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Fédération Internationale des Ligues des Droits de l'Homme  
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الفدرالية الدولية لحقوق الانسان



# **Burma's "Saffron Revolution" is not over**

**Time for the international community to act**

**December 2007**

**Based on a joint international FIDH - ITUC mission on the Thai-Burma border**

## Table of contents

|          |  |           |
|----------|--|-----------|
| <b>1</b> | <b>The current situation in Burma .....</b>  | <b>7</b>  |
| 1.1      | The crackdown of large, peaceful protests .....  | 7         |
| 1.2      | The situation is not 'back to normal' .....  | 11        |
| 1.3      | "It is not over" .....   | 12        |
| <b>2</b> | <b>The people of Burma and their representatives are ready for a transition .....</b>  | <b>15</b> |
| 2.1      | Non-violent means for achieving democracy .....  | 15        |
| 2.2      | Political maturity .....   | 16        |
| 2.3      | A capable democracy movement .....   | 16        |
| 2.4      | No civil war if regime change happens.....   | 18        |
| <b>3</b> | <b>Cautious support for the 'dialogue' .....</b>   | <b>20</b> |
| 3.1      | The SPDC: no genuine willingness for dialogue (an unanimous view expressed by witnesses) .....                                 | 20        |
| 3.2      | Monitoring progress is crucial .....   | 22        |
| 3.3      | Good offices: an exclusively U.N. mandate .....  | 24        |
| <b>4</b> | <b>Failure of "wait-and-see". Seize the opportunity and give the UN Special Envoy's mission a real chance of success .....</b> | <b>26</b> |
| 4.1      | Four key principles to give Gambari's mission a chance of success.....   | 26        |
| 4.1.1    | Keeping Burma a priority .....   | 27        |
| 4.1.2    | Increasing the pressure now: useful, not harmful.....  | 27        |
| 4.1.3    | Accepting to take responsibility for Burma .....   | 28        |
| 4.1.4    | Two-pronged approach: influencing the regime, encouraging the people .....   | 29        |
| 4.2      | Four key leverage points to give Gambari's mission a chance of success.....  | 29        |
| 4.2.1    | International pressure to support national reconciliation .....  | 30        |
| 4.2.2    | Sanctions - Cutting the SPDC's economic lifeline .....   | 31        |
| 4.2.3    | A Burma Transition Fund.....   | 35        |
| 4.2.4    | Preparation of a transition towards democracy .....  | 36        |
| <b>5</b> | <b>Burma and international legal action.....</b>   | <b>37</b> |
| 5.1      | Possible crimes against humanity: prosecuting the Burmese military before the International Criminal Court (ICC)?.....         | 37        |
| 5.2      | Burma and Forced Labour: options available under international law .....   | 40        |
| <b>6</b> | <b>Conclusions and Recommendations: an international agenda .....</b>  | <b>43</b> |
|          | Glossary .....   | 47        |
|          | Useful reports & recent statements by FIDH and ITUC .....  | 47        |
|          | Web resources.....   | 47        |
|          | Burma-related Online media.....  | 47        |

**Tables**

|   |    |
|---|----|
| Table 1: A genuine dialogue? Monitoring the political change in Burma ..... | 23 |
| Table 2 : Four key principles to give Gambari's mission a chance.....       | 26 |
| Table 3 : Four key leverage points to give Gambari's mission a chance ..... | 30 |

## Executive summary

The situation in Burma after the "Saffron Revolution" is unprecedented. The September 2007 peaceful protests and the violent crackdown have created new dynamics inside Burma, and the country's future is still unknown. This led the FIDH and the ITUC to conduct a joint mission along the Thai-Burma border between October 13<sup>th</sup>-21<sup>st</sup> 2007 to investigate the events and impact of the September crackdown, and to inform our organizational strategies and political recommendations.

The violence and bloodshed directed at the monks and the general public who participated in the peace walks and protests have further alienated the population from its current military leaders. The level of fear, but also anger amongst the general population is unprecedented, as even religious leaders are now clearly not exempt from such violence and repression. This is different from the pro-democracy demonstrations in 1988, when monks were not directly targeted. In present-day Burma, all segments of the population have grown hostile to the regime, including within the military's own ranks.

The desire for change is greater than ever. Every witness -from ordinary citizens to monks, and Generation '88 leaders- told mission participants the movement was not over, despite the fear of reprisals and further repression. The question is what will happen next, and when? The future will depend of three factors: the extent to which the population will be able to organize new rounds of a social movement, the reaction of the State Peace and Development Council (SPDC), and the influence the international community can exert on the junta.

What happened in Burma *since* the crackdown has proven that the international community has influence on the regime. The UN Secretary General's Special Envoy Ibrahim Gambari's good offices mission was accepted. The UN Special Rapporteur on Human Rights, Sergio Pinheiro was allowed access to the country for the first time in four years, and Daw Aung San Suu Kyi and members of the National League for Democracy (NLD) were given permission to meet with each other for the first time since Daw Suu was placed under renewed house arrest, in May 2003. Yet these positive signs are still weak: a genuine process of political change has not started yet. Such a process, involving the democratic parties and ethnic groups, is fundamental to establishing peace, human rights and development in Burma. To achieve that, the international community must keep its focus on Burma, and maximise its efforts and capacity to help bring about political transition.

There are four key principles and four key leverage points to influence the SPDC regime. If implemented, they should force the regime to negotiate a peaceful transition, in which the military would become a professional body in charge of defending the country against external threats, and not a tool for repression in the hands of a dictatorship. These principles and leverage points stem from wide consultations with the organizations representing the people of Burma. Principles include keeping Burma a priority, understanding that increasing the pressure now is useful and not harmful, accepting to

take responsibility for Burma instead of passing the buck, and implementing a two-pronged approach in order to influence the regime and encourage the people of Burma. Leverage points include a binding Security Council resolution based on the responsibility to protect and on the fact that Burma is a threat to peace, cutting the SPDC's economic lifeline (comprehensive sanctions including, in particular, in the key priority sectors of oil and gas, timber, gems and financial - including banking - services, with due consideration, where necessary, for exceptions on justified humanitarian or similar grounds) as well as efforts to prepare the transition.

The international community has been watching the situation in Burma closer than ever since September 2007. It has offered the SPDC the opportunity of a Good Offices mission to nurture a tripartite dialogue with the National League for Democracy and ethnic groups. The SPDC must seize this last opportunity to be actively involved in the peaceful transition by opening up a genuine dialogue and starting an authentic political process of transition out of dictatorship. However, if the SPDC does not do so, the possibility remains open for a prosecution of the Burmese military before the International Criminal Court through a specific Security Council resolution, such as in the case of Darfur. The issue of criminal responsibility (holding officials accountable before criminal courts) is now considered as a serious issue by Burmese organizations if the regime does not make rapid progress. The SPDC should consider this very seriously.

The FIDH and ITUC call upon the international community, each Member State of the United Nations, regional organizations and political structures, to seize the opportunity created by the current situation, and to actively support political change in Burma. Our organizations will actively promote the use of the principles and leverage points laid out in this report.

The issue is urgent: accepting the risk that the current window of opportunity for a transition swings shut is not an option. While we are starting a year-long campaign to celebrate the 60<sup>th</sup> Anniversary of the Universal Declaration of Human Rights, and barely a few weeks after the 40<sup>th</sup> anniversary of ASEAN, our collective capacity to effectively realise and promote peace, human rights and democracy, is at stake. The lives, human rights, dignity and future of Burma's 54 million people require concerted and focussed commitment from the international community now, and not at some undetermined time in the future.

## **The joint FIDH-ITUC mission**

The FIDH and ITUC, both having a long involvement with Burma, decided to send a joint mission to the Thai-Burma border in order to investigate the September crackdown on the peaceful protests in Burma, and to inform our own organizational strategies and political recommendations. The mission included representatives from two Bangkok-based FIDH partner organizations (The Union of Civil Liberties and the coalition 'Peace for Burma'). The mission stayed in Thailand between October 13<sup>th</sup>-21<sup>st</sup>, both in Bangkok and on the Thai-Burma border, where most eye witnesses have recently arrived, and where many Burma-related NGOs and political organizations have a presence.

The mission interviewed 13 people who participated in the protests in Burma, or who were eyewitnesses to the crackdown and fled to Thailand, arriving immediately prior to the FIDH-ITUC visit. The delegation interviewed people from a range of backgrounds, some with extensive involvement in the events of August and September and others who joined spontaneously. They included monks, civic leaders of the marches, student leaders, a civil servant, a street vendor, a businessman, workers and a daily labourer, a poet, former political prisoners, university students and their family members.

The mission delegates also held 15 meetings with leaders and representatives of organizations belonging to Burma's democracy and human rights movement: Ministers in the National Coalition Government of Burma (NCGUB), members of the National Council of the Union of Burma (NCUB), and the Ethnic Nationalities Council (ENC), the Federation of Trade Unions of Burma (FTUB), Young Chi Oo's Workers' Association, the Assistance Association for Political Prisoners of Burma (AAPPB), and the Burma's Lawyers Council (BLC).

The mission held an informal roundtable meeting with delegates from the European Commission and six EU Member States, the UN Human Rights Office, the UN Office for Humanitarian Affairs and other Burma experts (including UN officials formerly based in Burma). The mission also met with Thai-based Asian human rights organizations (including Altsean-Burma and Forum Asia).

The mission did not travel to Rangoon as the risk assessment concluded that meetings in Rangoon or central Burma at the height of a brutal crackdown would put people there at even greater risk.

### **Members of the mission**

Danthong Breen (Chairperson, Union of Civil Liberties, Thailand, representing FIDH),  
Somsri Hananuntasuk (Coordinator, Asian Network for Free Elections, and Thai 'Peace for Burma Coalition').

Alison Tate (International Officer, Australian Council of Trade Unions, representing the International Trade Union Confederations (ITUC)),

Gaëtan Vanloqueren (Action Birmanie, Belgium, representing the International Federation for Human Rights (FIDH)).

## 1 The current situation in Burma

The events of August and September 2007 in towns and cities across Burma have brought the world's attention to the ongoing and very serious abuses of human rights in that country.

The mission conducted interviews with monks, workers, students, and others who were active in participating and organizing the peace walks and demonstrations. Their testimonies confirmed the severity of the crackdown reported by international media during the events in September and October. The interviews helped explain the dynamics of the movement that created the September marches and those that will shape post-September 2007 Burma. The situation after the protests is not that of a return to "business as usual". Indeed, eyewitness accounts strongly emphasize that the Saffron revolution is 'not over'.

### *1.1 The crackdown of large, peaceful protests*

Raises in fuel prices led to the first protests launched in August. However, the real spark that started the wide marches in mid-September was the repression of a peaceful street walk by monks in Pakokku (Northern Burma). People then saw that the SPDC was willing to brutalize even Buddhist monks, normally highly respected in Burma – and respected indeed, hitherto, even by the military themselves.

The protests were not only about fuel prices. They also concerned basic rights and freedoms. Peaceful demands to the authorities to respond with "loving kindness" ("metta", in Burmese), were met with armed violence. In mid-September, the initial street walks calling for an apology for the treatment of monks in Pakokku grew into demands for the SPDC to address the issues of severe poverty and the economic crisis facing many families, following the rise in fuel prices, and subsequently to demands for respect for fundamental human rights and freedoms.

The protests did not spring out from a vacuum. A fertile ground had developed over the preceding two years. Whilst action was sudden, mobilization was key to the large protests of late September. Small, organized groups of citizens from different backgrounds had formed, and were in contact with each other before and during the protests. Interviewees told the mission participants of the risks they faced and of how they and others distributed flyers and communicated with their friends and families by phone. Groups of activists joined and organized neighbours and fellow workers. A new wave of leaders has emerged (e.g., women groups issued a report about twenty women who performed critical functions during the protests)<sup>1</sup>.

Many people learned of events in other parts of the country by tuning into international radio and television broadcasts, as local media kept totally silent about the events.

