

## **ERI Policy Statement on Joint Plan of Action**

EarthRights International (ERI) commends the efforts by the International Labour Organization (ILO) to eradicate the use of forced labor in Burma. Based on interviews and in-depth investigations conducted by ERI, we have significant evidence to believe that forced labor remains a serious problem in Burma, especially in ethnic areas. ERI recognizes the difficulty of the task of abolishing forced labor given the magnitude of the problem and the current political climate inside Burma. If the regime fails to take credible steps towards improving conditions for the Joint Plan of Action to be successfully implemented, ERI calls for the reactivation of the ILO commission measures of 2000, given the SPDC's intransigence on this issue. Recent statements and policies by the government have not persuaded the ILO that the regime is serious about implementing the Joint Plan of Action and eliminating forced labor.

### *Discouraging Business*

At the 291<sup>st</sup> session of the ILO Governing Body, constituents discussed the option of discouraging investment and business activities to Burma unless conditions are improved. The government may be subject to harsh consequences such as sanctions if it fails to change the environment for the ILO to effectively implement its mandate. Under Article 33 the ILO can recommend its constituents including member states, workers' organizations and employers' organizations to take certain measures such as imposing sanctions. In other words, this translates into economic divestment and prohibiting international trade unions and United Nations agencies from interacting with Burma.

### *Background*

The ILO and the SPDC agreed to a "Joint Plan of Action for the Elimination of Forced Labor Practices in Burma" (herein "the Plan") in May 2003.<sup>i</sup> The Plan was originally designed to demonstrate that the SPDC was capable of taking clear and verifiable steps towards completely eliminating the practice of forced labor throughout the country. Efforts were prioritized in the Tenasserim Division, Arakan State, Mon State, Karen State, and Shan State—areas where the use of forced labor and other human rights abuses have been particularly egregious. Before the Plan moves forward, ERI has identified several areas where the Plan's agreed terms can be improved.

The eighteen-month plan of action has three main components:

- 1) A public works project;
- 2) An awareness campaign;
- 3) A complaint mechanism to help victims of forced labor to seek redress.

A brief analysis of each component is included below. Recommendations follow.

The Plan has not fully entered into force. The ILO and the SPDC signed the agreement on May 28, 2003, just two days prior to the incident where Aung San Suu Kyi was detained in Depayin after a clash between her supporters and the government. Thus, the

implementation phase of the Plan never occurred. After the May 30<sup>th</sup> incident, the political climate was unfit for the Plan to be undertaken.

In February 2004, the Plan was re-evaluated and again, it appeared ready to be implemented. It was stalled again due to the announcement of high treason cases sentencing three individuals to death for possessing evidence of contacting the ILO. Once again, the Plan was put on hold.

#### *Public Works Component*

In June 2003, representatives from the ILO and the SPDC visited six potential project sites in Myeik District in the Tenasserim Division. The ILO designated this District as a “special focus region” due to the number and severity of the allegations it had received over the past several years concerning the use of forced labor by the military. Three sites were then selected for road construction and maintenance projects (total 20-30 km). The projects are designed to use a combination of local labor and light-machinery with Field Observation Teams monitoring the process to determine whether the labor practices constitute the use of forced labor.<sup>ii</sup>

In 1996, ERI first began documenting the widespread use of forced labor on national development projects, most notoriously the Yadana and Yetagun natural gas pipelines in southern Burma. ERI remains concerned that the Plan will not be sustainable or replicable elsewhere without significant financial and technical support from the ILO beyond the original eighteen-month time frame. Given the SPDC’s past efforts to deliberately mislead the ILO by disguising its direct involvement in perpetuating the use of forced labor in addition to the well-documented role in committing gross human rights abuses more generally, our fears are not unfounded.<sup>iii</sup> Evidence recently collected from a village leader living in the pipeline corridor suggests that the energy companies involved in managing the project are unwilling or unable to address the abuses still occurring in the region (see testimony #1).

