



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 said that Myanmar was now passing through a most important phase in its modern history. The national referendum to adopt the new State Constitution had been held successfully on 10 May 2008 in 278 out of 325 townships in Myanmar, and in the remaining townships of Yangon Division and Irrawaddy Division, which had been hit by the severe cyclone Nargis, on 24 May 2008. According to the result, over 26.8 million eligible voters had voted in favour of the Constitution, accounting for 92.48 per cent in the referendum. Therefore, the new State Constitution had already been approved by the overwhelming majority of the people of Myanmar. The State Peace and Development Council (SPDC) issued Announcement No. 7/2008 on 29 May 2008 announcing that the State Constitution had been ratified and promulgated by the national referendum. Myanmar had therefore successfully completed the fourth step of the Seven-Step Road Map. The multi-party democracy general elections, which was the Fifth Step, would be held in 2010. This was indeed significant progress in Myanmar's political transition towards a democratic society.

He added that the joint field visit of the Ministry of Labour and the ILO Liaison Officer on 20 to 21 May 2008 to Nyaung Lay Bin Township, Bago Division, for awareness raising had proved the freedom of movement of the ILO Liaison Officer to carry out his responsibilities. Another area in which significant progress had been made was public awareness and educational activities. A special press conference organized by the Ministry of Labour had been held on 26 March 2007 in Nay Pyi Taw. The Director-General of the Department of Labour had explained in detail about the Supplementary Understanding and had replied to the questions raised by reporters and journalists. The Ministry of Labour had also published news about the prohibition of forced labour in the country in the local newspaper, the New Light of Myanmar, on 31 March 2007.

He informed the Committee that in response to the request of the Governing Body, the translation of the Supplementary Understanding into the Myanmar language had been completed and uploaded onto the web site of the Ministry of Labour. The translated version of the Supplementary Understanding had also been sent to the ILO Liaison Officer.

He noted that since the 301st Session of the Governing Body, the Liaison Officer had received 78 complaints, of which 45 had been transmitted to the Working Group for necessary action after the preliminary investigation had been made by the Liaison Officer. Of the 45 cases, 29 had already been closed after necessary investigation by the Ministry of Labour. The remaining 16 cases were under investigation and would be finalized in the near future. At the end of February 2008, the ILO Liaison Officer had transmitted 19 cases relating to the military to the Chairperson of the Working Group, the Deputy Minister of Labour. The Ministry of Labour had submitted those cases to the Adjutant General's Office of the Ministry of Defence for the necessary action. The details of these cases had already been provided to the Committee of Experts on the Application of Conventions and Recommendations on 28 February 2008. The Ministry of Labour subsequently received another six new cases from the ILO Liaison Officer, which had also been forwarded to the Adjutant General's Office for necessary action. The total number of cases related to the military was therefore 25, of which 16 had already been closed and only nine remained. Of the nine remaining cases, replies had already been provided to the ILO Liaison Officer on four cases, and five cases were still under investigation.

He emphasized that his country attached great importance to the question of the protection and promotion of the rights of the child. Myanmar was a party to the United Nations Convention on the Rights of the Child and had enacted the Child Law, as well as the Military Service Recruitment Laws and Regulations, under which the recruitment of minors under the age of 18 was illegal. He added that the United Nations Country Team in Myanmar had been cooperative and supportive of the Government's endeavours to prevent the recruitment of under age children. Cooperation would be continued with the United Nations Country Team and also with the Special Representative of the Secretary-General for Children and Armed Conflict.

With regard to Su Su Nway, he indicated that she had been charged in two cases. The first was under sections 124(a), 130(b) and 505(b) of the Penal Code. The second was under sections 143 and 147 of the Penal Code. The trial at the West Yangon District Court was still proceeding. In both cases, the sections of the Penal Code under which she had been charged did not relate to either the Supplementary Understanding or workers' affairs.

With regard to the case of Min Aung, he had been charged under Penal Code section 143 providing for the punishment of a member of an unlawful assembly, and section 295 respecting a malicious act intended to outrage religious feelings of any group by insulting its religion or religious beliefs, as well as under section 505(b) respecting statements leading to public mischief. He had been found guilty under the above sections and sentenced accordingly by the Thandwe District Criminal Court. Upon appeal to the Rakhine State Criminal Court, the sentences had all been reduced. All of the above sections of the Penal Code were beyond the scope of the Supplementary Understanding and workers' affairs, and the Supreme Court confirmed the decision of the Rakhine State Criminal Court. In another case, Min Aung had been charged in the Thandwe District Criminal Court under section 6 of the Formation of Associations Law and had been found guilty and sentenced. Following an appeal to the Rakhine State Criminal Court, the sentence had been reduced.

He reconfirmed that the case of Thet Wai was not in any way associated with activities against forced labour. He had been charged under section 353 of the Penal Code respecting assault or criminal force to deter a public servant from discharging his duty, and section 189 respecting the threat of injury to a public servant. The trial was still proceeding.

He indicated that, among the basic principles enshrined in the new State Constitution, a provision relating to forced labour was specifically included in Chapter VIII, paragraph 359. This clearly demonstrated that the Government had put in place a comprehensive framework of legislative measures to eliminate the practice of forced labour in the country.

He took the opportunity to provide information on the situation in Myanmar after the powerful tropical cyclone which had severely affected the country. Earlier in the month, Myanmar had faced the most severe natural disaster in its history. Cyclone Nargis had hit Ayeyawady and Yangon Divisions on 2 and 3 May. The effect had been devastating. About two days before the natural disaster, national television and radio had continuously warned the people in the regions about the storm. However, the magnitude of the storm had been very severe with very high winds and a very high tide, preventing the local people from moving from the areas. As a result, 77,738 people had been confirmed dead, 55,917 people were still missing and 19,359 had been injured.

The Government, in cooperation with the international community, was taking emergency relief and rescue

measures including the establishment of emergency relief camps and the distribution of emergency relief provisions to the cyclone victims. The Government of Myanmar was also working closely with the Association of South-East Asian Nations (ASEAN), neighbouring countries and the international community. On 19 May, ASEAN had established an ASEAN-led coordinating mechanism to facilitate the effective distribution and utilization of assistance from the international community. A task force headed by the ASEAN Secretary-General had been formed to operate the mechanism. As of 25 May 2008, 3273.20 tonnes of humanitarian supplies delivered by 221 cargo flights from various countries and organizations had been received. In addition, emergency relief provisions were being received by sea and land everyday. These supplies had been distributed to the victims immediately.

The Government had announced a three-day national mourning period for the cyclone victims from 20 to 22 May 2008. The Chairperson of the State Peace and Development Council had toured the cyclone-hit areas on 19, 20 and 21 May 2008 and had encouraged the victims in the affected areas. The Government had arranged a visit to the relief camps in Yangon and Ayeyawady Divisions for diplomats, United Nations agencies, representatives of donor countries and international organizations on 17, 21 and 22 May 2008. The United Nations Secretary-General Ban Ki-moon visited relief camps in the hardest-hit delta areas on 22 May; the local authorities explained to the Secretary-General the measures being taken for rehabilitation, health-care services and to meet the needs of the victims. He had been received by the Head of State and the Prime Minister.

On 25 May 2008, an ASEAN-United Nations International Pledging Conference had been held in Yangon. A total of 51 countries and 24 international organizations had participated in the Conference, which had been attended by Ban Ki-moon. The Conference had focused on cooperation in providing assistance to the victims of the cyclone.

In conclusion, he extended his deep appreciation to governments, the United Nations, including the International Labour Organization, international organizations, non-governmental organizations, private individuals and friends far and near for the sympathy and condolences expressed and the kind generosity in donating emergency relief provisions as well as financial support for relief and resettlement of the victims in the cyclone-hit areas. He also expressed gratitude to Mr Marshall and the staff of the ILO Liaison Office which, as part of the United Nations Country Team, was cooperating actively with the Government in the relief efforts.

The Worker members emphasized that for many years the Conference Committee on the Application of Standards had been holding a Special Sitting on the serious and continuing situation with regard to forced or compulsory labour in Myanmar. This year, however, and unlike in previous years, when the Conference Committee had had to be content with small steps forward or backward, the situation had been deeply affected by dramatic political and humanitarian events.

It should be recalled that the 1997 Commission of Inquiry had concluded that widespread and systematic violations of Convention No. 29 existed in both national law and practice. In July 2008, it would be ten years since the Commission of Inquiry had formulated the following three recommendations: (1) that the relevant legislative texts should be brought into line with Convention No. 29; (2) that in actual practice, no more forced or compulsory labour should be imposed by the authorities, in particular the military; and (3) that the penalties which could be imposed for the exaction of forced or compulsory labour should be strictly enforced.

In addition, to ensure the implementation of these three recommendations, the Committee of Experts had identi-

fied four areas in which concrete measures should be taken. However, the continued failure by the Government to implement the recommendations of the Commission of Inquiry had led the Governing Body to have recourse to article 33 of the ILO Constitution in March 2000, an unprecedented decision. Despite this decision, however, year after year the Committee of Experts and the Conference Committee had only been able to highlight the flagrant continuing violations of Convention No. 29 and the systematic refusal to give effect to the recommendations of the Commission of Inquiry. Ten years later, none of the recommendations had been implemented. During this time, a large number of multinational enterprises, however, had no hesitation in remaining in the country.

What is the situation today? According to the latest observation of the Committee of Experts, as well as the report of the Liaison Officer and the new facts reported in documents D.5 and D.6 to the Conference Committee, the Government, although it had drafted a new Constitution, had not included the principle of freedom of association or a clear prohibition of forced labour. Freedom of association was therefore still entirely subject to laws on state security. The Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87) would be respected no more in the future than it had been in the past. Moreover, the provision in the draft new Constitution prohibiting the use of forced labour contained such restrictions that it contradicted Convention No. 29.

Furthermore, no high-level statement on forced labour had been made by the Burmese authorities, despite the fact that the Governing Body had requested such a statement on several occasions. With regard to adequate budgetary means to replace forced or unpaid labour, the Government had indicated that a share of the budget was allocated to every ministry to cover labour costs. Nevertheless, as the Committee of Experts had mentioned in its observation, it was difficult to understand why recourse to unpaid forced labour remained widespread, particularly by the military and local civil administrations.

With regard to the dissemination of information and enforcing the prohibition of forced labour, the Supplementary Understanding of February 2007 represented an interesting development, in that it contained a new mechanism for the submission of complaints through the Liaison Officer. This mechanism was a step forward. However, it was only a very small step forward as the Liaison Officer could only receive complaints and assist complainants, but could not report violations himself. In addition, the mechanism was still little known, for at least two reasons. First, even after 15 months, no understandable version of the Supplementary Understanding was available because the Junta had not yet approved a translation. Second, those who did not live close to Yangon encountered significant practical difficulties in presenting complaints, in view of the lack of a communication network covering the whole country. Finally, a number of people who had made complaints or who had been engaged in activities to implement the Supplementary Understanding had been harassed or detained.

