



Legal Journal on Burma

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Burma Lawyers' Council
P.O Box 14
Ngam Wong Won P.O
Nonthaburi 11001
Thailand

Email : blcsan@ksc.th.com>
Website : www.blc-burma.org

Burma Lawyers' Council

Legal Journal on Burma

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The BLC Publication Team

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PREFACE

Legal Issue on Burma (L.I.O.B). turns 10 years old from this issue but in a different name “Legal Journal on Burma” We owe an explanation to our readers for the change in name and size and apology to its founders. The change in name has been propelled by changes that have taken effect since the birth of the first issue in 1997. Enormous changes have taken place round the world and also in the democracy movement of our country, Burma. The Journal was the creation of a few founders of the BLC Lawyers by profession, who fled the country to escape from the dragnet of the military dictatorship. The need of the hour at that crucial stage was to focus on “Legal Issues” which confronted the people having been brought down under military dictatorship by its brute force. The pro-democratic movement under exile leaders and leaders inside the country took deeper roots. 1990 election and landslide victory of the democratic forces widened the spectrum of the main stream politics.

The lawyers could not remain confined strictly to legal issues. Many Socio economic problems emerged which needed legal interpretation. Slowly in its journey the journal moved into the wider arena. It recorded all the changes and struggles. The change of name is thus more to formalize the broad spectrum in which law is centrifugal. Hopefully with the end of military dictatorship and transition to democracy, the journal will be able to take care of varieties of problems which will be thrown up by historical changes. The collapse of military rule will lead to disappearance of junta. The change is a process of preparation for the future. The change in size is to make it even with our Burmese Journal and lessen the burden in our potential funders. It is with gratitude that we B.L.C acknowledge the pioneering service Friedrich

Naumann Stiftung (F.N.S) has rendered to the cause of the rule of law. Also to the contributors of our journal with expectation that they will continue co-operation.

We are getting ready to be held accountable. The lawyers will have to play a critical role in democratization of the country, nation building from legal aspect and putting the country under the rule of law banishing military rule for ever. The on- going National Convention and the road map has become a focal point in Burmese politics. The country has been ruled without a constitution for nearly half a century. The future constitution of Burma should evolve all inclusive processes focusing on the debate amongst the people. The journal may play a crucial role in exposing the merits and demerits of junta's constitution and its making processes. More importantly, the other major issues of society will also be scrutinized from legal aspect and reported to the international community as the cause has become socio- legal. Our Legal Journal on Burma hopes to meet the aspirations of the people.

Publication Team

Self-determination and the law

Venkat Iyer

Given the prominence and frequency with which issues of self-determination feature in debates concerning a post-SPDC Burma, some reflections on the complex legal questions thrown up by this rather elusive concept are probably in order. Two recent collections of essays on the subject offer valuable food for thought.

The first,¹ a volume in honour of the British academic and leading specialist on minority rights, Patrick Thornberry, addresses a number of issues, including the meaning and scope of the “right to self-determination” and the conceptual difficulties surrounding this right. The subject is, as one of the editors pertinently notes at the outset, riddled with contradictions, especially when it comes to implementation.

For many years since its formal recognition in international law, the right to self-determination was equated with the right of people living under foreign rule to free themselves of their colonial yokes. (This concept was later extended to cover the situation in South Africa where under the policy of *apartheid* the majority black population was denied meaningful participation in government.) The methods by which self-determination could be achieved were elaborated in the 1970 Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States,² viz. (a) establishment of a sovereign and independent state; (b) free association with another state; (c) integration with another state; or (d) emergency into any other political status freely determined by a people.

The Cold War saw a subtle shift in emphasis, with greater attention being paid to the internal aspects of self-determination. The aim here was to promote democracy, free elections and other participatory structures within the former Soviet Union. But with the fall of the Berlin Wall, the priorities changed again: it now became imperative to discourage the secessionist pressures that

had been unleashed in many of the former Soviet states. The right to self-determination was, consequently, interpreted as exercisable only within the confines of territorial integrity.³ The international community's disfavour of secession was brought out most explicitly by the UN Committee on the Elimination of Racial Discrimination which categorically declared that "international law has not recognised a general right to peoples unilaterally to declare secession from a State".⁴

Secession

But that has not prevented many commentators as well as activists from insisting that a right to secede is an integral part of the right to self-determination. Their arguments are bolstered by many *de facto* triumphs of the secessionist cause, e.g. the creation of new independent states in what used to be the Soviet bloc, and the disintegration of the former Yugoslavia. These developments have been seen as evidence of a growing gap between the theory and practice of the right to self-determination.

Academic commentators who subscribe to the pro-secessionist view of self-determination have been careful not to express themselves in absolutist terms. As Alexandra Xanthaki explains:

Even authors who recognise that a right to secession may exist insist on the level of human rights violations that would activate secession: a 'people' must be persistently and egregiously denied political and social equality as well as the opportunity to retain their cultural identity; exploitation or discrimination must be systematic and must constitute in real terms colonial or alien domination. Other conditions that must be fulfilled include: that the claimants must inhabit a well-defined territory which overwhelmingly supports separatism; that secession is a realistic prospect of conflict resolution and peace; and that all other political and diplomatic avenues have been seriously examined.⁵

Quite clearly, a global consensus on this thorny issue is far from imminent. If anything, the waters around self-determination have been muddied even more in recent years by claims that the concept should be given a wider meaning to include, among other things, a right of a people to pursue their own economic, cultural and social development, a right to particular political and legal systems, and, bizarrely, even a right to "ethnic cleansing".

Autonomy

Far less controversial, as a manifestation of self-determination, is the idea of internal autonomy. This idea has been used quite pervasively to manage ethnic, religious, linguistic and other tensions in a number of divided societies over the years, albeit with varied results, as the second volume under review testifies.⁶ Autonomy, of course, has many dimensions – the most obvious being *territorial* and *personal* – but the “right” to autonomy is not without its complications.

At its simplest, autonomy denotes self-government but without the legal incidents of independent statehood. The concept of self-government has enjoyed international recognition since at least the founding of the UN Charter; there is, however, no legal “right to autonomy” as yet.⁷

The advantages of autonomy over other forms of minority rights protection have been well documented. Not only do autonomy regimes allow ethnic, linguistic and other groups to realise their individual and collective aspirations without fragmenting existing nation-states, but they also provide minorities with the democratic space necessary to play a meaningful role in politics and public affairs within fractious societies. But autonomy is not without its disadvantages. Hans-Joachim Heintze identifies a number of them in his contribution to the present volume: the conferment of a special status on minority groups – which is an inevitable characteristic of autonomous regimes – often results in discouraging the development of overlapping and inclusive identities; the concentration of minorities in discrete territorial units impedes the operation of the free market; the differential treatment accorded to minority groups (solely on account of their belonging to an autonomous group) often leads to growing resentment by other groups and to internecine conflicts; and so on.⁸ In Heintze’s view, therefore:

autonomy is not automatically a recipe for success. It is only one part of conflict resolution and has to be combined with other measures according to the circumstances of the case. It must be backed by the political will of the partners to make autonomy a success.⁹

An even stronger critique of autonomy that finds repeated mention in academic and professional writings on the subject is that

autonomy is but the thin end of the secessionist wedge. Hurst Hannum addresses this issue in a perceptive, if rather brief, essay. He draws attention to a not uncommon trend in global politics which has worrying implications for those who value the territorial integrity of existing states:

While autonomy may respond to assertions for greater rights by an ethnic or other minority, the political elements contained within most autonomy regimes go far beyond those traditionally considered to be essential to protect minority cultures. Minority rights are still understood as responding primarily to those elements which define minorities themselves, i.e. the need to retain control over and develop their language and culture, practise their own religion, and influence or control the education of their children. In a word, minority rights are about minority identity, not (until recently) about greater political power.¹⁰

The experience of a number of countries bears out the truth in Hannum's warning. Autonomy, he argues, should not be used indiscriminately, but only where it is likely to achieve compelling over-riding objectives such as ending violent conflict or ensuring widespread human rights protection. Much will depend on the peculiar circumstances of each case:

If the goal of the international community is to reward those who fight by the rules and punish those who do not, assuming that autonomy is an appropriate solution (as opposed to lesser minority rights protection) may unfairly strike a middle course where the 'bad guys' belong to the minority. Should we, for example, reward terrorist violence by members of aggrieved groups, even if the government offers reasonable responses to their demands? Once violence occurs, should we require fundamental constitutional changes in a state, rather than merely the guarantee of recognised rights (including minority rights) to all, without discrimination? Again, perhaps the answer should depend on the actions of the respective parties in either initiating or responding to violence, not upon nebulous claims of sovereignty or ethnic self-determination.¹¹

Conclusion

The books reviewed here – and a number of other similar recent works – illustrate the highly complex nature of self-determina-

tion and the accommodation of minority rights in pluralist societies. One message that comes through loud and clear is that problems of this kind are not susceptible to easy solution, contrary to the glib certitudes offered by some armchair experts. Those involved in charting a new course for Burmese politics – in a post-SPDC phase – will do well to heed the lessons thrown up by other societies which have had to grapple with similar dilemmas in recent years.

[Dr. Venkat Iyer, Barrister, is a Senior Lecturer in Law at the University of Ulster, U.K.]

¹ Nazila Ghanea and Alexandra Xanthaki (eds.), *Minorities, Peoples and Self-Determination* (Leiden: Martinus Nijhoff, 2005).

² UNGA Res. 2526.

³ See, e.g. the Vienna Declaration and Programme of Action (1993).

⁴ General Recommendation CERD/C/49/CRP.2/Add.7, March 1996.

⁵ *Minorities, Peoples and Self-Determination*, supra note 1, at p. 24.

⁶ Zelim A. Skurbaty (ed.), *Beyond a One-Dimensional State: An Emerging Right to Autonomy?* (Leiden: Martinus Nijhoff, 2005).

⁷ A possible exception to that statement may be found in the rights of indigenous peoples.

⁸ *Beyond a One-Dimensional State*, supra note 6, at pp. 59-61.

⁹ *Ibid.* at p. 62.

¹⁰ *Ibid.*, at p. 156.

¹¹ *Ibid.*, at p. 159.

Laws of the child in Burma

B.K. Sen

Concept of the child

"Child" means "a person who is unable to maintain itself." It is the responsibility of the society, parents and guardians and those who are in charge of governance of the country to attend to children to make them appropriate citizens of tomorrow.

Socrates said: "The children love luxury; they have bad manners, contempt for authority; they show disrespect for elders love chatter in place of exercise. Children are tyrants, not the servants of their households. They no longer rise when elder enter the room. They contradict their parents, chatter before company, gobble up dainties at table, cross their legs, and tyrannize their teachers".

Rousseau said: "Lacking all senses of right and wrong, a child can do nothing which is morally evil, or which merit either punishment or reproof".

George Herbert said: "One father is enough to govern one hundred sons, but not a hundred sons one father",

Hennery Ward Beecher said: "You cannot teach a child to take care of himself unless you will let him try to take care of himself. He will make mistake, and out of these mistakes will come his wisdom."

James Baldwin said: "Children have never been good at listening to their elders, but they have never failed to imitate them."

