



Governing Body

313th Session, Geneva, 15–30 March 2012

GB.313/INS/6

Institutional Section

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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)

Purpose of the document

This document informs the Governing Body about activities undertaken by the Office since the 312th Session (November 2011), includes a report of the Liaison Officer pursuant to paragraph 6 of the Supplementary Understanding and provides factual background information on the current situation. It also addresses the question of possible review of the measures adopted by the International Labour Conference.

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

Policy implications: These will depend on the decisions taken or guidance provided.

Legal implications: These will depend on the decisions taken or guidance provided.

Financial implications: None.

Follow-up action required: This will depend on the decisions taken or guidance provided.

Author unit: ILO Liaison Office in Myanmar, Office of the Legal Adviser (JUR) and Executive Director of the Standards and Fundamental Principles and Rights at Work Sector (ED/NORM).

Related documents: Governing Body members may find reference to the conclusions of GB.312/INS/6 and GB.313/INS/7 useful to their deliberations.

1. Considerable activity has taken place since the last session of the Governing Body, against a background of major political change in Myanmar. Following general elections in November 2010 and a new Government taking office in March 2011, the new Parliament and the Government have continued to work on a broad reform agenda.
2. The complaints mechanism under the Supplementary Understanding (SU), which was extended for a further 12 months in January 2012, continues to operate with positive developments in a number of areas in an environment of increased dialogue and cooperation.
3. Furthermore, agreement has been reached in principle on the development and implementation of a joint Government/ILO strategy for the elimination of all forms of forced labour by 2015. A framework agreement for such a strategy is under discussion and at the time of writing is expected to be available in time for the current session of the Governing Body.
4. Since the 312th Session (November 2011) of the Governing Body, 91 formal complaints have been received which have been assessed as coming within the ILO forced labour mandate. Of these, 63 related to under-age recruitment. While still an issue in some states and regions, the number of complaints alleging the use of forced labour by the civilian authorities continues to fall. There is growing evidence that, in a context of better information and growing confidence, some forced labour incidents, including under-age recruitment, are more amenable to resolution at local level without recourse to the complaints mechanism. The exaction of forced labour by the military and non-state armed groups in conflict situations, while not the subject of many formal complaints because of the obstacles faced by victims, continues to be a problem. Direct discussion with the military has been opened at senior level, and positive initial responses have been received. The proposed joint strategy will, by definition, address all manifestations of forced labour, whether related to the military, the civil Government or the private sector.
5. This paper is presented in four parts, with a view to assisting the Governing Body in its deliberations both in respect of its review of developments and in the context of the conclusions it adopted in November 2011,¹ in which it noted, inter alia, the calls for a review of the mandate defined by the 1999 resolution² and decided to consider this issue at its March 2012 session.
 - Part I provides a brief chronological summary of ILO action in respect of forced labour in Myanmar;
 - Part II discusses the current political climate;
 - Part III discusses developments since the 312th Session (November 2011) of the Governing Body; and
 - Part IV calls for a possible review of the measures decided by the Conference.

¹ GB.312/PV/Draft, para. 112 (the text of the conclusions is contained in Appendix I to this document).

² Resolution on the widespread use of forced labour in Myanmar, adopted by the International Labour Conference at its 87th Session (June 1999) (the text of the resolution is contained in Appendix II to this document).

Part I. A summary of ILO action in respect of forced labour in Myanmar

6. Following a complaint in respect of the observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29), lodged under article 26 of the ILO Constitution, the Governing Body established a Commission of Inquiry in 1997.³ The Commission's report was received by the Governing Body at its 273rd Session (November 1998), and its recommendations were duly adopted.⁴

7. On 21 May 1999, the ILO Director-General presented a report to Governing Body members,⁵ which concluded that:

Despite the Order issued by the Government of Myanmar on 14 May 1999 there is no indication that the three recommendations of the Commission of Inquiry have yet been followed:

- (a) the Village Act and the Towns Act have not been amended;
- (b) in actual practice forced or compulsory labour continues to be imposed in a widespread manner;
- (c) no action appears to have been taken under section 374 of the Penal Code to punish those exacting forced labour.