In that context, the number of complaints received could not be considered to reflect the extent of forced labour in the country. Moreover, the means – that is to say the complaints mechanism – should not be confused with the end, namely the abolition of forced labour. However, the mission of the Liaison Officer should not be restricted to implementing the Supplementary Understanding. Priority must always be given to working toward the implementation of the three recommendations made by the Commission of Inquiry.

The new mechanism was nonetheless revealing in two respects, namely the continued existence of forced labour and the glaring lack of democracy and freedom of expression. With regard to the continued existence of forced labour, the International Trade Union Confederation

(ITUC) had provided the Committee of Experts with extensive documentation. In relation to the extent of democracy, certain facts and events should be recalled, such as the following:

- the severe repression by the Government of the peaceful demonstrations of September 2007 and the higher death toll than initially reported;
- the detention and imprisonment of individuals who had exercised their fundamental right of expression, including Min Aung, Su Su Nway and the six trade union activists sentenced in September 2007, and the charges made against one of the facilitators of the new complaints mechanism, U Thet Wai, simply for being in contact with the ILO;
- the arrest this week of 18 people protesting peacefully against the extension of the house arrest of Aung San Suu Kyi, despite the draft new Constitution guaranteeing freedom of expression;
- the referendum on the draft new Constitution, which had been prepared and drawn up in an authoritarian manner, without any dialogue with the opposition and excluding any participation by nuns, monks and Hindu and Christian leaders, as well as Aung San Suu Kyi and others;
- the three-year prison sentence for disseminating leaflets, posters, speeches and other means of criticizing the referendum; and finally
- the reservation for the military of 25 per cent of parliamentary seats and of the right of veto.

The restriction of democracy had been dramatically demonstrated after cyclone Nargis had struck. The areas affected had been closed to all humanitarian aid from outside. The population had been unable to express either its suffering or its urgent needs, with the result that, according to estimates, at least one third of those affected still lacked vital aid. The Worker members expressed their full sympathy and complete solidarity with the Burmese people.

The humanitarian disaster should not divert attention from forced labour in Burma. Indeed, the Junta might well try to take advantage of the disaster to increase the use of forced and child labour in the long process of reconstructing the country. It was therefore incumbent upon all international organizations and governments to ensure that their aid was in compliance with the fundamental rights of the workers of Burma. Similarly, the International Labour Organization should ensure that reconstruction of the country was carried out in accordance with the rights of workers and the principle of decent work.

The Worker members added that the Committee had been holding a Special Sitting on the case for almost a decade and the case had been before the Conference Committee for over 26 years. The cause of Burmese workers and their struggle against the slave labour regime in the country were also those of the worldwide labour movement, notwithstanding the unacceptable libel by the regime that the Federation of Trade Unions of Burma (FTUB), was a terrorist organization. It was impossible to review the case in a vacuum. It was therefore necessary to recall the brutal crackdown in September 2007 against the largest democratic mobilization since 1988, in which at least 110 people had been killed and thousands wounded; the imposition of 20 to 28 year prison sentences on six trade union activists last year, namely Thurein Aung, Kyaw Kyaw, Shwe Joe, Wai Lin, Aung Naing Tun and Nyi Nyi Zaw, merely for meeting to discuss labour rights; and the odious interference by the regime with the entry of international relief workers and the confiscation of vital

food and medicine in the midst of the tragic national disaster of cyclone Nargis. Moreover, as recently as the previous week, the regime had even violated its own laws and Constitution by extending the detention of Aung San Suu Kyi for five more years, as well as arresting the peaceful demonstrators who had protested against this measure. These events merely added to the incontrovertible evidence of the chronic bad faith of the regime in relation to internationally recognized human rights and the ILO's fundamental Conventions, as well as its total disdain for nearly the whole of its people.

The Worker members also recalled their comments the previous year on the relative merits, but also the limitations of the Supplementary Understanding, including the real fear of reprisals by its State Peace and Development Council (SPDC), restrictions on freedom of travel for complainants in outlying regions, and the thousands of Burmese victims living in Bangladesh, Malaysia, Thailand and other countries unable to have access to the system. The very basis of the Supplementary Understanding was that there should be no more reprisals against complainants or potential complainants. Yet, notwithstanding the protestations of the Government representative, only a few months ago U Thet Wai of the National League of Democracy had been arrested for possessing reports on forced labour which were to be delivered to the ILO Liaison Officer. The media had also reported that over 30 activists investigating labour issues had been arrested and were still being detained.

Contempt and impunity, both in law and in practice, had been the primary response of the military regime in relation to the recommendations of the Commission of Inquiry, approved by the Governing Body over ten years ago. Firstly, with regard to the recommendation to issue specific and concrete instructions to the civilian and military authorities, as noted by the Committee of Experts, the Government had still not provided even minimal details of the content of such instructions. Indeed, in view of the extensive documentation gathered together by the ITUC on the continued existence of forced labour in virtually every region, it was clear that such instructions had not been given. Secondly, with regard to the call to give wide publicity to the prohibition of forced labour, and despite the claim that publicity had been given to the Supplementary Understanding, there had still been no unambiguous public statement at the highest level that all forms of forced labour were prohibited throughout the country and would be duly punished. Thirdly, the demand for the Government to provide for the budgeting of adequate means to replace forced and unpaid labour remained unheeded. Fourth, in relation to ensuring the enforcement of the prohibition of forced labour, the Committee of Experts concluded that the regime had still not repealed the authorization of forced labour in the respective legislation despite promising to do so for over 40 years. The regime had also failed to adopt positive legislation prohibiting forced and bonded labour by children, including in the armed forces. The Committee of Experts further noted that the authorities had failed to bring any administrative or criminal action against military personnel for the imposition of forced labour conditions on the population. Of the 24 complaints that had been forwarded by the Liaison Officer to the Government, only two civilian officials had been subject to any serious and effective prosecution. The Worker members therefore reiterated their profound concern at the lack of criminal liability.

Finally, the Worker members recalled that the Governing Body had decided in March 2007 to defer the question of an advisory opinion by the International Court of Justice until the necessary time. The latest report of the Committee of Experts made it abundantly clear that the cooperation and actual progress achieved in complying with the recommendations of the Commission of Inquiry did not even come close to meeting the relevant threshold,

which had been identified as one of the basic issues for review by the International Court of Justice.

The Employer members thanked the Government representative for appearing once again before the Conference Committee in its examination of the ongoing failure of his country to implement Convention No. 29. They affirmed that the hearts of the global community went out to the country because of the devastation of cyclone Nargis. However, they believed that the country's handling of the tragedy, and particularly its slowness in accepting aid from the international community and the lack of transparency, illustrated some of the root causes of forced labour, which was still prevalent. The causes of the forced labour situation included the lack of fundamental civil liberties, and particularly 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.

They emphasized that two events had had a significant impact on the context within which the ILO was working in the country, namely the civil unrest and its repression in the autumn of 2007 and the devastation caused by cyclone Nargis. When discussing the case, the ILO's supervisory bodies had focused attention on the recommendations of the Commission of Inquiry, in respect of which the Committee of Experts had identified four areas in which measures needed to be taken: issuing specific and concrete instructions to the civilian and military authorities; ensuring that the prohibition of forced labour was 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.

The Employer members welcomed the extension of the trial period of the Supplementary Understanding and recognized that the number of complaints had increased. However, fundamental practical problems seemed to persist in the physical ability of victims or their families to file a complaint and for the Liaison Officer and his team to carry out their duties. They expressed serious concern that a number of persons associated with the application of the complaints mechanism remained in detention, and were of the view that the low level of complaints was an indication that the citizens might not have adequate access to the mechanism nor feel that they had the freedom to file complaints. Moreover, commenting on the statement by the Government representative that criminal law was outside the scope of the Supplementary Understanding with the ILO, the Employer members emphasized that the important point was to ensure that criminal law did not override human rights, violate the right of freedom of association, or facilitate or condone forced labour.

The Employer members welcomed the approval by the Government of a translation of the Supplementary Understanding and understood that the draft text of a proposed brochure was currently under consideration by the Government. They emphasized that continued publicity of the mechanism was vital to ensure wide knowledge of the prohibition of forced labour and its effective application in practice, so as to send a message to potential perpetrators that they were not free to act with impunity. They hoped that the ILO text for the brochure would be approved and distributed throughout the country without delay. Targeted training and joint missions to follow-up specific complaints would also be helpful. But they emphasized that a high-level public statement on the Government's policy on the prohibition on forced labour remained vital to demonstrate a clear commitment to the eradication of forced labour.

Although it was too early to assess the effects of cyclone Nargis, they emphasized that forced labour and other human rights abuses should not occur in the reconstruction process. In this respect, they expressed apprecia-

tion of the work carried out by the Liaison Officer and other United Nations agencies under difficult circumstances, and urged the Government to facilitate their task.

The Employer members noted that the recently adopted Constitution contained specific articles on the right to freedom of association, freedom of expression and the right to organize. However, they observed that the article banning the use of forced labour contained qualifications which raised questions concerning its conformity with the Convention. Time would tell whether and how the rights contained in the two fundamental Conventions ratified by Myanmar would be applied in practice following the adoption of the Constitution. Words were not enough. Full and complete implementation in practice was required in accordance with the obligations of Convention No. 29.

The ILO had been calling on the Government to apply the Convention in both law and practice and to bring an end to the intolerable climate of impunity. The Government remained far from applying the measures recommended by the Commission of Inquiry, or from giving effect to the four areas of action identified by the Committee of Experts. It was a matter of concern that the Government had not replied in detail to the information requested by the Committee of Experts in its previous observation or to the ITUC's latest communication. The Employer members urged the Government once and for all to provide full and detailed information to the Committee of Experts as an unequivocal sign of its willingness to engage in genuine cooperation with the ILO's supervisory bodies. They also reminded the Government that the Supplementary Understanding and the establishment of a complaints mechanism in no way relieved the Government of its obligation to suppress forced labour under the Convention.

In conclusion, the Employer members urged the Government to make tangible improvements in national legislation and to provide sufficient funds to ensure that paid labour replaced forced labour under both civil and military administration as a demonstration of its unambiguous will to combat forced labour and the longstanding and unacceptable climate of impunity. The situation had gone on for too long. It was time for the Government to adopt a sense of humanity, bring an end to forced labour and rebuild the country without resorting to forced labour, as demanded by its own citizens and by the world.

