

Leveraging International Legal and Human Rights Mechanisms: Efforts to End Forced Labour in Burma/Myanmar

Rachel Fleming*

This Article explores the origins of the interrelated legal concepts of slavery and forced labour, with a particular focus on the unusual role played by the International Labour Organisation in the development of the right to freedom from forced labour. It sets out the pervasive use of state-ordered forced labour in Burma/Myanmar¹, and the inherent complexities surrounding ending this practice

* Rachel Fleming is currently pursuing an MA in Human Rights Law at SOAS, University of London. She is a human rights practitioner with a decade of experience working on human rights issues in Burma/Myanmar.

¹ Leaders of Chin, Kachin and Shan homelands agreed to join together with Burman leaders to found the Union of Burma in 1948, following independence from British colonial rule. In 1989 the military regime unilaterally changed the name of the country to Myanmar, which historically only referred to the majority Burman territory and had never included the other ethnic homelands. The change to Myanmar was recognised by the UN and is used in common parlance, but many human rights defenders from ethnic minority backgrounds continue to prefer the term Burma. To reflect this duality, this author will use Burma/Myanmar in reference to the country.

in a country where the military is beyond civilian control. In doing so, it foregrounds the role of local human rights organisations in documenting human rights violations and the myriad ways in which they have leveraged this evidence through international legal and human rights mechanisms and cooperation with the International Labour Organisation. This has led to partial success, but significant challenges remain to eradicate this practice in Burma/Myanmar and ensure accountability for perpetrators.

I. Introduction

There is abundant evidence before the Commission showing the pervasive use of forced labour imposed on the civilian population throughout Myanmar by the authorities and the military for portering, the construction, maintenance and servicing of military camps, other work in support of the military, work on agriculture, logging and other production projects undertaken by the authorities or the military, sometimes for the profit of private individuals, the construction and maintenance of roads, railways and bridges, other infrastructure work and a range of other tasks... Forced labourers, including

those sick or injured, are frequently beaten or otherwise physically abused by soldiers, resulting in serious injuries; some are killed, and women performing compulsory labour are raped or otherwise sexually abused by soldiers... It is a story of gross denial of human rights to which the people of Myanmar have been subjected particularly since 1988 and from which they find no escape except fleeing from the country.²

The pervasive use of forced labour – legalised by colonial-era statutes³ – and the intersecting forms of human rights violations perpetrated by the Burma/Myanmar military and local authorities have been well-documented by local organisations since the early 1990s. Such reports prompted the establishment of an International Labour Organisation (ILO) Commission of Inquiry in 1998 into the alleged violations of the 1930 Forced Labour Convention, to which Burma/Myanmar is a State party.

² Extracts from the International Labour Organisation Commission of Inquiry into Forced Labour in Myanmar, 1998; Forced Labour in Myanmar (Burma): Report of the Commission of Inquiry appointed under article 26 of the Constitution of the International Labour Organisation to examine the observance by Myanmar of the Forced Labour Convention, 1930 (No. 29), (1998) available at <[http://www.ilo.org/public/english/standards/relm/gb/docs/gb273/myanmar5.htm#\(4\)%20Recommendations](http://www.ilo.org/public/english/standards/relm/gb/docs/gb273/myanmar5.htm#(4)%20Recommendations)> Accessed 5 August 2018.

³ Villages and Towns Acts 1907.

In addition to the observations highlighted above, the Commission of Inquiry concluded:

[A]ny person who violates the prohibition of recourse to forced labour under the Convention is guilty of an international crime that is also, if committed in a widespread or systematic manner, a crime against humanity.⁴

In spite of the gravity of such findings, the struggle to end the practice of forced labour in Burma/Myanmar, and ensure the State's compliance with its obligations under the 1930 Forced Labour Convention has continued ever since.

In 2010/11, Burma/Myanmar agreed to participate in the first cycle of the Universal Periodic Review (UPR) under the UN Human Rights Council (HRC); at the time, it had only ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC). Burma/Myanmar apparently viewed this new international human rights mechanism⁵ as an opportunity to defend its abysmal human rights record to peer States within the HRC, after years of criticism about human rights violations in Burma/Myanmar from the CEDAW and CRC treaty bodies

⁴ Report of the Commission of Inquiry (n 3) [538].

⁵ Created under the UN Human Rights Council by a UN General Assembly resolution (3 April 2006), UN Doc A/RES/60/251.

and the UN Special Rapporteur on the situation of human rights in Myanmar.⁶

Human rights organisations from Burma/Myanmar civil society were primarily based in exile at that time, as it was not possible for them to operate freely inside the country due to the considerable security risks. However, they maintained clandestine networks inside the country, via which they collected documentation of human rights violations. Organisations were already engaging with well-established mechanisms by providing briefings and shadow reports based on this documentation, and seized the opportunity to influence the new process. One such organisation was the Chin Human Rights Organisation (CHRO), established in 1995. CHRO made an individual submission to the process, which was strongly represented in the stakeholders' report compiled by the Officer of the High Commissioner for Human Rights (OHCHR) as one of the three short reports forming the basis of the review, conducted via interactive dialogue at the HRC.⁷ In the submission, forced labour is cited as a primary human rights concern and a root cause of

⁶ The country-specific Special Rapporteur's mandate was first created in 1992 by the Commission on Human Rights resolution E/CN.4/RES/1992/58, and has been extended every year since then.

⁷ The author of this paper worked as Advocacy Director at CHRO for six years and prepared the organisation's UPR submissions based on analysis of human right documentation collected by fieldworkers. CHRO's submission was cited 11 times in the stakeholders' report, on a par with Human Rights Watch.

flight, contributing to the exodus of around 150,000 Chin to India and Malaysia:⁸

In Chin State the use of forced labour by the military and local authorities is widespread and systematic. Since 2006 more than 70 incidents of forced labour have been documented by CHRO, some involving orders to 40 villages at a time.⁹

This claim was strongly substantiated by a report published by the international NGO Physicians for Human Rights (PHR) in January 2011,¹⁰ shortly prior to the UPR interactive dialogue. The report was based on a quantitative survey of over 600 households in Chin State conducted in early 2010 (by CHRO fieldworkers and others at considerable personal risk), and covered violations which had taken place in the preceding twelve months. The key finding was that almost 92 percent of households had experienced forced labour during that timeframe, on average three times per household. Forced labour was exacted by the military and local authorities, and took similar forms to those outlined in CHRO's submission.¹¹ Such findings bore a striking similarity to those of the ILO's Commission of Inquiry more than a decade earlier, and PHR

⁸ CHRO, 'Burma/Myanmar: Individual Submission to the UN Universal Periodic Review', July 2010, 1[3], 2.

