



**Commentary**

April 10<sup>th</sup>, 2007 / KHRG #2007-C1

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**The limits of the new ILO mechanism and potential misrepresentation of forced labour in Burma**

*In late February 2007, the International Labour Organisation (ILO) and the State Peace and Development Council (SPDC) reached an agreement regarding the implementation of a new mechanism intended to allow individuals to submit complaints of forced labour without fear of retaliation. External observers have reported that this agreement represents a positive step towards effectively addressing forced labour in Burma. However, as this commentary points out, the potential usefulness and effectiveness of the new mechanism is suspect. By outlining some of the ways in which the SPDC actively obstructs villagers from accessing such mechanisms and the inability of the ILO to ensure protection for civilians from retaliation, this commentary warns that the results of this agreement will likely misrepresent the true scale of forced labour in Burma. It further calls for the ILO to publicly acknowledge these limitations, so that the SPDC is unable to use the lack of complaints to deny the existence of forced labour.*

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On February 26<sup>th</sup> 2007, Ambassador Nyunt Maung Shein, acting on behalf of the Burmese military regime, signed a Supplementary Understanding with the ILO following three years of negotiations. The agreement sets out a mechanism which supposedly allows individuals to submit complaints of forced labour to the ILO Liaison Officer for investigation, without fear of reprisals.<sup>1</sup> The new mechanism was officially announced the same day and was widely reported in the media as a “historic deal”<sup>2</sup> and a success for the ILO and the people of Burma.<sup>3</sup> Richard Horsey, the ILO’s Liaison Officer in Rangoon, has described the establishment of the mechanism as a “welcome and positive development”.<sup>4</sup> However, KHRG has serious doubts about the potential for villagers from Karen state, or indeed any individuals outside of Burma’s main urban centres, to use this mechanism as a way to claim their rights, halt the demands upon them for forced labour and end the system of impunity within which the military in Burma operates.

Since its formation in 1992, KHRG has frequently and consistently reported the widespread use of forced labour in Karen State and other regions by SPDC soldiers and other military groups allied to the SPDC. Villagers in military-controlled areas have faced regular demands for forced labour in a wide variety of forms and for many different purposes. To mention but a few, some of the projects and reasons for which villagers have been ordered to provide forced labour include: construction and maintenance of Army camps; servant, messenger and sentry duty at Army camps and along roads; portering of supplies and rations to Army posts and for mobile military columns; construction and regular maintenance of roads, railways, dams, bridges, canals, and other infrastructure; the cutting and clearing of

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<sup>1</sup> “Developments concerning the question of the observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29),” International Labour Office, Geneva, March 2007. (ILO ref: GB.298/5/1)

<sup>2</sup> “Shackles, torture, executions: inside Burma’s jungle gulags,” *The Observer*, March 28<sup>th</sup> 2007.

<sup>3</sup> “UN leader lauds ILO pact with Burma,” *Democratic Voice of Burma*, February 28<sup>th</sup> 2007.

<sup>4</sup> “Forced labor conviction sends ‘important signal,’ says ILO,” *The Irrawaddy*, April 2<sup>nd</sup> 2007.

bush and growth along the sides of roads to prevent ‘ambushes’ and make it more difficult for villagers to evade SPDC forces; forced agricultural programmes, such as forced labour on rubber and more recently castor plantations, as well as dry-season paddy planting; forced labour on Army-run farms; construction of schools, clinics and libraries, which the SPDC has then taken credit for but given no support for materials or running costs; establishment of plantations, fishponds, brick-baking kilns and other industries for the profit of military officers; construction of fences to enclose villages, which in turn restricts the movement of villagers and creates a more ready supply of labour for further forced labour demands; provision of food supplies or building materials, such as wood and thatch, which villagers are then required to transport to army camps by foot or bullock cart; and a plethora of other forms of forced labour, together comprising virtually all physical labour required to support military units and local SPDC authorities. Not only are the villagers uncompensated for their labour and the time they have to take out from their own livelihood activities, but villagers generally also have to provide their own tools, food and water while they are working and face the risk of physical or sexual abuse by the soldiers supervising their work. Many of these projects are part of the SPDC’s so-called ‘development’ agenda and villagers are told that their labour is for the good of their country or communities. However, in Karen state, these projects can instead be seen to expand and consolidate military control, allowing for the continuation of further forced labour demands.<sup>5</sup> The SPDC has continued to perpetrate such forced labour despite ratifying the 1932 Forced Labour Convention (ILO Convention 29) and issuing Order 1/99 in 1999 which explicitly bans most forms of forced labour, followed by two decrees in 2000 which expanded this ban and declared criminal penalties for anyone requisitioning forced labour.<sup>6</sup> There is little to suggest that the situation will be any different under the new mechanism.

