Law-Making and Law Enforcement in Burma:
The Military Junta's Failure in Regard to Forced Labour

Janelle Saffin*

The Tatmadaw in Burma have control of executive, legislative and judicial power and the Parliament has not met since before the Tatmadaw seized power by military coup d' etat on the 18th September 1988, installing the State Law and Order Restoration Council (SLORC), predecessor of the present State and Peace and Development Council (SPDC). The SPDC is the creature of the Tatmadaw (Burma's Armed Forces), as was the Tatmadaw's Burmese Socialists Program Party's (BSPP) Revolutionary Council that ruled Burma for many years up until 1988. For functional purposes they are one and the same group, in essence a military junta exercising the power of dictatorship.

The SPDC has very publicly demonstrated that they have put a lot of effort into assuring the international community that:

1. they do not condone the practice of portering (slave labour)
2. they have issued 'Orders' prohibiting such practices
3. laws that permit slave labour have been amended
4. the ILO’s reports, resolutions and ensuing actions are politically motivated
5. there is in fact no slave labour in Burma

Their halting and confused attempts to persuade the international community that forced labour does not exist flies in the face of evidence to the contrary. It is hard not to conclude that the SPDC does not exert as much control in the Tatmadaw ranks and local SPDC committees, in the regions and villages they would have us believe. Their leadership has been ineffective. They appear to lack the legislative competence to make appropriate laws that the public can be certain of, also the legal infrastructure or will to have them enforced. The alter-
native conclusion to that of incompetence and lack of control, is that the SPDC is simply attempting to deceive the international community.¹

With regard to legal matters in Burma under the control of the SPDC junta, there is no debate, no draft bills, no scrutiny, no review, (public nor judicial) no appeal, no safeguards, no rule of law. The Tatmadaw government is a military dictatorship.²

In May and October 2000 high ranking Tatmadaw government representatives including Secretary 1 Lt-General Khin Nyunt, Ministers for Foreign Affairs, Home Affairs and Labour, accompanied by officials from the Attorney-General’s, Foreign Affairs and Home Affairs departments met with the ILO’s Technical Cooperation Mission. The Tatmadaw government obviously treated this matter seriously to have allowed such a senior ILO delegation to visit Burma.

This is set against a background replete with irrefutable direct and indirect evidence that slave labour in Burma is still widely practised, with orders still being issued by local Tatmadaw and SPDC forces. This is particularly so in the regions where many of Burma’s ethnic nationalities population lives.

The Tatmadaw government on the one hand condemns the ILO report and actions as one-sided, the accusations of slave labour as having ‘political motives’, and based on ‘wrong information sent by groups of runaways, insurgent organisations and groups of elements opposed to the Government’, and on the other hand it has made an enormous effort to quell international concern. To date though their efforts have neither yielded the result that they apparently desired, which is to stop the opprobrium of the international community expressed in the ILO’s unprecedented Article 33 resolution in the form of a sanction, since their 1919 beginnings, and importantly nor has it brought about the cessation of slave labour.

Their approach to law-making and law enforcement has been described by commentators as “whimsical” and such a description is borne out by examining their reaction to the ILO concerns and subsequent attempts to ‘correct’ the situation. The evidence seems to suggest both incompetence and lack of control, yet equally suggests that it is deliberatively deceptive.

Following the ILO’s first formal report on the situation in Burma (July 1998) the Tatmadaw government announced that the practice had ceased and that it had ‘dropped’ the offending sections of the Township (1907) and Village (1908) Acts and that these Acts were a legacy of the colonial administration, thereby not something that the Tatmadaw government took responsibility for, despite the Tatmadaw having been ruling Burma for the past thirty-eight (38) years. These particular sections facilitated and permitted the government to demand
people’s labour for state infrastructure projects.


Four days later on the 1st November 1999 the SPDC issued in their words “a separate order underscoring the need to follow the order issued by the Ministry of Home Affairs”.

At the same media conference with Lt-Col Tin Oo Staff Officer Grade 1 of the Office of Strategic Studies acting as the Master of Ceremonies, the Tatmadaw government informed the community that the General Administration Department, the Myanmar Police Force of the Ministry of Home Affairs and the Ministry for Progress of Border Areas and National Races and Development Affairs “issued separate orders concerned with the matter”.