8. In this context, the International Labour Conference, at its 87th Session (June 1999), adopted a resolution⁶ stating:

- (a) that the attitude and behaviour of the Government of Myanmar were grossly incompatible with the conditions and principles governing membership of the Organization;
- (b) that the Government of Myanmar should cease to benefit from any technical cooperation or assistance from the ILO, except for the purpose of direct assistance to implement immediately the recommendations of the Commission of Inquiry, until such time as it has implemented the said recommendations; and
- (c) that the Government of Myanmar should henceforth not receive any invitation to attend meetings, symposia and seminars organized by the ILO, except such meetings that have the sole purpose of securing immediate and full compliance with the said recommendations, until such time as it has implemented the recommendations of the Commission of Inquiry.

9. At its 277th Session (March 2000), the Governing Body decided to place on the agenda of the 88th Session of the Conference (June 2000) an item entitled: "Action recommended by the Governing Body under article 33 of the Constitution – Implementation of the recommendations contained in the report of the Commission of Inquiry entitled *Forced Labour in Myanmar (Burma)*".

³ GB.268/15/1.

⁴ GB.273/5 (the text of the recommendations is contained in Appendix III to this document).

⁵ Report of the Director-General to the members of the Governing Body on measures taken by the Government of Myanmar following the recommendations of the Commission of Inquiry established to examine its observance of the Forced Labour Convention, 1930 (No. 29), Geneva, 21 May 1999, para. 61.

⁶ Resolution on the widespread use of forced labour in Myanmar, op. cit. (Appendix II).

10. Subsequently, at its 88th Session (June 2000), the Conference adopted a further resolution⁷ which called, among other measures, on member States, workers' and employers' organizations and international organizations to review their relations with the Government of Myanmar with a view to supporting the objective of the elimination of forced labour. In the absence of further progress, notwithstanding the undertaking of a technical cooperation mission to Myanmar in October 2000, the provisions of the resolution were brought into effect as of November 2000.
11. Following a number of further technical cooperation missions and a mission by a high-level team during the period from September 2001 to February 2002, a formal Understanding between the Government and the ILO was concluded in March 2002 for the appointment of an ILO Liaison Officer based in Yangon. The Liaison Officer was tasked with assisting the Government in its efforts to ensure prompt and effective elimination of forced labour in the country. The tasks of the Liaison Office include cooperation with the Government in the application of its policy against the use of forced labour, undertaking educational activities and monitoring and otherwise supporting progress in the application of that policy.
12. Following a further debate at the 95th Session of the International Labour Conference, in 2006, a number of unsuccessful initiatives to implement practical mechanisms to support the elimination of forced labour and a number of serious incidents, including the arrest and conviction on charges of treason of persons supporting ILO activities, all of which raised serious questions as to the Government's true commitment, further negotiations resulted in the conclusion of an SU which came into effect on a one-year trial period basis as of 26 February 2007.
13. The SU was intended to support better the implementation of the Commission of Inquiry's recommendations. It addressed awareness raising on rights and responsibilities under the law and the application of the law and its enforcement, and also contained a mechanism permitting residents of Myanmar to submit complaints in respect of forced labour to the Liaison Officer, who in turn was authorized to assess those complaints and, if it was established that there was a case to answer, to submit those complaints to a Government Working Group established for the purpose of initiating an investigation and appropriate response.
14. The trial period of the operation of the SU has been extended annually since 2008, and its operation has been the subject of reports of the Liaison Officer to each session of the Governing Body since then. Initially very few complaints were received, largely because of the absence of any public awareness of rights under the law or of the complaints mechanism itself, and of a genuine fear of retribution.
15. With the coming into effect of the SU, a long and difficult process commenced, which initially met with serious obstruction and acts of reprisal, including imprisonment, against persons involved in the process. This situation has improved progressively as the Government's commitment to the process has increased, along with public awareness and confidence in it.
16. At the 98th Session of the Conference (2009), the Office's mandate in respect of Myanmar was extended to permit a positive response to the Government's request for assistance in meeting its obligations under the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), which it has ratified.

⁷ Resolution concerning the measures recommended by the Governing Body under article 33 of the ILO Constitution on the subject of Myanmar, adopted by the International Labour Conference at its 88th Session (June 2000) (the text of the resolution is contained in Appendix IV of this document).

