

Legal Issues on Burma

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Current Legislations in Myanmar against AIDS

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BRIEF SURVEY OF DEVELOPMENT OF LAWS IN BURMA

*Burma Lawyers' Council**

Introduction

The legal system of a country usually accommodates with the changes of its political, administrative and economic systems. Where such system is changed into a new system, existing laws which are not consistent with the system are repealed, their entry into force is ceased, they are amended and they are inserted. Existing laws which are not inconsistent with the new system continue to be applicable. But those changes can be repealed if they are not in conformity with the changing situations. Therefore, in studying the legal history of a country her political, administrative and economic history cannot be excluded. This article will touch how the laws have changed from the era of Burma kings up to the present day with a brief background of Burma's history.

Era of Burmese Kings

Kingship arose in theory from the concern of the people to escape social chaos. The king's primary duty was to protect his people by punishing the unjust and the predatory strong. The ruler was supposed to be truthful and wise, considerate before acting, capable of curbing his personal desire for wealth and pleasure. Courts were supposed to be based on Dhamma or the firmament of the law. Patronage of Buddhism was a basis for loyalty to the king. Buddhism provided its devotees with uniform attitudes and social values and operated as a cohesive force uniting the territorial and national fragments of the Burma State. The whole Hlutdaw functioned as a court of law both civil and criminal. Royal edicts were issued which had the force of law. Ancient Burma's kings till Kon Boun Era ruled the country with Yazathats and Dhammathats. The Yazathats are composed of the king's commands and criminal laws for prevalence of law and order, security and peace. The Dhammathats are composed of rulings and case laws relating to marriage, divorce and inheritance.

In respect of the Dhammathats, there are a total of 175 documents including 57 Pittakas, 16 Dhammathat Lingars, 82 Rulings, 10 Dhammathats precedents and 10 Dhammathats branches in the history of Pittaka. We also apply the Burma Customary Law which is called Burma Buddhist Law, which in turn is composed of Burma customs and based on the said Dhammathats, adopted by Burma Buddhists for successive periods.

It is observed that during the time of King Min-Don and King Thibaw, the last kings of Kon Boun Dynasty, the criminal department and law department were formed. And thence, the laws, rules and orders including over 130 laws were enacted and issued. There were about 16 financial and taxation laws and one of them was on capitation tax known as Thathamayda.

Period after the Anglo-Burmese Wars and before 1935 i.e. British Colonial Rule.

The British annexed the Rakhine and Taninthayi regions after the first Anglo-Burmese war in 1824 and after the second war in 1852, Bago and Moat-ta-ma fell to the British. Although Rakhine, Taninthayi and Bago were kept as states under a Chief Commissioner in 1862, they were ruled by the Governor-General of India and the laws enacted by his Legislature. In 1866, the legislative power was conferred on the Chief Commissioner to enforce the laws prescribed in India in the British Burma. The British conquered the entire kingdom of Burma in 1885.

The Operation of the Yazathat and statute laws of ancient Burma kings faded gradually after the first and second Anglo-Burmese wars and ceased totally after the British annexed the entire country. However, some of the Burma Buddhist Law including the Dhammathats were still applied by the courts of the colonial period. The Arakan Hill District Laws Regulation, 1874 was prescribed for Rakhine hills area and later, the Arakan Hill District Laws Regulation was substituted in 1916. In addition to a total of 50 Indian Acts, 3 Regulations, 7 Burma Acts and the Bengal State Prisoners Regulation, 1818 entered into force in Burma. The Bengal State Prisoners Regulation, 1818 prescribed in India was the earliest of the Indian Laws that entered into force in Burma.

In 1886, the Shan State and Kachin State were formed as Scheduled Districts under the Scheduled District Act, 1874. Also in 1886, the Shan State was given a specific status under the Upper Burma Laws Act. In that year the Court of the judicial Commissioner of Upper Burma was also founded. In 1888, the Shan State Act was prescribed and the Shan Saw-bwas were given limited powers under the Sanad Document in civil, criminal, taxation and administrative matters. After that the Shan State Act was repealed and the Act of Burma Law was prescribed in 1898 and extended to the Shan State. The Karenni area i.e. the

Kayah State was placed under the control of the Karenni Chief with the advice and supervision of the Shan State Deputy Commissioner under the Sanad Document. The Kachin Hill Tribes Regulation, 1895 was applied to the tribes in the Kachin hills region. The Chin State was placed under a separate control by the Chin Hills Regulation, 1896.

In order that the Bengal Codes and other Acts prescribed by the Governor-General under the Government of India Act may take effect in both Upper and Lower Burma, the Burma Laws Act, 1898 was prescribed and 159 Acts and Laws took effect during the period 1843 to 1896. On 1st May, 1897, Burma was upgraded under the direct control of the Deputy Governor-General. The Legislative Council was formed under the Indian Council Act, 1861 and Burma had its first opportunity to legislate. However, the India Government was assigned power to prescribe law on financial matters.

There were some changes in administration during 1909 to 1919 and due to Morley-Minto Reforms, the number of members in the Legislative Council was increased from 9 members previously to 30 members. Burma laws enacted during the British colonial period up to 1932 were published in Burma Laws Volume I to III. Volume I consisted of Laws and Regulations prescribed during 1876 to 1898, Volume II of those prescribed during 1898 to 1923 and Volume III of those prescribed during 1924 to 1932. In 1923, Burma was granted Diarchy like the other States of India and the number of members in the Legislative Council was increased to 103, but Shan, Kachin and Chin States were excluded. In the Shan State the Shan Saw - bwa Council was put under the control of the Governor of India and administered separately. The British declared Shan, Kachin and Chin States as Backward Tracts.

The Period Governed under the Government of Burma Act, 1935

Since British occupation of Burma, it was governed as a province of landing. During the period of endeavours to gain independence in Burma, the separation crisis occurred. Burma was separated from India under the Government of Burma Act, 1935. The said Act was prescribed in the nature of a Constitution and it may be considered to be the first Constitution of Burma. Under the said Act the Governor of Burma was appointed directly by the British Government. There were 2 Chambers in the Legislature, the House of Representatives and the Senate. In the sector of administration, the Burma Government gained more administrative power in the form of 91 Administrative Divisions. That Act came into force on 1st April, 1937 and Burma became a colony governed by the British Government through the Governor. It ceased to be a dependency under India. The Laws prescribed by the 2 Chambers had to be confirmed by the Governor and the law came into force only after the approval of the British Emperor. Under section 12 of the said Act, the Governor appointed an Advocate

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General. The first Advocate General of Burma was Sir Arthur Eggar and in his duties, the function of drafting laws and giving legal advice to the Government were included.

As it was prescribed in section 14 of the Government of Burma Act, 1935 "that laws prescribed for Burma under the Government of India Act shall, unless amended, altered or repealed continue to have effect," India Acts prescribed for the states of India were revived. Under the said Act over 130 laws prescribed during the reign of Burma kings were not revived. Thus the said laws were not included in the list of Burma Acts. Even in 1935, certain laws prescribed previously were repealed, amended or annulled to be consistent with the situations of Burma. Furthermore, in 1937 in order to be consistent with the changing administrative system existing laws were amended, inserted and repealed under the Government of Burma (Adaptation of Laws) Order, 1937 and the Burma (Adaption) Act, 1940. Out of the laws which were prescribed for Burma excluding the repealed laws, annual finance Acts and temporary Acts, all other laws which took effect up to December, 1942 were published subject-wise in Burma Code Volumes I to VII in 1943.

Japanese Regime from 1942 to 1945.

Under the Government of Burma Act, 1935 the existing Fundamental Law was suspended during the Second World War. Under the said Act, the Governor of India took over section 139 of the legislative power and executive power. On 10-12-42 a state of emergency was declared by the Evacuee Government in Simla town in India. The Burma's Patriotic Force for Independence, with the aid of the Japanese Army attacked and drove the British. The Japanese Army conquered the whole country and decided to give Burma Independence. According to this decision on 1-8-43, the Law Regulating the Administration of Burma 1305. M.E. was prescribed and independence was granted. This law was enacted as a Constitution of the State and should be called the Second Constitution for Burma. Under this law, Dr. Ba Maw was elected as Chancellor of the State. In respect of legislation the Chancellor of the State had the power to prescribe laws after consultation with the Council of Ministers. In Section 23 of the said law, Burma existing laws, Indian Acts and Burma Acts continued to be applicable insofar as they were not inconsistent with this Regulation.

Burma's existing laws, Indian Acts and Burma Acts continued to be applicable insofar as they were not inconsistent with this Regulation.

During the Japanese Period, the interests of foreigners were restricted and 3 laws protecting Burma national interests were enacted. These laws were: -

- (1) The Transfer of Immoveable Property (Restriction) Act;
- (2) The Company Law; and
- (3) The Law of Marriage with Foreigners.

As Burma fell under Japanese control, the British Evacuee Government

which retreated established headquarters in Simla, India and carried out administrative and legislative measures for Burma. From 1942 to 1945, the Evacuee Governor enacted 68 laws and the Compendium of Governor's Acts, 1942-45 was published comprising those laws.

From 1945 to Pre-Independence Period (1948)

The Army which endeavoured for Burma's Independence fought back and the Japanese retreated. In May 1945, the British reoccupied Burma and the country was ruled once again under the Government of Burma Act, 1935. The Burma Indemnity and Validating Act, 1945 was enacted and the Acts, Rules and Regulations which were prescribed before the Japanese Regime came into force again in the relevant regions insofar as they were not repealed. However, as the 3 laws which were enacted during the Japanese Regime were not revived, they were not included in the list of Burma Acts.

Instead of electing the members of the two Chambers which consisted under the Government of Burma Act of 1935, in 1945 the Legislative Council which consisted of 32 members was formed, by the order of the Governor. In addition, the Governor issued the Legislative Council Rules of Procedure, 1945. In such Rules it was prescribed that the Governor had the legislative authority without consultation with the legislative Council.

In 1945, the Crown Office Rules, 1945 was made and the Crown Office (Present usage- "Attorney General's Office") was established. The Legislative drafting officers were appointed and assigned duty. In 1947, that office was abolished and the Advocate General was appointed and assigned the duties. The Evacuee Government came back to Burma from Bengal in 1945 and before Independence enacted 150 laws. It was found that out of these laws, 7 laws were enacted during January 1 to 3, 1948. Simultaneously with the endeavours for Independence, the Committee for drafting of the Constitution was formed and on 14.9.47 the Constituent Assembly approved the Constitution of the Union of Burma, 1947.

Parliamentary Period from 1948 to 1st March 1962

Under Sections 90 and 92 (1) of the Constitution, 1947, power of making laws was vested in Parliament and under section 92 (1), power to make laws on matters enumerated in List-II was assigned to the State Council. In Section 226 (1) of the Constitution, it was prescribed that existing Laws and Acts which were in force during British colonial period shall, subject to that Constitution and to the extent to which they were not inconsistent therewith continue to be in force. The Union of Burma (Adaptation of Laws) Order, 1948 was prescribed to adapt the clauses and expressions contained in the Constitution to those contained in

...existing Laws and Acts which were in force during British colonial period shall, subject to the Constitution and to the extent to which they were not inconsistent, continue to be in force.

the Order. Under that Order, the expression "British Burma" was substituted with the expression "Union of Burma", "Crown" was substituted with "Government" and "Governor" with "President".

On 4.1.48 (Independence Day), the Supreme Court and High Court were established and Courts at different levels were also formed under the Union Judiciary Act. Moreover, an Advocate of the High Court who was nominated by the Prime Minister was appointed and assigned duties as the Attorney General. In order to make laws enacted before Independence, consistent with the changing situation, the Laws Revision Committee headed by a Supreme Court Judge was formed. Even in 1948, the Statutory Burmese Version and Legal Terms Act (No. 27/48) was enacted and efforts were made to translate those laws in English into Burmese.

As under section 139 (1) of the Government of Burma Act, 1935, Acts enacted by the Governor before Independence were only temporary measures. Acts whose Terms are about to Expire to Continue to be in Force, 1949 was prescribed in order that such laws may continue to be in force. After attaining Independence, from 4-1-48 till December, 1954 a total of 467 laws were enacted. The laws enacted before independence and still in force and the laws enacted after Independence up to 1954 were classified subject-wise in Burma Code Volume 1 to XIII by the Laws Revision Committee and published. This Code consisting of 13 Volumes are still in force and are applied till this day. After publishing of Burma Code in 13 Volumes, from 1955 up to this day, Acts and Laws enacted were published yearly. From 1955 till 1961, a total of 334 laws were enacted and in 1962 before 2nd March 1962 no laws were enacted.

SYNOPSIS OF THE BURMA CODE

Name	Volume
- Adaptation Act, Burma Laws	I
- Adaptation of Laws order, 1948, Union of Burma	I
- Burma Extradition Act	I
- Burma General Clauses Act	I
- Burma Immigration (Emergency Provisions) Act	I
- Burma Indemnity and Validating Act, 1945	I
- Burma Laws Act	I
- Burma Passport Act	I
- Contempt of Courts Act	I
- Courts Act, Burma Small Cause	I
- Immoveable Property (Restriction) Act, Transfer of	I
- Police Act, 1945	I
- Prisons Act	I

From 1955 till 1961, a total of 334 laws were enacted and in 1962 before 2nd March 1962 no laws were enacted.

- Regulation, State prisoners	I
- Army Act, Burma	II
- Burma Army Act	II
- Emergency Powers Act, press	II
- Emergency Provisions Act, Requisitioning	II
- Essential Supplies and Services Act	II
- Official Secrets Act, Burma	II
- Press (Registration) Act	II
- Search (Special Power) Act	II
- Seditious Meetings Act	II
- Unlawful Associations Act	II
- Burma Income-tax Act	III
- Burma Stamp Act	III
- Customs Act, Land	III
- Customs Act, Sea	III
- Financial Commissioners Act	III
- Forest Act	III
- Stamp Act, Burma	III
- Births, Deaths and Marriages Registration Act	IV
- Births, Deaths and Marriages Registration Act, 1943	IV
- Dangerous Drugs Act	IV
- Degrees Act, Burma Medical	IV
- Development Trust Act, Rangoon	IV
- Education Act, Primary	IV
- University of Rangoon Act	IV
- Attorney Act, Powers of	IX
- Burma Companies Act	IX
- Charitable and Religious Trusts Act	IX
- Companies Act, Burma	IX
- Contract Act	IX
- Co-operative Societies Act	IX
- Official Trustees Act	IX
- Partnership Act	IX
- Religious Societies Act	IX
- Societies Act, Co-operative	IX
- Societies Registration Act	IX
- Children (Pledging of Labour) Act	V
- Compensation Act, Workmen's	V
- Disputes Act, Trade	V
- Payment of Wages Act	V
- Regulation of Employment Act, Dock Workers	V
- Trade Unions Act	V
- Workmen's Compensation Act	V
- Municipal Act, City of Rangoon	VI
- Bills of Lading Act	VII

- Burma Carriage by Air Act	VII
- Burma Carriage of Goods by Sea Act	VII
- Burma Merchant Shipping act	VII
- Burma Motor Vehicles Act	VII
- Code, Penal	VIII
- Code of Criminal Procedure	VIII
- Special Crimes (Tribunal) Act, 1947	VIII
- Special Judges Act, 1946	VIII
- Acquisition Act , Land	X
- Acquisition (Mines) Act, Land	X
- Burma Agriculturists' Debt Relief Act	X
- Burma Copyright Act	X
- Lower Burma Town and Village Lands Act	X
- Money Lenders Act	X
- Negotiable Instruments Act	X
- Tenancy Act, 1946	X
- Town and Village Lands Act, Lower Burma	X
- Transfer of Property Act	X
- Burma Divorce Act	XI
- Administrator General's Act	XI
- Adoptions Act, Registration of Kittima	XI
- Arbitration Act	XI
- Bar Council Act	XI
- Burma Insolvency Act	XI
- Child Marriage Restraint Act	XI
- Christian Marriage Act	XI
- Kittima Adoptions Act, Registration of	XI
- Legal Practitioners Act	XI
- Relief Act, Specific	XI
- Slavery Act	XI
- Special Marriage Act	XI
- Succession Act	XI
- Bankers' Books Evidence Act	XII
- Civil Procedure, Code of	XII
- Code of Civil Procedure	XII
- Courts Fees Act	XII
- Evidence Act	XII
- Fees Act, Process	XII
- Limitation Act	XII
- Oaths Act	XII
- Suits Valuation Act	XII
- Application Act, 1950, Towns Amendment Act	XIII
- Application Act, 1952, Urban Rent Control Act	XIII
- Burma Immigration (Emergency Provisions) (Extension) Act, 1949	XIII