The Government member of Slovenia, speaking on behalf of the Governments of Member States of the European Union (EU), the candidate countries of Croatia, The former Yugoslav Republic of Macedonia and Turkey, as well as Armenia, Georgia, Iceland, Republic of Moldova, Montenegro, Norway, Switzerland and Ukraine, reaffirmed their solidarity with the people of Burma/Myanmar affected by cyclone Nargis and welcomed the international conference held in Yangon on 25 May 2008, co-sponsored by the United Nations and ASEAN, to address the pressing needs of those affected by the terrible natural disaster. He expressed strong support for the efforts of the United Nations, international and local agencies, non-governmental organizations, the International Red Cross and Red Crescent Movement, donors and all others to bring vital aid to the people of the country. Free and unfettered access for such actors was urgent to prevent an even greater tragedy. He therefore called on the authorities to ensure expeditious delivery of visas and travel permits to all international humanitarian workers and took note of the gradual openings made so far. The European Union expected the authorities not to use forced or child labour in the reconstruction of the country, as had been the case after the tsunami of December 2004.

This case was one of the most serious and long-standing cases that the ILO had ever had to address. He therefore reiterated full support and appreciation for the work of the

ILO and the Liaison Officer in assisting the Government to abolish the practice of forced labour. In that regard, he recalled the Conclusions of the Commission of Inquiry, the resolution of the 89th Session of the International Labour Conference, the conclusions of past sessions of the Governing Body and the four measures identified by the Committee of Experts to comply with the recommendations of the Commission of Inquiry, namely the following: issuing specific and concrete instructions to the civilian and military authorities; ensuring that the prohibition of forced labour was 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. He called upon the authorities to ensure that children were not recruited for military service and that all perpetrators of the illegal extraction of forced labour were adequately penalized, with the penalties being strictly enforced.

Welcoming the Supplementary Understanding of 26 February 2007 between the ILO and the national authorities, the aim of which was to eradicate forced labour and establish an effective complaints mechanism for victims of forced labour to seek redress without fear of harassment or reprisal, he noted with interest that the trial period of the Supplementary Understanding had been extended for a further year. Nevertheless, he reasserted the deep concern that the population outside Yangon was, by and large, unaware of the complaints mechanism set up by the Supplementary Understanding, owing to lack of translation, distribution and awareness-raising activities. He again urged the authorities to implement fully the Supplementary Understanding and arrange for further translation into local languages and for wide and easily understandable dissemination of the Supplementary Understanding and other awareness-raising materials.

The report of the Committee of Experts concluded that the complaints mechanism, while valuable, did not by itself address the root causes of the forced labour problem that had been identified by the Commission of Inquiry and the High-level Team. In particular, it did not address the basic governance relationships prevailing in the country, the role of the army and its self-reliance policy, and the absence of freedom of association and, more generally, freedom of assembly.

Clearly, the implementation of the Supplementary Understanding was not and could not be sufficient. In order to achieve substantial and lasting progress in eliminating forced labour, the national authorities needed to undertake a number of more-than-overdue measures beyond implementing the Supplementary Understanding, which was only one step towards achieving compliance with Convention No. 29. It was of paramount importance that the authorities reaffirmed, in a public and unambiguous statement at the highest level, the prohibition and illegality of all forms of forced labour, including the recruitment of child soldiers, and replaced contradictory legal provisions with the appropriate legislative and regulatory framework to give effect to the recommendations of the Commission of Inquiry. He shared the concern of the Liaison Officer that the article in the new Constitution banning the use of forced labour contained qualifications that could raise the question of its conformity with Convention No. 29. Finally, he encouraged neighbouring countries to continue with their efforts to lead Myanmar towards the ending of forced labour and the encouragement of national reconciliation.

The Government member of New Zealand expressed her Government's sincere appreciation for the continued dedication of the ILO Liaison Office in Yangon in promoting observance of Convention No. 29 by the Government, particularly in the face of the added challenges of the September 2007 protests, the constitutional referendum held in May 2008 and the major natural disaster of cyclone Nargis. The Liaison Office had been unstinting in

its work, even managing to expand its range of activities, which had included a training of trainers course for military recruitment.

Her Government welcomed the extension of the Supplementary Understanding for a further 12 months, hoping that it would continue to produce results and that understanding of the issue would grow. Nevertheless, more was needed. To that end, the Government was urged to implement the recommendations of the Commission of Inquiry and to make a clear commitment to bringing an end to the practice of forced labour. The recent approval of a translation of the Supplementary Understanding was a step in the right direction. Her Government looked forward to its effective use, along with other informational material under consideration, including an explanatory brochure, in raising awareness of what forced labour was, explaining citizens' rights under the law and describing how complaints could be made using the ILO mechanism.

The people of Myanmar had the heartfelt sympathies of her country following the devastation wreaked by cyclone Nargis. Expressing concern that the risk of trafficking and forced labour might increase in the wake of the cyclone, the Government was urged to work with the ILO and others involved in relief efforts to ensure that reconstruction did not involve the use of forced labour. The absolute commitment of the Government to the process remained paramount. Her Government looked forward to deeper cooperation between the authorities and the ILO in the months and years ahead, with the goal of eradicating forced labour wherever and in whatever guise it appeared.

The Worker member of Japan referred to statistical data from various organizations concerning living conditions in Burma. According to the United Nations Children's Fund (UNICEF), the infant mortality rate remained high, with one death in ten births. Malnutrition was widespread among children with about one third of children severely or moderately stunted and underweight. More than 25 per cent of the population lacked access to safe drinking water and arsenic contamination was a major concern.

She also referred to the warning issued by the Director of the World Food Programme (WFP) in October 2007 that at least 5 million people were short of food and that humanitarian assistance was not enough to meet their needs. The WFP had also indicated in a project proposal submitted to its Executive Board that one third of the children were malnourished and one fifth were born underweight. The maternal mortality rate was 230 per 10,000 live births.

The United Nations Development Programme (UNDP) had recently conducted a household survey with the permission of the Government. The survey found that 95 per cent of the population lived on less than US\$1 a day and 90 per cent on less than 65 cents a day. The average household spent almost 75 per cent of its income on food.

She stated that everybody should feel uncomfortable with the current situation in which, while the Government allocated only 0.5 per cent of its budget to health, 40 per cent of the budget went to the armed forces. Moreover, the Government had reportedly spent over US\$300 million for the construction of its new capital, Naypyidaw.

The people of the country were in need of access to international aid. In reality, however, due to the Government's deplorable human rights record, including workers' rights and forced labour, the amount of official development assistance provided by foreign governments had been sluggish, amounting to US\$147 million in 2006, a slight increase by US\$2 million from the previous year. Japan was the largest donor, with a contribution of US\$25.49 million or 33 per cent of the total assistance received by the country. Such data did not provide a complete picture. Based on statistics of the Organization for Economic Development and Co-operation (OECD), the

contributions of emerging economic powers sharing the national boarder remained uncertain.

The role of the Asian Development Bank (ADB) could not be overlooked. In its annual report for 2007, it had stated that it continued to monitor economic development and would formulate an operational strategy when appropriate, and that no loan or technical assistance project had been approved since 1987. This was in contradiction with the fact that in developing the Greater Mekong Subregion Energy Strategy, a regional cooperation programme with the participation of six countries, including Burma, the ADB had been the driving force since the programme's inception in 1992. In many development projects under this scheme, numerous problems had been reported in relation to environmental assessments, the livelihoods of the people affected and damage to the biological and cultural diversity. She indicated her concern with respect to forced relocations and the use of forced labour in Burma.

Concerning the emergency assistance following the cyclone Nargis, there could be no question of opposing the humanitarian aid provided or pledged by many foreign governments to meet the urgent needs of the victims. She called on the Government and donors to ensure that assistance reached the people who were badly in need of it, as well as the country's democratic organizations, and that as the focus shifted from disaster relief to reconstruction no forced labour was used in the process.

She urged the Government to reallocate its budget to make greater provision for health, food, water and education. She also requested other governments to respect and apply the resolution adopted by the 88th Session of the ILC in 2000, to review their relations with the country and to report back to the Governing Body.

The Government member of Canada extended his Government's sympathies to the many thousands in Burma who had lost loved ones and whose lives had been severely affected by cyclone Nargis. The leadership of the United Nations, including its Secretary-General, in coordinating relief efforts with ASEAN and the national authorities was recognized, and the ILO Liaison Officer and his team were thanked for their work under difficult conditions. Although a small, but increasing number of international aid workers were gaining access to affected areas, he expressed concern at the ongoing challenges reported by humanitarian actors.

May 2008 had not been an encouraging month for the Burmese people. A reluctant regime continued to be slow to provide full and unhindered access for humanitarian actors to the affected populations, and his Government called for it to afford such access without delay. A new Constitution had been adopted with no credible consultation of citizens, and the house arrest of Aung San Suu Kyi, who had been in detention for more than 12 of the last 18 years, had been extended once more. His Government had condemned that decision. Such deeply disappointing but entirely predictable developments provided a critical and instructive context for the particular work on forced labour that the ILO had to do in the country.

At its 301st Session (March 2008), the Governing Body had formulated conclusions calling, inter alia, for steps to be taken by the authorities to communicate to their own people the action agreed with the international community, represented by the ILO. The simplest step was the reproduction and dissemination of the Supplementary Understanding in local languages. More demanding, perhaps, was the call for the authorities to make an unambiguous public statement at the highest level reaffirming the prohibition of any form of forced labour and their ongoing commitment to enforcing that policy. The Supplementary Understanding had now been translated into Burmese and discussions were under way concerning its effective promulgation. This development, although modest, was welcome and his Government hoped to see the Supplementary Understanding disseminated soon throughout the

country. The unambiguous high-level statement, however, remained unspoken and, as a next step, the authorities were called to make such a statement and implement the recommendations of the Commission of Inquiry in order to bring an end to forced labour.

The reference to forced labour in the new Constitution was not only insufficient; it appeared to be problematic, raising questions about its conformity with the provisions of Convention No. 29. The work of the Committee of Experts was commended and attention drawn to the last line of its report: "The Committee remains hopeful that, having agreed the Supplementary Understanding, the Government will finally take the required steps to achieve compliance with the Convention in law and in practice and resolve one of the most serious and long-standing cases that this Committee has ever had to address."

The Government member of China took note of the statement by the Government representative. Her Government was delighted that the Government of Myanmar had been working closely with the ILO since the conclusion of the Supplementary Understanding. Since the Governing Body had reviewed the situation in March this year, the Government had taken concrete steps.