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<sup>1</sup> Attention drawn to Burma's women leaders, Mizzima News, Nov 23, 2007

Despite the anticipated violent reactions from the authorities, interviewees described the feeling of sympathy for the monks among the broader population, during their street walks and spoke of tens of thousands of people being inspired to join them.

The number of people who participated in the protests is difficult to assess with accuracy. The number of monks and other protesters who joined were described as lining up 10 by 10 over many street blocks in Rangoon. Numbers vary between 30,000 and 100,000. Thousands of individuals were originally taken into custody. The number of those released since was announced by the authorities but there has still been no independent verification.

In August 1988, an estimated 3,000 people had been killed following the violent repression of peaceful protests, and thousands of others were taken into detention for years. Not since the country-wide pro-democracy demonstrations of 1988 have so many people in Burma taken to the streets to publicly express their opposition to military rule and the lack of basic freedoms.

At least 1,000 people were documented by the Assistance Association for Political Prisoners of Burma (AAPPB) as still in detention at the time of the mission, on top of political prisoners already held before the events. On Dec 1<sup>st</sup>, AAPPB still documented the names of 706 detainees, in addition to 1158 political prisoners held prior to August 5, 2007<sup>2</sup>. Amnesty International (AI) quotes very similar figures. According to AI, 700 people arrested during and since the September protests remained behind bars by end-November, while 1,150 political prisoners held prior to the protests had not been released<sup>3</sup>. The authorities consistently claimed throughout November that between 91 and 93 people arrested during the protests remained in detention. The figure was challenged by the United Nations Special Rapporteur on Human Rights in Myanmar (Burma), Mr Sergio Pinheiro, who said on 27 November that "the government's claim that only 93 people remain in detention is most likely not true"<sup>4</sup>.

Witnesses interviewed by the mission reported that many thousands of monks were taken from the streets and in raids on their monasteries in Rangoon, Mandalay and elsewhere, 6,000 on one day. Eye witnesses told the mission participants of monks and civilians who were beaten, rounded up and taken away in trucks. Unknown numbers remain in detention, held under harsh conditions, with no food for the first days, in cramped rooms, with no space to lie down. Others were sent to labour camps. The families of monks and others have been denied access to their imprisoned family members.

In the following days, authorities ordered monks to return to their home villages, hence verifying the identity and whereabouts of those who disappeared will take time. Those

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<sup>2</sup> [www.aappb.org](http://www.aappb.org)

<sup>3</sup> Amnesty International press release, 28 November 2007

<sup>4</sup> *'I don't think this number corresponds to reality,' Mr. Pinheiro told an audience at Brown University's Watson Institute for International Studies, where he is a visiting professor. 'Ninety three is too low. I think it's a larger number of people continuing in detention.'* (Source: Associated Press, 28 November 2007).



who died in detention are reported to have been cremated without families or witnesses identifying their remains, or knowing the cause of death.

While no accurate and verifiable number of deaths or wounded can be provided, it is clear, as recognized by all independent observers, that the repression was brutal and systematic. Most of the participants witnessed people that were or had been shot, people lying on the street seriously injured, as well as being beaten to death.

The mission participants were unable to determine accurate details of the numbers and whereabouts of those detained or of the remains of those killed. Human rights organizations located on the Thai-Burma border, and having constant contacts with contacts inside Burma, have the same difficulty:

“We tried to collect a list of deaths during the protests but it is very hard. We have only 12, one was beaten to death at night and died in hospital. Two people died during interrogations. One body was not given back to his family: they only later confirmed that the body had been cremated”.

Assistance Association for Political Prisoners Burma - AAPPB

The AAPPB has a list of 18 persons killed during the protests, but the real figure may be very different from that.

Interviewees described details of the events where in the early days of the demonstrations, the military authorities communicated with them that they would not shoot, in spite of orders telling them to do so. A witness reported a switch in the military command in Rangoon on the 25<sup>th</sup> September when the 77<sup>th</sup> Brigade was replaced by the 66<sup>th</sup> Brigade, under General Shwe Man, formed by soldiers from SPDC top leader Senior General Than Shwe's home region.

On September 26<sup>th</sup> when the first shots were fired, some of those interviewed by the mission participants, narrowly escaped the bullets of snipers or being detained.

“On Sept 27<sup>th</sup>, I saw people on the ground. A student leader with a peacock flag was shot dead with one shot. All the people ran away. We don't know what happened to the body. After that, they shot with an automatic weapon [many shots were heard, not sure if it was machine gun]. People fell down. Many were shot.”

Participant in Rangoon street walks, poet, September 27<sup>th</sup>, 2007

Witnesses told the mission participants they were shot at while on the streets and near monasteries, while carrying wounded monks to safety.

“The army had blocked the gates leading into the Shwedagon pagoda. Monks who were praying were beaten, and then the army opened fire. 30 to 40 monks were wounded, lying on the ground, with maybe 50 other people. There were five dead monks. *[How can you tell they were dead?]* I was carrying wounded monks to take them to a safe place; some were not moving (...) I took the wounded

monks. It was 12 or 12.30 pm. People were beaten, and there was a lot of smoke [tear gas]. Snipers on trucks shot those people who threw stones or tried to fight back”.

Civilian leader during the protests, Rangoon, September 26<sup>th</sup>, 2007.

Mission participants heard accounts of the arrests and targeting of people who offered water to the monks on the street or had distributed flyers calling for people to join the protests.

Others said they were told by family members of the USDA militias, that militia members were given alcohol and amphetamines.

Up to 52 monasteries were raided in the days immediately following the street protests. The forcible disrobing of monks has contributed to the widespread outrage. The authorities made nightly household register checks for weeks, to identify activists and persons wanted for questioning.

[*At High School Number 3 in Tamwe*] “Most of the people killed were monks as they were at the front of the march, when the soldiers attacked, the crowd went back (reversed direction) and they were last. The riot police beat the monks, shot in the air, used tear gas. Everybody ran away; I hid in a house and saw those two bodies, two dead bodies lying on the ground. Another 20 persons were lying on the ground and were beaten up by the soldiers”.

Participant in Rangoon street walks, poet, September 2007

The international community must prioritize renewed access to Burma for the United Nations Special Rapporteur on Human Rights in Myanmar (Burma), Mr Sergio Pinheiro, and ensure he is allowed to visit prisons and labour camps in order to verify details, and conduct a full and independent investigation into the events of September. The United Nations, ASEAN and the diplomatic community must also insist on access to the country for the International Committee of the Red Cross (ICRC) for its full range of programs. Both the UN Special Rapporteur and the ICRC should have unhindered, private and confidential access to political prisoners.

All those interviewed said they could not live in safety any longer in Burma as they were followed, their homes were raided, and their photographs distributed. In order to escape arrest, they avoided their homes and did not try to seek refuge in monasteries, choosing instead to leave Rangoon by public transport to the Thai-Burma border. They said public buses were stopped, in search for anyone with Rangoon identification cards, being checked frequently at checkpoints and the police having photo files to identify specific people. People with shaven heads or in robes were particularly targeted. Others escaped to the border by walking, arranging to hire motorbikes and hiding in the jungle as even monasteries or houses could not provide safe refuge. Most were not seeking to resettle in a third country but were considering their refuge in Thailand as temporary.

*"We were surrounded by the soldiers. When the military said the monks could leave, they refused to go without all the people being allowed to leave. The monks said, "No, we are in the same boat!" The army threatened to shoot if the monks did not leave. Eventually a group of some thousands were allowed to leave, two by two – monks and civilians. Then the military closed the barriers again, stopped anyone further from leaving, and then they opened fire. I was grabbed by supporters and pushed through a gap to safety."*

Civilian leader who negotiated with the military commander during the protests near the City Hall, Rangoon, September 26<sup>th</sup>, 2007.

## ***1.2 The situation is not 'back to normal'***

Fear and anger among the general population have reached unprecedented high levels, as even religious leaders are now clearly not exempt from deadly violence and repression. The violence directed against the monks was unprecedented. This is different to 1988, when the crackdown did not directly target the monks.

The violence and bloodshed directed at the monks and the population who participated in the peaceful walks and protests has thus further estranged the junta from the civilian population. Even those previously politically and socially conservative parts of society, who were not attracted to the movement for democracy, the abbots who focused on meditation and their religious practice, retired military officers and civil servants have now been offended. The mission heard many accounts of people being enraged by the reaction of the military authorities and of cases where the soldiers cried or begged for forgiveness as they followed the orders of their commanders.

The repression and arrests were still taking place in late October. During the mission, the regime was taking family members as hostages when the targeted people were not found at home, until those who had fled into hiding turned themselves in exchange. Arrests of human right defenders continued throughout November. According to the Bangkok-based organization ALTSEAN, at least four monks and 15 political activists were arrested in November<sup>5</sup>. The Maggin Monastery in Rangoon was locked down on Nov 29<sup>th</sup> and an official directive for all monks and lay people to leave was issued.

A witness and several organizations confirmed that, in the days following the crackdown, the regime had been forcing people to participate in pro-government, pro-National Convention rallies<sup>6</sup>. Teachers and their students were threatened with dismissal from their

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<sup>5</sup> See Burma Bulletin n° 11, November 2007, issued by ALTSEAN (Alternative ASEAN Network on Burma), Bangkok, <http://www.altsean.org/Reports/Burma%20Bulletin/BBNovember07.php>

<sup>6</sup> Fourteen years ago, the military regime has started a National Convention to draft a new Constitution. The Convention was attended by over 1,000 hand-picked delegates and was interrupted ten times. Widely criticized internally (the NLD is not participating in it) and externally, it is mainly a tool designed to legitimize and perpetuate military rule.

jobs and schools if they did not join, households were ordered to send one member or pay huge fines.

*"People were forced to go to pro-government mass meetings in my home region. At that time I could not contact my friends. People had to go to the meetings or had to give money to the authorities. That's forced labour. Teachers had to go. If they did not, they were dismissed from school. Many teachers and basic school students had to attend those meetings. If the students did not attend, they would be dismissed."*

1988 Generation student leader and former political prisoner who left his town in Pegu Division, and went to Rangoon when he saw on CNN TV that soldiers had opened fire on people.

### 1.3 "It is not over"

*"This crisis is not a small issue. I think it is not finished yet."*

21-year old university student, participant in Rangoon street walks, September 2007.

The result of this unprecedented situation is huge social tension, both against and *within* the military, unlike public responses to previous events and crackdowns. The underlying causes of the protests, named "the Saffron Revolution", have not been addressed, on the contrary. The fuel price rise, the economic conditions, the systematic violation of fundamental human rights and basic civil liberties, the lack of rule of law and the impunity of the authorities in their violent actions against the monks and others have fueled the desire for change more than ever.

*"What happened in Pakokku is very cruel. The underlying cause for this event is politically-related. Lots of people in our country are poor because there is no political stability. To solve the political stability, there should be a dialogue. For this national reconciliation, all political prisoners should be released, including Aung San Suu Kyi. Ethnic groups should also be part of the dialogue. Without national reconciliation, there won't be [political] stability. Without stability, there is no development. Without development, the people will stay poor. With people staying poor, the monks have no support."*

A monk from State Pariyatti Sasana University, Rangoon, who fled Burma because of the danger of being arrested for joining the protests.

It is not possible to anticipate what will happen next; nor can a time line be safely predicted. Yet every person met by the mission participants, from the youngest student that had joined his first protest to the Generation 88 leader, told the mission that the movement was not over. By all accounts, the monks intend to continue their religious boycott of the military.

Numerous ideas for continuing protests and expressing dissent were outlined to the mission.

*"We will continue but the regime is very difficult to predict. We are fighting for our survival. We are not sure about new demonstrations but dislike for the military is very huge."*

Rangoon street vendor, participant in Rangoon street walks, September 2007.

*"I think there will be other protests because people have seen monks beaten, and even more economic hardship. Some people could only eat one meal a day. They have to eat rice soup"*.

