



## **BUSINESS AND HUMAN RIGHTS IN BURMA: A TRADE UNION PROPOSAL**

For decades, the global trade union movement and human rights organizations worked to promote democracy and human rights in Burma, largely through supporting trade union and civil society organizations operating both inside and outside of Burma. In coordination with these organizations, we lobbied governments and international institutions to impose a range of sanctions to hasten the restoration of democracy and respect for international human rights. Many governments did in fact impose a combination of travel, trade, investment, financial and other sanctions in response to the serious and widespread human rights violations occurring in Burma. This month, governments have moved to ease, suspend or lift sanctions on Burma. While recognizing that important changes are taking place, we also note that human rights violations, including violations of workers' human rights, continue at alarming levels in Burma. In our view, while some easing of sanctions is appropriate, more sweeping reforms are premature – especially those related to investment.

In particular, we are troubled by the long history of corruption and human rights violations associated with trade and investment in Burma, particularly but not limited to oil and gas and infrastructure projects. As these sanctions are eventually removed, there will no doubt be a rush of investment from the US, EU and other countries seeking to take advantage of the country's abundant natural resources, new, flexible investment laws, low labour costs and lack of adequate laws, regulation or public accountability. Indeed, each day brings reports that manufacturers in parts of Asia where wages have been on the rise are looking to relocate to Burma, including in the country's quickly expanding industrial zones. Some claim that "western" corporations in Burma will help establish high standards in transparency and accountability, though past experience in Burma and elsewhere provides numerous examples to the contrary.

We believe that it is vitally important that any new business in Burma, when sanctions are eased, suspended or lifted, support the long-term economic and social development of the nation. This cannot be accomplished without respect for human rights (including the human rights of workers), protection of the environment and public transparency and accountability. If and when they do, we believe strongly that governments must *require* those doing business in Burma, via trade or investment, to uphold human rights standards. Strong accountability and transparency measures for business in Burma should be developed, with civil society, that draw on existing instruments such as the UN's Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises. Voluntary codes of conduct have proven to be ineffective tools and would be dangerously inappropriate in Burma. Given the country's high level of corruption and poor record on human rights, *binding* requirements to assess and remedy any negative human rights impact from investments; public reporting; and the creation of effective complaints and dispute-settlement instruments, among others, will be essential to ensure that new trade and investment do not contribute to the country's problems.<sup>1</sup>

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<sup>1</sup> The government of Burma also has an international duty to protect people from human rights violations by third parties, including businesses. Governments should strongly encourage the government of Burma to ensure that its laws give full effect to this duty. Additionally, governments should encourage the government

At all stages, businesses investing in or operating in Burma must accept the need to work openly and cooperatively with, among others, trade unions. The right to form or join a trade union and to collectively bargain working conditions will be among the most salient human rights at risk in Burma.

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The ITUC is encouraging all trade unions to promote the following proposal with their respective governments.

### **What We Want:**

Burma-specific legislation that would operate to ensure that multinational enterprises are operating responsibly, contributing both to sustainable development and the promotion of decent work and employment - especially in a country where human and labour rights violations remain common and the rule of law is extremely weak - and are held accountable for the acts of their operations and their business partners.

1. Business must respect human rights, which means avoid infringing on the human rights of others and address adverse human impacts to which it may cause or contribute. Any enterprise doing business in Burma (via trade or investment) would be *required* to respect international standards regarding human rights, including those human rights that have been identified by the ILO as constituting fundamental rights at work, protection of the environment, and corruption. The scope of this requirement should draw on the UN's Guiding Principles on Business and Human Rights and the 2011 OECD Guidelines for Multinational Enterprises (as well as OECD guidance related to investments in weak governance zones and conflict-affected and high risk areas, the OECD Convention on Combatting Bribery of Foreign Officials and the UN Convention against Corruption).

Importantly, enterprises also have an additional responsibility to prevent or mitigate adverse human rights impacts that are linked to their operations, products or services by their business relationships. The enterprise need not have contributed to those impacts. This obligation extends to all business relationships linked to its business operations, products or services.

2. Enterprises would be required to undertake a thorough and credible human rights due diligence process, assessing any actual or potential adverse impacts associated with that trade or investment, including business relationships, and publish that assessment on a centralized website (maintained by an authoritative expert body)<sup>2</sup> prior to establishing the investment. The UN Guiding Principles on Human Rights Impact Assessments of Trade and Investment Agreements is also instructive as to the components of a competent human rights impact assessment. Importantly, the due diligence process should draw upon on both independent experts (such as the ILO) and affected groups, including trade unions.

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to ensure that revenues from trade and investment are directed to support long-term economic and social development, including education, health and social services.

<sup>2</sup> The "authoritative expert body" would be established by the ILO and the Human Rights Council.

3. Enterprises would also be required to publicly disclose their direct or indirect business relationships including their supply chains within Burma.
4. Where actual or potential adverse impacts are identified, an action plan to remediate or to prevent those impacts within a reasonable time must be published with the impact assessment. This action plan should be developed in consultation with affected groups, including trade unions, and be made available to them in the relevant language(s). Further, the enterprise must establish and maintain a process for identifying its human rights and environmental impacts. Enterprises have an on-going due diligence requirement, posting reports on an annual basis. The public must also be given a reasonable opportunity to comment on these reports.
5. Certain economic sectors carry a high risk of adverse human rights and environmental impacts – in particular extractive industries, timber and large infrastructure projects. Any business conducting activities in these sectors, and any other sectors that may be identified as high risk after an initial sector by sector assessment, would require the review and certification of the due diligence reports and action plans by an authoritative expert body prior to the commencement of the business relationship.
6. Enterprises would be required to consent to a process to review alleged breaches of its requirements. This is not a substitute for any legal action which could be taken in any court with jurisdiction. Any third party/affected persons or their representatives could bring a complaint to the authoritative expert body. The complaint would be reviewed together with all evidence and a final report with specific recommendations, if any, would be issued. Efforts would first be made to have the corporation voluntarily prepare and implement a remediation plan consistent with the recommendations. If no plan is prepared or it is not implemented in full, then the enterprise would be required to accept review by ad-hoc arbitration, if requested by the claimant, which would issue a binding award. Claimants could alternatively seek relief in court. We recommend that any legislation explicitly grant to courts the jurisdiction to hear civil and criminal claims arising in Burma in the home country of the enterprise.
7. Enterprises would be prohibited from including terms in any agreements with the government of Burma that threaten to limit the ability of the government of Burma to regulate or enforce laws related to those rights within the scope of this this proposal.
8. Finally, the very fragile framework of industrial relations in Burma creates a heightened risk of enterprises being directly associated with or contributing to abuses. To strengthen this framework, enterprises would be required to take *proactive* steps to improve the environment for freedom of association, including making commitments (or requiring their business relationships making such commitments) with trade unions to adopt and promote an open attitude towards their activities. This would include, among other things, right of access to workers and the workplace, refraining from any acts that would have the effect of discouraging workers in any way from exercising their human rights to form or join trade unions and to bargain collectively, from avoiding any genuine opportunity to bargain collectively and making available facilities for trade union activities.