#### *Public Information Component*

In March 1999, the SPDC issued Order No. 1/99,<sup>iv</sup> which outlawed forced labor throughout Burma.<sup>v</sup> Since then, the SPDC has taken steps to improve public awareness of these Orders and its Supplement Order. The ILO will also carry out an intensive public information campaign itself. The implementation of this campaign will involve consultation with experts in conducting such campaigns in situations such as Burma. In the interest of victims of forced labor and local communities, ERI encourages the ILO to begin its public awareness campaign in a timely manner. The Joint Plan of Action is to further strengthen these efforts. However, each of the steps exhibits several weaknesses.

- Awareness remains limited

The SPDC reports that copies of Order No. 1/99 have been distributed widely throughout the country. However, ERI continues to interview people who have fled the country due

to the use of forced labor, including those areas targeted for special monitoring by the ILO. ERI has interviewed hundreds of victims of forced labor from ethnic areas as recent as November 2004. The vast majority of them report that they have never heard of Order No. 1/99, much less seen a copy of the Order. ERI has also found that almost no one in this area is aware that people who violate the ban on forced labor, including military personnel and local administrative personnel, can be prosecuted under section 374 of the Penal Code and other relevant statutes.

- Information Distribution

According to the agreement, the Ministry of Labor is to distribute pamphlets to the public containing factual background information on ILO Convention No. 29 (1930) as well as updates on efforts to reduce the use of forced labor via a monthly news bulletin.<sup>vi</sup> While greater access to such information is an important step, we also note that the Plan does not require these bulletins to be translated into other major ethnic languages, which would reach many of the more remote areas.

Additionally, the pamphlets are only distributed to public libraries and to government and non-governmental organizations. In other words, there is no mechanism to guarantee that the information actually reaches the village-tract or village level, where forced labor is most prevalent. Further, there is no indication that these pamphlets include explanations about how to file a complaint or ensure the safety of those whom choose to lodge a complaint.

Finally, the approach does not meet the needs of illiterate Burmese, who constitute an estimated 15% of the population.<sup>vii</sup> Radio and television broadcasts should additionally be used to reach a broader audience, especially in more remote rural areas.

- Trainings

The Plan also requires awareness-raising programs, including training workshops, for public officials and military personnel on the issue of forced labor. For unexplained reasons, however, public officials were prioritized over military personnel. In either case, no reports on these programs have been publicly released.

### *Complaint Mechanisms*

The most significant aspect of the Plan is to create procedures for filing and investigating complaints. Yet, several problems remain. Since the Plan has not been implemented, we call for improvements in access to complaint mechanisms.

Only *bona fide* residents of Burma with appropriate identification papers are able to file complaints in a government court of law. This requirement poses problems for those people who lack proper residency papers because they: (1) reside in border areas and never received such documentation; (2) have been displaced by anti-insurgency campaigns; or (3) fled the country because they were victims of forced labor

and other human rights abuses. To prove legal residency in Burma, it is necessary to provide “conclusive evidence” of entry and residence in Burma prior to 4 January 1948, or to establish bloodlines as required by law (officially stamped papers listing the names of family members, dates of birth, and places of birth). The Rohingya, a Muslim ethnic group based in northern Arakan State, are particularly vulnerable as a result of this requirement; the discriminatory 1982 Burma Citizenship Law denies the Rohingya basic citizenship rights as outlined in international law. Moreover, the use of forced labor remains commonplace in the region.<sup>viii</sup> International organizations such as the ILO can file complaints on behalf of others. To lodge complaints to ILO Governing Body meetings in Geneva, there is no requirement to possess citizenship papers. Yet, the complaint mechanisms administered by the ILO and those handled by the SPDC undergo different processes.