The ILO has previously taken a very strong and progressive stance on the forced labour situation in Burma, stating in 1998 that the use of forced labour in Burma was “*widespread and systematic*” and that military officials “*treat the civilian population as an unlimited pool of unpaid forced labourers and servants at their disposal*” with impunity, as “*part of a political system built on the use of force and intimidation to deny the people of Myanmar democracy and the rule of law*”.<sup>7</sup> Unwilling to accept the SPDC’s usual denials and promises of cosmetic measures, the ILO instead insisted on concrete evidence of measures to stop forced labour, gradually succeeding in pressuring the SPDC into circulating its orders banning forced labour in some parts of the country. The ILO reaffirmed its concern that the practice of forced labour continued to be prevalent in Burma at its 297<sup>th</sup> Session of the Governing Body in November 2006 and had been preparing to request an advisory opinion from the International Court of Justice regarding the Burmese regime’s continued violation of the Forced Labour Convention.<sup>8</sup> However, the ILO representation of this new mechanism as an achievement and a “*welcome and positive development*”<sup>9</sup> seems to back-track on this stance, allowing the SPDC to gain credit for signing this agreement, when it is likely to be very difficult for villagers to submit complaints under this mechanism and previous experience suggests that the use of forced labour will continue regardless. On signing the mechanism the ILO withdrew its threat to go to the International Court of Justice, and thus appears to have joined the ranks of international organisations prepared to accept cosmetic measures instead of real change from the SPDC.

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<sup>5</sup> The upcoming KHRG report *Development by Decree: The politics of poverty and control in Karen State* further outlines this argument and provides many examples of the ways forced labour has been used to consolidate military control.

<sup>6</sup> See *Forced Labour Orders Since the Ban* (Karen Human Rights Group, February 2002), Appendix B.

<sup>7</sup> Press Release (ILO/98/32): “Report of ILO Commission of Inquiry reveals widespread and systematic use of forced labour in Myanmar (Burma),” International Labour Office, August 20<sup>th</sup> 1998.

<sup>8</sup> “Developments concerning the question of the observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29),” International Labour Office, Geneva, March 2007. (ILO ref: GB.298/5/1)

<sup>9</sup> “Forced labor conviction sends ‘important signal,’ says ILO,” *The Irrawaddy*, April 2<sup>nd</sup> 2007.

It is important to examine here where this new mechanism fits in the recent history of forced labour in Burma. For a brief period between 2003 and 2004, about 10 villagers throughout Burma were able to bring civil cases against local civilian authorities without these cases being blocked by the SPDC. Some of these cases were successful – the first time the SPDC had allowed a crack to appear in the impunity of its officials. The ILO celebrated this step, but admitted that it was as yet far from sufficient to address forced labour, particularly as the SPDC had not allowed any cases to be brought against military officers, who are the main perpetrators of forced labour demands. This period did not last, however; following the SPDC internal purge of late 2004 the regime became more hardline, blocked any further cases and retaliated against those who had lodged them. In the most famous case, Daw Su Su Nway, who had successfully sued her local officials for using forced labour, was imprisoned on trumped-up charges. International pressure secured her early release, and the ILO began negotiations which resulted in the new mechanism. It should be clear that this new mechanism is essentially nothing more than a return to the conditions of a few years ago when villagers could lodge complaints – a process which the ILO itself labelled as welcome but highly insufficient because only a few cases were allowed and none against military officers. Yet we now see the ILO celebrating a situation it had previously declared unsatisfactory. In doing so they have fallen victim to a routine SPDC tactic which has been employed many times over the past 19 years: when the regime is being criticised for its behaviour (such as forced labour or the arrest of political prisoners), it deliberately makes that behaviour a great deal worse for a time, then negotiates with the international community to gain concessions (such as, in this case, not being taken to the International Court of Justice) in return for ‘improving’. The ‘improvement’, however, is simply a return to the previously condemned behaviour. Using this tactic the regime has consistently turned international condemnation into approbation without ever needing to improve its actual behaviour. The lesson this delivers to repressive regimes worldwide is simple: if you are being condemned for holding political prisoners, you should arrest many more and torture them harder, then agree to release a few and return the torture to normal levels and you will be congratulated; if you are criticised for using forced labour, increase it and violently punish those who protest, and then your agreement to return to the previous levels of abuse will be lauded as a welcome step forward.

