



## **Third item on the agenda: Information and reports on the application of Conventions and Recommendations**

### **Report of the Committee on the Application of Standards**

#### **PART THREE**

##### **OBSERVATIONS AND INFORMATION CONCERNING PARTICULAR COUNTRIES**

##### **Special sitting to examine developments concerning the question of the observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29)**

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## A. RECORD OF THE DISCUSSION IN THE COMMITTEE ON THE APPLICATION OF STANDARDS

A Government representative of Myanmar recalled that the 310th Session of the Governing Body had welcomed the positive developments in Myanmar as well as the extension of the Supplementary Understanding trial period for a further 12 months. He explained that it had been extended during the visit of the Executive Director's mission in February 2011. He stressed that it was important to highlight that the ILO mission was the only foreign mission that the authorities had received during the period in which the new Parliament was in session, with a view to extending the Supplementary Understanding and to seeking advice on the draft legislation on workers' organizations. During this mission, the members had met the Minister of Labour, the Government Working Group for the Elimination of Forced Labour, the Government Working Group for Anti-Human Trafficking and the Government Human Rights Body. These discussions had brought the mutual understanding and cooperation between Myanmar and the ILO to another level. Receiving the mission reflected the political will and commitment of the Government to the cooperation with the ILO.

He referred, as one of the concrete measures to implement Convention No. 29, to the ongoing preparation of a draft legislation to amend the Village Act and the Towns Act of 1907 by a drafting committee headed by the Union Minister of Home Affairs. The draft law explicitly prohibited forced labour and included exceptions in the case of natural disasters. This draft law would be submitted to *Pyidaungsu Hluttaw* (Parliament). Supplementing orders, directives and procedures would be issued as necessary. He informed that the drafting of a law for the formation of workers' organizations was also under way in close cooperation with the ILO. He believed the draft law would be promulgated by the Parliament in the very near future. Turning to the Constitution of 2008, he indicated that since it had been approved by 92.48 per cent of the people's votes, it was impossible, at this juncture, to amend its provisions. However, the draft legislation would provide for provisions effectively outlawing forced labour practices, thereby bringing the legal framework in line with Convention No. 29.

His Government believed that advocacy played a very important role in eliminating forced labour in the country. In this regard, he stated that a total of ten regional workshops had been held to date since 2008. He stressed that they had been held not only in mainland Myanmar, but also in ethnic minority regions like Kachin, Karen, Shan and Chin States. Civil and military authorities and officials from relevant local government ministries had also taken part in these workshops. Since May 2010, a total of 35 training and awareness-raising activities for various stakeholders had been successfully held.

These activities had generated better awareness on the issue among the public and had resulted in an increase in the number of complaints. The Liaison Officer had indicated in his report that this trend should not be construed as an increase in the use of forced labour. In order to cope with the increased workload, it had been made clear to the Liaison Officer that he had the liberty to employ local staff.

As part of the proactive approach, the budget to cover labour costs in government projects had been allocated to all ministries. The allocated funds were spent for the purpose of minimizing the risk of unpaid labour in government projects.

He referred to the complaints on under-age recruitment had been dealt with, on a priority basis, by the Government Working Group and its respective committees. Acting on the complaints received through the ILO complaints mechanism, a total of 120 recruits had been allowed to resign from military service and 13 had been

released from prisons. As regards enforcement measures against under-age recruitment, five military officers and five other ranks had been dismissed and sentenced to prison terms. Disciplinary action had also been taken against 20 officers and 110 other ranks in the military. It was evident that action would be taken against any perpetrator, civilian or military on forced labour and under-age recruitment. He added that some complaints had been filed directly to the military authorities and they had been handled with the same priority and measures taken. The local military authorities had also settled 22 land disputes.

His Government believed that progress had been achieved on the observance of Convention No. 29, which had been made possible in close cooperation with the ILO, in particular the Liaison Officer. He highlighted that Myanmar never lost sight of the goal of eliminating any form of forced labour practice, even at a time of important political transition in the country. He indicated that the Government would strengthen its cooperation with the ILO to achieve this shared goal.

The Employer members noted the political changes since the last time this Committee examined the case. They hoped that the absence of a military-controlled government and the new parliament, which included representatives of ethnic parties and parties not aligned to the previous Government, would lead to an environment in which the Government could finally put an end to the scourge of forced labour. Since last year, small positive steps had been undertaken consisting of the release of Aung San Suu Kyi, the opening up of the censorship rules, the Presidential advisory committees on economic, legal and general policy and the acceptance of the principle of finance and planning for public works. Fundamentally, however, the situation remained unchanged given that the Government still had not implemented the recommendations of the 1998 Commission of Inquiry. It was particularly disappointing that the recent change in government had not resulted in perceptible change that would have suggested that the tactics of stall and delay of the prior Government belonged to the past. The Employer members had expected a longer statement by the Government of Myanmar providing more concrete information, in particular on the legislative amendment.

Unconditional, proactive, political will need to be demonstrated through concrete actions, the timing and urgency of which was as important as the actions themselves. In order to demonstrate that the elimination of forced labour was an attainable reality, the Employer members urged that the Government: (1) approve visas for additional ILO staff; (2) allow the ILO to help it address forced labour in the military; and (3) open a broader discussion and plan of action with the ILO on worker rights. While welcoming the activities of the ILO Liaison Office, the workload had increased and the Office was understaffed due to the rise in the number of complaints. Yet, the Government continued to resist approving visas to enhance the capacity of the Liaison Office. Substantial problems with respect to the elimination of forced labour both in law and practice persisted. There were ongoing concerns relating to the intimidation, harassment and imprisonment of complainants. The military recruitment of minors was presumptively forced labour and had to be included under the Liaison Officer's mandate and the complaints mechanism. The most recent submissions of the International Trade Union Confederation (ITUC) and the Federation of Trade Unions-Kawthoolei (FTUK) containing 94 Order letters from military and other authorities requisitioning compulsory and uncompensated compulsory labour from January 2009 to June 2010 as well as last year's submission to the Committee of Experts appeared to constitute conclusive evidence of the continued

systematic imposition of forced labour by military and civil authorities throughout the country.

Through its Working Group for the Elimination of Forced Labour, the Government of Myanmar continued to respond in a reasonably timely manner to complaints that had been lodged under the Supplementary Understanding. The Working Group had responded positively to proposals to broaden the scope of training and awareness-raising activities. The Government reported that the Working Group had completed 80 per cent of the amendments to the Village Act and Towns Act in order to bring it into conformity with Convention No. 29. However, the Employer members asked the Government to clarify their statement which seemed to indicate that there was a conflict between these amendments and the new Constitution. He also asked when the legislative amendments would become effective. The Employer members underlined the importance of a joint Working Group meeting with the Government finance and planning ministries to discuss budgeting and financial allocation. Sound macroeconomic policies and budgeting was needed to ensure sufficient funds to pay wages. The Employer members asked the Government as to the date of this meeting and whether the ILO Liaison Officer could provide input on the draft agenda for the meeting.

The Employer members remained concerned with the difficulties to get satisfactory conclusions regarding complaints that alleged forced labour by the military, as well as with the continued alleged harassment of complainants, particularly farmers, facilitators, their legal counsels and relatives. While welcoming the publication of a simply worded brochure to explain the law, the Supplementary Understanding and the procedure to file a complaint in one language, the Employer members asked when this brochure would be available in all languages. There still appeared to be a total absence of prosecutions against military officers in connection with forced labour, which suggested a lack of real commitment to eliminate forced labour. Although 20 persons imprisoned for activities which were related to procedures under the Supplementary Understanding had been released, four persons remained in prison and two lawyers who were active supporters of the Supplementary Understanding procedures lost their legal licenses after being released from prison.

The progress so far was limited. Fundamentally, the Employer members still observed a lack of fundamental civil liberties, in particular: the right to freedom and security of the person, freedom of opinion and expression, freedom of assembly and association, the right to a fair trial by an independent and impartial tribunal, and protection of private property. A climate of fear and intimidation of citizens persisted. These were the root causes of forced labour, but also for trafficking and recruitment of minors in the military, child labour, child soldiers, discrimination and the absence of freedom of association. The Employer members recalled the three areas identified by the Committee of Experts in this year and last year's observation in which measures should be taken by the Government to implement the recommendations of the Commission of Inquiry. The number of complaints was still low indicating that citizens may not have adequate access nor feel free to file complaints. The Employer members argued that forced labour in Myanmar had to be addressed holistically. Therefore, the Government Working Group should also receive complaints of trafficking in humans for forced labour and not refer those cases to the Ministry of Home Affairs, as had been done so far.

The new Constitution contained specific articles on freedom of association, freedom of expression and the right to organize, but the article banning the use of forced labour contained qualifications which raised questions of its conformity with Convention No. 29. The ILO tripartite constituency unanimously had called on the Government of Myanmar to apply the provisions of Convention No. 29

both in law and in practice and to put an end to the intolerable climate of impunity. The Employer members urged the Government once and for all to provide full and detailed information to the Committee as a clear and unequivocal sign of willingness to cooperate genuinely with the supervisory bodies. Transparency and collaboration with the Liaison Officer and the Committee of Experts was essential to addressing the issues at stake. The Supplementary Understanding in no way relieved the Government of its obligations to abolish forced labour. They urged the Government to make substantial tangible improvements in its national legislation and to provide sufficient funds so that paid labour replace forced labour both in civil and military administration to demonstrate the unambiguous willingness of the Government against forced labour.

**The Worker members** expressed their regret that, although there had been a number of political changes in the country in November 2010, nothing had altered in Burma/Myanmar as far as the forced labour situation was concerned. In its annual report, the ITUC had stated that there were more instances of forced labour than ever in virtually all the country's states and divisions. The forced labour was directly linked to the army (portering, construction and compulsory enlistment of children) or, more generally, to agriculture, construction, road maintenance and other infrastructural work. The reports from the Federation of Trade Unions of Burma (FTUB) and the FTUK added that, to avoid possible complaints, some military personnel signed their forced labour orders under a false name or simply refused to sign. The increase in the number of complaints concerning forced labour, which had also been noted by the ILO Liaison Officer, often coincided with the confiscation of agricultural land. Some crops were actually imposed on the growers, and the profit from the higher land rental charges went to the military, other commercial interests or big private enterprises. The number of complainants who were still in prison was unacceptable.

The Worker members stressed that the United Nations Special Rapporteur on the situation of human rights in Myanmar had stated that the political, military and judicial authorities at every level were implicated in the violation of human rights, including the imposition of forced labour. The growing number of displaced persons and migrants in Thailand, Malaysia and other countries was further proof of the extent of forced labour. As to the follow-up to the comments of the Committee of Experts, the Worker members noted that, although the Village Act and the Towns Act were supposedly being revised, there was no change in the most recent Constitution, article 359 of which authorized "labour imposed by the State in the interests of the people, in accordance with the law". Moreover, although the extent of forced labour by the civil authorities was said to have declined to a certain extent, its use by the military throughout the country was still a matter of concern. Furthermore, although a simple leaflet had been prepared explaining the law as it related to forced labour and the possibility of appealing against it, it had not been translated into all the local languages. Finally, there was still no budget allocation for replacing forced labour, and known instances of its imposition were still not punished but treated instead as mere administrative or disciplinary concerns. To sum up, they deplored the fact that the Government had not yet implemented the recommendations adopted by the Commission of Inquiry 13 years ago, and they therefore felt that it was time to revive the ILO's initiatives and activities under the resolution that was adopted in 2000.

**The Government member of Hungary**, speaking on behalf of the Governments of Member States of the European Union (EU) attending the Conference, as well as the Candidate Countries (Turkey, Croatia, The former Yugoslav Republic of Macedonia, Montenegro and Iceland),

potential Candidate Countries (Albania, Bosnia and Herzegovina, and Serbia), Ukraine and the Republic of Moldova, expressed deep concern about the critical situation of human rights in Burma/Myanmar and regretted that the elections in 2010 had not been free or fair and that the authorities were yet to demonstrate substantive evidence of positive change. She indicated that the EU was nevertheless willing to respond to progress in Burma/Myanmar. In this connection, she welcomed the prolongation of the Supplementary Understanding in February 2011. She also acknowledged the efforts made by the Government, particularly in the field of awareness raising, cooperation in the functioning of the complaints mechanism and in the release of under-age recruits from the military. She, however, indicated that despite these positive developments, the recommendations of the Commission of Inquiry were not yet fully implemented, and that the use of forced labour remained widespread. She expressed the hope that as the review of the Village Act and the Towns Act was in progress, these acts would be amended or repealed as soon as possible in order to bring the legislation into full conformity with the Convention. She also urged the Government to amend section 359 of Chapter VIII of the Constitution, which exempted from the prohibition of forced labour “duties assigned by the Union in accordance with the law in the interest of the public”.

As regards forced and compulsory labour which continued to be exacted from local villagers by military and civil authorities throughout the country, she urged the Government to continue and expand its awareness-raising activities to ensure the prohibition of forced labour is widely known and applied in practice, and to ensure the strict enforcement of penalties for the exaction of forced labour under the Penal Code against civil and military authorities. In relation to the commitment expressed by the Government to establish a democratic government, she urged the Government to release unconditionally all those detained for their political convictions, to demonstrate respect for human rights and fundamental freedoms, and to establish an inclusive dialogue with all opposition and ethnic groups, including Aung San Suu Kyi and the National League for Democracy.

Turning to the UN mechanisms, she urged the Government to comply, as a matter of priority, with Resolution 16/24 of the UN Human Rights Council to establish an independent investigation into reported serious human rights violations, including the use of forced labour. Reiterating that involving children in armed conflicts is one of the worst forms of child labour, she encouraged the Government to cooperate with the UN on the protection of children from recruitment and use by armed forces, and on the full rehabilitation and reintegration of children affected by armed conflicts. Particular concern was also raised about the ongoing conflicts in ethnic areas, including Shan and Karen States and, in this connection, she urged the authorities to exercise constraint and look to a political solution and national reconciliation. She regretted that despite the request by Mr Vijay Nambiar, the UN Secretary-General’s Special Adviser to Myanmar, the Special Rapporteur had not been permitted to visit the country and, therefore, called on the Government to provide an opportunity for the Special Rapporteur at the earliest possible date to make a first-hand assessment of the performance of the new administration.

To resolve the serious and long-standing problem of forced labour, she indicated that the EU urged the Government to take all the long overdue steps to achieve compliance with the Convention. She expressed the appreciation for the tireless work of the Liaison Officer in assisting the authorities concerned to implement fully Convention No. 29, and encouraged them to further strengthen their cooperation with the Liaison Officer.

**The Worker member of Sweden** presented a case of land confiscation and forced labour. She explained that since December 2009, a number of companies with ties to the military regime confiscated the farmland of the local farmers of Sis-sa Yan village of the Kanma township. The farmers sent petitions to the authorities to look into the case but received no reply. On the contrary, they were attacked and detained by officials from the military-owned companies and local authorities. The workers from the companies that confiscated the farmland started to build a motorway through the farmland of Sis-sa Yan village as well as offices for a planned factory. The representatives of the farmers then lodged a complaint to the Kanma criminal court but it was rejected. Several of the farmers who had lodged complaints were illegally detained and prevented from seeing their families or getting access to medical treatment. They were also charged by the authorities for fabricated crimes. The court in fact handed down heavy sentences of ten to 12 years of jail to five of the farmers.

