MALAYSIAN TRADES UNION CONGRESS

MEMORANDUM TO YB DATUK DR S. SUBRAMANIAM MENTERI SUMBER MANUSIA ON DENIAL OF COLLECTIVE BARGAINING

After more than five years of intense dialogue at the National Labour Advisory Council (NLAC) and at subcommittee level YB Menteri Sumber Manusia pushed through the Parliament a series of amendments to the Industrial Relations Act 1967 and the Trade Unions Act 1959.

It is important to stress that the bill presented at the Parliament was contrary to the consensus reached at the NLAC.

One of the amendments supported by the MTUC was Section 9 of the Industrial Relations Act relating to Recognition Claims. Unfortunately, instead of expediting settlement of recognition claims, all claims submitted after February 2008 are not being processed by the Director General of Industrial Relations (DGIR).

The DGIR says that he is unable to act on reports from unions, because the Kementerian has not put in place appropriate Regulations. MTUC raised this matter at the last NLAC on 23 July 2009 and YB Menteri assured us that the Regulations would come into force within one month. It is now almost three months and there is no indication that the YB Menteri has fulfilled his promise.

There seem to be a serious lack of urgency in settling unions' claim for recognition. The Human Resources Ministry fails to comprehend the numerous problems faced by workers at workplaces.

We are witnessing increasing anti union activities by employers and the situation is worsening. Under Section 9 of the Industrial Relations Act, union recognition claims should be settled within 21 days but in practice

it is taking as long as 18 to 24 months. Employers openly defy the labour laws and often refuse to cooperate with the Industrial Relations Department.

The Human Resources Ministry must accept responsibility for perpetuating this sad state of affairs. We say this because 20 months ago suitable amendments were adopted by the Parliament. The amendments intended to empower the Director General of Industrial Relations and the Human Resource Minister to act against recalcitrant employers remain ineffective.

We attach herewith a list of pending recognition claims, some as long as three years.

Inordinate Delay in Settlement Of Dismissal Cases

Government has denied the unions the right to strike in furtherance of disputes relating to dismissals. Even in glaring cases of dismissals, deliberately carried out to victimize union officials and bust the unions in their workplaces, industrial action is not permitted.

The inordinate delay in the conciliation process at the Department of Industrial Relations and the long delay at the office of the YB Menteri to refer unresolved disputes to the Industrial Court, causes dismissed workers to wait for more than five years for a decision.

Cap on back wages

Very much against MTUC's objections, YB Menteri proceeded to amend Section 30 of the Industrial Relations Act to deprive the independence of the Industrial court to award back wages and compensation in excess of 24 months salary. While responding to opposition against this amendments, YB Menteri told the Parliament that he was taking effective measures to ensure that a decision on reports against dismissals are handed down within 24 months of reporting.

MTUC has received numerous reports that it takes more than 24 months for the YB Menteri to refer dismissal cases to the Industrial Court.

The long delay and the 24 months cap on benefits has encouraged certain unscrupulous employers to openly adopt union busting activities.

Kementerian's unacceptable practices makes a mockery of the provisions of Section 5 of the Industrial Relations Act - **Prohibition on employers and their trade unions in respect of certain act.**

ILO Convention 98 on right to organize and collective bargaining

Workers must be protected against acts of anti-union, discrimination, and particularly acts calculated to:

- **make their employment subject to the condition that they shall not join a union or shall relinquish membership thereof**;
- **cause the dismissal or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours, or, with the consent of the employer, within working hours.**

Workers' and employers' organizations must enjoy adequate protection against any acts of interference by each other, and particularly acts which are designed to promote the domination, financing or control of workers' organizations by employers or employers' organizations.

Measures appropriate to national conditions have to be taken, where necessary, to encourage and promote the full development and utilization of machinery for voluntary negotiation between, on the one hand employers, and on the other hand employers' and workers' organizations with a view to the regulation of terms and conditions of employment by means of collective agreements.

The Convention leaves it to national laws or regulations to determine the extend to which it applies to the armed forces and the police. Furthermore, it does deal with the position of public servants engaged in the administration of the State, nor may it be construed as prejudicing their rights or status in any way.

By virtue of Section 13 of the IR Act, Government has imposed a pre conditions that only a trade union accorded recognition can invite the employer to commence negotiations. We believe that the Kementerian Sumber Manusia has intentionally laid down cumbersome procedures to delay union recognition for long periods, sometimes as long as five years, to deny collective bargaining.

Despite ratifying convention no 98, the laws and practices promote unfair labour practices often, condoned by the Kementerian. DGIR' s failure to act on complaint of violation of the provisions of section 5 of the Industrial Relations Act are clearly in violation of the said convention.

We like to cite the following cases as evidence to support our statement.

British American Tobacco Company

We reproduce hereunder a complaint against the Government of Malaysia regarding the British American Tobacco Co:-

DENIAL OF FREEDOM OF ASSOCIATION AND RIGHT TO COLLECTIVE BARGAINING

This complaint to the committee on Freedom of Association is against the Government of Malaysia for denying the employees of British American Tobacco (Malaysia) Bhd and its subsidiary companies the right to remain as members of the in-house union known as the British American Tobacco Employees' Union (BATEU).

