



**Third item on the agenda: Information and reports on the application of Conventions and Recommendations**

**Report of the Committee on the Application of Standards**

PART THREE

**OBSERVATIONS AND INFORMATION CONCERNING PARTICULAR COUNTRIES**

**Special sitting to examine developments concerning the question of the observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29)**

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## A. RECORD OF THE DISCUSSION IN THE COMMITTEE ON THE APPLICATION OF STANDARDS

A Government representative of Myanmar reaffirmed that eliminating the practice of forced labour in his country was an important goal set by the Government of Myanmar for the people, and equally shared by the ILO and the international community. Sincere efforts had been made to this end in close cooperation with the ILO, particularly with the ILO Liaison Officer. While relative progress had been achieved, current socio-economic conditions were not conducive to this goal. Time was needed to produce the desired result and the situation had to be looked at objectively and constructively.

Turning to some of the developments since this Committee's session in June 2009, he wished to highlight the extension of the Supplementary Understanding (SU) between the Government of Myanmar and the ILO for another year following the visit of the ILO delegation from 17 to 24 January 2010. This extension reflected the appreciation and support for the work of the ILO by the Government of Myanmar and its commitment to eradicate forced labour in the country. With regard to the complaints mechanism under the SU, he stated that the Liaison Officer's report recognized his Government's full cooperation with the complaints mechanism through the Government Working Group for the Elimination of Forced Labour (the Working Group). Timely responses to the complaints submitted under the SU and the facilitation of training and awareness-raising activities, including the training for military personnel, would not have been possible without his Government's commitment. Movement of the Liaison Officer had also been facilitated.

Concerning the actual extent of the forced labour situation in the country, the speaker pointed out that only 196 alleged cases of forced labour had been submitted to the Working Group from February 2007 to 17 May 2010; 125 of those had been investigated and met with solutions proportionate to their gravity. The results of the investigations on 35 cases had been transmitted to the Liaison Officer. Highlighting that Myanmar had a population of 58 million today, he considered that 196 cases over a three-year period for such a population could not be regarded as widespread. Without intending to suggest that the practice of forced labour was acceptable or tolerable, the statistics and analysis of the issues showed that forced labour was not widespread in the country. While problems remained at the local level, the Government was taking necessary measures to solve them.

Turning to the need for raising awareness about forced labour and its prohibitions, he indicated that a total of 13 awareness-raising activities had been successfully conducted since June 2009, for state/division and village authorities and representatives of military units, as well as UN and INGO field staff. The last workshop had been held in Pegu with the participation of administrative authorities from 14 townships in the area, the township police force and representatives from the Ministry of Defence, the Ministry of Immigration and Population and the Ministry of Labour. More activities would be carried out in the future so that more constituents would be aware of their rights, obligations and consequences concerning forced labour. The simply worded brochure explaining the law on forced labour, the SU and the complaint mechanism was presently being printed and distributed.

With regard to the question of under-age recruitment, the speaker recalled his Government's statement at the 307th Session of the Governing Body (document GB.307/6) that parents, guardians or relatives

could file complaints on under-age recruitment directly to any recruitment centre or military establishment. The military authorities were fully prepared to receive and follow-up on complaints. At the same time, the authors of a complaint may also resort to the SU complaints mechanism and in this regard there was no restriction on the part of the authorities. While being aware of some incidents of under-age recruitment at the local level, these were neither prevalent nor systematic, and should not be generalized. The Committee for the Prevention of Military Recruitment of Under-age Children was actively engaging in poster campaigns, training of military personnel, monitoring of the recruitment process, taking action on perpetrators and, more importantly, the speedy and steadfast releasing of proven under-age recruits. It was regularly providing information on the progress of its work to the relevant UN agencies and would continue to pursue its objectives, which included finalizing a Plan of Action in close cooperation with, among others, UNICEF and UNHCR.

While expressing appreciation to the Liaison Officer for his transparent and cooperative manner in sharing with the Government the draft report to this Committee, the speaker declared that some of the views and approaches expressed in the report were neither objective nor acceptable. Some of the information in the report was outside the mandate of the Liaison Officer and outside the purview of the SU. In future, the Working Group and the Liaison Officer might need to interact more in order to obtain a better understanding of the *modus operandi* of the Liaison Officer.

The speaker concluded by expressing the conviction that the Government of Myanmar would spare no efforts in attaining the goal of eliminating forced labour.

The Employer members expressed the view that, while some small positive steps could be seen, the situation in Myanmar remained fundamentally unchanged and that the Government was quite far from the abolishment of forced labour. Responding to the Government's statement that change would take time due to the socio-economic conditions of the country, they indicated that, given the duration of these issues, it was time to overcome these obstacles. The Employer members welcomed the Liaison Officer's report, and stated that it did not exceed his mandate. The work of the Liaison Officer was growing and his office was understaffed. The Employer members noted with regret that the visa application for an additional staff member had not yet been approved, and urged the Government to do so.

With regard to the elimination of forced labour in both law and practice, the Employer members stated that substantial problems remained. Forced labour involving the military continued at all levels, with an increase of complaints concerning the recruitment of minors into the military, in addition to the intimidation, harassment and imprisonment of those filing complaints in this regard. Examinations of complaints concerning the recruitment of minors should be included in the Liaison Officer's mandate. In addition, it appeared that there was conclusive evidence of the systematic imposition of forced labour by military and civil authorities, particularly the submission by the International Trade Union Confederation (ITUC) to the Committee of Experts in 2009 indicating that more than 100 Order "letters" for the requisition of forced labour had been issued between December 2008 and June 2009. Turning to the Village Act and Towns Act, the Employer members asked when these statutes would be repealed.

While substantial problems remained, small signs of progress could be seen in the Liaison Officer's report including: the third extension of the Supplementary Understanding (SU); the positive response of the Working Group to training and awareness-raising activities; the relatively timely response to complaints filed through the SU through the Working Group; the involvement of the Ministry of Defence in the delivery of training to military personnel on the law regulating under-age recruitment; the planned publication of a brochure on the SU and the procedures to file a complaint; the prosecution of two military officers in connection with forced labour (representing only a small proportion of necessary prosecutions); and the release of 14 out of 20 persons imprisoned relating to procedures under the SU, though the remaining six had yet to be released. Despite these positive signs, there was still a fundamental lack of civil liberties in Myanmar, in particular, the right to freedom and security of the person, freedom of opinion and expression, freedom of assembly and association, the right to a fair trial by an independent and impartial tribunal and protection of private property. Furthermore, there was still a substantial climate of fear and intimidation of citizens, including the continued house arrest of Aung San Suu Kyi. Those were the root causes of forced labour, child labour, recruitment of child soldiers, discrimination and the absence of freedom of association.

With regard to the Government's statement that the number of complaints was low given the large population of Myanmar, the Employer members expressed the view that this low number might be due to a lack of access to the complaints mechanism and because of pressure felt by the population not to file a complaint. A number of complaints of trafficking in persons for the purpose of forced labour had been deemed not receivable by the Working Group and referred to the Ministry of Home Affairs. Forced labour in Myanmar needed to be addressed holistically, and the Government was strongly urged to receive cases of trafficking for the purpose of forced labour without delay.

Turning to the recently adopted Constitution, the Employer members noted that the qualifications contained in the article banning forced labour raised questions regarding its conformity with Convention No. 29. The Convention must be fully and completely implemented in law and in practice. The Government remained far from applying the measures recommended by the Commission of Inquiry that, for example, legislative texts, particularly the Village Act and Towns Act, should be brought into conformity with the Convention, the authorities should cease to impose forced labour and the sanctions provided for imposing forced or compulsory labour be strictly applied. The implementation of those recommendations would be guaranteed if the Government took action in the four areas identified by the Committee of Experts in its 2009 observation; yet, the matters that needed to be addressed remained unresolved.

The Employer members urged the Government to provide full and detailed information as an unequivocal sign of its genuine willingness to cooperate with the Committee and the supervisory bodies. Transparency and collaboration with the Liaison Officer was essential. The Government was reminded that the agreement on the SU and the creation of a complaints mechanism did not relieve it of its obligations under Convention No. 29. The Government needed to make tangible improvements in national legislation and provide sufficient funds so that voluntary paid labour could replace forced labour in the civil and military

administration to demonstrate its unambiguous willingness to combat forced labour and bring an end to the climate of impunity. The situation in Myanmar had persisted far too long, particularly as it had ratified Convention No. 29 over 50 years ago and the Government of Myanmar needed to end forced labour.

**The Worker members** recalled that the discussion was part of the follow-up to the conclusions and recommendations of the Commission of Inquiry established by the Governing Body in 1997, which had concluded that the Government of Myanmar was constantly and systematically violating Convention No. 29 and which had urged it to take three sets of measures. Firstly, it had requested that the country's legislation be brought into line with Convention No. 29. On that point the Government was still not prepared to repeal either the Village Act or Towns Act, even though it claimed that they were not applied in practice. There was every reason to believe that repealing the laws would, in any case, no longer be enough, as article 359 of the new Constitution, which banned forced labour, provided for an exception in the case of work imposed by the State in the interest of the people, thereby opening the door to every kind of forced labour. Secondly, the Commission of Inquiry had called for the adoption of specific measures guaranteeing that the military authorities would no longer impose forced labour. Both the Committee of Experts and the Commission of Inquiry had repeatedly made it clear that the civilian and military authorities, and the population at large, needed to be given precise instruction to that effect. A number of activities had been carried out which marked a degree of progress, but the Government must undertake to provide more information, conduct a more coherent and systematic public awareness campaign, distribute leaflets on the subject in all the local languages and declare unambiguously that it was prohibiting all forms of forced labour. The Worker members also emphasized that the budget for recruiting paid workers in the place of unpaid forced labour was still inadequate or was not adequately utilized. The machinery for handling complaints was useful but its effectiveness was limited by the poor facilities available to the Liaison Officer and his limited sphere of action, by the reprisals suffered by victims who lodged complaints and by the refusal of the local authorities to use the machinery. As a result, civil and military authorities continued to impose forced labour systematically throughout the country. The third issue raised by the Commission of Inquiry concerned the application of sanctions. Although the Penal Code provided for sanctions against people who imposed forced labour, not one of the complaints lodged in 2009 under the Supplementary Understanding had led to charges being brought and only administrative sanctions had been imposed in the cases of minors being recruited by military personnel. This was a source of considerable concern, especially where military personnel were implicated. Although the Liaison Officer played a vital role in helping to do away with forced labour, it was necessary that the Government cooperate fully. Much remained to be done towards applying the Convention.

**Another spokesperson for the Worker members** also felt that the present case should not be reviewed in a historical vacuum and wished to assess the progress that the Government had made with respect to the Conference Committee's conclusions of 2009. These seven conclusions had not been effectively or significantly implemented by the Government, namely bringing the relevant legislative texts, in particular the

Village Act and the Towns Act, into conformity with the Convention; amending paragraph 15 of Chapter VIII of the new Constitution; ensuring the total elimination of widespread forced labour practices; ensuring that perpetrators of forced labour be prosecuted and punished under the Penal Code; issuing an authoritative statement at the highest level clearly confirming the Government's policy for the elimination of forced labour and its intention to prosecute perpetrators; approving a simply worded brochure in accessible languages on the functioning of the SU; and eliminating problems in the physical ability of victims of forced labour or their families to complain and immediately ceasing the harassment, retaliation and imprisonment of individuals who used, or facilitated the use of, the complaints mechanism. Special sittings for this case had been held for a decade, and there continued to be substantial non-compliance with the Committee's conclusions, as well as the recommendations of the Commission of Inquiry. This persistent non-compliance challenged and affronted the supervisory function of the ILO and the ILO Constitution.

Referring to the conclusions of the Commission of Inquiry, the Worker members emphasized that necessary budgetary allotments needed to be made to assure the contracting of voluntary labour. The Committee of Experts, in its 2009 observation, stated that any budgetary allocations for this purpose were not adequate or not adequately utilized. Therefore a lack of progress was due to a lack of political will, and not because of resource constraints. Turning to the need for criminal prosecution of the intellectual and material perpetrators of forced labour practices expressed in the Commission of Inquiry's conclusions, the Worker members noted that the Committee of Experts, in its 2009 observation, had indicated that none of the complaints assessed and forwarded by the Liaison Officer to the Working Group had resulted, in 2009, in a decision to prosecute fully and convict criminally perpetrators of forced labour. This included a case where the explicit recommendation by the Liaison Officer for criminal prosecution was rejected. While the Government's agreement to continue the SU was favourable, the Government continued to undermine its effective implementation. The Committee of Experts had concluded that the Government persisted in imprisoning facilitators of complaints, and that complainants were subject to detention, harassment and judicial retaliation. In a number of cases, complainants chose not to pursue their claims out of fear of such reprisals.

The Worker members recalled the 2007 decision of the Governing Body to defer seeking an advisory opinion from the International Court of Justice (ICJ) on this case until the necessary time, and that the question for the ICJ could be whether the Government's cooperation with the Commission of Inquiry's recommendations "met the relevant threshold". Three years later, the Government was nowhere near the threshold, and this Committee should assume responsibility for the undermining, by the Burmese Government, of the supervisory system.

**The Government member of Spain**, speaking on behalf of the Government members of the Committee member States of the European Union and of the Government members of San Marino, Switzerland and Norway, expressed concern about the critical human rights situation in Burma/Myanmar, as reported by the Liaison Officer, the United Nations Special Rapporteur on the situation of human rights in Myanmar, as well as the UN Human Rights Council and the UN General Assembly. The authorities of

Burma/Myanmar should take steps to bring about peaceful transition to a democratic and civilian system of government and to make the planned elections credible, transparent and inclusive. The political and socio-economic challenges facing the country could only be addressed through genuine dialogue between all stakeholders, including ethnic groups and the opposition. The speaker called upon the Government to release all political prisoners and detainees, including Aung San Suu Kyi, and expressed grave concerns about the non-compliance by Burma/Myanmar with Convention No. 29.

The speaker welcomed certain positive steps taken by the Government of Burma/Myanmar, such as the renewal of the trial period of the SU complaints mechanism; the publication and distribution of the simple-worded brochure, in local languages, setting out the law against forced labour and the complaints mechanism under the SU; and the proposals that the Penal Code and Military Regulations on forced labour incur imprisonment of military personnel for the recruitment of minors. The speaker urged the Government of Burma/Myanmar to build on these steps by ensuring that proposed amendments to the laws and regulations were put in practice.

Full compliance with Convention No. 29 was far from being achieved. It was deeply regrettable that persons who had used the complaints mechanisms in order to denounce forced labour were imprisoned. This was contradictory to the Government's own commitment under the SU and, as had been indicated by the ILO Governing Body, would undermine the progress made to date. Therefore, imprisoned complainants should be released. The authorities were urged to put an end to the recruitment and use of child soldiers, and to pursue their collaboration with the Special Representative of the Secretary-General for Children and Armed Conflict. He expressed deep concern that complaints against serving military personnel were difficult to pursue, especially in light of reports of their use of forced labour for portage and sentry guards. Finally, the speaker called upon the authorities to respect their commitment and reaffirmed the importance of the cooperation between the authorities of Burma/Myanmar and the ILO.

**The Worker member of Malaysia** indicated how the continued situation of forced labour in Burma/Myanmar was having a negative impact on the member countries of the Association of Southeast Asian Nations (ASEAN), and in particular on workers and trade unions. Emigration to avoid forced labour was a major contributing factor to the presence of more than two million migrants from Burma in Thailand, nearly 200,000 in Malaysia and undocumented numbers in Bangladesh. The social and legal issues involved, and the complex situation with respect to the Burmese migrant workers, were a huge financial and political drain on governments, and the workers' organizations in Thailand and Malaysia had to deal with the impact of unscrupulous employers' practices taking advantage of these migrants. Highlighting the continuing exaction of forced labour in North Arakan from hundreds of Rohingya villagers of Maungdaw Township, to build a fence and check posts along the Bangladesh border, he indicated that forced labour depriving the poor from their wages had been the primary root cause for emigration to Bangladesh. While the ILO and the broader international community had been trying to end human trafficking, the Government of Burma/Myanmar seemed to be doing the reverse. He concluded that the continuing forced labour and

denial of fundamental rights were driving workers from Burma to ASEAN and South Asian countries, weakening the social, economic and security conditions in these countries. If Burma wanted to be given due respect as a partner in ASEAN, its Government had to make the necessary changes to end forced labour.

**The Government member of Thailand** welcomed the continued cooperation and dialogue between the Government of Myanmar and the ILO. The developments within the last year were encouraging, namely the functioning of the complaint mechanism, training and awareness-raising activities, operational field missions, consultations between the Liaison Officer and the Working Group and the extension of the SU. The Myanmar Government had responded in a reasonably timely manner to complaints that had been lodged under the SU and progress was made regarding under-age recruitment in the military. The Government should be encouraged to continue this positive trend in partnership with the ILO to ensure the protection of complainants, facilitators and others associated with the filing of complaints. Awareness raising was a key element in addressing forced labour and it was crucial that state authorities and the general public be fully aware of the national laws prohibiting forced labour and the complaints mechanism. The Government's agreement on the final layout of the brochure on this mechanism, which would soon be available to the public was to be welcomed. Wide-ranging distribution of the brochure was necessary, especially in rural areas and in areas with a high number of reported complaints. It was apparent that Myanmar was willing to work with the international community, although more still needed to be done. The Government of Thailand stood ready to support and cooperate with Myanmar on this matter.

**The Government member of Norway** aligned herself with the statement made by the Government member of Spain indicating that, while some positive steps had been made, concern about the human rights situation and the lack of compliance with Convention No. 29 remained. Improvements of the legal framework needed to be accompanied by real efforts on the ground, and the ILO should be given unrestricted access to verify these efforts in practice. The speaker then drew attention to the situation in the states dominated by ethnic minorities, where armed conflicts and tensions made the population particularly vulnerable to forced labour and the recruitment of child soldiers. She urged the Government to allow access by international experts to these areas in order to verify compliance with national legislation and international commitments by Myanmar.

**The Worker member of Japan** referred to the information from a fact-finding mission conducted in February 2010 by a Japanese non-governmental organization to refugee camps along the Thai-Burmese border, which indicated that all new refugees were victims of forced labour exacted by the Burmese army. She also referred to the death of a 15-year-old child soldier in Pyontaza in May 2010, who was killed for refusing to join the army and she expressed the view that this death was a by-product of the army's policy whereby soldiers must fulfil recruitment quotas. The resolution adopted by the International Labour Conference in 2000, which recommended that all member countries review their relations with the Government of Burma, had not been properly implemented. She noted that according to the report of the Burmese National Planning and Economic Development Ministry, by March

2010, the pledged amount of foreign direct investment in the country exceeded US\$16 billion. This was a significant increase from last year, largely due to investment in the oil and gas sector. The Government was heavily dependent on the exports from this sector, accounting for more than 40 per cent of the country's income. Thailand, Singapore and China are the top three countries making direct investment to Burma. This investment served to support the Government and contributed to maintaining the situation of forced labour. She urged governments and employers making investments in Burma to review their relations with the country. Referring to the conclusions of the Selection Committee of the International Labour Conference in 2006, she called for the establishment of a reporting mechanism on steps taken by international institutions, governments and organizations of employers and workers to implement the International Labour Conference Resolution of 2000. She also urged the Government to release Aung San Suu Kyi and other political prisoners.

