

**FOR DISCUSSION**

## 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)****I. Background**

1. At its Special Sitting in June 2005, the Committee on the Application of Standards of the International Labour Conference had before it, in addition to the observation of the Committee of Experts on the Application of Conventions and Recommendations, two documents setting out the developments over the previous year.<sup>1</sup> At the end of its discussion, the Committee adopted the following conclusions:

After taking note of the information from the Government representative, the Committee noted with grave concern the observation of the Committee of Experts which examined the measures taken by the Government to give effect to the recommendations of the Commission of Inquiry. The Committee of Experts had once again pointed out in its observation that the recommendations of the Commission of Inquiry had still not been implemented. The Committee of Experts and the vast majority of speakers in the Committee had expressed its strongest condemnation and urged the Government to demonstrate its stated determination to eliminate forced labour and to take the necessary measures to ensure compliance with the Convention. The extent of forced labour had not significantly changed in most areas, including ethnic areas, and its worst forms – including forced labour for the army and forced recruitment of child soldiers – continued.

In this regard, the Committee had taken note of the latest developments reported by the Director-General as well as by the Liaison Officer ad interim. The Committee welcomed the release of the third person in the high treason case, but regretted that he was not exonerated of the charges. The Committee could only deplore the fact that the Government had failed to demonstrate sufficient commitment to the elimination of forced labour, as reflected both by its treatment of the very High-Level Team (vHLT), and by its response to the concrete steps recommended by the vHLT and by the Governing Body. The Committee was alarmed in particular by the Government's stated intention to prosecute people it accuses of lodging false complaints of forced labour, and by the apparent intimidation of complainants.

In the view of the Committee, recent developments had further confirmed the conclusions of the Governing Body at its March 2005 session that the "wait-and-see" attitude that prevailed among most members since 2001 had lost its *raison d'être* and could not

<sup>1</sup> ILC, 93rd Session (Geneva, 2005), Committee on the Application of Standards, documents C.App./D.6 and C.App./D.7.

continue. The Committee's general view was that Governments, Employers and Workers, as well as other international organizations, should now activate and intensify the review of their relations with Myanmar that they were called upon to make under the 2000 resolution, and to urgently take the appropriate actions, including as regards foreign direct investment in all its various forms, and relations with State- or military-owned enterprises in Myanmar. In accordance with the conclusions of the Governing Body in March, the present conclusions should be transmitted to all those to whom the 2000 resolution was addressed. The results of such reviews should be fully reported to the Director-General so that the Governing Body could have a complete picture in November. As regards the Economic and Social Council (ECOSOC), it should be requested to reactivate its consideration of the item placed on its agenda in 2001 in this regard, and Members in ECOSOC should be ready to support such a move.

The Committee noted that a number of serious issues, some of which were already identified by the vHLT in its aide-mémoire, needed to be urgently resolved:

1. The Government should give clear assurances that no action would be taken against persons lodging complaints of forced labour, or their representatives, in order that the Liaison Officer a.i. could fully continue to accept and channel such complaints to the competent authorities, and urgent discussions should be undertaken with a view to making available the safeguards and protection built into the Facilitator mechanism.
2. A number of serious allegations of forced labour that were still outstanding, including those concerning the army, should be resolved in a credible manner.
3. The ILO's presence in Myanmar should be strengthened to enhance its capacity to carry out all its various functions, and the Government should issue the necessary visas without delay.
4. The freedom of movement of the Liaison Officer a.i. as recognized by the Understanding and necessary to the discharge of his functions should be fully respected.

The Committee was of the view that the test of the real commitment of the authorities was and still remained their willingness to urgently discuss the outstanding issues at the highest level and to commit to a substantive policy dialogue that can finally address the forced labour problem. This commitment should moreover be reflected in changes to the law as well as in any future Constitution. Depending on developments in this regard, the general view was that the Governing Body at its next session should not limit itself to reviewing the steps taken under the 2000 resolution, but should also be ready to consider further steps.

2. Developments as regards the follow-up to the 2000 resolution are set out in document GB.294/6/1 (which will be available in the week before the Governing Body's discussion in order that it can reflect the maximum number of replies). The present document gives an overview of the various other developments that have taken place.