**The Government member of New Zealand** speaking also on behalf of the Government of Australia, paid tribute to the continued dedication of the ILO Liaison Officer and his team in promoting the observance of Convention No. 29 by the Government of Myanmar. The increased activity under the complaints mechanism was a positive trend and indicated that the proactive awareness-raising approach taken by the Liaison Officer was working and demonstrated the growing confidence of the people of Myanmar in exercising their rights. The speaker noted the recent encouraging statements made by the Government of Myanmar as regards the need for good governance and accountability in national policies and the Government’s commitment to the elimination of forced labour. Practical steps undertaken included the renewal of the Supplementary Understanding earlier this year, as well as the agreement to broaden the scope of awareness-raising activities, including the publication of a brochure on citizens’ rights under the Supplementary Understanding in both the Myanmar and Shan languages. While positive, these encouraging steps highlighted the need for sustained, proactive action by the Government of Myanmar, in partnership with the ILO Liaison Office, to address and to eliminate forced labour. Incremental progress however did not suffice and forced labour by the military remained a persistent problem. It was key to address the weakness of macroeconomic governance and problems caused by the application of the economic self-sufficiency policy by the military which were the root causes of forced labour. She urged the Government to seek the technical assistance of the ILO in improving its policy frameworks and to ensure direct communication on military forced labour issues between the Government Working Group, the ILO and relevant authorities. In order for the Liaison Office to fulfil its mandate, appropriate resourcing was imperative and the Government was called on to facilitate the visa required for a new staff member to start working immediately. True and meaningful progress on the issue of forced labour could only be made if the very grave issue of incarceration and reprisal for association with the complaints mechanism was addressed. She welcomed the unconditional release of Aung San Suu Kyi in November 2010, but called on the Government to immediately release all political prisoners, including those incarcerated for their association with the ILO complaints mechanism.

**The Worker member of the Philippines** stated that various forms of human rights violations, including forced labour and extortion, had been widely practiced since early January 2011 by the military troops and the Border Guard Force in Karen State with a view to forcing the villagers to transport rations and military supplies necessary to set up more military positions and to launch military offensives in the hill region to control the whole area. Currently, the people of Toungoo district and Kler Lwee

Htu were victims of forced labour because the area was close to the Nay Pyi Daw capital. He cited examples of cases of forced labour exacted by the military and the Border Guard Force in villages such as Shwe O, Mae Pary Kee, Shan Zee Bo, Tan Ta Bin, Tha Pyi Nyut and Klor Mee Der in January 2011. He stated that forced labour continued in most states of the country and that only the recognition of freedom of association, the liberation of labour activists and other prisoners of conscience and the change of Constitution could lead to effective democracy and to the eradication of forced labour in the country. He called on the Government to adopt immediate measures to stop forced labour and other human rights crimes, and also on other governments, employers and international institutions to adopt strict policies for ensuring the promotion of democracy, rule of law and social justice in the country. He finally called on the ILO to strengthen its activities in collaboration with other organizations in this endeavour.

**The Government member of the United States** commended the unwavering commitment and excellent work of the ILO, in particular the Liaison Officer and his team, who often faced difficult circumstances in carrying out their critical mandate. They had proven time and again the value of the ILO's presence in Burma, and she hoped that the Liaison Office would soon be sufficiently strengthened to respond to its ever increasing workload. She noted several changes in Burma since last year, and in particular the fact that the Supplementary Understanding had been extended for an additional year; the number of complaints lodged under this Supplementary Understanding had continued to increase; significant awareness-raising and training activities had been undertaken, including progress in translating the information brochure on forced labour into local languages; and draft legislation was apparently being prepared. While her Government welcomed these developments, it encouraged the Government to continue and increase its efforts in these areas. Notwithstanding these positive steps, she also insisted on the fact that forced labour was still prevalent in Burma and that the Government had not yet implemented the recommendations of the Commission of Inquiry. Recalling the clear and unequivocal recommendations of the Commission of Inquiry, she noted that much remained to be done on an urgent basis. The Government had an obligation to eliminate completely and permanently the use of forced labour by developing and enforcing strong laws and regulations and by effectively promoting awareness of fundamental worker rights among the entire population. The Government should therefore avail itself of the ILO's technical assistance to achieve the necessary results. She noted that the ILO could provide important advice to the Government with regard to budgeting adequate means for the replacement of forced or unpaid labour. Finally, she reiterated the long-standing commitment of her Government to stand steadfastly with the Burmese people who aspire for a peaceful, prosperous and democratic nation that respects human rights and the rule of law. She hoped that recent developments would result in a genuine, open and inclusive dialogue leading to a lasting solution to the problem of forced labour.

**An observer representing the Federation of Trade Unions of Burma (FTUB)** explained that while providing training in Burma on basic trade union rights and democratic principles, he had met numerous people who had been forced to work as military porters, carrying ammunition and food. On 30 May 2011, ten people were conscripted as military porters by the Light Infantry Battalion No. 563 in Three Pagodas Pass near the Thai–Burma border. The FTUK reported that in May 2011, over 4,000 people were forced into labour for the Border Guard Force, the junta's Karen proxy army. These were not one-time instances, but formed part of a persistent pattern of violations. According to the ILO, 630 cases of child soldiers were re-

ported in 2010 and 157 victims of under-age recruitment were returned home. Despite ILO efforts, child soldier conscription still continued and political will at the highest level was needed to change the practice on the ground. The release of children had encouraged the families of conscripted children to reach out to the ILO, although fear of retaliation remained. Increased land confiscation by the military, either for new garrisons or business ventures, made people lose their income and caused confrontations. Regardless of the declarations of a successful representative election and changes in the political landscape, the actual situation on the ground remained the same. The speaker had personally witnessed that no elections had been held in 155 villages of Karen state and the people were denied the right to vote. Many areas in Mon state, Shan state (ten townships), Kachin state (63 village tracts) and Kayah state were denied the right to vote. The junta itself had declared that the recent elections did not cover the whole country. Although some might welcome the referendum, the elections, the Constitution and the new Government, the denial of citizens, prisoners, monks and Aung San Suu Kyi of their right to vote and to be elected should be considered by the world as a violation of international electoral standards. Forced labour continued to take place in the areas where no elections were held and more efforts from the ILO Liaison Office were needed in these areas. The ILO should discuss with other UN agencies that participated in the 19 training sessions to help the ILO, thus widening the scope of its activities. The recommendations made by the Commission of Inquiry had not been implemented, in particular the following measures: issuing specific and concrete instructions to the civilian and military authorities; ensuring that the prohibition of forced labour is given wide publicity; providing for the budgeting of adequate means for the replacement of forced or unpaid labour; and ensuring the enforcement of the prohibition of forced labour. Although positive, the Supplementary Understanding was not sufficient to meet the recommendations of the Commission of Inquiry. The junta should not be allowed to hide behind this Understanding, but should implement the recommendations of the Commission of Inquiry or face the consequences at the Governing Body meeting in November 2011.

**The Government member of Japan** expressed his Government's appreciation for the ILO's work to improve the situation of forced labour through its active engagement on the ground, as a result of which some positive developments had been seen. His Government welcomed the resolve of the Government of Myanmar to further advance the elimination of forced labour in cooperation with the ILO under the Supplementary Understanding, as well as its commitment to amend the provisions of the Village Act and the Towns Act of 1907 to achieve compliance with Convention No. 29, the draft of which was expected to be submitted to Parliament before the end of the year. The Government was urged to accept ILO technical assistance on this matter. His Government welcomed that the distribution of simply worded brochures explaining the complaints mechanism had been effective, and that the Government had recently agreed that the brochures should be translated into other local languages. He noted the view of the Commission of Inquiry that a significant cause of the use of forced labour lay in the weakness of macroeconomic governance and policy application, particularly with respect to budgeting and corresponding financial allocations. He expressed the hope in this regard that the Government and the ILO would hold close consultations, including joint discussions with appropriate finance and planning ministries as suggested. While progress could be observed with regard to under-age recruitment into the armed forces, his Government was concerned about the continued use of forced labour by the military and persons who continued to be detained due to their association with the complaints mechanism. He

urged the Government to take serious measures to ensure that persons were in no way disadvantaged based on this association. Finally, he indicated that as awareness of the complaints mechanism grew, an increasing number of complaints were being received. In this regard, he urged the Government to respond swiftly and positively to the requests of the ILO to meet the increasing workload of the Liaison Office, such as the issuance of visas for additional international staff.

**The Worker member of Italy** called on the Office to work on the recommendation of the Commission of Inquiry that the Government of Burma should make the necessary budget allocations so that workers are freely contracted and adequately remunerated. This crucial recommendation could be fulfilled if the Burmese government had the political will to avoid misuse of foreign direct investment; to resolve the problem of tax extortion, lack of accountability, corruption and illicit capital export as denounced by the United Nations Development Programme; and to shift public resources from the defence sector to public works. In this regard, she denounced several initiatives to build military-related installations and import military equipment and recalled that, in November 2010, the United Nations Security Council had denounced shipments of nuclear technology and military equipment from North Korea to Burma.

She called for the recently confirmed European Union restrictive measures towards Burma to be accompanied by adequate monitoring procedures. Denouncing several recent business-related initiatives by European companies and pension funds, she called on the European Union and the relevant governments as well as companies to implement the new United Nations Guiding Principles on Business and Human Rights. She also called on companies investing in Burma to comply with the Guidelines for Multinational Enterprises and with the Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas adopted by the Organization of Economic Co-operation and Development (OECD). There should be no relaxation of economic sanctions until there is a genuine improvement in human rights and progress towards democratic change. The speaker called on the ILO Director-General for renewed action for a consistent implementation of the 2000 ILC resolution. She added that, in view of the persistence of the use of forced labour in the country, there was still the need for the ILO to implement the decision to prepare a request for an advisory opinion of the International Court of Justice on the violation of Convention No. 29.

**The Government member of Singapore** welcomed the renewal of the Supplementary Understanding between the Government of Myanmar and the ILO for another year, as well as the concrete steps taken by the Government towards raising awareness of the complaints mechanism on forced labour, introducing the Labour Organizations Act, and drafting a law to bring the Village Act and the Towns Act in line with the Convention as recommended by the Commission of Inquiry. The draft legislation was understood to be near completion and to be subsequently sent to Parliament for consideration. With reference to the recent report of the ILO Liaison Officer in Myanmar, the speaker further highlighted the efforts made by the Government as regards training and awareness-raising activities under the 2002 Understanding, for instance workshops held throughout the country including in several ethnic areas, the publication and wide distribution of the ILO's brochure to explain the law, the Supplementary Understanding and the complaints mechanism, and the Government's intention to translate the brochure into Shan language. He also welcomed the efforts made in the area of under-age recruitment of soldiers, such as the continued education of military personnel on the relevant law by the Ministry of Defence with ILO and UNICEF technical assistance, the discharge and release to their families

of 174 persons recruited under age and the prison sentences imposed against military personnel (two officers and five of other ranks) for forced labour practices. Despite visible progress in respect of the use of forced labour by civilian authorities, there still appeared to be room for improvement on the use of forced labour by the military, in particular as regards the difficulty of reaching satisfactory conclusions on the relevant complaints. The speaker hoped that the Government would make stronger and sustained efforts to address the issue and encouraged the Government and the international community to continue in their constructive engagement for improving the lives of the people of Myanmar.

**The Worker member of the Republic of Korea** commented on the impact of energy development projects on forced labour. She indicated that there had been a noteworthy increase in foreign investment in the country's energy sector. Korean trade unions, as well as human rights groups, had been following the situation as regards the Shwe Gas Project, a gas pipeline construction project in which foreign companies were involved as members of a consortium. She expressed disappointment at the fact that a complaint lodged in 2009 by trade unions and non-governmental organizations on the basis of violation – on several counts – of the OECD's Guidelines for Multinational Enterprises by Korean enterprises had been dropped by Korean authorities without any serious investigation. Despite allegations of serious human rights and environment abuses, the request for suspension of the project was ignored and the project was now in its construction stage with continuation of forced labour and other forms of human rights abuses. She expressed concern at the fact that forced labour was directly connected even to corporate social responsibility projects conducted by companies involved in the energy development projects. She noted that the Burmese Army continued to rely on forced labour in connection with the Shwe Gas project, which demonstrated that the 2000 ILC resolution had not been fully implemented. She called on ILO member States and all constituents to fulfil their obligations under the resolution.

**The Government member of Norway** expressed deep concern about the human rights situation in Myanmar and, while noting the release of 47 political prisoners on 17 May 2011, requested the Government to release the remaining political prisoners. He welcomed the prolongation of the Supplementary Understanding, the cooperation between the ILO and the Government as regards the functioning of the complaints mechanism and the release of under-age recruits from the military, as well as the recently held training session for senior Government officials in the Chin state and the translation of the ILO forced labour brochure into Shan language. The speaker encouraged the Government to apply existing laws against forced labour and under-age recruitment, to introduce economic management and financial budgeting so as to prevent the use of forced labour and to proactively support the ILO in its efforts to eradicate forced labour. Noting the Government's willingness to discuss better employment policies for the protection of workers' rights, the speaker encouraged the ILO to take steps to provide capacity building in selected areas aimed at improving workers' rights in Myanmar, and, in addition, to intensify work together with the Government on the Freedom of Association Act and to provide assistance so as to ensure that any future Labour Union Act meets the requirements of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

**The Worker member of Japan** noted that forced labour was a long standing and widespread problem in Burma, with prison inmates used by the army as porters or human minesweepers, victimization of ethnic minority groups and recruitment of child soldiers through trafficking and kidnapping. She recalled that the 2000 ILC resolution

recommended to all member States to review their relations with the Government of Burma so as to ensure that the continued use of forced labour would not give it any advantage. However, this resolution had not been implemented properly. According to the report of the Burmese National Planning and Economic Development Ministry, the accumulated pledged amount of foreign direct investment by end-November 2010 had doubled – from 16 to 32 billion US dollars – in a six-month period. Most of this increase was attributed to investments in the oil and gas sector, with natural gas exports accounting for as much as 40 per cent of the country's export income. Given that this type of economic activities helped the Burmese Government to maintain forced labour and oppression of the Burmese people, she urged the representatives of governments and employers of countries investing in or trading with Burma to review their relations with this country in order to help eradicate forced labour in accordance with the 2000 ILC resolution. Finally, she indicated that without a democratization process, there would be no real driving force for the elimination of forced labour. In this regard, she considered the formation of a "civilian" government to be no great stride towards democracy but indicated that an essential step would be the immediate release of the numerous political prisoners, including labour activists.

**The Government member of the Russian Federation** shared the conviction that the eradication of all forms of forced labour throughout the world was an absolute priority and welcomed the cooperation between the ILO and the Government of Myanmar in that field. In that regard, the renewal for another year of the Supplementary Understanding on the occasion of the visit of the ILO High-level Mission was a positive step. The examination by the Committee on the Application of Standards of compliance by Myanmar with Convention No. 29 was taking place only shortly after the holding of elections last October, which had resulted in a new Parliament. In that context, draft reforms of the labour legislation were being prepared. Those initiatives should be welcomed, particularly as changes relating to forced labour were envisaged. His Government hoped that the Government of Myanmar would continue the progress towards democracy.