22-year old university student, participant in Rangoon street walks, September 2007.

Since the large crackdown, civilians and monks have taken up small initiatives to show their desire to continue the "Saffron Revolution". As of late November these include:

- Canine protests: activists tied photos of Than Shwe around the necks of stray dogs on Oct 12<sup>th</sup>. Police officers had to run after the offending dogs (associating anybody with a dog is an insult in Burma)<sup>7</sup>.
- More than 100 monks marched peacefully in Pakokku on Oct 31<sup>st</sup>.
- Distribution of "September True Story" CDs among the public on Nov 24<sup>th</sup><sup>8</sup>
- Formation of new secret group "Generation Wave" on Nov 24<sup>th</sup> and distribution of anti-military pamphlets in Rangoon. Generation Wave was formed following the Saffron Revolution by artists, civil servants, computer experts and students<sup>9,10</sup>
- Peaceful march by 25 women in Rangoon on Nov 25<sup>th</sup> to commemorate the International Day for the Elimination of Violence against Women<sup>11</sup>.
- All Burma Monks' Alliance statement on Nov 26<sup>th</sup> calling on the State Sangha Maha Nayaka (State Council of Senior Monks) "to try for the release of monks in prison and search for the monks missing during the Saffron Revolution". It also called for the State Sangha Council to work for the release of all political prisoners, including Daw Aung San Suu Kyi, and commencement of a meaningful political dialogue between the military junta, NLD and ethnic nationalities"<sup>12</sup>.

All organizations and individuals interviewed emphasized the need and desire for continuing non-violent protests, as a means to demand basic rights, that justice be done, for economic reform and for a peaceful transition to democracy.

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<sup>7</sup> Protesting Dogs Are Now on the Regime's Wanted List, by Saw Yan Naing, Oct 12, 2007, The Irrawaddy

<sup>8</sup> UNSC Burma Update, Nov 27<sup>th</sup>

<sup>9</sup> UNSC Burma Update, Nov 27<sup>th</sup>

<sup>10</sup> Activists group urge people to revive 'Saffron Revolution', by Maung Dee, Mizzima News, November 27, 2007

<sup>11</sup> Women Activists Stage Demonstration in Rangoon, by Saw Yan Naing, The Irrawaddy, Nov 26, 2007

<sup>12</sup> UNSC Burma Update, Nov 27<sup>th</sup>

**Burma's "Saffron Revolution" is not over. Time for the international community to act  
December 2007**

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The events of September 2007 have created new dynamics within Burma. The future will depend of three factors: the extent to which the population will be able to organize new rounds of a social movement, the reaction of the SPDC, and the response of the international community, namely what kind of influence it can generate and which level of pressure it bring to bear can put on the regime.

## **2 The people of Burma and their representatives are ready for a transition**

*"The world's people should know we are ready for democracy. We are worth democracy. In 1988, we showed our desire for peace and freedom. In 1990, we showed our desire for democracy. In 2007, we repeated these."*

'88 Generation student leader and former political prisoner who went to Rangoon after he saw on CNN TV that soldiers opened fire on protesters.

An important goal of our mission was to have a clear and updated view, not only of the dynamics inside Burma, but also of the organizations that represent the people of Burma and are located on the Thai-Burma border. Mission participants felt they had to consult these as they represent the people, and have expertise on the solutions for their country.

Mission participants were able to confirm the existence of a sustained commitment to democracy for more than 20 years, both from the newly arrived people from Burma and from the political and ethnic organizations consulted.

### ***2.1 Non-violent means for achieving democracy***

In 1988, non-violent protests lasted for almost a year before being crushed in the bloodbath committed by the authorities. In 1990, the people respected the principles of democratic elections, even though the military regime did not. 82% of the people voted for the National League for Democracy, under the leadership of Aung San Suu Kyi.

Since 1990, the people of Burma across the country have shown popular support for Aung San Suu Kyi every time she was freed and able to speak, like in 2003. The '88 Generation', a group of former student leaders who gained prominence in the 1988 democracy movement, organized peaceful political initiatives since the release of Min Ko Naing in late 2004, for example by signature campaigns for freedom in Burma, prayer campaigns or 'White Expression' (wearing white clothes).

In 2007, the people of Burma again used non-violent means to express their desire for democracy. The basic causes of the 'Saffron Revolution' were poverty, outrage towards the military after the Pakokku event (where monks were brutalized), and the desire for political change, calling for freedom, after decades of dictatorship. The leaders have maintained a strong and sustained non-violent approach.

## ***2.2 Political maturity***

Leaders from different groups were able to quickly reach agreements during the protests. Student leaders, leaders of monks and members of the NLD were able to quickly agree on four political demands after the crackdown in Pakokku in mid September:

- 1) Official apologies for the violent reaction in Pakokku
- 2) Release of all political prisoners
- 3) Reduction of fuel and commodity prices
- 4) Dialogue for national reconciliation that includes the SPDC, NLD and ethnic groups<sup>13</sup>.

This shows strong unity and political maturity even under dangerous and difficult circumstances.

The mission talked with various individuals who had been involved in contacts between these groups. These individuals were highly respectful of the constraints of other groups (the monks, for example), and stressed that reaching an agreement on the four demands had been smooth.

## ***2.3 A capable democracy movement***

The results of the national elections held in 1990 have never been recognized by the regime. The SPDC exercises effective sovereignty over the country, the Members of Parliament elected in 1990 are the genuine representatives of the people of Burma. These elected representatives, as well as their parties and other organizations of Burma's democracy movement, are functioning both inside Burma and outside its borders. Inside Burma, the NLD functions as best as it can with its limited capacity given the constraints of political freedom in Burma, and the Committee Representing the People's Parliament (CRPP) represents 433 Members of Parliament elected in 1990. Members of both the NLD and CRPP joined the protests in August and September 2007.

The leadership of the monks, the most revered members of society, created an effective social, religious and political movement. The authorities began their violent crackdown within days of the moment when peaceful marchers entered University Avenue and stopped outside Aung San Suu Kyi's house, where she came to the gate and prayed with the monks.

The democracy movement has a strong united political platform, the NCUB (National Council of the Union of Burma), which includes all the relevant organizations representative of the people of Burma: democratic parties, ethnic leaders, trade unions

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<sup>13</sup> Interview with a civilian Sikh leader and with a Buddhist monk from Pariyatti Sasana University



and other workers' associations, student organizations, and Members of Parliament elected in 1990<sup>14</sup>.

The organizations that the mission participants met showed unity, albeit not consensus on everything, as in any democratic state.

*"We are different organizations. Just as different family members, we are different. We have one common goal, two different strategies. We do the push, they do the pull".*

Maung Maung, NCUB Secretary General and leader of the FTUB<sup>15</sup>

*"The ethnic parties are our allies, we will not break up. There are two organizations: the NCUB and the Ethnic Nationalities Council (ENC), which represents seven states. ENC and NCUB go along just fine: We agreed on tripartite dialogue, we have meetings, and one ENC person is in our board".*

The NCUB presidium.

Representatives in exile of the people of Burma have also drafted a Constitution for a future Federal State<sup>16</sup>. 104 representatives of the various organizations have elected 17 persons to draft it. As would be expected from the history of Burma in modern times, the Constitution is forceful and explicit in affirming individual human rights and freedoms. It incorporates International Treaties in the legal system: 'The Courts shall have the right to directly refer to or apply the international covenants ratified by the Federal Union' (Article 45). That it has the agreement by all groups is a very significant statement about the intentions of the parties in constituting a new Federal Burma.

### **Complementarity, not opposition, between 'inside' and 'outside' democracy groups**

Some experts and diplomats point out differences in policy statements between 'inside' and 'in exile' groups, which is indeed sometimes the case. Our mission endeavoured to assess to what extent this could constitute a problem. It does not. The groups based outside the country, such as the NCUB, have the freedom to declare policy and make statements that the NLD and others cannot issue inside Burma without being repressed immediately. The foreign-based groups that the mission participants met have constant contacts with individuals and organizations based both inside and outside the country.

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<sup>14</sup> The National Council of the Union of Burma (NCUB) is comprised of the Democratic Alliance of Burma (DAB), the National Democratic Front (NDF), the National League for Democracy (Liberated Area) (NLD-LA) and the Members of Parliament Union (MPU), as members. The DAB includes two dozen democratic parties and various organizations, including the Federation of Trade Unions of Burma (FTUB), the Karen National Union and the All-Burma Students Democratic Front (ABSDF). The NDF includes organizations from nine ethnic groups, including Karen, Wa, Chin, Mon, Kayan, Arakan, Lahu. The MPU comprises Peoples' Parliament representatives who won the 1990 General Election, who went to the "liberated area", as well as those who are in exile, that include the ministers of the National Coalition Government of the Union of Burma.]

<sup>15</sup> Federation of Trade Unions – Burma, which enjoys "associated organization" status with the ITUC. Maung Maung is Secretary General of both the NCUB and the FTUB

<sup>16</sup> Federal Constitution Drafting and Coordinating Committee (2005). Constitution of the Federal Republic of the Union of Burma (First draft).

They work with and are regularly consulted by foreign governments, elected representatives, NGOs, as well as international organizations, including Specialised Agencies of the United Nations.

The mission strongly objects to the portrayal of 'inside/outside' differences as a weakness as well as to the '*out of the game dissident group*' picture put forward by some observers. The democracy movement has competent, proven and relevant policy capability.

## ***2.4 No civil war if regime change happens***

*“Singapore is wrong: we will not break up. We are ready: if the regime moves away, we have a Constitution. We all sit together as you can see. (...) We really want to say that there will not be balkanisation of Burma if there is a regime change.”*

Maung Maung, NCUB Secretary General and leader of the FTUB

In recent weeks, some Burma 'experts' have warned of the possibility of increased violence between ethnic groups in the case of a sudden regime change in Burma. This 'Iraq scenario' even convinced some diplomats that rapid regime change would not be desirable.

The mission delegates disagree with this “worst-case scenario approach”. Current armed struggle against the SPDC should not be seen as an obstacle to peace and democracy in a future federal state, as the intention of the groups that choose armed struggle is to provoke regime change. The reason for armed struggle is the need to protect their own people against ethnic cleansing and other violations of international humanitarian law routinely committed by the military in several regions of the country.

Human rights and capacity training organizations pointed out increased understanding and capacity for dialogue among the different ethnic groups. Hundreds of ethnic leaders, men and women, have participated in trainings and seminars on national reconciliation. The fact that some ethnic groups fought the national government fifty years ago to win independence should thus not be taken as an argument to say they would do the same under a process aimed at creating a federal state.

The desire for peace under a federal system is shared by many groups. Each ethnic group has committed and restated its commitment to a national, federal state. This is confirmed by recent public statements and media interviews<sup>17</sup>. The likelihood is very strong that a few key decisions by a government which respects ethnic diversity would bring more stability between the Burmans and the ethnic groups than there is now, as follows: 1) allow teaching of ethnic languages at school 2) access of ethnic groups to higher education 3) access of ethnic groups to medical care and facilities 4) integration of members of ethnic armies in a national army.

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<sup>17</sup> Ethnic leaders dismiss Iraq scenario should junta fall, By Saw Yan Naing, The Irrawaddy, Oct 26.

The mission was able to analyze the possibility of increased military operations from the ethnic armed groups in the near future. The key ethnic groups that have signed cease-fire agreements with the SPDC during the 1990s, hoping to be involved in the Convention process, have been disappointed. They have seen the brutal repression of the recent protests. Without hope for political change, they might take up arms again, but they have legitimate political claims to be included in the political process. Even increased military operations from ethnic groups should not be understood as a threat to peace, as the groups that choose it intend to use military force as a means to increase pressure on the regime to change.

