

## CHAPTER SIX

### ENGAGEMENT OR ISOLATION

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6.1 The lack of domestic accountability and the apparent unwillingness of the SLORC to set in place democratic processes ensure continuing international attention on Burma. The international system is, and must be, a last resort for people who can gain no redress internally. Since the massacres of 1988, there has been growing concern at the gross violations of human rights in Burma, conducted for the most part by the military and the Government. Far from preventing national disintegration and domestic rebellion, the policies of the SLORC, through tyranny and oppression, have encouraged it. Although minor adjustments have been made by the government in response to massive international pressure, the core issue of the recognition of the democratic will of the people and an end to human rights abuses has not been addressed in any credible way.

6.2 Moreover, there has been almost no dissension from the condemnation of the human rights abuses perpetrated by the current regime in Burma. However the question of what might be the most appropriate response has generated considerable debate. The question is whether the natural inclination to proscribe an abusive and illegal regime would lead to an improvement more quickly than engaging it and opening it to the influences of trade and development; whether contact would give political legitimacy and economic succour to the ruling elite at the expense of the ordinary people of Burma. The dilemma is made more complicated by the differing attitudes and interests of regional countries and neighbours - the ASEAN states, China and Bangladesh - and the wider international community - the United States, Japan, the European Union, Canada and Australia etc. Where there is no consensus the question becomes as much one of pragmatic politics and what is achievable as one of principle and international law.

#### The United Nations

6.3 The reaction of the United Nations has been expressed in a series of resolutions passed in both the General Assembly and the Commission on Human Rights. They have left no doubt about the UN's view of Burma. Since 1991 these resolutions have been increasingly specific and increasingly critical. Moreover they have been passed by consensus, thereby giving the force of unanimity to the condemnation of Burma's record. What began as a general concern about human rights violations and the failure to implement the results of the 1990 elections have become quite detailed demands for action to stop the detention and torture of political opponents, to improve conditions in prisons, to remove the conditions which cause the outflow of refugees from Burma and to comply with already ratified international conventions and ratify those which have not yet been ratified.<sup>1</sup>

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1 For the full text of the last UNGA resolution, 49/197 23 December 1994, see Appendix 7.

6.4 In 1992 a series of Special Rapporteurs reported on Burma:

- Mr P Kooijmans, pursuant to CHR Resolution 1992/32 concerning Persons Subjected to any Form of Detention or Imprisonment;
- Mr Bacre Waly Ndiaye, pursuant to CHR Resolution 1992/72 concerning Extrajudicial, Summary or Arbitrary Executions;
- Mr Angelo Vidal d'Almeida Ribeiro, pursuant to CHR Resolution 1986/20 concerning Religious Intolerance and Discrimination.

6.5 These rapporteurs based their findings on written communications both with complainants and the Government of Burma. They presented quite specific allegations to the Government and they have received only very general denials in reply.

6.6 In 1993 the Working Group on Arbitrary Detention found that, since both Aung San Suu Kyi and U Nu had never had access to counsel, could not challenge their deprivation of liberty before a court and had been held in almost complete isolation, their detentions were arbitrary and in contravention of Articles 9, 10, 11, 19 and 20 of the Universal Declaration of Human Rights and Articles 9, 14, 19 and 21 of the International Covenant on Civil and Political Rights.

6.7 The United Nations took a further step in 1993, Resolution 1992/58, appointing the Special Rapporteur on Human Rights in Myanmar, Mr Yozo Yokota. Mr Yokota has visited Burma twice, in December 1992 and November 1994. The Government of Burma organised wide-ranging discussions for him; however, on neither occasion was he able to see all the people he wished to see. Mr Yokota's first report concluded that there was 'serious repression and an atmosphere of pervasive fear in Myanmar' as well as 'a lack of accountability and an absence of legal and administrative protections'. He recommended continued close monitoring.

6.8 In the second report he noted 'visible signs of relaxation of tension in the life of the people ... many consumer goods, ... many cars on the streets.' However, the economic expansion and development only benefited a few and people did not generally enjoy civil and political rights - freedom of thought, opinion, expression, publication, and peaceful assembly and association. In a series of recommendations Mr Yokota called on the Government of Burma to develop a democratic constitution, to agree to and implement all the international human rights norms and to open the country to free access to and cooperation with non-government organisations.

6.9 In its resolutions on Burma, the United Nations has judged the record of Burma against its conventions and declarations; it has not taken a stand on the question of engagement or isolation. Unless matters are taken to the Security Council and resolutions agreed to under the Chapter VII enforcement provisions, it is in the nature of the UN system to be persuasive rather than punitive. When, in 1992 after 250,000 refugees had fled into Bangladesh, matters were close to being raised in the Security Council, the SLORC began to modify its policies. Since then the UN has sought the cooperation of the regime in reminding the SLORC of its obligations.

6.10 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.

## Other International Forums

6.11 As this report has detailed, a number of international organisations have come to similar conclusions and made similar demands on the regime. The International Labour Organisation, the Inter Parliamentary Union<sup>2</sup> and the European Union have taken strong stands on the denial of democracy and the abuse of the population in Burma.

### The European Union

6.12 In 1992 the European Community (now Union) resolved that member states should suspend non-humanitarian development aid programs to Burma. It noted that arms sales to Burma had already been suspended, that in 1991 member states had withdrawn military attaches and that economic and trade relations had by then been reduced to a minimum.

6.13 The European Community premised the opening of relations with Burma on a fulfilment of its obligations in the field of human rights and democracy.

### The United States - Isolation

6.14 Since the uprising of 1988 the United States too has:

- imposed an embargo on the sale of arms to Burma,
- suspended all non-humanitarian aid,
- opposed loans to Burma by international financial institutions, and
- encouraged others not to provide bilateral assistance to Burma.

6.15 As the situation worsened in 1991-92 the United States Congress advised and the President approved the imposition of further economic sanctions on Burma if Burma failed to meet certain conditions:

- (i) Burma meets the certification requirements listed in section 802(b) of the *Narcotics Control Trade Act 1986*.

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2 ILO and IPU resolutions have been dealt with in Chapters 3 and 5 of this report.

- (ii) The national governmental legal authority in Burma has been transferred to a civilian government.
- (iii) Martial law has been lifted in Burma.
- (iv) Prisoners held for political reasons in Burma have been released.

6.16 Sanctions were to be applied to major imports from Burma: fish, tropical timber and aquatic animals and particularly textiles, the largest single category of exports to the United States. In support of the amendment to the *Customs Act 1990*, the Hon Patrick Daniel Moynihan also warned:

We also have this important message today to any foreign investor who might be tempted to go to Burma for quick profits by shipping textiles to the United States: Think again. The President and the Congress will not permit the United States market to finance the exploitation of the Burmese people.<sup>3</sup>

6.17 In July 1991 Resolution 107 of the House of Representatives condemned the involvement of the military regime in Burma, also known as the Union of Myanmar, in the ongoing, horrifying abuses of human rights, the trafficking of illicit drugs and the mass buildup of military arms for domestic repression.

6.18 In March 1992, the Senate resolved concurrently with the House that:

- (i) the President should seek an international arms embargo against the Burmese military regime until all power has been transferred to a legitimate, democratically elected government; and
- (ii) the President should instruct the Secretary of State to call privately and publicly for an end to China's military sales and economic support for the Government of Burma until such time as the political prisoners are unconditionally released (including Daw Aung San Suu Kyi), martial law is lifted and the results of the May 1990 election are fully implemented.<sup>4</sup>

6.19 The US Department of State responded to the resolutions of the Congress by agreeing to implement Section 138 thereby refusing to renew the bilateral textile agreement. However Janet Mullins, the Assistant Secretary Legislative Affairs, noted that:

[T]here is no significant support for multilateral economic sanctions, generally because of the paucity of economic relations with Burma. We will continue to press our friends and allies on the situation in Burma, including the members of ASEAN ... at the annual Post Ministerial Conference in Kuala Lumpur.<sup>5</sup>

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3 Quoted from NCGUB, *Democracy and Politics in Burma: A Collection of Documents, 1993*, pp.434-35.

4 *ibid.*

5 *ibid.* p. 438.

6.20 Non-government organisations in the United States have also started a movement against trade and investment with Burma. The Coalition for Corporate Withdrawal lobbies companies involved in Burma explaining the record of human rights abuses of the SLORC. They lobby shareholders to bring about shareholders resolutions which would preclude companies from dealing with Burma.<sup>6</sup> The overall government and non-government pressure has led to some success. To date withdrawals include Levi Strauss, Federated Department Stores which owns Macy's, retailers Eddie Bauer and Liz Claiborne and Amoco. The Berkeley City Council in California decided in February 1995 not to buy goods from companies which do business with Burma. Madison (Wisconsin) Seattle (Washington) and the state of Massachusetts are considering similar legislation. Most companies which have withdrawn from Burma cite corruption as the factor which has made it impossible to work effectively.

6.21 Unions in the United States have also taken a stand by boycotting ships carrying Burmese crews that have been picked up in Rangoon by SLORC agencies.<sup>7</sup>

6.22 The most recent statements from the Congress and the Government of the United States, post the release of Aung San Suu Kyi, have tended to reinforce their determination to maintain such isolation of Burma as can be achieved. In July, Senator Mitch McConnell, Chairman of the Senate Appropriations, Foreign Operations Sub-Committee, proposed legislation, the *Free Burma Act*, which would ban US trade and investment in Burma, ban US imports of goods from Burma, suspend GSP and MFN status for Burma, suspend US assistance to any country selling arms to Burma, withhold US contributions to UN organisations funding non-humanitarian programs in Burma, instruct the US executive director at multilateral institutions to vote against loans to Burma and prohibit US tourist travel to Burma. This piece of legislation has been withdrawn for the time being; however the House Committee on International Relations held hearings in September to review recent developments in Burma. It was recommended to this hearing that continued efforts be made to persuade the SLORC to implement UN resolutions and that pressure be exerted on the SLORC through a freeze on private investment until forced labour is ended and independently verified to have ended, continued suspension of bilateral assistance, a continued freeze on multilateral financial assistance and a concerted effort to stigmatize China for its role in supplying arms to the SLORC.

6.23 The US Ambassador to the United Nations, Madeline Albright, visited Burma in September 1995. In discussion with General Khin Nyunt she told the junta forcefully that the United States intended to isolate Burma politically and economically until the regime began a meaningful dialogue with Aung San Suu Kyi, freed more political prisoners, halted attacks on ethnic minorities, ended forced portorage and forced labour and let the International Committee of the Red Cross visit Burmese prisoners.<sup>8</sup>

6.24 However, unlike Australia which has a policy that neither encourages nor discourages trade and investment<sup>9</sup>, the United States has a trade officer in Burma and, like the UK, still holds trade promotions for Burma. United States' companies investing in Burma

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6 Evidence, 5 May 1995, p. 109.

7 Evidence, 5 May 1995, p. 109. See also complaints to the ILO from the International Transport Federation, Chapter 3 and Appendix 6.

8 Quoted from Agence France Press (AFP), 9 September 1995.

9 The AUSTRALIA office in Rangoon is a minimal information office.

include Pepsi, Texaco and UNOCAL. Their policies appear to be somewhat at odds with stated US Government policy on Burma. The largest investor is UNOCAL which, in a joint venture with TOTAL, a French company, and the Government of Burma, is developing gas fields and building a 416 kilometre long<sup>10</sup> gas pipeline from the Gulf of Martaban in Burma into Ratchaburi Province in Thailand. The total investment is estimated to be \$US1 billion. They expect to supply 130 million cubic feet of gas per day to Thailand by 1998 increasing to 525 million cubic feet 15 months later.

6.25 Complaints about the construction of the pipeline have been widespread. It is claimed that it has caused the forced relocation of villages<sup>11</sup> along the route, forced labour for the clearing of the land surrounding the pipeline and the maltreatment of Burmese refugees on the border as the Thai government attempts to force the guerillas to sign ceasefire agreements. The notorious Ye-Tavoy railway project, the subject of massive forced labour<sup>12</sup> is an integral part of the pipeline project. Security is a major priority and has necessitated the building, again with forced labour, of military encampments throughout the area. Ethnic groups claim that SLORC are forcibly 'securing' the area before the building of the pipeline begins.<sup>13</sup> The capacity of the regime to conceal such practices from overseas investors needs to be examined as does the business ethics of companies which profit from them.

6.26 The Committee recommends that:

- 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.

## **ASEAN - Constructive Engagement**

6.27 ASEAN<sup>14</sup> is in an ideal position to encourage changes within Burma. Burma wishes to join ASEAN and, apart from China - the largest trading partner - trade with ASEAN is the largest sector of Burma's foreign trade. Moreover it is in the interests of ASEAN to ensure stability in the region. Stemming the flow of refugees and curbing the illegal traffic in drugs, women and illegal immigrants would make a significant difference to long term regional stability. All these activities have corrupting effects which are economically and politically cancerous for the whole region.

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10 It will be 350 kilometres off shore and 66 kilometres overland.

11 It is estimated that 30,000 Mon, Karen and Tavoyan people from more than 50 villages have been forcibly displaced or relocated into strategic hamlets miles distant from their primary location.

12 Involving over 150,000 people over a period of seven months.

13 See also Chapter 4.

14 ASEAN is currently made up of six countries: Brunei, Indonesia, Malaysia, the Philippines, Singapore and Thailand. Laos has observer status. Cambodia, Vietnam and Burma are seeking entry, which would make ASEAN 10.

6.28 ASEAN developed the policy of constructive engagement as a result of the distinction which south east Asian countries choose to draw between civil and political rights and economic, social and cultural rights. It is a reflection of a long-standing unwillingness of any of the ASEAN members to comment on what they describe as internal affairs of other member states; in essence, an unwillingness to take up human rights matters. It is fuelled to some extent by fear of intervention in their own affairs. Constructive engagement professes to seek changes through dialogue and through contacts both political and economic, reform through friendly engagement; unfortunately there often appears to be more emphasis on engagement than reform.

6.29 Current debate about the role of ASEAN suggests that there is scope for it to play a much more significant part in the political and cultural development of the region. At an international conference on the future of the UN held in Melbourne in July 1995, participants from the region that ASEAN could and should make a greater contribution to regional development. One of the streams of the conference was on regionalism. They believed there was scope in ASEAN for regional security dialogue, for a more concerted effort in multilateral trade negotiations, for social and cultural interaction in such a way that ASEAN might address the needs of marginalised groups and bridge the widening gap between rich and poor, for ASEAN-wide approaches to environmental concerns and for greater attention to human rights concerns. On this last matter, most relevant to Burma, they noted that there was a paucity of accessions to international human rights instruments, no regional human rights system, a tendency to over-emphasise communitarian and economic rights at the expense of individual and political rights - all this hesitation a reflection of ASEAN's own internal weaknesses and its external ambiguities.<sup>15</sup>

6.30 The Korean Co-President of the Forum for Democratic Leaders in the Asia-Pacific, Kim Dae-Jung, also believes there is an important role for ASEAN in these wider concerns. In relation to Burma he stated that:

[I]t is much better for Asians to solve this problem among ourselves. Burma's neighbours should take the lead in organising a truly coordinated policy to bring the country out of isolation. Such coordination has been lacking so far, and could make a difference. Japan's role is important, and Tokyo should not renew aid programs or encourage large scale investment until real progress is made towards democratic reforms. If the situation does not improve, several levels of pressure would have to be considered. At a minimum, a code of conduct for companies doing business in Burma should be adopted. Other options such as a UN weapons embargo and trade sanctions should be among the tools of the international community.

However he believed that:

ASEAN's role is central. Participation in ASEAN ... is viewed as a valued prize. A prize that should not be awarded casually, but earned

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15 See papers from conference on The United Nations: Between Sovereignty and Global Governance? La Trobe University, July 2-6 1995.

through a commitment to principles such as democracy. ... It may be that ASEAN is in the strongest position to set Burma on a course in this direction.<sup>16</sup>

6.31 The Committee recommends that:

**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) that these reforms should precede the entry of Burma into ASEAN.**

6.32 The Committee also endorses the recommendation in Chapter 14 of its report on Australia's Relations with Thailand on the development across the region of standards of justice and legal processes.

## Thailand

6.33 Thailand's role in relation to Burma is pivotal but it is also ambivalent. It has provided sanctuary for over ten years for the refugees and democracy activists who have fled over the border. It has encouraged negotiations with the ethnic factions and urged the regime to release Aung San Suu Kyi, a matter for which it has claimed some credit. It has been angered by incursions across its borders and the killing of its citizens by the Burmese army. However it has dealt closely with the regime in Rangoon,<sup>17</sup> profited from trade in logs,<sup>18</sup> gems and drugs.<sup>19</sup> Thai police have been complicit in the trafficking of Burmese women and girls into prostitution into Thailand.<sup>20</sup> Since 1988 there has been a noticeable turning away from support for the insurgents. In the last twelve months Thai officials have brought pressure to bear on refugee groups in the vicinity of the gas pipeline.<sup>21</sup> Dr Alan Smith argued in his submission to the Committee that:

To some extent this ambiguity and inconsistency reflects changes occurring in Thailand's own political situation, the normal see-sawing

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16 Kim Dae-Jung, *Asians Must Take the Lead with Burma*, Burma Debate, Vol.11, No.3 June/July 1995, p. 10.

17 Thailand's commercial interests in Burma are the largest of the ASEAN countries.

18 Within three months of the SLORC coming to power, 18 Thai logging companies gained 43 two year and three year concessions in Burma, reportedly contributing \$US112 million to SLORC's annual income from foreign logging businesses. Exhibit No. 5.

19 See Chapter 4.

20 See Chapter 4.

21 Refugee groups report that Thai military and civilian authorities have driven the Mon and Karen refugees from the area. In January 1994 7,400 Mon refugees from the Loh Loe camp were forcibly relocated, the majority to the Burmese side of the border. It was these refugees who fled back across the border in July 1994 when the Burmese military attacked the Halockhani refugee camp.



between governments, but between democratic and non-democratic regimes as well. But it arises also out of the lack of foreign policy hegemony by any one agency. Often different Thai agencies appear to follow contradictory policies reflecting quite different agency interests and values.<sup>22</sup>

6.34 Dr Smith also saw a Thai/ Chinese alliance influencing marked changes in the SLORC's approach to the border questions. He believed that what is perceived as a softening in the regime especially towards the ethnic groups - the negotiation of ceasefires - is in fact a more strategic move to minimise the demands for political change in Burma.

The initiative appears to have come from China and Thailand. The solution which these neighbours pressed upon the SLORC was one which would provide peace on their borders and the SLORC safe in Rangoon. Their part has been to persuade the SLORC to abandon an all out military victory in favour of a ceasefire which would get the West off the SLORCs back with minimal political concessions from the SLORC. This would be achieved by squeezing the forces of the opposition between an ever growing SLORC military capacity and an increasingly unaccommodating political stance from China and Thailand. The armed nationalities would be forced into separately negotiated ceasefires ... which would have the effect of politically neutralising the ethnic alliance and isolating and crippling its democracy movement allies. [Certainly] Thailand's pressure on the opposition groups has been gradually increased and openly admitted.<sup>23</sup>

6.35 As far as the promotion of democracy in Burma is concerned, Dr Smith characterises the Thai policy as 'destructive engagement'. The Committee believes it is in Thailand's interests to promote greater stability, greater development and a reduction in the number of refugees along the border with Burma and that this can only be achieved through long term political solutions incorporating democratic principles in the new constitution of Burma. Transparency, accountability and the institution of a rule of law in Burma would make the relationships between Burma and its neighbours, particularly Thailand, more predictable. It is the only way to stem the outflow of refugees or to persuade the existing refugees to return to Burma and it would assist in diminishing the damaging criminal activity - trafficking in women, children and drugs - which flourishes in conditions of war and poverty.

6.36 Therefore the Committee recommends that:

**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.**

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22 Yawnghwe, H, SLORCs ceasefire talks, *Bangkok Sunday Post*, 27 February 1994, pp. 19, 26. Quoted from Dr Alan Smith submission, p. S451.

23 Dr Alan Smith submission, pp. S452-453.

## China - Strategic issues

6.37 Constructive engagement is also premised on the belief that the isolation of the regime is dangerous in the vacuum it creates, particularly where that vacuum has already allowed for the spread of significant Chinese influence into Burma. The influence encompasses commercial interests - trade and investment, arms supply, possible strategic bases, immigration and tourism and a trade outlet for Chinese goods from Yunnan province. This influence has become so marked that it has created anxiety about China's intentions vis a vis the region.