**The Government member of the United States** commended the ILO, in particular the Liaison Officer and his deputy, for their excellent work, despite the difficult circumstances they often faced. It was now ten years ago that the International Labour Conference had adopted the unprecedented measures available under article 33 of the ILO Constitution in an attempt to secure Burma's compliance with the recommendations of the Commission of Inquiry relating to long-standing, methodical and gross violations of Convention No. 29. Recalling the three specific and clear recommendations made by the Commission of Inquiry, she noted, like some previous speakers that, since the last session of the Conference, there had been a number of steps forward. She encouraged the Government to continue and increase its efforts and urged it to ensure that the simply worded brochure on the complaints mechanism be translated into other local languages and broadly disseminated particularly in rural areas. Notwithstanding these positive steps, continuing and serious deficiencies remained, such as evidence of continuing forced labour throughout the country, the limited reach of the Supplementary Understanding and the discouragement of Burmese citizens from filing complaints, as well as retaliation, including imprisonment, against persons connected with the complaint mechanism. The legislative texts had still not been amended and penalties against forced labour remained inadequate particularly in cases involving military personnel. It was profoundly regrettable that the recommendations of the Commission of Inquiry had still not been implemented and much remained to be done on an urgent basis. Sustained action at all levels was therefore necessary to eliminate forced labour in Burma. The Committee of Experts had identified the types of concrete actions to be taken by the Government to this end and the ILO was willing and able to help it achieve the necessary results. It was incumbent upon the Government to continue to avail itself of the expertise and the assistance of the ILO, and it should take steps to permit additional staff resources so that the ILO Liaison Office in Burma could sufficiently meet the growing demands placed on it. This included issuing without further delay the visa for an international staff member. The Liaison Office should also be allowed to address all situations that fell within the scope of forced labour as defined by Convention No. 29. Only a truly democratic government could effectively guarantee its citizens their human and workers' rights. She urged the Government to release all politi-

cal prisoners and detainees, including Aung San Suu Kyi, and to engage in a genuine, open and inclusive dialogue to find a lasting solution to the problem of forced labour in Burma.

**The Government member of Japan** commended the ILO, including the Liaison Officer, on its efforts to improve the situation regarding forced labour in Myanmar, and noted some positive results. He particularly commended the willingness of the Government of Myanmar to cooperate with the ILO and the efforts by the Government and the military to address the issue of child soldiers. However, it was regrettable that forced labour by the military could still be found and that reports of cases of detention and punishment of complainants and facilitators continued. Greater efforts were needed on the part of the Government, including at its highest level, to cooperate closely with the military, to ensure that the central government's policy on the elimination of forced labour was effectively thoroughly implemented on the ground. As awareness-raising activities were essential, he expressed the hope that the Government of Myanmar would continue to implement such activities and urged it to start the actual distribution of the simply worded brochure as soon as possible. Given the increased workload on the ground, he requested the Government to respond positively to visa applications for new international staff members.

Lastly, Japan reiterated its call on the Government of Myanmar to release all prisoners of conscience in advance of the national elections expected this year, and that the elections would take place in a free and fair manner with the participation of all parties concerned. In order to realize such elections, it was also essential that freedom of association be guaranteed. In this connection, Japan requested that the Myanmar Government do its utmost in cooperation with the ILO.

**The Worker member of the Philippines** noted that, in his report, the Liaison Officer had mentioned a number of positive steps that the Government had taken with respect to the implementation of the Supplementary Understanding and the extension of its validity, but also that no progress had been made regarding the main recommendations of the Commission of Inquiry. The Conference Committee had been discussing this case for over a decade and it was regrettable that the Government of Myanmar was still not delivering on its promises. Myanmar was a member of ASEAN, one of the main objectives of which, was to "strengthen democracy, enhance good governance and the rule of law and to promote and protect human rights and fundamental freedoms". He supported the statement made by the Government member of Thailand calling for free, fair and all-inclusive elections, while even though these elections would not, in any case, eradicate forced labour in the country. In conclusion, he stated that it was high time for the Government of Myanmar to repeal the Village Act and the Towns Act and to amend the Constitution with a view to prohibiting all forms of forced labour, as a first step towards its eradication.

**The Government member of Singapore** welcomed the continued efforts made by the Government of Myanmar with regard to the observance of Convention No. 29, making more specific reference to the renewal for one year of the Supplementary Understanding and to the functioning of the complaints mechanism. He also welcomed the role of the Liaison Officer in training and awareness-raising activities, with the support of the Government. These activities seemed to have an

impact on the enforcement of the legal provisions prohibiting forced labour. Furthermore, the speaker acknowledged the continued efforts made by the Committee on the Prevention of Military Recruitment of Under-age Children for the training of military personnel and communities, the discharge of soldiers found to be under age and the investigation of complaints on forced military recruitment. This demonstrated the seriousness of the Government in stopping under-age military recruitment. What was needed now was a change of mindset in the military. The improved relationship between the ILO and the Government of Myanmar had made it possible for the Government to discuss setting up a proper framework for the recognition of the principles of freedom of association and the right to collective bargaining. Draft legislation on trade unions would be submitted to the new Parliament after the upcoming elections. Finally, the speaker expressed the hope that the Government would facilitate the recruitment by the Office of an additional international staff member to help with the tremendous workload of the Liaison Officer.

**The Worker member of the Republic of Korea** stressed that trade and foreign investments were worsening the situation of forced labour and human rights in general in Burma. Indeed, many countries continued to trade with Burma, which was directly contributing to finance the military regime and contrary to the resolution adopted in 2000 by the International Labour Conference. In addition, many projects by foreign companies were conducted with the use of forced labour, forced relocation and various types of human rights violations. The speaker's organization had repeatedly called on the Government of the Republic of Korea to stop investing in the oil and gas sector in Burma and engaging in trade with the Burmese military regime, without success however. She also recalled that the United Nations Special Rapporteur on the Situation of Human Rights in Myanmar had considered that extraction activities had directly resulted in an increase in human rights abuses committed by the military against the people living along a gas pipeline project, including forced labour overseen by the Burmese army. This project was also one of the major sources of income for the military junta, allowing it to ignore international pressure and democratic demands of the people of Burma. As investments in new projects escalated, the speaker once again requested ILO member States and constituents to fulfil their obligations under the International Labour Conference resolution of 2000 for the eradication of forced labour and human rights abuses in the country.

**The Government member of New Zealand**, speaking also on behalf of the Government of Australia, thanked the Liaison Officer for his report, which highlighted some positive developments. There were indications that the growing familiarity of local authorities with Convention No. 29 had resulted in a reduction of the use of forced labour by civilian authorities in some areas. The approval of the brochure on the complaints mechanism under the Supplementary Understanding was to be welcomed, but she expressed concern about the willingness of the Myanmar Government to address persistent forced labour problems. The Liaison Officer had encountered difficulties in reaching successful outcomes in cases involving forced labour by the military. She called upon the Myanmar authorities to act to prevent this practice. It was important that the mandate of the Liaison Officer encompassed all aspects of forced labour, and she called upon the Government to grant a visa to the new international staff

member which would signal its commitment to the ILO's work. As previous speakers, she urged the Myanmar authorities to use the opportunity of the planned elections to move the country towards a democratic future, and called upon the Government to release all political prisoners, including Aung San Suu Kyi, and those imprisoned due to association with the Supplementary Understanding complaints mechanism.

**An observer representing the Federation of Trade Unions of Burma (FTUB)**, speaking on behalf of the ITUC, observed that although the information provided in the report by the Liaison Officer tended to indicate that the ILO mechanism worked, the violations still taking place in Burma were indicators that forced labour and forceful recruitment of child soldiers persisted contrary to Convention No. 29.

On 20 May 2010, the *Democratic Voice of Burma* reported that less than ten days ago a child had been killed for refusing to join the army. Tin Min Naing, aged 15 years, son of U Htay Win of San Phae village, War-Yone-kone unit, Nyaunglaybin township, Pegu division, was killed by soldiers when he and a friend, while looking for rats to eat, reached a sentry post at a bridge, and were asked to join the army. When the two friends refused, Private Moe Win (TA 41842) shot Tin Min Naing and hid the body under bushes in the stream. It was reported that the outpost had been manned that day by Corporal Kyaw Moe Khaing and Privates Moe Win (TA 41842) and San Ko Ko of the 2nd column, light Infantry Division 586. The family filed the murder case at Pyuntaza police station and the police commander of Nyaunglaybin township went to inspect the sentry post immediately. In March 2010, the Federation of Trade Unions Kawthoolei (FTUK) reported to the Liaison Office in Rangoon that forced labour was occurring in Karen state. It was understood that the Liaison Office had started planning an assessment and awareness-raising mission to take place in that area.

These two cases, one concerning child soldier recruitment and the other concerning forced labour involving from one to 200 persons, both took place in the Taungoo area of Bago division, despite the fact that this division was one of the locations in which an awareness-raising seminar had been led jointly by the ILO and the Ministry of Labour for local authority personnel and representatives of military units, according to the Liaison Office report. The events after this seminar were an indicator that the trainees at the Bago local authority level, who should be personally in charge of the troops in that area, either failed to implement what had been discussed at the seminars or did not have the authority to implement it. This might be an indicator that the Supplementary Mechanism did not work effectively in the Bago division and that there was no political instruction to implement what had been discussed at the seminar. It also meant that there were no enforcement mechanisms in place to hold the perpetrators accountable.

On 11 March 2010, the United Nations Special Rapporteur on the situation of human rights in Burma recommended that the UN should consider establishing a Commission of Inquiry into war crimes and crimes against humanity committed by the Burmese Government. Taken together, the reports of the UN Human Rights Council and the ILO demonstrated, first, a systematic abuse of human beings in Burma for the benefit of the ruling junta and, second, a lack of political commitment to change the system.

The Government reported that an election was forthcoming and that things would change after the

election. However, this junta was the one that had refused to honour an election they had hosted in 1990. Having lost faith in the junta and their electoral process, the people of Burma, unless coerced, would not be voting in that election. The National League for Democracy that had won the 1990 election was not participating in the 2010 election, which was a farce. The next government would be composed of the junta without their military uniforms. This election and the new Constitution which allowed forced labour under section 359 would become yet another barrier facing the ILO in its mission to eradicate forced labour in Burma. Convention No. 29 would still be violated under the excuse that time was needed for the new government to settle down. It was clear that for a number of reasons, the junta itself and the delegations to the International Labour Conference which promised the ILO to eradicate forced labour were unable to deliver on their promise. Since the junta was unable to protect its own people, after over a decade of asking for the impossible and losing scarce resources, it was time, in the name of the people who suffered, to ensure that the ILO redressed its constructive approach and focused on responsibilities and protection.

**The Government member of the Russian Federation** stated that, being convinced of the need to eradicate forced labour in the world, his Government welcomed the extension, for a further 12 months, of the Supplementary Understanding trial period following an ILO high-level mission to Myanmar in January 2010. He expressed his Government's sincere appreciation to the ILO Liaison Officer for his constant and self-sacrificing efforts to implement the above Understanding. As a result of these efforts, more than 100 complaints on alleged cases of forced labour had been examined by the competent bodies including the Ministry of Defence, and in a number of cases efficient measures had been adopted.

The speaker noted with satisfaction the carrying out of joint seminars and visits to remote regions of the country, the dissemination of the text of the Supplementary Understanding translated into the local language, the publication in central newspapers of articles describing the complaints mechanism and the agreement reached with the authorities about the publication of a special brochure on this subject. However, there was an evident need for the Government to take additional measures to eradicate forced labour, particularly at the local level. The extension and deepening of the constructive cooperation between the ILO and the Government constituted the most efficient mechanism in order to move towards the fastest possible resolution of the forced labour problem in Myanmar and the implementation of Convention No. 29.

**The Worker member of Italy** indicated that the move to recruit a new staff member of the Liaison Office with financing from the Government of Germany was a positive development, although additional measures were necessary like the opening of offices in other parts of the country. However, despite the availability of funding as well as the Government's agreement and its undertaking to eradicate forced labour, the Government continued to stall any progress regarding the appointment of the new officer on the pretext of having to issue a visa. While investors never faced problems with their visas, the delegates to the Conference had to face insulting and evasive excuses year after year for the lack of implementation of the Government's commitments. This was just one example of the delaying tactics of the regime, contrary to the spirit



of cooperation that the authorities had repeatedly promised.

The brochure on the eradication of forced labour, despite being a positive step forward, had only been published in the Burmese language and not in ethnic languages as called for by the Committee of Experts, since forced labour was mainly prevalent in areas where the majority of the population read and wrote in their respective ethnic languages. In order to inform and support those who suffered the most from the practice of forced labour, information brochures should be translated into the main ethnic languages and illustrations should be included for those who could not read, as they were the most vulnerable to exploitation. It would be interesting to know how these brochures would be distributed as widely as possible. The stalling tactics of the authorities, including the delays in issuing visas, should no longer be regarded as legitimate excuses for the slow pace of progress. There had been more than enough time. The ILO and its constituents should evaluate the intentions of the authorities, and the ILO's capacity to investigate and monitor forced labour should be strengthened.

**The Government member of India** expressed his Government's satisfaction at the progress being made in the observance of Convention No. 29 by the Government of Myanmar as well as the ongoing cooperation between the Government and the ILO in this matter. Encouraging recent developments included most importantly the extension of the Supplementary Understanding for a further period of 12 months and the constructive dialogue that the ILO delegation to Myanmar had with the Government in January 2010. This could serve as an important basis in further strengthening the ongoing cooperation and help in the implementation of the provisions of the Convention. The awareness workshops jointly conducted by the Liaison Office and the Labour Department, and the publication of the Supplementary Understanding and a brochure on the law pertaining to forced labour by the Government had the potential to play an important role in eliminating the practice of forced labour. Finally, the mutually agreed mechanisms, including the complaints mechanism, were functioning properly.

The debate in the Committee should take place in a fair and transparent manner and focus on the matter in hand relating to the observance of Convention No. 29. Introduction of issues extraneous to the subject or unnecessary politicization of the debate would deviate the focus of the Committee from the merits of the case. India had consistently encouraged dialogue and cooperation between the ILO and the member States to resolve all outstanding issues. India had been and continued to remain strongly opposed to the practice of forced labour which was expressly prohibited under its Constitution. The speaker concluded by commending the ILO Director-General and his team for their efforts in assisting Myanmar to tackle the problem of forced labour.

**The Worker member of France** referred to another provision of the national legislation that required amendment, namely section 359 of the Constitution. That section provided for a number of exceptions to the prohibition on forced labour, and its wording rendered that prohibition ineffective. By allowing "work imposed by the Government in the general public interest" that constitutional provision reinstated the Towns Act and the Village Act. The speaker stressed that although the Constitution had been approved by more than 92 per cent of the voters participating in the

referendum, the conditions under which that referendum had been held were very controversial. General recourse to forced labour could not be isolated from the general situation of human rights in Myanmar, which was characterized by systematic violations of rights and freedoms. Forced labour could, therefore, be eradicated only by instauration of democracy and the legislative elections that were to be held soon would serve as a test in this regard. A series of restrictive electoral laws had already been adopted, which would prevent the opposition from freely participating in that process. Myanmar had reached a crucial turning point, which should not be used by the authorities as an excuse for maintaining an intolerable situation but, on the contrary, allow it to prove its political willingness to eradicate forced labour. The international community should remain particularly attentive to future developments.

**The Government member of China** noted that the Government of Myanmar and the ILO had cooperated effectively since the last session of the Conference and there had been a certain progress in the elimination of forced labour. This included the extension of the trial period for the Supplementary Understanding, the efficient handling of complaints, the publication of a brochure on the elimination of forced labour and the corresponding legislation and the appearance of articles on the subject in the national press. The Government of China continued to consider forced labour as a fundamental violation of human rights, and it was to be hoped that the ILO would be able to maintain its technical assistance to Myanmar, notably in the form of cooperation projects on employment creation that could improve people's quality of life. He trusted that the future would bring new projects aimed at eliminating forced labour in Myanmar.

**The Worker member of Zimbabwe** compared the anguish of the workers of Burma to that suffered in his own country, as attested by Commissions of Inquiry appointed for the two countries. He explained that although forced labour in his part of the world existed as a result of ingrained habits or wars and rebellions, and was mostly practised by private individuals and not at a large scale, forced labour in Burma was widespread, systematic and promoted and practised at all levels of the State by the military and civilian authorities. Forced labour in Burma took many forms, such as forcing villagers, including children, to grow food, build bridges and roads, construct and maintain army camps, build security fences, carry equipment for troops; forcibly displacing villagers from their land in areas where oil and gas infrastructure and pipelines were being construed and operated; putting prisoners to work in leg irons without wages, without access to medical treatment or other basics of life; forcibly recruiting child soldiers, in a context of the barbaric practice of human minesweeping; and forcing citizens to build and maintain tourism sites and facilities in larger cities like Mandalay and Rangoon, to enrich top military leaders whilst the soldiers suffered economic hardship. The military forced civilians into labour through intimidation, kidnapping and threat of arrest or bodily harm. This inhumane, degrading and back-breaking treatment also led civilians to lose wages and land, and many became sick from disease, malnutrition or exhaustion without medical assistance. All of these claims were backed by the extensive evidence submitted by the ITUC to the ILO, including copies of 100 Government Orders issued to village heads to gather workers from local communities for forced labour. As the Committee of Experts had concluded,

this was conclusive evidence of the systematic imposition of forced labour, and it was conclusive evidence to which the Burmese Government had not even bothered to respond. It was about time that the Government undertook a real engagement to end the unsavoury use of systematic forced labour and start implementing the recommendations of the ILO supervisory bodies. A first and immediate step should be to ensure that the law prohibited forced labour.

**The Government member of Cuba** observed that the report of the Liaison Officer on the latest activities carried out by the ILO and the Government of Myanmar described the progress made towards the elimination of forced labour and the difficulties that remained to be resolved. He noted the statement of the Government of Myanmar outlining the steps that were being taken in that direction. It was clear that the results that had been achieved so far were the fruit of the ILO's technical cooperation and of the bilateral dialogue with the Government. It was to be hoped that the technical cooperation and the open and unconditional dialogue between the Government of Myanmar and the ILO would be pursued, so that a proper analysis could be made of the conditions and circumstances prevailing in the country, as that was the only way to further the goals of Convention No. 29.

