



Governing Body

312th Session, Geneva, November 2011

GB.312/INS/6

Institutional Section

INS

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)

Overview

Summary

This report fulfils the obligation stemming from the 1999 International Labour Conference resolution that there be a standing item on the Governing Body agenda on this subject. The paper addresses activities undertaken and developments since the last report (March 2011).

Policy implications

None.

Legal implications

None.

Financial implications

None.

Decision required

The paper is submitted for debate and guidance.

Follow-up action required

Depending on the conclusions of the Governing Body.

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References to other Governing Body documents and ILO instruments

GB.310/5 and related Governing Body conclusions; GB.312/INS/7.

Members may also find reference to *Provisional Record* No. 18, Part 3, of the International Labour Conference, 100th Session (2011), useful in their considerations of this report.

Forced Labour Convention, 1930 (No. 29).

Introduction

1. Considerable activity has taken place since the last reports to the Governing Body at its 310th Session (March 2011)¹ and to the International Labour Conference at its 100th Session (June 2011).² Following the general elections in November 2010, the elected Government took office in March 2011 and, in parallel with the workings of the new parliamentary structure, has commenced work on a broad policy reform agenda.
2. The complaints mechanism under the Supplementary Understanding which was extended for a further 12 months in February 2011 continues to operate, with positive developments in a number of areas and an environment of increased dialogue and cooperation. The number of complaints received continues to grow – an average of 30 per month since March 2011 compared with 21 per month in the same period of 2010, ten per month for 2009 and five per month for both 2008 and 2007. This is seen as reflecting the increased awareness of the complaints mechanism and increasing confidence about its use.
3. Since the 310th Session of the Governing Body, 210 formal complaints have been received which have been assessed as coming within the ILO forced labour mandate. Of these, 155 (75 per cent) relate to under-age recruitment, with the balance being evenly spread between the issues of trafficking for forced labour and military forced labour. A number of cases are starting to be received alleging the use of forced labour in the private sector, particularly in, but not limited to, domestic work. Over the same period, the number of complaints alleging the use of forced labour by the civilian authorities has continued to fall. There is growing evidence too that, with all parties being better informed and people being more empowered, forced labour incidents are better able to be resolved at local level without recourse to the complaints mechanism.
4. This paper is presented in two parts with a view to assisting the Governing Body in its deliberations. Part I discusses the current political background. Part II provides a commentary concerning developments in the implementation of the recommendations of the 1998 Commission of Inquiry and of the conclusions adopted by the Governing Body at its 310th Session and by the Conference at its 100th Session.

Part I. The current political background

5. The activities and developments outlined in Part II of this document have taken place against a background of rapid political change. General elections were held in November 2010 under the terms of the Constitution adopted by referendum in 2008. Views on the legitimacy and credibility of that electoral process vary widely. They were contested by a number of political parties, but the main opposition group, the National League for Democracy, did not take part.
6. As a result, a parliamentary system is now in place comprised of upper and lower houses at the national level, as well as 14 state and regional assemblies. The party sponsored by the previous regime holds a majority of elected seats in all of these bodies, in which the military is entitled to appoint 25 per cent of members. Opposition parties and those representing the main ethnic groups also hold elected seats in each of them.

¹ GB.310/5.

² See ILO: *Provisional Record* No. 18, Part 3, International Labour Conference, 100th Session (Geneva, 2011), pp. 21–26.

7. During the first session of Parliament (3 February–31 March 2011), the Constitution was formally adopted, a national President elected, a new Government formed, appointments made to the judiciary and the civil service restructured. Corresponding actions were also taken at the state and regional levels.
8. Since taking office, the President and his Government have begun a major programme of legislative and policy reform. This has involved published parliamentary debates and consultations with the business community, United Nations (UN) agencies, and the international community.
9. The second session of Parliament (22 August 2011 to present) has, to a large extent, been committed to a broad legislative programme.
10. The major initiatives taken to date include the following:
 - introduction into Parliament of draft legislation on local administration which would repeal the Village and Towns Acts (see paragraph 18 below);
 - adoption by Parliament of a Labour Organizations' Act (see GB.312/INS/7), which repeals the provisions of the Trade Union Act, 1926. The Parliament has also repealed the Myanmar Labour Law, 1964, which made provision for a single union;
 - release from house arrest of Daw Aung San Suu Kyi, General Secretary of the National League for Democracy, who has undertaken dialogue with the Government;
 - declaration of two amnesties, involving the release of some 10,000 prisoners, most of whom were serving criminal sentences. The number of political prisoners benefiting remains unclear and many are believed to remain in detention. At the time of writing further releases are expected;
 - elaboration and implementation of a rural development and poverty-alleviation strategy;
 - relaxation of media censorship rules;
 - introduction of land reform legislation;
 - appointment of a Human Rights Commission in conformity with the Paris Principles relating to the Status of National Institutions;³
 - beginning of peace negotiations with non-state armed groups, seen by the Government as a key to "ethnic reunification". At the time of writing, two agreements had been reached, although fighting between the Myanmar armed forces and at least three non-state armed groups continued;
 - increase of pensions for ex-government and service personnel, with a review of private sector social security policy under way and the introduction of draft legislation into Parliament planned;
 - inviting the International Monetary Fund (IMF) to visit the country to advise on reform of macroeconomic policy;

