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September 3, 2007

Mr. Kari Tapiola
Executive Director
International Labor Organization
4 route des Morillons
CH-1211 Genève 22
Switzerland

Via E-Mail (ednorm@ilo.org)

Subject: Request for ILO Intervention in Burma for Violations of ILO Principles by the Ruling Military Regime

Dear Mr. Tapiola:

Warm greetings from the Burma Lawyers' Council. On behalf of the BLC as well as the oppressed Burmese people, I would like to express my gratitude to you and the ILO for your previous and current contributions to promote the labor rights of the people in Burma. Please find below information on additional violations of labor rights by the SPDC.

1. It has come to the attention of the Burma Lawyers' Council (BLC) that a large number of civil service and military personnel in Burma have recently tried, unsuccessfully, to resign from their positions. The State Peace and Development Committee (SPDC) has required them to continue working against their will. The BLC has also learned that, in response to the ongoing protests around the country, the SPDC has been forcing teachers to act as security guards in schools to monitor the protests. The BLC views these practices by the SPDC as forced labor that violates the "Fundamental Principles and Rights at Work" of the International Labour Organization (ILO) and the ILO Forced Labour Convention of 1930.

2. In February 2007, the ILO concluded an "Understanding" with the SPDC designed to provide "a mechanism to enable victims of forced labor to seek redress."¹ The Understanding provides alleged victims full freedom to submit complaints to the ILO Liaison Officer in Rangoon. The Liaison Officer then makes a confidential preliminary

¹ ILO Press Release, February 26, 2007, http://www.ilo.org/global/About_the_ILO/Media_and_public_information/Press_releases/lang--en/WCMS_081868/index.htm.

assessment as to whether a case involves forced labor so that such cases can be investigated by the SPDC authorities and appropriate action taken against the perpetrators. The Understanding incorporates guarantees that no retaliatory action will be taken against complainants.

3. The BLC is deeply concerned that the SPDC will not honor the protections in the ILO Understanding, particularly for government personnel who resign from their posts. The SPDC has a history of intimidating citizens to discourage complaints. Government employees are particularly susceptible to intimidation because they know firsthand how the SPDC operates. The Understanding also poses practical difficulties; the Liaison Officer is located in Rangoon, far from workers in rural areas who are likely to be exploited. Moreover, the Understanding authorizes the SPDC, rather than a neutral body, to investigate alleged cases of forced labor. The BLC questions whether the SPDC is capable of investigating and punishing a perpetrator of forced labor when the perpetrator is the SPDC itself. Finally, the BLC anticipates that the SPDC will argue that refusing to accept a resignation is not forced labor. This letter aims to clarify that such action is indeed a type of forced labor.

4. While the ability of civil servants to resign depends on the terms of their contracts, all employees whose contracts have come to an end or who are otherwise resigning in compliance with applicable law must not be forced to continue to work. The BLC recognizes that the refusal to accept a job resignation is not a traditional form of forced labor. Nonetheless, it clearly fits the ILO definition, which provides that forced labor is “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.”² First, the fear of the SPDC constitutes the “menace of penalty.” The SPDC is a brutal military regime that has a long history of harshly punishing anyone who disagrees with its policies or disobeys an order. Second, individuals who submit notices of resignation are clearly not offering themselves voluntarily when they are forced to continue to work.³

5. In a 2004 letter to the United Nations, the SPDC claimed that the Burmese military is a completely voluntary force.⁴ There is clear evidence that this declaration is false.⁵ Nonetheless, if the SPDC claims that all soldiers are voluntary, it must permit them to resign. Forcing a soldier to continue to serve after resignation would, in addition to violating international labor standards, contradict the SPDC’s own statement to the UN.

² International Labour Organization, “Rules of the Game: A Brief Introduction to International Labour Standards,” p. 28 (2005).

³ Although the ILO definition makes exceptions for “compulsory military service” and “normal civic obligations”, the instances at issue here do not fall into either of those categories. According to the SPDC, there is no compulsory military service in Burma; furthermore, civil servants whose primary job is government work are not performing “normal civic obligations.”

⁴ Child Soldiers Global Report 2004, http://www.child-soldiers.org/document_get.php?id=860. The letter provided: “The Myanmar Armed Forces is an all volunteer force and those entering the military do so of their own free will. There is neither a draft system nor forced conscription by the Government of Myanmar. Forced conscription in any form is strictly prohibited throughout the country.”

⁵ See, e.g., Yeni, “Running Scared”, March 2006, <http://www.irrawaddy.org/aviewer.asp?a=5535&z=102>.

6. Similarly, the SPDC is engaging in forced labor when it requires teachers, against their will, to monitor school premises, often even at night, in order to alert authorities about peaceful political activities. When they were originally hired, these teachers agreed to educate their fellow citizens, not act as spies. Moreover, they are being forced to participate in the violation of a fundamental human right, namely that of freedom of expression.

7. The abolition of forced labor as defined and codified in the 1930 ILO Convention has risen to the status of *jus cogens* over the past century.⁶ The SPDC has an obligation not only to the people of Burma but also to the international community to uphold its commitment to take all measures to stop forced labor.

8. The BLC respectfully requests the ILO to acknowledge that refusal by the SPDC to accept lawful resignations and forcing educators to act as security guard informants is forced labor, and to make clear to the SPDC that such practices are unacceptable and inhumane. There needs to be a fair and transparent procedure by which military personnel, civil servants, and teachers can report these violations to an objective organization without fear of retaliation. The investigation of complaints should be performed by a body with no ties to the SPDC.

Thank you very much for your kind attention.

Best regards,

Aung Htoo
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⁶ General Survey on the Eradication of Forced Labour, <http://www.ilo.org/public/english/standards/relm/ilc/ilc96/pdf/rep-iii-1b.pdf>. “*Jus cogens*” is a principle of international law that is based on values fundamental to the international community and that cannot be set aside.