

Asia Pacific Labour Law Review

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Workers' Rights for the New Century

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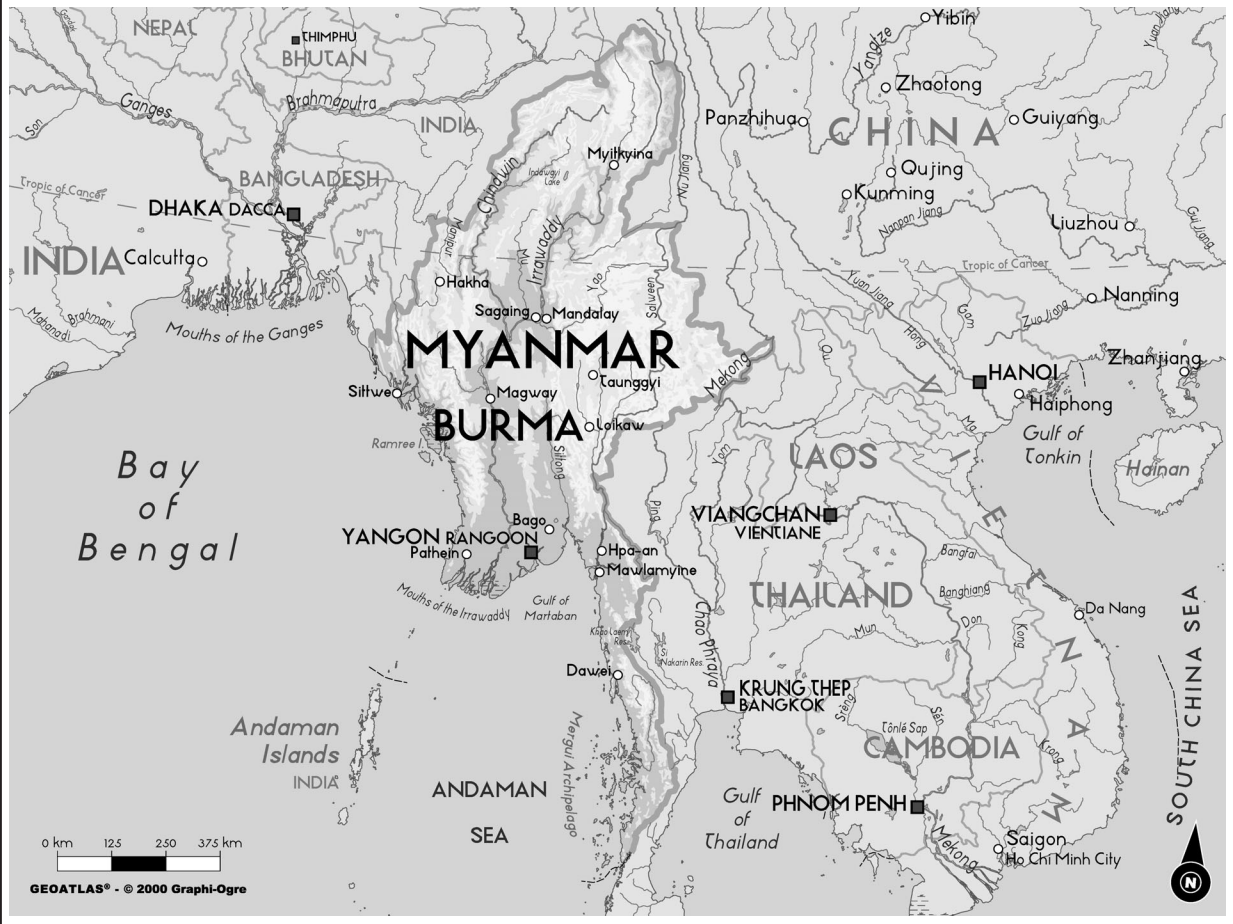
Burma, A Tyranny's Pharaonic Labour Practices

Earl V Brown Jr and Philip S Robertson Jr¹

Introduction

Burma's roughly fifty million people have lived under brutal military regimes for several generations now. In September 1988, after months of popular protests for democracy on the streets of Rangoon and other major cities, the Burmese military - known as the Tatmadaw - viciously lashed out against its people, killing thousands and imprisoning many leaders of the people's movement.

The Tatmadaw then established a State Law and Order Restoration Council (SLORC) as an extra-constitutional government, abrogating even the autocratic 1974 Constitution of strongman General Ne Win. Two years later, the SLORC stamped out the last pretences of democracy when it refused to recognise the overwhelming election victory of Daw Aung San Suu Kyi's party, the National League for Democracy (NLD).² In the years since, Burma's workers and minorities continue to suffer unremitting, brutal repression.



Other chapters in this book aim to show how the law affects workers and their families, and can be used to advance their position in the ebb and flow of power, economics, and law. This approach assumes some operative system of law - whatever a particular government's deficiencies. But the essential criminality of Burma's junta obviously requires a very different analysis. The evidence from within Burma shows that, despite some gestures at reform, the junta persists in massive human rights abuses. No relaxation of international pressure against this vicious regime is remotely justified by the contemporary facts on the ground.

Obviously, there is no law in Burma today. The hands of this military government – now styled as the State Peace and Development Council (SPDC) - are drenched in blood: that of ethnic minorities, of democracy activists, of trade unionists, of women, of students, of protesting monks, and of the thousands of quiet people who happen to get in its way, or get fingered by its diffuse network of informants.³ The junta's vast military and security apparatus continues to attempt to ensure that no new leaders or institutions emerge to challenge its rule, using detention, torture, murder, mass murder, ethnic cleansing, rape, and expropriation as the tools of its trade.⁴

This article will highlight one aspect of this persistently murderous regime - its Pharaonic labour policies. The regime habitually enslaves its citizens by forced labour practices, and steals their land, crops, livestock, and agricultural implements. It ruthlessly suppresses trade unions and other forms of association, and visits violence on workers who rise up to fight for better conditions. The Tatmadaw continues to wage a brutal war of ethnic cleansing on the minorities that make up one third of the population and a sizeable segment of Burma's internal and emigrant work force.⁵

These and other egregious human rights violations have provoked the USA, the European Union (EU) and key international financial institutions to withdraw trade preferences, refuse loans, and impose sanctions such as visa restrictions, bans on new investment in Burma, and arms embargoes.⁶

Most foreign investment has now fled. Consumer boycotts against 'Made in Burma' goods, led by trade unions and non-governmental organisations (NGO), have forced dozens of brand-name garment retailers to pledge to cease all sourcing in the country and have cre-

ated significant moral hazards for companies considering new investments there.⁷ An active campaign to ban the import of Burma-made products into the EU and the USA is gaining steam.

The military's longstanding addiction to forced labour (corvee), and its proclivity to stamp out all freedom of association have both featured prominently in provoking this international response. Yet on the slender basis of junta promises to abolish forced labour and other gestures of reform, there is now a discernable relaxation of this international pressure. However, little in Burma has changed. The regime continues to systematically violate in the most egregious ways its obligations as a state government that has ratified International Labour Organisation (ILO) Conventions Nos. 29 (banning forced labour) and 87 (guaranteeing freedom of association).

