



Governing Body

310th Session, Geneva, March 2011

GB.310/5

FOR DEBATE AND GUIDANCE

FIFTH ITEM ON THE AGENDA

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

Overview

Issue covered

This report fulfils the obligation stemming from the resolution on the widespread use of forced labour in Myanmar adopted by the 87th Session (1999) of the International Labour Conference that there be a standing Governing Body agenda item on this subject. The paper addresses the activities undertaken and progress made since the last report. It reports on the high-level mission undertaken on 22–25 February 2011 during which, amongst other matters, the trial period of the Supplementary Understanding complaints mechanism was extended for a further 12 months until 25 February 2012.

Policy implications

There are no new policy implications.

Financial implications

None.

Decision required

Submitted for debate and guidance. The Governing Body may wish to draw its own conclusions from the debate.

References to other documents

Governing Body members may find reference to document GB.309/6 and to the conclusions concerning Myanmar (Decisions of the 309th Session) useful in their consideration of this report.

Introduction

1. Activity since the last report has taken place against the backdrop of the general election which was held on 7 November 2010 and the subsequent transition, which is still continuing at the time of writing. During this period, the complaints mechanism provided for in the Supplementary Understanding between the Government of Myanmar and the ILO has continued to operate. Furthermore, the high-level mission led by Mr Guy Ryder, Executive Director, Standards and Fundamental Principles and Rights at Work, visited Myanmar from 22 to 25 February 2011.
2. This paper is presented in three parts with a view to assisting the Governing Body in its deliberations. Part I provides statistics and commentary on the operation of the Supplementary Understanding complaints mechanism since the last report; ¹ Part II provides some general and comparative statistics on the operation of the Supplementary Understanding complaints mechanism for the period between 25 February 2007 (when it first came into force) and 21 February 2011; and Part III reports on the high-level mission.
3. All activities are undertaken in pursuit of, and progress is measured against, the recommendations of the 1998 Commission of Inquiry which examined the observance by Myanmar of the Forced Labour Convention, 1930 (No. 29), namely: “that the relevant legislative texts [...] be brought into line with the Forced Labour Convention, 1930 (No. 29)”; “that in actual practice, no more forced or compulsory labour be imposed by the authorities, in particular the military”; 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, in conformity with Article 25 of the Convention”.

PART I Operation of the Supplementary Understanding complaints mechanism since the last report ²

4. During the period from 21 October 2010 to 21 February 2011, a total of 127 new complaints were received, bringing the total number of complaints received since the inception of the complaints mechanism to 630. The number of complaints received has continued to grow, as indicated in Part II below. It is believed that this increase reflects the growing awareness among residents of Myanmar of their rights under the law, greater knowledge of the complaints mechanism and improved confidence in making use of it. This can be put down largely to the intensified awareness-raising activities undertaken, including the continued widespread distribution of the simply worded brochure explaining the mechanism, since agreement on its production was reached in May 2010.
5. Although no joint Ministry of Labour/ILO awareness-raising activities were undertaken during this period, 16 ILO workshops were held with 596 participants, comprising individuals and representatives of NGOs and of community-based organizations (CBOs). An additional ten training sessions/presentations were conducted involving a further 384 participants from United Nations agencies, international NGOs and donor groups.
6. The continuing growth in the number of complaints received has put considerable additional strain on the capacity of the Liaison Officer to service them efficiently. As at 21 February 2011, some 159 cases were at different levels of processing/negotiation

¹ GB.309/6.

² *ibid.*

following their submission to the Government for resolution, with 110 more cases still in the assessment and preparation phase prior to submission.

