



## Governing Body

313th Session, Geneva, 15–30 March 2012

GB.313/INS/7

Institutional Section

INS

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### SEVENTH ITEM ON THE AGENDA

## Complaint concerning non-observance by Myanmar of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), made by delegates to the 99th Session (2010) of the International Labour Conference under article 26 of the ILO Constitution

#### Purpose of the document

In the present document, the Governing Body is invited to decide whether it wishes to institute the procedure under article 26 of the Constitution and, consequently, to appoint a Commission of Inquiry or to take any other action on the complaint of non-observance by the Government of Myanmar of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (see the draft decision in paragraph 8).

**Relevant strategic objective:** Promote and realize standards and fundamental principles and rights at work.

**Policy implications:** These will depend on the decision taken.

**Legal implications:** These will depend on the decision taken.

**Financial implications:** The cost of a Commission of Inquiry was approved by the Governing Body in March 2011 (see GB.310/PV, paragraph 140).

**Follow-up action required:** This will depend on the decision taken.

**Author unit:** International Labour Standards Department (NORMES).

**Related documents:** GB.309/7; dec-GB.312/INS/7; dec-GB.312/INS/6; GB.313/INS/6.



## I. Introduction

1. After deciding on the receivability of a complaint concerning non-observance by Myanmar of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), made by a number of Workers' delegates to the 99th Session (2010) of the International Labour Conference,<sup>1</sup> the Governing Body, at its 312th Session (November 2011):
  - (a) urged the Government of the Republic of the Union of Myanmar to avail itself of the advice and assistance of the ILO, including through strengthening and expanding the capacity of the ILO Liaison Officer, aimed at fostering the conducive environment necessary for the practical application of the new Labour Organizations Law and any implementing regulations in a manner which is in conformity with freedom of association principles; and
  - (b) decided to defer to its 313th Session (March 2012) the adoption of a decision on the appointment of a Commission of Inquiry.<sup>2</sup>
2. This document sets out the developments observed by the supervisory bodies in relation to Myanmar's application of Convention No. 87 and provides relevant information obtained by the ILO high-level mission that visited Myanmar from 22 to 28 January 2012.

## II. New developments

3. At its meeting in November and December 2011, the Committee of Experts on the Application of Conventions and Recommendations reviewed the application by the Government of Myanmar of Convention No. 87. Its observation, published in its report for the 101st Session of the International Labour Conference (Report III (Part 1A)), is reproduced in the appendix. The Committee of Experts noted with interest that, following advice from the Office, the Labour Organizations Law was adopted by the Parliament (Hluttaw) on 16 September 2011 and signed and enacted by the President of the Republic on 11 October 2011. The Committee observed that the Law contained provisions on the establishment of labour organizations, their functions and duties, rights and responsibilities, including the right to strike. Having raised some concerns about specific aspects of the Labour Organizations Law, the Committee expressed the firm expectation that the Law would come into force immediately and be applied in practice so as to ensure to all workers in the country the long-awaited legal framework in which they may exercise the rights set out in the Convention.
4. In addition, the high-level mission led by Mr Guy Ryder, Executive Director for the Standards and Fundamental Principles and Rights at Work Sector, engaged in constructive dialogue with the Government over the provisions of the draft Implementing Rules of the Labour Organizations Law and the draft Law on the settlement of labour disputes, providing informal advice to ensure that consideration was given to international labour standards and principles in the area. The high-level mission was informed that, once the Minister of Labour signed the Implementing Rules, the Labour Organizations Law would come into force and workers' and employers' organizations could be registered.

<sup>1</sup> GB.309/7.

<sup>2</sup> dec-GB.312/INS/7.

5. As regards the Governing Body's recommendation to the Government at its last session to avail itself of ILO advice and assistance, including through strengthening and expanding the capacity of the ILO Liaison Officer in the area of freedom of association, the Government welcomed such assistance and expressed to the high-level mission its positive disposition to the expansion of the Liaison Office capacity in that regard.
6. Following confirmation of their release, the high-level mission also met with U Thurein Aung, U Wai Lin, U Nyi Nyi Zaw, U Kyaw Kyaw, U Kyaw Win and U Myo Min, whose imprisonment was the subject of a case before the Committee on Freedom of Association (Case No. 2591) and whose release had been urged by the Governing Body on a number of occasions, most recently in November 2011.<sup>3</sup>
7. In its consideration of the question at issue in this document, the Governing Body may wish to draw on the information set out in GB.313/INS/6 and the report of the Liaison Officer.

### III. Draft decision

8. *The Governing Body decides:*

- (a) *in the light of the information available, to institute the procedure provided for in article 26, paragraph 4, of the Constitution and, consequently, to proceed to appoint a Commission of Inquiry to consider the allegations in the complaint referred to in paragraph 1 of this document; and/or*
- (b) *to take any other action it may consider appropriate.*

<sup>3</sup> dec-GB.312/INS/6.