## **II. Developments following the International Labour Conference**

3. On 7 July 2005, the Director-General wrote to the Minister for Labour of Myanmar (reproduced in Appendix I). On his return to Yangon at the end of June, the Liaison Officer a.i. requested a meeting with the Minister. The Minister was not available, but the Liaison Officer a.i. was able to meet on 4 July 2005 with the Director-General of the Department of Labour, who indicated that the decision of the International Labour Conference was regrettable and it was difficult to see how progress could be made in the dialogue when measures were being taken against Myanmar.
4. In the months of June, July and August 2005 a series of mass rallies and meetings of official and semi-official organizations were held around Myanmar on an almost daily basis. These included a series of mass rallies organized by the Union Solidarity and Development Association (USDA) to "guard against the danger posed by destructionists

through united strength of the people”, as well as meetings of the Myanmar Women’s Affairs Federation and the Myanmar War Veterans Organization. At nearly all of these meetings, officials of the organizations concerned gave speeches highly critical of the ILO; a number of speakers also called on the Myanmar authorities to withdraw from the ILO.<sup>2</sup> The State media carried most of these speeches in full.<sup>3</sup>

5. In the months of August and September 2005, the Liaison Officer a.i. received a series of death threats (21 in total), delivered through the Myanmar postal system to his private residence. These threats, which were subsequently described as part of an organized campaign of intimidation, supposedly came from inhabitants of various towns around Myanmar and stated that the Liaison Officer a.i. should leave the country or he would be killed (a sample of one of these letters is reproduced in Appendix II).<sup>4</sup> The informal facilitator and former Liaison Officer a.i., Mr. Léon de Riedmatten, received similar threats at the end of August. In view of the gravity of this situation, immediate steps were taken in Geneva and in Yangon. In close consultation with the United Nations designated official for security in the country, a number of measures were implemented as regards the security of the Liaison Officer a.i. and his family, and written interventions were made with the Myanmar authorities, including the Prime Minister (see Appendix III).<sup>5</sup> No formal response to these interventions was received from the Myanmar authorities.<sup>6</sup>

<sup>2</sup> These speakers also called on the authorities to declare the exiled Federation of Trade Unions of Burma an illegal organization, a step that was taken by the authorities and announced in Notification No. 3/2005 of the Ministry of Home Affairs dated 28 August 2005.

<sup>3</sup> For example, the 12 July edition of the *New Light of Myanmar* reported a speech by a Myanmar Women’s Affairs Federation divisional chairperson who stated that “The ILO without accepting Myanmar’s plausible explanation on forced labour, continues to put pressures on the latter, leaving some 160 garment factories closed. ... The ILO which is an institution in the service of workers turned out to be a trouble-maker for Myanmar people. Hence, the country should resign from the ILO”; and under the front-page headline: “Wipe out those who harm our three main national causes”, the *New Light of Myanmar* on 11 August reported a speech by a war veterans’ organization delegate who stated that “The traitors are ... using the ILO as a podium to put pressures on the Tatmadaw [military] government. The ILO has permitted terrorists and fugitives to attend its meeting. It is against its rules. The ILO is breaking its own rules and providing encouragement to the terrorists and fugitives, while encroaching on the nation’s sovereignty. In reality, it is insulting the entire Myanmar people.”

<sup>4</sup> It should be noted that the texts of several of these letters were identical, even though they supposedly came from individuals living in different parts of the country. Several other letters appeared to have been written by the same individuals, although signed in different names.

<sup>5</sup> ILO headquarters wrote to the Permanent Mission of Myanmar in Geneva on 12 and 16 August 2005 to express its grave concern and seek appropriate action to ensure the Liaison Officer a.i.’s safety. The designated official also wrote to the Myanmar authorities on 15, 16, 19 and 22 August 2005 in similar terms. When the threats continued to be delivered in increasing numbers, the Director-General wrote on 24 August to the Prime Minister of Myanmar. This letter is reproduced in Appendix III. The designated official also wrote to the Prime Minister to raise the serious concerns of the United Nations system and request that the authorities conduct an investigation into the matter. The matter was also referred by the ILO and by the designated official to United Nations headquarters at the highest levels.

<sup>6</sup> However, the Myanmar security services did indicate verbally to United Nations security personnel in Yangon that they would look into the matter and take appropriate steps. The Liaison Officer a.i. has not at any time been contacted by the Myanmar authorities in relation to any investigation, nor asked to provide the original letters for examination.

