



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)****Status report on decisions regarding
Myanmar****Introduction**

1. At the 302nd Session of the Governing Body, the Office undertook to prepare for its next session a status report on the decisions taken by the Organization to promote the compliance of Myanmar with the recommendations of the 1998 Commission of Inquiry. The present report recapitulates those decisions and their implementation to date. It does not, however, cover the decisions which have been addressed in the form of recommendations to the Government. The current status of these decisions will be addressed in the report of the Liaison Officer; furthermore, the Office is prepared to provide, in due course, a more comprehensive overview of the decisions in question. The Committee of Experts regularly reviews the observance by Myanmar of the Forced Labour Convention, 1930 (No. 29), and its observations are discussed by the Conference Committee on the Application of Standards.

The 1999 resolution

2. In 1999, the International Labour Conference, following the procedure set out in article 17(2) of the Standing Orders, adopted a resolution on the widespread use of forced labour in Myanmar¹ in which, inter alia, it resolved:

...

- (b) that the Government of Myanmar should cease to benefit from any technical cooperation or assistance from the ILO, except for the purpose of direct assistance to implement

¹ Resolution adopted by the International Labour Conference at its 87th Session (Geneva, June 1999).

immediately the recommendations of the Commission of Inquiry, until such time as it has implemented the said recommendations;

- (c) that the Government of Myanmar should henceforth not receive any invitation to attend meetings, symposia and seminars organized by the ILO, except such meetings that have the sole purpose of securing immediate and full compliance with the said recommendations, until such time as it has implemented the recommendations of the Commission of Inquiry.

3. This resolution remains in force and implemented.

The 2000 resolution and its implementation

4. Following a decision by the Governing Body under article 33 of the ILO Constitution,² the Conference held a debate in 2000 on measures to secure compliance with the recommendations of the Commission of Inquiry. The Conference adopted a resolution³ outlining a set of actions to be taken if the authorities of Myanmar did not promptly take concrete action to implement the recommendations. The Conference approved a set of measures on the basis of the proposals by the Governing Body, namely:

- (a) to decide that the question of the implementation of the Commission of Inquiry's recommendations and of the application of Convention No. 29 by Myanmar should be discussed at future sessions of the International Labour Conference, at a sitting of the Committee on the Application of Standards specially set aside for the purpose, so long as this Member has not been shown to have fulfilled its obligations;
- (b) to recommend to the Organization's constituents as a whole – governments, employers and workers – that they: (i) review, in the light of the conclusions of the Commission of Inquiry, the relations that they may have with the member State concerned and take appropriate measures to ensure that the said Member cannot take advantage of such relations to perpetuate or extend the system of forced or compulsory labour referred to by the Commission of Inquiry, and to contribute as far as possible to the implementation of its recommendations; and (ii) report back in due course and at appropriate intervals to the Governing Body;
- (c) as regards international organizations, to invite the Director-General: (i) to inform the international organizations referred to in article 12, paragraph 1, of the Constitution of the Member's failure to comply; (ii) to call on the relevant bodies of these organizations to reconsider, within their terms of reference and in the light of the conclusions of the Commission of Inquiry, any cooperation they may be engaged in with the Member concerned and, if appropriate, to cease as soon as possible any activity that could have the effect of directly or indirectly abetting the practice of forced or compulsory labour;
- (d) regarding the United Nations specifically, to invite the Director-General to request the Economic and Social Council (ECOSOC) to place an item on the agenda of its July 2001 session concerning the failure of Myanmar to implement the recommendations contained in the report of the Commission of Inquiry and seeking the adoption of recommendations directed by ECOSOC or by the General Assembly, or by both, to governments and to other specialized agencies and including requests similar to those proposed in paragraphs (b) and (c) above;
- (e) to invite the Director-General to submit to the Governing Body, in the appropriate manner and at suitable intervals, a periodic report on the outcome of the measures set out in paragraphs (c) and (d) above, and to inform the international organizations concerned

² GB.277/6.

³ Resolution concerning the measures recommended by the Governing Body under article 33 of the ILO Constitution on the subject of Myanmar, adopted by the International Labour Conference at its 88th Session (Geneva, June 2000).

of any developments in the implementation by Myanmar of the recommendations of the Commission of Inquiry;

The Conference further decided that the measures would take effect on 30 November 2000 unless, before that date, the Governing Body was satisfied that the intentions expressed by the Minister of Labour of Myanmar in his letter dated 27 May had been translated into a framework of legislative, executive and administrative measures that were sufficiently concrete and detailed to demonstrate that the recommendations of the Commission of Inquiry had been carried out and therefore rendered the implementation of one or more of the measures inappropriate.

5. The Governing Body concluded in November 2000⁴ that the measures should enter into force. In 2000 and 2005, the Director-General wrote to the governments of all member States, and through them to employers' and workers' organizations, pursuant to paragraph (b) above, and to international organizations, pursuant to paragraph (c) above. The replies were examined by the Governing Body in March 2001 and November 2005.
6. Since 2001, ECOSOC has dealt with the matter on a number of occasions under item 14(b) of its agenda.
7. Furthermore, since 2001, the Conference Committee on the Application of Standards has held a special sitting on Myanmar. Since 2002, it has, in addition to the observations of the Committee of Experts, also received a report from the ILO Liaison Officer in Yangon.

Conference discussion in 2006

8. Following a decision by the Governing Body at its March 2006 session,⁵ in view of the lack of progress, the Conference at its 95th Session (2006) resumed its consideration of the issue under a separate agenda item.⁶ It reaffirmed the validity of the measures outlined in the 2000 resolution, referred to a number of salient points regarding the promotion of enhanced awareness and implementation of the 2000 resolution, and subsequent Governing Body decisions, and highlighted the following points:

- 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.

