

Myanmar

The judicial system is subject to the military regime and is used to support a policy of repression. The Judiciary Law does not contain any provisions regarding security of tenure or protection from arbitrary removal and the military government has a clear role in appointing judges to the courts. During the last few years many lawyers have had their licences withdrawn for their alleged involvement in politics.

From 1988 until November 1997, power in Myanmar was centralised in the ruling military government, referred to as the State Law and Order Restoration Council (SLORC). On 15 November 1997, SLORC was dissolved and reconstituted as the State Peace and Development Council (SPDC). The purpose was said to be to "Ensure the emergence of an orderly or disciplined democracy" and to establish a "peaceful and modern state...in the interest of all the national peoples". Human rights violations, however, have only increased throughout 1997 and 1998 and the situation deteriorated even further in 1999.

The ruling military government strengthened its rule through a security apparatus led by the Directorate of Defence Services Intelligence (DDIS). The government justifies its security measures as necessary to maintain order and national unity. Members of the security forces reportedly commit serious human rights abuses.

In the elections of 1990 the National League for Democracy (NLD) won 60% of the votes and 82% of the parliamentary seats. The government-sponsored party obtained only 10 of the 485 seats. The SLORC responded by attacking the coalition of winning parties and their leaders through intimidation, detention and house arrest. According to Declaration No. 1/90, the sole responsibility of the elected representatives is the drafting of a new Constitution for a democratic Myanmar.

Declaration No. 11/92 created a National Convention to draft a new Constitution. NLD members have boycotted the meetings of the Convention in protest against the lack of any democratic process in its operations. The SLORC consequently banned the 86 NLD delegates from the National Convention. The National Convention has not convened since then.

The NLD established a ten-member Committee Representing Parliament (CRPP), which serves as a parliamentary body, but the creation of this committee was criticised by some NLD members. In response, the NLD Central Leadership accused this group of promoting disunity within the party.

Human Rights Background

Throughout 1999, the military government continued to seriously violate human rights. Arbitrary detention, serious restrictions on the freedoms of expression, assembly and association, extrajudicial killings, disappearances of political opponents and torture all occurred frequently.

Furthermore, Myanmar's ethnic and religious minorities such as the Karen, Karenni and Shan tribes, are involved in an internal conflict with the army, and suffer severe abuses, including arbitrary arrest, killings and forced labour in the army. There were also, however, credible reports of human rights abuses committed by insurgents.

The military government continues to use the 1950 Emergency Provisions Act and the 1975 State Protection Law to arrest and sentence persons for their peaceful political activities. It is estimated that in 1999 there were approximately 3,000 political prisoners in Myanmar.

Human rights organisations or other civil liberties movements are not permitted in Myanmar. In addition, foreign human rights activists are banned from the country and several of them were arrested in 1999. On 6 May 1999, the International Committee of the Red Cross (ICRC) resumed its work in the country however.

The Burmese authorities have not acceded to important human rights treaties such as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

In 1992, the United Nations Commission on Human Rights created a Special Rapporteur for Myanmar to examine the human rights situation in the country. Since his appointment in 1996, the current Special Rapporteur, Justice Rasjoomer Lallah, has sought the co-operation of the government of Myanmar and has requested their authorisation to travel to the country, but they have refused to cooperate (see also Attacks on Justice 1998).

In his report of 24 January 2000 to the annual meeting of the UN Commission on Human Rights which took place in Geneva from 20 March - 28 April 2000, the Special Rapporteur noted that:

No concrete progress, most unfortunately, can be reported on the general situation of human rights in Myanmar. On the contrary, repression of political and civil rights continues in Myanmar, including summary or arbitrary executions, abuse of women and children by soldiers and the imposition of oppressive measures directed in particular at ethnic and religious minorities, including the continuing use of forced labour and relocation.

Persecution of the democratic opposition, in particular members of the NLD, continues as in previous years, including long prison sentences and the use of intimidation and harassment.

Well-documented reports and testimonies continue to be received by the Special Rapporteur which indicate that human rights violations continue to occur, as in the last decade. These include extrajudicial, summary or arbitrary executions, torture, portering and forced labour, particularly in the context of the "development" programmes and of counter-insurgency operations in ethnic areas.

With regard to the exaction of forced or compulsory labour, the Special Rapporteur reiterates, as in his previous reports, that information he has received from refugees and displaced persons indicates that the practice of forced labour continues, although there is an official order directing that the offending provisions of the Village Act and the Town Act should not be enforced. No law has been passed to make forced labour an offence and no prosecution against those exacting forced labour is possible. Impunity remains a serious problem.

The UN Secretary-General's special envoy, Mr. Alvaro de Soto, has visited Myanmar several times in the past (see Attacks on Justice 1998). He carried out a "good offices" mission to the country from 14 to 18 October 1999. During this visit, Mr. de Soto held consultations with many officials, as well as with General-Secretary Daw Aung San Suu Kyi of the League for

Democracy (NLD), representatives of the Shan Nationalities League for Democracy and representatives of some ethnic minority groups.

Several issues were discussed during the visit, such as the restoration of democracy and human rights in Myanmar, freedom for political parties to conduct normal political activities, the release of political prisoners, the visit of the Special Rapporteur of the Commission on Human Rights, access to prisoners by the International Committee of the Red Cross (ICRC) and the practice of forced labour.