Not only are there many ways in which the SPDC actively obstructs Karen and other villagers from submitting complaints under this new mechanism, but even if villagers were able to submit such complaints, it seems very unlikely that the SPDC would ever prosecute any military personnel. Firstly, the SPDC severely restricts the movement of villagers in all military-controlled areas of Karen State, with villagers being required to apply for travel passes to travel outside of their villages or having been forcibly relocated to fenced compounds. Moreover, all travel in rural Burma is expensive, requiring bribes to pass frequent SPDC military checkpoints, at any one of which villagers (especially those from far away) risk being detained for forced labour. In this way the military obstructs villagers from travelling to Rangoon in order to submit their forced labour complaints to the ILO head office or even to a regional office, should the SPDC ever allow the ILO to open any. Meanwhile, those living outside military control are doing so because they have succeeded in evading SPDC forces and survive by living displaced in the hills and forests. To submit such a complaint would require them to leave their forest hiding-sites and risk detection and the very real possibility of being ‘shot on sight’ by SPDC soldiers. Furthermore, many villagers would be unwilling to submit such a complaint, given the fact that the agreement requires that, following preliminary assessment by the ILO, individuals submit to an investigation of their case “by the most competent civilian or military authority concerned as appropriate”.<sup>10</sup>

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<sup>10</sup> *Supplementary Understanding* – Appendix to “Developments concerning the question of the observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29),” International Labour Office, Geneva, February 26<sup>th</sup> 2007. (ILO ref: GB.298/5/1)

Despite the safeguards the regime has accepted under the agreement to protect the safety of complainants, most Karen villagers would be justifiably reticent to trust military officials from the same regime that is currently persecuting them, launching attacks against their villages, and implementing the very forced labour the mechanism is supposed to address, when the ILO has no physical presence which could guarantee their protection from reprisals. Besides, even the above obstacles assume that villagers actually know about the mechanism, when actual awareness and knowledge of this mechanism by villagers in Karen State is likely to be very limited, given poor communication networks and limited access to international media. Moreover, even if villagers were able to overcome these constraints and the ILO subsequently found that complaints submitted under the mechanism were cases of forced labour, there is no guarantee that the regime would find the same in their investigation or that those responsible would be brought to justice. Prior to the establishment of this mechanism, the SPDC has never once prosecuted, punished or even initiated investigations against any member of the armed forces over the perpetration of forced labour, despite having decreed criminal penalties for doing so since 2000 and despite the fact that members of the military are the principal agents of forced labour.

On March 26<sup>th</sup> 2007, almost four weeks after the signing of the Supplementary Understanding, the ILO Liaison Officer released a report on the initial functioning of the mechanism. Despite only four complaints *in the entire country* having been submitted under the mechanism thus far and only two having been deemed to constitute cases of forced labour, the Liaison Officer reported that "*no major issues*" had arisen and that the implementation of the mechanism was "*proceeding smoothly*".<sup>11</sup> Yet four complaints in four weeks hardly seems to be representative of the true scale of forced labour in Burma. If this pace continues for the entire twelve months of the mechanism's agreed lifespan, there would be a total of 48 cases of forced labour reported in Burma for the year, with only 24 accepted by the ILO. Given the "*widespread and systematic*" nature of forced labour, as repeatedly acknowledged by the ILO, and its imposition on Burma's estimated 50 million people, it would seem more appropriate to say the mechanism was proceeding smoothly if 4,000 complaints had been made within the first month, instead of just four. The very small number of complaints merely confirms that there are major obstacles preventing villagers from submitting complaints. Here an analogy might prove useful for those living in countries where systematic forced labour for the state is less common. Imagine if the USA introduced a system to make it easier for women to report rape cases, whereby women could report rape without fear of retaliation, and their cases would be investigated by officials of the state. This mechanism is only to last for twelve months, after which women will no longer be promised any protection. If we assume for the sake of argument that the USA has six times the population of Burma and that rape affects the same proportion of the population as forced labour does in Burma (i.e. in the language of the ILO, that it is 'widespread and systematic' and primarily committed by state officials), this would mean that (hypothetically) something like 6 to 12 million women per year are raped in the USA. Now imagine if after a month of this mechanism being operational, the implementing official reported that the mechanism was "functioning smoothly" because 24 cases of rape had been reported nationwide, of which he had decided 12 were valid reports and the other half were spurious or unsubstantiated. Finally, try to imagine what the public reaction to such a statement would be. This analogy falls short in one main aspect: in Burma 'public reaction' is still punishable by long prison terms, so the lack of any vocal reaction to the ILO's confidence in the mechanism is hardly surprising.