**The Worker member of Pakistan** observed that it was very sad and discouraging that in the twenty-first century, known as the age of reason, technological development and social justice, the military still used forced labour in Burma, which was a crime against humanity, after ten years of discussions on this issue. Nowhere was it shown that penalties had been imposed on those who had committed the crime of forced labour or that they had been brought to justice. Paragraph 8 of the report of the Liaison Officer referred to the difficulties encountered in obtaining proof of under-age recruitment and the hardship of the families who had to fetch their children from their regiments at considerable expense, leading them to sell their harvest in advance, borrow money or sell assets. In order to cope with the increasing workload, the capacity of the Liaison Office needed to be strengthened but despite the availability of funds from Germany, the Government had not granted a visa to an additional official. Those who helped the victims were themselves victimized. Paragraph 16 of the report of the Liaison Officer indicated that two lawyers who were active supporters of the Supplementary Understanding procedures had lost their licences to practise after their release from prison. In such circumstances, the speaker associated himself with the members who called for more action by the international community and the reinforcement of the Liaison Office, so that wider investigations could be carried out and appropriate penalties enforced against those who committed the crime of forced labour.

**The Government member of Canada** commended the Liaison Officer and his deputy for their continuing diligence and admirable work. Every year the Committee was confronted with the modest accomplishment that the Government of Myanmar offered to conform to its commitments to address issues of forced labour, including under-age military recruitment in Burma. In spite of the fact that the Understanding had been signed eight years ago and the Supplementary Understanding over three years ago, the pace of progress was frustratingly slow. While some positive steps which had been noted in the report of the Liaison Officer should be welcomed and encouraged, they were incremental and did not reflect a strong com-

mitment by the regime to eliminate forced labour. There was an urgent need for more significant progress.

Areas remained where the Government's failure to meet its commitments was fundamentally unacceptable and should be noted with greatest concern, notably the continued allegations of harassment of complainants, facilitators and their legal counsel as well as the refusal to receive complaints of human trafficking for forced labour. The speaker condemned any reprisals against complainants, particularly imprisonment, and called upon the Government to comply with its commitment to address forced labour in all its forms and provide support for the implementation of the full mandate of the ILO Liaison Officer. She also associated herself with other members who considered that the report of the Liaison Officer fell completely within its intended mandate. Finally, the speaker urged the Government of Myanmar to expedite the request for further assistance to manage the considerable caseload and meet demands, such as training and awareness raising, on an urgent basis. It was unfortunate and discouraging that the Government had to be urged once again to issue immediately the visa for an additional staff member and an update on the status of this question would be welcomed.

In conclusion, the speaker strongly urged the Government of Myanmar to take proactive and substantial steps to ensure compliance with Convention No. 29 throughout the country, including through the imposition of more meaningful penalties for all perpetrators of forced labour. The speaker also called on the authorities to release all political prisoners and detainees, notably Daw Aung San Suu Kyi.

**The Government representative** thanked those speakers who had made their interventions objectively and took note of their comments. Some of the interventions had been based on groundless information and were politically motivated. There were also some remarks that were not relevant to the work of the ILO. Some speakers had been referring to the country by its incorrect name. The official communications from the United Nations and its agencies addressed the country correctly as Myanmar, as this name had been recognized throughout the UN system. The importance and seriousness of the work carried out in the ILO should be reciprocated by the speakers. The use of inappropriate language did not serve any purpose, was not well intentioned and showed a lack of respect. A code of conduct should be enforced during the deliberations in this regard.

Some remarks had not been relevant to the work of the ILO. The Government of Myanmar rejected all undue comments and criticism concerning the home-grown political process. The destiny of Myanmar was to be decided by its own people. The democratization process was moving forward steadily and democratic elections would be held this year, as the fifth step in the road map to democracy. Laws necessary for multi-party general elections had already been promulgated. Over 20 political parties had been registered so far for the upcoming elections. The Constitution, approved by 92.48 per cent of eligible voters in Myanmar, would be the basis for the democratic society of the future. This clearly reflected the political will of the people.

The amendment of the Village Act and Towns Act had been explained repeatedly in previous sessions of the Conference. Under the Myanmar legal system, orders of the legislative authority had the force of law. This was the case for Order 1/99 and its Supplemen-

tary Order. Thus, in the Myanmar legal system the offending provisions of the two Acts had been put into dormant state or had even been annulled, as acknowledged by the Committee of Experts in the past. At the plenary session of the 98th International Labour Conference, the Government representative of Myanmar had mentioned that these conclusions were due to a misunderstanding as to the facts. He had taken the matter up with the Office and had provided explanations to the officials concerned.

The speaker concluded by adding that the representative of the FTUB and his friends were responsible for endangering and violating the security of the Myanmar people. The Government had concrete evidence that they were plotting, financing and carrying out several activities including bomb attacks in the country leading to loss of lives and numerous injuries. Such terrorists had no place in the work of the ILO.

The **Employer members** observed that the Government of Myanmar did not seem to appreciate the fact that it was not even close to abolishing forced labour. The Government should not be under the false impression that the Supplementary Understanding process was sufficient in itself. It was at best an internal process that should not absolve the Government from the obligation of full and complete implementation of policies and practices for the abolition of forced labour.

The **Worker members** concluded by asking for the immediate release of all trade union activists and political prisoners who had exercised their freedom of expression and fought against forced labour; the immediate discontinuation of harassment and detention of persons who filed complaints on forced labour; and the end of the impunity enjoyed by the perpetrators of forced labour. They recalled that it was essential to implement the recommendations of the Commission of Inquiry and to revise the provisions of the Constitution relative to forced labour. Moreover, the decisions taken in the past should be implemented, notably: the re-examination of the implementation of the 2000 Conference resolution; the request made to international institutions, governments and organizations of employers and workers to report on the steps taken in the framework of that resolution; the organization of a conference on best practices aimed at implementing the resolution; and the implementation of other international penal measures with a view to sanctioning those who exacted forced labour. To this end, the Worker members requested the Liaison Officer to focus on the implementation of the recommendations of the Commission of Inquiry and on the reinforcement of the means at the disposal of the ILO: increase in the number of offices and establishment of a network of facilitators in the country. Finally, the Worker members condemned and repudiated the statement of the Government representative with regard to the representative of the FTUB.

### **Conclusions**

The Committee noted the observations of the Committee of Experts and the report of the ILO Liaison Officer in Yangon that included the latest developments in the implementation of the complaints mechanism on forced labour established on 26 February 2007 with its trial period extended, on 19 January 2010, for a further 12 months to 25 February 2011.

The Committee also noted the discussions and decisions of the Governing Body of November 2009 and March 2010. It further took due note of the statement of

the Government representative and the discussion that followed.

The Committee acknowledged some limited steps on the part of the Government of Myanmar. It noted the further extension of the Supplementary Understanding for another year; the agreement for publication and distribution of an informative brochure on forced labour; certain activities concerning awareness raising of the complaints mechanism established by the Supplementary Understanding, including newspaper articles in the national language; and certain improvements in dealing with under-age recruitment by the military. The Committee was however of the view that these steps remained totally inadequate.

The Committee noted that despite these special sittings, none of the three specific and clear recommendations of the Commission of Inquiry had been implemented. These recommendations require the Government to: (1) bring the legislative texts in line with Convention No. 29; (2) ensure that in actual practice forced labour is no longer imposed by the authorities; and (3) strictly enforce criminal penalties for the exaction of forced labour.

The Committee also noted that the complaints mechanism reached only limited parts of the country and its functioning could be an indication that there had been any significant diminution in the use of forced labour.

The Committee emphasized the importance of the conclusions reached in its special sittings at the 97th and 98th Sessions of the Conference (June 2008 and June 2009), and again placed emphasis on the need for the Government of Myanmar to work proactively towards the full implementation of the recommendations of the Commission of Inquiry appointed by the Governing Body in March 1997 under article 26 of the Constitution. It also recalled the continued relevance of the decisions concerning compliance by Myanmar with Convention No. 29 adopted by the Conference in 2000 and 2006 and all the elements contained therein.

The Committee fully supported all of the observations of the Committee of Experts and the decisions of the Governing Body referred to above, and expressed the firm expectation that the Government of Myanmar moves with urgency to ensure that the actions requested are carried out at all levels and by all civil and military authorities.

The Committee strongly urged the Government to fully implement without delay the recommendations of the Commission of Inquiry and the comments and observations of the Committee of Experts. The Government in particular should:

- (1) take necessary steps to bring the relevant legislative texts, in particular the Village Act and Towns Act, into line with Convention No. 29;
- (2) ensure that legislation foreseen by paragraph 15 of Chapter VIII of the new Constitution is developed, adopted and applied in full conformity with Convention No. 29;
- (3) ensure the total elimination of the full range of forced labour practices, including the recruitment of children into the armed forces and human trafficking for forced labour, that are still persistent and widespread;
- (4) strictly ensure that perpetrators of forced labour, whether civil or military, are prosecuted and punished under the Penal Code;
- (5) ensure that the Government makes the necessary budget allocations so that workers are freely contracted and adequately remunerated;

- (6) eliminate the continuing problems with the ability of victims of forced labour or their families to complain and immediately cease all harassment, retaliation and imprisonment of individuals who use, are associated with or facilitate the use of the complaints mechanism;
- (7) release immediately complainants and other persons associated with the use of the complaints mechanism who are currently detained;
- (8) facilitate the production and wide distribution of the brochure in the ethnic languages;
- (9) intensify awareness-raising activities throughout the country, including training to military personnel to end under-age recruitment; and
- (10) actively pursue agreement of a joint action plan with the Country Task Force on Monitoring and Reporting in respect of children in circumstances of armed conflict, of which the ILO is a member, to address amongst other things under-age recruitment.

The Committee called for the strengthening of the capacity available to the ILO Liaison Officer to assist the Government in addressing all of the recommendations of the Commission of Inquiry, and to ensure the effectiveness of the operation of the complaints mechanism, particularly in respect of the urgent issuance of an entry visa

for an additional international professional as a priority and without delay.

The Committee specifically called on the Government of Myanmar to take every opportunity, including through the continued use of all of the available forums, to increase the awareness of the people (the civil and military authorities as well as the general public) as to the law against the use of forced labour, to their rights and responsibilities under that law and of the availability of the complaints mechanism as a means of exercising those rights. An authoritative statement at the highest level would be a significant step in this regard.

The Committee regretted with serious concern the continued human rights violations in Myanmar, including the detention of Daw Aung San Suu Kyi. The Committee urged her immediate release as well as that of other political prisoners and labour activists.

The Committee called on the Government to investigate, without further delay, the allegations of forced labour orders and similar documents which had been submitted to the Committee of Experts and encouraged the Government to communicate to the Committee of Experts, for its next session, its findings and any consequential concrete actions taken. The Committee expected to be in a position to take note of significant developments at the next session of the Conference.

## Document D.5

### **B. Observation of the Committee of Experts on the application of Conventions and Recommendations on the observance of the Forced Labour Convention, 1930 (No. 29), by Myanmar**

*Myanmar (ratification: 1955)*

#### *Historical background*

1. In its previous comments the Committee has discussed in detail the history of this extremely serious case, which has involved gross, methodical and pervasive breaches of the Convention enduring for many years, and which is also manifested by the long-standing failure of the Government to implement the recommendations of the Commission of Inquiry, appointed by the Governing Body in March 1997 under article 26 of the Constitution.

2. The Committee recalls that the Commission of Inquiry concluded that the obligation under the Convention to suppress the use of forced or compulsory labour was being violated in Myanmar in national law as well as in actual practice in a widespread and systematic manner. In its recommendations (paragraph 539(a) of the Commission's report of 2 July 1998), the Commission urged the Government to take the necessary steps to ensure:

- that the relevant legislative texts, in particular the Village Act and the Towns Act, be brought into line with the Convention;
- that in actual practice, no more forced or compulsory labour be imposed by the authorities, in particular the military, an outcome which required concrete action to be taken immediately for each and every of the many fields of forced labour and to be accomplished through public acts of the Executive, promulgated and made known to all levels of the military and to the whole population; and
- that the penalties which may be imposed under section 374 of the Penal Code for the exaction of forced or compulsory labour be strictly enforced, which required thorough investigation, prosecution and adequate punishment of those found guilty.

#### *Developments since the Committee's previous observation*

3. There have been numerous discussions and conclusions reached by ILO bodies, as well as further documentation received by the ILO, which have been considered by the Committee. These include the following:

- the report of the ILO Liaison Officer (ILC, 98th Session, *Provisional Record* No. 16, Part Three, Doc. D.5.C) submitted to the Conference Committee on the Application of Standards during the 98th Session of the International Labour Conference in June 2009, as well as the discussions and conclusions of that Committee (ILC, 98th Session, *Provisional Record* No. 16, Part Three, A and Doc. D.5.B);

- the documents submitted to the Governing Body at its 304th and 306th Sessions (March and November 2009), as well as the discussions and conclusions of the Governing Body during those sessions;
- the communication by the International Trade Union Confederation (ITUC) received in September 2009 which includes an appendix of 74 documents amounting to more than 1,000 pages, a copy of which was transmitted to the Government for comments on the matters raised therein;
- the Agreement of 26 February 2009 to extend the trial period of the Supplementary Understanding of 26 February 2007; and
- the reports of the Government of Myanmar received on 10 and 24 March, 1 and 4 June, 27 August, 6 and 21 October 2009.

4. *The Supplementary Understanding of 26 February 2007 – extension of the complaints mechanism.* The Committee notes that the trial period of the complaints mechanism under the Supplementary Understanding (SU) of 26 February 2007 between the Government and the ILO was extended on 26 February 2009 for one year, until 25 February 2010 (ILC, 98th Session, *Provisional Record* No. 16, Part Three, Doc. D.5.F., Appendix II). The SU supplements the Understanding of 19 March 2002 concerning the appointment of an ILO Liaison Officer in Myanmar and has as its object to “formally offer the possibility to victims of forced labour to channel their complaints of forced labour 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 Convention”. Information about the functioning of this important mechanism is discussed below in the sections on monitoring and enforcement.

5. *Discussion and conclusions of the Conference Committee on the Application of Standards.* The Committee on the Application of Standards once again discussed this case in a special sitting during the 98th Session of the Conference in June 2009. The Conference Committee, inter alia, acknowledged some limited steps on the part of the Government of Myanmar: the further extension of the SU for another year; certain activities concerning awareness raising of the complaints mechanism established by the SU; certain improvements in dealing with under-age recruitment by the military; and the distribution of publications relating to the SU. The Committee was however of the view that those steps were totally inadequate, and it strongly urged the Government to fully implement without delay the recommendations of the Commission of Inquiry.

6. *Discussions in the Governing Body.* The Governing Body also continued its discussions of this case during its 303rd and 306th Sessions in March and November of 2009 (GB.304/5(Rev.), GB.306/6). Following the discussion in November 2009 the Governing Body, inter alia, reconfirmed the continuing validity of its previous conclusions and those of the International Labour Conference. It noted the Government’s cooperation regarding complaints of forced labour submitted under the SU, as well as the joint Government–ILO awareness-raising activities. However, it called on the Government to strengthen the capacity of the ILO in the framework of the SU to deal with complaints throughout the country and, in particular, to facilitate adjustments to the staff capacity of the Office of the Liaison Officer, as provided for in article 8 of the SU, so that an increased workload could be met. It also called for the immediate release of all persons currently detained being complainants, facilitators and others associated with the SU complaints mechanism. It further called for particularly accessible material in local languages for awareness raising, and it reiterated the need for an authoritative statement by the senior leadership against the continued use of forced labour and the need to respect freedom of association.

7. *Communication received from the International Trade Union Confederation.* The information contained in the communication from the ITUC received in September 2009, referred to in paragraph 3, is discussed below in the section on current practice.

8. *The Government's reports.* The reports received from the Government, referred to in paragraph 3, include replies to the Committee's previous observation. They include information, inter alia, about joint ILO–Ministry of Labour (MOL) publicity, awareness-raising and training activities on forced labour; the Government's continued cooperation with the various functions of the ILO Liaison Officer including monitoring and investigating the forced labour situation, the operation of the SU complaints mechanism, and the implementation of technical projects; and ongoing efforts the Government is making to enforce the prohibitions of forced labour. The reports also include a reply to the ITUC communication of September 2008 by way of a categorical dismissal of the allegations of forced labour contained therein. The Government also indicates that no action was being contemplated to amend or repeal the Village Act and Towns Act or to amend section 359 of the New State Constitution. Further references to the Government's reports are made in the discussion below.

### **Assessment of the situation**

9. Assessment of the information available on the situation of forced labour in Myanmar in 2009 and in relation to the implementation of the recommendations of the Commission of Inquiry and compliance with the Convention by the Government will be discussed in three parts, dealing with: (i) amendment of legislation; (ii) measures to stop the exaction of forced or compulsory labour in practice; and (iii) enforcement of penalties prescribed under the Penal Code and other relevant provisions of law.

#### ***I. Amendment of legislation***

10. With regard to the Village Act and the Towns Act, referred to in paragraph 2, the Committee notes the statement of the Government in its report received on 27 August 2009 that these laws “have been put into dormant [sic] effectively and legally” by Order No. 1/99 (Order Directing Not to Exercise Powers Under Certain Provisions of the Town Act, 1907, and the Village Act, 1907) as supplemented by the Order of 27 October 2000. In its previous comments, the Committee has observed that the latter orders have yet to be given bona fide effect and do not dispense with the separate need to eliminate the legislative basis for the exaction of forced labour. ***Noting the indication of the Government representative, during the discussion in the Governing Body at its 306th Session in November 2009, that these Acts were under review by the Ministry of Home Affairs, the Committee urges the Government to take the long overdue steps to amend or repeal them and thereby to bring its law into conformity with the Convention. The Committee hopes that in its next report the Government will provide information confirming that such steps have been taken.***

11. In its previous observation the Committee noted that the Government has included in section 359 of the New State Constitution (Chapter VIII – Citizenship, Fundamental Rights and Duties of Citizens) a prohibition of forced labour containing an exception for “duties assigned by the Union in accordance with the law in the interest of the public”. The Committee observed that the exception encompasses permissible forms of forced labour that exceed the scope of the specifically defined exceptions in Article 2(2) of the Convention and could be interpreted in such a way as to allow a generalized exaction of forced labour from the population. The Committee notes with regret the statement of the Government in its report received on 27 August 2009, that section 359 of the New State Constitution “adequately captures the spirit” of the Convention. ***The Committee once again urges the Government to take steps to amend section 359 of Chapter VIII of the new Constitution, in order to bring its law into conformity with the Convention.***

II. *Measures to stop the exaction of forced or compulsory labour in practice*

12. *Information available on current practice.* The Committee notes from the ITUC's communication referred to above, the well-documented allegations that forced and compulsory labour continued to be exacted from local villagers in 2009 by military and civil authorities and to have occurred in all but one of the country's states and divisions. The information in the appendices refers to specific dates, locations and circumstances of the occurrences, and to specific civil bodies, military units and individual officials responsible for them. According to these reports, forced labour has been requisitioned both by military personnel and civil authorities such as village heads, and has taken a wide variety of forms and involved a variety of tasks, including: construction of bridges and roads; forced portering for military personnel; prison labour, construction and maintenance of army camps; confiscation of food supplies and extortion of money; forced recruitment of child soldiers; forced sentry duty; and human minesweeping. The appendices also include translated copies of more than 100 Order documents and Order "letters" for the requisition of forced (and uncompensated) labour issued between December 2008 and June 2009 to villagers and village heads in Chin, Karen, Mon, and Rakhaing States and in Irrawaddy, Pegu, and Tenasserim Divisions. The tasks and services demanded by these call-up orders involved, inter alia, portering for the military; road repair and other infrastructure projects, and on paddy plantations; production and delivery of thatch shingles and bamboo poles; recruitment of children as soldiers; attendance at meetings; provision of money and alcohol; provision of information on individuals and households; registration of villagers in State-controlled NGOs; and restrictions on travel and use of muskets. ***Noting the conspicuous absence of any comment from the Government on such Order letters forwarded by the ITUC in previous years, the Committee requests that in its next report the Government respond in detail to the entirety of the September 2009 communication of the ITUC, and in particular to the Order letters referred to above which constitute conclusive evidence of the continued systematic imposition of forced labour by military and civil authorities throughout the country in 2009.***

13. The Committee notes the observations of the ILO Liaison Officer that the SU mechanism continues to function, yet "the overall forced labour situation remains serious in the country". (GB.304/5/1(Rev.), paragraph 2). Victims of under-age military recruitment with substantiated complaints are regularly discharged from the military, yet the "continued and repeated illegal recruitment of children by military personnel" is also confirmed (GB.306/6, paragraphs 5 and 7). In terms of the experience with the SU complaints mechanism, the Liaison Officer refers to action taken by the authorities "to ensure that the practice of forced labour does not continue and further complaints are not received from that area" from which they originate (GB.306/6, paragraph 10). However, he also refers to the behaviour of local authorities, both civil and military, as well as judicial, who refuse to accept the validity of settlement agreements reached under the SU process, continue traditional forced labour practices, and harass those who attempt to exercise their rights under the law (GB.306/6, paragraph 15).