## Appendix

### Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

#### Observation 2011/82 of the Committee of Experts on the Application of Conventions and Recommendations

Myanmar (ratification: 1955)

*Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 100th Session, June 2011)*

The Committee notes the comments submitted by the International Trade Union Confederation (ITUC) in a communication dated 31 August 2011.

The Committee further notes the conclusions of the Conference Committee on the Application of Standards of June 2011. The Committee notes, in particular, that the Conference Committee noted with great concern the continued failure by the Government, over several years, to eliminate serious discrepancies in the application of the Convention. The Committee further observes that an *article 26 of the Constitution* complaint in relation to the application of this Convention is pending for decision before the Governing Body.

*Legislative framework.* In its previous comments, the Committee recalled the issues it has been raising over the years with respect to the complete absence of a legislative framework in which the rights under the Convention can be exercised. The Committee recalls that it had not only urged the Government to adopt legislation which would enable workers to freely establish the organization of their own choosing, but had also emphasized the urgent need to repeal a number of legal texts, which continue to seriously impinge upon the freedom of association rights in the country.

The Committee notes with *interest* from the Government's report that, following advice from the ILO, the Labour Organizations Law was adopted by the Parliament (Hluttaw) on 16 September 2011 and signed and enacted by the President on 11 October 2011. The Committee observes that the Law contains provisions on the establishment of labour organizations, their functions and duties, rights and responsibilities, including the right to strike. Moreover, it notes with *interest* that the law provides for the repeal of the 1926 Trade Union Act. It further understands that a Bill proposing the repeal of the 1964 Law Defining the Fundamental Rights and Responsibilities of the People's Workers is before the Parliament.

*The Committee expresses the firm expectation that the Labour Organizations Law will come into force immediately and be applied in practice so as to ensure to all workers in the country the long-awaited legal framework in which they may exercise the rights set out in the Convention.*

As regards the provisions of the new legislation, recalling that, under *Articles 2 and 5* of the Convention, trade union diversity must remain possible in all cases (General Survey on freedom of association and collective bargaining, 1994, paragraphs 91–93), the Committee observes with *concern* that the English translation of the legislation appears to refer to a single labour confederation (sections 6, 7, 11, 12, and 14). *The Committee requests the Government to indicate whether more than one confederation may indeed be formed and recognized under the new Labour Organizations Law.*

The Committee further observes with **concern** that section 40(b) appears to enable the exercise of strike action only following the approval from “the relevant labour federation”. The Committee considers that the right to strike should not be subjected to legislative restrictions which would place the authority to permit strike action with higher-level workers’ organizations regardless of the rules of the organizations concerned or the affiliation of the lower-level organization. ***The Committee requests the Government to indicate the steps taken to amend this section so as to ensure the right of all workers’ organizations, including at the basic level, to organize their activities and formulate their programmes in full freedom.***

In addition, the Committee observes with **concern** that section 26 provides that the basic labour organization shall allocate monthly contributions to the higher labour organizations, federations and confederation as prescribed by the relevant labour federation. ***Recalling that Article 3 of the Convention protects the right of workers’ and employers’ organizations to organize their administration without interference by the public authorities includes in particular their autonomy and financial independence and the protection of their assets and property, the Committee requests the Government to take the necessary measures to amend this section so as to ensure that the transmission of funds to a higher-level worker’s organization is a matter wholly for determination by the organizations themselves and without any legislative or other intervention on the part of the Government.***

The Committee will address the new Labour Organizations Law in more detail at its next meeting when it expects further information to be provided by the Government in its report due on the manner in which the Law is implemented in practice and on the adoption of any relevant regulations or instructions.

The Committee further recalls its previous comments in relation to the broad exclusionary clause of article 354 of the Constitution which subjects the exercise of freedom of association rights “to the laws enacted for State security, prevalence of law and order, community peace and tranquillity or public order and morality”. ***The Committee expresses the firm expectation that with the entering into force of the Labour Organizations Law the Government will take all necessary steps to ensure that this article is not used to permit restrictions on the rights consecrated in the Convention and requests the Government to provide all relevant information on the practical application of the Labour Organizations Law.***

Finally, the Committee recalls its previous comments with respect to the following legal texts: (i) Order No. 6/88 of 30 September 1988 which provides that “organizations shall apply for permission to form to the Ministry of Home and Religious Affairs” (section 3(a)), and states that any person found guilty of being a member of, or aiding and abetting, or using the paraphernalia of, organizations that are not permitted, shall be punished with imprisonment for a term which may extend to three years (section 7); (ii) Order No. 2/88 which prohibits the gathering, walking or marching in procession by a group of five or more people regardless of whether the act is with the intention of creating a disturbance or of committing a crime; (iii) the Unlawful Association Act of 1908 which provides that whoever is a member of an unlawful association, or takes part in meetings of any such association, or contributes or receives or solicits any contribution for the purpose of any such association, or in any way assists the operations of any such association, shall be punished with imprisonment for a term which shall not be less than two years and more than three years and shall also be liable to a fine (section 17.1); and (iv) the 1929 Trade Disputes Act which contains numerous prohibitions of the right to strike and empowers the President to refer trade disputes to courts of inquiry or to industrial courts.

