



## **Additional agenda item**

### **Review of measures previously adopted by the International Labour Conference to secure compliance by Myanmar with the recommendations of the Commission of Inquiry**

#### **I. Background to the present report**

1. At its 313th Session (March 2012), the Governing Body decided to place on the agenda of the 101st Session of the International Labour Conference (June 2012) an additional item enabling a review of measures previously adopted by the Conference to secure compliance by Myanmar with the recommendations of the Commission of Inquiry.
2. The Governing Body also requested its Officers to undertake a mission to Myanmar and to report to the Conference on all relevant issues with a view to assisting its consideration of that review. The report of the Officers will be prepared following the mission.
3. For the purpose of facilitating discussion at the Conference, the Office has prepared the present report in order to indicate measures taken by the ILO to secure compliance by Myanmar with the recommendations of the Commission of Inquiry established to examine the observance by Myanmar of its obligation in respect of the Forced Labour Convention, 1930 (No. 29), starting with a brief resumé of the history of developments in this case.

#### **II. Brief history of developments**

4. Following a complaint in June 1996 under article 26 of the Constitution, a Commission of Inquiry was established in 1997 to examine the observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29). The authorities did not permit the Commission of Inquiry to visit Myanmar, and the Commission therefore had to take testimony in neighbouring countries and in Geneva. In its report issued in July 1998, the Commission of Inquiry found that the Convention had been violated in law, as well as in practice, in a widespread and systematic manner. It made the following recommendations:

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:

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- (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 [of the Commission of Inquiry report] 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.

5. The ensuing response of the Government was mainly limited to issuing an order (Order 1/99 of May 1999) temporarily suspending the power to requisition labour under the Village Act and the Towns Act. However, this was considered by the Committee of Experts and the Committee on the Application of Standards of the Conference to be only a partial measure that had no concrete impact on the practice of forced labour.<sup>1</sup> In view of the Government's failure to take the necessary action to implement the recommendations of the Commission of Inquiry, the Conference adopted at its 87th Session (June 1999) a resolution on the widespread use of forced labour in Myanmar which resolved:

- (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;

<sup>1</sup> See "Report of the Committee on the Application of Standards", Part One, General Report, International Labour Conference, 87th Session (Geneva, 1999); *Provisional Record* No. 23, para. 195; and Report III (Part 1A), *Report of the Committee of Experts on the Application of Conventions and Recommendations*, International Labour Conference, 88th Session (Geneva, 2000), p. 106 ff.

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- (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.
6. Subsequently, at its 88th Session (June 2000) the Conference adopted a resolution under article 33 of the Constitution on measures to secure the compliance of Myanmar with the recommendations of the Commission of Inquiry (the “2000 resolution”). This is the only case in ILO history where article 33 of the Constitution was applied to ensure the compliance of a Member with international obligations. This resolution approved the following measures, which took effect on 30 November 2000:
- (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 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.
7. In parallel to these developments, an exchange of correspondence between the Director-General and the Myanmar authorities led to two ILO technical cooperation missions visiting Yangon, in May and October 2000, to provide assistance to the authorities for the immediate implementation of the recommendations of the Commission of Inquiry. These missions resulted in the adoption of an additional order supplementing Order 1/99, which for the first time prohibited forced labour covering all authorities including the army.
8. In accordance with the 2000 resolution, the Director-General wrote to member States in December 2000, and through them to employers’ and workers’ organizations, bringing their attention to the relevant paragraph of the resolution and requesting that they inform

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him of any action taken or envisaged in this regard. In accordance with the resolution, the Director-General also wrote to international organizations and set in motion the procedures necessary to have the matter placed on the agenda of the July 2001 session of ECOSOC.

