



## Governing Body

317th Session, Geneva, 6–28 March 2013

GB.317/INS/4/2

Institutional Section

INS

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### FOURTH ITEM ON THE AGENDA

## Matters arising out of the work of the International Labour Conference

### Follow-up to the resolution concerning the measures on the subject of Myanmar adopted under article 33 of the ILO Constitution by the Conference at its 101st Session (2012)

#### Purpose of the document

The Governing Body is invited to place an item on the agenda of the 102nd Session of the International Labour Conference for review of the remaining measures adopted under article 33 of the Constitution concerning forced labour in Myanmar, and recommendations on arrangements for the Conference's consideration of all relevant issues concerning Myanmar (see draft decision in paragraph 9).

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

**Policy implications:** Consideration of current developments in Myanmar and the contribution of ILO activities to the elimination of forced labour and related programme activities.

**Legal implications:** Placing an item on the agenda of the 102nd Session of the International Labour Conference for review of the remaining measures imposed under article 33 of the Constitution of the International Labour Organisation.

**Financial implications:** The usual financial implications of an item on the agenda of the Conference.

**Follow-up action required:** Possible Report of the Director-General to be provided to the 102nd Session of the Conference.

**Author unit:** Office of the Legal Adviser (JUR) and the Liaison Office in Myanmar.

**Related documents:** Resolution concerning the measures on the subject of Myanmar adopted under article 33 of the ILO Constitution, adopted by the International Labour Conference at its 101st Session (2012); Resolution concerning the measures recommended by the Governing Body under article 33 of the ILO Constitution on the subject of Myanmar (June 2000); GB.316/INS/5/5 (November 2012).



## I. Introduction

1. At its 316th Session (November 2011), the Governing Body reviewed the resolution of the 101st Session of the International Labour Conference (June 2012) regarding Myanmar<sup>1</sup> which lifted the restrictions on ILO cooperation with the Government of Myanmar set by the Conference in June 1999,<sup>2</sup> and suspended for one year the recommendation to constituents on their relations with Myanmar contained in paragraph 1(b) of the resolution of the Conference in 2000, subject to its review in 2013.<sup>3</sup> A review of paragraph 1(a) of the 2000 resolution concerning the measures under article 33 of the ILO Constitution on the subject of Myanmar was postponed for the 102nd Session of the Conference. Appendix I contains the 2012 and 2000 resolutions of the Conference.
2. Pursuant to the Conference resolution, the Governing Body examined at its last session a report prepared by the Office on ILO technical cooperation priorities for Myanmar and endorsed the proposed interim programme framework for technical cooperation activities in the country and requested the Office to report on progress in its implementation at the 319th Session (October 2013).<sup>4</sup> It further called on member States and international organizations to provide voluntary contributions to the ILO programme in Myanmar.
3. The 2012 Conference requested the Governing Body to place an item on the agenda of the 102nd Session of the Conference (2013) concerning Myanmar, and to organize at its March 2013 session a discussion on arrangements for consideration of all relevant issues concerning Myanmar at the 102nd Session of the Conference, with a view to making any recommendations it deems appropriate. Follow-up on those issues is found in Part III.

## II. Current developments

4. As an update to the information provided to the Governing Body at its last session,<sup>5</sup> Appendix II contains the report of the Liaison Officer on the current situation in the country. In order to ensure the legal framework for the ILO's renewed cooperation in Myanmar, the Government and the ILO have agreed to a further extension of the Supplementary Understanding and its Minutes of the Meeting dated 26 February 2007 (see Appendix III), and an exchange of letters confirming the application of the provisions of the 1947 Convention on the Privileges and Immunities of the Specialized Agencies to ILO's technical cooperation activities in the country. The attached report covers current developments in respect of the application of the Memorandum of Understanding, and associated action plans.

<sup>1</sup> ILO: Resolution concerning the measures on the subject of Myanmar adopted under article 33 of the ILO Constitution, adopted on 13 June 2012, International Labour Conference, 101st Session, Geneva. See Appendix I.

<sup>2</sup> ILO: Resolution on the widespread use of forced labour in Myanmar, International Labour Conference, 87th Session, Geneva, 1999.

<sup>3</sup> ILO: Resolution concerning the measures recommended by the Governing Body under article 33 of the ILO Constitution on the subject of Myanmar, International Labour Conference, 88th Session, Geneva, June 2000. See Appendix I.

<sup>4</sup> This report will encompass the full programme of work in the country including progress in respect of the elimination of forced labour.

<sup>5</sup> GB.316/INS/5/5.