³ *The Principles and Guidelines on children associated with armed forces or armed groups*, February 2007.

- beginning of financial sector reform;
 - joint initiatives with the Government of Thailand to protect the rights and interests of Myanmar migrant workers in that country;
 - introduction of tax relief on foreign currency earnings; and
 - suspension of a major Myanmar–China hydroelectric project in response to public petitioning.
11. These developments have attracted considerable attention internationally. Positive moves by the Government, including in matters of long-standing concern to the ILO, have been welcomed and the need to proceed further towards full respect of all human rights and democratic freedoms has been underlined.
12. In her video message to the Conference in June 2011, Daw Aung San Suu Kyi stated, amongst other things: “We look to the ILO to expand its activities in Burma to help usher in an era of broad-based social justice in our country.”⁴ In discussion with the ILO Liaison Officer, Daw Aung San Suu Kyi has expressed the view that whilst many issues remained to be addressed, the new President appeared sincere in the pursuit of reforms at many levels. While questions remained in respect of the depth and sustainability of the reform, the capacity of the Government to deliver, and possible areas of resistance, she said that appropriate effort should be directed at supporting reform efforts and ensuring their successful introduction while maintaining a firm principled approach – including on the issues of forced labour and freedom of association.
13. The Governing Body will no doubt wish to keep this background in mind when considering the developments reported below in the implementation of the recommendations of the 1998 Commission of Inquiry on Forced Labour and in drawing up its conclusions on the future activities of the ILO in the country.

Part II. Developments in implementing the recommendations of the 1998 Commission of Inquiry, and the conclusions of the Governing Body at it 310th Session and of the Conference at its 100th Session

14. All activities are undertaken in pursuit of the recommendations of the 1998 Commission of Inquiry, which examined the observance by Myanmar of the Forced Labour Convention, 1930 (No. 29), namely:
- A. that the relevant legislative texts [...] be brought into line with the Forced Labour Convention, 1930 (No. 29);
 - B. that in actual practice, no more forced or compulsory labour be imposed by the authorities, in particular the military; and

⁴ ILO: *Provisional Record* No. 16(Rev.), International Labour Conference, 100th Session (Geneva, 2011), p. 20. The video message is available at: http://www.ilo.org/global/about-the-ilo/press-and-media-centre/videos/video-interviews/WCMS_157494/lang--en/index.htm.

- C. 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.

15. The working agenda of the Liaison Officer is guided by the conclusions of the Governing Body and of the Conference on the practical issues to be addressed in order to meet the Commission of Inquiry's recommendations. The following commentary records activity undertaken in response to the conclusions adopted by the Governing Body at its 310th Session and by the Conference at its 100th Session.

Follow-up expectations

16. Recognizing the political restructuring and positive developments which have taken place following the November general elections, both the Governing Body and the Conference expressed the expectation that these would result in a revitalization of the programme, with substantive positive actions and proactive and preventive measures for the eradication of all forms of forced labour and the advancement of workers' rights.

Update

17. Following both the 310th Session of the Governing Body and the 100th Session of the Conference, the Liaison Officer had three meetings with the Government Working Group for the Elimination of Forced Labour, chaired by the newly appointed Deputy Minister of Labour to review their conclusions and identify priority issues for follow-up action. These meetings took place in a new, more constructive, atmosphere with substantive discussion of issues, priorities identified and agreed, and concrete commitments made, as described in the following paragraphs.