9. The initial responses received by the Director-General were summarized in an interim report to the March 2001 session of the Governing Body (GB.280/6). The replies from the Organization's constituents indicated that in general they had adopted what was then described as a "wait-and-see" approach, in the light of the ongoing dialogue which had in the meantime been developing between the ILO and the Myanmar authorities and which seemed to have the potential to achieve positive results. At this time agreement was reached on the visit to Myanmar in September and October 2001 of a High-level Team (HLT) appointed by the ILO to assess in full independence and with freedom of movement the realities of the forced labour situation. The findings and recommendations of the HLT in turn led to the appointment of an ILO Liaison Officer in Myanmar in May 2002, and in May 2003 to agreement on a joint Plan of Action to address forced labour, including in particular the establishment of a facilitator mechanism to address specific complaints regarding forced labour.
10. However, around the time of the finalization of the draft Plan of Action in May 2003, the momentum in the process of dialogue and cooperation slowed in part due to uncertainties following the Government's action against the National League for Democracy (NLD). It did not prove possible to go ahead with the implementation of the Plan, and there were increasingly calls to return to the application of the measures adopted under the 2000 resolution.<sup>2</sup> The prospects of proceeding with the Plan were undermined in March 2004 by a court case in which three people were sentenced to death for high treason, including on the basis of alleged contacts and cooperation with the ILO.
11. In the conclusions adopted at the end of its special sitting in June 2005, the Committee on the Application of Standards of the International Labour Conference inter alia indicated that:

In the view of the Committee, recent developments had further confirmed the conclusions of the Governing Body at its March 2005 session that the "wait-and-see" attitude that prevailed among most members since 2001 had lost its *raison d'être* and could not continue. The Committee's general view was that Governments, Employers and Workers, as well as other international organizations, should now activate and intensify the review of their relations with Myanmar that they were called upon to make under the 2000 resolution, and to urgently take the appropriate actions, including as regards foreign direct investment in all its various forms, and relations with state- or military-owned enterprises in Myanmar. In accordance with the conclusions of the Governing Body in March, the present conclusions should be transmitted to all those to whom the 2000 resolution was addressed. The results of such reviews should be fully reported to the Director-General so that the Governing Body could have a complete picture in November. As regards the Economic and Social Council (ECOSOC), it should be requested to reactivate its consideration of the item placed on its agenda in 2001 in this regard, and Members in ECOSOC should be ready to support such a move.

12. A report on further action taken by constituents under the 2000 resolution and an update on the policies of other international organizations were provided to the Governing Body at its November 2005 session (see GB.294/6/1). Some legislative documents, such as the EU Common Position on Myanmar and Council Regulation (EC) No. 194/2008, make reference to the practice of forced labour in their preambles as one of the reasons for

<sup>2</sup> See ILO: *Provisional Record* No. 24, Part Three, International Labour Conference, 91st Session, Geneva, 2003, p. 10.

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sanctions. Others, such as the Burmese Freedom and Democracy Act of 2003 adopted by the United States Congress, make specific reference to the 2000 resolution and provide for consultation with the ILO to terminate the provisions of that Act. Some legislation issued after 2005, such as the 2007 Canadian Special Economic Measures (Burma) Regulations, was also motivated by the continuing use of forced labour by Myanmar.

- 13.** Information was also presented to the Governing Body at this time on a number of developments of concern, including death threats addressed to the ILO Liaison Officer in Myanmar. These triggered a new discussion at the Conference in 2006, which resulted in the following conclusions being adopted upon proposals formulated by the Selection Committee:

The [Selection] Committee, after listening to Ambassador Nyunt Maung Shein on behalf of the Government of Myanmar, has carefully reviewed the situation on the basis of Provisional Record No. 2 entitled “Review of further action that could be taken by the ILO in accordance with its Constitution in order to: (i) effectively secure Myanmar’s compliance with the recommendations of the Commission of Inquiry; and (ii) ensure that no action is taken against complainants or their representatives”. It also had before it the conclusions adopted by the Committee on the Application of Standards on 3 June.

