



FOR DEBATE AND GUIDANCE

FIFTH 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. Following discussion of the item at its 297th Session (November 2006), the Governing Body adopted the following conclusions:

The Governing Body considered all the information before it, including the comments of the Permanent Representative of Myanmar, in the framework of the conclusions adopted by the International Labour Conference in June 2006. In this regard, regret was expressed by the Workers' group and some Governments that not all options contemplated by the Conference had been followed up. It was recalled in this context that the Conference conclusions, *inter alia*, provided that "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 ... proposals for the enhanced application of the measures".

It was acknowledged that the Myanmar authorities had released Aye Myint and ended the prosecutions in Aunglan. The Permanent Representative furthermore gave assurances in his opening comments that the moratorium on prosecution of complainants would remain in place.

However, the Workers, Employers and the majority of Governments, expressed great frustration that the Myanmar authorities had not been able to agree on a mechanism to deal with complaints of forced labour within the framework set out in the Conference conclusions. The authorities had therefore missed a critical opportunity to demonstrate a real commitment to cooperating with the ILO to resolve the forced labour problem, which once again raised serious questions as to whether any such commitment existed. There was widespread and profound concern that, at the same time, the practice of forced labour continued to be prevalent in Myanmar.

The general conclusions were that:

- The Myanmar authorities should, as a matter of utmost urgency and in good faith, conclude with the Office an agreement on a mechanism to deal with complaints of forced labour, on the specific basis of the final compromise text proposed by the ILO mission.
- Irrespective of the status of the moratorium on prosecutions of complainants, it must be clearly understood that any move to prosecute complainants would be a violation of

Convention No. 29 and would open the way to the consequences contemplated in paragraph 2 of the Conference conclusions.

- Following the Conference conclusions in June 2006, a specific item would be placed on the agenda of the March 2007 session of the Governing Body, to enable it to move on legal options, including, as appropriate, involving the International Court of Justice. The Office should therefore make necessary preparations for the Governing Body to request an advisory opinion of the International Court of Justice on specific legal question(s), without prejudice to the possibility that a member State could take action on its own initiative.
- As regards the question of making available a record of the relevant documentation of the ILO related to the issue of forced labour in Myanmar to the Prosecutor of the International Criminal Court for any action that may be considered appropriate, it is noted that these documents are public and the Director-General would therefore be able to transmit them.
- In addition, the Director-General could ensure that these developments are appropriately brought to the attention of the United Nations Security Council when it considers the situation in Myanmar, which is now on its formal agenda.
- As provided for in the Conference conclusions, the Governing Body in March will revisit the question of placing a specific item on the agenda of the 2007 session of the International Labour Conference to allow it to review what further action may then be required, including the possibility of the establishment of a special committee of the Conference.
- The other options contained in the Conference conclusions should also be appropriately followed up by the Office.

2. Mr Richard Horsey continued to act as interim ILO Liaison Officer. The present report summarizes his activities since November 2006 as well as the discussions that have taken place between ILO headquarters and the Permanent Representative of Myanmar in Geneva on the text of a Supplementary Understanding.
3. The preparatory work on legal options requested by the Governing Body at its 297th Session is dealt with in a separate document before the Governing Body (see GB.298/5/2).¹
4. As regards the request by the Governing Body that developments be appropriately brought to the attention of the United Nations Security Council, the Director-General wrote on 24 November 2006 to the United Nations Secretary-General transmitting the relevant documentation and requesting that this be brought to the attention of the Security Council. The Secretary-General transmitted the Director-General's letter and the related documentation to the President of the Security Council, who in turn transmitted it to the members of the Security Council on 15 December 2006.