6.38 It has been estimated that cross border trade over the last ten years through Yunnan and Mandalay has risen from \$US15 million to \$US800 million in 1994.<sup>24</sup> An estimated 800,000 Chinese visited Burma in 1994. China is the chief source of cheap consumer goods in Burma. Chinese businesses in Mandalay abound. The cross-border drug trade also involves many Chinese smugglers and dealers. Burmese identity papers can be obtained for a few hundred dollars.<sup>25</sup> China also gives aid to Burma in the form of concessional finance and infrastructure projects; however there are no reliable figures for the amounts involved. The Australian Embassy advised that the amounts were significant and had a strong commercial bias.<sup>26</sup>

6.39 Mr Bertil Lintner argues that if 'trade is one way for China to expand southward, arming the Burmese military is another.'<sup>27</sup> The trade in arms is described by Mr Lintner as ongoing. He quotes a resident of the town of Ruili. 'In October [1994], more than 500 trucks crossed the bridge. Some, meant as transports for the Burmese army, were empty; others carried small arms as well as rocket launchers. The deliveries took place at night. The whole area was sealed off as the trucks went across.'<sup>28</sup> As with all statistics relating to Burma, it is difficult to be precise about arms expenditure as a percentage of the national budget. Estimates presented to the Committee have varied between 35 and 50 per cent. AusAID quoted the UNDP Human Development Report which shows that SLORC spent 222% of the combined health and education budget on military expenditure in 1990/91.<sup>29</sup> China has supplied Burma with over \$US1.2 billion worth of arms, locking Burma into Chinese weapon systems. Moreover the Committee was told that 'some of these arms go beyond the traditional counterinsurgency internal security equipment which they have concentrated on in the past. They have taken delivery of anti-aircraft guns, interceptor aircraft and heavy tanks.'<sup>30</sup> The size of the Burmese army compared to the size of its population is itself a matter of some concern in the region.

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24 Bertil Lintner, *Far Eastern Economic Review*, 22 December 1994, p.22

25 Michael Hirsh and Ron Moreau, *Newsweek*, from the *Bulletin*, 20 June 1995, p. 59

26 AusAID submission, p. S513.

27 Bertil Lintner, *op.cit.* p. 23.

28 *ibid.*, p. 23.

29 AusAID Submission, p. S505.

30 Evidence, 17 August 1995, p. 298.

**Table 6.1: Comparison of Military Strength**

ASEAN Countries	Population*	Size of Armed Forces
Brunei	285,000	4,400
Indonesia	200,410,000	276,000
Malaysia	19,283,000	114,500
Philippines	69,809,000	106,500
Singapore	2,859,000	54,000
Thailand	59,510,000	256,000
Potential New Members		
Burma	44,277,000	400,000 (note 1)
Cambodia	10,265,000	88,500
Laos	4,702,000	37,000
Vietnam	73,104,000	572,000
Source: <i>The Military Balance</i> , International Institute for Strategic Studies, London, October 1994.		
Note 1: U.S. Embassy estimate.		
*Population Figures: <i>The World Almanac Book of Facts, 1995</i>		

Source: Exhibit No 1, *Burma Debate*, Vol 11 No 3 June/July 1995, p.16.

6.40 Mr Selth, an analyst from the Department of Defence, told the Committee that the bulk of the equipment came from China - fighter aircraft, ground attack aircraft, armoured vehicles, artillery, small arms ammunition, military communications equipment and anti-aircraft artillery. Burma also bought a range of equipment from other sources - helicopters and vehicles from Poland, ground attack aircraft and patrol boats from the former Yugoslavia and reports of sales from Singapore, North Korea, Czechoslovakia, South Africa, Israel and Belgium. Mr Selth pointed out that arms sales were not a particularly public process, often going through private brokers or third countries, and quantities were difficult to ascertain.<sup>31</sup> The range of countries which, directly or indirectly, have supplied the SLORC illustrate the difficulties of enforcing embargoes.

6.41 China has also assisted in the upgrading of the Burmese navy and that, plus suspicions that Burma has established on Coco Island in the Andaman Sea intelligence surveillance installations, equipment which may be operated in part by Chinese technicians, has alarmed regional countries, particularly India.<sup>32</sup> The Department of Defence believed however that India's concerns were being allayed to some extent by Burma's growing interest in ASEAN.

If you speak to people in India, you will find there is obviously a range of views: some people are very concerned about China's influence in Burma; other people, including those at an official level, are more cautious in their statements. [But] there are some concerns, particularly

31 Evidence, 17 August 1995, p. 300.

32 Bertil Lintner, *op.cit.* p. 23.

cautious in their statements. [But] there are some concerns, particularly given China's relationship with Pakistan, China's relationship with Nepal and China's relationship with Bangladesh. If China were to develop a partnership with Burma, I am sure there are people in India who would be concerned about a potential encirclement of India by a potentially hostile China.<sup>33</sup>

6.42 Massive arms purchases by Burma have a significant impact on regional security but they must also be seen as a misdirection of funds in a country desperately in need of improving its infrastructure and alleviating the poverty of its people. They should therefore be an inhibition on the allocation of development assistance. The Overseas Development Assistance Charter of the Japanese Government which requires the Government to 'pay full attention to the export and import of arms by ODA-recipient countries' is a pragmatic policy recognising the distortions to national expenditure that development assistance can create in recipient countries. It targets governments which rely on overseas development assistance while allowing huge amounts of government spending to go into military expenditure or to be siphoned off by individuals through corruption. It is a policy worthy of attention and application because it seeks to make governments give a priority to their own development needs. Burma of course, even in the absence of aid, has nevertheless chosen to buy arms at the expense of the social and economic development of the people. Given this record, it would appear to be unlikely that such a regime without significant political change would contribute more to its own development if large scale development assistance were reintroduced.

6.43 The Committee recommends that:

**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
- (c) in the light of Japan's Overseas Development Assistance Charter and its aid program with China,
- (d) remind the SLORC that the level of arms expenditure is a significant inhibition in the willingness of the international community to resume development assistance.

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33 Evidence, 17 August 1995, p. 301.

## Trade and Investment

6.44 The Country Economic Brief for Myanmar produced by the Australian Department of Foreign Affairs and Trade warns that statistics in relation to Burma need to be treated with caution. They are neither precise nor complete and should be seen as a guide only. They rely on the official exchange rate of 6 kyat to \$US1 which is considerably different from the unofficial rate of 80 kyat to \$US1 - 120 kyat to \$US1. According to the World Bank, Burma's total external debt in 1993 was \$US5.5 billion, half of which, \$US3 billion, was owed to Japan and \$US700 million to Germany. The weak foreign exchange position made it difficult for Burma to service its debt.<sup>34</sup>

6.45 Assessing trade statistics presented particular difficulties because of the overvalued exchange rate and because a substantial part of Burma's trade is unrecorded, especially in relation to illegal cross-border trade. Nevertheless the terms of trade appeared to be deteriorating. Since 1985-86 the terms of trade declined by 47.6 per cent. The trade deficit had expanded from \$US616 million in 1993-94 to \$US724 million in 1994-95.

**Table 6.2: Trade Deficit 1994-95**

Year	Amount
1993-94	\$US616 million
1994-95	\$US724 million

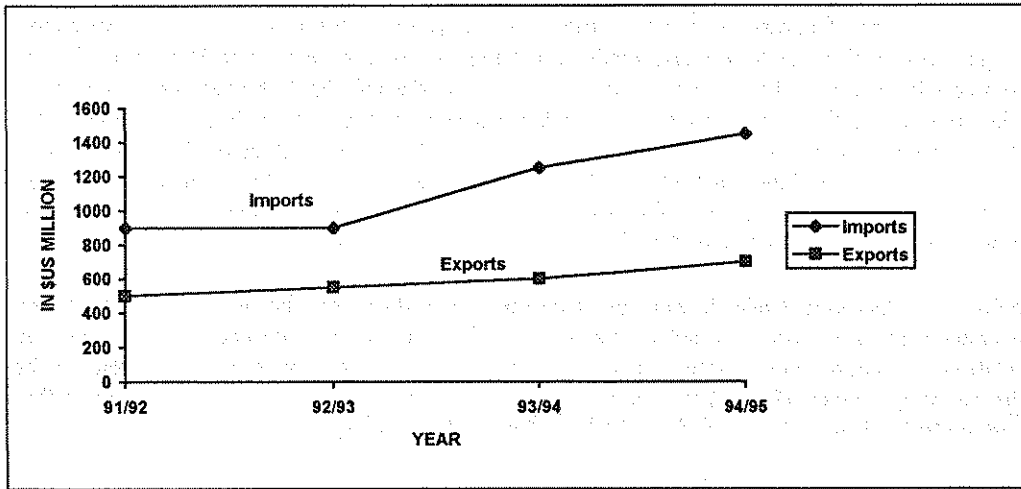
Source: DFAT Country Economic Brief, Myanmar, August 1995, p. 14.

6.46 In 1994-95 exports grew strongly at 12.9 percent: agricultural and forest products, seafood minerals and gems. The private sector accounted for over 50 per cent of these exports. Imports, mainly consumer goods, increased by 15 per cent although the rate in increase in imports was slower than in 1993-94. Most exports go to Singapore, Thailand, India, Hong Kong, China and Japan. Most imports come from Japan, China and Thailand. There is also a very large unrecorded trade with both Thailand and China.

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34 DFAT, Country Economic Brief for Myanmar, August 1995, pp.14-15.

**Table 6.3: Balance of Trade 1994-95**



Source: DFAT Country Economic Brief for Myanmar, August 1995.

6.47 Although overall figures are still relatively low, the extent of 'engagement' with Burma in trade and investment has been increasing since economic reforms were carried out in 1988. The Government introduced a Foreign Investment Law in 1989-90 which gave tax exemptions and tax relief, rights to repatriation of profits, guarantees against nationalisation and the right to wholly foreign-owned ventures. To obtain these benefits there is a minimum foreign capital requirement of \$US100,000.<sup>35</sup> According to the most recent statistics released by the Government of Burma, Burma received \$2.9 billion in foreign investment by 151 companies from 18 countries.

6.48 The United Kingdom is the largest single investor, followed by France, Thailand, Singapore, the United States of America and Japan. Most of the paid in capital was in the oil and gas exploration sector. Many companies which paid in capital in this sector no longer operate in Burma. According to the DFAT Country Brief this accounts for one third of the paid in capital. Hotels and tourism accounts for the next largest sector, accounting for \$US 568.44 million.

6.49 Investment is still inhibited by the difficulty of repatriating profits and the continuing controls on foreign exchange.

35 Exhibit No 17, ASEAN Focus Group, *The Myanmar Business Guide*, p. 47.

**Table 6.4: Total Investment in Burma**

Year	Amount
1989	\$618 million
1994	\$1.2 billion
1995	\$2.9 billion

Source : Figures released by the Government of Burma Investment Commission, August 1995.

**Table 6.5: Major Investment by Country to 1994-95**

Country	Investment
United Kingdom	\$632 million
France	\$465 million
Singapore	\$456 million
Thailand	\$418 million
United States	\$241 million

Source : Figures released by the Government of Burma Investment Commission, August 1995.

6.50 The industrial sector is relatively undeveloped, accounting for 9.36 per cent of GDP and employing only 8.19 per cent of the work force. Most activities are small scale, equipment is outdated and in poor condition. Most manufacturing is related to the processing of natural resources. Larger industrial concerns are State Economic Enterprises, mostly unprofitable but responsible for the Government's foreign exchange revenue. A program of privatisation has begun. Energy shortages remain severe.

**Table 6.6: Investment by Sector 1994-95**

Sector	Amount
Oil and Gas	\$1.4 billion
Hotels and Tourism	\$603 million
Fisheries	\$252 million
Mining	\$182 million
Manufacturing	\$175 million

Source: Figures released by the Government of Burma Investment Commission, August 1995.

6.51 In early 1995 a number of overtures were being made by companies involved in tourism. In January, the London based shipping and tourism group, Eastern and Oriental Express Ltd., signed a \$35 million package to operate luxury cruises on the Irrawaddy River. The Government of Burma claimed that by the end of 1994, the Ministry of Hotels and Tourism had issued 195 licences to hoteliers and 247 travel agencies had registered for operation in Burma.

6.52 Examples of other investments taken up in 1994-95 are:

- a 300 million baht (\$12 million) loan made by Thailand to Burma to repair the road linking the Thai-Burmese border and the Chinese-Burmese border;
- a \$500 million contract with a Singapore conglomerate, Singapore Technologies Industrial Corp, controlled by the Singapore Government, to build an international airport in Mandalay
- a \$500,000 multimedia project being developed by the Australian company, Pacific Advanced Media. It comprises CD-ROMs entitled Explore Myanmar Interactive, to boost trade and investment in Burma;
- an investment and economic cooperation agreement signed between Mitsubishi Corp. and the Burmese military authorities in March 1995;
- a joint venture agreement signed between the Australian company, Pacific Earth Exploration Company and the Burmese Mining Ministry to exploit Burma's onshore gold reserves.

6.53 Since the release of Aung San Suu Kyi, investment in some quarters appears to have accelerated. Many regional countries seem to be taking her release as a green light to increased investment. On 7 August 1995, the Bank of Tokyo announced the reopening of a representative office in Rangoon to survey political, economic and financial conditions in



Burma, support Japanese investment and gather information on possible economic cooperation. It appears the Japanese Government is considering a review of official aid to Burma for the first time since 1988. Daiwa Securities Co. is negotiating to assist in the setting up of a stock exchange for Burma.<sup>36</sup>

6.54 However, problems associated with investment in Burma remain. Those who would counsel restraint stress the need for substantial political change as a prerequisite for a more stable, transparent and accountable economic regime. They cite an estimated inflation rate of 35 percent for 1994-95, up from 22 per cent in 1993-94, a decline in real incomes, bank losses on all loans which are lent at 18 per cent and a greatly overvalued exchange rate - the dollar will buy 20 times as many kyats on the black market as at the official rate. These statistics, they say, reflect an economic system distorted by massive military spending which consumes up to half the national budget,<sup>37</sup> severely dilapidated infrastructure and corruption which complicates business arrangements, creates uncertainty and increases costs in unpredictable ways. Such a system, say the critics, is unable to plan for long-term national development and squanders resources for quick turn-around profits. As well, critics argue that the security situation, despite the ceasefires, is fragile and the maintenance of security is achieved with quite unacceptable levels of brutality.

6.55 Illustrative of some of these problems is the experience of Thai logging firms in the last year. They reported 100 million baht losses in the concession areas opposite Mae Hong Son. The companies have claimed breach of contract and the falsification of documents by Burmese officials. The argument revolves around which route the companies will use for the export of the logs.<sup>38</sup> There have been other significant tensions between Burma and Thailand. In August 1995 cross border trade also fell when Burmese authorities closed a major border checkpoint. Burmese merchants were forbidden to cross into the Thai trading town of Mae Sot with the reported result that about 100,000 workers - truck drivers and porters were made jobless. The cause of the road closure was believed to be the Burmese army offensive against the Mong Tai army of Khun Sa.

6.56 Mr Peter Church for the ASEAN Focus Group, although generally supportive of a constructive engagement policy, told the Committee that he saw a number of risks in doing business in Burma. First he noted that while there were the rudiments of English law it was not a society governed by the rule of law. Politics overlaid all of it. The bureaucracy swung with the sentiments of the Generals rather than according to the laws of the country. He cited the recent example of the cessation of approvals for the setting up of companies on the basis of one general's statement. Second, arranging appointments with government officials was difficult. The tendency to be closed and negative, a result of authoritarianism and long isolation, was strong. Lastly, and most seriously, he saw the exchange rate as a great obstacle. Mr Church relayed the typical Government response to concern about investors being able to get their money out of Burma as 'This will be taken care of in time. There are many ways to get your money out legally.' However he noted that:

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36 AFP news item, 7 August 1995.

37 Estimates presented to the Committee have varied between 35 and 50 per cent. AusAID quoted the UNDP Human Development Report which shows that SLORC spent 222% of the combined health and education budget on military expenditure in 1990/91. AusAID Submission, p. S505.

38 Report in the Bangkok Post, 4 March 1995.

Despite all of those assurances, they have not taken major decisions in that regard. I think there are major problems if they go to the real rate in terms of inflation. It would cripple the poor in the country who already have a difficult time. ... The Foreign Exchange Certificates (FECs) work but to a very small degree. Most of the people we talk to have kyat and they have to convert them to white dollars. That means either buying some item in Myanmar, which is then exported and sold outside, or finding some Burmese who is exporting and who can give them the dollars from outside in exchange for their buying his goods inside.<sup>39</sup>

6.57 The DFAT Country Economic Brief lists similar problems. They cited:

- (i) a highly overvalued official exchange rate;
- (ii) rigid customs and other formalities;
- (iii) excessive red tape often requiring that trivial decisions are taken at the top;
- (iv) poor coordination and cooperation between separate ministries;
- (v) corruption amongst officials;
- (vi) poor communications infrastructure; and
- (vii) rudimentary banking services.

6.58 All this, according to the brief, can make business operations in Burma very expensive, a slow process and requiring 'careful and imaginative planning' to overcome the exchange rate problems. Some companies, they warned, have found themselves in complicated trade in areas outside their expertise.

## **Australia - the Current State of Involvement in Burma**

6.59 Since 1988, at a government level, Australia's relations with Burma have been minimal.

- (a) Australia maintains an Embassy in Rangoon.
- (b) Defence exports to Burma are banned and defence visits from Australia have been suspended.
- (c) Austrade officers from Australia do not visit Burma although an Austrade office is maintained in Rangoon with guidelines to 'neither encourage nor discourage trade'; it is an information office.
- (d) The Government has suspended direct bilateral development aid and assistance through the United Nations is confined as much as possible to grassroots activities.

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39 Evidence, 2 June 1995, pp. 235-236.

- (e) Humanitarian aid is provided to displaced people along the borders of Burma and Thailand and Burma and Bangladesh. It is delivered through NGOs.<sup>40</sup>

6.60 However, the Australian Government has promoted change in the political situation and an improvement in human rights in Burma through:

- (a) dialogue between the Foreign Ministers, Senator Gareth Evans and U Ohn Gyaw at regional and UN forums;
- (b) representations and dialogue with the Government of Burma by the Embassy in Rangoon;
- (c) support for strong resolutions on Burma at the UN General Assembly, the Commission on Human Rights;
- (d) support for the objectives of the ICRC and UNHCR in their work in Burma and on the borders;
- (e) support for the international legal and human rights infrastructure; and
- (f) urging regional countries and the wider international community to press the Government of Burma to implement democratic reforms and to adhere to universally accepted standards of human rights.

### **Australian Trade and Investment**

6.61 Australian trade with Burma is small. Australian exports to Burma in 1993 were valued at \$A9.7 million, made up of electrical equipment, machinery, telecommunications equipment and spare parts; imports from Burma were \$A12.7 million, mainly seafood.

6.62 Australia is ranked twelfth in foreign investment in Burma; \$US28.2 million of investments have already been approved. At March 1995, proposals by four Australian firms for investment have been approved, two in oil exploration, one in mining. The fourth company, BHP, though approved has withdrawn.

6.63 The DFAT Country Economic Brief reported that there had been 100 per cent increase in the number of Australian businesses visiting Burma in 1994-95. Australian business presence in Burma was listed as:

- BHP Minerals is engaged in coal exploration in the Tenasserim area.
- Carlton and United Breweries are actively engaged in the promotion, distribution and sale of Fosters beer, distributed through a local agent.
- Ericsson (Australia) which successfully commissioned telephone substations during late 1993 and early 1994, maintains an office staffed with an expatriate manager responsible for follow up work and to search for future business opportunities.

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40 Department of Foreign Affairs and Trade submission, p.S497.

- Glover Electrical Industries, which entered the Myanmar market in 1989 has grown solidly. They specialise in air conditioning, electrical refrigeration, plumbing and construction works.
- ICI Pacific Seeds (Australia) has supplied hybrid maize and sunflower seeds on a modest but steady scale to the Ministry of Agriculture for some years. Similarly Boart Longyear continued to supply mining tools and equipment to the Ministry of Mines.
- In February 1995, Pacific Arc Exploration signed a contract for joint venture gold exploration with the Ministry of Mines. A feasibility study has been completed and initial works are now under way.
- South Pacific, an oil exploration company, started drilling its first test well in March and in April 1995, Empire Oil Co (Pacific) signed a contract with the Ministry of Energy for a production sharing joint venture exploration for oil and gas in the Rakhine State, western Myanmar.
- Transfield International has an office run by a expatriate manager, with interests in developing proposals for power stations.<sup>41</sup>

6.64 The Committee wrote to 16 Australian businesses,<sup>42</sup> understood to have had connections with trade or investment in Burma, seeking information on their experience. Nine replied. None were willing to talk to the Committee. Airey Ryan & Hill said that they had not proceeded after exploring the possibilities. Klinger explained that they had withdrawn in 1988, Transcom withdrew in 1993, Multiplex successfully completed their project in 1993, BHP withdrew in 1992. None of these companies believed they had anything useful to tell the Committee. Lloyd's P&O Maritime said they had no involvement in Burma at all. Kailis also said that they had no involvement but suggested that another part of the company might have. They did not volunteer any further information.