How it came to this: recent economic and political history

A military that cannibalises resources, human and natural, has moved Burma from the position of one of Asia's richest countries to one of its poorest. By 1987, Burma, which once enjoyed one of the best higher education systems in Asia, a vital industrial base and a productive agricultural sector, acceded to official 'least developed nation' status.⁸ The numbers tell this grim tale of decline. These numbers do not, however, reflect developments in the extra and illegal economy, which now rivals in size the legal economy.⁹

Rangoon University, once one of Asia's best, is now deserted and overgrown with weeds. Expenditure on education has plummeted under military rule from approximately one percent of GDP in 1994-95 to 0.3 percent in 1999-2001 – a particularly measly amount considering that the average for other low-income countries is 3.3 percent of GDP.¹⁰ The global survey of health systems by the World Health Organisation rated Burma as 190th out of 191 countries examined, ahead of only chronically war torn Sierra Leone.¹¹

By the 1990s, Burma had the lowest life expectancy, school enrolment ratio, percentage of population with safe water access, and the highest infant mortality rates in the region.¹² Per capita income in Burma has barely budged from 1950 levels, in contrast to marked increases in per capita income in the neighbouring states of Indonesia, the Philippines, Malaysia, and Thailand.¹³

Labour and living standards for urban Burmese workers, around 10 percent of the population, have plummeted as investors have abandoned projects and the military has looted remaining industries into oblivion.¹⁴ Those few profitable joint ventures in areas like mining, seafood production, low-end garment manufacturing, and consumer goods such as cigarettes and alcohol, are invariably dominated by the generals and their cronies through one of the two military-controlled conglomerates – the Union of Myanmar Economic Holdings (UMEH) or Myanmar Economic Corporation.¹⁵

Rice, which should be plentiful and cheap, is now expensive as a result of a state system that forces farmers to sell a significant amount of their harvest to the government at prices that are four to five times lower than the market price. This system is backed by the threat of violence and imprisonment for farmers who fail to provide the agreed amount of paddy to the government. Combined with the Tatmadaw's demand for forced labour that often takes farmers away from their fields during critical times during the growing season, the net result of these policies has been the increasing impoverishment of farmers, and malnutrition stemming from food shortages. The SPDC's policy to export paddy it procures in order to earn hard currency also plays a major role in explaining systematic shortages of rice.¹⁶

The collapsing economy and the war waged by the junta against its peoples, Burman and ethnic alike, has forced up to one and a half million workers to migrate to neighbouring states for dangerous and dirty work, illegal and legal. The low labour standards faced by these migrants depress labour standards throughout the region, and visit social turmoil on countries like Thailand that must cope with this influx.¹⁷

The current regime represents the last stop in a tragic journey of promise squandered. Since independence from British rule in 1948, Burma has been continually riven by ethnic and political conflict. The hope held out for a peaceful multi-ethnic federal union, presaged by the Panglong Agreement between General Aung San, the father of the current NLD leader, Aung San Suu Kyi, and representatives of the Shan, Kachin, and Karenni people in early 1947, expired early. Shortly after the agreement was stuck, Aung San and other key Anti-Fascist People's Freedom League (AFPFL) leaders were assassinated in July 1947.

Ethnic Burmans then split along political lines, with the Communist Party of Burma breaking with the AFPFL and initiating an armed struggle to topple the government. Numerous Burman leaders created their own militias, or 'pocket armies' as they were known, further destabilising an already chaotic situation. The revolt of the Karen in 1949, and formation of the Karen National Union (KNU), splintered the Tatmadaw. The KNU besieged Rangoon and KNU forces reached as far as the capital's suburb of Insein before their advance was halted.¹⁸

Successive democratic coalition governments led by Prime Minister U Nu were characterised by instability and backbiting, against a backdrop of broad consensus on centre-left, socialist economic policies, and non-aligned foreign policy. Despite its internal problems, Burma played a central role as a leading nation of the developing world. Excellent education systems, regional transport links (where Rangoon was the airport hub of the region, not Bangkok or Singapore), and rich natural resources made Burma a regional leader. During this period, a lively free press, free speech, and freedom of association prevailed. It is not surprising that the first and only Asian to lead the United Nations (UN) as Secretary-General was a Burmese, U Thant.

However, political instability was Burma's Achilles heel. The harbinger of problems came in 1958, when Prime Minister U Nu asked General Ne Win, commander of the Tatmadaw, to create an interim government pending new elections in 1960. The Tatmadaw succeeded on some levels in creating order out of the internal chaos of Burma during that two-year period. As a result, the Tatmadaw began to view itself as uniquely positioned to preserve the Union of Burma.

When U Nu was re-elected in democratic elections in 1960, he immediately began making inroads into Tatmadaw prerogatives. General Ne Win and the Tatmadaw struck back in 1962, declaring a Revolutionary Council government. U Nu was imprisoned, and the Shan President was 'disappeared' and later executed.¹⁹ University of Rangoon students, the traditional leaders of public uprisings, protested. The Tatmadaw responded by dynamiting the historic Rangoon University Student Union building with the protesters inside.

Ne Win declared a Burma Socialist Programme Party (BSPP) government, touting his 'Burmese Way to So-

cialism', a mix of Burman ethnic chauvinism, militarism, Buddhist religion, and economic nationalisation. The relatively progressive 1948 Constitution was abrogated, independent newspapers shut down, other political parties banned, and economic enterprises large and small seized by the state. Naturalisations and ethnic persecutions prompted an exodus of ethnic groups perceived as 'foreign', such as Indo-Burmese and Sino-Burmese. Burma's rich and diversified economy, benefiting from the country's incredibly rich natural resources, began its decline.

Absolute rule by General Ne Win continued through 1988. Periodic uprisings – such as the 1974 students uprising over the shoddy treatment afforded to the returning body of U Thant – and internal plots against Ne Win punctuated a regime which became characterised by Ne Win's megalomania, economically ruinous policies, savage military repression against ethnic groups in revolt, and strict isolation from the outside world. The situation changed with the advent of student protests in 1988.

Popular outcry led to a surprise convening of a BSPP convention, where General Ne Win astonished all observers by stating that he was stepping down and was going to retire. The possibility of a political future without Ne Win prompted renewed street protests, and a flurry of new openings, with new political parties, independent newspapers/broadsheets, and trade unions being formed. The emergence of Daw Aung San Suu Kyi galvanised disparate and often feuding political forces around a common leadership.²⁰

This promising democracy movement was brutally suppressed when the Tatmadaw came out of the barracks and shot down thousands of protesters in Burma's cities and towns during the last days of September 1988. With the emergence of the SLORC, Burma's current military rulers took the stage. Shunned by much of the international community, which reacted in horror to the SLORC's brutal massacres of pro-democracy protesters, the SLORC turned to the People's Republic of China (PRC) which provided between US\$1-2 billion in modern arms and military equipment. With this infusion of equipment, the Tatmadaw doubled in size to over 350,000 soldiers, and has turned the tables on ethnic groups in revolt against the regime. Those groups, which previously controlled wide swaths of Burma's hinter-

land, have now been reduced to guerrilla hit and run tactics against an overwhelming Tatmadaw.²¹

International sanctions and the flight of foreign investment have exerted demonstrable pressure of this Neanderthal regime. In recent years, pressure from fellow Association of South East Asian Nation (ASEAN) countries and the larger international community has pushed the generals to begin a shadow dance of liberalisation. Suu Kyi has been released from house arrest, and some other political prisoners have been freed. Promises have been made to abolish human rights abuses, such as forced labour. These and other gestures towards allowing freedom of association have begun to perceptibly weaken international pressure on the regime and appear to have afforded it much needed breathing room. However it should be made clear that Burma is violating these external promises: forced labour continues up to the present and activist workers and their organisations are ruthlessly suppressed.

Promises to stop forced labour: believable?

The practice of exacting forced labour is a means of survival for the Tatmadaw, one not easily given up. Much of the discourse in the ILO concerning Burma has necessarily focused on the legal abstractions of ILO Convention No. 29, banning involuntary labour. But forced labour in Burma is part of the military's support system and way of doing business. The Tatmadaw has become habituated to violently forcing Burmans and ethnics, including women, to carry heavy military equipment and supplies (portage), and even to act as human mine detectors, as it wages internal war.²²

Forced labour is routinely used to build roads, bridges, and other public infrastructure that cannot be funded by legitimate means. Forced labour is used as well as on private commercial projects that enrich the military officers. Such projects include everything from growing paddy, rubber, pulses, and other agricultural products, usually on land confiscated from the same villagers, forcing villagers to collect bamboo, firewood, and other forest products. In essence, whatever can be grown, seized, or procured through the villagers' labour and re-sold for the profit of Tatmadaw officers is fair game. Forced labour is also a violent means of deterring dissent by workers and others.

‘The connection between forced labour and other human rights abuses that sustain the military - for example the practices of ethnic cleansing, rape, and other violence against minority women and girls-leaps from the reports of Rajsoomer Lallah, UN Rapporteur on the human rights situation in Burma. The events he describes occurred in 1998 as a Tatmadaw battalion waged war in a Shan ethnic area, expelling communities, dragooning the able-bodied, and living off the land. The young, the old and weak are particularly vulnerable as more fit relatives have been removed from the community, or fled: ‘On 27 June 1998, 13 (minority) villagers, including two women and seven children, were reportedly killed by about 120-130 troops of the State Peace and Development Council led by commander Htun Nyein. The troops were patrolling and searching deserted villages [due to relocation and siphoning able-bodied persons into forced labour] in the countryside of Mung-Nai when they found people at a farm four miles west of their village of Nawng Tao, Kaeng Tawng tract. The villagers killed belong to the same extended family...’