**Short Break-Down
Parliaments Acts (1955 up to 1961)**

Name	Volume
- The Union Judiciary (Temporary Amendment) Act, 1955.	1955
- The Union Judiciary (Amendment) Act, 1955.	1955
- The Prisons (Amendment) Act, 1955	1955
- The Workmen's Compensation (Amendment) Act, 1955	1955
- The States (Extension of Laws) (Amendment) Act, 1955	1955
- 1955 Courts Act (Amendment)	1955
- The Myanmar Companies (Amendment) Act, 1955.	1955
- The Myanmar Army (Amendment) Act, 1955.	1955
- The Village (Amendment) Act, 1955.	1955
- 1955 Administration of Democratization Amendment Act	1955
- 1955 Parliament Election Amendment Act	1955
- The Myanmar Income-Tax (Amendment) Act, 1955.	1955
- The Wa States and Ko Kang State, Criminal Law Extension Act, 1955	1955
- The Arms (Temporary Amendment) (Amending) Act, 1955.	1955
- The Trade Disputes (Amendment) Act, 1955	1955
- 1955 Government building Eviction Act	1955
- The Myanmar Immigration (Emergency Provisions) (Amendment) Act, 1955.	1955
- 1955 Parliament election (Second Amendment) Act	1955
- The Child Act, 1955	1955
- 1956 Union Judiciary Act (Amendment)	1956
- 1956 Parliament Election Amendment Act	1956
- 1956 Parliament election (Second Amendment) Act	1956
- The Registration of Foreigners (Amendment) Act, 1956.	1956
- The Myanmar Immigration (Emergency Provisions) (Amendment) Act, 1956.	1956
- The Myanmar Income-Tax (Amendment) Act, 1956.	1956
- The Foreign Exchange Regulation (Amendment) Act, 1956	1956
- The Myanmar Extradition (Amendment) Act, 1956	1956
- The Code of Civil Procedure (Amendment) Act, 1956.	1956
- The Administrator-General's (Amendment) Act, 1957.	1957
- The Essential Supplies and Services (Amendment) Act, 1957.	1957
- The Union of Myanmar Citizenship (Amendment) Act, 1957	1957
- The Workmen's Compensation (Amendment) Act, 1957.	1957
- 1957 Attorney General Act (Amendment)	1957
- The Myanmar Stamp (Amendment) Act, 1957.	1957
- The Myanmar Court Fees (Amendment) Act, 1957.	1957
- 1957 Union Citizenship Selection Act (Amendment)	1957

- The Criminal Law (Amendment) Act, 1957	1957
- The Myanmar Immigration (Emergency Provisions) (Amendment) Act, 1957.	1957
- The Registration of Foreigners (Amendment) Act, 1957.	1957
- The Code of Criminal Procedure (Temporary Provision) Act, 1957.	1957
- The Special Judges (Amendment) Act, 1957.	1957
- 1957 Emergency provision Temporary Act	1957
- The Criminal Law (Second Amendment) Act, 1957.	1957
- The Criminal Law (Temporary Provision) Act, 1957.	1957
- The Union Citizenship (Amendment) Act, 1958	1958
- The Myanmar Immigration (Emergency Provisions) (Amendment) Act, 1958.	1958
- The Foreign Exchange Regulation (Amendment) Act, 1958.	1958
- The Court Fees (Amendment) Act, 1958	1958
- The Trade Disputes (Amendment) Act, 1958	1958
- The Code of Criminal Procedure (Temporary Provision) (Repeal) Act, 1959	1959
- The Yangon Police (Amendment) Act, 1959	1959
- 1959 Employment Restriction Act	1959
- The Trade Union (Amendment) Act, 1959	1959
- The Printers and Publishers (Registration) Act	1959
- The Myanmar Companies (Amendment) Act, 1959	1959
- The Foreign Exchange Regulation (Amendment) Act, 1960	1960
- The Shan State Criminal Law and Procedure Extension Act, 1959	1960
- The Special Crime (Tribunal) (Amendment) Act, 1960	1960
- The Army (Amendment) Act, 1960	1960
- The Printers and Publishers Registration (Amendment) Act, 1960	1960
- The Penal Code (Amendment) Act, 1960	1960
- The Penal Code (Amendment) Act, 1960	1960
- The Penal Code (Amendment) Act, 1961	1961
- The Code of Criminal Procedure (Amendment) Act, 1961	1961
- The Myanmar General Clauses (Amendment) Act, 1961	1961
- The Child (Amendment) Act, 1961	1961
- The Village (Amendment) Act, 1961	1961

Regime of the Ne Win Revolutionary Council from 1962 to 1974

As the danger of disintegration of the State was about to occur, on 2nd March 1962, the Revolutionary Council took over the sovereign powers and on 7.3.62 issued Declaration No. (14) to the effect that existing laws shall, with effect from 2.3.62, continue to be in force until they are repealed. Declaration No. (22) was

issued on 12.3.62 to the effect that in the existing laws the expression "the President of the Union" shall be substituted by the expression "the Chairman of the Revolutionary Council". Furthermore, on 30.3.62 by Declaration No. (28) the expressions in the existing laws "Council of Ministers/Cabinet", "Prime Minister", "Minister" were substituted. In order to implement the existing laws to be in accordance with the policy of the Revolutionary Council, the Laws Revision Committee was formed on 1.10.63 with the Attorney General as Chairman.

In 1965, the Adaption of Expressions Law No. 9/65 and the Law Amending the Burma General Clauses Act, 1965 were published and the expressions "President" and "Government" were substituted. From 1962 up to 1974, during the Revolutionary Council period, a total of 182 laws were enacted. During that period, the laws that were not consistent with the socialist system were repealed and those laws that contributed towards that system were enacted. Of the contributing laws, the Law for Prevention of Contravention of the Establishment of the Socialist Economic System, 1964 and the Law Conferring Powers for the Establishment of the Socialist Economic System, 1965 were prominent.

As the Constitution, 1947 was not consistent with the changing system, a Constitution Drafting Commission consisting of 97 members was formed on 25.9.71 in order to draft a new Constitution. A nationwide referendum was held and the Constitution of the Socialist Republic of the Union of Burma was promulgated on 3.1.74.

Revolutionary Council Laws (1962 up to 1974)

- Yangon University Act repealed law, 1962	1962
-1962 Buddhist religious Order Amendment Act	1962
- 1962 the Factory Amending Law	1962
- The Yangon City Civil Court Act Amending Law, 1962	1962
- The Court Act Amending Law, 1962	1962
- The Special Criminal Court Law, 1962	1962
- The Printers and Publishers Registration Law, 1960	1962
- The Press (Emergency Powers) Act Amending Law, 1962	1962
- The Gambling Act Amending Law, 1962	1962
- The Criminal Law Amending Law, 1963	1963
- The Trade Disputes Act Amending Law, 1963	1963
- The Myanmar Income-Tax Act Amending Law, 1963	1963
- 1963 Nationalization of Businesses Law	1963
- The Special Criminal Amending Law, 1963	1963
- The Yangon Police Act Amending Law, 1970	1970
- The Printers and Publishers law Amending Law, 1971	1971
- The Special Judges Act Amending Law, 1973	1973

- The Union Judiciary Act Amending Law, 1973

1973

Pyithu Hluttaw Period from 1974 to 17th September 1988

It was prescribed in Article 199 of the Constitution of 1974 that the laws and rules enacted by the Revolutionary Council devolved on the Socialist Republic of the Union of Burma and the in Article 202 the existing laws shall remain in force insofar as they were not contrary to the Constitution and until they were repealed or amended. Furthermore, some expression in the existing laws which did not conform to the usages and expression of the existing Constitution were substituted by the Notification dated 7.8.74 of Council of the State.

On 27.8.76 under Notification No. 66 of the Council of State, the Law Revision and Law Translation Committee was formed with the Chairman of the Council of People's Attorneys as Chairman. Under Notification No.29 of the Council of State, the Law Commission was formed and the Law Revision and Law Translation Committee was abolished. Furthermore, the Council of State prescribed methods of drafting laws and rules. Under the Constitution, only the Pyithu Hluttaw can approve and enact laws and rules. During the Pyithu Hluttaw period from 1974 to 1988, a total of 128 laws were enacted and published yearwise.

The State Law and Order Restoration Council Period- From 18th September 1988 to 14th November, 1997

Since the prevalence of law, peace and tranquility of the State were in danger, the State Law and Order Restoration Council took over the powers of the State on 18.9.88 and abolished the organs of power of the State at different levels. The State Law and Order Restoration Council declared under Declaration No. (6/88) dated 24.9.88 that all the laws existing on 18.9.88 shall remain in force until they were annulled or repealed. The expressions contained in those laws were substituted under the Adaptation of Expressions Law (No. 8/88).

On 26.9.88 the Attorney General Law was enacted to scrutinize, draft, translate and amend the laws. The method of drafting laws was that drafts of laws were prepared by the relevant Ministry or in coordination with the Attorney General's Office and then scrutinized by the Attorney General's Office. These scrutinized drafts of laws were sent back to the relevant Ministry which would submit them to the Government for approval. After approval, those laws were submitted to the State Law and Order Restoration Council. Laws which were required to be enacted were published under the signature of the Chairman of the State Law and Order Restoration Council.

Since there were changes in the administrative, political and economic systems, the laws which should not be effected and exercised any more were repealed and those which should be amended, substituted and inserted were amended.

The State Law and Order Restoration Council declared under Declaration No. (6/88) dated 24.9.88 that all the laws existing on 18.9.88 shall remain in force until they were annulled or repealed.

These laws which were not suitable with the current situation were repealed. 137 Laws were repealed under the Law for Repeal of Laws (No.1/92) and 14 Laws under the Law for the (Second) Repeal of Laws (No.4/93). A total of 139 laws were enacted during the said period.

1988 to 1996 SLORC laws

- Substitution of Expressions Law	1988
- Auditor General Law	1988
- Judiciary Law	1988
- Political Parties Registration Law	1988
- Multi-party Democracy General Election Commission Law	1988
- Union of Myanmar Foreign investment Law	1988
- Law Amending the Myanmar Red Cross Society Act, 1959	1988
- Attorney-General Law	1988
- Special Limitation Law	1988
- Law Relating to Forming of Organizations	1988
- Law Amending the Bar Council Act	1989
- Law Amending the Defence Services Act, 1959	1989
- State-Owned Economic Enterprises Law	1989
- Law Amending the Printers and Publishers Registration Law, 1962	1989
- Law Amending the Union of Myanmar University Education Law, 1973	1989
- Pyithu Hluttaw Election Law	1989
- Law Amending the Myanmar Companies Act	1989
- Myanmar War Veteran Organization Law	1989
- Law Amending the Partnership Act	1989
- Financial Institutions of Myanmar Law	1990
- Central Bank of Myanmar Law	1990
- Myanmar Maternal and Child Welfare Association Law	1990
- Law Amending the Myanmar Immigration (Emergency Provisions) Act, 1974	1990
- City of Yangon Development Law	1990
- Law Amending the Court Fees Act	1990
- Law Relating to the Sangha Organization	1990
- Law Amending the Law Safeguarding the State from the Danger of Subversive Elements	1991
- Law for the Repeal of Laws	1992
- Development of Border Areas and National Races Law	1993
- Narcotic Drugs and Psychotropic Substances Law	1993
- Peoples's Police Force Maintenance of Discipline Law	1995

- Narcotic Drugs and psychotropic Substances Rules 1995
- Law Protection the Peaceful and Systematic Transfer of State Responsibility and the Successful performance of the Functions of the National Convention Against Disturbances and Oppositions 1996

The Period of the State Peace and Development Council (1997)

In order to cause the emergence of a “well-disciplined democratic system, and to build a new, peaceful and modernized State”, the State Law and Order Restoration Council was dissolved and the State Peace and Development Council was constituted on 15.11.97. On 17.11.97, the Adaptation of Expressions Law, 1997 was prescribed and expressions such as Na-wa-ta, Pa-wa-ta, Ta-wa-ta, Kha-Wa-Ta, Ma-wa-ta and Ra-wa-ta were substituted with Na-Ya-ka, Pa-ya-ka, Ta-ya-ka, Kha-ya-ka and Ra-ya-ka.

The methods of drafting and enacting laws that were formerly applied by the State Law and Order Restoration Council continue to be applicable. In 1997, 3 laws and in 1998, 10 laws, a total of 13 laws have already been enacted up to 31st December, 1998.

- Law Amending the State-Owned Economic Enterprises Law 1997
- Law Amending the Myanmar Citizenship Law 1997
- Law Amending the Suppression of Prostitution Act, 1949 1998
- Law Relating to Overseas Employment 1999
- Rules Relating to Environmental protection and Cleansing of Yangon City Development Committee 1999
- The Judiciary Law 2000
- The Law Amending the Code of Civil procedure 2000
- Order Directing Not to Exercise Powers Under Certain provisions of the Towns Act, 1907 and The Village Act, 1907 1999
- The Attorney General Law, 2001 2001
- The Control of Money Laundering law 2002
- The Law Amending the Judiciary Law, 2000 2003
- The Law Amending the Attorney General Law, 2001 2003
- Control of Money Laundering Rules 2003
(Notification No. 1/2003 of the Ministry of Home Affairs)

CONCLUSION

Evolution of Law in Burma confirm the theory that Social change in a country is not independent of role of law. Law has been instrument of many changes for e.g. the anarchic laws under Monarchy underwent eclipse with the advent of colonel regime which introduced its own laws. After Independence, many of the colonial laws have been retained not only by Parliamentary Democracy but by military regimes over the period of half-a-century. The basic cause is imbedded common law in our legal system. A major challenge that the lawmakers will face in democratic transition will be whether, the common law will continue or a synthesis of common law and civil law be reformed in the legal system some changes through law and justice, human order oriented on firm values and offering fulfillment of each member of the society whether he/she belongs to ethnic nationalities or minorities is a great challenge before law reformers of legal system in various facet.

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Evolution of Law and Legal Concept in Burma: Challenges at the Transition

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Abstract

This paper explores evolutionary process of legal concept and theory in Burma. The purpose of this paper is to analyze the issues that Burma will face in legal transformation. Since its independence, the post-colonial governments have failed to transform legal system in accordance with the social elements that govern daily lives of Burmese. The paper argues that there are two fundamental challenges Burmese society faces in legal transformation. The first challenge is the emergence of a new constitution – what kind of constitution should be implemented to suite the livelihoods and social elements? The second challenge resonates in the question of how can Burmese society achieve “rule of law” system while it encompasses traditional and social elements into it?

I. Introduction

This paper examines some important historical documents and books dating back to publications of the late 1700s mostly written about the accounts of the early Burmese society. Early westerners, who arrived in Burma as missionaries and later as merchants and diplomatic appointees especially by the British India government, have recorded their own account of Burma as they saw it. In addition, scholarly works written in the period after Burma’s independence in 1948 by the Burmese and western historians are also examined. The purpose of this paper is two fold: (1) to interpret and analyze the conceptual unfolding of law in the context of Burmese Dhammathats as well as the traditional social and cultural elements; and (2) to analyze the current state of challenges at the transition.

Nations at political transition, in a broader conceptual framework, face three

areas of transformation: (1) economic transformation, (2) legal transformation, and (3) historical and traditional value transformation. Economic transformation is the condition at which transition from traditional economic activities to modern “growth” oriented economic activities takes place.¹ At this stage critical debate about the present and future economic goals of the nation need serious consideration. The issues such as conservation and utilization of natural resources, cultivation of human and social resources, and adaptation to modern technology are some of the fundamental issues that need to be addressed in economic transition. Legal transformation is related to how the economic system is transformed. Law and legal institutions play a critical role in carrying out and maintaining a viable and solid economic system. It is indispensable that nations at transition need to seriously consider the transformation of law and legal system to meet the short and long term social and economic goals. Historical and value transition is also another equally important area of transformations that transitional nations need to articulate and debate about. The ethnic identity, historical values of a segment or whole population, citizenship issues, property ownership, and traditional customs are some key elements that need to be incorporated into the debate about value transformation.

This paper will mainly cover the area of legal transformation in the case of Burma. I will also incorporate this analysis with the historical and value transformation. In so doing, the paper will be organized into the following subtitles:

- II. Early Development of Law in Traditional Burmese Society
- III. Burmese Social and Legal Theory
- IV. Law in the Era of British Burma (1885-1948)
- V. Burmese Law After Independence
- VI. Challenges in Transitions
- VII. Conclusion

II. Early Development of Law in Traditional Burmese Society

Origin of the Burmese People

The early written works about Burmese history are U Kula Yarzawin (History of Kings written by U Kula) completed in 1721 and Mhannan Yarzawin (The Glass Palace History of Kings) written in 1829. The latter, being written by the assigned historical commission of the King, became the national archive of Burmese history. Because the king-assigned historical commission to write Hmannon Yarzawin, western scholars charged Hmannon Yarzawin as a nationalistic interpretation of the history of Burma.² The scholars, who are criti-

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¹ The growth of domestic industries and their capacity to transform into modern competitive industries is the main focus of economic transformation

² See Maung Htin Aung (1970) *Burmese History Before 1287: A Defense of the Chronicles*

cal of Hmannan Yarzawin, base their interpretation of Burmese history on inscriptions dating back to the Pagan era (A.D 1044-1278), the first great kingdom of Burma. Before the Pagan period there were dynasties of different regions. King Anawratha united all of those existing dynasties and established the first Burmese kingdom at Pagan in 1044 and proclaimed Buddhism as the religion of his kingdom with the help of a famous Buddhist monk Shin Araharn (Harvey, 1967: 25-27).

