control Program (UNDCP) in support of the expansion of crop substitution measures;

(b) examine the feasibility of contributing to the UNDCP program by offering law enforcement training; and

(c) encourage its dialogue partners in ASEAN to pursue with the Government of Burma long term solutions to the problems of trafficking in women and drugs through fully negotiated political settlements in the border regions in conjunction with the ceasefires.

- 10 the Australian Government urge the Government of Thailand to:

(a) ratify the international human rights conventions relevant to the issue of trafficking in women, particularly the ICCPR;

(b) implement the provisions of its existing anti-prostitution legislation by instituting prosecutions against those who traffic in women and girls for the purposes of prostitution and any police or army officers assisting in the trade;

(c) ensure that the victims of trafficking, women, girls and young men, are protected and rehabilitated and that support for Thailand in this endeavour should become a focus of the Australian aid program to Thailand.

- 11 the Attorney-General's Department, in coordination with other relevant State and Federal agencies,
 - (a) review all legislation relating to prostitution in Australia;
 - (b) consider the need to enact legislation which would target traffickers in women and children.

- 12 the Australian Government
 - (a) consider accession, perhaps with a reservation on Article 6, to the 1949 Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others;
 - (b) encourage Australian Embassies to maintain tight visa and passport processes and procedures with a view to limiting fraud;
 - (c) offer assistance to regional countries to improve the security of their passports;
 - (d) put in place programs which would recognise Australia's responsibilities for the protection and rehabilitation of the victims of trafficking; and,

in cases where the women are the victims of the crime of trafficking,
 - (e) consider this as a factor in any application which is made for a humanitarian visa.

- 13 the Australian Government urge the Government of Burma to accede to the *UN Chemical Weapons Convention*.

- 14 the Australian Government urge the Government of Thailand to:
 - (a) ratify the *1951 Convention Relating to the Status of Refugees and its 1967 Protocol*; and
 - (b) permit the United Nations High Commissioner for Refugees to provide greater assistance to the refugees on the Thai - Burma border.

- 15 the Australian Government explore ways, within the current humanitarian program in Burma, to assist in the wider dissemination of information about HIV/AIDS.

- 16 the Australian Government endorses the call of the UN Rapporteur for the revision of the 1982 Citizenship Law to eliminate the creation of second class citizenship, especially for the Rakine Muslim people.

- 17 Australian diplomatic representatives and officers from AusAID make a specific evaluation of the repatriation and resettlement of the Rohingya refugees by regular visits to the Arakan State and the UNHCR projects established to ensure their successful resettlement.
- 18 in responding to demands for self-determination in Burma, the Australian Government and its ASEAN dialogue partners include on their agenda for discussions between Foreign Ministers and between Heads of Government the importance of protecting minority rights as the most effective way of ensuring the stability of the state.

Chapter 5

The Committee recommends that:

- 19 the Australian Government continue to press the Government of Burma to:
 - (a) recognise the popular legitimacy of the NLD and builds on Daw Aung San Suu Kyi's call for power sharing on a South African model; and
 - (b) begin negotiations with Aung San Suu Kyi with a view to bringing about this end.
- 20 the Australian Government urge the Government of Burma to include a greater number of the National League for Democracy representatives and a more representative group of delegates from the ethnic minorities in the deliberations of the National Convention.
- 21 the Australian Government urge the Government of Burma to provide observer status to the international press, diplomatic representatives and representatives of the Inter-Parliamentary Union to the proceedings of the National Convention.
- 22 the Australian Government press the Government of Burma to begin immediate negotiations with Daw Aung San Suu Kyi and the leadership of the NLD.
- 23 the Australian Government urge the Government of Burma to:
 - (a) release immediately all political detainees;
 - (b) comply with the request of the Inter-Parliamentary Union for information on the names and numbers of all political detainees;
 - (c) allow private access to delegates of the IPU or the ICRC to these detainees; and

- (d) repeal those laws which include ill-defined offences against national security (see paragraph 5.44) which have been used for the purpose of eliminating opposition.
- 24 the Australian Government urge the Government of Burma to enact laws which would ensure freedom of assembly and information so that all citizens of Burma may participate fully in the political process.

Chapter Six

The Committee recommends that:

- 25 the Australian Government continue to work through the United Nations for change in Burma and that at all times the government give full support to the work of the Special Rapporteur on Burma in his endeavours to persuade the Government of Burma to comply with existing UN resolutions.
- 26 given that the United States, Japan, the European Union and the Commonwealth of Nations encompass most of the developed and the democratic states of the world, the Australian Government should continue to work bilaterally and through all relevant multi-lateral forums to gain an acceptance of the need for political reform as a prelude to investment in Burma or development assistance to Burma.
- 27 the Australian Government continue to press the ASEAN countries to:
 - (a) maintain the constructive aspects to their engagement policy by pressing the Government of Burma towards further reform - the end to forced labour, the release of political detainees, dialogue with Aung San Suu Kyi and the liberalisation of the procedures of the Burmese National Convention, established to draw up a new constitution; and
 - (b) ensure that these reforms precede the entry of Burma into ASEAN.
- 28 the Australian Government continue to encourage the Government of Thailand to take up the issue of democratic reform with the SLORC as a matter of mutual interest.
- 29 the Government of Australia
 - (a) take every opportunity to express its concern to the Government of China about China's supply of arms to Burma;
 - (b) urge the Government of Japan to continue to press the Government of China about the size and nature of its arms sales internationally; and

in the light of Japan's Overseas Development Assistance Charter and its aid program with China,

(c) remind the SLORC that the level of arms expenditure is a significant inhibition in the willingness of the international community to resume development assistance.

30 (a) the Australian Government should actively encourage Australian business to act at all times in a manner consistent with Australian law and human rights objectives, including environmental and women's rights; and

(b) consistent with a whole-of-government approach to human rights and the need to provide business with practical assistance, the Australian Government should ensure that those government departments, agencies and services, such as AUSTRADE, which routinely deal with and/or advise Australian companies:

(i) are fully appraised and routinely updated on Australia's human rights objectives and relevant human rights intelligence;

(ii) provide appropriate advice to companies on human rights matters; and

(iii) establish in cooperation with business organisations a human rights code of practice; and

(c) the Australian Government should pursue at the ILO the development of a convention to require the application of consistent health and safety standards for workers in multinational enterprises, ensuring that the same high standards apply to workers in developing countries as to those in the country of origin of the enterprise.

31 the Australian Government support the establishment, as outlined in the ACFOA proposal to the inquiry into Australia's efforts to promote and protect human rights, of a Human Rights Centre for Dialogue and Cooperation in Australia. This centre might be established in conjunction with the Peacekeeping Centre recommended in the Committee's report on Peacekeeping tabled in December 1994.

32 as long as there is no move to establish a dialogue with Aung San Suu Kyi and the NLD, no broadening of the procedures of the National Convention, no end to forced labour, nor the release of political prisoners, the Australian Government:

(a) continue to direct its assistance program to the people on the border; and

(b) consider an increase in health and sanitation programs for the people in the camps.

- 33 AusAID set aside some of its funding to Burma for educational programs directed at the development of civil society and an understanding of democratic processes amongst the people in the border camps.
- 34 the Australian Government
- (a) increase the intake of students from Burma in this category to a minimum of 12 per year; and
 - (b) encourage students to undertake, possibly through the TAFE system, skills based courses relevant to the future development needs of Burma.
- 35 the Australian Government increase numbers in the Special Assistance Category for people from Burma residing in Thailand to bring it up to the level of the intake from Rangoon.
- 36 the Australian Government use its influence with other countries and with the World Bank and the Asian Development Bank to discourage reinvestment in Burma until political reforms in line with the banks' good governance policies have begun, in particular the end to forced labour, the release of political prisoners, dialogue with Aung San Suu Kyi and changes to the structure and procedures of the National Convention.
- 37 the Australian Government should suggest the value of a regional forum for the examination of the problems associated with modern government with a view to developing strategies and programs of assistance for the enhancement of good government. Such issues as systems of bureaucracy and administrative practices, legal services and court systems, parliamentary practice or policing might be addressed in this way.
- 38 when any decision is made in the future to begin development assistance to Burma it should be in the form of project assistance which has as its objectives the protection of rights and the principles of openness and accountability which are being sought in the benchmarks.

CHAPTER ONE

INTRODUCTION

Background to the Inquiry

1.1 Burma is a large, strategically placed country between South Asia and South East Asia. It has borders with India, China, Bangladesh, Thailand and Laos. All of these countries have a vital interest in what happens in Burma. For Thailand Burma is a source of resources in timber and natural gas. It offers a trade route to China from the hinterland into South East Asia, the Bay of Bengal and ultimately the Indian Ocean. It is itself a large potential market and rich in natural resources - in gems, timber and natural gas. Today its estimated population is around 43 million and growing at an estimated rate of 2.2 per cent per year, although no accurate census figures are available. It is an ethnically mixed population: the dominant Burman group comprises 60-70 per cent of the population; other major communities include the Shan approximately eight per cent, the Karen about ten per cent, the Chin over two per cent, the Arakanese over three per cent. It is claimed there are over 100 indigenous languages. The major religion is Theravada Buddhism although Christianity and Islam are adhered to by significant groups of people.

1.2 Like many former colonial states, Burma is an artificial construction encompassing very different groups of people whose hostilities have deep historical roots, often exacerbated by their colonial experience. The challenge for Burma, as for many of the modern post colonial states, is to find a means of including all their people in the polity in ways that recognise their aspirations for cultural expression and give them confidence that they will be treated justly and equally.

1.3 Quite late in the nineteenth century, in 1886, Burma became part of the British Empire when the British, after a series of wars, finally defeated the Burman Empire. British control was wrested from them by the Japanese who promised independence to Burma and consequently gained local support to drive out the British. Formal independence under Japanese protection was given to Burma by the Japanese in August 1943 but Japanese 'protection' proved onerous and unacceptable to the Burmese who rejoined the allies in March 1945. Burma was finally decolonised in January 1948. The early attempt at a federal and democratic constitution with significant support from the ethnic minorities was thwarted by the military coup of 1962.

1.4 When Australians think of Burma their first thought is likely to be of the Burma railway where Australian prisoners of war, caught by the Japanese advance through South East Asia, were made to work in horrific conditions in Thailand and Burma, or of Burmese students brought to Australia to study under the Colombo Plan. However, in the 1950s, there was a sizeable program of officer training offered by the Australian army to the newly independent Burma. Because of the isolationist policies of the Ne Win Government, the

gradual cooling of Australia's political interests and the lack of commercial involvement, contacts declined after the coup of 1962.

1.5 Isolationism meant that news of the crackdown on the democracy movement in 1988 filtered out to the world very slowly and much less dramatically than had been the case of the massacre in Tienanmen Square in 1989, even though many more people appear to have died in Burma. At the time, the reaction in the Australian Parliament was muted. There were two questions on Burma in the Senate in 1988, one drawing attention to disturbances in Rangoon and the other asking the Minister for Foreign Affairs about the likelihood that elections would be held as promised.¹ Despite the quiet response, aid was suspended, although residual projects were to be completed.

1.6 In 1989, as more information of what had happened reached Australia, especially with the escape of students and political activists to the borders, and particularly because of the personal interest of Senator Schacht who had visited Burma in February 1989, the Parliament began to take a more active interest. Questions were asked, particularly in the Senate, about the number of students being arrested, the prospect for free elections given the apparent arrest and persecution of members of the democratic parties and the nature of Australia's dealings with the Government of Burma, especially in the spheres of aid, defence exports and investment. There were also petitions and motions in the Senate calling for the release of all political prisoners.

1.7 From 1990 onwards the concern became wide, encompassing all political parties and resulting in unanimous votes in the chambers when motions were put forward on Burma. The questions, motions, petitions became more specific, demanding the release of political prisoners, particularly Daw Aung San Suu Kyi, the handover of power to the National League for Democracy (NLD), the end to the gross violations of human rights and the cessation of Australian aid and trade until this was achieved.

1.8 The dozens of petitions, questions and motions of the Senate and the House of Representatives increasingly reflected the frustrations many Australians felt at the refusal of the State Law and Order Restoration Council (SLORC) to recognise the outcome of the 1990 election which they had lost so decisively. It offended every notion of fair play which Australians value. What was worse, however, was the brutality of the regime in dealing with its opponents and the arrogance and equivocation with which it responded to legitimate questions about its actions.

1.9 On 23 November 1993, the Senate passed the following motion moved by Senator Chamarette:

That the Senate -

(a) notes, with concern:

1 A question from Senator Jones on 29 August 1988 asked the Minister for Foreign Affairs, Senator Evans about the reported civil unrest in Burma; a question from Senator McMullan on 19 October 1988 asked the Minister for Foreign Affairs about the prospects for free and fair elections under the current regime.

- (i) the lack of progress towards democracy and the human rights situation in Burma;
 - (ii) the failure of the State Law and Order Restoration Council (SLORC) to respect the wishes of the people of Burma as expressed in the election held in 1990; and
 - (iii) indications that the SLORC is seeking to push through the National Convention constitutional proposals, which would entrench the military's role in politics, despite clear opposition to these proposals from delegates representing major opposition parties; and
- (b) encourages the Government:
- (i) to continue to urge all parties to the conflict in Burma to resolve their differences through negotiations;
 - (ii) to continue its endeavours, in concert with other concerned countries at the United Nations and elsewhere, to promote a resolution of the political and military conflict in Burma; and
 - (iii) to work to ensure that international attention remains focused on the situation in Burma.

1.10 The President of the Senate, Senator the Hon Michael Beahan, duly sent a copy of the resolution to the Ambassador for Myanmar (Burma), U Saw Tun. On 24 February 1994, the Ambassador replied to the President of the Senate in the following terms:

Dear Mr President

I wish to refer to your letter dated 24 November 1993 by which you have transmitted to me the text of the resolution adopted by the Senate of the Commonwealth of Australia on 23 November 1993 concerning the developments taking place in the Union of Myanmar.

In this connection I am constrained to express my deep regret that the contents of the above-mentioned resolution of the Senate do not reflect the true situation prevailing in my country. Consequently, in reference to the said resolution I would like to brief you and the distinguished Australian Senators as follows on the relevant developments taking place in Myanmar.

Firstly, it was alleged in the resolution in question that there was a lack of progress towards democracy and in the field of human rights in Myanmar. This allegation clearly cannot hold water at all since it can be easily seen from what have been taking place over the last few years in Myanmar that considerable progress has been achieved in various areas, including democracy and human rights. To cite a few examples in this regard, the State Law and Order Restoration Council (SLORC) Government which has temporarily taken over the responsibilities of State in order that a repeat of the chaos of the 1988 disturbances will not occur, has successfully held a free and fair election in 1990. It is currently overseeing the holding of a National Convention attended by the delegates of all strata of society, including the representatives elected in the 1990 general election and which will draw up a Constitution for future multi-party democracy as well as a

market-oriented economy in Myanmar, the SLORC Government has been conducting talks with underground armed groups to secure peace, it is also planning and implementing projects for achievement of progress of national races and border areas, it is combating the menace of narcotic drugs on national, sub-regional and international levels. Moreover, it should be mentioned here that hundreds of persons who no longer pose a threat to the security of the State have also been released. Incidentally, the Government has been compelled to take legal action against some persons, including a few delegates to the National Convention, not because of their political beliefs but because of their actions which, if left unchecked, would derail the constitutional process. Furthermore, the Government has agreed to and received the visits of responsible high-ranking UN human rights officials to my country.

As to the general election held in 1990, I would like to inform you that the authorities of the Union of Myanmar have stated time and time again that the objective of the election was the drafting of a new Constitution based on the broad principle of national consensus and not for the formation of a government by the elected representatives. Thus the question of the SLORC Government not respecting the wishes of the people of Myanmar, as mentioned in the resolution, does not arise at all. The Government has reiterated several times that it will transfer power to a firm government established in accordance with a sound constitution which is yet to emerge.

Finally, contrary to what has been stated in the relevant Senate resolution about the role of the Tatmadaw (the Myanmar Defence Services) in the political life of Myanmar, it has been agreed at the very outset of the ongoing National Convention that the participation of the Tatmadaw in the leading role of national politics be one of the six objectives of the Convention in laying down basic principles for the drafting of a constitution. Such a role is in keeping with Myanmar's historical traditions. The Tatmadaw has invariably been a source of great strength in times of crisis. It has constantly been above party politics and it has always shouldered its primary responsibility of ensuring the non-disintegration of the Union, the non-disintegration of national solidarity and the consolidation of national sovereignty. Additionally, at the current National Convention itself, through a process of free and open deliberations and mutual accommodation, significant progress has been made and a consensus is now in sight.

Having explained the issues raised in the Senate resolution, I would like to express the hope that my above explanations would help the distinguished members of the Australian Senate to understand our viewpoint regarding the complex issues obtaining in our country.

Yours sincerely

(Saw Tun)
Ambassador

1.11 This letter, signed by the Ambassador, was copied to all Senators. Senators did not find the Ambassador's explanations satisfactory and consequently passed the following resolution, moved by Senator Reid, on 2 March 1994:

That the following matters be referred to the Human Rights Subcommittee of the Joint Standing Committee on Foreign Affairs, Defence and Trade for inquiry and report: The Senate resolution of 23

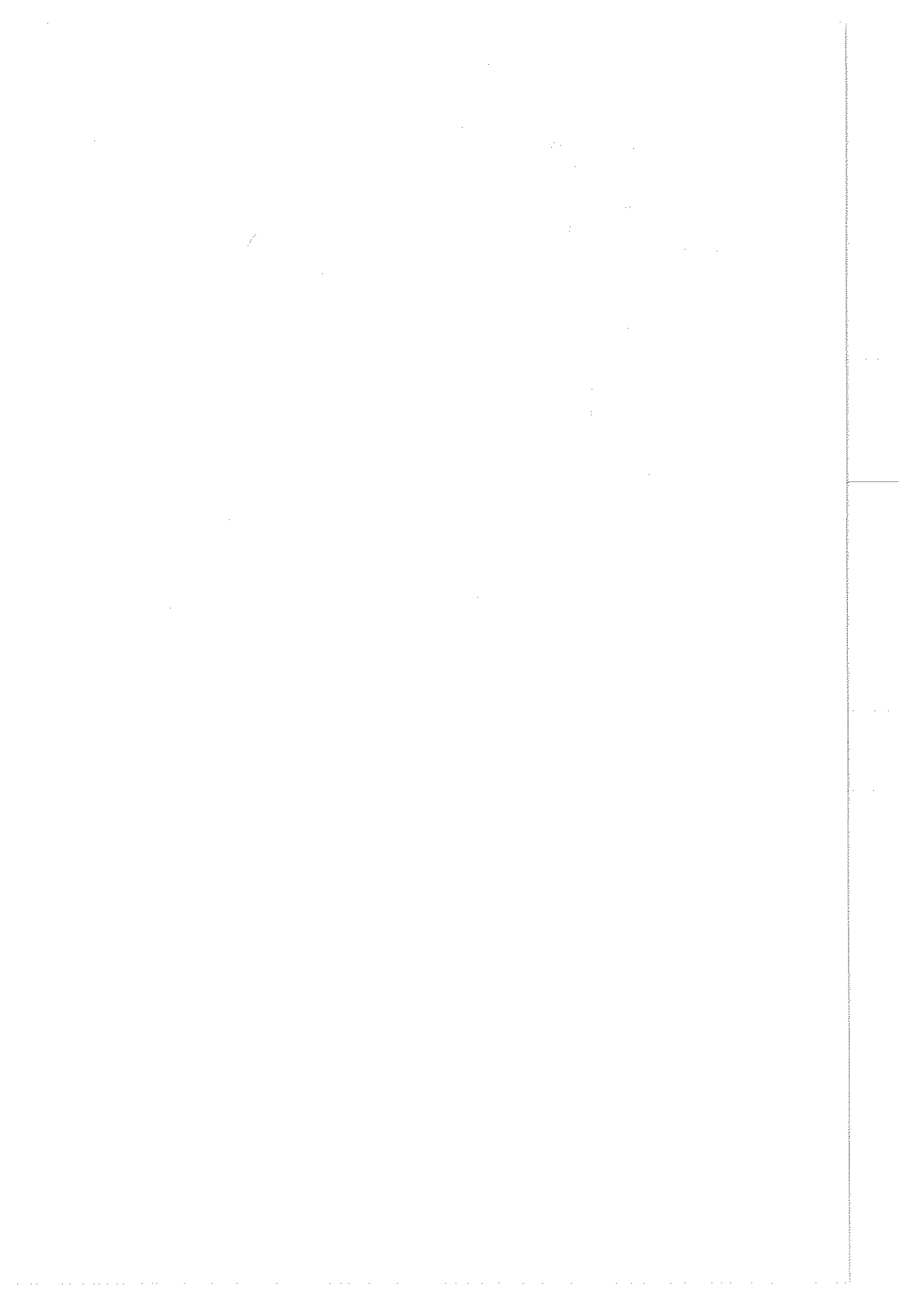
November 1993 relating to human rights and lack of progress towards democracy in Myanmar and the letter from the Ambassador of the Union of Myanmar responding to the resolution.

