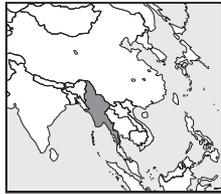


BURMA

No rule of law



The lack of rule of law since 1962 is the main obstacle in the struggle for equity and against poverty. Under these circumstances, corruption and bribery are every-day facts that hinder socioeconomic development. High unemployment rates among women have forced many of them into prostitution while others are victims of sex trafficking.

The Burma Lawyers' Council

Rule of law essentially guarantees equality of all individuals in society on the basis of the principle that every person is equal before the law. In societies where the rule of law is exercised, people have the opportunity to seek equal protection whenever any rights violations occur. The lack of rule of law is a major cause of poverty in Burma. Since equal protection for all citizens under the law is ignored, the transparency, accountability and good governance which underpin individual and societal development have not existed in Burma since the 1962 military coup.

In the aftermath of the second military coup in 1988 the lawless situation deteriorated further. Following the 30 May 2003 Depayin Massacre which was perpetrated with complete impunity,¹ the situation of the country worsened. The authorities continue to enjoy absolute impunity for all violations of political and economic rights and rule of law is denied throughout the country resulting in the collapse of individual economic life and leading to general poverty.

Under the military government, Burmese Army commanders act as warlords in rural areas where they order the village headmen and local authorities as they wish. The commanders and troops of the army are the main cause of the lawlessness and violations of rule of law in the country. Although many government departments and the authorities have stopped using forced labour, the commanders and troops of the army still continue the practice to secure people to work as porters in offensive operations and security guards along the main roads.

The behaviour of the army has provoked local village headmen and members of the village militia forces to contribute to the lawless situation in rural areas. If they receive orders from army commanders, headmen show their own power in the village by abusing local people.

¹ This massacre involved the assassination of leaders, members and sympathizers of the opposition National League for Democracy, and can be considered a crime against humanity, since it was committed in a planned, systematic manner and directed against a specific civilian population.

Corruption at all levels

Corruption among authorities is quite common. The income received by authorities in addition to their regular salaries is known as "outside money". Authorities at all levels of government take bribes from businesses and professionals.

There is evidence that the Commander of Southeast Command, Maj. Gen. Thura Myint Aung was involved in a widespread corruption scandal in which he took bribe money from medical doctors wanting to operate private clinics in Moulmein, the capital of Mon State.²

The judiciary in Burma is no longer the highest institution which enforces the rule of law, since it is subservient to the ruling military authorities. If they were not supplemented by bribes, the official salaries that the police and judiciary receive are not enough to survive on. Corruption has damaged all levels of the country's justice system and repeatedly results in unfair trials.

Rule of law and the open market economy

The rule of law is key to achieving an open market economy since it guarantees equal opportunities for all individual citizens, prohibits corrupt practices by authorities, and protects businesses from the abuse of local powers. Direct foreign investors are increasingly becoming disheartened with the lack of rule of law since business opportunities can only be obtained from the authorities and problems which arise during the course of doing business can only be resolved with bribe money. The unlawful confiscation in 1998 of a joint venture between Singapore-based company Yaung Chi Oo Trading, and the regime's Ministry of Industry is just one example of the difficult business environment in Burma.

In spite of the fact that an open market economic system functions superficially, Burma's circumstances do not facilitate its further development. Citizens do not have equal rights to engage in economic enterprises. Business licenses are mainly issued to those who can pay bribe money. When entrepreneurs encounter problems with the authorities there is no independent judiciary to rely on. The problematic legal and socioeconomic background

² Rahmonnya. Human Rights & Media for all Communities. "Lawlessness in Rural Areas", 4 May 2005, www.rahmonnya.org/report.php

complicates not only the question of judicial protection, but also the right to own private property. Additionally in order to keep the voice of the democratic opposition silent, the regime strictly controls the media. Currently the media is neither accountable to the public nor able to persuade the regime to pursue the development of a market economy. It never criticizes the authorities' mismanagement, nor does it denounce their corrupt practices. And it does not exercise the free flow of information which usually underpins market economies. The country's economy has been negatively affected by the absence of a market economy, which promotes market enhancing activities and the flow of information and technical knowledge between companies.

A skilful and efficient work force is essential for any market economy to function. Burma's formal education system lags far behind other Southeast Asian countries, so it cannot produce the qualified managers, technicians and academics required to develop an open market economy which would allow it to compete in the global market. Due to unjust laws which strictly prohibit the formation and functioning of independent organizations, independent trade unions which usually focus on promoting workers technical knowledge do not exist. Consequently the economy must function without a skilful and efficient work force. This situation does not facilitate its development nor does it create employment opportunities for the general public in order to provide them with enough money to live.

Cheap labour, lack of social security and poverty

Cheap labour remains the main incentive for foreign investors to work in Burma, as well as in neighbouring countries such as Thailand, Malaysia and Singapore. Manual labourers in Burma earn very low incomes of less than one dollar per day. The regime does not provide any protection to workers, particularly when they are unfairly treated by companies, whether foreign or national. Even worse, the regime itself exploits workers by forcing them to work without remuneration. However, despite poverty being an underlying issue, the ruling regime does not publicly address it as a priority issue, and it is yet to implement a poverty alleviation programme. Introducing such a programme would be

an admission that the regime's inefficiencies and mismanagement have led to the malfunctioning of Burma's economy, an area once known as "the rice bowl of Asia".

Information technology

As the free flow of information is strictly prohibited by the regime, the positive effects of information technology and doing business through the Internet have not materialized. Universities and research centres are not well connected and do not have contact with their international counterparts, which means learning processes in these institutions have not been enhanced by advances in information technology. Since the arrival of new information and knowledge from the outside world through interactive media is severely limited, creative idea generation in enterprises, manufacturing and trade, as well as at the level of the individual citizen, is not sufficiently developed.