Part II. The current situation in Myanmar

17. Rapid change has continued in Myanmar's domestic political situation, which has had consequences for its external relations. Parliament has continued to sit in extended sessions to deliberate on a wide range of legislation. Amendments to the Electoral Act have permitted political organizations previously unable to register as political parties to do so. This includes the National League for Democracy (NLD). By-elections for 48 vacant seats in Parliament will be held on 1 April 2012 with full NLD participation and with its Chair, Daw Aung San Suu Kyi, contesting a Yangon constituency.
18. The Government has launched two major priority campaigns: reduction in poverty; and rural development. It has also begun to address a wide range of issues relating to governance and economic and social policy. These include the development of national and regional budgets, foreign currency exchange rate alignment, taxation and licensing policies, financial institution structures, relaxation of media and information technology restrictions and local authority governance, as well as freedom of association and the right to peaceful assembly.
19. These initiatives have been undertaken in an environment of increased openness and transparency, with consultation being undertaken with, and assistance being sought from, the United Nations, the international financial institutions, other governments, the private sector and, increasingly, civil society.
20. Further amnesties have resulted in the release of a large number of prisoners of conscience, and there are indications that further amnesties could be expected shortly.
21. The Government has recognized that political stability, economic development and social cohesion cannot be achieved fully while hostilities continue with ethnically based, non-state armed groups. A number of ceasefire agreements have been negotiated, resulting in hostilities being halted for the time being in all parts of the country with the exception, at the time of writing, of Kachin State, where negotiations are continuing. These agreements, while fragile, are a critical first step which will need to be followed up with further negotiations for full peace agreements encompassing lasting political, economic and social solutions.
22. In response to these developments, a number of countries have increased their funding of aid to Myanmar and offered technical support, particularly for the transition process. Some of the political and economic sanctions previously imposed have been removed in whole or in part, with those remaining being subject to review in a number of cases. A number of Governments have opened or upgraded their diplomatic relations with Myanmar.

Part III. Developments in respect of the elimination of forced labour

23. The Liaison Office has faced an extremely heavy workload since the November 2011 session of the Governing Body: 214 complaints were submitted under the SU complaints mechanism, of which 91 have been assessed as falling within the forced labour mandate. The majority of those not deemed to be within the mandate relate to issues of land confiscation and, in increasing numbers, labour disputes. In such instances, complainants are referred to the government departments concerned or to the newly formed National Human Rights Commission, as appropriate.
24. The Office's limited capacity to service the increasing number of complaints has resulted in a backlog of unprocessed complaints. The situation has been aggravated by demands for

greater Office involvement in UN development planning activity as well as for support of ILO and numerous other international missions to the country.

25. At the invitation of the Government, an ILO high-level mission visited Myanmar from 21 to 28 January 2012. The mission was led by Mr Guy Ryder (Executive Director for Standards and Fundamental Principles and Rights at Work) accompanied by Ms Karen Curtis (Deputy Director of the International Labour Standards Department), Mr Drazen Petrovic (Principal Legal Officer in the Office of the Legal Adviser) and Mr Tim de Meyer (Standards Specialist, Regional Office for Asia and the Pacific).
26. Since the last session of the Governing Body, the work of the Liaison Officer and the activities of the ILO high-level mission have been concentrated on follow-up to the conclusions of that meeting.⁸
27. The following information on developments in respect of forced labour is structured by reference to the Governing Body's conclusions. Information on developments in respect of freedom of association issues is contained in document GB.313/INS/7.

Conclusion (1): Welcomed the positive developments in Myanmar since March 2011 but expressed concern that serious problems in the use of forced labour persist. The Governing Body called for the continuation of strengthened, resolute and proactive action for the full implementation of the recommendations of the 1998 Commission of Inquiry.

Further developments: A review of the operation of the SU was undertaken by the high-level mission with the Government Working Group for the Elimination of Forced Labour. A government proposal that a joint Government/ILO strategy be developed for the elimination of all forms of forced labour by 2015 was accepted in principle. A Memorandum of Understanding providing a comprehensive framework for the development of such a strategy has been agreed upon. Arrangements have been made for it to be signed, so that it could be presented at the current session of the Governing Body. The Defence Services have confirmed their commitment to cooperate with other government authorities and the ILO in such a strategy.

Conclusion (2): Noted that legislation, prohibiting the use of forced labour in all its forms and repealing both the Towns and Villages Acts of 1907, was before Parliament. The Governing Body regretted the absence of consultation and urged the early adoption and coming into force of that legislation. It underlined that full conformity of the new law with Convention No. 29 was required to meet the relevant recommendation of the Commission of Inquiry.