There was general agreement that the 2000 resolution provided a balanced framework on which to build, although a certain number of countries reiterated their general opposition to sanctions. A number of salient points emerged as regards the promotion of enhanced awareness and implementation of the 2000 resolution, and subsequent Governing Body decisions, which included the following steps, it being understood that they have to be carefully read in the context of the detailed record of the debate:

- The ILO has the possibility to seek an advisory opinion from the International Court of Justice which would, as the Workers stated, require the formulation of a specific legal question relating to the Forced Labour Convention, 1930 (No. 29). This is without prejudice to the fact that member States have the possibility to themselves institute contentious proceedings before the International Court of Justice on their own initiative. It was made clear that such action was complementary to, and not a substitute for, other action to be taken by the ILO itself.
- The application of the measures could be enhanced by providing more precise indications as regards the kinds of concrete steps by member States which might be more effective, and which would be most relevant to the sectors and types of enterprise in which forced labour appears to be currently employed. Such indications and guidance could be elaborated through examples of concrete actions taken to date.
- There could be more active involvement of employers’ and workers’ organizations, including at the national level, in the implementation of the measures.
- An enhanced reporting mechanism could also be developed, on the basis of a user-friendly questionnaire addressed to members.
- Multi-stakeholder conferences could be convened in order to exchange ideas of best practice in the implementation of the 2000 resolution.
- Steps should be considered with a view to fostering greater awareness and a consistent attitude on the issue among other international organizations, within their specific fields of competence, in particular ECOSOC.

In addition, it was suggested that the Office should provide information about other remedies that may exist under international criminal law for action against perpetrators of forced labour.

It was also suggested that appropriate and effective use should be made of public diplomacy in support of the ILO’s efforts.

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The [Selection] Committee shared all the very grave concerns expressed in the conclusions of the Committee on the Application of Standards as to the continued widespread use of forced labour by the Myanmar authorities, as well as their failure to implement the recommendations of the Commission of Inquiry. The unprecedented gravity of the forced labour situation in Myanmar was reflected in the Commission of Inquiry's report and, despite limited progress in a number of areas, there was every reason to believe that widespread and very serious abuses persisted. In some parts of Myanmar, villagers were liable to be detained for arbitrary periods by the army and forced to carry supplies during military operations, in terrible conditions and subject to brutal treatment. Across the country, local authorities continued to force the population to carry out local infrastructure work. It was unacceptable to the ILO that a member State not only tolerated such practices, but was itself responsible for them. This was a violation of the commitment to a shared humanity that a civilized world demanded.

The [Selection] Committee underlined that progress could be made only if the Government of Myanmar really committed itself to ending forced labour – a step that was indispensable for the modernization and development of the country – and resumed genuine cooperation with the ILO. A number of speakers noted that, even though the recent steps taken by Myanmar once again came very late and did not go far enough, the path of cooperation should continue to be further explored, taking into account Myanmar's expressed willingness to do so and the fact that they had given some concrete effect to their commitment to a moratorium on prosecutions by releasing Su Su Nwe from detention. The [Selection] Committee made it clear that any such cooperation needed to rapidly produce tangible and verifiable action from Myanmar towards the implementation of the recommendations of the Commission of Inquiry. The first test of this would be Myanmar's willingness to address the following points:

1. The Government must give credibility to its stated moratorium on prosecutions, by providing further details on how this moratorium would be applied, extending it to cover prosecutions currently under way (in Aunglan) and releasing any person still in detention (in particular Aye Myint). This should be done as soon as possible but in any event no later than by the end of July 2006. It must also be clear that anyone lodging a complaint during the moratorium should have immunity from any action being taken against them subsequently for doing so.
2. The moratorium would be considered strictly binding. It was understood that if the moratorium was breached, or if it came to an end without agreement on a satisfactory mechanism as envisaged under points 3 and 4 below, then the situation would immediately be brought to the attention of the membership, to review any steps that it may be appropriate to take, including international legal steps on the basis of article 37.1 of the ILO Constitution.
3. The authorities now need to immediately enter into discussions with the ILO with a view to agreeing by the end of October 2006 on the establishment of a credible mechanism for dealing with complaints of forced labour, which would include all necessary guarantees for the permanent protection of complainants or their representatives. This would also require that the ILO Liaison Office had the necessary resources and personnel.
4. Any mutually agreeable solution which would be reached on that basis should receive clearance at the highest level on both sides (i.e., through the Officers of the Governing Body in the case of the ILO).

