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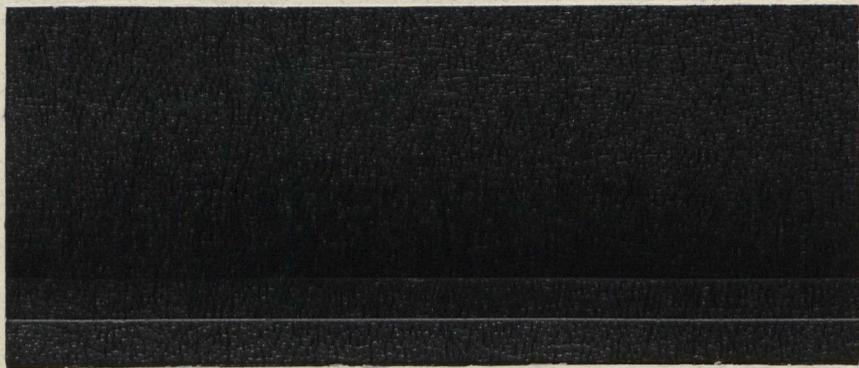
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Canadian NGO Policy Paper on Burma
Friends of Burma
May 1999





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I Overview

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The UN Special Rapporteur, Ransomjee Lalla, did not resort to diplomatic nuance in the language of his report. He described the human rights situation in Burma as one of systematic repression, systematic rape, torture, inhumane, cruel and degrading treatment of prisoners, displacement, arbitrary killings of civilians, impunity, and the confiscation of property.

The Special Rapporteur reports that:

... violence against civilians would appear to be a fundamental component of the overall military strategy. In flagrant violation of the basic rules of humanitarian law, civilians living in rural settlements have been attacked, this has resulted in massacres, in disorderly flight to safety, often separating families. Those who are captured are often subjected to rape and arbitrary killing, or held to grow food for the army, or made to provide labour or portering for the army.

The UN Special Rapporteur outlines the magnitude of the crisis inside the country. Canadian emergency operations and forced relocation programs can't shelter people in ethnic minority states, resulting in... in which people have little access to food, shelter or basic health care... attempting to leave relocation sites are often shot on sight - there are numerous... documented reports... Rapporteur also... are several victims

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Canadian NGO Policy Paper on Burma

1) Overview

There is little debate about Burma's stature as a pariah within the international community of nations. A country that once showed enormous promise, Burma has been impoverished by almost four decades of military dictatorship. Not only impoverished, the people of Burma have been brutalized by a junta determined to crush any opposition to its rule.

UN Special Rapporteur, Rajsoomer Lallah, did not resort to diplomatic nuance in the language of his 1999 report on Myanmar. His report is a blunt assessment of the human rights situation, and cites a long list of abuses, including arbitrary arrest and imprisonment; systematic repression of political opposition groups; torture; inhumane, cruel and degrading treatment of prisoners; forced displacement; arbitrary killings of civilians; impunity; and the confiscation of property.

The Special Rapporteur reports that:

“...violence against civilians would appear to be a fundamental component of the overall military strategy. In flagrant violation of the basic rules of humanitarian law, civilians living in rural settlements have been attacked...this has resulted in massacres...in disorderly flight to safety, often separating families. Those who are captured are often subjected to rape and arbitrary killing, or held captive to grow food for the army, or made to provide forced labour or portering for the army.”

The UN Special Rapporteur outlines the magnitude of the crisis inside the country. Counter-insurgency operations and forced relocation programs have dislocated more than half a million people in ethnic minority states, resulting in a massive humanitarian crisis in which people have little access to food, shelter or basic health care. People caught attempting to leave relocation sites are often shot on sight – there are numerous, well-documented reports of massacres of unarmed civilians. The Special Rapporteur also comments on the situation of women and girls in relocation sites, where sexual violence committed by military personnel is common.

The Special Rapporteur concludes that "the situation of human rights in Myanmar is worsening, and the repression of civil and political rights continues unabated." He recommends that the resources of the international community be mobilized to address humanitarian needs and that political dialogue "has become urgent in order to prevent a worsening of the present humanitarian disaster."