Further developments: The high-level mission was informed that the Ward or Village Tract Administration Act had been adopted by Parliament, repealing the Village Act and the Towns Act of 1907. Nevertheless, consultations between the mission and the Ministry of Home Affairs responsible for the legislation resulted in a number of recommendations for the amendment of the new Act with a view to bringing it into line with Convention No. 29. Regrettably, those recommendations were not included in a subsequent parliamentary review of the legislation before it was passed into law. According to the Government, although there was insufficient time to insert the ILO recommendations into the legislative review, it remained committed to the policy for the elimination of forced labour. It pointed out that the new legislation repeals the Village Act and the Towns Act of 1907 and contains no provision which in any way condones or permits the use of forced labour. It advised that section 374 of the Penal Code makes the use of forced labour illegal and provides for appropriate penalties. The Government also

⁸ GB.312/PV/Draft, para. 112 (Appendix I to this document).

said that the ILO recommendations for amendments to the Ward or Village Tract Administration Act would be built into the administrative rules which would be published to implement the Act. In response, the Office has brought to the Government's attention previous recommendations of the ILO supervisory bodies regarding the need for specific provision in law expressly prohibiting forced labour in order to remove any ambiguity arising from article 359 of the country's Constitution and to ensure the applicability of section 374 of the Penal Code. The Government may wish to provide further information for the current session of the Governing Body.

Conclusion (3): Urged that the practice of the imposition of forced labour on prisoners, particularly as porters in conflict areas, cease immediately and again invited the Government to avail itself of the technical assistance of the ILO in the review of the Jail Manual.

Further developments: Consultations were undertaken with the high-level mission on a draft revision of the Prisons Act (encompassing the Jail Manual) with recommendations made to ensure that the prison labour provisions meet the requirements of Convention No. 29. The amended draft is expected to be presented to Parliament for debate; however, the time frame is not known at present. It addresses, among other things, the practice of using prison labour for military portering duties in conflict zones. Direct discussion with the military on this matter continues with a view to an immediate end to such practices.

Conclusion (4): Welcomed the commencement of direct discussion with the Tatmadaw (armed forces) and looked forward to further substantive policy and behavioural change for the elimination of forced labour and the ending of impunity.

Further developments: Meetings were held by the high-level mission with the Minister of Defence, senior armed forces personnel and Ministry of Home Affairs officials, resulting in agreement for enhanced cooperation, including agreement to work together to find practical, operational solutions to informal practices which result in breaches of the law.

Conclusion (5): Welcomed the commencement of, and encouraged the continuation of, direct discussion with the Ministries of Finance and Planning and looked forward to confirmation that planning and financial management processes sufficiently provide for the payment of wages in government operational and project activities.

Further developments: National and regional budgets for the 2012 financial year commencing 1 April 2012 are currently under discussion in the respective Parliaments. It is expected that these will include appropriate allocation of funds to cover the cost of wages for public works. Follow-up discussion with officials of the Ministry of Finance and Revenue and the Ministry of National Planning and Economic Development is planned on the completion of the parliamentary budget adoption process to confirm that this is the case.

Conclusion (6): Welcomed the release of U Zaw Htay, U Nyan Myint, Daw Su Su Nway, U Min Aung, U Myo Aung Thant and other labour activists and strongly urged the early release of U Thurein Aung, U Wai Lin, U Nyi Nyi Zaw, U Kyaw Kyaw, U Kyaw Win and U Myo Min, as well as other labour activists remaining in detention.

Further developments: In amnesties since the last Governing Body session, 19 labour activists, including all those named in the conclusion above, have been released. This is in addition to 17 other labour activists released during 2011. Investigation and negotiations continue for the locating and release of 11 other persons who remain in prison or are otherwise unaccounted for at the time of writing.

Conclusion (7): Called on the Government to facilitate the free access of the Liaison Officer to detainees and to effect the reinstatement of the advocacy licences of U Aye Myint and Ko Pho Phyu.

Further developments: No progress can be reported on the issues referred to in the above conclusion. The Office is continuing its efforts in this regard.

Conclusion (8): Stressed the critical importance of a comprehensive proactive approach encompassing not only the continuation of awareness-raising activities and the management of the complaints mechanism but also the effective prosecution of forced labour perpetrators, military and civilian, under the Penal Code.