The FIDH and ITUC believe the role of third countries should be to support the leaders of the democracy movement and of ethnic groups, both inside Burma and outside its borders. These actors should be encouraged to contribute to a peaceful transition. Their capabilities should be further enhanced. They should not be portrayed, by foreign governments, as "dissidents" or the "opposition". Instead, they should be treated as the legitimate representatives of the people of Burma. The current momentum should be used to improve their unity and increase their chances of forcing the SPDC to accept genuine political change. Under their current attitude, foreign governments do not face up to their historical responsibility in the new circumstances created by the demonstrations of August-September 2007.

### 3 Cautious support for the 'dialogue'

Concerted international attention is required in order for a process of genuine political dialogue to be achieved. The SPDC has shown it has neither imagination nor tolerance in dealing with differences of opinion or expression and the "national convention" is little more than a delaying process. The United Nations has now set a course of action, with a mandate from the Security Council, to provide focused support through the good offices mechanism under the UN Secretary General's Special Envoy, Mr. Ibrahim Gambari.

#### 3.1 *The SPDC: no genuine willingness for dialogue (an unanimous view expressed by witnesses)*

*"The dialogue is meant to suppress Aung San Suu Kyi, to make her accept that everything bad in the country is her fault. In today's newspaper, they say 'we won't change anything'."*

Businessman from Burma, 14 October, 2007.

*"If they give full authority to Gambari to make a true reconciliation between Than Shwe and Aung San Suu Kyi, that's the best. But we are ready for the worst. (...) I don't believe Than Shwe because he did two things at the same time: the dialogue offer, and torture and arrests. He uses delaying tactics to avoid international pressure (...) The government is lying to the outside world."*

1988 Generation student leader and former political prisoner.

Mr Gambari's mission will not be a success without increased pressure from the international community. This is the general conclusion that emerged from the meetings mission delegates had with the representatives of the democracy movement and with Thai-based organizations.

From past experience, people don't trust the SPDC or General Than Shwe as being committed to a process of political dialogue. The most skeptical say Than Shwe is only agreeing to a public relations exercise for international consumption, in order to buy time and wait for the world's media attention to fade away. Burmese democrats and Asian partner organizations that have observed the stalling tactics the regime has played over the years, point out Than Shwe's proposal came with unacceptable preconditions placed on Aung San Suu Kyi at the same time as thorough sweeps of households, large-scale arrests and other repressive measures were taking place.

In the weeks since the mission, this analysis has been confirmed.

- The SPDC's Ministry of Foreign Affairs warned that it did not want UN Resident Coordinator Charles Petrie (the highest-ranking United Nations official in Burma) to continue working in the country, after a statement had been issued in early

- October by the UN about the socio-economic situation of the country<sup>18</sup>. Mr. Petrie has since left the country.
- The SPDC has rejected the three-way talks requested by Mr. Gambari<sup>19</sup>
  - State media have reported that authorities will "take action" against 91 people detained during pro-democracy protests whom it accuses of being involved in "violent and terrorist acts"<sup>20</sup>.
  - The regime arrested activists including Ma Su Su Nway, a well known labour activist on 13th November, during Professor Pinheiro's visit. Aung Zaw Oo, a member of the Human Rights Defenders and Promoters (HRDP) was arrested on November 26<sup>21</sup>. Ethnic leaders and members of the Committee Representing the People's Parliament (CRPP), Naing Ngwe Thein, U Aye Tha Aung, U Ohn Tin, Khun Htoo and U Soe Win were arrested on 20th Nov.

Ample evidence confirming this analysis can be found in the "Burma Bulletin" n°11 issued by ALTSEAN in November 2007<sup>22</sup>.

Doubts about the SPDC's real commitment towards political dialogue were further strengthened in early December 2007, when the SPDC made clear it did not intend to associate Aung San Suu Kyi, the NLD or any other democracy movement representatives in the "Constitution Drafting" process. It should be recalled that, on 18 October 2007, following 14 years of work on "Draft Principles for a Constitution" finalised earlier in the year by the "National Convention" – from which the NLD and other democracy organizations had in effect been excluded – the SPDC had announced the formation of a "Commission for Drafting the State Constitution in accord with the fundamental principles and detailed basic principles laid down by the National Convention". The "Commission" was scheduled to commence its work on 3 December 2007<sup>23</sup>. On that day, while it was officially announced that the "Commission" had indeed gathered to start its work, the Information Minister, Brigadier General Kyaw Hsan was quoted as having ruled out any role for Aung San Suu Kyi or the NLD in the constitution drafting process: *"No assistance or advice from other persons is required," he said, adding that no changes to the National Convention's work would be considered. "It is not reasonable or fair to amend those principles adopted by the delegates," he said*<sup>24</sup>.

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<sup>18</sup> UN News Centre - 02 October 2007

<sup>19</sup> Reuters - 06 November 2007

<sup>20</sup> AFP - 07 November 2007

<sup>21</sup> Junta arrests another Human Rights activist, by Maung Dee, Nov 26 2007, Mizzima News

<sup>22</sup> Burma Bulletin n° 11, November 2007, issued by ALTSEAN (Alternative ASEAN Network on Burma), Bangkok, <http://www.altsean.org/Reports/Burma%20Bulletin/BBNovember07.php>

<sup>23</sup> "The New Light of Myanmar" (official SPDC newspaper), 15 November 2007.

<sup>24</sup> See: "Myanmar rejects calls to include Suu Kyi in reforms", Asia Pacific News, 3 December 2007

### 3.2 *Monitoring progress is crucial*

*« If the military wants a genuine dialogue, Aung San Suu Kyi needs to be able to meet with other colleagues of the NLD and have access to other people.»*

Dr Sann Aung, Member of the Council of Ministers, NCGUB

The only way to ensure the dialogue is not a public relations' exercise is to monitor its progress, and to maintain vigilant international pressure.

All organizations mentioned that the n°1 priority for establishing a genuine dialogue was the release of all political prisoners:

- Daw Aung San Suu Kyi and all members of political parties,
- Ko Ming Ko Naing and Ko Ko Gyi and all student leaders,
- U Gambira, leader of the All-Burma Monks Alliance and all detained monks,
- Ma Su Su Nway and all detained labour activists,
- U Win Tin and all arrested journalists,
- Ma Thin Thin Aye and all detained women leaders,
- and all arrested artists and intellectuals.

The organizations of the democracy movement believe that these other steps are necessary to consider that a true dialogue is being launched:

- A de-escalation of the repression (ending torture and new arrests)
- 
- Authorisation should be given to Aung San Suu Kyi to meet with colleagues and representatives of the NLD and other organizations that need to be included in a genuine process of national reconciliation.
- The SPDC should fully cooperate in the establishment of a permanent office for UN Special Envoy Gambari in Rangoon, including permanent staff. Also, a permanent presence of the Office of the UN High Commissioner for Human Rights should be approved and established inside Burma to monitor the situation and receive the complaints of human rights abuse, not unlike the ILO Liaison Office in Rangoon (see section 5.2)

The FIDH and ITUC fully endorse the above-mentioned steps and call on the international community to urgently establish a monitoring mechanism of progress inside Burma.

The table below provides a draft of the main steps that should be achieved in a transition out of dictatorship as well as an assessment of the current state of play.

**Table 1: A genuine dialogue? Monitoring the political change in Burma**

| <b>Positive steps towards political transition</b>   | <b>Current situation (Dec 5<sup>th</sup> )</b>   |
|--|--|
| First positive signs <ul style="list-style-type: none"> <li>- meetings between SPDC and Aung San Suu Kyi</li> <li>- UN Gambari's and Pinheiro's visits</li> </ul>  | yes, but negated to some extent by simultaneous expulsion of UN representative in Rangoon  |
| Open the door to the democracy movement <ul style="list-style-type: none"> <li>- meeting between SPDC, ASSK, NLD, ethnic groups and other political parties</li> </ul>   | no   |
| Lift restrictions on political activity and freedom for political leaders to engage in a genuine dialogue <ul style="list-style-type: none"> <li>- release Aung San Suu Kyi from house arrest</li> <li>- freedom of Aung San Suu Kyi to meet with NLD colleagues and leaders of ethnic groups</li> <li>- freedom for these persons and organizations to talk to the media and consult the people of Burma</li> </ul>   | no   |
| De-escalating repression <ul style="list-style-type: none"> <li>- stop torture, cruel, inhuman and degrading treatment or punishment</li> <li>- stop arbitrary arrests and disappearances</li> </ul>   | no   |
| De-escalating military offensives against ethnic groups <ul style="list-style-type: none"> <li>- Stop army attacks against villages, including indiscriminate bombing and burning of undefended civilian settlements</li> <li>- End use of rape as a weapon of war</li> <li>- Stop forced displacement and regrouping of civilian populations</li> <li>- Ban the use of landmines</li> <li>- Stop use of forcibly recruited civilians as porters, human shields and "human minesweepers" for the military in conflict zones</li> </ul> | no   |
| Release all political prisoners <ul style="list-style-type: none"> <li>- arrested since August 15<sup>th</sup>, 2007</li> <li>- arrested before August 15<sup>th</sup>, 2007</li> <li>- disappeared since August 15<sup>th</sup>, 2007</li> </ul>  | On Dec 5 <sup>th</sup> , according to AAPB <sup>25</sup> : <ul style="list-style-type: none"> <li>- 706 still detained since Aug 15<sup>th</sup></li> <li>- 1158 still detained before August 15<sup>th</sup></li> <li>- 84</li> </ul> |
| Establish an independent, international human rights investigation, to asses details of the 2007 crackdown <sup>26</sup><br>Bring perpetrators to justice  | No   |
| Openness to international accountability <ul style="list-style-type: none"> <li>- ICRC prison visits and humanitarian operations re-established</li> <li>- unrestricted access and cooperation with humanitarian organizations</li> </ul>  | No   |
| End forced labour, respect ILO Convention 29, implementation of ILO Resolution of June 2000 and subsequent decisions of the ILO Conference and   | No   |

<sup>25</sup> See <http://www.aappb.org/>

<sup>26</sup> Validate numbers of deaths, disappearances and conditions of detention. See list of deaths: [http://www.aappb.org/died\\_sept\\_07.html](http://www.aappb.org/died_sept_07.html)

|   |    |
|---|----|
| Governing Body. Release all detained trade unionists  |    |
| Political freedoms, among others: <ul style="list-style-type: none"><li>- freedom of association and assembly</li><li>- freedom of speech and expression, including lifting of restrictions on the press and on Internet access</li><li>-</li></ul>             | No |
| Democracy, among others: <ul style="list-style-type: none"><li>- recognition of the results of the 1990 elections or new democratic elections</li><li>- genuine process of writing a constitution with the NLD and representative ethnic stakeholders</li></ul> | No |

Monitoring a process implies setting a clear timeline with specific benchmarks. There is a need to establish deadlines for the above steps to be implemented.

It is clear that some of the steps mentioned above should be rapidly implemented, such as the release of all political prisoners, and others may take longer (such as drafting a genuinely democratic constitution).

### ***3.3 Good offices: an exclusively U.N. mandate***

“If China and India want to be involved in talks, that is OK, but if it’s to reduce the pressure on the regime, it’s not OK. We are very cautious. If the U.N. Security Council does its job, we don’t need 6-country talks.”

Maung Maung, NCUB Secretary General and leader of the FTUB.

As Burma’s neighbours are key to a transition in Burma, it has been suggested that they should have a prominent role, such as that proposed by the Thai Prime Minister. The NCUB, FTUB and other democracy organizations consider the priority is for all UN Member States, especially Burma’s neighbours, to actively support Mr. Gambari’s UN Security Council mandate instead of suggesting initiatives that may undermine it.

The FIDH and ITUC welcome the announcement by the EU High Representative for the Common Foreign and Security Policy Javier Solana of the nomination of Piero Fassino as EU Special Envoy for Burma. The mandate must not undercut or preempt a process parallel to that of the UN, but instead strengthen the involvement of countries of the South-East Asia region and other regional powers, including India, China and Japan. It must be accompanied by other steps (see Sections 4.2 and 5).