Burma's humanitarian and political crisis is also a regional crisis, as increasing numbers of refugees have fled to neighbouring countries. In Thailand, there are currently 112,000 registered refugees living in refugee camps. As many as one million more Burmese have sought asylum or sustenance as undocumented refugees in Thailand, India, China and Bangladesh.

The flow of refugees has fueled considerable tension in receiving countries. Since 1995, Burmese troops and their proxies have regularly crossed into Thailand to attack refugee camps. The most recent cross-border incursions were in 1998 when three refugee camps were attacked and burned. In an attempt to prevent attacks on its territory, the Royal Thai government has deployed troops in the border region. Tensions also exist in India and Bangladesh where refugees live in appalling circumstances. In 1999, the refugee crisis continues - in the first several months of this year an estimated 5,000 more refugees crossed the border into Thailand.

The situation in Burma also has international implications, most evident in Burma's status as the world's leading producer of opium. Between 1948 and 1992, opium production in Burma increased by 8000 percent.¹ Since the SLORC/SPDC came to power in 1988, production has doubled. The 1992-93 harvesting season in Burma yielded at least 2,575 tons of raw opium.² Heroin from Burma began to flood the North American market in 1990; by late 1991, 56 percent of the heroin reaching the United States originated in Burma. According to the RCMP, most heroin reaching Canada is from Burma. The U.S. State Department says that the drug trade has become an "entrenched" part of Burma's political and economic life. Burmese military officials are complicit actors in the trade and the junta continues to provide protection to known drug-lords. The profits of the drug trade are channeled into public and private enterprises, helping to underwrite the equipping and the threefold expansion of the army since 1989.³

The costs of the drug trade to the Burmese people are high, in terms of increasing addictions and the criminalization of vast sectors of the rural economy. These problems are also spreading to Burma's neighbours via its borders with India and China as sharply-increased drug abuse is reported in these areas.⁴

¹ Lintner, Bertil. *Burma in Revolt: Opium and Insurgency Since 1948*; Westview Press, 1994.

² *Ibid*, pg. 1

³ *Burma Debate*, March/April, 1996.

⁴ *Out of Control*, South East Asian Information Network, 1998.

The costs to Canada of the drug trade and addictions are also high. The direct cost to the Canadian economy in 1992 was estimated to be \$1.37 billion in terms of law enforcement, health care, and productivity losses.⁵ This figure, of course, does not include the human and social costs of the drug trade, such as overdose deaths⁶, the lifestyles that young addicts are drawn into, or drug-related crimes.

The holding of the Interpol drugs conference this year in Rangoon had most seasoned Burma-watchers incredulous. Internationally-financed drug control programs, undertaken in collaboration with the military junta, will not put an end to Burma's drug industry. Bertil Lintner, in his overview of the drug industry in Burma, is quite clear about this:

“No anti-drug policy has any chance of success unless it is linked to a real political solution...and a meaningful democratic process in Rangoon. The alternative is continuing strife – which will keep the heroin flowing.”⁷

Currently, the possibility of political dialogue between the regime and the democratic forces is not promising. In the latter part of 1998, in response to the bid by the National League for Democracy to convene Parliament, the junta launched a massive crack-down against NLD members, arresting and detaining hundreds. Aung San Suu Kyi continues to be harassed and her mobility restricted. The junta's intransigence added to Aung San Suu Kyi's own personal tragedy when it refused an entry visa to her fatally-ill husband before he died in early 1999.

In economic terms, there are reports of food shortages due to the repression of the agricultural sector, mismanagement and drought. The junta has never developed a coherent economic policy and the economy is in serious condition with inflation running at about 50 percent. Foreign direct investment has plummeted by 53 percent and the currency is rapidly losing its value. The junta has been unable to adequately supply or pay the wages of its huge standing army, leading to a sharp increase in military extortion. The junta is reportedly looking at the development of energy mega-projects on the country's borders to earn foreign exchange, but it will be years before any of these projects materialize.

⁵ Chao-Tzang Yawngwe. *Burma, the Heroin Trade & Canada*, paper presented to CFOB Conference, April 1998.

⁶ In Vancouver alone, there were on average 13 overdose deaths a week in 1997. Ibid.