⁹ Ibid 3 [11].

¹⁰ PHR, 'Life Under the Junta: Evidence of Crimes Against Humanity in Burma's Chin State', January 2011.

¹¹ Ibid, 11.

concluded that such violations may constitute a crime against humanity.¹²

In a recalcitrant state like Burma/Myanmar where impunity is constitutionally entrenched, the rule of law is lacking, there is no independent judiciary¹³, and the State is not a party to the International Covenant on Civil and Political Rights (ICCPR) (Art. 8(3)(a) 'No one shall be required to perform forced or compulsory labour'), the challenges in bringing an end to the practice of forced labour are immense. The military remains beyond civilian control as per the military-drafted 2008 Constitution, and is in charge of the three key Ministries of Defence, Home Affairs, and Border Affairs. The Constitution also provides for immunity from prosecution to all past and present military personnel and government officials for acts committed in the course of their duties, and guarantees the military control over its own judicial processes via an opaque court martial system, which is beyond civilian oversight.¹⁴ The Commander-in-Chief can effectively stage a coup if a state of emergency, threatening national unity, should arise; and the military holds a *de facto* veto over constitutional change as 25 percent of parliamentary seats are reserved for military appointees, and

¹² Ibid.

¹³ During his time as mandate-holder (2008-2014), UN Special Rapporteur Quintana consistently emphasised the importance of legal and judicial reform as core 'human rights elements' required in the country.

¹⁴ Constitution of the Republic of the Union of Myanmar 2008, Art 445, 294.

constitutional change can only be enacted with a parliamentary majority of over 75 percent.¹⁵

Part II of this Article traces the role of the ILO in the development of the right to freedom from forced labour. First, the origins of the interrelated legal concepts of slavery and forced labour as they appear in the relevant conventions (the Slavery Convention of 1926 and the ILO Forced Labour Convention of 1930) are briefly discussed. Second, the work of the Human Rights Committee in clarifying the scope of the right to freedom from forced labour and obligations of States under Art. 8 of ICCPR is critically examined. Third, developments in the ILO's approach to the right to freedom from forced labour under the 1930 Forced Labour Convention are introduced.

Part III of this Article turns to the case of Burma/Myanmar, and highlights how documented evidence of human rights violations by local human rights groups has underpinned legal efforts to end the practice of state-ordered forced labour in the country. Taking Hopgood's dichotomy of human rights/Human Rights as a frame of reference, with 'human rights' characterised as local activism and 'Human Rights' as a 'global structure of laws, courts, norms',¹⁶ this Article argues that in this case, rather than the global *inevitably* structuring, disciplining, and colonising the local,¹⁷ the

¹⁵ Constitution of Myanmar 2008, Art 20 (b), 40 (c), 436 (a).

¹⁶ Stephen Hopgood, *The Endtimes of Human Rights* (Cornell University Press 2013) ix.

¹⁷ *Ibid* x.

dichotomy is not so clear-cut. It traces the role of local organisations in establishing the ILO Commission of Inquiry and the subsequent ILO individual complaints procedure, the only international human rights mechanism of its kind in operation in Burma/Myanmar.¹⁸ This Article argues that organisations like CHRO are deeply rooted in their communities, allowing them to document human rights violations and utilise that evidence as a vital resource to form strategic partnerships with international organisations, engage with international legal and human rights mechanisms, and ultimately garner institutional leverage to bring about positive changes – albeit limited – in practice.¹⁹

II. The Role of the ILO in the Development of the Right to Freedom from Forced Labour

The fight against slavery is often described as the first human rights campaign.²⁰ For example, Anti-Slavery International, founded in 1839, claims to be ‘the oldest human rights organisation in the world’ and works to end modern slavery,

¹⁸ Burma/Myanmar has not acceded to the individual complaint mechanisms for CEDAW or CRC, or those for the more recently ratified Covenant on Economic, Social and Cultural Rights (ratified in 2017) and the Convention on the Rights of Persons with Disabilities (ratified in 2011).

¹⁹ Nicholas Henry, ‘Trade Union Internationalism and Political Change in Myanmar’ [2015] 27(1) *Global Change, Peace & Security*, 69-84, 82-83.

²⁰ Vladislava Stoyanova, ‘United Nations Against Slavery: Unravelling Concepts, Institutions and Obligations’ [2017] 38(3) *The Michigan Journal of International Law* 359, 361.

characterized as taking a multitude of forms - including forced labour.²¹ Scholars such as McGeehan make the compelling argument that attempts to enumerate all the forms of a complex phenomenon like slavery risk quasi-legitimising new forms of slavery as they develop.²² Nonetheless, the legal concept of slavery has undergone fragmentation in international human rights law, resulting in legal obfuscation around interrelated concepts of slavery, servitude, human trafficking, and forced labour.²³ The origins of this fragmentation pre-date the birth of international human rights law.

i. The Origins of Slavery and Forced Labour under International Law

The 1926 Slavery Convention's definition of slavery remains the accepted definition under international law today: '[S]lavery is the status *or condition* [emphasis added] of a person over whom any or all of the powers attaching to the right of ownership are exercised.'²⁴ The reference to condition as well as legal status arguably proscribes both *de facto* and *de jure* slavery.²⁵ In spite of the fact that the Slavery Convention does not actually *define* forced labour, it calls on States parties

²¹ Anti-Slavery International <<https://www.antislavery.org>>, accessed 1 June 2018.

²² Nicholas L. McGeehan, 'Misunderstood and Neglected: the Marginalisation of Slavery in International Law' (2012) 16(3) *IJHR* 436, 455.

²³ Stoyanova (n 21) 364.

²⁴ Slavery Convention 1926, Art 1(1) 60 *LNTS* 253.

²⁵ McGeehan (n 23) 444.

to 'take all necessary measures to prevent forced or compulsory labour from developing into conditions *analogous to slavery* [emphasis added]'.²⁶ Herein lies the conceptual fragmentation between slavery and forced labour. The drafting of this Article was apparently the most contentious of the whole Slavery Convention.²⁷ Delegates were keen to make a distinction between forced labour for public and private purposes, with public uses of forced labour being justified as necessary for the 'development' of colonised territories,²⁸ ultimately reflected in the wording of the Slavery Convention.²⁹ Recalling the abhorrent racist justifications for slavery, colonial-era forced labour was viewed as 'an instrument of welfare' to instil the so-called 'dignity of labour'. This remained the prevalent view for many years

²⁶ Slavery Convention 1926, Art 5.

