

## HUMAN AND LABOR RIGHTS VIOLATION BY THE MYANMAR MILITARY JUNTA Why EU EBA need to be urgently suspended

### FORWARD

The first part of this paper will summarize the EU reports on the EBA implementation in the case of Burma/Myanmar. The second part of the paper will present a list of major violation of human rights at work.

On the 7<sup>th</sup> of October 2021, the EU Parliament Resolution reiterated: “its call on the Commission to swiftly launch an investigation into the trade preferences that benefit Myanmar, especially regarding companies owned by members of the Myanmar military, in specific sectors and to keep Parliament duly informed of the steps to take; ..... **underlines, however, that the enhanced engagement process had already been established in 2018, focusing on compliance with international human rights conventions and labour rights, and that the coup reversed the progress made during the democratisation process, thereby undermining the conditions for granting EBA preferences;**

The EU is the 3<sup>rd</sup> largest trading partner of Myanmar (after China and Thailand) and the 3<sup>rd</sup> largest export market (following China and Thailand), absorbing 18.6% of its total exports. Total EU imports from Myanmar in 2018 increased by 46.8% (compared to +56.7% in 2017), totalling around **€2.3 billion**. The EBA resulted in around **€250 million import duty savings**. The strong growth of imports from the country continued in the first seven months of **2019 (+35.5%)**. This **growth is mainly driven by garments and footwear**. Imports of garment and footwear from Myanmar increased by **50.6%** and made up nearly **80% of exports to the EU in 2018**. In the first seven months of 2019, this growth continued at a similar rate (+44.3%) and the share of garment and footwear in the import basket is now nearly 85% of total imports from Myanmar.<sup>1</sup>

### THE EU REGULATIONS AND REASONS FOR GSP AND EBA TEMPORARY WITHDRAWAL

The GSP is part of the EU's trade policy tool box with development objectives, which has been in place since 1971. Under the GSP Regulation, EBA preferences are conditional upon the beneficiary country respecting the principles of **15 core United Nations (UN) and International Labour Organisation (ILO) Conventions on human rights and labour rights**. Article 19 of the GSP Regulation spells out that the preferential tariffs **may be withdrawn temporarily**, in respect of all or of certain products originating in a beneficiary country.

Article 19(1)(c) provides, as a ground for withdrawing preferences: “**failure to comply with international conventions on anti-terrorism and money laundering**”. The Commission can launch a **temporary withdrawal procedure** if it considers that there are "sufficient grounds" of serious and systematic violations. **In its assessment, the Commission uses the reports and recommendations of the relevant UN and ILO bodies as well as additional information** including the analyses made by the EU Delegations, EU Member States, the European Parliament, **civil society and social partners**.

The withdrawal procedure starts with an **Implementing Decision adopted by the Commission** after having consulted the EU Member States. Following a six-month monitoring and evaluation period, the Commission has three months to submit a Report of Findings and conclusions to the beneficiary country, which then has one month to comment. Finally, within 12 months from the start of the procedure, the Commission takes a decision whether or not to go ahead with the temporary withdrawal.

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<sup>1</sup> Report on EU Enhanced Engagement with three Everything But Arms beneficiary countries: Bangladesh, Cambodia and Myanmar Brussels 10.2.2020 SWD(2020) 19 final

## **Situation of human rights violation and crimes against humanity Legal basis for the initiation of the EU procedures to suspend the EBA to Myanmar:**

The 2020 EU report (before the military coup) stated: “For Bangladesh, and Myanmar, the Commission will review the situation and decide on the next steps. If dialogue fails to produce sufficient results, **the EU remains ready, as a last resort, to launch the procedure for withdrawal of preferences with due consideration for the economic and social impact of such a withdrawal.**”

Even before the coup, Council Conclusions were adopted on 16 October 2017, 28 February 2018, and 10 December 2018 **to express the EU’s concerns in particular about the lack of full accountability for serious and systematic human rights violations** committed by the Myanmar armed forces, for restrictions to humanitarian access, the situation of internally displaced persons (IDPs) in Rakhine, Kachin, and Shan States, and the slow progress in implementing the recommendations of the Advisory Commission on Rakhine State.

In its Conclusions of 28 February 2018, the Council recalled "**that the respect of human rights and fundamental freedoms is a crucial part of the EU's trade policy and underpins the granting of trade preferences to Myanmar under the EBA**" and invited the Commission "**to continue monitoring the situation and to step-up engagement with Myanmar in light of the provisions of Regulation (EU) No.978/2012**".

The EU document underlines: “some stakeholders argue that removing preferences – even if for reasons of serious human rights violations – can have a negative effect on poverty eradication by negatively affecting employment.”

