



FOR DEBATE AND GUIDANCE

EIGHTH ITEM ON THE AGENDA

**Developments concerning the question
of the observance by the Government of
Myanmar of the Forced Labour
Convention, 1930 (No. 29)****I. Background**

1. In addition to the annual discussion of Myanmar's observance of the Forced Labour Convention, 1930 (No. 29), in a Special Sitting of the Committee on the Application of Standards,¹ the 95th Session of the International Labour Conference (June 2006) had on its agenda an item entitled: "Review of further action that could be taken by the ILO in accordance with its Constitution in order to: (i) effectively secure Myanmar's compliance with the recommendations of the Commission of Inquiry; and (ii) ensure that no action is taken against complainants or their representatives".² The Conference decided to refer this item to the Selection Committee, which examined the matter and submitted a report of its deliberations to the plenary. The conclusions contained in that report, as approved by the Conference, are reproduced in Appendix I.
2. As provided for in these conclusions, the Office has proceeded with the preparatory work necessary to enable the Governing Body to decide on the appropriate way forward as regards the question that could be submitted to the International Court of Justice. The elements for consideration in this regard will be provided in document GB.297/8/2. The conclusions also suggested that the Office provide "information about other remedies that may exist under international criminal law for action against perpetrators of forced labour". Relevant information on the possible options in this regard will also be provided in that second document.
3. Also, as provided for in these conclusions, the relevant documentation from the 95th Session of the International Labour Conference was brought to the attention of ECOSOC, which discussed the matter on 26 July 2006 under item 14b of its agenda.

¹ The conclusions adopted by the Special Sitting of the Committee on the Application of Standards are reproduced in Appendix II.

² ILC, 95th Session (Geneva, 2006), *Provisional Record* No. 3-2 (& Corr.).

II. Developments following the International Labour Conference

4. Following his return to Yangon from the International Labour Conference, the Liaison Officer a.i. met with the Deputy Minister for Labour on 27 June 2006. He briefed the Deputy Minister on the discussions that had taken place at the Conference. He underlined the importance of releasing Aye Myint and resolving the ongoing prosecutions in Aunglan, in order to create a climate in which it would be possible to discuss in good faith the establishment of a credible mechanism to address future complaints of forced labour.
5. On 8 July 2006, Aye Myint was released from prison after his sentence was conditionally suspended (under section 401 of the Code of Criminal Procedure). On 20 September 2006, the three persons in Aunglan township were acquitted of making false complaints of forced labour, following the withdrawal of the case by the authorities (under section 248 of the Code of Criminal Procedure). To the knowledge of the Liaison Officer a.i., this resolves all the outstanding cases of prosecution or imprisonment of persons having an ILO connection.
6. As regards the question of the mechanism, in addition to his meeting with the Deputy Minister on 27 June, the Liaison Officer a.i. met with the Director-General of the Department of Labour on 25 July, 17 August, 22 September and 9 October. Parallel discussions were held between ILO headquarters and the Permanent Representative of Myanmar in Geneva on 11 July, 21 August, 14 September and 29 September. In addition to underlining the importance of resolving the Aunglan case, these discussions focused on the specific modalities necessary for any complaint mechanism involving the Liaison Officer to be credible and effective. The discussions were complemented by an exchange of informal notes which set out what the Office considered to be the key parameters for such a mechanism. This was followed on 29 September by the formal submission to the authorities of a draft Understanding based on these parameters, which would supplement the existing Understanding on the appointment of a Liaison Officer signed on 19 May 2002. The text of this draft supplementary Understanding, as submitted to the authorities through the Myanmar Permanent Representative in Geneva and the Liaison Officer a.i. in Yangon, is reproduced in Appendix III.
7. The idea behind this supplementary Understanding was to formalize a de facto situation where, in the course of his activities, the Liaison Officer was receiving complaints of forced labour. The supplementary Understanding would provide the guarantees which were necessary to enable the Liaison Officer to make a preliminary assessment of the complaints he received, before transmitting those that appeared genuinely to involve forced labour to the authorities for investigation, action and reporting. Such guarantees would have to ensure that the Liaison Officer's role in receiving and transmitting complaints would not open the way to retaliatory action against the complainants, which had occurred in the past and which had led the Office in April 2005 to instruct the Liaison Officer to suspend the processing of complaints.
8. While the initial reaction of the Myanmar authorities to this draft supplementary Understanding indicated that there were divergent views on some important points, it was nevertheless made clear by the Office on a number of occasions that this text should be the basis for formal discussions. With the active support of the Myanmar Permanent Representative, it was decided that a mission would take place to Yangon for that purpose as early as possible, in order to try to reach agreement before the deadline of 31 October provided for in the conclusions of the Conference.

