



SIXTH ITEM ON THE AGENDA

Measures, including action under article 33 of the Constitution of the International Labour Organization, to secure compliance by the Government of Myanmar with the recommendations of the Commission of Inquiry established to examine the observance of the Forced Labour Convention, 1930 (No. 29)

A. Information available on measures taken by the Government of Myanmar following the recommendations of the Commission of Inquiry, and action taken in this regard within the ILO since the 276th Session (November 1999) of the Governing Body

1. At its 276th Session (November 1999) the Governing Body decided:

1. to invite the Director-General, in accordance with the resolution adopted by the International Labour Conference at its 87th Session (June 1999), and for so long as the Governing Body or its Officers acting on its behalf has not noted the implementation of the Commission of Inquiry's recommendations:
 - (a) to ensure that no technical cooperation or assistance to the Government of Myanmar, except for the purpose of direct assistance to implement immediately the recommendations of the Commission of Inquiry, is considered or undertaken by the Office; and
 - (b) to take the necessary steps to ensure that no proposal to invite or invitation to attend meetings, symposia or seminars organized by the ILO was extended to the

Government of Myanmar, except for meetings that have the sole purpose of securing immediate and full compliance with the Commission of Inquiry's recommendations;

2. to take a decision at its 277th Session (March 2000) on whether to place on the agenda of the 88th Session of the Conference (June 2000) an item entitled: "Action recommended by the Governing Body under article 33 of the Constitution – Implementation of the recommendations contained in the report of the Commission of Inquiry Forced Labour in Myanmar (Burma)";
 3. to request the Office to submit to it, at its 277th Session (March 2000), a paper detailing the various options, taking account of the views put forward during the preliminary examination of the question, in order to enable it to adopt recommendations under article 33 of the Constitution;
 4. to invite the Director-General to inform the members of the Governing Body by means of an update to his written report dated 21 May 1999, to be communicated to them by 28 February 2000 at the latest, of the measures taken by the Government of Myanmar to give effect to the recommendations of the Commission of Inquiry, taking into account in its preparation all the comments made by the Government of Myanmar, the information provided by the employers' and workers' organizations, and all other reliable sources.
2. Since May 1999 the Government of Myanmar has sent a letter dated 18 May 1999 and a memorandum dated 7 June 1999 in which it refers specifically to the situation in Myanmar and to the recommendations of the Commission of Inquiry and to Order No. 1/99 of 14 May 1999 ordering all implementing authorities not to exercise powers under the relevant provisions of the 1907 Towns Act and 1907 Village Act.¹ The latest communication from the Government dated 21 January 2000 repeats the arguments put forward in the aforementioned communications, without however referring to the Commission of Inquiry. It is reproduced in the annex to this paper.
3. The Committee of Experts on the Application of Conventions and Recommendations examined the application by Myanmar of the Forced Labour Convention, 1930 (No. 29), at its 70th Session (November-December).² Regarding the recommendations of the Commission of Inquiry, the Committee of Experts referred to the three points dealt with by the latter, viz. the amendments to be made to the Towns Act and Village Act, the measures taken by the Government to stop the exaction in practice of forced or compulsory labour, and the enforcement of penalties which may be imposed under the Penal Code for the exaction of forced or compulsory labour.
4. Regarding the amendment of legislation recommended by the Commission of Inquiry, the Committee of Experts noted that "all information available indicates that, by the end of November 1999, neither the Village Act nor the Towns Act had been amended". Moreover, regarding Order No. 1/99 of 14 May 1999, referred to by the Government in its earlier communications, the Committee of Experts noted that there are a number of ways in which the Order provides for the possibility of exercising the powers envisaged in the

¹ The text of the letter of 18 May is reproduced in Appendix I and that of the memorandum in Appendix II of document GB.276/6 (November 1999).

² *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III(1A), International Labour Conference, 88th Session, Geneva, 1999.

various provisions of these Acts and that it is therefore incompatible with the requirements of the Convention. The Committee reached the conclusion that “the concrete measures called for by the Commission of Inquiry ‘to ensure that nobody is compelled to work against his or her will’ have not yet been taken”, while recalling the Commission of Inquiry’s conclusion that the power to impose compulsory labour appears to be taken for granted in practice, without any reference to the Village Act or the Towns Act.