²⁷ Jean Allain, *The Slavery Conventions: The Travaux Préparatoires of the 1926 League of Nations Convention and the 1956 United Nations Convention* (Martinus Nijhoff Publishers 2008) 121.

²⁸ Ibid 122.

²⁹ Slavery Convention 1926, Art 5(1) 'Subject to the transitional provisions laid down in paragraph (2) below, *compulsory or forced labour may only be exacted for public purposes* [emphasis added]. 5(2) In territories in which compulsory or forced labour for other than public purposes still survives, the High Contracting Parties shall endeavour progressively and as soon as possible to put an end to the practice. So long as such forced or compulsory labour exists, this labour shall invariably be of an exceptional character, shall always receive adequate remuneration, and shall not involve the removal of the labourers from their usual place of residence. 5(3) In all cases, *the responsibility for any recourse to compulsory or forced labour shall rest with the competent central authorities of the territory concerned* [emphasis added].'

after the process of decolonisation began.³⁰ Instances of forced labour imposed on colonial subjects were often brutal, resulting in the deaths of labourers, and would have arguably met the definition of *de facto* slavery enshrined in the Slavery Convention.³¹

In 1926, the Assembly of the League of Nations passed a Resolution requesting the ILO to address the issue of forced labour.³² The resulting 1930 Forced Labour Convention obliges States parties to ‘suppress’ the practice ‘within the shortest possible period’.³³ Forced or compulsory labour itself is defined as, ‘all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily’. The Convention also sets out exceptions in the form of compulsory military service, civic obligations or minor communal works, emergencies, and services exacted as a result of a conviction in a court of law.³⁴ The vast majority of the Articles provided for the continuation of forced labour in

³⁰ J.S. Furnivall, *Colonial Policy and Practice: A Comparative Study of Burma and Netherlands India* (New York University Press 1956) 342.

³¹ Examples of this include the treatment of workers in the Belgian Congo and during the Culture system in Java under Dutch colonial rule, *Ibid.* See also McGeehan (n 23) 445-48.

³² League of Nations, ‘Slavery Convention: Resolutions adopted by the Assembly at its meeting held on 25 September 1926’, Doc A.123.1926.VI.

³³ 1930 Forced Labour Convention CO29, Art 1.

³⁴ 1930 Forced Labour Convention, Art 2(1) and 2(2)(a-e).

colonial contexts for a transitional period.³⁵ At the time, the Workers' Group, under the tripartite structure of the ILO (comprised of workers, employers and government representatives), expressed misgivings about the primary purpose of the text, but ultimately supported it as a step forward.³⁶ In short, the 1930 Forced Labour Convention needs to be viewed as a legal instrument of its time; a Foucauldian technology of rule for colonial powers 'facilitative rather than proscriptive in character'.³⁷

ii. Slavery and Forced Labour under International Human Rights Law³⁸

The 1948 Universal Declaration of Human Rights marked the advent of international human rights law and stipulated that, '[n]o one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.'³⁹ Although forced labour is not explicitly mentioned, the preparatory works indicate that it was considered to be a

³⁵ Forced Labour Convention 1930 transitional provisions, Art 3-24.

³⁶ McGeehan (n 23) 447.

³⁷ *Ibid* 445.

³⁸ A more detailed discussion of the legal obfuscation around the interrelated concepts of slavery, servitude, human trafficking, and forced labour under international law is beyond the scope of this paper. Of particular note is the fact that under international criminal law, slavery is regarded as encompassing these interrelated concepts. For in-depth analysis of these concepts under both international human rights law and international criminal law, see Stoyanova (n 21) and McGeehan (n 23).

³⁹ Universal Declaration of Human Rights 1948, Art 4.

form of slavery.⁴⁰ By contrast, Art. 8 of the legally binding ICCPR – which did not come into force until almost 30 years later — enumerates slavery, servitude, and forced labour separately, but does not define these concepts.⁴¹ The preparatory works for that particular article did not refer to the 1926 Slavery Convention or its definition of slavery. Instead, drafters appeared to focus on *de jure* rather than *de facto* slavery, viewing slavery as a ‘limited and technical notion’ involving the ‘destruction of the juridical personality’.⁴² Furthermore, drafters decided not to include the definition of forced labour enshrined in the 1930 Forced Labour Convention, on the basis that it was unsatisfactory when read in light of the exceptions.⁴³

The treaty body for the ICCPR – the Human Rights Committee (HRCtee) – clarifies both the scope of the rights protected and the obligations of States in the course of its work. Firstly, the HRCtee issues General Comments, which

⁴⁰ United Nations Economic and Social Council, ‘The Commission on Human Rights Second Session: Report of the Working Group on the Declaration of Human Rights’ (10 December 1947) UN Doc. E/CN.4/57 8.

⁴¹ International Covenant on Civil and Political Rights (ICCPR), Art 8 (1), (2), and (3)(a) 999 UNTS 171.

⁴² United Nations Economic and Social Council, ‘The Commission on Human Rights Sixth Session: Summary Record of the Hundred and Forty-Second Meeting, Draft International Covenant on Human Rights – Art. (continued), Art 8 (10 April 1950) UN Doc E/CN.4/SR.142, 16 [74], 17-18 [79].

⁴³ United Nations General Assembly, ‘Tenth Session: Draft International Covenants on Human Rights’ (1 July 1955) UN Doc A/2929, 33 [19].

are directed at all States parties and interpret the substantive provisions of the treaty. Secondly, in response to State reports submitted in accordance with their reporting obligations, the HRCtee produces Concluding Observations, which clarify the duties of States. Lastly, where a State party has acceded to the Optional Protocol, the HRCtee issues quasi-judicial Views on individual cases brought under the complaints procedure, providing further clarification of the scope of the rights protected.⁴⁴ Stoyanova's analysis of Concluding Observations produced between 2014 and 2016 found that those which address Art. 8 are largely concerned with human trafficking, and overlook the concepts specifically enumerated in the Article.⁴⁵ She argues that, 'The overview reveals a tendency in favour of framing only traditional practices as slavery and servitude and a resistance to using these labels to contemporary forms of abuses.'⁴⁶ The right not to be held in slavery has never been the object of a View, and only one View deals with an interpretation of forced or compulsory labour.

