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**New Era for the Rule of Law:**

# **Economic Development and the Rule of Law in Burma (Myanmar)**

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## **Introduction**

Burma, my country, has proved that political stability is essential for economic development as well as that the lack of the rule of law will also create political instability. For genuine democracy and sustainable economic development to exist in Burma once there has been a successful transition of power from the military regime to the democratic opposition, an understanding and respect for judicial independence will be the corner stone for a new democratic society governed by the rule of law. Unfortunately, the rule of law is in dire straits in Burma today.

The current political and legal framework stunts Burma's economic development, leaving millions of its people languishing in poverty despite the country's abundant natural resources. Wealth is concentrated in the hands of a few, while the opportunity for economic advancement and a decent standard of living is denied to the majority of Burma's population.





## **The Role of Country: Burma**

Burma is blessed with a host of natural resources like gas, oil, copper, tin, gold, precious stones, timber and millions of hectares of arable land. The country was known as the rice bowl of Asia. However, following the military coup in 1962, because of the lack of the rule of law, mismanagement of the economy, rampant corruption and cronyism, the country is now the poorest in the region. Burma under the junta is ranked third as the most economically repressed and second as the most corrupt country in the world by Transparency International in 2007.

I hope that through this POLA conference I shall be able to contribute towards a better understanding of the sorry state of the rule of law, judicial independence and human rights in Burma today. The people of Burma are by nature law abiding, peace loving and gentle. However, under the present military government, known as the State Peace and Development Council (formerly the State Law and Order Restoration Council), they have been subjected to deplorable treatment as a result of the complete lack of any rule of law.

Unlike some other authoritarian regimes, the Burmese generals do not care one bit about the economic well being of its citizens. While the top generals and their families and cronies are becoming millionaires and billionaires, ninety percent of the population lives on less than US \$1 per-day. Millions of people in Burma cannot even afford two regular meals a day. Only about 10 percent of the national expenditure is allocated to the education and health sectors combined, compared to forty or fifty percent for the military.

The economic hardship at home has forced millions of people in Burma to leave the country and seek jobs in neighboring countries where they are vulnerable to all forms of exploitation. Thailand alone hosts more than 2 million migrant workers, the majority of whom are undocumented. The same is true in Malaysia. The Burmese junta's restriction on freedom of movement is forcing those wishing to seek jobs abroad to rely on human smugglers and traffickers, and are often forcibly assigned to unsafe work, including prostitution. The people of Burma deserve a better fate.

## **The Role of Military Government and Election**

The Burmese military came to power in 1962 and continues to rule the country with an iron fist. Indeed, the present political situation is in fact worse than ever before. Without respecting the rule of law, political oppression and human rights abuses take place unabated nationwide despite condemnation from the international community. There are currently more than 2,100 political prisoners among whom 16 are MPs-elect. Daw Aung San Suu Kyi, the national icon and Nobel laureate has been placed under house arrest incommunicado for more than 13 years.



Although members of the National League for Democracy (NLD) party, the winner of the 1990 General Elections, bear the brunt of the oppression, many other democratic activists are also victims of the rampant and systematic human rights abuses by the military. Draconian security laws and sham legal proceedings are used to arrest, charge and imprison dissidents and democratic opposition members. Many of those arrested on trumped-up charges were given ridiculously long prison terms like 65 to 90 or more years and sent to isolated prisons hundreds of miles away from their families. Since 1990, 120 political prisoners have died in the junta's prisons.

The National League for Democracy is the political party that received the unequivocal mandate of the people in the only democratic elections held in Burma within forty-seven years. The NLD party won an overwhelming eighty-two per cent of the parliamentary seats contested. Today, the results of the elections remain unacknowledged by the military government which continues to rule the country through arbitrary and draconian ordinances and laws.

### **The Role of Independent Judiciary**

Although the SPDC, the military regime, effected judicial law 2/88, which contained formal guarantees of the independence of the courts, in practice courts in Burma are subjected to rigid control by the authorities at all times. Judges do not enjoy tenure and are under clear instructions to take their cues from the military authorities in the discharges of their functions. The independent administration of justice at present has become a casualty of the military regime.

Not only are democratic activists charged unjustly under various laws and military decrees, and denied fair trials and due process of law, the judicial system has been strangled over the years. Court proceedings are not open to the public and defendants are very seldom allowed access to counsel.

Moreover, accused are presumed guilty in advance and not given a fair chance to prove their innocence. Trials are a mere mockery of justice and punishments are far in excess of the so-called crimes. Moreover, most of the legal action taken against political prisoners falls into the *ultra vires* category. Legitimate democratic activities are deemed to be against the law.

Democracy and Human Rights cannot prevail in Burma without institutional, legal and practical safeguards for ensuring proper procedures for the appointments and removal of judges and for the exercise of their functions without undue external influence so that judges remain impartial and independent of the executive and legislative branches of government.