6.65 This reluctance on the part of business was a matter of regret to the Committee as it would have been most useful to test the general information and other claims made about doing business in Burma against the individual experiences of Australian companies.

6.66 The DFAT Country Brief makes no mention of the human rights situation in Burma. While the Committee understands the desire of businesses to separate trade and human rights issues, it seems to the Committee that where human rights are abused, business is affected. This is so because human rights problems generally indicate a lack of legal accountability in a number of fields and the lack of the rule of law and open systems make doing business unpredictable; because human rights abuses can impact on the safety of expatriates doing business; because there are ethical problems of associating the company with the problems of poor labour practices which a company may or may not be able to

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41 All the information in this section is quoted from the DFAT Country Economic Brief, op.cit. pp. 35-37

42 Letters were sent to: AGC Woodward-Clyde Pty Ltd, Ericsson Australia Pty Ltd, Richard Klinger Pty Ltd, C&C Diesel Engineering & Consultants, Lloyds (P&O Maritime Services Pty Ltd), Pacific Arc Exploration NL, PG Airey and Associates, BHP, Multiplex Constructions Pty Ltd, Blakers Pump Engineers, Global Livestock Marketing Pty Ltd, Stockdale 90, Stefani Pure Water Australasia, Modra Electric, Pacific Advance Media, Kailis Brothers and Transcom International.

control. Joint ventures particularly may face this ethical dilemma as far as labour standards are concerned. Burma's record of forced labour is so well documented and so brutal that it would seem to the Committee to be an important consideration in any investment decision.

6.67 The ethical dimension of doing business has received attention in a number of forums of late. The Academy of Social Sciences in Australia and the Asia-Australia Institute currently have a project on Australian-Asian perceptions. Business ethics are a matter of concern to Australians as evidenced by the disillusionment of many with the poor practices of the 80s and the subsequent losses suffered by shareholders and the wider community. However business ethics, what they are or should be, affect our international relationships as well. The export and investment push, especially in this region, requires Australian businessmen to have a clear understanding of our ethical values. This becomes particularly important where there are different levels of development, different rates of pay and different expectations of labour standards between Australia and the region. At a recent conference on business ethics, Professor Stephen Fitzgerald warned of the danger of failing to understand the importance of maintaining high standards of business ethics in this country if we are not to be accused of hypocrisy.<sup>43</sup>

6.68 The Committee believes that this is a debate that needs to be continued and developed. It should involve all those concerned with business and business practice and those concerned with the protection of human rights. These are not mutually exclusive groups. The Committee also believes that the debate should be broadly based, not, as in the past, narrowly focused on purely punitive responses to human rights abuses. In its two reports to the Parliament so far, the Committee has recommended that, where possible, policy should move away from reactive and punitive approaches and consider the integration of human rights expectations as a normal baseline feature of Australian practice both domestically and internationally, in both the public and private domain, applying equally to government agencies involved in trade, aid and defence cooperation and to private businesses.

6.69 It is time that Australian business became engaged in the development of a clear statement of business ethics. It is part of the best practice debate and it is an essential aspect of the projection of Australia in the region. To this extent, it is something that should be facilitated by the Australian Government through its relevant agencies, the Department of Foreign Affairs and Trade, AUSTRADE and the Department of Industry. It should be addressed in a coordinating way by the peak bodies of industry as well as by individual Australian companies.

6.70 The Committee recommends that:

- 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

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43 The views of Professor Fitzgerald and a number of prominent business leaders were given at a conference at the St James Ethics Centre and the Centre for Philosophy and Public Issues on 19 April 1993. Professor Fitzgerald's paper, *Ethical Dimensions of Australia's Engagement with Asian Countries: Are there any?* is quoted from the discussion paper, *Business and Human Rights*, 7 August 1995, prepared for Senator Bourne by Mr Eric Sidoti.

**(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.**

6.71 The Committee has addressed these matters and made similar recommendations in Chapters 5 and 16 of its report into Australia's Relations with Thailand.

6.72 In the human rights report of 1994, the Committee recommended that the Government consider the establishment of a Human Rights Centre for Dialogue and Cooperation. The Committee believes that this issue of extending and facilitating the debate on human rights and business would be well served by the establishment of such a centre. At the time of writing the Government had not yet made its response to the 1994 report. The Committee therefore reiterates its recommendation on the Centre and suggests there may be some scope for combining the Human Rights Centre with the Peace Centre proposed in the JSCFADT report on peacekeeping also tabled in December 1994.

6.73 The Committee recommends that:

- 31 The Australian Government support the establishment, as outlined in the ACFOA proposal to the inquiry into Australia' 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.**

## **Aid**

6.74 The suspension of development assistance to Burma is a response to the massacre of pro-democracy students in Burma in 1988 and the usurpation of power by the SLORC after the 1990 elections. The Government does not wish to aid the regime or offer it legitimacy. The resumption of development assistance is dependent on progress towards democracy and an improvement in human rights.

6.75 AusAID informed the Committee that the acceptability of particular programs of humanitarian aid was dependent on 'the extent to which the SLORC can take them over and use them to demonstrate international support.'<sup>44</sup> They told the Committee that they decide upon projects following direct discussions with NGOs and UN organisations in Burma, on the border and in Australia, about the situation on the ground and to ascertain the needs and wishes of the recipients.

6.76 The total allocation to Burma in 1994-95 is expected to be approximately \$A3.4 million, with most of those funds, approximately \$A2 million, going to refugee assistance on the borders. The delivery of most of the Australian assistance money to border refugees is through the UNHCR - \$A1.5 million of the \$A2 million. Other delivery agencies are Medicines sans Frontieres and the Burma Border Consortium. An allocation of \$A410,000 has been made to health programs for the Burmese in Thailand and \$A404,000 has been allocated to allow students from Thailand and the border to study in Australia. A further \$A90,000 is granted to NGOs through the Australian NGO Cooperation Program (ANCP) for projects along the Thai-Burma border.

6.77 **In-country humanitarian programs** for 1994-95 cover health programs, maternal and child health - \$A100,000 and HIV/AIDS - \$A200,000. This aid is delivered by NGOs and UN agencies. A further allocation through the Australian NGO Cooperation Program (ANCP) of \$A50,356 is devoted to similar health and humanitarian programs within Burma. Assistance in the form of a professional officer is given to the United Nations Drug Control Program (UNDCP)<sup>45</sup>.

6.78 Projects are evaluated through regular written reports and financial acquittals. AusAID officers visit projects where possible. In principle they do not at this stage visit Burma itself.

6.79 The delivery of the humanitarian assistance through NGOs inside Burma drew some criticism during the inquiry. The Australia-Burma Council opposed any aid that depended on a memorandum of understanding with the SLORC or any cooperation with SLORC officials as they said it was used by the SLORC for their own purposes. They believed that there was no adequate means of monitoring what was happening with the project and that corruption in the system made the targeting of the aid difficult. Medicines did not get through. They cited the case of a hospital supposedly supplied with medicines by the World Health Organisation:

[T]here are many problems concerning health programs in Burma. I have recently been to one hospital inside Burma right across the border from Thailand. The hospital is almost empty. One man I met was in the contagious diseases ward. He told us there was no one caring for him and there was no medicine. ... [T]he hospital is one of the areas where aid has supposedly been sent.<sup>46</sup>

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44 AusAID submission, p. S504.

45 Evidence, 17 August 1995, p. 278.

46 In-camera evidence, 5 May 1995, p. 35.

AUSTRALIAN ACTIVITY IN BURMA

SECTOR	PROGRAM	PROJECT TITLE	EXECUTING AGENCY	1993-94 Govt. cont.	1993-94 NGO Cont.	1994-95
HEALTH	HIV/AIDS NGO PROGRAM	HIV/AIDS/STD Peer Education Prevention & Control of HIV/AIDS AIDS Education, Prevention & Care	ARCS	39,000		200,000
			UNICEF AUST WVA	60,950 100,000		100,000 100,000
	ANCP	HIV/AIDS Youth Survey Kawthung AIDS Prevention HIV/AIDS various Combating malaria Exp Program of Immunisation	SUB-TOTAL	199,950	0	400,000
			ARCS	110,625	36,875	
			WVA	36,458	12,153	
			UNICEF AUST ICARE UNICERF AUST	37,500 129,589	12,500 43,196	
	SEAR	Various	SUB-TOTAL	314,172	104,724	90,000
			SUB-TOTAL			410,000
			MCH NGO PROGRAM			100,000
			NARCOTICS	100,000		89,000
EDUCATION	ASTAS ANCP ISSS	Displaced Burmese Students Sewing Centres Australasian Tropical Medical Conf	UNDCP	100,000		89,000
			TOTAL HEALTH	614,172	104,724	889,000
			TOTAL EDUCATION			404,000
			UNHCR	275,606	0	1,500,000
REFUGEES	HUR HUR HUR HUR HUR	Rohingyas Rohingyas Thai-Border Assistance Thai-Border Assistance Thai-Border Assistance	WFP	500,000		
			ASORAF	100,000		
			AUSTCARE	100,000		500,000
			ACC	100,000		
TRANSPORT	Residual Burma Bilateral	Western Highway Project (Storage fees for spare parts)	TOTAL REFUGEES	1,800,000	0	2,000,000
			SMEC	1,115		1,000
DISCRETIONARY	DAP	Various	TOTAL DISCRETIONARY			60,000
			ABSOLUTE TOTAL	2,690,883	104,724	3,354,000



6.80 They also believed that the intrusive nature of the regime meant that SLORC supervision would limit the effectiveness and impartiality of the delivery of the assistance. Finally they argued that Burmese opposition groups themselves thought that the time was not yet right.

6.81 Australian NGOs involved in humanitarian aid to Burma disagreed. They saw the need as substantial: there was extreme poverty; medicines were scarce; the HIV/AIDS incidence had reached crisis proportions<sup>47</sup> They believed that, despite many difficulties and frustrations, it was possible to deliver humanitarian assistance with a reasonable degree of integrity. This included hard negotiations to insist that no direct financial aid be given, only medicines and they warned that any systematic stealing from the program would result in its withdrawal. They had experienced a less than five per cent loss rate. However they admitted the Government accompanied their officers in the field and it was burdensome, that negotiations were protracted and that discrepancies in the exchange rate created difficulties for the delivery of assistance. (See Chapter 4, paragraph 4.55 and recommendation.)

6.82 The Committee recommends that:

**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.**

### **Assistance to NGOs for Human Rights Training, Legal And Other Services.**

6.83 A number of witnesses suggested to the Committee that because of the long history of authoritarian government in Burma there is a paucity of civil society and a poor understanding of what democracy means in practice. It was suggested that a valuable contribution could be made to the future civil society of Burma if, on the border regions, Australia provided aid through NGOs for training in the domestic or international legal and administrative systems which underlie democracy. The Committee has looked at such programs in its human rights reports tabled in 1992 and 1994.

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47 The Committee was told that an estimated 400,000 people in Burma had been infected with HIV/AIDS - approximately 1% of the population.

6.84 The Committee recommends that:

- 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.**

6.85 **Students.** A valuable if limited program has been the student program which provides tertiary education in Australia for students displaced following the military coup in 1988. Many students fled to the border and into Thailand. Their residency there has been tenuous. They have no refugee status. A number have reported violent attacks<sup>48</sup> and there is little prospect of their returning to Burma in the short term. They constitute a limited number of people; it was estimated that approximately 2,300 remain in Thailand. Australia provided 10 places in 1993-94 and intends to take another 10 students in 1994-95. Other small student programs have been provided by Japan, the United Kingdom and the United States but the nature of these programs is not known.

6.86 Given the limited numbers involved, this is a program which could humanely be expanded. The Australia-Burma Council argued that there was very great need and danger for the people on the border and that therefore there should be an expanded student program.

[P]eople of Burma residing in Thailand - either on the streets of Thailand or in the so-called safe camps - are in constant danger of deportation. Many have stated publicly that if they are sent back to Burma, they hope they are simply shot outright, as the option is simply too hideous to contemplate. The Thais have been accommodating up to now - however as their trade and diplomatic status improves with Burma, the pro-democratic forces are creating a situation of embarrassment for them, and this is going to further risk reprisals to the Burmese illegally residing in Thailand. ... I understand the conditions in the special detention centre and the immigration detention centre are ... horrific. ... The fact that there are so few should be seen as an advantage, not a disadvantage. ... It is a stable number of people that are at risk, and at great risk.<sup>49</sup>

6.87 The Committee recommends that:

**34 the Australian Government**

- (a) increase the intake of students from Burma in this category to at least 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.**

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48 See evidence reported in Chapter 4 p.

49 Evidence, 5 May 1995, p. 104.

6.88 Similar claims of risk affecting Burmese on the Thai-Burmese border were made by the Tribal Refugee Welfare Organisation. They cited the Amnesty International Report, *Thailand: Burmese and other Asylum Seekers at Risk*, September 1994, which expressed concern at the lack of legal recognition as refugees of the Burmese in Thailand, their routine arrest, prosecution and detention as illegal immigrants and the inability of UNHCR to offer them the full range of protection. The Amnesty International report documented claims of ill treatment at the Immigration Detention Centre in Bangkok - overcrowding, insufficient food, lack of water, extortion and forcible deportation to Burma.

6.89 The intake of Burmese from Thailand under the Special Assistance Category (SAC) is 200 for 1995-96.<sup>50</sup> The Tribal Refugee Welfare believed that there was good reason for the Australian Government to increase the number of places allocated to this group.

6.90 The Committee recommends that:

- 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.

## Multilateral Institutions

6.91 **World Bank:** Perhaps the most important leverage on the SLORC regime at present is the non-involvement of the World Bank and the Asian Development Bank in loans to the country. In 1994 a mission was sent to review the economic reforms being undertaken by the Government.

6.92 **Asian Development Bank:** The Asian Development Bank has one outstanding loan with Burma, but no new loans have been made since the uprising in 1988. Thirty-two loans had been approved prior to 1986. As with the World Bank they sent a fact finding mission to Burma in late 1994 to review economic and social conditions in Burma, focusing on a) recent macroeconomic and structural developments and on b) the state of education and health in the country. The Board is currently considering the report of the visit.

6.93 The Committee recommends that:

- 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.

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50 The number in the Special Assistance Category for Burmese from Burma for the same period is 500.

## Isolation Vs Engagement

6.94 Those who promote the continuing isolation of Burma argue that the policy has worked. They say that the election of 1990 and particularly the agreement to allow international observers at that election would not have happened without the suspension of aid and accompanying international outrage over the killings in 1988. Despite the failure to implement the results of the election, it was important in establishing the political will at the time. World criticism over the failure to implement the election results pressured the SLORC to establish the National Convention, an achievement limited by the fraudulent nature of its procedures. The SLORC cares enough about its international image to use the Convention as its chief propaganda weapon when confronted with its failure to hand over power. Supporters of continuing pressure on Burma also argue that it was the suspension of aid and the consequent rapid deterioration in Burma's health and education services and overall economic indicators which forced the open door economic policy after 1992.

6.95 ASEAN countries, particularly Thailand, claim as achievements for the policy of constructive engagement the ceasefires and the release of Aung San Suu Kyi. While it is true that the Government of Thailand is said to have brought diplomatic pressure on the SLORC over these two matters, the release of Aung San Suu Kyi has been a world wide demand. And moreover, the ceasefires are military and not political settlements. The cessation of hostilities is important but the long term prospects for peace are marred by the lack of structural political change. The end of human rights abuses can only come with progress towards democracy. For the most part, the ASEAN countries have made no demands on the SLORC for changes in the worst features of the regime.

6.96 The core of ASEAN's argument then is that engagement through trade and the delivery of aid will bring about structural political change. This is premised on the belief that you have to live with what you cannot change and that economic growth has an automatic liberalising effect.

6.97 Here the isolationists argue that, with a policy of engagement, change is not guaranteed and engagement without political reform will entrench the regime in power. They believe that the weakness lies in the fact that ASEAN does not make demands on the SLORC to ameliorate its practices. And they argue that the limited reforms implemented so far have not even led to significant growth as the SLORC has claimed. They say that the statistics are doubtful, particularly taking into account the difference between the official exchange rate and the black market, that the vaunted economic progress is illusory as it is based on rises in consumption, unequally distributed and that the underlying indicators are poor. Inflation is high, the money supply has increased at an annual rate of 53 per cent and violent social dislocation in the countryside does not make for good economic development. This case is put by Harne Yawngwe in an article in *Burma Debate*, July/August 1994, where he likens the current economic changes to those of the 1970s. At that time, he said:

The World Bank, the Asian Development Bank, Japan and other nations increased foreign aid to at least half a billion dollars. Then, as now, the reforms were superficial and the aid was absorbed by the 56 state enterprises and the corrupt system until, by the mid-80s, Burma was again facing an economic crisis and became a Least Developed Country. ... The question is not whether foreign investment and aid will

make a difference, but whether or not there is a will to introduce real reforms.<sup>51</sup>

6.98 On her release Aung San Suu Kyi argued for this case. She urged caution and restraint on investment in particular. She rejected the policy of constructive engagement as not constructive for either democracy or Burma. She believes that further engagement with Burma should be conditional on democratic reform.

## **Benchmarks - Qualified Engagement**

6.99 Since the ASEAN Ministerial Conference in 1994, the policy of the Australian Government towards Burma has sought to affirm the desire of Australia for engagement with Burma and at the same time accommodate ASEAN's constructive engagement policy by clarifying the basis on which the engagement might become truly constructive. This was to be achieved by specifying particular aspects of Australia's foreign policy goal of a more democratic Burma. Underlying the benchmarks of the Government is the assumption that the best opportunity for peace and stability in Burma lies in reconciliation.

6.100 At the 1994 ASEAN meeting Senator Evans identified a series of possible benchmarks which might govern Burma's reentry into international forums. The benchmarks represent those things which are perceived to be either the cause of human rights abuses in Burma or the abuses themselves. They are the basic obligations of Burma as a good international citizen and a member of the United Nations. They also represent the major areas of international objection to Burma's policies. At the last hearing of the Committee the Department of Foreign Affairs and Trade reported on the extent to which Burma had met these concerns.

### **1. The unconditional release of Aung San Suu Kyi;**

Aung San Suu Kyi was released apparently unconditionally on 10 July 1995.

### **2. The commencement of a serious dialogue between the SLORC and Aung San Suu Kyi about the political and constitutional evolution of the country;**

Two meetings took place in 1994 between Aung San Suu Kyi and the SLORC. Since her release and at the time of writing no further dialogue had begun.

### **3. Access to political prisoners by the International Committee of the Red Cross, UN Special Rapporteur and other outsiders;**

No agreement was reached between the ICRC and the SLORC on access to political prisoners. The ICRC has closed its Rangoon office.

The UN Special Rapporteur was granted access to some political prisoners (but not Aung San Suu Kyi nor all those he requested to see).

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51 Harn Yawngwe, *Engaging the Generals*, Burma Debate, July/August 1994, p. 7.

**4. A review and reduction of sentences imposed for political activity;**

Heavy sentences were imposed on a group of five dissidents in late 1994 for peaceful activity critical of the Government of Burma.

On 15 March 15 political prisoners were released. The release was significant in that it included U Tin Oo and U Kyi Maung, the two most prominent prisoners after Aung San Suu Kyi. However in early June U Kyi Maung was detained for a week, before being re-released, for reportedly having a secret meeting with Congressman Richardson.

Severe gaol sentences were imposed on 28 April on nine students who shouted pro-democracy slogans at the funeral of U Nu. The nine were sentenced to seven years gaol, while two other students who had escaped arrest were sentenced to twenty years in absentia.

**Significant progress in the proposed dialogue between the SLORC and the UN;**

Approximately nine months after the invitation was issued, Burma commenced a dialogue with the UN at the General Assembly in November 1994; representatives of the Secretary-General have since made two visits to Burma; they report little willingness on the part of the SLORC to engage in genuine dialogue. A further visit was planned for August.

**A clear timetable for the constitutional process with delegates able to participate more freely;**

The SLORC has rejected all suggestions that a timetable be imposed on the National Convention process.

Management of the Convention remains heavy-handed, with no indication that the SLORC will tolerate open debate and counter proposals which challenge its basic principles.

**5. Agreement by the SLORC to the inclusion of transitional provisions in the new constitution permitting further constitutional development;**

This has not been considered by the Convention and there is no indication that the SLORC would acknowledge the usefulness of transitional powers.

**The provision of legal guarantees for the rights of the ethnic minorities;**

Ceasefire agreements have not been negotiated with the Karen National Union and Khun Sa's Mong Tai Army.

Ceasefire agreements with the other ethnic minorities have concentrated on purely military matters and have not addressed political concerns and the desire for economic development.

The issue of minority rights is under consideration by the National Convention; it is not clear what degree of autonomy (if any) will be given to the minorities; however, it

seems clear that the SLORC blueprint remains, a strong central government under military control.