7. Complaints alleging under-age recruitment into the armed forces continue to account for some 60 per cent of the complaints received. Other complaints related to different categories of forced labour, including the exaction of forced labour by the civilian authorities and by the military, prison labour, forced labour related to the right to land use/occupancy, trafficking for forced labour and forced labour associated with both formal and informal sector commercial activities.
8. Government responses to complaints concerning under-age recruitment continue in general to be managed in an efficient and positive manner, with victims who are proven to have been recruited under age being discharged to the care of their families. However, complaints concerning other types of forced labour do not appear to be given the same level of priority, with considerable delays being experienced before any response is received. In the case of complaints concerning the armed forces, the responses that are received usually make reference to voluntary community work or to citizens' duties, or do not accept the complaint as genuine.
9. There has been an increase in complaints of forced labour associated with the occupancy and use of land. All agricultural land is owned by the Government. Recent complaints have shown a trend for forced cropping and increased fees, with the penalty for refusal to comply being loss of the use of the land. In the complaints received, the beneficiaries of these practices are the operational military, defence-owned commercial interests and large private corporations, with such arrangements being facilitated by local government authorities. The authorities concerned maintain that these activities are carried out in accordance with the law.
10. In line with the conclusions adopted by the Governing Body at its 309th Session (November 2010),³ two complaints raised at the initiative of the Liaison Officer have been lodged. Responses to these are awaited.
11. In response to a case of under-age recruitment, the Government has indicated that, in addition to discharging the victim and disciplining the military perpetrator, charges have been laid under the Criminal Code against a civilian who was allegedly complicit in the recruitment. This is the first such notification of prosecution to the ILO Liaison Officer and information on its outcome is awaited. Military personnel who are deemed to be responsible for the recruitment of children covered by a complaint under the Supplementary Understanding complaints mechanism are now routinely disciplined. It is understood that, pursuant to a number of complaints of trafficking for forced labour, the perpetrators have been identified and prosecuted under the Criminal Code. During the period under review, there have been no prosecutions of those alleged in complaints to have exacted other categories of forced labour.
12. In the majority of cases, no harassment or retaliation is reported in respect of either complainants or persons facilitating the submission of complaints. However, since the last report, the Liaison Officer has been obliged to raise with the Government a case of the alleged destruction/retention of harvests in retaliation for the lodging in November 2010 of a complaint concerning forced labour. In another long-standing case, most of the farmers removed from their land for refusing to undertake forced labour have been allowed to return to it, with the exception of ten farmers, who are apparently deemed by the local authorities to have been the instigators of a complaint. In addition, the licences of two

³ Conclusions concerning Myanmar (Decisions of the 309th Session).

lawyers associated with complaints under the Supplementary Understanding have not been reinstated following their revocation by the Bar Council, notwithstanding numerous submissions from the Liaison Officer. Daw Su Su Nway, U Min Aung and U Zaw Htay, who were active voluntary facilitators, and complainants U Htay Aung and U Nyan Myint, remain in prison.

PART II Statistics on the Supplementary Understanding complaints mechanism for the period between 25 February 2007 and 21 February 2011

13. As at 21 February 2010, a total of 630 complaints had been received under the Supplementary Understanding complaints mechanism: 62 in 2007 (from 26 February), 65 in 2008, 116 in 2009, 333 in 2010 and 54 in 2011 (between 1 January and 21 February).
14. Of these, a total of 354 have been assessed as receivable and submitted to the Government Working Group for action, of which 197 have been resolved with varying degrees of satisfaction. Some 159 cases are at different levels of processing/negotiation following their submission to the Government for resolution, while 110 cases are still in the process of assessment and preparation prior to submission. In total, 157 victims of under-age recruitment have been discharged and returned to their families.
15. Of the 333 complaints received in 2010, 194 related to under-age recruitment, nine to human trafficking for forced labour and 43 to other forms of forced labour. Nine complaints could not be submitted to the Government due either to insufficient evidence or the reluctance of the complainants to be identified. Following assessment, 74 complaints were not considered to be within the ILO mandate under the Supplementary Understanding and were therefore closed without submission to the Government.
16. During 2010, a total of 70 victims of under-age recruitment identified in complaints under the Supplementary Understanding complaints mechanism were discharged from the military. During the same period, two joint Ministry of Labour/ILO awareness-raising sessions were held with 165 participants from state, regional, district and township civilian administrations and the military, and four presentations were made to Government organized training sessions for military recruiters and judges and to an interdepartmental training course on international law and standards. In addition, 19 training sessions were held with some 672 participants from United Nations agencies and international NGOs and 32 workshops were organized by the ILO for 1,328 NGO and CBO personnel.

PART III Report on the ILO high-level mission (22–25 February 2011)

17. The high-level mission led by Mr Guy Ryder (Executive Director, Standards and Fundamental Principles and Rights at Work), accompanied by Ms Karen Curtis (Deputy Director, International Labour Standards Department) and Mr Drazen Petrovic (Principal Legal Officer, Office of the Legal Adviser), took place from 22 to 25 February 2011. The mission received the full cooperation of the Government of Myanmar in the organization and conduct of its programme.
18. During the course of the mission, it was agreed that the trial period of the Supplementary Understanding would be extended without change of content for a further 12 months. A copy of the signed extension agreement for the period 26 February 2011 to 25 February 2012, dated 23 February 2010, is attached as Appendix I.