It would be for the Governing Body to examine in November 2006 whether these points had been met, it being understood that the Office should in the meantime undertake all the preparatory work that may be necessary to allow for immediate decisions to be taken. Then, in the light of the developments or lack thereof, the Governing Body would have full delegated authority to decide on the most appropriate course of action, including as appropriate on the basis of the abovementioned proposals for the enhanced application of the measures. It was also understood that the Governing Body should make all the necessary arrangements so that the Conference at its 2007 session is able to review what further action may then be required, including the possibility of the establishment of a special Committee of the Conference.

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In the meantime, as contemplated by the Committee on the Application of Standards, all the deliberations of this [Selection] Committee, together with the report of the special sitting of the Committee on the Application of Standards, should be brought to the attention of ECOSOC in time for its July 2006 session.

14. In November 2006, faced with the lack of agreement on a mechanism to deal with complaints of forced labour within the framework set out in the Conference conclusions, the Governing Body requested the Office to prepare an analysis regarding a possible request for an advisory opinion of the International Court of Justice on specific legal questions and considered that the Director-General would be able to transmit publicly available ILO documents on forced labour in Myanmar to the Prosecutor of the International Criminal Court for any action that may be considered appropriate.
15. As instructed by the Conference, the Office entered into discussions with the Government with a view to agreeing on the establishment of a credible mechanism for dealing with complaints of forced labour. These discussions resulted in the signing of the Supplementary Understanding (SU) on 26 February 2007. The SU was intended to support better the implementation of the Commission of Inquiry's recommendations. The Liaison Officer and the Working Group for the Elimination of Forced Labour established by the Government of Myanmar were charged with the implementation of a newly created complaints mechanism.
16. The one-year trial period for the operation of the SU has been extended annually since 2008 (the last time on 26 February 2012), 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 because of a genuine fear of reprisal 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.
17. In the meantime, at its 98th (2009) and subsequent sessions, the Conference, having recalled the persistence of forced labour, could not be disassociated from the prevailing situation of a complete absence of freedom of association and the systematic persecution of those who tried to organize, called upon the Government to accept an extension of the ILO presence in Myanmar to cover the matters relating to the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), which it has ratified.
18. Furthermore, in 2010 a number of Workers' delegates at the 99th Session of the Conference filed a complaint pursuant to article 26 of the Constitution concerning non-observance by Myanmar of Convention No. 87. The decision on whether or not to establish a new commission of inquiry regarding the points raised in this complaint is still pending before the Governing Body.

### **III. Recent developments**

19. Against a background of positive political developments in Myanmar over the last year,<sup>3</sup> the Government of Myanmar has specifically reported to the ILO the following points in relation to the recommendations of the Commission of Inquiry:

<sup>3</sup> For ease of reference Appendix II reproduces the conclusions adopted at the 100th Session (2011) of the Conference.