The complainant in *Bernadette Faure v. Australia* maintained that she was subjected to forced or compulsory labour in violation of Art 8(3)(a) of the ICCPR ('No one shall be required to perform forced or compulsory labour') as she had to attend a work programme in order to receive benefits. In the View, the HRCtee noted that work forming part of

⁴⁴ Bantekas and Oette *International Human Rights Law and Practice* (CUP 2016) 198-217.

⁴⁵ Analysis of Concluding Observations issued 2014 – 2016; Stoyanova (n 21) 400-403.

⁴⁶ *Ibid* 402-403.

normal civil obligations is permissible under ICCPR art.(8)(3)(c)(iv) ('any work or service which forms part of normal civil obligations'), and therefore it did not fall within the scope of forced labour. The HRCtee made reference to ILO instruments but not to the definition of forced labour, maintaining that it fell to the Committee to 'elaborate on the indicia of prohibited conduct.'⁴⁷ The HRCtee's ratio for its View was largely based on 'the absence of a degrading or dehumanising aspect of the specific labour performed'⁴⁸, thereby providing a rather narrow interpretation of forced labour in comparison with the definition provided under the 1930 Forced Labour Convention.

Although to date the HRCtee has issued 35 General Comments on most of the substantive provisions of the ICCPR, a notable exception is Art. 8.⁴⁹ This perhaps reflects the challenges of consolidating its experience in interpreting a conceptually fragmented Article. However, the HRCtee's narrow interpretation of Art.8 is arguably contrary to its own specified approach of progressive interpretation of the ICCPR as a living instrument applicable to contemporary situations.⁵⁰ The HRCtee has ultimately failed to both effectively elaborate on the legal concepts enshrined in Art.8

⁴⁷ Human Rights Committee, *Bernadette Faure v. Australia* (23 November 2005) UN Doc CCPR/C/85/D/1036/2001, 11 [7.5].

⁴⁸ *Ibid.*

⁴⁹ Available on the OHCHR treaty body database <<http://tbinternet.ohchr.org>>, accessed 5 June 2018.

⁵⁰ Human Rights Committee, *Judge v. Canada* (13 August 2003) 20[10.3] UN Doc CCPR/C/78/D/829/1998.

of the ICCPR and bring them to life in light of new and evolving forms of human rights abuses.⁵¹

iii. The ILO's Approach to Forced Labour

Given the wholly inauspicious origins of the 1930 Forced Labour Convention, it is somewhat surprising that over the years the ILO has taken a more progressive approach to interpreting and clarifying the concept of forced labour, in line with the principle of effectiveness and the doctrine of dynamic interpretation of treaties.⁵² However, the unique tripartite structure of the ILO allows for the inclusion of non-state actors in its decision-making processes, which in turn shapes the approach of the organisation, alongside its supervisory mechanisms.⁵³ Although it became the first specialised agency of the UN in 1946, it is not generally considered as part of the UN human rights system and is often overlooked in mainstream discourse and academic literature on human rights.⁵⁴ Nonetheless, the organisation itself has long used the language of human rights in its approach to forced labour.

⁵¹ Stoyanova (n 21) 408.

⁵² For further discussion of these principles see Jonas Christoffersen, 'Impact on General Principles of Treaty Interpretation' in Menno Kamminga and Martin Sheinin (eds.) *The Impact of Human Rights Law on General International Law* (OUP 2009), 37-62.

⁵³ Gerd Oberleitner, *Global Human Rights Institutions* (Polity Press 2007) 107-110.

⁵⁴ *Ibid.*

In 1968, the ILO's Committee of Experts (CoE) – a key component of the supervisory mechanisms, comprising 20 independent jurists – noted that forced labour was the first human rights issue dealt with in ILO standards,⁵⁵ and subsequently referred to the 1930 Forced Labour Convention as a basic human rights instrument.⁵⁶ The CoE issues detailed comments in response to ratifying States' reports — submitted every two years — and employs General Surveys as a supervisory mechanism, providing interpretation of particular conventions and a detailed examination of their implementation by both ratifying and non-ratifying States.⁵⁷ In its 2007 General Survey on forced labour, the CoE affirmed that the so-called transitional period under the 1930 Forced Labour Convention which allowed for the continuation of forced labour 'expired long ago' and found that '[Articles 3 to 24] are therefore no longer applicable.'⁵⁸ Art. 7 of the 2014 Protocol to the 1930 Forced Labour Convention formally removes those provisions, and enjoyed widespread support at the time of its adoption.⁵⁹ By its 2012

⁵⁵ ILO Committee of Experts *General Survey: Forced Labour* (1968) 177 [4].

⁵⁶ ILO Committee of Experts *General Survey: Eradication of Forced Labour* (2007) 115 [209].

⁵⁷ Lee Swepston, 'Forced and compulsory labour in international human rights law' (ILO 2014) 10.

⁵⁸ ILO Committee of Experts *General Survey: Eradication of Forced Labour* (2007) 112 [196].

⁵⁹ Beate Andrees and Amanda Aikman, 'Raising the Bar: the Adoption of New ILO Standards Against Forced Labour' in Prabha Kotiswaran (ed), *Revisiting the Law and Governance of Trafficking, Forced Labour and Modern Slavery* (CUP 2017) 359-394, 380.

General Survey, the CoE referred to the prohibition of forced labour as 'a peremptory norm of international law on human rights.'⁶⁰

In addition to paving the way for the removal of the facilitative provisions of the 1930 Forced Labour Convention, the CoE has provided dynamic interpretation of the three key elements of the definition of forced labour contained therein: namely voluntary offer, work or service, and menace of any penalty. Voluntary offer 'refers to the freely given and informed consent of workers to enter into an employment relationship and to their freedom to leave their employment at any time' while work or service 'includes all types of work, service and employment, regardless of the industry or sector within which it is found, including the informal sector' (barring the permissible exceptions).⁶¹ Particularly progressive – especially when contrasted with the interpretation of forced labour put forward by the HRCtee in *Bernadette Faure v. Australia* – is that menace of any penalty 'should be understood in a very broad sense: it covers penal sanctions, as well as various forms of coercion ...[and]...might also take the form of a loss of rights or privileges'.⁶² It is also noteworthy that over the years, there appears to have been a convergence in the concepts of slavery and forced or compulsory labour within the ILO

⁶⁰ ILO Committee of Experts *General Survey: Giving Globalisation a Human Face* (2012) 103 [252].