1.12 This inquiry was deferred by the Sub-Committee until the then current inquiry into Australia's efforts to promote and protect human rights was completed in December 1994. Nevertheless, it was advertised in the national press on 10 September 1994. The Sub-Committee received 36 submissions, 46 exhibits and conducted 8 public hearings in Canberra, Sydney, Melbourne and Perth between 24 February and 17 August 1995.

1.13 The inquiry was characterised by the number of witnesses who sought to give evidence in-camera. Most expressed concern about the welfare of their families in Burma.

1.14 The Committee was also disappointed by the unwillingness of Australian businesses who were approached to give evidence on their experience of doing business in Burma to appear before the Committee. Most who were approached replied that they had considered ventures that they did not pursue; however, the Committee believed there might have been considerable value if those that had decided not to proceed had been willing to discuss the reasons for their decision.

1.15 To avoid confusion, a word needs to be said at the outset about the use of the alternate names, Burma and Myanmar. The SLORC renamed Burma Myanmar after they took power. In this report, where the name Myanmar is used by witnesses or in documents it has not been changed; however, the Committee resolved to use the name Burma in all other places.



CHAPTER TWO

HUMAN RIGHTS

A Definition

2.1 Human rights are the rights we have because we are human beings; they do not belong to us because we are Australian or Burmese, Chinese or American and therefore they cannot be modified or coloured by our nationality, our historical experience or our culture. This principle was declared, but not invented, by the international community in the Universal Declaration of Human Rights in 1948. Since 1948 this Declaration has been defined and elaborated upon by a series of covenants and conventions. The Universal Declaration in conjunction with the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) make up the International Bill of Rights. These documents represent the international consensus on the rights of human beings. They define rights that are universal, inalienable and indivisible - shared by all people of all cultures regardless of race, creed or stage of development. The promotion and protection of human rights as defined by these agreed standards is the obligation of all governments who are members of the United Nations and therefore adhere to the Charter and the Universal Declaration. Being universal rights, they are not subject to the limitations of national sovereignty nor can governments claim exemption on the basis of international laws on non-intervention. This view has been reaffirmed by the consensus of the international community as recently as 1993 when the World Conference of Human Rights adopted the Vienna Declaration.

2.2 The concept of human rights represents not simply a moral imperative, although it rests upon the inherent dignity of human beings. It is driven by the pragmatic recognition that the abuse of human rights retards development by causing instability and insecurity - oppression, rebellion, war and the outflow of refugees. Such consequences affect the vital interests of neighbouring countries and entitle them to scrutinise the policies of other governments as far as those policies affect the human rights of their citizens.

2.3 Burma is a member of the United Nations and voted in favour of the Universal Declaration of Human Rights in 1948. It has not ratified the two major covenants, the ICCPR or the ICESCR, and of the main conventions on human rights, the Burmese Government¹ has ratified only a few. However, many of the human rights complaints made against Burma concern breaches of obligations agreed to in the conventions they have signed.² The Burmese

1 The SLORC took power in 1988 and despite the outcome of the 1990 election it has continued to act as the Government of Burma. The nature of the takeover is described in Chapter 5. For the purposes of this report and largely for convenience the SLORC will be referred to as the Government of Burma but this should in no way be taken as a recognition of its legitimacy.

2 The Government of Burma has ratified the Geneva Convention of August 1949 relating to the conduct of war, the Convention on the Prevention and Punishment of the Crime of Genocide, the Slavery Convention of 1926, Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, ILO Conventions - the Forced Labour Convention, 1930 (No 29) and the

Foreign Minister, U Ohn Gyaw, in October 1994 in addressing the General Assembly in New York affirmed that his Government was committed to the principles contained in the Charter of the United Nations and the Universal Declaration of Human Rights.

2.4 The Universal Declaration asserts that it is 'a common standard of achievement for all peoples and all nations' and that:

Article 1

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property or other status.

2.5 The Foreign Minister's initial emphatic affirmation of support for the human rights principles of the international community was accompanied by equivocation and contradiction in the rest of his speech. For example, he believed that there was still a need to develop a consensus on accepted norms. However this ignores the fact that international consensus has long been achieved in the signing of the Universal Declaration and in the subsequent covenants and conventions. The promised democracy, he argued, would be one that corresponded with the 'historical experiences and prevailing conditions of the country'.³ In relation to democratic development he warned that 'no nation can claim a monopoly over values'⁴ that '[Burma was in] a transition period and we cannot permit excesses of freedom' and that 'too hasty a process will only lead to chaos and instability'.⁵ He also complained that there was a 'clamour for individual rights' which ignored the right to decent food, clothing and shelter and peace and security. His misunderstanding of and hostility to any notion of democracy was evident in the stridency of this statement:

In placing emphasis on individual rights above everything as expounded by some people, are we to permit promiscuity, to break down family values, to ignore respect for elders, to replace consensus building attitude with competition and confrontation.⁶

2.6 The argument that civil and political rights are a Western construct inimical to the security and development of developing countries and given precedence over economic, social and cultural rights was propounded in Bangkok at the preliminary regional meeting to the World Conference on Human Rights in Vienna in 1993.

Freedom of Association and the Protection of the Right to Organise Convention, 1948 (No 87), the Convention on the Political Rights of Women, and the Convention on the Rights of the Child.

3 Mr Michael Nyunt submission, p. S29.

4 *ibid.*, p. S29

5 *ibid.*, pp. S41-42

6 *ibid.*, p. S42

2.7 It is an argument frequently heard in this region. But it is an argument difficult to sustain in the face of the Vienna proclamation of the indivisibility of the two covenants; neither covenant should preclude the other nor precede the other.

2.8 The Bangkok NGO Declaration made prior to the World Conference on Human Rights made none of the qualifications evident in the statements of governments from this region. It concluded that 'Universal human rights are rooted in many cultures. We affirm the basis of universality of human rights ... and ... We affirm our commitment to the principle of indivisibility and interdependence of human rights, be they civil, political, economic, social or cultural.' The NGOs claimed to speak for ordinary Asian people and they claimed that many Asian governments were elitist and unrepresentative and did not speak for the aspirations of their people in the pronouncements they made on human rights. They believed the governments feared the accountability inherent in human rights.

2.9 The experience in Burma clearly supports this claim. In the election of 1990 the party supported by the SLORC gained only 10 per cent of the vote. The National League for Democracy (NLD) gained over 80 per cent of the vote. It is the NLD not the SLORC that has the only legitimate claim to speak for the people of Burma. The NLD does not support the cultural relativist argument on human rights. Daw Aung San Suu Kyi, the General Secretary of the party, stated:

It is precisely because of the cultural diversity of the world that it is necessary for different nations and peoples to agree on those basic human values which will act as a unifying factor. When democracy and human rights are said to run counter to non-western culture, such culture is usually defined narrowly and presented as monolithic. In fact the values that democracy and human rights seek to promote can be found in many cultures. Human beings the world over need freedom and security that they may be able to realise their full potential. The longing for a form of governance that provides security without destroying freedom goes back a long way.⁷

2.10 The Committee rejects U Ohn Gyaw's argument about cultural relativity. Nor is it accurate to claim that countries like Australia, committed to human rights, 'clamour' for individual rights at the expense of the rights of communities. In the Western tradition, there is always a tension between the rights of the individual and the rights of the community. It is the role of independent courts in a country governed by the rule of law to make judgements on the balance of these rights.

2.11 Australians, particularly, have a long tradition of adherence to the rights and duties due to communities. Australia was a social laboratory at the beginning of this century which saw the new Commonwealth Government provide protection for the poor, the aged and the invalided. The Harvester Judgement of 1907 heralded a radical approach to the social contract by seeking to determine a basic living wage for a family. In the discussions leading to the establishment of the UN the then Australian Foreign Minister, Dr Herbert Vere Evatt, fought

⁷ Aung San Suu Kyi, *Empowerment for a Culture of Peace and Development*, address to a meeting of the World Commission on Culture and Development, Manila, 21 November 1994, presented in her absence by Mrs Corazon Aquino, p. 6.

to have included in the UN Charter, Article 56, which states that full employment and a high standard of living are goals for the international community.

2.12 In Australia the ideal of the family has legislative recognition as the fundamental group unit of society and it retains a strong emotional force. Loving and honouring one's parents is a central requirement of Christianity. The strains on the family are as much a product of the atomising effects of industrialisation as of any philosophical stance. Industrialisation in Asia will, and is, producing similar effects, despite Confucianism, Islam, Buddhism or Hinduism.

2.13 Aung San Suu Kyi propounds a similar view:

Many of the worst ills of American society, increasingly to be found in varying degrees in other developed countries, can be traced not to the democratic legacy but to the demands of modern materialism. ... [C]ould such a powerfully diverse nation as the United States have been prevented from disintegrating if it had not been sustained by democratic institutions guaranteed by a constitution based on the assumption that man's capacity for reason and justice makes free government possible and that his capacity for passion and injustice makes it necessary.⁸

2.14 It must be stressed that the democratic tradition is born of the belief in the corruptibility of power; it is governments which, more often than any other group, tyrannise their citizens. Through the separation of legislative, executive and judicial powers, democracy seeks to defend and protect the individual from the excesses of governments and the powerful. This is neither an expensive nor chaotic system, nor is it rampant individualism.

Human Rights In Burma

The View of the State Law and Order Restoration Council (SLORC) - An Improving Situation

2.15 The Burmese Government did not formally address the Committee on the question of human rights in Burma. Nevertheless, the Burmese Government's assessment of its own record is presented in the Foreign Minister's addresses to the General Assembly and the Royal Thai National Defence College in 1994.

2.16 These speeches stressed a number of things:

- the State Law and Order Restoration Council intends to establish a multi-party democracy in the country;

8 *ibid.*, p. 6. Here Aung San Suu Kyi has recast a quotation from Reinhold Niebuhr. See footnotes to the address.

- the democracy would be in accordance with the wishes and desires of the 45 million people of Myanmar;
- as a consequence of the struggle for independence and the sacrifices of the people in that struggle, there was implacable opposition to the dominance of foreigners and any interference in the internal affairs of the country; and
- there is a need for unity in a country torn by internal strife and the existence of one hundred national races.⁹

2.17 U Ohn Gyaw listed the achievements of his Government as:

- the suspension of military offensives since April 1992 - a total of 12 groups have returned to the legal fold;
- the establishment of a National Convention to develop a new constitution and foster national reconciliation. Consensus has been achieved, he said, on the 15 Chapter headings, the 104 fundamental principles of the state and the Chapters on the Structure of the State and the Head of State. The process has been slowed by the need to achieve consensus from the 700 delegates.¹⁰ (There will be more extensive discussion of the National Convention in Chapter 5);
- a priority for the development of the border areas with a view to narrowing the gap between rural and urban areas - improvements in infrastructure, roads, bridges, hospitals and communication systems. A master plan for border areas up to the year 2004 details means for the alleviation of poverty through the eradication of poppy cultivation and the establishment of alternative economic enterprises, the preservation of culture, literature and customs for the national races and the preservation of security and law and order in the border areas. (There is a further discussion of the border areas below in Chapter 4);
- international cooperation with China, Laos and Thailand under the auspices of the United Nations Drug Control Program (UNDCP) and in compliance with the 1988 UN Convention against Traffic in Narcotic Drugs for the reduction of drug trafficking and production;
- the introduction of a market economy; and
- an increase in foreign investment through the promulgation of the Foreign Investment Law. Considerable detail on the sectors and the amounts of investment were given by the Foreign Minister.¹¹ (These will be addressed in Chapter 6).

2.18 On human rights, specifically civil and political rights, U Ohn Gyaw asserted that

9 Michael Nyunt submission, pp. S29-30.

10 Oddly, he believed that, 'After the National Convention has completed its task and the constitution promulgated, a constitutional government will materialise to lead the country.'

11 *ibid.*, pp. S29-40.

the Myanmar Government does not condone human rights abuses. It is totally against human rights abuses. [The Government] has cooperated fully with the United Nations and has faithfully responded to all its inquiries regarding human rights questions. We have permitted US congressmen and congressional aides as well as UN personnel to visit Insein gaol and interview some of the inmates. We have taken diplomats, visiting dignitaries and journalists to the areas of alleged human rights abuses. There has been no executions at all in prisons although there were many instances where people have been sentenced to death for their crimes. On 9 January 1993 all death sentences were changed to life imprisonment while other jail sentences were reduced. ... The Tatmadaw (the Burmese Army) is conducting classes in conjunction with the International Committee of the Red Cross (ICRC) regarding the various principles contained in the [Geneva] Convention. ... Torture, ill-treatment of prisoners and degrading punishment are strictly prohibited.¹²

2.19 Two witnesses to the inquiry also saw developments in Burma in a positive light. The Hon R/L Hawke in outlining his impressions of Burma after his visit to the country in January 1995 stated:

We had been uniformly impressed by the competence, knowledge and commitment of these ministers and their associates to the economic development of Myanmar as a basis for the national and political advancement of the people of their country. This view was confirmed in our meeting with General Khin Nyunt, who specifically expressed a commitment to the emergence of a more democratic society - not necessarily according to western parliamentary forms - in the future.

In dealing with the government of Myanmar, we believe that you are not dealing with the incompetence and self-aggrandisement that characterises so many military regimes in other parts of the world. It has done things which cannot be approved, but rather than one-sided, blanket condemnation made by its critics, the government is entitled to be given credit for its genuine commitment to improving the economic condition of the country and its people generally. Contact with it is justified and desirable.¹³

2.20 In his opening statement in evidence before the Committee, Mr Hawke quoted extensively from a briefing paper on Burma supplied to him by the Australian Department of Foreign Affairs and Trade in January 1995. He concentrated on the positive developments outlined in the paper as, he said, they had influenced his decision to take up the invitation to visit Burma. He noted:

12 *ibid.*, pp. S42-43. NB The ICRC left Burma in 1995 in frustration at the lack of proper private access to prisoners.

13 Evidence, 24 February 1995, pp. 48-49.

- the dialogue that had begun in 1994 between senior State Law and Order Restoration Council (SLORC) figures and Daw Aung San Suu Kyi,
- the release of 2,000 detainees,
- the lifting of the curfew,
- the replacement of the military courts with civilian ones,
- the visit to some prominent political prisoners by international visitors,
- the existence of the National Convention,
- the removal of reservations on the Convention on the Rights of the Child,
- the invitation to the International Committee of the Red Cross (ICRC) to train soldiers in international humanitarian law,
- the agreement for United Nations High Commission for Refugees (UNHCR) monitoring of the repatriation and reintegration of the Rohingya refugees from the Bangladesh border,
- the achievement of ceasefires with a number of border groups, and
- some limited economic reform.¹⁴

2.21 Mr Michael Nyunt also characterised Burma as a place where 'real and substantial changes had taken place, particularly since 1993'.¹⁵ On human rights he believed there had 'never really been a problem' in Burma. 'Dangerous' political prisoners had been held without trial but not executed. His former law partner, U Ye Htoon, sentenced to 12 and 18 years and placed in solitary confinement, had not been physically tortured. 'Human rights did not seriously concern the average Myanmar citizen'. Mr Nyunt claimed there is no, and never was any, religious discrimination in Myanmar. There is no forced labour for peaceful projects. He saw the leadership as 'clean, efficient, hardworking, educated and caring'.¹⁶ Aung San Suu Kyi was sincere but surrounded by sycophants. She had poor interpersonal skills and yet her personality cult was likely to destabilise the fledgling democracy. She had no interest in the ethnic minorities and the National Coalition Government of the Union of Burma (NCGUB) is a forgotten group within Myanmar.¹⁷

2.22 Finally, Mr Nyunt put the proposition that Burma could not afford Western style democracy or Australian style unionism. It was intent on development and attracting investment and tourists.

Human Rights - Alternative Views

2.23 A very different view of the human rights situation in Burma was presented to the inquiry by many witnesses. This evidence came in part from individual witnesses who talked about their personal experiences. It might be construed as anecdotal, skewed by the lapse of time or simply a distortion because individual circumstances were being extrapolated to characterise the whole. This distortion might be more likely to happen if one assumes that those who have left Burma are more likely to be disaffected. However, the unchanging story

14 Evidence, 24 February 1995, pp. 45-46.

15 Mr Michael Nyunt submission, p. S21.

16 *ibid.*, p. S23.

17 *ibid.*, pp. S22-24.

and the significant amount of detail and photographic proof of physical maltreatment offered by so many witnesses from different parts of Australia was increasingly persuasive. Moreover, there was corroboration of these stories by large and reputable organisations - UN agencies, international human rights organisations and aid and relief organisations - whose task is to monitor, verify and filter information in order to arrive at as accurate a picture as possible.

2.24 In November 1994, Amnesty International concluded that there had been no fundamental change in the attitude of the governing State Law and Order Restoration Council (SLORC) towards respecting the basic human rights of its citizens and that, despite tentative steps towards placating the international community, the Government had reinforced its repressive hold within the country.¹⁸

2.25 The US State Department country reports on human rights practices for 1994 concluded:

The Government reinforces its rule via a pervasive security apparatus led by military intelligence, the Directorate of Defence Services Intelligence (DDSI). Control is buttressed by selective restrictions on contact with foreigners, surveillance of government employees and private citizens, harassment of political activists, intimidation, arrest, detention and physical abuse.

...

Despite an appearance of greater normalcy fostered by increased economic activity, in fact the Government's unacceptable record on human rights changed little in 1994. Out of sight of most visitors, Burmese citizens continued to live subject at any time and without appeal to the arbitrary and sometimes brutal dictates of the military. There continued to be credible reports, particularly from ethnic minority-dominated areas, that soldiers committed serious human rights abuses, including extra-judicial killings and rape.¹⁹

2.26 Human Rights Watch/Asia, in March 1995 noted the release of nearly 100 political prisoners in January to coincide with the visit of representatives of the UN Secretary-General and a further 31 in March. Nevertheless they reported continued abuses across the country, especially in the attacks on the Karens accompanied by forced portering, forced labour and reprisals against the civilian population and attacks on the refugee populations.²⁰

2.27 Freedom House, an American organisation which monitors civil and political rights and the strength and stability of democracy around the world, commented in its report on Burma for 1994-95 that:

18 Exhibit No. 5, Amnesty International, *Myanmar: Human rights still denied*, November 1994, p.2.

19 *Country Reports on Human Rights Practices for 1994*, Washington DC, Government Printing Office, 1995. From the section on Burma.

20 Exhibit No. 41, Human Rights Watch/Asia, *Burma: Abuses linked to the fall of Manerplaw*, March 1995, p.2.

Burmese citizens cannot change their government democratically. The ruling military junta has all but decimated any political opposition. ... Despite some cosmetic liberalisations in recent years, the Junta still denies its citizens fundamental rights. Freedoms of speech, press and association are severely restricted. Trade unions, collective bargaining and strikes are illegal ... In the border areas ... soldiers rape women, force villagers to act as human mine-sweepers ahead of troops and compel civilians to act as porters, often until they die of exhaustion or hunger. Captured rebels have been subjected to torture and extrajudicial executions.²¹

2.28 Freedom House gives a rating to countries on the basis of its political freedom. It rates Burma at 7, its lowest rating for a country that is not free.

2.29 The Special Rapporteur of the Commission on Human Rights, Mr Yozo Yokota, in accordance with the Commission resolution 1994/85 visited Burma from 7 - 16 November 1994. He noted, since his previous visit, a relaxation of tension in the life of the people and increased economic activity. He applauded the cooperation of the Government with himself and the various international agencies concerned with human rights. However, on examining his report, it appeared to the Committee that the cooperation of the Government declined as the Special Rapporteur got closer to any investigation of the rights and welfare of prisoners or the rights and freedoms of political leaders or participants. He concluded that there were:

serious restrictions imposed upon people in the enjoyment of civil and political rights. The people do not generally enjoy freedom of thought, opinion, expression, publication and peaceful assembly and association. They seem to be always fearful that anything they or their family members say or do, particularly in the area of politics, could put them at risk of arrest and interrogation by the police or military intelligence. ... Several people told him that many persons wished to tell the Special Rapporteur their stories, but were too afraid to come and see him.²²

2.30 This report will enumerate the kind of human rights abuses which were conveyed to the Committee as ongoing problems in Burma. This will be a selection only of the cases brought to the Committee's attention. Readers of the report should look to the volumes of submissions and evidence and to the list of exhibits to get a comprehensive picture of the complaints.

21 Freedom House, *Freedom in the World 1994-95*, p. 165.

22 Exhibit No. 29, *Report on the Situation of Human Rights in Myanmar prepared by the Special Rapporteur, Mr Yozo Yokota, in accordance with resolution 1994/85*, E/CN.4/1995/65, 12 January 1995, p. 34.

2.31 The Committee recommends that:

- 1 **the Australian Government urge the Government of Burma to ratify the major human rights covenants, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).**

Surveillance

Article 12²³

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks on his honour or reputation. Everyone has the right to the protection of the law against such interference or attacks.