The internal Burma context is thus made up on the one hand of possible new initiatives by the people of Burma themselves to express their desire for freedom and democracy and to maintain internal pressure, and on the other hand of the risks of failure of Mr. Gambari's good offices mission if the international community does not seize current opportunities. The broader context is that of crimes against humanity committed by the SPDC, which include widespread use of forced labor, continuous offensives in ethnic areas that generate hundreds of thousands of internally displaced persons, the use rape as a weapon of war, the unlawful detention of more than 1100 political prisoners even before the recent events, as well as the humanitarian situation of malnutrition and possible large-scale starvation.

## **4 Failure of “wait-and-see”. Seize the opportunity and give the UN Special Envoy’s mission a real chance of success**

The violent crackdown by the Burmese authorities on the non-violent protests of ordinary citizens of Burma, followed by SPDC’s purported offer of political dialogue provides the international community with a choice. Either it maintains its wait-and-see attitude, in the hope that political change will happen. Or it acts in order to ensure that such change will indeed take place and that the current opportunities for transformation will not be lost.

If the international community chooses the wait-and-see approach, the people of Burma may yet be relegated to a continued life under brutal repression for years to come.

The FIDH and ITUC call upon the international community to choose the second option by committing itself to maintaining Burma at the top of its agenda, by establishing benchmarks and a timeline for the upcoming year and assess progress every month. This path is the only one likely to ensure that internal and international pressure achieve a peaceful transition.

All organizations met during the mission declared that more pressure was needed to insure a genuine dialogue. The meetings the mission delegates held with representatives of the democracy movement of Burma and with Bangkok-based Asian human rights organizations lead our organizations to suggest four principles to give the UN Special Envoy’s mission a good chance of success.

In addition, the FIDH and ITUC propose to use four leverage points on Burma.

### ***4.1 Four key principles to give Gambari’s mission a chance of success***

The international community -including regional organization- should follow four broad principles when dealing with Burma and defining its relevant policies (Table 2).

**Table 2 : Four key principles to give Gambari’s mission a chance**

- 1) Keeping Burma a priority
- 2) Increasing the pressure now: useful, not harmful
- 3) Accepting to take responsibility for Burma instead of passing the buck
- 4) Two-pronged approach: influencing the regime, encouraging the people

#### 4.1.1 Keeping Burma a priority

There is only one way to achieve sufficient international pressure to enable a political process in Burma. It is to build on the current momentum and continue to place Burma at the top of the international agenda, like the international community is doing in the cases of Iran, North Korea, Congo (RDC) and Sudan.

Concretely, it means keeping Burma a priority

- at the highest levels of government,
- in every relevant meeting/forum,
- by engaging countries in the region.

Keeping/making Burma a priority also implies adopting a stronger UNSC resolution than what was achieved so far. Binding resolutions on Burma are the top demand of the representatives of Burma, as they constitute the strongest possible signal directed at the SPDC. The absence of such a Resolution to-date is consistently used by some members of the international community – as well as by major economic interest groups– as an overwhelming argument for refusing to take meaningful action against the military regime.

As mentioned above, keeping Burma as a top priority also implies close monitoring of progress inside Burma.

Burma is a test case for the international community. The question addressed to it by the Buddhist monks and citizens is the following: are we, as a group of nations, able to influence positively a transition out of dictatorship for a people that has proved over twenty years its political maturity and commitment to non-violence and democracy? Burma is indeed a symbol, like South Africa and Chile were twenty years ago.

#### 4.1.2 Increasing the pressure now: useful, not harmful

*[Why did the EU decide to delay the implementation of the sanctions?] We want to give Gambari's mission a chance."*

A senior diplomat from the EC, informal roundtable briefing held during the mission

*"There is not enough international pressure on the SPDC. This time, it's the same, they will play manoeuvres again. They're buying time. We need more international pressure."*

NCUB Presidium

The people of Burma do not trust the dialogue offer of the SPDC, as mentioned above (Section 3.1). All the organizations that the mission met were asking for more pressure, not less.

Not a single person that mission participants met, whether ordinary citizens or representatives of organizations, mentioned that international NGO's or third countries should be cautious about their actions and avoid threatening the possibility for a dialogue to develop. This is in sharp contrast to the earlier dialogue between the SPDC and Daw

Aung San Suu Kyi when Burma's democracy organizations were quite cautious compared to today<sup>27</sup>.

Diplomats and experts advising an expectant attitude during Mr. Gambari's mission are thus not taking into account the political demands of the elected representatives of Burma's people.

#### 4.1.3 Accepting to take responsibility for Burma

*"To have a dialogue, you need points of leverage. The EU has no leverages on Burma. Only 3% of trade of Burma is with EU."*

A senior diplomat from the EC, informal roundtable briefing held during the mission

*"EU and ASEAN should not play ping-pong games."*

Anselmo Lee, Forum Asia Executive Director.

*"Our next report is going to be titled "Stop passing the buck"*

Debbie Stothard, Altsean-Burma Coordinator.

The representatives of the people of Burma ask countries to accept that they are responsible for the political transition in Burma, and that they implement every action that can be of use at their own level, in order to effectively combine regional and international efforts.

Indeed, key countries have refused to take responsibility for Burma and have been passing the buck before, during and after the recent protests. Various countries and organizations are keen to say that *"We don't have much leverage to influence the SPDC, but other countries do"*. The European Union has invoked this justification to defend itself for not implementing sanctions on trade and investments, including on financial services, saying India and China were the great powers. Singapore has recently said that it could not influence the SPDC, while it ranks high in the trading partners of Burma, and acts as the major source of banking services to the SPDC.<sup>28</sup>

Several organizations and experts that the mission participants met suggested that the international community should play a more pro-active role, in accordance with possibilities existing at national or regional level. While everybody agrees the international community must find the strongest common policy at the UNSC level, key organizations and experts that the mission participants met see no problem with regional groups and crucial countries playing different roles.

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<sup>27</sup> For example, the Burmese refugees who in 2002 filed a civil action in a Belgian court against the military regime and against TOTAL for crimes against humanity and complicity with crimes against humanity in Burma, took extensive time to consult with the Burmese community in order to ensure that their action would not hurt the dialogue process. Today, most of the representatives met urged the mission participants to increase all ways of pressure.

<sup>28</sup> BBC World Service report 20 Nov 2007: Quote "We are not vital to them".  
<http://news.bbc.co.uk/2/hi/asia-pacific/7102936.stm>

#### **4.1.4 Two-pronged approach: influencing the regime, encouraging the people**

*"Everything, outside and inside is connected".*

Maung Maung, NCUB Secretary General and leader of the FTUB

Up to now, international and regional organizations have focused on processes that could influence the military regime. Yet, everybody agrees - including China - that the people of Burma themselves will be key players to push for any transition. It is indeed their courageous 'Saffron Revolution' that pushed the international community to move forward, and influenced the SPDC into accepting Mr. Gambari's good offices mission.

This leads our organizations to stress the urgency and importance of combining two types of political processes and initiatives. If the international community wants to support peaceful, democratic processes and support internal pressure on the regime, it needs to deliver clear signals. Signals to the SPDC need to be combined with signals to the people of Burma.

The international community needs to support the people of Burma for a next wave of internal pressure. Actions that support the people of Burma help keep up the internal pressure, which is crucial to achieving a transition.

The '88 Generation' group which initiated the protests in August appealed for UNSG Ban Ki Moon to telephone General Than Shwe personally<sup>29</sup>. This type of action (or an official statement about the refusal of such a conversation by the SPDC leader) would inspire the people of Burma, who desperately need encouragement. These are only examples of a few demands heard by mission participants. Some of them will undergo deeper examination and may feed our advocacy in the future.

Most of those interviewed learned about the protests in other towns and cities via foreign broadcasting stations, mainly the BBC, CNN, or DVB<sup>30</sup>.

#### ***4.2 Four key leverage points to give Gambari's mission a chance of success***

The representatives of the people of Burma and large Asian Human Rights organizations point to four key leverage points the international community should use to maximize the current "window of opportunity" for a peaceful transition out of dictatorship in Burma.

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<sup>29</sup> Open letter to the UN Secretary General, October 16, 2007

<sup>30</sup> Democratic Voice of Burma, a multimedia organization based in and broadcasting from Norway, please see: [www.dvb.no](http://www.dvb.no)

**Table 3 : Four key leverage points to give Gambari's mission a chance**

- |  |
|--|
| <ol style="list-style-type: none"><li>1) International pressure and support for national reconciliation</li><li>2) Cutting the SPDC's economic lifeline (comprehensive sanctions)</li><li>3) A Burma Transition Fund</li><li>4) Preparation of a transition towards democracy – promoting a culture of democracy</li></ol> |
|--|

#### **4.2.1 International pressure to support national reconciliation**

The first leverage point is diplomacy: overall key decisions (such as a binding UNSC resolution), but also symbolic actions (such as official meetings with the democracy movement).

##### **A. First a binding UNSC Resolution on Burma**

The democracy movement representatives met by the mission emphasised the need for a binding Security Council resolution. UNSC resolutions express a joint international position, and that is their strength. The priority now is to have a resolution based on the key human rights' principle of "responsibility to protect" and on the fact that Burma is a threat to peace, as was demonstrated in the Havel/Tutu report 'A Threat to Peace: A call for the UN Security Council to act in Burma'<sup>31</sup>.

In line with that report, the resolution should:

- *“Outline the major reasons for the Security Council intervention, focusing on the threat to the peace caused by the major issues described in this report;*
- *Require the Government of Burma to work with the Secretary-General's office in implementing a plan for national reconciliation and a restoration of a democratically-elected government;*
- *Request the Secretary-General to remain vigorously engaged with the dispute resolution process and require that he report back to the Security Council on a regular basis;*
- *Urge the Government of Burma to ensure the immediate, safe, and unhindered access to all parts of the country for the United Nations and international humanitarian organizations to provide humanitarian assistance to the most vulnerable groups of the population, including internally displaced persons; and*
- *Call for the immediate and unconditional release of Aung San Suu Kyi and all prisoners of conscience in Burma.”*

A key new demand of all organizations is that the UNSC resolution should require the SPDC to fully cooperate in the establishment of a permanent office for UN Special

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<sup>31</sup> Available on <http://www.unscurma.org/Report.htm>

Envoy Gambari in Rangoon, including permanent staff. A permanent presence of the Office of the UN High Commissioner for Human Rights should be also approved and established inside Burma to monitor the situation and be able to receive complaints of human rights abuse. The ILO model provides useful experience in that request (see section 5.2)

### **B. Official meetings with the democracy movement**

Binding resolutions from the Security Council are one thing. Yet other diplomatic actions may help to increase the pressure on the regime and create a favorable environment for the democrats of Burma to be in a negotiating position if a genuine dialogue starts.

Prime Ministers and Ministers of Foreign Affairs from the regional organizations such as the EU and neighbouring countries should meet with the leadership of the democracy movement, including NCGUB, NCUB and NLD. This type of action sends the important signals to the regime and to the people of Burma that are necessary to bring about a balance of power favorable to political change towards democracy.

#### **4.2.2 Sanctions - Cutting the SPDC's economic lifeline**

*"The priority is to stop the lifeline of the military. Trade, investments, and bank transactions."*

Dr Sann Aung, Minister of the NCGUB.

*"We support sanctions. It doesn't hurt the people; it hurts the military and the elite in business. The economy in Burma is deteriorated because of mismanagement by military and cronies of the generals, not by sanctions."*

Moe Swe, Young Chi Oo Workers' Association.

The mission was told many times that sanctions hurt the regime and the crony elite, not the people, whose livelihoods are predominantly in agriculture or the informal economy. The mission participants were reminded that, while Burma saw a 2000% increase in FDI between 1995 and 2005<sup>32</sup>, 95% of the population lives on less than 1\$ day, and 90% with less than 65 cents a day<sup>33</sup>.