A referendum had been conducted in May 2008 on the new Constitution which clearly prohibited all forms of forced labour, thereby resolving the remaining legal issue. The ILO's Liaison Office was working closely with local focal points to prevent the use of forced labour. The complaints mechanism was functioning smoothly. The Supplementary Understanding had been translated and was being disseminated by the Ministry of Labour. In collaboration with UNICEF and other agencies, training had been undertaken for trainers. All these efforts indicated the Government's sincere political will to eradicate forced labour.

As seen in the cooperation between the Government and the ILO, there was effective collaboration based on mutual trust for the sustainable well-being of the people. Her Government hoped that the ILO and the international community would remain committed to continuing the constructive dialogue and would provide encouragement and assistance, especially in terms of infrastructure. These would help to eradicate forced labour and guarantee fundamental rights and equality of access to development and its benefits.

The Worker member of Malaysia expressed concern that among ASEAN member States, different standards of practice existed with regard to human rights. The ASEAN Charter stated that its member States adhered to the principle of democracy, the rule of law and good governance, and respect for and protection of human rights and fundamental freedoms. Fundamental human rights needed to be respected, upheld and practised, which he hoped would contribute to establishing the conditions necessary for the realization of decent work for all human beings so as to improve equity and human dignity in the ASEAN area.

Since 1991, the UN General Assembly had adopted 16 resolutions on Burma which directly addressed a range of issues, including denial of human rights, lack of progress towards democracy and the ongoing detention of political prisoners. Strongly worded statements had been issued year after year, highlighting the military nature of the Burmese regime and the failure of the State Peace and Development Council (SPDC) to address the concerns of the United Nations in a meaningful way. Since 1992, the United Nations Human Rights Committee and the Human Rights Council had adopted 15 resolutions on the SPDC's refusal to respect the fundamental human rights of Burma's people. Resolutions had time and again called on the SPDC to end systematic human rights violations, including forced labour and forced relocation, and to respect fundamental freedoms, including freedom of assembly, association, expression and movement.

These United Nations human rights bodies recognized that respect for human rights, the rule of law, democracy and good governance were essential to achieving sustainable development and economic growth, and had affirmed that the establishment of genuine democratic government was fundamental to the realization of human rights and fundamental freedoms. Forced labour could only truly be eliminated by ensuring respect for human decency and human rights. Impunity must also be combated, and there was a need to investigate, prosecute and punish human rights violations, including forced labour, by members of the military and other officials in all circumstances.

Despite attempts by the international community to accelerate the process of finding a political solution and to assist in engaging the SPDC in substantive political dialogue with the National League for Democracy (NLD) and ethnic nationalities, the SPDC had established, as a precondition to dialogue with NLD leader Aung San Suu Kyi, that the NLD abandon its long-standing call for economic sanctions. Although the Special Rapporteur on the situation of human rights in Myanmar, appointed by the United Nations Human Rights Council had been allowed to visit the country to carry out his mandate for the first time in four years, in his final report in March 2008 he stated that the SPDC's initial willingness to address issues under his mandate had disappeared and, regrettably, many recommendations formulated had therefore not been implemented.

This high level of engagement by major international institutions demonstrated the international community's strong commitment to support a process of the restoration of democracy and national reconciliation and the establishment of respect for human rights. However, despite its support for the related initiatives, the permanent members of the UN Security Council had not reached agreement on a binding resolution on Burma.

In December 2007, the UN Secretary-General had established a "Group of Friends" comprising closely interested countries. Following the devastating cyclone Nargis in May 2008, the UN and ASEAN Secretaries-General had intervened to negotiate access for the delivery of humanitarian relief and access for international aid specialists. He expressed satisfaction that the UN-ASEAN-led team had finally been able to assist people in gaining better access to urgently needed humanitarian relief supplies.

The international community had faced great frustration over the years in pushing for political reform and respect for human rights. Measures such as an arms embargo, trade and investment bans, targeted sanctions, visa bans and the freezing of assets had been taken by various governments and should be strengthened. Recalling the conclusions of the 300th and 301st Sessions of the Governing Body and the Special Sitting on Myanmar of the Conference Committee in 2007, he emphasized that the country had made no progress in fulfilling its obligations under Convention No. 29 to eliminate the widespread practice of forced labour. All options available in international law to ensure full implementation of the Convention should be explored, including the possibility of referral to the International Court of Justice. The dignity and rights of the people of Burma demanded nothing less.

The Government member of Japan expressed his Government's profound sympathy for the tragedy caused by the cyclone which had claimed so many lives earlier this month.

Since the successful conclusion of the Supplementary Understanding last year, progress had been made in its operation, including the approval of its translation, which was essential to raise the awareness of citizens and workers of their rights under the Understanding. His Government also welcomed the educational activity jointly undertaken by the Ministry of Labour and the ILO Liaison Office which had also served to enhance awareness. The Government's commitment in principle to holding the

second round of training soon should also be commended. His Government hoped that efforts to further enhance awareness would lead to the effective application of the Supplementary Understanding.

His Government appreciated the detailed explanations of the Government representative on the implementation of the laws and regulations against forced labour. With regard to the application of the Supplementary Understanding, he noted with concern the report of the Liaison Officer that a number of complaints on forced labour had been received and submitted to the Government. He expressed the hope that the Government would sincerely examine these cases and take proper and swift action to improve the situation.

A referendum had recently been held on the new Constitution. While recognizing the inclusion of an article banning the use of forced labour, he noted with apprehension the indication by the Liaison Officer that the article contained qualifications, giving rise to questions as to its conformity with the Convention. He expressed the hope that this apprehension would be dispelled as soon as possible.

With regard to the recent cyclone, while earnestly hoping that the country would recover from the disaster as soon as possible, and his Government was ready to maintain its assistance, his Government urged the Government of Myanmar to ensure that there was no risk of the increased use of forced labour, child labour, human trafficking and migrant labour in the recovery and reconstruction processes.

In conclusion, with the reinforcement of the presence and activities of the ILO in Myanmar, he expressed the hope that the Government and the ILO, particularly through its Liaison Officer, would continue their close collaboration and cooperation to address these issues and improve the situation.

The Government member of the United States thanked the Office for the detailed and candid report and commended the admirable work of the Liaison Officer under very difficult circumstances. The ILO had exhibited exceptional judgement in seeking to maintain dialogue with the military regime while simultaneously holding it to the high standards of labour and human rights upheld by the Organization.

She recalled that it was now a decade since the Commission of Inquiry had formulated very specific and clear recommendations to the Burmese authorities to bring the legislation into line with Convention No. 29; end the imposition of forced or compulsory labour by the authorities, in particular the military; and ensure that penalties for forced labour were strictly enforced. The Committee of Experts had also identified four equally clear areas in which measures still needed to be taken by the authorities in order to give effect to the recommendations of the Commission of Inquiry: issuing specific and concrete instructions to the civilian and military authorities; ensuring that the prohibition of forced labour was 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.

In the light of these recommendations, she noted the modest steps taken in recent months relating to the translation, distribution and publicity of the Supplementary Understanding. However, her Government regretted the lack of more meaningful progress. Although a number of complaints had been registered and processed under the complaints mechanism, there was no doubt that forced labour remained a widespread and serious problem and that the filing or facilitating the filing of a complaint about the exaction of forced labour was still a high-risk activity. Furthermore, based on the Office's report, it would appear that the penalties imposed on military perpetrators of forced labour were not credible and that the article in the new Constitution banning forced labour con-

tained qualifications that might not be in conformity with Convention No. 29. She also noted with concern that labour activists remained in prison, children continued to be coerced into military service and the authorities had still not issued a high-level statement on forced labour.

Although the Supplementary Understanding was undeniably significant, there were evident constraints and limits on the contribution that it and its complaints mechanism could make to the eradication of forced labour in the country. In particular, it did not address the root causes of the problem. Her Government therefore once again called on the regime to implement in full and without delay the recommendations of the Commission of Inquiry and the Committee of Experts.

The present Special Sitting of the Committee was being held in the wake of the devastating national tragedy of cyclone Nargis. She expressed her Government's deepest sympathy to the victims and noted that the President of her country had promised every effort to help the people of Burma recover from the disaster. However, in view of the regime's record, it would be critical to ensure that the reconstruction process did not involve or accommodate the use of forced labour in any of its forms. Anything less was unacceptable.

She added that the elimination of forced labour was inextricably linked to progress in guaranteeing freedom of association and restoring democracy in the country. She expressed deep concern at the general lack of regard for fundamental worker and human rights and noted that her Government had as a consequence imposed broad sanctions against the regime under several legislative and policy vehicles. These measures would be kept under review and additional measures would be considered as long as the authorities failed to end the brutal repression of their own people. Her Government called for the release of all political prisoners and for genuine dialogue with Aung San Suu Kyi, the National League for Democracy and other democratic and ethnic groups on a transition to democracy. Such a dialogue could only have a positive effect on eliminating the scourge of forced labour in the country.

The Worker member of the Republic of Korea called on all ILO constituents to take action in line with the 2000 resolution. It was regrettable that more than 400 multinational companies continued to support directly or indirectly the military regime's repression of the Burmese people, the use of forced labour, the denial of freedom of association and other human rights abuses, by maintaining business ties with Burma. For the past 20 years, foreign investment had been flowing to Burma, 98 per cent of which went to the oil, gas and power sectors last year. Gas exports accounted for half of the country's exports in 2006 and the sales to its main buyer, Thailand, brought in US\$2.16 billion. The funds strengthened the military's capacity for repression because most business was carried out through joint ventures with the military or directed through military-owned and -operated companies. A "production-sharing contract" between foreign companies, many of which were partially or wholly government-owned, and the Myanmar Oil and Gas Enterprise (MOGE), specified how much the company had to pay the Burmese regime in fees and taxes.

For example the Yadana pipeline, a Chevron-led project carrying natural gas to Thailand, was the military regime's financial lifeline. Yadana gas production in 2007 amounted to approximately 758 million cubic feet per day, 650 million of which was exported. The Burmese military's estimated budget, which supported a massive armed force of 428,000 troops, could be completely funded by the revenues from the Yadana Project (about US\$972 million a year). Moreover, many human rights abuses occurred in the gas pipeline region, including murder and rape by pipeline security soldiers, forced conscription of porters for security patrols, land confiscation,

forced plantation programmes, and widespread theft of goods. Another example was the Shwe gas project, which brought in between US\$600 and \$850 million to the military regime. The Shwe gas consortium was composed of the South Korean company Daewoo International, state-owned companies from India and the Republic of Korea, and MOGE.

Many of the problems in the Burmese economy stemmed from the fact that investment in the oil and gas sector, and other extractive industries, did not generate significant employment nor ensured substantial transfer of skills or technology to local people. This implied that, while the benefits to the regime were great, benefits to Burma's people were very limited.