‘On 29 June 1998, the same troops are reported to have beaten to death a man named Sai Phim who was weeding his farm at the deserted village of Nar Sarn, west of Nawng Phar, Kaeng Tawng. They buried his body ... leaving his head above the ground.’

‘[A girl of 14] ... named Nang Zarm Hawm [was left alone in a hut on 11 May 1998]. At that time, Major Myint Than and his ... troops ... came to the farm and saw Nang Zarm Hawm alone in the hut. Myint Than asked her about her parents and ordered his soldiers to wait at the edge of the farm and arrest anyone who came to the farm. He then raped Nang Zarm Hawm ... several times during the day and at about 4 p.m. burned Nang Zarm Hawm in the hut, and left the place with his troops.’²³

Human Rights Watch documented a similar massacre of 15 women and children, including infants, in February 2001 in Shan State, in interviews with Tatmadaw deserters.²⁴ Similar abuses have also been perpetrated against other ethnic groups resisting Tatmadaw control, including the Karenni, Karen, Chin, and Mon.

Forced labour emerges as one of many weapons used by the Tatmadaw as part of its ‘Four Cuts’ policy to cut insurgents off from sources of food, funds, recruits, and intelligence. These scorched earth tactics include as a

key component the massive forced relocation of populations to resettlement sites under Tatmadaw control, where the inhabitants then serve as a ready pool of porters and labourers in army camps and moneymaking projects.

It is a common practice to shoot people in ‘cleansed’ areas since all remaining persons in the area are considered insurgents or their sympathisers. Those refusing to move to the sites become internally displaced persons, living in the jungle and fleeing Tatmadaw sweeps.

For example, in 1996, after the SLORC - Karenni ceasefire broke down, the Tatmadaw forcibly relocated 200 villages in central Karenni state, displacing between 30,000 - 50,000 Karenni into the jungle, or to SLORC resettlement sites. Those lucky enough to flee to Thailand now languish in border refugee camps.

Among the soldiers perpetrating these abuses on a daily basis are many who are forced labourers themselves. A recent Human Rights Watch report exposes in devastating detail how the majority of new recruits into the Tatmadaw are forcibly recruited, and demonstrates that between 35 to 45 percent of these recruits are under the age of 18. Children as young as eleven years old have been seized by Tatmadaw soldiers, who receive financial incentives for the number of new recruits they bring in. A system of ‘Ye Nyunt’ (Brave Sprouts) youth camps and recruitment centres (Su Saun Yay) has been established to process these underage recruits. Recruits are forced to perform forced labour in army camps, and on moneymaking projects for officers, while awaiting entrance into military training. Violence and intimidation through regular beatings, and threats of execution for deserters, are used to keep new recruits in line.²⁵

In 1955, Burma ratified ILO Convention No. 29, which bans ‘...all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily...’²⁶ In the ensuing decades, the Burmese government and its apologists have sought to defend their forced labour practices at ILO conferences by tiresome appeals to ‘Asian values’. Their argument relies on equating SLORC practices with ancient traditions of communal self-help to build roads, schools, and temples. If the junta’s practices could be appropriately considered as civic or communal work, the prohibitions of Convention No. 29 would, by its very terms, not apply.



Myanmar cheroot rollers (Credit: Eugene Kuo)

Another variant of this argument is that since Burma has no taxes, it may use these forced labour as a substitute.

Compelling villagers to work for short times on communal projects obviously cannot be equated with the crimes against humanity surrounding this regime's forced labour practices. All Asian traditions condemn these crimes.²⁷ Indeed, Burma and most other South-East and East Asian states have signed Convention No. 29, which explicitly addresses the evils practiced by the regime. This regional acceptance of No. 29 gives lie to the assertion that forced labour, as inflicted by the junta on its people, remotely reflects 'Asian values'. Legally, the regime has also invoked the colonial Village and Township Act, 1907, to support forced labour. It only remains to ask: when did British colonial practice, designed to exact unpaid labour from colonised peasants, become enshrined as an 'Asian value'?

In the late nineties, after extensive remonstrations on forced labour in Burma, the ILO began to consider how to promote compliance with Convention No. 29 more effectively. In 1998, the ILO convened a Commission of Inquiry to review once more Burma's forced labour practices and fashion new recommendations for securing compliance with Convention No. 29. The Commission, of course, found that SLORC was engaging in the widespread and systematic forced labour. Among its findings was a clear expose of the impact of forced labour in terms of the human rights of the ordinary people of Burma: 'There is abundant evidence before the Commission showing the pervasive use of forced labour im-

posed on the civilian population throughout Myanmar by the authorities... In actual practice, the manifold exactions of forced labour often give rise to the extortion of money in exchange for temporary alleviation of the burden, but also to threats to the life and security and extra judicial punishment of those unwilling, slow, or unable to comply with a demand for forced labour; such punishment or reprisals range from the money demands to physical abuse, beatings, torture, rape, and murder ... Forced labour is widely performed by women, children, and elderly persons as well as persons otherwise unfit for work ... All the information and evidence before the Commission shows utter disregard by the

authorities for the safety and health as well as the basic needs of the people performing forced or compulsory labour ... Porters, including women, are often sent ahead in particularly dangerous situations as in suspected minefields, and many are killed or injured in this way ... Forced labourers, including those sick and injured, are frequently beaten or otherwise physically abused by soldiers, resulting in serious injuries; some are killed; and women performing compulsory labour are raped or otherwise sexually abused by soldiers.'²⁸

The 1998 Report provided a damning summary of the regime's crimes that advocates in the international trade union movement and human rights organisations have been able to use effectively to focus international pressure on the SPDC. The response of the regime was defiant, and focused on blaming the messenger – in this case, overseas Burmese organisations opposed to the government that it claims were the source of the information.²⁹ The SPDC asserted its sovereignty, seeking common cause with other members of the 'Asian values' coalition (such as the PRC and fellow members of ASEAN) to defend its prerogatives.

As it became clear, however, that the ILO was serious about taking further steps, the SPDC moved towards a pattern of last minute gestures manifested in concessions significantly short of international expectations, and accompanied by overstatements of what has been accomplished. Usually, these concessions would occur several weeks before a meeting of the ILO Governing

Body in March or November, or the International Labour Conference (ILC) in June, and appear specifically oriented to influencing the debate.

For instance, two weeks before the ILC meeting in June 1999 to take action on the SPDC's failure to implement the Commission of Inquiry's recommendations, the SPDC finally issued Order 1/99 of 14 May 1999, ponderously styled: 'Order Directing Not To Exercise Powers Under Certain Provisions of the Towns Act, 1907 and the Village Act, 1907'. It pointed to this Order as demonstrating the SPDC's commitment to carrying out the ILO's recommendations.

Yet the Order only referred to civilian authorities, and the distribution list notably omitted the army. Of course, the Commission and other observers have established that the Tatmadaw exacts the vast majority of forced labour. Distribution was also extremely uneven, did not include mass media like television and radio, and the Order was not translated into the ethnic languages.

This was transparently too little, too late. The delegates to the 1999 ILC, faced with the regime's failure to respond substantively, used the Commission's report to draw a line in the sand for Burma. They adopted by an overwhelming margin a resolution that found Burma's actions '... grossly incompatible with the conditions and principles governing membership in the organisation...' and barred Burma from all ILO technical assistance programmes except those directly focused on bringing the country into compliance with the Commission's findings.