Emphasis should also be placed on the efforts made and the enormous amount of work undertaken by the ILO Liaison Officer, particularly for the forwarding of complaints of forced labour to the competent authorities in Myanmar (especially the Ministry of Defence), which were reported to have resulted in those responsible being penalized. The initiatives to raise awareness of the complaints procedure among the population and to disseminate information brochures on forced labour were also useful and encouraging. It was to be hoped that the difficulties relating to the strengthening of the personnel in the ILO Liaison Office in Myanmar would be resolved rapidly. Finally, the Government expressed the conviction that the Government of Myanmar would continue to take the necessary measures to achieve the elimination of situations of forced labour. In that respect, the reinforcement of cooperation between the Government of Myanmar and the ILO was undoubtedly the most appropriate means of achieving that objective.

**The Worker member of Indonesia** drew the Committee's attention to the continued practices of forced labour and violations of human rights in Myanmar and highlighted the growing number of undocumented migrant workers fleeing Myanmar for safety reasons and working in Thailand, Malaysia, India and others for low wages and in bad working conditions. This phenomenon had triggered social conflict, xenophobic practices, increasing exploitation and deepening poverty in the receiving countries and in the Asian region. The speaker urged the Government to supply information about the concrete efforts undertaken

to meet the recommendation of the Commission of Inquiry to punish the perpetrators of forced labour.

Bearing in mind its interest in taking over the presidency of the Association of Southeast Asian Nations (ASEAN), the Government of Myanmar had not yet sufficiently proven that it was serious about the elimination of forced labour and transition to democracy. The ASEAN Member States should openly discuss Burma's democracy and human rights problems and stop considering those matters as a Burmese domestic affair but rather regard them as a regional commitment. Rewarding Burma with the ASEAN presidency despite sham elections, numerous political prisoners, continuing forced labour practices, and lack of democracy and freedom of association, would be an embarrassment for the region. The speaker encouraged the ILO to work closely with the ASEAN Human Rights Committee using its mechanisms to speed up elimination of forced labour and monitor practices of multinational corporations originating from ASEAN and violating ILO Conventions.

**The Government member of Thailand** indicated that forced labour was a challenge of global concern and that it was therefore imperative for the international community to support Myanmar's cooperative efforts in achieving the elimination of forced labour, particularly in view of the recent significant political developments. He felt encouraged by the ongoing cooperation between the Government of Myanmar and the ILO, hoping that the extension of the trial period of the Supplementary Understanding and the recent visit of an ILO High-level Mission to Myanmar would provide the impetus for further progress. The speaker urged the Myanmar authorities to continue pursuing the positive steps and to redouble their efforts towards achieving the recommendations of the Commission of Inquiry. There had been positive developments since the Governing Body in March 2011, such as the revision of the Village Act and the Towns Act adopted in 1907, which was now complete up to 80 per cent and should be submitted to Parliament by the end of 2011, and the drafting of legislation on workers' organizations. He emphasized that ILO technical assistance in this process would be crucial and hoped to see additional resources allocated to the ILO Liaison Office in Myanmar.

The increased number of complaints received through the mechanism established by the Supplementary Understanding – which received a positive response from the Adjutant General's Office in respect of under-age recruitment into the military – reflected the effectiveness of the awareness-raising workshops. The speaker also welcomed the decision of the Government Working Group to publish in local languages a brochure explaining the law, the Supplementary Understanding and the complaint procedure and to distribute it widely across the country. He expressed the hope that the continuous progress would lend credibility and add momentum to the process of democratization and national reconciliation. The political landscape in Myanmar and the cooperative international environment augured well for the elimination of forced labour. He pledged the support of Thailand in addressing this serious issue.

**The Government member of Cuba** reaffirmed her support for the principles set out in Convention No. 29 and welcomed the report which reflected the recent activities carried out by the Office and the Government of Myanmar and the progress made in the elimination of forced labour. The intervention by the Government representative of Myanmar reflected the most recent efforts made by his Government for the application of the Convention, with particular emphasis on the current process to bring national legislation into conformity with Convention No. 29. Recognizing that the results achieved were the product of international cooperation, she encouraged the continuation of technical cooperation, open and unconditional dialogue and analysis of the national situation and condi-



tions, as the only way of contributing to the achievement of the objectives set out in the Convention.

**The Worker member of the United States** reiterated the concerns expressed in previous sittings and strongly condemned that according to credible reports the brutal and dehumanizing practice of forced labour, including of children, continued unabated in Burma. The Government had once again failed to bring relevant legislation in line with the Convention and to impose strictly available criminal penalties for the exaction of forced labour, which evidenced a clear absence of will. While noting the publication and dissemination by the Government of the ILO brochure on forced labour and its intention to translate it, this measure was inadequate to address the requirement by the Governing Body for an authoritative statement by the senior leadership against the continued use of forced labour. Moreover, although the number of submitted complaints had recently increased and in some cases child soldiers had been freed as a result of the complaints process, complainants continued to be harassed or jailed for utilizing this mechanism to denounce acts of forced labour, and lawyers representing victims were disbarred. Given that work towards the receipt and resolution of complaints would never be fully effective if there was the real possibility of retaliation, he called on the Government once again to immediately release all trade unionists jailed because of their involvement in the complaints process as well as to reinstate the relevant professional licenses.

In view of the increasing workload and low staffing levels of the ILO Liaison Office in Yangon, the Government's intransigence severely limited the Office's effectiveness. The speaker urged the Government to issue the necessary visas to expand the personnel, which was needed for specific areas with widespread practices of forced labour, including monitoring the impact of oil and gas pipeline and dam construction work on forced labour and verifying that no forced labour was used in mines and international projects. Furthermore, ILO member States should direct their embassies to closely coordinate activities with and fully support the work of the ILO Liaison Office. Continued deepened coordination with other UN agencies in Burma was also necessary to ensure that their work is complementary. Recalling the profound responsibility of ILO member States, in particular governments, under the ILO Constitution and recommendations of various supervisory bodies, to work towards the elimination of the scourge of forced labour, the speaker urged the Committee to redouble its efforts henceforth.

**The Government member of Canada**, given the small signs of progress and the repeated calls on the Government of Myanmar to take serious action, urged the authorities to live up to their commitment to end forced labour, both in the civilian and the military spheres, and to fully implement the recommendations of the Commission of Inquiry. She called for the release of former child soldiers jailed for desertion or serving sentences arising from their participation in the complaints mechanism established by the Supplementary Understanding. In view of the fact that the ILO Liaison Officer was still being refused an entry visa for an additional international civil servant, she stressed that ensuring that the Liaison Office was equipped to carry out its critical functions was a rudimentary indication of the Government's commitment to the eradication of forced labour. While agreement in principle had finally been reached to translate the brochure into Shan language, reluctance remained to produce the brochure in other languages although this would again be a simple but important indication of the Government's commitment. The positive and efficient approach taken by the Government in responding to complaints concerning under-age recruitment should be extended to all types of forced labour. The Government should also enforce the law and ensure that all perpetrators were prosecuted under

the Criminal Code. Finally, she expressed the hope that the long awaited revision of the Village Act and the Towns Act of 1907 would be completed in the near future and strongly encouraged a positive response to the proposal for a joint Working Group/ILO meeting with the Finance and Planning Ministries and a joint Working Group/ILO meeting with the Ministry of Defence and senior military personnel.

**The Government member of India** expressed satisfaction at the progress made by the Government of Myanmar towards the observance of the Convention, as well as at the ongoing cooperation between the ILO and the Government in this regard, as illustrated by the constructive dialogue between the ILO High-level Mission to Myanmar and the Government in February 2011. The speaker further welcomed the extension of the Supplementary Understanding for another year as of 26 February 2011, the joint awareness workshops conducted by the ILO Liaison Office and the Labour Department, the publication of a brochure on the relevant law and the Supplementary Understanding, the continued functioning of the complaints mechanism and the steps taken to bring the 1907 Village Act and Towns Act in line with the Convention. While recalling that his Government had been and continued to be opposed to the practice of forced labour, he encouraged the ongoing dialogue and cooperation between the ILO and the Government of Myanmar and commended the ILO Director-General and his team for their efforts to assist Myanmar in tackling the problem of forced labour.

**The Worker member of South Africa**, recalling the history of apartheid and racial discrimination in his own country, emphasized that world solidarity, international trade sanctions and isolation were powerful tools in the fight for the respect for human rights. The recommendations put forward by the Commission of Inquiry had neither been met by the Burmese junta nor by the new civil authoritarian regime. One of the Commission's recommendations was the budgeting of public works. Highlighting the contradiction between the Government's argument that Burma is a poor country and the statement of the opposition party about the amount of revenues from exportation of gas, he deplored the fact that these revenues were not used to eliminate forced labour, child conscription or land confiscation. The non-implementation of the ILO recommendations was due to the lack of political will, and the reality of the situation had not changed after the elections. The Burmese people were still subjected to forced labour, land confiscation and arbitrary taxation which impacted on their basic human rights. He reiterated the importance to concentrate the work of the ILO on these issues, asking for wider cooperation of other international institutions present in Burma in order to build a country without forced labour where democracy and the rule of law would be the pillars for social development.

**The Government member of China** noted that many speakers had recognized that cooperation between the ILO and the Government of Myanmar was effective. Further progress had been achieved. The Supplementary Understanding had been extended for a year and draft laws were being prepared to bring the legislation into conformity with Convention No. 29. Numerous awareness-raising activities had also been carried out and an information brochure on the complaints procedure had been disseminated throughout the country. He recalled his Government's constant position that forced labour was a violation of fundamental rights and needed to be eliminated. Appropriate technical assistance should be provided and cooperation between the ILO and the Government of Myanmar should be continued.

**The Government member of Switzerland** endorsed the statement made on behalf of the Member States of the European Union.

**The Government representative** thanked the Committee for the discussion and interest in the various measures taken or envisaged by the new Government of Myanmar. Some speakers had been referring to the country by the incorrect name of Burma, whereas the proper official name was the Republic of the Union of Myanmar, or in short Myanmar. He requested that in future deliberations of the Committee, all delegates address the country correctly as Myanmar, since this name had been recognized throughout the UN system. The speaker further rejected statements affirming that persons associated to the Supplementary Understanding mechanism had become political prisoners and that labour activists were detained. Those arrests were solely based on the violation of existing laws and not on freedom of association or the Supplementary Understanding mechanism. Moreover, on 16 May 2011, the President had granted an amnesty covering approximately 14,000 prisoners. As regards the interventions alleging a situation of impunity in Myanmar, he stated that any perpetrators of forced labour, whether civilian or military, would be dealt with, as nobody is above the law. In terms of the mentioned incidents in border areas, while conceding that there might have been some minor quarrels and scuffles, the speaker refuted those interventions as politically motivated and based on false information. Finally, although the Government of Myanmar moved towards democracy, this could not be achieved instantly and transition might take a certain time. He therefore called upon the international community to be patient and pledged that his Government would do its best.

**The Employer members** indicated that they were very disappointed by the closing remarks of the Government. They were expecting a positive attitude, one that would give a blueprint on how the Government planned to move forward. Because of the history of the country, they expressed their scepticism about the Government's statement that people were incarcerated for violating the law and not for other reasons. As regards the issue of impunity, they recalled that it appeared that the military was above the law. They saw a fundamental legal challenge in the Government's indication that the Village Act and the Towns Act were revised at 80 per cent but that nothing could be done about the Constitution and wondered if the amendments to these acts would have any effect in either law or practice. The situation was the same as in previous years and the Employer members recommended that the starting point for the conclusions of the Committee this year be the conclusions reached at last year's session as there was no indication of significant and meaningful change on the ground in Myanmar.

**The Worker members** said that it was both urgent and timely to relaunch ILO action on the basis of the 2000 ILC resolution. The Government needed to implement in full and without delay the three recommendations made by the Commission of Inquiry and, in the first place, to take the necessary measures to revise the Constitution so as to bring it into conformity with the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and Convention No. 29. It also immediately needed to take the practical measures called for by the Commission of Inquiry and, firstly, to stop bringing to court, penalizing and imprisoning complainants, facilitators and others following the lodging of complaints and to allocate the gas and oil revenues to remunerating work performed freely, instead of having recourse to forced labour. Finally, trade unionists and political detainees needed to be released immediately.

The Worker members indicated that they expected that employers would refrain from having recourse to forced labour and from investing in the country for as long as it remained a military or semi-military dictatorship. Employers also needed to comply with the OECD Guidelines for Multinational Enterprises and with human rights, as

defined by the United Nations. Moreover, governments must not let up on the application of sanctions and needed to offer their support for a United Nations commission of inquiry into crimes against humanity. It was also necessary for the diplomatic community in the country to provide its support and expertise to the ILO Liaison Officer and for all United Nations institutions to cooperate more closely to extend their activities throughout the country.

The Worker members added that they expected the Office to focus not only on the Supplementary Understanding and the complaints mechanism, but also to take the necessary action for the elimination of forced labour: the strengthening of the human and financial resources of the Liaison Office so that it could cover all the regions of the country; the follow-up of the issue of freedom of association by a Liaison Officer; and the monitoring of forced labour in current major projects (mining, major dams, etc.). If there was insufficient progress, the Governing Body should be able to seek an opinion from the International Court of Justice on the violation of Convention No. 29. Finally, the Worker members also expected the Office to once again request information from governments and employers on the initiatives that they had taken within the framework of the 2000 ILC resolution.

### **Conclusions**

**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;
- (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.

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<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>.

## Document D.5

### **B. Observation of the Committee of Experts on the Application of Conventions and Recommendations on the observance of the Forced Labour Convention, 1930 (No. 29), by Myanmar**

*Myanmar (ratification: 1955)*

Follow-up to the recommendations made by the Commission of Inquiry (complaint made under article 26 of the Constitution of the ILO)

#### *Historical background*

In its earlier comments, the Committee has discussed in detail the history of this extremely serious case, which has involved the Government's gross, long-standing and persistent non-observance of the Convention, as well as the failure by the Government to implement the recommendations of the Commission of Inquiry, appointed by the Governing Body in March 1997 under article 26 of the Constitution. The continued failure by the Government to comply with these recommendations and the observations of the Committee of Experts, as well as other matters arising from the discussion in the other bodies of the ILO, led to the unprecedented exercise of article 33 of the Constitution by the Governing Body at its 277th Session in March 2000, followed by the adoption of a resolution by the Conference at its June 2000 session.

The Committee recalls that the Commission of Inquiry, in its conclusions on the case, pointed out that the Convention was violated in national law and in practice in a widespread and systematic manner. In its recommendations (paragraph 539(a) of the report of the Commission of Inquiry of 2 July 1998), the Commission urged the Government to take the necessary steps to ensure:

- (1) that the relevant legislative texts, in particular the Village Act and the Towns Act, be brought into line with the Convention;
- (2) that in actual practice, no more forced or compulsory labour be imposed by the authorities, in particular the military; and
- (3) 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, which required thorough investigation, prosecution and adequate punishment of those found guilty.

The Commission of Inquiry emphasized that, besides amending the legislation, concrete action needed to be taken immediately to bring an end to the exaction of forced labour in practice, to be accomplished through public acts of the Executive promulgated and made known to all levels of the military and to the whole population. In its earlier comments, the Committee of Experts has identified four areas in which "concrete action" should be taken by the Government to fulfil the recommendations of the Commission of Inquiry. In particular, the Committee indicated the following measures:

- issuing specific and concrete instructions to the civilian and military authorities;
- ensuring that the prohibition of forced labour is given wide publicity;
- providing for the budgeting of adequate means for the replacement of forced or unpaid labour; and
- ensuring the enforcement of the prohibition of forced labour.