Legislative reform

18. Both the Governing Body and the Conference called for the rapid amendment of the Village and Towns Acts, 1907, the review of the *Jail Manual*, and the introduction of proposed new labour legislation prohibiting the use of forced labour in all its forms, advising that the technical support services of the ILO should be taken advantage of so as to ensure full conformity with Convention No. 29.

Update

19. The Ministry of Labour has advised that the Ward and Villages Administration Bill has been submitted to Parliament and is under parliamentary discussion at the time of writing. The text of the Bill, managed by the Ministry of Home Affairs, remains confidential until the first round of parliamentary discussion is completed, but a copy may be transmitted shortly to the ILO. The ILO is advised that this Bill makes the use of forced labour illegal with the sole exception being under the emergency disaster provisions of Convention No. 29. It is further advised that the Bill repeals the forced labour provisions of the previous Village and Towns Acts, 1907. It is hoped that a copy of this legislation will be available prior to the November 2011 session of the Governing Body.

20. The ILO has also been informed that the review of the *Jail Manual* continues and that it is included in Parliament's legislative reform schedule. In the interim, discussion on current practices in respect of the use of convict labour for military portering purposes has commenced with the armed forces (see paragraph 29 below).

Expansion of community awareness

21. Both the Governing Body and the Conference called for the continued expansion of awareness-raising activities at community level and with government authorities, including the police and the military, as well as for the production and distribution of the information brochure on forced labour in languages other than the official Myanmar language in which it already exists.

Update

22. Since the last session of the Governing Body, the following forced labour presentations, seminars and workshops have been held:
- a joint Ministry of Labour/ILO awareness-raising seminar in Chin state for 162 local authority personnel (military, police, judges and civilian authorities);
 - a presentation to the Myanmar Women's Affairs Federation;
 - a presentation to some 120 senior police, immigration and Ministry of Home Affairs personnel, as part of the government training course on "Promotion and Protection of Human Rights (2011)";
 - a one-day workshop held for 34 journalists;
 - regular one-day forced labour workshops now held on a twice-monthly basis, with the participation of 582 community-based organization personnel, monks, teachers, elected politicians and individual citizens from all over the country;
 - a half-day seminar with 40 Save the Children and partner organizations' field staff;
 - a half-day seminar with 43 members of the Women's Protection Technical Working Group;
 - a half-day workshop with 18 field staff of partner organizations of the Office for the Coordination of Humanitarian Affairs; and
 - a one-and-a-half-day seminar with Thai-based international non-governmental organizations (NGOs).
23. The Government's translation of the information brochure into the Shan language has been received and, at the time of writing, is in the process of printing for distribution. It has been agreed that the Shan language, as the most widely used of the national languages after Myanmar, would be given priority with others to follow.
24. The brochure in the official Myanmar language has been widely distributed in every state and region by the Government and by the ILO with support from NGOs and community-based organizations.

25. UNICEF as the co-chair of the Country Task Force on Monitoring and Reporting on Children and Armed Conflict (CTFMR), of which the ILO is a member, has undertaken a number of training activities for military personnel in cooperation with the Ministry of Defence. Another similar training session is scheduled for December 2011, at which the ILO will present a section on under-age recruitment in the context of the operation of the Supplementary Understanding.
26. The Government Working Group for the Elimination of Forced Labour has confirmed agreement to include ILO presentations on forced labour, including under-age recruitment, in police in-service training curricula. This is expected to commence in early 2012.
27. Activity continues with the TOTAL Company, in respect of its pipeline operation, and initial discussions, as yet inconclusive, have been held with Ital–Thai and Daewoo, in respect of potential partner training/awareness-raising activities on their respective projects. It is hoped that discussions with the China National Petroleum Corporation (CNCP) and the Petroleum Authority of Thailand Exploration and Production Company (PTTEP) can be held shortly.

Military use of forced labour

28. Whilst recognizing the progress made in respect of the civilian authorities, the Governing Body and the Conference called on the Government to provide for meaningful consultations between the ILO and the Ministry of Defence and senior army representatives to address both the policy and behavioural practices driving the use of forced labour by the military, including in particular: the recruitment of children into the armed forces; forced conscription into the armed forces, fire brigade and militia reservist units; portering; construction, maintenance and servicing of military camps; and forced agricultural work.