⁶¹ *Ibid* 111 [271], 111 [269].

⁶² ILO Committee of Experts *General Survey: Eradication of Forced Labour* (2007) 20 [37].

understanding.⁶³ For example, Recommendation No. 190 lists forced labour as a practice similar to slavery.⁶⁴

Although Art.8 of the ICCPR confers the individual right to freedom from forced labour whilst the ILO 1930 Forced Labour Convention merely obliges States parties to 'suppress' the practice over time, the ILO has done much more than the HRCtee to clarify the scope of the right to freedom from forced labour. In practical terms, even if Burma/Myanmar *were* a State party to the ICCPR and to the Optional Protocol establishing an individual complaints mechanism, the HRCtee has limited naming and shaming measures at its disposal in cases of unsatisfactory implementation, which are largely ineffective when dealing with recalcitrant States.⁶⁵ The ILO does have enforcement mechanisms at its disposal but has only used them once in 'the most famous and fully litigated case in ILO legal history',⁶⁶ namely Burma/Myanmar.

Part III explores the role of local organisations in the Commission of Inquiry (CoI) in this case and the subsequent individual complaints procedure. As noted earlier, this is the

⁶³ Swepston (n 58) 13.

⁶⁴ ILO General Conference, 'Recommendation concerning the prohibition and immediate action for the elimination of the worst forms of child labour' Recommendation 190 (17 June 1999).

⁶⁵ Bantekas and Oette (n 45) 324.

⁶⁶ Brian Langille, 'The Curious Incident of the ILO, Myanmar and Forced Labour' in Adelle Blackett and Anne Trebilock (eds) *Research Handbook on Transnational Labour Law* (Edward Elgar Publishing 2015) 509.

only international human rights mechanism of its kind in operation in Burma/Myanmar, established after years of ILO negotiations. Part III then turns to the role of CHRO in engaging with the UPR mechanism over the timeframe of one complete cycle of the UPR, in order to increase leverage with the ILO in an effort to end forced labour in Chin State. Finally, Part III considers to what extent such efforts have been successful.

III. Leveraging International Legal and Human Rights Mechanisms to End Forced Labour in Burma/Myanmar: a Success Story?

According to Hopgood's thesis, global organisations will not only attempt to structure and institutionalise the local, but that this becomes an *inevitable* process of colonisation.⁶⁷ Hopgood argues that there is inherent tension between top-down authorities or 'Human Rights' as a global structure of laws and norms, and grassroots local human rights activism.⁶⁸ This suggests a clear-cut dichotomy between the work of local human rights activists and global norms and institutions, which is not entirely evident in practice. In certain cases, local human rights activism can and does leverage global organisations and/or institutions for its own ends. This arguably reflects tremendous tenacity and commitment rather than a process of colonisation in the case

⁶⁷ Hopgood (n 17) x, 172.

⁶⁸ *Ibid* x.

of efforts to bring an end to the practice of forced labour in Burma/Myanmar.

i. The Role of Local Organisations: the ILO Commission of Inquiry

Most academic literature on the ILO's CoI on forced labour in Burma/Myanmar tends to focus on the tripartite structure of the ILO – and in particular the role of the International Confederation of Free Trade Unions (ICFTU) in representing workers — as the most important factor in its establishment.⁶⁹ This arguably sidelines the crucial role of grassroots organisations in producing the documentary evidence of forced labour and *leveraging* the ICFTU within the tripartite structure, obliging the ILO to act.

The Federation of Trade Unions Burma (FTUB) was established on the Thai-Burma/Myanmar border by leading trade unionists who had fled the country in 1988, following the brutal crackdown by the junta. They maintained a clandestine network of activists within Burma/Myanmar, who collected information about incidents of forced labour and smuggled it out of the country.⁷⁰ The FTUB collected considerable evidence of portering exacted by the

⁶⁹ Patrick Bollé, 'Supervising Labour Standards and Human Rights: The Case of Forced Labour in Myanmar (Burma)' (1998) 137 ILR 391, 396-399; Francis Maupain, 'Is the ILO Effective in Upholding Workers' Rights?: Reflections on the Myanmar Experience' in Philip Alston (ed) *Labour Rights as Human Rights* (OUP 2005) 96-97; and Richard Horsey, *Ending Forced Labour in Myanmar: Engaging a Pariah Regime* (Routledge 2011) 12-16.

⁷⁰ Henry (n 20) 71.

Burma/Myanmar military, a practice which routinely involves civilians being compelled to carry weaponry, ammunition or other supplies for the military on foot in active conflict zones, often for days at a time, while being subjected to physical abuse. The FTUB first utilised their human rights documentation in 1991 by working in conjunction with the ICFTU, who submitted FTUB's evidence of compulsory portering to the ILO Committee of Experts.⁷¹ This was followed by a formal representation by the ICFTU regarding Burma/Myanmar's violations of the 1930 Forced Labour Convention under Art. 24 of the ILO Constitution in 1993, again based on evidence provided by the FTUB.⁷² Finally, in 1996, the ICFTU filed a complaint regarding portering and forced labour on large-scale infrastructure projects based on information collected by the FTUB and other local human rights organisations, which resulted in the Governing Body establishing a Commission of Inquiry pursuant to Art. 26(3) of the Constitution.⁷³

Similarly, although the three independent experts on the CoI were subsequently denied entry to Burma/Myanmar, they reviewed some 6,000 pages of documentary information, much of which was provided by CHRO and other local organisations such as the Human Rights Foundation of Monland, the Shan Human Rights Foundation, and the Karen Human Rights Group. This included several hundred

⁷¹ *Ibid* 73 and Bollé (n 70) 396.

⁷² A representation can be made by either the employers' group or the workers' group under Art 24 of the ILO Constitution 1919, available at <www.ilo.org> accessed 3 June 2018.

⁷³ Henry (n 20) 73.

Burma/Myanmar military orders issued to village leaders, requiring them to provide labourers. The experts on the CoI also travelled to border areas in India, Bangladesh and Thailand and took testimony from some 250 people who had been forced to flee as a result of their experiences of forced labour.⁷⁴

ii. **The Role of Local Organisations: Follow-up Mechanisms**

The CoI made three key recommendations, which continue to form the basis of ILO implementation monitoring today:

- (1) that Myanmar National legislation be brought into line with Convention No. 29 without further delay...;
- (2) that in actual practice no more forced or compulsory labour be imposed by the authorities, in particular the military;
- (3) that the penalties which may be imposed for the exaction of forced labour be strictly enforced, with thorough investigation, prosecution and adequate punishment of those found guilty.⁷⁵

⁷⁴ Report of the Commission of Inquiry (n 3) Appendices IV and V.