The British American Tobacco Company, in collusion with the Department of Trade Union Affairs and Department of Industrial Relations have crippled the 47 year old BATEU.

- On 29 October 2007, the Director General of Department of Trade Union Affairs, on the urging of the Company, arbitrarily ruled that the 46 year old union can no longer represent the employees of the wholly owned two subsidiary companies of BAT, namely

  a. Tobacco Importers & Manufacturers Sdn Bhd
  b. Commercial Marketing & Distributors Sdn. Bhd

- It is specifically stated under the registered rules of the Union:

  "That its membership is open to all employees of British American Tobacco (BAT) Mal. Bhd and its subsidiaries."

- The Union (BATEU) and the Company (British American Tobacco (Malaysia) Bhd) were due to commence collective bargaining on terms and conditions of employment. By aforementioned acts, the Union's right to collective bargaining is now restricted to a mere 17 employees which has undermined and effectively eliminated the Union's bargaining strength and rights. The said act, by the

Company supported by the Department of Trade Unions is in breach of Convention No 98.

As a result of the Government's (DGTU) ruling all employees other than a small fraction of the Workforce (only 17) have been denied the right to be members of the BAT Employees Union. Government's arbitrary decision is unfair and unacceptable.

HSBC Bank to eliminate 241 officers

On 27 August 2009, MTUC together with officials of the Association of HSBC Bank Officers (AHBO) met with the Director General of Industrial Relations and briefed him about HSBC Bank's decision to eliminate 241 officers who are all members of AHBO. MTUC expressed deep concern over the manner and unacceptable procedure adopted by HSBC Bank Management and urged the DGIR to intervene.

Nothing was heard from the DGIR but the HSBC Bank Management announced on 11th October 2009 to all affected officers that officers from the Ministry of Human Resources will hold a briefing at the Bank's premises on 13 October 2009.

The officers association was understanbly disturbed by the latest development and wrote to the DGIR stating that:-

If what is said by the Bank is true, this is an alarming state of affair in this country and blatant disregard to the fundamentals of Tripartism. Such action by the Ministry will be deemed as a collaboration with the employers <u>to bust the Union</u> protecting the interest of the workers.

In the event there is such intention on the part of the Ministry, we urge you to stop this immediately. Instead, meet us to discuss the closure of Call Centre (which is your actual role after our last meeting with your goodself) and not as alleged by the Bank.

Indeed we agree with AHBO that the unusual procedure allegedly adopted by the Ministry is clearly aimed to undermine the Collective Agreement between AHBO and HSBC Bank.

Reference of Trade Disputes to the Industrial Court

In the case of George Kent Malaysia and the Metal Industry Employees' Union, the parties having failed to reach an agreement, submitted a joint request on 25 March 2009 requesting the YB Menteri to refer their dispute to the Industrial Court. The dispute was referred to the Court

seven months later. This delay has caused the workers to lose seven months back wages.

In the case of Anshin Steel Industry and the Metal Industry Employees' Union, the Director of Industrial Relations Selangor, having failed in his effort to persuade the employers to attend conciliation proceedings, in August 2007 referred the dispute to the DGIR. It is now more than two years and YB Menteri has not referred the dispute to the Industrial Court.

Minimum Wage

YB Menteri has repeatedly rejected MTUC's proposal for a national minimum wage: Instead YB Menteri stated that a minimum wage on a sectoral basis would be more appropriate. MTUC is disappointed that YB Menteri have not taken any action on the wages councils recommendation same pending for more than four year.

Section 26 (1A) of the Trade Union Act

Although Section 26 (1A) come into force in 1989, the restrictions under this clause was rarely enforced: However the widespread enforcement of this specific clause since 2008 has exposed its serious implications on trade unions and its leadership. Employers, especially those who are anti union are encouraged to use the loophole under this section as an effective weapon to get rid of the union at their work place. Therefore MTUC urge the YB Menteri to remove the entire clause (1A) under section 26 of the Trade Union Act 1959.

Industrial Court

Some divisions of the Industrial Court take a long time to conclude the cases under their jurisdiction and take a long time to hand down an award. Reports from our Sarawak Division shows that even cases referred to them nine years ago are still pending award.

Many of the issues raised hereabove was brought to the attention of the YB Menteri on numerous occasion. We are deeply concerned that the right to organize and right to collective bargaining are deliberately hampered: Clearly contradicting the **decent work** concept declared by the Ministry of Human Resources:-

The Ministry of Human Resources subscribes to the principle of social dialogue and accordingly, stresses the value of tripartite consultation, enterprise cooperation and collective bargaining in

helping employers and employees to appreciate a positive labour-relations environment.

MTUC urge the YB Menteri to take urgent measures to remove the ever increasing obstacles impeding trade union's efforts to achieve decent work.

21st October 2009