



An ILO Commission of Inquiry on Freedom of Association in Burma (Myanmar) - The time is now!

*"The Ministry will stand for the workers so they don't need a labour union," said an official of the Ministry of Labour. "If they get a chance to form a labour union, it can be a group which can destroy the stability of the country. That's why we will not allow forming a union."*¹

Freedom of association has long been denied in law and practice in Burma (Myanmar), despite several years of strong criticism by the ILO supervisory bodies. The International Trade Union Confederation (ITUC) and its affiliate, the Federation of Trade Unions - Burma (FTUB), call upon the Governing Body of the International Labour Organization (ILO) to approve, at the November 2011 session (312th), the establishment of a Commission of Inquiry (COI) under Article 26 of the ILO Constitution for serious and systematic violations of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).² This step will allow the Governing Body to further press the government of Burma to finally undertake long called-for reforms.

Freedom of Association Denied in Law:

The ILO Committee of Experts on the Application of Conventions and Recommendations has repeatedly criticised "...the prohibition of trade unions and the absence of any legal basis for freedom of association in Myanmar."³ The ILO Committee on Application on Standards has also "deplored the long-standing absence of a legislative framework for the establishment of free and independent trade union organizations" and "regretted that there were no mechanisms available in the country permitting complaints of serious violations of trade union rights."⁴

Under the 2008 Constitution, Parliament has the power to legislate with respect to "labour organizations" and Article 354 allows for citizens "to form associations and organizations." However, that right can only be exercised, "if not contrary to the laws, enacted for Union security, prevalence of law and order, community peace and tranquillity or public order and morality". Further, even this narrow right can be suspended indefinitely by invoking a state of emergency under Article 379.



© blob59

The following laws also severely limit the right of freedom of association in Burma, and the Committee of Experts has called on the government of Burma to repeal them immediately:

- ▶ **Order No.2/88:** 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:** 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:** 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

¹ 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 On June 17, 2010, several workers' delegates to the International Labour Conference (ILC) filed a complaint under Article 26 of the ILO Constitution for non-observance of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), a predicate step to the possible establishment of a Commission of Inquiry. A decision on the matter was delayed to allow the government of Burma to respond to the complaint, which it did in March 2011. The matter is now before the Governing Body.

³ See ILO, Report of the Committee of Experts on the Application of Conventions and Recommendations (2011), Report III (Part 1A) page 120, available online at http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@relconf/documents/meetingdocument/wcms_151556.pdf

⁴ See ILO (2011) Report of the Committee on the Application of Standards (Part II/31) at p. 18, available online at http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@relconf/documents/meetingdocument/wcms_157818.pdf.

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.

The Government of Burma recently introduced a “Labour Organizations Law” to parliament, which purportedly affords workers freedom of association. The ITUC believes that these plans are being developed to deflect on-going criticism of human and trade union rights violations rather than to introduce real legislative reform consistent with ILO Convention 87 or to ensure that greater trade union rights are actually realised in practice. Indeed, workers have been completely excluded from the process of drafting the law that will regulate their activity. Rather, the process has only involved the government and the Union of Myanmar Federation of Chambers of Commerce. We understand that the Labour Organizations Law has already undergone numerous amendments in parliament, though it remains unclear what impact these amendments will have on the right to freedom of association and to organize and bargain collectively. While we understand that the ILO Standards Department has been given the opportunity to comment on an earlier draft copy, it is not at all clear in what form the law will emerge from parliament and to what extent it will comply with international labour standards.

Further, it remains unclear whether the existing laws noted above will remain in effect following the potential passage of a new trade union law. If so, then freedom of association would remain severely curtailed in Burma. Even if those laws were repealed, the 2008 Constitution is in breach of Convention 87. **The new law cannot therefore be consistent with both with the constitution and Convention 87.**

Freedom of Association Denied in Practice:

Workers engaging in trade union activity in Burma have been arrested, imprisoned, tortured, “disappeared” or killed, as has been extensively documented by the International Trade Union Confederation (ITUC) in its Annual Survey and as reported by various ILO supervisory bodies including the Committee of Experts on the Application of Conventions and Recommendations⁵, the Committee on Application of Standards and the Committee on Freedom of Association. There are at least 54 labour and trade union activists in prison in Burma today. As just one example, the ILO Committee on Freedom of Association found in 2008 that 6 labour activists - Thurein Aung, Wai Lin, Nyi Nyi Zaw, Kyaw Kyaw, Kyaw Win and Myo Min - were convicted and issued long prison sentences simply for organizing a May Day activity on workers’ rights and contacting and receiving financial assistance from the FTUB. The Committee concluded that: “it is undeniable that the six persons were punished for exercising their fundamental right to freedom of association and the freedom of expression. The Committee recalls that the detention of trade unionists for reasons connected with their activities in defence of the interests of workers constitutes a serious interference with civil liberties in general and with trade union rights in particular. A genuinely free and independent trade union movement can only develop where fundamental human rights are respected (see Digest, op. cit., paras 33 and 64).”⁶ The reports of the ILO supervisory bodies contain numerous other harrowing examples of brutal retaliation for the exercise of trade union rights.

