



INTERNATIONAL TRADE UNION CONFEDERATION BURMA SANCTIONS BENCHMARKS

For decades, the global trade union movement has worked to promote democracy and human rights in Burma, largely through supporting trade union and civil society organizations operating both inside and outside of Burma. In coordination with these organizations, we also lobbied several governments and international institutions to impose a range of sanctions meant to hasten the restoration of democracy and respect for international human rights. In response, the governments of the United States, Canada, the European Union, and Australia each imposed a combination of travel, trade, investment, financial and diplomatic sanctions. There is an ever-growing call, however, to review these sanctions in response to both the actual and perceived steps taken by the government of Burma.

We do not believe that the time is yet ripe for a major revision of sanctions. Further, any relaxation in sanctions must be done incrementally, matching evidence of real and substantial progress with an appropriate relaxation of sanctions. This document attempts to articulate the priorities of the trade union movement, and suggests an appropriate response for meeting those benchmarks. We note that these benchmarks do not cover the full range of issues that Burma must address, and we urge governments to be also guided by the recommendations of other civil society organizations that raise additional and compelling human rights concerns.

Background:

In late-2011-early-2012, we have in fact seen some changes. The government initiated a political dialogue with Daw Aung San Suu Kyi (ASSK) in 2011, which is ongoing. The National League for Democracy (NLD) succeeded in obtaining important changes to the election laws that enabled it to register as a political party and allowed ASSK and other NLD activists to stand for parliamentary seats in the April 2012 by-elections. The government has recently released several political prisoners, including trade union activists and leaders of the "88-Generation." A cease-fire agreement was recently inked with some ethnic groups, including the Karen National Union (KNU)(though that agreement now remains in some doubt). Censorship of media and restrictions on internet access has been lifted.

However, much remains to be done in these areas where steps have already been taken, as these issues are far from resolved and fundamental legislative and institutional reforms are yet to be enacted. The current constitution remains deeply flawed and the parliament continues to be dominated by current and former military personnel. A large number of political prisoners remain in jail, and there appears little if anything in the way of help or support from the government for those who have suffered years, if not decades, of torture and/or inhumane prison conditions. The laws and judicial system that imprisoned them in the first place have not been changed – meaning that these activists could once again find themselves in jail. Moreover, despite the ceasefire agreements, the military has continued brutal attacks on ethnic communities in Kachin and Shan states and the underlying causes of the long-running armed conflicts have not been addressed.

Further, the government has not yet begun to take serious steps in many other crucial areas. Despite the establishment of an ILO Commission of Inquiry in 1998, forced labour (including the conscription and use of child soldiers) remains widespread. The government has utterly failed to

rein in the army, which is responsible for most of the forced labour, or ensure that those responsible are prosecuted and face appropriate criminal penalties if convicted. Other serious human rights abuses continue throughout the country, with little accountability for those committing these crimes.

Reform of the judicial system to ensure independence from military or political interference has not been addressed.

Despite new legislation, trade unions still cannot register and function, and modern legislation governing collective bargaining and dispute settlement remains wholly absent. Laws, orders and decrees which erect serious obstacles to the exercise of freedom of association remain in place, and the ITUC-affiliate, the Federation of Trade Unions – Burma (FTUB), remains outlawed as an alleged “terrorist organization.” Its General Secretary also stands falsely accused of committing acts of terrorism. Repeated statements from various high-level officials give us great concern that the government will also attempt to frustrate the rise of an independent trade union movement.¹

In this process, we emphasize the importance of dialogue among all parties at the national and international level. The ITUC is open and willing to engage in a frank and open dialogue with all parties, including the government of Burma and Burmese business associations, in consultation with its affiliates, to help chart a course toward re-founding the country on the basis of respect for fundamental human rights, social inclusion, environmental protection and broadly shared, sustainable economic and social development. We understand such development to be based on the promotion of decent work, full employment, social protection and responsible and accountable investment which respects ILO standards, the UN Framework on Business and Human Rights, and the OECD Guidelines on Multinational Enterprises.