2.32 Burma was described to the Committee as an 'informer society in which there is expansive and complete coverage of the country by the intelligence services.²⁴ Another witness claimed that where there are 'four or five people gathered together, there will always be military intelligence around. It is common knowledge.²⁵ Information is sought from citizens by the military police as a matter of routine. 'On the walls of offices there are posters with slogans saying: Discipline is necessary for development. Please give information in return.'²⁶ In June 1994, Myanmar radio announced that the Government had awarded decorations to those who had informed on others.²⁷ Another witness described how visitors, Burmese returning to Burma, who had entered legally, were checked on every two days by military intelligence. This included interrogation in the middle of the night.²⁸

2.33 A significant organisation for the surveillance of the population and the detection of political unorthodoxy is the Union Solidarity and Development Association (USDA). Established in 1993, its task is the penetration of local communities to influence, control and supervise them. Amnesty International claims that unofficial sources have reported that 'in June 1994 USDA were given instruction by members of military intelligence on how to detect people distributing political leaflets.'²⁹

23 All articles quoted in this chapter are from the Universal Declaration on Human Rights. It is important to note that the then Government of Burma voted for this declaration in 1948. And by remaining a member of the United Nations, Burma pledges itself to these principles and the principles contained in the Charter.

24 Evidence, 12 May 1995, p. 128.

25 In-camera evidence, 26 May 1995, p. 99.

26 *ibid.*, p. 93.

27 Amnesty International, *op.cit.* p. 4.

28 In-camera evidence, 26 May 1995, p. 87.

29 Amnesty International, *op.cit.* p. 4.

Freedom of Expression/ Freedom of the Press

Article 19

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

2.34 The effect of pervasive surveillance is to intimidate the population and create a climate of fear and distrust. It remains illegal to pass information to foreigners and recent arrests and prosecutions with severe penalties have enforced this law.³⁰ The UN Special Rapporteur reported in 1994 that many people were too afraid to talk to him.

2.35 There is no free press in Burma, including where commentary on political matters is concerned. Government censorship and self-censorship both operate and the distribution of written material is controlled by the Government. The television and other media outlets are used for propaganda by the Government; no opposition views are given coverage.³¹ The Australian Government in its submission to the Committee concluded that 'informed critical discussion of political issues is not permitted by the state media monopoly. These restrictions on political debate clearly inhibit discussions at the National Convention, thus calling into question the Convention's credibility.'³²

2.36 The US State Department country report on Burma notes that there has been increased access for foreign journalists in Burma; however their movements and access to contacts are closely monitored. Foreign radio broadcasts from overseas services are impossible to stop and remain a source of uncensored information for Burmese citizens. Registration for satellite dishes has been limited and in 1994 it was reported that foreign language videos were mostly removed from video rental outlets in a military crackdown.³³

2.37 Teachers and university lecturers must follow a politically correct line in support of the government. Not only could they not criticise the Government, they were held directly responsible for the attitudes of their students. The Committee was also told that 'teachers are regularly exposed to what are called refresher courses, which I am sure are designed to guarantee their political correctness.'³⁴ Political propaganda was a feature of the school curriculum.

The children are good at slogans ... It would be fair to characterise that situation as one where the education system is used by the military,

30 Notable is the case of Dr Khin Zaw Win who was charged in July 1994 with having made arrangements in 1992 to 'send fabricated news on Myanmar to the Special Rapporteur during his visit in that year. Amnesty International has listed a number of cases of people arrested under this law and sentenced to periods of 7 to 15 years. See Amnesty International, *Myanmar: Human rights still denied*, November 1994, pp. 5-9.

31 The release of Aung San Suu Kyi was not announced by the media and information had to filter slowly by word of mouth.

32 Department of Foreign Affairs and Trade submission, p. S493.

33 *Country Reports on Human Rights Practice for 1994*, op. cit.

34 Evidence, 12 May 1995, p. 129.

and probably always has been, to try and project those political, social and economic objectives in the wider society - certainly through the teachers.³⁵

2.38 The Committee recommends that:

- 2 **the Australian Government urge the Government of Burma, to relinquish government control over the media and to encourage a free and vigorous press, in compliance with the recommendations of the UN Special Rapporteur.**

Freedom of Movement/ Freedom of Assembly

Article 13

Everyone has the right to freedom of movement and residence within the borders of each state.

Everyone has the right to leave any country, including his own, and to return to his country.

Article 20

1. *Everyone has the right to freedom of assembly and association.*
2. *No-one may be compelled to belong to an association.*

2.39 In relation to both freedom of movement and freedom of assembly an ironic double standard appears to apply in Burma. On the one hand there are restrictions on the rights of people to move freely or to assemble freely; at the same time there is considerable evidence of forced relocation of large numbers of people and staged rallies of large numbers of people in support of the regime.

2.40 Most observers have noted an easing of restrictions on movement during the last twelve months. There is greater freedom for citizens to move inside the country, although non-citizens, including Muslims and Chinese, are required to inform authorities of their movements. Border areas remain restricted for security reasons. Aid organisations are permitted to travel to work on their projects, but they are accompanied by Government officials. International travel remains difficult but not impossible. Passport applications are reviewed by a board and decisions appeared to be dependent on political considerations.³⁶ However, entry visas for returning Burmese are more readily available and for longer periods of time. Many witnesses told the Committee that 28 day visas were available. Most witnesses had not applied for visas. They worried that there was a blacklist of political dissidents and informed the Committee that they had no faith in the regime and did not trust that they would not be harassed or arrested.

35 *ibid.*, p. 130.

36 *Country Reports on Human Rights Practices*, *op. cit.*

2.41 The law prohibiting public gatherings of more than five people remains in force although its use appears to be reserved for the prevention of opposition political activity.³⁷ Permission has to be sought even to hold private meetings of legal political parties.³⁸ Any association, whether a professional organisation, a union or social group, required Government registration.

2.42 On the other hand, a large number of Government sponsored mass rallies took place in 1994.³⁹ Many were organised by USDA. Public servants, students and others were compelled to attend on pain of fine, dismissal or failure at examinations. The rallies sought to portray mass support for the SLORC and particularly for the National Convention.

2.43 Most disturbing of all are the claims of forced relocation of people on a mass scale. At times this has been used as a means of countering the insurgency in the border regions but it is by no means confined to these areas. The National Coalition Government of the Union of Burma (NCGUB) estimates the numbers involved in internal displacement could be somewhere between 500,000 and 1,000,000 people, although it admits that accuracy of information is made difficult by the poor communications within Burma and with the outside world.⁴⁰ The UN Special Rapporteur was informed of the same process. He reported that relocation occurred without compensation and at short notice. People were not allowed to take their property with them. They were moved to make way for development projects, tourist constructions or, on the borders, to deprive insurgent groups of their support base.

2.44 The Special Rapporteur had reports of forced relocations in Yangon, Mandalay, and Yan-bye. He listed a number of specific instances:

- 80 persons forced to leave Kyein-ta-li village, Rakine State, 9 July 1994;
- 1,500 persons forced to leave Nga-let village, Min-pya township, Northern Rakine State, 13 July 1994;
- 250 households forced to leave Ngla village, Minbya township, July 1994;
- 360 households forced to leave Kawalong village, Myauk U township, 4 October 1994.⁴¹

2.45 Amnesty International put the face of human misery to this process:

Our village had to move - that's why I came here ... they ask us to go or would burn our house. They burned my house. They gave us two days' notice to move. No compensation. New place was twenty miles

37 In December 1991 troops dispersed crowds demonstrating after the award of the Nobel Peace Prize to Aung San Suu Kyi. Many were arrested. However it is interesting to note that, since her release, groups of people have been gathering regularly, watched but largely unimpeded by security, outside Aung San Suu Kyi's house to hear her speak.

38 *Country Reports on Human Rights Practices* op.cit.

39 In January 1994 one rally was attended by four million people. Students marched to the occasion; villagers were bussed in from surrounding villages. See Amnesty International op.cit. p.3.

40 Exhibit No. 12, *Brief Report on Situation of Human Rights in Burma 1994*, NCGUB Delegation to the 51st Session of the UN Commission on Human Rights, Geneva, 20 Feb 1995, p. 8

41 *Report of the Special Rapporteur*, op.cit. pp. 27-28.

away. Twenty houses had to move. Ten each went to two new places

...

and

I came two weeks ago. I came because I had to move from ... village to [another village] and then to [another village] and then back to [the first village]. One year in each place then told to move back to [the first village] in April this year. If we don't move then we'll be beaten.⁴²

2.46 This is a story that was repeated dozens of times in the documents supplied to this Committee.

Freedom of Religion

Article 18

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

2.47 The law in Burma provides for freedom of religion and it appears that worship in any denominations is neither interfered with nor prohibited. However, the Committee was told that the SLORC is increasingly using the majority religion, Buddhism, to enhance its legitimacy and has promoted dissension between Buddhist and Christian and Muslim groups in the border regions as a means of political division and military advantage. Such policies have unleashed religious persecution. The Committee was given copies of inflammatory documents denouncing Christian practices and beliefs said to be circulating in the Karen region.⁴³

2.48 The incidents of religious persecution include the destruction of churches and mosques, resumption of land used as cemeteries, refusal of building permits for the building of new churches, limitations on visas for clergymen to travel either into or out of the country, the resumption of religious buildings from communities on the grounds that the people could not prove legal title.⁴⁴ Typical of the stories told to the Committee is the following:

The government wanted the land and the building in Rangoon. The church refused to sell or to give it, so the congregation was just relocated outside, in a satellite town, and dispersed. So there was not anybody there anyway. They lost their land.⁴⁵

42 Amnesty International, op.cit. pp.17-18.

43 In-camera evidence, 26 May 1995, p. 108.

44 Information on incidents relating to religious discrimination is to be found in the Special Rapporteur's report, op. cit. p. 28 and the Country reports on human rights practices, op. cit. p. 8.

45 In-camera evidence, June 1995, p. 121.

2.49 Some discrimination is coincidental with factors other than religion. Land is confiscated and people relocated for a range of reasons. Disadvantage regarding rights to adoption, political status or employment affects all non-citizens although it strikes the Muslim Rohingyas in particular. (See Chapter 4).

2.50 The Committee recommends that:

3 the Australian Government urge the Government of Burma, in accordance with its obligations as a member of the UN and using the UN human rights conventions as a framework, to:

(a) include within its new constitution specific guarantees for the protection of the rights to freedom of expression, religion, association, assembly and the press; and

(b) repeal all laws which prohibit free association and particularly the free participation in the political life of the country (SLORC Orders 2/88, 4/91, the 1950 Emergency Provisions Act, the 1957 Unlawful Associations Act, the 1962 Printers and Publications Act and the 1975 State Protection Law.)

Detention without Trial /Political Detention

Article 9

No one shall be subjected to arbitrary arrest, detention or exile.

Article 10

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against.

2.51 Human rights standards seek more than anything else to protect the individual from the arbitrary wielding of power by governments. In this, the record of the SLORC over the last five years has been very poor. The arbitrary nature of their wielding of power stems from the illegality of their seizure of power. After such an act, the rule of law can have little meaning.

2.52 Over the past five years thousands have been detained without trial or charge or on political charges made on the basis of vague laws. The numbers are uncertain as the Government is secretive about its processes. However, since 1992, 2,000 people detained under the emergency regulations have reportedly been released. This in itself is some measure of the scale of the practice. Claims of improvement based on the releases and the lesser frequency of arrests have been disputed by those who see the decline as evidence of the successful intimidation of the population and the demoralisation of the National League for Democracy (NLD), the victorious party at the 1990 elections.

2.53 Alternatively, it has been claimed that the improvement is in fact non-existent as detentions have continued, particularly as a result of rallies or demonstrations coinciding with the anniversaries of former political crises. While many of the high profile detainees have been released, and the releases widely advertised by the regime,⁴⁶ the lesser known students, monks and politicians remain in gaol. It is said that 35 to 40 elected members of Parliament⁴⁷ are still imprisoned. Estimates of the numbers of dissidents still held vary from 400⁴⁸ to 3,000.⁴⁹

2.54 The most famous detainee, Daw Aung San Suu Kyi, General Secretary of the NLD, was released on 10 July 1995. The Committee welcomes her release. However her long detention without charge or trial is indicative of the problem of arbitrary arrest and detention in Burma. Its motives were blatantly political and its extension first from three to five and then from five to six years was arbitrarily decided upon by the SLORC's amendments to the 1975 *Law for Safeguarding the State from Dangerous Subversive Elements*. This law, in Section 10(b), justifies the detention of a citizen 'if there are reasons to believe that he has committed, or is committing, or is about to commit, (emphasis added) any act which infringes the sovereignty and security of the state or public peace and tranquillity.' The decision on whether an offence has occurred rests with a 'Central Body, consisting of the Minister for Home Affairs, the Minister for Defence and the Minister for Foreign Affairs'.⁵⁰

2.55 Detention on the basis of what one might do does not meet international standards of justice. Moreover, it would appear from the cases in the documents presented to the Committee that the security of the state is interpreted as synonymous with the security, ie immunity from criticism, of the ruling junta.

2.56 The legal process appears to be deficient in a number of significant aspects:

- The speed with which some cases are dealt. Four people were arrested, charged, tried and sentenced to death in the space of two days in January 1994 for the alleged murder of a student.
- Bribery is said to be common in affecting the outcomes of trials.
- Political cases are almost all heard inside the prisons and are not open to the public.
- Sentences are disproportionate to the offences, particularly in political cases where sentences of seven to twenty years have been given for what can only be described as normal, peaceful political activity - the distribution of leaflets, criticism of the Government, pleas for democratic processes in the National Convention deliberations.

46 Recent releases include Dr Aung Khin Sint, former National Convention delegate accused of distributing a pamphlet during the Convention, Tin Moe, a poet and Win Tin a Central Committee Executive Member of the NLD.

47 NCGUB, *A Brief Report on the Human Rights Situation*, op. cit. p. 3. NB This number is regularly changing. The IPU reported in its mid-1995 report that 15 elected members remain in prison.

48 *Country Reports on Human Rights Practices*, op. cit.

49 NCGUB, *A Brief Report on the Human Rights Situation*, op.cit. p. 3.

50 *Report of the Special Rapporteur*, op.cit. p.24.

2.57 However, some improvements in the legal process have occurred. After considerable pressure from the UN and Governments around the world, military courts were abolished in 1992. Criminal cases are tried in public courts and defence counsel is provided for the defendant. All death sentences were commuted in November 1992.

2.58 The Committee recommends that:

- 4 the Australian Government urge the Government of Burma to ensure that all trials are conducted according to internationally accepted standards of justice - that they are open and accessible, that all defendants have counsel of their choice, and that sentences are commensurate with the offence.

Conditions in Prisons/Torture, Cruel, Inhuman and Degrading Treatment

Article 5

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

2.59 The allegations of torture in prisons, particularly during investigations are persistent. Amnesty International provided a list of prisoners about whom it has received specific information of beatings, lack of medical treatment and prolonged solitary confinement. Between 1988 and 1993 Amnesty International has recorded 15 deaths in custody.⁵¹

2.60 In December 1993, conditions in Insein Gaol were described by a Karen farmer who spent three years as a political prisoner there. He was released in October 1993. The following is an extract:

Many times I saw prisoners being beaten and tortured, usually for stealing, gambling or quarrelling. First the guards beat them with a rubber pipe, and then they took them to the gravel path. ... They order the victim to crawl along it on his elbows and knees. They follow him with two or three dogs biting his legs. To escape their biting, the victim tries to crawl back to the cell as fast as he can on the gravel, so he scrapes all the skin off his elbows and legs. I saw them do this at least once or twice a month, especially in the hot season. ... They tortured some of our hunger strike leaders with the dogs on the gravel path.

When we had fever they never gave us any medicine. If it gets very bad then they send you to the prison hospital, where many people die. ... while I was there about five people in my room died. ... We sometimes heard that foreigners were coming to see the gaol and the prisoners' conditions. When this happened, the officials didn't show them our

51 Amnesty International, *Myanmar: Human rights still denied*, op. cit. p. 11.

wards; they showed them the wing that is used for training gaol administration workers. The trainees put on convicts' dress and were presented to them as prisoners.⁵²

2.61 The Special Rapporteur was also told that the inmates had been busy for three days prior to his arrival, painting and cleaning the prison premises.⁵³

2.62 Mr Yokota also recorded that he had received accounts from reliable witnesses and photographic evidence of overcrowding in gaols, poor hygiene and even the torture of prisoners. Included in the claims of torture were the very serious allegations of beatings, shackling, near suffocation, burning, stabbing, rubbing of salt and chemicals into open wounds and psychological torture including threats of death.

2.63 The submission from the Australian Department of Foreign Affairs and Trade stated that there had been no recent, confirmed reports of torture and believed that the practice might have declined.⁵⁴ The US State Department Country Report also believed that the worst forms of torture were in the recent past (prior to 1994) but characterised the treatment of prisoners as unacceptably harsh, including sleep and food deprivation.⁵⁵

2.64 The Government of Burma claims that it does not torture its citizens. The Minister for Foreign Affairs, U Ohn Gyaw, told the United Nations, 'Torture, ill-treatment of prisoners and degrading punishment are strictly prohibited.' Moreover he claimed, 'We have cooperated fully with the United Nations and have faithfully responded to all human rights questions.'⁵⁶

2.65 However, this claim is not supported by the Special Rapporteur's report of his visit to Burma in November 1994. He says of his visit to Mandalay gaol that, '[he] was not allowed to see any of the detainees, nor was he allowed to see the cells.' Of his visit to Insein prison, he says that, '[he] was not allowed to see all the detainees he had requested to meet. ... After repeated requests ... [he] was allowed to meet only three detained political leaders' and ... 'The meetings took place in the presence of the Prison Warden; several of the prison guards recorded the interviews and a group of photographers were also present.'⁵⁷

2.66 It is notable that the International Committee of the Red Cross (ICRC) has also withdrawn from Burma because the Government did not fulfil its requirement of proper, private access to prisoners. The suspicion that the mistreatment of prisoners continues will remain so long as access of this kind is denied. The Burmese Government can make no claims about cooperation with the United Nations when visits are manipulated in this way. Such public and supervised visits to prisons have limited value unless it is for the propaganda purposes of the regime.

52 Exhibit No.1, *Current Conditions inside Insein Prison*, supplied by the Australia Burma Council.

53 *Report of the Special Rapporteur*, op. cit. p. 27.

54 Department of Foreign Affairs and Trade submission, p. S492.

55 *Country Reports on Human Rights Practices*, op.cit.

56 Michael Nyunt supplementary submission, p. S42.

57 *Report of the Special Rapporteur*, op. cit. pp. 15-16.

2.67 The Committee recommends that:

5 the Australian Government urge the Government of Burma to:

- (a) ratify the Convention against Torture and Cruel, Inhuman and Degrading Punishments (CAT);
- (b) eliminate from its prisons all practices involving physical abuse or torture;
- (c) institute proceedings against all officials guilty of the abuse of prisoners;
- (d) give training to prison officers, police and military personnel in the standards expected of such personnel in the human rights instruments and humanitarian law; and
- (e) allow representatives of the International Committee of the Red Cross full, private access to prisoners in Burmese gaols.

Extrajudicial, Summary or Arbitrary Executions

Article 3

Everyone has the right to life, liberty and security of person.

Article 11

1. Everyone charged with a penal offence has the right to be presumed innocent until proven guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

2.68 Arbitrary execution is most common in the border regions where porters or prisoners or ordinary villagers are killed frequently. The army in these regions appears to be a law unto itself. It appears that no prosecutions against army officers have occurred as a result of such killings. Reliable, monthly reports covering hundreds of documented cases of torture and arbitrary executions have been supplied to the Committee throughout the length of this inquiry.

2.69 The following is typical of the stories which emanate from all border regions and, in the documents received by this Committee, cover the period from 1991 until the present. This event was reported by Amnesty International and concerns the deliberate killing of three young men by soldiers of the 99th Division in March 1994:

... he did not know the soldiers had come and they captured him ... The three girls saw the men killed and were very frightened. They said that before the men were killed they were tortured. The soldiers put them in the water and hit them ... When we went to see the body we had to

dig them up as they had been buried. Only one had his throat slit, the other two were just stabbed.⁵⁸

2.70 In private evidence before the Committee, a witness related a number of incidents of arbitrary execution including:

People [have been] killed in Moulmein, which is south of Rangoon. Two people were quarrelling. One of them was an ethnic Indian and the other person was a Burmese. The military arrested them. When they were investigating why they were having a quarrel, the Muslim national died. They gave his body back to the relatives.⁵⁹

2.71 Ms Corinne Armour, an Australian teacher who had worked in the refugee camps on the border, told the Committee:

I have heard media claims by SLORC that there are no human rights problems in Burma. Claims like this make me want to laugh and cry. I have seen the evidence and I have heard so many tales to the contrary.

...

I would like to talk about my camp, a relatively small camp with a population of 3,570 Karen refugees. On 9 March [1995] at 1.30am, Burma's human rights abuses impacted yet again on the life of Veronica, a student in my English class. Armed men attacked her hut outside the camp's perimeter, stealing money from Veronica's mother and murdering her father and her 29 year old brother, himself the father of four. The attackers were DKBA and SLORC and as evidence I offer the testimony of Veronica's mother and photos of the dead men taken later that morning. ...