All the above quotes convincingly state the position of child in society. There is need for legislative, administrative tasks to take care of the child by invoking adequate political will and enlight-

ened social planning, the task on the judicial front would call for something more. Justice to a child has still to evolve ways and means that would adequately cater to the care, protection, maintenance, welfare, training, education, rehabilitation and needs of trial seeking the best means of protecting the child in the juvenile courts .Burma is in the depth of ignorance, deprivation and subjugation .Every home suffers, and children suffer the most . Child is a national asset and its full development is where the country's future lies.

International Instruments on the Rights of the Child

1. Convention on the rights of the child

UNICEF's mission is to advocate for the protection of children's rights, to help meet their basic needs and to expand their opportunities to reach their full potential. UNICEF is guided in doing this by the provisions and principles of the Convention on the Rights of the Child.

Built on varied legal systems and cultural traditions, the Convention is a universally agreed set of non-negotiable standards and obligations. These basic standards also called human rights set minimum entitlements and freedoms that should be respected by governments. They are founded on respect for the dignity and worth of each individual, regardless of race, colour, gender, language, religion, opinions, origins, wealth, birth status or ability and therefore apply to every human being everywhere. With these rights comes the obligation on both governments and individuals not to infringe on the parallel rights of others. These standards are both interdependent and indivisible; we cannot ensure some rights without or at the expense of other rights.

A legally binding instrument

The Convention on the Rights of the Child is the first legally binding international instrument to incorporate the full range of human rights civil, cultural, economic, political and social rights. In 1989, world leaders decided that children needed a special convention just for them because people under 18 years old often need special care and protection that adults do not. The leaders also wanted to make sure that the world recognized that children have human rights too.

The Convention sets out these rights in 54 articles and two Optional Protocols. It spells out the basic human rights that children everywhere have: the right to survival; to develop to the fullest; to protection from harmful influences, abuse and exploitation; and to participate fully in family, cultural and social life. The four core principles of the Convention are non-discrimination; devotion to the best interests of the child; the right to life, survival and development; and respect for the views of the child. Every right spelled out in the Convention is inherent to the human dignity and harmonious development of every child. The Convention protects children's rights by setting standards in health care; education; and legal, civil and social services.

By agreeing to undertake the obligations of the Convention (by ratifying or acceding to it), national governments have committed themselves to protecting and ensuring children's rights and they have agreed to hold themselves accountable for this commitment before the international community. States parties to the Convention are obliged to develop and undertake all actions and policies in the light of the best interests of the child.

2. Declaration of the rights of the child

The global scandal of violence against children is a horror story too often untold. With malice and clear intent, violence is used against the members of society least able to protect themselves children in school, in orphanages, on the street, in refugee camps and war zones, in detention, and in fields and factories. In its investigations of human rights abuses against children, Human Rights Watch has found that in every region of the world, in almost every aspect of their lives, children are subject to unconscionable violence, most often perpetrated by the very individuals charged with their safety and well-being.

Children are exposed to other human rights abuses as well. Millions have no access to education, work long hours under hazardous conditions, are forced to become soldiers, or languish in orphanages or detention centers where they endure inhumane conditions and daily assaults on their dignity.

These abuses persist because children have few mechanisms for reporting violence and other human rights violations. They may be reluctant to speak out for fear of reprisals. And because they

are children, their complaints are often not taken seriously. Even when children do make reports or abuse is exposed, perpetrators are rarely investigated or prosecuted. Those in a position to take action may be complicit in the abuse, reluctant to discipline or prosecute a colleague, or fearful of negative publicity. Adults who witness abuse by their own colleagues and attempt to report it may be fired for speaking up.

The year 2005 marked the fifteenth year of the entry into force of the Convention on the Rights of the Child, the landmark treaty that guarantees children the right to be free from discrimination, to be protected in armed conflicts, to be protected from torture and cruel, inhuman, or degrading treatment or punishment, to be free from arbitrary deprivation of liberty, to receive age-appropriate treatment in the justice system, and to be free from economic exploitation and other abuses, among other rights. Achieving these rights remains a challenge. Governments must take stronger action to implement the convention's provisions and fulfill their promises to the children of the world.

3. United Nations Standard Minimum Rules for the Administration of Juvenile Justice is another international instrument giving protection to children.

4. 18 Conventions and 16 Recommendations have been adopted by ILO in the in interest of working children all over the world.

Domestic Legislative Enactments

Provisions relating to Child under various domestic laws: Extracts from relevant laws recognizing the need to protect and nurture the rights of the child are given below

Burma Civil Procedure Code:

Order xxxii Rule 1 every suit by a minor shall be instituted in his name by a person who in such a suit shall be called the next friend of the minor.

Rule 3 order xxxii. Where the defendant is a minor, on being satisfied of the fact of his minority, shall appoint a proper person to be guardian for the suit for such minor.

Burma Contract Act:

Under section 11, Every person is competent to contract who is of age of majority However under section 68 a minor is bound by

contracts for necessities and by contracts of employment and analogous contracts. The concept is that the supplier of necessities in good faith supplied the necessities for survival and welfare of the child. The common law rule is that a minor is bound by a contract of employment so long it is on the whole for his benefit, if there is no prohibition for such employment. Some contracts are binding unless repudiated. Some contracts which are ratified after attainment of majority are not binding. There are contracts which are absolutely void. Repudiation may be at the time of minority or after majority.

In certain cases liability in tort against a minor exists. There is no liability of a minor for fraud in equity.

Burma Criminal Procedure Code:

Jurisdiction in case of juveniles is vested not under the code of criminal procedure but under juvenile courts to be formed by Supreme Court under the child law.

Burma Evidence Act:

118. All persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind.

Explanation.- A lunatic is not incompetent to testify, unless he is prevented by his lunacy from understanding the questions put to him and giving rational answers to them.

Burma Penal Code:

82. Nothing is an offence which is done by a child under seven years of age.

312. Causing miscarriage:

Whoever voluntarily causes a woman with the child to miscarry shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if the woman be quick with the child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Explanation-A woman who causes herself to miscarry is within the meaning of this section.

312 A. Sterilization of a woman by Surgery:

Whoever intentionally does sterilization by surgery to a woman shall, unless such sterilization is certified by the Board appointed by the Government in this behalf to be necessary for reasons of physical or mental health, be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine: Provided that in cases where immediate action must be taken in order to save the life of the woman no such certificate is necessary.

312 C. Allowing oneself to be Sterilized by Surgery:

Whoever voluntarily allows oneself to be sterilized by surgery, unless such sterilization is certified by the Board appointed by Government in this behalf to be necessary for reasons of physical or mental health, shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine.

315. Act done with intent to prevent child being born alive or to cause it to die after birth:

Whoever, before the birth of any child, does any act with the intention of there by preventing that child from being born alive or causing it to die after its birth, and does by any such act prevent that child from being born alive, or causes it to die after its birth, shall, if such act be not caused in good faith for the purpose of saving the life of the mother, be punished with imprisonment of either description for a term which may extend to ten years, or with fine, or with both.

317. Exposure and abandonment of child under twelve years by parent or person having care of it:

Whoever, being the father or mother of a child under the age of twelve years, or having the care of such child, shall expose or leave such child in any place with the intention of wholly abandoning such child shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Explanation- This section is not intended to prevent the trial of the offender for murder or culpable homicide, as the case may be, if the child die in consequence of the exposure.

366A. Whoever, by any means whatsoever, induces any minor girl under that such girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit

intercourse with another person shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine.

372. Selling minor for purposes of prostitution: etc.

Whoever sells, lets to hire, or otherwise dispose of any person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation 1. When a female under the age of eighteen years is sold, let for hire or otherwise disposed of to a prostitute or to any person who keeps or manages a brothel person so disposing of such female shall, until the contrary is proved, be presumed to have disposed of her with the intent that she shall be used for the purpose of prostitution.

Explanation 2. For the purposes of this section "illicit intercourse" means sexual intercourse between persons not united by marriage, is recognised by the personal law or custom of the community to which they belong or, where they belong to different community to which they belong or, where they belong to different communities, of both such communities, as constituting between them a quasi-marital relation.

373. Whoever buys, hires or otherwise obtains possession of any person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation 1. - Any prostitute or any person keeping or managing a brothel who buys, hires or otherwise obtains possession of a female under the age of eighteen years shall, until the contrary is proved, be presumed to have obtained possession of such female with the intent that she shall be used for the purpose of prostitution.

Explanation 2. - "Illicit intercourse" has the same meaning as in section 372.

The Child Marriage Restraint Act

2. In this Act, unless there is anything repugnant in the subject or context, -

- (a) “child” means a person who, if a male, is under eighteen years of age, and if a female, is under fourteen years of age;
- (b) “child marriage” means a marriage to which either of the contraction parties is a child
- (c) “contraction party” to a marriage means either of the parties whose marriage is thereby solemnized; and
- (d) “minor” means a person of either sex who is under eighteen years of age.

3. Whoever, being a male above eighteen years of age and below twenty-one contracts a child marriage shall be punishable with fine which may extend to one thousand rupees.

The Apprentices Act

1. Any child, above the age of ten and under the age of eighteen years, may be bound apprentice by his or her father or guardian to learn any fit trade, craft or employment, for such term as is set forth in the contract of apprenticeship, not exceeding seven years, so that it be not prolonged beyond the time when such child be of the full age of twenty-one years, or in the case of a female, beyond the time of her marriage.

The Child Law in Burma, 1993

This is the most important law on Child introduced by SPDC in 1993. An analysis of this law is made;

- (a) **Child** means a person who has not attained the age of 16 years.
- (b) **Youth** means a person who has attained the age of 16 years but has not attained the age of 18 years.

** There is no provision for persons between the age of 16 and 18.*

Article (3) The aims of this Law are as follows: -

- (a) to implement the rights of the child recognized in the United Nations Convention on the Rights of the Child.

** The Law by the above provision therefore admits the obligation of the State to UN Rights of the Child Convention.*

- (d) to carry out measures for the best interests of the child depending upon the financial resources of the State.

** In democratic countries the budget is determined by parliament but in military ruled Burma the budget is worked out by the junta. It gives top priority to defense and puts up the excuse that it has no financial resources for health, education or other heads in the budget.*

Article (4) gives the structure and composition of the National Committee on the Rights of the Child, the main instrument for implementation of the lofty ideals. Its overall control is by the SPDC.

Membership of the Committee interalia are

- (III) Representatives from non-governmental organizations who are carrying out work in the interests of children.
 (IV) Voluntary social workers who are interested in the affairs of children.

** Although NGOs and voluntary social workers are eligible to be members of the committee invariably they selected from among supporters of SPDC. This is in total infringement of UN convention. The motive which made SPDC to be party to the convention comes out clear from article 5 (d) and (e). The motive is to get money and divert it to their own purposes.*

- (d) obtaining assistance and co-operation of the United Nations Organization, international organizations, voluntary social workers or non-governmental organization for the interests of the child.
 (e) giving guidance and supervision in obtaining donations and property from local and foreign voluntary donors and to enable effective utilization of such donations and property in the interests of children.

Article (9)

- (a) Every child has the inherent right to life.

** It have no meaning in the context of large scale abortion*

that is taking place in the country. Hundreds of children are displaced and trafficked. There is high infant mortality.

Article (10) Every child shall have the right to citizenship in accordance with the provisions of the existing law.

** Hundreds of migrant children in Thai-Burma border are stateless and are denied health and education facilities.*

Article (13)

(a) Every child who is capable of expressing his or her own views in accordance with his age and maturity has the right to express his/her own views in matters concerning children;

** This is a farce as no student can take part in politics.*

(c) The child shall be given the opportunity of making a complaint, being heard and defended in the relevant Government department, organization or court either personally or through a representative in accordance with law, in respect of his rights.