KEY TRADE UNION BENCHMARKS FOR BURMA

A. Labour Related Benchmarks

1. End Forced Labor:

In 2011, the ILO Committee of Experts reported that it had received “extensive and detailed documentation referring to the persistence of widespread forced labour practices by civil and military authorities in almost all of the country’s states and divisions.”² Subsequent reports from credible sources show that the widespread and systematic use of forced labour (including forced recruitment of child soldiers) continues apace in Burma. The military in particular continues to force villagers to perform portering, road construction, road-repair and military camp

¹ Government officials have also stated on various occasions that trade unions are unnecessary. In June, a labour ministry official told the media, “The Ministry will stand for the workers so they don’t need a labour union... If they get a chance to form a labour union, it can be a group which can destroy the stability of the country.” See *Burmese Chamber of Commerce Threatens Crackdown on High-Paying Factories*, The Irrawaddy, June 7, 2011, available online at http://www.irrawaddy.org/article.php?art_id=21445

² http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@relconf/documents/meetingdocument/wcms_151556.pdf

construction, fence building and road clearing. In some cases, villagers are also forced to cultivate rice and other crops on plantations for military use.³ In some areas, such as the Arakan state, the use of forced labour was reported to have actually increased in 2011.⁴ Moreover, in many regions, people willing to present complaints are either threatened or discouraged from doing so.

In 2011, Human Rights Watch and the Karen Human Rights Group issued a lengthy report, *Dead Men Walking: Convict Porters on the Front Lines in Eastern Burma*, on the use of hundreds of convicts for forced porting by the military in, inter alia, northern Karen State.⁵ In interviews, prisoners reported being subjected to horrifying conditions. The military executed porters, inflicted physical abuse, failed to protect them from danger arising from military operations, and refused to care for the wounded or sick. Porters were denied food and water and forced to carry extremely heavy loads over hazardous terrain with minimal rest.

There are also continuing reports of forced child recruitment by the armed forces. Few have been punished, and those that have received administrative sanctions such as discipline or discharge from the army.

In 1998, the ILO Commission of Inquiry directed the government of Burma to take the necessary steps to ensure: 1) that the relevant legislative texts, in particular the Villages Act and the Towns Act, be brought into line with the Convention; 2) that in actual practise, no more forced or compulsory labour be imposed by the authorities, in particular the military, and 3) that the penalties which may be imposed under section 374 of the Penal Code for the exaction of forced or compulsory labour be strictly enforced, which required thorough investigation, prosecution and adequate punishment of those found guilty.

The ILO Report to the November 2011 Governing Body, “Developments concerning the question of the observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29)” demonstrates that while there have been some small steps forward, Burma has yet to fulfill any one of these requirements over a decade after the establishment of the Commission.⁶ The government must implement fully the benchmarks established by the ILO Commission of Inquiry and also provide effective remedies for victims.⁷

³ February 2011 Newsletter, available online at www.shanhumanrights.org/index.php/newsletter/74-2011/305-february-2011.html; March 2011 Newsletter, available online at www.shanhumanrights.org/index.php/newsletter/74-2011/306-march-2011.html.

⁴ See, The Arakan Project, *Forced Labour after the Elections: An Overview of Forced Labour Practices in North Arakan, Burma (Nov. 2010-July 2011)*. The report also notes that observes estimate that 35-40% of forced labourers are children – some as young as 10 years old.

⁵ The report is available online at <http://www.hrw.org/reports/2011/07/12/dead-men-walking-0>. A lengthy annex containing the interviews used for the report is available online at <http://www.khrg.org/khrg2011/khrg1102.pdf>.

⁶ Available online at http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_166958.pdf.

⁷ Both the United States and the European Union suspended Burma’s GSP benefits because of its persistent and widespread use of forced labour. Certainly, GSP should not be reinstated until forced labour is eliminated.