#### *Developments since the Committee's previous observation*

There have been a number of discussions and conclusions by ILO bodies, as well as further documentation received by the ILO, which has been considered by the Committee. In particular, the Committee notes the following information:

- the report of the ILO Liaison Officer submitted to the Conference Committee on the Application of Standards during the 99th Session of the International Labour Conference in June 2010, as well as the discussions and conclusions of that Committee (ILC, 99th Session, *Provisional Record* No. 16, Part Three(A) and document D.5.D);
- the documents submitted to the Governing Body at its 307th and 309th Sessions (March and November 2010), as well as the discussions and conclusions of the Governing Body during those sessions;
- the communication made by the International Trade Union Confederation (ITUC) received in August 2010 together with the detailed appendices of more than 1,400 pages;
- the communication made by the Federation of Trade Unions Kawthoolei (FTUK) received in September 2010 with appendices; and
- the reports of the Government of Myanmar received on 16 December 2009, 4 January, 4 February, 12 and 18 March, 6 April, 19 May, 19 August, 8 September and 6 October 2010.

#### *The Supplementary Understanding of 26 February 2007* – *Extension of the complaints mechanism*

In its earlier comments, the Committee discussed the significance of the Supplementary Understanding (SU) of 26 February 2007 between the Government and the ILO, which supplemented the earlier Understanding of 19 March 2002 concerning the appointment of an ILO Liaison Officer in Myanmar. As the Committee previously noted, the SU sets out a complaints mechanism, which has as its object “to formally offer the possibility to victims of forced labour to channel their complaints through the services of the Liaison Officer to the competent authorities with a view to seeking remedies available under the relevant legislation and in accordance with the Convention”. The Committee notes that the trial period of the SU was extended for the third time, on 19 January 2010, for a further 12 months from 26 February 2010 until 25 February 2011 (ILC, 99th Session, *Provisional Record* No. 16, Part Three, document D.5.F). The Committee further discusses the information on the functioning of the SU below, in the context of its comments on the other documentation, discussions and conclusions regarding this case.

## *Discussion and conclusions of the Conference Committee on the Application of Standards*

The Committee on the Application of Standards once again discussed this case in a special sitting during the 99th Session of the Conference in June 2010. The Conference Committee acknowledged some limited steps on the part of the Government, such as: the further extension of the SU for another year; the agreement for publication and distribution of an informative brochure on forced labour; certain activities concerning awareness-raising of the complaints mechanism established by the SU, including newspaper articles in the national language; and certain improvements in dealing with under-age recruitment by the military. The Conference Committee was, however, of the view that those steps remained totally inadequate. It noted that none of the three specific and clear recommendations of the Commission of Inquiry had been implemented and strongly urged the Government to: fully implement without delay these recommendations and, in particular, to take the necessary steps to bring the relevant legislative texts into line with the Convention; to ensure the total elimination of the full range of forced labour practices, including the recruitment of children into the armed forces and human trafficking for forced labour that are still persistent and widespread; to strictly ensure that perpetrators of forced labour, whether civil or military, are prosecuted and punished under the Penal Code; to release immediately complainants and other persons associated with the use of the complaints mechanism who are currently detained, etc. The Conference Committee also called for 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.

## *Discussions in the Governing Body*

The Governing Body continued its discussions of this case during its 307th and 309th Sessions in March and November 2010 (GB.307/6, GB.309/6). The Committee notes that, following the discussion in November 2010, the Governing Body reconfirmed all of its previous conclusions and those of the International Labour Conference and called upon the Government and the Office to work proactively towards their realization. In the light of the commitment made by the Permanent Representative of the Government, the Governing Body called on the new Parliament to proceed without delay to bring legislation into line with the Convention. While noting the increased number of the complaints received under the SU complaints mechanism, the Governing Body considered it essential that the movement towards an environment free from harassment or fear of retribution be sustained, and called upon the Government to cooperate with the Liaison Officer on cases raised at the Officer's own initiative. Notwithstanding the reported progress in increased awareness of both government personnel and the community at large of their rights and responsibilities under the law, further committed action is required to end all forms of forced labour, including under-age recruitment into the military and human trafficking, as well as the strict application of the Penal Code to all perpetrators, in order to bring an end to the impunity. The Governing Body also called for the continuation and intensification of awareness-raising activities undertaken jointly and severally by the Government and the ILO Liaison Officer encompassing government personnel, the military and civil society. Finally, the Governing Body welcomed the release of Daw Aung San Suu Kyi and urged that other persons still in detention, including labour activists and persons associated with the submission of complaints under the SU, would be similarly given their liberty as soon as possible.

## *Communication received from workers' organizations*

The Committee notes the comments made by the ITUC in its communication received in August 2010. Appended to this communication were 51 documents, amounting to more

than 1,400 pages, containing extensive and detailed documentation referring to the persistence of widespread forced labour practices by civil and military authorities in almost all of the country's states and divisions. In many cases, the documentation refers to specific dates, locations, circumstances, specific civil bodies, military units and individual officials. Specific incidents referred to in the ITUC documentation involve allegations of a wide variety of types of work and services requisitioned by authorities, including work directly related to the military (portering, construction and forced recruitment of children), as well as work of a more general nature, including work in agriculture, construction and maintenance of roads and other infrastructure work. The ITUC documentation includes, inter alia, reports submitted to it by the Federation of Trade Unions of Burma (FTUB) and its affiliate, the FTUK, which contain allegations that victims of forced labour who were encouraged by these organizations to report to the ILO, have been prosecuted for it and subsequently jailed. The ITUC documentation also includes translated copies of numerous written orders ("Order documents" or "Order letters") apparently from military and other authorities to village authorities in Karen State, Chin State and some other states and divisions, containing a range of demands, entailing in most cases a requisition for compulsory (and uncompensated) labour. Thus, the report submitted by the FTUK, which was also directly communicated to the ILO in a communication received in September 2010 referred to above, includes translated copies of 94 Order documents issued by military authorities to village heads in Karen State between January 2009 and June 2010. The tasks and services demanded by these documents involved, inter alia, portering for the military, bridge repair, collection of raw materials, production and delivery of thatch shingles and bamboo poles, attendance at meetings, provision of money, food and other supplies, provision of information on individuals and households, etc. The report states that the above orders illustrate the persistent exaction of forced labour by the military in the rural Karen State, which significantly contributes to poverty, livelihoods vulnerability, food insecurity and displacement of large numbers of villagers. Copies of the above communications by the ITUC and the FTUK with annexes were transmitted to the Government, in September 2010, for such comments as it may wish to make on the matters raised therein.

### *The Government's reports*

The Committee notes the Government's reports, referred to in paragraph 4 above, which include replies to the Committee's previous observation. It notes, in particular, the Government's indications concerning the Government's continued cooperation with the various functions of the ILO Liaison Officer, including monitoring and investigating the forced labour situation and the operation of the SU complaints mechanism, as well as the Government's efforts in the field of the awareness-raising and training activities on forced labour, including the joint ILO–Ministry of Labour (MOL) presentation made at the Deputy Township Judges' training course in Yangon in March 2010 and the distribution of booklets on the SU and informative, simply worded brochures on forced labour. The Committee also notes the Government's indications concerning measures taken to prevent recruitment of under-age children and to release newly recruited under age soldiers from September 2009 up to August 2010. As regards the amendment of the legislation, the Government indicates that the Ministry of Home Affairs has been coordinating with the concerned departments in reviewing the Village Act and Towns Act. However, no action has been taken or contemplated to amend section 359 of the Constitution. The Committee also notes that the Government has not yet supplied its comments on the numerous specific allegations contained in the communications from the ITUC and the FTUK referred to above, as well as in the communication by the ITUC received in September 2009. ***The Committee urges the Government to respond in detail in its next report to the numerous specific allegations of continued, widespread imposition of forced or compulsory labour by military and civil authorities throughout the country, which are documented in the above communications from the ITUC and the FTUK, making particular reference to***

*the “Order documents”, which constitute conclusive evidence of the systematic imposition of forced labour by the military.*

### **Assessment of the situation**

Assessment of the information available on the situation of forced labour in Myanmar in 2010 and in relation to the implementation of the recommendations of the Commission of Inquiry and compliance with the Convention by the Government will be discussed in three parts, dealing with: (i) amendment of legislation; (ii) measures to stop the exaction of forced or compulsory labour in practice; and (iii) enforcement of penalties prescribed under the Penal Code and other relevant provisions of law.

#### **(i) Amendment of legislation**

The Committee previously noted the Government’s statement in its report received on 27 August 2009 that the Village Act and the Towns Act “have been put into dormant [sic] effectively and legally” by Order No. 1/99 (Order directing not to exercise powers under certain provisions of the Towns Act 1907, and the Village Act 1907) as supplemented by the Order of 27 October 2000. The Committee observed that the latter orders had yet to be given bona fide effect and do not dispense with the separate need to eliminate the legislative basis for the exaction of forced labour. ***Noting the Government’s indication in its report received on 19 August 2010, that the Ministry of Home Affairs has been coordinating with the concerned departments in reviewing these Acts, the Committee expresses the firm hope that the long overdue steps to amend or repeal them will soon be taken and that legislation will be brought into conformity with the Convention. The Committee asks the Government to provide, in its next report, information on the progress made in this regard.***

In its earlier comments, the Committee referred to section 359 of the Constitution (Chapter VIII – Citizenship, fundamental rights and duties of citizens), which excepts from the prohibition of forced labour “duties assigned by the Union in accordance with the law in the interest of the public”. The Committee observed that the exception encompasses permissible forms of forced labour that exceed the scope of the specifically defined exceptions in *Article 2(2) of the Convention* and could be interpreted in such a way as to allow a generalized exaction of forced labour from the population. The Committee notes with ***regret*** the Government’s statement in its report received on 19 August 2010, that “it is completely impossible to amend the Constitution ... as it was ratified by the referendum held in May 2008 with 92.48 per cent affirmative votes”. ***The Committee urges the Government once again to take the necessary measures with a view to amending section 359 of Chapter VIII of the Constitution, in order to bring it into conformity with the Convention.***

#### **(ii) Measures to stop the exaction of forced or compulsory labour in practice**

*Information available on current practice.* In paragraph 8 of this observation, the Committee referred in detail to the communications received from the ITUC and the FTUK, which contain well-documented allegations that forced and compulsory labour continued to be exacted from local villagers in 2010 by military and civil authorities in almost all of the country’s states and divisions. The information in the numerous appendices refers to specific dates, locations and circumstances of the occurrences, as well as to specific civil bodies, military units and individual officials responsible for them. According to these reports, forced labour has been requisitioned both by military personnel and civil authorities, and has taken a wide variety of forms and involved a variety of tasks.



The Committee notes from the report of the ILO Liaison Officer to the Conference Committee in June 2010 (ILC, 99th Session, *Provisional Record*, No. 16, Part Three, document D.5.C) that, while the SU complaints mechanism continues to function and the awareness-raising activities continue to take place, complaints alleging the use of forced labour by both military and civil authorities continue to be received (paragraphs 5 and 6). The ILO Liaison Officer also refers to numerous requests to the authorities to release identified victims of under-age military recruitment and states that the work related to under-age recruitment under the SU supports the activity of the UN Country Task Force on Monitoring and Reporting on Children Affected by Armed Conflict under Security Council Resolution 1612 (paragraphs 8 and 12). According to the report, a number of complaints of human trafficking for forced labour have been received; three such cases have been referred to the ILO anti-trafficking projects based outside the country and have resulted in the release of 56 persons from a forced labour situation in neighbouring countries. The ILO Liaison Officer further states that “non-verifiable available evidence does suggest that the use of forced labour by the civilian authorities has been reduced at least in some locations and parts of the country”, which is most likely due to the extensive awareness-raising activities and the heightened awareness of local authority personnel (paragraphs 7 and 11). However, according to the Governing Body document submitted to its 307th Session in March 2010, “Whilst there are indications from some parts of the country that the actual incidence of forced labour imposed by civilian authorities has diminished to some extent, this on its own would not account for the reduction in complaints. The use of forced labour, particularly by the military, remains an issue throughout the country” (GB.307/6, paragraph 5).

*Issuing specific and concrete instructions to the civilian and military authorities.* In its earlier comments, the Committee emphasized that specific, effectively conveyed instructions to civil and military authorities, and to the population at large, are required which identify each and every field of forced labour, and which explain concretely for each field the means and manner by which the tasks or services involved are to be carried out without recourse to forced labour. The Committee previously noted the Government’s general statement in its report received on 1 June 2009 that “the various levels of administrative authority are well aware of the orders and instructions related to forced labour prohibition issued by the higher levels”. However, the Committee notes that no new information has been provided by the Government in its subsequent reports on this important issue. Given the continued dearth of information regarding this issue, the Committee remains unable to ascertain that clear instructions have been effectively conveyed to all civil authorities and military units, and that bona fide effect has been given to such instructions. It reiterates the need for concrete instructions to be issued to all levels of the military and to the whole population, which identify all fields and practices of forced labour and provide concrete guidance as to the means and manner by which tasks or services in each field are to be carried out, and for steps taken to ensure that such instructions are fully publicized and effectively supervised. ***Considering that measures to issue instructions to civilian and military authorities on the prohibitions of forced and compulsory labour are vital and need to be intensified, the Committee expresses the firm hope that the Government will provide, in its next report, information on the measures taken in this regard, including translated copies of the instructions which have been issued reconfirming the prohibition of forced labour.***

*Ensuring that the prohibition of forced labour is given wide publicity.* In relation to ensuring that the prohibition of forced labour is given wide publicity, the Committee notes from the report of the ILO Liaison Officer referred to above, from the documents submitted to the Governing Body and to the Conference Committee, as well as from the Government’s reports, that a number of awareness-raising activities concerning the forced labour situation, the legal prohibitions of forced labour and existing avenues of recourse for victims were carried out in 2010. These included, inter alia, three joint ILO–MOL awareness-raising seminars at state/division level for civil and military personnel held in

Rhakine State, Magway Division and Bago Division; two joint ILO–MOL presentations on the law and practice on forced labour to a refresher training course for township judges and deputy judges; and three training seminars/presentations for members of the armed forces, the police and the prison service on the law and practice concerning under-age recruitment into the military. During the meeting of the ILO mission with the Minister of Labour (January 2010), the Government agreed to the publication of a simply worded brochure, in Myanmar language, explaining the law pertaining to forced labour, including under-age recruitment, and the procedures available to victims for lodging a complaint (GB.307/6, paragraph 9). The Governing Body, while calling for the continuation and intensification of awareness-raising activities during its November 2010 session, called on the Government to continue to actively support the wide distribution of the agreed brochure and its translation into all local languages (GB.309/6, paragraph 4). ***The Committee reiterates its view that such activities are critical in helping to ensure that the prohibition of forced labour is widely known and applied in practice, and should continue and be expanded.***