In the case of Burma/Myanmar, where the military refused constantly to open any dialogue with the ASEAN, under the 5 point agreement, or the UN, and where crimes against humanity have been committed, and daily violations of human and labour rights are committed including mass dismissals of workers in the public and service sector there is no possibility for the EU to use GSP and EBA as a leverage to improve human rights at work.

### **THE SITUATION ON THE GROUND AND INTERNATIONAL INSTITUTIONS DECLARATIONS**

More than 11 months have passed since the military coup and it is clear that the genocidal junta does not accept any dialogue with the legitimate Myanmar representative such as the elected members of Parliament and the NUG. During these months the military junta arrested over **11.460** civilians, trade unionists, journalists, cultural workers, inflicted **64 death penalties**, killed more than **1,461** civilians, including at least **100 children**, aged between 14 months and 17 years.

#### **The 76th UN General Assembly Annex 1 Additional Human Rights Concerns Observed by the Special Rapporteur 1<sup>st</sup> September 2021 highlights:**

*The junta further restricted freedom of assembly and association by banning most trade unions. Trade unions have become an important force in mobilizing worker participation in the CDM’s general strike. On 26 February the junta announced it had banned (albeit without proper authority) at least 16 trade unions for not being properly registered under the Labour Organization Law and threatened legal action against them if they did not follow the ban.*

*The Special Rapporteur has received numerous reports that trade union leaders are in hiding, with police and military conducting door-to-door searches of their homes.*

*Several specific incidents were reported to the mandate, including **credible information** about trade unionists being shot, injured, killed, or arbitrarily detained during protests. Police and security forces actively sought to detain labour activists through raids in homes and places of work, including factories and commercial banks. In early June, the junta issued arrest warrants for several of the Central Committee members of the Confederation of Trade Unions of*

Myanmar (CTUM). In addition, passports belonging to CTUM Central Committee members were cancelled by the military authorities. Specific incidents include:

- (a) A youth leader of the Confederation of Trade Unions of Myanmar (CTUM)<sup>2</sup> was killed while participating in a protest on 27 March, Armed Forces Day, and a youth committee member of the Myanmar Industry, Crafts and Services Trade Union Federation (MICS-TUF) was shot and injured on the same day in a separate incident.
- (b) On 28 March, one MICS-TUF member was killed while participating in a demonstration and another was arrested in a separate incident.
- (c) In March, security forces went to houses searching for union organizers from one of CTUM's affiliates, the Industrial Workers Federation of Myanmar (IWF), and for trade union leaders from several garment factories.
- (g) On 15 April, security forces arrested the Director of the Solidarity Trade Union of Myanmar and charged her under section 505(a) of the Penal Code.
- (d) On 20 April, the police searched for three IWF union leaders at a factory with a warrant for their arrest and also went to the home of one of them, who managed to escape.
- (e) The junta has arrested 12 members of the University Teachers Association, an affiliate of the Agriculture and Farmer Federation of Myanmar – Food Allied Workers (AFFM-IUF), under section 505(a) of the Penal Code and warrants have been issued for the arrest of 17 of its members.
- (h) In early June arrest warrants were issued for several of the CTUM's Central Committee members. In addition, 28 passports belonging to CTUM Central Committee members were cancelled by the military authorities.
- (i) In June MICS reported that the military had searched the home of one of its leaders as well as the MICS office.

**The Office of the Human rights Council** on 13. September 2021 report: On 27 March 2021, SAC-affiliated "Myanmar Alin" newspaper published a warning for young people to "learn from earlier ugly deaths that you are in danger of getting shot in the head and back". This echoed verbatim ominous statements made on a military-affiliated TV station the previous day.<sup>22</sup> Nonetheless, demonstrators organized further public protests

**The UN General Secretary report** to the General Assembly denounced, among other issues that "by July, at least 64,615 civil servants who had gone on strike as part of the civil disobedience movement had either been dismissed or suspended from their jobs. About 48,000 of those were women. The large-scale illicit economy that has taken root in Myanmar is likely to benefit from the current crisis and related governance challenges. Conversely, illicit activities may also further fuel the ongoing instability,

**The Associated Press** in a report of the 28 October 2021 (<https://apnews.com/article/myanmar-torture-military-prisons-insein-abuse-390fe5b49337be82ce91639e93e0192f>) documents the numerous cases of torture by the security forces, with credible and consistent with the torture of 28 detainees released in recent months, with information from victims, forensic analysts and military deserters who witnessed the abuses.

**The UN's Independent Investigative Mechanism for Myanmar** on 13<sup>th</sup> of September 2021 reported that: "the Mechanism has collected over 219,000 information items related to post-coup events. Our initial analysis indicates that these crimes are both widespread and systematic in nature. The evidence shows security forces acting in a coordinated manner across different regions, systematically targeting specific categories of persons, such as journalists and medical professionals. Many thousands have been detained without due process of law."