### III. Possible arrangements for the 2013 Conference

5. As noted above, the 2012 resolution requested the Governing Body to place an item on the agenda of the 2013 Conference on the subject of Myanmar including a review of the remaining measures adopted under article 33 of the ILO Constitution. This decision is proposed below.
6. The 2012 resolution further called on the Governing Body to recommend, as it deems appropriate, arrangements for consideration of all relevant issues concerning Myanmar. Among such issues are the remaining measures provided for in paragraphs 1(a) and 1(b) of the 2000 Conference resolution, which were based on the actions recommended at the time by the Governing Body under article 33 of the ILO Constitution, namely:
  - (a) whether the question of Myanmar's implementation of the Commission of Inquiry's recommendations should continue to be discussed at a sitting of the Committee on the Application of Standards (CAS) specially set aside for the purpose (paragraph 1(a)); and
  - (b) whether the recommendation that the Organization's constituents should review their relations with Myanmar and take appropriate measures, reporting on the same in due course, should continue (paragraph 1(b)). In 2012, the Conference suspended this recommendation for one year, with immediate effect, and provided that the Conference will review the recommendation again in 2013 in the light of information available to it in respect of the elimination of forced labour in Myanmar.
7. Pursuant to paragraph 1(a) of the 2000 resolution, the question of Myanmar's implementation of the Commission of Inquiry's recommendations has been reviewed by the CAS at a special sitting since the 2001 Conference. Under the terms of the 2000 resolution, the discussion should be at a sitting "specially set aside" for such a review "so long as the Member has not been shown to have fulfilled its obligations", that is, to have met its constitutional obligation to take such action as may be necessary to secure the effective observance of the Convention. In this regard, the Governing Body may wish to consider recommending that the Conference arrange an early review, through the CAS discussion of the subject, in order to inform the Conference's further discussion, in the Selection Committee or by some other means, to decide whether such a measure under article 33 may, given current circumstances, be discontinued without prejudice to the continued examination of the application by Myanmar of Convention No. 29 through the general reporting obligations and supervision provided under article 22 of the Constitution.
8. The Conference's review of paragraph 1(b) of the 2000 resolution concerns the question whether the constituents should continue to review their relations with Myanmar and take appropriate measures to ensure against an effect of perpetuating or extending the system of forced or compulsory labour, and to contribute as far as possible to the implementation of its recommendations, reporting on the same in due course. The Governing Body and the Conference have been provided with information pertaining to the application of this measure on several occasions.<sup>6</sup> In this regard, the report of the Liaison Officer in Appendix II, and any further update on the situation, including on ILO technical

<sup>6</sup> See *Provisional Record* No. 2, International Labour Conference, 95th Session, Geneva, 2006, "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"; GB.294/6/1 and GB.294/6/1(Add.); GB.298/5/1(Add.).

cooperation with Myanmar, could be made available to the Conference for its discussion of the means by which the Organization and its constituents may cooperate with the Myanmar Government in its efforts to secure and promote the effective observance of the Convention.

### **Draft decision**

**9. In light of the 2012 resolution of the Conference and taking note of the situation reported by the Liaison Officer, the Governing Body:**

- (a) places an item on the agenda of the 102nd Session of the International Labour Conference (June 2013) enabling a further review of remaining measures previously adopted by the Conference under article 33 of the ILO Constitution to secure compliance by Myanmar with the recommendations of the Commission of Inquiry on forced labour;*
- (b) recommends that the 102nd Conference arrangements include:*
  - (i) an early review and decision, through an outcome adopted by the CAS and transmitted to the Selection Committee, of whether Myanmar is taking such action as may be necessary to secure the effective observance of Convention No. 29, in order to inform the Conference discussion and decision on action to be taken regarding the remaining measures adopted under article 33;*
  - (ii) a review, through the Selection Committee as decided by the Conference at its 101st Session,<sup>7</sup> or by such other means as the Conference may decide, in order to consider whether the remaining measures adopted under article 33 of the Constitution, as found in paragraphs 1(a) and 1(b) of the 2000 resolution of the Conference, should be modified or discontinued in the light of the information available to it;*
- (c) requests the Director-General to report to the Conference on all relevant issues involving an update to the situation in Myanmar as available, and on ILO activities in the country, with a view to assisting the Conference's consideration of this item on the agenda.*

<sup>7</sup> In June 2012, the 101st Session of the Conference referred the question of Myanmar to the Selection Committee which in turn created a subcommittee to report on the matter to the plenary directly on its behalf.