** These provisions have no meaning as there is no Legal aid law in Burma. There is no access to justice.*

Article (14) Every child shall, irrespective of race, religion, status, culture, birth or sex;

(a) be equal before the law;

** There is widespread discrimination among the ethnic and minorities.*

Article (15)

(c) has the right to participate in organizations relating to the child, social organizations or religious organizations permitted under the law.

** "permitted under the law" means law made by SPDC and its law does not permit formation of any organization.*

Article (17)

(c) The adoptive parents shall be responsible for the care and custody of the child to ensure that there is no abduction

to a foreign country, sale or trafficking, unlawful exploitation, unlawful employment, maltreatment, pernicious deeds and illegal acts.

** It refers to "trafficking" but the punishment under article 65 have been prescribed as six months and under article 66 it is two years. For such a serious crime the punishment is very light.*

Article (19)

(a) Every child has the right to enjoy health facilities provided by the State;

** Hundreds of children are suffering from malnutrition and have no access to hospital.*

Article (20)

(a) Every child shall:-

- (i) have opportunities of acquiring education;
- (ii) have the right to acquire free basic education (primary level) at schools opened by the State.

** They ethnics can't run the schools in their own languages. For example, in Mon state teaching of Mon language is not allowed. No private school is allowed, even private tuition not permitted.*

Article (22)

b. (ii) educate and disseminate by mass media to ensure that children and their parents or guardians are made familiar with the rights and ethnics of the child and that children have access to national and international news and information concerning them.

** It refers to news concerning them. It means that only child news can be propagated*

Article (23) Every child has the right to:-

- (a) rest and leisure and to engage in play;
- (b) participate in sport activities appropriate to his age;
- (c) participate in cultural and artistic activities.

** Hundreds of rural children are stranded and they can not think of play when they live in dire poverty.*

Article (26) In order that every child may enjoy fully the rights mentioned in this law:-

- (a) the Government departments and organizations shall perform their respective functions as far as possible;
- (b) voluntary social workers or non-governmental organizations also may carry out measures as far as possible, in accordance with law.

** These provisions are totally ignored, hundreds of migrants children are uncared and "first call" is never observed by SPDC.*

Article (37) A police officer or a person authorized to take cognizance shall abide by the following when arresting a child accused of having committed an offence:-

- (e) shall inform the parents or guardian concerned as soon as possible;

** As soon as possible" is vague and it defeats the purpose of law.*

Article (39) A police officer or a person who is authorized to take cognizance, in respect of a child who has escaped from a training school, home temporary care station or a custodian:-

- (a) may arrest him without a warrant;
- (b) shall, after arrest, commit him back to the custody of the training school, home, temporary care station or custodian;
- (c) may commit him to the custody of any other appropriate place, before being able to commit the child back to the custody of a training school, home temporary care station or a custodian under subsection (b).

** There is no time frame and the police have been given arbitrary power.*

Article (59) has given extensive powers to the minister and the court has been totally by- passed.

Article (65) sets out Offences and Penalties

** Offences like prostitution, begging, maltreating, pornographic and other serious offences, maximum punishment is only two years, where deterrent punishment should be prescribed.*

U.N. Committee Finds Burma in Violation of International Law

UN has to say this; The Burmese government should take immediate steps to demobilize child soldiers from its national army, Human Rights Watch said today. Earlier today, a U.N. committee found that Burma is violating international law by recruiting and using children as soldiers.

The U.N. Committee on the Rights of the Child, which includes 18 child rights experts from around the world, stated that it was “extremely concerned” at the use of children as soldiers by both governmental armed forces and armed ethnic opposition groups. Meeting in Geneva, the committee issued its findings following a formal review of Burma’s compliance with the Convention on the Rights of the Child, the most widely ratified treaty in the world.

The Committee issued specific recommendations urging the Burmese government to demobilize and reintegrate all combatants under 18, ensure that all military recruits are at least 18 and enlist voluntarily, and provide educational and other assistance to children affected by the conflict.

“Burma’s use of children as soldiers is unacceptable,” said Jo Becker, advocacy director for the Children’s Rights Division. “Rangoon should act immediately on the U.N. recommendations and end this terrible practice.”

A 2002 investigation by Human Rights Watch found widespread forced recruitment of children as young as 11 by government forces and concluded that Burma has the largest number of child soldiers in the world. According to accounts of former government soldiers interviewed by Human Rights Watch, 20 percent or more of its active duty soldiers may be children under the age of 18. Burma is believed to have an estimated 350,000 soldiers in its national army.

Armed opposition groups in Burma also recruit child soldiers, although on a much smaller scale. Human Rights Watch documented the use of child soldiers by 19 different armed opposition groups.

In an October report to the U.N. Security Council, Secretary-General Kofi Annan identified the Burmese government and armed opposition groups in Burma as violators of international laws prohibiting the recruitment and use of children as soldiers. In response, Burmese authorities announced a new Committee to Prevent the Recruitment of Child Soldiers.

“The government’s action to form a committee to prevent child recruitment is a positive step,” said Becker. “But the government must do more. It should immediately demobilize all children currently in its forces, and remove all incentives for recruiters to target children.”

Recruiters for Burma’s army frequently apprehend boys at train and bus stations, markets and other public places, threatening them with jail if they refuse to join the army. Former child soldiers interviewed by Human Rights Watch reported that recruiters frequently receive cash and bags of rice in exchange for each new recruit. After brutal training, child soldiers are deployed into units, where some are forced to fight against ethnic armed opposition groups. Many are also forced to commit human rights abuses against civilians, including rounding up villagers for forced labor, burning villages, and carrying out executions.

“The Burmese government is seeking to improve its image and gain international recognition,” said Becker. “If the government is really serious about its promised reform agenda, it urgently needs to improve its record on child rights.”

The Convention on the Rights of the Child prohibits any recruitment of children under the age of 15 or their use in armed conflict. It also upholds stronger applicable national laws. Because Burma’s national law sets a higher age limit of 18 for any recruitment into the military, this age limit also applies under international law.

Human Rights Watch urged the government of Burma to ratify the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, which sets 18 as the minimum age for participation in armed conflict, for compulsory or forced recruitment, and for any recruitment by nongovernmental armed groups. During the government’s appearance before the Committee on May 26, the delegation indicated

that the government was reviewing the protocol and considering ratification.

The Committee on the Rights of the Child assesses states' compliance with the Convention on the Rights of the Child approximately every five years. Governments are required to submit written reports and also send delegations to appear before the Committee.

Burma ratified the Convention in 1991, and was last examined by the Committee in 1997.

CHILD TRAFFICKING

Child Tracking is one of the most vicious forms of violence and crime against children because it entails the removal of children from similar surroundings to totally alien and often hazardous situations. These alien environments may be within the country or across national borders. Thus, trafficked children suffer in the darkest conditions- being alone in alien territory, perhaps treated as slaves with little hope of finding any help.

The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime defines the crime as: "the recruitment, transportation, transfer, harboring or receipt of persons, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation."

Although trafficking can be voluntary or with the minor's consent, the above definition indicates that consent of the child is irrelevant. IN a trafficking situation, the child is in a very vulnerable position. There is usually an abuse of power by the trafficking can be voluntary situation, the child is in a very vulnerable position. There is usually an abuse of power by the trafficker who also uses fraud and deception. The Office for Drug Control and Crime Prevention(ODCCP) clearly states that even in fraud and deception are not used, it is a case of trafficking if the victim is under 18 years old.

Child trafficking is for the purpose of exploitation through work (including slave labour and bonded labour); sexual exploitation (including prostitution and pornography); exploitation through illegal activities (including begging and drug trade); adoption trade; marital purposes; trading in organs, among others.

Child trafficking is a complex problem related to other social problems like discrimination against indigenous peoples, war or armed conflict, absence of juvenile justice system, drugs, HIV/AIDS, domestic violence materialism, stateless persons and citizenship, refugees, forced displacement, among many others.

CAUSES OF CHILD TRAFFICKING IN SOUTHEAST ASIA

Globalisation and Poverty

Globalisation has added an international dimension to free market economy by interconnection all or most markets. But given the disparity among nations, globalisation has only succeeded in widening the gap between rich and poor countries, and in concentrating more power in the hands of a few. Information technology enabled global financial markets to unleash control over local economies. With one push on the button, multinational investment houses are able to move funds from one country to another, just as what happened during the Asian economic crisis of 1997. Such global mechanisms have been destabilizing communities and increasing socio-economic crises down to the village level.

Trafficking in children is an extension of the free market, the laws of supply and demand and the movement of labour. Families desiring to experience the amenities of modern living become open to working abroad. But lack of education and training make rural people vulnerable to trafficking syndicates, exploitative agents and employment rackets. Parents are tricked into virtually selling their children to employment brokers and agents who promise to take care of their children. Poor people who are either despondent or just wanting to seek better life fall prey to promises of a trafficker.

CONSUMERISM

Globalisation has promoted consumerism and materialism with the lifting of import restrictions, and the influx of money and cheap foreign goods. Mass media and advertising compound the problem by encouraging conspicuous consumption. Rural people develop the desire to go to the city and tend to abandon self-sustaining lifestyle for easy money and convenient life.

CULTURE

The distortion of cultural values like filial piety produce the attitude that children should work outside the family to help parents and other siblings. There is also the attitude that the child must pay gratitude to parents. These values favour the rise of trafficking. It is not uncommon for parents and guardians to be witting or unwitting accomplices of the trafficker.

AFTERMATH OF WAR

Due to long periods of war, there is a weakening of community spirit and breakdown of families that favour the activities of traffickers.

BREAKDOWN OF FAMILIES

Broken families, problem with stepparents, family violence and related problems influence children to leave homes.

OUT-MIGRATION NETWORKS

Migration networks have become one of the most important aspects in explaining the out-migration of teenagers. There are some villages where out-migration has become so institutionalised that it has become a trend among young people, thereby exposing them to the probability of being trafficked.

LACK OF EDUCATION AND INFORMATION

Ignorant of trafficking, rural folks fall prey to syndicates and recruiters promising big money for their children to work in the cities.

GENDER DISCRIMINATION

Girls and women are more vulnerable to trafficking. Most countries in Southeast Asia share the male-dominated culture that results in unequal treatment in favour of boys. Boys are given better schooling, educational and work opportunities. Also, macho culture accepts that men can go and hire prostitutes for sex.

MODERNIZATION AND DEVELOPMENT SCHEMES

Modernization schemes in Southeast Asia cause rapid and uneven economic growth that caused disparity in the development of urban and rural areas, and among various regions. Modernization also comes with development policies like massive infrastructure changes and the development of tourism as multi-million dollar business. These result in environmental destruction as well as the emergence of social evils like criminality and illegal trading of arms, drugs, biological species and humans. The long-entrenched network of trade in drugs is related to the network of trafficking in persons.

OFFICIAL CORRUPTION AND COLLABORATION

Trafficking rings operate with impunity because corrupt and immoral government officials protect them.

HOW GRAVE IS THE PROBLEM?

Child traffickers may be operating on a small-scale basis or they may also be highly organized and sophisticated. They present themselves in a community as benevolent individuals. They may even be relatives or friends known to the child.