II. Agreement on a Supplementary Understanding

5. On his return to Yangon, after attending the 297th Session of the Governing Body, the Liaison Officer a.i. met on 4 December 2006 with the Director-General of the Department

¹ As regards the question of making ILO documentation available to the Prosecutor of the International Criminal Court, following the 297th Session of the Governing Body, the Office compiled a list of the public documents of the ILO related to the issue of forced labour in Myanmar that might be of relevance to the Prosecutor, and contacts were initiated in order to brief him on developments in the ILO and bring this documentation to his attention.

of Labour, and on 18 December with the newly-appointed Deputy Minister for Labour, Major-General Aung Kyi,² in order to brief them on the Governing Body's discussions and in particular on the urgent need to reach an agreement on a mechanism to deal with complaints of forced labour. The Deputy Minister indicated a willingness to revisit the outstanding issues, and possible modalities for a new round of negotiations were discussed. The Liaison Officer a.i. was subsequently informed that the Permanent Representative of Myanmar in Geneva, Ambassador Nyunt Maung Shein, would be authorized to conduct these negotiations with ILO headquarters.

6. A series of contacts and discussions between ILO headquarters and Ambassador Nyunt Maung Shein, commencing in the first week of January 2007, as well as parallel contacts between the Liaison Officer a.i. and the authorities in Yangon, led to agreement in principle on the text of a Supplementary Understanding on 15 February. The agreed text retained the essential elements of the final compromise proposal made by the ILO mission to Yangon in October 2006. After obtaining approval at the highest level on both sides (the Officers of the Governing Body and the Cabinet, respectively), as requested by the International Labour Conference in 2006,³ the Supplementary Understanding was signed on 26 February 2007 by Executive Director Mr Kari Tapiola and Ambassador Nyunt Maung Shein. The mechanism that it establishes to deal with complaints of forced labour came into force immediately. The text of the Supplementary Understanding and the minutes agreed upon at the same time are attached to this report.
7. The Supplementary Understanding makes provision for the Government of Myanmar and the ILO to give adequate publicity to its contents. The ILO issued a press release on 26 February announcing the development, which was widely reported internationally, including by media in Myanmar languages catering to a domestic audience. A press release was also issued on the same day by the Permanent Mission of Myanmar in Geneva. In addition, in order to increase awareness of the ILO's work on forced labour in Myanmar, the Liaison Officer a.i. has established an English language web site,⁴ and development of a Burmese language version is under way. Further steps will be taken to give additional publicity in Myanmar to the Supplementary Understanding, as necessary.
8. The Supplementary Understanding provides that "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 mechanism] as well as their outcome". The Liaison Officer a.i. has already received a number of complaints, which he is in the process of assessing, and his first report to the Governing Body pursuant to the Supplementary Understanding will be presented in an addendum to the present document that will be issued in time for the Governing Body's discussion of the item.⁵
9. As noted in the Supplementary Understanding, its implementation gives rise to additional work and responsibilities for the Liaison Officer a.i. that will entail supplementary

² Major-General Aung Kyi was appointed to the position of Deputy Minister for Labour in late November 2006, replacing Brigadier-General Win Sein.

³ See ILC, 95th Session (Geneva, 2006), *Provisional Record* No. 3-2 (&Corr.), p. 12, operative para. 4.

⁴ The URL for this web site is: <http://www.ilo.org/public/english/region/asro/yangon/>.

⁵ In this regard it is relevant to note that, shortly before the Supplementary Understanding was signed, a detailed allegation concerning forced labour was brought to the attention of the Liaison Officer a.i. and that some positive steps have already been taken by the authorities towards the resolution of that case.

expenditure beyond what has been currently foreseen. The number and nature of the complaints already received suggest that the increase in capacity foreseen in the Supplementary Understanding is indeed no longer speculative. The need for outside funding had already been contemplated in the past with respect to similar arrangements under the Plan of Action, and the Office will be actively discussing funding requirements with potential donors.

Geneva, 7 March 2007.

Appendix

Supplementary Understanding

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 him/her, 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, para.80) to the effect that victims of forced labour should be able to seek redress in full confidence that no retaliatory action will be taken against them, 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 legislation and in accordance with the Forced Labour Convention No.29 (1930). This Understanding is without prejudice to other steps to accommodate the requests of the competent supervisory bodies of the ILO.

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 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.