## Appendix I

### Conference resolutions (2012 and 2000)

#### ***Resolution concerning the measures on the subject of Myanmar adopted under article 33 of the ILO Constitution, 2012***

The General Conference of the International Labour Organization, meeting in Geneva at its 101st Session, 2012,

Taking note of the measures previously adopted by the Conference with a view to securing compliance by Myanmar with the recommendations of the Commission of Inquiry that had been established to examine the observance by Myanmar of its obligation in respect of the Forced Labour Convention, 1930 (No. 29), namely the resolution on the widespread use of forced labour in Myanmar, adopted by the International Labour Conference at its 87th Session (June 1999) (the “1999 resolution”), and the 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 (May–June 2000) (the “2000 resolution”),

Having been informed by the Officers of the Governing Body, the International Labour Office, member States and other international organizations of the progress made by Myanmar towards complying with the recommendations of the Commission of Inquiry,

Taking note of the conclusions adopted on 4 June 2012 by the Committee on the Application of Standards resulting from the discussion at its special sitting on Myanmar at this session of the Conference,

Considering that maintaining the existing measures would no longer help in attaining the desired result of compliance with the recommendations of the Commission of Inquiry;

1. *Decides* that the limitation of ILO technical cooperation or assistance to the Government of Myanmar, enunciated in paragraph 3(b) of the 1999 resolution is lifted with immediate effect to enable the ILO to assist the Government, employers and workers on a variety of issues coming within the ILO’s mandate;

2. *Decides* that the measure enunciated in paragraph 3(c) of the 1999 resolution is also lifted to allow the Government of Myanmar to participate in ILO meetings, symposia and seminars in the same way as any other Member, with social partners from Myanmar receiving the same treatment;

3. *Determines* that the remainder of the 1999 resolution ceases to apply with immediate effect;

4. *Suspends* for one year the recommendation contained in paragraph 1(b) of the 2000 resolution with immediate effect. The International Labour Conference will review the recommendation again in 2013 in the light of information available to it in respect of the elimination of forced labour in Myanmar. The Governing Body is requested to include this item on the agenda of the 102nd Session of the Conference (2013);

5. *Requests* the Director-General to prepare for the November 2012 session of the Governing Body a report on ILO technical cooperation priorities for Myanmar, including the resources required. The report is to include progress made in the implementation of the Joint Strategy for the elimination of forced labour in Myanmar, the operation of new labour legislation, including freedom of association, and on the impact of foreign investment on decent working conditions in the country;

6. *Invites* the Governing Body to organize at its March 2013 session a discussion, with a view to making any recommendations it deems appropriate, on arrangements for consideration of all relevant issues concerning Myanmar at the 102nd Session of the Conference (2013);

7. *Requests* the International Labour Office to give urgent attention to the identification of technical cooperation priorities in Myanmar in close consultation with the Government and social partners in the country. This should be in addition to the established priorities of effective and full realization of freedom of association and the elimination of forced labour, particularly through the effective implementation of the Joint Strategy. It is noted that the Government has acknowledged the need for immediate action on the Joint Strategy, with a view to its full implementation before the declared target date;

8. *Calls upon* Members and international organizations to make available to the ILO the financial resources necessary for it to provide the technical assistance that Myanmar requires to meet the opportunities and challenges of its rapidly changing circumstances;

9. *Invites* the Governing Body and International Labour Office to make adequate budget provisions to support the ILO Office in Myanmar on a reasonable and stable basis;

10. *Requests* Members and international organizations to continue following closely the situation and share with the ILO Liaison Officer any information on the occurrence of forced labour in Myanmar;

11. *Requests* that the ILO coordinate its work with UN system and other international organizations to seek their support for ILO priorities in Myanmar;

12. *Requests* the Government of Myanmar to facilitate the enlarged scope of the activities of the International Labour Office in Myanmar through appropriate arrangements;

13. *Notes* that the provisions of paragraph 1(c), (d) and (e) of the 2000 resolution have ceased to apply;

14. *Invites* the Director-General to communicate to relevant international organizations referred to in article 12, paragraph 1, of the Constitution, the text of this resolution.



**Resolution concerning the measures recommended  
by the Governing Body under article 33 of the ILO  
Constitution on the subject of Myanmar, 2000**

The General Conference of the International Labour Organization,  
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 organisations, 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.