Every year, hundreds of thousands of children are sold and enslaved. No official figures are available but many separate studies and assessments have been made: Fifty-four percent of trafficked children in the Philippines are 15-17 years old and in 1999 there were 85 child trafficking victims documented by the Department of Social Welfare and Development. In Indonesia, 29% of children in prostitution were coerced into the job and 310,378 trafficked domestic helpers in 1999 within Indonesia were between 10-18 years old. Meanwhile, from 1992-1997 in the Mekong sub-

region, there were 80,000 women and children from Burma, Vietnam, Lao PDR and Cambodia drawn into sex industry in Thailand.

**Summary record of the 358th meeting : Myanmar. 21/01/97.
CRC/C/SR.358. (Summary Record)**

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COMMITTEE ON THE RIGHTS OF THE CHILD
Fourteenth session

3. Mrs. KARP said she had received no answer to her questions concerning the status of the national and local committees on the child. Were they consultative, or decision-making bodies; were they allocated budgets; were they distributed throughout the country; and what was their relationship with the local Law and Order Restoration Councils? What three priority areas would the Myanmar authorities single out when applying for international technical assistance?

4. Mrs. EUFEMIO said she had received no answers to her three questions concerning the geographical distribution of non-governmental organizations (NGOs), on teamwork between NGOs and the authorities and on the inclusion of child development in training programmes.

5. She noted that a member of the Myanmar delegation had stated that about 4 million kyats had been allocated for social services, including child welfare services, in the 1995/96 budget, 1 million of which had been channelled into new child-care facilities. Three million kyats had thus not been accounted for. In connection with the financial constraints facing the Government, she asked what criteria were used in determining priorities among infrastructural programmes, and what indicators were used to evaluate the effectiveness of those programmes.

6. Miss MASON reiterated her request for clarification regarding the various levels of citizenship (full, associate and naturalized), to which she had received no response. The impression she had gained was that different levels of citizenship conferred differing levels of opportunity on children in areas such as health, education and linguistic rights. She also requested answers to her questions on the extent of children's participation in dissemination of

awareness of the Convention, and on the relative status of the Child Law and the provisions of other laws in the event of a conflict between them.

11. The CHAIRPERSON invited the delegation of Myanmar to reply to the questions relating to the national budget.

12. U DENZIL ABEL (Myanmar), responding to observations that the budgetary allocations for social welfare were low in comparison with the appropriations for defence, said that the transition to a free-market economy called for various adjustments. Thus, while defence expenditures set two to three years previously in response to high levels of insurgency were currently being reduced following cease-fire agreements, the Government was also having to establish priorities with a view to securing quick returns in dynamic sectors of the economy, thereby generating more resources for the social sector. In 1995/96, 6.4 per cent of the budget had been allocated to social services. Future budgets would be remodelled to take account of the projected needs.

13. Mrs. SANTOS PAIS said that allocations for the social sector were thus only about half of those earmarked for defence. The principle set forth in the Convention that the maximum available resources should be allocated to the social sector was thus not reflected in practice.

14. Mrs. KARP asked what proportion of the budget was allocated to the national and local committees on the rights of the child.

15. U AYE (Myanmar) said that his delegation had already undertaken to contact the Central Statistical Office with a view to providing the breakdown of figures that had been requested. More expenditure was undeniably needed in the social field, but the issue was not just one of income distribution, but also of income generation.

16. As for the "20-20 rule" to which members of the Committee had alluded, his delegation welcomed all such recommendations and would also benefit from the fruits of its interaction with other delegations, which it would transmit to the National Committee with a view to improving the situation in Myanmar.

17. Mrs. BADRAN said that the Myanmar authorities should bear in mind the fact that the social and economic sectors constituted an indivisible whole. Human resources were essential to the prosperity of the economic sector.

18. U AYE (Myanmar) said that his Government attached great importance to investment in human resources, within the limits imposed by financial and time constraints.

19. The CHAIRPERSON said that the Committee's message was that social expenditure on children was low. The "20-20 rule" was considered a reasonable level for social expenditure, and Myanmar's expenditure was at less than half that level. A recommendation in that regard would appear in the written conclusions. 20. He invited the delegation of Myanmar to respond to members' questions concerning NGOs.

21. U THAN PO (Myanmar) said he would try to respond to the questions concerning NGOs and to other questions raised at the previous meeting. No separate secretariat existed to service the National Committee on the Rights of the Child; that task was carried out by the Department of Social Welfare, which was allocated a budget for the purpose. In order to implement the provisions of the Child Law, 139 provision officers and 78 voluntary provision officers had been trained in 1995 and 1996, in addition to staff in primary schools and day-care centres. More social workers could be trained if further international assistance became available.

22. Between 1993 and 1996, 2,678 cases of children in need of protection had been referred to the Director-General of the Department of Social Welfare for approval. Of those cases, 655 had been returned to their families; the rest had been placed in institutions, where they were receiving formal education and vocational training.

23. The minimum age for participation in military activities was 18 years of age, or 16 in the case of the Red Cross Brigade. Information on the Child Law had been translated into six of the country's indigenous languages. Dissemination posed a problem, however, given that the country had no fewer than 135 ethnic groups. Plans to disseminate information on children's rights had been discussed with the relevant ministries and with the United Nations Children's Fund (UNICEF), and it had been agreed to

use the Committee's recommendations at its current session as a basis for action in that regard.

24. The National Committee on the Rights of the Child was presided over by the Minister of Social Welfare, and its members included senior officials from many areas of the administration, as well as representatives of NGOs and of the private sector. As yet, there had been no opportunity to evaluate the work of that Committee. Law and Order Restoration Councils at district and township levels were authorized by the State Law and Order Restoration Council (SLORC) to take action to implement children's rights.

25. International NGOs wishing to provide assistance could submit their proposals to the relevant ministry through the Ministry of Planning. If those proposals were deemed to be in the national interest, the NGO would then be authorized to cooperate with the relevant ministry.

26. So far there was no provision for a dialogue between children and the Government. However, radio and television talk shows were envisaged for the future.

27. Myanmar sorely needed technical assistance to help and advise on the subject of disabled children, their rehabilitation and education.

28. In response to the question of how social changes had mirrored economic changes in the country, he said that a number of NGOs had helped establish night schools and youth centres which were run on a voluntary basis and catered for children who had to work during the day.

29. The CHAIRPERSON asked for further clarification as to whether the National Committee on the Rights of the Child was a decision-making or advisory body.

30. U THAN PO (Myanmar) said that the National Committee was the highest body in the land dealing with the rights of the child. Its Chairman, who was also a Government Minister, could decide on some of its policies or, in the event of a complex issue, could seek the advice and approval of the Cabinet.

31. Mr. MOMBESHORA asked if children were involved in the functioning of the National Committee.

32. Mrs. SANTOS PAIS inquired about the degree of success of the work of the National Committee in terms of its coordination, guidance and reporting functions. She had heard it stated that only 25 per cent of children were actually being reached by Government policies and that the national plan of action was not fully operational. She therefore asked how the Government received feedback from local authorities; how disparities in the coverage of children in different regions were being overcome; how the necessary resources were allocated to local levels and how far the National Committee was able to make a difference to the lives of children at the sub-regional level.

33. Mrs. KARP suggested that concrete examples of decisions reached by the National Committee and of issues it had referred to the executive should be given, together with instances of action it had taken as a result of feedback from townships and local authorities.

34. U AYE (Myanmar) said that the structure of the National Committee did not provide for the participation of children.

35. Mr. MOMBESHORA said that reports indicated that there was a lack of communication between student and children's groups and the authorities. The Convention specifically provided that children should have the right to make their views known, and the National Committee would appear to be the ideal vehicle to enable them to exercise that right.

36. U THAN PO (Myanmar) said that there was direct contact between the National Committee and other committees working at a lower level on children's issues, and the National Committee was at liberty to turn to the Government for advice or information.

37. One example of the kinds of decisions taken by the National Committee was its ruling that, in one specific case, the judgement and punishment handed down by a court on a child should be overturned.

38. Mrs. SARDENBERG said that she was still not clear as to whether the National Committee was competent to formulate policies or simply to monitor their implementation or whether it operated on a multi sectoral basis.

39. U AYE (Myanmar) said that the structure of the National Committee, which was basically a coordinating body, was such that there were representatives of all ministries and departments of relevance to children. They were thus part of the decision-making process and able to ensure that policies were duly noted in their respective fields of competence.

40. Mrs. KARP expressed concern at the power of the National Committee to overturn a court decision, which raised the question of the independence of the courts.

41. U AYE (Myanmar) said that the court case referred to had involved only a minor transgression on the part of the child. The decision had been overruled because it had been clear that the judge in question was not familiar with the provisions of the Child Law. If there were any doubts about a judgement in a case of a serious crime, the advice of the Cabinet would have to be sought and it would be out of the hands of the National Committee.

42. U SANN MAUNG (Myanmar) said that, after Myanmar became party to the Convention on the Rights of the Child, it had begun the process of amending or repealing legislation that was not in line with the Convention's provisions or drafting new instruments, one of which was the Child Law.

43. Miss MASON said that, as she understood it, where there was a conflict in domestic legislation between the Child Law and the Penal Code, it was the Penal Code that would prevail.

44. U AYE (Myanmar) said that, in any such conflict, the Child Law would be applied and respected. However, that scenario had never arisen.

45. Mrs. SANTOS PAIS asked what would happen in the event of a conflict between the provisions of the Convention and the Child Law. She also asked for clarification as to how the provisions of the Convention would be applied to cover areas that were not dealt with in domestic legislation, such as the prohibition of torture, which was clearly stated in the Convention but not in the Penal Code of Myanmar.

46. U AYE (Myanmar) said that, if lower court decisions conflicted with the provisions of the Child Law or the Convention, appeals could be made to the higher courts.

47. In response to a question from Mr. KOLOSOV, he said that the Child Law contained a provision making it clear that, in any conflict between various instruments of domestic legislation, the Child Law would prevail.

48. Mrs. KARP said that, further to a question she had asked at the previous meeting, it appeared that schoolchildren could not form associations, so that their freedom of association, in accordance with article 15 of the Convention, was restricted. She wondered whether schoolchildren who formed associations were prosecuted or whether the Convention and the Child Law prevailed.

49. U HLA BU (Myanmar) said that applications to form associations must be submitted to the Home Department. Many schools had, for example, Red Cross associations, under the patronage of the head teacher.

50. The CHAIRPERSON said that, although Mr. Kolosov had been informed that the Child Law prevailed over other domestic legislation, it seemed that that was not so in respect of freedom of association.

51. U AYE (Myanmar) said that, if the proposed association did not violate the relevant regulations, then the Home Department would authorize it. If the association had nothing to do with children's affairs, however, then the question of the underlying motives of its formation arose and whether, in actual fact, the initiative was being taken by adults. In such cases, the Child Law would not apply.

52. The CHAIRPERSON, referring to a question asked by Miss Mason, said that the Citizenship Law divided citizens into three categories. He would like to know what the impact of that arrangement on children was.

53. U SANN MAUNG (Myanmar) said that the three categories of full citizen, associate citizen and naturalized citizen had been established by the 1982 Citizenship Law, which also specified the criteria for admission to each category. Applications for citizenship were considered by a three-man committee of officials of the Home Department and the Ministries of Defence and Foreign Affairs. All three categories of citizenship carried equal rights and privileges except in two respects: associate and naturalized

citizens could vote in elections but could not stand for office and their citizenship could be revoked, whereas full citizenship could not. Members of Myanmar's 135 ethnic groups were all regarded as full citizens.