⁷⁵ Key excerpts published in the International Labour Office Report to the Governing Body, 'Follow-up to the resolution concerning remaining measures on the subject of Myanmar adopted by the Conference at its 102nd Session (2013) (5 November 2015) ILO Ref GB.325/INS/7(Rev.) 1 [4].

Although the regime could have appealed against these recommendations to the International Court of Justice (ICJ), it chose not to; but neither did it move forward with their implementation.⁷⁶ This prompted the unprecedented threat of punitive measures (to be decided by individual ILO members) in a Resolution under Art. 33 of the ILO Constitution in 2000 — again proposed by the ICFTU, with the FTUB playing an instrumental role behind the scenes.⁷⁷

ILO progress in negotiating monitoring mechanisms for the implementation of the CoI recommendations via numerous High-Level Missions was stilted during this period and marred by setbacks. In 2002, a Memorandum of Understanding was signed, but the attempted assassination of Aung San Suu Kyi at Depayin the following year saw the adoption of some Art. 33 measures.⁷⁸ In 2004, an informal complaints mechanism was established, but the regime prosecuted both complainants and their lawyers, alleging that these were ‘false complaints’ and insisting that the regime was within its sovereign right to prosecute. Two high profile cases around this time included the labour activist Su Su Nway and the lawyer Aye Myint.⁷⁹ By 2006, the Workers Group secured support for a motion that the International Labour Conference should review possible action to be taken

⁷⁶ ILO Constitution (n 74) Art 29.

⁷⁷ Henry (n 20) 72.

⁷⁸ The US government adopted sanctions via the *Burmese Freedom and Democracy Act* (28 July 2003), based, at least in part, on the ILO Resolution in favour of Art 33 measures. Maupain (n 70) 107.

⁷⁹ Ken Maclean, ‘Lawfare and Impunity in Burma since the 2000 Ban on Forced Labour’ (2012) 36 *Asian Studies Review* 189 – 206.

by the ILO under its Constitution to ensure Burma/Myanmar's compliance with the CoI recommendations, and prevent retaliatory action against complainants.⁸⁰ It is noteworthy that by this time the FTUB was able to directly participate in ILO proceedings through accreditation from the ICFTU and its successor, the International Trade Union Confederation.⁸¹

The ILO subsequently gave serious consideration to possible actions that could be taken under international law, including referral to the ICJ under Art. 37(1) of the ILO Constitution for either an advisory opinion, or a binding ruling regarding Burma/Myanmar's conduct and its obligations under the 1930 Forced Labour Convention. The ILO's guidance note also set out the various possibilities for international criminal prosecution of alleged perpetrators of forced labour — albeit rather remote, as Burma/Myanmar is not a State party to the Rome Statute of the International Criminal Court — given the findings of the 1998 Commission of Inquiry and subsequent reports of the ongoing pervasive use of forced labour by the military and other authorities in Burma/Myanmar, as documented by local human rights organisations and

⁸⁰ International Labour Conference, 'Additional agenda item: Review of further action that could be taken by the ILO in accordance with its Constitution in order to: (i) effectively secure Myanmar's compliance with the recommendations of the Commission of Inquiry; and (ii) ensure that no action is taken against complainants or their representatives', (Provisional Record Ninety-fifth Session Geneva 2006) ILO Doc ILC.95/PR/2, 21-24 and Appendix I.

⁸¹ Henry (n 20) 74.

included in reports by the UN Special Rapporteur.⁸² There were – and remain – considerable jurisdictional⁸³ and political barriers to individual criminal prosecutions, particularly given that such legal action by the Prosecutor of the International Criminal Court is dependent on a referral by the UN Security Council. Overall, the possibility of ILO referral to the ICJ raised complex and untested legal questions, but ultimately provided the ILO with significant leverage.⁸⁴ The regime was forced to make concessions, and finally, in 2007, the Supplementary Understanding (SU) was successfully negotiated, which provided for the formal establishment of an individual complaints mechanism.⁸⁵

⁸² International Labour Office Governing Body, 'Developments concerning the question of the observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29): Legal aspects arising out of the 95th Session of the International Labour Conference' (November 2006) ILO Doc GB.297/8/2. See also 'Collected Reports to the UN General Assembly by the Special Rapporteurs on the Situation of Human Rights in Myanmar 1992 – 2009' and 'Collected Reports to the Human Rights Council and the Commission on Human Rights by the Special Rapporteurs on the Situation of Human Rights in Myanmar 1992 – 2009', compiled by the Online Burma/Myanmar Library and available at <<http://www.burmalibrary.org>> accessed 5 June 2018.

⁸³ *Ibid* 5-10 [14]-[32].

⁸⁴ Richard Horsey, 'The International Labour Organisation and Forced Labour in Myanmar' in Pedersen and Kinley (eds) *Principled Engagement: Negotiating Human Rights in Repressive States* (Routledge 2016) 118.

⁸⁵ ILO, *Supplementary Understanding between the Government of Myanmar and the International Labour Office*, and other associated documents (2007) 1 [1].

Under this mechanism, once a complaint has been investigated and upheld by the Liaison Officer, it is passed to the government's Working Group for action. Victims are entitled either to compensation, an apology, or guarantee of non-recurrence, while the perpetrators may be punished.⁸⁶ Although under the SU, 'Complaints submitted under the present Understanding shall not be a ground for any form of judicial or retaliatory action against complainant(s)...',⁸⁷ in practice some reprisal prosecutions of complainants continue to date, particularly of human rights defenders.⁸⁸ In spite of the risks, people have consistently utilised the complaints mechanism since 2007.⁸⁹ This needs to be understood in the context of the absence of rule of law and the lack of an independent judiciary in the country; the ILO complaints mechanism – albeit flawed — is therefore the main avenue for redress for forced labour.

⁸⁶ ILO forced labour complaints mechanism
<<http://www.ilo.org/yangon/complaints/lang--en/index.htm>>
accessed 5 June 2018.

⁸⁷ Supplementary Understanding (n 86) 1 [9].

⁸⁸ International Labour Office Report to the Governing Body, 'Follow-up to the resolution concerning remaining measures on the subject of Myanmar adopted by the Conference at its 102nd Session (2013)' (7 February 2018) ILO Doc GB.332/INS/8 4 [15].