⁷ Lintner, pg. 335

While the crisis in Burma has regional and international peace and security implications, it is the people of Burma who continue to suffer. Yet, despite the tyranny of dictatorship, there remains enormous hope for the future. Thousands of democracy activists – monks, students, teachers, writers, intellectuals, ordinary men and women – continue to defy the regime, braving arrest, imprisonment, torture and summary execution to work for a democratic Burma. It is upon the ideals of these people that a democratic Burma will be founded.

2. Canada and Burma

Canadian public interest in Burma has grown over the past decade due to the public education efforts of Canadian Friends of Burma, the Canadian churches, NGOs, trade unions, and solidarity groups. Burma solidarity groups are active in more than twenty Canadian cities and on almost as many university campuses. Canadian NGOs and institutions have a long history of supporting the Burmese democracy movement. The International Centre for Human Rights and Democratic Development undertook pioneering work related to Burma and was the first organization worldwide to support the National Coalition Government for the Union of Burma. Inter Pares has been working with counterparts on the Thai-Burma border since 1990-91, supporting humanitarian activities as well as human rights and advocacy organizations. More recently, the Canadian Lutheran World Relief has become involved in an international peacebuilding project coordinated by the EURO Burma Office.

The Government of Canada has also demonstrated its support of Burma's democracy cause and Minister Axworthy has indicated his personal interest. Minister Axworthy has met with NGOs and members of the democracy movement on several occasions. In August 1997, the Minister withdrew Burma's General Preferential Tariff eligibility and placed the country under the Area Control List of the Export and Import Permits Act. Canada has expressed its concern about the situation in Burma in multilateral fora as well as in bilateral meetings with members of the junta itself. CIDA is providing humanitarian assistance to Burmese refugees in Thailand and in Bangladesh and is supporting a peacebuilding project through the EURO-Burma office. The Canada Fund administered by the Canadian embassy in Bangkok has supported important refugee activities and women's projects in the Burma-Thai border region.

Canadian NGOs welcome these initiatives. However, Canada can and must do more. This paper outlines the actions which NGOs recommend that government take in helping to secure a democratic future for Burma.

3. Policy Recommendations

3.1 Canada and the UN

Canada's membership in the UN Security Council provides an important opportunity to play a leadership role in raising the human security dimensions of the Burma crisis with other members. Canada should be working with members of the UN to find measures of enforcement to implement the terms of consecutive UN resolutions on Burma, in particular comprehensive economic sanctions and arms embargo.

Canada should also be encouraging the UN system to search for ways of addressing the humanitarian crisis in Burma. In his 1999 report, the UN Special Rapporteur described the current situation as a "humanitarian disaster". This situation will not soon improve and many lives are at risk.

Recommendations to the Government of Canada:

Canada should introduce the subject of Burma as a general discussion agenda item in the UN Security Council.

Canada should initiate a discussion about the humanitarian crisis in Burma with the UN Office for Coordination of Humanitarian Affairs.

Canada should request the Office of the UN High Commissioner for Human Rights to convene a UN interagency meeting to consider the crisis in Burma.

Canada should seek to formalize the existing Burma informal consultative mechanism of the UN Secretary General and promote it as a forum for the coordination of international policy and strategy.

3.2 Sanctions with Teeth: The Special Economic Measures Act

In 1997, many Western nations concluded that engagement with Burma was ineffectual. The United States imposed unilateral investment sanctions against Burma, while Europe and Canada imposed limited trade sanctions. In justifying its action, the Canadian Government noted that "Canada's promotion of international human rights is founded on our long-standing principle of effective influence...Dialogue and engagement generally offer the best vehicle to effect change...Dialogue is, however, impossible without a willing partner. Burma's ruling State Law and Order Restoration Council (SLORC) has consistently rebuffed efforts by Canada and other countries to engage in dialogue."

Minister Axworthy noted that "[t]he actions we have taken...are intended to convey the seriousness of our concerns over the suppression of political freedoms and our frustration with Burma's failure to curb the production and trafficking of illegal drugs."

Unlike the US measures, the Canadian sanctions do not apply to investment in Burma, despite calls for such action from Burmese democratic leaders and the recent announcement of several joint ventures between Canadian firms and the repressive Burmese regime. In this regard, Vancouver-based Indochina Goldfields announced in November 1998 the start-up of a US\$300 million copper mine in Burma, one that is jointly owned by the regime's mining company. Edmonton-based Mindoro Resources, meanwhile, has partnered with the regime in a Burma gold exploration project.