⁴ GB.279/6/2.

⁵ GB.295/7.

⁶ ILO: *Provisional Record* No. 3-2, International Labour Conference, 95th Session, Geneva, 2006.

- 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.

9. With regard to the issue of seeking an advisory opinion from the International Court of Justice (ICJ), attention was focused specifically on the contentious question of whether the Forced Labour Convention clearly prohibited the prosecution of persons wishing to complain about the practice. The agenda item for the 95th Session of the Conference, as decided by the Governing Body at its March 2006 session, specified the aim "to ensure that no action is taken against complainants or their representatives". A number of options were considered in detail in the document presented to the Conference.⁷ These involved: a binding ruling by the ICJ under the terms of article 37(1) of the ILO Constitution; a decision through the establishment by the ILO of a tribunal under article 37(2) of its Constitution; or an advisory opinion from the ICJ.
10. An advisory opinion could be requested by the ILO, as a specialized agency, under article 37(1) of its Constitution and under article IX(2) of the Agreement between the United Nations and the International Labour Organization.⁸ The Governing Body would have to give careful consideration to the precise formulation of the question to be asked. The Court would provide notice of the request for an advisory opinion to all States entitled to appear before it, and these States and international organizations could furnish information on the question. A binding ruling by the ICJ would require a member State to raise the matter with the Court; the Court could invite the ILO to make a submission on the case, and the ILO could submit information on its own initiative. The question of the possible binding nature of an advisory opinion delivered by the International Court of Justice under article 37(1) could also be submitted to the Court.
11. The option involving the establishment by the ILO of a tribunal under article 37(2) of the Constitution "for the expeditious determination of any dispute or question relating to the interpretation of a Convention" would allow the ILO to retain full control of the procedure; it would, however, take up considerable time and involve substantial costs. Moreover, this option might not provide significant additional leverage, as it would have to be enforced through ILO procedures, including those available under article 33 of the Constitution.
12. The question of a possible advisory opinion from the ICJ has been in abeyance in the light of a change in attitude and specific commitments undertaken by the Government through the Supplementary Understanding of 26 February 2007. In March 2007, the Governing Body decided to defer the question, while recalling in its conclusions that "the necessary question or questions would continue to be studied and prepared by the Office, in

⁷ ILO: *Provisional Record* No. 2, International Labour Conference, 95th Session, Geneva, 2006.

⁸ *ibid.*, Appendix III.

consultation with the constituents and using the necessary legal expertise, to be available at any time that might be necessary”.⁹

13. The trial period for the operation of the Supplementary Understanding was extended in February 2008 for another year. In March 2008, the Governing Body welcomed this extension and expressed its strong expectation that during the extension period the Supplementary Understanding would be applied in full and according to the original intent.¹⁰ In particular, the Governing Body singled out the freedom of complainants to access the mechanism without fear of harassment or reprisals; the need to reproduce the Supplementary Understanding in local languages and ensure its wide dissemination; the freedom of movement of the Liaison Officer; and the imposition of meaningful penalties on perpetrators of all forms of forced labour.
14. The question of the possible jurisdiction of the International Criminal Court to entertain some aspects of the conclusions of the Commission of Inquiry has also been raised. In November 2006, the Governing Body concluded that ILO documents relating to the issue are public and the Director-General would therefore be able to transmit them.¹¹ The ILO consequently made relevant documentation available to the Prosecutor of the Court.
15. The Governing Body also noted in November 2006 that the Director-General could ensure that the recent developments were appropriately brought to the attention of the UN Security Council when it considered the situation of Myanmar, which was now on its formal agenda. The Office has cooperated with the United Nations, including the Special Adviser of the Secretary-General on Myanmar, for this purpose. Information has been given to the Special Adviser and for the reports prepared by the Special Rapporteur on Myanmar of the Human Rights Council. Since the ILO's presence in Myanmar was assured in 2002 through the appointment of a Liaison Officer, who also has a team of staff, the ILO has been participating fully in the United Nations Country Team in Myanmar.
16. ILO officials, including the Liaison Officer, have attended international meetings, conferences and academic symposia organized by member States and the social partners. The Office holds regular briefing sessions and consultations with diplomatic representatives and representatives of the social partners in Geneva and elsewhere, including briefings given by the Liaison Officer to embassies in Yangon and Bangkok.
17. Reference has been made on a number of occasions to the proposal for a multi-stakeholder conference, the latest being at the June 2008 session of the Governing Body. The issue was raised by the Workers' group with the general support of the Employers, in the context of possible relief assistance following the devastation caused by Cyclone Nargis in early May 2008 and in the light of the relief efforts of the United Nations and the Association of South-East Asian Nations (ASEAN). Although possible modalities and means of financing such a tripartite conference – or any other separate consultation involving the constituents – have been explored, the Office is not currently in a position to make a concrete proposal.
18. Clearly, more could be done to follow up the measures agreed upon by the Conference in 2000 and 2006. It should be recognized, however, that these recommendations are addressed not only to the Office but also to the member States and the social partners, and in many cases their effect depends on the way in which the constituents carry them out. The cost of the activities of the Liaison Officer and his staff is also a factor, as is the

⁹ GB.298/5.

¹⁰ GB.301/6.

¹¹ GB.297/8.

workload on headquarters staff. In Geneva, the implementation of the recommendations of the Commission of Inquiry is followed up by the International Labour Standards Department and, under the instructions of the Director-General, the Executive Director for Standards and Fundamental Principles and Rights at Work, to whom the Liaison Officer reports.

Geneva, 22 October 2008.

Submitted for debate and guidance.