⁸⁹ International Labour Office Report to the Governing Body, 'Report on ILO activities in Myanmar' (20 February 2018) ILO Doc GB.320/INS/6(Rev.), Appendix I.

iii. Engaging the UPR to Increase Leverage with the ILO: the Work of CHRO

As noted earlier, at the time of the first cycle of the Universal Periodic Review of Burma/Myanmar's human rights record under the UN Human Rights Council in 2010/11, Burma/Myanmar was only a State party to CEDAW and CRC. At the time of writing, the ILO individual complaints procedure is the only human rights mechanism in the country. The 1930 Forced Labour Convention, the complaints mechanism, and forced labour were key issues raised during the interactive dialogue.⁹⁰ The Convention, the 2002 Memorandum of Understanding (MoU), and 2007 Supplementary Understanding formed the legal basis for CHRO's recommendations to Burma/Myanmar as part of the UPR. CHRO called on the regime to cooperate fully with the ILO to end the practice of forced labour; hold awareness-raising seminars in Chin State; and reproduce leaflets about the complaints mechanism in ethnic Chin languages.⁹¹

There were 35 documented incidents of forced labour in CHRO's individual submission to the second cycle of the UPR in 2015, in comparison with 70 in the first submission, representing a fifty percent reduction in the number of documented incidents of forced labour in Chin State.⁹² It is

⁹⁰ UN Human Rights Council 'Report of the Working Group on the UPR: Myanmar' (24 March 2011) UN Doc A/HRC/17/9.

⁹¹ CHRO (n 9) 5 [25].

⁹² CHRO, 'Burma/Myanmar: Individual Submission to the UN Universal Periodic Review' (March 2015) 5 [19].

difficult to assess to what extent the ILO complaints mechanism itself brought about this change, in part because the publicly available statistics about complaints are not disaggregated geographically. However, in line with CHRO's UPR recommendations, an ILO focal point was appointed for Chin State to facilitate complaints – one of only four in the country – and leaflets distributed in some of the Chin languages.⁹³

Perhaps more importantly, CHRO's strategic partnership with PHR for research and advocacy purposes increased CHRO's leverage both with the ILO and within the UPR process. PHR's report, accompanied by photographs of forced labour provided by CHRO, received media coverage in at least 250 media outlets around the world. In Geneva CHRO representatives met with Kari Tapiola, Special Advisor to the ILO Director-General, as well as with dozens of diplomats from Permanent Missions to the UN in Geneva and lobbied for CHRO's UPR recommendations on forced labour. Three recommendations on forced labour put forward by States during the Review were accepted by Burma/Myanmar.⁹⁴ Although the recommendations are not

⁹³ ILO 'Report to the Governing Body' (March 2012) ILO Doc GB.313/INS/6 7 [27].

⁹⁴ ILO 'Report to the Governing Body', (March 2011) ILO Doc GB.310/5 6[33]. Recommendations put forward by Slovenia, New Zealand and France, UN Human Rights Council 'Report of the Working Group on the UPR: Myanmar' (24 March 2011) UN Doc A/HRC/17/9 and UN Human Rights Council 'Addendum: Views on conclusions and/or recommendations, voluntary

legally binding, they do indicate political commitment on the part of the State under review. Implementation of the accepted recommendations also forms part of the monitoring process in subsequent rounds of the UPR. These recommendations therefore enhanced the ILO's negotiating power on their High-Level Mission to the country the following month.⁹⁵

A key commitment secured during that Mission was for a high-level joint Ministry of Labour-ILO awareness-raising seminar in Chin State; arguably a direct result of CHRO's advocacy.⁹⁶ The seminar – the first of its kind in Chin State – took place in May 2011, attended by 160 senior personnel including military officers and judges.⁹⁷ This was particularly significant, because the seminar was held jointly with the Ministry of Labour and therefore any subsequent report of forced labour could be followed up directly under the original MoU, rather than relying on the individual complaints mechanism. CHRO took advantage of this avenue and some forced labour practices reported to the ILO in Burma/Myanmar were brought to an end soon after reporting. In one high-profile case involving the Chief Minister of the Chin State, CHRO fieldworkers affirmed that the violation stopped within two weeks of reporting it to the

commitments and replies presented by the State under review [Myanmar]' (27 May 2011) UN Doc A/HRC/17/9/Add.1.

⁹⁵ Ibid 6 [33].

⁹⁶ Ibid 4 [25].

⁹⁷ CHRO, 'CHRO Welcomes ILO's Visit to Chin State', 21 May 2011 <<http://www.chro.ca/index.php/chro-media/press-releases>> accessed 5 June 2018.

ILO. As such, CHRO's engagement with international legal and human rights mechanisms to end the practice of forced labour can be qualified as a *partial* success.

Both the Commission of Inquiry and the subsequent individual complaints mechanism would have arguably never been established without the documentary evidence of forced labour produced by CHRO and other local organisations. For CHRO in particular, the strategic partnership with PHR reinforced its leverage within the UPR process, which in turn worked in tandem with ILO mechanisms to bring about significant change in practice on the ground; a partial but nonetheless hard-won human rights success in a recalcitrant state like Burma/Myanmar.

iv. Assessing Progress against the Commission of Inquiry Key Recommendations

The same notion of partial success is evident to some degree in assessing progress against the implementation of the three key recommendations made by the CoI in 1998 over the time-frame of one cycle of the UPR. The first key recommendation called for legislative reform to bring Burma/Myanmar's domestic law in line with its obligations under the 1930 Forced Labour Convention. Although Order 1/99 and its Supplementary Order in 2000 issued under the former military regime stipulated that illegal exaction of forced labour shall be punished as a penal offence, the colonial-era 1907 Towns and Villages Acts legally authorised the use of forced labour and remained on the statute books. The 2012

Ward and/or Village Tract Amendment Act does bring domestic legislation in line with the Convention, although significant challenges with accountability remain.⁹⁸

The third key recommendation of the CoI clearly sets out that in order to meet its obligations under the 1930 Forced Labour Convention, Burma/Myanmar must pursue accountability for alleged perpetrators of forced labour. In practice there has arguably been very limited progress in this area, which is unsurprising given the constitutional constraints outlined above and the lack of rule of law in the country. As of November 2015, according to the ILO no person had been prosecuted under the forced labour provisions of the 2012 Ward and/or Village Tract Amendment Act.⁹⁹ Since the 2007 Supplementary Understanding establishing the complaints mechanism, more than 275 prosecutions of military personnel had taken place by November 2015. However, these were conducted under the military's court martial system, which lacks civilian oversight. The punishments ranged from formal reprimands, fines, demotion, and dishonourable discharge to imprisonment,¹⁰⁰ raising questions over whether this constitutes 'adequate punishment of those found guilty' as

⁹⁸ ILO Report of the Governing Body, 'Review of the situation in Myanmar on issues relating to ILO activities, including forced labour, freedom of association, and the impact of foreign investment on decent working conditions' (5 March 2015) ILO Ref GB.323/INS/4, 4 [18(b)].