5. The Committee of Experts also considered the information available on actual practice, and specifically since mid-May 1999, and concluded that there is no evidence that the current practice of large-scale and systematic imposition of forced labour on the civilian population has changed and that, on the contrary, “the exaction of forced or compulsory labour by the authorities has continued and is well documented”.
6. With regard to the imposition of penalties for the use or exaction of forced labour, it is apparent from the Committee of Experts’ observations that the steps taken by the Government in May 1999 (section 6 of Order No. 1/99 of 14 May 1999) do not conform to the Commission of Inquiry’s recommendations (paragraph 539(c) of the report), and no action whatsoever under section 374 of the Penal Code has so far been brought to its knowledge.
7. Furthermore, the Office replied on 16 December 1999 to the letter dated 14 October 1999 in which the Government of Myanmar suggested that an ILO mission might visit Myanmar for a week in order to discuss matters of mutual interest and exchange points of view on ways and means of increasing cooperation with the Office. In its reply the Office recalled that it was acting on the instructions of the constitutional bodies, i.e. the International Labour Conference and the Governing Body. As to the decisions already taken by these bodies, the only matter of mutual interest that might be discussed between the Office and the Government was the immediate implementation of the recommendations of the Commission of Inquiry established to examine the observance by Myanmar of the Forced Labour Convention, 1930 (No. 29), in order to ensure full compliance with the provisions of that Convention. To date the Office has not received any official reaction from the Government of Myanmar.
8. Finally, the members of the Governing Body have received the update to the Director-General’s written report dated 21 May 1999 on the measures taken by the Government of Myanmar by 28 February 2000 to give effect to the recommendations of the Commission of Inquiry.

B. Measures that may be recommended by the Governing Body to the International Labour Conference for their possible adoption under article 33 of the Constitution

9. At its 276th Session (November 1999) the Governing Body considered placing on the agenda of the 88th Session (May-June 2000) of the International Labour Conference an item entitled: “Action recommended by the Governing Body under article 33 of the Constitution – Implementation of the recommendations contained in the report of the Commission of Inquiry Forced Labour in Myanmar (Burma)”. Since there was no unanimous decision in November 1999, the Governing Body must reach a decision on this

matter at its current session, in accordance with article 10, paragraph 1, of the Standing Orders of the Governing Body.³

10. If the Governing Body decides to place this item on the agenda of the 88th Session of the Conference, it should also adopt proposals for submission to the Conference in accordance with article 33 of the Constitution. The Governing Body accordingly requested the Office to provide it with information so that it can reach a decision on the matter. The information set out in the first part of this paper should enable it to decide on the desirability of applying article 33, and that which is given in the paragraphs below indicates the measures that might be proposed.
11. Article 33 of the Constitution stipulates that, “in the event of any member failing to carry out within the time specified the recommendations, if any, contained in the report of the Commission of Inquiry, [...] the Governing Body may recommend to the Conference such action as it may deem wise and expedient to secure compliance therewith”. The wording of this article is the result of an amendment adopted in 1946 which replaced with a more general provision an exclusive reference to the “measures of an economic character” which could be imposed on a Member in the event of its failing to carry out the recommendations of a commission of inquiry. The Conference Delegation on Constitutional Questions noted that this general clause “would leave the Governing Body a discretion to adapt its action to the circumstances of the particular case, and permit it to make recommendations to the Member of the Organization or, if appropriate, to draw a case of such failure to the attention of the Security Council of the United Nations”.⁴
12. The discretion left to the Governing Body is very broad and allows it to choose between various options, ranging from measures involving the Member itself to measures that can be considered as penalties⁵ – on the understanding, however, that for the reasons already given to the Governing Body such measures cannot entail either expulsion from the Organization or suspension of a Member’s voting rights.⁶ On the other hand, the Conference is still at liberty to adopt a resolution inviting a Member to draw all the appropriate conclusions from its persistent refusal to comply with its international obligations under the Convention, which derive from a principle that has been recognized as being essential to membership of the ILO. The proposals that the Governing Body may be called upon to adopt must meet three criteria: they must come within the terms of reference of the Conference, they must derive from the recommendations of the Commission of Inquiry (the measures to be taken must correspond to the purpose of the recommendations of the Commission of Inquiry, which is to put an end to the widespread exaction of forced or compulsory labour in Myanmar), and they must be conducive to securing the implementation of the Commission of Inquiry’s recommendations.