The historians of Burmese history have different views about at what period Burma's different kingdom began to emerge and by whom. A renowned post-war Burmese historian U Htin Aung in his *Introduction to Burmese Law Tales* gives the account of where the Burmese people came from as follows:

There were humans in Burma at least some 5,000 years ago, but not much is known of those early humans. Later on some Indonesian tribes seem to have come from the West, settled for sometime in coastal regions, and then passed to the East. In the early centuries of the Christian era, the Mons entered Burma from the East, by way of the region now known as Thailand, and settled in the South, founding cities and kingdoms, which originally were part of the Great Mon-Khmer Empire of Southeast Asia. The Burmese and their allied tribes bound to them by blood and a common language, left their original homeland on the south-eastern slopes of the Tibetan Highlands, and migrated across the northern hills of Burma into the Irrawaddy.

One of the pioneer works of Burmese history, on which many western historians of Burmese history relied upon in studying Burmese history, is a book entitled *A Description of Burmese Empire* written in 1833 by an Italian missionary leader Reverend Father Sangermano who arrived in Burma in 1782. Sangermano in the chapter on *Origin of the Burmese Nation and Monarchy* observed that it was impossible to trace back the origin of Burmese nation and people due to the lack of historical account of the people who lived before the establishment of dynasties (Sangermano, 1833: 38). Sangermano obviously failed to cite U Kula Yarzawin, which is the account of Burmese history written in 1721.

The Emergence of the First Kingdom and Legal Development

Before King Anawratha concurred different dynasties of Burma to establish the first Kingdom of Pagan in A.D. 1044, Burma passed through eras of dynasties for thousands of years. Pagan is also known as the "Kingdom of Temple Builders" for its great number of temples built during the Pagan era. After Anawratha had established Pagan's power, his grandson King Alaungsithu in A.D. 1112-1165, began the formalization of legal system based on customary law (Htin Aung, 1962: 9). However, while legal disputes were decided according to native customary law, it was also in accordance with the spirit of Buddhist ethics. When Alaungsithu died, his decisions were collected as a work called *Alaungsithu's Pyat-hton* (or *Alaungsithu's Judgment*), which served as a code of precedent for

King Alaungsithu in A.D. 1112-1165 began the formalization of the legal system based on customary law (Htin Aung, 1962: 9).

later generations up until the nineteenth century (Htin Aung, 1962: 9).

In the year A.D. 1173, Narapatisithu, grandson of Alaungsithu, became the king of Pagan. Like all kings of Pagan he was a great patron of Buddhism. The king wanted a young monk, named Shin Ananda who was then educated in India, to be the Royal Tutor. The king gave a great feast in honor of the monk and offered him the title of *Dhammavilasa*, meaning 'great scholar of Buddhist scriptures.' Shin Dhammavilasa³ became famous all over the region as a teacher of other monks. He later wrote a treatise on law, which became to be known as *Dhammavilasa Dhammathat*, which is one of highly regarded nine institutions of law out of thirty-six Dhammathats in Burma (Appendix A). The Dhammavilasa Dhammathat is the oldest surviving Burmese law book today, although it is not a pioneer work among thirty-six Dhammathats (E Maung, 1951: 6).

Burmese legal scholars have followed the Dhammathats and attempted to trace the legal development of Burma beginning from the first Manu Dhammathat written at the time when this world emerged according to Burmese mythical tales and stories (Analysis in Section B). The earliest written work by western scholars about the sources of Burmese law and legal concept was the Jardine Prize essay entitled *On the Sources and Development of Burmese Law from the Era of the First Introduction of the Indian Law to the Time of the British Occupation of Pegu* by learned British scholar Dr. Emanuel Forchammer. It was published in 1884, two years before British invaded the last Kingdom of Burma.

Dr. Forchammer in his essay observed: the development of law in Burma has not been a steady devolution. Every great Burmese or Talaing Monarch endeavored to preserve existing laws and to enact and enforce new ones suitable to the customs and usages of the people for whom they were intended. But subsequent weak rulers, or a change of dynasty, reduced the body of law promulgated by predecessors or members of subverted dynasties to a dead letter; it was set aside and then forgotten [p. 91].

The scholars including Burmese legal historian and judges rejected Dr. Forchammer's observation. Former Justice U E. Maung of Burma in his series of lectures given at Cornell University and published in 1951 stated that Burmese law in its descent to the later part of the 19th Century had no breaks and catastrophes. He argued that: Dynasties passed away to be succeeded by other dynasties; kings waged war with supplanted other kings; rebellion on many occasions reared its head and pretenders had come to the rule; but there never was a revolution in the growth of Burmese law. (E Maung, 1951: 1). U E. Maung's views contend that Burmese law has existed without much break and changes but steadily resonated in the sources – Dhammathats. This view was supported by the Letters Patent of the appointment of judges in the last days of Burmese monarchs in 1885 as recited below:

³ "Shin" is the title to address a monk.

U E. Maung's views contend that Burmese law has existed without much break and changes but steadily resonated in the sources – Dhammathats.

In case of dispute they must, in accordance with all thirty-six Dhammathats, enquire into the causes of the people and decide between them and for this purpose they are appointed to the Courts as judges. In a lawsuit or dispute any of our subjects apply to a Judge, the Judge shall decide the matter with the Manu Dhammathat in hand first. If the required rule is not to be found therein, follow all other Dhammathats.

Therefore, the development of Burmese law is rooted in all Dhammathats written by different legal scholars appointed by different kings throughout eras of Burmese kings. These Dhammathats were restored one dynasty after another and observed by one king after another. By this observance, the kings gained people's support and respects throughout Burmese history.

III. Burmese Social and Legal Theory

Legal Theory

Among the Burmese Dhammathats, the Manu Dhammathats is the first of 36 Dhammathats. Throughout Burmese history, the Dhammathats are the fundamental sources of laws. In the introduction of Manu Dhammathat, the foundation of the source of law in Burma is written:

When this universe had reached the period of firmly established continuancy, the original inhabitants of this world conjointly entreated the great king Mahasammata to become their ruler. King Mahasammata governed the world with righteousness. Now the king had a wise nobleman called Manu, who was well versed in the law. This nobleman called Manu, desiring the good of all human beings, and being also opportuned by King Mahasammata, rose into the expanse of heaven, and having arrived at the boundary wall of the world, he there saw the natural law, Dhammathat, he committed them to memory and having returned, communicated the same to the King Mahasammata, stating eighteen branches of law.

The sources of Burmese law, therefore, can be inferred as natural law. "Burmese laws on the whole seem wise, and evidently are calculated to advance the interests of justice and morality" (Vincent Jr., 1874: 16). The value of justice or truth is seriously upheld in Burmese culture. The worst insult that one could do to oneself and society is giving lies or making false statements to harm others. This is reinforced by the belief in the concept of *Karma*. To be able to capture the mentality of the Burmese in regard to law and justice, I present the oath of witness used in court during the Ava⁴ dynasty in 1782 (cited in Vincent Jr., 1874: 18) as follows:

⁴ Ava dynasty is one of the early dynasties that started establishing relationships with India and Italy in the further west. During this period, Italian Reverend Father Sangermano visited and established a missionary in Burma in 1782, who later wrote one of the earliest works by western scholars entitled "A Description of Burmese Empire" printed in 1833.

The sources of Burmese law, therefore, can be inferred as natural law. "Burmese laws on the whole seem wise, and evidently are calculated to advance the interests of justice and morality"

“I will speak the truth. If I speak not the truth, may it be through the influences of the laws of demerit – passion, anger, folly, pride, false opinion, immodesty, hard-heartedness, and skepticism – so that when I and my relations are on land, land animals – as tigers, elephants, buffaloes, poisonous serpents, scorpions, and etc – shall seize, crush, and bite us, so that we shall certainly die. Let calamities occasioned by fire, water, rulers, thieves and enemies oppress and destroy us, till we perish and come to utter destruction. Let us be subject to all the calamities that are within the body, and all that are without body. May I be seized with madness, dumbness, blindness, deafness, leprosy, and hydrophobia. May we be struck with thunderbolts and lightning, and come to sudden death. In the midst of not speaking truth may I be taken with vomiting clotted black blood, and suddenly die before assembled people. When I am going by water may the water nats⁵ assault me, the boat be upset and then property lost; and may alligators, porpoises, sharks, and other sea monsters seize and crush me to death; and when I dies and change worlds nay I not arrive among human or nats, but suffer unmixed punishment and regret, in the utmost wretchedness, among the four states of punishment, Hell, Prita, Beasts, Athurakai.’

“If I speak the truth, may I and my relations, through the influence of the ten laws of merit, and on amount of the efficacy of truth, be freed from all calamities within and without the body, and may evils which have not yet come be warded far away. May the thunderbolts and lightning, the nat of waters, and all sea animals love me, that I may be safe from them. May my prosperity increase like the rising sun and the waxing moon; and may the seven possessions, the seven laws, and the seven merits of the virtuous be permanent in my person; and when I change worlds (life after death) may I not go the four states of punishment, but attain the happiness of men and nats, and realize merit, reward, and perfect calm.

This oath of witness illustrates how Burmese are serious about upholding the truth in order to help the machinery of justice at the court. In addition, the oath conveys the social philosophy of Burmese people being rooted in the concept of Karma – such as wishing to gain good things as a result of good deed of telling the truth and willing to accept the bad that comes as a result of ones’ lie or bad acts. I shall extend the discussion about Burmese belief in the concept of Karma in the following paragraphs.

The Concept of Karma

In Burma, it is fair to state that the society is imbued with Buddha’s teaching. “The one single factor which has had the most influence on the Burmese culture and civilization is Theravada Buddhism,” (Aung San Suu Kyi, 1991: 66). Bud-

⁵ Nats refers to goddesses or spirits of different kinds. Some people still believe in different Nat s in Burma today.

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dhism teaches that the sole “God” of an individual is the individual itself and therefore, an individual is responsible for his or her actions, which are finally judged by the Karma of the individual. The similar concept of Karma is found in Isaac Newton’s *Third Principle of Force* which states that when object A hits object B with certain force, object B would respond with the same amount of force that comes from object A. Therefore, all good and bad actions of individuals would result in their respective ways according to Buddha’s principle of Karma.

One of the weak points that the concept of Karma plays in the Burmese mind, however, is that the people in Burma tend to leave those evil doers, such as the military generals in Burma, alone under the judgment of their own Karma, believing that one day in the line of their Karma, justice will be served for those evil doers. At the same time, Burmese people tend to believe that the suffering under the military government is somewhat in accordance with the Karma of the sufferers. Therefore, the Burmese are tolerant in reacting to or correcting the military generals’ wrong doings. This is true even if their family members are jailed and tortured. However, the majority of the Burmese have expressed their desire through demonstrations in 1988 and the well-known election held on May 27, 1990 in which the democratic opposition party, the National League for Democracy (NLD), won 82% of the parliamentary seats. The Karma of people’s acts has yet to become true.

Government and Governed

The Buddhist view of kingship (government) does not invest the ruler with the divine right to govern the realm as he pleases, which is in contrast with the Chinese view of the legitimacy of government based on the “Mandate of Heaven.” The king or government is expected to observe the Ten Duties of King or Government, the Seven Safeguards against Decline, and the Four Assistances to the People, and to be guided by numerous other codes of conducts stated in Buddha’s teaching. During the people’s movements in 1988, a number of speakers including a famous Burmese scholar, astrologer and novelist Min Thin Kha widely quoted the Ten Duties of Government in his public speeches. The Nobel Peace laureate and the opposition leader Daw Aung San Suu Kyi also discussed the importance and relevance of the Ten Duties of Government to democracy in her *Freedom from Fear* (1991). Since the Ten Duties of Government or King are well-known and mainly used as the parameters to judge their government by Burmese people, it is necessary to discuss how the concept of the Ten Duties of Government work in the context of modern politics and legal system.

The Ten Duties of Government are: charity (*dana* in Parli), morality (*sila*), self-sacrifice (*paricagga*), integrity (*ajjava*), kindness (*maddava*), austerity (*tapa*), patience (*akkodha*), nonviolence (*avihamsa*), forbearance (*khanti*), and non-opposition to the will of the people (*avirodha*). The first duty of *charity (dana)* demands

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that a ruler should contribute generously toward the welfare of the people, and makes the implicit assumption that a government should have the competence to provide adequately for its citizens. In the context of modern politics, the *dana* means that one of the prime duties of the people's government would be to ensure the economic security of the people, such as creating jobs and eliminating unemployment.

The second duty of government, morality (*sila* in Parli) is based on the observance of the Five Precepts of Buddha's teaching, which entail refraining from destruction of life, theft, adultery, falsehood, and indulgence in intoxicants. The Burmese believe that the ruler must bear a high moral character to win the respect and trust of the people, thus the ruler is in a position to ensure their happiness and prosperity, and to provide a proper example as a role model of their society. When the king or the government does not observe the *dhamma* (the rule of morality or ethic), state functionaries become corrupt, and when state functionaries are corrupt the people are subjected to suffering.

Self-sacrifice (or *paricagga*) is the third duty of government. The *paricagga* is sometime translated as generosity and sometimes as self-sacrifice. The former would overlap with the meaning of the first duty, *dana*, so the latter, meaning self-sacrifice as the ultimate generosity which gives up all for the good sake of the people, would appear the more appropriate interpretation. The concept of selfless public service is sometimes illustrated by the stories of the hermit Sumedha who took the vows of Buddhahood. In so doing he "who could have realized the supreme liberation of *nirvana* in a single life time committed himself to countless incarnations that he might help other beings free themselves from suffering" (cited by Aung San Suu Kyi 1991: 171).

The fourth duty of government is to observe integrity or *ajjava*, which implies incorruptibility in the discharge of public duties as well as honesty and sincerity in personal relations. Burmese believe that those who govern should be wholly bound by the truth in thought, word, and deed. According to the fourth duty, to deceive or to mislead the people in any way would be an occupational failing as well as a moral offense. The ruler, therefore, has to observe the truth which is "as an arrow, intrinsically straight, without warp or distortion, when one word is spoken, it does not err into two," as Buddha has compared the meaning of truth to a straight arrow (Aung San Suu Kyi, 1991: 172).

The fifth duty of government is to practice Kindness (*maddava*). A ruler has to bear courage to feel concern for the people's welfare. With this courage the ruler has mind and heart to take care of public services. To care is to take responsibility and to dare to act in accordance with the dictum that the ruler is the strength of the needy and helpless. Not just "a few good men" but many good men are needed in the government of the people in order to observe the fifth duty of government.

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The sixth duty austerity (*tapa*) implies that a ruler must adopt simple habits, develop self-control, and practice spiritual discipline. This duty prevents rulers from abusing public properties and taxpayers' money. The seventh, eighth, and the ninth duties, patience (*akkodha*), nonviolence (*avihamsa*), and tolerance (*khanti*) are similar and are related in most of the interpretations in Burmese culture. Rulers must not allow personal feelings of enmity and ill will to erupt into destructive anger and violence. It is incumbent on a ruler to cultivate true tolerance, which serves him/her to deal wisely and generously with the shortcomings and provocation of even those enemies he could crush with impunity. Violence is inhumane and absolutely contrary to the Buddha's teachings. A good ruler relinquishes ill will and anger with loving kindness, wickedness with virtue, parsimony with liberality, and falsehood with truth. These are all relevant to the seventh, eighth, and ninth duties of rulers.

The most significant duty among the Ten Duties of Government is the tenth duty, which states that the ruler must not oppose the will of the people. The *avirodha* meaning non-opposition to the will of the people is the Buddhist endorsement of democracy. This was supported by numerous stories of the kings during the Buddha's time in the ancient world. For instance, Pawridasa, a monarch who acquired an appetite for human flesh and adopted a habit of eating it, was forced into exile because he would not heed the people's demand that he should abandon his cannibalistic habits. Another different kind of ruler was the Buddha's penultimate incarnation on earth, the pious King Vessantara. He was also sent to exile when, in the course of his striving for perfection of liberality, he gave away the white elephant of state without the consent of the people. The true meaning of the tenth duty, non-opposition to the will of people, is a reminder that the legitimacy of government is founded on the consent of the people who have the power to withdraw their mandate at any time if they lose confidence in the ability or creditability of the ruler to serve their best interest.