The Committee notes from the Governing Body document submitted to its 309th Session in November 2010 (GB.309/6), that the number of complaints received under the SU complaints mechanism continued to increase: over the period 1 June to 21 October 2010, 160 complaints have been received, as compared to 65 complaints received during the corresponding period in 2009 and 25 for the same period in 2008 (paragraph 18). As at 21 October 2010, a total of 503 complaints have been received under the SU mechanism; 288 cases (assessed to be within the ILO mandate) have been submitted to the Government Working Group for investigation, of which 132 have been resolved with varying degrees of satisfaction; 127 forced and/or under-age recruits have been released/discharged from the military in association with complaints under the SU mechanism (paragraphs 14 and 15). The Committee reiterates its view that the complaints mechanism under the SU in itself provided an opportunity to the authorities to demonstrate that continued recourse to the practice is illegal and would be punished as a penal offence, as required by the Convention. ***The Committee therefore hopes that the Government will intensify and expand the scale and scope of its efforts to give wide publicity to and raise public awareness about the prohibition of forced labour, including the use of the SU complaints mechanism as an important modality of awareness raising; that it will undertake awareness-raising activities in a more coherent and systematic way; and that it will provide, in its next report, information on measures taken or contemplated in this regard. The Committee further hopes that the Government will provide information on the impact of awareness-raising activities on the enforcement of criminal penalties against perpetrators of forced labour and on the imposition in actual practice of forced or compulsory labour, particularly by the military.***

*Making adequate budgetary provisions for the replacement of forced or unpaid labour.* In its earlier comments, the Committee observed that budgeting of adequate means for the replacement of forced labour, which tends also to be unpaid, is necessary if recourse to the practice is to end. The Committee recalls in this regard that, in its recommendations, the Commission of Inquiry stated that “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”. The Committee has noted the Government’s repeated indication in its reports, including the report received on 19 August 2010, that the budget allotments including the expense of labour costs for all ministries have been allocated to implement their projects. ***Noting that no other information has been provided by the Government on this important issue, the Committee requests the Government once again to provide, in its next report, detailed and precise information on the measures taken to budget adequate means for the replacement of forced or unpaid labour.***

(iii) *Ensuring the enforcement of the prohibition of forced labour*

The Committee previously noted that section 374 of the Penal Code provides for the punishment, by a term of imprisonment of up to one year, of anyone who unlawfully compels any person to labour against his or her will. It also noted that Order No. 1/99 and its Supplementing Order of 27 October 2000, as well as the series of instructions and letters issued by government authorities in 2000–05 with a view to securing the enforcement of those Orders, provide for persons “responsible” for forced labour, including members of the armed forces, to be referred for prosecution under section 374 of the Penal Code. The Committee notes from the Governing Body document submitted to its 309th Session in November 2010 (GB.309/6) that, in respect of cases concerning forced labour exacted by the military, the ILO has received no information concerning the prosecution of any perpetrator under the above provision of the Penal Code. The ILO has been advised that, in four instances, disciplinary action has been taken under military procedures in response to complaints submitted under the SU mechanism, and that in some instances the solution to the complaint has resulted in the issuance of orders requiring behavioural change (paragraph 11). As regards cases concerning forced labour exacted by civilian authorities, prosecution of perpetrators under the Penal Code in response to complaints submitted has been reported only in respect of Case No. 1, which has been already noted by the Committee in its earlier comments and resulted in the prosecution of two civilian officials, who were punished with penalties of imprisonment. In other instances, the solution has involved administrative penalties, including dismissal or transfer, with the majority of cases being resolved by addressing the situation of the complainants without punitive action being taken against the perpetrators (paragraph 12). As regards cases of forced and/or under-age recruitment, a punitive and disciplinary process has increasingly been applied and military perpetrators have been referred to summary trial under military regulations, which resulted in imprisonment in three instances; other penalties which appear to be regularly administered included the loss of seniority, pensionable rights or several days’ pay, as well as the issuance of various levels of formal reprimand (paragraph 13).

The Committee notes with *regret* that no new information has been provided by the Government in its 2010 reports about any prosecutions against perpetrators of forced labour being pursued under section 374 of the Penal Code. ***The Committee points out once again that the illegal exaction of forced labour must be punished as a penal offence, rather than treated as an administrative issue, and expresses the firm hope that appropriate measures will be taken in the near future in order to ensure that the penalties which may be imposed under section 374 of the Penal Code for the exaction of forced or compulsory labour are strictly enforced, in conformity with Article 25 of the Convention. It asks the Government to provide, in its next report, information on the progress made in this regard.***

**Concluding remarks**

The Committee fully endorses the conclusions concerning Myanmar made by the Conference Committee and the Governing Body, as well as the general evaluation of the forced labour situation by the ILO Liaison Officer. The Committee observes that, in spite of the efforts made, particularly in the field of awareness raising, cooperation in the functioning of the SU complaints mechanism and in the release of under-age recruits from the military, the Government has not yet implemented the recommendations of the Commission of Inquiry: it has failed to amend or repeal the Towns Act and the Village Act; it has failed to ensure that, in actual practice, forced labour is no longer imposed by the authorities, in particular by the military; and it has failed to ensure that penalties for the exaction of forced labour under the Penal Code have been strictly enforced against civil and military authorities. The Committee continues to believe that the only way that

genuine and lasting progress in the elimination of forced labour can be made is for the Myanmar authorities to demonstrate unambiguously their commitment to achieving that goal. *The Committee urges the Government once again to demonstrate its commitment to rectify the violations of the Convention identified by the Commission of Inquiry, by implementing the concrete practical requests addressed by the Committee to the Government, and that all the long overdue steps will be taken to achieve compliance with the Convention, both in law and in practice, so that the most serious and long-standing problem of forced labour will be finally resolved.*

## **C. Report of the Liaison Officer to the special sitting on Myanmar (Convention No. 29) of the Committee on the Application of Standards**

### **I. Introduction**

1. The ILO Liaison Officer in Myanmar operates under the authority of a 2002 Understanding and a subsequent Supplementary Understanding (SU) agreed in 2007 between the Government of Myanmar and the ILO. The Liaison Officer undertakes various activities aimed at supporting the Government in its implementation of the recommendations of the Commission of Inquiry appointed to examine the observance by Myanmar of the Forced Labour Convention, 1930 (No. 29) (see Annex A attached).
2. The Supplementary Understanding signed on 26 February 2007 sets out a complaints mechanism under which residents of Myanmar can forward to the Liaison Officer complaints on alleged cases of forced labour. The definition of forced labour under Convention No. 29 covers human trafficking for forced labour, forced military recruitment and the recruitment of minors into the military. The trial period of the SU was extended for a fourth time in February 2011 for a further 12 months.
3. The Governing Body has regularly reviewed developments, including any progress made, at each of its March and November meetings under a specific agenda item on the subject. Parts D and E contain the reports of the Liaison Officer to the Governing Body in November 2010 and March 2011, together with the conclusions reached following each of those discussions.
4. This report provides a summary of activities since the report to the Committee on the Application of Standards in 2010 without, however, repeating the information that is contained in the abovementioned reports to the Governing Body. The report takes into account the conclusions of the 99th Session of the International Labour Conference in 2010 (please see Part C) and highlights developments which can be considered steps forward, as well as long-standing areas where further progress is required in order to achieve the objective of the elimination of forced labour in Myanmar.

### **II. The operational environment**

5. Since the last report to the Committee, Myanmar has undergone political change in accordance with the Constitution adopted in 2008. National multiparty elections have taken place, with representatives being elected in a newly established parliamentary system consisting of an upper house (the Amyotha Hluttaw), a lower house (the Pyithu Hluttaw) and 14 state/regional parliaments. The previous military-controlled Government, the State Peace and Development Council (SPDC), no longer exists. Under the Constitution, 25 per cent of the members of all parliaments shall be military appointees. The political party established by the previous Government holds the majority of the elected seats in all parliaments, and a considerable number of the elected members of parliament, including ministers and the new President, as Head of State, are former military personnel prominent in the previous Government. However, representatives of parties not aligned with the previous Government and representatives of ethnic parties have been elected and have taken up their seats. It is noted that a number of technical professionals have been appointed as ministers and to newly established policy advisory bodies.

6. In his parliamentary and public statements, the new President has declared the new situation to be a new era for Myanmar. He has spoken strongly on the need for government policy in the market economy to reflect the needs of the people and has expressed his commitment to strengthening the economy for the development of the country and the people. He has stressed the need for good government and good governance, inter alia, through accountability and the elimination of corruption. A new Presidential Advisory Body, comprising a number of respected independent persons with extensive internal and external experience, has been established to provide economic, social, legal and political policy support.
7. While there has been criticism of the Constitution, as well as allegations of irregularities in the electoral process, there is no doubt that the political landscape has changed. The Government describes the political model as “discipline-flourishing democracy”, a term which reflects the continued emphasis on national unity and national security in the face of persisting internal political and ethnic conflict. Whatever the real or potential extent and value of the changes brought in under the new system, it may be noted that a number of governments have reviewed their policies towards Myanmar in the light of these changes, with an observable tendency toward increased dialogue and cautious optimism.
8. Daw Aung San Suu Kyi was released from house arrest shortly after the November 2010 elections. Her National League for Democracy (NLD) party did not participate in the elections. In the meeting during the February 2011 mission to Myanmar of Mr Guy Ryder, ILO Executive Director, Daw Aung San Suu Kyi confirmed her belief that it was important to retain the ILO presence in Myanmar, which should undertake work in support of workers’ rights while maintaining a firm principled position in dealings with the Government.
9. The Government Working Group for the Elimination of Forced Labour (the Working Group), chaired by the new Deputy Minister of Labour and consisting of senior representatives from a range of relevant ministries, the Supreme Court, the Office of the Attorney-General and with a representative of the Adjutant-General’s Office in a participating observer capacity, has been retained in the new situation. The first meeting with the Working Group under the new Government was held on 5 May 2010. The Deputy Minister reconfirmed his Government’s commitment to the elimination of forced labour and expressed the wish that cooperation between the Government and the ILO could be further enhanced with a view to meeting that objective, fulfilling the recommendations of the Commission of Inquiry and achieving full compliance with Convention No. 29.
10. An increasing number of complaints under the SU mechanism continue to be received. This, it is believed, does not reflect an increase in the use of forced labour. Rather, it is seen as a sign of greater awareness among the public of their right under the law to complain and their increased confidence in seeking redress through the use of the complaints mechanism.
11. The Working Group and the Adjutant-General’s Office continue to respond in a reasonably timely manner to most complaints that have been lodged under the SU and, after assessment by the Liaison Officer, transmitted to the Government.
12. The Working Group has responded positively to proposals to broaden the scope of training and awareness-raising activities under the 2002 Understanding. While joint awareness-raising activity at regional and township levels continues to be a useful tool, discussions are under way with the appropriate bodies to initiate joint Ministry of Labour (MOL)/ILO presentations to police in-service training courses, as well as to contractor, subcontractor and local authority personnel associated with major infrastructure projects and to the public affected by such projects.

13. The Ministry of Defence, supported by UNICEF and with an ILO technical contribution, continues to be involved in the delivery of training to military personnel in respect of the law on under-age recruitment.
14. Notwithstanding these activities, complaints continue to be received alleging the use of forced labour by both military and civilian authorities. There is no evidence of systematic use of forced labour in the private sector: those complaints that are received against private enterprises are mostly related to restrictive employment terms and poor working conditions.
15. Non-verifiable evidence continues to suggest that the use of forced labour by the civilian authorities has been reduced, at least in some parts of the country. A proposal is currently under consideration to include questions designed to verify this trend in a proposed labour force survey.
16. As identified by the Commission of Inquiry, a significant cause of the use of forced labour is the weakness of macroeconomic governance and policy application, particularly in respect of budgeting and corresponding financial allocations. A proposal has been made for a joint Working Group/ILO meeting with the appropriate government finance and planning ministries to discuss this matter.
17. The generally efficient and positive responses from the Adjutant-General's Office in respect of under-age recruitment and associated complaints is in contrast to the continuing difficulty in reaching satisfactory conclusions regarding complaints that allege the use of forced labour by the military. This relates to their operational activities (use of civilian porters and sentry guards, forced recruitment of reservist militia, etc.), the application of the economic self-sufficiency policy and their commercial activity in various industries. No response has yet been received to a proposal for a joint Working Group/ILO meeting with Ministry of Defence and senior military personnel to address these issues.
18. The simply worded brochure in the Myanmar language explaining the law, the SU and the procedure for filing a complaint agreed to in May 2010 has been published and continues to be widely distributed. This is felt to explain in large part the considerable increase in complaints received over the past 12 months. At the 5 May 2011 Working Group meeting, it was agreed in principle that the brochure should be produced in other local languages to further enhance its value, and that the first stage would be the production of a bilingual brochure in the Myanmar and Shan languages.
19. A considerable number of forced labour complaints have been lodged by farmers in Magway Region. These cases refer to the actions of the military in support of their commercial projects and self-sufficiency policy. The cases have proven very difficult to resolve, with relations at local level progressively worsening, in some instances reaching the point of volatile confrontation. Notwithstanding the existence of unresolved complaints and the no reprisals provisions of the SU, the military, supported by members of the local authorities, have over the past two years continued to take action against complainant farmers, facilitators and their relatives for their association with the complaints. At the Working Group meeting of 5 May 2011, the long-standing proposal that a joint MOL/ILO mission to Magway be undertaken was accepted. This mission will work with the local authorities and complainants to find lasting solutions to the various outstanding complaints. The Working Group indicated that they were undertaking preparatory work for the joint mission. The Liaison Officer has requested that this preparatory activity should not result in pre-emptive remedial action being imposed, recommending instead that the mission be undertaken in a timely manner and that in the interim period complainant farmers be allowed to maintain their livelihoods.

20. The Government has reconfirmed its commitment to amend the provisions of the Village Act 1907 and the Towns Act 1907 to bring them into conformity with Convention No. 29. The Working Group has indicated that the drafting of the new provisions, as of 5 May 2011, was 80 per cent complete and that the draft legislation would be introduced into Parliament at its next sitting, which is expected to be before the end of 2011. ILO technical assistance to support this process has been offered.
21. The full-time professional staff in Yangon consists of the Liaison Officer, his deputy and one national programme officer. More complaints have been received in the last 12 months than were received in the first three years of the SU operation combined. This increased caseload must be managed in parallel with other demands such as undertaking assessment missions, awareness-raising seminars, facilitator network training, and working with other UN agencies, international non-governmental organizations (INGOs) and non-governmental organizations (NGOs) on various aspects of forced labour. The Government of Germany provided funding which ended as at 31 December 2010 for, among other things, an additional international professional to further support SU activities, particularly in respect of child soldiers, a community liaison officer (national) to support training activities and associated support staff. Some valuable additional activities have been undertaken using these funds. In the absence of government agreement to issue the required entry visa for the international professional officer, the services of a suitably qualified consultant already resident in the country have been utilized. The European Commission and the Government of Sweden have generously agreed to continue this funding for 2011 and 2012. A licence for the importation of an additional vehicle has been approved; however, an indication that a new visa application would be favourably considered by the new Government is still awaited.
22. The Government has indicated its willingness to enter into discussions towards resuming best-practice project activities as envisaged by the previously discussed, but not implemented, “plan of action”, similar to the project undertaken in response to Cyclone Nargis.
23. A response is awaited to an ILO proposal that joint Working Group/ILO briefings of ministers and officials in state/regional parliaments with labour responsibilities be undertaken.
24. In February 2011, Mr Guy Ryder, ILO Executive Director, accompanied by Ms Karen Curtis, Deputy Director of the International Labour Standards Department, and Mr Drazen Petrovic, Principal Legal Officer, undertook a mission to Myanmar during which meetings were held with the Government Working Group for the Elimination of Forced Labour, the Government Anti-Human Trafficking Working Group and the Government Human Rights Body. The SU trial period was extended for a further 12 months from 26 February 2011. The Government sought input from the mission on a draft of the proposed legislation on workers’ organizations which the Minister of Labour indicated would be introduced into Parliament, most likely at its second sitting.