## Appendix II

### Report of the ILO Liaison Officer for Myanmar

#### ***I. Overview of the political developments in Myanmar***

1. The Myanmar Government, which took office in March 2011, continues under the leadership of President U Thein Sein to carry out a complex political, economic and social reform and transition to democracy following decades of military rule. The upper and lower houses of Parliament continue to carry out an extensive legislative programme which addresses evolving governance, budgetary and institutional framework issues. Although the parliamentary opposition is still a relatively small minority, its influence has been considerably strengthened since by-elections in early 2012.
2. Two major policy areas – the eradication of poverty and rural development – have been defined by the President as the core objectives of all policy initiatives. The Government has recognized that to this end comprehensive reform across all policy areas is required, together with an emphasis on the rule of law, thus empowering people and their communities, and promoting the development of a more inclusive society.
3. In January 2013 a major meeting on development cooperation was held in Nay Pyi Taw organized by the Government of Myanmar in association with the international community which resulted in the development of the “Nay Pyi Taw Accord” – a set of principles in respect of ongoing aid coordination in support of the reform process. The ILO Deputy Director-General for Management and Reform (DDG/MR) was in attendance and took active part in these important discussions (see section II below).
4. These transition measures are complicated by the need to achieve peace between the ethnic communities of Myanmar. Since assuming office the Government has negotiated 11 ceasefire agreements with non-state armed groups. At the time of writing, these ceasefire agreements, although still fragile and with reportedly some incidence of occasional breach, were generally being respected. However, serious armed conflict continues in the north of the country between government forces and the Kachin KIA/KIO. Negotiations between these parties continue with the support of both internal ethnic nationality groups and the international community. At the time of writing there were expectations that a positive breakthrough was imminent with the potential for agreement being reached permitting negotiations with all stakeholders to move to the next level.
5. The situation concerning the previously reported civil unrest between the Rakhine and Rohingya populations of Arakan State, which erupted in June 2012, although more stable, remains tense. The report of the Government-appointed commission of inquiry established to investigate the causes of the civil unrest and to recommend a way forward is, at the time of writing, awaited.
6. The Government continues to be strongly committed to reform: progress continues to be made but there remain many complex issues to be addressed. As is to be expected in such circumstances, contradictions persist in both the development and the implementation of policy which will take time to resolve. The need for long-term international support at all levels is considerable.

#### ***II. Mission to Myanmar***

7. The DDG/MR, supported by the Regional Director of Asia and the Pacific and the ILO Principal Legal Officer undertook a mission to Myanmar from 17 to 21 January 2013.

During the mission agreement was reached on the further 12-month extension of the Supplementary Understanding and the complaints mechanism contained therein. During a meeting with the Minister of Labour the Government's commitment to the policy for the elimination of forced labour was reconfirmed with the Minister expressing his Government's intent to achieve its full elimination before the 2015 target date if at all possible. The delegation met the full membership of the Strategic Working Group for the Elimination of Forced Labour and undertook a review of progress against the agreed action plans. The commitment of all members – civil and military – and their acceptance of responsibility for action in those areas within their authority were noted.

8. The delegation also met with each line ministry with interest in the various areas under which the Government–ILO interim programme of work is being developed. The need for ongoing coordination and cooperation towards achieving a cohesive overall programme was recognized. As reported in paragraph 3 above the delegation also took part in the first Myanmar Development Cooperation Forum on 19 and 20 January 2013.

### **III. Progress in the elimination of forced labour**

9. An extensive report in respect of new initiatives and commitments for the elimination of all forms of forced labour by 2015 was presented to the 316th Session of the Governing Body.
10. Recognizing the direct link between armed conflict and the use of forced labour, the ILO has continued its work in support of the peace process, both in its own right and as part of the Myanmar Peace Support Initiative (MPSI), providing services to conflict-affected villagers in previously inaccessible locations inside the ceasefire areas.
  - (a) In Mon State, working in support of local community-based organizations, the ILO has as part of a broader MPSI project, commenced the provision of technical engineering and employment support for a community-led infrastructure project for the provision of fresh water.
  - (b) In East Bago, again working in support of local community-based organizations, and as part of a broader MPSI project, the ILO has continued its work with the internally displaced communities in preparation for their voluntary return to their abandoned villages. This project envisages a small-scale, community-led irrigation scheme.
  - (c) In southern Shan State, the ILO has commenced work in association with UNODC and WFP, to establish a project utilizing the labour intensive infrastructure modality in support of conflict affected communities.
  - (d) Discussions continue on similar activities, in response to requests from both government authorities and ethnic nationality organizations, in Chin State, Kayah State, Kayin (Karen) State and Tarintharyi Region.
11. In addition to creating increased awareness of rights and responsibilities under the law in respect of the use of forced labour, each of these projects will provide opportunity for skills transfer, community empowerment through micro- and small business activity, and governance and coordination support to community-based organizations undertaking the various elements of pilot project activities.
12. The ILO has also been requested by a number of the non-state armed groups to deliver rights-based training, with an emphasis on forced labour, to their Officers and ceasefire liaison office personnel.
13. Since the last report the ILO has received confirmation of the discharge of a further nine under-age recruits from the defence services bringing the total released and discharged in response to complaints under the ILO complaints mechanism to 319. This includes 56 having been released from prison after conviction on desertion charges. Under the joint

action plan on children in armed conflict under Security Council Resolution 1612 (signed on 27 June 2012) a further 24 under-age recruits were discharged in February 2013.