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The Ten Duties of Government or King in the tradition of Buddha's teachings greatly influence Burmese people's mind. The concept of these duties is not very different from the concept of representative democracy that is currently practiced in the world's democratic countries. Why could the current military regime exist in a Burmese society in which the concept of the Ten Duties of Government is widely accepted? To understand the answer for this question, one must first understand the concept of Karma and how it plays out in Burmese social life, as discussed earlier. The social and legal theory discussed above still play important role in the daily lives of Burmese belief and practices. However, they are difficult to spell out in legal terms or to be incorporated into rule of law system. The challenge lies before the new generation of governments and citizens in Burma is to find a way to address these elements into the political and legal system.

IV. Law in the Era of British Burma (1886-1948)

Although Burma as a whole was eventually colonized in A.D 1885, some Burmese legal scholars argue that the influence of British over the administration of Burma began in 1824 at the end of the first Anglo-Burmese war (Maung Maung, 1963: 20). Beginning from the first Anglo-Burmese war, there were three stages in which the British came into Burma and influenced the administration of Burmese kingdoms. The first stage took place in 1824 when the British took the lower maritime areas as a result of Yandabo⁶ ceasefire treaty of the first Anglo-Burmese war. The second stage took place in 1852 when territory further north was seized and “Lower Burma” became “British Burma.” The third stage occurred in 1885 when Upper Burma was annexed and the entire country was consolidated as a province of the British India Empire (Maung Maung, 1962: 20).

The British first arranged the administrative system in which local customary law and traditional practices were allowed to exist parallel with the British administration. The British rules immediately encompassed city administration at Mandalay where the Palace of last king of Burma was located. However, the Burmese society was not entirely shattered by the changes that took place at Mandalay. The Burmese society in rural areas, during the British rules, revolved around the family and the village. These social units survived almost at the outside of the British administration that is active at the capital and cities where most commercial activities took place. Hugh Tinker (1961) observed that Burmese people in rural villages “were very conscious of their relationship as ‘sons of the village,’ their law was the law of custom and tradition, there were no great social differences, all bore their share in manning the village defenses and in repairing the village wells or roads; it was a democratic little world ... and much of the tradition of past times remain alive today, village democracy, patriotism, and proud memories of independence back to the dawn of the Burmese race.”⁷ Some of these patterns of livelihoods in rural Burma are mostly retained intact by the teaching of elders and monks and it is still practiced in Burma today.

When the British established civil service and the hierarchy of courts under the Village Act in 1886, the role of the village headman and the elders, who used to be the traditional “judges” for rural problems and quarrels, was eliminated and replaced by the appointed judges by the British. Under the traditional system of law and justice, the aim of the village headman and elders was to keep social harmony and peace. The job of keeping social harmony and peace was not just a noble one but it also has economic incentives for the elders who wanted “to

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⁶ The name of the Village where the ceasefire treaty was signed after the first Anglo-Burmese war.

⁷ See Hugh Tinker, “A Short Survey of Burmese History,” *The Guardian*, English language monthly magazine, Rangoon, December, 1961.

wax fat they must keep as many villagers as possible, and to do this they must keep the peace and reduce quarrelsome litigation to a minimum. For this reason it will be found that in awarding punishment for an offence the elders rarely inflict the maximum penalty applicable. Because they have to live with both parties to the case their main objective is restoration of harmony, granting of just sufficient economic balm to assuage the wounded without permanently antagonizing the wonder.”⁸ With the change in the village and agricultural land system, the role of the headman was reduced to collector of revenue and upholders of the Village Act. The British system emphasized the self-policing functions of the village, and neglected its role as social system.

The Burma Reforms Committed organized by the British India in 1922 noted that, “the Burmese people feel that there is too much of logic and too much of hair-splitting in the system of British law, and too many loop-holes and too many occasions for the benefit of the doubt. Therefore, the justice is not served and so the lawless people, offenders, and the clever-people enjoy the advantage of rule of law system under the British rules.”⁹ This report precisely reflects the social theory of Burmese society in which the Buddhist teaching of the “medium way” of judging at things and viewing at their live and existence. Therefore, the British system of rule of law faced passive resistance throughout rural Burma by not following British rules.

V. Burmese Law after Independence

After Burma gained independence from Britain on January 4, 1948, it established a parliamentary democratic system in which the rule of law became an important parameter for keeping the system working. The first Burmese Prime Minister U Nu speaking to the whole nation on March 12, 1948 said, “The first essential condition for making democracy secure in our lives is to base all our activities firmly on the rule of law.” With this ideology, the post-colonial government introduced the “rule of law” system by explicitly copying almost all rules of the governing system from the British. A Burmese legal scholar, Furnivall in his book *Colonial Policy and Practice*, pointed out that “judicial interpretation in British Burma was to favor private interest over social welfare. This was a heritage from the British legal system, which had been transplanted in Burma by judges and lawyers. But judicial traditions that fortified the national solidarity of England furthered the disintegration of social order in Burma.” The reason why the British rule of law system failed to keep social order in Burma is because, as pointed out earlier, it deviates from the social elements and tradition of rural communities.

This report precisely reflects the social theory of Burmese society in which Buddhism teaches the “medium way” of judging things and viewing life and existence.

⁸ See H.N.C Stevenson, *The Central Chin Tribes*, Bombay, 1943.

⁹ See Burma Reforms Committee, *Record of Evidence*, II, p. 73, Rangoon 1922.

A similar sentiment was expressed in a note of dissent, which a Burmese political leader wrote for the report on reorganization of the administration in 1949: It has been found that the introduction of the rule of law, which is alien to Burmese tradition, has led to the disintegration of Burmese social life. Any unalloyed continuance of the rule of law will further disintegrate Burmese social life. Hence any measure to reintegrate Burmese social life will have to depend more on social sanction than on the rule of law. I do not recommend that the rule of law should be dispensed with. But the rule of law should be adjusted in such a way that it should leave the largest possible scope to the play of social sanction.¹⁰

The post-colonial Burma's parliamentary system, based on rule of law, lasted about twelve years from 1948 to 1962. In 1962, Burma fell into the hands of the Burmese army led by General Ne Win. General Ne Win created a political system called "Burmese Way to Socialism" and implemented new "rule by law" system to replace "rule of law" system. In new "rule by law" system under the socialist ideology, law is made by the authoritarian power. Meanwhile, General Ne Win sorted out social norms and traditional practices outside of political boundary in which rule by law is practiced. Therefore, social norms and traditional practices are left to be dealt by village headmen and abbots of Buddhist monasteries throughout country. This dual system "rule by law" and rule of the "social and traditional practices" exists today. This, from the legal scholars' point of view, is a challenge for the next coming generation of governments and citizens in Burma. The fundamental question is how can a newly emerged government in Burma integrate social norms and traditional practices into "rule of law" system?

VI. Challenges at the Transition

Burma now is in the throes of transition to modernization and change. The quest for this modernization and change began in 1988 after the student-led popular uprising challenged the "Burmese Way to Socialism" under General Ne Win's government. On August 8, 1988, people throughout Burma marched on the streets of cities and town demanding a more liberalized political system. The people's movement was ceased by the military coup on September 18, 1988. The military government known as State Peace and Development Council (SPDC) promised to transform the country to a "modern and developed" nation. In 1990, it held democratic election. The National League for Democracy (NLD) led by Daw Aung Suu Kyi won the election. The military government refused to transfer the power to the elected government on a ground that the emergence of a new constitution was priority before the transfer of power could

¹⁰ See *The First Interim Report*, Administration Reorganization Committee, Rangoon 1949. Bo Khin Gale's note of dissent.

take place. Accordingly, the SPDC has single-handedly convened the National Convention that is charged to draft a new constitution.

Burma at present is somewhat in a period of “constitutional moment.” The military regime in Rangoon has been convening the National Convention since 1992 to write the constitution while the opposition party, National League for Democracy, has its own version of the constitution. In addition, two constitutions still exist in Burma to be sorted out their relevancy today from the Burma’s historical complex. The first is 1947 constitution nullified by the 1962 military coup and the second is 1974 constitution ended by the 1988 military coup respectively. Therefore, there are at least two challenges at the frontier of legal transformation in Burma.

First is the challenge for the emergence of a constitution. What kind of constitution should be implemented to meet the desire of the population – a constitutional democratic system of governing system? General public and majority of politicians in Burma view the constitution as a foundation for a political transformation rather than a foundation for a legal system. Legal system and political system are, by nature, different. Legal system clearly outline a set of rules or a serve as social contract that society as a whole view as parameters of civic behaviors whereas political system functions based on the level of civic education and the scale of economy. Therefore, political transformation cannot be set out or controlled by a constitution. However, these two systems are dependent upon each other in coevolution. The progress or change of one can have significant impact on the other. While the constitution necessarily need to address issues associated with political transformation, the overemphasis on the constitution as fundamental foundation of political system and its transformation can impede the natural process and evolution of political lives of citizens and society as a whole.

Burma at present is somewhat in a period of “constitutional moment.” The military regime in Rangoon has been convening the National Convention since 1992 to write the constitution while the opposition party, National League for Democracy, has its own version of the constitution.

Therefore, the challenge in constitutional thinking for the emergence of a new constitution is not to confuse with Burma’s need for political transformation because the emergence of a new constitution does not necessarily guarantee political transformation to occur. For the constitution to set parameters for civic behaviors, it is important in Burmese context that the rule of law framed by the constitution does not deviate from the traditional and social elements of the people. The challenge, therefore, for the constitutional framers is to sort out current social and traditional values that dominate the daily life of people in Burma and to incorporate them into the constitution. If a newly emerged constitution is closer to the traditional social elements of livelihoods of different communities of Burma, it may support and lead the political transformation to occur in Burma.

The second challenge is to introduce the rule of law system in Burma so as to plug Burmese social and economic system into the global economy while it

encompasses traditional values and wisdoms. The system of rule of law is important to maintain political and economic stability as well as to foster economic and social progress. Burma had a short history of parliamentary democratic system from 1948 to 1962, in which the rule of law system began to emerge. However, the system failed due to the lack of political will and the failure of the then legal system to frame rule of law in accordance with social elements of the society. The difficulty was encountered, however, in discovering what the Burmese social elements and customary laws were (Maung Maung, 1963: 27). The new government in the future has to deal with this difficulty. One way in dealing with this difficulty is to decentralize or federalized¹¹ legal and political systems by giving more authority to local governments and communities.

VII. Conclusion

The history of legal development in Burma discussed in preceding paragraphs indicates that Burma today is a society where modernization and traditional social elements are about to collide in every aspect of transformations. The legal transformation and historical and traditional value transformation are likely to be shadowed by the economic transformation. This could lead to incomplete or partial political transformation. Three areas of transformations that should occur simultaneously to achieve comprehensive political transformation that is mainly desired by various groups other than the military regime are not the subjects of the ongoing National Convention.

Therefore, the hindrance for the political transformation exists when all parties or groups in Burma view the National Convention as the hallmark of political transformation in Burma while it should be viewed as just one area of comprehensive political transformation. If the ongoing National Convention is viewed as the hallmark of political transformation, then the constitution that is produced by this National Convention will be unlikely to match social and traditional elements of livelihoods of various communities of Burma. The emerging governments have to balance the transformation of three areas – economic, legal, and historical and traditional value – so as to establish a viable and sustainable social and economic development that facilitate the evolution of not only law but also social and traditional livelihoods of various communities.

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Appendix A: Nine Institutions of Burmese Dhammathats

Name of Dhammathat	Date	Reign of the King	Remarks
- Manu	A.D. 540-560	First Pagan	The introduction states that it was presented to King Mahathamada by the Rishi Manu.
- Dhammavilasa	A.D. 1200	Fifth Pagan	The introduction states that it was abridged edition of Manu Dhammathat by Shinn Dhamavilasa.
- Wagaru	A.D. 1270	Martaban	This Dhammathat at the introduction states that it was rooted in Manu Dhammathat written at the instance of Wagaru, King of Mataban.
- Pasadha	A.D. 1468	Taungoo	This Dhammathat has been considered to be high authority in Burmese law
- Manusara	A.D. 1549	Pegu	Twelve legal scholars in 1549 composed this Dhammathat under King Sinbyumyashin
- Dhammathat Kyaw	A.D. 1581	Taungoo	This Dhammathat, according to its preface, is combination and analysis of previous Dhammathats
- Pyanchi	A.D. 1614	Taungoo	This Dhammathat was written by an individual named Maung Pe Thi.
- Myingun	A.D. 1650	Konebaung	It is named after the town where the Dhammathat was written.

Sources: 1. Kinwun Mingyi U Gaung, *A Digest of Burmese Buddhist Law*
2. Justice E. Maung, *The Expansion of Burmese Law*

¹¹The term “federal” here means a power and authority sharing system between the union government and state, division, and local governments. In the military regime’s view, the term “federal” is misunderstood as “disintegrated” while in practices in other federal republics in the world, it means opposite. This notion of interpretation of language “federal” is perhaps the most important “trap” in reconciliation of views in Burmese politics between the regime and other parties.

References

- Aung San Suu Kyi, *Freedom from Fear*, Penguin Book, 1991.
- E. Maung, *The Expansion of Burmese Law*, Cornell University Press, 1951.
- Forchammer, Emanuel, "On the Sources and Development of Burmese Law from the Era of the First Introduction of Indian Law to the Time of the British Occupation of Pegu" *The Jardine Prize Essay*, Rangoon Government Press, 1885.
- Harvey, G. E., *History of Burma: from the earliest times to 10 March, 1824, the beginning of the English conquest*, London, Cass, 1967.
- Htin Aung, *Burmese Law Tales*, Oxford University Press, 1962.
- Htin Aung *Burmese History Before 1287: A Defense of the Chronicles*, Oxford, 1970.
- Kinwun Mingyi U Gaung, *A Digest of the Burmese Buddhist Law*, 1893
- Maung Maung, *Law and Custom in Burma and the Burmese Family*, The Hague, 1963.
- Sangermano, Revnd. Father., A Description of Burmese Empire: Compiled Chiefly from Native Documents, 1833.
- Tun Myint, "Burmese Legal System" in Kritzer, Herbert (editor), *Legal Systems of the World: A Political, Social, and Historical Encyclopedia*, p.222-226, ABC-CLIO Inc., 2002.

Footnotes

1. *The growth of domestic industries and their capacity to transform into modern competitive industries is the main focus of economic transformation.*
2. *See Maung Htin Aung (1970) Burmese History Before 1287: A Defense of the Chronicles*
3. *"Shin" is title to address monk.*
4. *Ava dynasty is one of the early dynasties that started establishing relationships with India and Italy in the further west. During this period, Italian Reverend Father Sangermano visited and established a missionary in Burma in 1782, who later wrote one of the earliest works by western scholars entitled "A Description of Burmese Empire" printed in 1833.*
5. *Nat(s) is the term refers to the goddesses or spirits of different kinds. Some people still believe in different Nat in Burma today.*
6. *The name of the Village where the ceasefire treaty was signed after the first Anglo-Burmese war.*
7. *See Hugh Tinker, "A Short Survey of Burmese History," The Guardian, English language monthly magazine, Rangoon, December, 1961.*
8. *See H. N. C. Stevenson, The Central Chin Tribes, Bombay, 1943.*
9. *See Burma Reforms Committee, Record of Evidence, II, p. 73, Rangoon 1922.*
10. *See The First Interim Report, Administration Reorganization Committee, Rangoon 1949. Bo Khin Gale's note of dissent.*
11. *The term "federal" here means a power and authority sharing system between the union government and state, division, and local governments. In the military regime's view, the term "federal" is misunderstood as "disintegrated" while in practices in other federal republics in the world, it means opposite. This notion of interpretation of language "federal" is perhaps the most important "trap" in reconciliation of views in Burmese politics between the regime and other parties.*

Burma's Junta Combating Corruption?

*B.K. Sen**

The "complete explanation on the developments in the Country, given by General Thura Shwe Mann, member of the State Peace and Development Council, Lt. Gen. Soe Win, Prime Minister, and Secretary 1, Lt. Gen. Than Shwe, chairman of the National Convention Convening Commission, on October 24, 2004" were received with cynicism in many circles. They related to the sacking of Prime Minister, Khin Nyunt, and dismantling of the entire structure of Military Intelligence. The explanations given were that rampant corruption had pervaded the organization from top to bottom.* Annex¹. Although motives have been attributed to these actions, the abominable levels of corruption in the Country is utterly genuine. It has been long talked of that the Junta leaders and their families are deeply involved in economic activities, that there has been lack of probity in all walks of life is not a secret. Total absence of major public reforms eludes the public administration. The anti-graft strategy by the Junta has been followed by formal legal actions against the perpetrators and no more.

When those in power are elected, they are accountable. The military dictators are ruling the Country without a Constitution, without mandate. The need for accountability has piled up and surfaces sporadically. It is high time Burma is put under Constitutional Civil rule.