14. In its previous observations the Committee, recalling the Commission's recommendation that concrete action needed to be taken immediately for each and every of the many fields of forced labour, identified four types of "concrete action" the Government needed to take, without which an end to imposition of forced labour in practice could not be achieved: issuing specific and concrete instructions on forced labour and on its prohibitions to civilian and military authorities; giving wide publicity to the prohibitions on forced labour; making adequate budgetary provisions for replacing forced labour with free wage labour; and monitoring the practice of forced labour and efforts to enforce its prohibitions.



15. *Issuing specific and concrete instructions.* In its previous observations the Committee has emphasized that specific, effectively conveyed instructions to civil and military authorities, and to the population at large, are required which identify each and every field of forced labour, and which explain concretely for each field the means and manner by which the tasks or services involved are to be carried out without recourse to forced labour. The Committee has noted that, with one exception (namely, the “Additional Instruction” issued by the Department of General Administration of the Ministry of Home Affairs, No. 200/108/Oo, dated 2 June 2005 and noted by the Committee in its 2005 observation), the series of instructions and letters issued by Government authorities in 2000, 2004 and 2005, which were intended to secure compliance with the prohibition of forced labour under Order No. 1/99 and its supplementing Order of 27 October 2000, were not shown to have met these criteria.

16. The Committee notes that in its report received on 1 June 2009 the Government states only that “the various levels of administrative authority are well aware of the orders and instructions related to forced labour prohibition issued by the higher levels”. The document submitted to the Governing Body in March 2009 (GB.304/5/1(Rev.)) includes an indication, without a date specified, that the General Administration Department had issued instructions through the state and divisional administrative structures reconfirming the prohibition of forced labour; and that this instruction had been transmitted to township and village tract levels (paragraph 6). The Government indicates in its report received on 27 August 2009 that all instructions and directives “contain the details [sic] necessary measures for the implementation of the Orders”. The Committee also notes the observation of the ILO Liaison Officer that a number of forced labour complaints, particularly involving confiscation of farmers’ croplands, result from the improper application of economic and agricultural policies not directly concerned with the practice of forced labour, yet the Government has not agreed to consider policy-application training designed to stop the application of such policies in a way that leads to the imposition of forced labour (Report to the Conference Committee, paragraph 14; GB.304/5/1(Rev.), paragraph 9). The Committee notes that once again the information provided by the Government is grossly deficient. It reiterates the need for concrete instructions to be issued to all levels of the military and to the whole population, which identify all fields and practices of forced labour and provide concrete guidance as to the means and manner by which tasks or services in each field are to be carried out, and by which any other relevant government policies are to be implemented, without recourse to forced labour or forced contributions from the population, and for steps taken to ensure that such instructions are fully publicized and effectively supervised. ***The Committee requests the Government to provide in its next report information about the measures of this nature it is taking, including a translated and dated copy of the text of the instructions it states have been issued reconfirming the prohibition of forced labour and of the “necessary details” it states are contained in its directives and instructions.***

17. *Making adequate budgetary provisions for the replacement of forced and unpaid labour.* The Committee recalls that in its recommendations the Commission of Inquiry drew attention to the need to make adequate budgetary provisions to hire free wage labour for the public activities which are today based on forced and unpaid labour. In its report received on 27 August 2009, the Government has reiterated previous indications in stating that it “provides the budget allotment including labour costs for all Ministries to implement their respective projects”. In previous observations the Committee, noting the information available on actual practice which shows that forced labour continues to be imposed in many parts of the country, particularly in those areas with a heavy military presence, has considered it obvious that any budgetary allocations that are specifically designated for the recruitment of free wage labour have not been adequate or adequately utilized. ***The Committee once again urges the Government to use state budget allotments to provide civil and military authorities at all levels the financial means for utilizing voluntary paid labour for needed tasks and services, and which are adequate enough to eliminate the***

***material incentives for recourse to forced and unpaid labour, and that it report in detail on the steps taken to that end and on the effect of such measures in actual practice.***

18. *Giving publicity to and raising awareness about forced labour and its prohibitions.* The Committee notes from the Government's reports and the documents submitted to the Governing Body and to the Conference Committee, the indications that a number of activities to give publicity to and raise awareness about the forced labour situation, the legal prohibitions of forced labour and existing avenues of recourse for victims were carried out in 2009. These included, inter alia, a joint ILO–MOL awareness-raising seminar for civil and military personnel held in Karen State and Northern Shan State in April and May of 2009; a joint seminar held in Rhakine State with participants representing both the civil and military authorities; and a joint presentation to a refresher training programme for senior township judges. A booklet comprised of the texts of the SU and related documents and translated into the Myanmar language, was prepared (GB.304/5/1(Rev.), paragraph 4) and distributed to civilian and military authorities nationwide, to civil society groups, and the general public for awareness-raising purposes (Report to the Conference Committee, paragraph 18). Some 16,000 copies had been circulated as of November 2009; however, the Government had yet to agree to the production of a simply-worded brochure, translated into local languages, which outlined the law against forced labour and the procedures available to victims to exercise rights under the law (GB.306/6, paragraph 10). The Government, in its reports received on 6 and 21 October 2009, refers to a number of activities carried out in May and August of 2009 by the Committee for the Prevention of Military Recruitment of Under-Age Children, including law lectures for officer trainees at military camps; supervision of training on recruitment procedures at military training schools and basic training units; and informational visits to numerous regiments and recruitment centres. A rural infrastructure project in the cyclone-affected area of the Irrawaddy Delta implemented by the Office of the ILO Liaison Officer with cooperation from the MOL, a second phase of which was carried out through September of 2009 but with a further extension declined by the Government, included awareness-raising seminars (GB.306/6, paragraph 22) and was reported to have played a valuable role in raising awareness in the cyclone-affected area as to the rights and responsibilities in employment, in particular those relating to the prohibition of forced labour (GB.304/5/1(Rev.), paragraph 23). The Committee notes the indication of the Liaison Officer in November 2009 of an increase in new complaints filed under the SU complaints mechanism during the five-and-a-half-month period from mid-May through 28 October 2009, which he considered to be due to heightened awareness generally of citizens' rights, the maturing and expansion of the facilitators' network, and an increased readiness to present complaints. The Liaison Officer further observed, however, that awareness levels, particularly in rural areas, remained low (GB.306/6, paragraph 4). The Government had also yet to issue an authoritative public statement at the highest level, as called for by ILO supervisory organs, to clearly reconfirm its policy prohibiting all forms of forced labour throughout the country and its intention to prosecute perpetrators, both civilian and military (Report to the Conference Committee, paragraph 24, GB.306/6, Conclusions).

19. The Committee considers the publicity and awareness-raising activities noted above to represent a step forward, and the recent increase in new complaints received under the SU and partly attributed to such activities to be a positive sign; however, these measures continue to be largely ad hoc, partial and piecemeal in nature. The Committee reiterates the need for the Government to commit itself more fully to publicity and awareness-raising activities, to conceive and undertake them in a more coherent and systematic way, and with a view to the tangible effect they have on the observance in practice by civil and military authorities and personnel at all levels, and in all areas of the country, of their legal obligation not to exact forced labour, and on the efforts of victims of forced labour throughout the country to seek legal recourse. ***The Committee hopes that in its next report the Government will supply information on measures of this nature being***

*taken or contemplated, including information about their practical effect, observed or anticipated.*

20. *Monitoring the situation of forced labour including efforts to enforce its prohibitions.* The Committee notes the important role in assisting the Government with monitoring and investigating the situation of forced labour in Myanmar, including enforcement of rights and obligations arising out of the prohibitions of forced labour, which has been accorded to the ILO Liaison Officer, both under the broad mandate of the Understanding of 2002 and in the framework of the SU complaints mechanism. The Committee notes that several ad hoc investigation missions and inspection tours were carried out by the Liaison Officer and the Ministry of Labour in late 2008 and early 2009, and that presentations were made to NGOs and civil society groupings, in part, to seek their support in forced labour observation and reporting (GB.304/5/1(Rev.), paragraphs 5 and 6). A small sub-unit of the Office of the Liaison Officer has been established for dealing with under-age recruitment complaints and for monitoring and reporting on the child soldier situation nationwide (GB.306/6, paragraph 21). The Committee considers these to be positive steps. At the same time, however, the reach of the SU mechanism in a country the size of Myanmar is still very limited (GB.304/5/1(Rev.), paragraph 10); the ILO Liaison Officer is based in Yangon and is provided meagre facilities and a small staff (paragraph 12); he does not have the authority to initiate complaints on the basis of his own observation or information (GB.306/6, paragraph 6) or his own investigations of under-age military recruitment (GB.304/5/1(Rev.), paragraph 7); and there are continuing practical impediments to the physical ability of victims of forced labour or their families to complain, such that a network of complaints facilitators remains a necessity (Report to the Conference Committee, paragraph 12). The complaints mechanism of the SU is being undermined (GB.306/6, paragraph 4) by the continued imprisonment of labour activists with a record of support in the facilitation of complaints under the SU (GB.306/6, paragraphs 14 and 16), by serious cases of apparent harassment and judicial retaliation against complaining victims, facilitators and other persons associated with complaints filed with the ILO (GB.306/6, paragraphs 11–14; Report to Conference Committee, paragraph 10), and by the refusal of local civil and military authorities, as well as local courts, to respect the terms of formal complaint settlements, notably the agreements in several land-confiscation cases that resulted from joint ILO–MOL investigative missions carried out in Magwe Division in December 2008 and March 2009 (GB.306/6, paragraphs 13 and 15). In this regard notations in the Register of cases under the SU mechanism indicate a number of cases, including Cases Nos 149, 150, 151, 204, 205 and 206, in which complainants chose not to pursue their claims out of fear of reprisals (GB.306/6, Appendix IV). A formal proposal of the ILO Liaison Officer to the Working Group for joint action to address these issues with a view to achieving lasting solutions has not been accepted by the Government (GB.306/6, paragraph 15). ***Noting the obligation of the Government under the 2002 Understanding and the 2007 SU to take appropriate steps to enable the ILO Liaison Officer to effectively discharge the work and responsibilities arising therein, including extending to his Office the requisite facilities and support, the Committee strongly urges the Government to take immediate steps to address the serious problems noted above, and it requests information from the Government in its next report on the progress of those steps. More generally, the Committee urges the Government to take necessary measures to ensure that a climate exists for a monitoring and investigation process that is effective, national in its reach and scope, and fully respected by all elements and all levels of society. It requests that in its next report the Government supply information on the progress of measures so taken or contemplated.***

### III. Enforcement of penalties

21. The Committee recalls that section 374 of the Penal Code provides for the punishment, by a term of imprisonment of up to one year, of anyone who unlawfully

compels any person to labour against his or her will, and that Order No. 1/99 and its supplementing Order of 27 October 2000, as well as the series of instructions and letters, issued by Government authorities in 2000, 2004 and 2005 with a view to securing the enforcement of those orders, provide for persons “responsible” for forced labour, including members of the armed forces, to be referred for prosecution under section 374 of the Penal Code or other applicable provisions of law. The Committee notes that none of the complaints under the SU mechanism assessed and forwarded by the ILO Liaison Officer to the Working Group for investigation and appropriate action resulted, in 2009, in a decision to prosecute perpetrators of forced labour. The notations in the Register of cases under the SU mechanism (as of 23 October 2009) indicate that in at least 14 of the closed cases, the Liaison Officer considered the penalties or punishment imposed or disciplinary actions taken to be inadequate, and that the Working Group has routinely rejected recommendations made for more serious sanctions to be applied (GB.306/6, Appendix IV). Recent cases involving complaints of under-age military recruitment have resulted in the discharge of the child victims but with only administrative sanctions, if any, imposed on the perpetrators; there have been no prosecutions under criminal law (GB.304/5/1, paragraph 7). In Case No. 127 an explicit recommendation by the Liaison Officer for criminal prosecution was rejected. The Committee notes the observation of the Liaison Officer that the need for the imposition of meaningful penalties on perpetrators “continues to be a concern, particularly in respect of cases involving military personnel” (GB.306/6, paragraph 7), and that in the most serious cases of under-age military recruitment the penalties remained inadequate (Report to the Conference Committee, paragraph 15). ***The Committee urges the Government once again to take measures to ensure that the penalties imposed by law for the illegal exaction of forced or compulsory labour are adequate and strictly enforced, as required by Article 25 of the Convention, and it requests the Government to supply information in its next report on the progress of measures taken to that end. The Committee hopes that fulfilment of the Government’s commitments as a party to the SU will be better reflected in the processing of cases forwarded to the Working Group by the ILO Liaison Officer, in terms of greater weight being accorded to the preliminary assessments of the Liaison Officer and a greater number of investigations leading to prosecutions, convictions and the imposition of criminal penalties rather than to case closures, and it requests information on progress being made in that vein.***

## **Concluding comments**

22. In summary, the Committee observes that the Government has yet to implement the recommendations of the Commission of Inquiry; to wit: it has failed to amend or repeal the Towns Act and the Village Act; it has taken no concrete actions shown to have brought about in any significant and lasting way an end to the exaction of forced labour in practice; and it has failed to ensure that penalties for the exaction of forced labour under the Penal Code or other relevant provisions of law have been strictly enforced against civil and military authorities and personnel who are responsible for it. While the Office of the ILO Liaison Officer, by virtue of the broad mandate set forth under the Understanding of 19 March 2002, and the procedures and mechanisms provided for under the SU, has been accorded a critical role in assisting the Government in its efforts to bring about the elimination of forced labour, the robust and fully fledged cooperation of the Government that is vital to the fulfilment of that role, including the cooperation needed in extending the requisite facilities and support and in engendering full respect for, and trust in, these special organs by the society at large, leaves much room for improvement. ***The Committee once again urges the Government to give credence to its expressed commitment to eliminate the use of forced labour in Myanmar and take the long overdue steps that are required to implement the recommendations of the Commission of Inquiry and achieve compliance with the Convention in law and in practice.***

## **C. Report of the Liaison Officer to the special sitting on Myanmar (Convention No. 29) of the Committee on the Application of Standards, and register of cases as of 17 May 2010**

### **I. Introduction**

1. The ILO Liaison Officer in Myanmar operates under the authority of a 2002 Understanding between the Government of the Union of Myanmar and the ILO. The Liaison Officer undertakes various activities aimed at supporting the Government in its implementation of the recommendations of the Commission of Inquiry on Forced Labour in Myanmar concerning the Forced Labour Convention, 1930 (No. 29).
2. A Supplementary Understanding signed on 26 February 2007 sets out a complaints mechanism under which residents of Myanmar can forward to the Liaison Officer complaints on alleged cases of forced labour. The definition of forced labour under Convention No. 29 also includes the recruitment of minors into the military. The trial period of the Supplementary Understanding was extended for a third time in January 2010 for a further 12 months.<sup>1</sup>
3. The Governing Body has reviewed developments, including any progress made, at each of its March and November meetings under a specific agenda item on the subject. The reports of the Liaison Officer to the Governing Body in November 2009 and March 2010, together with the conclusions reached following each of those discussions, are attached. The register of cases as at 17 May 2010 is attached as appendix.
4. This report provides a summary of activities over the past year without, however, repeating the information that is contained in the abovementioned reports to the Governing Body. The report takes into account the conclusions of the special sitting on Myanmar of the Committee on the Application of Standards held at the 98th Session of the International Labour Conference in 2009 (see Part C), and highlights developments that can be considered steps forward as well as areas where further progress is required in order to achieve the objective of the elimination of forced labour in Myanmar.

### **II. The operational environment**

5. Through its Government Working Group for the Elimination of Forced Labour, chaired by the Deputy Minister of Labour and consisting of senior representatives from a range of relevant ministries, the Supreme Court and the Office of the Attorney-General, the Government of Myanmar continues to respond in a reasonably timely manner to complaints that have been lodged under the Supplementary Understanding and, after assessment by the Liaison Officer, transmitted to the Government. The Working Group has responded positively to proposals for training and awareness-raising activities under the 2002 Understanding. The Ministry of Defence has been involved in the delivery of training to military personnel in respect of the law concerning under-age recruitment.
6. While these activities continue to take place and expand, complaints continue to be received alleging the use of forced labour by both military and civilian authorities. There is

<sup>1</sup> See GB.307/6, paras 15–19.

little evidence of the use of forced labour in the private sector, although working conditions may often leave much to be desired.