**6. The cessation of forced labour and porterage beyond what are traditional practices;**

These abuses continue unabated both in infrastructure development and in support of military operations (reports of forced porterage increased in preparation for the recent Karen offensive).

The repeal of censorship and state protection legislation.

There has been no relaxation in these areas.

## **Conclusion**

6.101 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.

6.102 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.

6.103 Therefore the Committee draws attention to recommendation 26 in this Chapter urging regional countries to use their good offices to press the Government of Burma towards democratic change.

6.104 In line with this the Committee recommends that:

**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.**

6.105 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 should be no change to the policies of major international institutions, whether financial or political, to include Burma more fully.

6.106 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.

6.107 Finally the Committee recommends that:

- 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 being sought in the benchmarks.**

**ROGER PRICE, MP  
CHAIRMAN**



List of Submissions

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No.	Name of Person/Organisation
1.	Tribal Refugee Welfare in South East Asia (Inc) & 6 Attachments
2.	Mr Michael Nyunt
2a.	Mr Michael Nyunt
3.	Human Rights for Burma
3a.	Human Rights for Burma
4.	Dr U Ne Oo
4a.	Dr U Ne Oo
4b.	Dr U Ne Oo
5.	Overseas Burma Liberation Front
5a.	Overseas Burma Liberation Front
5b.	Overseas Burma Liberation Front
5c.	Overseas Burma Liberation Front and the International Commission of Jurists
5d.	Overseas Burma Liberation Front
5e.	Overseas Burma Liberation Front
6.	Mr Hugh Wood
6a.	Mr Hugh Wood
6b.	Mr Hugh Wood
6c.	Mr Hugh Wood
7.	Committee for Restoration of Democracy in Burma (Vic) Inc
7a.	Committee for Restoration of Democracy in Burma (Vic) Inc
8.	Confidential

9. Dr Htin Kyaw
10. Burmese Relief Centre
11. Diplomacy Training Program
12. Mr Max Ediger, Burma Issues, Bangkok
13. All Burma Students League
14. Ko Benya Aye
15. Burma Support Group, Melbourne
- 15a Burma Support Group, Melbourne
16. Amnesty International
17. Australia Burma Council and  
The Burma NGO Forum
18. Confidential
- 18a Department of Immigration and Ethnic Affairs
- 18b Department of Immigration and Ethnic Affairs
19. Democratic Alliance of Burma
20. International Human Rights Law Group
21. Asian Development Bank, Manila
22. Dr Alan Smith, Asia Institute, Monash University, Melbourne
23. Department of Foreign Affairs and Trade
- 23a. Department of Foreign Affairs and Trade
24. AusAID
25. Confidential
- 25a. Additional information on Burma Submission
26. ACTU
- 26a ACTU

27. The Committee for Restoration of Democracy in Burma (Aust) Inc
- 27a. The Committee for Restoration of Democracy in Burma (Aust) Inc
- 27b. The Committee for Restoration of Democracy in Burma (Aust) Inc
28. Hon Clyde Holding, MP
29. Confidential
30. Asian Development Bank
31. The Committee for Restoration of Democracy in Burma (Perth, WA)
32. Dr Herbert Feith
33. Mrs Marion Smith
34. Ms Corrinne Armour
35. Confidential
36. Australian Council For Overseas Aid (ACFOA)
37. National Council of Women of Australia Inc Ltd



List of Witnesses

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**24 FEBRUARY 1995 - SYDNEY**

**Amnesty International Australia**

Mr Mark Ostryn, Convenor, Myanmar/Burma Coordination Group

Mr Richard Simpson, Campaign Director

**Burma NGO Forum**

Mr Kerry Murphy, Representative Member

Ms Alison Tate, Research Officer

**Australia-Burma Council**

Mr Terrell Oung, National Coordinator

**Individual Witnesses**

Miss Blanche d'Alpuget

Hon. RJL Hawke

**Overseas Burma Liberation Front**

Mr Philip Smyth, Secretary

**International Commission of Jurists**

Mr Malcolm Gracie, Convenor, Burma Subcommittee

**Diplomacy Training Program Ltd**

Mr John Scott-Murphy, Executive Officer

**Individual Witness**

Mr Ko Benya Aye

**5 MAY 1995 - CANBERRA**

**International Women's Development Agency**

In-camera witnesses

**Individual Witness**

Mr Michael Nyunt

**Committee for the Restoration of Democracy in Burma (NSW)**

Dr Htin Kyaw, Member

Mr Saw Oo, Chairman

Mr Saw Nay Gay Pe

Mr David Rettie, Chairman, Canberra Chapter

**Australia-Burma Council**  
Ms Amanda Zappia, Central Coordinator

**All Burma Students League**  
In-camera witness

**12 MAY 1995 - CANBERRA**

**Department of Foreign Affairs and Trade**  
Mr Stuart Hume, Head of Mission, Rangoon

**19 MAY 1995 - MELBOURNE**

**In-camera**

**Individual Witness**  
Ms Corrinne Armour

**Committee for the Restoration of Democracy in Burma (VIC)**  
In-camera witness

**Burma Support Group**  
Mr Mya Aye, Member  
Mr Richard Horsey, Member  
Mr Marc Purcell, Member  
Mr Soe Soe, Member

**Individual Witness**  
Dr Herb Feith

**26 MAY 1995 - PERTH**

**Tribal Refugee Welfare in South-East Asia**  
Mrs Constance Allmark, Secretary  
Mrs Deborah Peters, SAC and Community Refugee Settlement Support Group  
Officer

**In-camera Witness**

**Committee for the Restoration of Democracy in Burma (WA)**  
Dr Myo Nyunt, Adviser  
Mr Bruce Roberts, Vice-Chairman

**In-camera Witness**

**2 JUNE 1995 - CANBERRA**

**In-camera Witness**

**ASEAN Focus Group**

Mr Peter Church, Managing Director

**16 AUGUST 1995 - CANBERRA**

**Australian Council of Trade Unions (ACTU)**

Mr Alan Matheson, International Officer

**Australian Federal Police**

In-camera witnesses

**17 AUGUST 1995 - CANBERRA**

**Department of Foreign Affairs and Trade**

Mr Miles Kupa, First Assistant Secretary, South and South East Asia Division

Mr Peter Doyle, Philippines, Burma and Thailand Section

Mr Marc Innes-Brown, Philippines, Burma and Thailand Section

**AusAID**

Mr Laurence Engel, Assistant Director-General, East Asia Branch

Mr Ki Detto, Director, Thailand, Burma and Regional Section

Dr Julia Newton-Howes, Director, International Policy and Ministerial Services Section

Mr Peter Buckley, Assistant Director, Humanitarian Relief Program

**Department of Immigration and Ethnic Affairs**

Mr Laurence Bugden, Assistant Secretary, Entry and Humanitarian Policy Branch

**Department of Defence**

Mr Hugh White, First Assistant Secretary, International Policy

Mr Andrew Selth, Strategic Analysis Cell

Mr Ben Coleman, Assistant Director, Indo-China, Philippines, Thailand





## Burma Inquiry Exhibits Lists

No.

- 
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  4. 'Australia's Relations with Thailand: An AFP Perspective': Submission to  
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25. ACTU, Attachment A to Submission 26, Federation of Trade Unions of Burma (FTUB), *Human Rights and Trade Union Rights Situation in Burma*, 10 June 1993.
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## Current Conditions in Insein Prison

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**CURRENT CONDITIONS IN INSEIN PRISON**  
**An Independent Report by the Karen Human Rights Group**

December 5, 1993

The following testimony was given by a Karen farmer who spent 3 years as a political prisoner in the SLORC's notorious Insein Prison near Rangoon. He was released in October 1993, and describes the current conditions for political and other prisoners in Insein Prison. Note especially his comments on the SLORC's much-publicised release of political prisoners, and on what happens when a foreigner is allowed to visit the prison to see the conditions. Such visits are becoming more common; the SLORC recently allowed UN Special Rapporteur on Burma Professor Yozo Yokota to go to the prison, and is also including Insein Prison visits in the all-expense-paid holidays it is now offering to U.S. Congressmen and Senators to come and see how wonderful life is in Burma under the SLORC.

This man's name has been changed, and some personal details have been omitted, in order to protect his friends and fellow villagers against SLORC retaliation.

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**NAME:** Saw Winston Htoo                      **SEX:** M      **AGE:** 39  
**ADDRESS:** Nyaunglebin District  
 Karen Christian, married with 4 children aged 5-17

My village is in an area that is completely under SLORC control. We are west of the Sittang River, so Karen troops have almost never been there - only once or twice. I was arrested on October 1, 1989 with some friends. We were coming back after driving some bullocks to a place near the Thailand border so they could be sold. They weren't our bullocks, we were just working for the owner. When the SLORC captured us I was just 7 miles from my home village. There were 7 of us, but they only caught 5, because the other two ran away. They accused us of having no travel documents, and also because we had one or two magazines which they say are "illegal" - magazines of the KNU [*Karen National Union*] and the Burmese students.

They took us to the office of the 57 Regiment commander at Shwegyin, and locked us in a room all together. They tied our wrists with rope, kicked us with their boots, beat us and interrogated us. For the first 5 days they gave us no food. After 5 days, they transferred our case to the police, but for security we were still kept in the same place in custody of the military. This lasted for months. During this time there was no more torture and they didn't keep us tied up. They gave us just a little food. In the daytime we had to do work around the army compound, like clearing the compound and making buildings, and at night we were locked up.

Then the police transferred our case to the military tribunal at Pegu. We were transferred to Pegu Jail and kept there until one day about 3 months later they took us to appear in the military court. The judges were 3 army colonels in uniform. The judge asked us to admit our mistakes, and we did because there was no alternative. He said, "Have you made mistakes?", and we said, "Yes, we have made the mistake of taking bullocks to sell in the KNU area." The judge said, "Yes, this was a mistake. The penalties are 3, 5 or 7 years.' We had no chance to explain anything, because the judge said if we prolonged the hearing, our sentences would be increased. If you try to argue your sentence will be longer, but if you simply admit it then they will give you a concession. Three of my friends were sentenced to 3 years each, and they sentenced me and the old man to 5 years each. I think the old man and I got longer sentences because we had one or two magazines and some money when we were arrested, but I'm not sure because the judge didn't explain it. The three men who got 3 years all served their sentences in Insein and then were released. The old man's name was U Saw Bee; he was 54. He died in Insein Prison in 1992, from a cerebral haemorrhage because of high blood pressure.

All five of us were put under the Political Prisoners Act. There are three sections: 17/1, 8/3 and 5J. We were sentenced under sections 17/1 and 8/3. They sent us to Insein Prison on March 29, 1990. At Insein, we were put in Ward 5; there are 7 big wards. Ward 5 had eight rooms. I was put in a room 100 feet by 50 feet, while the others were put in different rooms. In my room there were 140 prisoners. Each room has about 15 or 20 political prisoners in among all the others. There was very little room for us to sleep - we all had to keep our bodies straight, and many of us had to sleep on our sides. There were only 5 or 6 sleeping mats in the whole room, so we all had to sleep on the cement floor. They allowed us to have a bath once a day. We had to line up in rows of 5 men at a time, and we were allowed 5 bowls of water, then soap, then 7 more bowls of water. But there were many problems - sometimes there was no water supply, so they wouldn't let us take a bath and we could hardly even get water to drink. There were latrines in 2 places - outside of the room for the daytime, and in the room at night. The latrines always had guards, and to use them you had to bribe the guard with two cheroots. The latrine was just a bucket, with no water. You could use paper if you could get some, but we used to beg scraps of cloth from the men who worked in the sewing workshop out in the compound. The feeding system was like the bathing system - we had to sit 5 in a row while the cooks brought rice, one plate each. Then you go yourself to get bean paste and fishpaste.

In Insein Prison there are about 9,900 or 10,000 prisoners altogether. There are 500 political prisoners, who are in wards 3, 4 and 5 and also in single cells and other special places. In my room, there were 3 or 4 different kinds of prisoners, and more than 20 political prisoners. Some were monks, and students from 1988 sentenced under Section 5J and Section 1221 - high treason, and revolt against the State. We had to work cultivating crops for the jail workers and cleaning the jail wards; as we were political prisoners, they couldn't send us to do road construction and other work outside the jail. Inside the jail, we got the same treatment as the criminal prisoners. The guards said, 'If you've come to prison, you must live as a prisoner. All the same.'

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've made a gravel path, and they order the victim to crawl along it on his elbows and knees. They follow him with 2 or 3 dogs biting his legs. To escape their biting, the victim tries to crawl back to the cell as fast 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 hot season, because in hot season it gets very hot and we've all in a very confined area, so there are more quarrels. This never happened to me - the political prisoners seldom quarrelled.

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. The sick prisoners want to go to the hospital, but the guards never send them there until its already too late, so many die once they get to the hospital. I got fever but I didn't want to go to their hospital, because I was afraid of their dirty needles and contagious diseases. At the hospital they have doctors, but not enough medicines. Once in 1991, all the political and other prisoners in my ward held a hunger strike to demand proper health care and the right to read the newspapers, but none of our demands were granted. They said if we made our demands individually they'd listen to us, but if we made united demands they wouldn't listen. Then they tortured some of our hunger strike leaders with the dogs on the gravel bath.

While I was there, about 5 people in my room died. People who finished their sentences were released, but more prisoners always came. Twice in 1992 and 1993 they announced that they were going to release political prisoners, but then they only released those who had no more than 1 or 2 months left of their sentences anyway. Since then, there are still just as many new political prisoners arriving as ever before. Whenever any room is available, more prisoners come in, both political and others. Nothing at all has changed since I first arrived there.

We sometimes heard that foreigners were coming to see the jail and the prisoners' conditions. When this happened, the officials didn't show them our wards; they showed them the wing which is used for training jail administration workers. The trainees put on convicts' dress and were presented to them as prisoners. The beds, mosquito nets and blankets that were shown to the foreigners are not for prisoners, they're for jail system trainees. On the beds in the prison hospital, they were only shown those men who had paid 500 kyat or more to bribe the doctor to let them take a rest in the hospital. These men were not really sick. All the real patients had been moved back into the cells with us two or three days ahead. Then after the guests left, they were called back to the hospital. I don't know if any of them got worse or died because of this.

The prison dress was made of cotton - each prisoner gets one shirt and one longyi [Burmese sarong]. The prison rule is that prisoners must get new clothes once every 6 months, but this rule is not followed. In my room there were 7 monks. All of them were political prisoners, and all had been forced to disrobe. When they were first captured, the soldiers just took their robes and forced them to put on civilian prison clothes. In the prison, all of them kept on practising as monks, and only eating one meal a day, but the guards treated them the same as everyone else. There is a group in the prison which is responsible for keeping all the prisoners' hair cut, but the guards wouldn't allow the monks to shave their head. Their names were:

	<u>Monks Name</u>	<u>Burmese Name</u>	<u>Sentence</u>
1.	Ashin Nyana Wontha	Kyaw Myint	7 years
2.	Ashin Sandaw Baw Ta	Soe Lwin	5 years
3.	Ashin WiLa Tha	Hla Min	5 years
4.	Ashin Zaw Tika	Min Aung	3 years

5.	Ashin Pinya Dippa	Pan Shwe	5 years
6.	Ashin Ku Ma Ra	Chit Htun	5 years
7.	Ashin Dhamma Sara	Htun Htun Win	3 years

They were from 2 different monasteries in Yankin, near Rangoon. They had all been in since 1991, sentenced under section 5J for signing the monks' boycott petition. [*This was the petition to join the Buddhist monks' religious boycott of the military, which was instigated due to the SLORC's massacres of Buddhist monks, desecration of Buddhist temples and general disregard for the human and religious rights of the people*]. There were also 3 senior reverend monks who had refused to disrobe. They were kept all in one cell, in a part of the prison separate from us. I heard threats a warder said to them, " You can't go on like monks - we treat everyone equally here." So one of the reverend monks said, "If that's so, then let us see you treat your mother and sisters the same way as you treat us." The warder didn't say anything, and left them.

I was released on October 19, 1993 because I finished my term. If a man is sentenced by a civil court to 5 years, then he can leave after three and half. But I was sentenced by a military tribunal, so the 6 months I spent in custody before my trial weren't counted towards my sentence, and they held me for 4 years altogether. I wasn't released as part of any amnesty, but because I'd served my whole term. It's the same with all the political prisoners they release.

## An Example of SLORC Orders

**SLORC ORDER TO VILLAGES: SET 95-C**  
**MON AREA: YE-TAVOY RAILWAY, OTHER FORCED LABOUR, etc.**

An independent Report by the Karen Human Rights Group  
 May 2, 1995 / KHRG#95-15

Following are the direct translations of some typical SLORC written orders received by Mon villages in southern Burma's Tenasserim Division, along the route of the Ye-Tavoy railway line which is currently being built with forced civilian and convict labour, and in the area where the SLORC/Total/Unocal gas pipeline from the Martaban Gulf is to come ashore en route to Thailand. All of the orders were signed by SLORC officers of officials, and in most cases were stamped with the military unit or local SLORC stamp. Photocopies of the order documents themselves may be enclosed with this report, and if not they are available on request. Most of these orders concern forced labour, money and materials being extorted for construction of the railway, forced labour building a naval base which is most likely intended to protect the gas pipeline, extortion of labour and money and labour, and summonses to 'meetings'. While many of the orders repeat each other, they are included to give an idea of the endless series of SLORC demands and threats faced by Mon villages who are already struggling to survive. For each order included here, there are hundreds more which have been issued. Many are lost or destroyed, while other are impossible to obtain. We would like to express our sincere gratitude to those who helped us obtain copies of these documents.

Most of the orders for Ye-Tavoy railway construction are from the period just before the main 1994/95 dry season construction work began in Nov.94, so the numbers of people demanded were small. As soon as the dry season started, 11,850 people were demanded from Ye Township alone (see "SLORC Order to Villages: Set 95-A", KHR#95-01), and such large numbers are still being conscripted now on a rotating basis. SLORC claims to pay these people, but at the labour camps they tell people that their 'pay' has been put toward 'community development projects' instead. The 'meetings' to which village leaders are summoned are usually to discuss forced labour assignments and extortion demands. The recurring phrase 'if you fail it will be your responsibility' is well understood by village elders to mean 'you will be arrested and tortured or we will come to burn you village'. In the orders, SLORC uses the expression "servants' or 'government servants' to refer to forcibly conscripted civilian labourers. Money which is demanded to 'pay' these people or by materials is almost never used that way - the money is pocketed by the authorities, while labour goes unpaid and materials are extorted from villagers and small businessmen.

While SLORC stands for State Law & Order Restoration Council, it administer through State, District, Township and Village level Law & Order Restoration Councils or LORCs, an abbreviation used throughout this report. Most orders are addressed to the 'chairman' or 'secretary' of the village - these are village elders appointed (usually against their will) by SLORC to be its local contact people. When orders are not obeyed they are the first to be tortured. LIB stands for Light Infantry Battalion, while IB is Infantry Battalion. Where

necessary, names of people and places have been blanked out and denoted by 'xxxxx' or 'yyyyy' to protect them. All numeric dates in the orders are in dd-mm-yy format.

TOPIC SUMMARY: Railway labour (#2,4,5,8-12,29,33), Navy base labour (#4,6-8), gas pipeline (#4), political prisoners on the railway (#1), forced labour building for surrendered Mon soldiers (#39), threats against elders (#2,3,27,38), extortion of railway money & materials (#12-19,29), extortion by bandit group (#20), misc, labour (#28,30,31,39), misc. extortion (#20-24, 27,39).

#### Letter #1

[In January/February 1995, an opposition member managed to conceal the following note at one of the worksites on the Ye-Tavoy railway line. At his particular worksite, prison convicts are being held in a labour camp and being forced to work on the railway.]

Dear Brother,

We have heard about your troubles. We want to help you. We are thinking how we can do this and we want to communicate. If you have a chance to escape, you can. We have already asked the civilians of the surrounding villages, and they will help you too. Always we are thinking of what we can do and how we can help you.

A Revolutionary

(Tomorrow evening, please leave your reply letter here)

[A couple of days later the following note, written on the back of the first, was retrieved from the same place:]

There is full security and we cannot escape.

If they catch us, they will kill us. One person has escaped - did you meet him? He didn't come back. The food is scare-food, we never get enough and we have to work the whole day. We have been beaten many times. There are so many sick people. Help us out of this trouble.