It is not lack of quality of police investigation or lack of vigilance which has bred gross abuse. Improving the quality of investigation is not going to make any difference. The need is a radical change of the whole process of governance, whereby public servants have little or no discretion when a citizen approaches them for lawful services. The need is for a change in the mindset. There has to be more transparency, more accountability. But when the rulers select as to who should rule as in a dictatorship, all these mechanism cannot be put in place. There is total centralization of power resulting in absolute power. Absolute power absolutely corrupts. That is the bottom line. The entire political system has to be changed. When those in power are elected, they are accountable. The military dictators are ruling the Country without a Constitution, without mandate. The need for accountability has piled up and surfaces sporadically. It is high time Burma is put under Constitutional Civil rule.

Criminal charges concerning illegal economic activities including illicit possession of foreign exchange and several offences of multiple charges are part of corruption scandal.

News headlines read:

- 26 Intelligence officers detained at Insein Prison
- Assets frozen Home Ministers and Ministers at Prime Minister's office
- Scores sacked responsible for immigration, customs, finance, revenue and foreign affairs
- 1500 intelligent officers ordered to retire
- 2500 transferred to infantry units
- It was a collapse of 56 years old MI, which ruled Burma. New office of military Affairs Security created to report to Rangoon command.
- Trials of more than 326 high ranking officers
- 10 tribunals have been formed
- Access to defendant lawyers denied
- Insein Prison: 45days, time frame to complete the trials
- Thousands interrogated: MI, government employers, civilians and members of former ethnic armed groups, and also business enterprises
- Khin Nyunt: high treason, abuse of power and graft, trial not yet fixed
- Khin Nyunt's second son's charged: conspiracy against the state (7 years for bribery and illegal foreign exchange)

The damage that has been done to the Country's reputation by the pernicious evil of public servant corruption can hardly be exaggerated. It has already affected decisions by foreign investors at a time when Junta need as many entrepreneurial giants to come to invest in a big way. The Military Intelligence, which has been the greatest torturer of people, collapsed and yet the common man did not put up any show. Deterrence in the form of more stringent laws cannot do the miracle. We have the following laws:

1. Burma Penal Code Volume 8
2. Public Property Protection Volume 2
3. National Intelligence Bureau (NIB)
4. Money Laundering Law
5. Anti-Drug Law
6. Child Law
7. Inquiries Act Vol 1
8. Bureau of Special Investigation
9. Foreign exchange regulation

Corruption has been a global development issue for over a decade. But in Burma it has surfaced in all its ugliness. The very basis of democracy delivering good governance to the people comes at state by corruption. The Junta rule is even more affected. The poor have become poorer and the rich have become richer. No doubt there is widespread dependency in the minds of millions who doubt if every democracy will improve their living standard. Whether it is advanced industrialized country from Japan right down to underdeveloped country like Indonesia or Philippines corruption has eroded the system.

The recent massive shakeup in Burmese has brought to focus the issue of corruption. The P.M. Khin Nyunt, and Home Minister with hundred others have been sacked and significantly the entire MI. 13 have been dismantled. From top to bottom there is a shakeup and no parallel in other countries. Before taking up the analysis it is advisable to put the official version of the issue. ^{*Annex 1} To lend authenticity they are given in quotes. ^{*Annex 1}

Corruption is recognized worldwide as a white collar crime. It is not an ethical problem but a problem vitally standing as a road-block between the people and their impoverished conditions. So much so that there has been "International Corruption & Perception Survey to identify "clean" countries. Criminal justice system has lost its credibility totally. Law enforcement agencies are unequal to the task. The community has to rise to fill the breach. Clean rupture with the sordid past of rivalry and mean-spirited hostility produce a major breakthrough.

Court Martial

It is reported that all the offenders will be tried by Court Martial. It is true that Khin Nyunt and other military officers and personnel can be tried by Court Martial. But there are many others like Immigration officers and civil officers who cannot be tried by Court Martial. Only a competent Criminal Court constituted under Criminal Procedure Code can try them. The striking feature of these trials is that they are held in secrecy in the Insein prison. ^{*Annex 1} There is no transparency and the accused are denied legal assistance. This not only defeats the purpose of the trial, namely create awareness among the people, it is also abuse of the process of law. The modus operandi is hard evidence that the ruling Junta is motivated by power struggle in respect of who would get the lion's share of the booty. Court Martials are not remedies. They do not address the cause but confines to effects. It is in a vicious circle that Burma's Junta will move and nobody knows who will be the next victims.

...that there has been "International Corruption & Perception Survey to identify "clean" countries. Criminal justice system has lost its credibility totally. Law enforcement agencies are unequal to the task. The community has to rise to fill the breach.

Ethics and Corruption

This subject was extensively discussed in a Seminar of OECD Countries and China. The need for independent anti-corruption Commission was focused. This is unthinkable in the context of Burma where the entire control is in the hands of Junta. They are the perpetrators and how fair play can be expected if they are to be the victims. Annex 2 is the proceedings of the Seminar.

Investigation Procedures

ICAC has laid down its procedure for investigation into Corruption. It is in Annex 3.

World Bank

How the World Bank fights corruption has been brought in Annex 4.

UN Convention Against Corruption

Corruption has become such a menace to good governance and stability of democracies that UN has to take it into account.^{*Annex 5} In passing it may be stated that of late even the son of UN Secretary General has been involved in Corruption Charge in the "Food for oil project" in Iraq.

What is Corruption?

This has been explained in ICAC document annexed 7. Corruption is widespread in all walks of life. Khin Nyunt's corruption represents a microcosm of how corruption works with Burmese society. The many different types of corruption are just variations on the same theme. Corruption is organized crime. An insidious corrupting influence has plagued the country's political, economic and social life for too long. The same basic principle applies in dealing with corruption in all levels, transparency and consistency in law enforcement without fear or favour.

Bureaucracy : From recruitment, transfer and retirement, illegal payment of money decides the cause of action

Business : Grant of licenses, permits, contracts all depend on payout of money

Judiciary : Getting bail, acquitted or reduction of sentences similarly depend on how much one can pay

Revenue : Revenue-earning agencies like home, passports, customs, excise

Health : Admission to hospital, avoiding or delaying in operations, administration of medicine

Education : Students are forced to take private tuition and the teachers are generally thus who conduct the examinations

Thailand, Hong Kong, China

The ongoing corruption in China, Thailand and Hong Kong and how it is being fought will be traced from Annex 6. Laws play a very important role in curbing

Corruption is organized crime. An insidious corrupting influence has plagued the country's political, economic and social life for too long.

corruption in a society, and they have to keep pace with the changing times and circumstances. Yet, it must not be forgotten that the laws that are entirely in consonance with the mores and milieu of a society are seldom successful. Corruption is not only a problem of the law; it is also a socio-cultural problem that can seldom be dealt with through laws alone.

Corruption is now recognized world wide as a white collar crime. It is no more considered merely an ethical problem, but is viewed as a formidable roadblock standing between the people and their prosperity, since it enriches a few and impoverishes millions. Corruption is also not a phenomenon confined to India but continues to afflict a large number of countries, both developing and developed. Some of the countries have over a period of time successfully fought this menace, and are today rated in International Corruption Perception Surveys as 'clean' countries. Awareness is one of the prime requirements for combating corruption. Awareness of the laws, Institutions and practices adopted in different parts of the world for dealing with the problem is crucial not only for general public but for academicians, researchers and the policy makers.

Corruption has been, and can be defined variously. In the most general terms, corruption may be defined as misuse of public office for private gain, e.g. acceptance of bribes by public officials, taking kickbacks in public procurement, embezzling public funds or seeking favours for relations or friends by using official position. In the Indian legal system corruption is defined under section 161 of the Indian Penal Code and section 5 (1) of the Prevention of Corruption Act, 1947. Now, sections 7 to 16 of the Prevention of Corruption Act, 1988 list the offences treated in law as corruption.

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Though no nation can be said to be absolutely free from corruption, the degree and nature of corruption in different countries of the world are not the same. Various organisations have been conducting corruption surveys in respect of the different countries and have come out with various Corruption Perception Indexes. The most reputed of these organisations is the Transparency International of Germany which has been, in collaboration with Gottingen University of the same country, studying the phenomenon of corruption the world over. It has also been compiling Annual Corruption Perception Indexes since 1995. Ranking of different countries among the comity of nations in these surveys can be found. Several factors have a bearing on the degree of corruption prevalent in the country. Two of them are the laws of the country and the agencies responsible for enforcing them. In a sense, the laws would seem to be more fundamental than the enforcing agencies, because the strength and weakness of the latter depend partly, and sometimes largely, on the way the laws empower them. Legal loopholes invariably give rise to institutional weakness, though they are not the only source of the debilities suffered by the institutions. Therefore, it was felt that the anti-corruption laws of the country must form a separate volume of the Anti-corruption Act.

In selecting the relevant laws, we decided to pick out not only the laws that explicitly purport to combat corruption, or are meant exclusively to curb corruption, but also the ones that deal with a wider gamut of activities but have a major bearing on control of corruption. Thus, we chose to include not only the Prevention of Corruption Acts and the BIS and NIB but also Acts relating to foreign exchange and money laundering that play a major role in hawala transactions and in converting ill-gotten wealth into white money.

ENFORCEMENT AGENCIES VIS-A-VIS CORRUPTION

Enforcement agencies have an important role to play in curbing corruption in a society. These agencies are often creatures of the law and derive their powers from the law of the land. The reputed Independent Commission Against Corruption, Hong Kong, which has been instrumental in transforming a highly corrupt society into a fairly clean one within a span of a quarter of a century, derives its powers from the Independent Commission Against Corruption Ordinance, Hong Kong. The phenomenal success of this institution is attributed largely to the way it has been empowered and made accountable by the law. Another successful anti-corruption agency, Corrupt Practices Investigation Bureau, Singapore, is also said to have been successful largely on account of the law that backs it up, i.e. the Prevention of Corruption Act (Chapter 241) of Singapore. The Independent Commission Against Corruption Act, 1988 provides legal support to the ICAC in New South Wales, Australia.

State of corruption in India, the largest democracy

Therefore it would be necessary to briefly discuss the legal framework for the principal anti-corruption agencies of India. Part of what will be said in the following paragraphs finds a place in the first volume of the Source Book on the mandate of the anti-corruption agencies of the Government of India. Nevertheless, discussing legal aspects of the make-up of these agencies in this volume on the Indian anti-corruption laws becomes imperative, even at the cost of some repetition.

The Central Bureau of Investigation and the Central Vigilance Commission are the two principal anti-corruption agencies of the Government of India. The first of these derives its powers and responsibilities from a law called the Delhi Special Police Establishment Act, 1947. The Central Vigilance Commission, on the other hand, was originally set up as a non-statutory body in 1964 through a Resolution of the Government of India (No. 24/7/ 64 – AVD, Government of India, MHA, Dated. February 11, 1964), which was in the nature of an executive order. However, following a public interest litigation, the Supreme Court of India, in 1997, directed that the CVC be accorded a statutory status in order to suitably empower it to combat corruption in high places. As a sequel to the

The phenomenal success of this institution is attributed largely to the way it has been empowered and made accountable by the law.

court order, the Government of India has introduced a Bill in Parliament to give the Commission a statutory status.

THE DELHI SPECIAL POLICE ESTABLISHMENT OR THE CBI

The Government of India originally set up the Delhi Special Police Establishment, now popularly known as the Central Bureau of Investigation, as a Special Police Establishment (SPE) in 1941. It was to investigate cases of bribery and corruption in the War and Supply Department of Government of India during World War II. The urgency of large-scale supplies during the war brought with itself a great deal of corruption in India as well as in many other countries involved in the War. Therefore, the SPE was a creature of a specific need, and its superintendence was vested with the War Department. Even after the end of the War, the need for a Central Government Agency to investigate cases of bribery and corruption in the Central Government departments was felt. The Delhi Special Police Establishment was brought into existence in 1946, through an enactment called the Delhi Special Establishment Act, 1946, transferring the superintendence of the SPE to the Home Department and enlarging its functions to cover all departments of the Government of India. The jurisdiction of the SPE extended to all the Union Territories, and the Act provided for extension of its jurisdiction to the States, if the States concurred. The DSPE acquired its popular current name, Central Bureau of Investigation (CBI), through a Home Ministry Resolution in the year 1963, though this administrative order could not change the legal status of the organisation.

As provided under the Delhi Special Police Establishment Act, 1946, the Special Police Establishment is authorised to investigate only those offences, or class of offences, which are specified by the Central Government, through its notifications in the Official Gazette from time to time. As indicated, initially these offences related to corruption alone. However, through dozens of notifications during the last few decades, nearly all major offences have been brought under the ambit of the CBI. Therefore, the organisation which had started as an anti-corruption outfit has finally evolved into a multidimensional organisation, responsible for investigating all types of crime. Even though it remains under the administrative control of the executive, the institution has been made accountable to the Central Vigilance Commission in anti-corruption matters.

In spite of its enhanced standing, the CBI is not yet intrinsically a national investigative agency, but essentially an agency for Delhi and other Union Territories. This is it was established by the Delhi Special Police Establishment Act, 1946, which is a local Act, and which was enacted by Parliament in its capacity as the State Legislature for Delhi. This agency does not have the powers to investigate cases of corruption in a State, without the formal permission of that State, even against the Central Government employees located in the State. If

all the States withdrew their consent towards operation of the Delhi Special Establishment in their areas, the agency's area of operation would shrink to Delhi and a handful of other Union Territories. This might have serious consequences because the vigilance institutions in many states have failed to develop in a manner that would make it possible for them to lay their hands effectively on the high and mighty with whom they happen to work. Therefore, this major lacuna in the law governing the CBI has to be removed. This can be done only through an enactment by Parliament in its capacity as the national legislature.

Many experts hold the view that the Centre is not competent to set up an investigative police agency with a countrywide reach, as it would be hit by Entry 2 of the State List in the Seventh Schedule of our Constitution. This view is based on the idea that an investigative agency must necessarily be a 'police' agency. Entry 6 of the Union List relates to 'Central Bureau of Intelligence and Investigation', which means that the Central Government can set up a Central investigative agency through legislation, with country legal *power*. Further, the subject of "curbing corruption" or "maintaining probity services" does not figure in any of the lists in the Seventh Schedule. Many legal experts feel that Parliament can thus also legislate the new CBI Act in exercise of its residuary powers, under Article 284 of the Indian Constitution. It is high time these legal options were explored.

The selection of the Chief of the Commission (Central Vigilance Commissioner) has been made subject to a more transparent procedure. Now his selection is not left completely in the hand of the political executive; the Leader of the Opposition in Parliament is also part of the Committee that now selects the head of this institution. This has increased the possibility of the right person being selected for the post, and has significantly fortified the independence of the institution.

COMBATING CORRUPTION AMONG FOREIGN OFFICIALS IN INTERNATIONAL BUSINESS TRANSACTIONS

Globalisation and growing liberalisation of economy will promote commerce with other nations more intensively and extensively in times to come. As the Indian industry and commerce come of age, they would also be taking advantage of liberalised international commerce and will tend to move into other countries with their products and services. In a recent study by Dr. Johann Graf Lambsdorff, the author of Transparency International's annual Corruption Perception Index, the bribing propensity of some exporting countries has been investigated. It has been found that there are considerable differences in the behaviour of leading exporting nations. Some of the exporting nations have high propensity to pay bribes for the acquisition of contracts in international trade. Others, like Australia, Sweden and Malaysia have the lowest propensity

towards corrupting importing countries. The Indian businessmen have not been investigated by the study. However, they are not known for their low bribing propensity. Therefore, it is not unlikely that they would be bribing their way into business in other countries. These tendencies have their own fallout both for ethics, the national image as well as for long-term economic interests. This is the reason why the U.S.A. had to enact a law called the Foreign Corrupt Practices Act³ that makes it punishable for the United States businessmen to pay bribes abroad. The 29-member Organisation of Economic Co-operation and Development (OECD) countries has also started enacting their own laws prohibiting bribery abroad though so far many of them had been allowing income tax exemption on bribes paid to foreign officials. They adopted a Convening Bribery of Foreign Officials in International Business Transactions' in the year 1997. India would do well to prepare for a policy exercise on the issue for its own business class.

CYBER-CORRUPTION

India has caught up with the information revolution sweeping the world. The Internet club of the country has crossed the two million mark and computers and Internet are becoming a craze. This is going to have far-reaching consequences. One of these would be that more and more information and application forms would be placed on the Internet allowing easy access to them, both of which used to cost money to the citizen in the form of illegal offerings to public officials for obtaining them. Also, as a larger proportion of communication and transaction is going to take place through the internet in Government departments, it will lead to further erosion in the 'income' of the servants of the Government. While this is likely to bring down corruption on the one hand, it may prompt public officials to take to cyber-corruption on the other, through manipulation of the computer records and by other means as these officials become more and more computer-savvy. While the acts may still be covered under the existing definitions of crime and corruption, the problem of mustering evidence for fixing individual responsibility may become more and more difficult. This would not only call for developing computer forensics at a fast pace but also making the law of evidence up-to-date in order to cope with the new evidentiary tools offered by computer forensics.