In its previous comment, the Committee had noted the Government’s indication that the Hluttaw would take the necessary measures, after the 2010 elections, to repeal Orders

Nos 2/88 and 6/88, the Unlawful Association Act, as well as Declaration No. 1/2006. The Committee observes, however, that, in its latest report, while recalling that these matters are being discussed in the Hlutlaw, the Government states that the Orders are important in ensuring law and order and community peace and tranquillity and that the Unlawful Association Act is necessary in protecting against illegal armed forces. The Committee recalls in this regard the serious concerns that it has raised for many years in respect of these texts and their use to imprison workers for their relations with trade unions as observed in complaints before the Committee on Freedom of Association (see Case No. 2591, 349th Report). *Further noting the Government's indication before the November 2011 Governing Body that these texts will be repealed once the Bill on Peaceful Assembly and Procession which is before the Parliament is promulgated, the Committee urges the Government to take without delay the necessary measures for the repeal of Orders Nos 2/88 and 6/88 as well as the Unlawful Association Act and Declaration No. 1/2006, so that they may no longer be applied in a manner that would infringe upon the rights of workers' and employers' organizations, and to provide a copy of the Law on Peaceful Assembly and Procession as soon as it is adopted.*

*Civil liberties.* As in its previous observations, the Committee once again notes the shared concern of the Conference Committee concerning the continued imprisonment of many people due to their exercise of freedom of expression and of association, despite repeated calls for their release. The Committee recalls in this regard the Conference Committee's urgent call to the Government to put an end to the practice of persecuting workers or other persons for having contact with workers' organizations and to ensure the immediate release of Thurein Aung, Wai Lin, Nyi Nyi Zaw, Kyaw Kyaw, Kyaw Win and Myo Min, as well as all other persons detained for exercising their basic civil liberties and freedom of association rights. The Committee *deeply regrets* that the Government only reiterates the information provided in its previous reports that these persons were not workers and states that these persons continue to serve their prison sentence.

The Committee welcomes however the latest information provided by the Government that Myo Aung Thant has been released after serving 13 years in prison for having maintained contacts with the Federation of Trade Unions of Burma (FTUB). The Committee further notes the information provided by the Government that Tin Hla has been provided medical treatment for tuberculosis in Insein Central Prison and is in good health.

The Committee, however, notes with *regret* that the Government has not provided the information requested in its previous observation in relation to the other persons alleged to be serving sentences for their exercise of freedom of association (Khin Maung Cho (aka Pho Toke), Nyo Win, Kan Myint, Thein Win, Tin Oo, Kyi Thein, Chaw Su Hlaing, U Aung Thein, Khin Maung Win, Ma Khin Mar Soe, Ma Thein Thein Aye, U Aung Moe, and Naw Bey Bey).

The Committee recalls that respect for the right to life and other civil liberties is a fundamental prerequisite for the exercise of the rights contained in the Convention and workers and employers should be able to exercise their freedom of association rights in a climate of complete freedom and security, free from violence and threats. Furthermore, the Committee recalls that while trade unions are expected under *Article 8* of the Convention to respect the law of the land, "[t]he law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in this Convention", the authorities should not interfere with legitimate trade union activities through arbitrary arrest or detention and allegations of criminal conduct should not be used to harass trade unionists by reason of their union membership or activities.

*The Committee urges the Government to take all necessary measures to secure the immediate release of Thurein Aung, Wai Lin, Nyi Nyi Zaw, Kyaw Kyaw, Kyaw Win, Myo*

*Min, and all those who have been imprisoned for the exercise of their basic civil liberties and freedom of association rights and to provide detailed information on the steps taken in this regard in its next report and on the whereabouts and health status of all the abovementioned detained workers.*

*Extension of ILO mandate.* The Committee notes that the Conference Committee has once again suggested that the Government accept an extension of ILO presence to cover the matters relating to the Convention. The Committee notes with *regret* the Government's indication in its latest report that an extension of the ILO presence to cover the matters related to the Convention was still not required given that the Labour Organizations Law has been approved and the formation of workers' organizations will proceed from that. The Committee considers however that it is precisely within this new configuration that the Government will be in most need of assistance to effectively ensure that all parties understand the new framework of rights and responsibilities and implement it in the true spirit of the Convention. *The Committee therefore once again expresses the firm hope that the Government will be in a position to accept such an extension in the very near future and requests it to provide information on any developments in this respect.*

*The Committee requests the Government to furnish a detailed report on all concrete measures taken, with the full and genuine participation of workers and employers from all sectors of society regardless of their political views, to implement the Labour Organizations Law and enact any additional measures necessary so that all workers and employers may fully and effectively exercise their rights under the Convention without interference from the public authorities.*

*[The Government is asked to report in detail in 2012.]*