True to form, the SPDC dallied in responding to the ILO's insistence on compliance, including its recommendations that the regime amend the law and revise Order 1/99 to correct deficiencies, and prosecute government and military officials procuring forced labour. ILO delegations pressing for action were met with a stupefying assertion: the SPDC was not a constitutional government and therefore had no right to promulgate laws. Therefore, what the ILO was requesting was quite difficult to accomplish within a limited time frame.³⁰

At the 2000 ILC, the delegates went further. For the first time ever, the ILO delegates - who represent governments, but also trade unions and employer associations - deployed Article 33 of the ILO's Constitution.³¹ That provision allows the ILO Governing Body to recommend action to enforce compliance with a decision of

an ILO Commission of Inquiry. The government, worker and employer members of the ILO passed a tough resolution under Article 33 calling on governments, worker and employer associations, and international organisations to review their relationships with Burma to ensure that they were not aiding and abetting forced labour. The military regime apparently began to comprehend that the ILO's action opened the door to another round of even more extensive economic sanctions against the country, including potentially crippling bans on the importation of all products made in Burma to the EU and the USA.³²

However, after many ILO visitations to Rangoon in the wake of the 2000 resolution, the junta continues to ration out palliatives on forced labour. Invariably, these concessions come late, only a few weeks before ILO meetings in March, June, or November, and are accompanied by calls to revoke the resolution authorising action under Article 33. Illustrative of this pattern is the fact that it was not until November 2002, over two years after the SPDC first issued Order 1/99, which the regime agreed and began to move forward to systematically translate the order into major ethnic languages like Karen and Shan. It is in this unfavourable context that the ILO commenced to set up a Rangoon office.

The ILO appears to be retreating from its threat to take substantive punitive action (in co-ordination with its constituent tripartite members) for repeated Burmese violations of Convention No. 29. Its office in Rangoon could be viewed as a symbol of that relaxation to those within Burma.³³ Ostensibly this liaison office is supposed to grow into an office that can receive and investigate complaints of forced labour.

It is doubtful that the ILO can credibly guarantee the safety of witnesses who might come forward. Without protections for such witnesses in place, the victims of the regime will surely avoid the ILO's Burma office. This elemental fact compromises the ILO's capacity to engage in any sort of rigorous fact finding from the inside.³⁴ It is further hard to see how the ILO can reasonably meet the logistical challenges of investigating the allegations that come before it with the extremely limited number of officers it has in the country. The ILO office also has the mandate of providing 'technical assistance' to the SPDC to help it end forced labour, further muddying the picture for both the office and those

Burmese citizens who must decide whether to place their lives in its hands. As the ILO pursues the policy of technical assistance for the regime, it will become associated with, and hence tainted by, that regime in the eyes of many Burmese.

The facts inside: what observers know about forced labour patterns

But is this or any relaxation of international pressure deserved? The files of the Federation of Trade Unions - Burma (FTUB), with an extensive network inside Burma, show that the junta continues to practice forced labour. Other sources, including NGOs and ethnic groups doing monitoring on the border (such as Karen Human Rights Group, HURFORM, and Shan Human Rights Group), international human rights organisations (such as Amnesty International), and the International Confederation of Free Trade Unions also support this conclusion of the FTUB. Ethnic minorities in particular continue to suffer from this criminal propensity of the regime. Here is what just a few of the FTUB investigations show: villagers fleeing from forced labour from Htee Khu Thaw village tract, Kyar Inn Township in Karen State were interviewed by the FTUB in March 2002. They reported in early 2000 that the Tatmadaw confiscated farmlands from villagers to set up an army camp. Villagers were regularly compelled to do forced labour, with each family forced to send one member to work on a regular basis – including digging trenches, collecting bamboo, making bamboo stakes for traps around the camp, building fences, cleaning, and collecting firewood. When two nearby bridges on the road between Kyar Inn Seikkyi and Kawkareik were destroyed by a forest fire, the Tatmadaw suspected sabotage, and starting in January 2002 all villagers in the area were forcibly relocated from their villages in other parts of the village tract to Htee Khu Thaw village. Reconstruction of the bridges by forced labour and forced portering began in earnest, with porters being required every day during the first three months of 2002. Regular work of the porters was to carry between 10 and 15 kilogrammes of supplies, including bullets, artillery shells, food, and other equipment. Those forced to porter were beaten when they could not keep up the pace, and often returned to their homes with wounds from the violence by soldiers and difficulty of carrying the loads.

The FTUB, working closely with Karen organisations, compiled a dossier of 55 original written orders sent to village leaders by Tatmadaw military camps and operational columns in the Toungoo area between July 1999 and September 2000. This is precisely the period of time that the SPDC was claiming it was serious about eliminating forced labour in its representations to the international community. Signatures of Tatmadaw officials (complete with rank and army unit) are present on all the orders, making prosecution a simple matter if the regime were interested. Reading the orders provides a chilling snapshot at a litany of abuses, and makes clear the intimidation and willingness to resort to violence that characterise relations between the Tatmadaw and civilians in the areas that it occupies. The orders reveal that villagers are still forced to labour on roads and army camps, procure construction supplies and food and provide them free of charge to the army, and pay ‘servant fees’ to the military.³⁵ Meanwhile, they face arrests, forcible relocation of villages, theft of goods, and constant threats of violence targeted against entire village communities if they do not comply with the demands, and if the village representatives do not appear at the time and place requested. Orders include clear threats like, ‘If you do not come, we will call with the big gun’, ‘If [you] fail to meet, your village and villagers will suffer consequences’, ‘If [you] do not come, the Column will come [to you]’, and ‘You failed your promise to meet, so I will come when your village is holding the hill god ceremony. As compensation, a bullet will be received. Meet now.’

Even in areas in central Burma, far from fighting with ethnic insurgents, forced labour continues to be exacted. From August 14-16, 2002 in Myin Gan township of Mandalay division, dozens of villagers from a local village were forced by local SPDC officials to plant trees and make barriers along the Myin Gyan – Nyaung Oo highway, and along the northern part of the Sin Te River. Tatmadaw sweeps of public spots for porters for the military continued, with eyewitnesses reporting that such a sweep happened at 3 a.m. on 7 October 2002 at the Mandalay Central Rail station. In Sagaing division, villagers in Shwebo Township were forced in June 2002 to construct military installations, and were forced to provide money for materials to be used in the construction.

Repression of industrial and other workers

The regime that enslaves minorities in rural areas not unexpectedly also suppresses its industrial workforce. After over four decades of this military autarchy, even the memory of an industrial relations system in Burma is fading.³⁶ There is now no reliable mechanism for advancing the claims for industrial workers or resolving their grievances.

Any legal institution still functioning in Burma, including those with competence in industrial relations can be overridden by military decree, or by the action of any powerful officer or his cronies. Anyone who invokes law to challenge this arbitrary power faces arrest, violence, and possibly death. Despite the fact that Burma has ratified ILO Convention No. 87, independent trade unions are of course outlawed.³⁷ Union leaders, their families, and associates are subject to arrest and murder. Rank and file workers who lead fights against exploitation face retaliation up to imprisonment and death. A union movement centred on the FTUB operates in exile and underground in Burma itself, at great cost and peril.³⁸

There is, to be sure, a residue of law, regulations, and legal institutions: old colonial Government of India industrial relations enactments, newer statutes, and regulations from the independence era, and arbitration boards. For every shard of law workers might theoretically take up, there is a net of repressive laws, regulations, and decrees, some from colonial days, others new and yet others secret, to enmesh workers and all others who might seek to challenge the military.³⁹

Labour law in Burma

The status of trade unions

Burma has ratified ILO Convention No. 87, the core ILO convention on freedom of association for workers and protecting collective bargaining rights.⁴⁰ Yet even its written law—considered apart from the regime's practices - conspicuously fails to comply with ILO minimum standards. The earliest law, the Trade Union Act of 1926, is a repressive colonial relic, never repealed, that erects an excessively high threshold for establishing unions as legal bodies. Section 4 of that Act requires 50 percent union membership in a given workplace before a

union can be registered, effectively barring new unions that emerge from obtaining legal status.

A 1966 ILO Report of the Committee of Experts on the Application of the Conventions and Recommendations specifically condemned this sort of threshold as violating Article 2 of Convention No. 87, which guarantees workers the right to establish associations *without prior authorisation*.⁴¹ This lingering statute also impermissibly forces union officers to eschew membership in political parties and requires that they be active employees of the enterprise where the union is established. (Section 6 (h)) By the latter rule, employers can oust union officials by terminating their employment.