³ Paragraph 1 of article 10 of the Standing Orders of the Governing Body reads as follows: “When a proposal to place an item on the agenda of the Conference is discussed for the first time by the Governing Body, the Governing Body cannot, without the unanimous consent of the members present, take a decision until the following session.”

⁴ *Constitutional questions, Part 1: Reports of the Conference Delegation on Constitutional Questions*, Report II(1), International Labour Conference, 29th Session, Montreal, 1946.

⁵ The Commission on International Labour Legislation emphasized in 1919 that the objection and complaint procedures had “been carefully devised in order to avoid the imposition of penalties, *except in the last resort, when a State has flagrantly and persistently refused to carry out its obligations under a Convention*” (italics added), *Official Bulletin*, Vol. I, p. 266.

⁶ GB.276/6, para. 20.

13. With regard to measures designed to provide the Government of Myanmar with technical assistance, a Government member of the Governing Body recalled that the elimination of forced or compulsory labour, which is the ultimate objective of the forced labour Convention, is a complex, long and difficult process. However, so long as the Government of Myanmar has not shown its determination to meet its obligations under the Convention fully by making the first step, i.e. by taking the steps recommended by the Commission of Inquiry, it is difficult to contemplate any such measures of technical assistance. In its letter dated 23 September 1998 in which it undertook to comply with the Commission of Inquiry's recommendations,⁷ the Government of Myanmar stated that it "did not see any difficulty in implementing the recommendations contained in paragraph 539 of the report [of the Commission of Inquiry]". At no time has the Government of Myanmar asked the Office for specific assistance in implementing the following recommendations: repeal of legislative texts that conflict with Convention No. 29; implementation of a provision that exists in the national legislation (section 374 of the Penal Code of Myanmar) in order to give effect to the provisions of Article 25 of the Convention; practical steps to be taken to ensure that no forced or compulsory labour can be imposed any longer by the authorities, in particular the military, and to ensure that nobody is compelled to work against his or her will. In its exchange of correspondence with the Government of Myanmar, the Office has nevertheless expressed its willingness to help it implement the recommendations of the Commission of Inquiry.
14. It should also be borne in mind that, at the invitation of the International Labour Conference,⁸ the Governing Body has instructed the Director-General to ensure that no technical cooperation or assistance to the Government of Myanmar, except for the purpose of direct assistance to implement immediately the recommendations of the Commission of Inquiry, is considered or undertaken by the Office; and to take the necessary steps to ensure that no proposal to invite or invitation to attend meetings, symposia or seminars organized by the ILO is extended to the Government of Myanmar, except for meetings that have the sole purpose of securing immediate and full compliance with the Commission of Inquiry's recommendations.⁹ These measures are applicable for so long as the Governing Body, or its Officers acting on its behalf, has not noted the implementation of the Commission of Inquiry's recommendations.¹⁰
15. Pursuant to article 33 of the Constitution, the Governing Body might thus propose to the Conference that it consider and adopt measures to induce the Government of Myanmar to take this first step towards complying with its obligations. The application of the measures set out below would be the responsibility of the relevant bodies of the Organization, of its constituents or of other international organizations acting within their own terms of reference.

⁷ GB.273/5, appendix.

⁸ See the resolution reproduced in Appendix IV of document GB.276/6.

⁹ GB.276/6, paras. 5-10.