7. Non-verifiable available evidence does suggest that the use of forced labour by the civilian authorities has been reduced at least in some locations and parts of the country. This is most likely due to the extensive awareness-raising activities undertaken and the heightened awareness of local authority personnel to the issue itself, including the risk attached to being the subject of a complaint and its follow-up action. A fair conclusion would also be that a significant part of the use of forced labour reflects the weakness of macroeconomic governance and policy application, particularly in respect of budgeting and the corresponding financial allocations.
8. It is difficult to reach satisfactory conclusions to complaints that allege the use of forced labour by the military, either in respect of their operational activities (use of porters, sentry guards, and so on) or their commercial activity in various industries. Where a complaint of under-age recruitment is submitted, and the Liaison Officer can prove the age and the fact of recruitment, the child concerned is in most instances discharged to his family. There are recent indications that, in addition to undertaking an assessment of the case, the Government expects the Liaison Officer to undertake a more extensive inquiry and to obtain at least two official forms of proof of age before the case is accepted for government investigation. Notwithstanding numerous requests to the authorities to release identified under-age recruits close to their homes, parents are still required to fetch their sons from their regiments, which often entails lengthy travel at considerable expense. Some families, for example, have to sell their harvest in advance, borrow money, or sell assets, in order to undertake the journey.
9. The publication of a simply worded brochure to explain the law, the Supplementary Understanding and the procedure for filing a complaint was agreed in principle by the Working Group in January 2010. On 30 April 2010, the wording and its translation were agreed. The Liaison Officer received government approval of the document layout on 24 May 2010 and arrangements are currently being made for its publication and subsequent distribution.
10. The full-time professional staff in Yangon consists of the Liaison Officer, his deputy and one national programme officer. The workload has grown considerably as awareness of the law and the right to submit complaints has spread. The increased caseload must be managed in parallel with other demands, such as undertaking assessment missions, awareness-raising seminars, facilitators' network training, and working with other United Nations (UN) agencies, international non-governmental organizations (INGOs) and non-governmental organizations (NGOs) on various aspects of the forced labour agenda. The Government of Germany generously provided one year's funding for, among other things, an additional international professional to further support Supplementary Understanding activities, particularly in respect of child soldiers. Some valuable additional activities have been undertaken using these funds. However, as the Government of Myanmar has not approved the visa application for an additional international staff member, a considerable sum had to be returned to the donor in December 2009. The donor has generously agreed to extend the project execution date to 31 December 2010 on condition that the visa is accorded or an appropriate in-country candidate is located before 31 July 2010. The number of complaints requiring preliminary assessment is growing, and there is a backlog of follow-up work on earlier cases.
11. A number of complaints of human trafficking for forced labour have been received. The Government Working Group has expressed its view regarding a more effective way of taking action, advising that such cases are not receivable by the Working Group and that the complainants should be referred to the proper authorities within the Ministry of Home

Affairs without further action being taken by the ILO Liaison Officer. Three such cases have been referred to the ILO anti-human trafficking projects based outside the country this year and they have resulted in the release of 56 persons from a forced labour situation in neighbouring countries. The Liaison Officer has renewed his recommendation that such cases be referred through the Government Working Group to the Myanmar police anti-human trafficking unit for appropriate action.

12. The work related to under-age recruitment under the Supplementary Understanding supports the activity of the UN Country Task Force on Monitoring and Reporting on Children and Armed Conflict under Security Council Resolution 1612 on the protection of children affected by armed conflict. As a member of the Task Force, the Liaison Officer and his deputy have been involved in the negotiation of a joint action plan with the Government with a view to stopping the recruitment of children into the military and the release of those already in service.

### **III. Action under the Understanding and the Supplementary Understanding**

13. Since the 2009 meeting of the Committee on the Application of Standards, the following activities have been undertaken.

#### **(a) Training and awareness raising**

- Three joint ILO/Ministry of Labour awareness-raising seminars at State/Division level for state/division/district/township/village local authority personnel and representatives of military units in Rhakine State, Magway Division and Bago Division.
- Five training workshops/presentations held for UN and INGO field staff on the law pertaining to forced labour, including under-age recruitment and the practical operation of the Supplementary Understanding complaints mechanism.
- Two joint ILO/Ministry of Labour presentations on the law and practice on forced labour to township judge and deputy judge refresher training courses.
- Three training seminars/presentations for members of the armed forces (operational, training and recruitment personnel), the police and the prison service on the law and practice concerning under-age recruitment into the military.

#### **(b) Operational field missions**

- Four in-country field missions for case assessment or follow-up.
- Two orientation/information gathering missions.
- One mission accompanying the UN Special Rapporteur on the situation of human rights in Myanmar on his inspection visit to Rhakine State.

#### **(c) Government consultations**

- Four meetings with the full Government Working Group for the Elimination of Forced Labour on the operation of the Supplementary Understanding and one meeting to discuss the principles and application of the Freedom of Association Convention,

1948 (No. 87), with the participation of the International Labour Standards Department, and the Government's concept for proposed trade union legislation.

- Two meetings with the Government Human Rights Body regarding the Universal Periodic Review process and the promotion of UN/Government of Myanmar cooperation on human rights matters.
- Three meetings with the Committee for the Prevention of the Recruitment of Minors as part of the UN Country Task Force on Monitoring and Reporting on Children and Armed Conflict under Security Council Resolution 1612 on the protection of children affected by armed conflict.

#### **IV. Statistics on complaints**

- 14.** Since the entry into force of the Supplementary Understanding in February 2007, a total of 331 complaints have been received by the Liaison Officer. Of those, 45 were outside the ILO mandate in Myanmar, including five relating to freedom of association issues that could not be pursued under the Supplementary Understanding.
- 15.** Of the 286 cases accepted as being within the ILO mandate, 144 have been assessed, submitted to the Government Working Group for the Elimination of Forced Labour, investigated by the Government and subsequently concluded to varying degrees of satisfaction. Another 68 cases remain open, either awaiting information on the results of government investigations or still the subject of follow-up negotiations. Some 52 cases are currently either under assessment or require further information prior to submission. Twenty-two cases that fall within the mandate set out in the Supplementary Understanding have not been submitted, either because there is insufficient information to substantiate the allegations or because of reluctance on the part of the complainant to proceed owing to their own fear of possible reprisals.
- 16.** Since the last report to the Committee on the Application of Standards, seven cases of alleged harassment of complainants, facilitators or legal counsel have been received. Fourteen persons deemed to have been the subject of judicial harassment for their association with the complaints mechanism have been released from prison after their sentences were reduced. Six people who had either been imprisoned owing to their association with the complaints mechanism, or sentenced for unrelated alleged breaches of the law in a situation where they had clearly had an association with the Supplementary Understanding mechanism, remain in prison. Two lawyers who are active supporters of the Supplementary Understanding procedures have lost their licences to practise after their release from prison. The Government continues to maintain that these persons have all been arrested and appropriately sentenced for breaches of the law unrelated to their association with the Supplementary Understanding complaints procedure and that the cancellation of the lawyers' practising licences reflects their breach of the legal practitioners' code of conduct. A total of 99 persons who had been recruited as children have been discharged from the military and returned to their families.



## Appendix

### Register of cases

Case	Date received	Accepted	Intervention date	Status	Comments
001	28 Feb. 07	Yes	9 Mar. 07	Closed	Prosecution – 2 x imprisonment, 1x acquitted, land use remains in dispute [case 129].
002	28 Feb. 07	Yes	29 May 07	Closed	Child released, disciplinary action – formal reprimand.
003	5 Mar. 07	No		Closed	Not related to mandate – worker welfare issue.
004	13 Mar. 07	Yes	20 Mar. 07	Closed	Not forced recruitment – under age – discharged to parents.
005	29 Mar. 07	No		Closed	Not related to mandate – land issue.
006	6 Apr. 07	No		Closed	Not related to mandate – pension issue.
007	6 Apr. 07	No		Closed	Not related to mandate – pension issue.
008	6 Apr. 07	Yes	16 May 07	Closed	Compensation paid. Instigator dismissed.
009	9 Apr. 07	Yes	10 Apr. 07	Closed	Civil sanctions and reprimands.
010	9 Apr. 07	No		Closed	Insufficient basis to proceed at this stage.
011	19 Apr. 07	No		Closed	Insufficient information at this stage.
012	19 Apr. 07	No		Closed	Not related to mandate – employment dispute.
013	23 Apr. 07	No		Closed	Complaints unwilling to be identified.
014	23 Apr. 07	No		Closed	Complaints unwilling to be identified.
015	23 Apr. 07	Yes	16 May 07	Closed	Government denied portering and alleged victim to be an insurgent who was captured but subsequently escaped. Any connection between the facilitator's subsequent imprisonment and this case was denied.
016	25 Apr. 07	No		Closed	Not related to mandate – employment dispute.
017	26 Apr. 07	Yes	22 Aug. 07	Closed	Administrative instructions issued and educative activity undertaken.
018	9 May 07	Yes	22 May 07	Closed	Military officer disciplined – joint training seminar undertaken.
019	9 May 07	No		Closed	Not related to mandate – property dispute.
020	9 May 07	No		Closed	Insufficient basis to proceed.
021	9 May 07	Yes	10 May 07	Closed	Victim discharged to parents – disciplinary action as the result of military inquiry considered inadequate.
022	18 May 07	No		Closed	No evidence that the work constituted forced labour.
023	18 May 07	Yes	23 May 07	Closed	Field visit, education activity undertaken.
024	25 May 07	No		Closed	Insufficient information to proceed.
025	22 June 07	Yes	14 Aug. 07	Closed	Four officials dismissed, administrative instructions re-issued.
026	26 June 07	Yes	13 Aug. 07	Closed	Local authorities instructional activity undertaken.

Case	Date received	Accepted	Intervention date	Status	Comments
027	28 June 07	No		Closed	Not related to mandate – pension/gratuity matter.
028	7 June 07	No		Closed	Not related to mandate – pensions matter.
029	14 June 07	Yes	2 Aug. 07	Closed	Village chairman dismissed.
030	31 July 07	Yes	31 July 07	Closed	Child released – summary military trial – recruiting officer disciplined.
031	25 June 07	No		Closed	Not related to mandate – mass termination.
032	29 June 07	No		Closed	Not related to mandate – land confiscation.
033	6 July 07	Yes	9 Aug. 07	Closed	Child released, training seminar undertaken.
034	12 July 07	No		Closed	Not related to mandate – hours of work/overtime issue.
035	23 July 07	Yes	17 Aug. 07	Closed	Government instructions issued, retrospective remuneration paid, joint field trip for awareness education undertaken.
036	24 July 07	No		Closed	Insufficient basis to proceed.
037	29 June 07	No		Closed	Not related to mandate – migrant worker/payment of wages.
038	25 July 07	No		Closed	Not related to mandate – termination of employment issue.
039	12 June 07	No		Closed	Insufficient basis on which to proceed.
040	31 July 07	No		Closed	Insufficient information to proceed.
041	6 Aug. 07	No		Closed	Not related to mandate – termination grievance.
042	7 Aug. 07	Yes	8 Aug. 07	Closed	Not within Supplementary Understanding mandate – issue of freedom of association remains. Six labour activists remain imprisoned. Request for ILO visiting rights rejected. The mission of the UN Special Rapporteur on the situation of human rights in Myanmar to Northern Rhakine State visited U Kyaw Min in February 2010.
043	15 Aug. 07	Yes	16 Aug. 07	Closed	Child released, disciplinary action as the result of military inquiry considered inadequate.
044	16 Aug. 07	No		Closed	Not related to mandate – wages/fees payment issue.
045	20 Aug. 07	Yes	10 Sep. 07	Closed	New instructions issued.
046	24 Aug. 07	No		Closed	Not related to mandate – commercial dispute.
047	27 Aug. 07	Yes	12 Sep. 07	Closed	Joint mission undertaken, village chairman dismissed, military officer reprimanded, practice stopped.
048	7 Sep. 07	No		Closed	Insufficient evidence to proceed.
049	7 Sep. 07	Yes	19 Dec. 07	Closed	Compensation package. One perpetrator demoted. Recommendation on prison labour policy review made.

Case	Date received	Accepted	Intervention date	Status	Comments
050	14 Sep. 07	Yes	20 Sep. 07	Closed	Victim released – military inquiry resulted in disciplinary reprimand.
051	20 Sep. 07	Yes	25 Feb. 08	Closed	Practice of forced labour ceased, awareness raising undertaken.
052	20 Sep. 07	Yes	22 Feb. 08	Closed	Forced labour stopped, travel restriction removed.
053	10 Oct. 07	Yes	9 Nov. 07	Closed	Responsible officer disciplined, practice stopped, joint awareness-raising mission undertaken.
054	17 Oct. 07	Yes	18 Oct. 07	Open	Clause 9 breach – negotiations continue, Su Su Nway, Min Aung remain in prison. Request for ILO visiting rights rejected.
055	19 Oct. 07	Yes	31 Oct. 07	Closed	Child released – military inquiry resulted in disciplinary reprimand.
056	25 Oct. 07	Yes	9 Nov. 07	Closed	Child released – military inquiry resulted in disciplinary reprimand.
057	7 Nov. 07	No		Closed	Not related to mandate – cross-border trafficking and HIV and AIDS.
058	15 Nov. 07	Yes	23 Nov. 07	Closed	Child released – summary military trial – recruiting officer disciplined.
059	15 Nov. 07	Yes	30 Nov. 07	Closed	Official translation approved.
060	19 Nov. 07	No		Closed	Not related to mandate – wages claim issue.
061	17 Dec. 07	Yes	19 Dec. 07	Closed	Government agreed to issue discharge in absentia, however victim cannot be located.
062	20 Dec. 07	Yes	28 Dec. 07	Closed	Victim discharged to custody of parents. Responsible recruiting officer officially reprimanded.
063	7 Jan. 08	Yes	14 Jan. 08	Closed	Victim discharged, recruiting officer reprimanded, instruction on humane treatment of trainees issued. Ongoing procedure recommendation made.
064	7 Jan. 08	Yes	11 Feb. 08	Closed	Sentence remitted, victim discharged from military to care of family.
065	8 Jan. 08	No		Closed	Not related to mandate – corruption allegation.
066	14 Jan. 08	Yes	22 Feb. 08	Open	Forced labour ceased, 12 complainants and associated persons released from prison. One complainant remains in prison. Related land issues remain unresolved. Negotiation continues.
067	16 Jan. 08	No		Closed	Not within mandate of forced labour, land confiscation.
068	16 Jan. 08	Yes	25 Feb. 08	Closed	Official dismissed, education activity undertaken, ongoing situation to be monitored.
069	31 Jan. 08	Yes	25 Feb. 08	Closed	Closed in association with case 051 following assessment mission.
070	6 Feb. 08	Yes	12 Feb. 08	Closed	Victim discharged, recommendation on proof of age documentation procedure made.

Case	Date received	Accepted	Intervention date	Status	Comments
071	29 Jan. 08	No		Closed	Not related to mandate – compensation for damaged crop issue.
072	30 Jan. 08	Yes	11 Mar. 08	Closed	Awareness-raising activity undertaken.
073	20 Feb. 08	Yes	3 Mar. 08	Closed	Portering allegation denied, disciplinary action re: serious assault on complainant considered inadequate.
074	21 Feb. 08	No		Closed	Insufficient basis to proceed.
075	3 Mar. 08	Yes	11 Mar. 08	Closed	Victim discharged, responsible officer reprimanded, Government investigation to locate broker continues.
076	3 Mar. 08	Yes	10 Mar. 08	Closed	Child discharged – recruitment officer reprimanded.
077	5 Mar. 08	No		Closed	Not within Supplementary Understanding mandate – freedom of association issue subject to separate consideration.
078	5 Mar. 08	No		Closed	Not within Supplementary Understanding mandate – freedom of association issue subject to separate consideration.
079	14 Mar. 08	No		Closed	Not within Supplementary Understanding mandate – freedom of association issue subject to separate consideration.
080	14 Mar. 08	Yes	8 Apr. 08	Closed	Associate with case 068, ongoing situation to be monitored.
081	17 Mar. 08	No		Closed	Not related to mandate – labour market dispute.
082	17 Mar. 08	No		Closed	Complainants unwilling to be identified.
083	20 Mar. 08	Yes	8 Apr. 08	Closed	Victim discharged. Recruiting officer seriously reprimanded, disciplinary response considered inadequate.
084	26 Mar. 08	No		Closed	Being dealt with in context of case 015.
085	28 Mar. 08	No	2 Aug. 08	Closed	Being dealt with in context of case 066.
086	28 Mar. 08	Yes	7 Apr. 08	Closed	Victim discharged to care of parents. Responsible senior officer reprimanded. Disciplinary action considered inadequate.
087	11 Apr. 08	Yes	11 Apr. 08	Closed	Child discharged – recruitment officer reprimanded.
088	22 Apr. 08	Yes	16 June 08	Closed	Child discharged.
089	19 May 08	Yes	20 June 08	Closed	Victim discharged, desertion charge dropped, responsible officer reprimanded.
090	20 May 08	Yes	17 July 08	Closed	Victim discharged, responsible officer seriously reprimanded. No response in respect of other reported minors in same unit.
091	23 May 08	No		Closed	Complaint withdrawn.
092	27 May 08	No		Closed	Not related to mandate – labour dispute.
093	28 May 08	Yes	16 June 08	Closed	Victim discharged, responsible officer reprimanded.

Case	Date received	Accepted	Intervention date	Status	Comments
094	28 May 08	Yes	2 Sep. 08	Closed	Division-wide joint training seminar for civilian, judicial, police and army authorities undertaken.
095	11 June 08	No		Closed	Not related to mandate – land confiscation.
096	11 June 08	Yes	14 July 08	Closed	Victim discharged, two officers responsible disciplined. One with 28 days' salary deduction and one with 14 days' salary deduction and a serious reprimand.
097	14 June 08	Yes	20 June 08	Closed	Child discharged – recruitment officer reprimanded.
098	15 June 08	Yes	17 June 08	Open	Negotiation for reinstatement of facilitator's law practicing license continues.
099	18 June 08	Yes	24 June 08	Closed	Victim released from prison, discharged from military, desertion sentence remitted – first perpetrator dead, second perpetrator resigned with no disciplinary action applied. Victim seriously ill on release, subsequently deceased.
100	23 June 08	Yes	9 Oct. 08	Open	Government response received, full denial of forced labour, claiming sentry duty to be community work. Communication continues.
101	2 July 08	Yes	9 Oct. 08	Closed	Allegation denied, Ministry of Defence instruction on recruiting process issued.
102	11 July 08	No		Closed	Insufficient evidence to proceed.
103	16 July 08	Yes	18 July 08	Closed	Victim discharged to care of parents.
104	17 July 08	Yes	21 July 08	Closed	Victim located, allegedly now of age and wishing to remain in army. ILO independent verification request denied.
105	21 July 08	Yes	24 July 08	Closed	Child discharged – recruitment officer disciplined by the loss of 28 days' salary.
106	31 July 08	Yes	31 July 08	Closed	Community work related. Government guidance distributed through General Administration Department as to appropriate approach to be adopted.
107	28 July 08	Yes	4 Aug. 08	Closed	Victim discharged, perpetrator fined 28 days' salary.
108	29 July 08	Yes	28 Aug. 08	Closed	Autistic boy of disputed age recruited. Government advises that victim deserted in 2005. Person responsible for his delivery to recruitment centre has himself deserted. No action taken against any perpetrator. Current whereabouts and status of victim unknown.
109	11 Aug. 08	Yes	23 Oct. 08	Open	Joint mission undertaken, negotiated settlement re: forced labour and land confiscation reached, agreements not yet fully applied by local authorities, negotiations continue. Facilitator and lawyer imprisoned, alleged harassment of facilitator's family denied. Lawyer released on judicial review of sentence, March 2010 with legal licence revoked. Negotiations continue.