6. However, before departing Yangon for consultations in Geneva, the Liaison Officer a.i. had the opportunity to meet on 30 August 2005 with the Minister for Labour. In the course of this meeting the Minister assured him that the authorities were aware of their responsibility for his security, and stressed that Myanmar had a reputation as a very safe country so he should have no concerns about his personal security except in certain remote areas. Despite these assurances, he continued to receive further threats in his absence,<sup>7</sup> although he has received no additional threats following his return to Yangon on 20 September. He was able to meet with the Minister for a second time on 23 September 2005.
7. The various developments described above have seriously undermined the ability of the Liaison Officer a.i. to perform his functions. Even if his freedom of movement had not already been restricted, the climate of intimidation created by the mass rallies and media campaign is not one in which people could be expected to speak freely to him. Similarly, people have naturally been much more cautious than in the past to raise cases of forced labour with him. The security concerns raised by the death threats would also prevent him from travelling in the country.
8. In spite of this, the Liaison Officer a.i. has continued to receive complaints from victims or their representatives concerning ongoing forced labour and forced recruitment. He is of course not in a position to ascertain the veracity of these complaints. Regrettably, however, he is unable to refer these cases to the competent Myanmar authorities for further investigation as he did in the past, because of indications from the Minister that any person who made what the authorities considered to be a false complaint would be prosecuted.<sup>8</sup> On the other hand, the Liaison Officer a.i. is aware that in one very serious case of forced labour that he had raised with the authorities in 2004, the villages in question have not been subjected to further forced labour since that time.
9. The Liaison Officer a.i. has been closely following the situation of Su Su Nwe, who had successfully prosecuted local officials in January 2005 for imposition of forced labour.<sup>9</sup> She was convicted on 13 October 2005 of criminal intimidation and sentenced to 18 months imprisonment in a case brought against her by some other local officials. Her family contacted him on 18 October 2005 to express their deep concern that they had been prevented by prison authorities from providing her with the medication that she needed for a serious heart condition. The Liaison Officer a.i. has also been following up on the situation of U Aye Myint, one of the three persons convicted of high treason on the basis of contacts with the ILO, who was released from prison earlier this year. He was re-arrested on 27 August 2005 and charged with “spreading false information”.<sup>10</sup> According to the information received, the basis for this charge is a letter of complaint sent to the Myanmar authorities and copied to the Liaison Officer a.i. concerning a land confiscation

<sup>7</sup> In response to these, the Executive Director for Fundamental Principles and Rights at Work, Mr. Tapiola, wrote to the Minister for Labour on 12 September 2005.

<sup>8</sup> The comments of the Minister, and the decision by the ILO to suspend interventions with the authorities concerning cases of forced labour, were reported to the International Labour Conference in June (see ILC, 93rd Session (Geneva, 2005), Committee on the Application of Standards, document C.App./D.6, Part B, p. 10, para. 12).

<sup>9</sup> These officials had appealed, but the Supreme Court recently upheld their convictions under article 374 of the Penal Code on the basis that they had violated Order No. 1/99 which prohibited forced labour. The officials in question have now been released at the end of their prison terms.

<sup>10</sup> These charges were lodged under section 5(e) of the 1950 Emergency Provisions Act.

issue. U Aye Myint's trial is under way and he is in police custody having been denied bail. Both of these cases were raised with the Minister for Labour (see below).