54. Mrs. SANTOS PAIS said that the categorization of citizenship seemed to reopen the question as to which legislation prevailed, since it clearly implied the possibility of discrimination. She would like to have more information about the differences in the rights enjoyed by the three categories of citizen. For example, were citizens in all three categories entitled to own property and make use of the social services?

55. U AYE (Myanmar) said that all citizens could own property and had equal access to services.

56. Mrs. SANTOS PAIS said that she understood that, in order to qualify for full citizenship, a person had to prove that one of his ancestors had lived in Myanmar prior to 1823. She would like to know the exact qualifications for full citizenship and the nature of the document which certified its possession. If identity cards were used, what were the conditions regulating their issue and were there any differences in treatment according to the status established by the cards, for example, could citizens of all categories move freely about the country?

57. The CHAIRPERSON said that he could not understand the need for the three categories of citizenship. The Committee obviously wanted a clear picture of the significance of the distinction, especially in so far as it affected children. There was no doubt that such categorization could lead to discrimination.

58. Mrs. SARDENBERG asked whether identity cards were issued to children and whether there were any differences between the categories of citizenship with respect to access to such services as health and education.

59. U SANN MAUNG (Myanmar) said that identity cards were, in fact, used. They were issued to children at age 12. All citizens could move freely about the country and had equal access to social services.

60. Mrs. SANTOS PAIS said that, if there were no differences, she could not understand why there had to be three categories.

61. U SANN MAUNG (Myanmar) said that the law had been enacted by the previous Government, and he was not sure what its purpose had been. There were some differences between the categories, as had already been pointed out.

62. U AYE (Myanmar) said that all countries had citizens and non-citizens who enjoyed different rights. In Myanmar, the second and third categories were entitled to apply for full citizenship.

63. The CHAIRPERSON said that the statement in paragraph 57 (b), of the initial report that, according to the Myanmar Citizenship Law “there is hardly a chance for a child to be stateless or to be deprived of his nationality” apparently indicated that many different possibilities had been covered. Nevertheless, the Committee seemed to feel that such categorization lent itself to discrimination. Were there, in fact, any stateless children in Myanmar? The Committee had been informed that many of the returnees from Bangladesh had had difficulty in securing even the third category of citizenship, so there might well be some such children.

64. U AYE (Myanmar) said that any returnee who could not prove Myanmar or some other nationality was accorded foreigner status. All children born in Myanmar were entitled to one of the categories of citizenship. It was, of course, necessary to establish the bona fides of returnees. In Myanmar, every household had to maintain a list of residents. The lists were submitted to the local authorities, which issued registration cards to the residents. However, many persons in the first wave of returnees had been unable to produce evidence of such household registration.

65. The authorities had adopted a very flexible approach but had required undocumented persons to give information concerning their village of origin, the name of the headman, etc. If they could provide such information, they were admitted. In many cases, in fact, even people who could not prove any local connection were also admitted.

66. During the second wave, the Myanmar authorities, in conjunction with the United Nations High Commissioner for Refugees (UNHCR), had entered into negotiations with the neighbouring countries concerning the status of the returnees. Those who could not prove a local connection were refused admittance. Children and adults had received equal treatment.

67. The CHAIRPERSON said that the Committee had been informed that many persons in the second wave of refugees who had been admitted to Myanmar were still experiencing great difficulty in obtaining citizenship.

68. U AYE (Myanmar) said that the problem had not yet been fully resolved.

69. Mrs. KARP said that it seemed to her that a person who had been born and brought up in Myanmar but could not secure full citizenship because he could not prove some technical detail about his ancestors might well feel that his rights and sense of identity were impaired. The impact of such a situation on children, amounted to a violation of the Convention.

70. U AYE (Myanmar) said that the authorities did adopt a flexible approach, but a line had to be drawn somewhere. Myanmar had borders with five other countries, with all of which it maintained excellent relations but which included the two most populous countries in the world. It could not afford to grant citizenship to everyone who came and asked for it. The Citizenship Law took into account the need to protect the interests of future generations - the need to contain the population.

71. Mr. KOLOSOV said he presumed that the essential difference between the three categories of citizenship was connected with property and inheritance rights.

72. Mrs. SANTOS PAIS said that, while it was not the responsibility of the Committee to question the conditions laid down by a State for the granting of nationality, it had to assess the extent to which such conditions were in conformity with the provisions of the Convention. Under the Convention, every child had the right to acquire a nationality. The Committee had been informed, however, that, in Myanmar, associate and naturalized citizenship could be withdrawn, thereby entailing the risk of statelessness - hence its concern.

73. Furthermore, she was aware that a system of identity cards had been in place in Myanmar since 1990. Such cards were not issued automatically but upon request, and applicants had to meet certain conditions. She was particularly concerned at the fact that the identity card contained information regarding religion and ethnic origin, which could easily lead to discrimination.

74. The CHAIRPERSON, reverting to the subject of the returnees, said that there was no question of a massive influx into Myanmar from neighbouring countries. A group of people, who were well known to the Myanmar authorities, had returned to Myanmar from Bangladesh. The Committee's concern was that a high proportion of the returnees, including children, had apparently encountered difficulties in resettling in Myanmar and having their rights recognized.

75. U. AYE (Myanmar) said that that was precisely the type of concern which had been taken up by UNHCR with the Myanmar immigration authorities at a meeting held recently in Geneva. He was not, himself, in a position to provide detailed information, but the UNHCR staff members who had been directly involved might possibly be of assistance.

76. The CHAIRPERSON invited the members of the Committee to ask questions concerning the section of the initial report entitled "Definition of the child".

77. Mr. KOLOSOV said that sections 2 (a) and 2 (b) of the Child Law defined persons under and over the age of 16 as "children" and "youth" respectively, but there was only one further reference to "youth" in its subsequent provisions. The law was thus not in keeping with the provisions of the Convention, since it afforded no protection for children between the ages of 16 and 18, and should be amended.

78. Mrs. KARP said that, under the Law, persons who allowed a girl child in their care under the age of 16 to engage in prostitution were liable to punishment. She wondered why the age limit for protection in such cases was 16 rather than 18 and why there was no reference to the boy child.

79. U. AYE (Myanmar) said that children up to the age of 18 were protected by law, as borne out by the very title of the legislation in question. A distinction was drawn between children and youths for the purposes of placement in institutions. Boys and girls were afforded the same protection against social evils such as prostitution.

80. Mrs. KARP said that section 66 of the Child Law referred specifically to the responsibility of a guardian towards a girl under 16 who was involved in prostitution. How could that be seen as providing protection for boys also?

81. U. AYE (Myanmar) said that prostitution had previously been considered as affecting girls only, but it had since been recognized that boys could also be victims and thus needed protection.

82. U. THAN PO (Myanmar) said that, when the Child Law had been drafted, prostitution of boys had been far less common than in recent times. The point was a valid one and would be taken into account when the implementing regulations for the Child Law were being prepared.

83. U. AYE (Myanmar) said that his Government would welcome the Committee's advice concerning improvements that could be made, particularly with regard to the distinction between children and young people. There must be other States parties to the Convention where the age of majority was 16 and it would be useful to learn how they reconciled their legislation with the provisions of the Convention.

84. The CHAIRPERSON said that he would prefer not to enter into a discussion of the very complex issue of the age of majority and how it could be reconciled with the provisions of the Convention. Individual members of the Committee would, however, be happy to give the Myanmar delegation some advice on the matter outside the meeting.

85. Mrs. SANTOS PAIS said it was very important to afford children up to the age of 18 the best possible protection against forms of exploitation such as prostitution. She was also gravely concerned about the very low age of criminal responsibility, whereby a child between the age of 7 and 12 who was deemed to have understood that he or she had committed an offence was liable to the penalties normally applied to adults. Myanmar should consider raising the age of criminal responsibility to the age of civil majority, as recommended in "The Beijing Rules."

86. U. AYE (Myanmar) said that those suggestions would be conveyed to the competent authorities in his country.

87. Mr. KOLOSOV said he had to insist that Myanmar's Child Law was not in keeping with the provisions of the Convention and must be amended. He rejected the assertion that all children were guaranteed adequate protection by the title of the law, despite the distinction drawn between youths and children. The existence of such a distinction effectively excluded children between

the ages of 16 and 18 from the protection of the Law and, consequently, of the Convention.

88. The CHAIRPERSON invited the members of the Committee to ask questions concerning the section of the initial report entitled "General principles."

89. Mrs. BADRAN said that mention was made in Myanmar's written replies of services provided by the authorities to certain groups of the population as a means of preventing and eliminating discrimination. Since prejudice was usually a question of attitude, however, she wondered whether there were any other programmes aimed at changing discriminatory attitudes towards the groups of children listed under item 10 of the list of issues (CRC/C/Q/Mya.1).

90. Mrs. SANTOS PAIS said that Myanmar's legislation did not fully reflect article 2 of the Convention since it made no reference to discrimination on grounds of national, ethnic or social origin or of political or other opinion held by the child or his or her parents or legal guardians. How was a child protected against penalties when the views expressed by members of his or her family ran counter to those of the authorities?

91. She would welcome some information on the action being taken to ensure equal opportunities for children living in the rural areas, especially with regard to education. Were additional funds earmarked for that purpose? Were school materials available free of charge? How were ethnic languages used in schools in Myanmar and were teachers given material and other support in that connection?

92. She would like the delegation to give some illustrations of the way in which the best interests of the child were taken into account in the courts of law, in schools and in the family environment and to inform the Committee how the legislative bodies reflected the best interests of the child when drafting or amending legislation.

93. Mrs. KARP said she would welcome examples of legislation that required the courts and administrative bodies to hear the views of children before taking decisions affecting them, together with details of how such legislation was implemented. Who acted on behalf of the child, for instance?

94. Mrs. SARDENBERG asked what opportunity children had to participate in discussions, and decisions on matters affecting them, both in the family environment and in the schools. Moreover, with respect to the schools, she would like to have further information on corporal punishment and expulsion.

95. Mrs. BADRAN said she had received the impression from the report and the written replies that the whole concept of the participation of children was unclear to the Myanmar authorities. For instance, reference had been made in the written replies to activities being assigned to children. The whole point was that children should have a say in their own affairs by planning their own activities and setting up their own associations so that they could express their views both individually and collectively. That was an important preparation for life in a democratic society.

96. The CHAIRPERSON said that the Committee was clearly behind schedule in its work but it nevertheless appreciated the efforts of the Myanmar delegation to answer the many detailed questions that had been asked, particularly in view of the language difficulties encountered. He hoped that it would be possible to complete the dialogue in the time available.

COMMITTEE ON RIGHTS OF CHILD CONSIDERS SECOND PERIODIC REPORT OF MYANMAR

The Committee on the Rights of the Child today considered the second periodic report of Myanmar on that country's efforts to implement the provisions of the Convention on the Rights of the Child.

In preliminary remarks, Committee Expert Yanghee Lee, who served as country Rapporteur to the report of Myanmar, said the dialogue had been fruitful and constructive and had provided the Committee with a better understanding of the status of children in Myanmar. She recommended, among other things, amending and/or repealing national legislation in order to fully harmonize it with the provisions of the principles of the Convention.

