



The USDP: An Unlawful Association

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Introduction

For decades, Burma's ruling elites have committed atrocities against many segments of the Burmese population. Ethnic minorities have been violently suppressed, political dissidents have been imprisoned and small landowners have been subject to arbitrary land confiscations. Despite occasional power struggles within the military controlled government and periodic reshuffling of its leadership, these atrocities have continued unabated.

In 2008, a new state Constitution was adopted through a fraudulent referendum process. Article 445 of this 2008 Burmese Constitution states:

...all policy guidelines, laws, rules, regulations, notifications and declarations of the State Law and Order Restoration Council [SLORC] and State Peace and Development Council [SPDC]... shall devolve on the Republic of the Union of Myanmar. No proceeding shall be instituted against the said Councils or any member thereof or any member in the Government, in respect of any act done in the execution of their respective duties.¹

This provision grants impunity to Burma's ruling elite for actions taken in their capacity as SPDC and SLORC officials. The atrocities authorized or committed by these officials cannot be the subject of criminal prosecutions or civil lawsuits, frustrating these means of seeking justice.



However, other domestic laws may still provide a mechanism through which ruling figures in past and present Burmese governments could be held responsible for their acts. This paper examines how the governing Union Solidarity and Development Party (USDP) could be classified as an unlawful association under Burmese domestic law. It then employs the *Unlawful Associations Act* (UAA)², the *Political Parties Registration Law*³ and the 2008 Constitution to analyze the consequences of such an organization being declared “unlawful.” This analysis demonstrates one mechanism through which criminal sanctions could be brought against individuals responsible for the acts of aggression and intimidation perpetrated against the citizenry of Burma over the past two decades.

Background of the USDP

The predecessor to the USDP, the Union State and Development Association (USDA), was a mass organization formed in 1993 by the ruling State Law and Order Restoration Council (SLORC) in an effort to counterbalance the widespread public support for the opposition National League for Democracy (NLD). As a result of compulsory membership for many citizens, including students and government employees, the USDA’s membership grew quickly, exceeding 24 million people by 2007.⁴ Though the USDA was officially the “social welfare organization” of the SLORC and SPDC governments, it was more commonly viewed as being the violent and “thuggish civilian wing of the military junta.”⁵

The USDA was closely associated with the ruling generals of the SLORC and SPDC governments. In fact, General Than Shwe was the “leading patron” of the USDA’s governing Panel of Patrons.⁶ The other members of the Panel were also key figures in the SLORC/SPDC juntas. As a result of the extensive powers afforded to it by the military rulers, the USDA wielded significant and arbitrary powers over important social and economic matters for almost two decades.

Though the USDA was not officially a political organization, from as early as 2002 leading figures in the Burmese government indicated that it would eventually become a political party as part of the regime’s “Roadmap to Democracy.” In 2002, the Minister of Defence, General Maun Bo, suggested that “when the government has faced enormous economic crises in the country [it has been solved] with the strength of the USDA... Therefore [the USDA] must work hard against other groups in a political match.”⁷

In the run up to the 2010 elections, the Union Solidarity and Development Party was established. On 29 April 2010, Prime Minister Thein Sein (also a member of the USDA’s Panel of Patrons) applied to register the USDP as a political



party.⁸ Subsequently, all USDA assets, including offices, members and financial resources, were transferred to the USDP. Following this massive shift of resources, the USDA was dissolved.⁹ Most observers noted that the only differentiation between the two associations was a minor name change. Even the government, at that time, indicated that the “USDP is inherited from the national force of the state, the USDA.”¹⁰

Unsurprisingly, the USDP used the resources it acquired from the USDA, in combination with extraordinarily restrictive electoral laws and a corrupt electoral process, to win the 2010 election in a landslide. As a result, the USDP became Burma’s governing party.

The Unlawful Associations Act

Implemented by colonial authorities in 1908, the UAA has been used by military-controlled governments since 1962 to punish dissenting voices in Burmese society by arbitrarily and capriciously declaring organizations to be “unlawful.” The *Act* has not been used as a mechanism through which associations responsible for committing atrocities against civilians have been disbanded and punished. Instead, it has been used as a mechanism of oppression.