The subsequent Law Defining the Fundamental Rights and Responsibilities of the Peoples' Worker Councils (1964) set up a mandatory system of workers' councils, explicitly under the direction of Ne Win's now defunct monopoly political party, the Burma Socialist Programme Party.⁴² No elaboration is required to show that this law transgresses international labour law on its face. This 1964 statute was, in turn, amended in 1970 to compel all workers to join the Asiayone, the monopoly BSPP union. Again, no attempt was made to harmonise this 'law' with prior and subsisting law.⁴³

The SLORC continues to add debris to this legal aggregation. It has abolished Asiayone. During the brief democracy period when BSPP control had receded and pro-democracy groups had ostensible control of the streets, Burmese workers rose up and formed the All Burma Workers Union (ABWU). One of the first actions the SLORC took upon shooting its way back into power on 19 September 1988 was to arrest U Khin Kyaw, the ABWU chairman, and compel him to dissolve the organisation.⁴⁴

With the Asiayone abolished, and the ABWU dissolved, the regime now maintains that there is no freedom of association problem in Burma because there are no trade unions there.⁴⁵ To fill the void it has created, the junta has required the creation of 'worker welfare committees', made up of workers and managers, in all Burmese enterprises. The architects of this system have not bothered to specify the means of selecting the representatives.

The junta also forces workers to join the Union Solidarity and Development Association (USDA), an artificial governmental creation designed to substitute for

unions and all other civil society institutions. The USDA is the organisation that most observers believe was responsible for a violent attack on a NLD motorcade carrying Daw Aung San Suu Kyi where a number of party workers were injured. Suu Kyi has publicly denounced the USDA as ‘brownshirts’, a comparison to the Hitler Youth in the early to mid 1930s. To work in the civil service, to take exams or get licenses, or for myriad other economic activities, USDA membership is required.⁴⁶

A new trade union law is under what now seems eternal consideration by a mysterious body, the Laws Scrutiny Central Body that has the curious mandate of looking at the laws to see if they fit present conditions. Presumably, this body can shred laws that do not meet with its approval.⁴⁷ This posture of study and review is obviously a clumsy attempt to justify a forty-year history of violating Convention No. 87.⁴⁸

In fact, SLORC has promulgated a draconian decree, No. 6/88, which denies legal status to any labour organisation not approved by the regime’s security apparatus. This ukase bans all associations not approved by the government and specifically applies to trade unions. Since SLORC takes the position that no unions exist legally in Burma, the decree effectively requires all unions that might emerge to ‘...apply for permission...’ It goes without saying that should a legitimate labour organisation, such as principally the FTUB and its affiliates or the Federation of Trade Unions – Kawthoolei (composed of ethnic Karen workers), actually apply for such permission, it would be denied and the organisation formally branded as illegal.

The regime’s vitriol against the FTUB is sufficient to establish its hostility towards any manifestation of independent and democratic trade unionism. The FTUB has been variously called ‘national traitor expatriates’ and ‘an expatriate terrorist gang’ by the SPDC controlled press.⁴⁹ The FTUB General Secretary, U Maung Maung is accused of ‘all kinds of nation-destroying acts by going against the motherland and the ruling government’.⁵⁰ At the Special Sitting on Myanmar at the ILO in June 2002, the representative of the Government of Myanmar specifically objected to Maung Maung speaking as a member of the International Confederation Free Trade Unions delegation, because he was ‘a terrorist and a

criminal and therefore letting him take the floor was an abuse of this ILO forum.’⁵¹

Severe criminal sanctions attend any activity that might be deemed union activity with respect to an unregistered union or other association.⁵² A companion decree to 6/88, 2/88, contains a sweeping ban on all assemblies and other forms of expression, including strikes. Both decrees, considered together, suppress all trade union activity and spontaneous worker protest.

This is the operating labour ‘law’ of Burma. Two members of the FTUB Executive Committee have been imprisoned and tortured, inter alia, under these decrees as a result of their work for a democratic trade union movement. One of these leaders, U Khin Kyaw, an official of the Seafarers’ Union of Burma (SUB), was imprisoned in 1993 and again in 1997 for union activity. He has been tortured and is now serving a 17-year sentence in Thayarwaddy Prison. Myo Aung Thant, a leader of oil workers, was sentenced to life in prison in 1997, and has been moved to a remote prison in Kachin State, in the far north of Burma. His wife was imprisoned as an accomplice at the same time but in a different prison, leaving a small child in the care of relatives. However, she has now been released as part of the series of prisoner releases accompanying the now stalled NLD-SPDC dialogue.⁵³ These men remain imprisoned. Relaxation is not yet on the cards for these trade unionist victims of the junta.

Collective bargaining

The regime claims it has systematic and effective machinery for settling industrial disputes.⁵⁴ The 1929 Trade Disputes Act (India Act VII), as amended, still appears to define the means of resolving industrial disputes. The statute, which has been over time amended in part by law and decree, sets up conciliation boards and courts of inquiry to arbitrate industrial disputes. The junta claims that under this law, a central and local arbitration boards are functioning to resolve grievances.⁵⁵ This law, however, also severely restricts the right to strike in all sectors and industries by allowing the government to refer any dispute to the settlement machinery for disposition and to suppress any strike over the issues so referred. Strikers and their supporters who violate these strictures face criminal sanctions.⁵⁶

Minimum wages, hours, and conditions of work

Although there is no official minimum wage in the private sector, government policy keeps industrial wages down. The military does not want wages in foreign factories to exceed government salaries. The FTUB reported a ceiling on factory wages of less than US\$3 a day in 1998. The National Labour Committee's research found that Burmese wages are much less than that. NLC reported that the average Burmese garment factory worker earns only US\$0.07 per hour, or approximately US\$3.23 a week.⁵⁷

The Payment of Wages Act 1936 (India Act IV), as amended, regulates wage payments for most private sector workers, and proscribes abuses such as withholding cash payments, docking pay, and cheating workers. The current minimum wage reported by the government for unskilled state sector workers is 20 kyat per day.⁵⁸

Legal maximum working hours are as follows: at shops, offices, service and entertainment facilities and emporiums - eight hours per day, 48 hours per week; at factories, oil fields and surface mines - eight hours per day, 44 hours per week; at factories engaged in continuous operations - 48 hours a week; in underground mines - eight hours per day, 40 hours per week. Private employees should receive roughly six days' casual leave, 30 days' medical leave, 10 days' vacation, and 21 holidays. Women working in enterprises covered by the Social Security Act are entitled to maternity benefits. However, given Burma's shrinking legal industrial sector, it is clear that these protections, were they enforced, would apply to and benefit few workers.⁵⁹

Antique factory and workers' compensation statutes purport to regulate occupational health and safety conditions, and to compensate injured workers, their families, and the survivors of workers killed on the job. There are archaic specialised laws protecting children, apprentices, dock workers, miners, and oil workers. Specific regulations have been over time issued under these laws.⁶⁰ Another special law, the Emigration Act 1922 (India Act VII), is on the books to protect the interests of Burma's migrant work force.

These standard setting laws are woefully outdated. Health and safety regulation has not kept pace with current work-place conditions, or with new scientific and technological developments. Nonetheless, these laws,

and the regulations issued under them, offer some legal protections for workers. They should be updated and enhanced, not scrapped, as they offer the rudiments of a framework for a labour law that can begin to protect workers.

The precise degree to which these antiquated standards are enforced is impossible to ascertain. The absence of a legal trade union movement means that there is little in the way of consistent worker pressure to enforce standards. Burma's generals want a cheap, unprotected work force, and in this they have allies in the bottom-end investors from the region who see Burma as one of the few countries that can compete with mainland China on the basis of low wages and unregulated conditions.

It is a safe bet that these laws are rarely, if ever, enforced in military run factories, or in most private enterprises. The Central Executive Committee of the NLD put the matter succinctly in their May Day statement of 2001 by noting that 'Factory workers and dock labourers suffer exploitation by the employers and have no choice but to accept the wages paid to them. They enjoy no rights, no benefits, or security.'⁶¹

Even if the generals wanted to enforce these laws, however, they simply do not have the funds or staff to do so. At the same time, the officials at the Ministry of Labour, like civil servants in many of the government departments, are afraid of taking any action that might upset or offend the ruling generals who could retaliate with dismissal, transfer, or worse. Where workers bring complaints to the Ministry, it appears that the common practice is to simply go through the motions of an inspection and then refuse to follow up. The case of Goodwear Factory, a Taiwanese owned garment manufacturer, is illustrative.