Other Committee Experts also raised a number of questions pertaining to, among other things, the law that regulated the work of non-governmental organizations (NGOs); lack of NGO participation in children's affairs; the transformation of the national commission for children and whether it received complaints; how the "World Fit for Children" Declaration was being implemented;

the situation of stateless children; the lack of implementation of the Committee's previous recommendations and the value attached to those conclusions; the laws on citizenship, corporal punishment and villages which were not compatible with the Convention; and discrimination against the poor and some ethnic groups in access to education.

As one of the 192 States parties to the Convention, Myanmar is obliged to present periodic reports to the Committee on its efforts to comply with the provisions of the treaty. The delegation was on hand throughout the day to present the report and answer questions raised by Committee Experts.

Questions Raised by Committee Experts

YANGHEE LEE, the Committee Expert who served as country Rapporteur to the report of Myanmar, welcomed some of the recent developments such as the National AIDS Programme; Joint Programme for HIV/AIDS: Myanmar 2003-2003; National Health Plan of 1996-2001; Joint Plan of Action for the Elimination of Forced Labour; Myanmar Health Vision 2030; and other wonderful programmes as evidenced in the wealth of pamphlets and brochures depicting them.

Ms. Lee said Myanmar was State party to only two UN human rights treaties – the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women. The State party had not ratified the two optional protocols to the Convention on the Rights of the Child that had a direct bearing on the lives of children in Myanmar. The State party also had not ratified any of the Hague conventions, the ILO conventions, or the Geneva Conventions. She expressed regret that some of the concerns that the Committee had expressed in its conclusions after its consideration of the State party's initial report had not been sufficiently addressed, particularly the issue of domestic legislation, national coordinating mechanisms, children affected by military activities, and children in conflict with the law.

Citing the concerns expressed by the Committee on the Elimination of All Forms of Discrimination against Women, Ms. Lee asked why the Towns Act and the Village Act which left women vulnerable to forced labour remained as legislation. That had di-

rect implications on the girl child. She also asked the delegation to provide information on the status of the Whipping Act, which still seemed to exist.

On the preparation of the report, particularly the participation of civil society and children, the Rapporteur said that the report had noted the numerous non-governmental organizations (NGOs) currently active in the country. She wanted to know more about national and local NGOs. The Myanmar Red Cross and the Myanmar Maternal and Child Welfare Association had been mentioned but she was not sure if the Myanmar Red Cross could be considered as an NGO because the president of that organization had been part of the Government's delegation at the dialogue for the review of the initial report.

With regard to the allocation of data, Ms. Lee said that in Myanmar a child was defined as someone under the age of 16. There were no statistics on children between 16 and 18 years as requested by the Committee. The delegation was asked to provide information on this age group.

On non-discrimination, Ms. Lee asked about discrimination against vulnerable children such as girls, children from remote and border areas, children belonging to minorities, and children with low status citizenship. She wanted to know about the general attitude towards children or persons with disabilities; the de facto discrimination against people of the Muslim faith and of certain ethnic origins; the process of obtaining citizenship for some ethnic groups, such as the Bengali residing in the Northern Rakine regions who could not provide evidence of residence prior to 4 January 1984; and the disparity in birth registration between urban and rural areas.

NEVENA VUCKOVIC-SAHOVIC, the Committee Expert who served as Co-rapporteur to the report of Myanmar, said that while welcoming the establishment of an interdisciplinary national committee on the rights of the child and its broad mandate, it was still not clear what was the real power of that body to coordinate all activities related to the implementation of the Convention. How effective had that committee been and how did it function on decentralized levels? What about the new Plan of Action that would fully reflect the "World Fit for Children" Declaration, allocate the necessary human and financial resources for its full imple-

mentation, and provide for a better coordination and monitoring mechanism?

In 1999, a monitoring and evaluation sub-committee was established along with a committee on human rights, but Ms. Vuckovic-Sahovic wondered to what extent those bodies were capable of monitoring the situation of children in the country. Were they independent institutions? Were there some units for children? Could children apply for protection in case of violations?

Ms. Vuckovic-Sahovic asked to what extent were the non-governmental organizations (NGOs) in Myanmar involved in the implementation of the Convention. What was their legal status? What about children's organizations? She also asked about the impact of sanctions on children.

There were some budget allocations that were upgraded on the account of the social system, the Co-rapporteur said. How did that fit in with the realization of child rights "to the maximum extent of available resources" as stated in article 4 of the Convention?

There was concern that corporal punishment was used as a disciplinary method in raising children, she said. It seemed to be allowed in laws and used in practice. What had the Government done to change this and how effective had the Government's efforts been so far?

There were allegations of numerous cases of ill-treatment of children by law enforcement officials as well as army personnel, Ms. Vuckovic-Sahovic said. In the report, there was no information on that issue. Was there awareness of such incidents and how did the police and the judiciary treat the perpetrators of such violations. She said the Committee had received numerous information on the use of children below 15 as soldiers by both the governmental and paramilitary-armed groups. What was the Government doing to prevent such recruitments and to rehabilitate those who had participated in fighting? Further, there were allegations that army members were often perpetrators of crimes against children, such as violence, rape and exploitation. How many perpetrators had been prosecuted?

Other Committee Experts also raised questions. They asked, among other things, about the children's appeal system; the law

that regulated the work of non-governmental organizations (NGOs); the lack of NGO participation in children's affairs; the transformation of the national commission for children and whether it received complaints; how the "World Fit for Children" Declaration was being implemented; if children understood the Child Law; the situation of stateless children; the lack of implementation of the Committee's recommendations and the value attached to those conclusions; the laws on citizenship, corporal punishment and on villages, which were not compatible with the Convention; discrimination against the poor and some ethnic groups in access to education; freedom of association; the right to be heard; availability of complaint mechanisms for children; and the wearing by some ethnic groups of giraffe-neck necklaces which affected the spinal cords of children.

Questions by Experts

Committee Experts continued raising further questions. They asked, among other things, about access to elementary health care; infant mortality rates; the status of breastfeeding; the problem of teenage pregnancy; preventive measures against alcohol and tobacco; the high dropout rate of girls; the banning of indigenous languages; the situation of HIV/AIDS; children with disabilities; access to clean water; domestic and international adoption processes; age of criminal responsibility; the alleged recruitment of children as child soldiers; punishment for juvenile offenders; forced child labour; the sentencing of children to maximum long-term imprisonment; and the situation of street children.

Preliminary Remarks

YANGHEE LEE, the Committee Expert who served as country Rapporteur to the report of Myanmar, said in preliminary remarks that the dialogue had been fruitful and constructive and had provided the Committee with a better understanding of the status of children in Myanmar. Together, new and better ways to implement the Convention had been explored to ensure that the rights of all children in the country were upheld, protected and guaranteed.

Ms. Lee recommended, among other things, amending and/or repealing national legislation in order to fully harmonize it with the provisions of the Convention. The Child Law did not seem to

be in full compliance with the Convention and international standards in areas such as juvenile justice and child protection. The general principles of the Convention such as non-discrimination, the best interest of the child, the right to life, survival and development, and respect for the views of the child were not adequately reflected in Myanmar's legislation. Moreover, the Citizenship Act, Village Act and Towns Act and Whipping Acts should be amended or repealed.

Further, the Rapporteur recommended that Myanmar ratify and implement the two optional protocols to the Convention on the sale of children, child pornography and child prostitution, and on the involvement of children in armed conflict. The State party should also take steps to ratify other human rights and international instruments. It should allocate resources for services and programmes for children such as health and education. A better coordinating mechanism and establishment of a truly independent monitoring mechanism was also recommended.

Ms. Lee recommended that the State party continue to involve civil society and children throughout all stages of the implementation of the Convention; ensure equal access to education and health for all children, for girls as well as boys, for all ethnic and religious minority groups, and children with disabilities; make education truly free and compulsory and prevent children from dropping out of school; reform the juvenile justice system with a view to ensure maximum protection for children in conflict with the law; continue tackling the issue of child soldiers with a view to put an end to recruitment of child soldiers; initiate a rights-based review of the current registration system; seek a multilateral approach to protect trafficking of vulnerable children within and from neighbouring countries; and take an active approach in tackling the issue of HIV/AIDS.

Conclusion

Population It is estimated to be 48.16 million with population growth rate of 1.8 %. The total number of children aged 1 to 18 is around 20.5 million that means 43 % of the total population. Majority are Buddhists. Buddhist teachings include the five obligations of the parents towards their children. Family is the basic unit and not the individual. Parents take upon themselves as religious duty to provide support to their children. But due to the

abnormal situation created by the military dictatorship, this fabric is being broken. The narrative below will substantiate this contention “ Children and Women in Myanmar: A situation Analysis 1955 UNICEF estimated that as many as 4 million out of total 11,6 million children between the age of 6 and 15 may be working today in Burma Health Budget is lowest. .02 percent public expenditure far below regional level. Blotted expenditure are on military has seriously affected public health. Children and mothers are worse affected.

Infant mortality is 79 per thousand births compared with East Asia average 394 malnutrition is very high. Three out of 10 suffer "moderate wasting."

Education Budget Public spending per child in 1999 100 kyat 37 percent finish fourth grade and 22 percent in rural areas.

Work cultures armed conflicts victims, used human bullet shields, human mine sweepers, sent to labor camps terrible conditions just to earn .mothers also go leaving the children Budget is lowest.

Child problem in Burma are multifarious and insurmountable. They are deeply political and with out political reforms, nothing can be done. The situation will fast deteriorate and reach a crises point. Only all out and inclusive attempts can take the challenge. For this a raging changed based on rule of law is an urgent necessity.

It is to be seen as to why is it that child problems have continued despite the aforesaid statutory enactments. This has been a subject of study by a good number of authors. It would be enough to note what has been pointed out in “Indian Child Labour”. Report quoted above. The causes of failure are:

- (1) Poverty;
- (2) Low wages of the adult;
- (3) Unemployment;
- (4) Absence of schemes for family allowance;
- (5) Migration to urban areas and cross-border
- (6) Large families;
- (7) Children being cheaply available;
- (8) Non-existence of provisions for compulsory education;
- (9) Illiteracy and ignorance of parents; and
- (10) Traditional attitudes.

Of the aforesaid causes, it seems that poverty is the basic reason which compels parents of a child, despite their unwillingness, to get it employed. Otherwise, no parents, specially no mother, would like that a tender-aged child should toil in a factory in a difficult condition, instead of it enjoying its childhood at home under the paternal gaze.

What to do ?—It may be that the problem would be taken care of to some extent by insisting on compulsory education. If employment of child below that age of 14 is a constitutional indiction insofar as work in any factory or mine or engagement in other hazardous work and if it has to be seen that all children are given education till the age of 14 years in view of this being a fundamental right. But the basic element of a Society, a constitution for good government is absent in Burma. Fundamental rights are not guaranteed and enforceable. There is no open Society, no Civil Society. If the wish embodied in a constitution that the tender age of children is not abused and citizens are not forced by economic necessity to enter avocation unsuited to their age, and if children are to be given opportunities and facilities to develop in a healthy manner and childhood is to be protected against exploitation to be visualised by a constitution the least that the Court could do is to see to the fulfilment of legislative intendment behind enactment of the Child Laws. Taking guidance therefrom, the Court can take the view that the offending employer must be asked to pay compensation for every child employed in contravention of the provisions of the Act. The authorities would see that for each child being victim in violation of the provisions of the Act, the concerned pays compensation which could be deposited in a fund to be known as Child Labour Rehabilitation-cum-Welfare Fund. To generate greater income, fund can be deposited in high yielding scheme of any nationalised bank or other public body. Be that as it may unless governance is established on rule of law, enlistment of child will remain a dream.