19. The Minister of Labour, in welcoming the mission, expressed the Government's continued commitment to the policy of the eradication of the use of forced labour and expressed the belief that this commitment would be continued and potentially strengthened under the newly elected Government when it took office. He also indicated that it was the intention of the Government to introduce into Parliament a Labour Organizations Law in conformity with both the Constitution of Myanmar and the provisions of ILO Convention No. 87, as well as the necessary revisions to the Village and Towns Acts of 1907 to ensure conformity with the Constitution of Myanmar and ILO Convention No. 29. He indicated that all of these draft bills were nearing completion and expressed the belief that they could be introduced into Parliament at either its second or third session.
20. During the discussion of the situation of persons currently in detention, the mission was advised that the Government was giving serious consideration to the conclusions of all Governing Body and International Labour Conference deliberations. In this regard, the Minister said that all persons currently in detention named in ILO conclusions had been convicted of criminal offences unrelated to the ILO and its activities. Their release was therefore subject to either normal judicial appeal proceedings, or possibly by way of an amnesty that might be considered by the Government. Developments could be expected before the 100th Session of the International Labour Conference in 2011.
21. In its meeting with the Government Working Group for the Eradication of Forced Labour (WG), the mission reviewed the operation of the Supplementary Understanding in detail. The WG is composed of senior representatives from the Ministries of Labour, Foreign Affairs, Home Affairs and from the Attorney-General's Office, the General Administration Department and the Supreme Court. Also present were representatives of the Adjutant General's Office and the Corrections Department. The Chairman of the WG, the Deputy Minister of Labour, again confirmed the Government's political will to address the forced labour problem, as confirmed by the signing of a further extension to the Supplementary Understanding.
22. The discussion addressed the three recommendations of the Commission of Inquiry, namely legislative conformity with Convention No. 29, elimination of the practice of forced labour and enforcement of the law with appropriate punishment of the perpetrators.
23. In respect of legislative conformity with Convention No. 29, the WG reconfirmed the Minister's indications in respect of the intended new laws and the amendment of existing laws. More detailed discussion took place in respect of the proposed Labour Organizations Law, which is reported in more detail under item 6 of the Agenda of the Governing Body.⁴
24. The representatives of the Government said that, while the information brochure was recognized as a valuable tool which could be distributed in greater numbers, it was not possible for it to be produced in any other than the official language provided for in the Constitution. The mission raised concerns at the possible misunderstandings that could result from the inevitable production of unauthorized translations by other parties.
25. The ILO proposal for a joint Ministry of Labour/ILO awareness-raising seminar in Chin State was agreed to and further proposals were noted for such activities in conjunction with major infrastructure projects, such as the Northern Myanmar/China pipeline, and with ceasefire groups.

⁴ GB.310/6.

26. The issue of the use of prison labour for the portering of military supplies in conflict zones was discussed. The mission indicated that this unacceptable practice should be discontinued. The representative of the Corrections Department indicated that the review of the 1894 Jail Manual, which regulates the use of prison labour, was 75 per cent complete and on completion would be submitted to Parliament for adoption. He indicated that the amendment would be in line with international standards and, as such, would meet ILO concerns. The mission expressed the wish that the ILO should receive confidentially the draft texts of the revised Jail Manual and of the Village and Towns Acts amendments.
27. In response to the request by the Governing Body that the Government grant the Liaison Officer access to court files and to detainees for the purpose of verifying the reasons behind the conviction of named persons, the Government indicated that the Liaison Officer or a member of his staff has the right to attend and observe any relevant court hearing. Furthermore, if the Liaison Officer obtained the authority of the accused person on trial he would be granted access to that person's full court record. It was indicated that the right of access to persons in prison is governed by the Jail Manual and that this issue remains unclear.
28. With regard to the six pending cases concerning forced labour in Aunglan and Natmauk townships, Magwe Region, the mission reconfirmed the previous proposal that these matters be the subject of a joint Ministry of Labour/ILO task force investigation with a view to finding lasting solutions. This proposal was noted and the WG indicated that it was expected that these matters would be concluded satisfactorily in the near future.
29. The mission recognized the positive progress already achieved in a number of areas but stressed that a greater effort was required to achieve the common objective of the eradication of forced labour. It was emphasized that the law should be respected by all sectors of the Government and society, with no exceptions. All, including the military, carry that responsibility and should be held to account for failure to meet it.
30. The mission reconfirmed the firm expectation that the provisions of the Supplementary Understanding, which guarantee that no harassment or judicial retribution be directed against complainants or persons supporting the lodging of a complaint, would be honoured in all cases.
31. The WG noted without comment the mission's request for agreement on the issuance of entry visas which may be sought to enhance the efficient operation of the Supplementary Understanding complaints mechanism.
32. An informative exchange took place between the mission and the Government Committee for the Prevention of Human Trafficking. It was agreed that complaints in that area received under the Supplementary Understanding should be documented and submitted for appropriate action to the police transnational crime unit. It was further agreed that coordination between the Liaison Officer and ILO projects on human trafficking in receiving countries, with corresponding liaison between the respective national police departments, would be beneficial. The Committee for the Prevention of Human Trafficking noted the ILO's offer to support the forthcoming review of its five-year plan in respect of those areas lying within its mandate and that of the ILO, namely trafficking for forced labour and under-age recruitment.
33. It was recalled that, as part of the Human Rights Council Universal Periodic Review (UPR), a number of recommendations have been made by member States concerning matters pertaining to ILO mandated activities in Myanmar. The Myanmar UPR will not be finalized until June 2011. At a meeting with the Government Human Rights Body, it was agreed that both parties could usefully work together to follow up the recommendations of