Article 15 2(b) of the *Act* states that an unlawful association is one that “has been declared to be unlawful by the President of the Union.” In using this provision to declare the Burma Lawyers’ Council (BLC) to be unlawful in 2009, Home Affairs Minister General Maung Oo said the BLC was “hurtful to the rule of law in the Union of Myanmar, stability of the state and community peace.” The *Act* was also employed to sentence the Burma VJ reporters to long prison terms for their association with the independent Burmese media organization Democratic Voice of Burma (DVB).¹¹

A related provision, Article 15 2(a), states that an association is also unlawful where it “encourages or aids persons to commit acts of violence or intimidation or of which the members habitually commit such acts.” It is this provision that could be used to make a clear case that the USDP is an unlawful organization under Burmese domestic law.

An Unlawful Association

The USDP is guilty of committing acts of violence and intimidation and is therefore an unlawful association. To prove this, one could look at any number of atrocities coordinated by the USDP or the USDA. For example, in 1996, the USDA attacked Daw Aung San Suu Kyi’s motorcade. Over the last two de-



acades, the USDA has used violence and intimidation in order to enlist membership in the USDA, garner “support” for the SPDC’s “roadmap to democracy” and create civilian militias and security forces that have been used to spy on, intimidate and oppress political dissidents.¹² Perhaps the most obvious example of a violent act orchestrated and executed by the USDA is the Depayin Massacre of 2003.

In 2003, Daw Aung San Suu Kyi and other NLD leaders conducted a tour through many different regions of Burma. On 3 May the town of Depayin was the site of a massacre of more than 70 NLD supporters.¹³ Thousands of individuals, including 5,000 USDA members, were recruited to launch attacks against NLD leaders and supporters. The USDA’s involvement in the attacks has been well documented. One man stated that he and his companions were offered daily wages, meals and liquor at the USDA office in exchange for their participation in the massacre.¹⁴ Another witness recalled that USDA leaders with megaphones and other USDA members, wearing USDA uniforms, were spotted gathering and organizing for the planned attack.¹⁵ Another witness testified that someone asked her “What has your Indian’s wife Aung San Suu Kyi done for you? We [presumably the “social welfare organization” USDA] have built bridges and roads on which you all can walk.” He then proceeded to violently assault her and her companions.¹⁶

USDP officials may contest that the accused party for the massacre, the USDA, is a different entity from the USDP and therefore it cannot be held accountable for its predecessor’s actions. However, Article 18 of the *Act* states that “an association shall not be deemed to have ceased to exist by reason only of any formal acts of dissolution or change of title, but shall be deemed to continue so long as any actual combination for the purposes of such association continues between any political members thereof.” By virtue of this provision, the aforementioned mass transfer of resources from the USDA to the USDP offers conclusive evidence that these organizations should be treated as one and the same under Burmese domestic law. As a result, both organizations would be equally liable for acts committed by either organization and, therefore, equally unlawful under domestic law. The USDA is the USDP and therefore the USDP can be held responsible for the “violent acts of intimidation” committed by the USDA in the past. Therefore, under the *Unlawful Associations Act*, Burma’s governing party is an unlawful organization.

Party Over

As an unlawful association, the USDP would be legally ineligible to register as a political party or contest elections, and its members could not serve in govern-



ment. Section 3(b) of the *Political Parties Registration Law* states that when the Union Election Commission:

...receives the application [of a proposed political party], it shall scrutinize the particulars mentioned in the application and shall give permission to establish as a political party if they are found in conformity with the provisions of Section 4 of this Law. Commission shall reject the application if they are found not in conformity with the provision of the law.

Sections 4 and 10 go on to state that a person who wishes to establish or join a political party shall not be a member “of an organization which is declared by the Union as... [an] unlawful association... or person who is not having contact with said member of unlawful association directly or indirectly, or abetting the said unlawful association.”

This argument, advocating that the USDP should not be recognized as a political party, also has a strong Constitutional basis. Under Article 407, entitled “the right of non-existence of political parties,” the Constitution states that a party shall not have the right to continued existence where it has “been declared an unlawful association under the existing law.” Where a political party is found to infringe a stipulation of Article 407, that party’s registration is to be revoked pursuant to Article 408.

As an unlawful association, Section 4 of the *Political Parties Registration Law* requires the USDP be stripped of its ability to register as a political party. As members of an “unlawful association,” USDP leader Thein Sein, along with other members of the USDP, would be ineligible for political office under the USDP banner. USDP members would no longer be members of the government and would therefore be ineligible for the constitutional protection from prosecution afforded members of the government.

Penal Consequences

The UAA also provides a mechanism for holding USDP members criminally responsible. It may be argued that Article 445 of the 2008 Constitution protects USDP members from prosecution for acts committed while they served in government, even after they are removed from office. However, article 445 does not grant immunity for membership in an unlawful association or for the actions of that organization. Put simply, the Constitution affords protection only for actions by the state government not for those of a “social welfare organization” or other association.