On February 2, 1999, Canadian Friends of Burma met with representatives of the Department of Foreign Affairs and International Trade to be briefed on the Department's response to a June 25, 1998 CFOB memorandum calling for the application of investment sanctions under the Canadian *Special Economic Measures Act* (SEMA). At that meeting, the Department stated its view that, as a matter of law, the SEMA may not be used to grapple with the situation in Burma as it stands at this time. Unilateral sanctions are only permissible under s.4 of the Act where Cabinet is of the opinion that "a grave breach of international peace and security" has occurred that has resulted or is likely to result in a serious international crisis". The Department concedes that this language is nowhere defined in Canadian law, but takes the view that "breach of international peace and security" is to be attributed its meaning in international law. While the Department apparently agrees that an internal civil conflict can be a "threat" to international peace and security in international law, it takes the view that a "breach" requires something approximating a trans-border conflict, of the sort associated with the Gulf War.

According to a second memorandum commissioned by CFOB, issued on April 15, 1999, the position taken by the Department of Foreign Affairs and International Trade on the scope and applicability of the SEMA is questionable. First, its argument that the term "breach of international peace and security" in the Act is to be accorded its international meaning is largely inconsistent with the legislative history of the Act. Instead, this legislative history supports a view of the Act as a flexible instrument that does not pre-define the circumstances in which Cabinet may impose unilateral sanctions. Second, even if one were to accept the Department's view, there is strong reason to believe that circumstances in Burma amount to a breach of international peace and security, within the international meaning of the term. The repeated attacks by Burmese government and proxy forces against refugees in Thailand, and the repeated exchange of fire between these forces and the Thai military, render the Burmese situation a trans-border conflict.

Despite these objections, the Department's view seems to have placed a legal chill on Cabinet action. Accordingly, CFOB has recommended that the Minister resort to a second legal opinion as to the scope of the Act, preferably from a source outside the Department. Alternatively, CFOB has recommended either amendments to the Act or the

enactment of a special statute tailored to the situation in Burma and analogous to the now repealed *Iranian Economic Sanctions Act*. Such actions would bring Canadian responses to the Burmese crisis more in line with the actions of other countries.

A second issue which government should examine are the tax deductions allowed Canadian companies operating abroad. Canadian tax law allows Canadian companies to deduct a portion of their foreign business income tax from their Canadian taxes, even in the absence of a formal tax treaty between Canada and the foreign jurisdiction. Even where Canada has annulled double taxation treaties on human rights grounds in the past, this unilateral tax relief has remained. Thus, when Canada annulled the Canada-South Africa Double Taxation Agreement in 1985, critics argued that this move was largely symbolic as companies were able to continue deducting taxes paid in South Africa and Namibia under the foreign tax credit provisions of the *Income Tax Act*.

In a December 1998 report, the Senate Standing Committee on Foreign Affairs cited with approval a recommendation that the "government should publicly establish thresholds of systematic human rights abuses beyond which the government...[*inter alia*,] will not provide tax credits for taxes paid to the regime...". This approach is a reasonable and logical way of reducing the incentive Canadian businesses might have to operate in countries where their operations contribute to human rights problems.

Recommendation to the Government of Canada:

That the Minister proceed to impose investment sanctions under the Special Economic Measures Act.

If the Minister determines that he cannot proceed under SEMA, that he enact a special statute tailored to the particular situation of Burma.

The Canadian Government should amend the Income Tax Act to bar Canadian companies operating in Burma from deducting any of their foreign business income tax from their Canadian taxes.

3.3 Recognizing the Committee Representing the People's Parliament

The Committee Representing the People's Parliament (CRPP) was formed in September 1998 by representatives of the political parties that won the majority of seats in the 1990 election, including the NLD. The Committee is acting as an executive committee of the elected parliament, most of whose members are in prison, exile or detention. The CRPP has proxies from 251 of the surviving Members of Parliament who have given the committee the mandate to convene the full parliament as soon as possible and act on their behalf. The 10 member committee is chaired by U Aung Shwe, Chairman of the NLD. Dr. Saw Mra Aung of the Arakan League for Democracy and MP elect from Arakan

State, was elected as the People's Parliament President. Dr. Saw Mra Aung, who is 80 years old, was recently arrested, making him the oldest political prisoner in Burma.