the UPR process that were finally supported by the Government. Specific reference was made to issues concerning freedom of association, the elimination of forced labour, under-age recruitment and the reaching of final agreement on a joint action plan between the Government of Myanmar and the United Nations Country Task Force on Monitoring and Reporting in the context of the Security Council resolution on children in armed conflict (resolution 1612). The mission confirmed the availability of ILO technical assistance in these areas. The mission reported that problems concerning the ownership, use and management of land had been raised repeatedly as a major human rights issue.

34. During a meeting with the mission, the Union of Myanmar Federation of Chambers of Commerce and Industry expressed support for the eradication of forced labour, in which it said that its members were not implicated. It also expressed support for the proposed Labour Organizations Law.
35. A very active exchange was held with a group of voluntary complaint facilitators on the practicalities of the operation of the Supplementary Understanding. During the discussion, the alleged systematic nationwide use of forced labour in connection with the right of land use/occupancy was raised as a matter of serious concern. The need to ensure the safety of complainants and of persons supporting the lodging of complaints was also raised as a key condition for the successful operation of the Supplementary Understanding complaints mechanism. The participants expressed strong belief in the value of the ILO's presence in Myanmar and their support for the continued operation of the Supplementary Understanding complaints mechanism. They hoped that the ILO's presence would be strengthened and urged the ILO to take the necessary measures to ensure the protection of all concerned.
36. The mission was able to meet and hold a valuable discussion with Daw Aung San Suu Kyi. She emphasized the critical importance of social justice in the development of Myanmar and its people, and expressed strong support for the continued presence of the ILO in the country and for its mandate on forced labour. She sought the strengthening of ILO activities in Myanmar in support of workers' rights, and particularly to meet the challenges of the proposed law on freedom of association, as and when that might materialize. She voiced concern at breaches of the Supplementary Understanding complaints mechanism in respect of the safety and security of complainants and others supporting the complaints process. She expressed the hope that the ILO would continue to take a firm position both in that regard and in upholding its long-held principled position in its relationship with the Government of Myanmar.

Geneva, 10 March 2011

Submitted for debate and guidance

Appendix I

An Agreement for Extension of the Supplementary Understanding and its Minutes of the Meeting dated 26 February 2007, for an additional one year trial period from 26 February 2011 to 25 February 2012

This Agreement is hereby concluded between the Government of the Republic of the Union of Myanmar and the International Labour Organization represented by the undersigned authorized representatives.

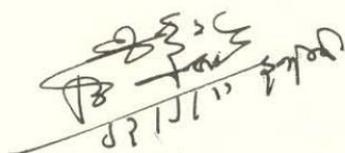
Noting clause 10 of the "Supplementary Understanding" (hereinafter SU), the "Minutes of the Meeting" dated 26 February 2007 being an integral part of the SU (hereinafter Minutes of the Meeting),

Noting the three preceding Extensions of the SU and its Minutes of the Meeting, of 26 February 2008, 26 February 2009 and 26 February 2010,

It is herewith agreed as follows:

1. Both parties agree to extend, on the same trial basis, the SU and the Minutes of the Meeting, for one year with the extension period commencing on 26 February 2011, to the day one year thereafter being 25 February 2012.
2. The spirit and letters of the SU and the Minutes of the Meeting remain *in toto* unchanged.
3. The SU and the Minutes of the Meeting shall continuously remain in legal effect upon signing by the authorized representatives of the parties mentioned below.
4. This agreement will be submitted to the forthcoming session of the Governing Body of the International Labour Office.

This Agreement is done at Nay Pyi Taw, the Republic of the Union of Myanmar on the 23rd day of February 2011.



(U Tin Htun Aung)
Deputy Minister
Ministry of Labour
Government of Myanmar



(Mr. Guy Ryder)
Executive Director
International Labour Office

23-2-2011