[Signed Y\_\_\_\_]

8 years (17-1)

Ko-Mile Prisoner Camp

[Notes: No one had encountered the man who escaped - he may have been caught. "Scare-food" is a Burmese idiom which basically means "although the food comes from them, still we are terrified of them". The man signed "8 year (17-1)", meaning he is serving an 8-year prison sentence under Article 17-1. Article 17-1 decrees imprisonment for anyone "associating with illegal or opposition organisations" such as democratic political parties and ethnic opposition organisation. In other words, THIS MAN IS A POLITICAL PRISONER. Using political prisoners for forced labour violates all international norms, but this letter make it clear that SLORC is using political prisoners for labour on the Ye-Tavoy railway. The number of political prisoners being used remains to be known, but it is important that SLORC be condemned internationally in the strongest possible terms and that this be stopped.]

**Order #2**

Stamp:  
Frontline #406 LIB  
Column 1 HQ

Frontline #406 Light Infantry Battalion  
Nat Gyi Zin Camp  
Ref. No. 406/1001/Sa Ka 1  
Date: 1994 November 4

To: Chairman  
Village Law & Order Restoration Council  
xxxx village

Subject: Call for labour to the head of the village

- 1) Regarding the above subject, we already called many times for the headman of xxxx village and 25 villagers for railway labour to come to Nat Gyi Sin camp.
- 2) Therefore, as soon as you receive this letter the headman and 25 people, along with rations and needed equipment [tools, etc], must come without fail.
- 3) Along with this letter, we are sending some presents for the chairman and secretary [of the village]. If you get these presents, come here. If you fail to come, we will give the next present to the headman of the village. Wait and see what kind of present.

[Sd.]  
(for) Column Commander  
Nat Gyi Zin Camp

[Note: the "presents" enclosed with this order were 2 bullets.]

**Order #3**

Stamp:  
Frontline #406 LIB  
Column 1 HQ

94 November 09 - 0900  
(9-11-94)

To: Chairman/Secretary  
(xxxx village)

For railway construction, we have to have a discussion with the [village] chairman and secretary. Therefore, come yourselves to Nat Gyi Zin camp. We give you your chance to come on 15-11-94 without fail to come. If you really work on behalf of the village people, you (chairman and secretary) must come without fail. If you fail, it will be your responsibility.

If you don't come because you are afraid of Mon rebels, we army must show you that we are worse than Mon rebels. That's all.

[Sd.]  
(for) Column Commander  
Nat Gyi Zin camp

#### **Order #4**

Stamp: Date: 1994 November 20  
Village LORC group To: Village LORC  
Kywe Thone Nyi Ma village Chairman/Secretary  
(xxxx village)

- Subject: 1) Regarding free labour for Ye-Tavoy railway constructions  
2) Regarding gas pipeline, Bote Island  
3) Regarding operations servants [porters]

Regarding the above subjects, we have to have a discussion. You yourself must come to Kywe Thone Nyi Ma village LORC office on 22-11-94. For the Ye-Tavoy railway construction, we have already hired people. So bring along the charge for this labour, according to your share.

[Sd., 20/11/94]  
U Than Yee  
Chairman  
Village LORC group  
Kywe Thone Nyi Ma village group

[Note: Bote Island is just offshore in the Hein Zeh Basin area, where the SLORC/Total Oil/Unocal gas pipeline is to come onshore from the Martaban Gulf en route to Thailand. SLORC has also recently built a naval base on this island with forced labour (see related order in this report). It is unlikely that any labour for the Ye-Tavoy railway has been "hired" - the money demanded is simply extortion.]

#### **Order #5**

Township Law & Order Restoration Council group  
Ye Pyu Town  
Ref. No. 1496/4-8/TLORC (YP)  
Date: 1994 August 30

To: Chairman  
xxxx Quarter/Village LORC group  
Ye Pyu township

Subject: To send free labour for Ye-Tavoy railway construction

- 1) To guard and repair the Ye-Tavoy railway construction labour camp and to take good care of the camp, we will start work from 1-9-94 until 15-9-94. So send labour from your village without fail (without fail), we inform you.

Three Pagodas Camp  
Kyauk Kanyah [village must send:] 10 people  
Nat Twin 10 people 31-8-94 at 5 pm

Kyauk Taung  
Nyin Huway  
Baleh Ku

10 people  
10 people  
10 people

must arrive at  
Township LORC office





INTERNATIONAL LABOUR OFFICE

GOVERNING BODY

Geneva, November 1994

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THIRD ITEM ON THE AGENDA

**295th Report of the Committee on Freedom of Association****Case No. 1752****Complaint against the Government of Myanmar  
presented by  
the International Transport Workers' Federation (ITF)**

87. In a communication of 17 December 1993, the International Transport Workers' Federation (ITF) submitted a complaint of infringements of trade union rights against the Government of Myanmar. It sent additional information relating to its complaint in a communication of 21 March 1994

88. The Government supplied its observations on the case in a communication dated 6 June 1994.

89. Myanmar has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No.87); it has not ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 89).

**A. The complainant's allegations**

90. In its complaint of 17 December 1993, the ITF alleges that the Government has committed flagrant violations of human and trade union rights through its oppression of Myanmar seafarers serving on foreign flagships. The intimidation and abuse of these seafarers is the direct result of their having accepted assistance from the ITF to improve their wages and working conditions.

91. The ITF explains that its complaint is based on information which has been collated from sources which include the ITF affiliated Seafarers' Union of Burma (SUB), which operates in exile in Thailand and is in regular contact with the ITF, and ITF inspectors worldwide who over the past few years have intervened on behalf of Myanmar seafarers on numerous occasions. The ITF points out that many Myanmar seafarers are forced by poverty to take jobs at sea and around 30,000 are currently registered with the Seamen Employment Control Division (SECD) which operates under the auspices of the Department of Marine Administration. This agency in turn comes under the responsibility of the Ministry of Transport and Communications. The Government therefore has, through the SECD, total control over the placement of all Myanmar seafarers. Myanmar seafarers have to work with

whatever pay and conditions the flag-of-convenience ships offer and before boarding a ship they are required to sign a contract saying that they will not contact the ITF. The complainant attaches an example of such a contract (see Annex 1). In the event that Myanmar crew members do receive an ITF settlement, they are required to pay the money back to the SECD (even if the ITF's intervention was requested by non-Myanmar members of the crew). If they refuse, their registration is revoked, passports confiscated and they face the threat of imprisonment. In at least one case of ITF intervention, the Myanmar crew of a flat-of-convenience ship were told that their families would be hurt if the action was not called off.

92. The ITF then goes on to describe in detail certain case histories as evidence to support its allegations. The MV Albatross incident, which occurred in March 1987, involved the 22 Myanmar crew of the Maltese-flag Albatross. The Myanmar crew members sailing on the Albatross were being paid in line with the agreement the SECD had signed with the manning agent (i.e. US\$200 per month for the Able Seamen (AB) as opposed to the ILO recommended minimum, at that time, of \$286). Their December salary was paid three months late and minus overtime. Thereafter they only received cash advances representing a fraction of their true entitlement. Living conditions on board were appalling - they were rationed to only 15 minutes of fresh water for washing and bathing every five days, and were provided with the barest minimum food to survive. Only 2.5 kg of meat were spread between 22 Myanmar crew. The rice was not full grain but of the type usually used to feed livestock rather than humans. The men also had serious worries about the overall safety of the ship. There was only one nine-year-old radio receiver working and the medical chest was almost empty in breach of international standards.

93. The Myanmar crew were also maltreated by the master and were physically assaulted and threatened to the extent that many of the crew genuinely believed their lives were in danger. These horrendous conditions eventually drove the crew to seek help in March 1987 when their ship docked near New Orleans in the US. They contacted ITF Inspector John Sansone (from the International Longshoremen's Association - ILA), and told him that they had activated the grievance procedure outlined in their contract and were waiting for a response. On 18 March 1987, when a response to their complaints has not been forthcoming, they went on strike. The owners' representative, from Seaworld Management and Trading Inc. in Greece, appeared on the scene and promptly tried to bribe the ITF inspector. He told Sansone that he would pay for a trip for him to go away while the ship slipped quietly out to sea while the strike was still on. The US pilots refused to board the ship on the grounds that the ship was not safe to sail. The owners then contacted the Myanmar Ambassador to Washington and within hours the crew lifted the eight-day-long strike and the ship sailed. The captain of the ship was replaced, but the real reason for the crew ending their action was a series of telephone calls they received from the Myanmar Ambassador. The crew maintained that the Ambassador threatened each of them with immediate imprisonment upon return to Myanmar unless the strike ended. Faced with government and employer pressure like this, the men were forced to give way.

94. In the *MS Cape Hope* incident which also occurred in 1987, the ITF explains that it won US\$44,239.40 plus interest for the Myanmar seafarer on the Cyprus-flag Cape Hope in a case brought in Germany. The judgement was handed down in a Bremen Labour Court against the owners of the ship, the Kingfisher Shipping Company of Nicosia. The seafarer in question had been employed on the Cape Hope (a ship with an ITF collective agreement) for over two years. The fact that the ship was covered by an ITF agreement, and the owner had contracted to pay ITF rates, meant that the ITF had a legitimate right to intervene to assist the crew in obtaining justice. In rejecting the seafarer's claim, the owner claimed falsely that he had an agreement with the ITF under which 70 per cent of crew pay

was to be sent back to the SECD. In fact, the crew members on the Cape Hope were the victims of "double bookkeeping", a common phenomenon on flag-of-convenience ships. Each pay-day they were given two lists to sign, an official ITF salary list, and the SECD "ITF" salary list which was considerably lower.

95. As a result of being cheated of their wages in this way, the crew asked ship inspector Han Kreitlow of the German Transport Workers' Union (OTV) to help them when the ship arrived at the German port of Bremen in May 1987. The crew gave Kreitlow leave to have the ship arrested for payment of the debt. A representative of the Myanmar Embassy in Bonn learned of the situation and visited the ship. By this time only one seafarer was prepared to continue the action against the shipowner but the Myanmar Embassy representative "persuaded" the seafarer to go with him to a local notary where he signed papers saying he was prepared to drop the case. Despite this the case came before the courts and further evidence of subversion by the Myanmar authorities came to light. Kingfisher, with the obvious collaboration of the Myanmar authorities, produced a statement which they claimed that the seafarer had signed in June 1987 (i.e. about a month after the events described took place) before a notary in Myanmar. In this document the seafarer stated that he wished to drop the case against Kingfisher as he had received all the money due to him for the two years he had been on the ship.

96. However, the court was able to prove from entries in the seafarer's passport that he was not even in Myanmar at the time the company claimed he had signed the statement, but in Thailand. Not surprisingly, the court later declared the signature a forgery (it was quite different from those in his passport and on the ship's document). Not deterred, the company also produced a second statement to back up the first in which the seafarer was said to have signed receipts before the Director of the Myanmar Department of Marine Administration for the money he had supposedly received. The court, after examining the evidence before it, said it fully accepted the seafarer's argument that he had not been in Myanmar since lodging his complaint in Germany. Nor could he possibly have signed this second statement as he was by that time in Germany. It therefore dismissed both of the statements Kingfisher had placed before the court. The court therefore ruled that the SECD "agreement" had no validity and even had it been in force the SECD could not deduct 70 per cent of a seafarer's pay without his express authority. In the light of the evidence, the court decided to award the seafarer his claim in full. He was subsequently awarded backpay of US\$44,239.40 plus 4 per cent interest from 10 August 1987. Costs were also awarded against Kingfisher.

97. As regards the MV Trans Dignity case, the ITF states that on 29 September 1988 in Sundsvall, Sweden, 14 Myanmar seafarers working on board the Liberian-flag Trans Dignity contacted the ITF-affiliated Swedish Seamen's Union (SSU) requesting their help in improving their working and living conditions on board ship. A local official of the SSU, Peter Rundqvist, went on board to listen to the crew's complaints. The Trans Dignity was technically covered by the ITF agreement (the owner had in fact signed the agreement with an ITF affiliate just days before arriving in Sweden), but the crew were not being paid in accordance with it. Rundqvist found evidence of the usual system of evasion - the crew were signing on two sets of ships' articles and dual wage accounts were in operation. The Swedish unions decided to seek the termination of the existing agreement and to request the signature of a new ITF Standard Agreement. When the owners refused to agree to this demand, the unions boycotted the vessel for a period of six days until the owner's representative, flying in from Hong Kong, eventually agreed to sign the new agreement and to pay the crew their backpay entitlement under it. As part of the agreement, the owners gave an undertaking that they would not subsequently victimise the seamen by withdrawing their seamen's books or

registration or attempting to claim back the payments obtained for them by the Swedish unions' action.

98. The new agreement, which was signed on 1 December 1988, awarded a total of US\$176,845 in backpay to the Myanmar crew. The crew decided that they would accept the backpay settlement and sign off the vessel and return to Asia. When the claims had all been settled, the crew, who at their own insistence had already received part of their backpay in cash, prepared to leave Sweden on a flight to Bangkok on 6 December 1988. Knowing the fate which might await them in Myanmar, they had no intention of going on any further than Bangkok. Prior to departure, the local manning agent in Sweden attempted to intimidate the crew by informing them that he was aware of their flight details and "promised" they would be met on arrival. The message "you can't escape from us" was also conveyed to the men's families back home in Myanmar. As planned, the crew arrived in Bangkok on 8 December 1988. Their money and passports were confiscated on arrival by the Myanmar authorities, prompting the Thai authorities to declare them illegal immigrants and to request that they be returned Myanmar as soon as practicable. Their passports were subsequently returned but only after ITF lawyers had intervened on their behalf. A campaign was then launched designed to make an example of the crew so as to ensure that no other Myanmar crew members would ever accept assistance from the ITF or any of its affiliates. They circulated a scurrilous document headed "ITF problem crew on MV Trans Dignity", accompanied by pictures of each crew member and their identity documents numbers, saying that they were troublemakers. (The ITF attaches a copy of this document to its complaint.) This tactic was successful in ensuring that they did not work at sea again. In the end, financial hardship forced all but three of the former crew of the Trans Dignity to return home to Myanmar where their passports and seamen's books were confiscated by the Myanmar authorities as punishment for accepting the help of the ITF and refusing to hand over their backpay settlements.

99. In the MV Chemical Harmony case, in March 1991 one of the ITF's inspectors in Rotterdam, Mr Gert-Jan Harmsen from the ITF-affiliated Federatie van Weknemersorganisaties in de Zeevaart (FWZ), visited the Japanese-owned Panamanian-flag chemical tanker Chemical Harmony and discovered that nine Myanmar crew members were not signed on the ship's articles. The names of Koreans who were not on the ship had been entered in their place. The vessel was covered by an ITF-approved Korean collective agreement, but the Myanmar crew members were being paid much less than the other 14 Korean crew members. Disturbed by this, Harmsen investigated further and uncovered a double bookkeeping system. Despite being reminded of the risks involved, the crew of the Chemical Harmony were determined to press for the full wages due to them, and after threatening the Master with arrest for false documentation Harmsen persuaded the ship's Korean managers, Nam Ung Marine of Pusan, to guarantee the payment of US\$46,583 owed to the men. The next problem was to get the Myanmar crew members home safely. The first four Myanmar crew members flew to Bangkok on 27 March 1991, having promised to telex the ITF when they arrived. The ship was delayed in Rotterdam by repair work and it was not until 5 April 1991 that the remaining five Myanmar crew members could be flown to Bangkok. Four days later, the ITF heard from its lawyers in Bangkok that all except two of the nine were in safety. The first group had been threatened by the manning agents, and one of them had disappeared having presumably been taken back to Myanmar by the Myanmar authorities. One member of the second group then decided for personal reasons to take the risk and return to Myanmar too and he promised to try to contact the missing man and report back. No such information was ever received.

100. In the MV Angelic Faith incident, the ITF describes that on 3 June 1993 11 Myanmar former crew members of the Greek-flag Angelic Faith were kidnapped by Myanmar government officials whilst in transit through Singapore airport bound for Bangkok. these

seafarers had received assistance from the ITF when their vessel docked in Dalrymple Bay, Queensland, Australia. Industrial action by the ITF-affiliated Maritime Union of Australia (MUA) resulted in a backpay settlement of nearly US\$100,000. The crew were threatened by the Myanmar authorities with forcible repatriation to Myanmar. Instead, the MUA arranged repatriation from Australian to Thailand via Singapore. The crew arrived in Singapore on Qantas flight AF051 on 3 June. What happened then has rightly become an international diplomatic incident, with the Government of Singapore publicly accusing Qantas airline and the Myanmar Government of infringing its sovereignty. It is clear that the crew members were effectively kidnapped and returned forcibly to Myanmar. It has been reported on Myanmar television that they are currently under house arrest.

101. On 31 August 1993, Mr Lau Ping Sum, a member of the Singaporean Parliament, asked the Minister for Home Affairs to inform the House if the Government was investigating the circumstances under which 11 airline passengers were intercepted at the airport and sent to Myanmar. The Home Affairs Minister, S. Jayakumar, told Parliament that the Myanmar Embassy had persuaded Qantas airways staff in Singapore and private airport security guards to help seize and hold the 11 seafarers on 3 June when they were put on a flight to Yangon (Rangoon). The Minister told the Singaporean Parliament that the day before the flight arrived, the First Secretary of the Myanmar Embassy in Singapore had received a request from the Chairman of the Star Corporation Shipping Company, representing the seafarers' employers, asking him to help in repatriating the seafarers to Myanmar. The First Secretary subsequently received instructions from the Myanmar Foreign Ministry to assist in repatriating the seafarers, the Minister told Parliament. He stated that when the seafarers arrived, the First Secretary got the Qantas airport duty manager to assist him to seize the passports of the 11 seafarers and to hold the men until their departure to Yangon (Rangoon). The Minister stated that the actions of the airport security officers, who he stated acted solely on the request of Qantas and the Myanmar Embassy, were unsatisfactory and that they would be reviewing their future procedures. He further stated that the Singaporean Government took a very serious view of this incident.

102. The ITF finally indicates that the Deputy Minister of Transport, U Than Wai, stated at a press conference held on 8 October 1993 (which was broadcast by Rangoon Radio) that there were approximately 28,000 registered Myanmar seafarers and about 11,000 of these were currently being employed by over 120 "international shipping companies". According to the Director-General of the SECD, Dr U Tin Hlaing, it was the SECD which, in the absence of a trade union in Myanmar, looks after the welfare and interests of Myanmar seafarers. At the press conference mentioned above, the Director-General of the Department of Marine Administration, U Hla Min, stated that the SECD entered into general agreements with foreign shipping companies for the employment of Myanmar seafarers and that the SECD was solely responsible for ensuring that the seafarers got their contractual wages and decent working conditions. In addition, the Director of the SECD, U Tun Aung Myint, said that Myanmar seafarers did not face the threat of detention or torture nor are they prevented from bringing money into the country. However, the Deputy Transport Minister did confirm that Myanmar seafarers had to sign an agreement before they can leave the country to join a ship with the SECD stating that they will not "let down the State's dignity". He also confirmed that there were some disciplinary measures in place, such as the confiscation of the seamen's discharge book, if this agreement was breached by the seafarer. The ITF concludes by stating that those seafarers who have contacted the ITF in the past regarding the non-compliance with collective agreements by foreign shipping companies and their working conditions generally have been subject to retaliation by the Government of Myanmar. This retaliation has included the confiscation of passports, seamen's record books and qualifications and some have even been

sentenced to jail for obtaining "illegal income" in accordance with the Foreign Currency Act. This is, according to the radio broadcast of the press conference held on 8 October 1993, legitimate persecution in order to ensure that Myanmar seafarers do not compromise the "State's dignity"

103. To its communication of 21 March 1993, the ITF attaches a letter (see Annex 2) which, according to it, illustrated the nature of the pressure being exerted by manning agents in Myanmar on Myanmar seafarers. The ITF asserts that the letter clearly indicates that Myanmar seafarers are required to sign for wages they do not actually receive. The letter also states that the manning agent "has excellent contacts with the departments concerned here and ensure not to occur any problem especially in connection with ITF matters". In the ITF's view, this is a clear reference to the Government's practice of intimidating Myanmar seafarers who contact the ITF, or its affiliates, for assistance in securing their legitimate rights.

### **B. The Government's reply**

104. In its communication of 6 June 1994, the Government contends that the complaint filed by the ITF is groundless. The allegation that there is oppression of Myanmar seafarers serving on foreign-flag ships by the Myanmar Government is utterly baseless and has no foundation whatsoever. It is not the policy of the Myanmar Government to oppress the Myanmar seafarers or Myanmar citizens for that matter. The allegations emanate from certain quarters, mainly from outside sources, who are politically motivated and who are bent on tarnishing the image of Myanmar authorities.

105. The Government then refers to the five vessels mentioned by the ITF. The Government points out that the allegations made by the ITF were found to be untenable. For example, in the case of MV Trans Dignity, the ITF has in its letter of complaint appended as Annex 2, the names of 14 crew members said to have served on MV Trans Dignity. Names and photographs said to be belonging to 14 crew members were given. The names of four seamen, namely Maung Htwe, Thaung Tun Shane, Maung Aung and Zaw Myint were given. Their passport numbers and their CDC numbers were also given. However, upon scrutiny by the Myanmar authorities concerned it was found that the said four seamen never registered themselves with the authorities concerned. The passports as well as the CDCs were all fakes. In other words the four so-called seamen had never registered themselves officially and were carrying fake passports and fake CDCs.