The month of December 2021 was marred by very serious crimes against humanity committed by the military junta, which has been planning them since months. The news arrived on Christmas day, from the Kayah state, which has a prevalence of Christians and Catholics, show the genocidal strategy of the military: 38 civilians, including women and children fleeing and seeking refuge and protection from the conflict, were killed and their bodies burned. Among the barbarously killed, there were two Save the Children's staff members returning home for the holidays.

**ECHO** stated that: *"The seizure by the army of medical facilities and equipment, the general state of unrest in Myanmar, the collapse of the economy and the country's isolation have led to one of the worst humanitarian catastrophes in the world, now aggravated by COVID19"*.

The UN estimates that the more than 1.6 million internally displaced persons and refugees, due to the conflict in Chin, Kachin, Rakhine and Shan States in Myanmar, and those in Bangladesh, Malaysia and Thailand, have another 241,000 displaced since February 1, which have added to this very high number.

The junta is using **collective punishment, including the abduction of family members** of those who have arrest warrants, but that police and military forces are unable to locate.

**The 109 ILO Conference 2021 Resolution** for a return to democracy and respect for fundamental rights in Myanmar, stated:

- *"Gravely concerned that the police and military raided trade union offices and homes, harassed and threatened trade unionists and their families, and placed trade union leaders in detention and on a wanted list in retaliation for their participation in strikes and peaceful demonstrations demanding the restoration of democratic order and civilian rule and the continuation of the transition to democracy and an end to the violations of human rights, including labour rights,*
- *Recognizing the serious risks for the capacity of employers, following the military coup on 1 February 2021, to provide for decent work and the sustainability of their enterprises,*
- *Recalling that freedom of peaceful assembly and freedom of opinion and expression are essential for the exercise of freedom of association and that all Member States have an obligation to apply fully, in law and in practice, the Conventions that they have voluntarily ratified,*
- *Noting with deep concern the military's use of forced labour, including in areas of ongoing conflict and against ethnic minorities, such as the Rohingya, particularly as conflict increases across the country,*
- *Noting also that the deteriorating humanitarian situation across the country, especially in border areas, and the lack of humanitarian access pose a threat to the effective exercise of labour rights and human rights at large*
- *Expressing deep concern at the increased risks of forced displacement and lack of access to jobs and livelihood opportunities for persons belonging to religious and ethnic minorities, including the Rohingya, .....*"

**The 13th September 2021 UNHRC Report stated:** *"The coup has evolved into a human rights catastrophe that shows no signs of abating. This report has outlined numerous human rights violations and abuses, as well as violations of international humanitarian law, some of which may amount to war crimes. Some violations may also amount to crimes against humanity if they are found to have been committed as part of a widespread and systematic attack against the civilian population."*

**The November 2021 ILO Governing Body**, as a follow up of the Resolutions concerning Myanmar adopted by the ILO Conference at its 102<sup>a</sup> and 109<sup>a</sup> Sessions: *" expressed profound concern over ongoing practices of the military authorities including the large-scale use of lethal violence and the use of forced labour, as well as the harassment, ongoing intimidation, arrests and detentions of trade unionists and others, including the Rohingya, for exercising their human rights, and called on the military authorities to cease immediately such activities, and to release from detention and drop any charges against trade unionists who have peacefully participated in protest activities; (c) expressed deep concern that the military authorities have taken no steps to respect and protect the status of the ILO Liaison Office in Myanmar and all ILO staff in Myanmar and to refrain from interference in its operations in keeping with the principles of the Convention on the Privileges and Immunities of the Specialized Agencies of 21 November 1947; (d) expressed its grave concern that measures curtailing freedom of expression and freedom of peaceful assembly remain in place and that further restrictions have been implemented by the military authorities on the internet, and called again for the immediate repeal of such measures and for guarantees of the freedom of workers' and employers' organizations to undertake their activities freely and without threat of intimidation or harm;*

In conclusion, as from UN and ILO Reports, the Myanmar SAC has continuously violated:

- ILO Declaration on Fundamental Principles and Rights at work (1998)
- ILO Co. 29 on forced Labour 1930
- ILO Co. 87 Freedom of Association and Protection of the Right to Organize, 1948
- ILO Co. 138 on Minimum age
- ILO Co. N.182 Worst Form of Child labour 1999
- UN Convention on the Rights of the Child (UNCRC)
- The International Covenant on Civil and Political Rights