III. Mission to Yangon

9. It was decided that the mission would initially consist of Mr. Francis Maupain, Special Adviser to the ILO Director-General, together with Mr. Richard Horsey, the interim Liaison Officer. It was envisaged that, provided sufficient progress could be made, a second phase would then take place with the participation of Executive Director Mr. Kari Tapiola to finalize the supplementary Understanding.
10. The mission arrived in Yangon on the evening of 19 October. It had the opportunity on the morning of 20 October 2006 to have preliminary discussions with the Minister for Labour. The mission recognized the positive developments which had occurred and which had allowed this visit to take place. The ILO Director-General had always considered it important to pursue dialogue under all circumstances and the mission hoped that the positive climate in which the visit was taking place could be translated into a positive outcome which could be a vindication of this approach. The mission also recalled that the Office had been requested by the Conference to provide additional information on international judicial options, which would be annexed to the Governing Body report; this should not be interpreted as a threat, but as a matter of fact.
11. The Minister replied that indeed the authorities had addressed many of the concerns of the International Labour Conference, including releasing Aye Myint and resolving the Aunglan case, and were ready to have a mechanism to deal with complaints of forced labour. However, he said there were strong legal obstacles to granting the Liaison Officer freedom of movement and contacts in this connection, as it would seem to confer on him quasi-investigative powers contrary to the provisions of the 1898 Code of Criminal Procedure. The mission recalled that this was one of the key elements essential to the credibility of the mechanism, and the mandate that the Office had received from the Conference was clear in this respect. The mission underlined that there was no question of the Liaison Officer having any investigative powers. Rather, he would provide a channel through which victims could lodge complaints, and would filter out those that appeared spurious or unrelated to forced labour. Following this preliminary assessment, the Liaison Officer would transmit those complaints that appeared genuinely to involve forced labour to the authorities. The mission also recalled that the legal concerns raised by the Minister had never been raised in the past, either in 2001 when the High-level Team had been granted such freedoms, or in 2003 during negotiations on the "Facilitator" mechanism, which would have provided for the same freedoms. The Minister commented on the unusual conditions in which agreement had been reached on those prior occasions under the previous Prime Minister and Labour Minister. He requested the mission to discuss the matter in detail with the Working Group that the authorities had established to deal with this matter, in order to find a compromise solution that could meet the concerns of both sides.
12. The mission had detailed discussions on 20 and 21 October with this Working Group.³ These discussions did take as a basis the text of the draft supplementary Understanding.

³ The Working Group comprised the Deputy Minister for Labour (as Chair), together with the Deputy Attorney-General, the Director-General of the Office of the Chief Justice, the Director-General of the Department of Labour, the Director-General of the General Administration Department (Home Affairs) and the Deputy Director-General of the International Organizations and Economic Department (Foreign Affairs).

Apart from a number of mainly drafting comments or minor points of substance,⁴ three key divergences emerged.