Case	Date received	Accepted	Intervention date	Status	Comments
110	13 Aug. 08	Yes	10 Oct. 08	Closed	Victim not located, prison labour policy review proposed.
111	14 Aug. 08	Yes	21 Aug. 08	Closed	Victim initially not located. Government advised that victim rejected at recruitment centre. No action taken against identified broker or military personnel. Subsequently established that he was discharged on health grounds after 11 months of service.
112	19 Sep. 08	Yes	29 Sep. 08	Closed	Victim discharged, three military personnel seriously reprimanded.
113	24 Sep. 08	Yes	–	Closed	Parents decided not to pursue the case.
114	25 Sep. 08	Yes	29 Oct. 08	Closed	Victim located, is now of age, decided to remain in the army, ILO not granted private meeting for verification.
115	26 Sep. 08	Yes	29 Oct. 08	Closed	Victim discharged, two military personnel seriously reprimanded.
116	1 Oct. 08	No		Closed	Insufficient information to proceed.
117	1 Oct. 08	Yes	10 Nov. 08	Closed	Victim released, compensation paid, ongoing medical treatment provided, prison labour policy review proposed and agreed in principle, awaiting outcome.
118	1 Oct. 08	No		Closed	Not within Supplementary Understanding mandate – industrial dispute issue.
119	22 Oct. 08	Yes	22 Oct. 08	Closed	Awareness-raising activity undertaken, practice ceased.
120	30 Oct. 08	Yes	6 Nov. 08	Closed	Victim discharged, non-commission officer seriously reprimanded with loss of 28 days' salary and allowances. Disciplinary action considered inadequate.
121	4 Nov. 08	Yes	10 Nov. 08	Closed	Victim discharged, senior officer responsible reprimanded.
122	10 Nov. 08	Yes	20 Feb. 09	Closed	ILO offer of support for the production of guidelines for agricultural policy application to avoid forced labour complaints stands.
123	14 Nov. 08	Yes	14 Nov. 08	Closed	Victim discharged, perpetrator seriously reprimanded with loss 14 days' salary, disciplinary action considered inadequate.
124	14 Nov. 08	No		Closed	Not within Supplementary Understanding mandate – land confiscation.
125	5 Dec. 08	Yes	15 Dec. 08	Closed	Victim discharged. Captain dismissed and sentenced to one year civilian imprisonment with hard labour. Two privates sentenced to three months and one month military imprisonment with hard labour. Warrant Officer and Sergeant both reduced one year pensionable service rights.
126	11 Dec. 08	Yes	11 Dec. 08	Closed	State-wide awareness raising held in Karen State and Northern Shan State, ongoing situation being monitored.

Case	Date received	Accepted	Intervention date	Status	Comments
127	15 Dec. 08	Yes	22 Dec. 08	Closed	Victim discharged, perpetrator had retired, recommendation for criminal prosecution not accepted.
128	14 Jan. 09	Yes	30 Jan. 09	Closed	Victim discharged, junior officer disciplined. Recommendation on policy procedure concerning allocation of responsibility made.
129	30 Jan. 09	Yes	26 Oct. 09	Open	Related to case 01, ILO assessment mission undertaken. Two complainants imprisoned on damage to government property charges, negotiations continue.
130	4 Feb. 09	Yes		Closed	Settlement incorporated within case 66 solutions.
131	13 Feb. 09	Yes	9 Mar. 09	Open	Victim dismissed/ discharged. Communication re: perpetrator continues (related to cases 132 and 133).
132	13 Feb. 09	Yes	22 May 09	Open	Discussion on process for potential discharge continues.
133	13 Feb. 09	Yes	22 May 09	Open	Age on and circumstances of recruitment disputed. Communications continue.
134	16 Feb. 09	No		Closed	Insufficient information to proceed.
135	16 Feb. 09	Yes	9 Mar. 09	Open	Government agreed to victim being discharged – victim ran away from army between date of filing complaint and date that parents arrived at his unit to collect him. As yet not located – communication continues.
136	17 Feb. 09	No		Closed	Not related to mandate – alleged political harassment issue.
137	5 Mar. 09	Yes	13 July 09	Open	Two persons died whilst undertaking alleged forced labour. Government investigation determined it to be community work. Joint awareness-raising seminar involving township local authorities undertaken.
138	6 Mar. 09	Yes	10 Mar. 09	Closed	Victim released from prison, desertion sentence remitted, discharged from the military, perpetrator seriously reprimanded. Punishment considered insufficient.
139	9 Mar. 09	Yes	8 Apr. 09	Closed	Victim released from army, recommendation made re: issuance of instruction and discipline.
140	30 Mar. 09	Yes	8 Apr. 09	Closed	Victim discharged. Responsible Private disciplined with unspecified salary deduction. No action taken against identified broker who denies involvement.
141	30 Mar. 09	Yes	27 Apr. 09	Closed	Victim discharged, recruiting officer seriously reprimanded, penalty deemed inadequate.
142	31 Mar. 09	Yes	18 May 09	Closed	Use of forced labour denied. Summary of north-west command instruction against use of forced labour received. Full text awaited.
143	1 Apr. 09	No		Closed	Forced labour criteria met, victim does not wish to pursue the matter.

Case	Date received	Accepted	Intervention date	Status	Comments
144	22 Apr. 09	Yes	27 Apr. 09	Closed	Victim discharged, recruiting officers (two) seriously reprimanded.
145	22 Apr. 09	Yes	22 Apr. 09	Closed	Rhakine State/Northern Rhakine State awareness-raising session held in Sittway on 7 September 2009, ongoing situation being monitored (see case 225).
146	30 Apr. 09	Yes	30 Apr. 09	Closed	Victim discharged, recruiting officer seriously reprimanded.
147	8 Apr. 09	Yes	8 Apr. 09	Closed	Not within Supplementary Understanding mandate, four labour activists released. Issue of freedom of association remains.
148	15 May 09	Yes	25 May 09	Closed	Victim discharged, recruiting officer seriously reprimanded, disciplinary action considered inadequate.
149	15 May 09	Pending		Pending	Multiple complainants, reluctant to formalize complaint in fear of reprisal. ILO assessment mission in consideration (Kayin State).
150	15 May 09	Pending		Pending	Multiple complainants, reluctant to formalize complaint in fear of reprisal. ILO assessment mission in consideration (East Bago).
151	15 May 09	Pending		Pending	Multiple complainants, reluctant to formalize complaint in fear of reprisal. ILO assessment mission in consideration (Tanintharyi Division).
152	15 May 09	No		Closed	Insufficient information to proceed on alleged forced labour – complaint centred on alleged corruption and land confiscation.
153	21 May 09	Yes	25 May 09	Closed	Victim discharged. No reported action has been taken against two identified military personnel allegedly responsible for the recruitment of 13-year-old boy and one named military officer accused of harassing the victim's family.
154	21 May 09	No		Closed	Not related to mandate – labour dispute issue.
155	22 May 09	Yes	25 May 09	Closed	Victim discharged. Facts on recruitment remain in dispute. No disciplinary action taken against military personnel involved. Recommendation on discharge location policy made.
156	29 May 09	Yes	26 June 09	Closed	Victim released from prison, desertion sentence remitted, discharged from the military.
157	3 June 09	Yes	31 Aug. 09	Closed	Victim discharged. Responsible officer seriously reprimanded.
158	10 June 09	Yes	9 July 09	Closed	Victim discharged. Responsible officer seriously reprimanded with loss of seven days' pay. Recommendation for action re: second perpetrator made. Two further possible victims alleged to be volunteer adults, verification not possible.
159	11 June 09	Yes		Closed	Victim discharged whilst ILO assessment under way.



Case	Date received	Accepted	Intervention date	Status	Comments
160	17 June 09	Yes	6 Oct. 09	Closed	Magway Division awareness-raising seminar undertaken.
161	17 June 09	Yes	10 July 09	Closed	Victim discharged, ILO recommendation re: disciplinary action against perpetrators not accepted.
162	24 June 09	Yes	20 Oct. 09	Open	Awaiting Government response.
163	25 June 09	No		Closed	Forced labour criteria met, victim does not wish to pursue the matter.
164	29 June 09	Yes	16 July 09	Closed	Victim released from prison, discharged from army. Facts on recruitment circumstances disputed. No disciplinary action taken.
165	30 June 09	Yes	9 July 09	Open	Victim located, not under-age recruitment. Alleged abduction for forced labour – 100 more other children allegedly involved. Government questioned veracity of victim's story and indicated that its investigation could not locate the alleged forced labour site. Information on detailed investigation process and findings awaited.
166	13 July 09	Yes	5 Aug. 09	Closed	Victim (14 years old) released from army. Facts of recruitment disputed. Not reported if action taken against medical doctor and military officer as alleged perpetrators.
167	15 July 09	Yes	30 July 09	Closed	Victim discharged, one perpetrator seriously reprimanded with loss of 14 days' salary, second perpetrator identified by victim. National registration card returned to father of victim.
168	15 July 09	Yes	5 Aug. 09	Open	Victim discharged, perpetrator seriously reprimanded. Communication concerning other follow-up recommendations continues.
169	17 July 09	Yes	3 Aug. 09	Open	Qualified agreement for discharge received. Communication on process continues.
170	17 July 09	Yes		Closed	Evidence indicates forced labour. However, complainants not prepared to proceed owing to fear of reprisal.
171	6 Aug. 09	Yes	31 Aug. 09	Closed	Victim discharged from the army, recruiting officer was seriously reprovved. ILO considered disciplinary response inadequate.
172	6 Aug. 09	Yes	8 Sep. 09	Closed	Victim discharged. Warrant Officer seriously reprimanded. Awareness-raising activity undertaken in victim's operational unit.
173	10 Aug. 09	Yes	8 Sep. 09	Closed	Victim discharged suffering from malaria, second Lieutenant reprovved.
174	10 Aug. 09	Yes	8 Sep. 09	Closed	Victim released from prison, desertion charge remitted, discharged from the army.
175	11 Aug. 09	No	11 Aug. 09	Closed	Note related to mandate – land issue.
176	13 Aug. 09	Yes	8 Sep. 09	Closed	Victim discharged. Responsible officer seriously reprovved with loss of 28 days' salary.

Case	Date received	Accepted	Intervention date	Status	Comments
177	13 Aug. 09	Yes	11 Sep. 09	Open	Government rejected complaint arguing there was no factual reference to victim's age. Victim currently in prison for desertion. Documentation shows him to be a minor. Negotiations continue.
178	17 Aug. 09	Yes	20 Oct. 09	Closed	Victim discharged. Recruiting Sergeant seriously reprovved. ILO considers punishment inadequate under the circumstances of case.
179	21 Aug. 09	Yes	15 Sep. 09	Closed	Victim discharged. Responsible Sergeant seriously reprimanded.
180	24 Aug. 09	Yes		Closed	Victim discharged during assessment process.
181	24 Aug. 09	Yes		Closed	Victim discharged during assessment process.
182	24 Aug. 09	Yes	18 Oct. 09	Closed	Victim discharge notified. Responsible Sergeant seriously reprovved, recommendation made that discharges take place close to the victim's home.
183	25 Aug. 09	Yes	15 Sep. 09	Closed	Victim discharged. Responsible Sergeant seriously reprimanded.
184	25 Aug. 09	Yes	20 Oct. 09	Closed	Victim discharged. Recruiting Sergeant clerk seriously reprimanded.
185	25 Aug. 09	Yes	7 Oct. 09	Closed	Victim discharged. Recruiting Sergeant received seven days' salary deduction penalty.
186	25 Aug. 09	Yes	20 Oct. 09	Open	Age at recruitment disputed, victim dismissed from military and sentenced to two years' hard labour for desertion. Communications on proof of age and circumstances of forced recruitment continue.
187	2 Sep. 09	Yes	22 Sep. 09	Open	Government advised victim cannot be located owing to insufficient information. Further inquiries being made.
188	2 Sep. 09	Yes	27 Oct. 09	Closed	Victim discharged, perpetrator seriously reprimanded. Recommendation on awareness raising for known brokers made.
189	2 Sep. 09	Yes	27 Oct. 09	Open	Victim discharged. Corporal reprovved on summary trial, communication on disciplinary response continues.
190	3 Sep. 09	Yes	10 Sep. 09	Closed	Victim discharged from the army. No charges for alleged desertion. One perpetrator deserted and one retired. Recommendations made as regards training of recruiting staff and police.
191	3 Sep. 09	Yes	14 Sep. 09	Closed	Victim discharged, recruitment took place in 1997. No punishment against perpetrator. Recommendations made concerning arrest warrant and desertion charge procedures in case of under-age recruits.
192	4 Sep. 09	No		Closed	Not related to mandate – civil dispute.
193	4 Sep. 09	Yes	15 Sep. 09	Closed	Victim released. Absence of any disciplinary response considered inappropriate, recommendation made.

Case	Date received	Accepted	Intervention date	Status	Comments
194	8 Sep. 09	Yes	27 Oct. 09	Closed	Victim discharged, Sergeant punished with loss of 14 days' salary, further information sought on investigations' findings.
195	8 Sep. 09	Yes	27 Oct. 09	Closed	Victim discharged, recruiting Corporal seriously reprimanded. Recommendation on release location made.
196	8 Sep. 09	Yes		Closed	Victim discharged and released from convict labour camp during assessment process.
197	10 Sep. 09	Yes	28 Oct. 09	Closed	Victim released from prison and discharged from army during assessment. On associated forced labour complaint, recommendation made for counselling local authorities on community work procedures.
198	16 Sep. 09	Yes	28 Oct. 09	Open	Government disputes age, negotiation continues.
199	16 Sep. 09	Pending		Pending	Awaiting further information.
200	22 Sep. 09	Yes	26 Oct. 09	Closed	Victim discharged, perpetrator seriously reprimanded. Recommendation on police training made.
201	24 Sep. 09	Yes	26 Oct. 09	Open	Victim court-martialled and sentenced to seven years' imprisonment for desertion whilst case still with Government for investigation. Request made for his release and for full investigation on under-age recruitment allegation to be completed.
202	24 Sep. 09	Yes		Closed	Insufficient evidence to proceed.
203	24 Sep. 09	Yes		Closed	Insufficient evidence to proceed.
204	28 Sep. 09	Yes		Closed	Evidence indicates forced labour, however, complainants not prepared to proceed owing to fear of reprisal.
205	28 Sep. 09	Yes		Closed	Evidence indicates forced labour, however, complainants not prepared to proceed owing to fear of reprisal.
206	28 Sep. 09	Yes		Closed	Complainants unwilling to pursue.
207	1 Oct. 09	Yes	28 Oct. 09	Closed	Victim discharged, desertion charge dropped, responsible officer seriously reprovved.
208	2 Oct. 09	Yes	28 Oct. 09	Open	Government disputes age and recruitment facts. Negotiation continues.
209	2 Oct. 09	Yes	28 Oct. 09	Open	Victim discharged, further communications taking place covering three other alleged under-age recruits and policy for entry to the military academy.
210	2 Oct. 09	Pending		Pending	Assessment in process.
211	5 Oct. 09	Yes	6 Oct. 09	Closed	Victim discharged, perpetrator deceased.
212	6 Oct. 09	Yes	9 Nov. 09	Open	Government disputes both age on recruitment and the facts of the case. Negotiation continues.

Case	Date received	Accepted	Intervention date	Status	Comments
213	6 Oct. 09	Yes	2 Nov. 09	Closed	Victim discharged. Corporal reprovved after summary trial.
214	12 Oct. 09	Yes	13 Oct. 09	Closed	Victim discharged. Responsible Sergeant reprovved. Recommendation on process made.
215	13 Oct. 09	Yes	9 Nov. 09	Open	Discharge agreed, arrangement for physical discharge being made.
216	15 Oct. 09	Pending		Pending	Assessment in process.
217	16 Oct. 09	Yes	26 Oct. 09	Closed	Victim discharged, perpetrator seriously reprimanded.
218	16 Oct. 09	Yes	4 Nov. 09	Open	Government alleged victim rejected on health grounds at recruitment centre. Victim cannot, as yet, be located. Inquiries continue.
219	19 Oct. 09	Yes	27 Oct. 09	Closed	Victim discharged, Corporal seriously reprimanded. No action taken on Officer and Sergeant who ignored mother's advice that victim is under age.
220	20 Oct. 09	Yes	9 Nov. 09	Open	Awaiting government response.
221	20 Oct. 09	Pending		Pending	Assessment in process.
222	23 Oct. 09	Yes	6 Jan. 10	Closed	Victim discharged, perpetrator seriously reprimanded.
223	23 Oct. 09	Yes	23 Oct. 09	Open	Awaiting government response.
224	29 Oct. 09	Yes	3 Nov. 09	Open	Under-age recruit convicted with death penalty in military court. Recommendation made that as a minor he should have been discharged from the military and prosecuted under the appropriate jurisdiction. Awaiting government response.
225	2 Nov. 09	Yes	2 Nov. 09	Open	Awaiting government response on proposed specific Northern Rhakine State awareness raising following continuing reports of use of forced labour.
226	2 Nov. 09	Yes	2 Nov. 09	Closed	Government investigation found that it was community work but acknowledged that inappropriate procedure adopted. Use of village labour discontinued.
227	3 Nov. 09	Yes	22 Dec. 09	Open	Victim currently serving seven years' prison sentence for desertion. Negotiation continues.
228	11 Nov. 09	Yes	24 Dec. 09	Closed	Victim discharged. Perpetrator seriously reprimanded.
229	12 Nov. 09	Yes	24 Dec. 09	Closed	Victim discharged, training centre corporal seriously reprimanded. Recommendation on review of process and punishment made.
230	16 Nov. 09	Yes	23 Dec. 09	Closed	Victim discharged, regiment Captain reprovved.
231	16 Nov. 09	Yes	23 Dec. 09	Open	Government disputes age on recruitment, negotiation continues.
232	17 Nov. 09	Yes	23 Dec. 09	Closed	Victim rejected on ground of age. Released from informal attachment to military regiment to care of parents.

Case	Date received	Accepted	Intervention date	Status	Comments
233	17 Nov. 09	Yes	23 Dec. 09	Open	Victim discharged, awaiting official advice.
234	24 Nov. 09	Yes	23 Dec. 09	Open	Government disputes age on recruitment, negotiation continues.
235	30 Nov. 09	No		Closed	Not related to mandate – employment dismissal.
236	1 Dec. 09	Yes	23 Dec. 09	Open	Government disputes age on recruitment, negotiation continues.
237	30 Nov. 09	Yes	22 Dec. 09	Closed	Victim discharged, responsible officer reprimanded.
238	1 Dec. 09	Yes	22 Dec. 09	Closed	Victim discharged. Recruitment Centre corporal seriously reprimanded.
239	10 Dec. 09	Yes	23 Dec. 09	Open	Government disputes age on recruitment, negotiation continues.
240	15 Dec. 09	Yes	22 Dec. 09	Open	Government disputes age on recruitment, negotiation continues.
241	16 Dec. 09	Yes	23 Dec. 09	Open	Government advised unable to locate the victim. Further identification and location information provided. Awaiting government response.
242	21 Dec. 09	Yes	22 Dec. 09	Open	Government disputes age on recruitment, negotiation continues.
243	23 Dec. 09	Yes	24 Dec. 09	Open	Victim imprisoned for desertion. Government disputes age on recruitment. Negotiation continues.
244	5 Jan. 10	Yes	7 Jan. 10	Open	Awaiting government response.
245	5 Jan. 10	Yes	8 Jan. 10	Closed	Victim discharged, perpetrator seriously reprimanded.
246	6 Jan. 10	Yes	8 Jan. 10	Closed	Victim discharged, perpetrator given monetary fine on summary trial.
247	8 Jan. 10	Yes	12 Jan. 10	Open	Government rejected complaint, does not accept proof of age documentation submitted, communication continues.
248	8 Jan. 10	Pending		Pending	Further information being obtained.
249	12 Jan. 10	Pending		Pending	Further information being obtained.
250	12 Jan. 10	Yes	26 Feb. 10	Open	Victim discharged, awaiting Government official confirmation.
251	14 Jan. 10	Yes	12 Feb. 10	Closed	Victim discharged.
252	21 Jan. 10	Pending		Pending	Further information being obtained for assessment purposes.
253	21 Jan. 10	Yes	22 Apr. 10	Open	Awaiting government response.
254	25 Jan. 10	Yes		Closed	Victim discharged whilst ILO assessment under way.
255	26 Jan. 10	Yes		Closed	Victim discharged whilst ILO assessment under way.
256	27 Jan. 10	Yes	25 Feb. 10	Open	Awaiting government response.
257	27 Jan. 10	Yes	12 Feb. 10	Open	Awaiting government response.

