On 17 June 2002, the ruling junta enacted “The Control of Money Laundering Law” Law No. 6/2002. Far back in December 2001 the need for Money Laundering Law \(^1\) in Burma was focused in this journal thus:

“All economic activities in Burma have become instruments of drug money laundering. At least 50% of Burma’s economy is unaccounted for and extralegal: the earnings from heroin now exceed those from all of Burma’s legal exports.”

“Although the Narcotic Drugs and Psychotropic Substances Law contains some useful legal tools for addressing money laundering, to date this law remains unused as Burmese police and judicial officials have not enforced.”

“The junta has finally started drafting a counter-money laundering law. This should be seen with guarded optimism given the junta’s poor understanding of economic principles and its notorious contempt for law.”

The magnitude of money laundering activities went so far that it threatened to uproot the normal economy by replacing it with black-market economy. Partly due to the pressure of genuine investors, partly due to the criticism of academic and journals and partly due to the exigencies of it own survival the law was enacted. The law was criticized in various forums. It was characterized as Toothless Money Laundering Law. \(^2\)

“In short, the Money Laundering Law is a law above the law, a law unto
itself, a whitewash that does not meet international standards on its own admission. The political situation in Burma is characterized by a lack of rule of law and ineffective law enforcement. The new money laundering law promises nothing and is likely to be seen as a hoax.”

**Press briefing**

The quote proved to be true. After 5 months on 20/11/02 the SPDC came out with a hastily gathered press briefing to clarify the law. The Home Minister said that the law was not retroactive. In fact, there was no need for so-called clarification. When in June 2002 it was enacted everybody understood it to be enforced from the date of enactment. The Home Minister said “the objective was to prevent and control money-laundering and its multiplying effects.” Reading between the lines one can say the clarification was assurance not to use it for confiscation of property, funds, or shut down local entrepreneurs. It was a clear message that there will not be enforcement, all that was intended was to keep the business within bounds. Ironically the word “Control” was prefixed with the name of the Law. In U.S. the law is called Money Laundering Control Act of 1986 (MLCA). The Act was the result of booming cocaine trade of the 1980s and widespread non-compliance with the banking reporting statutes. The purpose was to cover a broad range of criminal conduct. The copying of the title name of the law in Burma “The Control of Money Laundering Law” Law No. 6/2002 has been misconceived. Although 5 months have passed not a single prosecution has been launched. On the contrary assurance, euphemistically called clarification, has been given to potential offenders not to panic. The three chief defects of the law are its lack of legitimacy, its uncertainty and its complexity. The law is not one-strike law and is only purported to be a smokescreen.

The law gives a special committee headed by Home Minister wide-ranging powers including access to bank accounts and investigate personal income, property deals and money derived from ill-gotten gains. Punishment can range from seven years to life imprisonment. All economic laws that the SPDC has enacted are merely show pieces. Enforcement of Law is a vital part of the objective of any law. When it goes by default for various reasons the very object of the Law is defeated. The ruling Junta has crafted a clever device to defeat laws whenever it is forced to enact. The press briefing on “The Control of Money Laundering Law” is a classic example of its delinquency.

The Money Laundering issue is a vital sector in macro-economy of Burma. Its failure to address this issue is one of the reasons why Burma
unlike Indonesia and other repressive regimes could not register any economic growth. Economic growth may facilitate democratizations, and promote acceptance of the regime, even if it is not a democracy. Suharto recruited civilian experts and technocrats who helped him out of several crises. But the Junta rules by its own decisions and has monopolized every thing. In respect of law and judiciary it surfaces every time it wants to enact law to fend off instability. The “Control of Money Laundering Law against illegal acts” is an instant case. Money Laundering envisaged under the Law is against illegal acts. Does it mean that there can be legal acts under Money Laundering? What does “control” mean? Why not, it is outright prohibition? The Junta cannot go on like this for a long time playing with rule of law.

Just over 24 hours, the local currency plunged from 742 Kyat to the dollar to 900 to the dollar and there was a wide spread panic.

The Law Journals published by Attorney General or the Supreme Court, Burma have not brought this issue in the forefront. Nor Mandaing Magazine published under editorship of Maung Maung Win supposed to be an independent lawyers’ Journal debated or gave coverage to this issue. When a law is passed without public hearing, its fate can easily be guessed. This public hearing is more important as the SPDC is the law-maker and law dispenser.

In other countries, the parliaments debate laws and legislation is the outcome of debate amongst the elected representatives of the people. The conclusion is inevitable that any law that the junta brings will be flawed and unenforceable. Honest review of its laws and enforcement and failures should have convinced it that regime change is the only sustainable solution.

Money Laundering in Burma’s context has to be viewed as an integral feature of a failed state. It is a serious problem. Money received through illegal activities such as drug sales, gambling, human trafficking are filtered through legitimate sources to make it appear to have been derived from these sources. Original source cannot be traced. For example, an organised crime organization obtains larger profit through drug sales. It will channel this money through a restaurant. Law enforcement may become suspicious of a small business earning disproportionately huge income. This will lead to investigation. To avoid this, organised criminals will disperse the money through several channels, so that smaller amount are sent out. Once this happens it is impossible to detect it as laundered money. It also enables earning high profit which cannot be taxed. Statutes have to directly target the crime and provide stiff penalties for com-

Junta policy to prop up the drug industry is the chief cause of the problem.
mitting the crime. In U.S. Racketeer Influenced and Corrupt Organizations Act (RICO) successfully broke down the structure and sophistication of the criminal syndicates by convicting and severely sentencing its leaders. The law was made adaptable to apply to the evolving reality of organised crime.

Criminal Law “Consists of prohibitions of antisocial behaviour backed by serious sanctions”. In Burma, the leading drug lords have been legally permitted to establish public bank and carry on banking operations. The very system of financial institutions has fuelled money laundering and made it a constituent of the Economy. Only a law with far reaching reforms in financial sector, this problem can be solve. Steps like enacting “The Control of Money Laundering Law” or floating Projects cannot remedy the situation. Bt 20 million model village project to be implemented in areas controlled by Pro-Rangoon United Wa State Army (UWSA) is a sheer hoax. UWSA is world’s largest drug army operating freely in Burma with the support of ruling junta. It is high time that the ruling junta instead of press briefing seriously addresses the issue and initiate building coalitions on major critical issues facing the country.

Endnotes

1. Legal Issue on Burma Journal No 10 (December 2001), Published by BLC p. 23
2. Legal Issue on Burma Journal No 12 (August 2002), Published by BLC p. 3

List of References

Law Journals of the Supreme Court and Attorney General