Further developments: Representatives of the military provided information to the high-level mission concerning the prosecution, in response to complaints lodged with the ILO, of 166 military personnel (27 officers and 139 other ranks) for breaches of the forced labour and under-age recruitment laws. According to this information, penalties ranged from formal reprimands, monetary fines, the loss of promotional and pensionable service, and demotion, to dismissal from the service and imprisonment (three cases). These measures are prescribed by Chapter VII of the Defence Services Act, 1959, and result from a sentence of a court martial. In respect of civilian perpetrators, the ILO has been informed of the prosecution of three persons under the Penal Code of whom two were convicted and received prison sentences. One Government official was recently dismissed from his post and it is understood that further prosecutions under the Penal Code are currently under consideration.

Conclusion (9): Noted the priority action taken towards the resolution of a number of long-standing complaints in the Magwe region and looked forward to receiving confirmation that they are at last satisfactorily resolved.

Further developments: Three of the five major Magwe cases have now been satisfactorily resolved with the farmers concerned having been permitted to return to their land with no restrictions imposed on its use. In one of the remaining two cases, most of the farmers concerned have similarly been permitted to return to their land. Negotiations continue in respect of a significant number of others who as yet have not been allowed to do so. In the other case, negotiations continue in respect of compensation to those unable to return to their land.

Conclusion (10):

- (a) Welcomed the expanded awareness-raising activities being undertaken, including the production and distribution of the information brochure in the Shan language, and encouraged the continuation of this partnership activity and its expansion into other languages.

Further developments: The Government informed the high-level mission that the Attorney-General's Office was currently working on the translation of the brochure into the Karen (Paw and Sakaw), Kachin, Chin and Rakhine languages, with the Mon language still under consideration.

- (b) Further noted the positive initiative of the proposed training of police personnel to ensure their understanding of their role and responsibilities, in collaboration with the military, in the elimination of forced labour, including in respect of procedures to address the continuing problems of under-age recruits and their alleged desertion.

Further developments: Joint planning is under way for further awareness-raising/training activities for military personnel (including recruitment staff), the police and other relevant government services.

Conclusion (11): Whilst recalling all of its previous conclusions and recommendations, encourages the ILO and the Government in their continuing positive collaboration within the framework of the Understanding and its SU which should be further extended in February 2012. It also encourages the Government to respond positively to all ILO related recommendations made by the Human Rights Council during the Universal Periodic Review.

Further developments: On 23 January 2012, an extension of the SU trial period was agreed for a further 12 months from 26 February 2012.

Conclusion (12): Considered it essential to strengthen the capacity of the Liaison Office and therefore reiterated in the strongest terms the Governing Body's repeated calls on the Government to issue without delay the visas for additional international staff necessary to this effect.

Further developments: The Government informed the high-level mission that an appropriate visa application for an additional international professional to support the operation of the SU would be granted and that further visa applications for the engagement of two further professionals – one on forced labour and one on freedom of association – would be positively considered. It should be possible to provide confirmation of the appointment of the initial additional staff member at the current session of the Governing Body.

Part IV. Possible review of measures adopted by the Conference

28. The Office recalls that the Governing Body took note in November 2011 of the calls for a review of the mandate defined by the 1999 resolution on the widespread use of forced labour in Myanmar and decided to consider this issue at its current session. The texts of the 1999 resolution and the resolution on Myanmar adopted by the Conference in 2000 are appended to this document (Appendices II and IV).
29. Should the Governing Body consider that there is need to review the measures adopted by the Conference, it may wish to decide (as it did in 2006) to place on the agenda of the 101st Session of the Conference (2012) an additional item that may be entitled "Review of measures adopted by the Conference to secure compliance by Myanmar with the recommendations of the Commission of Inquiry".