13. The first concerned the conditions under which the Liaison Officer would carry out his preliminary assessment of a complaint. It was clear from the outset that the Myanmar side was very reluctant to accept the concept that the Liaison Officer would carry out a preliminary assessment of forced labour complaints on an independent and confidential basis, and that for this purpose he needed to have free, confidential and timely access to complainants. They repeatedly insisted that this preliminary assessment should be conducted jointly with the authorities. The mission recalled that at an earlier stage the ILO had indeed proposed a joint examination of complaints in the form of a “Joint Panel”, but this had been rejected by the authorities as it implied the need for an independent third party to arbitrate in cases of disagreement between the two sides. This is why the ILO had tried to find a solution which was simple and which built on what already existed – that is, the existing 2002 Understanding and the fact that the Liaison Officer was in practice receiving complaints of forced labour in the course of his activities. In view of the problems that had arisen in the past with the handling of complaints, it was important to elaborate in a supplementary Understanding a mechanism based on the idea that there would be two successive and independent steps, whereby the Liaison Officer would first make a preliminary assessment of a complaint, on an independent basis, before transmitting it to the authorities to conduct the necessary investigations and take the appropriate action, with a report being provided to the Liaison Officer. It was therefore very important for the credibility of the mechanism that its modalities were consistent with this general approach.
14. After detailed discussions, the two sides reached what appeared to be a balanced solution in the framework of paragraph 7 of the draft supplementary Understanding, which would have been amended to read along the following lines:

[U3.] In accordance with his/her role of assisting the authorities to eradicate forced labour, it shall be the task of the Liaison Officer and or any person that he/she may appoint for that purpose to examine the complaint objectively and confidentially, in the light of any relevant information provided or that he/she may obtain through direct and confidential contact with the complainant(s), their representative(s) and any other relevant person(s), with a view to making a preliminary assessment as to whether the complaint involves a situation of forced labour.

[U7.] The facilities and support extended to the Liaison Officer under the March 2002 Understanding and the present Understanding shall include timely freedom to travel for the purpose of establishing the contacts referred to in paragraph 3. While the designated representative of the relevant Working Group may accompany the Liaison Officer, assist him/her at his/her request or otherwise be present in the area he/she is visiting [in particular for security reasons], their presence should in no way hinder the performance of his/her functions, nor should the authorities seek to identify or approach the persons he/she has met until such time as he/she has completed his/her task under paragraph 3.

However, it subsequently appeared during the discussion of the next point of divergence (see below) that the Myanmar side was raising renewed questions over one key element in this compromise, by insisting that their own examination of a complaint should take place

⁴ The other substantive issue concerned the handling of complaints involving the army. While the Working Group at first seemed ready to accept a different form of words referring to the fact that such complaints would be channelled through the existing army focal point for investigation by the military, the Working Group later took the position that any specific reference to the army should be omitted. Apart from this issue, a number of other amendments were discussed, none of which were of major importance to the substance, and some of which improved the clarity.

in parallel with the preliminary assessment that would be made by the Liaison Officer,⁵ thus reopening the fundamental approach reflected in the last sentence of paragraph [U7.] quoted above.

15. The second key divergence related to the duration of the trial period, which the draft Understanding had tentatively set at 18 months. The Myanmar side insisted on having a much shorter period of six months, which they considered to be quite sufficient. The mission pointed out that the Governing Body would necessarily be involved in the evaluation of the mechanism, and taking into account the intervals between Governing Body sessions, a six-month trial period would imply that the Governing Body would have to come to a decision on the effectiveness of the mechanism on the first occasion it considered the matter. This was difficult to imagine in practice, and implied that an 18-month period would be more reasonable. The mission, however, was ready to consider a compromise whereby the trial period could be shortened by mutual agreement but would in no case be less than six months nor more than 18 months. However, no conclusion was reached on this matter, as another issue unexpectedly became of decisive importance.
16. This third key divergence, which came to be of central importance in the discussions, concerned the staff resources available to the Liaison Officer to enable him to perform his additional functions under the supplementary Understanding. This matter was dealt with in paragraph 8 of the draft text. Already during the discussion of other paragraphs, and in particular paragraph 3 (which refers to the fact that the Liaison Officer may be assisted or substituted by another person), the Myanmar side made it clear that they had strong objections. In the discussion of paragraph 8, they seemed at first ready to consider an alternative proposal submitted by the mission. This proposal made it clearer that agreement was only needed on the principle that the strength of the office should be adequate to meet its additional responsibilities, and that this in no way prejudged the extent and timing of any strengthening. The mission also pointed out in this respect that the present situation, where due to his ability to speak Burmese the Liaison Officer could in most cases have direct dialogue with complainants, could not be taken for granted. It may be necessary for the present Liaison Officer to have interpretation in some cases, and in all likelihood any successor would need to be accompanied by a non-national interpreter.
17. Unexpectedly, however, the Myanmar side was not ready on the second day to enter into any discussion of the alternative wording proposed by the mission and insisted that the entire paragraph 8 be omitted. The mission then recalled the terms of the letter sent by Mr. Tapiola to the Permanent Representative of Myanmar on 15 September 2006, which made it clear that this solution already represented a compromise formula worked out between the two sides in initial informal discussions, within the framework of the clear mandate contained in the conclusions adopted by the Conference. The mission therefore indicated that it was not in a position to agree to the removal of this important point from the text.
18. At that stage, it was considered that there was no point considering other, more specific, drafting issues or minor points of substance. However, the mission insisted on the importance of having another meeting with the Minister for Labour in order to explain the seriousness of the situation and to request that he bring the matter to the attention of the higher authorities. The Minister gave the mission an opportunity to explain in detail the nature of the impasse. The mission indicated that good progress appeared to have been

