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Letter to ILO regarding Migrant Worker Voting in Referendum

April 10, 2008

Via E-Mail: ilo@ilo.org

Mr. Juan Somavia, Director-General
International Labour Organization
4 route des Morillons
CH-1211 Genève 22
Switzerland

Re: *Right of Burmese Migrant Workers to Vote in May 10, 2008 Referendum*

Dear Director-General Somavia:

This letter is to bring to your attention the recent Burmese law that excludes millions of Burmese migrant workers from voting during the upcoming May 10, 2008 Referendum on the Union of Myanmar Constitution (Draft).

In February 2008, the State Peace and Development Council, the ruling military regime in Burma, issued a Referendum Law that provides: “Every person who is included in the voting roll for the referendum is entitled to vote.”¹ Section 11(d) adds: “The following persons shall not be included in the voting roll: ... (4) persons who are illegally abroad.” Thus, millions of migrant workers who are residing abroad illegally will not be able to vote in the Referendum.

The migrant population abroad, particularly in Thailand, is significant. In 2004, 921,482 of the 1,280,053 migrant workers registered with the Thai Ministry of Labor were Burmese (71.9%). The Federation of Trade Unions – Burma (FTUB) Migrants Section has stated, however, that “many researchers believe the actual number of Burmese workers in Thailand is much higher than the number registered, with estimates frequently made in the range of 2 million.”² Almost all of these workers are unskilled laborers who work in areas such as manufacturing, retail, domestic help and agriculture. The vast majority crossed the border in violation of applicable immigration laws. According to the Referendum Law, these workers will not have the right to vote on the country’s Constitution, its most fundamental and essential document.

The status of Burmese migrant workers is not a matter of choice, but rather is the direct result of the SPDC’s policies. First, there is no legal migration



system for these types of workers. Burma and Thailand have not adequately implemented the June 21, 2003 Memorandum of Understanding between the Government of the Kingdom of Thailand and the Government of the Union of Myanmar on Cooperation in the Employment of Workers.³ Second, the SPDC itself is largely to blame for the mass exodus of workers. Its economic policies have failed, it faces a host of international sanctions due to its continued human rights violations, and its economic system is rife with corruption, cronyism and instability. The poverty in Burma is well-recognized; Mr. Paulo Sérgio Pinheiro warned that Burma is characterized by “deep-rooted and worsening poverty, the continuing violation of economic rights and the lack of economic reform.”⁴ In 2004, the FTUB estimated that the average wage for a relatively unskilled laborer in Burma was approximately 14 to 22 baht per day, while that same worker can earn approximately 50 baht per day in Mae Sot, Thailand.⁵ People are starving in Burma and can earn more money in Thailand; it is only natural that they will do whatever it takes to feed their families.

Importantly, renowned Thai Professor Vitit Muntarbhorn has argued that Burmese migrants can legally work in Thailand under an exception provided in the immigration laws. Professor Muntarbhorn explains that “there is a key section — Section 17 — which provides the Minister of Interior with discretion in applying (or not applying) the strictures of the Immigration Act. This has provided a window for exempting irregular migrant workers from being deported, at least when they come out into the open to be registered.”⁶ In a 2007 meeting attended by the BLC General Secretary, ILO representatives stated that the ILO has adopted Professor Muntarbhorn’s position. The plain conclusion is that the migrant workers who have work permits are actually legal in Thailand, and thus should be able to vote in the Referendum.⁷

The right for citizens to vote is a fundamental right prescribed in Article 25 of the International Covenant on Civil and Political Rights. The Burma Lawyers’ Council urges the ILO to use its considerable leverage and international influence to ensure this right for the millions of Burmese migrant workers living abroad. Specifically, the BLC recommends that the ILO directly insist to the SPDC that all migrant workers be allowed to vote in the May 10 Referendum. Everyone’s voices must be heard in a free and fair Referendum.

(Endnotes)

¹ Referendum Law for the Approval of the Draft Constitution of the Republic of the Union of Myanmar, 2008 (Law No 1/2008) (issued February 26, 2008).

² FTUB, “The Mekong Challenge, Working Day and Night, The Plight of Migrant Child Workers in Mae Sot, Thailand”, p.19 (published by the ILO, 2006).

³ In “The Mekong Challenge, Working Day and Night”, the FTUB affirms that full implementation of a Memorandum of Understanding between Thailand and Burma “offers one of the few clear paths to leverage increased protection for migrant workers.” (p. 17)



⁴ Smith, Dan, “Pinheiro Warns of Burma Humanitarian Crisis”, *The Irrawaddy*, February 24, 2006.

⁵ The Mekong Challenge, Working Day and Night, p.27.

⁶ Muntarbhorn, Vinit, “The Mekong Challenge — Employment and Protection of Migrant Workers in Thailand: National Laws/Practices versus International Labour Standards?” p. 13 (published by ILO, 2005). Section 17 of the 1979 Immigration Act provides: “In certain special cases, the Minister, with Cabinet approval, may permit any alien or any group of aliens to stay in the Kingdom under certain conditions, or may make conditions, or may consider exemption from conforming with this Act.”

⁷ The Burmese government will likely argue that the migrant workers violated Burmese immigration laws when they left Burma without a passport; thus, their compliance with Thai laws is irrelevant. However, there is no established procedure for these types of unskilled factory and farm migrant workers to enter Thailand legally. Thus, complying with Burmese laws would essentially mean never leaving Burma.

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