The repression continues today. In 2011, thousands of workers have undertaken numerous strikes out of utter desperation over extremely low wages and abysmal working conditions in apparel and footwear factories, most located in and around Rangoon. Reported strikes include those at CGI garment factories in South Dagon Township Industrial Zone No. 2, Taiyi shoe factory in Hlaing Tharyar Township Industrial Zone, Mya Fashion garment factory in Hlaing Tharyar Township Industrial Zone 3, New Way shoe factory in Hlaing Tharyar Township Industrial Zone 4 and PTK Company in Three Pagodas Pass. Most workers are also hired as day labourers with no employment stability whatsoever. In many cases, riot police, police custody vans and fire trucks appear on the scene as soon as a strike starts in an effort to control and intimidate the workers. In some cases, workers have been told to disperse immediately or face a harsh crackdown from the central and/or township government.

Why We Need A Commission on Inquiry Now?

► Unless additional pressure is exercised, the government of Burma will continue to ignore the criticisms and recommendations of the ILO supervisory mechanisms, as it has done for the last twenty years. The latest report of the Committee of Experts reflects this exasperation, repeating many basic recommendations in the “strongest terms”.⁷ As the ILO’s highest-level investigative procedure, the Commission of Inquiry could promote the needed reforms in law and in practice. The Commission of Inquiry could help to open up needed space for debate and consultation.

⁵ See id, fn. 3 at pp. 118-119.

⁶ ILO Committee on Freedom of Association, Complaint against the Government of Myanmar presented by the International Trade Union Confederation (ITUC), Report No. 349, Case No. 2591, para. 1089.

⁷ See page 120



© Naingankyatha

Any law ratified under the framework of the 2008 Constitution cannot comply fully with C87. As the Committee of Experts has stated, “the broad exclusionary clause of article 354 of the Constitution subjects the exercise of this right ‘to the laws enacted for State security, prevalence of law and order, community peace and tranquillity or public order and morality’” and that “article 354 of the Constitution may continue to give rise to continued violations of freedom of association in law and practice.”⁸ A Commission of Inquiry could identify the additional next steps necessary to bring Burma’s constitution and labour laws into compliance with international labour standards independent of any present legislative initiative by the government.

▶ More importantly, there is no indication that the government plans to stop the persecution of worker rights activists and trade unionists or to recognize the FTUB as a legitimate trade union organization. Further, there is every indication that the government will prevent the formation of any trade union which it does not or cannot control. Ministry of Labour officials have already made that quite clear. It is insufficient to have a new law if there is no real possibility of free and independent trade unions.

▶ A Commission of Inquiry would establish recommendations that would be followed up through intensified ILO technical assistance and regular reporting to the ILO Governing Body to monitor progress in the implementation of the Commission of Inquiry recommendations. A Commission of Inquiry would increase the likelihood that technical assistance from ILO staff is incorporated in a consistent manner and is accompanied by close follow up.

▶ Given the lack of freedom of association and other fundamental human rights, a Commission of Inquiry would also help create space for freedom of association in society more broadly. The lack of fundamental human rights, including democracy, remain important obstacles to the full enjoyment of freedom of association for workers, and a Commission would also address issues to the benefit of other parts of society. This would strengthen the movement towards more democratic space.

▶ We remain confident that a Commission of Inquiry on Convention 87 would not diminish the important work which followed from the Commission of Inquiry on Convention 29. Indeed, the issues of freedom of association and forced labour are

⁸ See ILO, Report of the Committee of Experts on the Application of Conventions and Recommendations (2010), Report III (Part 1A) at p. 178, available online at <http://www.ilo.org/public/libdoc/ilo/P/09661/09661%282010-99-1A%29.pdf>.

interrelated, and a Commission of Inquiry on Freedom of Association would complement and strengthen the existing work on forced labour.

We Call on All Governments to Support a Commission of Inquiry

Without significant and sustained additional pressure, meaningful changes in law and in practice in Burma will likely remain elusive. As mentioned, the ITUC has very serious concerns about the compatibility of any new trade union law with international labour standards. Further, both the government and the business community have clearly stated that they oppose the formation of independent trade unions. Failure to establish a Commission of Inquiry will very likely mean that any trade union structure created under any new legislation, whenever it may be ratified, would not be independent. The likelier outcome is that any union would be under state control in order to prevent industrial action for the purpose of improving the lives of working people. That is not an outcome that we can accept.

The ITUC and its affiliates urge governments to support the workers of Burma in their demand to be free to exercise their fundamental right of freedom of association. This can only be accomplished if new legislation consistent with international labour standards, notably Convention 87, is enacted without delay and that genuine trade unions are able to form and operate without interference from the government. A Commission of Inquiry is needed now to make sure that these basic demands do not remain aspirations but become reality.



© Patrice Muc8