Additionally, the Plan would emphasize new complaints. It has no provisions for proactively enforcing Order No. 1/99. Nor does the Plan encourage its Field Observation teams to investigate past offenses. Current provisions protecting individuals who file formal complaints from retribution are inadequate. In November 2003, for example, three men were convicted and sentenced to death for “aiding and abetting high treason,” a crime which included having contacted the ILO and organizations abroad. The sentence, following international protest, was first reduced to life in prison and now has been commuted to two years in jail for two individuals and five years in jail for the third individual. All of them will be required to conduct hard labor as part of their penalty.<sup>i</sup>

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### Endnotes

<sup>i</sup> See International Labour Conference, Committee on the Application of Standards, “Special Sitting to Examine Developments Concerning the Question of the Observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29). The report was presented during the 91<sup>st</sup> Session (Geneva, June 2003) and is available at <[www.ilibrio.org/obl/docs/ILC2003special\\_sitting.htm](http://www.ilibrio.org/obl/docs/ILC2003special_sitting.htm)> (downloaded 18 June 2004).

<sup>ii</sup> The labor practices include recruitment methods, the payment of wages, wage levels, facilities and privileges accorded to workers, and the use of porters. The ILO uses a two-part definition of forced labor. Any situation where a person is required to work or provide a service that he or she has *not* voluntarily offered to carry out and has reason to believe that he or she will suffer a penalty for not carrying out the work or service. Whether this person receives payment or not is irrelevant since the person cannot refuse to work without risking some form of punishment.

<sup>iii</sup> The evidence is extensive. See, for example, the following reports by ERI: *More of the Same* (2001) and *We Are Not Free to Work* (2002); *Entrenched* (2003), all of which are available on EarthRights International’s website: [www.earthrights.org](http://www.earthrights.org)

<sup>iv</sup> Copies of Order No. 1/99 have been translated into ethnic languages: such as Chin, Kachin, Mon, Karen, Karenni and Shan.

<sup>v</sup> Technically, the Order restricted but did not eliminate its use. International pressure eventually forced the SPDC to issue Supplementary Order to Order No. 1/99 (October 2000), which closed the loopholes in the earlier one. Hereinafter, this article will refer to both the original Order No. 1/99 and the Supplementary Order as “Order No. 1/99” to simplify matters.

<sup>vi</sup> Two International Labour Organization (ILO) Conventions form the key legal instruments for ending forced or compulsory labor, a globally widespread practice that violates both internationally recognized human rights and labor laws. ILO Convention No. 29 (1930) was the first attempt to reduce and control the use of forced labor in European colonies in Africa and Asia. ILO Convention No. 105 (1957) supplements

the first Convention, and calls for the immediate and complete abolition of any form of forced or compulsory labor in five specific cases. The Government of Burma ratified Convention No. 29 in 1955, but has to date declined to ratify Convention No. 105 since it bans the mobilization and use of forced labor for economic development

vii See United Nations Human Development Report 2003 available for download at [http://www.undp.org/hdr2003/indicator/indic\\_2\\_1\\_1.html](http://www.undp.org/hdr2003/indicator/indic_2_1_1.html).

viii The 1982 Burma Citizenship Law superseded the 1948 Union Citizenship Act. It is grossly inconsistent with international human rights laws, e.g.: (1) the 1954 Convention relating to the Status of Stateless Persons; (2) the 1961 Convention on the Reduction of Statelessness; (3) the 1966 International Covenant on Civil and Political Rights; (4) and the 1969 International Convention on the Elimination of All Forms of Racial Discrimination.

ix See Marwaan Macan-Markar, "Forced Labor Still a Problem in Burma," *Interpress Service* (10 June 2004); International Labor Conference, Committee on the Application of Standards, "Special Sitting to Examine Developments Concerning the Question of the Observance by the Government of Myanmar of the Forced Labor Convention, 1930 (No. 29)." The report was presented during the 92<sup>nd</sup> Session (Geneva, June 2004) and is available at [www.ibiblio.org/obl/docs/ILC2004-capp-d5.htm](http://www.ibiblio.org/obl/docs/ILC2004-capp-d5.htm) (downloaded 18 June 2004). The response by Mya Than, Burma's Ambassador to the UN, is available at [www.ibiblio.org/obl/docs/ILC2004-capp-d5-add2.htm](http://www.ibiblio.org/obl/docs/ILC2004-capp-d5-add2.htm).

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