According to the NLD, mandatory overtime, no provision for sick leave of any sort, late payment of wages, and arbitrary fines for violation of company 'rules' were the norm in May-June 2000. Yet when a worker complained to the Yankin district Labour Office, visits to the factory by Labour Ministry officials resulted in no changes, and no follow up was taken.⁶² Whether the officials were bribed, intimidated, or both, remains unknown but it is clear that their ability to enforce labour law is limited.

Like the man who bit the dog, the newsworthy item would be a report that these laws were actually enforced.

And none of these standards impact the agricultural, extra legal (all informal sector employment and off-the-books industrial work), and illegal sectors. An example of the last would be a fly-by-night jewellery grinding factory employing under age children. Illegal employment is work in the burgeoning drug manufacturing, sex, and smuggling trades. Child labour is rampant, as is trafficking in women and children. Most Burmese workers, adult and children, inside and outside the country, work without any protections at all.⁶³

Whatever the written law, in practice workers who fight to redress often atrocious conditions face threat, violence, and murder. The files of the ILO's Freedom of Association Committee tell the story and build the historical record. Reports received by the FTUB from inside Burma establish that this pattern of repression continues, and public statements issued by the NLD buttress that conclusion; the following examples illustrate.

1993 ITF complaint case

Thousands of Burmese work as seafarers on foreign flagged ships, often shopped out by the junta's Seamen's Employment Control Division (SEDC). The SEDC controls the terms of the seafarers' employment, and forces them to sign a 'yellow dog' contract forbidding them from contacting the International Transport Workers' Federation (ITF).⁶⁴ Conditions at sea for these workers are appalling; the workers are starved, beaten, and sometimes killed. They are routinely cheated out of wages. When cheated seafarers have recourse in foreign ports to foreign industrial dispute resolution machinery to remedy these abuses, or to recover back pay, Burma's SEDC threatens families of the seafarers with violence and demands the back pay money from the seafarers under the 'yellow dog' contract.⁶⁵ The international trade union movement reports similar and continuing violations by the SEDC of Burmese seafarers' freedom of association rights.⁶⁶

Myanmar Yes Garment Factory (May 2000)

This Korean owned garment factory employs about 1,400 workers on 10 lines in Yangon's Hlaing-tha-ya industrial zone. Conditions include frequent mandatory overtime (with dismissal for those who refuse) and ex-

tremely limited bathroom breaks (one toilet permission allowed at any given time for each line of over 100 workers). On 16 May, a woman worker named Ma Moe Htay took seriously ill, but she was initially refused permission to rest. Her supervisor refused to let her go home, and finally when it became clear she could not work, told her to lie down behind a stack of garments to avoid upsetting other workers. The next day she did not come to work. On 18 May, her body, still clad in a Myanmar Yes uniform, was found in a gutter in the area around the factory. The factory provided no compensation, and the local police refused to investigate.⁶⁷ On 5 October 2000, Myanmar Yes workers staged a collective protest after the employer retracted a promise to revamp pay practices. Myanmar Yes management called in SPDC Military Intelligence and the police, who suppressed the protest and arrested around 30 workers who management pointed out as the ringleaders of the protest. Approximately 10 of the workers were taken to the Ye Kyi Ai Centre, a notorious torture and interrogation military prison in Rangoon. The remaining workers were held in police lock-up at the Hlaing tha-ya police station. The fate of these workers remains unknown.

Kanthayar Motorcar Tyre Factory (March 2001)

Democratic Voice of Burma (DVB) radio reported that on 9 March 2001, workers at this factory in Thaton township, in Mon state, held a protest against the owner for unspecified compensation issues. The workers dispersed after the Thaton district police informed them that they could file petitions with the relevant government agencies. However, before any formal petitions could be prepared, officers from Military Intelligence Unit 5 began arresting those workers identified as the ringleaders. 19 workers were arrested on the evening of 9 March and during the day of 10 March, prompting the remaining workers involved to scatter. Meanwhile, all work was stopped at the factory and the lane and surrounding areas were put under control of two companies of soldiers from Light Infantry Battalion 24. The soldiers put a curfew into effect around the factory, and posted signs in the lane leading to the factory that persons entering the lane between 18.00 to 06.00 hours without authorisation were liable to be shot. The fate of the arrested protesters remains unknown.⁶⁸

Unique International Industry Company (November 2001)

This factory, located in Zone 4 of the Hlaing Thayar industrial estate on the outskirts of Rangoon, faced a labour dispute in November 2001 when workers joined together to demand an increase in overtime rates from 20 to 30 kyats per hour. Factory management informed the Tatmadaw, and the Tactical Commander of Rangoon Regional Command arrived at the factory to assess the situation. Six workers representing the protesting workers discussed the grievance with the Commander. The day after the Commander's visit, management fired the six workers, and paid three months severance pay as well as the pay owed to them for that day. The workers did not resist the order, and the last update of the situation indicated that the workers went into hiding because they were worried that the Tatmadaw would arrest them. The factory was producing men's jackets for export to the USA and Canada.

Mass murders on the Mae Lamao Stream

The mass murder of workers who collectively demand back pay due them, and tolerance of such murders also plainly and with utmost aggravation violates Convention No. 87. The junta has created a climate where it is reasonable to suspect that employers are murdering Burmese workers with impunity.

Since January 2002, scores of bodies of men, women, and youth have washed ashore by the Mae Lamao stream, Mae Ramat District, near Mae Sod, Tak Province, on the Thai side of the Thai/Burma border. The victims are all able-bodied, aged approximately 15 to 45 years, and are most likely Burmese migrants working illegally in Thailand, or workers from inside Burma, who worked near the border. The Asian Commission on Human Rights notes that migrant workers from Burma '... are extremely vulnerable to all types of human rights violation, ranging from denial of wages and police extortion to assault, rape and murder'. Burmese migrants are often murdered in this area and Thai and Burmese authorities do nothing.

Of course, in this vast void of secrecy and illegality, murders, even mass murders, can go completely undetected. The Commission rightly suspects that these mass murders are labour related. It is not unlikely that these are Burmese workers who have been murdered because

they have demanded their pay. No one can say otherwise given the inadequate investigations undertaken by the authorities. If this tragic probability proves true, then these murders represent a new but hardly unexpected depth in the bestial treatment of Burmese migrants.⁶⁹ They also show how Burma's junta has created a vortex of brutality in labour relations.

Conclusion: no relaxation of pressure is justified on this record

Old facts that tragically endure, and the fresh accounts of the FTUB and others knowledgeable about conditions inside Burma, show that the junta persists in policies of exacting forced labour and suppressing workers. These accounts of criminal human rights violations should counsel against any relaxation of international pressure on Burma. The ILO in particular should guard against affording the junta any opportunity to argue for relaxation of pressure to comply with international labour law norms. Those interested in improving conditions for Burmese workers inside and outside Burma, including the ILO and private groups, should pressure governments to afford Burmese migrant workers their rights under international instruments to asylum and legal protections. Burma should continue to be isolated by international bodies, governments, trade unions, consumer organisations, and community action world wide, until that time when voices like those of Daw Aung San Suu Kyi and U Maung Maung call for relaxation.

Notes

1. This article reflects solely the private views of the authors, and not those of the FTUB, AFL-CIO, or any other person or organisation.

In this article, some USA and international legal authorities and instruments are cited. For simplicity, the authors use abbreviated forms of legal citation. Some of the sources used are small publications of limited circulation retained in the files of the authors.

Obtaining authoritative versions and translations of Burmese military decrees is highly problematic. The USA Department of Labour's International Labour Bureau has observed: 'Burma's laws are vague and inaccessible. In the area of fundamental human rights, including basic worker rights, the problem of identifying Burma's laws is particularly acute, as the GOB ...re-

fuses to co-operate with international organisations and other interested parties.' See, note 44, *infra*. The versions quoted here are from the files of the authors. The citations herein to Burmese statutes are based on the texts available to the authors, as authoritative editions of Burmese statutory law are difficult to access.