CORRUPTION IN NON-GOVERNMENTAL SECTORS

It is often said that lack of initiative and responsiveness, corruption, procedural wrangling, red-tape and lack of cost effectiveness have been the hallmarks of governance in the past few decades. This has led to a growing demand for downsizing the governmental machinery and privatisation of many of the services formerly monopolised by the State. However, thanks to the current cul-

tural milieu of the country, a large section of the private sector has also shown lack of scruples and dearth of integrity. Officials of private institutions in the educational sector have been demanding and accepting huge bribes in the form of unacknowledged donations and personal gifts, making the meritorious and poor students suffer.

Corruption among a section of media and voluntary agencies has been similarly growing. Corruption in the non-governmental sector in India is therefore going to offer a serious challenge to the Indian State in the days to come. Certain countries have woken up, and many are waking up to this menace and have made provisions the law to deal with corruption in the private sector. The Prevention of Corruption Act in Singapore has empowered its principal anti-corruption investigation agency, the Corrupt Practices Investigation Bureau, to probe corruption in the private sector. In the U.K. more and more private agencies providing public services are coming under the purview of the Ombudsmen. The Independent Commission against Corruption has similarly been empowered to deal in a limited manner with corruption in the private sector. In India, the law is still to gear up to take on this challenge.

ELECTRONIC RIGHT TO INFORMATION

The Right motion tends to reduce corruption. A Bill granting; this right to citizens is likely to be shortly introduced in the India. The USA enacted its Freedom of Information Act with effect in July 1967, but did not generate a flurry to snarled procedures and bureaucratic resistance. These have been revised several times since to keep pace with the needs and changing times, but the most significant amendments were carried out by the Electronic Freedom of Information Act Amendments of 1996. This legislation places obligation on the governmental agencies to provide broadened public access to government information by placing more material on-line and expanding the role of the agency's electronic reading room.

The E-FOIA, as the Amendments are popularly known in the USA, requires agencies to make reference material or a guide, including an on-line guide, for requesting records of information from an agency, publicly available. This guide includes a description of all major information systems and a handbook for obtaining various types and categories information from an agency. The annual reports of agencies are also required to be made available to the public through the medium of computer telecommunication. If an agency does not have the means established to make the report available on-line, then the report is to be made available in some other electronic form like CDs or floppy discs. The new law also made it mandatory at materials, such as agency options and policy statements, be made available by computer telecommunication within a year after the date of enactment. Again, if an agency does not have the means make

these materials available on-line, the information has to be made available in some other electronic form, e.g. CDs or floppy discs.

Needless to say, similar provisions laws would be necessary if we wish to curb corruption through systemic and intelligent means instead of penal one alone. Simply granting a legal right to information without allowing the citizen to exercise his right with ease and without facing harassment may not be of much help, as the US experience highlights.

CONCLUSION

It is recognized world-wide that the menace of corruption can not be dealt with successfully without involvement civil institutions in the endeavour. If we look closely at the reasons behind the success of the Independent Commission Against Corruption, Hong Kong, in curbing corruption in that part of the world, we would find that the institution has been successful largely because it has been empowered to institutionally involve the civil society in its endeavours. One of the three principal wings of the CAC is the *Community Relations Department*, with more than two hundred officers, which is meant to educate the public on the evils of corruption and seek citizens' active support. It maintains regional offices for liaison with schools, local bodies, and civil society institutions, sponsors TV serials, and takes such other steps that would educate the people on their rights, and encourage them to report acts of corruption. It is largely owing to the efforts of this department, backed by the other wings of the CAC, that the percentage of reports, in which the reporters were willing to identify themselves, increased from 33 percent in 1974 to 71 percent in 1994. The CVC in India does not have a clear legal mandate for such networking with the civil society institutions and for involving ordinary citizens in an effective manner. As the awareness of these issues builds up in this country, it is expected that such institutional mechanisms would be evolved in India too through appropriate changes in the law relating to our anti-corruption agencies. In Burma which is ruled by military dictatorship, the only remedy is a regime change which will reflect all the diverse sectors of the polity. In the introductory part of this essay, it has been focused that transparency, accountability and legitimacy of those who run the government are prerequisites to combat corruption.

As the awareness of these issues builds up in this country, it is expected that such institutional mechanisms would be evolved in India too through appropriate changes in the law relating to our anti-corruption agencies.

Endnote

* The author is an Executive Committee Member of the Burma Lawyers' Council.

Annex 1 - Complete Explanation on the Developments in the Country

...At Muse, one of the border towns where border trade is conducted, the Government uncovered bribery and corruption case involving billions of Kyats by service personnel...

...In this regard, Former Prime Minister General Khin Nyunt is culpable. Firstly, he violated Tatmadaw discipline by his insubordination. It is of the utmost importance for Tatmadawmen to follow orders; the orders from superiors must be obeyed and carried out without fail. Secondly, he is involved in bribery and corruption and is responsible. He committed certain acts which are not legal and his family is involved in bribery and corruption...

...General Khin Nyunt went to Singapore on 12-9-2004 to undergo medical treatment. It was billed as an official visit. At that time, an incident occurred at 105th Mile point in Nant Phetkar near the town of Muse. The Northeast Command Commander received a copy of a letter addressed to the Prime Minister by a dutiful citizen. The Commander established an enquiry board to determine the veracity of the communication. As it was found that there was a clear violation, he reported the matter. Because of the magnitude of the findings and as it was beyond the mandate of the Regional Commander, a high-level team led by the Inspector-General of the Ministry of Defence was dispatched to the region. However, because of the serious nature of the case, the team had to be reinforced with the State Auditor-General and his team. When the case was slowly unveiled, it was found to be beyond imagination. It was a huge and alarming bribery and corruption case. It was not only illegal but also involved bullying of ordinary citizens and traders. In some cases, individuals area immigration supervisory body did not get along. It can be analyzed that the reports emanated because of the friction between the two sides. There were also many other incidents. In the final analysis, preparations had to be made to take action in accordance with civil and military laws...

...On 30-9-2004 the Head of State in the combined Cabinet meeting held every 5 weeks, personally instructed Ministries that they should not set up economic ventures to raise funds, giving welfare as an excuse...

... In keeping with the instructions, the Office of the Commander-in-Chief of Army issued a directive on 1-10-2004 calling on all departments to review and submit an explanation regarding economic undertakings by 14-10-2004...

Annex 2 - Seminar on Promoting Integrity and Fighting Corruption in the Public Service

The Seminar on Promoting Integrity and Fighting Corruption in the Public Service, held on 19-20 November 2002, in Guiyang, China, successfully launched a new co-operation with China to promote integrity and fight corruption in the public service by exchanging working methods and experience of OECD countries, countries of the region and China.

Agenda - Opening Remarks

- Mr. Zhao Hong, Deputy Procurator General, Supreme People's Procuratorate, People's Republic of China
- Mr. Howard R. Wilson, Chairman, OECD Expert Group on Managing Conflict of Interest
- Mr. Wang Anxin, Chief Prosecutor, Guizhou Province

International Initiatives to Fight Corruption

Drafting the UN Anti-corruption Convention

- Mr. Jerry Z. Li, Legal Advisor, UNDP China Office, Beijing

UNDP anti-corruption project for China

- Mme. Du Yuexinour, Assistant Resident Representative, UNDP China Office, Beijing

OECD Instruments:

The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions

- Information sheet on the Convention and related instruments
- Text of the Convention(Bilingual English-Chinese; Chinese version only)
- Mr. Frédéric Wehrlé, Co-ordinator for Anti-Corruption Initiatives, Anti Corruption Division, OECD

OECD Recommendation on Improving Ethical Conduct in the Public Service

- Building Public Trust: Ethics Measures in OECD Countries - Policy Brief
- Ms. Hélène Gadriot-Renard, Head of Division, Public Governance and Territorial Development Directorate, OECD

Regional Initiatives

The OECD/ADB Anti-Corruption Initiative for Asia Pacific

- Information sheet on the OECD/ADB Initiative
- Ms. Gretta Fenner, Project Manager, Anti-Corruption Initiative for Asia-Pacific, Anti Corruption Division, OECD
- Mr. Jak Jabes, Advisor for Governance, Asian Development Bank

Experiences from participating countries

- Mr. Chua Cher Yak, Director, Corrupt Practices Investigation Bureau,

Singapore

- Mr. Dato' Zulkipli bin Mat Noor, Director-General, Anti-Corruption Agency, Malaysia

Enforcing anti-corruption laws

The tasks of independent anti-corruption commissions

- The Hon. Mr. Justice Barry O'Keefe, Supreme Court Judge, Former Commissioner, Independent Commission Against Corruption (ICAC), New South Wales, Australia
- Mr. Kyung-Joong Kim, Assistant Chairman, Korea Independent Commission Against Corruption (KICAC), Republic of Korea

Preventing corruption

The Canadian experiences on preventive measures

- Mr. Howard R. Wilson, Ethics Counsellor, Government of Canada

The Australian experience

- The Hon. Mr. Justice Barry O'Keefe, Supreme Court Judge, Former Commissioner, Independent Commission Against Corruption (ICAC), New South Wales, Australia

Using new technologies to fight corruption:

Using new information and communication technologies to fight corruption

- Mr. Janos Bertok, Principal Administrator, Directorate for Public Governance and Territorial Development, OECD

Implementation of anti-corruption programmes by Seoul Metropolitan Government

- Mr. Suntai Ahn, Head, Open Government Task Force, Seoul Metropolitan Government, Republic of Korea

The use of anti-money-laundering systems to combat corruption

- Mr. Martin Comley, National Criminal Intelligence Service, United Kingdom

Fighting Corruption and Safeguarding Integrity through International Cooperation

- Mr. Sang-Ok Park, Chief-Prosecutor, Head of Korean Organising Office for Global Forum III, Ministry of Justice, Republic of Korea

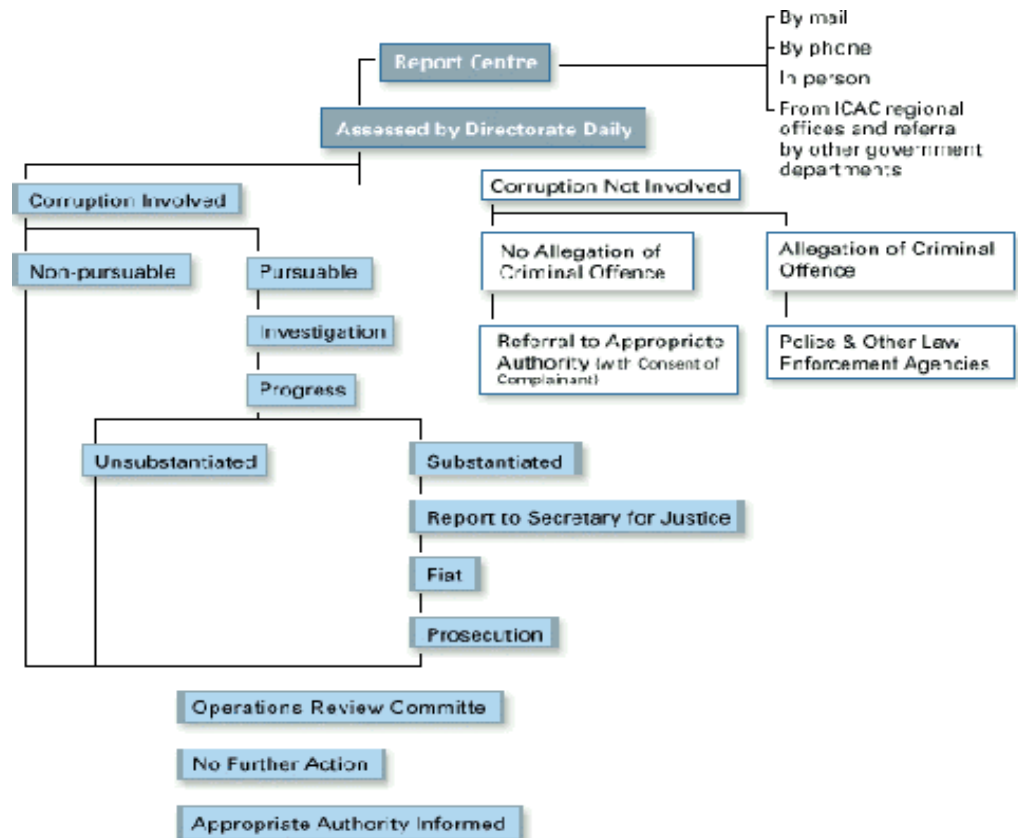
Closing remarks

- Dr. Ye Feng, Director-General, Foreign Affairs Bureau, Supreme People's Procuratorate, People's Republic of China

- Mrs. Hélène Gadriot-Renard, Head of Division, Public Governance and Territorial Development Directorate, OECD

Annex 3 - Investigation procedures

In normal circumstances, the ICAC will contact a complainant within 48 hours to arrange for an interview after a complaint is lodged. Each case will be handled carefully in accordance with a set of elaborate procedures. If the case is not related to corruption, referral to an appropriate authority will be considered.



Annex 4 - Corruption

How the World Bank Fights Corruption

At a Glance:

- World Bank lending for governance, public sector reform and rule of law - all key to poverty reduction - totaled 3.9 billion in FY2004. This represents approximately 20 percent of the Bank's new lending.
- The Bank runs a global 24-hour a day anti-corruption telephone hotline;
- To deliver results in fighting corruption, the Bank relies upon the Department of Institutional Integrity to investigate claims of fraud and corruption – inside and outside the institution – and a Sanctions Committee to adjudicate cases and assess penalties;
- So far more than 300 companies and individuals have been sanctioned from doing business with the Bank, and their names and sanctions posted on the Bank's external web site;
- The Bank's investigative unit has more than 50 staff and dozens more across the Bank are working with developing countries on anti-corruption efforts or on research on corruption and governance issues, and;
- By June 30, 2004, the Bank referred 26 cases of fraud or corruption to member countries resulting in 25 criminal convictions;
- The Bank today spends \$10 million a year on investigations and sanctions, more than all other multilateral development banks combined.

Summary

In just over eight years, the World Bank has significantly raised the profile of corruption as a development issue, both inside and outside the institution. During this time, corruption has become a critical consideration in the Bank's work with client countries, in its analysis of economic and social issues, and in its own operations and the projects it supports. The Bank has progressed rapidly from taking an ad hoc, low-visibility approach to instances of fraud and corruption in member countries, Bank projects, and among staff, to a leadership role among the multilateral development banks in all three areas.

The Bank has a comprehensive and integrated anti-corruption strategy in place, and it has taken a clear public stance – based on exhaustive research – that corruption is an impediment to growth and poverty reduction. It has also put in place a team of investigators that has quickly established a track record of success in uncovering those engaged in fraud and corrupt practices in Bank projects.

The anti-corruption policy that emerged at the Bank in the following months

called for action on four key fronts:

- Providing assistance to countries that ask for help in curbing corruption;
- Making anti-corruption efforts a key focus of the Bank's analysis and lending decisions for a country;
- Contributing to international corruption-fighting efforts, and;
- Striving to prevent fraud and corruption in Bank-financed projects.

World Bank Anti-Corruption Initiatives

The Bank's anti-corruption initiatives incorporate investigative and analytical approaches. The Bank provides advice to countries on how to improve public service transparency and accountability through the analytical and operational work of the Poverty Reduction and Economic Management department, the World Bank Institute, the Legal Department, and the Bank's Regional Operations. The institution also has its own Office of Ethics and Business Conflict provides advice on internal ethical issues for staff. The Bank views corruption as both a symptom and a cause of institutional deficiencies, thriving where economic policies are poorly designed, where competition is lacking, and where the accountability of public institutions is weak.

The investigative function is conducted by the Department of Institutional Integrity (INT). It is charged with investigating allegations of fraud and corruption in Bank-financed projects, and allegations of staff misconduct. It also conducts preventative operations such as training staff to detect and deter fraud and corruption in Bank operations. The Bank runs a hotline **(1-800-831-0463)** for staff or the public to report incidents of corruption and reports also can be made to the INT team online. INT also participated in direct project reviews of Bank-funded projects conducted through regional offices. A fiduciary review is designed to reduce corruption by ensuring that proper financial controls and oversight are in place in selected projects.

The INT team is comprised of around 50 staff and consultants from a range of disciplines and a diversity of countries. It includes financial analysts, researchers, investigators, lawyers, former prosecutors, forensic accountants, and former operational Bank staff. By June 30, 2004, INT had 321 open cases underway, and since 1999 has investigated more than 2,000 cases of alleged fraud or corruption, such as theft, bid-rigging, bribes, kickbacks, collusion or coercion by bidders, fraud in contract performance, product substitutions, email or fax scams, and misuse of World Bank funds.