⁵ They had also earlier insisted that for the sake of transparency that the details of all complaints should be shared immediately with the authorities. A practical solution seemed to have been found to this issue, by providing that the Liaison Officer would establish a register of complaints which could be freely shared with the authorities without jeopardizing the confidentiality of the complaints or their source.

made on the first day of discussions, and tentative agreement seemed to have been reached on some of the key elements. However, the discussions had now reached an impasse over the question of staff strength. The mission found this difficult to understand, since it appeared from the discussions that the Myanmar side was ready to accept in principle the possibility of the staff available to the Liaison Officer being increased in order to cope with the workload. It was therefore difficult to see why this important point could not be reflected in the supplementary Understanding itself. The mission noted that if no further progress could be made, it would have no alternative than to report the situation to the Governing Body, with all the consequences that could entail. The Minister then noted that he had his own instructions, but that he would bring the matter to the attention of the Cabinet; this might, however, take a few days.

- 19.** Following this meeting, the mission transmitted to the Minister a revised text which incorporated the progress made so far and proposed some further changes which in its view went as far as possible to bridge the remaining gaps, in particular as regards paragraph 8, on which it made the following proposal:

[U8.] It is further recognized that the staff allocated to the Liaison Officer or his/her successor should be adequate in number, qualifications and status to enable the Liaison Officer to effectively discharge the additional responsibilities resulting from the present Understanding, and the two sides agree to the necessary adjustments being made in a timely manner in response to the workload.

- 20.** On 23 October, the mission was informed that the Minister had not yet been able to obtain new instructions and was unlikely to receive any in the next few days. The mission therefore saw no need to wait longer in Yangon, and Mr. Maupain thus departed on 24 October. He was seen off by the Director-General of the Department of Labour, who stressed that the final text proposed by the mission was being given careful consideration, and that Mr. Horsey, who remained in Yangon, would be informed of their reaction in due course.

Geneva, 24 October 2006.

Submitted for debate and guidance.

Appendix I

Conclusions of the Selection Committee on the additional agenda item concerning Myanmar, as adopted by the 95th Session of the International Labour Conference, June 2006

The Committee, after listening to Ambassador Nyunt Maung Shein on behalf of the Government of Myanmar, has carefully reviewed the situation on the basis of *Provisional Record* No. 2 entitled: “Review of further action that could be taken by the ILO in accordance with its Constitution in order to: (i) effectively secure Myanmar’s compliance with the recommendations of the Commission of Inquiry; and (ii) ensure that no action is taken against complainants or their representatives”. It also had before it the conclusions adopted by the Committee on the Application of Standards on 3 June.