Media sources have since announced that in one of the two cases accepted as forced labour by the ILO, two officials were each imprisoned for six months for forcing villagers to repair a

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<sup>11</sup> "The functioning of the complaint mechanism established under the "Supplementary Understanding"," International Labour Office, Geneva, March 26<sup>th</sup> 2007. (ILO ref: GB.298/5/1 (Add.2))

road in Aunglan township of Pegu Division.<sup>12</sup> Richard Horsey argued that these convictions send an “*important signal*” to those imposing forced labour “*that forced labour is illegal and they can be held accountable.*” He claimed that the convictions had resulted in an end to forced labour in the village, but it would be impossible to confirm this without investigation into other forms of forced labour or follow-up visits. It is also unclear from media reports whether these were civilian or military officials. One of the officials was reportedly from the “*local Peace and Development Council,*”<sup>13</sup> which would generally mean a civilian; while village and township PDCs are part of the SPDC structure, such officials are civilian as opposed to military in ranking. Moreover, if either of the imprisoned men were a military officer the ILO would surely have stated this, given their past emphasis on the need to convict military officers. In Karen State, villagers have been forced to organise themselves under a system of Township Peace and Development Councils (TPDCs) and Village Peace and Development Councils (VPDCs). Traditional village heads in effect become VPDC chairpersons. This system has been used to implement broad-ranging abuses against Karen villagers, but is particularly relevant to this discussion, as demands for forced labour are often channelled through VPDC chairpersons by oral or written orders issued by military officers, or through orders issued at TPDC meetings. Village heads are frequently called to attend such meetings to receive these orders and then face the difficult situation of being expected to enforce demands for forced labour on their own communities. At these meetings, village heads are scolded for prior non-compliance and threatened against future disobedience. Therefore, any arrest or punishment of VPDC ‘officials’ under the mechanism would have to be considered at best dubious, as these individuals are civilians who are merely following orders which have been issued from SPDC military officials. Such convictions alone would also suggest that the real perpetrators have been allowed to escape punishment.

Meanwhile, in the same document on the initial functioning of the mechanism, the ILO Liaison Officer announced that he had been allowed to travel to the popular tourist destination of Mandalay for two days, independently of the authorities, having submitted his travel plans to the authorities a few days prior to his trip as required. The fact that this trip was deemed worthy of note shows how restrictive the conditions and requirements placed upon the Liaison Officer’s travel must be and raises serious doubts as to whether he would ever be allowed to travel to any of the rural areas where forced labour occurrences are highest, such as Karen State, to conduct his assessments.

Given that the mechanism is currently only operating under a one year trial period and the agreement can then be terminated by either side, it is important that the problems with and obstacles to the use of the mechanism are exposed sooner rather than later. This is particularly important as there is much potential for misunderstanding or misrepresentation of the outcomes. With mechanisms of this kind, there is a tacit assumption that if there are few complaints submitted, there are few cases occurring – a conclusion that would be totally erroneous in the case of Burma. KHRG fears that outside observers will believe SPDC claims that there is little or no forced labour in Burma on the basis of this assumption, while forced labour continues unabated. Moreover, institutions such as the UN Secretary-General’s office and United Nations agencies working with the SPDC have historically been reluctant to mention abuses in Burma but over-eager to seize on any sign of ‘improvement’ in the country as grounds for increased aid budgets and continued political inaction; the ILO’s presentation of the mechanism as a success is almost certain to be trumpeted by these institutions, generating yet more undeserved positive publicity for the SPDC. Little over a week ago, Information Minister General Kyaw Hsan announced at a Press Conference in the country’s new official capital in Pyinmana, that no incidents of forced

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<sup>12</sup> “Forced labor conviction sends ‘important signal,’ says ILO,” *The Irrawaddy*, April 2<sup>nd</sup> 2007.

<sup>13</sup> *Ibid.*

labour had occurred anywhere in Burma<sup>14</sup>, while on the very same day KHRG released a report with information that villagers have been submitted to further forced labour in the construction of a new road in Papun District.<sup>15</sup> Therefore, it is extremely unlikely that this new mechanism will be able to solve the forced labour problem in Burma and it could instead be used by the SPDC to gain political advantage in international fora. Given the fact that the ILO has already stated the widespread nature of the problem, it seems perverse that they are now portraying this mechanism as an achievement. From the problems and limitations outlined above, it is clear that the number of complainants will misrepresent the true scale of forced labour, and that the mechanism cannot apply to remote rural areas at all. Therefore, it is important that the ILO acknowledge the limitations of the mechanism and the ways in which SPDC abuses and restrictions create obstacles both preventing villagers from submitting complaints and hindering the access of the ILO to the relevant populations. While the SPDC may cite the low number of complaints submitted to the ILO as evidence of the near elimination of forced labour in Burma, KHRG and other groups documenting the situation on the ground will continue reporting on the SPDC's ongoing abuse of this form of labour. In Burma, no serious progress can be made on forced labour until *military officers*, as the main agents of forced labour, are tried, convicted, stripped of their rank and imprisoned for demanding it. This has never yet happened, not even in a single case.

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<sup>14</sup> “Karen rights group reports new cases of forced labor,” *The Irrawaddy*, March 27<sup>th</sup> 2007.

<sup>15</sup> See *Road construction, attacks on displaced communities and the impact on education in northern Papun District*, (Karen Human Rights Group, March 2007).