**Specific human and labour rights violations collected by CTUM trade union representatives in the last months.**

- According to verified data collected among workers by the CTUM, the Confederation of Trade Unions Myanmar that are at disposal of the EU officials, during this year: all **rights to freedom of association and collective bargaining, which are among the fundamental human rights standards at work have been totally cancelled.**
- **130.000** teachers and **11.000** university professors have been suspended from their jobs due to their participation to the Civil Disobedience Movement.
- **400.000** civil staffs had been dismissed from their jobs, becoming jobless and homeless and 70 percent of business had broken down since the February coup.
- At least **250.000** workers of the garment and shoe sector lost their jobs due to the military coup
- According to the ILO report, about 500.000 building workers remained jobless and working hours decreased of 64%, due to the coup impact on the economy. In the tourism sector about **65.000** persons lost their jobs.
- The military raided charity and health facilities, destroying, damaging or confiscating medical equipment, while abducting, beating, and arbitrarily detaining doctors, nurses and other colleagues.
- The SAC closed universities and hospitals, searched civilian homes, carried out roadblocks, random killings and attacked healthcare workers or facilities in at least hundreds separate incidents.
- The junta issued arrest warrants for **600 healthcare workers**, forcing them into hiding.
- The military continues to carry out workplaces, and door-to-door searches in hostels and in workers' homes.
- **16 labour organizations** were declared illegal. For this reason, all union leaders were forced to work from hiding.
- Company managers provide telephones, addresses and photos of union leaders to both military and police.
- Since the coup, **28 union activists** have been killed, and **116 male and female workers** and trade unionists have been arrested with the aim to kill the labour movement.
- Factories announced that labour unions has been dissolved. There is also a pre-employment warning, that **workers will be fired if they join union or participate in union/ labour support activities.**
- All collective agreements have been cancelled, and social dialogue is not possible since trade unions are banned.
- Workers have no employment contracts as well as no extension of the EC.
- The Mandalay and 6 Yangon industrial zones: Hlaing Thar Yar, Shwe Pyi Thar, South Dagon, North Dagon, Dagon Seikkan and North Okklapa are subjected to **martial law**. Judicial power has been transferred to the military. Workers can be sentenced to many years of jail and hard labour. Those who still work in factories or private sector jobs, cannot speak because they are threatened.
- If workers take part to protests, the employer send someone to take photos to gather information about who attended the event. Those who were involved are threatened by the employer, that in case of any interrogation by military, there would be no protection.
- In many factories, wages payment are delayed, with the excuse of political instability and impossibility to withdraw cash from banks.
- Child laborers are also being recruited. The minimum wage is not paid, and no appropriate medical certificates.
- Although COVID-19 third wave, many factories have no protective measures, nor safety guidelines and no tests have been implemented. Workers have to do their job without PPE, or masks, or safety equipment's.
- In many Chinese companies, working for international brands, workers are hired as daily wage workers, and are not recognized as permanent workers after three probation months.



- Workers now receive only the minimum wage. Due to inflation, they earn less than €2 a day and are forced to unpaid overtime and to work Sundays without double pay. Paid leaves are not allowed. There are cases where management called or threaten to call the military and to arrest them, if they talk to people outside the workplace, about the factory's problems.
- Workers cannot enjoy social security benefits.
- Cases of sexual harassment have increased exponentially
- Many factories now pay soldiers and police to ensure factory peace.
- Former collective agreement between unions and employers have been abolished by employers. They publish new workplace rules, without consulting with workers representatives, or unions.
- Workers are obliged to work excessive hours and during Sundays or in official holidays, without overtime payment as in the labour laws.
- Factories temporary closure without notice and not informing workers when to reopen. When factories reopen, the management hire only non-union members or verbally pledge not to get involved or form union inside factory. and factories permanent closure without compensation.
- More than 400.000 public employees have been dismissed from their jobs due to the opposition to military coup.
- The ILO denounces widespread use of forced labor by the military.

#### **URGENT REQUESTS TO THE EU TO DECIDE FOR THE EBA SUSPENSION:**

For all the above mentioned reasons, it is time for the EU to start the procedures for EBA suspension,. There is no more time for a wait and see approach. No reason to continue to delay such decision. The people of Burma/Myanmar is starving due to the military coup and the situation will not deteriorate for the EBA suspension, but for the lack of decisions by the EU.

This request has been also presented by **200 Myanmar organizations:**

*“including workers, farmers, students, teachers, medical professionals, lawyers, youth and women organizations request the international governments, including the Governments of Europe and the United States of America, to promptly implement the **Comprehensive Economic Sanctions CES** on the Myanmar Economy.*

*The **Generalised System of Preferences (GSP)**, including in particular the **Everything But Arms (EBA)** instrument, must be immediately suspended for Myanmar.*

*The requested **Comprehensive Economic Sanction** calls for the stopping of international financial services (international bank transfers and bank credits), stopping the insurance and reinsurance services, effectively stopping arms and weapon selling and related support goods trading and dealing, oil and gas exploring, excavation, exporting and trading of natural resources of Myanmar such as gems, woods and other forest products”.*