Appendix I

Conclusions adopted by the Governing Body at its 312th Session (November 2011)¹

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)

The Governing Body's conclusions

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

- (1) The Governing Body welcomes the positive developments in Myanmar since March 2011 but remains concerned that serious problems in the use of forced labour persist. The Governing Body calls for the continuation of strengthened resolute and proactive action for the full implementation of the recommendations of the 1998 Commission of Inquiry.
- (2) The Governing Body notes that legislation, prohibiting the use of forced labour in all its forms and repealing both the Towns and Villages Acts of 1907, is before Parliament. The Governing Body regrets the absence of consultation and urges the early adoption and coming into force of that legislation. It underlines that full conformity of the new law with Convention No. 29 is required to meet the relevant recommendation of the Commission of Inquiry.
- (3) The Governing Body urges that the practice of the imposition of forced labour on prisoners, particularly as porters in conflict areas, cease immediately and again invites the Government to avail itself of the technical assistance of the ILO in the review of the *Jail Manual*.
- (4) The Governing Body welcomes the commencement of direct discussion with the Tatmadaw (armed forces) and looks forward to further substantive policy and behavioural change for the elimination of forced labour and the ending of impunity.
- (5) The Governing Body also welcomes the commencement of, and encourages the continuation of, direct discussion with the Ministries of Finance and Planning and looks forward to confirmation that planning and financial management processes sufficiently provide for the payment of wages in government operational and project activities.
- (6) The Governing Body welcomes the release of U Zaw Htay, U Nyan Myint, Daw Su Su Nway, U Min Aung, U Myo Aung Thant and other labour activists and strongly urges the early release of U Thurein Aung, U Wai Lin, U Nyi Nyi Zaw, U Kyaw Kyaw, U Kyaw Win and U Myo Min, as well as other labour activists remaining in detention.
- (7) The Governing Body again calls on the Government to facilitate the free access of the Liaison Officer to detainees and to effect the reinstatement of the advocacy licences of U Aye Myint and Ko Pho Phyu.

¹ dec-GB.312/INS/6.

- (8) The Governing Body again stresses the critical importance of a comprehensive proactive approach encompassing not only the continuation of awareness-raising activities and the management of the complaints mechanism but also the effective prosecution of forced labour perpetrators, military and civilian, under the Penal Code.
- (9) The Governing Body notes the priority action taken towards the resolution of a number of long-standing complaints in the Magwe region and looks forward to receiving confirmation that they are at last satisfactorily resolved.
- (10) The Governing Body welcomes the expanded awareness-raising activities being undertaken, including the production and distribution of the information brochure in Shan language, and encourages the continuation of this partnership activity and its expansion into other languages. The Governing Body further notes the positive initiative of the proposed training of police personnel to ensure their understanding of their role and responsibilities, in collaboration with the military, in the elimination of forced labour, including in respect of procedures to address the continuing problems of under-age recruitment and their alleged desertion.
- (11) The Governing Body, whilst recalling all of its previous conclusions and recommendations, encourages the ILO and the Government in their continuing positive collaboration within the framework of the Understanding and its SU which should be further extended in February 2012. It also encourages the Government to respond positively to all ILO related recommendations made by the Human Rights Council during the Universal Periodic Review.
- (12) In light of the above, the Governing Body considers it essential to strengthen the capacity of the Liaison Office and therefore reiterates in the strongest terms its repeated calls on the Government to issue without delay the visas necessary to this effect.
- (13) The Governing Body notes the calls for a review by the International Labour Conference of the mandate defined by the 1999 resolution and will consider this issue at its March 2012 session.

Appendix II

Resolution on the widespread use of forced labour in Myanmar, adopted by the International Labour Conference at its 87th Session (June 1999)

The International Labour Conference,

Reaffirming that all member States have an obligation to apply fully, in law and in practice, the Conventions that they have voluntarily ratified,

Recalling that Myanmar ratified the Forced Labour Convention, 1930 (No. 29), and the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), on 4 March 1955,

Taking note of the provisions of United Nations General Assembly resolution 53/162 of 9 December 1998 and of United Nations Commission of Human Rights resolution 1999/17 of 23 April 1999, which also address the use of forced labour in Myanmar,

Recalling the decision of the Governing Body to place on the agenda of its November 1999 session an item entitled: “Measures, including recommendations under article 33 of the ILO Constitution, to secure compliance by the Government of Myanmar with the recommendations of the Commission of Inquiry”,

Gravely concerned by the Government’s flagrant and persistent failure to comply with the Convention, as concluded by the Commission of Inquiry established to examine the observance of the Forced Labour Convention, 1930 (No. 29),

Appalled by the continued widespread use of forced labour, including for work on infrastructure projects and as porters for the army,

Noting the report (dated 21 May 1999) of the Director-General to the members of the Governing Body on measures taken by the Government of Myanmar following the recommendations of the Commission of Inquiry in its report on “forced labour in Myanmar (Burma)”;