There was general agreement that the 2000 resolution provided a balanced framework on which to build, although a certain number of countries reiterated their general opposition to sanctions. A number of salient points emerged as regards the promotion of enhanced awareness and implementation of the 2000 resolution, and subsequent Governing Body decisions, which included the following steps, it being understood that they have to be carefully read in the context of the detailed record of the debate:

- The ILO has the possibility to seek an advisory opinion from the International Court of Justice which would, as the Workers stated, require the formulation of a specific legal question relating to the Forced Labour Convention, 1930 (No. 29). This is without prejudice to the fact that member States have the possibility to themselves institute contentious proceedings before the International Court of Justice on their own initiative. It was made clear that such action was complementary to, and not a substitute for, other action to be taken by the ILO itself.
- The application of the measures could be enhanced by providing more precise indications as regards the kinds of concrete steps by member States which might be more effective, and which would be most relevant to the sectors and types of enterprise in which forced labour appears to be currently employed. Such indications and guidance could be elaborated through examples of concrete actions taken to date.
- There could be more active involvement of employers’ and workers’ organizations, including at the national level, in the implementation of the measures.
- An enhanced reporting mechanism could also be developed, on the basis of a user-friendly questionnaire addressed to members.
- Multi-stakeholder conferences could be convened in order to exchange ideas of best practice in the implementation of the 2000 resolution.
- Steps should be considered with a view to fostering greater awareness and a consistent attitude on the issue among other international organizations, within their specific fields of competence, in particular ECOSOC.

In addition, it was suggested that the Office should provide information about other remedies that may exist under international criminal law for action against perpetrators of forced labour.

It was also suggested that appropriate and effective use should be made of public diplomacy in support of the ILO’s efforts.

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The Committee shared all the very grave concerns expressed in the conclusions of the Committee on the Application of Standards as to the continued widespread use of forced labour by the Myanmar authorities, as well as their failure to implement the recommendations of the Commission of Inquiry. The unprecedented gravity of the forced labour situation in Myanmar was reflected in the Commission of Inquiry's report and, despite limited progress in a number of areas, there was every reason to believe that widespread and very serious abuses persisted. In some parts of Myanmar, villagers were liable to be detained for arbitrary periods by the army and forced to carry supplies during military operations, in terrible conditions and subject to brutal treatment. Across the country, local authorities continued to force the population to carry out local infrastructure work. It was unacceptable to the ILO that a member State not only tolerated such practices, but was itself responsible for them. This was a violation of the commitment to a shared humanity that a civilized world demanded.

The Committee underlined that progress could be made only if the Government of Myanmar really committed itself to ending forced labour – a step that was indispensable for the modernization and development of the country – and resumed genuine cooperation with the ILO. A number of speakers noted that, even though the recent steps taken by Myanmar once again came very late and did not go far enough, the path of cooperation should continue to be further explored, taking into account Myanmar's expressed willingness to do so and the fact that they had given some concrete effect to their commitment to a moratorium on prosecutions by releasing Su Su Nwe from detention. The Committee made it clear that any such cooperation needed to rapidly produce tangible and verifiable action from Myanmar towards the implementation of the recommendations of the Commission of Inquiry. The first test of this would be Myanmar's willingness to address the following points:

1. The Government must give credibility to its stated moratorium on prosecutions, by providing further details on how this moratorium would be applied, extending it to cover prosecutions currently under way (in Aunglan) and releasing any person still in detention (in particular Aye Myint). This should be done as soon as possible but in any event no later than by the end of July 2006. It must also be clear that anyone lodging a complaint during the moratorium should have immunity from any action being taken against them subsequently for doing so.
2. The moratorium would be considered strictly binding. It was understood that if the moratorium was breached, or if it came to an end without agreement on a satisfactory mechanism as envisaged under points 3 and 4 below, then the situation would immediately be brought to the attention of the membership, to review any steps that it may be appropriate to take, including international legal steps on the basis of article 37.1 of the ILO Constitution.
3. The authorities now need to immediately enter into discussions with the ILO with a view to agreeing by the end of October 2006 on the establishment of a credible mechanism for dealing with complaints of forced labour, which would include all necessary guarantees for the permanent protection of complainants or their representatives. This would also require that the ILO Liaison Office had the necessary resources and personnel.
4. Any mutually agreeable solution which would be reached on that basis should receive clearance at the highest level on both sides (i.e. through the Officers of the Governing Body in the case of the ILO).