The democracy movement has urged the international community to give their support to the CRPP to strengthen the democratic process in Burma and to pressure the military junta. The Parliaments of Norway, Denmark, Belgium and the EU have formally recognized the CRPP. In May 1999, the Legislative Assembly of British Columbia passed a strongly-worded motion condemning the situation in Burma that included a recommendation that the Government of Canada recognize the Committee Representing the People's Parliament..."as the legitimate instrument of the will of the Burmese people." (Motion No. 61, May 4, 1999).

Recommendation to the Government of Canada:

That the Minister introduce a motion in Parliament that the Parliament of Canada recognize the Committee Representing the People's Parliament as representative of the elected Parliament of Burma.

3.4 Supporting the Democracy Movement - Preparing for Transition

For several years, Canadian NGOs have discussed the development of a long-term program that anticipates democratic transition and builds a Canadian role in support of a democratic Burma. The program would aim to assist in building the capacity of Burmese organizations to prepare for democratic transition and governance. The program would also aim to strengthen the capacity of Canadian NGOs, institutions and government agencies to effectively support democratization.

Elements of such capacity-building, in Canada and in Burma, are already taking place. Canadian Friends of Burma, for example, has been a locus for bringing together Canadians from across the country with an interest and an expertise in Burma. The considerable interest in Burma was evident at the April 1998 CFOB conference "Creating New Policies and Partnerships". Partly as an outcome of this successful conference, CFOB plans to create an annual national forum to help build knowledge and expertise in Canada and to co-ordinate public education activities.

In the Burma - Thailand border region, Canadian NGOs have been supporting capacity-building activities for many years. Inter Pares, for example, has initiated a program to bring development expertise from other Asian countries to ethnic minority organizations working on the border. Capacity-building activities have included training of para-medics and training in psychological interventions with victims of torture and trauma. Exposure visits to countries in the region are planned in 1999 as a way of introducing experiences in development programming.

Much more training and capacity-building work needs to be done. There is a need for teachers, medical personnel, engineers, agriculturalists, administrators, managers, etc. These needs are especially acute given the collapse of post-secondary education in Burma over the past decade. There is also a need to support public policy research, think tanks, colloquia and conferences on the economic and political future of Burma. Canada has a plethora of resources - universities, community colleges, research institutions, distance education specialists - that could be mobilized in support of a human resource development program for Burma's democracy movement.

Canada should be investigating other forms of support for the democracy movement. Funding is urgently required by Burmese democracy organizations such as members of the National Coalition of the Union of Burma which is playing a leading role in preparing for transition. Ethnic minority organizations require a variety of capacity-building supports. Assistance is also needed by groups involved in human rights documentation and information dissemination. CIDA and Canadian NGOs should be working together to develop a long-term capacity-building strategy with these organizations.

CIDA's position has been that it cannot allocate bilateral funds in support of the types of activities outlined above since Burma is not eligible for ODA. Canadian NGOs are not promoting a resumption of ODA to the SPDC or for activities inside the country. Rather, Canada should allocate funds specifically for capacity-building with democracy organizations, as has been done by most other Western governments.

Recommendations to the Government of Canada:

The Ministers of DFAIT and CIDA should create the necessary framework to enable CIDA to support capacity-building activities with Burma's democratic movement.

Representatives of CIDA, DFAIT and Canadian NGOs should meet as soon as possible to discuss a capacity-building framework and strategy.

In 1999-00, CIDA should designate planning funds to an NGO coalition to investigate capacity-building needs and modalities of support for the democracy movement.

Summary of Policy Recommendations

Canada should introduce the subject of Burma as a general discussion agenda item in the UN Security Council.

Canada should initiate a discussion about the humanitarian crisis in Burma with the UN Office for Coordination of Humanitarian Affairs.

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Canada should seek to formalize the existing Burma informal consultative mechanism of the UN Secretary General and promote it as a forum for the coordination of international policy and strategy.

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The Canadian Government should amend the Income Tax Act to bar Canadian companies operating in Burma from deducting any of their foreign business income tax from their Canadian taxes.

The Minister should introduce a motion in Parliament that the Parliament of Canada officially recognize the Committee Representing the People's Parliament as representative of the elected Parliament of Burma.

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