2. Elections were held in May 1990, and the NLD won 82 percent of the seats in a national Parliament. The junta then issued a decree, Order 1/90, refusing to recognise these results and declaring that the elected representatives were merely drafting consultants to create constitutional drafts. Burma Lawyers' Council, 'Burma, The Military and the Constitution', (Bangkok, 1999, pp. 1-3).

3. As but one example, violence by military personnel against minority women remains widespread. New allegations of military gang rapes of ethnic minority Shan women are being reported by the USA Consulate in Chiangmai, Thailand; 'Junta Gang-raping Shan', *The Nation*, (Bangkok, 20 December 2002, p.5A).

4. USA Department of State, 'Report on Conditions in Burma and US Policy', (1998, p. 3), at www.state.gov/www/regions/eap/981028_us-burma_report.html; see also 'Report of the Special Rapporteur', Lallah, *infra* at note 24.

5. See, the allegations summarised in *NCGUB et al. v. Unocal Corp.*, 176 F.R.D. 329 (C.D. Cal., 1997) and its companion case, *Doe v. Unocal Corp.*, 963 F.Supp. 880 (C.D. Cal., 1997); see also, *Doe, id.*, 963 F.Supp. 880 (C.D. Cal., 1997). These are cases brought by ethnic villagers against an oil company contending that the company used the military to ethnically cleanse areas surrounding an oil exploitation project it was developing in Burma. The villagers' complaint was recently sustained under the USA Alien Tort Claims Act, 28 USC section 1350, against a motion to dismiss and sent for resolution by jury trial. *John Roe III v. Unocal Corp.*, F.3d, (9th Cir., 2002) (No. 00-56628). For more details, see: Terry Collingsworth, 'The Key Human Rights Challenge: Developing Enforcement Mechanisms', (15 *Harv.*, *Human Rights J.* 183, 2002).

The principal ethnic minorities are: the Arakans, Karen, Mon, Karenni, Shan, Chin, Naga, Wa and Lahu. These minorities may form the majority of the population in as much as half of Burma's land area.

In this article, the jurisdiction denominated Myanmar by the junta will be referred to as Burma, reflecting practice in the democracy movement. The junta, which seized power in 1988 as the State Law and Order Council (SLORC), now calls itself the State Peace and Development Council, upon the advice of PR consultants. It will be referred to herein as SLORC.

6. *Supra*, note 4 'Reviewing United States and European Union Sanctions'. The ban on fresh investment applies to the USA only.

7. See Web sites of the Free Burma Coalition at www.freeburmacoalition.org and Burma Campaign UK at www.burmacampaign.org.uk

8. 'Ne Win destroyed wealthy nation', *The Nation*, (Bangkok, Thailand, 6 December 2002) (Burmese military dictator's obituary).

9. '1996 Country Commercial Guide', United States Embassy, Rangoon, (United States Department of State reprinted in *Burma Debate*, July/August 1996, p. 4).

10. 'Review of Financial, Economic and Social Conditions, 1995/96, Union of Myanmar'. See also 'Communication of UNICEF-Rangoon Office' to Human Rights Watch by E-mail on 25 July 2002, quoted in 'My Gun Was as Tall as Me: Child Soldiers in Burma', (October 2002, p. 24).

11. 'Health Systems: Improving Performance', *The World Health Report 2000*, (World Health Organisation, Geneva, Switzerland).

12. 'Human Development Report 1996', (United Nations Development Programme, New York).

13. Khin Muang Kyi, Ronald Findlay, R M Sundrum, 'Research Group for Economic Development of Burma', (May 1997, p. 2).

14. 'More Trouble Brewing for Mandalay Beer', *Irrawaddy*, vol. 9, No. 9, (December 2001), describing the travails of Win Win Nu, a Singapore-based Burmese businesswoman who started up a profitable brewery only to find it confiscated by military officers. On 11 November 1998, 60 soldiers stormed the brewery and Win Win Nu was ejected. In her view, faced with the final insult of a lawsuit by the military against her, "...there is no point in going to Rangoon, because there is no law...").

15. UMEH's office in Rangoon is located at 72-74 Shwedagon Pagoda Road, in the same office that houses the Directorate of Procurement, Ministry of Defence. A confidential UMEH Board of Directors report for 1995-96, which was leaked to diplomatic sources in Rangoon, stated clearly that UMEH's 'major goal in the long run is to set up heavy industries like cement, fertiliser, iron and steel, car, and packaging industry thereby to become the main logistics and support organisation for the Burmese military in the future'.

16. 'What went wrong with the Rice Bowl of Asia?', Kyi May Kaung and Zaw Oo, *Policy Brief*, (The Burma Fund, Washington, D.C., November 2002).

17. 'The Land of Guile, Migrant Workers In Thailand', *Irrawaddy*, vol. 10, no. 8, (October 2002, pp. 11-23)

18. Martin Smith, 'Burma: Insurgency and the Politics of Ethnicity', (Zed Press, London, 1991); and Bertil Lintner, 'Burma in Revolt: Opium and Insurgency Since 1948', (Westview Press, San Francisco, 1994).

19. Patricia Elliot, 'Sao Shwe Thaik The White Umbrella', (Post Publishing Company, Bangkok, 1999).

20. Numerous books have been written about the events of 1988. Bertil Lintner, 'Outrage: Burma's Struggle for Democracy', (White Lotus Press, Bangkok, 1990); Christina Fink, 'Living Silence: Burma under the Military Regime', (Zed Books, London, 2001); Alan Clements and Leslie Kean, 'Burma's Revolution of the Spirit: The Struggle for Democratic Freedom and Dignity', (White Orchid Press, Bangkok, 1994).
21. Some of the best analyses on the capabilities, size, and future direction of the Tatmadaw have been by done by Andrew Selth of the Australian National University.
22. *Infra*, note 24 describing the connections between the practices of forced labour, ethnic cleansing, rape, and violence against women and girls.
23. 'Report of the Special Rapporteur, Mr Rajsoomer Lallah, on the Situation of Human Rights in Myanmar', submitted in accordance with Commission on Human Rights Resolution, (1997) 1997/64, E/CN.4/1998/70.
24. 'My Gun Was as Tall as Me: Child Soldiers in Burma', (Human Rights Watch, New York city, October 2002, pp. 91-94).
25. *Ibid.*
26. 'ILO Conventions and Recommendations', vol. I, (ILO Geneva 1992, pp. 115-124). No. 29 specifically exempts from this definition of prohibited forced labour: compulsory military service, work that is part of 'normal civic obligations' in a fully self-governing country, emergency work in cases of calamities and wars, and traditional communal work, Convention No. 29, Para 2(a)-(e).
27. For example, the junta's forced labour practices are a most serious breach of Buddhist norms of conduct for masters and rulers. See, e.g., Digha Nikaya, 3.180 ff; 'Ashoka's Seventh Pillar Edict', quoted in de Bary, *The Buddhist Tradition*, Vintage (New York, 1972, pp. 44; 53-4).
28. 'Forced Labour in Myanmar (Burma)', Report of Commission of Inquiry appointed under Article 26 of the Constitution of the ILO to Examine the Observance of Myanmar of the Forced Labour Convention, 1930 (No. 29), (ILO, Geneva, 2 July 1998).
29. 'Response of the Government of Myanmar to the ILO Commission of Inquiry Report', (23 September 1998). U Tun Shwe, the Director-General of the Ministry of Labour, stated in the reply that the Commission of Inquiry report contained 'information provided by some organisations from anti-government circles was politically motivated, highly biased, lacked objectivity, and without any goodwill on the part of those organisations'.
30. Authors' conversation with official of ILO Asia-Pacific Office in Bangkok who accompanied ILO technical team delegations to Burma, November 2000.
31. Article 33 provides: 'In the event of any Member failing to carry out with the time specified the recommendations ... contained in the report of the Commission of Inquiry, or in the decision of the International Court of Justice, as the case may be, the Governing Body may recommend to the conference such action as it may deem wise and expedient to secure compliance therewith.'
32. The Clinton Administration in particular investigated links between Burmese products and forced labour on infrastructure (roads, industrial zones) with an eye to justifying such a ban, and high-level White House policy meetings continued to consider issuing an administrative order in December 2000. However, in early January 2001, before Clinton left office, reports of a dialogue between Daw Aung San Suu Kyi and the military regime surfaced in Rangoon, and the escalation of sanctions that an import ban would have constituted was put off.
33. 'ILO liaison officer takes up assignment in Rangoon', *ILO Focus*, Vol. 15, No. 3, (Fall, 2002, p. 1).
34. The SPDC has consistently refused to consider appointment of an independent Burmese ombudsman to receive reports of abuses, claiming that the notion of an ombudsman is a foreign concept not appropriate to Burma.
35. 'Servant fees' is one way that the SPDC tries to disguise forced labour. It exacts forced labour, but then tells the villagers (from where the villagers are dragooned) to pay money to the army so that it can, in turn, pay the villagers for their work. In many cases, the 'servant fees' paid disappear into the pockets of local military officers, leaving villagers worse off than before.
36. There are few pro-worker lawyers left; most Burmese lawyers who represented workers or unions have been killed or exiled. There are no functioning law schools, and no young Burmese inside are learning the trade of legal advocacy for workers.
37. Two SLORC decrees passed in the wake of the 1988 election and the ensuing repression broadly ban free speech, assembly and associational activity, including trade union activity. 'State Law and Order Council Decree No. 6/88', (30 September 1988), banning unregistered organisations and suppressing any unions or associations who '...in any way disrupt...tranquility...' and providing for imprisonment for violations of the decree; 'State Law and Order Council Decree 2/88', (18 September 1988), sweeping ban on strikes, demonstrations, gatherings and meetings of all kinds.
38. The FTUB, formed in 1991, is the sole voice of the free Burmese trade union movement. Because of this, it is '...not allowed to function in the country and workers identified with it [are] under constant surveillance by the police and the military intelligence agency [and live] ...in permanent fear of arrest and torture'. 'Interim Report of the Special Rapporteur On Burma' (1997),