1. Deeply deplores that:

- (a) the Government has failed to take the necessary steps to bring the relevant legislative texts, in particular the Village Act and Towns Act, into line with the Forced Labour Convention, 1930 (No. 29), by 1 May 1999, as recommended by the Commission of Inquiry;
- (b) at the end of the twentieth century, the State Peace and Development Council (SPDC) has continued to inflict the practice of forced labour – nothing but a contemporary form of slavery – on the people of Myanmar, despite repeated calls from the ILO and from the wider international community for the past 30 years;
- (c) there is no credible evidence that those exacting forced labour in Myanmar have been punished under section 374 of the Penal Code;

2. Reaffirms that this issue should be further considered by the Governing Body in November 1999;

3. Resolves:

- (a) that the attitude and behaviour of the Government of Myanmar are grossly incompatible with the conditions and principles governing membership of the Organization;

- (b) that the Government of Myanmar should cease to benefit from any technical cooperation or assistance from the ILO, except for the purpose of direct assistance to implement immediately the recommendations of the Commission of Inquiry, until such time as it has implemented the said recommendations;
- (c) that the Government of Myanmar should henceforth not receive any invitation to attend meetings, symposia and seminars organized by the ILO, except such meetings that have the sole purpose of securing immediate and full compliance with the said recommendations, until such time as it has implemented the recommendations of the Commission of Inquiry.

Appendix III

Recommendations of the Commission of Inquiry appointed under article 26 of the Constitution of the International Labour Organization to examine the observance by Myanmar of the Forced Labour Convention, 1930 (No. 29)¹

539. In view of the Government's flagrant and persistent failure to comply with the Convention, the Commission urges the Government to take the necessary steps to ensure:
- (a) that the relevant legislative texts, in particular the Village Act and the Towns Act, be brought into line with the Forced Labour Convention, 1930 (No. 29), as already requested by the Committee of Experts on the Application of Conventions and Recommendations and promised by the Government for over 30 years, and again announced in the Government's observations on the complaint. This should be done without further delay and completed at the very latest by 1 May 1999;
 - (b) that in actual practice, no more forced or compulsory labour be imposed by the authorities, in particular the military. This is all the more important since the powers to impose compulsory labour appear to be taken for granted, without any reference to the Village Act or Towns Act. Thus, besides amending the legislation, concrete action needs to be taken immediately for each and every of the many fields of forced labour examined in Chapters 12 and 13 above to stop the present practice. This must not be done by secret directives, which are against the rule of law and have been ineffective, but through public acts of the Executive promulgated and made known to all levels of the military and to the whole population. Also, action must not be limited to the issue of wage payment; it must ensure that nobody is compelled to work against his or her will. Nonetheless, the budgeting of adequate means to hire free wage labour for the public activities which are today based on forced and unpaid labour is also required;
 - (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. This requires thorough investigation, prosecution and adequate punishment of those found guilty. As pointed out in 1994 by the Governing Body committee set up to consider the representation made by the ICFTU under article 24 of the ILO Constitution, alleging non-observance by Myanmar of the Forced Labour Convention, 1930 (No. 29), the penal prosecution of those resorting to coercion appeared all the more important since the blurring of the borderline between compulsory and voluntary labour, recurrent throughout the Government's statements to the committee, was all the more likely to occur in actual recruitment by local or military officials. The power to impose compulsory labour will not cease to be taken for granted unless those used to exercising it are actually brought to face criminal responsibility.
540. The recommendations made by the Commission require action to be taken by the Government of Myanmar without delay. The task of the Commission of Inquiry is completed by the signature of its report, but it is desirable that the International Labour Organization should be kept informed of the progress made in giving effect to the

¹ Forced labour in Myanmar (Burma), report of the Commission of Inquiry appointed under article 26 of the Constitution of the International Labour Organization to examine the observance by Myanmar of the Forced Labour Convention, 1930 (No. 29), Geneva, 2 July 1998, GB.273/5.

recommendations of the Commission. The Commission therefore recommends that the Government of Myanmar should indicate regularly in its reports under article 22 of the Constitution of the International Labour Organization concerning the measures taken by it to give effect to the provisions of the Forced Labour Convention, 1930 (No. 29), the action taken during the period under review to give effect to the recommendations contained in the present report. In addition, the Government may wish to include in its reports information on the state of national law and practice with regard to compulsory military service.