Reference:

1. *Burma Code Volume; 5, 8, 11, 12*
2. *UN Documents*
3. *Child Law 1993 (Public by Union of Myanmar, SLORC)*
4. *Pamphlet of Asia Acts Secretariat from Philippines*
5. *Law of Child in India by S.P Shaw*

Rule of law on trial

Prominent Muslim lawyer Somchai Ndaphaijit of Thailand went missing in Bangkok in March 2004. The disappearance took place after he had accused police of torturing four of his clients while they were in police custody. His clients were standing trial as accused of belonging to regional extremist group Jemaoh Islami Yah and to have committed national security offence, conspiracy to commit rebellion but were acquitted in June 2005. Mr. Somchai had told colleagues and family members that he had received threats since alleging police torture of suspects arrested for alleged participation in the attack on an army camp in Jan 4, 2004.

After discussion with his clients, Somchai said publicly that they had admitted to the grave charges because they had been tortured. (The case was dismissed in July 2004.) On March 12, 2004, eight days after he spoke out, Somchai disappeared. His car was found abandoned on Kamphaeng Petch Road, near the Mor Chit 2 bus station in Bangkok. The rear bumper showed signs of being rammed. Khunying Dr Porntip Rojanasunan, deputy director of the Justice Ministry's Central Institute of Forensic Science, inspected the car on March 20. She said she could be confident that in Somchai was in an accident on the night he went missing.

"My husband renewed his car insurance just two weeks before his disappearance and had not demanded compensation for the damaged bumper," said Angkhana. Angkhana and many civic groups were immediately suspicious that his disappearance was closely connected to his persistent work in defending human rights. Moreover, he had also initiated a campaign to lift the martial law in the deep South by obtaining 50,000 signatures from around the country.

"Somchai had been handling many high-profile cases a which concerned the issue of rule of law, such as that of a "Jo" Danchang and five of his followers in Suphan Buri a (the six handcuffed suspects were shot in the house where police took them to search

for hidden weapons, but the relatives of the deceased later withdrew the cases) and many other cases also concerning Muslim suspects accused of terrorism and treason,” said Angkhana.

After intense efforts and pressure on both the local and international levels to investigate the disappearance, five policemen were identified as being directly responsible.

“Unfortunately, they (the policemen) were not even charged with abduction or forced disappearance — only gang-robbery of his car, wristwatch and mobile phone, and physically forcing another person into submission, relating to articles 309 and 340 of the Penal Code,” said the lawyer’s wife.

The trial of the five police officers began on August 9 and was concluded on December 1, 2005. The verdict was handed down.

The authorities have said that the absence of a body makes it difficult to prove a murder or abduction charge, but Angkhana is certain a much better case could have been prepared.

“If only the investigators had paid more serious attention and did not rush to finalise their findings, if only they interrogated more witnesses, the charges would not be this weak,” she said.

Angkhana raised as an example the testimony of one of the investigators, Pot Lt Col Phakom Samukiri of the Bangrak District Police Station. He testified in court that in his opinion there might not have been enough detail in the investigation.

Angkhana said the investigation did not look into the vehicle that was allegedly used to abduct Somchai. According to several eyewitnesses, a black sedan was parked behind Somchai’s green Honda Civic but they could not identify the model of the car.

“The information regarding the car used by the perpetrators could be a key piece of evidence that if properly investigated might allow the car to be traced. Yet, the police didn’t pay serious attention to the matter,” she said.

Forensics Lacking

From observing the proceedings in the courtroom, it is apparent that the forensic science work conducted in relation to the investi-

gation was also questionable. According to Pol Maj Gen Chuan Vorawanich, commander of the Scientific Crime Detection Division, his officials inspected Somchai's car on March 16 for fingerprints and 20 strands of hair were collected. Eight of the 20 strands of hair were unidentified and none of the fingerprints matched those of recorded criminals.

"Yet, during the witness testimony he did not mention whether any of the fingerprints matched with the victim's own fingerprints," Angkhana said, adding that at least there must be fingerprints of the driver himself.

There is concern that the police may have unintentionally destroyed some of the crucial forensic evidence.

Angkhana also pointed out that some public prosecutors announced to the jury that there was not enough forensic evidence to convict those who committed the crime.

At the moment, it seems to me that only the details of the phone records of the five defendants remain as key evidence. These should be fully investigated.

"The mobile phone records show that the five accused Jul men had called one another 75 times in the hours before the sul disappearance of Somchai on March 12," she explained. Yet apparently the five defendants rarely called one another on the days before or shortly after March 12.

According to the telephone records from a mobile phone to operator, supplied upon the request of the investigators, the calls were made from areas close to where Somchai was pet known to have been at the time. After Somchai's car was found on March 16, the number of calls between the five suddenly increased again to more than 30.

Angkhana places some hope on the Department of Special Investigation (DSI) to obtain and use these phone records in its investigation.

"That's why we wanted the DSI to handle this case in the first place. I know, after the DSI accepted the case last July, there has still been no progress made, and I had to submit a petition letter again last month (December)," added Angkhana.

Seeing good in a had situation, Angkhana said she appreciates and admires those eyewitnesses who volunteered to testify.

“They are decent citizens who love justice. They are brave people, although some of them might be afraid to look into the eyes of the defendants. When they watched a video showing the suspects, they could identify exactly who forced Somchai into the car and who drove the car from Ram khainhaeng Road.

“However, during their testimony, the defendants were also present. Whenever the prosecutor requested that the eyewitnesses take a look at the suspects, they quickly replied that they had not seen any of them,” she said.

A PLEA FOR SINCERITY

On different occasions, many high-ranking government officials, including Prime Minister Thaksin Shinawatra, have discussed Somchai’s possible whereabouts, although no further investigation has been carried out. On March 28, 2004 the PM said at a security agency meeting that he knew from his intelligence sources that a group of officials took Somchai to Mae Hong Son.

“I feel sorry that there were no attempts to investigate the matter and identify his sources of information. When a Senate Committee was set up to investigate the disappearance, the prime minister and Gen Chavalit (Yongchaiyudh) were invited to respond to requests for information but they declined, saying that they had no time,” said Angkhana.

When she attended a dialogue on the International Covenant on Civil and Political Rights last July in Geneva, she found out that the government had responded to the United Nation I human Rights Committee inquiries on Somchai’s case as follows: “With regard to the case of Somchai, four police officers have been charged with the offence of deprivation of his liberty, and the then Royal Thai Police commissioner-general was transferred to an inactive post until his retirement.”

“But actually what does it mean? Why was he transferred? What is the connection between that general and Somchai’s disappearance?” asked Angkhana, adding that at a personal level they always tell her something that is very useful. “But they lack sincer-

ity to speak publicly and investigate thoroughly. How can they allow a state of impunity like this?”

Apart from struggling to convince high-level officials to be more sincere regarding her husband’s case, she has encountered changing circumstances in the trial from day to day. During the proceedings on October 18-19, 2005, Angkhana learned that the presiding judge, lion Judge Suvith Pornpanich, would be transferred to assume a new post and would preside over the case only up to October 21.

“At that time, all witnesses were scheduled to testify in court up to November 30 and in fact the last day of the trial was on December 1. As a joint-plaintiff, the transfer incident would have direct adverse effects on our case,” she said.

The lawyer’s wife said that such a transfer seems to be not in line with a provision of the Article 236 of the 1997 Constitution which stipulates that, “The hearing of a case requires a full quorum of judges. Any judge not sitting at the hearing of a case shall not give judgment or a decision in such case, except for the case of force majeure or any other unavoidable necessity as provided by law”

Angkhana asked the President of the Supreme Court to have Judge Smith continue presiding over this case until the final judgment was passed, in the interests of justice, and her request was granted. Later, on November 3, the day that Angkhana considers to be one of the most chaotic days during the trial, the defendants took the stand for the first time. This is also the day that two brand-new public prosecutors showed up.

They had never read the case before. In the afternoon, the new public prosecutors confessed that they did not know the details of the case well and requested that the judge postpone the cross-examination until the next day.

“Think about it, what if you do not know anything. How can you raise any crucial point and conduct effective cross-examination?” asked Angkhana.

Angkhana observed that the prosecutors always said that there was not enough evidence. “But,” she pointed out, “they have done nothing. In fact they can ask the investigators to testify in order to obtain more information. At one crucial point, it was found out

that the five suspects have some connections to a ranking official who is also involved in the case. They (prosecutors) can order the investigators to interrogate (those officials) so that they can obtain more solid evidence,” she pointed out. Angkhana also found out that the prosecutors never met with or talked to their witnesses before they testified in court. This resulted in the reversal of some of the testimony.

The Lawyers Council of Thailand provided six lawyers, one of whom never attended the hearings.

“Among the six lawyers, some of them lack experience in searching for relevant information and conducting field research such as visiting the scenes (relevant to) the incident. Some lawyers claimed they were intimidated, that was why they did not show up in court. Only two came regularly,” she sighed.

After all is said and done, Angkhana believes that if only the government is serious enough to commit itself to the rule of law, it will then be able to hear the cries of people that suffer in silence, who have never felt justice.

“The government should not only be proud of human rights given on paper in international treaties, it must implement them.”

Some big questions

It is becoming clear that the involuntary disappearance of the human rights defender is a matter of great concern to most Thai citizens, and now the world is also shedding its spotlight on Somchai’s case. Many international organisations sent staff members to listen in on the 35-day trial, and they have come up with some suggestions for follow-up investigation:

1. Where is the car that was used to abduct t Somchai?
2. Did the police investigators follow procedures? For example, did they take the eyewitnesses to the crime scene to go over their statements?
3. Do the defendants really have alibis? The police, and the DSI should properly investigate the defendants’ stories, their whereabouts on and after March 12, and determine if they are telling the truth or not.
4. Where was the forensic science? The Central Institute of Forensic Science under the Justice Ministry investigated

the scene and the victim's car, but no one from that agency appeared in court.

5. What about the telephone records? At present the mobile phone records can be considered as the strongest evidence. The DSI and the Appeals Court should consider seriously the logic of defendants' claims regarding their phones, such as "the phone was with another person", "the phone was on the desk and anyone could use it", and "the phone was switched off".
6. Were the eyewitnesses threatened? Were investigators threatened? The eyewitnesses all reversed or undermined their pre-trial statements during their testimonies in court. Why?

Two police officers involved in the case also told the court that they had been threatened and intimidated by other officers during the investigation. One began telling the court of his ordeal, but was instructed to submit a written complaint instead.

7. Who ordered the abduction? It is widely believed that the alleged perpetrators weren't the ones to come up with the idea of abducting Somchai Neelaphaijit. Someone else did that; they took the order. So who was it?

by Supara Janchitfah
Perspective, Bangkok Post
15 January 2006

Asean's sad policy on Burma

While it is clear to everyone that the Burmese junta does not care about Asean nor the international community, the point was reinforced once again this past week. When Malaysian Foreign Minister Syed Hamid Albar visited there recently, he cut short his three-day trip by one day and came home empty-handed. Of course he will file a report for the Asean ministers but so far he has put a brave face on the debacle because Malaysia is the current chair of Asean. Lie does not want to antagonise Burma any further.

It is interesting that Asean, since the admission of Burma in 1997, continues to defend Rangoon, even though this pariah state has not made any positive contribution to Asean's well-being or reputation. And yet, Asean has continued to offer its goodwill to the military junta.