2. Guarantee Freedom of Association and Collective Bargaining as Guaranteed under ILO Conventions 87 and 98.

The Government of Burma enacted a Labour Organizations Law (LOL) in October 2011. This is undoubtedly a step forward from the previous, long-standing situation, where freedom of association was prohibited in law and practice. However, two major problems remain. First, the LOL has not yet entered into force, as the government now claims that it must first adopt implementing regulations before trade unions may register. This important detail was disclosed to no one (including the ILO Governing Body in November), and local trade unions thus sought to register under the new law. Some of the trade union leaders were subsequently interrogated and threatened by police, special forces and local authorities. Every application has since been turned down. As of today, there remains no legal framework in force for unions to register and operate. Second, the LOL does not fully afford the rights guaranteed under ILO Conventions 87 and 98. Future revisions to the LOL and, if necessary, implementing regulations must be undertaken through a tripartite process, involving government, employer and trade union representatives, which unfortunately was not the case when either were drafted.

The LOL is nearly devoid of any operable language regarding collective bargaining and dispute settlement. In the absence of such language, it remains unclear which laws - if any - govern industrial disputes. This too must be remedied by the passage of legislation establishing a duty to bargain collectively in good faith and expeditious procedures for dispute settlement.

Finally, labour legislation (as well as various orders and decrees affecting the exercise of freedom of association) adopted in the 1920s, the 60s and the 80s may still remain in force; indeed, only the Trade Union Law of 1926 is expressly repealed by the LOL. In particular, we are concerned that the following have not been expressly repealed to our knowledge: **Order No. 2/88** (which prohibits the gathering, walking or marching in procession by a group of five or more people regardless of whether the act is with the intention of creating a disturbance or of committing a crime); **Order No. 6/88** (which provides that “organizations shall apply for permission to form to the Ministry of Home and Religious Affairs” and states that any person found guilty of being a member of, or aiding and abetting, or using the paraphernalia of, organizations that are not permitted, shall be punished with imprisonment for a term which may extend to three years; **Unlawful Association Act** (which provides that whoever is a member of an unlawful association, or takes part in meetings of any such association, or contributes or receives or solicits any contribution for the purpose of any such association, or in any way assists the operations of any such association, shall be punished with imprisonment for a term which shall not be less than two years and more than three years and shall also be liable to a fine; and **Declaration No. 1/2006** (declaring the Federation of Trade Unions of Burma (FTUB) as “terrorist organization” although it is a bona fide trade union working through non-violent means). These decrees must be repealed.

We are particularly concerned that the government of Burma continues to consider the FTUB a terrorist organization, and its General Secretary a terrorist, despite several recommendations from the ILO calling on the government to recognize the FTUB as a legitimate trade union organization.⁸ Until that time, the leadership of FTUB are forced to continue to administer the

⁸ See, e.g., Committee on Freedom of Association Case No. 2591 (Burma) 2008, ¶ 1093.

union's work from exile. The FTUB must be allowed to operate freely within Burma as a registered labour federation and its leaders must be allowed to return.

The government must grant a visa, when officially requested, to permit an expert(s) on freedom of association to work in the ILO Office in Rangoon to provide technical assistance to the nascent trade union movement. This has been a long-standing request of the global labour movement.

Further, we expect the establishment of a national tripartite body, which is tasked with submitting comprehensive regular reports to the ILO Governing Body for the next 5 years regarding the registration and recognition of trade unions - including local unions, regional unions, federations and confederations. This body could also be tasked with providing the necessary revisions for the LOL.

B. Human Rights/Democracy Benchmarks

1. Release Remaining Political Prisoners and Allow the Return of Political Exiles:

The government has released hundreds of political prisoners in recent months, including many trade union activists. However, the government must complete its work, unconditionally release all remaining political prisoners and pass an amnesty law annulling their convictions. The Assistance Association for Political Prisoners (Burma) (the AAPPB) estimates that there remain over 1,000 political prisoners, even after the release of 651 prisoners on January 16, 2012.⁹ In addition, the government must take responsibility for the physical and mental effects of long-term imprisonment on these prisoners, as well as the torture and other brutal treatment they have endured, and adopt a comprehensive plan to support their recovery. Similarly, those who were forced into exile should be allowed to return without threat of arrest because of past political activities.

In this regard, the Parliament must also work to repeal the numerous laws that were used to imprison these activists in the first place. In the meantime, the government should immediately cease using these laws to stifle political dissent.