⁹⁹ International Labour Office Governing Body 'Follow-up to the resolution concerning remaining measures on the subject of Myanmar adopted by the Conference at its 102nd Session (2013)' (5 November 2015) ILO Doc GB.325/INS/7(Rev.) 5 [27].

¹⁰⁰ *Ibid* 5 [26].

required under the third key CoI recommendation, given the gravity of forced labour violations.¹⁰¹ Furthermore, the ILO noted reluctance on the part of the authorities to bring some cases of forced labour to final closure to the satisfaction of the complainants.¹⁰²

With regard to the second and arguably most important recommendation, the ILO continued to receive reports and complaints of forced labour – including by the military – over the time-frame of the UPR cycle, although these have gradually reduced in number.¹⁰³ In March 2015, the ILO observed that, ‘while considerable progress has been made, there remains a long way to go in respect of both the policy settings and the adaptation of behaviours required for their application.’¹⁰⁴ A number of both positive and negative factors need to be taken into consideration in order to understand this piecemeal progress. In March 2012, President Thein Sein’s Burma/Myanmar government made a public commitment to eradicate forced labour by the end of 2015, and signed a new Memorandum of Understanding with the ILO to this effect, including a highly detailed plan of action

¹⁰¹ *Ibid* 5 [26] 1 [4].

¹⁰² *Ibid* 5 [28].

¹⁰³ *Ibid* 4 [18]-[19].

¹⁰⁴ International Labour Office Report of the Governing Body, ‘Review of the situation in Myanmar on issues relating to ILO activities, including forced labour, freedom of association, and the impact of foreign investment on decent working conditions’ (4 March 2015) ILO Doc GB.323/INS/4, 1 [4].

for tackling different forms of forced labour.¹⁰⁵ The Commission of Inquiry and subsequent follow-up mechanisms ensured that the ILO has a strong mandate in the country, and that the ILO has consistently pursued a strategy of sustained pressure and engagement whilst also providing essential technical assistance. However, political will on the part of the Burma/Myanmar government has ultimately proven to be limited in terms of pursuing prosecutions to end impunity for forced labour, and eradicating the practice altogether. The peace process initiated in 2012 is flawed, with renewed armed conflict breaking out in both ceasefire and non-ceasefire areas,¹⁰⁶ and throughout 2015 the military continued to exact forced labour from the civilian population in active conflict zones.¹⁰⁷

At the time of writing, the complaints mechanism and the 2012 Memorandum of Understanding and detailed action plan have been extended until the end of 2018, but only after protracted and difficult negotiations with the government of

¹⁰⁵ Strategy for the Elimination of Forced Labour (Joint Government of the Republic of Union of Myanmar and International Labour Organisation) (16 March 2012) available at <http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---iloyangon/documents/genericdocument/wcms_191415.pdf> accessed 5 June 2018.

¹⁰⁶ See for example <<http://mmpeacemonitor.org/>>, accessed 5 June 2018.

¹⁰⁷ International Labour Office Report of the Governing Body (4 March 2015) (n 105) 3 [13].

Burma/Myanmar.¹⁰⁸ The ILO continues to receive complaints via the mechanism, but the authorities also persist in bringing reprisal cases against high-profile complainants in forced labour cases.¹⁰⁹ Local human rights organisations continue to document cases of forced labour, especially in active conflict zones where demands for portering and other forms of forced labour by the Burma/Myanmar military are ongoing.¹¹⁰ Future strategies to eradicate forced labour and end impunity for this practice in Burma/Myanmar are mired in uncertainty, given that political will appears to be dwindling, the military is constitutionally beyond civilian control, and significant political hurdles remain to further recourse to international legal action.

¹⁰⁸ International Labour Office Report to the Governing Body (7 February 2018) (n 89) 1 [1]-[2].

¹⁰⁹ *Ibid* 4 [15]-[16].

¹¹⁰ Shan Human Rights Foundation, 'Burma Army LIB 147 uses forced labor, loots food and requisitions civilian trucks during military operation against SSPP/SSA in Hsipaw' (4 December 2017) <<http://www.shanhumanrights.org/eng/index.php/338-burma-army-lib-147-uses-forced-labor-loots-food-and-requisitions-civilian-trucks-during-military-operation-against-sspp-ssa-in-hsipaw>> accessed 5 June 2018 and Karen Human Rights Group, 'Dooplaya Incident Report: Forced labour ordered by Tatmadaw officer in Win Yay Township, October 2017' (3 April 2018) <<http://khr.org/2018/04/18-24-i1/dooplaya-incident-report-forced-labour-ordered-tatmadaw-officer-win-yay-township>> accessed 5 June 2018.

IV. Conclusion

This Article has traced the origins of the interrelated legal concepts of slavery and forced labour, and critically analysed their interpretation under international human rights law. It has argued that in spite of the provisions of the colonial-era 1930 Forced Labour Convention that provided for the perpetuation of forced labour, over time the International Labour Organisation has adopted a progressive approach to interpreting and clarifying the concept of forced labour and developing the right to freedom from forced labour. This Article has sought to present a nuanced analysis of the significant challenges to ending this practice in the complex context of its pervasive use by the military and local authorities in Burma/Myanmar. In particular, it has foregrounded the paramount role of local human rights organisations in establishing both the 1998 ILO Commission of Inquiry, and its follow-up mechanisms. It has demonstrated that local engagement with international legal and human rights mechanisms can have a positive impact on the ground – albeit limited, in a recalcitrant state – in terms of changing practice. It has argued that rather than being *colonised* by global institutions, organisations, and mechanisms, local human rights organisations have successfully leveraged them. Although the challenges remain – particularly in terms of accountability, legal protection for complainants, and satisfactory resolution of complaints – local human rights organisations will undoubtedly continue to play a leading role in addressing these challenges over the long term.

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