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- (a) The Village Act and the Towns Act of 1907 were repealed and replaced by the Ward or Village Tract Administration Act. The new Act contains no provision which in any way condones or permits the use of forced labour. The definition of forced labour in the Act directly derives from Convention No. 29 and the Act unambiguously criminalizes the exertion of forced labour. The gravity of the penalty imposed in the Act is the same as the punishment stipulated under article 374 of the Penal Code.
  - (b) Other rules that authorized forced labour, such as the Jail Manual, are in the process of being revised through the Prisons Act to ensure that their provisions do not give rise to any form of forced labour that would be contrary to Convention No. 29.
  - (c) Out of 67 persons whose release has been requested by the ILO, current information is that ten are still in prison.
  - (d) To show commitment to the elimination of any practice of forced labour, the Government proposed a comprehensive, joint and benchmarked strategy for the elimination of all forms of forced labour in Myanmar by 2015. A Memorandum of Understanding covering the main points regarding the development of such a strategy was signed by both the ILO and the Government of Myanmar on 16 March 2012. The joint strategy is expected to be administered by a joint working group consisting of the members of the Government Working Group for the Elimination of Forced Labour supplemented by up to three nominated representatives each from the Ministry of Defence and the ILO. The Government hopes to achieve the elimination of forced labour prior to the targeted deadline of 2015.
  - (e) In reaction to complaints lodged with the ILO under the SU, 166 military personnel (27 officers and 139 members of other ranks) were condemned for breaches of the prohibition of forced labour and under-age recruitment laws. The ILO was provided with the list of names of all 166 persons. 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, three persons were prosecuted under the Penal Code, of whom two were convicted and received prison sentences. One government official was recently dismissed from his post.

**20.** The Governing Body examined the situation in March 2012 and its conclusions are reproduced in Appendix I to this document.

**21.** As regards freedom of association and compliance with Convention No. 87, the Committee of Experts on the Application of Conventions and Recommendations reviewed at its meeting in November and December 2011, the application by the Government of Myanmar of Convention No. 87. Its observation is available in its report to the 101st Session of the International Labour Conference (Report III (Part 1A)). 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. It also made a number of observations on the Law. Subsequently, the Law came into force on 9 March 2012. The Labour Organization Rules were signed by the Minister of Labour on 29 February 2012, following their approval by the Government. The Chief Registrar has been appointed by the President and the township registrars have been appointed by the Chief Registrar. Finally, the Settlement of Labour Dispute Bill came into force on 28 March 2012. A number of workers' and employers' organizations have subsequently been registered in Myanmar.

**22.** A number of member States, either individually or collectively, have encouraged positive recent developments through specific measures. For example, the European Union reduced the list of persons subject to visa ban by Decision 2012/98/PESC of 17 February 2012 and suspended restrictive measures, with the exception of the arms embargo, on 23 April 2012. Switzerland also revised its list on 30 March 2012. Some other countries, such as Australia

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and Norway, announced similar measures. The United States recently issued (17 April 2012) a general licence authorizing certain financial transactions in support of humanitarian, religious, and other not-for-profit activities.

#### **IV. Final remark**

- 23.** In accordance with the conclusions adopted by the Governing Body at its 313th Session (March 2012), the Conference is invited to review the measures it has previously adopted to secure compliance by Myanmar with the recommendations of the Commission of Inquiry.

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## Appendix I

### **Decision on the sixth item on the agenda of the 313th Session of the Governing Body: Developments concerning the question of the observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29)**

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, the Governing Body:

- (1) Welcomes the important and positive developments in Myanmar since the 312th Session of the Governing Body (November 2011) and in particular the further extension of the Supplementary Understanding (SU) and the adoption of legislation repealing the Village and Towns Acts of 1907, defining forced labour and providing for the criminal prosecution of perpetrators.
- (2) Further welcomes the initiative of the Government, including the defence services, in formalizing its commitment to develop a comprehensive, proactive, joint strategy with the ILO for the full elimination of all forms of forced labour by 2015. In so doing, it is emphasized that immediate effective measures are required and that every effort should be made to meet that objective earlier. The intention to maintain ongoing direct cooperation between the defence services and the ILO in this regard is an important part of the process as all sectors of the Government must respect the new legislation.
- (3) Whilst recognizing that these represent major steps towards meeting the recommendations of the Commission of Inquiry, notes that both the strict application of the new law and the prosecution and appropriate punishment of those who may violate it are critical to achieving the objective and as such should be built into the proposed strategy. This new strategy should be accompanied by a high-level public commitment to its implementation and to full compliance with Convention No. 29.
- (4) Notes the importance of ensuring that policy coverage and application encompasses the entire territory of Myanmar including border areas in context of achieving sustainable peace agreements.
- (5) Notes the information concerning the prosecution of some perpetrators and encourages the Government to maintain a process based on preventative education/awareness, the full application of the law and accountability by way of criminal prosecution of perpetrators as a means for combating impunity.
- (6) Welcomes the expansion of awareness-raising activities including the availability of the joint Government/ILO brochure in the Myanmar language and four other national languages and looks forward to further translations and their wide distribution.
- (7) Welcomes also the recent release from prison of a further number of labour activists and seeks the immediate unconditional release of all remaining imprisoned labour activists and prisoners of conscience.
- (8) Urges the Government to avail itself of the technical assistance of the Office including in further consultation in the drafting of relevant legislation.
- (9) Expresses its appreciation for the work of the Office and especially of the Liaison Officer and his small dedicated team and re-emphasizes the need to strengthen and expand the Liaison Office capacities including through the provision of adequate resources, the Government's expeditious approval of necessary visas on request and the engagement of local focal points for the strengthening and support of community networks.
- (10) Strongly encourages the Government and the people of Myanmar to continue their ongoing democratization efforts and emphasizes in that regard the need for full respect of human rights and international standards.

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- (11) Decides to place on the agenda of the 101st Session of the International Labour Conference (June 2012) an additional item enabling a review of measures previously adopted by the Conference to secure compliance by Myanmar with the recommendations of the Commission of Inquiry.
  - (12) Finally it requests the Officers of the Governing Body to undertake a mission to Myanmar and to report to the Conference on all relevant issues with a view to assisting its consideration of that review.
  - (13) The total cost of the above mission, estimated at US\$58,000, will be financed in the first instance from savings in Part I of the budget or, failing that, through Part II of the budget.
- (Documents GB.313/INS/6, GB.313.INS/6(Add.) and GB.313/INS/6(Add.2).)

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## Appendix II

### Conclusions of the discussion in the Committee on the Application of Standards at the 100th Session of the International Labour Conference, 2011

The Committee noted the observations of the Committee of Experts on the application of Convention No. 29 by the Government of Myanmar, as well as the report of the ILO Liaison Officer in Yangon that included the latest developments in the implementation of the complaints mechanism on forced labour established on 26 February 2007 with its trial period extended, in February 2011, for a further 12 months to 25 February 2012.

The Committee also noted the discussions and decisions of the Governing Body of November 2010 and March 2011. It further took due note of the statement of the Government representative and the discussion that followed. In particular, the Government referred to the ongoing revision of the Village Act and the Towns Act and indicated that the draft law explicitly prohibits forced labour and includes reservations in the case of natural disasters. He also referred to ongoing awareness-raising activities, including in ethnic minority regions, and to the allocation of funds for the purpose of alleviating the chances of unpaid labour on the part of the Government. As regards complaints of under-age recruitment, he stated that children had been released, disciplinary action taken against military personnel and some officers dismissed and sentenced to prison terms. He stated that it was evident that action would be taken against any perpetrator, civilian or military, on forced labour and under-age recruitment.

The Committee welcomed the release from house arrest of Daw Aung San Suu Kyi that it had been calling for over many years. It again called for the immediate release of other political prisoners and labour activists.

The Committee referred to the political restructuring that had taken place since the last meeting and noted the initial policy priority statements of the newly elected President on good government and good governance. The Committee firmly expects that these objectives will be transposed into substantive positive actions and proactive and preventive measures for the eradication of all forms of forced labour and the advancement of workers' rights.

Despite the above, the Committee regretted to note that there had been no substantive progress achieved towards complying with the 1998 recommendations of the Commission of Inquiry, namely to:

- (1) bring the legislative texts in line with the Forced Labour Convention, 1930 (No. 29);
- (2) ensure that in actual practice forced labour is no longer imposed by the authorities; and
- (3) strictly enforce criminal penalties for the exaction of forced labour.