14. After considerable negotiation and with good cooperation from both the KIA and the defence services, the ILO successfully achieved the transfer back into central Myanmar of eight soldiers of the official army, being under-age recruits, who had been captured and held as prisoners of war by the KIA. With the support of UNICEF and the Ministry of Social Welfare these boys have now been reunited with their families and are receiving reintegration support whilst their official discharge from the military is processed.
15. In parallel to this, following ILO intervention, four schoolgirls, having been recruited by KIA personnel, were safely returned to their homes.
16. In conformity with the action plan the following activities have been undertaken since 1 November 2012 or are scheduled:
  - (a) seven ILO forced labour awareness-raising seminars for members of Parliament, representatives of community-based organizations and members of the public have been undertaken in Yangon with a total of 344 participants;
  - (b) two further presentations have been made to the general administration department township administrators at their in-service training session;
  - (c) in cooperation with the freedom of association project, presentation of forced labour rights and responsibilities were incorporated into two seminars for journalists and legal practitioners;
  - (d) a one-day ILO workshop was held as part of the ASEAN meeting for senior police officers in Yangon encompassing forced labour and freedom of association rights and responsibilities and practical policing of strike-related demonstrations;
  - (e) a further 21,035 forced labour brochures have been distributed since 1 November 2012. This brings the total number of brochures distributed nationwide, in seven languages, to 1,546,292. The brochure continues to be reproduced in full in Myanmar language newspapers and journals on a periodic basis. Nationwide radio and television broadcasts of the full brochure content also continue. These periodic broadcasts explain what forced labour is and how citizens can exercise their rights through the ILO complaints mechanism;
  - (f) a database of allegations, as documented in the comments of the ILO supervisory bodies, and a procedure for their joint investigation is being developed;
  - (g) a field mission to the Kyauk Phyu special economic zone is planned to be undertaken in April 2013, with meetings with project management, contractors and subcontractors, and associated civilian and military government personnel;
  - (h) the Deputy ILO Liaison Officer is now confirmed as a member of the anti-human trafficking working group. A comparative analysis of the Government's anti-human trafficking plan of action and the Government-ILO forced labour action plan has been undertaken and recommendations for further cooperation between the two accepted;
  - (i) a series of forced labour presentations to the defence service training programmes scheduled for February 2013 were postponed owing to the late confirmation of dates and the ILO's inability to arrange attendance of appropriate personnel. Arrangements for rescheduling are under discussion;
  - (j) it is expected that an IPEC specialist engaged to support the economic reintegration of discharged under-age recruits will be joining the Yangon-based team during April. Advice from Government as to its intent regarding ratification of the Worst Forms of Child Labour Convention, 1999 (No. 182), is awaited.