Indeed, the Burmese junta leaders did not offer any face-saving concessions to the Asean envoy at all. Albar was unable to meet the opposition leader, Aung San Suu Kyi, although a visit could have eased political tensions between the junta and the opposition if the envoy had been allowed to mediate and promote some national reconciliation dialogue. Instead, it was shown that Asean has already exerted its fair share of pressure on Burma.

But that is simply not the case. Although Asean went the extra mile at the last Asean summit by expressing its concerns, the pressure was still insufficient because Burma, as a member of Asean, did not respond with anything resembling goodwill. The saddest thing about Burma's membership is that Rangoon expects the group to treat it like a family member, but it seems that it has never occurred to the junta leaders that they should do likewise to Asean. There is no mutual trust or rapport.

Another interesting point is Albar's visit followed a trip by Indonesian President Susilo Bambang Yudhoyono to Rangoon. I Yudhoyono has appointed a special envoy to Burma, signalling Jakarta's growing interest in engaging the junta-led state. With its expansive political clout, Indonesia may be able to talk to Burma. After all, at one time, the Suharto regime was the darling of the military junta. But efforts undertaken by Indonesia should be reinforced by other members, particularly Malaysia.

The time has come for Asean to take a tougher stance on Burma. Asean leaders should warn Burma that its behaviour will no longer be tolerated. Furthermore, the eminent people drafting the Asean charter should conduct their work with Burma's growing intransigence in mind. This is important because whatever transpires in Burma in the future will impact on the drafting process and the charter's contents.

And how could Asean members settle on a charter with integrity and references to basic respect for human rights and democratic values when one of its members is actively suppressing its own people? The drafters have to be realistic in establishing norms and values that Asean members can follow in the real world.

It is also an open secret that Asean leaders, as well as other members of the diplomatic community, are still upset about the lack of information regarding Burma's new capital Pyinmana. The junta leaders failed to inform other countries about the relocation, another example of their willingness to abrogate international diplomatic practices.

Many embassies, including Thailand's, have already been established in Rangoon and the task of relocating to the new capital is difficult, given constraints in budget allocations. In the future, communications between the host and foreign missions will be all the more difficult.

Without concerted Asean and international collaboration, which should include India and China, Burma will continue on its destructive path. Both the Asian giants must display diplomatic finesse and responsibility to ensure that their competition for influence in this beleaguered country does not worsen the political nightmare in Burma.

The Supreme court punts

The U.S. Supreme Court ducked its duty Monday. It declined to review a notorious case testing President George W. Bush's sweeping claim to have the power to seize American citizens on American soil and toss them into indefinite detention out-side the normal legal process simply by declaring them to be "enemy coinbatants." The justices were asked to rule on the case of Jose Padilla, an American citizen who was held for more than three years at a Navy brig in Charleston, South Carolina, supposedly on suspicion of being part of a plot by Al Qaeda to explode a radioactive "dirty bomb" in the United States. No such case was ever presented against Padilla, and just before the issue of his detention could reach the Supreme Court, the government transferred him to a civilian prison. It filed criminal charges accusing him of the far lesser conventional crime of conspiring to send money overseas for violent purposes.

The intent of that move was clear: to avoid what appeared to be an inevitable showdown in the Supreme Court over Bush's imperial vision of executive authority. And it worked. Shifting Padilla to a civilian court rendered the issue of the presid^ont's detention powers "at least for now, hypothetical," according to justice Anthony Kennedy, who wrote a rare statement setting forth the court's reasoning for denying a hearing on a case.

That statement, *which* was joined by Chief Justice John Roberts and Justice John Paul Stevens, slid past the government's unseemly gaming of the justice system. It also ignored the urgency of checking once and for all the egregious overreaching by the president that led to Padilla's being locked up without any legal process in the first place. He was even denied access to a lawyer until court pressure forced the administration to back off.

This is far from a hypothetical matter, as justice Ruth Bader Ginsburg noted in her dissent. As she observed, nothing prevents the administration from shifting direction again and returning Padilla

to military custody. “A party’s voluntary cessation does not make a case less capable of repetition or less evasive of review,” she said. There is also nothing to stop Bush from applying his arrogated powers to another American citizen.

Fortunately, the court did not hand a total victory to the administration. Kennedy made it clear that the case raises “fundamental issues respecting the separation of powers” and strongly signaled that the court would be ready to step in quickly if the government returned Padilla to military custody, or his basic rights were denied in his civilian trial.

We trust Kennedy and his col-leagues to stay true to that pledge.

* *International Herald Tribune* (April 5, 2006)

Lebanon spring forward

The author has brilliantly unfolded the story of transition in Lebanon. He has traced the coming into being of Lebanon in 1926 as an entity that European colonial powers cobbled together amidst Arab-speaking but competing religious minorities, the Christians and Muslims. The Turks during Ottoman Empire ruled but after its collapse when the First World War ended. France as mandate holder of League of Nations gave Lebanon a constitution. Lebanon became a parliamentary democracy with power sharing according to a 6:5 ratio of legislative seats, cabinet posts and so on. In 1943, Lebanon became independent. The leaders struck an unwritten accord. The National pact decreed that the President should always be a Maronite (Christian), the Prime minister a Sunni and the speaker of the Parliament a Shi'ite, remaining to be shared among various groups. The author with great erudite analysed the pact as "not surprisingly, the pact masked deep divisions. Worse, it entrenched confessional politics and failed to offer a resilient state structure that could adjust as demographic and social realities shifted. The pact thus laid the basics for a weak and fragile polity wherein major decisions had to meet the crippling requirement of virtual intercommunal unanimity."

Nevertheless the pact witnessed a booming economy but in the words of the author "Lebanon became polarized and its consensus-based version of democracy ever more nominal rather than real. Most Lebanese, meanwhile, remained poor and rural despite the urban service-sector boom. Internal economic migrants began creating teeming shantytowns around Beirut and other cities." In April 1975 a full blown civil war broke out. Syria entered and for almost three decades the civil war continued. Arab League brokered "Document of National Reconciliation." Constitutional amendments were effected. The President was made weaker, Sunni Prime Minister and Shi'ite Parliament stronger. The author criticized the Accord stating communalist politics were more firmly anchored. The rise of Rafi Hariri was significant and Syria

pulled strings. Harari was assassinated on 14 February 2005. And largest public demonstrations, that the Middle East has ever seen brokeout. Syria withdrew and an international fact finding mission into Harari assassination followed paving the way for international investigative commission. In May 2005 legislation elections followed. There was need for change in the electoral law. "Opposition leaders faced the choice of postponing the balloting indefinitely while they negotiated a new law, or having the elections go forward on time but under the imperfect 2000 law. Not wanting to risk a delay that might blunt their momentum, they selected the latter option." Under subtitle "The tasks ahead" the author suggested priority to economic reforms, secondly, "its task is to organize nationwide consultations and recommend to parliament a draft electoral law that all Lebanese will find acceptable. This is the first time that Lebanon has used an apolitical commission in order to organize and inform a systematic nationwide discussion of a key and rather sensitive issue." Thirdly the security issue. The truth about Harari murder must be known and setting up a international tribunal has to be achieved.

Fourthly, Then there must follow "Then there must follow a serious and comprehensive dialogue on the country's future. This discussion must include all the various factions, plus civil society. Without this, the gains of March 14 and after may dissipate. Friends of democracy should hope to see civil society become a growing force."

The author has given a road map for Lebanon's future progress. Many divided societies suffering from political in stability and economic crisis, will do well to make an in depth study of the authors article, draw lessons from their own respective countries and apply them in context of their peculiarities.

Note.

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*Author: Oussama Safa, General Director of the
Lebanese Center for Policy Studies.*

A comparative approach to the Arbitration Act of Myanmar*

The author's attempt to write on the Arbitration Act of Myanmar is praise worthy but lacks analysis and has its short comings. The article is narrative and provides no data as to how many cases have been recorded in courts of law either as original applications or by way of appeals. It is a law which is almost dead as the courts never exhorts the litigants to settle their disputes by resorting to the provisions of the Act. Author has stated that it is conceived as a substitute for court litigations. With due respect it is contended that it is not substitute but only an ancillary in the justice system. There is no mandatory provision in the Act nor provision in Civil the procedure code that the parties must first seek other remedies before they resort to court litigation. The Act was promulgated in 1944 by Government of Burma in Simla when Burma was under the Japanese occupation. Later it was adopted by Union of Burma adaptation of laws and order. Moreover it is now over half a century old and no amendments to be in tune with changing times have ben made. The author is silent on this issue of legal reform.

The Act has however given lot of powers for court interference. Even the award itself is ineffective unless it is filed in court and made into a decree under section 41. The procedure and power of court has been laid down under article 37. The law of limitations apply. The proceedings before the arbitrators are conducted on legal lines and are adhered to. The law of evidence might not be strictly followed in its letter but the broad principles of the law have to be adhered to. It is therefore not correct to say "arbitrators are entitled to adopt whatever procedure they think fit."

It is also not correct that an arbitration agreement can not expel the Jurisdiction of Myanmar court. The United Nations commission on International Trade law, Model and on International Commercial arbitration of 1985 give the parties to select the jurisdiction. The author of the article could have been more critical and not caption it “comparative approach” which is misleading.

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By Dr. Tin May Htun, Associate Professor, Department of Law University of Yangon

NEWS AND NOTES

Opening ceremony on Pyi-Daung-Su Law Academy (BLC)

A Law Academy has been established by BLC named as "Pyidaungsu Law Academy." It has intensive programme in Law and Human rights for 2 years, 2006 and 2007 in 3 semesters each year. 25 students of high school level have been selected through open competition .15 are female students and 10 are male. Ethnicns constitute 92%. The female and male students have separate hostel accomodation with food. All lecturers are trained lawyers. Visiting professors from abroad will also lecture. Syllabus covers twelve subjects. Opening ceremony was held in 27 February 2006. Political leaders of different Burmese organizationsin exile were invited and also democratic organisations in exile.They exhorted the students to become future leaders in transitional Burma. The Project is funding by Denish Government. An Academy Board composing of eminent law professors has been formed to oversea the teaching system and promote its quality. Although it is for 2 years, efforts are being made to make it on on-going process so that a new generation with legal mind can emerge.

Burma Lawyers' Council
Opening Ceremony of Advanced Internship Program in
Law and Human Rights (Year 2006 to 2007)
Date - 27 February 2006





Burma Lawyers' Council

Everyone is equal before the law.

Wisdom is power to transform the society into a just, free, peaceful and developed one.

Mission Statement

“By vigorously opposing all unjust and oppressive laws, and by helping restore the principle of the Rule of Law, the Burma Lawyers Council aims to contribute to the transformation of Burma where all the citizens enjoy the equal protection of law under the democratic federal constitution which will guarantee fundamentals of human rights.”

The Status of Organization

The Burma Lawyers' Council is an independent organization which was formed in a liberated area of Burma in 1994. It is neither aligned nor is it under the authority of any political organization. Individual lawyers and legal academics have joined together of their own free will to form this organization.

Objectives of the BLC

- Promote and assist in the educating, implementing, restoring and improving basic human rights, democratic rights, and the rule of law in Burma;
- Assist in drafting and implementing a constitution for Burma, and in associated matters of legal education; and
- Participate and cooperate in the emergence of a Civil Society in Burma.