It would be for the Governing Body to examine in November 2006 whether these points had been met, it being understood that the Office should in the meantime undertake all the preparatory work that may be necessary to allow for immediate decisions to be taken. Then, in the light of the developments or lack thereof, the Governing Body would have full delegated authority to decide on the most appropriate course of action, including as appropriate on the basis of the abovementioned proposals for the enhanced application

of the measures. It was also understood that the Governing Body should make all the necessary arrangements so that the Conference at its 2007 session is able to review what further action may then be required, including the possibility of the establishment of a special Committee of the Conference.

In the meantime, as contemplated by the Committee on the Application of Standards, all the deliberations of this Committee, together with the report of the Special Sitting of the Committee on the Application of Standards, should be brought to the attention of ECOSOC in time for its July 2006 session.

Appendix II

Conclusions of the Special Sitting of the Committee on the Application of Standards of the ILC, June 2006

The Committee had before it the observation of the Committee of Experts and a report from the Office on the latest developments as reported by the ILO's Acting Liaison Officer, whose action and dedication received full support. It also listened to the statement of the Government representative, Ambassador Nyunt Maung Shein. It was noted, however, that he was absent from the room during the comments of the Worker spokesperson.

As regards the observation of the Committee of Experts, the Committee noted its profound concern that the recommendations of the Commission of Inquiry had still not been implemented, and deplored the fact that forced labour continued to be widespread, particularly by the army. This was underlined by current reports of extensive forced labour being used in the context of increased military activity leading to significant internal displacement in Kayin (Karen) State. The situation in the Northern Rakhine (Arakan) State remained very serious.

The Committee recalled that, as a result of concerns expressed both in the Governing Body and in the present Committee, the matter was, for the first time since 2000, on the agenda of the Conference as such. The Committee concluded that the inclusion of such an agenda item was more than justified. There would thus be an opportunity for the Conference to fully consider what steps the ILO should now take. The Committee's conclusions would therefore address the question of Myanmar's compliance with its obligations.

The Committee underlined that it was now eight years since the Commission of Inquiry had issued its report and recommendations. While a few interventions claimed that Myanmar was making some moves in the right direction, however slowly, none of these recommendations had so far been implemented by Myanmar. Indeed, instead of progress in the elimination of forced labour and action against those responsible, people were liable to be prosecuted and imprisoned for complaining about forced labour, with the result that victims were being doubly victimized. The policy of prosecuting complainants was incompatible with Articles 23 and 25 of Convention No. 29, and Myanmar could not claim to be committed to the elimination of forced labour or to cooperation with the ILO while it continued to pursue such a policy.

In this context, the Committee noted the comments of the Ambassador of Myanmar that his Government was willing to consider Option-I but rejected Option-II. He stated that the Myanmar authorities were ready to put a six-month moratorium on prosecutions of complainants. The Committee underlined, however, that although this may sound positive, it was late and limited. Words had to be urgently confirmed and completed by deeds in all relevant matters, in particular the acquittal and release of persons who had already been prosecuted (in particular, Su Su Nwe and Aye Myint) and the cessation of prosecutions currently under way. Such action was particularly important as the Conference was to discuss further action to be taken by the ILO, and other organizations including ECOSOC, and that the decisions of the Conference should be based on credible information and commitments confirmed at the highest levels as to the Government's intentions. The authorities now need to immediately enter into discussions with the ILO, with a view to establishing as soon as possible a credible mechanism for dealing with complaints of forced labour.

It would be very important that all the deliberations of the Conference on this matter would be brought to the attention of ECOSOC and other organizations concerned as soon as possible. The Government of Myanmar was also requested to provide a full report to the Committee of Experts on the Application of Conventions and Recommendations in time for its session later this year.

Appendix III

Text of a “draft supplementary Understanding” submitted to the Myanmar authorities on 29 September

In the framework of the Conclusions adopted by the 95th Session of the International Labour Conference (Geneva, June 2006) in order to give full credibility to their commitment to effectively eradicate forced labour the Government of the Union of Myanmar and the International Labour Organization have agreed to adopt the present Understanding relating to the role of the Liaison Officer with respect to forced labour complaints channelled through his/her Office which supplements the “Understanding between the Government of the Union of Myanmar and the International Labour Office concerning the Appointment of an ILO Liaison Officer in Myanmar” (Geneva, 19 March 2002) as follows.