17. The strategy for the elimination of forced labour as outlined in the Government–ILO Memorandum of Understanding of March 2012 and its associated action plans addresses the issue at three levels – awareness raising/training and understanding of rights and responsibilities under the law; the application of the law; and the application of justice with corresponding accountability under the law.
18. The above reflects the commitment of all stakeholders in respect of ensuring awareness and understanding of the law against forced labour. This is confirmed by the continued level of complaints received. It has further been noted that different sectors of society (for example, civil servants, private sector workers) are beginning to use the complaints mechanism as a means of realizing their own rights in respect of their own employment situation.
19. Between 1 November 2012 and 28 February 2013, 136 complaints, accepted as being within the mandate, have been received under the complaints mechanism. This compares with 123 received over the same period in 2011–12. Of those complaints, 95 were individual cases of under-age recruitment, with the balance encompassing 18 forced labour complaints with multiple complainants, seven allegations of human trafficking and 17 forced adult-recruitment complaints.
20. Consistent reports are now being received from all parts of the country, including in ethnic ceasefire areas that the incidence of the use of forced labour by both the military and the civilian authorities is falling. Given the close link between conflict and human rights abuses it is not surprising that the reported exceptions to this trend are the conflict areas of Kachin State and Rakhine State.
21. This situation has been brought to the attention of all parties concerned directly by the ILO and through the advocacy of the UN Country Team and the international community.
22. One lawyer, U Pyo Phyu, whose licence was revoked following his involvement in a case that was taken up through the ILO complaints mechanism, still awaits the reinstatement of his professional rights.
23. All 11 of the labour activists reported as being imprisoned whose names have been on the ILO list of detainees, have now been accounted for. Government inquiries have established that the last two such persons, Naw Bey Bey and Nyo Win, have been identified as being imprisoned under the names Naw Bway Say and Nyount Win and that they were released from prison on 18 September 2009 and 12 October 2011 respectively. As a result there are no labour activists, having been the subject of ILO Committee of Expert observations, in detention.
24. A recent issue has arisen concerning the application of new land rights laws in cases where complainants had previously lost the right to farm their traditional land owing to their refusal to undertake forced labour. As the result of intervention under the complaints mechanism these farmers were permitted to return to their land. Under the new land laws all land occupants are required to re-register their land holdings with the Land Records Department. This is in general a positive process being the beginning of a land tenure system. However in these cases it appears that although the farmers were permitted to resume occupancy of their traditional land it continues to be recorded as being owned by the parties who sought to subject them to forced labour and evicted them on receiving a refusal. It is hoped that this is an administrative error and that current negotiations under the complaints mechanism will lead to a resolution.
25. In response to complaints under the mechanism, 329 prosecutions have been recorded – five under the Penal Code and 324 under military regulations. Eleven offenders have received prison sentences whilst the others have been subjected to dismissal, fines, demotion or other administrative penalties. Feedback from military sources indicates that the recent publishing of reports confirming the imprisonment of offenders has acted as a strong disincentive to others. There is no doubt that such publicity has not only increased

the confidence of people to complain to the ILO but has also empowered them to successfully raise issues directly with the authorities.

26. Additionally, during the mission of the DDG/MR, the ILO was given a copy of the 2005 Anti-Trafficking in Persons Law. In paragraph 3 of the Law, forced labour is listed as a form of exploitation and therefore enters into the definition of human trafficking, which is prohibited by the Law and for which punishment involves heavy sanctions of imprisonment. The Government reported that, of the 120 cases prosecuted under this law, 11 related to trafficking for forced labour.

#### **IV. Developments regarding freedom of association**

27. As at 22 February 2013 there were 421 labour organizations registered (compared to 264 at the time of the last report based on 24 September registrations). Registrations continue to increase steadily. Eighteen employers' organizations have been registered.
28. Significant activities during the reporting period under the key project objectives have been as follows.

##### **1. Awareness raising**

###### **(a) Publications**

- An easy to read, information brochure about the Labour Organization Law has been prepared in the Myanmar language, and will be translated into other ethnic languages. To date 150,000 copies of the leaflet have been printed. Other materials in development include:
  - a colourful A5 poster promoting “The New Freedom in Myanmar – the Freedom to Associate”;
  - a do-it-yourself kit to provide a guide to the process of forming and registering a basic labour organization; and
  - DVDs and radio advertisements.

###### **(b) Events**

- Awareness-raising events held during the period covered by this report were:
  - a media workshop “Labour Rights and the Building of a Modern Society in Myanmar” which was organized to raise awareness among the media about freedom of association, the new laws, and the ILO programmes;
  - a workshop to raise awareness among non-governmental organizations' leaders in Myanmar;
  - a workshop for youth leaders which brought youth organization leaders together with young labour organization leaders;
  - an awareness-raising workshop in Mawlamyne which was attended by senior ministers of the regional government, local community organizations and representatives of workers.

###### **(c) Training of Promoters' Programme**

- A three-day training workshop for 20–25 participants is conducted monthly for nominees from workers' and employers' organizations and the Government. Trainees are provided with presentation and facilitation skills using ILO resources on freedom of association and the Labour Organization Law, which they then use to raise awareness in their own workplaces and communities.

## 2. Well-functioning registration process and labour market institutions

- A workshop for government officials “Formation and operation of labour and employers’ organizations – the role of government officials” was held in Mandalay on 30 November 2012. The purpose of the workshop was to, firstly, examine the relevant decisions and principles of the ILO Committee on Freedom of Association to gain a deeper understanding for the application of national laws and practice; secondly, to discuss the experience of conciliation and arbitration bodies, township registrars and other Ministry of Labour officials in the formation and operation of labour and employers’ organizations; and thirdly, to discuss what more can be done to promote the formation and registration of labour and employers’ organizations under the Labour Organization Law 2011.
- A workshop for arbitration council and arbitration body members entitled “The Arbitration Institutions – Achieving independence, credibility and fairness” was held in Yangon on 22 November 2012.