Case	Date received	Accepted	Intervention date	Status	Comments
258	27 Jan. 10	Yes	25 Feb. 10	Open	Victim discharged, communication on punishment continues.
259	1 Feb. 10	Yes	2 Mar. 10	Open	Awaiting government response.
260	2 Feb. 10	Yes	1 Mar. 10	Open	Awaiting government response.
261	2 Feb. 10	Yes	23 Apr. 10	Open	Awaiting government response.
262	2 Feb. 10	No		Closed	Not related to mandate – commercial dispute and alleged corruption.
263	5 Feb. 10	No		Closed	Not related to mandate – migrant worker, occupational safety and health compensation.
264	5 Feb. 10	No		Closed	No causal link between alleged harassment and ILO activity.
265	8 Feb. 10	Yes	4 Mar. 10	Open	Human trafficking for forced labour case. Rejected by Government's Forced Labour Working Group. Referred to ILO anti-human trafficking project in neighbouring country and Myanmar Government anti-trafficking unit. One victim returned. Investigation continued.
266	8 Feb. 10	No		Closed	Not related to mandate – employment dismissal.
267	9 Feb. 10	Yes	26 Feb. 10	Open	Awaiting government response.
268	9 Feb. 10	Yes	9 Mar. 10	Open	Awaiting government response.
269	9 Feb. 10	Yes	25 Mar. 10	Open	Awaiting government response.
270	9 Feb. 10	Pending		Pending	Further information being sought for assessment process.
271	10 Feb. 10	Yes	5 Mar. 10	Open	Awaiting government response.
272	10 Feb. 10	Yes	5 Mar. 10	Open	Awaiting government response.
273	15 Feb. 10	Yes	22 Apr. 10	Open	Awaiting government response.
274	15 Feb. 10	Pending		Pending	Assessment in process.
275	16 Feb. 10	Yes	5 Mar. 10	Open	Awaiting government response.
276	17 Feb. 10	Pending		Pending	Further information being sought for assessment process.
277	18 Feb. 10	Pending		Pending	Assessment in process.
278	19 Feb. 10	Yes	15 Mar. 10	Open	Awaiting government response.
279	19 Feb. 10	Yes	23 Apr. 10	Open	Awaiting government response.
280	19 Feb. 10	No		Closed	Not related to mandate – land eviction.
281	22 Mar. 10	Yes	22 Apr. 10	Open	Awaiting government response.
282	25 Feb. 10	Pending		Pending	Assessment in process.
283	25 Feb. 10	Pending		Pending	Assessment in process.
284	26 Feb. 10	Yes	19 Apr. 10	Open	Awaiting government response.
285	26 Feb. 10	No		Closed	No causal link between alleged harassment and ILO activity.
286	3 Mar. 10	Pending		Pending	Assessment in process.

Case	Date received	Accepted	Intervention date	Status	Comments
287	3 Mar. 10	Pending		Pending	Assessment in process.
288	3 Mar. 10	Pending		Pending	Assessment in process.
289	5 Mar. 10	Yes	25 Mar. 10	Open	Awaiting government response.
290	5 Mar. 10	Yes	23 Apr. 10	Open	Awaiting government response.
291	5 Mar. 10	Pending		Pending	Assessment in process.
292	15 Mar. 10	Pending		Pending	Assessment in process.
293	15 Mar. 10	Pending		Pending	Assessment in process.
294	16 Mar. 10	Pending		Pending	Assessment in process.
295	16 Mar. 10	Pending		Pending	Assessment in process.
296	16 Mar. 10	Pending		Pending	Assessment in process.
297	17 Mar. 10	Pending		Pending	Assessment in process.
298	17 Mar. 10	Pending		Pending	Assessment in process.
299	17 Mar. 10	Pending		Pending	Assessment in process.
300	22 Mar. 10	Yes	23 Apr. 10	Open	Awaiting government response.
301	23 Mar. 10	Yes	26 Apr. 10	Open	Awaiting government response.
302	30 Mar. 10	Pending		Pending	Assessment in process.
303	31 Mar. 10	Yes	22 Apr. 10	Open	Awaiting government response.
304	1 Apr. 10	Yes	09 Apr. 10	Open	Referred to anti-trafficking unit, awaiting further contact.
305	1 Apr. 10	Yes	09 Apr. 10	Open	Awaiting government response.
306	5 Apr. 10	Yes	23 Apr. 10	Open	Awaiting government response.
307	5 Apr. 10	Pending		Pending	Assessment in process
308	6 Apr. 10	No		Closed	Not within mandate, freedom of the press
309	6 Apr. 10	Pending		Pending	Assessment in process
310	6 Apr. 10	Pending		Pending	Assessment in process
311	6 Apr. 10	Pending		Pending	Assessment in process
312	11 Nov. 09	Yes		Closed	External trafficking for forced labour – referred to ILO Thailand – 51 victims rescued
313	8 Apr. 10	Pending		Pending	Assessment in process
314	8 Apr. 10	Pending		Pending	Assessment in process
315	8 Apr. 10	Pending		Pending	Assessment in process
316	9 Apr. 10	Pending		Pending	Assessment in process
317	21 Apr. 10	Pending		Pending	Assessment in process
318	21 Apr. 10	Pending		Pending	Assessment in process
319	23 Apr. 10	Pending		Pending	Assessment in process
320	29 Apr. 10	Pending		Pending	Assessment in process
321	3 May 10	Pending		Pending	Assessment in process

<b>Case</b>	<b>Date received</b>	<b>Accepted</b>	<b>Intervention date</b>	<b>Status</b>	<b>Comments</b>
322	4 May 10	Pending		Pending	Assessment in process
323	5 May 10	Pending		Pending	Assessment in process
324	6 May 10	Pending		Pending	Assessment in process
325	7 May 10	Pending		Pending	Assessment in process
326	7 May 10	Pending		Pending	Assessment in process
327	7 May 10	Pending		Pending	Assessment in process
328	7 May 10	Pending		Pending	Assessment in process
329	7 May 10	Pending		Pending	Assessment in process
330	7 May 10	Pending		Pending	Assessment in process
331	7 May 10	Pending		Pending	Assessment in process



**D. Conclusions adopted by the Committee on the Application of Standards in its special sitting to examine developments concerning the question of the observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29) (International Labour Conference, 98th Session, June 2009)**

The Committee noted the observations of the Committee of Experts and the report of the ILO Liaison Officer in Yangon that included the latest developments in the implementation of the complaints mechanism on forced labour established on 26 February 2007 with its trial period extended on 26 February 2009 for a further 12 months. The Committee also noted the discussions and decisions of the Governing Body of November 2008 and March 2009. It also took due note of the statement of the Government representative and the discussion that followed.

Since its last session, the Committee acknowledged some limited steps on the part of the Government of Myanmar: the further extension of the Supplementary Understanding for another year; certain activities concerning awareness raising of the complaints mechanism established by the Supplementary Understanding; certain improvements in dealing with under-age recruitment by the military; and the distribution of publications relating to the Supplementary Understanding.

The Committee was however of the view that these steps are totally inadequate. The Committee, recalling the conclusions reached in its special sitting at the 97th Session of the Conference (June 2008), again placed emphasis on the need for the Government of Myanmar to work proactively towards the full implementation of the recommendations of the Commission of Inquiry appointed by the Governing Body in March 1997 under article 26 of the Constitution. It also recalled the continued relevance of the decisions concerning compliance by Myanmar with Convention No. 29 adopted by the Conference in 2000 and 2006 and all the elements contained therein.

The Committee fully supported all of the observations of the Committee of Experts and the decisions of the Governing Body referred to above, and had the expectation that the Government of Myanmar would move with urgency to implement all the actions requested.

The Committee strongly urged the Government to fully implement without delay the recommendations of the Commission of Inquiry and the comments and observations of the Committee of Experts, and in particular to:

- (1) take necessary steps without any further delay to bring the relevant legislative texts, in particular the Village Act and the Towns Act, into line with Convention No. 29;
- (2) amend paragraph 15 of Chapter VIII of the new Constitution in order to bring it into conformity with Convention No. 29;
- (3) ensure the total elimination of forced labour practices that were still persistent and widespread;
- (4) ensure that perpetrators of forced labour, whether civil or military, were prosecuted and punished under the Penal Code;

- (5) issue an authoritative statement at the highest level clearly confirming to the people of Myanmar the Government's policy for the elimination of forced labour and its intention to prosecute perpetrators;
- (6) approve a simply-worded brochure in accessible languages on the functioning of the Supplementary Understanding; and
- (7) eliminate the continuing problems in the physical ability of victims of forced labour or their families to complain and immediately cease harassment, retaliation and imprisonment of individuals who used or facilitated the use of the complaints mechanism.

The Committee specifically called on the Government of Myanmar to take every opportunity, including through the use of all of the various media channels available, to increase the awareness of the people as to the law against the use of forced labour, their rights under that law and of the availability of the complaints mechanism as a means of exercising those rights.

The Committee, whilst acknowledging the continued use of joint awareness-raising seminars/symposia, called on the Government and the ILO Liaison Officer to redouble these efforts towards ensuring a full understanding on the part of all officials (military and civil), as to their responsibilities under the law.

The Committee noted with serious concern the continued human rights violations in Myanmar including the detention of Daw Aung San Suu Kyi. The Committee called for her release and that of other political prisoners, as well as labour activists. It further called for the immediate release of those persons who were associated with the operation of the complaints mechanism and who were currently incarcerated.

The Committee called for the strengthening of the capacity available to the ILO Liaison Officer to assist the Government in addressing all of the recommendations of the Commission of Inquiry and to ensure the effectiveness of the complaints mechanism, and expected the Government to cooperate fully in that regard.

## **E. Document before the Governing Body at its 306th Session (November 2009) and conclusions of the Governing Body**



INTERNATIONAL LABOUR OFFICE

GB.306/6

306th Session

**Governing Body**

Geneva, November 2009

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## **FOR DEBATE AND GUIDANCE**

SIXTH ITEM ON THE AGENDA

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

#### **Introduction**

1. This report updates the activities of the ILO Liaison Officer in Yangon since the 98th Session (2009) of the International Labour Conference. It covers information on the operation of the Supplementary Understanding regarding complaints on the use of forced labour; various other activities undertaken by the Liaison Officer, Mr Stephen Marshall, and his assistant Ms Piyamal Pichaiwongse; a report on the final outcomes of the post-cyclone Nargis project response; and brief information on ILO participation in the UN country team activities in Myanmar.
2. For ease of reference, Appendix I contains the conclusions concerning Myanmar of the 304th Session of the Governing Body (March 2009); Appendix II presents details of activities undertaken between the 304th Session of the Governing Body and the 98th Session of the Conference; Appendix III includes the conclusions of the special sitting on Myanmar of the Committee on the Application of Standards of the 98th Session of the Conference; and Appendix IV contains the updated register of cases.

#### **Activity under the complaints mechanism**

3. The level of activity under the Supplementary Understanding has increased both in respect of the number of complaints received and the follow-up work required for the treatment of complaints. While a total of 152 complaints had been received by 15 May 2009, that number has increased to 223, as at 28 October 2009. This represents an increase of 71 new cases compared to 31 new cases for the same period in 2008. These latest cases include 52 cases of alleged under-age recruitment, 17 cases of alleged forced labour with two cases having been assessed as outside the Liaison Officer's mandate. Over the period, 48 cases have been submitted for investigation and 29 cases have been closed with varying degrees

of satisfaction. Currently 58 cases either await a response from the Government or are under continuing negotiation, and 18 cases are being assessed for possible submission.

4. This increase in complaints received appears to result from heightened awareness generally of citizens' rights under the law, the maturing and expansion of the facilitators' network, and an increased readiness to present complaints. However, it would not be correct to interpret this as an increase in the incidence of forced labour or under-age recruitment. Awareness levels, particularly in rural areas, remain low and the confidence to complain will not be assisted by recent incidents of complainant and facilitator harassment, which have received considerable media coverage. This issue is addressed separately below.
5. The Government Working Group for the Elimination of Forced Labour continues to respond to complaints through the good offices of the Ministry of Labour (MOL). A constructive meeting was held with the full Working Group following the 98th Session of the International Labour Conference and regular meetings are held with the Director-General of the Labour Department who has delegated responsibility for operational activity. When a victim of under-age recruitment is identified with proof of age and sufficient indication as to his whereabouts, he is regularly discharged from the military. Although most allegations of forced labour continue to be denied by the Government, parallel action is usually taken by the authorities to ensure that the practice does not continue and that further complaints are not received from that area. In the assessment process, every attempt is made to ensure that complaints submitted are genuine. Government responses at times reflect the sensitivity to what is perceived as political activism, and unfortunately this sometimes outweighs the facts of the case.
6. The complaints mechanism contained in the Supplementary Understanding remains, as the name indicates, complaints driven. The ILO Liaison Officer does not have the authority to initiate complaints or formally raise a case solely on the basis of his own observation or information.
7. While the declared objective of the Government is to put an end to the use of forced labour and to the recruitment of under-age children, this cannot be achieved by passive educational activity alone; the imposition of meaningful penalties on perpetrators is a necessary additional component. This continues to be a concern, particularly in respect of cases involving military personnel. The continued and repeated illegal recruitment of children by military personnel in the same recruitment centres and regiments attests to this need.
8. Assessment missions have been undertaken in Magway Division and a joint mission to Bago Division is planned for 30 October 2009 to follow up on a case in which the facts are in dispute.

## **Awareness raising**

9. A number of joint awareness-raising activities have recently been undertaken. A joint ILO/MOL seminar has been held in Rhakine State with participants representing both the civil and military authorities. A joint presentation was made to a senior township judges refresher training programme. The ILO Liaison Officer, accompanied by a Department of Labour representative, visited villagers and socio-economic project committees set up by the company Total in nine villages in the proximity of the Yadana pipeline. This provided an opportunity to observe the situation in the region and discuss the rights and responsibilities of the local population under the law.

10. An interview with the Liaison Officer on the law and practice concerning forced labour was printed in the biweekly edition of *Eleven magazine*, a widely distributed and read publication. An awareness-raising seminar in Magway Division, an area from which numerous and serious complaints have been sourced, is scheduled for 5 November 2009. An ILO-sponsored workshop on the law and practice in respect of forced labour including under-age recruitment is scheduled to be held in December 2009 for United Nations and selected international non-governmental organizations programme staff from both their Myanmar headquarters and the field. Some 16,000 copies of the translation of the Supplementary Understanding have been circulated. Unfortunately, the Government has not yet agreed to the production of a simply-worded brochure outlining the law against forced labour and the procedures available to exercise rights under the law.

## Harassment and judicial actions

11. A number of serious cases of apparent harassment and judicial retaliation against complainants, facilitators and other persons associated with complaints have taken place in the reporting period. All arise out of 11 complaints from 328 farmers over the use of forced labour in Magway Division. Seven of those cases stem from Aunglan Township and one serious case from Natmawk Township. Six of these eight complaints remain unresolved despite lengthy negotiations. In three of those cases agreements for their resolution have been reached but they have not been satisfactorily applied. Serious harassment, including lengthy and intense interrogations and judicial action, has taken place against complainants at various stages of the process, some of it in obvious retaliation for their attempts to apply the settlement arrangements.
12. In one case (case 129) complainants in a previously resolved complaint (case 001), in which forced labour was proven, have again been subjected to forced labour on the same land. They have been refused access to their traditional land contrary to the settlement reached, which had granted them the right to return to their land. Three of them, U Nyant Myint, Ko Thura Aung and Ko Kalar have been detained and charged with causing damage to government property in respect of the trees which they were forced to plant on their land, which was the basis for the original complaint.
13. In another case (case 066) the ILO Liaison Officer and a Government Working Group representative negotiated a comprehensive written agreement for the resolution of a complaint concerning the confiscation of land as a penalty for refusing to undertake forced labour. Part of that settlement granted the complainants the right to return to their traditional land and to grow crops as they determined. Subsequently, 12 persons have been charged and sentenced to prison terms ranging from nine months to four years and nine months, for trespass on that land and damage to property as they prepared the land for the next harvest. A 13th complainant has been imprisoned for failing to repay his agricultural loan at an old interest rate which was to have been lowered as part of the settlement. It is understood that in its determination of the case, the court referred to the written agreement for settlement under the Supplementary Understanding as “unofficial” and concluded that it therefore provided no grounds on which its judgement should be based.
14. In respect of another forced labour case (case 109), the agreed settlement for the return of land confiscated by the army or the allocation of replacement land has not been implemented. In addition, the facilitator, U Zaw Htay, and his lawyer remain in prison despite the call for their release included in the conclusions of the 304th Session of the Governing Body. Individual complainants have been interrogated in military premises by senior personnel on the way complaints to the ILO have been prepared, and have been required under threat to sign confessions, which in practice undermine their fellow complainants and the ILO complaints process.

15. It would thus appear that there is a serious “disconnect” between the desire of the central government authorities to stop the use of forced labour and the behaviour of the local authorities, both civilian and military, who do not accept settlements reached, continue traditional forced labour practices, and harass those who attempt to exercise their rights under the law. Previous reports of the Liaison Officer have already referred to this disconnect. Given the seriousness of the situation, the Liaison Officer has formally proposed to the Working Group that joint action be taken to consider all of these issues collectively with a view to achieving lasting solutions. This proposal has not as yet been accepted, although the agreement to a joint awareness-raising seminar in the region (referred to in paragraph 10 above) can be seen as a small first step in that direction.
16. There is nothing new to report on the cases of imprisoned activists who have been mentioned in earlier conclusions of the Governing Body. Su Su Nway, U Min Aung and the six labour activists Thurein Aung, Kyaw Kyaw, Wai Linn, Nyi Nyi Zaw, Kyaw Min and Myo Min remain in prison, despite repeated calls from the Governing Body for their release.