Whereas more and more governments, especially in the wake of the brutal crackdown on Burmese protesters in September 2007, did impose sanctions on Burma, the country's neighbours and other economic powers in the region seemed ever more eager to do business with the regime. The Republic of Korea, the Russian Federation and Singapore were some of the largest investors in the oil and gas sector last year, and China was the main foreign investor in the power sector (US\$281 billion). With respect to trade, investment, economic cooperation and political influence taken together, Burma's three immediate neighbours stood out as the main backers of the regime, and hence as the holders of the keys to the freedom of the Burmese people.

It was therefore crucial that all governments, international institutions, workers' and employers' organizations fully implemented the 2000 resolution, that targeted economic sanctions, in particular relating to import and export of goods, were imposed to stop the financing of the military regime, and that a total arms embargo was implemented as suggested by the European Union. The conclusions of the Committee should call for the adoption of an enhanced reporting mechanism and for a multi-stakeholder conference to be convened by the ILO to ensure full implementation of the 2000 resolution.

The Government member of India expressed his Government's satisfaction at the tangible progress that had been made and the further strengthening of cooperation between the Government of Myanmar and the ILO. The translation of the Supplementary Understanding and its publication on the web site of the Ministry of Labour was welcomed, as was the progress in the ILO Liaison Officer's work which was being facilitated by the Government of Myanmar. It was a matter of satisfaction that cases concerning forced labour were being resolved through the mutually agreed mechanism between the Government of Myanmar and the ILO. The institutional mechanism to address the issue of recruitment of under-aged soldiers was functioning effectively. India had always encouraged dialogue and cooperation between the ILO and the member States to resolve all outstanding issues. The ILO Director-General was commended for his efforts in assisting Myanmar to eradicate the practice of forced labour. His Government continued to remain strongly opposed to the practice of forced labour, which was expressly prohibited under the Constitution of India. The Government of India therefore welcomed recent developments and progress on the issue of the eradication of forced labour in Myanmar.

The Worker member of Italy expressed her concern about the ongoing implementation of the Supplementary Understanding and the impact of the recent humanitarian crisis on the use of forced labour. Persons associated with the complaints mechanism had expressed concerns over reports of harassment and detention; despite that, at its November 2007 session the Governing Body noted some progress in the operation of the Supplementary Understanding. At the March 2008 session, the Workers' group welcomed the extension of the trial period of the Supplementary Understanding, thereby recalling that rapid pro-

gress should have been seen by the present session of the Conference, in line with the decisions already taken by the Governing Body. Unfortunately, the decisions had not yet been implemented. Only on 2 May 2008, did the Government approve the translation of the Supplementary Understanding and its publication on the ministerial web site.

The Committee of Experts' conclusions underlined that there were obvious constraints and limits on the contribution that the complaints mechanism could make to the eradication of forced labour because of its structural limitations and that whilst valuable, it does not address the root cause of the problem of forced labour. This same preoccupation is shared by the Worker members. The Liaison Officer's report indicated that his activities are mainly concentrated on the implementation of the Supplementary Understanding, while his work should be focused primarily on the implementation of the recommendations of the Commission of Inquiry. In order to overcome such constraints, the need of putting more human and financial resources at his disposal was underlined.

To date, and despite the increase of forced labour, only 89 complaints had been received, many of which had been rejected by the authorities as minor community work or because they were considered to be beyond the mechanism's mandate. According to the workers, the rejection of some complaints might be in contradiction with the Committee of Experts' jurisprudence, for example, on land confiscation, which the Committee of Experts regularly considered to be a form of forced labour. In addition, while the junta accepted complaints of forced recruitment of children for labour, very few and irrelevant sanctions had been imposed on the military.

In such a situation, the lack of political commitment, the absence of information and of consequent awareness-raising initiatives, the physical inability of victims to complain, and the fear of reprisal constituted major obstacles for reporting. Furthermore, it was unacceptable that the Liaison Officer was not authorized to present complaints himself. Therefore, it was reiterated that the Committee's conclusions should reaffirm the following previous decisions: that a formal statement be published at the highest level and in all local languages stating that all forms of forced labour are prohibited and will be duly punished; that a wide network of complainant facilitators is urgently put in place including in the combat zones; that the Government urgently provide the reproduction of the Supplementary Understanding in all local languages and ensure wide dissemination and publication of awareness-raising materials; that the mechanism under the Supplementary Understanding remain fully functional with no further detention or harassment of complainant facilitators or others, that adequate penalties are enforced toward perpetrators, and that forced labour victims are able to access easily the complaints mechanism; and that the Liaison Officer is able to move freely throughout the country and is able to raise complaints himself.

The Burmese people were now living in a new intolerable situation which was not only a direct result of the cyclone, but also a result of the junta's inhuman actions, its imposition of a referendum with predefined results, its refusal to act, and its obstruction of the international community's help, causing an even greater humanitarian crisis.

Reports had already been received of forced labour being exacted by military and local authorities in the Irrawaddy Delta area. One example was the case of the Maubin displacement camp, where 1,500 men and women were forced to work in quarries. In the village of Nga-byama in the Southern Bogale township, authorities had forced survivors to cut trees and reconstruct roads. In Bogalay, soldiers had used local people for forced labour. All these examples confirmed the validity of the alarm raised by the Liaison Officer's report underlining the in-

creased risk of incidence of forced labour, child labour, human trafficking and migrant labour in the Irrawaddy Delta region. The Liaison Officer was thanked for his huge work, particularly in view of the situation and during the early recovery cluster work set up by the UN agencies present in Burma.

In this regard, the Committee's conclusions should emphasize the need for the promotion of Convention No. 29 and fair labour practices in the relief and reconstruction activities, through procedures involving the ILO to ensure respect for the Convention, and to include democratic organizations in the reconstruction process. More human and financial resources should be allocated to the ILO for such activities. It was unacceptable that under the pretext of the humanitarian crisis, fundamental human rights were being denied to the victims of the dictatorship and of the humanitarian crisis.

The striking tragedy in which the Burmese people found themselves struggling for their lives, their freedom, and their human rights needed a consistent and clear answer from the Committee and from the International Labour Conference as a whole. As the Commission of Inquiry had stated, the forced labour occurring in Burma was a crime against humanity. There was a need to act consistently using all means available through international criminal law and from previous Governing Body decisions. The Office should prepare a request for an advisory opinion from the International Court of Justice on the violation of Convention No. 29 because the Burmese people deserved it.

The Government member of Australia expressed the sympathy of his Government and the people of Australia to the people of Myanmar for the loss of life, suffering and devastation caused by cyclone Nargis. His Government stood ready to help the people of Myanmar in their time of desperate need and was pleased to have been able to make a contribution to the relief effort. The damage caused by the cyclone was extensive and reconstruction in the affected areas, particularly the Irrawaddy Delta, would be a huge task. It would be critical that forced and child labour were not used in the reconstruction effort. The international community had already made a generous contribution to the relief efforts in the affected areas. If the Government of Myanmar would engage constructively with the international community and allowed relief agencies full access to the affected areas, a much greater level of international assistance would be possible.

He expressed his Government's continuing appreciation of the ILO's ongoing efforts to encourage the Government of Myanmar to respect its international obligations under the Convention. In this regard, his Government paid tribute to the efforts of Executive Director, Mr Kari Tapiola, to the Special Adviser, Mr Francis Maupin, and to the Liaison Officer, Mr Steve Marshall. They had all continued to seek out progress on this vital issue for the benefit of the people of Myanmar and his Government would like to extend its full support and encouragement to them.

The mechanism established by the Supplementary Understanding had played a role in providing an avenue for a limited number of people in Myanmar to allege violation of their right not to be forced into labour. Through the dedication and attention of the Liaison Officer, several people had benefited from the operation of the mechanism. However, the results achieved by the mechanism to date had been modest at best.

The Government of Australia remained concerned that the limited number of cases reflected a lack of awareness in Myanmar of the operation of the mechanism and of the people's right to complain, the logistical difficulty people faced in registering a grievance and their fear of reprisals. Further, he expressed the Government's grave concern about the situation of six labour activists who had been imprisoned in 2007 for sedition, and for U Thet Wai, who

was arrested on 24 February 2008, for being in possession of information on forced labour issues. It was further concerned that the outcome of many of the cases brought to the ILO's attention appeared far from satisfactory. Only one case had resulted in prosecutions being pursued by the Government. The ILO's assessment that, "There continues to be differences of opinion as to the appropriate remedy for complaints and punishments for perpetrators", was worrying and indicated a continuing lack of commitment by the Government and authorities of Myanmar to see justice done.

The Australian Government shared the ILO's assessment that the mechanism could play an important role in helping the ordinary people of Myanmar and address the scourge of forced labour. However, a far greater commitment from the Government of Myanmar would be required to achieve this end.

As an immediate sign of this commitment, his Government strongly urged the Government of Myanmar to make readily available to all of its citizens an unambiguous public statement that all forms of forced labour were prohibited. It also urged the Government of Myanmar to ensure that adequate publicity was given to the Supplementary Understanding in appropriate languages. In this regard, it was very important that the Government made available a suitable translation of the Understanding in the Myanmar language as soon as possible. Any further delay implementing these basic steps could only be interpreted in a most negative way.

Finally, he noted that the mechanism could only ever be part of a broader solution, and the recommendations of the Commission of Inquiry showed the direction that any genuine attempt by the Government would take to meet its international obligations. To reiterate, the Commission recommended that the Government of Myanmar, without delay:

- bring its legislation into conformity with the Forced Labour Convention;
- cease its exaction of forced labour, particularly by the military;
- ensure the public is informed of the illegality of forced labour; and
- strictly enforce the criminal penalties in its legislation pertaining to the exaction of forced labour.

The Worker member of Bangladesh expressed solidarity with the Burmese people who were fighting for their legitimate rights and democracy. More recently, the population had been severely affected by cyclone Nargis. Unfortunately, the Government of Myanmar had been preventing international aid efforts, while violations of Convention No. 29 continued. Bangladesh, as a neighbouring country, was receiving large numbers of Burmese refugees. This placed a heavy burden on Bangladesh which itself was a least developed country. All trade unions, employers' organizations, governments, as well as the ILO Director-General, were called upon to take the steps necessary to end forced labour in Myanmar.