### III. Visit to Yangon

10. As no reply had been received to the Director-General's 7 July 2005 letter to the Minister for Labour (see Appendix I) or to his subsequent letter to the Prime Minister (see Appendix III), a new attempt was made to develop a dialogue and to seek clarification of the intentions of the authorities through an informal and frank discussion with the Minister for Labour. For that purpose, a representative of the Director-General joined the Liaison Officer a.i. in Yangon for direct discussions with the Minister over a period of two days (18 and 19 October 2005). These consultations enabled the Office to directly express the urgent need to take effective action in response to the threats and to clarify the continued commitment of the authorities in the light of a number of developments that seemed to give precisely the opposite indication. If a genuine commitment did still exist, it would then be critical to find ways to credibly address the outstanding issues.
11. The discussions in Yangon confirmed, however, that the authorities had indeed considered the option of withdrawing from the ILO, as called for in the series of mass rallies in recent months, and that after they had taken advice from all competent departments, including the Supreme Court and the Attorney-General, the authorities had already made the decision to withdraw from the ILO. The notification of this decision had however been delayed in order to examine if other options were available.
12. The ILO delegation underlined that there was no other credible option under the circumstances but for the authorities to remedy the situation as regards the Liaison Officer a.i. and give a credible commitment to addressing the other outstanding issues, in particular through the establishment of a mechanism which could give the required confidence and guarantees to victims of forced labour to seek redress. Detailed consideration had already been given to this question in the past by both sides, and had led to agreement on the facilitator mechanism. In this regard the delegation raised two cases which precisely demonstrated the need for such a mechanism.<sup>11</sup>
13. However, the Minister made it clear for the first time<sup>12</sup> that the Facilitator mechanism was unacceptable in principle to the Myanmar authorities as it constituted an "invasion of Myanmar's sovereignty". He also clearly indicated that the Myanmar side was not willing to engage in any review of the steps recommended by the vHLT nor of the Plan of Action. The only mechanism which could be acceptable to them in dealing with complaints of forced labour was through the current ILO presence. The delegation indicated that the Office could be ready to enter into good faith discussions as to how such a mechanism could be developed, provided the authorities were also willing to explore this possibility in good faith. However, as things stood, the delegation expressed grave doubts as to whether this could be a serious option. First, the functions of the Liaison Officer a.i. did not currently include the necessary guarantees for the victims that were built into the facilitator mechanism. Second, the Minister had provided no indications about what action the

<sup>11</sup> These concerned, first, the imprisonment of Su Su Nwe for criminal intimidation and current serious concerns about her state of health and, second, the ongoing prosecution of U Aye Myint (see para. 9 above for further details on these two cases). The Minister indicated that just because certain individuals had had some contact with the ILO in the past did not mean that they were above the law. As regards the humanitarian concerns for Su Su Nwe, the Minister promised that the authorities would take care of her health condition.

<sup>12</sup> See the report of the very High-Level Team (document GB.292/7/3), para. 13.

authorities intended to take to effectively redress the very serious situation faced by the Liaison Officer a.i. This was critical since the threats made against him, and the recent campaign of mass rallies and media criticism of the ILO which had given rise to these threats, seriously impaired his capacity to discharge his normal functions. The delegation insisted that, if the authorities expressed a willingness to continue to delay notification of withdrawal to pursue such discussions, this would not be credible unless they would first clearly manifest their support and confidence in the Liaison Officer a.i. and take action against those responsible for the threats.

14. Having sought and received reconfirmation from the Minister that its understanding of the position of the authorities was correct, the delegation underlined that it was ultimately up to the Myanmar Government to decide whether or not to withdraw from the ILO. All that the delegation could do was to warn about the far-reaching and extremely serious consequences of such a step for the country and its image, as it would be an admission of their inability or unwillingness to fulfil the obligations to which they had claimed to be committed. The Minister, however, explained that the move was motivated not by unwillingness to continue cooperation to eradicate forced labour, but by the dissatisfaction of the authorities with the treatment they had received at the International Labour Conference. They were perfectly ready to accept criticism from genuine delegates, but not from people who were not delegates and did not represent real workers. In this situation, the delegation drew attention to the fact that, if the authorities did take the step of withdrawing from the ILO, then the two-year notice period – during which they would still be members of the Organization with all the rights and obligations attached – could still be put to good use in order to continue efforts to solve the outstanding issues. If, as they claimed, the authorities were still committed to the elimination of forced labour, then they could express their willingness to continue to work with the ILO through the Liaison Officer a.i. in the hope of resolving these issues. The delegation warned, however, that this could be convincing to the Governing Body only if the authorities offered very serious guarantees that the ability for the Liaison Officer a.i. to discharge his functions would be fully restored.

Geneva, 25 October 2005.

*Submitted for discussion.*

## Appendix I

### Letter dated 7 July 2005 from the Director-General to the Myanmar Minister for Labour

Dear Minister,

As you are aware, the Committee on the Application of Standards adopted conclusions on the observance by your country of the Forced Labour Convention, 1930 (No. 29). These conclusions were endorsed by the International Labour Conference on 16 June 2005. Enclosed herewith is *Provisional Record* No. 22 of the discussion which includes the text of these conclusions.

I am drawing the attention of the ILO's constituents as well as relevant international organizations on these conclusions as provided for therein.

These conclusions certainly contain a strong message that cannot be ignored. But they should also be seen as an opportunity to give to the cooperation between the ILO and Myanmar a momentum that has been lost. There is a simple straightforward way to achieve this, which is to resume a meaningful dialogue. This was precisely the objective of the visit that regrettably was not carried through by the very High-Level Team last February.