## **Children in armed conflict**

17. The ILO Liaison Officer, on behalf of the Country Task Force on Monitoring and Reporting on Children and Armed Conflict (CTFMR), has accepted responsibility for the monitoring, reporting and intervention activity in respect of the Security Council Resolution 1612 (2005). This work falls within the scope of the ILO Forced Labour Convention, 1930 (No. 29), and within the application of the Supplementary Understanding.
18. The first meeting between representatives of the CTFMR and the Government Working Group established for this purpose was held on 20 and 21 August and a second meeting is scheduled for 3 November 2009. The primary objective is the agreement of a joint CTFMR/government action plan.
19. The Government Committee on the Prevention of Military Recruitment of Under-age Children reports considerable activity in the training of military personnel on the law concerning under-age recruitment.
20. As at 28 October 2009, 102 complaints concerning under-age recruitment had been received, of which 89 have been submitted under the Supplementary Understanding. As a result, 59 children have been discharged from the military, 30 cases are still under Government investigation or are the subject of ongoing communication, and nine await ILO initial assessment prior to submission. All children discharged through this process are referred to UNICEF for reintegration and rehabilitation support through the services of their partner organizations.
21. With the support of funding received from the Government of Germany a small sub-unit has been established for dealing with under-age recruitment cases under the Supplementary Understanding, as well as for monitoring and reporting on the child soldier situation nationwide. A programme officer has been selected and will join the staff once the Government has processed the submitted visa application.

## **ILO post-Nargis infrastructure project**

22. The workplan between the ILO and the Ministry of Labour on the infrastructure project in the Irrawaddy Delta area expired on 30 September 2009. During the period 31 October

2008 to 30 September 2009 the project undertook work in 65 villages in the cyclone-affected area. A total of 159 community contracts were governed by community committees established for the purpose. Some 7,404 people were engaged for a total of 80,491 days of work, under the technical supervision of the ILO engineering team, building 87.6 kilometres of raised concrete footpaths, 25 jetties, 55 bridges and 40 latrines. Awareness-raising seminars on employment rights, forced labour, and under-age recruitment were held throughout the project for project employees with a further 7,000 or more villagers in attendance. The Government announced that it was unable to extend the project period owing to the workload prior to the parliamentary elections. The Liaison Officer is hopeful that similar activities could be considered at a later stage. The whole ILO engineering team has now been engaged by the United Nations Development Programme (UNDP) to continue work on that organization's infrastructure programmes.

## **UN Country Team activities**

23. As part of the UN Country Team, the ILO assumes an active role on the nationwide Inter-Agency Protection Group and the Human Rights Subgroup. The Human Rights Subgroup has met the Government Human Rights Body on one occasion and is awaiting agreement for a further meeting with the objective of identifying common human rights priorities for joint action.

Geneva, 4 November 2009.

*Submitted for debate and guidance.*

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**Decision on the sixth item on the agenda:  
Developments concerning the question of the  
observance by the Government of Myanmar of  
the Forced Labour Convention, 1930 (No. 29)**

**Governing Body conclusions**

*The Governing Body:*

- (a) *took note of the report of the Liaison Officer and listened with interest to the statement made by the Permanent Representative of the Government of the Union of Myanmar;*
- (b) *in the light of the information available, and considering the interventions made during the debate, it concluded as follows:*
- *full compliance with the Forced Labour Convention, No. 29 (1930), implementation of the recommendations of the Commission of Inquiry and the complete elimination of the use of forced labour in Myanmar have not yet been achieved; all activity must be targeted to this end;*
  - *the Governing Body recalls its previous conclusions and those of the International Labour Conference and reconfirms their continuing validity; this concerns particularly accessible material in local languages for awareness raising and the need for an authoritative statement by the senior leadership against the continued use of forced labour and the need to respect freedom of association;*
  - *the Governing Body notes the Government's cooperation regarding the complaints submitted, as well as the joint Government/ILO awareness-raising activities; in continuing the arrangements under the Supplementary Understanding, the capacity of the ILO to deal with complaints throughout the country should be strengthened; cases of forced labour should be reported and followed up consistently so that the practices cease and the perpetrators are prosecuted and punished; particular attention should be paid to monitoring infrastructure projects such as oil and gas pipelines; the Governing Body calls for and encourages progress towards achieving greater compliance with the international obligations of Myanmar, including Convention No. 29, particularly where local practices do not respect the aim of abolishing forced labour;*
  - *the Governing Body is deeply concerned about the continued imprisonment of a number of persons who have complained of being*



*subjected to forced labour or who have been associated with such complaints; this is in total contradiction with the Government of Myanmar's own commitments under the Supplementary Understanding and puts into question the good faith necessary for the implementation of the Supplementary Understanding; if this situation is not promptly remedied, it will undermine the advances made to date; the Office should continue to examine potential legal implications of the failure to comply with Convention No. 29;*

- the Governing Body calls for the immediate release of all persons currently detained being complainants, facilitators and others associated with the Supplementary Understanding complaints mechanism, as well as for the unconditional release of all imprisoned political and labour activists;*
- the Governing Body repeats its previous call for the Government of Myanmar to facilitate, as provided for in article 8 of the Supplementary Understanding, the adjustments to the staff capacity of the Office of the Liaison Officer so that an increased workload could be met; this includes the presence of an additional international recruited professional appointed by the ILO.*



## **F. Document before the Governing Body at its 307th Session (March 2010) and conclusions of the Governing Body**



INTERNATIONAL LABOUR OFFICE

Governing Body

GB.307/6  
307th Session

Geneva, March 2010

### **FOR DEBATE AND GUIDANCE**

SIXTH 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. Introduction**

1. Activity since the last report to the Governing Body<sup>1</sup> has been targeted at operationalizing the conclusions of that debate (see Appendix I). Progress has been made in a number of areas as reported below. A mission was undertaken from 17 to 24 January 2010 by Mr Kari Tapiola, Executive Director, accompanied by Ms Karen Curtis, Deputy Director of the International Labour Standards Department with special responsibility for freedom of association, and Mr Drazen Petrovic, Principal Legal Officer in the Office of the Legal Adviser. A summary of the outcomes of the mission is reported below. During the mission an extension of the trial period of the Supplementary Understanding was signed, covering a further 12 months from 26 February 2010.

### **II. Operation of the Supplementary Understanding**

2. Since the last report, 65 new complaints were received. Of these, 35 were assessed as falling within the scope of the Supplementary Understanding and were submitted as cases to the Government Working Group for the Elimination of Forced Labour (Working Group) for investigation towards resolution; 23 cases required further assessment or information before eventual submission; and seven cases were considered not to be within the ILO's forced labour mandate (see Appendix II).
3. Over the same period, 35 cases were closed with the case register recording various degrees of satisfaction with the resultant outcomes.

<sup>1</sup> GB.306/6.

4. In the period between the Supplementary Understanding's inception in February 2007 and 9 March 2010, a total of 289 complaints have been received. From these, 198 were accepted as cases, of which 70 remain open either awaiting Government responses or being the subject of continuing communication, and 29 either require more information prior to submission or are currently under assessment. The Government continues to respond to complaints lodged in a timely manner.
5. The structure of complaints has changed somewhat in recent time. The vast majority of new complaints are specific to under-age recruitment with six complaints on what can be considered as traditional forced labour received since the last report. Whilst there are indications from some parts of the country that the actual incidence of forced labour imposed by civilian authorities has diminished to some extent, this on its own would not account for the reduction in complaints. The use of forced labour, particularly by the military, remains an issue throughout the country. In the view of the Office, the imprisonment of persons associated with the use of the complaints mechanism may have had an effect on the reduced confidence to lodge forced labour complaints. No similar consequences have been reported by those who have filed complaints on under-age recruitment. The recent prison releases, the planned brochure campaign and continuing awareness-raising activity (see below), will hopefully increase confidence in the functioning of the complaints mechanism as set out in the Supplementary Understanding.
6. The Government underlined its concerns that the complaints mechanism should not be used for political ends and that the protection provisions of the Supplementary Understanding should not be used to justify activities that are contrary to the law. The Liaison Officer continued to insist that each complaint would be examined strictly on the basis of the facts reported.

### **III. Awareness raising**

7. Since the last report, the Assistant to the Liaison Officer made two presentations to UNICEF-led recruitment officer training programmes and one presentation to middle-level government officials on the obligations under international labour standards as part of a five-day UNITAR training seminar. A two-day seminar was held for 54 field staff from UN organizations and international NGOs on the law relating to forced labour, observation skills and information reporting processes. Presentations were also made to field staff of UNHCR and UNDP as part of their in-house staff development and planning processes. A further joint ILO–Ministry of Labour presentation has been made to a training course for deputy township judges.
8. Broad in-country publicity resulted from seven different articles that were published in various domestic newspapers with nationwide coverage. These covered such matters as the renewal of the Supplementary Understanding with reference made to the complaints mechanism; the Government's agreement to the publication of an easily understandable brochure; the Penal Code and Military Regulations in force on forced labour including under-age recruitment and how complaints can be lodged under the Supplementary Understanding; the non-harassment guarantees under the Supplementary Understanding; the imprisonment of military personnel for the recruitment of minors; and the recent publication of an ILO booklet on the rights of migrant domestic workers in Thailand.
9. During the meeting of the ILO mission with the Minister of Labour, U Aung Kyi, it was confirmed that the Government agrees to the publication of a brochure, in Myanmar language, explaining in simple terms the law pertaining to forced labour, including under-age recruitment, and the procedure for lodging a complaint. The Working Group has

proposed that a comprehensive discussion with the Liaison Officer on the previously submitted draft text takes place after the current Governing Body session.

10. Proposals made for the next three joint awareness-raising seminars are as follows:

- in Northern Rhakine State in follow up to a number of reports of continuing use of forced labour in that area;
- community and local authority seminars along the proposed path of the Myanmar–China pipeline in accordance with the November 2009 Governing Body conclusions;
- in Bago Division, which is an area with a high incidence of reported complaints.

#### **IV. Under-age recruitment and child soldiers**

11. In addition to his work in respect of under-age recruitment complaints under the Supplementary Understanding, the Liaison Officer continued to play a role as part of the Country Task Force for Monitoring and Reporting (CTFMR) under Resolution 1612 of the Security Council. As reported above, at the invitation of both the armed services and the Ministry of Social Welfare, presentations were made at training courses for recruitment officers. The CTFMR met the Government Committee for the Prevention of the Recruitment of Minors to discuss further the substance of a proposed joint action plan against under-age recruitment. The ILO mission also met this high-level committee. The meeting was constructive and assisted in clarifying the role of the ILO, under both the Supplementary Understanding and as part of the CTFMR, as well as providing the opportunity to discuss practical matters associated with the application of the Supplementary Understanding. The Government Committee has been very active in training of military personnel and itself monitors the performance of recruiting centres in respect of recruitment of minors.

12. Two authorized inspection visits to recruitment centres were undertaken in conjunction with the CTFMR, while the Liaison Officer accepted an invitation to visit the Military Service Academy (officers training) and the Military Services Technological Institute (engineer officer training) establishments.

13. Since the last report, one officer has been dismissed from the military and sentenced to one year's imprisonment with hard labour in a civilian prison and two privates were sentenced to military imprisonment with hard labour for three months and one month respectively, having been convicted for breach of the military regulations on under-age recruitment. There were no notifications during the period under review of sentences being imposed under the Penal Code.

14. As of 9 March 2010, in all 154 complaints alleging under-age recruitment have been received resulting in 84 children being discharged to date.

#### **V. Extension of the Supplementary Understanding trial period**

15. In addition to constructive and open discussions in Naypyidaw with the Minister of Labour and the Government Committee for the Prevention of the Recruitment of Minors, as reported above, the ILO mission held an extensive meeting with the Working Group for the Elimination of Forced Labour. The operation of the Supplementary Understanding was reviewed after a discussion which reconfirmed the principles contained in it and addressed

practical issues for the further advancement of the policy for the elimination of forced labour. The extension of the Supplementary Understanding trial period was agreed upon for a further 12 months from 26 February 2010 without change.

16. After a visit to Bagan, the mission travelled to Aungmye Township to discuss with local authorities, villagers and, in particular, the families of imprisoned complainants. In Yangon the mission met with the UN Country Team, the diplomatic corps and a group of the volunteer facilitators supporting the application of the complaints mechanism. Meetings were also held with the Myanmar Federation of Chambers of Commerce and Industry following which a proposal is under consideration to possibly produce a Myanmar language version of "Combating forced labour: A handbook for employers". The mission also met with the Workers' Co-ordination Committee established for the election of a Workers' delegate to the International Labour Conference.
17. The mission was extended full cooperation and courtesy by the Government. It was not, however, possible for it to visit certain persons who have been associated with the complaints procedures and are currently in prison.
18. The mission could note a certain number of steps forward. It is reasonable to expect that the increased publicity, continuing awareness-raising activities and the yet to be distributed brochure will increase public understanding of rights provided under the law. It is similarly expected that the continuing operation of the Supplementary Understanding, supported by the ongoing training of government personnel (civil and military) will increase understanding on the responsibilities that the law imposes on all.
19. The granting of the still awaited visa for the engagement of an additional international professional staff member would better ensure the ability to support Government efforts for the full elimination of forced labour in Myanmar.

## **VI. Freedom of association**

20. The national Constitution adopted in 2008 contains an article providing for freedom of association and the right to organize. The Government of Myanmar has recently announced its intention to introduce a Trade Union Act into the new Parliament which will result from the national elections to be held this year. During the visit of the ILO mission, a meeting took place with senior civil servants from several ministries and the Supreme Court at which Ms Karen Curtis made an extensive presentation on Convention No. 87. An open discussion took place on the Government's principles and concepts of the proposed legislation, leading to a request from the Government for further exchanges and advice on the issue.

## **VII. Release of imprisoned persons**

21. The report to the 306th Session of the Governing Body (November 2009) pointed out that 17 complainants or persons otherwise associated with the operation of the Supplementary Understanding had been imprisoned. Discussions on the circumstances and implication of the sentences of these persons took place during the ILO mission. The Government reviewed the situation and, following this, 13 of the persons were released. One of them had completed his sentence, 11 were released following a significant reduction of their sentences following an appeal to the district court and lawyer U Pho Phyu was released following the reduction of his sentence on judicial review.

22. The Liaison Officer undertook a follow-up assessment mission to Aunglan Township from 5 to 7 March 2010. He made site visits, met the released farmers and the families of those still in detention, and held consultations with groups of complainants on the current situation and the way forward in respect of their various cases.
23. The Court of Appeal decision concerning two of the remaining imprisoned complainant farmers is awaited and negotiations continue in respect of the release of one further farmer and the facilitator U Zaw Htay. No other persons mentioned in earlier Governing Body conclusions have been released.

## **VIII. Other forced labour-related activity**

24. At the invitation of the Government, through the UN Resident Representative, the Liaison Officer and his assistant joined the UN Special Rapporteur on the situation of human rights in Myanmar on his mission to the Rhakine State. This provided useful opportunities to meet and discuss forced labour issues with local government officials, UN and international NGO field staff and community members in both Rhakine State and, in particular, Northern Rhakine State. The mission provided the opportunity for a visit to labour activist U Kyaw Min in Buthidaung prison. He is in good health, and the prison conditions have improved over the last six to eight months.
25. As part of the UN Country Team subgroup on human rights, the Liaison Officer has been able to meet the Government Human Rights Committee to discuss procedures and obligations under the Universal Periodic Review process (Myanmar hearing 2011). Training on the human rights-based approach to programming has started for UN staff and, by agreement with the Government, is planned for senior government officials in the near future.
26. Again, in conjunction with the appropriate UN Country Team grouping, the Liaison Officer and his assistant are supporting the Government in respect of the forced labour aspects of human trafficking and labour migration.

Geneva, 12 March 2010.

*Submitted for debate and guidance.*

# **307th Session of the Governing Body of the International Labour Office**

(March 2010)

## SIXTH ITEM OF THE AGENDA

### **GB.307/6**

#### **Conclusions concerning Myanmar**

The Governing Body took note of the report of the Liaison Officer, the statement made by the Permanent Representative of the Government of the Union of Myanmar and the subsequent discussion. In light of the debate, it made the following conclusions:

1. The recommendations of the Commission of Inquiry for compliance with the Forced Labour Convention, 1930 (No. 29), have still not been implemented, and the primary objectives of the eradication of forced labour in both law and practice, as well as ending the impunity which allows forced labour to continue, remain unachieved. Sustained action at all levels, including by the local authorities, is necessary.
2. The further extension until 25 February 2011 of the trial period of the Supplementary Understanding, agreed during the High Level ILO mission visit, is noted as an encouraging step. The complaints mechanism established by the Supplementary Understanding continues to function, particularly in cases of the recruitment of minors into the military. There is a need for the national application of a proper and accountable recruitment system.
3. It is imperative that the Government strictly ensures, in accordance with the provisions of the Supplementary Understanding, that there is no judicial or retaliatory action, or any other form of harassment of complainants, their representatives, facilitators and/or any other relevant persons involved in the complaints. Without this, the necessary confidence in the complaints mechanism is absent. It is crucial that access to the complaints mechanism is facilitated.
4. Certain positive developments have been noted regarding the earlier conclusions of the Governing Body, such as: the Government's agreement in principle to a simply worded brochure in the local language; increased local media reporting on the rights contained in the Supplementary Understanding; the continuation of joint awareness-raising seminars and training; and the imposition of prison sentences on certain military as well as civilian personnel for the use of forced labour and under-age recruitment.
5. In considering these steps the Governing Body looks forward to an early agreement on the brochure wording and its wide distribution in the near future, particularly in rural areas. It further encourages the continuation of joint awareness-raising and training activities, which should be broadened further to encompass the wider community.
6. While welcoming the release of 13 out of the 17 persons imprisoned for activities which have been the subject of procedures under the Supplementary Understanding, the Governing Body calls for the urgent release of the four persons associated with the operation of the Supplementary Understanding who remain in prison (U Zaw Htay, U Htay Aung, U Nyan Myint and Maung Thura Aung).



7. The Governing Body strongly reiterates its call for an early release of all of the imprisoned labour activists referred to in its previous conclusions (these include, among others, Su Su Nway, U Min Aung, U Myo Aung Thant, U Thurein Aung, U Wai Lin, U Nyi Nyi Zaw, U Kyaw Kyaw, U Kyaw Win and U Myo Min).
8. The Governing Body expresses serious concern at the delay in the approval of the visa application submitted for an additional international professional staff member to strengthen the capacity of the Liaison Officer to meet the growing work demands under both the initial Understanding and the Supplementary Understanding. It trusts that the Government will take immediate action to remedy this situation.
9. The Governing Body shares the concerns expressed in this debate and during the 98th Session of the International Labour Conference (2009), concerning the absence of freedom of association rights, which is an area intimately linked to the elimination of forced labour. The Governing Body welcomes the fact that the January 2010 ILO mission discussed with the Government the basic principles of trade union legislation. The Governing Body thus urges the Government to continue to seek and make use of information and advice from the Office so that early progress can be made concerning the legal framework for respecting freedom of association.
10. The Government should take immediate steps, without waiting for any future legislative action, to guarantee in practice the right of workers to organize freely in accordance with the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), ratified by Myanmar, in order to promote and defend their occupational interests. This is particularly important in the context of any industrial conflicts.