4. The Liaison Officer will then communicate to the relevant Working Group established by the Government of the Union of Myanmar those complaints which he/she considers to involve such a situation of forced labour, together with his/her reasoned opinion, in order for these cases to be expeditiously investigated by the most competent

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civilian or military authority concerned as appropriate. In minor cases the Liaison Officer may at the same time 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) to verify that no retaliatory action has been taken. The Liaison Officer shall be informed by the authorities of any action taken against the perpetrator(s) with its motivation. In the event that penal action is taken he/she will have full freedom to attend any relevant court sittings personally or through a representative, in accordance with law.

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 fulfill 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 timely freedom to travel for the purpose of establishing the contacts referred to in paragraph 3. While the designated representative of the 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, this 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.

8. The two sides recognize that appropriate steps are to be taken to enable the Liaison Officer or his/her successor to effectively discharge the additional work and responsibilities arising out of this Understanding. The necessary adjustments will be made to the staff capacity available to him/her in a reasonable time, to meet the workload after due consultation.

9. Complaints submitted under the present Understanding shall not be a ground for any form of judicial or retaliatory action against 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.

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III. Time frame and trial period

10. The arrangements in the present Understanding shall be implemented on a trial basis over a period of 12 months that may be extended by mutual agreement.

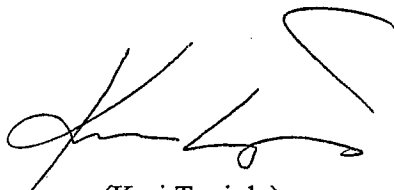
11. It will then, subject to any modification that may appear appropriate and acceptable to both parties, either be consolidated or terminated in the light of the evaluation referred to in part I.

12. During the trial period, in the event that either party fails demonstrably to fulfill 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

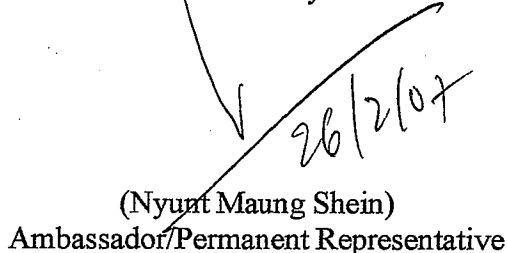
13. The Government of the Union of Myanmar and the International Labour Organization shall give adequate publicity to the present Understanding in the appropriate languages.

For the International Labour Organization



(Kari Tapiola)
Executive Director

For the Government of
the Union of Myanmar



(Nyunt Maung Shein)
Ambassador/Permanent Representative

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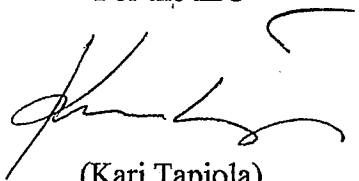
Minutes of the Meeting

The text, attached hereto, reflects the agreement between the Government of the Union of Myanmar and the International Labour Organization on a Supplementary Understanding relating to the role of the Liaison Officer with respect to forced labour complaints channelled through him/her, 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).

It is understood that:

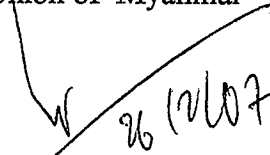
1. In connection with operative paragraph 1, last sentence, the Understanding cannot effect constitutional obligations under ratified Conventions, including reporting obligations under article 22 of the Constitution, and thus cannot prejudge the responsibilities that the competent supervisory bodies (Committee of Experts and the Committee on the Application of Conventions and Recommendations of the ILC) are called upon to discharge in that connection;
2. In connection with operative paragraph 4, the ILO agrees that in line with the whole purpose of the mechanism, and the specific concern reflected in this paragraph with respect to the subsequent investigation of the complaint by the Myanmar side, the assessment of the Liaison Officer should be carried out expeditiously;
3. The original of this Understanding has been written and signed in English. If this Understanding is translated into a language other than English, the English version shall govern and prevail;
4. This Understanding shall enter into force upon its signature by the authorized representatives of the parties.

For the ILO



(Kari Tapiola)
Executive Director
Standards and Fundamental Principles
and Rights at Work
International Labour Office
Geneva

For the Union of Myanmar



(Nyunt Maung Shein)
Ambassador
Permanent Representative
Permanent Mission of
the Union of Myanmar
to the United Nations and other
International Organizations
in Geneva

Geneva, 26 February 2007

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