2. End Other Serious Human Rights Abuses:

Forced labour is sadly not the only human rights violation committed by Burmese military and civilian authorities. Human rights organizations and the United Nations have documented widespread and systematic human rights violations, including war crimes and crimes against humanity, throughout Burma in 2011-12. In ethnic territories in particular, these include extrajudicial killings, torture, rape, disappearances, forced relocation, destroying water and food supplies and razing villages. This has created a massive refugee crisis, with over 450,000 internally displaced persons and a much larger number of refugees in Burma's neighboring and third countries. The government must bring an end to these human rights abuses committed by the armed forces and civilian officials. The government should adopt clear policies to respect

⁹ There remains some dispute as to how many political prisoners remain in Burma. We support AAPPB's recommendation that a UN-backed verification process be undertaken to determine exactly how many political prisoners remain in Burma.

international law and ensure they are respected and implemented through the armed forces chain of command to the rank and file. When violated, those responsible must be punished fully. To the extent that domestic law is inconsistent with international human rights law, Parliament should act expeditiously to ensure that its laws meet international standards. These need to be enforced by an independent, professional judicial system. In the meantime, the government must also allow monitors to have unimpeded access to areas where human rights violations are occurring.

3. Enter Into Nationwide Ceasefire and Begin Process to Fully Address Root Causes of Conflict:

Burma will not have a sustainable and peaceful future if the ethnic conflicts continue. The government must work towards and achieve a nationwide ceasefire, which is a prerequisite for comprehensive political, social or economic development in Burma. However, the government should not stop there but also address the issues that gave rise to the decades-long conflicts. Any ceasefire must include a commitment to negotiate over the goals of the ethnic minorities for constitutional decentralization/federalism, power-sharing, a fair federal fiscal system, and the rights of individual minorities, including religious, cultural, and linguistic rights. This is the only way to ensure a sustainable peace.

4. Free and Fair Elections and Curtailing Role of the Military in Government and Economy:

Burma must hold free and fair elections in which all ethnicities and citizens can participate freely and anyone who meets requisite qualifications should be allowed to run for office. The upcoming by-elections provide an important test to determine whether recent changes to the political parties law have been fully implemented. In future elections, ethnic political parties from throughout Burma must also be allowed to participate. International observers must be allowed to monitor the elections throughout Burma in order to assess whether Burma has committed to democratic reforms. Further, the 2008 Constitution gives significant power to the military. The Constitution should be amended as soon as possible to remove the military from the political sphere. The government must also introduce legislation to substantially curtail the military's economic holdings and their role with regard to foreign direct investment.

Conclusion:

The international trade union movement does not suggest a mechanical approach to the relaxation of sanctions, where a specific sanction is paired with a benchmark. Rather, we see a gradual, measured lifting of sanctions as the government of Burma makes progress on this complete list. For example, it sees "soft," targeted sanctions lifted only when there is evidence of real structural, albeit partial, reform (e.g. 50%), more economic sanctions lifted when there is evidence of more substantial progress (e.g. 75%), and a complete removal of sanctions (trade and investment), when these benchmarks have been fully implemented. In the meantime, governments and international institutions could help accelerate this process, in consultation with employers and workers organizations, and other civil society organizations, by providing technical assistance to overcome the many problems identified throughout this document.

The international community must begin to prepare now for a post-sanctions Burma. Investment in Burma, particularly from Asia (and especially China), has been on-going and is

only intensifying. And, as sanctions softened or are lifted, there will no doubt be a “gold rush” of international investment, seeking to take advantage of the country’s abundant natural resources, low labour costs and lack of regulation for public accountability. The international community can and must prevent one misery simply being replaced by another. It is vitally important that new investment in Burma, when sanctions are eventually lifted, support the long-term economic and social development of the nation. This cannot be accomplished without respect for the rights of workers, protection of the environment and public transparency and accountability. To do this will require coordination at the international level and a commitment by governments, corporations and donors to fully abide by a set of international principles on corporate responsibility and accountability. Existing principles, such as the OECD Guidelines on Multinational Enterprises and the Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework, can well serve as the rules of the game.