As a result, more than 300 companies and individuals have been sanctioned from doing business with the Bank, either temporarily or indefinitely.

Taking Concrete Actions On Corruption

The growing attention the Bank pays to anti-corruption work, and more broadly to public sector governance and institutional reform, is reflected in its loan portfolio. In 1980, only 0.6 percent of Bank lending went to projects supporting core public sector reform. In the fiscal year ended June 30, 2003, it had climbed to 12.3 percent. Bank lending for governance and public sector reform is expected to constitute roughly 25 percent of Bank projects in the current fiscal year. The proportion of new projects with public expenditure and financial reform components jumped to 18 percent in the 2003 fiscal year from nine percent in the year ended June 1997.

With research showing that open and transparent governments are more likely to generate economic growth - and therefore to help reduce poverty - ensuring good governance has been a major focus of the Bank's anti-corruption initiatives. In recent years, World Bank lending for governance, public sector reform and rule of law - all key to poverty reduction - has averaged more than \$4 billion a year. Governance and anti-corruption measures are addressed in Country Assistance Strategies, the Bank's medium-term country-level business plans. This helps spotlight not only governance shortcomings but what the government and the Bank are doing to address these issues.

Its governance programs promote:

- **Anti-corruption;**
- **Public expenditure management;**

Civil services reform;

- **Judicial reform;**
- **Tax policy; and**
- **Administration, decentralization, e-government and public services delivery**

World Bank Institute (WBI)

The World Bank Institute (WBI) facilitates action-oriented and participatory programs to promote good governance and capacity building in client countries. It is providing support for programs to improve governance and control corruption, in collaboration with World Bank Operations and often in partnership with international organizations, to nearly 30 countries—principally in Sub-Saharan Africa, Latin America, Eastern and Central Europe, and more recently, Asia.

WBI takes an integrated approach to capacity building, governance, and anti-corruption. WBI's governance and anti-corruption strategy emphasizes:

- Going beyond public sector dysfunction (the 'symptom') to as-

sist countries in integrating institutional, regulatory and economic reforms (the 'fundamentals')

- Implementing rigorous empirical diagnostics and analysis (WBI publishes data and analysis for around 200 countries which help to raise awareness nationally and globally and help to inform policy reform)
- Bringing about collective action, through participation and broad-based bottom-up coalitions

Moving beyond conventional training to knowledge dissemination, policy advice based on the latest research and operational findings, and participatory and consensus-building activities.

- Scaling up the impact of its activities, utilizing new tools for knowledge dissemination, innovating, and taking managed risks

Leading By Example

Any program to assist in controlling corruption worldwide needs to start with the example of best practices at home. Recognizing this, the Bank has also looked inward to stamp out conflicts of interest and any possible corrupt practices among its own staff. In 2003, the Bank announced the strengthening of its financial disclosure obligations for senior staff. All the Bank's senior managers are now required to provide an annual statement listing their financial interests and those of their immediate family.

The Bank now requires that all CASs address governance. In some of the higher risk countries, governance and anticorruption have become the anchor for the entire country program. For example, the Bank strategy for Indonesia identifies governance problems as the principal factor impeding poverty reduction. Therefore, the entire country program - in the form of technical assistance, lending, IFC and MIGA activities, and donor coordination - aims to address these issues. Governance and anticorruption are fully mainstreamed in the CAS by linking lending volumes to progress in governance and anti-corruption; requiring anticorruption plans and fiduciary reforms for all projects; selecting projects linked to governance challenges; and providing funds to local reform leaders to carry out poverty-reduction projects. Other innovations include hiring the staff necessary to implement this CAS in the field office - a resident governance advisor and a fiduciary team that includes investigators and project advisors - as well as forming an anticorruption committee in the field office and actively collaborating with civil society on this issue.

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Annex 5 - United Nations Convention against Corruption

“Corruption hurts the poor disproportionately—by diverting funds intended for development, undermining a government’s ability to provide basic services, feeding inequality and injustice, and discouraging foreign investment and aid”.

Kofi Annan, United Nations Secretary-General

in his statement on the adoption by the General Assembly of the United Nations Convention against Corruption

Text of the United Nations Convention against Corruption

Background

In its resolution 55/61 of 4 December 2000, the General Assembly recognized that an effective international legal instrument against corruption, independent of the United Nations Convention against Transnational Organized Crime (resolution 55/25, annex I) was desirable and decided to establish an ad hoc committee for the negotiation of such an instrument in Vienna at the headquarters of the Centre for International Crime Prevention, Office for Drug Control and Crime Prevention. The text of the United Nations Convention against Corruption was negotiated during seven sessions of the Ad Hoc Committee for the Negotiation of the Convention against Corruption, held between 21 January 2002 and 1 October 2003.

The Convention approved by the Ad Hoc Committee was adopted by the General Assembly by resolution 58/4 of 31 October 2003. The General Assembly, in its resolution 57/169 of 18 December 2002, accepted the offer of the Government of Mexico to host a high-level political signing conference in Merida for the purpose of signing the United Nations Convention against Corruption. The Assembly invited all States to be represented at the Conference at the highest possible levels of Government.

Convention highlights

Prevention

Corruption can be prosecuted after the fact, but first and foremost, it requires prevention. An entire chapter of the Convention is dedicated to prevention, with measures directed at both the public and private sectors. These include model preventive policies, such as the establishment of anticorruption bodies and enhanced transparency in the financing of election campaigns and political parties. States must endeavour to ensure that their public services are subject to safeguards that promote efficiency, transparency and recruitment based on merit.

Once recruited, public servants should be subject to codes of conduct, requirements for financial and other disclosures, and appropriate disciplinary measures. Transparency and accountability in matters of public finance must also be promoted, and specific requirements are established for the prevention of corruption, in the particularly critical areas of the public sector, such as the judiciary and public procurement. Those who use public services must expect a high standard of conduct from their public servants. Preventing public corruption also requires an effort from all members of society at large. For these reasons, the Convention calls on countries to promote actively the involvement of non-governmental and community-based organizations, as well as other elements of civil society, and to raise public awareness of corruption and what can be done about it. Article 5 of the Convention enjoins each State Party to establish and promote effective practices aimed at the prevention of corruption.

Criminalization

The Convention requires countries to establish criminal and other offences to cover a wide range of acts of corruption, if these are not already crimes under domestic law. In some cases, States are legally obliged to establish offences; in other cases, in order to take into account differences in domestic law, they are required to consider doing so. The Convention goes beyond previous instruments of this kind, criminalizing not only basic forms of corruption such as bribery and the embezzlement of public funds, but also trading in influence and the concealment and “laundering” of the proceeds of corruption. Offences committed in support of corruption, including money-laundering and obstructing justice, are also dealt with. Convention offences also deal with the problematic areas of private-sector corruption.

International cooperation

Countries agreed to cooperate with one another in every aspect of the fight against corruption, including prevention, investigation, and the prosecution of offenders. Countries are bound by the Convention to render specific forms of mutual legal assistance in gathering and transferring evidence for use in court, to extradite offenders. Countries are also required to undertake measures which will support the tracing, freezing, seizure and confiscation of the proceeds of corruption.

Asset recovery

In a major breakthrough, countries agreed on asset-recovery, which is stated explicitly as “a fundamental principle of the Convention...” This is a particu-

larly important issue for many developing countries where high-level corruption has plundered the national wealth, and where resources are badly needed for reconstruction and the rehabilitation of societies under new governments. Reaching agreement on this chapter has involved intensive negotiations, as the needs of countries seeking the illicit assets had to be reconciled with the legal and procedural safeguards of the countries whose assistance is sought.

Several provisions specify how cooperation and assistance will be rendered. In particular, in the case of embezzlement of public funds, the confiscated property would be returned to the state requesting it; in the case of proceeds of any other offence covered by the Convention, the property would be returned providing the proof of ownership or recognition of the damage caused to a requesting state; in all other cases, priority consideration would be given to the return of confiscated property to the requesting state, to the return of such property to the prior legitimate owners or to compensation of the victims.

Effective asset-recovery provisions will support the efforts of countries to redress the worst effects of corruption while sending at the same time, a message to corrupt officials that there will be no place to hide their illicit assets. Accordingly, article 51 provides for the return of assets to countries of origin as a fundamental principle of this Convention. Article 43 obliges state parties to extend the widest possible cooperation to each other in the investigation and prosecution of offences defined in the Convention. With regard to asset recovery in particular, the article provides *inter alia* that “In matters of international cooperation, whenever dual criminality is considered a requirement, it shall be deemed fulfilled irrespective of whether the laws of the requested State Party place the offence within the same category of offence or denominate the offence by the same terminology as the requesting State Party, if the conduct underlying the offence for which assistance is sought is a criminal offence under the laws of both States Parties”.

Implementation mechanisms

The Convention needs 30 ratifications to come into force. A Conference of the States Parties is established to review implementation and facilitate activities required by the Convention.

Documentation

Intergovernmental Open-ended Expert Group on the Preparation of Draft Terms of Reference for the Negotiation of the Future Legal Instrument against corruption
(Vienna, 30 July - 3 August 2001)

Informal Preparatory Meeting of the Ad Hoc Committee on the Negotiation of a Convention against Corruption
(Buenos Aires, 4-7 December 2001)

Ad Hoc Committee on the Negotiation of a Convention against Corruption

High-level Political Conference for the Purpose of Signing the United Nations Convention against Corruption
(Merida, Mexico, 9-11 December 2003)

Signatories

Related speeches and press releases
31 October 2003

Statement on the Adoption By the General Assembly of the United Nations Convention Against Corruption by the

Annex 6

China Probes eight brokerages (*The Nation, January 22, 2005*)

China will launch corruption probes into eight brokerages including the fifth-biggest, Southern Securities, regulators said yesterday as the government seeks to overhaul a loss-making but critical sector. Analysts say Beijing is signaling its intention to accelerate the unprecedented wave of takeovers, mergers and closures that engulfed nearly a dozen houses in 2004. "We have decided to kick off investigations into eight brokerages, all of which were either taken over or suspended from operating last year, for serious irregularities," an official at the China Securities Regulatory Commission said. Major financial newspapers reported yesterday the market watchdog would soon dispatch investigators to the eight, which are suspected of falsifying financial statements, misusing clients' funds and poor management.

Besides Southern, others coming under scrutiny would be Yunnan, Liaoning, Hantang and MF Securities, and three brokerage units of once high-flying private ketchup-to-finance conglomerate Delong (Group). The news helped push the benchmark Shanghai composite stock index down 0.2 per cent 1,201.634 by noon, after it hit a fresh five-and a-half year low of 1,189.211.

Reform of brokerages is crucial as Beijing tries to instill better lending practices among its banks - whose US\$200 billion (Bt7.7 trillion) in sour debt has been a drag on the world's seventh-largest economy
State media have reported that more than half of China's 130-odd brokerages

may have fallen into the red in 2004. "Those who found to have been involved in economic crimes will be handed over to the police," the *Securities Times* said.

Beijing kicked off a much-needed shake-up of the brokerage industry in January 2004 by seizing control of Southern Securities, the premier trading house in southern go-go boomtown of Shenzhen. Regulators and city officials had taken over operations at Southern Securities, but analysts expected the new probe to identify and punish executives suspected of creating the initial problems. The brokerages' problems underscore the plight of a sector that relied heavily on plain-vanilla trading fees, a vulnerability that a bear market exposed. Chinese stocks dived 15 per cent in 2004 to become Asia's worst performing market. CITIC Securities, long the sector's most profitable player, warned last Saturday that net profits in 2004 could slide by more than half.

Check and balance system lauded (*Bangkok Post*, January 30, 2005)

Thai Rath commented on a unanimous Supreme Court ruling that there was merit in a suit brought forward by Senator Pratin Santiprapob and other senators against 9 members of the National Counter Corruption Commission (NCCC). The commissioners will be investigated for abuse of authority in awarding themselves a raise. The Supreme Court instructed the attorney general to proceed with prosecution proceedings. The *Thai Rath* editorial noted that the case should serve as a lesson to all independent organisations established under the present Constitution that even though they are independent in carrying out their duties, they are still subject to monitoring by other organisations.

The preliminary investigation may result in the attorney general bringing the case before the Supreme Court's Political Crime Division. Of course the NCCC commissioners will have a chance to defend their collective decision to raise the position allowance for the NCCC chairman to 45,500 baht a month and other commissioners to 42,500 baht. The NCCC might use for its justification Section 302 of the Constitution, which states that the NCCC has independent authority for administration and budgeting within the organisation. However, the plaintiffs may cite Section 253 of the Constitution and Section 18 of the NCCC Act, which states that salary, position allowance and other benefits for the NCCC chairman and commissioners must conform to due legal process, which means that the government must submit a bill to be vetted by Parliament before it can be approved.

The plaintiffs believe that Section 302 is meant to apply to the administration and budgeting of the NCCC office, but is not applicable to commissioners' salaries. This is the first time that an independent organisation has been sued in the Supreme Court's Political Crime Division. When the attorney general indicts the nine commissioners, they will immediately become defenders in a criminal

case. Now that the Supreme Court has found that the case has merit to proceed, it is up to each commissioner to decide whether he wants to show any spirit and resign. This marks the first time that an independent organisation has been sued in the Supreme Court's Political Crime Division.

The case points to the fact that in practice the Constitution's provision for checks and balances does work, as demanded by several democracy advocates. This bodes well for the upcoming general election and democracy. If one cannot rely on independent organisations to check the executive branch, there is still the judicial system, concluded *Thai Rath*.

Life cycle of a political party

Goods and services have a so-called *Product Life Cycle* or PLC, consisting of Introduction Stage, Growth Stage, Maturity Stage and Decline Stage. Marketing experts believe that the PLC is characterised by sale volume and profits, among several other factors. Nuchrudee Ruimai used this concept in an analogy to Thai political parties in a column published in *Matichon* daily. In the Introduction Stage, a product is still new in the market. A large budget is needed to introduce the product to the public. At this stage, it is a loss making enterprise as the sales have yet to be large enough to offset R&D and other costs. The target is consumers who want to try new things.

The product needs to convince consumers of its quality and desirability to entice them to try the product. *Matichon* said that the Mahachon Party is still in the Introduction Stage. The party has been established for only a few months but already is promoting its policies and candidates, who are standing for election in many constituencies. Of course, Mahachon has had to invest a large sum of money to make the party well-known to the general public, including buying ad time on television and in cinemas. The party has achieved a small success in projecting the image of an alternative party and the people now know about the party and its leader.

The Growth Stage characterises a product in the phase of its life cycle that sees rising sales accompanied by rising profits, while other expenses, including advertising, decline. At this stage, there are more competitors entering the market. To counter this, the adopted strategy is to find a new market segment and to increase product quality and variety. The marketing campaign changes from product introduction to creating brand loyalty. Nuchrudee did not think that there is at present any political party in this stage of its life cycle. In fact this is the best stage, but even Thai Rak Thai party could only claim it in the first 2-3 years of government. TRT's Growth Stage was relatively short, said *Matichon*. Maturity Stage is when the product reaches its sales zenith and can only look forward to a popularity decline. A product at this life stage must engage in vari-

ous product promotions including increasing R&D, finding new markets and raising sales. The Thai Rak Thai party was considered to belong in this stage. The TRT's popularity has reached its zenith when compared with other political parties, but it cannot grow any further. The only option left is to prolong the time before the decline from approaching. So there is no surprise that the party is engaging in full-scale "promotions", such as delaying the implementation of a five percent reduction in bureaucracy, granting the SML fund, pegging diesel fuel price rises and reducing road and subway tolls.

The party is also trying to penetrate a new market segment in the South, along with some other constituencies which they had lost in Bangkok. The Decline Stage signifies a product suffering plunging sales and popularity, which may be due to changing technology, consumer's behavior and/ or intense competition. The product's survival depends on loyal customers, cutting unnecessary costs and abandoning market segments which suffer losses.

Thai political parties at this stage are Democrat and Chart Thai, the oldest and the second oldest party in Thai history. The image of the Democrat party is very low at present and it has to rely on its loyal constituencies in the South just to survive. The party is realistic about its chances in the up-coming election, judging from the fact that core party executives spend very little time in Isan while sitting Democrat MPs just stay at home defending their seats. As for Chart Thai, its leader is even forced to stand in Suphanburi to guard its turf.

The only way for a political party in this stage to survive and revive is by "rebranding", which the Democrat party is currently undertaking. The party has lots of quality young blood waiting in the wings to take up the mission. But the old guard doesn't think it's time to introduce them because the current of TRT's popularity is still very strong. When the time is right, the Democrat party will surely bring in its new faces to rebrand its image. If the TRT does not have its own new blood waiting in the wings, the time might be right for the Democrat party to upstage the ruling party.