I could [also] quote you the testimony of a porter. Most of the porters who do escape can tell tales of death. This was a 20 year old porter who escaped on 14 March and made it to the Thai-Burmese border. In an interview with human rights reporters he said: 'One man was lying by the road. His head was bloody and he had been beaten to death. I saw another body, an old man beside the road. A third man could no longer carry anything so a soldier hit him on the chest and head. Then he started hitting him on the shoulder with a 75mm shell. The porter said to the soldier, 'Kill me. I cannot go on anymore.' then the soldier just kicked him down the hill so we do not know for sure if he died, but I think so.⁶⁰

2.72 The UN Special Rapporteur drew a number of cases of reported summary executions to the attention of the Burmese government. The overall response appears to have been one of denial and, although there appears to be some evidence, according to the Special

58 Amnesty International, op. cit. p. 15

59 In-camera evidence, 26 May 1995, p.97

60 Evidence, 19 May 1995, pp. 152-155



Mae Salid (Gray Hta) Refugee Camp: On 9 March 1995 at 1.30am these two Karen men were murdered in their hut by the Moei River just north of the Mae Salid Refugee Camp.

Source: Corrinne Armour, Public Hearing , Melbourne, 19 May 1995.

2.73 Rapporteur, of the army attempting to discipline its soldiers, his final assessment is that little progress has been made.

However, the Special Rapporteur cannot deny, in view of so many detailed and seemingly reliable reports, that violations appear to be committed consistently and on a wide scale by the soldiers of the Myanmar Army against innocent villagers (particularly those belonging to ethnic minorities) in the form of summary or extrajudicial executions and arbitrary killings which occur in the context of forced labour, rape, forced relocation and confiscation of property.⁶¹

2.74 The Committee recommends that:

6 the Australian Government urge the Government of Burma to:

- (a) bring the conduct of its military officers into compliance with accepted standards of behaviour in accordance with the Geneva Conventions and the international human rights conventions;**
- (b) take proceedings against members of the military guilty of arbitrary killing, rape or the beating of civilian porters or villagers; and**
- (c) control the military to ensure that there is no confiscation of property.**

Conclusion

2.75 Reports continue to be made of gross human rights abuses in Burma, in the Special Rapporteur's words, 'consistently and on a wide scale.' The concessions which the Government of Burma has made, and made only under great international pressure - the abolition of military tribunals, the release of some of the high profile political detainees and the cessation of official executions - are important but, since they rely on the will or the whim of the Government, there is no certainty that these abuses will not occur in as great a measure at any time. No structural changes have been made which might assist in the long term protection of human rights. This requires the perpetrators of abuses to be brought to justice, the establishment of an independent judiciary and a free press, a recognition of the rights of a democratic opposition and the subordination of the army to an elected civilian government. There is no sign of any intention on the part of the State Law and Order Restoration Council (SLORC) that they will implement democratic changes which would ensure this kind of accountability.

61 *Report of the Special Rapporteur, op. cit. p. 23.*

CHAPTER THREE

LABOUR RIGHTS

International Obligations on Labour

3.1 The Government of Burma incurs obligations under the relevant sections of the Universal Declaration on Human Rights dealing with labour and employment,

Article 4

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 23

Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

Everyone, without any discrimination, has the right to equal pay for equal work.

Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

Everyone has the right to form and join trade unions for the protection of his interests.

3.2 The Government has also has ratified International Labour Organisation Convention No 29 on forced labour and No 87 on freedom of association and the protection of the right to organise. These international instruments go to the heart of the complaints that are made against the Government - the pervasive nature of forced labour and the lack of freedom of association and free trade union activity in Burma.

Article 2 of the *Forced Labour Convention (No 29)* allows for five exceptions:

For the purpose of this Convention the term 'forced or compulsory labour' shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.

Nevertheless, for the purpose of this Convention, the term 'forced or compulsory labour' shall not include:

- a) any work or service exacted in virtue of compulsory military service laws for work of a purely military character;*
- b) any work or service which forms part of normal civic obligations of citizens of a fully self-governing country;*
- c) any work or service exacted from any person as a consequence of a conviction in a court of law, provided that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies or associations;*
- d) any work or service exacted in the case of an emergency, that is to say in the event of war or a calamity or threatened calamity, such as fire, flood, famine, earthquake, violent epidemic or epizootic diseases, invasion by animal, insect or vegetable pests and in general any circumstances that would endanger the existence or well being of the whole or part of the population;*
- e) minor communal services of a kind which, being performed by the members of the community in the direct interest of the said community, can therefore be considered as normal civic obligations incumbent upon the members of the community, provided that the members of the community shall have the right to be consulted on the need for such services.*

Forced Labour

3.3 Forced labour in Burma takes a number of forms:

Porters, conscripted from the villages to supply the logistical support for the Burmese military in their campaigns are conscripted under the *Army Act*. Army conditions, rations, medical assistance, pay and rights to compensation in the case of injury should apply. It appears the system is grossly abused. There are reports of porters being used as minesweepers ahead of soldiers, money as well as service demanded of village families, farm animals and food supplies commandeered.

3.4 Hundreds of testimonies have been given to this Committee on the nature of forced labour in practice. These testimonies come from all the border regions, the Shan state, the Chin state, from the Mon people, the Karen, the Karenni and from central Burma. They reveal a system that is at the mercy of the individual commander's humanity and, in reality, it is

very often brutal. This is particularly so where the army is dealing with the ethnic minorities.¹ Immunity from punishment appears to have bred an arbitrary brutality towards people. Escaped porters tell of being forced into service, being made to carry excessively heavy loads, of little or no food, no payment, beatings, the rape of women and the killing of the old and the sick or the uncooperative.

3.5 For example, in Shan State in 1994, one porter described the behaviour of 244 Battalion.

The soldiers said that all the villages were the villages of rebels, so they arrested the men and went and slept with the women. They killed all the villagers' animals and the people cried. The soldiers killed the people, even the children. ... We only got a handful of boiled rice to eat, only once a day. ... I had to carry six 75 mm shells² at a time ... I've still got these wounds on my shoulders - at the time there were even worms in them. People got sick but when they asked them for medicine they were hit with rifle butts.³

Forced portage is a major cause of refugee outflows from Burma.

3.6 **Corvee labour**, compulsory public labour contributions to large infrastructure projects. This is said to be traditional, a family contribution now necessitated by Burma's poverty and lack of development assistance funds. It appears to be used on a massive scale. The United Kingdom organisation, the Burma Action Group, has listed some of the development projects using forced labour.

- (a) An estimated 120,000 - 150,000 local people working on the 160km long Ye-Tavoy railway line, 1993.
- (b) From the 500,000 residents of Mandalay, each family ordered to give three days a month to the renovation of the moat and palace, 1994.
- (c) 364,224 people forced to work on the 18.14 km railway from Nahtogyi to Myangyan, 1992.
- (d) Over 300,000 people worked on the Loikaw to Aungban railway, 1992.
- (e) 921,753 people forced to work on the Pakokku-Monywa section of the Chaung Oo - Pakokku railway, 1993.
- (f) 350,000 people forced to work on the construction of the Bassein Airport.

1 The Committee was supplied, from a number of different sources, with copies, both in Burmese and in English, of SLORC Orders given to villagers in Karen areas. They are peremptory and threatening. They suggest and sometimes openly state the retaliations that will be meted out to 'uncooperative' villagers. They are signed by SLORC commanders, usually a Lieutenant Colonel. The orders make it clear that the villagers are expected to give labour, goods and money. They are dated as late as June 1995. See Appendix 5.

2 A 75mm shell weighs about three kilos so that the total weight of the load was approximately 18-20 kilos.

3 Exhibit No 6, *SLORC in the Southern Shan State*, p. 5.

- (g) Over 85,000 people forced to work on the construction of the 30 mile long Yenangyaung-Natmauk road.

3.7 This year, in February, Burma, Thailand and business corporations UNOCAL (United States) and TOTAL (France) signed a huge gas supply contract to develop the Yadama gas field in the Gulf of Martaban and to run a pipeline through Burma's Tenasserim Division into Thailand. Thailand intends to purchase 10, 000 million baht (over \$US400 million) worth of natural gas per year from Burma. Opposition to the gas pipeline, which runs through Karen and Mon territory, has claimed that the projects have caused environmental damage, forced relocations of thousands of people and forced labour. No consultation has taken place with local groups of Karen or Mon people. Human rights groups have claimed that 3,000 people in 19 villages have been moved to make way for the pipeline and local people have been forced to burn their own villages and clear the land. The companies concerned, UNOCAL and TOTAL, have denied any use of forced labour, but their inspection of the sites would appear to be cursory.⁴

3.8 This view was reiterated at the ILO Committee on the Application of Standards in 1995:

There was also new information surfacing on the Government's \$1 billion gas pipeline project paid for by the American corporation UNOCAL and its French counterpart TOTAL. Villagers had not only lost their land but had been forced to clear them to make way for the pipeline. Village after village was being razed in this manner by those who had lived in them their whole lives.⁵

3.9 It appears that the more remote the project, the worse the conditions of work become. Cases of beatings, untreated disease, malnutrition and death from exposure were reported. On the Ye-Tavoy railway project, for example, seven control centres, each under the command of a local SLORC military authority, were responsible for 7,000 to 8,000 conscripts per centre. All villagers, men and women, between the ages of 15 and 60 were conscripted. The work involved very heavy labour, particularly in the building of embankments. A limited amount of machinery was available, but only if hired by the labourers. Fuel was an extra charge. Workers had to supply their own tools. People were not paid. Escapees surmised that the money and equipment supplied by the central government for the project had been misappropriated. If labourers escaped, fines of 2,000 to 3,000 kyats were charged or the headman of a village was beaten. As the project developed people worked day and night and in all weathers.⁶

4 ACTU supplementary submission, Attachment B. It is reported in UNOCAL in Myanmar: report to Stockholders by Unocal's Chief Executive Officer, Roger C Beach, that the company claims to have 'visited the area and discovered no human rights abuses.' According to *Burma Issues*, Bangkok Vol 5 No 5 May 1995, p. 7, the visit was conducted by helicopter.

5 *ibid.*, p. S1002.

6 Exhibit No 6, *Ye-Tavoy Railway Construction: Report on Forced Labour in the Mon State and Tenasserim Division in Burma, April 1994*, pp. 2-6.

3.10 Human Rights Watch/Asia reported interviews with refugees in January 1995:

Sometimes we didn't go because we were tired, and they came at night and dragged us from our house. My children were screaming and crying, but I just had to leave them there.⁷

3.11 Others reported that an old man died from being beaten by an army captain on 22 February 1995, while working on the Rangoon-Kyaukpyu road in Arakan State. At the same site twelve others died from fevers which were not treated.⁸

3.12 An eyewitness account of conditions on the Ye-Tavoy railway project described:

Two labour camps have been set up along the line of the Ye-Tavoy railway. The inmates are watched over against escape by armed guards and are only allowed out to forage for food on rotation, at intervals. As an extra humiliation, escapees report having to collect firewood at the end of each working day for the SLORC guards, who then sell it back to them and surrounding villagers.⁹

3.13 The International Confederation of Free Trade Unions reported numerous instances of forced labour, including work on army owned commercial ventures:

One 43 years old refugee Karen farmer, interviewed by Burma Issues, said he saw a fellow forced labourer being brutally interrogated and beaten for two hours, before being stabbed to death by soldiers. They were forced to work on a rubber plantation, at least 10,000 acres large, owned by the military. Pay was never handed out and it was suspected of being diverted by the military.¹⁰

3.14 The work is obviously neither a voluntary contribution nor an ennobling experience as claimed by the Government. (See paragraph 3.22.) The refugee outflows from Burma testify to this. Hundreds of the refugees along the Thai and Bangladesh borders claim they are fleeing not just the military action of the SLORC but the slave labour conditions and cruelty of this system.

Prison labour is also used on infrastructure projects and claimed by the Government to be a way of reintroducing the prisoners into society. However, reports have reached the Committee of labour concentration camps for prisoners in northwest Burma:

There are three concentration labour camps in the Kabow valley, in the Tamu township in the Sagaing Division near the Indo-Burma border. The names of the camps are Wet Shu, Thanun and Yezagyo. ... The human rights conditions in these camps are extremely bad. The Wet Shu camp was constructed by porters from nearby villages. ... [it] was

7 Exhibit No. 44, Human Rights Watch/Asia. *Burma: Entrenchment or Reform? Human Rights Developments and the Need for Continued Pressure*, Vol. 7 No.10, July 1995, p. 14.

8 *ibid.*, p. 14

9 ACTU supplementary submission, Attachment B, p. S1024.

10 *ibid.*, p. S1029.

fenced with a double roll of barbed wire and guarded by 45 armed riot police and a platoon of the Burmese army. ... Up to now the prisoners deaths exceeds 150. The work is timber cutting and agricultural.

3.15 A further description of prison labour came from Ron Gluckman relating a train journey through Burma in 1995.

Our first glimpse of the dark side of Myanmar comes 100km north of Yangon, when the train passes a long row of men in tattered rags. They line both sides of the track, heads bowed. Even before seeing the chains dangling from their legs we can see from their sad look they constitute a prison chain gang. They appear repeatedly along the route, chained like animals. Many are boys. ... This is one of Myanmar's greatest shames, for the conscription of prisoners is commonplace. ... Chain gangs are everywhere.¹¹

3.16 In its 1995 session and in response to the government's claim that workers on infrastructure projects were volunteers, the Workers' representative from the United States told the ILO Committee on the Application of Standards:

[T]he fact of the matter was that there were photographs of people in shackles, building what was now called the 'death railroad'..¹²

Basic Labour Rights

3.17 Apart from forced labour, paid workers in Burma do not have basic labour rights. Despite the ratification of the ILO conventions, there is no freedom of association, no right to strike, no functioning trade unions¹³ and no right to bargain on wages. The international trade union movement always lists Burma as one of the countries where child labour is endemic.¹⁴ The Government sets wages unilaterally in the public sector; private sector wages are set by the market. Wage increases continued to lag far behind inflation.¹⁵

3.18 In 1993, complaints were made to the ILO by the International Transport Federation (ITF) about the contracts and conditions of 30,000 Burmese seamen. All seamen come under the control of the Government's Seaman's Employment Control Division (SECD). They are required to sign contracts which state that the seamen will not contact the ITF. More specifically, the ILO Committee on Freedom of Association heard a series of cases of the alleged abuse and intimidation by the Burmese Government of Burmese seamen serving on

11 *ibid*, Attachment D, p. S1096

12 *ibid.*, Attachment A, p. S1002.

13 The Federation of Trade Unions of Burma, founded in 1991, has to operate clandestinely. The organiser, Thein Tua, was arrested in Mandalay in January 1993. Most activities have been conducted from outside the country, but in 1993 FTUB's offices in Bangkok were raided, staff detained and the offices closed. Thailand will not reissue the General Secretary of the union, Maung Maung, a visa. See ACTU submission, p. S526.

14 Evidence, 16 August 1995, p. 247.

15 *Country Reports on Human Rights Practices*, *op. cit.* p. 12.

foreign ships flying flags of convenience. In the period between 1987 and 1993, while in ports in the United States, Germany, Sweden and Australia, the seamen had complained about very poor conditions and underpayment. The response of the Government of Burma included revocation of registration, confiscation of passports, threats of imprisonment, threats against families and possible kidnapping.¹⁶

3.19 One case of particular significance for Australia concerned the interception in 1993 of 11 Burmese seamen by Burmese authorities in the transit lounge at Singapore airport and their forcible repatriation to Burma. It was claimed in the Singapore Parliament by the Home Affairs Minister that, in response to a request from the Burmese Embassy on behalf of the Burmese Foreign Ministry and the Star Corporation Shipping Company, the First Secretary of the Burmese Embassy had persuaded the Qantas airport duty manager to assist him to seize the passports of the 11 seamen and hold them until their departure to Rangoon. (For detailed accounts of the cases see Appendix 6).

The Position of the Government of Burma

3.20 In 1994 at the 81st session of the International Labour Conference in Geneva, the representative of the Burmese Government expressed a desire to cooperate through the Ministry of Labour with the International Labour Organisation in developing laws and systems which would meet the standards set down in the ILO conventions to which Burma is a party. He stated that the discussions at the National Convention on a new constitution for Burma included a determination to enact laws to protect the rights of workers in the country and to enable workers to form their own unions. However, he considered that 'the present machinery for the protection of the rights of workers was as strong and as effective as ever. ... The Laws Scrutiny Central Body was formed in 1990 to review the existing national legislation including labour laws. ... The fundamental rights of workers continued to be a major concern of his Government.'¹⁷

3.21 In 1995, at the Commission on Human Rights, the Burmese representative, Ambassador Maung Aye, explained labour practices in Burma in the following terms:

It has always been a tradition in the Myanmar culture of donating labour in the building of monasteries, pagodas, roads and bridges. A belief persists that in doing so, it leads to mental and physical well-being. Those who can afford to, donate money, while those who cannot, donate their labour. ...

For their contribution towards community development, remuneration is given to the volunteer workers by the government either on a piece-rate or at prevailing wage rates. ...

The authorities concerned do all they can to provide for the basic needs of the voluntary labourers. ...

16 ACTU submission, p. S526 and Attachment C., pp. S971-81.

17 ACTU submission, Attachment D, p. S985.

3.22 On portering, he explained:

This has been a practice in Myanmar since she gained her independence in 1948. Recruitment is based on the following three criteria:

- a) They [the porters] must be unemployed;
- b) They must be physically fit to work as porters; and
- c) A reasonable amount of wages must be fixed and agreed to before hand.

The labourers must be paid from the time they leave their respective homes until they return at the completion of their duty. Apart from daily wages, they are entitled to receive rail and steamer travelling warrants or actual money to cover the cost of transport to and from their homes and the operation area. The respective military unit has the responsibility of providing accommodation, messing, medical cover, and social welfare benefits for the hired labourers. ... besides giving out daily wages, the Tatmadaw provides medical care for sickness and injuries.¹⁸

3.23 Witnesses to the inquiry were critical about the claim of the Burmese Government that forced labour was legitimate and or/acceptable because it was traditional. The Australian Ambassador to Burma, Mr Hume, said:

[T]here is a legal basis for that in the Burma Army Act - that is there is power vested in civil and military authorities to conscript, or to call on the services of civilians, to provide these - but clearly under very properly defined circumstances and conditions which do not include the sort of abuse and mistreatment which is clearly documented in the use of porters.¹⁹

3.24 Amnesty International explained that traditionally 'everything was a voluntary effort. This is not a voluntary community effort in any respect at all.'²⁰ The Australia-Burma Council rejected the Burmese Government's argument on traditional labour practices completely:

Murder is traditional, rape is traditional, torture is traditional. It is all traditional - it does not make it right. If any of this [abuse] was traditional practice, there would not be hundreds of thousands of refugees on Burma's borders. If it were traditional and acceptable

18 Exhibit No 29, Ambassador Maung Aye, *Letter dated 13 February 1995 from the Permanent Representative of Myanmar to the United Nations Office at Geneva addressed to the Assistant Secretary-General for Human Rights*, E/CN.4/1995/148, 20 February 1995 (Geneva: UN ECOSOC)

19 Evidence, 24 February 1995, p. 9.

20 Evidence, 24 February 1995, p. 9.

practice, the people would not be fleeing it. ... Forced labour is slavery.²¹

3.25 On the question of forced labour, the ILO's investigation, in November 1994, found that:

The exaction of labour services, in particular portage service, under the Village Act and the Towns Act, is contrary to the Forced Labour Convention, 1930 (No 29) ratified by the Government of Myanmar in 1955.²²

3.26 In 1995 at the 82nd session of the International Labour Conference in Geneva, the Government of Burma responded to the previous year's criticisms of the Committee on the Application of Standards. It announced that the *Village Act* and the *Towns Act* are among the list of laws to be reviewed on 29 January 1995 and again on 16 May 1995. The laws were deemed to be not in conformity with prevailing conditions in the country or Convention No. 29.

3.27 The Australian Department of Foreign Affairs and Trade also informed the Committee that it had received reports that:

[T]he SLORC had issued a directive in late July 1995 that the use of forced labour for public works at the local village/township level was to cease and that in future these projects were to be carried out exclusively with the use of paid labour. The directive notes public complaints about the conditions under which such projects have been carried out previously, particularly concerning summons for voluntary labour, collection of funds and procurement of crops. ... These works are now to be implemented only by wage labour with the person in charge paying the daily wage/piece meal labour charges with correctly registered records.²³

The Judgement of the International Labour Organisation

3.28 The International Confederation of Free Trade Unions (ICFTU), in its 1995 report to the European Union, concluded that:

The evidence is both consistent and overwhelming: the use of forced labour in military operations, civilian or military construction, maintenance work and infrastructure (including tourist) development is

21 Evidence, 5 May 1995, pp.106-107.

22 International Labour Organisation, 'Report of the Committee set up to consider the representation made by the International Confederation of Free Trade Unions under Article 24 of the ILO Constitution alleging non-observance by Myanmar of the Forced Labour Convention, 1930 (No 29) (Geneva: International Labour Organisation) November 7, 1994, Cited from Human Rights Watch/Asia, *Burma: Entrenchment or Reform?* op. cit. p. 15.

23 Department of Foreign Affairs and Trade supplementary submission p. S907

part and parcel of the Burmese population's everyday life. It is characterised by systematic coercion and violence, imposed by the army, police and other security forces. Drawing on outdated legislation inherited from the colonial period, the so-called State Law and Order Restoration Council (SLORC) claims its record in this respect to be consistent with both domestic law and the legitimate needs for community participation in the nation's economic and social development. To the contrary, the international human rights community maintains that forced labour in Burma constitutes a *prima facie* violation of international human rights standards and international humanitarian law, including binding international standards on the treatment of civilian populations during armed conflict, as defined by the Geneva Conventions of 12 August 1949.²⁴

3.29 The ILO Committee on the Application of Standards noted the failure of the Government of Burma to implement legislation to uphold labour standards agreed to in ILO conventions to which it was a party. In 1994 the explanations of the Burmese Government representative that the workers were well protected were roundly condemned and rejected by the workers', employers' and other government representatives on the Committee.