Object

1. In line with the recommendations of the High-level Team (Report, GB.282/4, 282nd Session, Geneva, November 2001, paragraph 80) to the effect that victims of forced labour should be able to seek redress without fear of further victimization, the object of the present Understanding is to formally offer the possibility to victims of forced labour to channel their complaints through the services of the Liaison Officer to the competent authorities with a view to seeking remedies available under the relevant provisions of the Penal Code and the Code of Criminal Procedure.

I. Treatment of complaints of forced labour

2. In accordance with the objective of the appointment of a Liaison Officer, the functions assigned, and the facilities extended to him/her under the March 2002 Understanding, any person or their representative(s) bona fide residing in Myanmar shall have full freedom to submit to the Liaison Officer allegations that the person has been subject to forced labour together with any relevant supporting information.
3. In accordance with his/her role of assisting the authorities to eradicate forced labour, it shall be the task of the Liaison Officer and or any person that he/she may appoint for that purpose to examine objectively and confidentially if the complaint, in the light of any relevant information provided or that he/she may obtain through direct contact with the complainant(s), their representative(s) and any other relevant person(s), represents a prima facie case of forced labour.
4. The Liaison Officer will then communicate to the Working Group those complaints which he/she considers to represent such a prima facie case, together with his/her reasoned opinion, in order for these cases to be expeditiously investigated by the most competent authority (including as appropriate the army). In minor cases the Liaison Officer may also provide suggestions on ways in which the case could be settled directly among those concerned.
5. The Liaison Officer shall at all times during and after the treatment of the case have free and confidential access to the complainant(s), their representative(s) and any other relevant person(s). The Liaison Officer shall be informed by the authorities of any action taken pursuant to the complaint with its motivation. In the event that penal action is taken he/she will have full freedom to attend any relevant court proceedings personally or through a representative.

6. The Liaison Officer will report through the ILO Director-General to the Governing Body at each of its sessions on the number and type of complaints received and treated under the above provisions as well as their outcome. He/she will provide at the end of the trial period his/her evaluation as to whether the scheme has been able to fulfil its objective, any obstacle experienced, and what possible improvements or other consequences could be drawn from the experience, including its termination. These interim and final reports will be communicated in advance to the authorities for any comments they would like to make.

II. Guarantees and facilities to be accorded to the Office in the discharge of the above responsibilities

7. The facilities and support extended to the Liaison Officer under the March 2002 Understanding and the present Understanding shall include freedom to travel for the purpose of having timely, unhindered and confidential contact with the complainant(s), their representative(s) and any other relevant person(s).
8. These facilities shall be extended not only to the Liaison Officer and any successor, but also to any person who will subsequently be appointed by the ILO, after appropriate consultations with the authorities, to assist or enable him/her to effectively discharge the functions provided for under the present Understanding or as appropriate discharge them on his/her behalf. Subject to any consultations as may be appropriate the authorities shall expeditiously grant such persons necessary visas and extend to them in addition to the facilities provided for under the present Understanding the privileges and immunities corresponding to those granted to diplomatic staff of equivalent rank in accordance with usual practice.
9. No action shall be taken against any complainant(s), their representative(s) or any other relevant person(s) involved in a complaint, at any time either during the implementation of the arrangements in the present Understanding or after its expiration, whether or not the complaint is upheld.

III. Time frame and trial period

10. The arrangements in the present Understanding shall be implemented on a trial basis over a period of 18 months.
11. It will then either be consolidated subject to any modification that may appear appropriate and acceptable to both parties or terminated in the light of the evaluation referred to in Part I.
12. During the trial period, in the event that either party fails demonstrably to fulfil its obligations under the March 2002 Understanding or the present Understanding the other party may terminate the mechanism by giving one month's notice in writing.

IV. Miscellaneous

13. The Government of Myanmar and the ILO shall give adequate publicity to the present Understanding, in the appropriate languages.

Geneva, 29 September 2006.