### **III. Action under the Understanding and the Supplementary Understanding**

25. Since 20 May 2010, the following activities have been undertaken.



**(a) Training and awareness raising**

- Two joint ILO/MOL awareness-raising seminars at state level have been undertaken for state/district/township/village local authority personnel and representatives of military units in Bago-East Region and Chin State.
- Twenty-nine ILO training workshops/presentations have been held for 1,030 United Nations, INGO, local NGO and community-based organization staff on legislation in respect of forced labour, including under-age recruitment, and the practical operation of the SU complaints mechanism.
- Two Country Task Force for Monitoring and Reporting training seminars/presentations have been conducted for members of the armed forces (operational, training and recruitment personnel), the police and the prison service on the law and practice concerning under-age recruitment into the military.
- Two presentations have been made to the UNICEF partners Reintegration and Rehabilitation Network.

**(b) Operational field missions**

- Two field missions for complaint assessment.
- Twelve case follow-up/information verification missions.

**(c) Government consultations**

In addition to meetings held in association with the ILO mission visit there have been three meetings with the full Government Working Group for the Elimination of Forced Labour on the operation of the SU.

**IV. Statistics on complaints**

26. Since the coming into effect of the SU in February 2007, a total of 711 complaints have been received by the Liaison Officer. Of these, 161 were outside the ILO mandate in Myanmar; five of them concerned freedom of association issues and could not be pursued under the SU.
27. Of the 550 cases accepted as being within the ILO mandate, 202 have been assessed, submitted to the Working Group, investigated by the Government and subsequently closed, to varying degrees of satisfaction. A further 193 cases remain open, either awaiting information on the results of government investigations or still the subject of follow-up negotiations. Another 120 cases are currently either under assessment or require further information prior to submission. Thirty-five cases have not been submitted, either because there is insufficient information to substantiate the allegations or owing to the reluctance of the complainants themselves to proceed.
28. A total of 174 persons recruited under age have been discharged and/or released into the care of their families. The representative of the Adjutant-General's Office reports that in response to these complaints, 20 officers and 110 other ranks have been disciplined, including the imprisonment of two officers and five other ranks.

**29.** Complaints continue to be received alleging various degrees of harassment to complainants, facilitators and their legal counsel, particularly in respect of cases involving the military. Since February 2007, 20 persons imprisoned for their association with the complaints mechanism have been released. Four persons (Su Su Nway, Min Aung, Zaw Htay and Nyan Myint) who had been imprisoned because of their association with the complaints mechanism, or heavily sentenced for unrelated alleged breaches of the law in a situation in which they have clearly had an association with the SU mechanism, remain in prison. Two lawyers (Pho Phyu and Aye Myint), who are active supporters of the SU procedures, have lost their legal licences after being released from prison. The Government continues to maintain that these persons have all been arrested and appropriately sentenced for breaches of the law unrelated to their association with the SU complaints procedure and that the cancellation of the lawyers' licences reflects their breach of the legal practitioners' code of conduct.

## Annex A

### Commission of Inquiry recommendations

#### (4) *Recommendations*

539. In view of the Government's flagrant and persistent failure to comply with the Convention, the Commission urges the Government to take the necessary steps to ensure:
- (a) that the relevant legislative texts, in particular the Village Act and the Towns Act, be brought into line with the Forced Labour Convention, 1930 (No. 29) as already requested by the Committee of Experts on the Application of Conventions and Recommendations and promised by the Government for over 30 years, and again announced in the Government's observations on the complaint. This should be done without further delay and completed at the very latest by 1 May 1999;
  - (b) that in actual practice, no more forced or compulsory labour be imposed by the authorities, in particular the military. This is all the more important since the powers to impose compulsory labour appear to be taken for granted, without any reference to the Village Act or Towns Act. Thus, besides amending the legislation, concrete action needs to be taken immediately for each and every of the many fields of forced labour examined in Chapters 12 and 13 above to stop the present practice. This must not be done by secret directives, which are against the rule of law and have been ineffective, but through public acts of the Executive promulgated and made known to all levels of the military and to the whole population. Also, action must not be limited to the issue of wage payment; it must ensure that nobody is compelled to work against his or her will. Nonetheless, the budgeting of adequate means to hire free wage labour for the public activities which are today based on forced and unpaid labour is also required;
  - (c) that the penalties which may be imposed under section 374 of the Penal Code for the exaction of forced or compulsory labour be strictly enforced, in conformity with Article 25 of the Convention. This requires thorough investigation, prosecution and adequate punishment of those found guilty. As pointed out in 1994 by the Governing Body committee set up to consider the representation made by the ICFTU under article 24 of the ILO Constitution, alleging non-observance by Myanmar of the Forced Labour Convention, 1930 (No. 29), the penal prosecution of those resorting to coercion appeared all the more important since the blurring of the borderline between compulsory and voluntary labour, recurrent throughout the Government's statements to the committee, was all the more likely to occur in actual recruitment by local or military officials. The power to impose compulsory labour will not cease to be taken for granted unless those used to exercising it are actually brought to face criminal responsibility.
540. The recommendations made by the Commission require action to be taken by the Government of Myanmar without delay. The task of the Commission of Inquiry is completed by the signature of its report, but it is desirable that the International Labour Organization should be kept informed of the progress made in giving effect to the recommendations of the Commission. The Commission therefore recommends that the Government of Myanmar should indicate regularly in its reports under article 22 of the Constitution of the International Labour Organization concerning the measures taken by it to give effect to the provisions of the Forced Labour Convention, 1930 (No. 29), the action taken during the period under review to give effect to the recommendations contained in the present report. In addition, the Government may wish to include in its reports information on the state of national law and practice with regard to compulsory military service.

**D. Conclusions adopted by the Committee on the Application of Standards in its special sitting to examine developments concerning the question of the observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29)**  
(International Labour Conference, 99th Session, June 2010)

The Committee noted the observations of the Committee of Experts and 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, on 19 January 2010, for a further 12 months to 25 February 2011.

The Committee also noted the discussions and decisions of the Governing Body of November 2009 and March 2010. It further took due note of the statement of the Government representative and the discussion that followed.

The Committee acknowledged some limited steps on the part of the Government of Myanmar. It noted the further extension of the Supplementary Understanding for another year; the agreement for publication and distribution of an informative brochure on forced labour; certain activities concerning awareness raising of the complaints mechanism established by the Supplementary Understanding, including newspaper articles in the national language; and certain improvements in dealing with under-age recruitment by the military. The Committee was however of the view that these steps remained totally inadequate.

The Committee noted that despite these special sittings, none of the three specific and clear recommendations of the Commission of Inquiry had been implemented. These recommendations require the Government to: (1) bring the legislative texts in line with Convention 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 also noted that the complaints mechanism reached only limited parts of the country and its functioning could be an indication that there had been any significant diminution in the use of forced labour.

The Committee emphasized the importance of the conclusions reached in its special sittings at the 97th and 98th Sessions of the Conference (June 2008 and June 2009), and again placed emphasis on the need for the Government of Myanmar to work proactively towards the full implementation of the recommendations of the Commission of Inquiry appointed by the Governing Body in March 1997 under article 26 of the Constitution. It also 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.

The Committee fully supported all of the observations of the Committee of Experts and the decisions of the Governing Body referred to above, and expressed the firm expectation that the Government of Myanmar moves 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) take necessary steps to bring the relevant legislative texts, in particular the Village Act and Towns Act, into line with Convention No. 29;
- (2) ensure that legislation foreseen by paragraph 15 of Chapter VIII of the new Constitution is developed, adopted and applied in full conformity with Convention No. 29;
- (3) ensure the total elimination of the full range of forced labour practices, including the recruitment of children into the armed forces and 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 and punished under the Penal Code;
- (5) ensure that the Government makes the necessary budget allocations so that workers are freely contracted and adequately remunerated;
- (6) eliminate the continuing problems with the ability of victims of forced labour or their families to complain and immediately cease all harassment, retaliation and imprisonment of individuals who use, are associated with or facilitate the use of the complaints mechanism;
- (7) release immediately complainants and other persons associated with the use of the complaints mechanism who are currently detained;
- (8) facilitate the production and wide distribution of the brochure in the ethnic languages;
- (9) intensify awareness-raising activities throughout the country, including training to military personnel to end under-age recruitment; and
- (10) actively pursue agreement of a joint action plan with the Country Task Force on Monitoring and Reporting in respect of children in circumstances of armed conflict, of which the ILO is a member, to address amongst other things under-age recruitment.

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, particularly in respect of the urgent issuance of an entry visa for an additional international professional as a priority and without delay.

The Committee specifically called on the Government of Myanmar to take every opportunity, including through the continued use of all of the available forums, to increase the awareness of the people (the civil and military authorities as well as the general public) as to the law against the use of forced labour, to their rights and responsibilities under that law and of the availability of the complaints mechanism as a means of exercising those rights. An authoritative statement at the highest level would be a significant step in this regard.

The Committee regretted with serious concern the continued human rights violations in Myanmar, including the detention of Daw Aung San Suu Kyi. The Committee urged her immediate release as well as that of other political prisoners and labour activists.

The Committee called on the Government to investigate, without further delay, the allegations of forced labour orders and similar documents which had been submitted to the Committee of Experts and encouraged the Government to communicate to the Committee of Experts, for its next session, its findings and any consequential concrete actions taken. The Committee expected to be in a position to take note of significant developments at the next session of the Conference.

**E. Document before the Governing Body  
at its 309th Session (November 2010)  
and Governing Body conclusions**

INTERNATIONAL LABOUR OFFICE



**Governing Body**

309th Session, Geneva, November 2010

**GB.309/6**

**FOR DEBATE AND GUIDANCE**

SIXTH ITEM ON THE AGENDA

**Developments concerning the question  
of the observance by the Government of  
Myanmar of the Forced Labour  
Convention, 1930 (No. 29)**

**Overview**

**Issue covered**

This report fulfils the obligation stemming from the resolution on the widespread use of forced labour in Myanmar adopted by the 87th Session (1999) of the International Labour Conference that there be a standing Governing Body Agenda item on this subject. The paper addresses activities undertaken and progress made since the last report.

**Policy implications**

See above.

**Financial implications**

None.

**Action required**

Submitted for debate and guidance. The Governing Body may care to draw its own conclusions from that debate.

**References to other Governing Body documents and ILO instruments**

Governing Body members may find reference to document GB.307/6, "Conclusions concerning Myanmar", and to *Provisional Record* No. 16, Part III of the 99th Session (2010) of the International Labour Conference, useful in their consideration of this report.

## Introduction

1. Activity since the last report has taken place against the backdrop of the General Election, which is scheduled for 7 November 2010. Whilst this has obviously raised a number of sensitivities, it has not unduly disrupted the operation of the complaints mechanism as set out in the Supplementary Understanding between the Government of Myanmar and the ILO or any of the associated activities.
2. This paper is presented in three parts with a view to assisting the Governing Body in its deliberations. Part I recapitulates developments related to the recommendations of the Commission of Inquiry, established in 1997 to examine the complaint concerning the non-observance by Myanmar of the Forced Labour Convention, 1930 (No. 29); Part II provides statistics and commentary on the operation of the Supplementary Understanding complaints mechanism; and Part III addresses other matters directly or indirectly related to the mandate of the ILO Liaison Officer in Myanmar.

### **Part I. Developments related to the recommendations of the Commission of Inquiry**

#### **Recommendation 1: “That the relevant legislative texts be brought into line with the Forced Labour Convention 1930 (No. 29)”**

3. The Towns Act and Villages Act of 1907 have not been repealed or amended because of, inter alia, the absence of a Parliament. Following discussions with an ILO mission, the Government of Myanmar issued, in May 1999, Order No. 1/99 and, in October 2000, Supplementary Order No. 1/99. These Orders stipulated that notwithstanding the provisions of the Towns and Villages Acts, work or services should not be requisitioned by civilian or military authorities and that breaches of this were offences under the Penal Code. A number of exceptions related to emergencies were specified. To date, Order No. 1/99 and Supplementary Order No. 1/99 have remained the reference point for the Government in its instructions and other activities.
4. The supervisory bodies of the ILO have considered that, although these Orders were a possible step towards meeting the recommendations of the Commission of Inquiry, by themselves they did not constitute an adequate response.
5. The Government has recently indicated that legislation which encapsulates both Order No. 1/99 and Supplementary Order No. 1/99, and repeals or amends the Towns and Villages Acts, is being drafted as the Constitution adopted by referendum in 2008 contains a section on forced labour. The supervisory bodies have stressed the need for the Constitution and subsequent legislation to be in conformity with the Forced Labour Convention, No. 29. According to the Government, legislation is scheduled to be introduced in the Parliament after the elections of November 2010.



**Recommendation 2: “That in actual practice, no more forced or compulsory labour be imposed by the authorities, in particular the military”**

6. Responsibility for complying with Convention No. 29 rests with the Government including, inter alia, through the full implementation of the Commission of Inquiry’s recommendations. The mandate of the ILO Liaison Officer based in Myanmar is to assist the Government of Myanmar, on its request, in its efforts to ensure the prompt and effective elimination of forced labour.
7. This assistance is materialized, not only by educational and awareness-raising activities relevant to the above objective, but also through the operation of a complaints mechanism based on the Supplementary Understanding concluded on 26 February 2007, intended to give full credibility to both the Government’s and the ILO’s commitment to the eradication of forced labour. The trial period of this Supplementary Understanding has been extended in 2008, 2009 and 2010, each time for one year.
8. Part II of this report provides an update on progress in the operation of the Supplementary Understanding.

**Recommendation 3: “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”**

9. Forced labour largely falls within three broad categories in Myanmar: (1) forced labour extracted by the military, such as portering, sentry duty and labour to support commercial activity; (2) forced labour extracted by the civilian authorities, for instance public works such as infrastructure repair, maintenance and construction; and (3) forced and/or under-age recruitment into the military.
10. Complaints under the Supplementary Understanding have been received in respect of each of these categories.
11. In respect of cases received under the category of forced labour extracted by the military, the ILO has received no information concerning the prosecution of any perpetrator under the Penal Code. In four instances the ILO has been advised that disciplinary action has been taken under military procedures in response to complaints submitted under the Supplementary Understanding. In some instances the solution to the complaint has resulted in the issuance of orders requiring behavioural change. One example is the requirement to use military personnel as railway security sentries, as opposed to using civilians on a 24 hour/7 days a week rotational roster system. In other instances the solution has involved the reissuing of instructions reconfirming Order No. 1/99 and Supplementary Order No. 1/99 in parallel with awareness-raising and training activities and, in yet other instances, the response has been an effective denial of the claim.
12. In respect of cases received under the category of forced labour extracted by civilian authorities, prosecution of perpetrators under the Penal Code in response to complaints submitted has been reported only in respect of Case No. 1. In that instance three persons were prosecuted under the Penal Code, resulting in one acquittal and the imprisonment of two persons. In other instances the solution has involved an administrative penalty, including dismissal or transfer, with the majority of cases being resolved by addressing the

situation of the complainant(s) without punitive action being taken against the perpetrator(s).