¹⁰ GB.276/6, para. 6. In accordance with article 34 of the Constitution, "the defaulting government may at any time inform the Governing Body that it has taken the steps necessary to comply with the recommendations of the Commission of Inquiry [...] and may request it to constitute a commission of inquiry to verify its contention. In this case, [...] if the report of the Commission of Inquiry [...] is in favour of the defaulting government, the Governing Body shall forthwith recommend the discontinuation of any action taken in pursuance of article 33".

Measure involving the bodies of the Organization

16. The Conference might decide that the question of the implementation of the Commission of Inquiry's recommendations and of the application of Convention No. 29 by Myanmar should be discussed at future sessions of the International Labour Conference, at a sitting of the Committee on the Application of Standards specially set aside for the purpose, so long as this Member has not been shown to have fulfilled its obligations.

Measures involving the constituents

17. The Conference might recommend to the Organization's constituents as a whole – governments, employers and workers – that they: (i) preview, in the light of the conclusions of the Commission of Inquiry, the relations that they may have with the member State concerned and take appropriate measures to ensure that the said Member cannot take advantage of such relations to perpetuate or extend the system of forced or compulsory labour referred to by the Commission of Inquiry, and to contribute as far as possible to the implementation of its recommendations; and (ii) report back in due course and at appropriate intervals to the Governing Body.

Measures involving the other international organizations and the United Nations

18. As regards international organizations, the Director-General might be invited: (i) to inform the international organizations referred to in article 12, paragraph 1, of the Constitution of the Member's failure to comply; (ii) to call on the relevant bodies of these organizations to reconsider, within their terms of reference and in the light of the conclusions of the Commission of Inquiry, any cooperation they may be engaged in with the Member concerned and, if appropriate, to cease as soon as possible any activity that could have the effect of directly or indirectly abetting the practice of forced or compulsory labour.
19. Regarding the United Nations specifically, the Conference might invite the Director-General to request the Economic and Social Council (ECOSOC) to place an item on the agenda of its July 2000 session.¹¹ The item would concern specifically the failure of Myanmar to implement the recommendations contained in the report of the Commission of Inquiry and would seek the adoption of recommendations directed by ECOSOC or by the General Assembly, or by both, to governments and to other specialized agencies and including requests similar to those proposed in paragraphs 17 and 18 above.
20. The Conference might invite the Director-General to submit to the Governing Body, in the appropriate manner and at suitable intervals, a periodic report on the outcome of the measures set out in the two preceding paragraphs. It would be the responsibility of the Director-General to inform the international organizations concerned of any developments in the implementation by Myanmar of the recommendations of the Commission of Inquiry.

¹¹ Such a request would be based on article III of the Agreement between the United Nations and the International Labour Organization, which reads as follows: "Subject to such preliminary consultation as may be necessary, the International Labour Organization shall include in the agenda of the Governing Body items proposed to it by the United Nations. Similarly, the Council and its commissions and the Trusteeship Council shall include in their agenda items proposed by the International Labour Organization."

21. In the light of the foregoing, the Governing Body may wish:

- (a) *to take a decision on whether to place on the agenda of the 88th Session of the Conference (May-June 2000) an item entitled: “Action recommended by the Governing Body under article 33 of the Constitution – Implementation of the recommendations contained in the report of the Commission of Inquiry Forced Labour in Myanmar (Burma)”;*
- (b) *should it so decide –*
- (i) *to recommend measures based inter alia on the information contained in one or more of paragraphs 16, 17, 18, 19 and 20 above, with a view to their adoption at the 88th Session of the International Labour Conference in accordance with article 33 of the Constitution of the ILO;*
- (ii) *to adopt the following resolution:*

The Governing Body of the ILO:

Recalling the discussions held at the 273rd, 274th and 276th Sessions of the Governing Body on the implementation of the recommendations of the Commission of Inquiry established under article 26 of the Constitution of the ILO to examine the observance by Myanmar of the Forced Labour Convention, 1930 (No. 29);

Noting that the Government of Myanmar has so far not complied with the recommendations of the Commission of Inquiry, despite the disapproval that the gravity of the Government’s failure to act must inspire in everyone’s conscience and the imperative need to put an end to this situation by every appropriate means as soon as possible;

Noting the provisions of article 33 of the Constitution of the ILO;

Recommends to the International Labour Conference, meeting at its 88th Session (May-June 2000), that it adopt the measures listed in the annex¹² to this resolution.

