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Mr. Guy Rider
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Standards and Fundamental Principles and Rights at Work
International Labor Organization
Geneva

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Subject: To overview the ILO's stand on legal framework in Burma from the aspect of the international law, the international human rights laws and the ILO Conventions

Firstly, we would like to express our gratitude to you, other ILO officials working inside Burma and the entire ILO for your great contribution to promote not only the rights of workers but also human rights of other people inside the country, Burma. No one can deny that ILO has been doing its best for several years now as far as the case of Burma is concerned.

However, I would like to urge you to overview the ILO's position, if any, in regard to 'The Labor Organizations Law' enacted by the so-called legislative body, namely Pyidaungsu Hluttaw, established by the military regime. Interestingly, in connection with that law, we had received a copy of CONFIDENTIAL letter, with the date of August 8, 2011, sent by Maung Wai, Permanent Representative/Ambassador of the ruling regime in Burma, to you since over two months ago before the regime officially made known the public on that law on October 11, 2011.

According to that letter which was attached with the English translation of that controversial law, it is evident that the regime currently led by U Thein Sein, former General Thein Sein, and its government which is under the control of the National Defense and Security Council (NDSC) or the military council had already written the law prematurely and so called Legislative Assembly, by the name of Pyidaungsu Hluttaw, plays a role only for rubber-stamp. If you contrasted English translation of that law sent to you on August 8, 2011 with an official Burmese text issued by the regime on October 11, 2011, you would find that both of them are almost the same.

Article 8 of the ILO Convention 87 provides as follows:

1. In exercising the rights provided for in this Convention workers and employers and their respective organisations, like other persons or organised collectivities, shall respect the law of the land.
2. The law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in this Convention.

Having received that draft law at that time, the ILO was responsible to observe other effective laws in Burma, centering on the 2008 Constitution, as the supreme law of the land, with the background of international law, international human rights laws and ILO Conventions. Then, ILO should impose pressure on or persuade the regime: first, to amend the 2008 Constitution, at minimum, as far as the provisions relevant to the right to freedom of association and the independence of judiciary are concerned; second, to reactivate the 1926

Trade Union Act in which the right to formation and operation of trade unions was guaranteed more widely and effectively than this new law recently approved by the regime; third, to abolish other draconian laws, such as the 1975 State Protection Act and the 1988 Law Relating to Forming of Organizations, which negatively hinder the attempts of workers and their organizations to freely exercise their rights. I have concern that the ILO, nevertheless, has not yet taken its responsibility.

Contrarily, immediately after the announcement of that controversial act - 'The Labor Organizations Law' - the ILO official Mr. Steve Martial, who has been taking responsibility inside Burma, presupposed and made a premature statement publicly by mentioning the term '**extremely positive**' in regard to that controversial law. In addition to others, his statement, made on behalf of the ILO, to a remarkable extent misled a number of people inside Burma and the international community that the military regime's legislative body, which is the Pyidaungsu Hluttaw, made a wonderful positive step as it had produced a law by which the workers are allowed to form their own organizations, to exercise their rights to lock-out and strike, and make mutual contact with international labor organizations and federations. Actually, that law was not produced by the Pyidaungsu Hluttaw but by the military regime in order to hoodwink the ILO, people and political parties in Burma, and the international community.

As a matter of fact, the workers are the social strata that constitute a part of the entire people. They will never enjoy their rights so long as the 2008 Constitution and other draconian laws are effective. It is because under those laws and legal framework the entire people in Burma have been deprived of their basic rights and freedoms – freedom of expression, assembly and association, guaranteed in the international human rights laws. The Pyidaungsu Hluttaw formed by the military regime means nothing but the one which plays as the sham legislative body as far as the basic rights and freedoms of people are concerned.

The ILO might misunderstand that, before in Burma, there was no law which allows workers to enjoy such rights provided for in the controversial 'The Labor Organizations Law'. Actually, it is not the case. Until the regime produced that controversial law on October 11, 2011, the 1926 Trade Unions Act was an effective law. As such, in the Article 58 of the 'The Labor Organizations Law', the regime had to officially abrogate it by stating, 'The Trade Unions Act, 1926 is hereby repealed.'