106. The Government points out that since the advent of the State Law and Order Restoration Council which took over the state power in September 1988, it is the policy of the Government to look after the interests and welfare of Myanmar workers including Myanmar seamen. The incidents said to have occurred regarding MV Albatross and MS Cape Hope took place in 1987. With regard to the case concerning MV Chemical Harmony, the Myanmar authorities feel that the responsibility of the unfortunate incident lay with the owners of the vessels or with the manning agents. With regard to the incident concerning MV Angelic Faith, the Government submits that the allegations against the Myanmar authorities are unfounded. Neither coercion nor threat was resorted to by the Myanmar authorities against the 11 seamen, as alleged. They were repatriated to Myanmar by the shipowners in accordance with the contracts. On their return to Myanmar no harm was done by the Myanmar authorities except that their CDCs were revoked.

107. As regards family remittance, the Government states that for the welfare and benefit of the families of the seamen, Myanmar seamen are required to remit a portion of their salaries to their families back home. Prior to 1989 the allotment for family remittances was fixed at 50 per cent of the seamen's salaries. Beginning from 1989-90 Myanmar fiscal year,

this allotment was reduced to 25 per cent. The seamen can use freely the remaining 75 per cent of their earnings. They can either spend the whole amount abroad or they can open a foreign exchange account in Myanmar. They can operate this foreign exchange account in Myanmar freely.

**108.** The Government then turns to the issue of employment contracts and pledges. According to it, the hiring of Myanmar seamen by foreign shipping companies/agencies is done in accordance with the agreement signed between the foreign shipping companies/agents and the Myanmar seamen. The terms and conditions of the contract are scrutinised by the Seamen Employment control Division (SECD) under the Department of Marine Administration, Ministry of Transport. Before leaving the country, the seamen have to pledge that they will conduct themselves as good citizens of the Union of Myanmar and also to abide by the rules and regulations for Myanmar seamen. The allegation that the Myanmar Government has long made Myanmar seamen enjoy reduced salaries and rights is totally untrue. No government would adopt and practice a policy detrimental to its own citizens or nationals. Myanmar seamen enjoy rights under the terms and conditions of the contract signed with the respective shipping companies. The terms and conditions will depend on the type and volume of work. The SECD oversees the contract. there is no oppression by the Myanmar authorities on the Myanmar seamen serving on foreign ships.

**109.** With respect to the Seamen Union of Burma (SUB), the Government claims that the SUB does not represent the seamen of Myanmar. Those who belong to this self-styled SUB are a handful of seamen who have violated the laws, rules and regulations of the country. This small group of seamen left the country for various reasons and chose to stay abroad. They are involved in illegal and clandestine business. the SUB is no recognised by the Government of the Union of Myanmar.

**110.** The Government then refers to U Nay Win Aung's letter which was sent to various shipping companies and which had been appended to the ITF's complaint (Annex 2). The Government explains that in his letter of 2 February 1994, U Nay Win Aung, President of Vasconia Myanmar Limited, Yangon, Myanmar, had solicited the business of various shipping companies abroad. In his zeal to act as manning agent in Myanmar, U Nay Win Aung had deceived his prospective business companies by stating that there existed a double bookkeeping arrangement by Myanmar authorities with foreign shipowners to avoid any involvement or problem with the International Transport Workers' Federation. The Government asserts that no such arrangement of double bookkeeping exists between the Myanmar authorities and foreign shipowners. The Government adds that U Nay Win Aung is engaged in general trading export-import business and is a business representative of Vasconia SARL (France). It considers that it is regrettable that ITF has used U Nay Win Aung's letter as a complaint against Myanmar.

**111.** In the Government's view, it is apparent from the foregoing that the allegations made against the Myanmar authorities concerning the Myanmar seamen are without foundation. The Myanmar Government's policy is to look after the interests and welfare of Myanmar seamen serving on board foreign vessels. The role played by the SECD is of a regulatory nature to protect the interests of Myanmar seamen. the allegations made against the Myanmar authorities are regrettable. With a view to rebutting these allegations, the authorities of the Government of the Union of Myanmar held a news conference on 8 October 1993 in which senior officials explained everything that really happened in order to dispel any misunderstanding and misconception.

### The Committee's conclusion

112. The Committee notes that the allegations in this case concern violations of human and trade union rights through the oppression by the Government of Myanmar of seafarers serving on foreign flag ships. The complainant contends more specifically that the intimidation and abuse of these seafarers is due to the fact that they accepted assistance from the complainant to improve their wages and working conditions. In this respect, the complainant provides detailed information and case histories to back up its allegations.

113. At the outset, the Committee observes that the Government does not dispute the allegation that the terms and conditions of the contract signed between foreign shipping companies/agents and Myanmar seafarers are overseen by the Seamen Employment Control Division (SECD) which operates under the Department of Marine Administration in the Ministry of Transport. However, the Government maintains that the role played by the SECD is of a regulatory nature to protect the interests of Myanmar seamen and not to oppress them. The Committee notes however that the Government does not reply to the complainant's allegation that Myanmar seafarers are required to sign an affidavit saying that they will not contact the complainant before boarding a ship nor does it provide its observations on the copy of such an affidavit provided by the complainant (Annex 1). All it states is that before leaving the country the seamen have to pledge that they will conduct themselves as good citizens of Myanmar and abide by the rules and regulations for Myanmar seamen. However, it would appear to the Committee from the detailed information and case histories provided by the complainant that Myanmar seafarers are in fact required to sign a contract restricting their rights to accept any assistance from the complainant or affiliated parties.

114. In this connection, the Committee would emphasise the importance that it attaches to the fact that no obstacle should be placed in the way of the affiliation of workers' organisations, in full freedom, with any international organisation of workers of their own choosing [see Digest of decisions and principles of the Freedom of Association Committee, 3rd edition, 1985, para. 520]. In the present case, it is the Myanmar seafarers themselves and not an organisation of workers as such who are prevented from contracting or accepting assistance from the complainant. However, the Committee believes that this situation is due to the fact that the ITF-affiliated Seafarers' Union of Burma (SUB) which intervenes on behalf of Myanmar seafarers operates in exile in Thailand since by the Government of Myanmar. In this respect, the Committee would remind the Government that, under the terms of Article 2 of Convention No. 87 which the Government of Myanmar has ratified, workers, without distinction whatsoever, shall have the right to establish and to join organisations of their own choosing in full freedom to protect their interests. The Committee considers that it is not for the Government to decide which organisation would best represent the workers' interests, as would appear to be the case of the SECD which exercises total control over the placement of all Myanmar seafarers and which is a government agency.

115. In view of the above-mentioned arguments, the Committee would first of all urge the Government to withdraw the SECD requirement that Myanmar seafarers must sign an affidavit restricting their right to affiliate with or contact the complainant for assistance, which requirement violates freedom of association principles. Moreover, as regards the non-recognition of the SUB by the Government, the Committee would remind the Government that workers should be able to form and join organisations of their own choosing in full freedom; it therefore urges the Government to guarantee and respect the rights of seafarers to form an independent trade union in Myanmar for the defence of their basic rights and interests if they so wish.



116. The Committee recalls in this respect the special paragraph adopted by the 1993 Conference Committee on the Application of Standards concerning the denial of the right to organise by the Government of Myanmar. The Committee notes that the evidence before it in this case is yet another example of the way in which the Government denies the right to freedom of association to its citizens. The Committee deplores that this case illustrates that the Government similarly denies the same fundamental rights to Myanmar seafarers.

117. The Committee further deplores the requirement in the affidavit by which Myanmar seafarers are obliged to sign a double payroll. This is a reprehensible way of evading the terms of collective agreements, a practice which the Committee strongly condemns.

118. Finally, the Committee takes note with serious concern of the various incidents described by the complainant and of the victimisation of Myanmar seafarers - such as revocation of their registration, confiscation of their passports and even the threat of imprisonment - in the event that they accept and receive an ITF settlement and they refuse to hand their back-pay settlements to the SECD. The Committee deeply regrets that in response to the incidents of the five vessels described in detail by the complainant, the Government merely states that in certain incidents the seamen never registered themselves and were carrying fake passports or that in certain other incidents, the responsibility lay with the owners of the vessels or with the manning agents. It is amply clear to the Committee that in most of these incidents the Myanmar authorities, either directly or indirectly, had exerted various types of pressures on Myanmar seafarers once an ITF settlement concerning them was reached. The Committee draws the Government's attention to the principle that no person should be prejudiced in his employment by reason of trade union membership or legitimate trade union activities [see Digest, *op. cit.*, para. 538]. It therefore calls on the Government to refrain in future from having recourse to acts of anti-union discrimination against Myanmar seafarers who pursue their legitimate grievances through the complainant and/or its affiliated trade unions.

#### **The Committee's recommendations**

119. In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:

- (a) The Committee urges the Government to withdraw the requirement by the Seamen Employment Control Division (SECD) that Myanmar seafarers must sign an affidavit before leaving the country restricting their right to affiliate with or contact the complainant for assistance to protect their occupational interests.
- (b) Recalling the importance that it attaches to Article 2 of Convention No. 87 which the Government of Myanmar has ratified, the Committee urges the Government to guarantee and respect the rights of seafarers to form an independent trade union in Myanmar for the defence of their basic rights and interests if they so wish.
- (c) The Committee calls on the Government to refrain from having recourse to acts of anti-union discrimination against Myanmar seafarers who pursue their legitimate grievances through the complainant and/or its affiliated trade unions.

**Annex 1**

Literal translation into English from the Myanmar original

**AFFIDAVIT**

confirm that I am fully aware of the dangers of the International Transportation Workers' Federation (I.T.F.) or other parties involvement. I solemnly promise by signing my name that I will abide with and honour my official agreement of employment for the complete duration of the agreement and/or additional Voluntary extension hereof.

Should the Master and/or Managers and/or Agents of above vessel be forced to effect any backpay to us as extorted by I.T.F. through intimidation or blackmail or whatever form, so the undersigned seamen commit myself being signing this AFFIDAVIT, that I shall return this backpay money promptly and in full to the Master or the Owners of above vessel upon departure from said port.

I likewise promise and agree to sign every month a "Double payroll" if required by the Master.

I, the undersigned, fully understand that I will be legally liable for prosecution in case I break this personal commitment.

Furthermore, I hereby state that the following are true and correct.

My bank account is:.....  
Assets under my  
ownership are:  
(include any houses or cars).....

Finally, I, the undersigned seamen, confirm that I have signed this document out of my free will and without force or intimidation in any kind of force.

IN WITNESS whereof I place my signature on this Affidavit on this      day of 199 , and I confirm that the text was read and translated to me.

**Annex 2**

**Vasconia Myanmar Limited**

Dated: 2-2-94

To:

FRANCE

FOR THE ATTENTION OF THE OPERATION MANAGER

Through the Honourable Commercial Attache of the Embassy of France in Myanmar, we came to learn your esteemed company and aware that your line of business is mainly involving with shipping. Taking the liberty we are pleased to introduce ourselves that we are one of the

leading exporters/importers and also a business representative of Vasconia S.A.R.L (France) in Myanmar. Our line of business is general trading and involved with man-power and seamen recruiting. We have been doing seamen recruiting and man-power business since last 10 years ago. Therefore we assure you that our experiences and knowledge can fulfil all your requirements regarding with seamen recruitment and man-power.

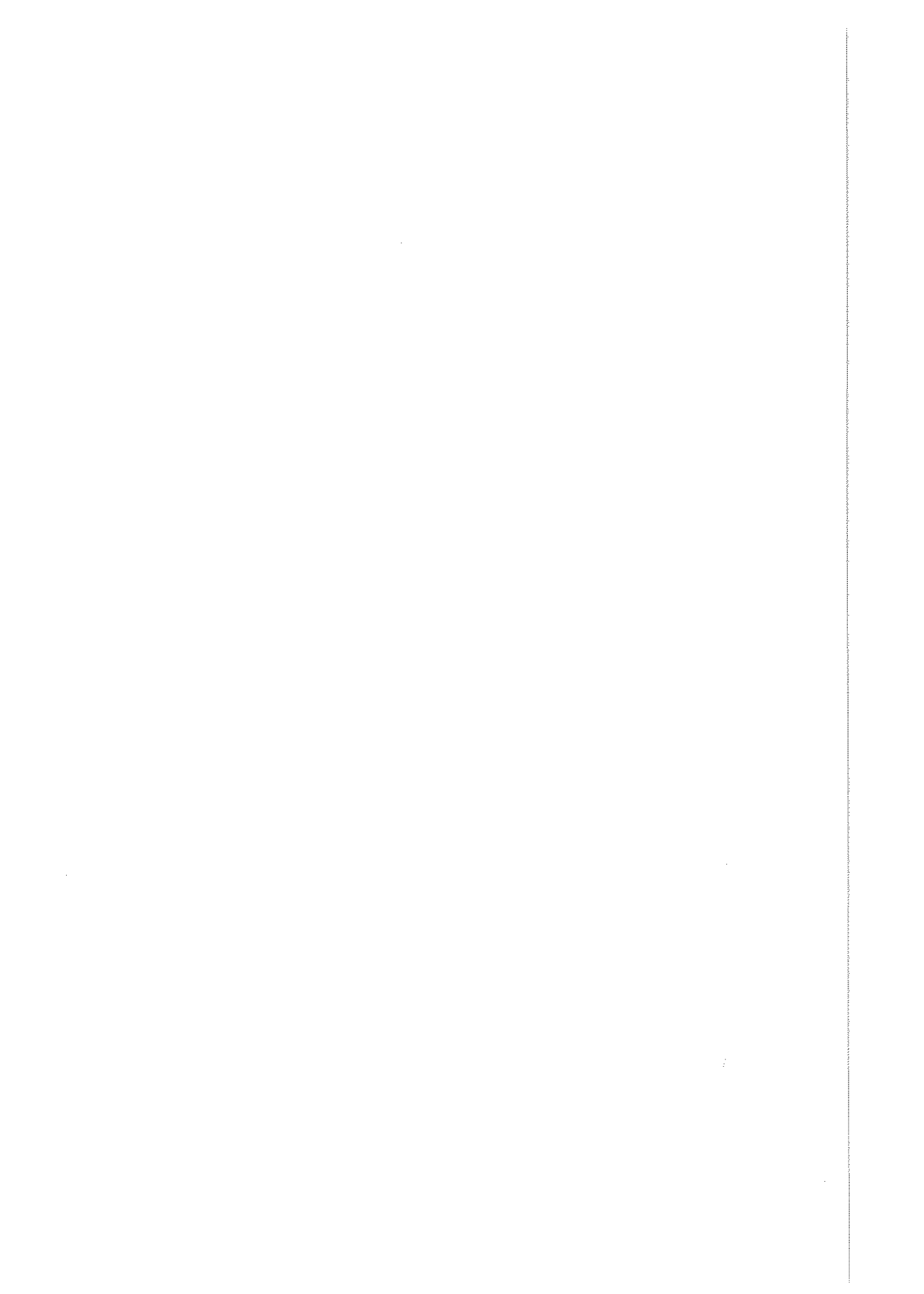
Also note that we have excellent contacts with the departments concerned here and ensure not to occur any problem especially in connection with ITF matters. Even in the case of ITF people make routine check up at certain ports and found the pay different, our seamen understood very well to solve this problem. In such case they firstly receive the salaries as recommended by ITF in order to fall in line with regulations. but, as soon as the vessel departed the port and came into the area of international water zone they surrender their surplus money to the master of the vessel and master remit all surplus amount to the principal Co. All our seamen understood this ITF matter and they know the way to solve the problem. Therefore we guarantee not to happen any problem regarding with ITF. Also note that our Myanmar seamen are had working, obedient, experienced, well training and hold relevant certificates of competency as recognised by the standard of International Maritime Organisation (IMO). To be competent as above, Marine Administration Dept: Has closely supervised, trained and made necessary examination to issue the certificates. So most of the foreign shipping companies are much interested Myanmar seamen for their vessel. For the above facts that we are much interested to establish business relationship with you for long mutual benefits and to promote seamen recruiting business. We do expect that our offer will meet you interest and if you need further information, please do not hesitate to contact us. We ever welcome your enquires and assure you to feed back your requirements immediately with our best attention.

Our fax No. 095-01-89960 ATTN: (864)  
095-01-87806 ATTN: NAY WIN AUNG  
Tlx No. BM 21201 ATTN: (1861)  
Banker name: MFTB, YANGON, MYANMAR.

We much look forward to hearing good news from you soon.

Yours faithfully

Nay Win Aung  
President



The Commission on Human Rights Resolution on Burma 1994/95

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66th meeting  
9 March 1994

[Adopted without a vote. See chap. XII.]

1994/85. Situation of human rights in Myanmar

The Commission on Human Rights,

Reaffirming that all Member States have an obligation to promote and protect human rights and fundamental freedoms as stated in the Charter of the United Nations and as elaborated in the Universal Declaration of Human Rights, the International Covenants on Human Rights and other applicable human rights instruments,

Aware that, in accordance with the Charter, the United Nations promotes and encourages respect for human rights and fundamental freedoms for all and that the Universal Declaration of Human Rights states that the will of the people shall be the basis of the authority of government,

Noting with particular concern in this regard that the electoral process initiated in Myanmar by the general elections of 27 May 1990 has not yet reached its conclusion and that the Government still has not implemented its commitments to take all necessary steps towards democracy in the light of those elections,

Deploring that many political leaders, in particular elected representatives, remain deprived of their liberty and that Daw Aung San Suu Kyi, and Nobel Peace Prize Laureate, is still under house arrest and, according to some sources, will not in any event be released before the end of 1994,

Noting the measures taken by the Government of Myanmar, including its accession to the Geneva Conventions of 12 August 1949 for the protection of war victims and the release of a number of political prisoners, at the urging of the international community,

Gravely concerned at the violations of human rights in Myanmar which remain extremely serious, in particular the practice of torture, summary and arbitrary executions, forced labour, including forced portering for the military, abuse of women, politically motivated arrests and detention, forced displacement of the population, the existence of important restrictions on the exercise of fundamental freedoms, including the freedom of expression and association, and the imposition of oppressive measures directed, in particular, at minority groups,

Noting further that many violations directly affect women, in particular women belonging to minorities, who have suffered ill-treatment, especially at the hands of the military, as stated by the Special Rapporteur,

Noting that this situation has resulted in flows of refugees towards neighbouring countries,

Deeply concerned at the continuous problems created in neighbouring countries by this exodus of refugees, including some 200,000 refugees still living in Bangladesh,

Welcoming, nevertheless, the signing on 5 November 1993 by the Government of Myanmar and the Office of the United Nations High Commissioner for Refugees, of the Memorandum of Understanding on the voluntary repatriation of refugees from Bangladesh,

Having examined the reports of the Working Group on Arbitrary Detention (E/CN.4/1994/27), the Special Rapporteur on the question of torture (E/CN.4/1994/31), and the Special Rapporteur on the question of religious intolerance (E/CN.4/1994/71 and Add.1),

Recalling its resolution 1992/58 of 3 March 1992, in which it decided to nominate a special rapporteur to establish direct contacts with the Government and people of Myanmar, including political leaders deprived of their liberty, their families and their lawyers, with a view to examining the situation of human rights in Myanmar and following any progress made towards the transfer of power to a civilian Government and the drafting of a new constitution, the lifting of restrictions on personal freedoms and the restoration of human rights in Myanmar,

Taking note of General Assembly resolution 48/150 of 20 December 1993,

Noting that the Special Rapporteur has visited Myanmar at the invitation of the Government of Myanmar,

Deploring, however, that, in spite of the provisions of resolution 1993/73 requesting the Myanmar authorities to extend their full and unreserved cooperation to the Special Rapporteur, he has been denied access to Daw Aung San Suu Kyi,

Reaffirming that Daw Aung San Suu Kyi, a Nobel Peace Prize laureate, who has recently been authorised to receive a number of visits, must be released immediately and unconditionally,

Taking note of the cease-fire being observed and the negotiations under way between the Government of Myanmar and several minority groups,

1. Expresses its thanks to the Special Rapporteur for his report (E/CN.4/1994/57) and the conclusions and recommendations contained therein;

2. Deplores the continued seriousness of the situation of human rights in Myanmar and, in particular, the fact that a number of political leaders, including Daw Aung San Suu Kyi and other leaders of the National League for Democracy, remain deprived of their liberty;

3. Again urges the Government of Myanmar to take, in conformity with the assurances given at various times, all necessary measures to establish a democratic State in full accordance with the will of the people as expressed in the democratic elections held in 1990;