## 3. Building the technical and institutional capacity of unions

- A priority focus has been the development of appropriate training for leaders of the new labour organizations registered under the Labour Organization Law. An interactive two-day course, with labour leaders on the first day who are joined by their employers on the second day, provides basic skills and knowledge of the laws, union management and leadership; as well as exercises on communication, strategic thinking, and collective bargaining role plays. This has proved very popular with both labour organization leaders and employers. It is currently being run on a weekly basis with 30–35 participants each and will be increased to two courses weekly if funding permits. The training is in the Myanmar language and is led by a local educator/trainer.

## 4. Meaningful social dialogue

- Two social dialogue workshops were held during the reporting period. The first was held on 27 January 2013 in Yangon on the theme of health and safety at work. It was successful and all parties requested that a further workshop be organized so that the dialogue could continue in more detail. As a result a second Social Dialogue Workshop on Occupational Safety and Health (OSH) was held on 26 February 2013 which examined a proposed new OSH law and a proposed amendment to the Holiday and Leave Law.
- A further workshop for lawyers on “Freedom of Association and Dispute Resolution – The Laws and the Practice”, was organized jointly with the Friedrich Ebert Stiftung (FES) on 11–12 February. The objective was to examine the Labour Organization Law 2011 and the Settlement of Labour Disputes Law 2012 in detail and, with assistance from Myanmar and international legal experts, to better understand, and to learn from, the practical experience of these new laws during their first year of operation. This workshop produced very good discussion and, with the concurrence of the Deputy Minister of Labour and the Director-General of the Labour Department, a schedule of suggested amendments to both laws was presented to the Deputy Minister.

### 29. The following further activities are currently being planned or developed:

- An enterprise-level training and relationship building programme for employers and leaders of labour organizations.



- Discussions are currently under way on a possible additional training and capacity-building project for the Government, worker and employer members of the new labour institutions, particularly the conciliation and arbitration bodies and the arbitration council to be undertaken in partnership with the US Federal Mediation and Conciliation Service.
- Late last year the Freedom of Association Unit undertook a training needs analysis of the Ministry of Labour. The technical memorandum produced shows that capacity building is necessary in all areas of the Ministry. A separately funded project to this end is in development.
- It is intended that more advanced level modular training programmes for labour organization leaders will be developed but this will again be dependent upon additional donor funding.
- A national consultation forum of labour organization representatives is being planned for the end of April, both as an education exercise about the ILO and its processes, and also to facilitate the selection of a Workers' delegate to the 2013 International Labour Conference, and a national consultative group having a mandate for ILO related purposes.
- Employer-specific training and employer awareness-raising workshops have been held and more are being developed, in cooperation with the Republic of the Union of Myanmar Federation of Chambers of Commerce and Industry and supported by the Office through the Bureau for Employers' Activities.

30. Despite the steady increase in registrations of labour organizations there are still a number of issues and challenges.

(a) *The adequacy of the new laws and their enforcement*

Some weaknesses in the Labour Organization and Settlement of Labour Disputes Laws have become apparent during their first year of implementation, particularly relating to the protection of workers from being dismissed or discriminated against for union activities, and the enforcement of arbitration court/body orders for reinstatement of workers who have been dismissed. The Ministry of Labour has recognized this with a proposed amendment to impose penalties (including imprisonment) on employers who fail to comply with reinstatement orders and has been open to discussing possible additional amendment needs. This open approach to possible changes in law is encouraging, and a process of continuing consultation with the Ministry on them raises the possibility that the weaknesses can be successfully addressed through amendments. However, in the meantime, the effect of the current laws' shortcomings on labour organization formation and membership is increasingly evident.

(b) *The law relating to the right of peaceful assembly and peaceful procession*

The arrest under the above law of workers exercising their rights (to strike and protest) under the Labour Organization Law has raised the issue of which law has precedence. During the recent ILO mission, the Minister for Labour advised the DDG/MR that workers exercising rights under the Labour Organization Law would not be subject to the Right of Peaceful Assembly and Peaceful Procession Law. However charges under the latter law against a group of protesting workers have not yet been withdrawn.

(c) *Employer responses to the new law*

The level of interest by employers is still very low, as indicated by the relatively few (18) employers' organizations which have been registered. The Freedom of Association Unit has undertaken some employer-specific workshops and will be undertaking more, and it is encouraging that at least 90 per cent of the employer representatives who attend the

two basic workshops finish with a positive attitude and have agreed to follow up activities in their workplaces. The challenge is to intensify education work with non-complying and non-involved employers.