Article 17 of the UAA states that whoever is a member “of an unlawful association... shall be punished with imprisonment for a term which shall not be less than two years and more than three years” and whoever “manages or assists in the management of an unlawful association.... [s]hall be punished with imprisonment for a term which shall not be less than three years and more than five years.” This provision overcomes the impunity granted to SLORC and SPDC officials in the 2008 Constitution by targeting activities undertaken by the USDA. Burmese leaders such as Than Shwe and Thein Sein have been intimately involved in the activities of the USDA/USDP and may be considered managers of the organization. As a result, those involved with the USDP could be convicted for their membership in or management of an unlawful association and sentenced to as much as five years in prison.

Conclusion

In the presence of an independent judiciary, employing the *Unlawful Associations Act* to target the USDP would provide a strategy through which individuals responsible for Burma’s oppressive rule could be brought to justice. This *Act* has formerly been used only to oppress opposition by misconstruing peaceful organizations, such as the BLC and DVB, as being “hurtful” to the rule of law, stability of the state or community peace. However, it could alternately be used to circumvent Constitutional provisions providing impunity to appropriately punish those individuals responsible for atrocities such as the Depayin Massacre.

When genuine reform comes to Burma, neither a law as subject to misuse as neither the “Unlawful Associations Act” nor a constitutional provision granting impunity to past and present leaders should continue to exist. Until that day, however, this analysis demonstrates one way in which the existing Burmese legal framework could be used to prosecute those who have persecuted political opposition, ethnic minorities and Burma’s most vulnerable populations for decades.

The reality is that Burma’s legal system and judiciary is heavily biased in favor of current authorities and is plagued by corruption. It is therefore improbable that it could provide an independent venue for those connected to the government to be prosecuted under the aforementioned statutes. The perpetual political control enjoyed by members and cronies of the military and the USDP ensure that legitimate claims against well-connected individuals are not advanced.

Thus, absent an independent judiciary, the strategy discussed in this analysis could not be employed successfully. However, regardless of the practical difficulty created by a corrupt judiciary and military controlled government, the fact remains that the USDP is an unlawful association under the letter of Burmese



domestic law. Highlighting this fact, and the logical repercussions under Burmese law, exposes another facet of the hypocrisy of one of the most oppressive regimes in the world and underscores the need for real reform.

(Endnotes)

¹ Constitution of the Republic of the Union of Myanmar, 2008

² Unlawful Associations Act, 1908

³ Political Parties Registration Law, 2010

⁴ 'The Depayin Massacre: 2 Years On, Justice Denied' (30 May 2005), ASEAN Inter-Parliamentary Myanmar Caucus and Burma junta support group USDA disbands, BBC News (15 July 2010) <<http://www.bbc.co.uk/news/world-asia-pacific-10651760>>

⁵ Min Zin, The USDA Factor, The Irrawaddy (July, 2003) <http://www.irrawaddy.org/article.php?art_id=3046>

⁶ Nayee Lin Latt, Regime Separates Assets of USDA and USDP, The Irrawaddy (8 July, 2010) <http://irrawaddy.org/article.php?art_id=18907>

⁷ 'Burma: A Violent Past to a Brutal Future- the Transformation of a Paramilitary organization into a Political Party' (November, 2010), Network for Democracy and Development

⁸ Ibid

⁹ Ibid. At Page 39 the authors state that “

although the USDP did not explicitly link the party with the USDA at the time of registration, over the following months, USDP statements, actions and members made it explicitly clear that the USDP was borne out of the mass organization. The USDP had inherited USDA's membership, policies, resources, and moreover, its formidable physical clout and threatening reputation as a violent wing of the SPDC.

¹⁰ Ibid

¹¹ Attacks on the Press 2010: Burma, Committee to Protect Journalists (15 February 2011) <http://www.cpj.org/2011/02/attacks-on-the-press-2010_burma.php>

¹² 'The White Shirts: How the USDA Will Become the New face of Burma's Dictatorship' (May 2006), Network for Democracy and Development

¹³ Supra note 4

¹⁴ 'Human Rights Yearbook 2002-2003: Burma' (October 2003), National Coalition Government of the Union of Burma

¹⁵ Ibid

¹⁶ Ibid. Note: The massacre at Depayin is well-documented. The ASEAN Inter-Parliamentary Myanmar Caucus cited “exculpating harassment campaigns coordinated by the Union Solidarity Development Association and local authorities” that characterized the tours of the NLD.

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