In his report, of 27 October 1999, to the UN General Assembly, the Secretary-General stated:

I welcome the visits by the ICRC to prisons and places of detention, something which the General Assembly has repeatedly asked the Government of Myanmar to allow to take place. However, I am unable to report concrete progress on other issues which the international community has raised time and again in successive resolutions of the General Assembly and the Commission on Human Rights. It is my very strong desire to see the government take action on these other issues as well. I hope the Foreign Minister's indication that "serious consideration" would be given to a visit by the Special Rapporteur will translate into the setting of a date very soon.

International Labour Organisation (ILO)

The persistent failure of the Burmese Government to implement ILO Convention No. 29 against forced labour (see Attacks on Justice 1998) led to a report of the Commission of Inquiry in August 1998. The report concluded that:

the obligation to suppress the use of forced or compulsory labour is violated in Myanmar in national law, as well as in actual practice, in a widespread and systematic manner, with total disregard for the human dignity, safety, health and basic needs of the people.

An updated report by the ILO Director-General, Juan Somavia, examining new evidence of the situation concluded that an order issued by the government of Myanmar on 14 May 1999 does not exclude the imposition of forced labour, in violation of the Convention. "In actual practice, forced or compulsory labour continues to be imposed in a widespread manner."

On 17 June 1999 the 87th International Labour Conference of the ILO adopted an unprecedented resolution against Myanmar for violating the Forced Labour Convention. The resolution, inter alia, states that the government of Myanmar should cease to benefit from any technical cooperation or assistance from the ILO, except for the purpose of getting direct assistance in the immediate implementation of the recommendations of the Commission of Inquiry. The resolution will stay in force until Myanmar has revised its legislation, particularly the Village Act and Towns Act, so that it is in line with the Forced Labour Convention.

In March 2000, for the first time in its history, the ILO invoked Article 33 of the ILO Constitution as the Governing Body recommended that the International Labour Conference in June 2000 "take such action as it may deem wise and expedient to secure compliance" by Myanmar with the recommendations of the 1998 Commission of Inquiry.

Article 33 is designed for use only in the event of a country failing to carry out the recommendations of an ILO Commission of Inquiry, which is itself a procedure reserved for grave and persistent violations of international labour standards.

The Judiciary

During 1999 there was no major change with regard to the situation of the judiciary in the country. Myanmar's court system was inherited from the United Kingdom and subsequently restructured. The Rule of Law in Myanmar has malfunctioned since the military government began its rule in 1988.

The administration of justice is based on several judicial principles. For example, under Section 2(a) of Law No. 2/88, justice is required to be administered "independently, according to law." In reality, however, the judiciary is far from being independent, due to the suspension of the Constitution and the numerous decrees which restrict freedoms.

Without the permission of the intelligence organs, judges cannot even let the family or counsel of the accused know what sentence has been passed. In many cases, the accused is kept in ignorance of the provision of law under which he is charged. There have been instances where the military intelligence has passed sentences orally, at the time of arrest before any trial had taken place.

In his report of 4 October 1999 to the UN General Assembly the Special Rapporteur noted that:

the Rule of Law cannot be said to exist and function, as the judicial system is subject to a military regime and serves only as handmaiden to a policy of repression.

Structure of the Courts

In September 1988, SLORC issued Law No. 2/88, the Judiciary Law, according to which there shall be a Supreme Court composed of a Chief Justice and "not more than five judges". Lower courts, the State or Division and Township Courts, were to be formed by the Supreme Court. Military tribunals, established in 1989 for the purpose of trying martial law offenders under special summary procedures, were abolished in September 1992.

Appointment and Dismissal

The SPDC appoints the judges of the Supreme Court. The Supreme Court selects judges for the lower courts, with the approval of the SPDC. The Supreme Court is, moreover, in charge of the supervision of all courts. The Judiciary Law does not contain any provisions regarding security of tenure and protection from arbitrary removal, thus leaving such issues in the hands of the military government.

In addition to the military government's unfettered role in appointing judges to the courts, it also directly influences the administration of justice, reportedly by manipulating the courts to secure an outcome which will serve its political ends. This is particularly obvious in cases concerning persons alleged to be involved in political activities.

Lawyers

When the SLORC seized power on 18 September 1988, the activities of individual lawyers and lawyers' associations in Myanmar were suppressed and silenced. Since 1989, the Bar Council has no longer been independent and is, instead, supervised by the Attorney General and staffed by government officials.

Some basic due process rights, including the right to a public trial and to be represented by a defence attorney, are seriously undermined in political cases. Defence attorneys are permitted to call and cross-examine witnesses, but their primary role is to bargain with the judge to obtain the least severe sentence possible for their clients.

During the last few years many lawyers have had their licences withdrawn for their alleged involvement in politics.

In last year's edition of *Attacks on Justice* we reported on numerous cases of lawyers who had had their licences withdrawn for their alleged involvement in politics. Due to the deteriorating situation in Myanmar, and in order to protect the safety of human rights activists both in Myanmar and Thailand, it was impossible for the CIJL to obtain reliable information on new cases of harassment of judges and lawyers or updates on the cases we reported last year.