As pointed out in the Committee's conclusions, the willingness of the authorities to urgently discuss the outstanding issues at the highest level is indeed the test of their real commitment. As far as the Office is concerned, I can assure you that the will to resume such meaningful dialogue exists and could confirm itself concretely and quickly both in Yangon and Geneva.

As regards one of the main outstanding issues, the Office has already made it clear that problems which have emerged with respect to the treatment of allegations received by the Acting Liaison Officer have to be acknowledged but could certainly be resolved through open, frank and objective discussions.

As regards such open, frank and objective discussions on the above and other outstanding issues, the Office believes that to serve their objective and be really effective they need to be carefully organized, prepared and scheduled. It is thus ready to examine urgently with the authorities in Yangon and Geneva how and when preparatory conversations could be held for that purpose.

It is my sincere hope that, in line with the commitment they have expressed so far to cooperate with the ILO, the authorities will wish, through you, to give to this matter the serious and urgent consideration it warrants, and I am looking forward to receiving timely indications in this regard.

Yours sincerely,

(Signed) Juan Somavia.

## Appendix II

### Example of a threatening letter received by the Liaison Officer a.i.

To

Mr Richard Horsey  
I.L.O Liaison officer (a.i.)

I.L.O is accusing our country of using forced labour. That is wrong. In our country there is not forced labour. Most of our people paid their labour according to their wishes of the construction work of pagoda. More over they collectively taking part in cleaning work and maintenance of the houses in their village of their own wishes. That is our loveable tradition. So there is no forced labour in our Union of Myanmar.

I.L.O is controled by U.S CIA. Therefore U.S and western big countries are accusing our country of using forced labour by groundless facts. and gave pressure.

According to accusations of I.L.O, U.S and western big country imposed economic sanction on our country. Over one hundred and sixty garment factories were closed down. due to economic sanctions in 2003. The closure has left over 70000 Myanmar woman jobless and 600,000 dependents had lead to the life of total misery. Ousting them from their job is violation of human right and forced into unemployment.

Moreover terrorist are sheltering your I.L.O. They are presenting the false accusations to your I.L.O. So I.L.O is becoming a terrorist supporting stage.

Therefore I would like to urge you not to interfere our internal affairs. If you interfere our internal affairs, your head will be cut off and our people will crush you and prison you. Be careful; danger is everywhere for you.



## Appendix III

### Letter dated 24 August 2005 from the Director-General to the Myanmar Prime Minister

Excellency,

You are aware of the serious concern provoked in the UN family in Myanmar by the death threats to the ILO Liaison Officer Mr. Richard Horsey, and more recently to Mr. Léon de Riedmatten who has performed various functions on behalf of the ILO. It is my duty as Director-General of the ILO to seek your immediate personal intervention to take the action that the circumstances urgently require to stop such threats and guarantee their safety and normal conditions for the exercise of their functions.

It is clear from the content of the threats, which have been communicated to the authorities, that they mirror the campaign and attacks voiced by various government-affiliated organizations against the ILO and which were reported in great detail in papers like the "New Light of Myanmar". Under these circumstances, let me recall the international responsibility of the Government of Myanmar for any development that may occur. This also includes the obvious obligation to ensure the smooth functioning of the ILO Liaison Office in Yangon and the security of its staff under the relevant Understanding.

It is in my view also essential to bring much needed clarity to the scope and implications of the conclusions reached by the International Labour Conference at its last session in June 2005. I have indeed written to the Minister for Labour to offer an open dialogue to review all these implications, in the spirit that had enabled the cooperation between Myanmar and the ILO to develop over the last five years. It is regrettable that while no answer has been received, the ILO has been targeted by this well orchestrated campaign. It is difficult to see how these developments can further your interests in the ILO.

This approach for dialogue remains valid and I hope it could through you be urgently activated. I would thus hope that in the interest of our continued cooperation all channels can be used to clarify the situation and any misunderstandings. My Office has been in touch with Ambassador Nyunt Maung Shein in Geneva to indicate that there are various ways that could be explored to resume the much needed dialogue.

In any event, I have to inform the Officers of the Governing Body and, in due time, the relevant bodies of the ILO on the evolving situation in Myanmar.

Yours sincerely,

*(Signed)* Juan Somavia.