The Government member of the Russian Federation expressed his Government's sympathy to the people of Myanmar for the loss of life and suffering caused by the natural disaster and wished a prompt reconstruction of the affected regions. His Government noted with satisfaction that the Supplementary Understanding had been extended for a further 12 months. It welcomed the following developments which confirmed that constructive dialogue between the Government of Myanmar and the ILO was taking place: the creation of a working group within the Ministry of Labour to examine complaints of forced labour, and involvement of the Ministry of Defence in examination of such complaints; two ILO officials were working in Myanmar, thus enhancing the effectiveness of the

ILO's actions; the recently adopted Constitution explicitly provided for the prohibition of forced labour; and the publication of the text of the Supplementary Understanding on the official web site of the Ministry of Labour. The ILO and the Government of Myanmar should therefore continue constructive cooperation with a view to ensuring implementation of Convention No. 29.

The Government member of Cuba welcomed the results so far achieved to comply with the objectives fixed by Convention No. 29. He further underlined that such results were exclusively accomplished thanks to the cooperation between the ILO and the Myanmar authorities. The coercive measures, public condemnations, blockades and other punitive actions, far from contributing to the improvement of the conditions required to fulfil the objectives set forth in the ILO's Conventions, had a counter-productive effect. All conclusions to be adopted by the Committee should be based on the continuity of technical cooperation, as well as on the open and unconditioned dialogue with the Myanmar authorities.

The Worker member of Indonesia stated that forced labour remained among the most pervasive human rights violations in Burma, involving harassment, threats and physical abuses. Forced labour undermined the livelihoods of whole communities and led to the complete collapse of village economies, large-scale displacement and refugee flows. Both the army and local authorities continued to force thousands of people to work in brick baking, construction of roads and military facilities and agriculture, including plantation for biofuel production. Portering services for military purposes also continued. Many forced labourers who had escaped from the army reported that hundreds of people had been used as porters after having served prison sentences.

In October 2007, in the Tangoo District, the Military Operation Command No. 9 obliged the villagers of Play Has Loh to carry out work for the army, including cutting of bamboo poles and carrying of soil. The Military Operation Command No. 5 forced hundreds of villagers to carry military supplies, and to clear an army camp and roads. On 14 November 2007, the Light Infantry Battalion 599 forced hundreds of villagers to build army offices and camps in the Kler Law Htoo District. Other examples of forced labour exacted by the army occurred in December 2007 in Hakha and Mantaw townships in Chin State, and in January 2008 in Mong Hsat in Shan State. Forced labour was essential for the survival of the army and serious political commitment was needed to stop this vicious circle.

In November 2007, the army decided to establish a new model village in Nurullah, Arkan State. Following confiscation of lands, villagers were forced to prepare the land for construction and carry building materials. In January 2008, the villagers were ordered to complete the construction of 120 houses within a month. By the end of April 2008, 200 houses had been built. None of the 200 to 270 labourers from nine villages that were used in this project had been paid.

The approaching monsoon season would create a dramatic situation in the delta region. The authorities were bringing cyclone victims back to their destroyed villages with no aid supplies and there were reports of new cases of forced labour imposed by the army and local authorities in the devastated areas.

The ILO and its member States were urged to take the most effective measures for the immediate and full compliance with Convention No. 29 and the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). The world could not sit by while the Burmese people were suffering. The Government must implement fully the recommendations of the Commission of Inquiry. As a matter of urgency, the military, particularly the regional commanders, and the local authorities must change the existing laws, behaviour and practices. It

was crucial that the authorities made an unambiguous public statement in all local languages concerning the prohibition of forced labour and that a consistent budget for public works was defined. Further, respect for freedom of association must be ensured for all workers to allow them to organize and denounce forced labour. The Government and the international institutions were called upon to assist in the relief and reconstruction programmes. All trade union activists and political prisoners, including Aung San Suu Kyi, should be released.

The Government representative of Myanmar noted that a number of speakers had acknowledged the efforts made by its authorities and the progress achieved so far. Those who had expressed different views had their own agendas, attempting to undermine the Government's efforts. The Government representative also expressed the hope that the Committee members would henceforth refer to his country by its official name as included in the new Constitution which had been approved by referendum.

The Worker members wished to focus on the conclusions, which should, in their view, include the following points: a request to liberate Aung San Suu Kyi as well as trade union activists and political prisoners who had exercised their right to freedom of expression and freedom of association; the recognition of the Federation of Trade Unions of Burma (FTUB), which should no longer be considered as a terrorist organization by the authorities; the immediate cessation of harassment and the liberation of persons submitting complaints of forced labour. Finally, the conclusions should also deplore the fact that persons having recourse to forced labour did not incur penal sanctions.

Whereas recalling the need to implement urgently the recommendations formulated by the Commission of Inquiry ten years ago, the Worker members underlined that the Government also needed to implement fully all decisions taken in the past by various ILO bodies, including the 2006 conclusions of the Selection Committee and subsequently reaffirmed by the Governing Body. Some of the following issues needed to be subject to serious consideration: the Office should call on governments, employers, international organizations, financial institutions and international or regional banks, to modify or suspend, according to their mandates, their direct or indirect relations and programmes with the enterprises of the Government, of the military or of the Burmese private sector; a reporting mechanism should be established, on the basis of a user-friendly questionnaire, concerning the measures to be implemented in accordance with the recommendations contained in the 2000 resolution; conferences including the various actors should be organized in order to discuss the best way to enforce the resolution of 2000; measures available under international criminal law should be applied to punish those guilty of imposing forced labour; the ILO and governments should inform the public through a special page on the ILO's web site; the Government should put in place a network of facilitators in order to examine complaints, at the same time ensuring the increased implementation at the national level, including in the conflict areas, of the Supplementary Understanding, through its translation in all local languages, as well as through public awareness campaigns; the ILO Liaison Officer should be able to submit complaints and to effectively make the necessary investigations.

The Worker members requested that governments not recognize the new Constitution. Furthermore, they reserved the possibility of submitting to the International Court of Justice a request for an advisory opinion regarding the consequences in international law of the violation by Burma of Convention No. 29.

Concerning the tragic humanitarian situation, the Worker members, by way of conclusion, requested the Office to ensure – through promotional measures and information on cases of good practice – the implementa-

tion of Convention No. 29 in the context of the country's reconstruction activities. In this regard, the Office should enjoy increased human and financial resources, as well as the cooperation of other international agencies in order to monitor compliance with Convention No. 29. The Government should allow all democratic organizations to participate freely in the reconstruction activities, as well as inform the ILO's Governing Body, at its next session in November 2008, of any measures taken to implement the Committee's conclusions.

The Employer members stated that the Government's response had been lacking any serious commitment to end forced labour. The Government had failed to take the steps necessary to this end. Widespread forced labour continued to exist and the right to freedom of association was being violated with impunity, contrary to Myanmar's international obligations. The Government did not appear to understand the consequences of its human rights abuses. Violations of human rights were not only harmful for the country's citizens, but also caused the Government to lose its moral authority to govern the country and its credibility within the community of nations. In addition, disrespect of human rights impeded economic development, as broad-based and continuous investment would not take place where democracy and civil liberties were inexistent and where human development remained at a low level. The Employer members expressed their profound concern that forced labour in Myanmar continued as widespread as before. Concrete and verifiable evidence that the practice of forced labour was being eradicated was needed on an urgent and comprehensive basis.

Conclusions

The Committee extended its sympathies and condolences to the people of Myanmar in the wake of cyclone Nargis. It expressed its sincere hope that the continuing humanitarian needs would be met and that the required rehabilitation and reconstruction work would be undertaken, without any use of forced labour and in a spirit of cooperation and constructive dialogue, in full respect of civil rights and international labour standards.

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 26 February 2008 for a further 12 months. The Committee also noted the discussions and decisions of the Governing Body of March 2007, November 2007 and March 2008. It also took due note of the statement of the Government representative and the discussion that followed.

The Committee noted that certain steps had been taken in the application of the Supplementary Understanding, and that some awareness-raising activities had taken place since the last session of the Conference in June 2007. However, it expressed its concern that these steps were very small and considered that much more needed to be done with commitment and urgency. In particular, the Government should, as requested by the Governing Body, make, without delay, an unambiguous statement at the highest level that the exaction of forced labour was prohibited and that violators would be prosecuted and convicted. It also expressed concern at the restrictive provisions in the newly adopted Constitution which could raise issues of compliance with Conventions Nos 29 and 87 ratified by Myanmar.

The Committee expressed its profound concern that forced labour in Myanmar, including the recruitment of children into the armed forces, remained as widespread as before, as reflected in the observation of the Committee of Experts. None of the recommendations of the Commission of Inquiry had yet been implemented, and the exaction of forced labour continued to be widespread, particularly by the army. Any instructions to cease the practice of utilizing

forced labour appeared to have been disregarded regularly and with impunity. Similarly, although it was now some 15 months since the coming into effect of the Supplementary Understanding, a translation of it had only recently been approved for distribution. The Committee continued to be concerned that awareness of the existence of both the legal provisions against forced labour (Order 1/99) and the complaints mechanism under the Supplementary Understanding, remained very low. The Committee urged the Government to give early approval to the translation, in all local languages, of an easily understandable brochure, for wide public distribution, explaining the law and the procedure for lodging a complaint under the Supplementary Understanding.

The Committee took note that the complaints mechanism on forced labour continued to operate and that the authorities were investigating cases referred to them by the Liaison Officer. However, the Committee expressed its continued concern that penalties imposed on perpetrators of forced labour had, in general, not been imposed under the Penal Code. As a result, no criminal convictions of members of the armed forces had taken place.

The Committee noted that an international professional staff member has been appointed to assist the Liaison Officer. The Committee emphasized that it was critical that the Liaison Officer had sufficient resources available to undertake his responsibilities. The Committee underlined that there was an urgent need that the Government accepts a strengthened network of facilitators to deal with complaints from all over the country. The Committee noted with concern the reported cases of retaliation and harassment against complainants and volunteer facilitators who cooperated with the Liaison Officer. Such action was a fundamental breach of the Supplementary Understanding. The Committee called on the Government to ensure that all retaliation and harassment – based on any legal or other pretext – ceased with immediate effect and that the perpetrators were punished with the full force of the law.

The Committee recorded with extreme concern that many people remain in prison for exercising their rights to freedom of expression and association. The Committee called for the immediate release of these persons and, in particular, for the release of Daw Su Su Nway, U Min Aung and U Thurein

Aung and his associates: U Kyaw Kyaw, U Shwe Joe, U Wai Lin, U Aung Naing Tun and U Nyi Nyi Zaw. These persons all had links with the ILO and were labour activists legitimately seeking to achieve acceptance of international labour standards and, in particular, those ratified by the Government of Myanmar. The Committee re-emphasized the expectation of the Governing Body that U Thet Wai remain free from further persecution and detention.