3.30 The situation was described as 'one of almost total despair, considering that the convention had been ratified almost 40 years ago. ... The convention was neither complex nor difficult to implement if the Government wished to meet its obligations.' In response to the Burmese Government's explanation of impending constitutional changes in Burma, the employers' representative stated that 'they felt this was simply a delaying tactic.' The Government representative from the United States added that the repeated promises of the new constitution 'had a hollow ring. Although the basis of the case had been a problem of trade union monopoly, she now considered that it was actually a total lack of freedom of association.' The workers' member from Japan said that 'empty assurances were no substitute for concrete progress.' The workers' delegates to the Committee concluded that, 'To show real progress the Government needed to provide more specifics, such as the texts of new laws under consideration and the dates when they were planned to come into effect.'²⁵

3.31 At the 1995 meeting of the Committee on the Application of Standards, despite the announced review of the legislation, the tripartite members of the Committee remained sceptical that the review would be any more effective than the promises for reform made in the last 40 years. In relation to Convention No 87, they reiterated that:

year after year there had been promises of new constitutions, new labour laws and courts. ... The very simple and plain point was that there were no trade unions in Myanmar at the present moment. There were some bodies under the total control of the Government which under no circumstances could ever qualify as trade unions.²⁶

24 ACTU supplementary submission, Attachment A, p. S1012.

25 ACTU submission, Attachment D.

26 ACTU supplementary submission, Attachment A, p. S1007.

3.32 Recommendations were made in relation to both conventions, Nos. 29 and 87;

The Committee called on the Government to urgently repeal the offensive legal provisions under the *Village Act* and the *Towns Act* to bring them into line with the letter and the spirit of Convention No 29, to terminate forced labour practices on the ground, to provide for and award exemplary penalties against those exacting forced labour and to furnish a detailed report to the Committee of Experts on legislative and practical measures adopted to fall in line with Convention No 29.

and

The Committee urged the Government to adopt, as a matter of urgency, the necessary measures to guarantee that in law and in practice the workers and employers had the right to join organisations of their own choice and without previous authorisation outside the existing structure, and that such organisations had the right to join federations and confederations and to affiliate with international organisations without impediment.²⁷

3.33 The Committee recommends that:

7 the Australian Government urge the Government of Burma to:

(a) comply with the standards it has agreed to under the Geneva Conventions, in respect to the treatment of civilians during armed conflict, and under ILO Convention 29 in relation to forced labour;

(b) institute the necessary legal changes to the *Village Act* and the *Town Act* to prevent the continuation of the practice of forced labour in Burma;

(c) agree to the provision of expert advice by representatives of the ILO for the institution of improved laws and systems relating to labour practice in Burma; and

(d) comply with the requests of the ILO Committee on the Application of Standards to institute new laws relating to the existence of free trade unions in Burma - allowing the formation of unions independent of the government, the right of workers to join unions of their own choice, the right to strike and the release of union officials currently in prison for union activity sanctioned under ILO Convention No 87.

27 *ibid*, pp. S1007-8

3.34 The Committee recommends that:

- 8 **Australian delegates to the ILO continue to raise these issues and press the Government of Burma for reform of its labour laws to bring them into line with the requirements of the ILO.**

Conclusion

3.35 The gap between the statements made by various representatives of the Burmese Government and the actual conditions of life for ordinary Burmese people appears to be very wide. For the most part, the worst conditions are not matters that can be attributed to poverty or levels of development or different, Asian, values. They are often attributable to Government policy or to the direct action or inaction of the Government or individual military commanders. They result from a lack of accountability. Where there is no domestic accountability then the only possibility for the protection of people who are abused by their government is through the international system, flawed as it is.

CHAPTER FOUR

BORDER REGIONS

The Historical Perspective

4.1 The modern state of Burma, like many nation states, is an artificial construction, resulting from historical developments, wars and colonisation. There is little perceived connection, and often considerable suspicion, between many of the people included in its borders. As a result, the people of the border regions of Burma have always displayed a degree of independence; they have been separated both ethnically and geographically from those of the central plains. Non-Burman ethnic groups make up 30-40 per cent of the population and occupy 55 per cent of the land area of Burma.¹ These significant ethnic minorities are also indigenous to the land. They include the Karen (10.2%), the Shan or Tai (7.7%), the Arakanese (3.7%), the Mons (2.5%), the Chin (2.4%), the Kachin (1.1%) and the Kayak or Karenni and other smaller indigenous groups (2.5 %). In contrast to the Burmans of the lowland plains, these groups live in scattered communities in the mountainous regions of the borders.² In terms of ethnic composition, the indigenous Burmans are the dominant political and religious group and have, since the eleventh century, assimilated others into their culture.

4.2 Under British rule, as early as 1922, this separateness and the independence which sprang from it was recognised in the creation of the federation of Northern and Southern Shan States. Trade and financial links between the frontier areas and the central administration increased during the colonial period; however there were different rates of development between the central and the border regions with the border lagging behind. Colonial policy also exacerbated the tensions between the groups. The British used Indians in the administration rather than Burmans; in the army they preferred Christian Karens or the Shans to Burmans. World War II unleashed resentment against minority groups in the form of racial riots and in 1942 violence against the Indian population and the Karens.

4.3 British plans for representative councils had not been put in place by the time the war began, and upon reoccupation the British Government instituted a centralised rather than a federal form of administration. This was a reversal of the trend colonial administration had taken and it flew in the face of an almost universal desire for greater autonomy. It was vigorously resisted.

4.4 In 1947, during the phase of the interim government prior to independence, the Burma Executive Council met with representatives of the frontier peoples to discuss aspects of the London Agreement which was to be the basis of a new constitution for an independent Burma. The outcome of this meeting, the Panlong Agreement of 1947, determined the

1 Exhibit No 8, National Coalition Government of the Union of Burma, *The Ceasefire Negotiations*, p.2.

2 Joint Standing Committee on Foreign Affairs, Defence and Trade, *A Review of Australia's Efforts to Promote and Protect Human Rights*, November 1994, p. 238.

principles for the ultimate association of the frontier peoples with the new Burmese Government. It stated that frontier peoples should:

- be entitled to fundamental democratic rights;
- have the right to full autonomy in the internal sphere; and
- be entitled to receive a measure of assistance from the revenues of Ministerial Burma.³

4.5 The Panlong Agreement (1947) created a Supreme Council of the United Hill Peoples. It was ratified by the Shans, the Chins and the Kachins but not the Karens, the Chins of the Arakan Hill Tracts, the Nagas or the Was. Then in June 1947, the Frontier Areas Committee of Inquiry recommended to the British Government 'elastic interim arrangements' until the border regions developed. Nevertheless, they also recommended that the ultimate aim and the best solution to the aspirations of the people on the borders would be a federal constitution for Burma. The assurance by the nationalist leader, General Aung San, that the ethnic minorities would receive equal political status through a federal constitution was short lived. Aung San was assassinated in 1948, the 1947 Constitution was amended and a unitary state was formed.

4.6 The Karen, the Mon and the Karenni took up arms against the central government. In 1958 after a split in the ruling party of Prime Minister U Nu, Ne Win instituted a caretaker government. The elections of 1960 reaffirmed U Nu's popularity. In 1961 a Conference of the Ethnic States Unity and Solidarity Organisation reasserted the adherence of the ethnic minorities to the principles underlying the Panlong Agreement, namely federalism and the right to self-determination. At the same time the conference supported the determination of the Shan and the Karenni not to secede from the union. Claiming imminent national disintegration, Ne Win, in 1962, overthrew the democratically elected government and arrested all of the constitutionally elected Burmese national and ethnic leaders.⁴ He ruled for twelve years without a constitution before feeling confident enough to formalise his power in the 1974 constitution. This constitution entrenched the power of the military through the Burma Socialist Program Party (BSPP) in a one party state. This situation has been repeated in the last six years.

4.7 The civil wars have continued. The fighting is sometimes sporadic and sometimes fierce and the allegiances between and among groups have been shifting and complicated. Alliances are influenced by both economic and political considerations. The lucrative and corrupting effect of the drug trade further complicates any analysis of motives and intentions. Burman nationalism and hegemony has set itself against the demand by the non-Burman groups for ethnic diversity within the state or, at times, secession.

4.8 A large measure of the human rights abuses of the regime are attributed to the pursuit of these armed struggles. Along with internal political oppression, the military action is the source over the last ten years of the huge outflows of refugees along Burma's land borders with Thailand, China, India and Bangladesh. The Burmese military, well armed but lacking

3 Weller, Marc, *Democracy and Politics in Burma*, Government Printing Office of the National Coalition Government of the Union of Burma, 1993, p.37.

4 International Commission of Jurists and the Overseas Burma Liberation Front supplementary submission, p. S669.

logistical support, has forced large numbers of local ethnic men and women into portage duties. The results are well documented - exhaustion, starvation, beatings, rape of women and the arbitrary killing of the sick or old. Since 1988 the border camps and the ethnic wars have been injected with the added political factor of the presence of members of the government-in-exile, the National Coalition Government of the Union of Burma (NCGUB).

Ceasefires

4.9 The *raison d'être* of its existence according to the State Law and Order Restoration Council is to preserve national unity in the face of separatist struggles by minorities on Burma's borders. The Government of Burma has heralded the recent ceasefires as its most significant achievement, as an example of national reconciliation and as the precursor to national development. At February 1995, Maung Aye, the Burmese Ambassador to the UN, listed 13 groups as having returned to the legal fold: 1. Kokang National Group; 2. Wa National Group; 3. Shan State Army (SSA); 4. Shan Ahka National Group; 5. New Democratic Army (Kachin, NDA); 6. Kachin Defence Army (KDA); 7. Pa-O National Organisation (PNO); 8. Palaung State Liberation Party (PSLP); 9. Kayan National Guard (KNG); 10. Kachin Independence Organisation (KIO); 11. Karenni National People's Liberation Front (KNPLF); 12. Karen New Land Party (KNLP); 13. Shan National Peoples' Liberation Organisation (SNPLO).

4.10 Mr Bertil Lintner⁵ described the groups which had signed ceasefires with the SLORC in more detail. He listed only 11 groups:

4.11 Four groups which had made up the Peoples' Army of the Communist Party of Burma (CPB), divided along ethnic lines, signed a ceasefire in March-April 1989:

- the New Democratic Army, the former CPB 101 War Zone in Kachin State - Kambaiti and Panwa Areas. A small group of 300-400 men.
- the Myanmar National Democratic Alliance Army, the former CPB forces in Kokang - a district of the Shan State dominated by ethnic Chinese. 1,500- 2,000 men.
- the United Wa State Army. The main group 10,000- 15,000 men.
- the former CPB 815 War Zone in eastern Shan State - north of Kengtung. 1,500- 2,000 men

Then

- in September 1989, the Shan State Army, which had a military pact with the CPB, 2,000 men.
- in December 1990, the 4th Brigade of the Kachin Independence Army - north eastern Shan State. 800-900 men.
- in March 1991, the Pa-O National Army. 400-500 men.
- in April 1991, the Palaung State Liberation Army. 700-800 men.
- in February 1994, the main KIA.

5 Mr Lintner is a journalist with the *Far Eastern Economic Review* and a longstanding commentator on Burmese affairs.

- in mid-1994, the Karenni National Peoples' Liberation Front. 200-300 men.
- in mid-1994, the Shan State National Peoples' Liberation Organisation. 600-700 men.

4.12 At the end of 1994 it was estimated by Mr Lintner that the following armed factions were still fighting the Government in Rangoon:

- the Karen National Union. 3,000-3500 men.
- the New Mon State Party. 800-1,000 men.
- Karenni National Progressive Party. 600-700 men.
- the Mong Tai Army - Khun Sa's army. Approximately 18,000 men.
- the Chin National Army.
- the Rohingya Solidarity Organisation. A few hundred men in arms.
- the Arakan Rohingya Islamic Front. A smaller Rohingya faction.
- the National Socialist Council of Nagaland. Two factions - total strength possibly 1,000 men.
- a few smaller Arakanese groups such as the Arakan Liberation Army and the Arakan Army.⁶

4.13 The Committee was offered the following explanation for the ceasefires:

With the exception of the Kachin and the Wa, the other ten armed groups that SLORC has negotiated ceasefires with each number less than 500 men. Some have been attracted solely by the opportunity to trade (some groups have become more active in the illegal drug trade), some are attracted by the opportunity to trade as well as to develop their ethnic area (many of the areas are poor and have been devastated by four decades of fighting), others have been attracted by the promise of local autonomy and future political participation (at least six groups live in the Shan State and would like their own ethnic homeland). Yet others have negotiated with SLORC because of pressure from neighbouring countries.⁷

4.14 More importantly, the argument was put to the Committee that the ceasefires were purely military agreements and hence offered no political solution which might endure.⁸ Dr Alan Smith saw the ceasefires as a result of 'determined and powerful intervention by certain groups in neighbouring Thailand'. The effect he argued was 'to allow the SLORC to end the civil wars on its terms, neutralise the democracy movement and entrench itself in power.'⁹ He concluded:

This is no vindication of 'constructive engagement' of a kind of which ASEAN can be proud. It represents the bankruptcy of regional and

6 Australia-Burma Council submission, p. S338.

7 *ibid.*, p. S334.

8 Australia-Burma Council submission, p. S334.

9 Dr Alan Smith submission, p. S447.

international conflict resolution procedures. There is an urgent need for 'corrective diplomacy' to convert imposed ceasefires into an opportunity for peace through a genuine political settlement.¹⁰

The Drug Trade

The Extent of the Drug Trade

4.15 What has flourished in northern Burma since the ceasefires of 1989 is not peace but the drug trade. Prior to the ceasefires the production of opium was estimated at less than 1,000 tons; in 1992-93 it was more than 2500 tons. The area under cultivation in north eastern Burma has increased from 92,000 ha in 1987 to 142,000 ha in 1989 to more than 165,000 ha in 1993.

The Nature of the Drug Trade

4.16 In the Shan State major Chinese narcotics traffickers have become involved with the ethnic insurgent groups. Ex-members of the Communist Party of Burma (CPB) have used the drug trade and the money it can generate to establish themselves as warlords in the northern provinces. The peace they have brokered with the military regime in Rangoon has left them with their arms and their areas of control undisturbed. Conflicts within the various Shan State organisations reflect disputes between those with political objectives and those with illicit economic interests as well as power struggles between the crime syndicates vying for control of the drug trade.

4.17 Over the last ten years it appears that there has been a shift in the centre of operations from the Thai border in the southern Shan State where Khun Sa had most of his heroin laboratories to rival groups on the border of Yunnan province. It is estimated that Khun Sa's share of the opium trade has fallen from 80 per cent in the mid-80s to less than 50 per cent by 1993. This north eastern region is now largely under the control of remnants of the CPB, chiefly the United Wa State Army (UWSA), the Burmese National Democratic Alliance (BNDA) and the Eastern Shan State National Democratic Alliance (ESSNDA). Individual narcotics dealers such as the Pheung brothers, the Wei brothers, the Yang clan and Lo Hsing Han and Lin Ming Xian compete for a share of the heroin trade. The distribution network has also shifted to routes through Yunnan and China to Hong Kong and Taiwan or through Laos and Cambodia as well as the more traditional route through Thailand. The ethnic armies protect the areas of cultivation and the initial transport routes, but organised crime provides a distribution network into the markets of China, Taiwan, United States, Europe and Australia.¹¹

10 *ibid.*, p. S447.

11 This information came to the Committee from a number of sources. Exhibit No 40, Confidential submission No. 35. and Jane's Intelligence Review, Special Report No 5, *The Drug Trade in South East Asia*.

Corruption of Government

4.18 The drug trade corrupts every government and every region it touches. It is an international problem requiring an international solution. It leads to the bribery of officials who thwart the implementation by the national government of any corrective policy; it distorts financial markets through money laundering practices; it is attended by criminal activity - murder, smuggling and the spread of private armies; it is accompanied by addiction and the consequent debilitation of the population, prostitution, the trafficking of people, illegal immigration and the spread of HIV/AIDS.

4.19 In Burma the Government of the SLORC has publicly and internationally declared that it seeks to eradicate the cultivation of the poppy and opium refining in the border regions. It seeks development assistance to provide alternatives to the border communities and it wishes to cooperate with the UN and other international drug control agencies. Particularly, the Government has claimed that the signing of ceasefire agreements provides an opportunity to deliver economic development to these areas.

4.20 In September 1994, the Government announced a Master Plan for the Development of the Border Areas and National Races. Drug control operates through the Central Committee for Drug Abuse Control (CCDAC). It has 17 narcotics task forces (NTF). Burma is a party to UN Conventions on Narcotic Drugs and Psychotropic Substances. It passed a new law in 1994, the Narcotic Drugs and Psychotropic Substance Law, which brings Burma's legal code into compliance with relevant UN conventions. In July 1993, three year United Nations Drug Control Program (UNDCP) projects commenced. These involve law enforcement training and very limited crop substitution projects in the eastern Shan State and the Wa areas.

4.21 The US Drug Enforcement Agency (DEA) has also maintained a presence in Burma. Pressure from the DEA to target the 'kingpins' in the industry would appear to be behind the attacks on Khun Sa.¹² This thrust is from Thailand. (See the recommendation in Chapter 19 of the JSCFADT report into Australia's Relations with Thailand dealing with AFP/DEA coordination.)

4.22 However, the Committee was told that a significant feature of the Golden Triangle's narco-political situation was:

- the presence and role of major Chinese narcotics traffickers in the upper echelons of ethnic minority independence movements within the Shan State;
- the increasing involvement of major players tolerated by national governments; and

12 In December 1993, the Burmese armed forces mounted an offensive against the Golden Triangle warlord, Khun Sa and his army which is still continuing. Thousands of Government forces have since blockaded the ferry crossings on the Salween River and put an economic stranglehold on his headquarters at Homong.

- the continuing involvement of national security organisations and intelligence agencies in narcotic enforcement and the associated potential development of conflicts of interest this situation presents.¹³

4.23 In support of this, the view was put to the Committee that the attacks on Khun Sa occurred at a time when his power was in decline and that the prime objective of the SLORC was to crush the political opposition, not to eradicate the drug trade. It was claimed that the burning of opium by the SLORC was a sham public relations exercise as the amounts made no impact on a rapidly expanding trade. Khun Sa was expendable.

4.24 Of more serious concern was the claim, put by a number of sources, that, despite the statements of the SLORC to the contrary, the narcotics trade was protected at the highest level of the Government. The Committee was told that the involvement was evident at two general levels:

- on an individual basis for personal profit, covering areas of responsibility for transport, protection and patronage; and
- as a matter of policy, either explicit or covert, in order to raise government revenue.¹⁴

There is a curious discrepancy in Burma's national accounts. The IMF estimates of Burma's foreign exchange reserves for 1991 were \$US310 million; however they showed no decline in 1992-93 despite a trade deficit of \$US406 million and a current account deficit of \$US112.7. Moreover Burma has purchased arms to the value of \$US1.2 billion in this period.¹⁵

4.25 Witnesses went on to say:

In practical terms, the importance attached to the role of the Directorate of Defence Services Intelligence (DDSI) and the Burmese Army has meant that these organisations have a greater interface with ethnic minority groups than the police. ... Representatives of the ethnic minority groups claim that most Burmese Army officers in the Shan State are corrupted by the opium trade. Opium is warehoused at Burmese military bases, while trucks transporting narcotics are sometimes escorted by military vehicles to avoid inspection en route.

Allegations of corruption on the part of members of the junta abound, with senior officers continuing to amass fortunes. ... According to Burmese businessmen who have dealt with them, both General Than Shwe [and] Lt General Khin Nyunt have accumulated personal fortunes by manipulating the system and accepting millions of dollars in kickbacks.¹⁶

13 Confidential submission.

14 Confidential submission.

15 *ibid.*

16 *ibid.*

If these allegations are true, and the only way to dispel them would be greater transparency in the system of government in Burma, then it is clear why the SLORC is so reluctant to recognise the results of the 1990 election. The biggest threat to their status, power and wealth is the democracy movement. This Committee believes that until there is accountability in the system of government and a proper democratic base, there can be no lasting solution to the problems of corruption, no end to the drug trade and no end to the violence and abuse of those Burmese who wish to speak out against the corruption in their midst.

4.26 The Committee recommends that:

9 the Australian Government:

(a) contribute to the United Nations Drug Control Program (UNDCP) in support of the expansion of crop substitution measures;

(b) examine the feasibility of contributing to the UNDCP program by offering law enforcement training; and

(c) encourage its dialogue partners in ASEAN to pursue with the Government of Burma long term solutions to the problems of trafficking in women and drugs through fully negotiated political settlements in the border regions in conjunction with the ceasefires.

4.27 The Committee also endorses the recommendation on a cooperative regional training program in Chapter 19 of its report on Australia's Relations with Thailand.