The representatives of the people of Burma (and those representing Asian human rights organizations) focus on three types of measures that should be taken: freezing and stopping investments, stopping trade (imports and exports), and bank/financial transactions.

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<sup>32</sup> Altsean –Burma (2007) "ASEAN should stop 'passing the buck' on Burma". Report BN 2007/1037: October 25, 2007. Available on <http://www.altsean.org/Reports/ASEANbuckBurma.php>

<sup>33</sup> UNDP survey, to be published (2004 data, household survey conducted with the SPDC, at current exchange rates, US\$1=1300 Kyat (Burmese currency)).

## **A. Trade and investments**

All organizations repeated their call for immediate, comprehensive sanctions on trade and investments and, as a matter of priority, in the three 'milk cow' economic sectors. They could not see how such actions would increase repression in Burma, but rather felt that it could be a brake on current excessive repression, they directly assess positive impacts (both signals to the regime and to the people of Burma).

### **EU sanctions even if China does not apply them**

One of the symbolic, and controversial cases of sanctions is the case of the Yadana pipeline operated by Total (France), Chevron (USA), PTT (Thailand) and MOGE (Burma).

Both the FIDH and ITUC have long advocated and campaigned for sanctions, as our economic and policy analysis is that comprehensive economic sanctions – with due exceptions for justified humanitarian and similar reasons - and parallel diplomatic initiatives are key means for persuading the SPDC to committing to a genuine political dialogue. Days before the mission arrived on the Thai-Burma border, new figures confirmed this analysis. According to Total's CEO, Christophe de Margerie, the Yadana investment results in a yearly flow of money towards the SPDC as large as \$US 360 million<sup>34</sup> yet the project only creates 270 jobs in Burma<sup>35</sup>. The ration of jobs created vs/ financial support to SPDC is obviously not in favour of the now ridiculous, so-called "constructive engagement" approach.

The democratic leaders are very clear about it: economic sanctions from the EU, whilst carrying less impact than would a freeze of Thai, Chinese or ASEAN trade, are seen by Burmese democrats as a moral issue and a positive signal that European democrats can send to the people of Burma and beyond.

They clearly ask the EU to impose sanctions, even if other countries are not as supportive of their cause. They also clearly ask Total to withdraw from Burma, even if a Chinese company might replace the French company:

*"The regime could survive on trade just with India, China and Thailand. However, international sanctions are for moral support for people inside. We've limited knowledge. As long as we know we are on the right track (for us) and wrong track (for SPDC)... it's very important for us."*

Anonymous businessman from Burma.

*"Please leave today rather than tomorrow! The money goes to the military. It is very important to stop the gas. (...) [Do you want Total to leave the country, even if Chinese companies replace them?] For democratic issues, ethics count. They should not take into account what other countries do. If they withdraw, we'll be*

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<sup>34</sup> AOF, 5 Oct 2007

<sup>35</sup> AFP 2 Oct , 2007



*able to put more pressure on other investors who make new investments. When we get democracy in Burma, we can change things. We'll not only remember, we'll have democratic principles. We'll pay back, one way or the other. [What will be the effect of a withdrawal of Total?] First thing is moral support. The message will be that the regime is unbearable by the international community. Second, it will be a clear message to international business that consider investing in Burma."*

Dr Sann Aung, NCGUB Minister when he was told Total recently stated their presence benefited the country and that nobody asked them to leave.

*"The EU should pressure negative forces (China and India), bring Japan and Korea on board, and work with Asean-5 (non-authoritarian ASEAN countries), to counter the argument of "western intervention.""*

Anselmo Lee, Forum Asia Executive Director

Moreover, there are doubts that other companies would buy Total's shares in the Yadana pipeline, if Total was willing or forced to leave Burma. Indeed, Chinese companies are interested in Burma's gas when they can export it to China, not to Thailand, which is the Yadana pipeline's only possible customer. Competition between neighbouring countries (China, India, Thailand,...) for energy must not be underestimated. But other partners in the Yadana pipeline, who have priority should Total sell its shares, may not be interested either. Chevron is prevented under US law from making new investments in Burma. PTT is not interested in raising its contribution in the project. Only MOGE may be interested, but has scarce resources to pay for it. Total's main argument is thus flawed.

The FIDH and ITUC welcome the implementation of the new EU sanctions on gems and timber. This is clearly a step in the right direction. Yet the EU Council, if it wishes to aim at credible and efficient policies, should urgently add the key strategic energy sector to its list of currently targeted economic sectors, as it is indisputably the SPDC's cash crop. Foreign investments in this sector represent 98% of all foreign investments and neared half a billion dollars for the fiscal year 2006-2007<sup>36</sup>.

A possibility that has not yet been used in order to increase pressure on Burma is the mandatory establishment of an escrow impounded account for all existing and/or new investments. The UN Security Council has the possibility to impose that all revenues from foreign investments in Burma must be paid into an escrow impounded account, which would be blocked until an agreement on the use of these revenues is reached by the SPDC, NLD and ethnic groups. The mission participants propose that this option and its implications be further investigated and considered. This tool would thus influence the SPDC to start a genuine dialogue.

### **ASEAN sanctions, because ASEAN has more influence than China**

“ASEAN has enough leverage to paralyze the regime”

Research Officer, Altsean-Burma

While the analysis of the trade relationships between ASEAN countries and Burma was not a focus of the mission, sanctions form a key strategy for exerting pressure on the SPDC.

Malaysia can paralyze the military by stopping selling diesel to the country, and Thailand can stop being the largest contributor to Burma's foreign currency, merely through one single project, Yadana, which accounts for 48% of FE earnings and enables the SPDC to buy arms. These are the conclusions of a recent report by Altsean-Burma<sup>37</sup>. Every country has a responsibility to cut the SPDC's lifeline. Every country's economy will also be better off with a stable Burma.

The mission also found direct evidence that trade with Burma is often, if not always, directly or indirectly associated with gross exploitation or even outright forced labor.

“Joe”, one of the witnesses that the mission participants met, had been a victim of forced labor in a complex system embroiling the SPDC chairman of his township, a large Thai fishing company and the Chinese fishing business. Recruited by the chairman of the

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<sup>36</sup> Announced by the Ministry of National Planning and Development as mentioned in its latest statistical survey report in (“Oil Sector Dominates Myanmar Investments”, Associated Press - 26 November 2007)

<sup>37</sup> Altsean –Burma (2007) “ASEAN should stop ‘passing the buck’ on Burma”. Report BN 2007/1037: October 25, 2007. Available on <http://www.altsean.org/Reports/ASEANbuckBurma.php>

township (the local SPDC representative), he was told he had to work on a fishing boat, but would be paid every three months. Yet he received no payments at all for twelve months, as was the same case for the other 57 labourers on the fishing boat. Later on, Joe was sued after filing an official complaint with township authorities. His ID was confiscated, and he fled after having tried to inform the authorities in order to solve his case.

## **B. Financial transactions**

*"All people investing in Burma should review their policy. We request Swift to review its policy. They should not help the regime. In my view, they should stop all transactions with Burma. They don't benefit the people, they benefit the regime."*

Dr Sann Aung, NCGUB Minister

Comprehensive banking and financial sanctions can usefully strengthen the impact of any economic sanctions. As global trade and banking systems are complex, there is an urgent need to directly target the incomes of the regime.

All represented organizations mentioned that third countries should stop bank transactions with the regime. They mentioned the responsibility of neighbouring countries as well as the responsibility of the European Union, which dominates the global financial system with the U.S.

The FIDH and ITUC call on all third countries to impose comprehensive banking and financial sanctions on the SPDC. The EU and US, if they act together, can prevent the SPDC from using its resources by blocking its access to US and EU banks. Singapore can also paralyze the SPDC's access to banks.

### **4.2.3 A Burma Transition Fund**

While the international community should urgently cut SPDC's lifeline, it should also be prepared to contribute by all means to the costs of a transition. Burma already faces major problems today (such as malnutrition, HIV-AIDS, ...). A transition may bring temporary additional costs (such as professionalizing the armed forces, drafting a new constitution, ...) before benefiting Burma's economy by bringing stability and development.

The international community should announce today the establishment of a large "Burma Transition Fund" that would be established now but would only become available for Burma when an agreement between SPDC and the democracy movement on the use of it is reached. Regional organizations should start to establish such funds to show their own commitment.

As other leverage points, it cannot be used separately. It can only be complementary to a broader approach that includes other leverage points.

#### **4.2.4 Preparation of a transition towards democracy**

Ground efforts to make the big transition change happen are necessary. These must prepare the people, the future leaders, and the current military officers to build, and live under a democratic rule.

##### **A. Upscaling training efforts for the leaders of a future democratic Burma**

The people of Burma have experienced dictatorship for decades. As stated above, efforts to train leaders from political parties, ethnic groups and other organizations have been going on for many years. Yet they must be scaled up today, as part of keeping and sustaining a momentum and a positive environment for transition.

Thee efforts must include:

- training of ethnic leaders (reconciliation, leadership, negotiation skills etc)
- training of leaders (human rights training)
- training of trade unions and other workers' groups
- funding of women's, environmental and youth groups
- funding of initiatives for independent information and media about Burma
- funding of initiatives for justice

##### **B. Convincing the military that it has a (better) role under a democratic system**

The events of September have more than ever shattered the little respect the general population may have had for the Tatmadaw (armed forces). Any future legitimacy or process of professionalizing the armed forces will require rebuilding its image within society.

Moreover, the military includes thousands of soldiers and officers who do not agree with the dictatorship but know nothing other than the current system. A regime change is a threat to them, as they may feel they would not have a role nor a job in the future.

It has been proposed by Indonesia's Special Envoy to Myanmar, retired Lt-Gen Agus Widjoyo, that this psychological insecurity of the military must be dealt with, as part of a broad cultural change<sup>38</sup>. Assistance proposals by various countries, such as the one Indonesia could offer (as suggested by Widjoyo) or the one already put forward by Poland's Lech Walesa and Wojciech Jaruzelski, are important initiatives in this respect<sup>39</sup>.

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<sup>38</sup> Give Myanmar a big taste of democracy, by Amy Chew, New Straits Times, Malaysia – 06 November 2007

<sup>39</sup> Poland's Walesa, Jaruzelski urge Myanmar talks, Reuters, September 27, 2007

## 5 Burma and international legal action

The UN Secretary General Ban Ki-Moon will open a year-long campaign to celebrate the 60th Anniversary of the Universal Declaration of Human Rights this Monday the 10<sup>th</sup> of December. Nobody can continue to ignore the universal scope of human rights. Neither can the international community ignore to need for the rights of the people of Burma to be respected, nor can the SPDC ignore that its country is part of the international community and as such has an obligation to respect human rights and comply with the international treaties it has signed.

Two international legal avenues are today being considered by a number of organizations: prosecuting the Burmese military before the International Criminal Court (ICC), and a referral to the International Court of Justice by the ILO based on the lack of implementation of Convention 29 on forced labour.

### 5.1 *Possible crimes against humanity: prosecuting the Burmese military before the International Criminal Court (ICC)?*

*"Whatever the outcome of dialogue, those guilty of crimes against humanity must be brought to justice".*

NCUB Presidium

*"Many people think an ICC referral would stop or hurt a political dialogue. But criminal accountability needs to be highlighted. The crackdown was part of crimes against humanity. (...) People should not put too much hope on political dialogue. Past and existing crimes cannot be left like that. Victims cannot be ignored. (...) It's about victims."*

Aung Htoo, General Secretary of Burma Lawyer's Council.

Criminal accountability for those responsible of the crimes committed in Burma is an issue far less discussed than the need for national reconciliation or the call for economic sanctions. This issue, however, is beginning to feature higher on the list of the priorities put forward by representatives of Burma's democracy movement.