The Committee also stressed the need to allow all citizens of Myanmar to fully exercise their civil rights, and called on the Government to immediately end the detention of Daw Aung San Suu Kyi. It also recalled the recommendations of the Committee on Freedom of Association, in March 2008, with respect to trade union rights and the recognition of trade union organizations, including the Federation of Trade Unions of Burma (FTUB).

The Committee also recalled the continued relevance of the decisions adopted by the Conference in 2000 and 2006 concerning compliance by Myanmar with Convention No. 29.

The Committee strongly urged the Government to take all the necessary measures to give full effect to all of the recommendations of the Commission of Inquiry, without any further delay. It urged the Government of Myanmar to provide full information to the Committee of Experts in time for its next session later this year, including concrete and verifiable evidence of action taken with a view to the full implementation of the recommendations of the Commission of Inquiry.

The Worker members stated, in their acceptance of the conclusions, that they also understood that the reference in the conclusions to the discussion and decisions of the Governing Body in March 2007, November 2007 and March 2008, and to the decisions adopted by the Conference in 2000 and 2006 concerning compliance by Burma with Convention No. 29, effectively incorporated the Worker members' suggestions for this year's conclusions, including an International Court of Justice advisory opinion at the necessary time. The Worker members also reiterated the need for the ILO Liaison Officer to be able to submit complaints and make the necessary investigations.

Document D.5

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

I. Follow-up to the 96th Session (2007) of the International Labour Conference

1. Following the 96th Session (2007) of the International Labour Conference, the Office continued discussions with the Government of Myanmar on the implementation of the recommendations of the Commission of Inquiry, including through the complaints mechanism established on a trial basis by the Supplementary Understanding between the Office and the Government, which had been concluded on 26 February 2007. On 26 February 2008, the trial period was extended for another 12 months.
2. Reports on the application of the Supplementary Understanding were submitted to the Governing Body at its 300th (November 2007) and 301st (March 2008) Sessions. Documents GB.300/8, GB.300/8(Add.), GB.301/6/1 and GB.301/6/2 are attached to this report. It is also important to recall that over the past 12 months, two events have had an impact on the framework in which the ILO activities are carried out. They are the civil unrest and its suppression in September–October 2007 and the devastation caused by Cyclone Nargis in early May 2008.
3. In the conclusions of its 300th Session, the Governing Body noted progress made in the operation of the Supplementary Understanding, including educational activity jointly undertaken by the Ministry of Labour and the ILO Liaison Officer. However, it did so against the backdrop of the Government's crackdown on the peaceful protests of September 2007 as well as the detention and imprisonment of persons who had exercised their fundamental rights of expression and freedom of association. The Governing Body noted with concern reports of harassment and detention of persons associated with the application of the complaints mechanism. It called for the release of those persons, together with the issuance of a highest level statement which would unambiguously reconfirm that forced labour, including the recruitment of child soldiers, is illegal and the Government of Myanmar remains committed to its elimination.
4. At its 301st Session, the Governing Body welcomed the extension of the trial period of the Supplementary Understanding. It noted with serious concern however that a number of persons associated with the application of the complaints mechanism remained in detention, as did six labour activists who after their detention on 1 May 2007 were finally sentenced on 7 September 2007, receiving long prison terms for exercising their freedom of association rights (see also CFA 349th Report, GB.301/8, Case No. 2591). The Governing Body again called for the release of the detained persons, Min Aung and Su Su Nway, as well as the six labour activists. It further called on the Government to approve the translated text of the Supplementary Understanding for free distribution to administrators, the military and the general public, to increase awareness of the rights and responsibilities it contains. The Governing Body repeated its call for a high-level public statement on the Government's policy on the prohibition of forced labour.

5. The Governing Body further took note of the Government's acceptance of the appointment of an additional international staff member to support the Liaison Officer. It also noted the undertaking of a joint presentation to a deputy township judges' refresher training course.

II. Activities since the 301st Session (March 2008) of the Governing Body

6. On 2 May 2008, the Cabinet of the Government of Myanmar approved a translation of the Supplementary Understanding for distribution for awareness-raising purposes. A draft ILO text for a proposed brochure, in accessible language, is currently under consideration by the Government.
7. The first of two five-day training for trainers' courses, led by the Assistant to the Liaison Officer, in association with UNICEF and the ICRC, has been successfully completed. Its 37 participants were officers and non-commissioned officers of the Recruitment Regiment, the Basic Training Camps, and personnel of the Social Welfare Department. The second programme of this kind is scheduled for the last week of June. It will be followed by the participants leading multiplier training courses around the country.
8. The Liaison Officer undertook a joint mission with the Ministry of Labour on 20–21 May 2008. This mission followed the receipt of the report of the Government's inquiry into a complaint of forced sentry/guard duty. It was agreed to in order to clarify some areas which remained unclear and also for the purpose of awareness raising. It was ascertained that following the lodging of the complaint, all of the activity that was subject to the complaint had been stopped. One army officer has been reprimanded for his actions. A further recommendation for disciplinary action has been made, and copies of interview statements in respect of the alleged detention/harassment of the case facilitator have been requested. The Government is expected to respond on these matters.
9. In April and early May 2008, the Government proceeded with the preparations for the referendum for the adoption of a new Constitution. The referendum went ahead as planned on 10 May 2008 although the Government postponed the voting for people in 47 townships affected by Cyclone Nargis until 24 May 2008. On 16 May, the Government publicly announced an interim result, declaring a 99.07 per cent turnout with 92.4 per cent voting their support for the Constitution, 6.12 per cent voting against and 1.49 per cent of votes not being accepted. There has been considerable commentary on both the process adopted and the content of the new Constitution. The Constitution contains specific articles on the right to freedom of association, freedom of expression and the right to organize. The article banning the use of forced labour contains qualifications which could raise the question of its conformity with the Forced Labour Convention, 1930 (No. 29). Time and future events will determine whether, and how, the rights contained in the two fundamental ILO Conventions ratified by Myanmar will be applied in practice following the adoption of the Constitution. No new high-level statement on forced labour as requested by the Governing Body has been made; the Government has considered that the new Constitution restates the commitment to the elimination of forced labour.
10. At the time of writing, Min Aung, Su Su Nway and the six labour activists sentenced in September 2007, all remain in prison. The Liaison Officer has requested permission to visit them but this has not as yet been agreed. The number of charges against one of the facilitators, U Thet Wai, who was freed from detention in early March 2008 has been reduced, but the court hearings on the remaining charges continue. The Government has been reminded that the Governing Body underlined that U Thet Wai should remain out of prison, as the initial charges against him were related to his contacts with the ILO.

III. The functioning of the Supplementary Understanding

11. As of 19 May 2008, a total of 89 complaints have been received under the Supplementary Understanding. Of those complaints, 46 have been assessed and submitted to the Government for investigation and action, while 36 have been assessed as not being within the mandate or not sufficiently supported or substantiated for submission. At present seven complaints are under assessment towards acceptance or otherwise for submission. The number of complaints dropped immediately after the unrest and its suppression in September–October 2007, but complaints have been steadily received since then. It is still too early to assess what effect Cyclone Nargis has had.
12. Of the 46 cases submitted to the Government, 28 cases have been closed following an investigation by the authorities. In two of these cases, a note has been made that the Liaison Officer considers the action taken by the Government against the perpetrators as inadequate. Responses continue to be in discussion in eight cases, and responses have not yet been received to the original letter of complaint in respect of the remaining ten cases. In 15 of the closed cases, recommendations have been made towards improving ongoing practice.
13. The complaints submitted can be broken down into the following categories:
 - (a) forced labour under the instruction of civil authorities – 17 cases;
 - (b) forced labour under the instruction of military authorities – five cases;
 - (c) recruitment of minors into the military – 21 cases;
 - (d) complaints concerning the application of the Supplementary Understanding – harassment/detention – three cases.
14. In general the Ministerial Working Group, chaired by the Deputy Minister of Labour and supported by the Department of Labour, has responded in a reasonably timely manner to the complaints that were submitted. However, it must also be said that the absence of a translation of the Supplementary Understanding has acted to keep awareness of the rights it contains low, and the incidence of harassment and detention of persons associated with its application has severely limited its operation. The number of complaints therefore cannot be seen to reflect the size of the issue.
15. There are continuing practical problems in the physical ability of victims of forced labour or their families to complain. The ILO Liaison Officer is in Yangon, and the facilities available consist of one additional international professional staff, supported by six local staff contracted to the ILO for interpretation, administrative and transport support purposes. Myanmar is a very large country with somewhat unreliable communication systems and where it is not easy for citizens to travel. Therefore, a network of complaints facilitators is necessary. Facilitators undertake this activity because they are socially aware and committed to support the elimination of forced labour, including the use of child soldiers. They are not paid and receive no financial support or reimbursement of their costs in accepting this responsibility. They also accept a level of risk of potential harassment and even detention.
16. Some facilitators belong to political or social organizations while others are ordinary committed individuals. The Government has maintained on a number of occasions that facilitators may use the provisions of the Supplementary Understanding as a means of undermining the State by actively seeking out and encouraging complaints, and as a means to gain protection for themselves under the non-retribution provision of the Supplementary

Understanding. The Liaison Officer has in response stressed the fact that he accepts, and exercises, his responsibility to properly assess every complaint to ensure as best as possible its legitimacy. This includes verification that there is a genuine complaint and a willing complainant, the critical issue being the substance of the complaint not the identity or motivations of the personality. In respect of protection, the Liaison Officer has the responsibility to exercise judgement in the acceptance of complaints of reprisal/harassment. However, he must also be convinced that the alleged offences are genuine.