Trafficking in women

4.28 A consequence of political oppression, corruption, war, and poverty - especially in the Burmese countryside - and has been the growth in the trade in women, girls and young men from Burma into Thailand. Most of the women and young girls are recruited for the purpose of prostitution. The trade in people has grown with the official opening of some trade routes for the importation into Thailand of logs and gems, as well as drugs and other goods. The trading boom has increased the demand for labour and has encouraged the supply of illegal workers¹⁷ into Thailand away from rural poverty, inflation and forced labour in Burma. In the towns along the trade routes on either side of the border, Mae Sai and Taichelek, Mai Sot and Myawaddy, Three Pagodas Pass and the Ye township, Ranong and Kawthaung, brothels have multiplied rapidly over the last six years. For example according to a 1992 study by Hnin Hnin Pyne, the number of brothels in Ranong multiplied threefold between 1988 and

17 Various estimates of the numbers of illegal Burmese working in Thailand were given to the Committee. Some submissions put the figure at 300,000. Thai Government officials suggest a range from 200,000 to 500,000. See Exhibit No 30, Asia Watch, *A Modern Form of Slavery: Trafficking of Burmese women and Girls into Brothels in Thailand*, p.17.

1992.¹⁸ Similarly the Committee was told of flourishing brothels along the trade routes into China from Mandalay.¹⁹

4.29 Prostitution is endemic in Thailand. There are estimated to be between 800,000 and 2 million people employed in the sex industry in Thailand.²⁰ It is stimulated mostly by local demand and traditional practice²¹ but also by tourism.²² The number of women from Burma involved in prostitution was conservatively estimated at between 20,000 and 40,000 at any one time. The trade operates through agents on both side of the border who pay an amount up to the equivalent of \$A500 to the girl's family. This becomes the basis of debt bondage for the girl who must pay back this amount and any further expenses she incurs while living in the brothel. The girls generally do not understand the terms of their debt or the amount owing. They receive little or no payment.²³ In the Asia/Watch study, the youngest interviewed was 12 and the oldest was 23. They usually stay in the brothel network for at least two to three years. Young girls from the more remote rural regions are sought after as they are believed to be free of infection and easier to control.²⁴ However, among those tested, 50 to 70 per cent were HIV positive. Conditions inside the brothels are appalling, including barbed wire and electric fences.

4.30 Beside debt bondage, the girls are kept in prostitution by physical intimidation, their ignorance of where they are, their lack of Thai language, the corruption of officials and their fear of authorities because of their illegal status in Thailand.

4.31 Despite the formal illegality of the trafficking, there is considerable official connivance and even involvement in it. Agents come into Burmese villages and make payments to parents, offering to find work for their children. There are also documented cases of physical force being used to coerce women to go along with agents. They bring them to the border and arrange with other agents to bring them further into Thailand. The Committee was told that:

The agents have very sophisticated arrangements with the Thai police. In many instances, the girls could document instances of being transported into Thailand with policemen in uniform, armed and often in police vehicles.²⁵

Once in Thailand the brothels were under the protection and had the patronage of the police.

She saw police in all the brothels in which she worked. They seemed to know the owners very well and were often around with their uniforms,

18 Quoted from Exhibit No 30, Asia /Watch, op.cit, p.14.

19 Evidence, 19 May 1995, p.174.

20 Exhibit No 30, p. 16.

21 Pyne's study, referred to above, found that 75% of Thai men had had sex with a prostitute, 48% experienced their first sexual intercourse with a prostitute. Exhibit No 30., p. 16.

22 Steven Schlosstein, *Asia's New Little Dragons*, Contemporary Books (Chicago, 1991) pp. 196-97 notes that of 4.3 million people who visited Thailand in 1988, three-quarters were unaccompanied men. Quoted from Exhibit No 30, p. 16.

23 A typical scenario presented to the Committee was that girls would serve six to ten clients a day, twenty-five days a month, earning for the owner between \$A600 and \$A2500 per month for which they paid the girls approximately \$A1 per day or \$A25 per month.

24 In-camera evidence, 5 May 1995, pp. 31-44.

25 In-camera evidence, 5 May 1995, p. 31.

guns and walkie talkies. They also often took the girls to the rooms or out for the whole night. ... In Klong Yai the police had special arrangements with the owner and could take the girls for free.²⁶

4.32 The Government of Thailand is not a party to the international human rights conventions relevant to the problems of trafficking,²⁷ with the exception of the *Convention for the Elimination of Discrimination against Women (CEDAW)*. However domestic Thai law does address the question comprehensively. Until 1960 prostitution was legal in Thailand although controlled by a system of licences and fees; however, the 1928 *Anti-Trafficking Act* made trafficking in women illegal. The *Suppression of Prostitution Act, 1960*, outlawed prostitution and penalised both prostitutes and those who procured prostitutes or benefited from their exploitation. The *Thai Penal Code 1956* also prohibited procurement for the purpose of prostitution and provided heavy penalties.

4.33 The problem does not seem to lie in a failure of the laws but in a failure to apply the laws. In 1991 the Thai Government announced a crackdown on prostitution and trafficking. A number of raids has been made on establishments revealing the extent of the trafficking problem: approximately 30-40 percent²⁸ of the women and children rescued from brothels were from Burma. As a result of the crackdown the women were deported or sent to penal reform institutions such as Ban Pakkret, an island in the Chao Phraya River just outside Bangkok. It is one of four institutions for the reform of prostitutes.

4.34 Collusion, bribery and immunity from prosecution have undermined the Government's intentions to stop the trafficking. For all the efforts of the Government of Thailand, Asia/Watch has concluded that:

the trafficking of Burmese women and girls in Thailand continues, virtually unchecked. Moreover despite clear evidence that the Thai law enforcement and immigration officials remain directly involved in the flesh trade, not a single officer has been prosecuted or punished for such abuse. Brothel owners, pimps and recruiters have been largely exempt from punishment. In fact the main targets of the Chuan administration's crackdown on forced and child prostitution have been the victims themselves.²⁹

4.35 The women and girls from Burma who are victims of trafficking are arrested as prostitutes or illegal immigrants, detained in penal servitude in reform institutions, suffer mistreatment, abuse and extortion in detention and they are deported with little concern for the consequences on their return to Burma.

On their first day in the Kanchanaburi gaol, all of the women inmates [Burmese deportees] from the Immigration Detention Centre were asked to pay 100 baht (\$4). If they said they had no money, the police

26 Exhibit No 30., p. 39.

27 Including the *International Convention for the Suppression of the White Slave Traffic* and the *Final Protocol.*, 8 February 1913.

28 In some cases, depending on the location of the brothel, the percentage was even higher. Pyne lists over 200 of 342 women as Burmese in 1991 raids. Exhibit No 30. p. 31.

29 Exhibit No 30., p. 36.

'checked them out' touching all over their bodies. If they found any money, watches or valuables, they took them. ... One night a policeman came to the women's cell and asked for Maw Maw. Muiyar felt very sorry for Maw Maw and knew she could not speak Thai so she told the policeman that Maw Maw was very sick and could not get up. The policeman told Muiyar to come down instead. Muiyar refused. The policeman then entered the cell, pulled her out and beat her until she agreed to come down.³⁰

4.36 In Burma, the fate of the deportees is uncertain. The border areas are unsafe because of the fighting. Moreover, the women are liable to fines or imprisonment either for illegally leaving the country, a breach of the Burmese *Immigration and Manpower Act*, or for prostitution which is illegal in Burma. The Government of Burma has given guarantees to the Government of Thailand that it offers rehabilitation programs to women being returned from prostitution in Thailand; however no monitoring of this has been possible

4.37 This is a humanitarian problem of considerable proportions, which would appear to require cooperation at an international level.

4.38 The Committee recommends that:

10 the Australian Government urge the Government of Thailand to:

(a) ratify the international human rights conventions relevant to the issue of trafficking in women, particularly the ICCPR;

(b) implement the provisions of its existing anti-prostitution legislation by instituting prosecutions against those who traffic in women and girls for the purposes of prostitution and any police or army officers assisting in the trade;

(c) ensure that the victims of trafficking, women, girls and young men, are protected and rehabilitated and that support for Thailand in this endeavour should become a focus of the Australian aid program to Thailand.

4.39 The Committee also endorses the recommendation in Chapter 13 of its report on Australia's Relations with Thailand dealing with AusAID support for community-based programs in this area.

Trafficking to Australia

4.40 Trafficking in women does not confine itself to Burma and Thailand. It is an international trade which affects most countries. It is associated with a variety of social ills and criminal activity - the spread of HIV/AIDS and other sexually transmitted diseases, drug trafficking, forgery of documents, official corruption, taxation offences and money laundering,

30 *ibid.*, p.105.

illegal immigration, violence and kidnapping. It is a lucrative trade making millions of dollars for the networks of criminals involved in it.

4.41 It was reported to the Committee that there was significant, organised trafficking of women into Australia linked to suspected drug traffickers. Women were brought to the country on falsified passports often escorted by men posing as husbands or boyfriends. They were often indebted to the organisers for large amounts of money for passport and travel costs - \$A15,000 to \$A18,000. Their movement in Australia was restricted by heavy security and it appeared that some were being kept against their will. It was estimated that at any one time there might be 200 Asian prostitutes working in Australia. The main centre appears to be Sydney where there were at least 20 brothels, and probably many more, associated with Asian prostitution but brothels in Victoria, Queensland and the Australian Capital Territory were also involved.³¹

4.42 Australia is a signatory to a number of United Nations conventions and treaties³² relating to the trafficking of women and girls. However, although there is considerable legislation which addresses the attendant criminal activity associated with the trade, there is no legislation which covers trafficking as such.

4.43 The Department of Immigration and Ethnic Affairs reported that, between 1993 and 1995, 120 women had been apprehended. The Department noted that in no way are these figures representative of the total number of women being brought into Australia as many evade detection. As in Thailand, the women are in breach of immigration laws and therefore they are liable to visa cancellation, removal, deportation or prosecution. Those who are detained under the Migration Act are accommodated in Immigration Detention Centres (IDC) located in Perth, Melbourne and Sydney. The Department told the Committee that at the Immigration Detention Centres medical assessments, including assessments of those suffering mental trauma, are made and female interpreters are supplied. However those being deported are only held for a couple of days while travel arrangements are made for them. If women apply for a protection visa, they are not held in detention and they receive a bridging visa and are usually granted permission to work.³³

4.44 The Committee recommends that:

11 the Attorney-General's Department, in coordination with other relevant State and Federal agencies,

(a) review all legislation relating to prostitution in Australia;

(b) consider the need to enact legislation which would target traffickers in women and children;

31 Confidential submission.

32 But not the 1949 *Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others* which in Article 6 would require the repeal of any law subjecting prostitution to registration, a requirement which runs counter to current State and Territory legislation.

33 Department of Immigration supplementary submission.

4.45 The Committee recommends that:

12 the Australian Government

(a) consider accession, perhaps with a reservation on Article 6, to the *1949 Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others*;

(b) encourage Australian Embassies to maintain tight visa and passport processes and procedures with a view to limiting fraud;

(c) offer assistance to regional countries to improve the security of their passports;

(d) put in place programs which would recognise Australia's responsibilities for the protection and rehabilitation of the victims of trafficking; and,

in cases where the women are the victims of the crime of trafficking,

(e) consider this as a factor in any application which is made for a humanitarian visa.

Environmental Rights

4.46 Burma is fertile, rich in minerals, gems and forests and it is a largely undeveloped country. The Government of Burma has signed the *Vienna Convention for the Protection of the Ozone Layer*, the *UN Framework Convention on Climate Change* and the *UN Convention on Biodiversity* and it has set up a National Commission for Environmental Affairs. However, since the economic changes began in Burma in the late 80s there have been complaints that the approach to the development of Burma's resources has been uncontrolled, exploitative and without any consideration of the wishes or concerns of the local people.

4.47 The specific areas of environmental concern include:

- **Fisheries:** SLORC has sold large fishing concessions in the Andaman Sea to Thailand and the Thais have used modern trawler fleets³⁴ to work these areas. The local, traditional fishermen complain that large areas of the sea have been fished out.
- **Deforestation:** The rapid depletion of the great forests of Burma has probably been the most constant complaint about the exploitation of resources.³⁵ The

34 The first concessions were sold in 1989. Contracts in November 1993 licensed 280 boats from a further eight Thai companies.

35 In 1948 there was an estimated forest cover of 500,000 square kilometres or 70% of Burma's land area. Today SLORC officials say there is 50% forest cover; other estimates put the percentage at 30%.

deforestation rate has been calculated at 800,000 to one million hectares a year, one of the five highest in the world.³⁶ Large numbers of timber concessions have been given in cross border deals to commercial logging interests, often military based companies, from Thailand, China and India. The complaints have centred on the rate of extraction and clear felling techniques leaving large areas of land open to flooding³⁷ and the involvement of illegal operators resulting in much greater clearances than agreed.

- **Large infrastructure projects:** While Burma is badly in need of infrastructure, the scale and nature of many developments - the oil and gas pipeline, hydroelectric schemes etc. - are put in place not only without local consultation but as a result of forced relocation of very large numbers of people³⁸. Tourism developments have been criticised for the same reasons. Since 1989 over 200,000 people have been relocated from Rangoon to new satellite towns; 5,000 inhabitants were moved by soldiers from Pagan in 1990. Despoilation of historic monuments, notably the Kentung Palace in November 1991, have brought objections from the Shan people. Critics of the demolition were severely dealt with at the time.³⁹
- **Chemical Weapons:** There have also been alarming but unverified stories about the use of defoliants, chemical weapons and bacterial or viral substances in the border wars. The latest reports tell of burning substances being used in the attack on Kawmoora in February 1995.⁴⁰ However the UN Chemical Weapons Convention completely prohibits the manufacture, possession and use of chemical weapons.

4.48 The Committee recommends that:

- 13 **the Australian Government urge the Government of Burma to accede to the UN Chemical Weapons Convention.**

Refugees

4.49 An estimated 75,000⁴¹ people have sought refuge along the Thai-Burma border. With the fall of Manerplaw in January 1995 another 6,000-12,000 people mostly Karen crossed into Thailand. A further 300,000 Burmese are thought to be illegally in Thailand. Of

Exhibit No 1a, Article 19, International Centre against Censorship, *Paradise Lost: The Suppression of Environmental Rights and Freedom of Expression in Burma*, p.12.

36 *ibid.*, p. 12.

37 In Kackin State 100 villagers died in floods in 1991 which were blamed on the deforestation in the area. Similarly in south east Burma 60 villagers have lost their lives.

38 See Chapter 2 and other sections of this chapter.

39 Exhibit No 1a, *op.cit.* pp. 23-26.

40 Tribal Refugee Welfare supplementary submission, pp. S800-08.

41 Mostly Karen-55,000 and Mon-10,000. The numbers are fluid as more refugees stream across the border when military activity increases or the pressure on the villages to supply forced labour or porters increases.

these, approximately 2,300 are students and other dissidents, people designated as 'of concern' to UNHCR.⁴² At any one time there are thought to be 20,000 - 40,000 young girls and women from Burma who have been drawn into prostitution in Thailand.⁴³ Over 15,000 people, mostly Kachin are on the Chinese border. About 6,000, mainly Chin and Naga, have fled into India. In 1992, over 200,000 Rohingyas crossed into Bangladesh; a UNHCR repatriation program has seen all but 50,000 of these people return to Burma in the last two years. It is also estimated that there are up to half a million displaced people inside Burma⁴⁴

4.50 The number of refugees on the border is a measure of the abuse of the ethnic minorities in Burma. Despite ceasefire agreements which go back to 1989 the stories persist of gross mistreatment - forced labour, forced relocation, portering and the use of porters as human mine-sweepers, beatings, summary killings, torture, rape and political suppression and war⁴⁵ - as the reason for their departure from Burma.

Student Refugees in Bangkok

4.51 In Thailand there are 2,300 Burmese students. They escaped from Burma after the democracy uprising of 1988. Most suffered trauma as they fled from the shootings in Rangoon, were hunted by the military security forces and travelled by whatever means they could through the jungles of Burma to the border. This was often a journey of days or months in which they battled sickness and military pursuit.⁴⁶ Many remain on the border, others have scattered to third countries for asylum. Some remain in Bangkok. A number of witnesses told the Committee that these people are in precarious circumstances.

4.52 Although UNHCR has designated these students as persons of concern and offers them a survival payment, Thailand does not recognise them as refugees. Thailand is not a signatory to the 1951 *Convention Relating to the Status of Refugees*. The students are therefore liable to arrest as illegal immigrants. In 1991 a number were deported to Burma. Their fate is largely unknown. Protests about the prospect of deportation led to long periods of detention in the Immigration Detention Centre (IDC) in Bangkok. Many students have been arrested and have spent time (90 days to a year) in the IDC where conditions have been described as very bad - unsanitary, overcrowded and violent. A student who has since come to Australia described the situation:

We were not given enough food. ... In place of 10 persons to a cell, 50 students were put in to sleep together. Some students had to stand up and some would have to sleep. ...

During my stay in Bangkok, three of my friends were shot dead. One was shot in the compound of the Thai police station, one was shot on

42 Department of Foreign Affairs and Trade submission, p. S496.

43 In-camera evidence, 5 May 1995, p. 37.

44 Australia-Burma Council submission, p. S291.

45 See Chapters 2 and 5 of this report and the volumes of submissions and evidence for details of these complaints.

46 Submission to the JSCFADT inquiry into Australia's relations with Thailand, pp. S28-9.

the Thai-Burma border, and one killed himself. He committed suicide due to depression about the difficult situation in Bangkok.⁴⁷

4.53 In 1993 the Government of Thailand changed its policy and developed a 'safe camp' for students 70 kilometres from Bangkok. Students lost their UNHCR allowance unless they went to the safe camp. It is only from this camp that students can be processed for third country entry.

4.54 The Committee recommends that:

14 the Australian Government urge the Government of Thailand to

(a) ratify the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol; and

(b) permit the United Nations High Commissioner for Refugees to provide greater assistance to the refugees on the Thai-Burma border.

The Burma - Thailand Border

4.55 There are 23 camps along the Thai-Burma border. They have formed since the mid-80s and for Thailand their presence also corresponds with the influx of 400,000 refugees along the Cambodian and Laotian borders. Whereas the UNHCR and the United Nations Border Relief Organisation administered the Cambodian and Laotian refugee camps, on the Thai-Burma border, the Burma Border Consortium (BBC) was formed to provide emergency relief to the Burmese refugees. The BBC consists of five non-government organisations which supply emergency food aid and medical assistance. For the most part the camps are internally administered.

4.56 Where there is a sudden influx of refugees, the makeshift shelters are often made of plastic sheeting⁴⁸ making the camps muddy and uncomfortable. Toilets are of the most basic kind. Food, clothing, medicines and clean drinking water are limited. Often there is overcrowding. Living conditions in the camps create an environment of psychological despair and disease. The refugees suffer from depression, anxiety and other mental illnesses as a result of civil war, displacement, psychological, physical and sexual mistreatment by the SLORC's Tatmadaw and also instances of abuse by the Thai border patrol officers and other Thai authorities. They run a high risk of catching malaria which spreads quickly through the camps, causing deaths or permanent brain or nerve damage.⁴⁹ Other major health problems are tuberculosis and severe diarrhoea, especially among children in the new refugee camps. Dr Cynthia Maung, a doctor from Mae Sot in Thailand reported that 'people move from place to place without a community [and it is therefore] difficult to do any preventative health care. Antibiotics and clean dressings are all the treatments available in the camps.'⁵⁰ Substantial aid is

47 In-camera evidence, 5 May 1995, p.55.

48 Tribal Refugee Welfare in South East Asia submission, p. S1

49 AUSTCARE, *The New World Order: Redefining Refugees*, 17 June 1992, p. 61.

50 *Far Eastern Economic Review*, 24 November 1994, p. 150.

needed for limb replacement and other injuries from landmines. The Committee heard specific evidence about the impact of landmines.

I went to the Mae Sot hospital at the time of the Kawmoora attack. ... I have seen people with no eyes, no face, no limbs, no legs as a result of landmines: soldiers and young people my age. That is a very difficult thing to see. ... For example there is a 17 year old boy in my village who is the youngest of a number of children, none of whom are in the area. His mother is old and sick and his father died a number of years ago. He went across the Moi River onto the Karen side of the river to cut bamboo to rebuild the house for himself and his mother. It was just an innocent activity, cutting bamboo like most villagers do; but he stood on a landmine which blew off one of his legs. This is a young boy whose mother relies on him.⁵¹

See Recommendation No. 32.

The Spread of HIV/AIDS

4.57 Another major health issue in the camps is the spread of HIV/AIDS. It is difficult to know exactly what the dimensions of the problem might be. The United Nations Drug Control Program (UNDCP) estimated that the percentage of infection of HIV positive case in Burma was:

All tested Drug users	74.3%
Prostitutes	9.0%
Blood donors	0.5%
Pregnant women	1.4% ⁵²

Similar percentages were quoted by the SLORC Minister for Health, Colonel Pe Thein. He put the total number of people who tested positive in 1992 at 5,000. However, an AIDS specialist from the Harvard School of Public Health, Dr Tarantola, calculated that 300,000 to 400,000 people in Burma were likely to be infected.⁵³ The Burma Support Group told the Committee that there was considerable ignorance inside Burma about the nature of HIV/AIDS and how it might be avoided or treated. The Government brochure on the subject is sold to the public; it is not free.⁵⁴ The more vulnerable areas for HIV infection are in the country and in the border camps. Here the spread of the disease is magnified by the return of infected prostitutes who have been repatriated by the Thai authorities.