The military government of Burma has not abided by its own domestic laws nor



by the international norms of justice. As it is neither an elected government accountable to the people nor a popular government ruling under a constitution accepted by the people but a government that has usurped power by military force, there can be no rule of law and the independence of the judiciary is a mere scrap of paper, a mockery of the system.

Recently, the United Nations has acknowledged the regime's violation of its own domestic laws, in addition to its continued flaunting of international ones. This Spring, the UN Working Group on Arbitrary Detention ruled that the renewal of another one more year in 2008 of Daw Aung San Suu Kyi's house arrest "not only violates international law but also domestic laws," since the 1975 State Protection Law only permits renewal for a maximum of five years. Daw Suu Kyi has now spent almost 14 of the past 20 years under house arrest. This declaration by the United Nations is almost unprecedented, accusing a member country of violating its own laws. Sadly, however, this is just a simple illustration of the flagrant regard that the SPDC has for the rule of law.

### **The Role of Human Rights**

Human rights abuses are particularly widespread in border States in Eastern and Western Burma. Villages are burnt down, crops destroyed, people arrested, tortured and many killed. The political repression and rampant human rights abuses in ethnic areas have resulted in the displacement and exodus of more than 150,000 refugees to Thailand alone. Thousands of Burmese citizens are taking refuge in India, Bangladesh and Malaysia as well. Apart from these externally displaced refugees, there are also about 500,000 internally displaced people along the Thai-Burma border.

Burma is more than just a human rights and refugees problem. It is, according to the International Narcotics Control Strategy Report (March 2008), still the largest source of illicit drugs in South East Asia. In September 2008, the US for the 7<sup>th</sup> straight year said, Burma had "failed demonstrably" in its effort to combat illicit drugs.

Despite the fact that there is no internal or external threat to the security of the country, the Burmese generals maintain a huge army. The strength of the Burmese armed forces is currently estimated to be around 400,000 strong, and the generals plan to expand it to 500,000. There are 70,000 child soldiers in the junta's army, the highest number in the world.

The political, social and economic problems plaguing Burma can be resolved only through political talks under the light of the rule of law and mutual respect. The NLD party and ethnic political leaders have, therefore, been calling on the military junta to engage in political dialogue. The call has been echoed by the international community including the UN, EU and ASEAN.



## The Role of New Constitution

Instead of listening to the domestic and international calls for dialogue, the military continues to embark on political repression, and, having gone through with its sham and undemocratic national convention to produce a constitution tailored to its needs, are planning an election for 2010. The election held under the new constitution adopted in a farcical referendum in the middle of Cyclone Nargis which killed more than 140,000 people in May 2008, will allow the military to entrench itself in power for many years to come.

The Nargis Constitution obviously seeks to maintain a centralized administrative state, with the military tightly in control of all sectors of the government. The constitution in its present form cannot lead to democracy. It had been one-sidedly written to protect and keep the military in power. There is no room for free and fair elections. The military gets 25 percent of the Parliamentary seats, from national down to township levels, without the need to contest the elections. All key portfolios in the different levels of government are allocated to the military.

Written in such a way, there is no possibility for amendments. Articles and clauses guaranteeing ethnic rights and equality are conspicuously absent. Separation of powers is sought "to the extent possible". Article 11(a) provides that "The three branches of sovereign power namely, legislative power, executive power and judicial power are separated, to the extent possible, ---" This reservation is legally ambiguous and makes room for the executive branch—dominated by the military—to supersede and subjugate the judicial branch.

The protection of fundamental human rights and of democratic processes requires a judiciary that is not only independent from legislative and executive controls but also neutral, objective, competent and free of all external influences. Constitutional safeguards can go only so far in ensuring those qualities in a country's judiciary.

The Burmese democratic opposition deem it extremely important for the international community not to endorse the undemocratic constitution that has been adopted through a sham referendum, and the election that will be a product of an undemocratic, military-drawn constitution. Endorsing the constitution and the election held under that 2008 constitution is tantamount to lending legitimacy to the military regime and their continued stay in power without the rule of law.

### Conclusion

To sum up, the rule of law is in dire straits in Burma today. Good governance, good public administration practicing fiscal prudence and an independent judi-



ciary are needed for there to be sustainable and sustained development, but, unfortunately, Burma is so far away from these bare fundamentals of development. Burma is in crisis- both political and economic.

The political system, lack of rule of law, constructed by the State Peace and Development Council (SPDC) is designed to continue the military's dominance over Burma. In its efforts to maintain power, the SPDC represses and silences its critics and it is clear that they are above the law. The continuing political crisis ensures both national and regional instability.

Constitutional guarantees that protect and promote human rights of individual citizens, the rule of law, and political freedom for political parties must be in place to ensure the participation of Burmese citizens in current and future political process and economic development.

Thank you.

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