The reaction of some government employers has been disappointing; it should be expected that government ministries, agencies, and enterprises would be positive to the formation of labour organizations. This has not been the case. In some sectors, such as the public education sector, there has been a negative employer reaction. This has included discriminatory action against university staff in Mandalay who registered a labour organization. An ILO workshop for senior government officials is being planned in an attempt to effect a change in attitudes.

(d) *Building national union organization*

The requirements of the Labour Organization Law (particularly the requirements that each stage of the process from basic enterprise level to national federation has to be related to a common trade or activity with support from 10 per cent of workers/organizations in that trade or activity), make the building of more viable labour organization structures an organizational challenge. The ILO has emphasized the need for a “partnership for development” between employers’ and workers’ organizations and to the development of some industry projects (for example in the garment sector) can encourage close dialogue on industry issues.

(e) *Scale and reach of the freedom of association programme*

With 421 labour organizations registered there are now more than 3,000 labour organization executive members who would benefit from training. In addition the number of members (tripartite) of township conciliation councils so far appointed is well over 1,000. Additional donor funding is currently being sought to deepen and extend project work.

## **V. ILO programme framework for Myanmar**

31. The immediate focus of the new programme framework remains on the fundamental principles and rights at work, notably through: (i) the continued implementation of the Memorandum of Understanding with the Government on forced labour; (ii) a scaled-up freedom of association programme; and (iii) preparatory work in identified priority areas leading to a future Decent Work Country Programme (DWCP).
32. Forced labour and freedom of association activities are outlined above. On broader DWCP preparation the Office has commenced active work in cooperation with the tripartite partners in respect of:
  - (a) human trafficking;
  - (b) child labour, including the reintegration of under-age recruits from the army and militias;
  - (c) enhanced employment opportunities, especially for youth;
  - (d) labour legislation and labour market governance including labour statistics;
  - (e) socially responsible enterprise development;
  - (f) labour migration;
  - (g) employment dimension of trade and investment;
  - (h) social security and social protection floor;
  - (i) skills and vocational development;

- (j) micro, small and medium-sized enterprise and entrepreneurial development.
33. All of the above activity has been and continues to be undertaken with the cooperation of the Ministry of Labour and other relevant authorities. In particular the demand for awareness raising, training and capacity building as well as programme development and support services has increased considerably. Of necessity the ILO staffing levels have been increased, supported by both the granting of supplementary regular budget allocation and increased donor support. Staffing is projected to increase further over the coming months. The Office as a result has been obliged to relocate to larger premises.

## Appendix III

### **An Agreement for Extension of the Supplementary Understanding and its Minutes of the Meeting dated 26 February 2007,**

#### **for an additional one year trial period from 26 February 2013 to 25 February 2014**

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

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

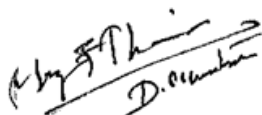
Noting the five preceding Extensions of the SU and its Minutes of the Meeting, of 26 February 2008, 26 February 2009, 26 February 2010, 26 February 2011, and 26 February 2012,

Noting the agreement on the Action Plan established to implement the Memorandum of Understanding on the Elimination of Forced Labour in Myanmar signed by the same parties on 16 March 2012.

It is herewith agreed as follows:

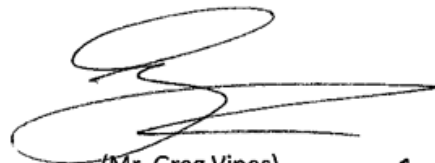
- Both parties agree to extend, on the same trial basis, the SU and the Minutes of the Meeting, for one year with the extension period commencing on 26 February 2013, to the day one year thereafter being 25 February 2014.
- The spirit and letters of the SU and the Minutes of the Meeting remain *in toto* unchanged.
- The SU and the Minutes of the Meeting shall continuously remain in legal effect upon signing by the authorized representatives of the parties mentioned below.
- This agreement will be submitted to the forthcoming session of the Governing Body of the International Labour Office.

This Agreement is done at Nay Pyi Taw, the Republic of the Union of Myanmar on the 8 day of February 2013.



(H.E. U Myint Thein)

Deputy Minister for Labour, Employment and  
Social Security  
The Government of the Republic  
of the Union of Myanmar



(Mr. Greg Vines)

Deputy Director General  
for Management and Reform  
International Labour Office