13. In respect of cases received under the category of forced and/or under-age recruitment, a punitive and disciplinary process has increasingly been applied. Currently, the Adjutant General's Office, working with Regimental Commanders and other senior personnel, routinely refer military perpetrators of forced and/or under-age recruitment to summary trial under military regulations. There have been no reported cases of the use of the Penal Code but three instances of military personnel being imprisoned for their part in under-age recruitment cases have been recorded. Other penalties, such as the loss of seniority, loss of pensionable rights, loss of seven, 14 or 28 days pay, and the issuance of various levels of formal reprimand, appear to be regularly administered. There have been no reported prosecutions of civilian intermediaries in the recruitment process.

## **Part II. Operational update of the complaints mechanism**

14. As at 21 October 2010, a total of 503 complaints have been received under the Supplementary Understanding. Of these, 81 complaints were assessed as not being within the ILO mandate, 24 were assessed as receivable but were not submitted owing to the complainants' concern at possible retribution. In a further six cases the under-age recruit was released/discharged while the case was under ILO assessment and investigation. Altogether, 288 cases have been submitted to the Government Working Group for investigation, of which 132 have been resolved with varying degrees of satisfaction. Some 104 cases are currently either in assessment or cannot be submitted until further information is obtained.
15. To date, 127 forced and/or under-age recruits have been released/discharged from the military in association with complaints under the Supplementary Understanding. Government responses in these cases, subject to the Liaison Officer's ability to substantiate the facts of the case and produce proof-of-age evidence, are normally positive and relatively efficient. The principle that an under-age recruit who runs away cannot be considered a deserter has been agreed upon, and a number of such victims have been released from prison accordingly – regrettably this, at this stage, is in response to Supplementary Understanding complaints only, with no understanding as yet being reached that the age on recruitment of an alleged deserter should be formally verified prior to the arrest. Whilst the principle that the reaching of 18 years of age does not legitimize an under-age recruitment has been agreed, the ILO has been consistently refused access to verify the wishes of under-age recruits who are now of majority age and who allegedly have voluntarily chosen to continue their military career.
16. As previously reported, there is some anecdotal evidence that the incidence of forced labour extracted by civilian authorities appears to be reducing. The number of such complaints received is slowly coming back to the levels experienced immediately prior to the publicized arrest of persons associated with the lodging of complaints. This would suggest that there is a return of confidence to complain, which could be explained by the publicity surrounding the release of the persons who have been imprisoned and the continued distribution of the jointly agreed Ministry of Labour/ILO brochure.
17. There continues to be no evidence by way of complaints received of the systematic use of forced labour in the private sector. A small number of complaints concerning trafficking for forced labour continue to be received.

18. The number of complaints received continued to increase – over the period 1 June to 21 October 2010, 160 complaints were received. This compares to 65 received in the corresponding period for 2009, 25 for the same period in 2008 and 31 in 2007. Each complaint received must be individually assessed as to whether it falls within the forced labour mandate, any additional evidence required to substantiate the complaint must be obtained, and after submission there is considerable correspondence undertaken before the process can be concluded. This, together with the other responsibilities of the Liaison Officer and his staff in such areas as awareness raising and training is putting the process under considerable stress, as is evidenced by the number of cases currently in assessment.
19. To relieve this pressure, and with the support of funding from the Government of Germany, an additional local translator/interpreter, a local community liaison officer, a part-time local case worker and a locally employed international programme officer have been engaged until the end of the year. Their work is predominantly related to activities concerning children in armed conflict and under-age recruitment. Negotiations are currently under way towards obtaining the necessary funding to continue these roles in 2011–12.
20. The Supplementary Understanding contains the provision that residents of Myanmar have the right to lodge a complaint without fear of any form of judicial or retaliatory action. There have been no reports of harassment or reprisals against persons associated with under-age recruitment complainants. Similarly, in most instances of forced labour complaints lodged against government personnel (military or civilian), no harassment or reprisals are reported.
21. There are however two major areas where this has not been the case. The first relates to those facilitators for complaints under the Supplementary Understanding who are considered by the Government as being political activists. These persons tend to be arrested, prosecuted and imprisoned on charges seemingly unrelated to their complaints facilitation activities under the Supplementary Understanding. It is however believed that the association of these persons with the ILO is, in part, responsible for their incarceration and is a significant factor in determining the severity of the sentence. Daw Su Su Nway, U Min Aung and U Zaw Htay have all been previously active voluntary facilitators and they remain in prison serving lengthy sentences.
22. The second such area is geographical. Complainants from a relatively small area within the Thayet District of Magwe region, encompassing Natmauk and Aunglan townships, have experienced serious harassment in association with their forced labour complaints. Some 16 forced labour complaints, involving hundreds of complainants, have been received from this area since the Supplementary Understanding was agreed. Six remain open and unresolved even though they have now been in process for in excess of one year. Notwithstanding continuing negotiation, two of the 14 complainants imprisoned in association with these complaints remain in prison. Other complainants continue to be barred access to their traditional land, which creates obvious livelihood problems. No specific reason can be identified as to why this particular area is problematic; there may be a number of contributing factors. These could include the fact that two local authority personnel from this area have received prison sentences and six have been dismissed in response to complaints, or the fact that the area has a high military presence, both operational and commercial. However, the situation is compounded by the communities' apparent heightened awareness of their rights and preparedness to exercise those rights, in contrast to other areas. The Central Government Working Group for the elimination of forced labour continues to address these issues. However, there appears to be reluctance on the part of the local authorities in the area to reach lasting solutions.

23. The Liaison Officer considers that it would be important that he be granted full access to the court files in such cases in order to satisfy himself that the charges and subsequent prison sentences are indeed unrelated to the lodging of a complaint and do not comprise any retaliatory action in respect of the defendants regarding their involvement with the implementation of the Supplementary Understanding.
24. All requests to visit these persons in prison have been declined.

### **Part III. Other related activities/issues**

25. From 7 to 9 September 2010, a series of awareness-raising/training activities was undertaken in cooperation with TOTAL Oil, the Ministry of Labour and Myanmar Oil and Gas Enterprises in Kanbauk township, Tanintharyi region. These activities encompassed a training-for-trainers seminar for TOTAL social and community development staff, a seminar on the management of community projects for community representatives from 26 villages, and an awareness-raising seminar for local authority representatives.
26. On 13 and 14 September 2010, a joint Ministry of Labour/ILO awareness-raising mission was undertaken to Kyaukyi and Tantabin townships in East Bago region. Two sessions were held with over 100 participants, including senior local authority personnel and senior representatives of the local police force, the judiciary and the local army regiments.
27. On 24 June 2010, a full training-for-trainers' presentation on the complaints mechanism with emphasis on under-age recruitment was made to 40 officers and staff of the Mandalay Military Recruitment Centre.
28. Between June and October 2010, three one-day workshops on forced labour were held for the staff of local non-governmental organizations. In total some 125 persons participated from all regions of the country.
29. During the same period, a two-day workshop for some 40 field staff of the United Nations Development Programme and a half-day workshop for 15 UN-HABITAT staff were held. Presentations were also made to 50 members of the Myanmar Humanitarian Country Team, the Myanmar NGO Gender Group and the Bogale township protection meeting.
30. The Liaison Officer and his staff continue to be active members of the Country Task Force for Monitoring and Reporting in respect of Security Council Resolution 1612, concerning children in armed conflict – the primary initial objective being the reaching of agreement on a joint action plan with the Government armed forces.
31. Similarly, as part of the UN Country Team Human Rights Sub-group, the Liaison Officer continues to provide support, within the limits of the current mandate, to the Myanmar Human Rights Universal Periodic Review process.

Geneva, 3 November 2010

*Submitted for debate and guidance*

# 309th Session of the Governing Body of the International Labour Office (November 2010)

SIXTH ITEM ON THE AGENDA

## GB.309/6

### Conclusions concerning Myanmar

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

1. The Governing Body welcomes the release of Daw Aung San Suu Kyi and urges that other persons still in detention, including labour activists and persons associated with the making of, or supporting the submission of, complaints under the Supplementary Understanding, will similarly be given their liberty as soon as possible. In particular it reiterates its previous call for the release of U Zaw Htay, U Htay Aung, U Nyan Myint, Daw Su Su Nway, U Min Aung, U Myo Aung Thant, U Thurein Aung, U Wai Lin, U Nyi Nyi Zaw, U Kyaw Kyaw, U Kyaw Win and U Myo Min.
2. In light of the commitment made by the Permanent Representative of the Government, the Governing Body calls on the new Parliament to proceed without delay to bring legislation into line with the Forced Labour Convention, 1930 (No. 29), starting with the repeal of the relevant provisions of the Villages and Towns Acts as called for by the Commission of Inquiry.
3. Notwithstanding the reported progress in increased awareness of both Government personnel and the community at large of their rights and responsibilities under the law, much remains to be done to eliminate the use of forced labour. Further committed action is required to end all forms of forced labour, including under-age recruitment into the military and human trafficking. Bringing an end to the impunity which allows forced labour to continue requires the strict application of the Penal Code to all perpetrators.
4. The Governing Body calls for the continuation and intensification of awareness-raising activities undertaken jointly and severally by the Government and the ILO Liaison Officer encompassing Government personnel, the military and civil society. It again calls on the Government to continue to actively support the wide distribution of the agreed brochure and its translation into all local languages.
5. The Governing Body notes the increased number of forced labour complaints received but considers it essential that the movement towards an environment free from harassment or fear of retribution be sustained. In this context the Government is requested to grant the Liaison Officer access to court files and detainees for the purpose of verifying the absence of judicial retribution.
6. The Governing Body calls upon the Government to cooperate with the Liaison Officer on cases raised at the Officer's own initiative.
7. The Governing Body notes that the Liaison Officer has engaged additional temporary resources to assist in meeting the demands of the increasing workload. However, that

does not meet the need that the Governing Body has consistently identified for the strengthening of capacity to deal with complaints and associated activities. Therefore the Governing Body calls on the Government to ensure the conditions and facilities necessary for the effective and timely receipt and processing of complaints throughout the country.

8. The Governing Body recalls and reconfirms all of its previous conclusions and those of the International Labour Conference and calls upon the Government and the Office to work proactively towards their realization.

**F. Document before the Governing Body  
at its 310th Session (March 2011)  
and Governing Body conclusions**

INTERNATIONAL LABOUR OFFICE



**Governing Body**

310th Session, Geneva, March 2011

**GB.310/5**

**FOR DEBATE AND GUIDANCE**

FIFTH ITEM ON THE AGENDA

**Developments concerning the question  
of the observance by the Government  
of Myanmar of the Forced Labour  
Convention, 1930 (No. 29)**

**Overview**

**Issue covered**

This report fulfils the obligation stemming from the resolution on the widespread use of forced labour in Myanmar adopted by the 87th Session (1999) of the International Labour Conference that there be a standing Governing Body agenda item on this subject. The paper addresses the activities undertaken and progress made since the last report. It reports on the high-level mission undertaken on 22–25 February 2011 during which, amongst other matters, the trial period of the Supplementary Understanding complaints mechanism was extended for a further 12 months until 25 February 2012.

**Policy implications**

There are no new policy implications.

**Financial implications**

None.

**Decision required**

Submitted for debate and guidance. The Governing Body may wish to draw its own conclusions from the debate.

**References to other documents**

Governing Body members may find reference to document GB.309/6 and to the conclusions concerning Myanmar (Decisions of the 309th Session) useful in their consideration of this report.

## Introduction

1. Activity since the last report has taken place against the backdrop of the general election which was held on 7 November 2010 and the subsequent transition, which is still continuing at the time of writing. During this period, the complaints mechanism provided for in the Supplementary Understanding between the Government of Myanmar and the ILO has continued to operate. Furthermore, the high-level mission led by Mr Guy Ryder, Executive Director, Standards and Fundamental Principles and Rights at Work, visited Myanmar from 22 to 25 February 2011.
2. This paper is presented in three parts with a view to assisting the Governing Body in its deliberations. Part I provides statistics and commentary on the operation of the Supplementary Understanding complaints mechanism since the last report;<sup>1</sup> Part II provides some general and comparative statistics on the operation of the Supplementary Understanding complaints mechanism for the period between 25 February 2007 (when it first came into force) and 21 February 2011; and Part III reports on the high-level mission.
3. All activities are undertaken in pursuit of, and progress is measured against, the recommendations of the 1998 Commission of Inquiry which examined the observance by Myanmar of the Forced Labour Convention, 1930 (No. 29), namely: “that the relevant legislative texts [...] be brought into line with the Forced Labour Convention, 1930 (No. 29)”; “that in actual practice, no more forced or compulsory labour be imposed by the authorities, in particular the military”; and “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”.

### **Part I. Operation of the Supplementary Understanding complaints mechanism since the last report<sup>2</sup>**

4. During the period from 21 October 2010 to 21 February 2011, a total of 127 new complaints were received, bringing the total number of complaints received since the inception of the complaints mechanism to 630. The number of complaints received has continued to grow, as indicated in Part II below. It is believed that this increase reflects the growing awareness among residents of Myanmar of their rights under the law, greater knowledge of the complaints mechanism and improved confidence in making use of it. This can be put down largely to the intensified awareness-raising activities undertaken, including the continued widespread distribution of the simply worded brochure explaining the mechanism, since agreement on its production was reached in May 2010.
5. Although no joint Ministry of Labour/ILO awareness-raising activities were undertaken during this period, 16 ILO workshops were held with 596 participants, comprising individuals and representatives of NGOs and of community-based organizations (CBOs). An additional ten training sessions/presentations were conducted involving a further 384 participants from United Nations agencies, international NGOs and donor groups.
6. The continuing growth in the number of complaints received has put considerable additional strain on the capacity of the Liaison Officer to service them efficiently. As at 21 February 2011, some 159 cases were at different levels of processing/negotiation

<sup>1</sup> GB.309/6.

<sup>2</sup> *ibid.*



following their submission to the Government for resolution, with 110 more cases still in the assessment and preparation phase prior to submission.

7. Complaints alleging under-age recruitment into the armed forces continue to account for some 60 per cent of the complaints received. Other complaints related to different categories of forced labour, including the exaction of forced labour by the civilian authorities and by the military, prison labour, forced labour related to the right to land use/occupancy, trafficking for forced labour and forced labour associated with both formal and informal sector commercial activities.
8. Government responses to complaints concerning under-age recruitment continue in general to be managed in an efficient and positive manner, with victims who are proven to have been recruited under age being discharged to the care of their families. However, complaints concerning other types of forced labour do not appear to be given the same level of priority, with considerable delays being experienced before any response is received. In the case of complaints concerning the armed forces, the responses that are received usually make reference to voluntary community work or to citizens' duties, or do not accept the complaint as genuine.
9. There has been an increase in complaints of forced labour associated with the occupancy and use of land. All agricultural land is owned by the Government. Recent complaints have shown a trend for forced cropping and increased fees, with the penalty for refusal to comply being loss of the use of the land. In the complaints received, the beneficiaries of these practices are the operational military, defence-owned commercial interests and large private corporations, with such arrangements being facilitated by local government authorities. The authorities concerned maintain that these activities are carried out in accordance with the law.
10. In line with the conclusions adopted by the Governing Body at its 309th Session (November 2010),<sup>3</sup> two complaints raised at the initiative of the Liaison Officer have been lodged. Responses to these are awaited.
11. In response to a case of under-age recruitment, the Government has indicated that, in addition to discharging the victim and disciplining the military perpetrator, charges have been laid under the Criminal Code against a civilian who was allegedly complicit in the recruitment. This is the first such notification of prosecution to the ILO Liaison Officer and information on its outcome is awaited. Military personnel who are deemed to be responsible for the recruitment of children covered by a complaint under the Supplementary Understanding complaints mechanism are now routinely disciplined. It is understood that, pursuant to a number of complaints of trafficking for forced labour, the perpetrators have been identified and prosecuted under the Criminal Code. During the period under review, there have been no prosecutions of those alleged in complaints to have exacted other categories of forced labour.
12. In the majority of cases, no harassment or retaliation is reported in respect of either complainants or persons facilitating the submission of complaints. However, since the last report, the Liaison Officer has been obliged to raise with the Government a case of the alleged destruction/retention of harvests in retaliation for the lodging in November 2010 of a complaint concerning forced labour. In another long-standing case, most of the farmers removed from their land for refusing to undertake forced labour have been allowed to return to it, with the exception of ten farmers, who are apparently deemed by the local authorities to have been the instigators of a complaint. In addition, the licences of two

<sup>3</sup> Conclusions concerning Myanmar (Decisions of the 309th Session).

lawyers associated with complaints under the Supplementary Understanding have not been reinstated following their revocation by the Bar Council, notwithstanding numerous submissions from the Liaison Officer. Daw Su Su Nway, U Min Aung and U Zaw Htay, who were active voluntary facilitators, and complainants U Htay Aung and U Nyan Myint, remain in prison.