4. Notes with concern that most of the representatives democratically elected in 1990 have been excluded from participating in the meetings of the National Convention, created to prepare the basic elements for the drafting of a new constitution, that severe restrictions have been imposed on delegates, including members of the National League for Democracy, who are unable to meet or distribute their literature, and that one of the objectives of the Convention is to maintain the participation of the armed forces (Tatmadaw) in a leading role in the future political life of the State;

5. Notes with concern the observation of the Special Rapporteur with regard to the National Convention that no evident progress has been made towards turning power over to a freely elected Government;

6. Strongly urges the Government of Myanmar to restore full respect for human rights and fundamental freedoms, in particular the freedom of expression and opinion and the right of association and of assembly, to restore protection of persons belonging to minority groups, notably against discrimination, especially in the framework of the citizenship laws, and to put an end to violations of the right to life and integrity of the human being, to the practice of torture, abuse of women and forced labour, to enforced displacements of the population and to enforced disappearances and summary executions;

7. Strongly urges the Government of Myanmar to restore full respect for human rights and fundamental freedoms, in particular the freedom of expression and opinion and the right of association and of assembly, to restore protection of persons belonging to minority groups, notably against discrimination, especially in the framework of the citizenship laws, and to put an end to violation of the right to life and integrity of the human being, to the practice of torture, abuse of women and forced labour, to enforced displacements of the population and to enforced disappearances and summary executions;

8. Reminds the Government of Myanmar of its obligation to put an end to the impunity of perpetrators of violations of human rights, including members of the military, and its responsibility to investigate alleged cases of human rights violations committed by its agents on its territory, to bring them to justice, prosecute them and punish those found guilty, in all circumstances;

9. Regrets the recent harsh sentences meted out to a number of dissidents, including persons voicing dissent in regard to the procedures of the National Convention;

10. Regret also that, while a certain number of political prisoners have been released, many political leaders are still deprived of their freedom and their fundamental rights;

11. Strongly urges the Government of Myanmar to release immediately and unconditionally the Nobel Peace Prize laureate, Daw Aung San Suu Kyi, detained without trial for the last five years, as well as other detained political leaders and all political prisoners, to ensure their physical integrity and to permit them to participate in the process of national reconciliation;

12. Calls upon the Government of Myanmar to consider becoming a party to the International Covenant of Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, and to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

13. Appeals to the Government of Myanmar to fulfil its obligations as a State party to the Forced Labour Convention, 1930 (No. 29) and the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) of the International Labour Organisation;

14. Encourages the Government of Myanmar to continue to lift the emergency measures;

15. Requests the Government of Myanmar to ensure that all persons, without discrimination, are afforded the minimum guarantees for a fair trial, according to due process of law and in conformity with applicable international standards, that laws are given due publicity and that the principle of non-retroactivity of laws is respected;

16. Requests the Government of Myanmar to create the necessary conditions to facilitate the early repatriation of Myanmar refugees in neighbouring countries and their full reintegration, in conditions of safety and dignity, and to implement fully the Memorandum of Understanding concluded with the Office of the United Nations High Commissioner for Refugees on 5 November 1993, concerning refugees in Bangladesh;

17. Invites the Government of Myanmar to fully respect its obligations under the Geneva Conventions of 12 August 1949, in particular their common article 3, and to avail itself of such services as may be offered by impartial humanitarian bodies;

18. Stresses that it is important for the Government of Myanmar to give particular attention to prison conditions in the country's jails and to allow international humanitarian organisations to communicate freely and confidentially with prisoners;

19. Welcomes the first measures taken by the Government of Myanmar to provide for the training of military personnel in international humanitarian law and requests it to intensify its efforts in that regard and to extend them to police and prison personnel;

20. Decides to extend for one year the mandate of the Special Rapporteur to establish or continue direct contacts with the Government and people of Myanmar, including political leaders deprived of their liberty, their families and their lawyers, and requests him to report to the General Assembly at its forty-ninth session and to the Commission on Human Rights at its fifty-first session;

21. Urges the Government of Myanmar to cooperate fully and unreservedly with the Commission and the Special Rapporteur and, to that end, to ensure that the Special Rapporteur has effectively free access to any person in Myanmar whom he may deem it appropriate to meet in the performance of his mandate, including Daw Aung San Suu Kyi;



22. Requests the Secretary-General to provide the Special Rapporteur with all necessary assistance;

23. Decides to keep the matter under review at its fifty-first session under the agenda item "Question of the violation of human rights and fundamental freedoms in any part of the world, with particular reference to colonial and other dependent countries and territories".

### Resolutions adopted on the reports of the Third Committee

#### 49/197. Situation of human rights in Myanmar

Date: 23 December 1994  
Adopted without a vote

Meeting: 94  
Report: A/49/610/Add.3

#### The General Assembly,

Reaffirming that all Member States have an obligation to promote and protect human rights and fundamental freedoms as stated in the Charter of the United Nations and elaborated in the Universal Declaration of Human Rights,<sup>286</sup> the International Covenants on Human Rights<sup>287</sup> and other applicable human rights instruments,

Aware that, in accordance with the Charter, the Organisation promotes and encourages respect for human rights and fundamental freedoms for all and that the Universal Declaration of Human Rights states that "the will of the people shall be the basis of the authority of government".

Recalling its resolution 48/150 of 20 December 1993,

Recalling also Commission on Human Rights resolution 1992/58 of 3 March 1992,<sup>288</sup> in which the Commission, inter alia, decided to nominate a special rapporteur to establish direct contacts with the Government and with the people of Myanmar, including political leaders deprived of their liberty, their families and their lawyers, with a view to examining the situation of human rights in Myanmar and following any progress made towards the transfer of power to a civilian Government and the drafting of a new constitution, the lifting of restrictions on personal freedoms and the restoration of human rights in Myanmar,

Recalling further Commission on Human Rights resolution 1994/85 of March 1994,<sup>289</sup> by which the Commission extended for one year the mandate of the Special Rapporteur,

Gravely concerned that the Government of Myanmar still has not implemented its commitments to take all necessary steps towards democracy in the light of the results of the elections held in 1990,

<sup>286</sup> Resolution 217 A (III)

<sup>287</sup> Resolution 2200 A (XXI), Annex

<sup>288</sup> See Official Records of the Economic and Social Council, 1992, Supplement No. 2 (E/1992/22), chap. 11, sect. A

<sup>289</sup> Ibid., 1994, Supplement No.4 (E/1994/24), chap.II, sect. A

Gravely concerned also at the continued violations of human rights in Myanmar, as reported by the Special Rapporteur, in particular summary and arbitrary executions, torture, forced labour and forced relocations, abuse of women, politically motivated arrests and detentions, restrictions and fundamental freedoms, including the freedom of expression and assembly, and the imposition of oppressive measures directed in particular at ethnic and religious minorities,

Noting that the human rights situation in Myanmar has consequently resulted in flows of refugees to neighbouring countries, thus creating problems for the countries concerned,

Noting also the measures taken by the Government of Myanmar, including its accession to the Geneva Conventions of 12 August 1949<sup>290</sup> for the protection of victims of war, the conclusion of cease-fire agreements with several groups of ethnic and religious minorities in Myanmar, the withdrawal of its reservations to the Convention on the Rights of the Child<sup>291</sup> and the release of a number of political prisoners in response to the concerns expressed by the international community, including the General Assembly and the Commission on Human Rights,

Welcoming the cooperation between the Government of Myanmar and the Office of the United Nations High Commissioner for Refugees on the Voluntary repatriation of refugees from Bangladesh to Myanmar,

1. Expresses its appreciation to the Special Rapporteur of the Commission on Human Rights for his interim report,<sup>292</sup>
2. Also expresses its appreciation to the Secretary-General for his report;<sup>293</sup>
3. Deplores the continued violations of human rights in Myanmar;
4. Repeats its call on the Government of Myanmar to release unconditionally and immediately the Nobel Peace Prize Laureate Aung San Suu Kyi, who is now in her sixth year of detention without trial, and other political leaders and remaining political prisoners;
5. Welcomes the recent meetings between the Government of Myanmar and Nobel Peace Prize Laureate Aung San Suu Kyi, and encourages the Government of Myanmar to engage in a substantive political dialogue with Aung San Suu Kyi and other political leaders, including representatives from ethnic groups, as the best means of promoting national reconciliation and the full and early restoration of democracy;
6. Also welcomes the recent discussions between the Government of Myanmar and the Secretary-General, and further encourages the Government of Myanmar to continue to cooperate fully with the Secretary-General;

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<sup>290</sup> United Nations, Treaty Series, vol. 75, Nos. 970-973

<sup>291</sup> Resolution 44/25

<sup>292</sup> A/49/594 and Add.1, annex

<sup>293</sup> A/49/716

7. Again urges the Government of Myanmar, in conformity with its assurances given at various times, to take all necessary steps towards the restoration of democracy in accordance with the will of the people as expressed in the democratic elections held in 1990 and to ensure that political parties can function freely;

8. Notes with concern that most of the representatives duly elected in 1990 are still excluded from participating in the meeting of the National Convention, created to prepare basic elements for the drafting of a new constitution, and that one of its objectives is to maintain the participation of the armed forces in a leading role in the future political life of the State, and notes also that there is as yet no process nor timetable for concluding the national Convention;

9. Strongly urges the Government of Myanmar to take all appropriate measures to allow all citizens to participate freely in the political process in accordance with the principles of the Universal Declaration of Human Rights and to accelerate the process of transition to democracy, in particular through the transfer of power to democratically elected representatives.

10. Urges the Government of Myanmar to ensure full respect for human rights and fundamental freedoms, including freedom of expression and assembly, and the protection of the rights of persons belonging to ethnic and religious minorities, and to put an end to violations of the right to life and integrity of the human being, to the practices of torture, abuse of women, forced labour and forced relocations, and to enforced disappearances and summary executions;

11. Appeals to the government of Myanmar to consider becoming a party to the International Covenant on Civil and Political Rights<sup>294</sup> and the International Covenant on Economic, Social and Cultural Rights<sup>295</sup> and to the convention against torture and Other Cruel, Inhuman and Degrading Treatment or Punishment,<sup>296</sup>

12. Urges the Government of Myanmar to fulfil its obligations as a State party to the Forced Labour Convention 1930 (No. 29) and to the Freedom of Association and Protection of the Rights to Organise Convention 1984 (No. 87) of the International Labour Organisation;

13. Stresses the importance for the Government of Myanmar to give particular attention to conditions in the country's jails and to allow the International Committee of the Red Cross to communicate freely and confidentially with prisoners;

14. Regrets the recent harsh sentences meted out to a number of dissidents, including persons voicing dissent with regard to the procedures of the National Convention and persons sentenced, inter alia, for seeking to communicate with the Special Rapporteur;

15. Also regrets that, while a certain number of political prisoners have been released, many political leaders are still deprived of their freedom and their fundamental rights;

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<sup>294</sup> Resolution 2200 A (XXI), annex.

<sup>295</sup> Ibid.

<sup>296</sup> Resolution 39/46, annex.

16. Calls upon the Government of Myanmar to respect fully the obligations of the Geneva Conventions of 12 August 1949,<sup>297</sup> in particular the obligations in article 3 common to the Conventions, and to make use of such services as may be offered by impartial humanitarian bodies;

17. Expresses its concern at the attack by Myanmar army soldiers on the civilian refugee camp at Halockhani on 21 July 1994;

18. Encourages the Government of Myanmar to create the necessary conditions to ensure an end to the flows of refugees to neighbouring countries and to facilitate their speedy repatriation and their full reintegration, in conditions of safety and dignity;

19. Requests the Secretary-General to continue his discussions with the Government of Myanmar in order to assist in the implementation of the present resolution and in its efforts to achieve national reconciliation, and to report to the General Assembly at its fiftieth session and to the Commission on Human Rights at its fifty-first session.

20. Decides to continue its consideration of this question at its fiftieth session.

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<sup>297</sup>

United Nations, Treaty Series, vol. 75, Nos. 970-973.

Extract from April 1995 Report of IPU  
Committee on the Human Rights of Parliamentarians

D. PREVIOUS TREATMENT

1. The Committee examined for the first time the communications concerning the case of 63 elected members of the Pyithu Hluttaw at its 52nd session (March 1991). It noted that the alleged victims had the status of parliamentarians at the time of the alleged facts. It thus concluded that the two communications lodged with it were admissible and declared itself competent to deal with the case of the members of the Pyithu Hluttaw in accordance with the provisions of Section A of the Procedure.

2. At its 53rd session (April-May 1991), after a thorough study of the information on file, the Committee decided to bring the case to the attention of the Inter-Parliamentary Council.

3. On 4 May 1991, at its 148th session, the Council adopted a resolution whereby it noted that the parliamentarians mentioned in the communications had been elected to the Pyithu Hluttaw (People's Assembly) in the election of 27 May 1990, which were recognised as free and fair by the authorities of Myanmar and whose results were officially proclaimed.

The Council expressed concern at the fact that the twelve months that had already elapsed since the elections had not sufficed to complete the electoral review process and enable the Assembly, as the body representing the popular will, to meet.

In line with the above, the Council observed that failure to convene the Pyithu Hluttaw had the effect of preventing the elected members from discharging the mandate entrusted to them by their electors, who were thus deprived of representation.

The Council expressed grave concern at the fact that 62 elected members of the Pyithu Hluttaw had been imprisoned, some without charge or trial and others having received heavy sentences after summary trials. It recalled that any person deprived of freedom through arrest or detention had the right to lodge an appeal before a court in order that it might rule promptly on the legality of such detention; that should there exist specific charges against arrested or detained persons based on concrete facts, they should be formally charged and tried within the shortest possible time, enjoying therefore guarantees of a fair trial; and that, failing the existence of charges, they should be released forthwith.

The Council consequently invited the authorities of Myanmar to convey to it any clarification on the situation of the elected members of the Pyithu Hluttaw.

It was noted with regret by the Council that an elected member of the Pyithu Hluttaw had died in prison and that no details had been received regarding the causes of his death in response to requests on the matter made by the Committee; the

Authorities of Myanmar had therefore been requested to state whether a post-mortem examination and an inquest had been carried out and to notify its results.

4. As the prevailing situation remained unchanged and the authorities insisted on the argument based on the need to verify the results of the election in order to justify the non-convening of the Pyithu Hluttaw, at its 149th session (12 October 1991), the IPU Council adopted a resolution pointing out that such argument could no longer reasonably be invoked as an excuse. It also considered that failure to convene the People's Assembly revealed the intention of the authorities of the Union of Myanmar to evade the outcome of the election.

5. In the light of the information transmitted to it, the Committee adopted a decision at its 56th session (January 1992) whereby it noted that several parliamentarians elected in May 1990 would be disqualified and thus deprived of the mandate received from the electorate through the application of Order 4/91 amending the Pyithu Hluttaw Election Law, enacted retroactively. It pointed out that those amendments were contrary to the principle embodied in Article 11 of the Universal Declaration of Human Rights.

The Committee regretted that the authorities of the Union of Myanmar had not responded favourably to the request made by the Inter-Parliamentary Council in its resolution of 12 October 1991 that a mission of the Inter-Parliamentary Union be allowed to make an on-site visit.

Noting that the authorities of the Union of Myanmar had given their co-operation with the United Nations Commission on Human Rights as a justification for their decision, the Committee felt that they could not plead that co-operation as a reason for failing to respond to the concern shown by the worldwide inter-parliamentary community with regard to the fate of some of its members.

6. At its 150th session (April 1992), the Council adopted a resolution along the same lines; it did, however, go further and denounced the political will of the authorities of the Union of Myanmar to evade the outcome of the election by failing to convene the Pyithu Hluttaw.

In that same resolution, the Council urged the authorities of the Union of Myanmar to reconsider their decision and co-operate with the Committee, authorising the IPU mission to travel to the country.

7. At its 58th session (July 1992), the Committee took note with satisfaction of the announcement of the release of detained parliamentarians and hoped to receive confirmation of their release. It expressed concern over the prospect of the convening of a National Conference in place of the Assembly freely elected by the people on 27 May 1990, and particularly over the fact that the debarred parliamentarians would not be able to represent their electors in accordance with the mandate entrusted to them by those voters. Lastly, the Committee remained deeply concerned over the fate of the parliamentarians who were still imprisoned.

8. Echoing these concerns, the Council, at its 151st session (September 1992) recalled the importance it attached to the carrying out of an on-site mission and insisted that the authorities of the Union of Myanmar should reconsider their decision.

9. At its 60th session (February 1993), the Committee expressed deep concern at the fate of the parliamentarians still imprisoned, and sought information about them. It regretted that the authorities of Myanmar had not supplied the particulars requested or authorised an on-site mission of the Inter-Parliamentary Union for the purpose of gathering further details of the case. It decided to insist on those two demands, stressing that, failing information on positive developments, the Committee would be obliged to recommend to the Council that it conclude from the silence of the authorities of Myanmar and their refusal to allow an on-site mission that the allegations are substantiated, and that the human rights of the members of the Pyithu Hluttaw still detained had been gravely violated.

10. At its 152 session (April 1993), the Inter-Parliamentary Council, regretting that the authorities of Myanmar had neither provided details about the conditions of detention of the imprisoned parliamentarians nor authorised an on-site mission of the Inter-Parliamentary Union to gather further information concerning the case, reiterated its concerns and insisted that the authorities should reconsider their decision. More particularly, it requested information on the circumstances of Mr. Tin Maung Win's death in prison. Lastly, the Council urged all National groups to contact the authorities of the Union of Myanmar in support of the resolution and to encourage their governments to take similar steps.

11. The Committee was seized of the case of Mr. Hla Pe at its 62nd session (July 1993) and declared it admissible. It then recalled the concerns repeatedly expressed by the Inter-Parliamentary Council on this case of the parliamentarians of Myanmar. In its decision, the Committee took note of the alleged disappearance of Mr. Hla Pe who was living in exile in Bangkok, and decided to contact the National Group of Thailand to obtain information on this matter, particularly concerning any inquiry that might have been carried out by the competent Thai authorities regarding that disappearance. It further recalled the alleged murder of Mr. Win Lo in the People's Republic of China, and decided to contact the National Group of China to obtain information concerning any enquires that might have been carried out by the competent authorities of that country with regard to that murder. The Committee expressed the wish that the authorities of Myanmar would be able to receive a mission of the Inter-Parliamentary Union, thus enabling the IPU to gather objective and precise information on the spot concerning the situation of the imprisoned parliamentarians. It finally entrusted one of its members with contacting the Minister of Foreign Affairs of his country to ask him to support that hope of the Union with the authorities of Myanmar.

12. At its 153rd session (September 1993), the Inter-Parliamentary Council took note of the arrest of Dr. Aung Khin Sint and the accusations brought against him. The Council wished to obtain information from the Thai National Group regarding the alleged disappearance of Mr. Hla Pe, as well as information from the Chinese National Group regarding the alleged assassination of Mr. Win Ko. Furthermore, the Council reiterated its concern regarding the situation of the parliamentarians who were on the Committee's list, and expressed the hope that the authorities of Myanmar would receive a mission of the Inter-Parliamentary Union.

13. The Committee was seized of the Cases MYN-69 to MYN-81 at its 64th session (January 1994), and having deemed them admissible, it decided to combine

them with that of the other parliamentarians. Given the present state of the file the Committee decided to adjourn the study of this case to its next session pending receipt of the clarifications to be obtained from the sources and from the authorities of Myanmar concerning the individual situations of the parliamentarians concerned so that it may then approach the entire file from a fresh angle.

14. At its 154th session (March 1994), the Inter-Parliamentary Council deplored the death of Mr. Hla Pe and the murder of Mr. Win Ko. It requested the Secretary General to resume contact with the National Groups of China and Thailand to obtain information concerning any inquiries that might have been carried out by the competent authorities of those countries with regard to these murders.

The Council remained deeply concerned at the fate of the parliamentarians who were still imprisoned, and desired to ascertain their present conditions of detention and the prospects for their release. It also deeply regretted that the authorities of Myanmar had neither provided details about the conditions of detention of the imprisoned parliamentarians nor authorised an on-site mission of the Inter-Parliamentary Union to gather further information concerning that case and hoped that they would be able to receive a mission of the Inter-Parliamentary Union, thus enabling the IPU to gather objective and precise information on the spot concerning the situation of the imprisoned parliamentarians. It appealed in the strongest terms to all National Groups to contact the authorities of the Union of Myanmar in support of the resolution, to encourage their governments to take similar steps, and to inform the Committee on the Human Rights of Parliamentarians of their approaches and of any results obtained.

15. At its 66th session (July 1994), the Committee declared itself competent to take up the case of Maung Maung Aung and decided to merge it with the other cases (case MYN/82). The Committee asked the authorities to verify the information contained in the latest list on the situation of the MPs-elect under review. The Committee further reiterated the concerns expressed in the Council's Paris resolution and the wish that the IPU mission may finally be carried out.