There has been a plethora of Ministers, Departments, Police Force, the SPDC themselves issuing orders prohibiting the use of slave labour. This highlights a number of issues concerning the competence of the Tatmadaw’s law-making and enforcement powers. The issuance of ‘Orders’ is the standard procedure by which the Tatmadaw government makes laws, with Ministries issuing ‘Notifications’ frequently classified as ‘enabling legislation’. Given the above approach to the ILO matter and the prohibition of slave labour it appears that many institutions or individuals in senior positions can make laws as well, without the obvious concomitant delegated regulation review. According to rule of law principles regulation-making can be delegated, but subject to democratic checks and balances, but law-making can never be delegated.

It should come as a surprise to many international observers then, that the Tatmadaw and the Tatmadaw Government presided over by Senior General Than Shwe known to rule with an iron fist exerting absolute control over every aspect of Burmese life, has found it necessary to have caused the issue of so many orders and even complementary orders from so many central, regional and local departments, forces and agencies.

It then becomes self-evident that the Tatmadaw government is unable to have its ‘laws’ implemented, that its territory and local units the local Tatmadaw and SPDC committees have either deliberately ignored the Orders issued by the Ministry of Home Affairs....
party to the deception?

The surprise then regarding the Tatmadaw government’s response to the ILO’s condemnatory reports and now sanctions imposed at the ILO’s 279th session on the 16th November 2000, is the fact that they have prima facie taken both strong and multi-faceted actions to prohibit slave labour, by passing many orders, complementary orders and made many pronouncements, yet still the practice prevails. Is their stranglehold on the three governmental arms of power weakening or proving too difficult to manage. Could this then be the cleavage in their competence to govern that can only go deeper?

The Tatmadaw government does of course maintain absolute power but it is not so obvious that it has such absolute control, given their inability to control the law-making and enforcement procedures. This scenario serves to highlight the confused situation that exists in Burma over the last twelve years where in essence the nation has been delegalised.

If a regular law making process existed, such as the convening of the Pyithu Hluttaw (People’s Assembly/Parliament) and there are Members of Parliament elect, having been elected on the 27th May 1990 in Burma’s internationally recognised multi party general elections, ready to fulfil the duties for which they were elected and regular governmental institutions empowered to act rationally, then efforts to prohibit forced labour could be tackled in a framework where the responsible institutions could exercise their power to ensure that the wishes of the legislature were followed. Even the Tatmadaw government must be increasingly aware of the problems arising from their flawed attempts at law-making and enforcement.

The more that the SPDC/Tatmadaw government engages and opens up to the international community the more that is exposes its institutional incapacity and its collective and individual incompetence. This is acutely transparent in the exercise of power in the legislative and legal spheres.

The ILO sanctions raise a seminal matter regarding the human rights of the people of Burma, starkly illuminating the Tatmadaw government’s institutional governance incapacity and incompetence. Burma desperately requires a fully functioning legal system that is underpinned by the rule of law, not by the rule of military. To effect this Burma needs to have democracy restored. This is, of course, the crux of the matter.

The rule of law cannot flourish with a ‘government’ that concurrently exercises the three heads of government power, namely the executive, legislative and judicial. Given the domestic and international concern regarding the lack of democracy and rule of law in Burma and the massive human rights violations, this observation is an attempt to introduce the reader to the practical effect of a
'government' that exercises all those heads of power in a dictatorship form, itself a form of government anathema to the rule of law.

Endnotes

* Honourable Janelle Saffin, Member of the NSW Legislative Council, is an Executive Committee Member of the Burma Lawyers' Council.

1. They are certainly not deceiving the people of Burma, who are daily conscripted into forced labour.
2. Tatmadaw leader Senior General Than Shwe is also the head of the SPDC with the title of Prime Minister. The SPDC use the terms SPDC and Tatmadaw government interchangeably. In a media release issued by the Ministry of Foreign Affairs dated 17th November 2000, a public media conference held at the Myanmar Radio and Television Station (MRTV) in Pyay Road Rangoon on the 18th November 2000, also broadcast on MRTV and a piece printed in the Tatmadaw's newspaper The New Light of Myanmar on the 19th November 2000, Tatmadaw Deputy Minister for Foreign Affairs U Khin Maung Win referred to the government as the 'Tatmadaw government'. The media was all directed to the ILO’s sanction resolution of the 16th November 2000 vis-à-vis Burma.
3. U Kin Maung Win, Deputy Foreign Affairs Minister, media conference MRTV 18th November 2000.
4. ibid
5. ibid