## **Part II. Statistics on the Supplementary Understanding complaints mechanism for the period between 25 February 2007 and 21 February 2011**

13. As at 21 February 2010, a total of 630 complaints had been received under the Supplementary Understanding complaints mechanism: 62 in 2007 (from 26 February), 65 in 2008, 116 in 2009, 333 in 2010 and 54 in 2011 (between 1 January and 21 February).
14. Of these, a total of 354 have been assessed as receivable and submitted to the Government Working Group for action, of which 197 have been resolved with varying degrees of satisfaction. Some 159 cases are at different levels of processing/negotiation following their submission to the Government for resolution, while 110 cases are still in the process of assessment and preparation prior to submission. In total, 157 victims of under-age recruitment have been discharged and returned to their families.
15. Of the 333 complaints received in 2010, 194 related to under-age recruitment, nine to human trafficking for forced labour and 43 to other forms of forced labour. Nine complaints could not be submitted to the Government due either to insufficient evidence or the reluctance of the complainants to be identified. Following assessment, 74 complaints were not considered to be within the ILO mandate under the Supplementary Understanding and were therefore closed without submission to the Government.
16. During 2010, a total of 70 victims of under-age recruitment identified in complaints under the Supplementary Understanding complaints mechanism were discharged from the military. During the same period, two joint Ministry of Labour/ILO awareness-raising sessions were held with 165 participants from state, regional, district and township civilian administrations and the military, and four presentations were made to Government organized training sessions for military recruiters and judges and to an interdepartmental training course on international law and standards. In addition, 19 training sessions were held with some 672 participants from United Nations agencies and international NGOs and 32 workshops were organized by the ILO for 1,328 NGO and CBO personnel.

## **Part III. Report on the ILO high-level mission (22–25 February 2011)**

17. The high-level mission led by Mr Guy Ryder (Executive Director, Standards and Fundamental Principles and Rights at Work), accompanied by Ms Karen Curtis (Deputy Director, International Labour Standards Department) and Mr Drazen Petrovic (Principal Legal Officer, Office of the Legal Adviser), took place from 22 to 25 February 2011. The mission received the full cooperation of the Government of Myanmar in the organization and conduct of its programme.
18. During the course of the mission, it was agreed that the trial period of the Supplementary Understanding would be extended without change of content for a further 12 months. A copy of the signed extension agreement for the period 26 February 2011 to 25 February 2012, dated 23 February 2010, is attached as Appendix I.

19. The Minister of Labour, in welcoming the mission, expressed the Government's continued commitment to the policy of the eradication of the use of forced labour and expressed the belief that this commitment would be continued and potentially strengthened under the newly elected Government when it took office. He also indicated that it was the intention of the Government to introduce into Parliament a Labour Organizations Law in conformity with both the Constitution of Myanmar and the provisions of ILO Convention No. 87, as well as the necessary revisions to the Village and Towns Acts of 1907 to ensure conformity with the Constitution of Myanmar and ILO Convention No. 29. He indicated that all of these draft bills were nearing completion and expressed the belief that they could be introduced into Parliament at either its second or third session.
20. During the discussion of the situation of persons currently in detention, the mission was advised that the Government was giving serious consideration to the conclusions of all Governing Body and International Labour Conference deliberations. In this regard, the Minister said that all persons currently in detention named in ILO conclusions had been convicted of criminal offences unrelated to the ILO and its activities. Their release was therefore subject to either normal judicial appeal proceedings, or possibly by way of an amnesty that might be considered by the Government. Developments could be expected before the 100th Session of the International Labour Conference in 2011.
21. In its meeting with the Government Working Group for the Eradication of Forced Labour (WG), the mission reviewed the operation of the Supplementary Understanding in detail. The WG is composed of senior representatives from the Ministries of Labour, Foreign Affairs, Home Affairs and from the Attorney-General's Office, the General Administration Department and the Supreme Court. Also present were representatives of the Adjutant General's Office and the Corrections Department. The Chairman of the WG, the Deputy Minister of Labour, again confirmed the Government's political will to address the forced labour problem, as confirmed by the signing of a further extension to the Supplementary Understanding.
22. The discussion addressed the three recommendations of the Commission of Inquiry, namely legislative conformity with Convention No. 29, elimination of the practice of forced labour and enforcement of the law with appropriate punishment of the perpetrators.
23. In respect of legislative conformity with Convention No. 29, the WG reconfirmed the Minister's indications in respect of the intended new laws and the amendment of existing laws. More detailed discussion took place in respect of the proposed Labour Organizations Law, which is reported in more detail under item 6 of the Agenda of the Governing Body.<sup>4</sup>
24. The representatives of the Government said that, while the information brochure was recognized as a valuable tool which could be distributed in greater numbers, it was not possible for it to be produced in any other than the official language provided for in the Constitution. The mission raised concerns at the possible misunderstandings that could result from the inevitable production of unauthorized translations by other parties.
25. The ILO proposal for a joint Ministry of Labour/ILO awareness-raising seminar in Chin State was agreed to and further proposals were noted for such activities in conjunction with major infrastructure projects, such as the Northern Myanmar/China pipeline, and with ceasefire groups.

<sup>4</sup> GB.310/6.

26. The issue of the use of prison labour for the portering of military supplies in conflict zones was discussed. The mission indicated that this unacceptable practice should be discontinued. The representative of the Corrections Department indicated that the review of the 1894 Jail Manual, which regulates the use of prison labour, was 75 per cent complete and on completion would be submitted to Parliament for adoption. He indicated that the amendment would be in line with international standards and, as such, would meet ILO concerns. The mission expressed the wish that the ILO should receive confidentially the draft texts of the revised Jail Manual and of the Village and Towns Acts amendments.
27. In response to the request by the Governing Body that the Government grant the Liaison Officer access to court files and to detainees for the purpose of verifying the reasons behind the conviction of named persons, the Government indicated that the Liaison Officer or a member of his staff has the right to attend and observe any relevant court hearing. Furthermore, if the Liaison Officer obtained the authority of the accused person on trial he would be granted access to that person's full court record. It was indicated that the right of access to persons in prison is governed by the Jail Manual and that this issue remains unclear.
28. With regard to the six pending cases concerning forced labour in Aunglan and Natmauk townships, Magwe Region, the mission reconfirmed the previous proposal that these matters be the subject of a joint Ministry of Labour/ILO task force investigation with a view to finding lasting solutions. This proposal was noted and the WG indicated that it was expected that these matters would be concluded satisfactorily in the near future.
29. The mission recognized the positive progress already achieved in a number of areas but stressed that a greater effort was required to achieve the common objective of the eradication of forced labour. It was emphasized that the law should be respected by all sectors of the Government and society, with no exceptions. All, including the military, carry that responsibility and should be held to account for failure to meet it.
30. The mission reconfirmed the firm expectation that the provisions of the Supplementary Understanding, which guarantee that no harassment or judicial retribution be directed against complainants or persons supporting the lodging of a complaint, would be honoured in all cases.
31. The WG noted without comment the mission's request for agreement on the issuance of entry visas which may be sought to enhance the efficient operation of the Supplementary Understanding complaints mechanism.
32. An informative exchange took place between the mission and the Government Committee for the Prevention of Human Trafficking. It was agreed that complaints in that area received under the Supplementary Understanding should be documented and submitted for appropriate action to the police transnational crime unit. It was further agreed that coordination between the Liaison Officer and ILO projects on human trafficking in receiving countries, with corresponding liaison between the respective national police departments, would be beneficial. The Committee for the Prevention of Human Trafficking noted the ILO's offer to support the forthcoming review of its five-year plan in respect of those areas lying within its mandate and that of the ILO, namely trafficking for forced labour and under-age recruitment.
33. It was recalled that, as part of the Human Rights Council Universal Periodic Review (UPR), a number of recommendations have been made by member States concerning matters pertaining to ILO mandated activities in Myanmar. The Myanmar UPR will not be finalized until June 2011. At a meeting with the Government Human Rights Body, it was agreed that both parties could usefully work together to follow up the recommendations of

the UPR process that were finally supported by the Government. Specific reference was made to issues concerning freedom of association, the elimination of forced labour, under-age recruitment and the reaching of final agreement on a joint action plan between the Government of Myanmar and the United Nations Country Task Force on Monitoring and Reporting in the context of the Security Council resolution on children in armed conflict (resolution 1612). The mission confirmed the availability of ILO technical assistance in these areas. The mission reported that problems concerning the ownership, use and management of land had been raised repeatedly as a major human rights issue.

34. During a meeting with the mission, the Union of Myanmar Federation of Chambers of Commerce and Industry expressed support for the eradication of forced labour, in which it said that its members were not implicated. It also expressed support for the proposed Labour Organizations Law.
35. A very active exchange was held with a group of voluntary complaint facilitators on the practicalities of the operation of the Supplementary Understanding. During the discussion, the alleged systematic nationwide use of forced labour in connection with the right of land use/occupancy was raised as a matter of serious concern. The need to ensure the safety of complainants and of persons supporting the lodging of complaints was also raised as a key condition for the successful operation of the Supplementary Understanding complaints mechanism. The participants expressed strong belief in the value of the ILO's presence in Myanmar and their support for the continued operation of the Supplementary Understanding complaints mechanism. They hoped that the ILO's presence would be strengthened and urged the ILO to take the necessary measures to ensure the protection of all concerned.
36. The mission was able to meet and hold a valuable discussion with Daw Aung San Suu Kyi. She emphasized the critical importance of social justice in the development of Myanmar and its people, and expressed strong support for the continued presence of the ILO in the country and for its mandate on forced labour. She sought the strengthening of ILO activities in Myanmar in support of workers' rights, and particularly to meet the challenges of the proposed law on freedom of association, as and when that might materialize. She voiced concern at breaches of the Supplementary Understanding complaints mechanism in respect of the safety and security of complainants and others supporting the complaints process. She expressed the hope that the ILO would continue to take a firm position both in that regard and in upholding its long-held principled position in its relationship with the Government of Myanmar.

Geneva, 10 March 2011

*Submitted for debate and guidance*

## Appendix

### 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 2011 to 25 February 2012

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.

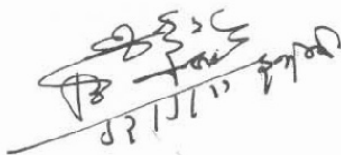
Noting clause 10 of the "Supplementary Understanding" (hereinafter SU), the "Minutes of the Meeting" dated 26 February 2007 being an integral part of the SU (hereinafter Minutes of the Meeting),

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

It is herewith agreed as follows:

1. 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 2011, to the day one year thereafter being 25 February 2012.
2. The spirit and letters of the SU and the Minutes of the Meeting remain *in toto* unchanged.
3. 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.
4. 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 23<sup>rd</sup> day of February 2011.



(U Tin Htun Aung)  
Deputy Minister  
Ministry of Labour  
Government of Myanmar



(Mr. Guy Ryder)  
Executive Director  
International Labour Office

23-2-2011

# 310th Session of the Governing Body of the International Labour Office (March 2011)

FIFTH ITEM ON THE AGENDA

## GB.310/5

### Conclusions concerning Myanmar

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

1. The Governing Body welcomes some positive developments in Myanmar as well as the extension of the Supplementary Understanding trial period for a further 12 months, and urges a revitalized programme of activities towards fully implementing the recommendations of the Commission of Inquiry.
2. The Governing Body notes the increase in the number of cases dealt with under the terms of the Supplementary Understanding. This highlights the need for the Government to adopt a more proactive stance in dealing with the overall causes of forced labour and for it to cooperate in ensuring that the ILO Liaison Office is adequately strengthened to respond to its increasing workload, including through timely positive responses to visa and licensing applications.
3. The Governing Body notes the Government's indication that draft legislation aimed at achieving legislative conformity with Convention No. 29 is in the process of preparation. It invites the Government to take advantage of the technical assistance of the ILO with a view to the rapid amendment of the Village and Towns Acts 1907, the review of the Jail Manual, and the introduction of proposed new labour legislation prohibiting the use of forced labour in all its forms.
4. The Governing Body strongly supports educational and awareness-raising activities as a means for changing behavioural patterns in respect of forced labour and to this end calls for the continuation of such activities particularly amongst the civilian and military authorities, for the continuation of initiatives for enhanced community awareness including ILO workshop activity, and for the publication and wide distribution of the information brochure on forced labour in local languages in addition to the official national language. Specific targeted awareness raising and training of persons associated with or affected by major construction projects, including oil/gas pipelines, would also be of particular importance.
5. While taking note of the information provided on activities undertaken, the Governing Body re-emphasizes the need for national laws to be consistently applied. The practices of the army and defence institutions in respect of forced cropping and the forcible use of villagers or prison labour for portering of military supplies, sentry duty and construction work in conflict zones, must be stopped. The Government is urged to take all measures to combat the culture of impunity, including through the strict application of the Penal Code to all those who use forced labour, even when such acts are committed by the military.

6. The successful elimination of the use of forced labour depends critically on the confidence of persons to complain of breaches of the law in the knowledge that they can do so without fear of harassment or retaliation.
7. The Governing Body, whilst noting the early release of U Htay Aung, reaffirms its previous call for the release of U Zaw Htay, U Nyan Myint, Daw Su Su Nway, U Min Aung, U Myo Aung Thant, U Thurein Aung, U Wai Lin, U Nyi Nyi Zaw, U Kyaw Kyaw, U Kyaw Win and U Myo Min, and of other persons still in detention, including labour activists and persons associated with the making of, or supporting the submission of, complaints under the Supplementary Understanding. Furthermore, the Governing Body calls for the Government to facilitate the free access of the Liaison Officer to visit persons so detained and to effect the reinstatement of the advocacy licences of U Aye Myint and Ko Pho Phyu.
8. The Governing Body notes that a number of long-standing complaints in the Magwe Region remain unresolved and, as a result, the issues and relationships in this area are becoming more complex and entrenched, with the potential to disrupt the overall positive operation of the Supplementary Understanding. The Government is urged to work with the ILO Liaison Officer towards finding early and lasting solutions to these cases.
9. The Governing Body recalls and reconfirms all of its previous conclusions and those of the International Labour Conference, and calls upon the Government and the Office to work proactively towards their realization.





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