16. At its 67 session (September 1994), the Committee once again submitted the case to the IPU Council, which adopted a resolution on the matter. It pointed out that the information provided by the authorities at different times did not coincide and, in some cases, was at variance with information provided by the sources. It therefore wished to obtain detailed information on the situation of those concerned. It was shocked at the recent arrests of MPs-elect and considered that to be an indication that SLORC had no intention of changing its ways. The Council considered further that the National Convention convened by SLORC on 9 January could in no way be regarded as a step towards the restoration of democracy. It reiterated its wish to send an on-site mission to Myanmar and appealed again to all National Groups to take action in support its resolution. Finally, it requested any MP visiting Myanmar on official business to make firm representations to the authorities regarding respect for human rights in general and to ensure that their visits were not exploited by the authorities.

17. At its 68th session (January 1995) the Committee reaffirmed its indignation that, more than 4 years after the elections, the authorities of the Union of Myanmar continued to ignore the outcome of the election and reiterated in this respect that the National Convention could in no way be regarded as a step towards democracy. It



reiterated the concerns expressed by the Council in its Copenhagen resolution on the matter and its wish that an on-site mission be authorised by the Myanmar authorities. It requested the authorities to verify the list on the situation of the MPs-elect under review.

## **COMMITTEE ON THE HUMAN RIGHTS OF PARLIAMENTARIANS**

### **MYANMAR**

#### **Parliamentarians still detained:**

Case No - MYN/01 Ohn Kyaing

Case No - MYN/08 Tin Htut

Case No - MYN/10 Win Hlaing

Case No - MYN/13 Naing Naing

Case No - MYN/26 U Hla Tun

Case No - MYN/28 Tin Aung Aung

Case No - MYN/36 Myin Naing

Case No - MYN/41 Zaw Myint

Case No - MYN/42 Mya Win

Case No - MYN/50 Wan Maung

Case No - MYN/53 Hla Tan

Case No - MYN/60 Zaw Myint Mung

Case No - MYN/71 Kyi Myint

Case No - MYN/72 Saw Win

Case No - MYN/73 Fazal Ahmed

#### **Parliamentarians deceased:**

Case No MYN/55 - Tin Maung Win

Case No MYN/66 - Win Ko

Case No MYN/67 - Hla Pe

List of Parliamentarians	Constituency	Arrest	Sentence (Authorities)	Sentence Source	Current Situation Source	Current Situation Authorities
MYN/01 U. OHN KYAING	Mandalay Southeast 2	7/9/90	7 & 10 years		released 15/3/95	still in detention
MYN/02 U. KYI MAUNG	Bahan 2	6/9/90	10 & 10 years		released	released (26/4/92)
MYN/03 U. CHIT KHAING	Taungtha 1	6/9/90	7 & 10 years	10 years	released (29/4/92)	released (1/5/92)
MYN/04 KHIN MAUNG SWE	Sanchaung	23/10/90	10 years	10 years	released (15/5/92)	released (25/4/92)
MYN/05 U. CHAN AYE	Moulmein 2	23/10/90	7 years	10 years	released (20/5/92)	released (20/5/92)
MYN/06 U. SOE THEIN	Waw 2	23/10/90	10 years	10 years	still in detention	still in detention
MYN/07 U. KYAW MIN	Bassein West 2	23/10/90	7 years	10 years	released (29/4/92)	released (1/5/92)
MYN/08 U. TIN HTUT	Einme 1	23/10/90	25 years	10 years	still in detention	still in detention
MYN/09 SEIN HLA OO	Insein 2	24/10/90 + /or	7 years	7 or 10 years	still in detention	still in detention
MYN/10 U. WIN HLAING	Taikon 2	15/5/91	7 years			
MYN/11 VICTOR CLYDE	Thandaung 2	25/10/90	4 years	not known	released (27/5/92)	released (27/5/92)
MYN/12 COL. MYO AUNG	Tavoy 2	25/10/90	10 years		released (25/4/92) CT	released (25/4/92)
MYN/13 Saw NAING NAING (a.k.a NAI NAI)	Pazundaung	25/10/90	10 years		still in detention	still in detention
MYN/14 U. MAUNG MAUNG	Ye-kyi 2	25/10/90	10 years	not known	released (26/4/92) C	released (13/5/92)
MYN/15 HLAUNG NI (a.k.a. Dr MAUNG MAUNG LATT)	Thaketa 1	.../10/90 and / or 13/12/91		25 years	released 27/1/95	released 4/2/95
MYN/16 U. THA SAING =MYN/55	Twante 1	.../1/90		25 years	released (2/6/92)	released (2/6/92)
MYN/17 TUN AUNG	Yedashe 2	.../1/90	10 years	25 years	released (27/5/92)	released (27/5/92)
MYN/18 THEIN TUN	Thegon 2	.../1/90	25 years	25 years	released (27/5/92)	released (27/5/92)
MYN/19 Daw. SAN SAN WIN	Ablone	10/1/90	25 years	25 years	released (29/4/92) T	released (1/5/92)
MYN/20 U. KYAW THWIN	Kayan 1	16/1/90	25 years	10 years	released 27/1/95	released 4/2/92
MYN/21 KHIN MAUNG THEIN	Khin-U1	21/1/90	25 years		released (2/6/92)	released (2/6/92)
MYN/22 MYINT KY	Karha	27/1/90	25 years		released (4/6/92)	released (4/6/92)
MYN/04 KHIN MAUNG SWE	Sanchaung	4/8/1994 (6/10/1994)	7 years		in detention	in detention
MYN/09 SEIN HLA OO	Insein 2	4/8/1994 (6/10/1994)	7 years		in detention	in detention

List of Parliamentarians	Constituency	Arrest	Sentence (Authorities)	Sentence (Source)	Current Situation Source	Current Situation Authorities
MYN/23 AUNG SAN MYINT	Myaing 1	.../1/90	25 years		released (29/6/92)	released (29/6/92)
MYN/24 THAKIN SOE MYINT = MYN/76	S. Okkalapa 1				released	not on prison list
MYN/25 Daw. SAN SAN	Seikan	23/10/90 - 01/91	25 years		released (29/4/92)	released (1/5/92)
MYN/26 U.HLA TUN	Kenandine	3/0/91	10 years	25 years	still in detention	released 4/2/95
MYN/27 Dr. SOE LIN	Mandalay Southwest 1	.../1/90	25 years	10 years	released 6/2/95	released 4/2/95
MYN/28 U. TIN AUNG AUNG	Mandalay, Northwest 1	.../1/90	25 years	10 years	still in detention	still in detention

MYN/29 Dr. ZAW MYINT AUNG	Amarapura 1	.../1/90	25 years			still in detention	still in detention
MYN/30 BA BWA	Amarapura 2	23/10/90 - 01/91	25 years			released (4/5/92)	released (4/5/92)
MYN/31 OHN KYI	Myittha	23/10/90 - 01/91	25 years			released (4/5/92)	released (4/5/92)
MYN/32 U. YE HTUT	Daik-U 1	23/10/90 - 01/91	25 years			released (27/5/92)	released (27/5/92)
MYN/33 U. THAUNG MYINT	Khin-U 2	23/10/90 - 01/91	25 years			released (4/6/92)	released (4/6/92)
MYN/34 Daw KHIN SAN HLAING	Weitset 2	23/10/90 - 01/91	25 years			released (4/5/92)	released (4/5/92)
MYN/35 SAW HLAING	Indaw	23/10/90 - 01/91	25 years			released (27/5/92)	released (27/5/92)
MYN/36 Dr. MYINT NAING	kabalu 2	23/10/90 - 01/91 5/1/92	25 years		10 years	still in detention	still in detention
MYN/37 THEIN PE	Kambalu 1	23/10/90 - 01/91	not known		not known	released (27/5/92)	released (27/5/92)
MYN/38 Saw. CHIT THAN	Pa-an 1	16/01/91	10 years		not known	released (26/4/92)	released (26/4/92)
MYN/39 CHIT TIN	Min Hla	23/10/90 - 01/91	10 years		25 years	released (29/6/92)	released (29/6/92)
MYN/40 U.KHIN MAUNG WIN	Okdwin 2					released (11/5/92)	released (11/5/92)
MYN/41 Dr. ZAW MYINT	Henzada 2	23/10/90 - 01/91 28/12/91	25 years			still in detention	still in detention
MYN/42 U. MYA WIN	Ingapu 1	23/10/90 - 01/91 and/or 13/12/91	25 years (10 years)		25 years	still in detention	still in detention
MYN/43 HLA PE = MYN/67	Launglon 1	16/01/91	10 years		not known	released (25/4/92)	released (25/4/92)
MYN/44 Col. SOE THEIN	Sagaing 1	16/01/91	10 years		10 years	released (25/4/92)	released (29/4/92)
MYN/45 TIN AYE	Mandalay, NE 2	16/01/91	10 years		not known	released (26/4/92)	released (26/4/92)
MYN/46 KHIN MAUNG TUN	Himawbi 2	16/01/91	10 years		not known	released (25/4/92)	released (25/4/92)
MYN/47 THAN THAN SEIN (possibly U. THAN SEIN)	Pa-le 1		---		---	not arrested (in exile-India)	not on prison list
MYN/48 U. MYA LAY	Kawa 2		---		---	neither arrested nor detained	not on prison list
MYN/49 Dr. KYI MIN	Pakoku 1	.../12/90	---		---	released	not on prison list
MYN/50 U. WAN MAUNG	Tatkon 1	---	---		3 years	still in detention	never detained
MYN/51 U. THAN NYEIN							never detain. or arrest
MYN/52 U. YU GAN							never detain. or arrest
MYN/53 U. HLA THAN	Cocos Islands	23/10/90	25 years			still in detention	still in detention
MYN/54 U. TIN MAUNG WIN	Kayan 2	23/10/90	5 years			died in detention (Insein 18/1/90)	died of cancer in hospital prison 18/1/91
MYN/56 U. SEEN WIN	Dalla	28/10/90	---		---	released	not on prison list
MYN/57 U. MAUNG MAUNG KYAW	Botiahtung 1	12 months	---		---	released	released (27/4/92)
MYN/58 U. KYI WIN	Mingaladon 1	.../10/90	5 days			released	not on prison list
MYN/59 U. NAY OO							never detain. or arrest
MYN/60 U. SAW MYINT MAUNG	Amarapura 1	28/12/91	10 years			still in detention	still in detention
MYN/61 U. OHN MYINT	Bok Byin/Thaketa 1?		2 weeks (5 years - 28/7/89)			released	released on 9/4/93
MYN/62 Khun. PE HITWE (a.k.a. Khun YADANA HAWNG)	Taunggi 2	late 1990 early 1991	---		---	released	not on prison list
MYN/63 U. THAUNG TIN	Paypon 1	---	---		---	not arrested	not on prison list
MYN/64 DAVID HLA MYINT	Ngapudaw	.../01/91	6 months		1 year	released (26/6/91)	released (26/6/91)

MYN/65 U. AUNG KYI NYUNT	Chaung Zone 1	mid - 1990							released (11/4/92) not on prison list
MYN/66 U. WIN KO	Ye - U 2								released (11/4/92) allegedly assassinated in China
MYN/67 U. HLA PE	Pyawbwe 2								found dead in Thailand =MYN/43
MYN/68 Dr. AUNG KHIN SINT	Mingala Taunggyunt 1	3/8/93	20 years						released 4/2/95
MYN/70 U. TIN SOE	Kyauktada, Rangoon	25/8/93	2 years						still in detention
MYN/71 U. KYI MYINT	Latha	...7/8/93	20 years						still in detention
MYN/72 U. SAW WIN	Hulin	12/12/91	11 years						still in detention
MYN/73 FAZAL AHMED	Maungdaw 2	.../6/92	2 years (5 years - 15/3/93)						reportedly released - date not known
MYN/74 Nai. TUN THEIN	Thanbyzayat 2	.../12/91	10 years						reportedly released - date not known
MYN/75 Dr. HLA WIN	Kyaunggon 2		not known						not on prison list
MYN/76 U. SOE MYINT (a.k.a U. TIN TUN MAUNG)	Mingaladon 2 mingaladon 2		not known						reportedly not detained reportedly not detained
MYN/77 R.P. THAUNG	Thandaung 1	.../02/91 28/12/91	5 years						released 21/6/1994
MYN/78 U. MAUNG MAUNG LAY	Thazi 2	.../12/92	5 years						still in detention
MYN/79 U. SOE NYUNT	Kyauktan 2	28/10/90	7 years						released 4/2/95
MYN/80 Lt-Col. KYAW HSAN	Da-ze 1	.../12/91	7 years						released 4/2/95
MYN/81 NAING THAUNG NYUNT (a.k.a. Nai. THAUNG NYUNT	Paung 2 Paung 2)	not known							still in detention
MYN/82 MAUNG MAUNG AUNG	paeban	.../12/92	5 years						not on prison list never prosecuted or imprisoned released on 3/12/92
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## Election Results, May 1990

The following table lists the Hluttaw representatives who won the 27 May 1990 multi-party general election by respective political parties or individual and percentages.

1. Chin National League for Democracy (CNLD), 3 seats, 0.6%
2. Democratic Organisation for Kayan National Unity (OKUN), 2 seats, 0.4%
3. Democracy Party (DP), 1 seat, 0.2%
4. Graduates and Old Students Democratic Association (GOSDA), 1 seat, 0.2%
5. Independent, 6 seats, 1.2%
6. Kamans National League for Democracy (KNLD), 1 seat, 0.2%
7. Kachin State National Congress for Democracy (KSNCD), 3 seats, 0.6%
8. Kayah State Nationalities League for Democracy (KSNDL), 2 seats, 0.4%
9. Karen State National Organization (KSNO), 1 seat, 0.2%
10. Lahu National Development Party (LNDP), 1 seat, 0.2%
11. Mro (or) Khami National Solidarity Organization (MKNSO), 1 seat, 0.2%
12. Mon National Democratic Front (MNDF), 5 seats, 1.0%
13. Mara People Party (MPP), 1 seat, 0.2%
14. National Democratic Party for Human Rights (DPHR), 4 seats, 0.8%
15. Naga Hills Regional Development Party (NHRDP), 2 seats, 0.4%
16. National League for Democracy (NLD), 392 seats, 80.8%
17. National Unity Party (NUP), 10 seats, 2.1%
18. Party for National Democracy (PND), 3 seats, 0.6%
19. Patriotic Old Comrades League (OCL), 1 seat, 0.2%
20. Rakhine Democracy League (RDL), 11 seats, 2.3%

21. Shan Nationalities League for Democracy (SNLD), 23 seats, 4.7%
22. Shan State Kokang Democratic Party (SSKDP), 1 seat, 0.2%
23. Ta-ang (Palaung) National League for Democracy (TNLD), 2 seats, 0.4%
24. Union Danu League for Democracy Party (UDLDP), 2 seats, 0.2%
25. Union Nationalities Democracy Party (UNDP), 1 seat, 0.2%
26. United Nationalities League for Democracy (UNLD), 1 seat, 0.2%
27. Union Paoh National Orangization (UPNO), 3 seats, 0.6%

**Benchmarks**

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At the 1994 ASEAN Ministerial Conference Senator Evans identified a series of possible benchmarks which might govern Burma's recent entry into international forums

- the unconditional release of Aung San Suu Kyi;
- the commencement of a serious dialogue between the SLORC and Aung San Suu Kyi about the political and constitutional evolution of the country;
- access to political prisoners by the International Committee of the Red Cross, UN Special Rapporteur and other outsiders;
- a review and reduction of sentences imposed for political activity;
- significant progress in the proposed dialogue between the SLORC and the UN;
- a clear timetable for the constitutional process with delegates able to participate more freely;
- agreement by the SLORC to the inclusion of transitional provisions in the new constitution permitting further constitutional development;
- the provision of legal guarantees for the rights of the ethnic minorities;
- the cessation of forced labour and portage beyond what are traditional practices; and
- the repeal of censorship and state protection legislation.





## **Dissenting report by Senator Margetts**

The report contains a number of recommendations which address the issue of Australia-Burma relations in light of the release of Daw Aung San Suu Kyi. The report rightly notes that her release, in itself, is not an indication that the military regime in Burma will now recognise the rights and freedoms which are expected in countries which are members of the United Nations and signatories to the Charter.

However, a number of recommendations are based on what could best be described as a policy of 'limited constructive engagement'. These recommendations assume that Australia and Burma are in dialogue at a high, if not ministerial, level. It is evident that the SLORC makes wide use of each and every opportunity for such contact for its international propaganda purposes. This has been shown with visits by United States congressmen and former Australian Prime Minister Hawke.

### **Recommendation 1:**

**That any ministerial level contact be limited to those occasions when the Australian Foreign Minister and ministers of the Burmese regime are present at multilateral fora outside Burma such as the ASEAN ministerial meeting, or at the United Nations.**

In July 1994, the Minister for Foreign Affairs, Senator Evans announced a series of 'benchmarks' by which progress in Burma would be measured. The Committee acknowledges that the only benchmark which has been met is that which called for the release of Daw Aung San Suu Kyi. Indeed, in other benchmark categories, it can be argued that the SLORC is acting with greater harshness and brutality. Recent reports from Amnesty International about conditions in prisons and labour camps have not improved. Similarly, the decision of the International Committee of the Red Cross to leave the country indicates a situation of the utmost gravity.

In this situation it would be intolerable for Australia to give, or be seen to be giving, any signs of legitimacy to the SLORC in the international arena.

### **Recommendation 2:**

**That the Australian government 'hold the line' on the benchmarks and not resume ministerial contact (other than as described in Recommendation 1, above) until significant progress is made on the benchmarks.**

Despite the fact that estimates from some sources indicates that as much as 60% of the heroin imported into Australia comes from Burma, the report makes scant mention of the level of this trade. I believe that a greater degree of public opinion in Australia could be mobilised against the SLORC if this were made known. It would also assist in mobilising public opinion in support of the reports recommendations in relation to the drug trade.

### **Recommendation 3:**

**That the Australian government inform the public of the major sources of heroin being imported into Australia as a means of mobilising public opinion against the SLORC.**

The report recommends (Recommendations 19 to 22) that the Australian government press the SLORC in relation to democratic reforms. As with earlier recommendations, this assumes a high level dialogue. I would argue that the greatest pressure which can be put on the SLORC in this matter is for the international community to recognise the legitimate place of Daw Aung San Suu Kyi in the same way as Nelson Mandela's leadership in South Africa was recognised long before his release from prison.

Clearly, as Ms Suu Kyi is not willing to leave Burma for fear of not being able to return, it would not be appropriate to press other countries to invite her. Nor would it be appropriate to insist that she be invited to such fora as the ASEAN ministerial meeting. It is crucial that the international community follow her lead in relation to dialogue between the SLORC and the legitimate democratic leadership in Burma.

### **Recommendation 4:**

**That the Australian government urge the United Nations and individual countries to recognise Daw Aung San Suu Kyi as the rightful leader of a democratic government of Burma and establish contact with her.**

**That, in the event that government officials plan to visit Burma, such visits are predicated on the itinerary including a meeting with Ms Suu Kyi prior to, and following, discussions with the SLORC.**

The report (Para 6.24) splits hairs on the status of the Austrade office in Rangoon. There is no effective difference between the United States' employment of its own nationals in a trade officer capacity in Burma and the Australian position of engaging local employees. Similarly, the production of a Country Economic Brief by the Department of Foreign Affairs and Trade is not consistent with the government's stated policy of neither encouraging nor discouraging investment and trade. As the Brief does not contain a human rights assessment, nor refer readers to the government's foreign policy stance on Burma, a company contemplating doing business in Burma will accept the Brief as a sign of legitimacy for such activity. It is ingenuous to suggest that the Brief is not intended to provide a full country profile and that companies would not assume that it is a full guide to foreign policy.

### **Recommendation 5:**

**(a) That the Austrade office in Rangoon be closed until such time as significant progress is made on the benchmarks released by the Minister for Foreign Affairs in 1994;**

**(b) That the Country Economic Brief on Burma be withdrawn from circulation.**

The report notes that Australian businesses should be encouraged to act as good corporate citizens in relation to obligations in the areas of Australian law, human rights and environmental obligations (Recommendation 30). I believe that this matter could be taken a step further by means of the development of a code of practice for Australian businesses as is suggested in the text (p101) but not taken up in the recommendations.

**Recommendation 6:**

**That the Australian Securities Commission be given a reference to conduct an inquiry with a view to creating a code of practice covering such matters as international law, international treaties and conventions, human rights and environmental obligations for Australian businesses operating outside Australia.**

**Conclusion:**

There are some fundamentals which Australia should keep in mind at all times in relation to Burma. These have been addressed in recommendations in this dissenting report. The key to these is that in the matter of dialogue with the SLORC, the international community should take its lead from Daw Aung San Suu Kyi and not move to greater levels of dialogue than she is willing to engage in herself.

Senator D Margetts

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