Foreign companies

On the one hand foreign companies can help transfer technology and provide locals with employment opportunities. On the other hand, foreign companies can ignore this technological aspect while they knowingly or unknowingly conspire with the regime, violating human rights as they carry out their so-called development projects. This second option has characterized foreign enterprise participation since 1988, as no code of conduct exists which promotes the sustainability of local efforts and the protection of environmental and human rights. The regime does not have the ideas or experience to deal with foreign enterprises in a way which strengthens the national economy. The mismanagement and abuses of the ruling regime cause people to suffer from economic hardship and widespread hunger, and have led to the collapse of economic and social life in Burma.

Depletion of natural resources

Natural resources, forests and fisheries in particular, are severely depleted. Forest depletion is taking place for two reasons. First, and in order to increase the GDP, the regime grants licenses to timber companies without paying enough attention to forest sustainability and protection of the environment. Secondly, ethnic armed resistance groups seek funds for their revolutionary activities by selling timber across the border. In the fishery industry, foreign fishing ships equipped with advanced technologies can catch large amounts of fish within a short period. The local people's right to food is denied since they can no longer catch enough fish with their traditional fishing boats and nets. The depletion of natural resources has become one of the major reasons for the aggravation of poverty. Forest depletion in the state of Kachin led to a huge flood in July 2004, larger than any flood experienced in the last 50 years, in which the local people lost their homes and livelihood.

Common property rights

The concept of common property rights with regard to natural resources is never raised in Burmese society. Public participation in the management of natural resources is only in the hands of the ruling authorities or of the domestic or foreign private sector. It is not beneficial for society when managerial power over natural resources is distributed in this way, since abuses can take place at any time. National natural resource exploitation regulation is required to resolve this issue and it should be based on the concept of common property rights with the aim to protect the interests of society and alleviate poverty. International monitoring of the environmental situation in Burma may also be required since environmental degradation affects not only the country in which it occurs in the short term but also the whole world in the long term.

The role of UN agencies

While the military regime ignores the Copenhagen agreement,³ some UN agencies, mainly the United Nations Development Programme (UNDP), disregard the 1986 UN Declaration on the Right to Development. So as not to be expelled from the country, they focus more on maintaining good relations with the State Peace and Democracy Council (SPDC), than on encouraging participation in development projects which might lead to the emergence of independent civil society organizations. As a result it is questionable whether their programmes are helping lay the foundation for long-term development or simply making a contribution to alleviating poverty to some extent.

Analysis of poverty from a gender perspective

Livelihood and the sex industry

Income in rural areas is earned by selling consumer goods and *chai* (illegal lottery tickets), trading, dress-making, mat-knotting, plant growing and rice harvesting. However there are large numbers of unemployed women, many of whom enter Thailand illegally to find work in the fishing, construction and sex industries. Selling sex is culturally unacceptable in Burma, but due to deteriorating economic conditions, low wages and unemployment, women from different communities and classes have become sex workers in order to survive.

Many women in the war conflict zone have also fled their homes and illegally migrated to Thailand in the face of rape, arbitrary arrest, summary execution and forced labour. Women are deceived by (often female) traffickers into believing that they will have a good job in Thailand, but are then forced into prostitution, resulting in the massive spread of HIV/AIDS. At the same time, there are cases of young female university students, who wishing to obtain a degree, voluntarily work in the sex trade to finance their education. Other unemployed women who remain in their native areas have no choice but to earn a living

through prostitution. The root cause of prostitution is family poverty directly related to a lack of equal economic rights for women and is perpetuated by the military regime - the same regime which ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

Although women face wage discrimination for equal work, the regime has never pledged to abolish this discrimination in the workplace. While a man earns MMK 500 (USD 0.69) per day in construction work, a woman receives only MMK 400 (USD 0.55) per day. Women also do not have the right to the same employment opportunities as men since employers tend to select men. Only when they are unable to get the desired number of employees do they hire women.

Additionally, state authorities and Burmese Army commanders are also involved in the sex trade and prostitution. Since the brothel business is illegal in Burma, brothel owners must pay bribes to authorities and army commanders for permission to operate or involve them as shareholders. In some cases, the authorities or army commanders also operate brothels for extra income.

Domestic violence

Eighty percent of families face domestic violence. Unemployment, lack of income and high commodity prices, as well as the basic structural differences between men and women lead to fights between the sexes in almost all families. It is generally the women who suffer more from beating and torture at the hands of their husbands. In comparison to rural village populations, families in urban areas face more domestic violence.

Domestic work

Burmese women who work as domestic workers in Thailand are at risk of being raped by their employers. The employers' wives turn a blind eye although they are aware of their husbands' sexual exploitation. Some hire domestic workers lest their husbands go to the brothels. Since the victims are usually illegal workers, they do not offer any resistance in order to avoid being handed over to the police.

Childbirth and medical attention

Many times people cannot afford to pay for hospital births or are unable to travel the distance to a hospital or clinic. Medical treatment costs are very expensive, and if the mothers want to have an anaesthetic, they must pay more than MMK 1,000 (USD 1.40). Patients often have to bribe doctors and nurses in order to get good treatment while in hospital. Pregnant women also have difficulty reaching clinics and getting treatment in remote areas due to poor seasonal road conditions. Also, the trip can become dangerous when Burmese soldiers are met along the way. This is another reason why some pregnant women prefer the services of midwives to deliver their babies.⁴ ■

4 Rahmonnya. Human Rights & Media for all Communities. "Livelihoods and Sex Industries", December 2003 and March 2004, www.rehmonnya.org/report.php

3 World Summit for Social Development, Copenhagen, 1995.