UN Doc. A/52/484, para. 19. For more information on the FTUB, see their Web site at www.tradeunions-burma.org

39. Here are but some of the descriptively named repressive laws: Official Secrets Act 1928 (colonial enactment providing for imprisonment for dissemination of statements deemed official secrets); Emergency Provisions Act 1950 (allowing detention up to seven years for opposition threatening ‘...tranquility...’); Unlawful Associations Act 1975; Printers’ and Publishers’ Registration Act 1962; State Protection Act 1975; and Decree No. 5/96 ‘Protecting the Stable, Peaceful, and Systematic Transfer .. Of State Responsibility...Free from Disruption and Opposition etc’.

40. Burma ratified Convention No. 87 Freedom of Association and Protection of the Right to Organise 1948, in 1955, at the same time it ratified Convention No. 29 on Forced Labour (1929). See, ILO, List of Ratifications by Convention and Country (1977).

41. ‘Report of the Committee of Experts, 1966’, (ILO, p. 96). (emphasis added)

42. ‘Report of Committee of Experts, 1971’, (ILO, p. 116).

43. ‘Report of Committee of Experts, 1980’, (ILO, p. 111).

44. Authors’ discussions with U Sein Htay, former Central Committee member of the ABWU, Bangkok, December 2002. U Khin Kyaw is now a Central Executive Committee member of the FTUB, and is serving a 17-year jail term in Burma connected to his work with the FTUB. U Sein Htay is currently the Director of the Economic and Research Department of the FTUB.

45. This argument evokes the Roman historian Tacitus’ description of the destruction wrought by some other generals, the Roman generals, ‘They have created a desert and called it peace.’

46. ‘Report of the Special Rapporteur On Burma’, (UN Doc. E/CN.4/1977/64, 1997).

47. USA Department of Labour, ‘Report on Labour Practices in Burma’, (Bureau of International Affairs, September 1998, p.66, n. 324).

48. ‘Provisional Record of the International Labour Conference, 86th Sess.’, No. 17, (Geneva, 1998), see also, *Burma Debate*, Vol. III, (1996), discussing the Central Laws Scrutiny Body and reprinting prior ‘review’ justifications tendered to the ILO in 1996.

49. ‘Democracy Ghouls Against the State – 1’, *New Light of Myanmar*, (Rangoon, 29 October 1988). See also ‘Wrongly Hanging Jingle Bells for Love of the Monkey – 1’, *New Light of Myanmar*, (Rangoon, 1 June 1999).

50. *Ibid.*

51. ‘Special Sitting to Examine Developments Concerning the Question of the Observance of the Govern-

ment of Myanmar of the Forced Labor Convention, 1930 (No. 29)’, International Labour Conference Provisional Record, Ninetieth Session, 28, part 3, (Geneva, June 2002. p. 9). The fact that U Maung Maung has been honoured repeatedly by the international trade union movement, and was awarded the George Meany-Lane Kirkland Human Rights Award of the AFL-CIO in 2001, shows that the SLORC view of this trade union leader is inconsistent with the views of the ILO’s other constituents.

52. See Sections 5-8 of SLORC Decree 6/88.

53. *Supra*, note 19, (pp. 72-73); see also, ‘International Confederation of Free Trade Unions Burma Report (2002)’.

54. It so claims on its Web site cited in note 55, *infra*.

55. However, nothing in Burma’s law can be ascertained or asserted with certainty, and it is not clear that these bodies rest their authority on this Act. *Infra*, note 28.

56. (Sec. 14; 24-25).

57. ‘USA Military and Retailers Profit Supporting Brutal Military Dictators in Burma’, (National Labour Committee) at www.nlcnet.org/Burma/12-00/burma_alert_us_military_retailers_profit.htm

58. See, www.myanmar.com/gov/trade/lab.html. On the street, roughly 1,100 kyat gets you one US dollar.

59. *Id.*; The Social Security Act is funded by a sliding scale of employee contributions and by an employer contribution of 2 percent of payroll.

60. See, e.g, The Factories Act 1951, The Social Security Act 1954, The Shops and Establishment Act 1951, The Workmen’s Compensation Act 1923 (Act VIII), The Apprentices Act 1850 (India Act XIX), The Children (Pledging of Labour) Act 1933 (India Act II), The Dock Labourers Act 1934, (India Act XIX), The Mines Act 1923 (India Act IV), and The Oil-Fields Act 1919 (Burma Act I). All these statutes have been amended. The Worker Compensation Act has been extensively amended, by Acts LII of 1951, XVII of 1955 and XXII of 1957.

61. Statement No. 1 (5/01), Central Executive Committee, ‘National League for Democracy: World Workers Day’, issued 1 May 2001, translated from original in Burmese by FTUB.

62. ‘Statement 85 (6/00)’ Central Executive Committee, National League for Democracy, issued in Rangoon, 7 June 2000. Translated from Burmese by FTUB.

63. ‘Images Asia, No Childhood at All: A Report on Child Soldiers in Burma’ (May 1996); Human Rights Watch /Asia: ‘Human Rights of Children in Burma’, (1 March 1966); same, ‘Labour Practices in Burma, A Submission to the United States Department of Labour’, (1988).

64. A ‘yellow dog’ contract violates freedom of association norms on its face, making it a condition of employ-

ment that workers avoid contact with trade unions. See, *Hitchman Coal and Coke Co. v. Mitchell*, 254 US 229 (1917), infamous and now overruled USA case legitimising this plain violation of freedom of association principles.

65. Case No. 1752, ILO Committee on Freedom of Association, Complaint of the ITF, 17 December 1993, containing a copy of the yellow dog contract.

66. See note 31 *supra*.

67. 'Statement of the Central Executive Committee', National League for Democracy, 14 August 2000. 'NLD

Presses for Labour Unions at Garment Factories', (Deutsche Presse Agentur, Rangoon, 14 August 2000).

68. Workers arrested following protest over compensation claims, Democratic Voice of Burma radio, broadcast from Oslo, in Burmese 12.45 GMT, 20 Mar 2001.

69. 'Massacre on the Mae Lamao', Urgent Appeals Desk, Asian Human Rights Commission, Article 2, vol. No 2, (Hong Kong April 2002, pp. 33-35). See also, 'Massacres in Asia' at <http://massacres.ahrchk.net>