Geneva, 9 March 2000.

Point for decision: Paragraph 21.

¹² The measures adopted under point (b)(i) would be listed in the annex.

Annex

Letter addressed to the Director-General by the Department of Labour of the Government of Myanmar dated 21 January 2000

GOVERNMENT OF THE UNION OF MYANMAR
DEPARTMENT OF LABOUR
YANGON, MYANMAR

REF: 1/DL (R-2) 2000

DATE: 21 January, 2000

To,

Mr. Juan Somavia
Director-General
International Labour Office
Geneva

Subject: Positive and effective measures taken concerning
certain labour matters in Myanmar

Dear Director-General,

In recent years, there had been repeated allegations of practice of forced labour in Myanmar and also that the relevant sections of the existing Village Act of 1907 and the Towns Act of 1907 were incompatible with the Forced Labour Convention, 1930 (No. 29).

Under the instruction of the Government of the Union of Myanmar, the Ministry of Home Affairs, which oversees the execution of the Village Act of 1907 and the Towns Act of 1907, embarked on a review process in co-ordination with the relevant ministries, organs and departments of the country with a view to either amend or, supplement or repeal the two acts in conformity with the changing security, administrative, economic and social situations and conditions.

As a result of the review process, the Ministry of Home Affairs issued Order No. 1/99 on 14 May 1999 under the Directive of the State Peace and Development Council, instructing the Chairmen of the Ward and Village Tract Peace and Development Councils and other local authorities concerned not to exercise the powers under those provisions relating to requisition for personal services, prescribed in the Village Act, 1907 and the Towns Act, 1907.

A member of the International Labour Organization, which has ratified an ILO Convention, if it is required to bring the relevant internal legislation in line with the Convention which it has ratified. In taking necessary steps towards that end, however, it is the prerogative of the country concerned to decide on the most effective and appropriate means.

In this regard, I wish to emphasize that Order 1/99 of 14 May 1999 by the Ministry of Home Affairs was issued under the Directive of the State Peace and Development Council, the law making body and that it has the full force of law.

I wish to also underscore that various means at our disposal were utilized to give the widest possible publicity to the Order. First, the issuance of the Order was clearly explained to local and international media at the press conference held at the conclusion of the ASEAN Labour Ministers' Meeting held in Yangon from 14 to 15 May 1999. In addition, the Order was circulated to the state bodies and local authorities concerned. (List attached)

Finally, the Order was promulgated and published in Gazette No. 26; Vol. V; dated 25-6-99 of the Official Myanmar Gazette, where all laws, notifications, rules, regulations, directives and orders are officially published.

With regard to enforcing penalties on those who exact unlawful forced or compulsory labour, I wish to state that action shall be taken under section 374 of the Penal Code of the Union of Myanmar in the event of any complaint by any individual subjected to unlawful forced or compulsory labour. Section 374 of the Penal Code provides as follows:-

"Whoever, unlawfully compels any person to labour against the will of that person, shall be punished with imprisonment of either description for a term which may be extended to one year with fine or with both".

According to the official records as of 15 January 2000, there have been no complaints and no charges made or actions taken under section 374 at any law court at the State/Division, District and township levels.

Furthermore, the Ministry of Home Affairs directed the State and Divisional, District, Township, Ward and Village Tract Peace and Development Councils, which are local authorities, and all the Police Stations in the whole country to notify the Ministry of any complaint lodged under section 374. We have been informed in this regard that no complaints whatsoever have been made as of 15 January 2000.

I wish to inform you that, in view of the above, it is now amply clear that positive and effective measures have been virtually taken in accordance with the ILO Convention, 1930 (No. 29).

Myanmar has been a long-standing member of the International Labour Organization (ILO) and has maintained the tradition of closely cooperating with the Organization. I am confident that we will be able to keep up this tradition.

Yours sincerely,

(Soe Nyunt)
Director-General