4.58 Australia provides money through the aid program for the control of HIV/AIDS on the border and inside Burma. It is one of the few humanitarian programs that operate inside Burma. Funding is supplied through NGOs. The allocation for 1994-95 is \$A200,000. One

51 Evidence, 19 May 1995, pp. 165-66.

52 Far Eastern Economic Review, 21 July 1994, p. 26.

53 Burma Support Group submission, p. S231.

54 Evidence, 19 May 1995, pp. 173-74.

NGO reported difficulties with protracted negotiations, the military presence when aid workers were travelling through the country and complications posed by the exchange rate problems where the official rate is 6 kyats to the \$US and the blackmarket rate is 120 kyats to the \$US. Nevertheless, they believed there was genuine concern in the Ministry of Health to solve the AIDS crisis and that the level of theft from the program was minimal. Australia's aid programs to the area are dealt with more fully in Chapter 6.

4.59 The Committee recommends that:

- 15 the Australian Government explore ways, within the current humanitarian program in Burma, to assist in the wider dissemination of information about HIV/AIDS.**

The Committee endorses the recommendation in Chapter 13 of its report on Australia's Relations with Thailand concerning the role of the World Health Organisation in this problem.

The Burma-Bangladesh Border

4.60 There are approximately one million Burmese of Indian origin in Burma. Many were brought into Burma during the British colonial period to assist in the administration of the colony. They were resented by the indigenous population and consequently they have been excluded from full citizenship. They may not travel freely, are not eligible for promotion in the civil service or to enrol in advanced university programs in medicine and technological fields. There are restrictions on land ownership. Asia/Watch believes that, of all the minority groups in Burma, the Muslims suffer the worst discrimination. They are disproportionately represented in the numbers of porters who are interviewed as refugees. Whole villages of Muslims have been forcibly relocated. They have suffered the destruction of Mosques and the prohibition on religious services under the order which forbids the gathering of more than five people.⁵⁵ The UN Special Rapporteur has called for revision of the 1982 Citizenship Law which currently applies 'second class citizenship in a manner which has a discriminatory effects on racial or ethnic minorities, particularly Rakine Muslims.'⁵⁶

4.61 The Committee endorses:

- 16 the call of the UN Rapporteur for the revision of the 1982 Citizenship Law to eliminate the creation of second class citizenship, especially for the Rakine Muslim people.**

4.62 In 1991-92 over 250,000 refugees fled across the Burma-Bangladesh border. They were mainly Muslim Rohingya people from Arakan State. At that time the refugees reported horrendous stories of forced labour, forced portage, forced relocation, rape, torture and summary executions. The US Committee for Refugees reported in 1995 that a doctor who had treated the refugees in Bangladesh found that 'in the average family of ten, two members exhibited evidence of recent abuses such as gunshot wounds, beatings, burns, or physical

55 Exhibit No 44, Human Rights Watch/Asia, *Burma: Entrenchment or Reform? July 1995*, p. 17.

56 Economic and Social Council, *Report on the situation of human rights in Myanmar, prepared by Mr Yozo Yokota, Special Rapporteur, in accordance with Commission resolution 1993/73, E/CN.4/1994/57, 16 February 1994, para 74(h).*

exhaustion and that on average one woman per family had been raped.⁵⁷ The level of violence directed against the Rohingyas appeared to be a reflection of their low status both legally and socially within Burma.

Repatriation

4.63 Although they were allowed to stay for the short term, Bangladesh had little to offer the refugees and conditions in the camps deteriorated. Early in 1992 the Government of Bangladesh came to an agreement with the Government of Burma for the return of the refugees. No provision was made for supervision of the voluntary nature of the repatriation or for monitoring the resettlement. Protest demonstrations and reports of coercion - the beating and arrest of refugee leaders - accompanied the first repatriation process. Fifteen refugees were killed during demonstrations, 100 wounded and 119 arrested.⁵⁸ UNHCR was prevented from monitoring the situation and formally withdrew from the process on 22 December 1992. Approximately 16,000 people appear to have been deposited across the border in this period.

4.64 The recent and extensive repatriation process has been supervised by the UNHCR. On 12 May 1993 they signed a new memorandum of understanding with the Government of Bangladesh. UNHCR undertook to ascertain whether the refugees were willing to return to Burma. The MOU stated that UNHCR would conduct independent interviews and that no refugees would be forced to leave Bangladesh. Bangladeshi officials moved the refugees from the refugee camps to transit camps for assessment by UNHCR. Since mid-1993, 190,000 refugees have returned to Burma.

4.65 The UNHCR report on the repatriation said that they informed the refugees about the conditions inside Burma through group sessions and over loudspeakers. The refugees were able to opt out of the process at any stage and final verification interviews with heads of families were conducted in private. They illustrated the voluntary nature of the process by noting that 5,000 individuals had so far chosen not to be repatriated. They provided returnees with kits of food on departure from Bangladesh. On their arrival in Burma, each person received 2,000 kyats (\$US20), 100 kyats for transport to their village of origin and each family received a grant of 2,000 kyats to help build and repair their homes.⁵⁹

4.66 UNHCR reported that there were 13 international staff in Maungdaw, two in Buthidaung and four in Rangoon to monitor the returnees. It claimed that its representatives had free and full access to the returnees in the villages. In conjunction with the World Food Program, UNHCR instituted small scale projects for the returnees to give them employment and reduce poverty - the improvement of sanitation, production of food, construction of roads and enlargement of ponds⁶⁰.

4.67 The Australian Ambassador to Burma, Mr Stuart Hume, reported to the Committee that he had visited Arakan State and had had discussions with UNHCR about the

57 Exhibit No 43., Lambrecht, Curt, *The Return of the Rohingya Refugees to Burma: Voluntary Repatriation or Refoulement?* The US Committee for Refugees, March 1995, p. 4.

58 *ibid.*, p. 5.

59 Exhibit No 43., UNHCR Information Bulletin, *Return to Myanmar: Repatriating refugees from Bangladesh*, June 1995.

60 *ibid.*

repatriation. He noted that the willingness of the SLORC to allow UNHCR and the two NGOs, the World Food Program and the Action Internationale Contre la Faim, into Arakan State to monitor the resettlement was a fundamental change of policy. He observed that the process appeared to be working successfully.

All the elements that UNHCR wanted to deliver were being delivered. ... I was struck by the fact that at every point up until actually getting onto the truck to cross the border, these refugees had access to UNHCR personnel and the opportunity to say, 'I don't want to go.' ... It is fairly clear from my discussions with UNHCR they have had good cooperation with the Myanmar authorities, from the local area commander and also from those government ministers that have a role to play in it. [There are] approximately 12 international staff inside Myanmar actually monitoring the distribution of the material benefits for the program: food, transport and the reintegration into their villages of origin.⁶¹

4.68 The Burma Support Group was not so sanguine about the program. They believed that UNHCR had access to five repatriation centres in Burma but that they were reliant on SLORC interpreters. They also cited a weaving cooperative for 50 women which was run by the military and where there had been reports of rape.⁶²

The MSF Report

4.69 The repatriation process on the Burma-Bangladesh border is now almost complete. As at 31 July 1995, 192,541 refugees have been repatriated; 52,551 people remain in the camps. However this second repatriation process has also been severely criticised. Particular concern has been expressed about the change of policy in December 1993 to one of mass repatriation, that the role of UNHCR had changed from facilitating to promoting repatriation. It is claimed that:

- **The numbers of truly voluntary returnees are much lower than the numbers who have been repatriated.** In surveys by UNHCR itself in April 1994 and by Medecins Sans Frontieres (MSF) in May 1995 and in interviews conducted by Curt Lambrecht for the US Committee for Refugees between June and August 1994, a consistent percentage of 20 - 30 per cent said they wished to return to Burma. MSF has claimed that UNHCR used somewhat deceitful methods of encouraging the refugees. Mass registration replaced private interviews. Refugees were not informed that if they registered with UNHCR it was tantamount to agreeing to be repatriated. By way of encouragement UNHCR also advertised that conditions inside Burma were safe and that their officers would supervise the resettlement. When the mass registration was introduced the numbers of 'volunteers' allegedly jumped from the April UNHCR figure of 23 per cent to 95 per cent.

61 Evidence 12 May 1995, pp.135-36.

62 Evidence, 19 May 1995, p. 190.

- **The coercive practices have continued within the camps.** It was reported to Lambrecht that if families told UNHCR that they did not wish to return they were kept in the transit camps with inadequate or no shelter, their leaders were arrested on spurious charges or they were beaten. The Camp Magistrate in Kutu Palong reportedly broke the arm of one of three refugees during a severe beating with bamboo canes. Moreover refugees claimed that they understood that if they did not register they would be denied food rations.
- **The conditions within Burma have not changed substantially.** Despite UNHCR claims that the situation inside Burma has improved and that the Government of Burma has given guarantees about the safety of the returnees, human rights organisations still report abuses in Arakan State throughout 1994 and 1995. Forced relocations of Muslims have continued and appear to be directed at moving and concentrating the Muslim population in towns closer to the Bangladesh border.⁶³ Forced labour and large infrastructure projects are still being undertaken in the region. Asia/Watch reports that forced labour obligations for returnees have been negotiated by UNHCR and a concession of four days of work from each family per month has been agreed. However no independent monitoring of this arrangement has been agreed to by the Burmese Government.⁶⁴ In July 1995 a fresh spate of atrocities was reported by Reuters. Two Rohingyas were reported to have been executed by firing squad in west Arakan State for refusing to work on a military project. Reports of torture and travel restrictions reached the refugees in Cox's Bazar and reduced the repatriation rate for the month to 27 compared to 16, 129 the month before.
- **UNHCR is not capable of properly supervising the resettlement.** Questions were raised with the Committee as to whether there were sufficient UNHCR monitors in Burma to ensure safe resettlement. In 1994 there had been 5, this was raised to 10 and at the beginning of 1995 to 25.

4.70 The Committee recommends that:

- 17 **Australian diplomatic representatives and officers from AusAID make a specific evaluation of the repatriation and resettlement of the Rohingya refugees by regular visits to the Arakan State and the UNHCR projects established to ensure their successful resettlement.**

The Fall of Manerplaw

4.71 If the ceasefires have made a significant difference in the strategic relations to Burma's north, the fall of Manerplaw in January and the attack on Kawmoora have also had a profound effect on the balance of power in the east. The Karen National Union was weakened by internal divisions between the Buddhist and Christian factions in December 1994⁶⁵ a division which the SLORC was able both to promote and exploit. Complaints with some apparent validity by the Buddhist rank and file that the Christian leaders had given themselves

63 Details of these cases are given in Chapter 1.

64 Exhibit No 44. Asia Watch, op.cit., p. 18.

65 Dr U Ne Oo submission, p. S664.



On 28 April 1995, Democratic Karen Buddhist Army (DKBA) soldiers burnt down more than 600 refugee houses at Mae Ta Waw (Baw No) Refugee Camp.

Source: Corrinne Armour, Public Hearing, Melbourne, 19 May 1995.

privileges combined with anti-Christian propaganda fomented by the SLORC to bring about the split. The formation of the Democratic Karen Buddhist Organisation (DKBO) and the Democratic Karen Buddhist Army (DKBA) armed and backed by the SLORC army proved to be overwhelming. The result has been to add 10,000 refugees to the camps on the Thai border. The motivation has variously been seen as the desire to defeat the main minority opposition to the regime but also to secure and open the area to development possibilities. The longer term effects may well be pressure on the democracy movement which had found support and shelter in the Karen camps.

4.72 Despite these seeming military victories, the hoped-for advantages to trade and development will not be realised unless there are political settlements with the minorities. At the last meeting of the National Convention in April 1995, the SLORC announced, without prior consultation with the groups concerned, the creation of Self Administrative Zones for ethnic minority groups, specifically for the Naga, the Da-nu, the Pa-o, the Pa-laung, the Kokang and the Wa. Paradoxically, according to submissions to the Committee, this move did not receive unanimous support from the minorities and the proceedings of the Convention were suspended until October. The minorities in question have moved to form a coalition, the Peace and Democracy Front, which is demanding the release of political prisoners and a genuine National Convention and they have agreed to mutual support in the event of an attack by the SLORC on one of their members.⁶⁶

4.73 The Committee would argue that, despite the apparent successes of the military offensives and the ceasefires, none have produced genuine political settlements and that, unless this is done through thorough consultation with all the minorities, the peace will be short lived.

Conclusion

4.74 This Committee reiterates the view it put in its last report on *A Review of Australia's Efforts to Promote and Protect Human Rights*, on the problems that arise for states because of the demands by minority groups for self-determination and independence. The Committee believes this issue alone represents one of the major security issues facing the world today. It is particularly pertinent to the countries of the region where there are numerous examples of pressure being applied to central governments for self-determination. In 1994, the Committee argued:

that governments cannot maintain national cohesion by force and the continual oppression of minorities. It supports the proposition that effective and successful multi-racial/multi-ethnic states need to express their diversity in institutions and political structures which genuinely accommodate the aspirations of their minorities. Failure to make that accommodation, and worse, the abuse and oppression of minorities, gives moral force to claims for independence and secession.⁶⁷

66 Overseas Burma Liberation Front and International Commission of Jurists submission., pp. S708-09

67 Joint Standing Committee on Foreign Affairs, Defence and Trade, *A Review of Australia's Efforts to Promote and Protect Human Rights*, p. 211.

4.75 The Committee recommends that:

- 18 in responding to demands for self-determination in Burma, the Australian Government and its ASEAN dialogue partners include on their agenda for discussions between Foreign Ministers and between Heads of Government the importance of protecting minority rights as the most effective way of ensuring the stability of the state.**

4.76 The problems associated with the border regions of Burma are complex and longstanding. However they clearly illustrate the interconnectedness of human rights, political democracy, peace, security and development. The current Burmese regime is a source of instability in the region. Its lack of accountability and legitimacy allows for corruption and oppression; there is no forum, independent of the government, to bring to account, consistently and impartially, those who, through normal human venality, abuse and oppress their fellow citizens. There is no place for the aspirations of minority groups who have a well founded suspicion of the power of the majority to find expression. Corruption and violence appear to be endemic and, so long as they exist, they encourage the evils of trafficking in arms, drugs and people and the outflows of refugees. Burma's problems then spill over into neighbouring countries and spread from there to the wider world.

4.77 Therefore, it is in the interests of our region and Australia that there should be a solution to the problems Burma faces. Despite the ceasefires and the acclaimed success of the military operations, the situation on the borders continues to be fragile and precarious. For there to be a secure peace there must be a political solution to the demands of the border peoples. This will necessitate proper, not token and selected, representation at the National Convention. Without proper representation at this Convention there can be no lasting accommodation in the new constitution of minority rights and little likelihood that such a constitution will find long term acceptance, thereby providing the basis for stability in the country.

CHAPTER FIVE

PROGRESS TOWARDS DEMOCRACY

Democratic Principles

5.1 There can be no democracy, Western or Asian, without certain baseline features. These include a freely organised opposition, a free and independent press, an independent judiciary and free and regular elections. The right to oppose a government's policies, to criticise and to seek support among the electorate for alternative programs is essential to any democratic system.

5.2 These principles are outlined in the Universal Declaration on Human Rights to which the SLORC repeatedly reaffirms its commitment. In particular, the following articles are worth noting here:

Article 21

Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

Everyone has the right of equal access to public service in his country.

The will of the people shall be the basis of the authority of government; this shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Also relevant is:

Article 19

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

and

Article 20

1. Everyone has the right to freedom of peaceful assembly and association.

2. No one may be compelled to belong to an association.

and, given the particular circumstances of elected members of the National League for Democracy (NLD) after the 1990 elections:

Article 11

- 1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has all the guarantees necessary for his defence.*
- 2. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the adopted time the penal offence was committed.*

5.3 These principles have been reinforced by the international community in the resolutions it has passed on Burma in the General Assembly and in the Commission on Human Rights. They have been adopted every year since 1991.¹ In both places they have been by consensus, without needing to go to a vote. They have become increasingly concerned about the continuing grave violations of human rights and failure of the Government to hand over power in accordance with the will of the people as expressed in the elections of 1990. (See Appendix 7)

The Historical Context

5.4 At a conference at Panlong in 1947, the leaders of the Burmese² and the ethnic minorities came to an agreement on a form of government for Burma post independence. They agreed to form a union in which the ethnic states would acquire equal status based on the principles of self-determination, political autonomy and social equality with the Burmese majority. ... The Panlong Agreement formed the basis of a unified, federal Burmese state.³ However, the plans for a federated state did not survive the assassination of Aung San in July 1947 and ongoing dissension over the status of the ethnic minorities within the union underlies the continuous insurgencies on the borders since that time.

5.5 After a brief experience of democracy between 1948 and 1962, General Ne Win seized power and Burma was ruled by a military, socialist regime. It repressed the rights and liberties of the people and destroyed the economy leading to the pro-democracy movement in 1988 which demanded constitutional change and economic reform. Large scale protests were held daily, involving students from both schools and the university, civil servants marching under banners announcing their departments, monks and ordinary workers. The Bar Council and ex-military officers declared their solidarity through announcements in the newspaper, *The*

1 General Assembly resolutions 46/132, 1991/47/144, 1992/ 48/150, 1993/ 49/197, 1994 and Commission on Human Rights resolutions 1992/58; 1993/73; 1994/85.

2 Notably Aung San, the father of Daw Aung San Suu Kyi.

3 Overseas Burma Liberation Front and the International Commission of Jurists, joint supplementary submission, p. S668.

Guardian. The movement was not confined to Rangoon but spread to most towns of Burma. There were riots in the prisons. The demands of the protesters were for the end of one party rule and the formation of an interim government with a view to drawing up a new, democratic constitution.

5.6 The Party Chairman and the Council of State Chairman, Dr Maung Maung, addressed the nation on 2 September 1988. He announced that he was calling together an Extraordinary Party Congress on 12 September to be followed by an emergency session of the Pyithu Hluttaw (Parliament) on 13 September to decide on the holding of a national referendum as to whether the single party system was to be continued or whether to change to a multi-party system. The referendum was to be held within one month. Dr Maung Maung went on to say:

If the answer received is a choice for a multi-party system, general elections will be held as quickly as possible and in the most just manner and under the supervision of a free and independent elections commission. The party which is the strongest at the Hluttaw will form a government. We will then hand over the matters to that government. This I promised in my address made on 24 August. This promise was not given by me alone; this promise was made by me and all my colleagues in full consensus and with the most genuine cetana.⁴

5.7 Dr Maung Maung was replaced by Saw Maung in a military coup on 18 September 1988 which saw the formation of the SLORC. However, despite this change the plans for the general election continued. On 17 November 1989, at the 65th Press Conference of the Information Committee, SLORC Ministry of Defence, General Saw Maung stated that:

After the election is held, according to the law, power will be duly handed over and the Tatmadaw will steadfastly carry out its ordinary duties.⁵

5.8 The view, expressed by the Burmese Ambassador in his letter to the Australian Senate on 24 February 1994, that 'the authorities of the Union of Myanmar have stated time and time again that the objective of the election was the drafting of a new constitution ... not for the formation of a government by the elected representatives' appears to be a reinterpretation of history.

5.9 The protests and demonstrations of 1988 were suppressed violently by the military causing the deaths of thousands of people. It is variously estimated that the death toll was between 3,000 and 10,000 people. Thousands were arrested. An estimated 700,000 fled the country. The generals declared a state of emergency and on 18 September 1988 established the State Law and Order Restoration Council (SLORC). They had promised to hold general elections and a number of political parties emerged to contest them, including the National League for Democracy (NLD), the National Unity Party (NUP) and the League for Democracy (LDP). However, before the elections took place most of the significant

4 This speech was reproduced in full and is quoted from the Burmese newspaper *The Guardian*, Rangoon, Friday 2 September, 1988, p.1.

5 Quoted from the magazine *Diplomacy*, Vol 15 No12, 25 December 1989.

democratic, political leaders, including Aung San Suu Kyi, the General-Secretary of the NLD, were detained or imprisoned.

5.10 Despite such handicaps, the National League for Democracy overwhelmingly won the election of May 1990, an election that was declared by observers, including the SLORC, to be free and fair. The NLD won 392 of the 485 seats, securing 80 per cent of the vote. The Pyithu Hluttaw (the parliament) was never convened. Subsequently the election was redefined; it was, the SLORC claimed, not an election for a government but an election for a constitutional assembly. However, even the promise that the new constitution would be drafted by the representatives elected in May 1990 was not kept. Eighty-three elected members were imprisoned or detained and consequently banned from standing for reelection. Eleven have since died (one in custody).

5.11 The SLORC has met criticism of its illegality and arbitrary means of operation with the claim that this is necessary to save the nation from disintegration, the threat of communism and anarchy.