Under Article 7(1) of the ICC statute, the definition of Crimes Against Humanity "means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

- (a) Murder; (b) Extermination; (c) Enslavement; (d) Deportation or forcible transfer of population; (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; (f) Torture; (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; (h)

Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court; (i) Enforced disappearance of persons; (j) The crime of apartheid; (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.”

In order to establish that these acts fall within this definition, it must be shown that they were part of a widespread or systematic attack directed at a civilian population.

The joint FIDH-ITUC mission took place fairly soon after the violent crackdown in Burma. Several signs suggest that it can become a serious issue. An open letter to the United Nations Secretary-General and Member States on this issue has been signed by most organizations representing the people of Burma, located on the Thai-Burma border. The NCUB and the Burma Lawyers Council (BLC) encourage human rights organizations to gather evidence about the existence of crimes against humanity in the whole country.

Is justice a necessity or an obstacle to peace in Burma? The debate between justice and peace is old and universal. While a few individuals interviewed believed a thorough analysis of the pros and cons had to be carried out, very few drawbacks were mentioned by representatives of Burma, lawyers, or campaigners (such as the possible danger of jeopardizing political dialogue with the SPDC leadership). But several advantages were outlined. Some concerned justice itself: the need for victims not to be ignored, putting an end to impunity, and the signal which legal actions would send to the SPDC. Other advantages are external: some organizations believe that the international community would be forced to act very differently than it does today should an official investigation into the criminal activity of the SPDC demonstrate the existence of genocide, war crimes or crimes against humanity.

Based on a case of crimes against humanity, various options for international justice initiatives can be developed. The NCUB and BLC strongly favor initiatives both at the international level (International Criminal Court) and by specific countries where universal jurisdiction is recognized<sup>40</sup>. A case on “responsibility to protect” is another way of engaging the international community and especially neighbouring countries.

*“As Burma has not signed the important human rights conventions, it is necessary to appeal to the principles of international law on the basis of crimes*

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<sup>40</sup> The NCUB has recently published documents about the International Criminal Court's Definition of "Crimes against humanity" in five different languages (Burmese, Karen, Kayan, Mon, English,) on the frontpage of its website. The BLC has issued a statement with the Global Justice Center on the necessity for criminal accountability [http://www.nationmultimedia.com/2007/09/29/opinion/opinion\\_30050677.php](http://www.nationmultimedia.com/2007/09/29/opinion/opinion_30050677.php). BLC also published a paper on this issue in *Legal Journal on Burma*, the journal it runs; *The changing landscape of international law: The global responsibility to prosecute perpetrators of grave crimes inflicted on the people of Burma*, by Professor Janet Benshoof (President of Global Justice Center), August 16, 2007, available on <http://www.globaljusticecenter.net/janetlawpapalajornalexcept.pdf>

*against humanity. It would require a resolution by to Security Council to set up such a Court."*

Mr. Aung Htoo, General Secretary of the Burma Lawyers' Council

The perpetrators of crimes committed in Burma, such as those responsible for the killings in 1988, have not yet been brought to Court. Yet international criminal law has improved a lot since 1988, and especially since 2002, with the Statute of the International Criminal Court (ICC) coming into effect.

The ICC may investigate acts of genocide, war crimes and crimes against humanity which have occurred after 1 July 2002. As the Burmese junta refused to ratify the Statute of the ICC, the people of Burma have no recourse of their own to have the crimes committed in their country investigated. However, a Security Council resolution could ensure that generalized and systematic human rights violations in Burma are tried by the ICC. The Security Council can declare itself ready to invoke the jurisdiction of the International Criminal Court regarding the situation in Burma, as it is authorized to do under Article 13(b) of the Rome Statute.

A previous example of having a non ICC signatory state investigated by way of a Security Council resolution was Sudan, in the case of Darfur. In Resolution 1593 (2005), the UNSC referred the situation in Darfur to a Prosecutor of the ICC. In that case, NGO's contributed to the collection and documentation of the alleged criminal acts and then advocated for action.

There is little doubt that if all UN human rights bodies and non-governmental human rights organizations put together the evidence they collected during the years, this would go a long way towards helping to prove the existence of crimes against humanity in Burma under the ICC statute<sup>41,42</sup>. The crimes committed during the crackdown of the "Saffron revolution" could be added to this evidence.

The first step towards an ICC referral is a serious investigation of the junta's criminal activity. All organizations interviewed on the issue agreed on the relevance of this first step. There are several potential ways to formally initiate such an investigation: Janet

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<sup>41</sup> ICC definition of crimes against humanity:  
[http://www.ncub.org/FrontPageNews/Rome%20Statute%20of%20ICC\\_Article%207%20English.pdf](http://www.ncub.org/FrontPageNews/Rome%20Statute%20of%20ICC_Article%207%20English.pdf)

<sup>42</sup> See, e.g; a list of report compiled in Janet Benshoof's paper cited in the preceding footnote :  
Human Rights Watch, World Report 2007: Burma, Event of 2006, available at  
<http://hrw.org/englishwr2k7/docs/2007/01/11/burma14865.htm> ; *Shattering Silences* (2004) by the Karen Women's Organization *Shattering Silences: Ongoing Rape of Karen Women by the SPDC* (2006) by the Karen Women's Organization, <http://www.karenwomen.org/>, *Catwalk to the Barracks* (2005) by the Women and Child Rights project and Human Rights Foundation of Monland (Burma), <http://www.rehmonnya.org/> *License to Rape* (2002) by the Shan Women's Action Network, *Still Licensed to Rape* (2005) by the Shan Women's Action Network, <http://www.shanwomen.org/>, *System of Impunity* (2004) by the Women's League of Burma, <http://www.womenofburma.org/>, *No Safe Place: Burma's Army and the Rape of Ethnic Women* (2003) by Refugees International <http://www.refugeesinternational.org/content/country/detail/2892/>

Benshoof (President of the Global Justice Center) suggests a Security Council Resolution for a Commission of Experts that would conduct this investigation<sup>43</sup>.

The international community has been watching the situation in Burma closer than ever since September 2007. It has offered the SPDC the opportunity of a Good Offices mission to nurture a tripartite dialogue with the National League for Democracy and ethnic groups. The SPDC must seize this last opportunity to be actively involved in the peaceful transition out of dictatorship by engaging in a genuine dialogue and starting an authentic political process of transition. However, if the SPDC do not do so, the possibility remains open for a prosecution of the Burmese military before the International Criminal Court. The SPDC should consider this issue very seriously, as initiatives preparing for criminal accountability are now considered as acutely needed by Burmese organizations, especially if the regime does not demonstrate rapid progress.

### **Initiatives by third countries under their universal jurisdiction laws**

In the absence of rapid progress inside Burma, it is not impossible that refugees from Burma in various countries try to hold officials accountable before criminal courts. Indeed, several countries have passed universal jurisdiction laws that allow them to investigate and judge the worst crimes such as genocide, war crimes and crimes against humanity. Such laws exist in the USA (Alien Tort Claim Act, Torture Victim Protection Act), Spain and Italy, for example.

In Belgium, a civil action concerning Burma was lodged in 2002. The civil action concerns Crimes against Humanity and complicity in Crimes against Humanity committed in Burma. It was lodged by four Burmese plaintiffs against X, against TOTALFINAELF S.A., and against two senior company executives, MM. Thierry Desmarest and Herve Madeo. While the civil action met several obstacles, it may be re-examined in January 2008. This would enable an investigation of the direct perpetrators of crimes committed in Burma, who had not been named directly by the plaintiffs (civil action "against X".)

## ***5.2 Burma and Forced Labour: options available under international law***

Of all the international human rights-related institutions, the International Labour Organisation (ILO) has conducted the most exhaustive examination of a systematic violation of human rights by the regime, namely forced labour, prohibited by the ILO Convention of Forced Labour, 1930 (n°29), ratified by Burma in 1955.

After years of earlier examination by its regular supervisory mechanisms, the ILO in 1996 established a special Commission of Inquiry into the matter. An ILO Commission

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<sup>43</sup> Ibid.



of Inquiry is an exceptional procedure, of an international judicial character and reserved for the gravest violations of international labour standards. The Commission issued its report<sup>44</sup> in July 1998. Despite the SPDC's formal commitment at the time – and repeated regularly since - to implement the Recommendations of that Commission to eradicate forced labour, the practice remains systematic and widespread, both by the military and local authorities. It is consistently accompanied by violations of other fundamental rights, including forced relocation, arbitrary detention and execution, rape, torture and the forced recruitment of child soldiers. With the assistance of the FTUB<sup>45</sup> and other organisations, the ITUC regularly provides the ILO supervisory mechanisms with highly detailed reports of forced labour imposed on civilian populations throughout the country.

In June 2000, the International Labour Conference (ILC)<sup>46</sup> adopted a Resolution highlighting the persistence of systematic forced labour in Burma. The Resolution, adopted under art. 33 of the ILO Constitution (which had never been invoked before), called on ILO Constituents<sup>47</sup> and other international organizations to review their relations with Burma and cease any relations that might have the direct or indirect effect of aiding and abetting forced labour.

Burma has remained on the agenda of every session of the ILO Governing Body and Conference ever since. The terms of the 2000 Resolution were further recalled and strengthened by the ILC in June 2006. The ILO's Constituents were requested to report on action taken under the 2000 Resolution and to take further appropriate action, including with respect to foreign direct investment and to their relations with Burma's state or military-owned enterprises.

Since 2006, the ILO has also actively been considering additional measures against the SPDC in order to force it to comply with its commitment to eliminate forced labour.

In November 2006, the ILO Governing Body for the first time formally examined how to use international legal mechanisms going beyond its internal procedures. In particular, it examined in detail options available before the International Court of Justice (ICJ) and the International Criminal Court (ICC). One option would be to refer the matter to the ICJ, asking it to determine, through an Advisory Opinion, what consequences could be drawn under international law from Burma's consistent failure to implement the recommendations of the Commission of Inquiry. The other option would be to make available to the ICC Prosecutor, through the UN Security Council, all available ILO information concerning forced labour falling under the ICC's mandate. This would be in line with the Conclusions and Recommendations of the 1998 Commission of Inquiry, which had ruled that forced labour, as practiced in Burma, could constitute a crime against humanity and that those responsible for imposing it could be guilty of a crime

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<sup>44</sup> Report of the ILO Commission of Inquiry, available through the website of the ILO Liaison Office in Rangoon (Burma): <http://www.ilo.org/public/english/region/asro/yangon/>

<sup>45</sup> The FTUB enjoys "Associated Organisation" status with the ITUC

<sup>46</sup> The ILC is the annual assembly of the ILO; it meets every year in June, in Geneva.

<sup>47</sup> The ILO is a tripartite organisation: its 181 Member States, which include Burma, are represented by Governments and employers' and workers' (i.e., trade union) organisations.

under international law. Both of these options are described in detail in a report examined by the ILO Governing Body at its 297th Session<sup>48</sup> (Geneva, November 2006).

In addition, the ILO and the SPDC agreed in February 2007 to a mechanism allowing victims of forced labour to present formal complaints to be investigated and addressed by the country's legal system. This mechanism, which is known as the Supplementary Understanding<sup>49</sup>, provides a possibility for victims of forced labour to submit complaints to the ILO Liaison Office in Rangoon and includes guarantees that no retaliatory action will be taken against complainants. How the mechanism functions in practice is to be reviewed by the ILO Governing Body by March 2008, when it may be extended. On the other hand, and in the absence of tangible progress, the ILO may decide to activate other options, including the above-mentioned referral to the International Court of Justice (ICJ).

The FIDH and ITUC call on the international community to work closely with all UN Specialised Agencies active in or dealing with Burma, first and foremost with the International Labour Organisation. This is particularly relevant owing, not only to the longstanding ILO involvement with and presence in Burma, through its Liaison Office in Rangoon, but also in view of the possibility, currently before the ILO, of referring the case of Burma to the International Court of Justice, over the SPDC's gross and consistent violations of the ILO Convention on Forced Labour, 1930 (n°29).