However, Nuchrudee did not see any future for the Chart Thai party. Bringing in the marverick Chuwit Kamolvisit did not help create a new image. It was just a small party taking over an even smaller party. The application of the PLC analogy may benefit a political party if it can recognise its own stage in the political life cycle and come up with appropriate strategies, said *Matichon*.

Don Muang Tollway demands compensation

On January 25, 2005 Don Muang Tollway issued a press statement stating that its president, Sombat Panitchewa, was concerned that the 20 baht toll reduction experiment which commenced on Dec 22, 2004 has resulted in a daily loss about 500,000 baht or 15 million baht a month. While the daily vehicle volume increased to about 136,626 a day, compared with 103,689 previously, the daily

intake declined from 3.3 million baht to 2.8 million baht. If the experiment lasts the full 3 months as agreed with the government, the company is expected to incur losses of about 45 million baht, noted a *Matichon* writer. The press statement demanded that the government honour its commitment of shouldering the 80 percent of the loss. But this was not the end, the statement called on the government to help by extending the concession period, which now stands at 17 years, to 20-30 years.

The government is also asked to help with the concessionaire's huge debt of about 11 billion baht owed mainly to the Government Savings Bank. The *Matichon* writer concluded that the government's experiment failed to raise vehicle volume on the tollway enough to significantly ease traffic along the Vibhavadee Highway, and also provided a chance for the near-bankrupt tollway operator to demand a lot more than the original agreement called for.

Annex 7 - What is corruption?

In simple terms, corruption occurs when an individual abuses his authority for personal gain at the expense of other people. Corruption brings unfairness, crookedness and, in its more serious case, puts the lives and properties of the community at stake. The spirit of the Prevention of Bribery Ordinance (POBO) enforced by the ICAC is to maintain a fair and just society. The law protects the interests of institutions and employers and inflicts punishments on unscrupulous and corrupt staff. POBO oversees corrupt offences in both the public and the private sector.

Public Sector

Government servants are subject to Sections 3, 4 and 10 of the Prevention of Bribery Ordinance while staff of public bodies are subject to Section 4.

Section 3 underlines the spirit to uphold a high standard of integrity within the civil service, by:

- * restricting civil servants from soliciting or accepting any advantage without the general or special permission of the Chief Executive; and
- * waiving the requirement of proof of a corrupt act or undulating.

Section 4 deals with corruption of public officials. Under this section:

- * it is an offence for a public servant to solicit or accept any advantage offered as an inducement to or reward in connection with the performance of his official duty; and
- * any person offering such an advantage also commits an offence.

Section 10 tackles hard-core corrupt civil servants and brings to book those

- * who receive bribes over a period of time even when the assets they possess cannot be linked to any specific corrupt deal. It stipulates that it is an offence for a civil servant to maintain a standard of living or possess/control assets which are not commensurate with his official emoluments.

LEGAL COMMENTARY

Kafkaism rules Burma judiciary

*Muhammad Yusuf**

Burma celebrated its 57th Independence Day on January 4, 2005. There was a lot of back-patting, mutual backscratching and "pride in race and country" talk by the ruling military junta. The Burmese people found nothing to celebrate. They live in a lawless land which has been struck by the tsunami of illegality since 1962 when the army took power. Many organisations and writers have documented the lawlessness. One of the most prominent bodies which strongly opposes unjust and oppressive laws in Burma is the Burma Lawyers' Council (BLC). It is headquartered in Thailand, with branches there and an overseas office in New Delhi, India.

BLC's major activities are legal research and documentation, providing a legal forum, giving legal assistance, trying to improve the Burmese legal system and advocacy. Its work is posted on the Net — and makes harrowing reading. BLC's study of Burma's State Protection Law (SPL, which BLC calls "the broadest law in the world") is a lesson for all those who suffer from State terrorism, whether in the East or West. It warns against such a law, exposes its inadequacies and tells people how to fight it. SPL (Pyithu Hluttaw Law No. 3 of 1975) consists of a Preamble and 24 Articles. The Burmese-language version does not give the exact date it was passed; it just says '1975.' It has many Kafkaesque clauses. The irony is that SPL is justified by the Burmese junta that it helps fighting global terrorism. "However," says the BLC study, "our analysis proves that there cannot be a single justification for the existence of such a draconian law."

In a foreword, H E U Thein Oo, who is Minister of Justice in the National Coalition Government of the Union of Burma (exile), says: "Now that the world is increasingly becoming entangled in the global war against terrorism, it seems as if 'state protection' is being put into a new legal perspective... but the question is whether this would justify the existence of overly broad laws that provide governments with martial-law-like powers."

BLC points out that any arrest without court order or detention without charge is illegal. But this is very much the way the ruthless military junta has been ruling Burma since 1962. "The junta's use of its laws to quash the principles of basic human rights in Burma is widely known," says the study. "The junta has enforced laws curtailing civil and political freedom. It abuses law to crush any political opposition. Current Burmese laws and regulations hamper and even criminalise freedom of thought, the dissemination of information and the right of association and assembly."

BLC gives a "roll-call of horror" stating the laws which ban civil and political rights in Burma: the Official Secrets Act (1923), the Emergency Provisions Act (1950), the Unlawful Association Act (1975), the Printers and Publishers Registration Law (1962), and, the harshest of all, the SPL (also called the Law to Safeguard the State Against the Dangers of Those Desiring to Cause Subversive Acts). Thousands of political prisoners currently remain in prison in Burma under this law, notes the study. Many of them have already served the terms to which they were sentenced, but are still under continued arbitrary detention. Prison conditions include cruel and inhuman treatment. Torture of political prisoners is frequently reported. There is lack of adequate food, water, sanitation and health care, while the Jail Manual gathers dust.

The junta, which calls itself SPDC or State Peace and Development Council, is one of the world's worst human rights violators. Even the United Nations, usually hesitant to criticise its members, has condemned the junta's abuses. The March 1998 resolution that was adopted unanimously by the United Nations Human Rights Commission described a deeply disturbing list of abuses committed by Burma's military junta, including torture, murders, rape, forced labour, and political imprisonment. The SPL has become the main power base for the junta which now rules by decree. "In reality," says BLC, "the only law in Burma is what the generals from day to day decide it to be."

According to BLC, SPL Article 3 is the real preamble of the Law. It speaks of the powers to declare Emergency. It is therefore conceived in the context of Emergency. But no Emergency has been declared! Article 3 bombastically provides for pre-emptive action in order "to protect the sovereignty and security of the State." But none of the detainees under the Law were involved in any public demonstrations or strikes. None of them were armed when they were arrested.

"This has nothing to do with law enforcement," says the BLC. "Only the fear that something might happen disturbs the junta. Fear led the generals to invoke this law. If this fear were well-founded, then surely the detainees would have been put for trial. But there has never been any evidence. The junta knew that every trial under this Law would be a farce. The judges in Burma are all selected on loyalty to the junta. So the only way to make the process watertight was to keep the detainees under protective custody."

SPL provides absolute immunity to the military for all atrocities. The members of the armed forces in the whole of Burma are protected from arrest for anything done "within the line of official duty." And the many instances of human rights abuses by the army have shown that without public accountability, there is no incentive for the army to change its conduct.

SPL's Article 7, Chapter 3, says, "The (military) Cabinet is authorised to pass an order, as may be necessary, restricting any fundamental right of any person suspected of having committed or believed to be about to commit, any act which endangers the sovereignty and security of the state or public peace and tranquility." There is no standard to determine 'reason to believe' — it is the whim or wish of the punishment giver to decide it! The junta rules the country without a Constitution, BLC concludes.

As though overcome by the arbitrariness of the junta, BLC calls its type of justice "nonsense." This is a strong word. Especially as it comes from seasoned lawyers who make up BLC executive committee who are experienced in the legal field. Even the global war against terrorism cannot, in any way, justify sham legislation like SPL. The law does not deserve even to be amended. It should be abolished completely, right now, and all political prisoners detained under it, released.

* Yusuf/Reporter/The Gulf Today/Sharjah/UAE.

In Brief:

New wave of democratic struggles - reflections on Burma

After the third wave of the movement for democracy from authoritarian rule, almost a decade passed, when a lull came in. It was a lull before a storm. Vibrant movements began, beginning with Georgia and encompassing a large number of countries, culminating in Kyrgystan. The focus is on restoration of Rule of Law, the overthrow of the tyrants and establishment of constitutional rule. Even in the quiet Islamic countries like Egypt, Lebanon and Palestine a new stir is discernible. In the eighties when the democratic wave was unleashed by Poland, Burma had already pioneered 8.8.88 uprising although it did not meet with success.

A short summary of peoples' struggles is given below to show that the tyrants in Burma should change their mindset, release Daw Aung San Suu Kyi and enter into a dialogue for peaceful change.

Iraq

After America's occupation of Iraq, there were doubts as to whether power could be handed over to pro-democracy Iraqis. The constitutional process however proceeded against great odds like insurgency, infighting, and the international community keeping its distance. Iraq had its watershed election two months back and presently it is locked up in a deadlock over formation of a new government. Malnutrition among young Iraqi children since the US-led invasion of Iraq has shot up remarkably and has become a serious concern. Food situation, political instability and disharmony among its people are causing serious problems to put in place a constitutional rule. However, American occupation, like it or not, is also witnessing the ongoing constitutional process and hopefully the democratic forces in Iraq will be able to forge acceptable constitution and establish a democratic government. But the international community has to get in-

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volved notwithstanding the fact that the initial occupation of Iraq was illegal.

Egypt

Egypt's pro-reform protesters are finding growing courage to make their voice heard and for the first time are challenging the once veteran President Hosni Mubarak. Opposition took to the streets in an unprecedented coordinated nationwide push directly targeting the old ruler. Egypt has not yet seen a people's revolution of the type that recently swept Ukraine and Lebanon. There is a great feeling that a country's silent majority will take its destiny in its own hands. Opposition has called on Mubarak to step down after 24 years at the helm of the nation. After a quarter of century of unchallenged autocratic rule, Mubarak and his regime are facing unprecedented political upheaval stemming from both internal and international pressure.

Palestine

In spite of lawlessness plaguing the Palestinian territory, Palestine president Mohammad Abbabbes is making progress to restore peace and make Palestine state a reality. Abbabbes has used dialogue instead of confrontation in his dealings with anti-Israeli militants. After the death of Arafat, although an unclaimed leader, the Palestinian movement took a new direction. The help of international community became more assertive with the emergence of new leadership which could cope with its own militants. The path of violence was abandoned but peaceful resistance continued to worry the Israeli hawks. Hopefully the state of Palestine will be born in time on rule of law.

Lebanon

After a long spell of calm Lebanon has made the headlines. The assassination of former Prime Minister Rafik Hariri threw Lebanon into turmoil. Massive demonstrations forced the government to resign, accelerating the withdrawal of Syrian troops Lebanon is without a government for 4 weeks. Caretaker Prime Minister Omar Karami has been asked by opposition to step down and to form a national consensus government in order to hold the elections on time.

United Nation's security council resolution 2004 demanded complete withdrawal of Syrian troops. Lebanon was a civil war arena between the Muslim majority and the Christians. United Nations' intervention helped withdrawal of Israeli and restoration of civil administration. Rule of Law has again come on the agenda of Lebanon.

Kyrgyzstan

The veteran leader, deposed president Akayer Finally, opted to resign after he had fled to Moscow. The resignation followed a wave of opposition protests fuelled by flawed parliamentary polls. Kyrgyzstan is a mountainous state of 5 million bordering China, almost unknown to outside world, a sleeping country. Bakiyer, the opposition leader who became the acting president accused Akayer and his family of ruling illegally and of running a corrupt business empire. "We have got used to living in an authoritarian state and we need to adapt to the fact that there will be competition between political parties. There is no one boss" said Baysalor.

The presidential election has been set for June 26. Under the constitution, new poll must be held within 3 months of the resignation of the previous leader. The protesters said that the way has now been opened for democratic election and new hope for the country. The message is clear and loud. A country as small as Kyrgyzstan raised the banner of protests and paved the way for peaceful change.

Burma's National Convention

In Burma the National Convention which the junta tried to market proved a failure. Devoid of representative character, transparency and accountability it has shrunk more into a hole. Daw Aung San Suu Kyi's house arrest and denial of NLD's participation have become a reality. Worse is that the leader of UNLD, U Khun Htun Oo, has been put on trial for high treason. Some cease-fire groups made demands to liberalize the constitutional making process and stayed away. On the excuse that farming season was on, the National Convention, which was reconvened on February 17 after 7 months hiatus, has been adjourned indefinitely. This process of holding and postponing will go on and reduce it to a mockery. The international community has already dubbed it a sham.

Significantly, ASEAN has become assertive. The parliamentarians in these countries are moving resolutions in their respective parliaments for release of Daw Aung San Suu Kyi and denial of Burma to chair the ASEAN conference scheduled in 2006 at Yangon. None of the Asian countries have military dictatorship ruling and they rule by constitution. It is high time that Burma junta resumes dialogue with Daw Aung San Suu Kyi for a political reform in a time frame and not pursue its fake National Convention for the larger interests of the people and country. Burma's ruling junta has to bend if not break. Burma's neighbors have voiced growing frustration over the slow pace of democratic reform and rampant human rights abuses.

The international community has already dubbed the National Convention a sham.

The diversionary tactics by Junta putting on the show of National Convention cannot fool the people. ILO has renewed its pressure to put an end to forced labor. Periheiro reported that only full and unconditional release of all political prisoners will pave the way for national reconciliation and the rule of law. UN Secretary-General expressed the opinion that the format of National Convention put in place by the junta "does not adhere" to UN General Assembly resolutions. What is all this debate about the National Convention? The Generals had better rethink the core issue, which is the restoration of genuine constitutional rule in Burma.

In Review

In the law journal 2000 August No. 2 issued by Attorney General Office, Myanmar, two articles appeared

- (a) Current legislation in Myanmar about AIDS
- (b) The Emergency Provisions Act (1950)

(a) Current legislation in Myanmar about AIDS

The author begins with "Legislation plays a vital role in fighting against the spread of HIV/AIDS. In Myanmar, there are some provisions of laws regarding the prevention of the lethal disease." And in conclusion it states "It can be noted that no specific law relating to HIV/AIDS is required because, according to section 21(a) and (b), the Ministry of Health may make necessary rules and procedures or issue orders and directives in combating the HIV/AIDS spread."

However, the rules and procedures mentioned cannot take the place of substantial law. There is a total misconception. The existing laws have been listed as follows:

- (1) The Suppression of Prostitution Act (1949)
- (2) Section 377 of the Penal Code (1861)
- (3) The Excise Act (1917)
- (4) The Narcotic Drugs and Psychotropic Substances Laws
- (5) Prevention and Control of Communicable Diseases Law (1987)

It will be seen that all laws are during the period 1861 to 1993 prior to the real threat that AIDS posed globally. Moreover, the laws do not directly address AIDS/HIV. Burma is one of the topmost AIDS affected countries, especially

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millions of migrants and refugees who are on the Thai-Burma border are the victims of disease with no protection or care.

After international pressure Burma signed a protocol on 27 January 1993. But no serious attempts to combat the disease have been made. On the contrary the author states "The Ministry of Health has carried out preventative activities but the number of HIV cases have been increasing from year to year." He does not give data or information regarding the activities of the Ministry of Health. Just vague assertion that it is doing its best means nothing. The gravity of the situation is not realized by the power mongers. There are well-documented international papers on HIV/AIDS and status of Burma has been specifically stated. The article has been written in defense of the regime and gives a misleading picture of the true state of affairs. The role of civil society and the democratic government are most crucial in these matters. This aspect has been ignored.

(b) The Emergency Provisions Act (1950)

The Act with all its provisions from 1 to 8 had been given with no comments. The readers will be left in darkness as it is to the advantage of the regime. It is one of most draconian laws which the junta uses to suppress dissents. It provides for the death sentence for minor offences like "informing the movement, numbers, circumstance, condition, position of the state armed forces". The law is vague, indefinite and falls short of international standards. "If anything is done intentionally to encourage or incite a person to refuse payment of land revenue" it shall be punishable with imprisonment for a term which may extend to 7 years or with fine or both. In fact the law classifies the entire gamut of dissent by a citizen as treason, which is liable to the death sentence according to this dubious interpretation.

In fairness, it may be stated that the exercise to bring out the journal is positive. However it suffers from flaws which may defeat its purpose of dissemination of legal knowledge. The authors of the article are all government employees. There are hundreds of practising lawyers who do not figure as writers. Independence of the journals is lost. Secondly, the contents of the article are selective. Some domestic laws are given but they lack analysis which can help reform. The international affairs are mostly confined to Singapore. Nowhere in the journal is any information of the great struggles of constitutional reform which are vigorously going on all over the world. The journal ought to be more objective, bringing to light the trials that go on in order to promote awareness amongst the legal fraternity.