5.12 Daw Aung San Suu Kyi has considered these arguments in recent writings on the prospects for peace and development in Burma. She said:

Many authoritarian governments wish to appear in the forefront of modern progress but are reluctant to institute genuine change. Such governments tend to claim that they are taking a uniquely national or indigenous path towards a political system in keeping with the times. ... It is often in the name of cultural integrity as well as social stability and national security that democratic reforms based on human rights are resisted by the authoritarian governments. ... It is claimed, usually without adequate evidence, that democratic values and human rights run counter to the national culture, and therefore to be beneficial they need to be modified - perhaps to the extent that they are barely recognizable.⁶

5.13 Aung San Suu Kyi rejected these arguments as the arguments of the empowered few who wish to retain power for themselves and who have no confidence in their capacity to compete successfully for the support of the people in a democratic process. She argued that:

A nation may choose a system that leaves the protection of the freedom and security of the many dependent on the few; or it may choose institutions and practices that will sufficiently empower individuals and organisations to protect their own freedom and security.

6 Daw Aung San Suu Kyi, *Empowerment for a Culture of Peace and Development*, an address to a meeting of the World Commission on Culture and Development, Manila, 21 November 1994, presented on her behalf by Mrs Corazon Aquino.

She believed that

where power is concentrated in the hands of the few, the threat to peace and stability is ever present even if unperceived.⁷

Finally, she argued that:

The democratic process provides for political and social change without violence. The democratic tradition of free discussion and debate allows for the settlement of differences without resort to armed conflict. The culture of democracy and human rights promotes diversity and dynamism without disintegration.⁸

5.14 The experience of Burma has validated this view. Without any mandate, the SLORC has proceeded to govern by the proclamation of laws. Declaration 1/90 states:

The State Law and Order Restoration Council (Tatmadaw) is not an organisation that observes any Constitution; it is an organisation that is governing the nation by Martial Law. ... It is common knowledge that the State Law and Order Restoration Council is governing the nation as a military government and that it is a government that has been accepted as such by the United Nations and the respective nations of the world.⁹

Through this proclamation and a series of others it has sought to assert its legitimacy. However, a number of international institutions, in particular the United Nations through its resolutions and the International Parliamentary Union (IPU) through its committees and resolutions, have condemned the failure of the SLORC to hand power to the properly elected representatives. Therefore the claim that it is a government accepted by the UN and the respective nations of the world is questionable.

5.15 The Committee recommends that:

19 the Australian Government continue to press the Government of Burma to:

- (a) recognise the popular legitimacy of the NLD and builds on Daw Aung San Suu Kyi's call for power sharing on a South African model; and**
- (b) begin negotiations with Aung San Suu Kyi with a view to bringing about this end.**

7 *ibid.*

8 *ibid.*

9 Overseas Burma Liberation Front and the International Commission of Jurists supplementary submission, p. S674.

The National Convention

Objectives

5.16 The major means the SLORC has used to assert its legitimacy and to allay criticism of its failure to hand over power has been the National Convention.

5.17 In 1992, a National Convention Committee was formed by the SLORC with the purpose of convening a National Convention to draw up a new constitution and, it would appear, to circumvent criticism. This Convention has ignored the existence of elected representatives of the people. Its objectives were:

- (i) Non-disintegration of the Union;
- (ii) Non-disintegration of the national solidarity;
- (iii) Perpetuation of sovereignty;
- (iv) Flourishing of a genuine multi-party democracy system;
- (v) Further burgeoning of the noblest and worthiest of worldly values, namely justice, liberty and equality in the State;
- (vi) For the Tatmadaw to be able to participate in the national political leadership role of the State.

5.18 In February 1995, the Burmese Ambassador to the United Nations described the work of the National Convention:

The National Convention, comprising some 700 representatives and representatives-elect, is currently engaged in the task of laying down the basic principles for the elaboration of a strong and enduring constitution.

The National Convention constitutes a truly representative body, comprising representatives from the entire cross-section of social strata of the Myanmar people.

At present the National Convention is continuing its work on various chapters and provisions, reflecting the views and containing suggestions of participating representatives.¹⁰

5.19 From the information presented to this Committee, none of these claims stand up to scrutiny; the National Convention is not truly representative; it does not reflect the views of the participating representatives; and therefore it is unlikely to produce a strong and enduring constitution certainly not one that has any semblance of democracy about it.

10 *Letter dated 13 February 1995 from the Permanent Representative of Myanmar, op. cit. pp. 4-5.*

Structure

5.20 The National Convention was convened on 9 January 1993. It was made up of eight groups of delegates.

- (i) Delegates of political parties;
- (ii) Representatives elected at the May 1990 elections;
- (iii) Delegates of nationalities;
- (iv) Delegates of peasantry;
- (v) Delegates of workers;
- (vi) Delegates of intellectuals and intelligentsia;
- (vii) Delegates of State service personnel; and
- (viii) Delegates who should be invited.

5.21 In all 702 delegates attended the first session of the Convention: 99 were representatives who had won seats at the May 1990 elections, another 48 came from political parties, categories 1 and 2 above. Therefore over 550 of the delegates were selected by the SLORC. Since 1993, the attendance at the Convention has declined by 61 delegates. At the beginning, only one in seven delegates were representative in the democratic sense of the word.

5.22 The Committee recommends that:

- 20 **The Australian Government urge the Government of Burma to include a greater number of the National League for Democracy representatives and a more representative group of delegates from the ethnic minorities in the deliberations of the National Convention.**

Procedures

5.23 The procedures for the working of the Convention have been controversial and contrary to any genuine attempt to consider properly the views even of the hand picked delegates. Issues for discussion are raised first in plenary sessions where the view of the SLORC is put before the Convention. Discussions then take place in each of the eight separate groups. Each group has an executive panel of five from which a further panel of chairmen is selected to report back to the plenary sessions. At each stage of this hierarchy official SLORC representatives are inserted into the group. All papers that are to be delivered have to be submitted in advance to the National Convention Convening Committee (NCCC)¹¹ and anything emanating from group discussions, which is to be raised in the plenary session, must be presented in outline to the Panel of Chairmen first. Human Rights Watch/Asia reports that

11 Exhibit No. 44, Human Rights Watch/Asia reports that this Committee is made up of Maj Gen Myo Nyunt (member of the SLORC, Minister for Religious Affairs and Rangoon Divisional Commander) Chairman; Maj Gen Maung Thint (Member of the SLORC and Minister for Border Areas) Vice-Chairman; Brig Gen Myo Thant (SLORC member) and Brig Gen Aung Thein (SLORC member and secretary of the defence services and public relations and psychological warfare).

the final 'agreed' principles rarely vary from the initial proposals put at the outset by the National Convention Convening Committee, ie the SLORC.

5.24 Delegates may not distribute any written material other than what is approved. They may not wear badges, lobby each other, hold intra-party discussions, bring in papers, distribute papers outside the convention, demonstrate against the proceedings or walk out. Delegates must live in especially provided quarters at the convention centre where they are supervised by military intelligence. They may not leave without permission and may not meet with their constituents. The discussions of the convention are only reported to the public through the Government censored media.

5.25 In February 1993, 14 people were arrested for distributing material critical of the convention. Dr Aung Khin Sint, an NLD delegate and his assistant U Than Hla, were arrested and sentenced to 20 years and 15 years in prison respectively for distributing material critical of the role of the junta in the convention.

5.26 U Daniel Aung, Chairman of the political committee of the National Convention, left the Convention at the end of its fourth session. He expressed his disillusionment in the following terms:

I have lost all faith in the National Convention convened by the SLORC and have therefore come over to the liberated area. Although the delegates to the National Convention are supposed to draft the aims and objectives of the Convention, the SLORC has already laid them down in advance. The basic principles that are supposed to be drafted by the delegates were already prepared and laid down by the SLORC. The delegates were merely asked to discuss these principles, but the suggestions given and the positions formulated by the delegates were never respected by the SLORC. In the end the guidelines prepared by the SLORC were adopted without any modifications. The SLORC took appropriate measures to ensure this would happen. The principles for selecting the President of the State which it adopted made it obvious that the whole administrative machinery will remain dominated by the military forever.¹²

5.27 Human Rights Watch/Asia concluded that 'it is clear from these developments that the SLORC has used every means possible to manipulate the political process and deny the citizens of Burma their right, as expressed in Article 25 of the ICCPR, to take part in the conduct of public affairs, directly or through freely elected representatives.' In doing so they have not only violated the most basic of international human rights standards, but also their own laws.¹³

5.28 The UN Special Rapporteur concurred that the National Convention was marred by excessive control, surveillance and harassment of delegates, and a lack of true representation and free exchange of ideas. Moreover, he believed that, despite the assurances

12 Exhibit No. 8, National Coalition Government of the Union of Burma, *Analysing the SLORC's National Convention*, p. 5.

13 Exhibit No 44., p.13.

of the Government of Burma to the contrary, they did not intend to transfer power. In particular, he concluded that:

given the composition of the delegates (only one in seven delegates was elected at the 1990 elections), the restrictions imposed on the delegates (practically no freedom to assemble, to print and distribute leaflets or to make statements freely) and the general guidelines to be strictly followed (including the principle of the leading role of the Tatmadaw), the National Convention does not appear to constitute the necessary 'steps towards the restoration of democracy, fully respecting the will of the people as expressed in the democratic elections held in 1990' (General Assembly Resolution 47/144, para 4)¹⁴

5.29 The Inter-Parliamentary Union (IPU) Committee on the Human Rights of Parliamentarians has monitored the fate of the members elected in May 1990 to the Pyithu Hluttaw. The IPU made the following judgement on the National Convention:

The Committee,

Reaffirms its indignation that, more than four years after the elections held on 27 May 1990, the authorities of the Union of Myanmar continue to ignore the outcome of the election, and insists that this constitutes a violation of the principle established in the Universal Declaration of Human Rights that '*the will of the People shall be the basis of the authority of government*'

Reiterates in this respect that the National Convention convened by the SLORC on 9 January 1993 can in no way be regarded as a step towards the restoration of democracy respecting the will of the people as expressed in the democratic elections held in 1990.¹⁵

5.30 The Committee recommends that:

- 21 **The Australian Government urge the Government of Burma to provide observer status to the international press, diplomatic representatives and representatives of the Inter-Parliamentary Union to the proceedings of the National Convention.**

5.31 The principles so far laid down for the new constitution of Burma do not bode well for the development of democracy. In particular, the army is to retain a central and powerful position, not be subject, as it should be, to the decisions, directions, scrutiny and control of the elected government. It will be free to administer its own affairs, it will have, by appointment, approximately 25 per cent of the seats in each of the House of Representatives and the House of Nationalities. The President will be required to have experience in the fields of political, administrative and military affairs and may not be married to a foreigner. This last condition is obviously designed to preclude Aung San Suu Kyi from holding office.

14 *Report of the Special Rapporteur*, op. cit. p. 34.

15 Exhibit No. 29, Inter-Parliamentary Union, *Report of the Committee on the Human Rights of Parliamentarians*, CL/156/11(a)-R.1, April 1995, p. 97.

The Decimation of the Elected Government

5.32 After the violent suppression of the democracy movement in 1988 and again after the election of 1990, the army set about destroying the pro-democracy political forces in Burma. Thousands who did not escape to the border were interrogated, tortured and imprisoned. The SLORC did this so ruthlessly that they destroyed any credibility or popularity they might have had with the electorate, evidenced by their achievement of less than 10 per cent of the vote.

Daw Aung San Suu Kyi

5.33 The most famous political detainee in Burma, Daw Aung San Suu Kyi, General Secretary and co-founder of the NLD, was released on 10 July 1995. She is the greatest hope for democracy in Burma and now has the task of rebuilding the NLD from the remnants left by six years of the SLORC's persecution.

5.34 Aung San Suu Kyi is the daughter of General Aung San who led the independence movement against British rule and was assassinated in 1947. She was educated in Burma, India and Oxford. She returned to Burma in 1988 at a time when opposition to the rule of the military junta had reached its height. She co-founded the National League for Democracy in September 1988, drawing together over 100 political parties. Her political impact, charisma and appeal were immediate. She attracted mass rallies at more than a hundred meetings in campaigning for the promised national elections. Criticism of the junta led to her being sentenced by the SLORC to house arrest on 20 July 1989.

5.35 She was kept in virtual isolation for six years; only occasional visits by her family and a visit from US Senator Bill Richardson and the Buddhist monk, Rewetta Dhamma, were permitted. Colonel Kyaw Win, Deputy Chief of Military Intelligence, informed her of her release in July 1995 in terms she described as kind and cordial. No conditions were attached.

5.36 She committed herself to reconciliation:

We have to choose between dialogue and utter devastation. I would like to believe that the human instinct for survival alone, if nothing else, would eventually lead us to prefer dialogue. You may ask what are we going to talk about once we reach the negotiation table? The establishment of certain principles, recognition of critical objectives and joint approaches to the ills besetting the country would be the main items on the agenda. Extreme viewpoints are not confined to any particular group and it is the responsibility of the leaders to control such elements that threaten the spirit of reconciliation.¹⁶

5.37 Her release was greeted internationally with relief and cautious optimism. It was an event greatly welcomed by those who had campaigned for her release. However, it would be odd to express gratitude or appreciation for an event that should never have been necessary and, even within the framework of the SLORC own laws, was overdue. Moreover, in some

16 Reported on AFP, 11 July 1995.

quarters it was seen as a cynical move on the part of the Government whose detention of Aung San Suu Kyi had become 'legally' untenable and counterproductive to its interests. The desire to expand the economic development of Burma required greater acceptance of the regime by the regional powers and the international financial institutions. The Government wished to sign the Treaty of Amity and Cooperation with a view to full acceptance in ASEAN and the release was well timed to precede the July ministerial meeting of ASEAN and the September meeting of the UN's General Assembly. From the standpoint of the SLORC the release might be not so much a concession but a measure of its belief in its own strength.

5.38 The Committee recommends that:

22 The Australian Government press the Government of Burma to begin immediate negotiations with Daw Aung San Suu Kyi and the leadership of the NLD.

5.39 Given the number of problems within Burma, the illegality of the government, the record of violence and brutality against citizens, the aggression against ethnic minorities, the continuing detention of people whose only fault was peaceful political activity, the lack of standard, agreed-to freedoms of speech, assembly and political association, the release of Aung San Suu Kyi is the most limited concession possible.

Political Prisoners

5.40 There remain many political prisoners in gaol. The arrest of students at the funeral of U Nu is a matter of great concern. No progress can be made until all political detainees are released and their right to future political participation is restored. Discussions with Aung San Suu Kyi and the Members of the NLD and their inclusion in the constitutional development process are essential.

5.41 Personal testimonies presented to the Committee give some insight into the political violence of the regime. One student who had worked for the democracy movement described his treatment at the hands of the military intelligence force. He was taken from his house at midnight, beaten, kicked and placed in a confined space under a mosquito infested urinal. He was interrogated by drunken military intelligence police who beat him with canes, applied electric shocks, suffocated him by placing a plastic bag over his head and burnt his hand with an electric iron. His parents paid a large bribe to get him a lighter sentence and a civil trial but even so he spent two years in detention including a period working from 4am to 6pm breaking rocks to build a 16 kilometre road. On his release he was unable to obtain work. He experienced further detention in 1994 and witnessed the beating of other political dissidents. He has since been given entry to Australia.¹⁷

5.42 Although a large number of political and other detainees have been released since 1992, the IPU remains gravely concerned about the fate of individual members of parliament still being held. The IPU has been monitoring the cases of 83 members of parliament who were arrested after the 20 May 1990 elections. The allegations include the death in prison in 1991 of one parliamentarian, U Tin Maung Win, and the assassination of two others outside Burma, one in China, U Win Ko, and one in Thailand, U Hla Pe. Many others have been detained,

17 Australia-Burma Council submission, pp. S404-15.

allegedly without charge or trial or have received heavy sentences after summary trials.¹⁸ The list provided by the IPU to this Committee still contains the names of 15 members of parliament in detention.¹⁹ Two members of parliament, **Khin Maung Swe** and **Sein Hla Oo** were rearrested in August 1994. Other parliamentarians, **U Kyi Maung** and six others were rearrested and detained for a week on 1 June 1995.

5.43 The response of the Government of Burma to the IPU is that 'reports according to which political activists opposing the Government become victims of torture and ill-treatment in detention are totally unfounded.'²⁰ On the specific question of the detention of the members of parliament the Government claimed:

Should there be legal action taken against an individual it is because that individual has violated the prevailing laws of the state but not on the grounds of his political beliefs.²¹

5.44 The problem lies in the nature of the 'prevailing laws'. The 'prevailing law' most often used to convict members of parliament in Burma has been the *1950 Emergency Provisions Act*, especially section 5 (e)²². However, other convictions have been attained under the *1962 Printers and Publishers Registration Act*²³, the *1957 Unlawful Associations Act*²⁴ and the *1975 State Protection Law*²⁵. A further decree which has prevented political activity is Decree 2/88 which bans gathering, walking, marching in procession, chanting slogans, delivering speeches, agitating and creating disturbances in the streets by a group of five or more people regardless of whether the act is with the intention of creating disturbances or of committing a crime or not. The offences are variously described by the Government as against the security of the state, involving the illegal distribution of 'seditious' papers or as 'spreading misinformation' through contact with foreigners, dissidents or the UN Special Rapporteur.

5.45 A matter of great concern, especially given the doubtful nature of the laws being used to detain parliamentarians-elect and countless political activists, is the prohibition on their

18 *ibid.*, p. 85. See also Appendix 8 for full list of parliamentarians who have been detained and their current status as far as the IPU can ascertain.

19 The list as of July 1995 is as follows: Case Nos - MYN/01 Ohn Kyaing; MYN/08 Tin Htut; MYN/10 Win Hlaing; MYN/13 Naing Naing; MYN/26 U Hla Tun; MYN/28 Tin Aung Aung; MYN/36 Myint Naing; MYN/41 Zaw Myint; MYN/42 Mya Win; MYN/50 Wan Maung; MYN/53 Hla Tan; MYN/60 Zaw Myint Maung; MYN/71 Kyi Myint; MYN/72 Saw Win; MYN/73 Fazal Ahmed.

20 Exhibit No 29, *Committee on the Human Rights of Parliamentarians*, *op. cit.* p.87.

21 *ibid.*, p. 87.

22 For '[causing the] the disintegration of the moral character of the people' and for 'writing and distributing false news that could jeopardise the security of the state'.

23 For the publication of material which 'opposes the SLORC ... or ... insults, slanders or attempts to divide the Defence Forces'

24 For membership of an association which 'encourages or aids persons to commit acts of violence or intimidation or which has been declared unlawful by the President.'

25 'The Government may order up to three years detention or house arrest without charge or trial for anyone the authorities believe will do, or is doing, an act which endangers the peace of most citizens or the security and sovereignty of the State'. Daw Aung San Suu Kyi and 40 other members of parliament were detained under this law.

future participation in politics as a result of their 'convictions'.²⁶ It is important that these provisions be revoked and rights to free and full political participation be assured to those who wish to be involved in the future democracy of Burma.

5.46 The Committee recommends that:

23 the Australian Government urge the Government of Burma to:

(a) release immediately all political detainees;

(b) comply with the request of the Inter-Parliamentary Union for information on the names and numbers of all political detainees;

(c) allow private access to delegates of the IPU or the ICRC to these detainees; and

(c) repeal those laws which include ill-defined offences against national security (see paragraph 5.44) which have been used for the purpose of eliminating opposition.

Democracy in Burma

5.47 This Committee rejects the proposition that any of the actions for which these people have been detained could be construed as a threat to national security. In reality it would appear that the laws are simply used against people exercising their legitimate rights to free speech, free association and peaceful political action - criticism of the actions of the SLORC, rightful protest about the failure of the SLORC to respect the election victory of the NLD, criticism of the dubious procedures of the National Convention and free dialogue and cooperation with the Special Rapporteur as agreed to by the Government. The laws are vague and at times amendments have been made by decree and punishments have been applied retrospectively. Procedures have not been open and the Government has not produced the concrete evidence upon which the judgements have been made. No distinction is made between the security of the State and the 'security of the SLORC'. Consequently procedures have not been in accord with natural justice and the 'prevailing laws' not in accord with the international obligations of Burma, as a member of the United Nations, to observe Articles 11, 19, 20 and 21 of the Universal Declaration on Human Rights.

5.48 This Committee deplores the deliberate and systematic destruction of political parties under the guise of legal process. It deplores the manipulation of the National Convention in order to produce an anti-democratic constitution which, if not modified, will entrench in power a military regime which has usurped power and denied the will of the people of Burma clearly expressed at a free and fair election.

26 SLORC Order 4/91 states that anyone convicted of 'moral turpitude' or offences relating to law and order 'ha[s] no right to continue to be a Peoples' Assembly representative' and such people 'shall have no right to stand for election as a Peoples' Assembly candidate in elections to be held in the future.' Cited from Human Rights Watch/Asia, op. cit. p. 10.

5.49 In Burma, there is a long history of authoritarian rule and isolation from international contact and international scrutiny. Today, since the SLORC deprived the elected government of power in 1990, the most gross human rights abuses committed by the Government result from that act of illegality, the opposition it has engendered and the systematic attempts of the SLORC to destroy the National League for Democracy and any political opposition to its rule. The Government lacks accountability. Its rule is arbitrary; it has dispensed with a rule of law and has resorted to rule by decree. There has been little progress towards democracy.

5.50 The Committee recommends that:

- 24 **the Australian Government urge the Government of Burma to enact laws which would ensure freedom of assembly and information so that all citizens of Burma may participate fully in the political process.**