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<sup>48</sup> Cf. ILO document GB.297/8/2, 297th Session of the Governing Body, Geneva, November 2006: *"Developments concerning the question of the observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29): Legal aspects arising out of the 95th Session of the International Labour Conference"*, see in particular concerning the ICC: Section III: *"Information concerning international criminal law in relation to forced labour"*, §14-26, at: <http://www.ilo.org/public/english/standards/reIm/gb/docs/gb297/pdf/gb-8-2.pdf>

<sup>49</sup> [http://www.ilo.org/global/About\\_the\\_ILO/Media\\_and\\_public\\_information/Press\\_releases/lang--en/WCMS\\_081868/index.htm](http://www.ilo.org/global/About_the_ILO/Media_and_public_information/Press_releases/lang--en/WCMS_081868/index.htm)

## **6 Conclusions and Recommendations: an international agenda**

This report is based on a number of interviews made in the course of the FIDH-ITUC mission. The persons and organisations whom the mission could consult with insisted on the need for a peaceful transition to democracy in Burma, based on the full recognition and respect for human rights. The demand for reform in Burma is profound and insistent. The determination of the democratic movement in Burma is strong.

However, to realise a peaceful political transition, the people of Burma need the support of all interested international actors, the Member States and bodies of the United Nations, regional political institutions, civil society organisations and activists. Non-violent action by the democracy movement inside Burma must be supported by external pressure if it is to be successful.

The international community now needs to establish an international agenda to seize the opportunity of ending military dictatorship in Burma. A business-as-usual approach to the current situation is no longer defensible; nor can it succeed in contributing positively to change. Instead, clear benchmarks should be set for a transition towards democracy, and progress towards this objective must be closely monitored. If the military government fails to make key positive steps met within reasonable time, the international community should draw the required conclusions from the absence of progress. In that case, an agenda of escalating demands should be pushed forward. For example, if, by 1 January Daw Aung San Suu Kyi has not been released from house arrest and is not able to meet freely and regularly with her NLD colleagues, then the Security Council should hold a new meeting on the Burma situation.

The international community cannot afford to wait. It cannot take the risk of the current window of opportunity for a transition being closed. The widespread and persistent human rights violations committed in Burma put the willingness of the international community to the test. It is our collective capacity to effectively realise and promote peace, human rights and democracy, which is at stake. The lives, human rights, dignity and future of Burma's 54 million people require concerted and focussed commitment from the international community now, and not at some undetermined time in the future.

The FIDH and ITUC call upon the international community - each Member State of the United Nations, its Specialised Agencies and other relevant bodies, regional organizations and political structures- to seize the opportunity created by the current situation, and to actively support political change in Burma. More than ever, our organizations are convinced that third countries can play a role to achieve and accelerate the transition.

The principles and leverage points to maximize the chances of political change in Burma have been summed up in Section 4.1 and 4.2. Our organisations will actively promote them. Here is a summary of how these principles and leverage points could be translated in effective decisions by international bodies and key players:

**FIDH and ITUC make the following recommendations:**

- the UN Security Council should hold a new meeting on Burma and urgently pass a first binding resolution based on the key human rights' principle of responsibility to protect and on the fact that Burma's military regime is a threat to peace and stability, as was demonstrated in the Havel/Tutu report 'A Threat to Peace: A call for the UN Security Council to act in Burma'. This binding resolution should:
  - effectively promote a genuine process of national reconciliation by setting clear benchmarks for the Burmese regime, including the urgent release of all political prisoners, and agreeing on a timeline for a successful transition towards democracy. A permanent monitoring of whether this timeline is complied with should be established, and the Security Council assess progress on a monthly basis.
  - require the State Peace and Development Council (SPDC) to fully cooperate in the establishment of a permanent office in Rangoon for the UNSG Special Envoy's good offices mission (including permanent staff) and for the Office of the High Commissioner for Human Rights, and to effectively engage in a constructive and sustainable dialogue with the Human Rights Council and its special procedures including the Special Rapporteur on the situation of human rights in Myanmar, Mr Paulo Sergio Pinheiro.
  
- the UN Security Council should be ready, failing genuine progress, to adopt a second binding resolution that would:
  - impose a full arms embargo on the Burmese military;
  - impose comprehensive economic sanctions to cut the SPDC's economic lifeline. While providing for due exceptions on the basis of humanitarian or similar reasons, sanctions should, as a matter of immediate priority, affect trade and investments in timber, gems, as well as the crucial sectors of oil and gas. In order to be effective, it is paramount that these measures be supported by mandatory financial - including banking - sanctions. Additionally, the possibility of imposing the establishment of an escrow impounded account for all revenue from investments in or trade with Burma should also be urgently, thoroughly and urgently investigated;
  - establish a "Burma Transition Fund" that would be available after a return to democracy and when an agreement between the SPDC and the democracy movement on the use of it is reached.

This would constitute a powerful demonstration of the unity of the international community, which is unanimous in its condemnation of the brutal repression of the protests.

- the UN Human Rights Council should take concrete steps to follow upon its special session on Myanmar/Burma. It should urgently adopt a resolution:

- expressing support for a genuine process of national reconciliation and supporting the establishment of a monitoring process, including clear benchmarks for the Burmese regime and a precise timeline,
- requesting from the Government that it accepts permanent offices in Rangoon for the UNSG Special Envoy's good offices mission and for the Office of the High Commissioner for Human Rights, and
- calling for the release of all political prisoners, and ensuring an investigation of all human rights abuses.

The HRC should also urgently take initiatives to empower the Office of the High Commissioner for Human Rights to prioritize Burma. It is in order to tackle such instances of serious human rights violations that the Council was set up as the successor to the Commission on Human Rights.

- Regional organisations such as ASEAN and the EU, as well as all other countries with major political or economic influence should:
  - o implement arms embargoes at their own levels;
  - o implement comprehensive economic sanctions; with due consideration for legitimate exceptions on humanitarian or similar grounds, such sanctions should as a matter of priority affect trade and new investments in the three 'milk cow' sectors (timber, gems, as well as oil and gas) and include a ban on financial services, including banking transactions;
  - o hold official meetings at the highest level (Prime Ministers and Ministers of Foreign Affairs) with the leadership of the democracy movement of Burma, including the NCGUB, NCUB and NLD.
  - o increase funding for training of ethnic leaders, trade unions and other workers' groups, women's, environmental and youth groups in areas such as reconciliation, leadership, negotiation skills and human rights training;
  - o fund initiatives for independent information and media about Burma, as well as initiatives for justice;
  - o consider relevant initiatives and ground efforts to bring about the necessary cultural change within the military in order for the necessary professionalizing of the armed forces to be seen positively by a majority of officers and soldiers<sup>50</sup> and accepted as such by Burma's people.
- all members of the international community must prioritize renewed access to Burma for the United Nations Special Rapporteur on Human Rights in Myanmar (Burma), Mr Sergio Pinheiro, and ensure he is allowed to visit prisons and labour camps in order to verify details, and conduct a full and independent investigation mission into the events of September. The United Nations, ASEAN and the diplomatic community must also insist on access to the country for the

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<sup>50</sup> After a transition, the military should become a professional body in charge of defending the country against external threats, and not a tool for repression in the hands of a dictatorship.

International Committee of the Red Cross (ICRC) for its full range of programs. Both the UN Special Rapporteur and the ICRC should have unhindered, private and confidential access to political prisoners.

- All members of the international community should also work closely with and support the efforts in Burma of the International Labour Organisation (ILO). This is particularly relevant owing not only to the longstanding ILO involvement with and presence in Burma, through its Liaison Office in Rangoon, but also in view of the possibility, currently before the ILO, of referring the case of Burma to the International Court of Justice, over the SPDC's gross and consistent violations of the ILO Convention on Forced Labour, 1930 (n°29).
- the SPDC should act swiftly towards implementing the reforms which the international community expects from it. It should very seriously consider the possibility that international legal action could rapidly be taken if it fails to seize this opportunity to be actively involved in the peaceful transition by engaging in a genuine dialogue and starting an authentic political process of transition out of dictatorship. Should it fail to do so, human rights violations, committed on a wide scale against the civilian population of Burma, could lead to prosecutions for those responsible before the International Criminal Court (ICC), acting upon a request by the UN Security Council.

## Glossary

|       |   |
|-------|---|
| AAPP  | Assistance Association for Political Prisoners      |
| NLD   | National League for Democracy                       |
| USDA  | Union Solidarity and Development Association        |
| SPDC  | State Peace and Development Council                 |
| NCUB  | National Council of the Union of Burma              |
| NCGUB | National Coalition Government of the Union of Burma |
| FTUB  | Federation of Trade Unions - Burma                  |
| BLC   | Burma Lawyers Council                               |

## Useful reports & recent statements by FIDH and ITUC

FIDH >> Total pollutes democracy - stop TOTALitarianism in Burma (2005)  
<http://www.fidh.org/spip.php?article2508>  
For a full collection of FIDH interventions on Burma see  
<http://www.fidh.org/spip.php?rubrique224>

ITUC >> Final Declaration, ITUC Conference on Democracy for Burma, Kathmandu (Nepal), 3-4 April 2007: [http://www.ituc-csi.org/IMG/pdf/Final\\_Declaration\\_-\\_ITUC\\_Burma\\_Conference\\_-\\_Kathmandu\\_3-4\\_April\\_2007\\_.pdf](http://www.ituc-csi.org/IMG/pdf/Final_Declaration_-_ITUC_Burma_Conference_-_Kathmandu_3-4_April_2007_.pdf)  
Resource documents on Burma, ITUC web site: <http://www.ituc-csi.org/spip.php?rubrique177>

## Web resources

NCUB >> <http://www.ncub.org/>

NCGUB >> <http://www.ncgub.net/>

BLC >> <http://www.blc-burma.org/>

AAPP >> <http://www.aappb.org/>

Federation of Trade Unions of Burma (FTUB) >> <http://www.ftub.org/>

Forum Asia (Asian Human Rights organization) >> <http://www.forum-asia.org/>

Altsean-Burma (Alternative Asean Network on Burma) >> <http://www.altsean.org/>

## Burma-related Online media

Democratic Voice of Burma >> <http://english.dvb.no/>

The Irrawaddy (online mag, including analyses) >> <http://www.irrawaddy.org/>

Mizzima news (news and multimedia) >> <http://www.mizzima.com/>

Burma Net News >> <http://www.burmanet.org/news/>

New Light of Myanmar (State newspaper): <http://www.myanmar.com/newspaper/nlm/>



Fédération Internationale des Ligues des Droits de l'Homme  
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The International Federation for Human Rights (FIDH) is an international non-governmental organisation for the defence of human rights as enshrined in the Universal Declaration of Human Rights of 1948. Created in 1922, FIDH brings together 155 human rights organisations from 100 countries. FIDH has undertaken over a thousand missions of investigation, trial observations, and trainings in more than one hundred countries. It provides its members with an unparalleled network of expertise and solidarity, as well as guidance to the procedures of international organisations. FIDH works to:

- a) Mobilise the international community
- b) Prevent violations, and support civil society
- c) Observe and alert
- d) Inform, denounce, and protect.

FIDH is historically the first international human rights organisation with a universal mandate to defend all human rights.



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The ITUC's primary mission is the promotion and defence of workers' rights and interests, through international cooperation between trade unions, global campaigning and advocacy within the major global institutions. The Programme Document adopted at the ITUC founding Congress sets out the Confederation's overall policy framework, which builds on existing ICFTU and WCL policies. Its main areas of activity include:

- + trade union and human rights
- + economy, society and the workplace
- + equality and non-discrimination
- + international solidarity.

The ITUC adheres to the principles of trade union democracy and independence, as set out in its Constitution. It is governed by four-yearly world congresses, a General Council and an Executive Bureau. The chief executive of the ITUC is its General Secretary Guy Ryder, supported by Deputy General Secretaries Mamounata Cisse and Jaap Wiene.

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