Update

29. In response to this call, the Working Group for the Elimination of Forced Labour facilitated the first direct meeting between the ILO and the Tatmadaw (Armed Forces) Committee on ILO Affairs. These initial discussions were constructive. The Committee indicated its understanding that the political environment had changed and now required greater accountability. All of the issues and practices outlined above were discussed and a second meeting with the Committee Chairperson was held in October, at which a number of issues were clarified. Another meeting to consider what and how issues can be acted on further is tentatively scheduled for December. In the interim, the Tatmadaw Committee has requested that a schedule of the various allegations presented to the Committee of Experts be submitted for its consideration and follow-up as appropriate.

Under-age recruitment

30. The Conference called for the active pursuit of a joint action plan with the CTFMR in respect of children in circumstances of armed conflict, addressing among other things under-age recruitment.

Update

31. Since 1 March 2011, 33 victims of under-age recruitment have been released or discharged from the military in response to complaints lodged under the Supplementary Understanding, including six who were released from prison with their desertion charges quashed. The total number of under-age recruits released or discharged in response to Supplementary Understanding complaints since February 2007 now stands at 208.
32. Negotiations between the Government and the CTFMR for a joint action plan under UN Security Council Resolution 1612 concerning children in circumstances of armed conflict have been resumed in recent months, with indications that the new Government is keen to finalize an agreement.
33. The armed forces continue to respond to under-age recruitment complaints and to deal with them relatively efficiently. In the meeting with the Tatmadaw Committee referred to above, a number of practical areas of action, proactive rather than reactive, were discussed and are under consideration.
34. Of these, two may be highlighted. The first concerns the need to put in place a policy and procedure under which a copy of a genuine official proof-of-age document is required to be produced and attached to the recruit's file before recruitment is confirmed. The second concerns the need to adopt a verification procedure to be followed prior to the arrest, prosecution and imprisonment of recruits for alleged "desertion". In some instances, such arrests occur in full knowledge that the child was illegally recruited and that a complaint under the Supplementary Understanding is being investigated. Responses are awaited on both of these issues.

Budgeting for wages

35. Both the Governing Body and the Conference have consistently called for the Government to facilitate ILO meetings with the Ministry of Finance and the Ministry of Planning towards ensuring that adequate budgetary allocations are made so that workers may be freely contracted and adequately remunerated.

Update

36. Following the 100th Session of the Conference, the Government Working Group facilitated the first meeting of the ILO with the Ministry of Finance on this matter. The meeting was constructive; the Ministry of Finance senior officials shared information on policy and practice and were responsive to questions asked. The budget formulation procedure was explained and it was clarified that, under the new administration, financial policy has been and continues to be reformed in accordance with the new Constitution. Government departments must submit project proposals to the Ministry of Planning as part of their annual budget forecasting process, and such proposals must make provision for payment of wages against a template policy of a standard daily wage of 1,100 Kyat (approximately US\$1.30) per day and a standard cost ratio of 60 per cent materials and 40 per cent wages. Once approved by the Ministry of Planning, the proposed budget is vetted and confirmed by the Ministry of Finance prior to acceptance. In the case of minor works, repairs and maintenance, the responsible departments must make global projections using the same prescribed daily wage and materials:wages ratio.
37. It was recognized that the potential for forced labour arose particularly at municipal level when the demand for infrastructure or repairs and maintenance outstripped budgeted allocations. Whilst a procedure for supplementary allocations existed, it was acknowledged

that local authority personnel could resort to the use of forced labour to fill the funding gap. It is expected that such matters will be addressed under new governance and accountability structures.

38. The Ministry of Finance was not in a position to clarify specific budgeting and financial management practices adopted by the defence services, as the Ministry simply provides the defence services the required overall allocation in respect of both current and capital accounts without being party to details of the budget breakdown or policy for its application. The issue of Ministry of Defence and armed services funding as a potential driver of forced labour is among the items in continuing discussion with the Tatmadaw Committee on ILO Affairs.
39. An introductory meeting with the Ministry of Planning was held on 20 October 2011 at which the basic procedures for pre-allocation planning were explained. Tentative arrangements have been made for a more in-depth follow-up meeting in December 2011.
40. It should be noted that, during the meeting with the Ministry of Finance, it was indicated that with the introduction of the new political environment and the establishment of state and regional parliaments the whole financial management system was being reconfigured. It is understood that, as from 1 October 2011, a transitional phase was entered into under which the national budget has been split and decentralized for state and regional parliament management. As from the financial year commencing April 2012, state and regional parliaments will, within the national budgeting framework, have full responsibility for the development of their own budgets, with the right to impose local taxes, under the overall supervision of a newly formed national Parliamentary Finance Commission.