The Committee recalled the continued relevance of the decisions concerning compliance by Myanmar with Convention No. 29, adopted by the Conference in 2000 and 2006, and all the elements contained therein.<sup>1</sup> It expressed the firm expectation that the Government move with urgency to ensure that the actions requested are carried out at all levels and by all civil and military authorities. The Committee strongly urged the Government to fully implement, without delay, the recommendations of the Commission of Inquiry and the comments and observations of the Committee of Experts.

The Government in particular should:

- (1) submit the draft proposals for amendment of the Village and Towns Acts to the ILO for comment and advice aimed at ensuring their full conformity with Convention No. 29, and ensure their early adoption into law and application in practice;

<sup>1</sup> <http://www.ilo.org/public/english/standards/relm/ilc/ilc88/resolutions.htm#I>,  
<http://www.ilo.org/public/english/standards/relm/ilc/ilc95/pdf/pr-3-2.pdf>.

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- (2) take steps to ensure that the constitutional and legislative framework effectively prohibit the exaction of forced labour in all its forms;
  - (3) take all necessary measures to prevent, suppress and punish the full range of forced labour practices, including the recruitment of children into armed forces, forced conscription into fire brigade and militia reservist units, portering, construction, maintenance and servicing of military camps, agricultural work, human trafficking for forced labour, that are still persistent and widespread;
  - (4) strictly ensure that perpetrators of forced labour, whether civil or military, are prosecuted under the Penal Code and that sufficiently dissuasive sanctions are applied;
  - (5) carry out, without delay, proposed consultations between the ILO and the finance and planning ministries towards ensuring that necessary budget allocations are made so that workers are freely contracted and adequately remunerated;
  - (6) 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;
  - (7) immediately cease all harassment, retaliation and imprisonment of individuals who use, are associated with or facilitate the use of the complaints mechanism;
  - (8) release immediately complainants and other persons associated with the use of the complaints mechanism who are currently detained and reinstate any consequentially revoked professional licences;
  - (9) intensify awareness-raising activities throughout the country including in association with major infrastructure projects and in training of police and military personnel;
  - (10) facilitate, without delay, the production and wide distribution of the brochure in the remaining local languages; and
  - (11) actively pursue agreement of a meaningful joint action plan with the United Nations Country Task Force on Monitoring and Reporting in respect of children in circumstances of armed conflict, of which the ILO is a member, addressing amongst other things under-age recruitment.

As called for in the 2000 ILC resolution of the International Labour Conference, the Committee counted on the collaboration of all agencies in the United Nations system in the efforts for the effective elimination of forced labour in Myanmar. It similarly called on all investors in Myanmar to ensure that their activity in the country is not used to perpetuate or extend the use of forced labour but rather makes a positive contribution to its complete eradication.

The Committee called for the strengthening of the capacity available to the ILO Liaison Officer to assist the Government in addressing all of the recommendations of the Commission of Inquiry, and to ensure the effectiveness of the operation of the complaints mechanism, as well as any other additional action necessary for the complete elimination of forced labour. In particular, the Committee firmly expected that the Government would give full assurances without delay for the granting of entry visas for additional international professional staff.

The Committee called on the Government to review with the ILO Liaison Officer the references to forced labour orders made during its discussion, as well as the orders and similar documents which have been submitted to the Committee of Experts and requested that the progress made in this regard be reported to the Governing Body at its November session. It encouraged the Government to make use of the ILO Office to put in place a mechanism for the immediate review and investigation of these allegations.

The Committee urged the Government to provide detailed information on the steps taken on all the abovementioned matters to the Committee of Experts for its examination this year and expects to be in a position to take note of significant developments at the next session of the Conference.

(ILO: *Provisional Record* No. 18, Part Three, International Labour Conference, 100th Session, Geneva, 2011, p. 11.)

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