Appendix IV

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

The International Labour Conference,

Meeting at its 88th Session in Geneva from 30 May to 15 June 2000,

Considering the proposals by the Governing Body which are before it, under the eighth item of its agenda (*Provisional Record* No. 4), with a view to the adoption, under article 33 of the ILO Constitution, of action to secure compliance with the recommendations of the Commission of Inquiry established to examine the observance by Myanmar of its obligations in respect of the Forced Labour Convention, 1930 (No. 29),

Having taken note of the additional information contained in the report of the ILO technical cooperation mission sent to Yangon from 23 to 27 May 2000 (*Provisional Record* No. 8) and, in particular, of the letter dated 27 May 2000 from the Minister of Labour to the Director-General, which resulted from the mission,

Considering that, while this letter contains aspects which seem to reflect a welcome intention on the part of the Myanmar authorities to take measures to give effect to the recommendations of the Commission of Inquiry, the factual situation on which the recommendations of the Governing Body were based has nevertheless remained unchanged to date,

Believing that the Conference cannot, without failing in its responsibilities to the workers subjected to various forms of forced or compulsory labour, abstain from the immediate application of the measures recommended by the Governing Body unless the Myanmar authorities promptly take concrete action to adopt the necessary framework for implementing the Commission of Inquiry's recommendations, thereby ensuring that the situation of the said workers will be remedied more expeditiously and under more satisfactory conditions for all concerned;

1. Approves in principle, subject to the conditions stated in paragraph 2 below, the actions recommended by the Governing Body, namely:

- (a) to decide that the question of the implementation of the Commission of Inquiry's recommendations and of the application of Convention No. 29 by Myanmar should be discussed at future sessions of the International Labour Conference, at a sitting of the Committee on the Application of Standards specially set aside for the purpose, so long as this Member has not been shown to have fulfilled its obligations;
- (b) to recommend to the Organization's constituents as a whole – governments, employers and workers – that they: (i) review, in the light of the conclusions of the Commission of Inquiry, the relations that they may have with the member State concerned and take appropriate measures to ensure that the said Member cannot take advantage of such relations to perpetuate or extend the system of forced or compulsory labour referred to by the Commission of Inquiry, and to contribute as far as possible to the implementation of its recommendations; and (ii) report back in due course and at appropriate intervals to the Governing Body;
- (c) as regards international organizations, to invite the Director-General: (i) to inform the international organizations referred to in article 12, paragraph 1, of the Constitution of the Member's failure to comply; (ii) to call on the relevant bodies of these

organizations to reconsider, within their terms of reference and in the light of the conclusions of the Commission of Inquiry, any cooperation they may be engaged in with the Member concerned and, if appropriate, to cease as soon as possible any activity that could have the effect of directly or indirectly abetting the practice of forced or compulsory labour;

- (d) regarding the United Nations specifically, to invite the Director-General to request the Economic and Social Council (ECOSOC) to place an item on the agenda of its July 2001 session concerning the failure of Myanmar to implement the recommendations contained in the report of the Commission of Inquiry and seeking the adoption of recommendations directed by ECOSOC or by the General Assembly, or by both, to governments and to other specialized agencies and including requests similar to those proposed in paragraphs (b) and (c) above;
- (e) to invite the Director-General to submit to the Governing Body, in the appropriate manner and at suitable intervals, a periodic report on the outcome of the measures set out in paragraphs (c) and (d) above, and to inform the international organizations concerned of any developments in the implementation by Myanmar of the recommendations of the Commission of Inquiry;

2. Decides that those measures will take effect on 30 November 2000 unless, before that date, the Governing Body is satisfied that the intentions expressed by the Minister of Labour of Myanmar in his letter dated 27 May have been translated into a framework of legislative, executive and administrative measures that are sufficiently concrete and detailed to demonstrate that the recommendations of the Commission of Inquiry have been fulfilled and therefore render the implementation of one or more of these measures inappropriate;

3. Authorizes the Director-General to respond positively to all requests by Myanmar that are made with the sole purpose of establishing, before the above deadline, the framework mentioned in the conclusions of the ILO technical cooperation mission (points (i), (ii) and (iii), page 8/11 of *Provisional Record* No. 8), supported by a sustained ILO presence on the spot if the Governing Body confirms that the conditions are met for such presence to be truly useful and effective.