Application of the law and punishment

41. Both the Governing Body and the Conference have sought to ensure that perpetrators of forced labour, whether civil or military, are prosecuted under the Penal Code and that sufficiently dissuasive sanctions are applied.

Update

42. In respect of military personnel deemed responsible for the recruitment of minors, action under the military disciplinary code is now routinely taken. Punishments range from a formal reprimand to a monetary penalty, the loss of service entitlements for pension and promotion, demotion, imprisonment and dishonourable discharge. In the case of civilian government personnel, the only prosecution under the Penal Code that the ILO has been informed of took place in respect of a case in 2007 with punishments since then being limited to the imposition of administrative penalties. While advice has been received that a prosecution, under the Penal Code, has been initiated in respect of a civilian accused of being party to the exaction of forced labour, no information has as yet been received as to the outcome of this or any other similar prosecutions.

Release of detainees

43. The Committee of Experts, the Conference and the Governing Body have at every opportunity called for the release of labour activists imprisoned for their association with forced labour complaints or their pursuit of freedom of association. This call has been made in respect of all such persons and, in particular: U Zaw Htay; U Nyan Myint; Daw 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. They have also called for the

reinstatement of licences to practice law of U Aye Myint and Ko Pho Phyu, which were revoked following their prosecution in connection with ILO activities.

Update

44. As part of the general presidential amnesty of 17 May 2011, U Nyan Myint was released. Under the second general presidential amnesty of 12 October 2011, U Min Aung, U Zaw Htay, U Myo Aung Thant and Daw Su Su Nway were also released, reportedly together with a further 13 labour activists.
45. At the time of writing, U Thurein Aung, U Wai Lin, U Nyi Nyi Zaw, U Kyaw Kyaw, U Kyaw Win and U Myo Min remain in prison, as reportedly do 16 other labour activists. As a result, there are currently no persons imprisoned in connection with ILO elimination of forced labour activities.
46. With respect to the reinstatement of licences to practice law, the Government has advised that this matter rests with the Bar Council which, to date, continues to reject applications for their reinstatement.

Harassment

47. The Governing Body and the Conference renewed their call for the cessation of all harassment, retribution and detention against complainants or persons supporting the submission of a complaint.

Update

48. A limited number of incidents in which complainants, their families or persons supporting their complaint have been subjected to verbal abuse have come to the ILO's notice. However, no reports of serious harassment have been received and no arrests or detentions in this connection have been experienced since the last quarter of 2009.

The Magwe Region cases

49. The Governing Body has identified a number of long-standing cases from the Magwe Region, largely concerning the loss of land as a penalty for refusal to undertake forced labour demanded by businesses owned by the Ministry of Defence or by operational military units. It has called for the Government to work with the Liaison Officer to find lasting solutions to these cases.

Update

50. Ongoing attention has been given to these five cases which involve the well-being and livelihood of many hundreds of farmers. In three of the cases, it is understood that the complainant farmers have been permitted to return to their land with no restrictions being placed on them as to its use. In one case, where the land was required for government use, compensation has been offered and has been accepted by the complainants. In the remaining case, the facts remain in dispute. All the cases remain, for the time being, open on the basis that it is necessary to verify final outcomes and to clearly establish the facts in respect to the last outstanding case. An ILO field mission has been scheduled for 3–5 November 2011 to this end.

Strengthening the capacity of the Liaison Office

- 51.** In light of the demands placed on the Liaison Office by the considerable increase in complaints received, together with the extensive demand for awareness-raising and training activities, the Governing Body and the Conference have called on the Government to grant a visa for an additional international Professional staff member and to facilitate a licence for an additional vehicle required for assessment missions.

Update

- 52.** An import licence has been issued and an additional vehicle ordered. The Government continues to advise that they consider the engagement of additional international Professional staff as unwarranted and that the ILO is free to engage national staff as deemed appropriate. The Office has recently been able to engage, on a temporary basis, international consultants resident in Myanmar who will assist in processing the substantial backlog of cases requiring assessment.
- 53.** Operating with limited staff requires the Liaison Officer to utilize the voluntary services of a number of community networks – currently some 250 persons – all of whom have received basic training in case facilitation work. To manage this operation, the Liaison Officer has engaged the services of national staff with regional network focal point responsibilities.
- 54.** Additional staffing and the provision of extensive awareness raising has been generously supported by targeted project funding from the European Union, the Government of Sweden and the Government of the United States.

Geneva, 3 November 2011