In the aftermath of the independence of Burma, the Trade Unions Act was mainly practiced with the background of the 1947 Constitution in which basic rights and freedoms of people were guaranteed and independence of judiciary was also established while no draconian laws such as the 1975 State Protection Act and the 1988 Law Relating to Forming of Organizations existed. In addition, the Trade Unions Act itself guaranteed the rights of workers to form their own organizations freely. As such, when the Trade Unions Act was practiced with the abovementioned background legal framework, the workers were able to operate their own organizations well and protect their own rights effectively.

Under the Trade Unions Act, workers could exercise their rights to lock-out and strike, and also communicate with the outside world, including the international labor organizations, independently although they were not provided for in the law. It was because of the existence of legal framework in which the 1947 Constitution not only guaranteed people's rights to exercise basic freedoms but also protected them with the establishment of independence of judiciary. Now such a legal framework is lacking. Worst, at any time, the workers who

attempt to form and operate their organizations independently can be detained by the government authorities and imprisoned them up to five years term, without being tried, in accordance with the 1975 State Protection Law. Workers have got such experiences endlessly from the time that law has become effective. If you observe the struggles of the workers for their rights in modern history of Burma, you would find General Workers' Strikes happened in 1974. It spread a number of major cities where the factories existed. Then, it was brutally and violently crushed down by the military regime. One year after that, the State Protection Law was provided for by the regime in 1975. It was mainly to prevent, inter alia, the attempts of workers to go on strikes peacefully.

The existence of the controversial Labor Organizations Law cannot protect the workers from application of the 1975 State Protection Law by the government authorities. Similar to the cases happened between 1974 to 1988, , the regime would allow the formation and operation of organizations of the workers who support the rule of the military dictatorship and who are under the control of the Union Solidarity and Development Association (USDA) while oppressing the workers who attempt to form and operate their independent organizations by using 1975 State Protection Act as well as the so-called Labor Organizations Law.

Actually, unlike the situations existed under the former law, which is The Trade Unions Act, the newly enacted law allows the workers to go on strike only against the relevant employers but not against the government. As the judiciary lacks institutional independence under the 2008 Constitution and it continues to be subservient to the executive, the workers cannot expect the protection of the judiciary absolutely. In the new law, a geographical restriction is also imposed. When the Trade Unions Act was effective, any person aggrieved by any refusal of the Registrar to register a Trade Union or by the withdrawal or cancellation of a certificate of registration can appeal to the High Court or to an inferior Court where the Head Office of the Trade Union existed. Unfortunately, under this new law, such person can apply only to the Supreme Court, which exists in the new capital where the military totally controls. The workers' organizations formed by the grassroots workers cannot have proper access to the court effectively and timely.

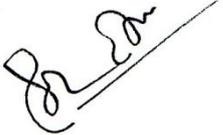
Under the Trade Unions Act, a registered Trade Union can constitute a separate fund for political purpose and it could even be, inter alia, used for the maintenance of any person who is a member of the Union Parliament. It meant that the operation of the Trade Union could be expanded to political arena and contribution could be made for the entire society as well. Such an important provision also lacks in the new law. In a nutshell, the former Trade Unions Act was much better than the new law. Thus, instead of simply supporting the latter, the ILO is responsible to consider why the regime did not activate the former rather than enactment of the new one. In that case, the ILO would find the existing legal framework which is against the international law, the international human rights law and the genuine principles of the rule of law.

Unless the rule of law is practiced, fundamental rights and freedoms of people, including the rights of workers, would never become a reality. More importantly, if there is no independence of judiciary, the term 'rule of law' will only be superficial. Under the 2008 Constitution, the separate military tribunals have been created and they are not under the supervision of the civilian judicial mechanism but under total control of the Commander-in-chief of the Armed forces. In such case, how can we imagine the protection of civilian judiciary for the crimes being committed by members of the Armed Forces, including forced

conscription of 'child soldiers' that the ILO has focused for some years. In accordance with the 2008 Constitution, the executive enjoys full power to appoint and dismiss the Justices of the Supreme Court. As such, expectation for the emergence of the judiciary which is independent, impartial and efficient will only be a myth.

We would like to request you to impose the stronger pressure on the ruling military regime in Burma in order that legal framework in Burma could be altered, at minimum, until workers can enjoy their rights to form Trade Unions freely, operate their organizations independently and protect their own rights by themselves as well as with the protection of the independence of judiciary in accordance with the constitution, in addition to the abrogation of the 1975 State Protection Act.

Sincerely,



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