17. A number of recent complaints concerned obliging farmers to change their crop under threat of penalties, including the loss of their land. The Government has stressed that its actions in this regard are due to the importance of agriculture for the development of the national economy. It has for some time been actively building dams for both electricity generation and irrigation. It has expressed the view that some complaints have been encouraged by politically motivated facilitators seeking to undermine its policy of agricultural enhancement. The Liaison Officer has assured the Government that complaints that he has received and submitted further are not due to any opposition to government policy. Many of the farmers concerned have welcomed the irrigation projects and enhanced income prospects. The complaints have concerned the insistence of certain authorities that farmers change the crop on all of their land notwithstanding whether or not it is appropriate to do so in light of the need to rotate crops, the soil type and the particular specifications of the land in question. In other instances complaints have related to the requirement that crops be changed to meet the supply demands of government-owned food processing and refining facilities without consideration of the economic consequences of such a change to the farmer.
18. In respect to the issue of child soldiers and recruitment of minors, the Government has raised concerns that facilitators are encouraging parents to make a complaint when in fact they and their child are in favour of the child adopting a military career. The Government claims to have ascertained that most children subject of complaints were volunteer recruits who entered the military of their own free will. It has further objected to the lodging of retrospective complaints of recruitment taking place before the Supplementary Understanding was signed. The Liaison Officer has advised that even if a child does “volunteer”, under the law no person under 18 years can join the Myanmar military services. Whilst some young men do offer themselves for recruitment, others are coerced, tricked or forced to do so. It is the recruiting officer’s responsibility to apply the law and regulations and to verify the applicant’s age prior to accepting a recruit. The Liaison Officer has also noted that notwithstanding the facts of a particular case, the penalty for military personnel for recruitment of minors has at most been a serious reprimand on the officer’s personal file. The Liaison Officer has considered that this is not credible, as there is an expectation that the punishment fits the crime. In particularly blatant cases of forced recruitment or the recruitment of very young children, the full force of either penal or military law should be applied with protagonists receiving the penalties provided under those laws, i.e. fines and/or imprisonment.
19. The question of whether an illegally recruited child can legally be considered a deserter if he tries to run away and go back home has also been discussed. There is a continuing tendency for underage recruits who have tried to go home to be considered absent without leave or deserters and to be punished, including being imprisoned, notwithstanding that this is both legally flawed and constitutes a severe human rights violation.

IV. The continuing situation

20. Myanmar has been severely hit by a major cyclone, with the loss of many tens of thousands of lives (the final death toll is yet to be determined) and major dislocation of a

huge number of people. Every sympathy is due to all affected, as reflected by the large humanitarian response from all over the world. It is critical at this time that in addition to making every effort to restore the lives of victims to some form of normality, both the Government and its partners, including the UN and all relief agencies and actors, are conscious of the increased risk of incidences of forced labour, child labour, human trafficking and migrant labour as the authorities and individuals come to grips with the sheer size of the tragedy and the ongoing implications for the population in the affected areas. An early return to relative normality and the ability of individuals and families to generate sustainable income through access to decent work to support their and the nation's recovery is critical. The ILO Liaison Officer and his team in Yangon are currently working with others, including the authorities and the people of Myanmar, to help to ensure that the reconstruction effort does not involve the use of forced labour in any of its forms.

21. The UN Country Team is working closely together. The ILO is supporting a range of agencies working within the cluster system that has been adopted to achieve coordinated and integrated responses to the various post-crisis issues. Across the board, attention is being given to ensure that relief and recovery operations do not inadvertently accommodate forced labour or other human rights abuses. Under the protection cluster, particular emphasis is being placed on preventing displaced and orphaned children from dropping into forced labour, and in the early recovery cluster programming, emphasis is being placed on the promotion of sound employment practice to avoid forced labour.
22. The ability to raise public awareness as to citizens' and workers' rights under both Myanmar law and the Supplementary Understanding will be significantly enhanced by the publication and distribution of the recently approved translation of the text of the Supplementary Understanding, supported by a simply worded brochure which hopefully can be approved and carried out shortly. The continuation of targeted training activity and the undertaking of joint missions in follow-up to specific complaints will also assist to this end. However, awareness of the law and the rights and responsibilities under it is only one part of the equation. It is critical that there is an increased ability for victims of forced labour complaints to physically submit their complaints directly or indirectly, with the help of facilitators, and to be able to do so without fear of retribution. The Government has agreed in principle to a second round of training sessions within the administrative authorities, and this will go some way towards achieving this objective. However, given that the facilities available to the Liaison Officer are unlikely to be expanded, the continued development of a network of facilitators is vital. Similarly important would be an assurance by the Government that victims of forced labour can complain and facilitators can support the complaints without fear of reprisal.

Yangon, 23 May 2008

Appendices

Supplementary Understanding dated 26 February 2007

Extension of the Supplementary Understanding dated 26 February 2008

Copy of the register of cases as of 19 May 2008

Supplementary Understanding

In the framework of the Conclusions adopted by the 95th Session of the International Labour Conference (Geneva, June 2006) in order to give full credibility to their commitment to effectively eradicate forced labour, the Government of the Union of Myanmar and the International Labour Organization have agreed to adopt the present Understanding relating to the role of the Liaison Officer with respect to forced labour complaints channelled through him/her, which supplements the "Understanding between the Government of the Union of Myanmar and the International Labour Office concerning the Appointment of an ILO Liaison Officer in Myanmar" (Geneva, 19 March 2002) as follows.

Object

1. In line with the recommendations of the High-Level Team (Report, GB.282/4, 282nd Session, Geneva, November 2001, para.80) to the effect that victims of forced labour should be able to seek redress in full confidence that no retaliatory action will be taken against them, the object of the present Understanding is 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 Forced Labour Convention No.29 (1930). This Understanding is without prejudice to other steps to accommodate the requests of the competent supervisory bodies of the ILO.

I. Treatment of complaints of forced labour

2. In accordance with the objective of the appointment of a Liaison Officer, the functions assigned, and the facilities extended to him/her under the March 2002 Understanding, any person or their representative(s) bona fide residing in Myanmar shall have full freedom to submit to the Liaison Officer allegations that the person has been subject to forced labour together with any relevant supporting information.

3. In accordance with his/her role of assisting the authorities to eradicate forced labour, it shall be the task of the Liaison Officer and/or any person that he/she may appoint for that purpose to examine the complaint objectively and confidentially, in the light of any relevant information provided or that he/she may obtain through direct and confidential contact with the complainant(s), their representative(s) and any other relevant person(s), with a view to making a preliminary assessment as to whether the complaint involves a situation of forced labour.

4. The Liaison Officer will then communicate to the relevant Working Group established by the Government of the Union of Myanmar those complaints which he/she considers to involve such a situation of forced labour, together with his/her reasoned opinion, in order for these cases to be expeditiously investigated by the most competent

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civilian or military authority concerned as appropriate. In minor cases the Liaison Officer may at the same time provide suggestions on ways in which the case could be settled directly among those concerned.

5. The Liaison Officer shall at all times during and after the treatment of the case have free and confidential access to the complainant(s), their representative(s) and any other relevant person(s) to verify that no retaliatory action has been taken. The Liaison Officer shall be informed by the authorities of any action taken against the perpetrator(s) with its motivation. In the event that penal action is taken he/she will have full freedom to attend any relevant court sittings personally or through a representative, in accordance with law.

6. The Liaison Officer will report through the ILO Director-General to the Governing Body at each of its sessions on the number and type of complaints received and treated under the above provisions as well as their outcome. He/she will provide at the end of the trial period his/her evaluation as to whether the scheme has been able to fulfill its objective, any obstacle experienced, and what possible improvements or other consequences could be drawn from the experience, including its termination. These interim and final reports will be communicated in advance to the authorities for any comments they would like to make.

II. Guarantees and facilities to be accorded to the Office in the discharge of the above responsibilities

7. The facilities and support extended to the Liaison Officer under the March 2002 Understanding and the present Understanding shall include timely freedom to travel for the purpose of establishing the contacts referred to in paragraph 3. While the designated representative of the Working Group may accompany the Liaison Officer, assist him/her at his/her request or otherwise be present in the area he/she is visiting in particular for security reasons, this presence should in no way hinder the performance of his/her functions, nor should the authorities seek to identify or approach the persons he/she has met until such time as he/she has completed his/her task under paragraph 3.

8. The two sides recognize that appropriate steps are to be taken to enable the Liaison Officer or his/her successor to effectively discharge the additional work and responsibilities arising out of this Understanding. The necessary adjustments will be made to the staff capacity available to him/her in a reasonable time, to meet the workload after due consultation.

9. Complaints submitted under the present Understanding shall not be a ground for any form of judicial or retaliatory action against complainant(s), their representative(s) or any other relevant person(s) involved in a complaint, at any time either during the implementation of the arrangements in the present Understanding or after its expiration, whether or not the complaint is upheld.

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III. Time frame and trial period

10. The arrangements in the present Understanding shall be implemented on a trial basis over a period of 12 months that may be extended by mutual agreement.

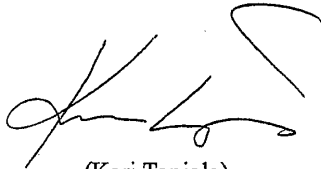
11. It will then, subject to any modification that may appear appropriate and acceptable to both parties, either be consolidated or terminated in the light of the evaluation referred to in part I.

12. During the trial period, in the event that either party fails demonstrably to fulfill its obligations under the March 2002 Understanding or the present Understanding, the other party may terminate the mechanism by giving one month's notice in writing.

IV. Miscellaneous

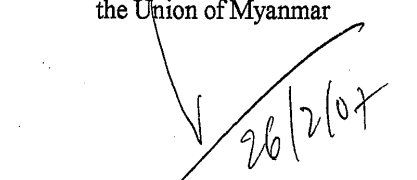
13. The Government of the Union of Myanmar and the International Labour Organization shall give adequate publicity to the present Understanding in the appropriate languages.

For the International Labour Organization



(Kari Tapiola)
Executive Director

For the Government of
the Union of Myanmar



(Nyunt Maung Shein)
Ambassador/Permanent Representative

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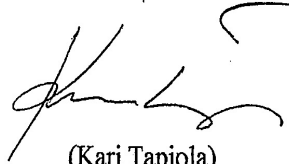
Minutes of the Meeting

The text, attached hereto, reflects the agreement between the Government of the Union of Myanmar and the International Labour Organization on a Supplementary Understanding relating to the role of the Liaison Officer with respect to forced labour complaints channelled through him/her, which supplements the "Understanding between the Government of the Union of Myanmar and the International Labour Office concerning the Appointment of an ILO Liaison Officer in Myanmar" (Geneva, 19 March 2002).

It is understood that:

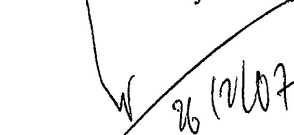
1. In connection with operative paragraph 1, last sentence, the Understanding cannot effect constitutional obligations under ratified Conventions, including reporting obligations under article 22 of the Constitution, and thus cannot prejudice the responsibilities that the competent supervisory bodies (Committee of Experts and the Committee on the Application of Conventions and Recommendations of the ILC) are called upon to discharge in that connection;
2. In connection with operative paragraph 4, the ILO agrees that in line with the whole purpose of the mechanism, and the specific concern reflected in this paragraph with respect to the subsequent investigation of the complaint by the Myanmar side, the assessment of the Liaison Officer should be carried out expeditiously;
3. The original of this Understanding has been written and signed in English. If this Understanding is translated into a language other than English, the English version shall govern and prevail;
4. This Understanding shall enter into force upon its signature by the authorized representatives of the parties.

For the ILO



(Kari Tapiola)
Executive Director
Standards and Fundamental Principles
and Rights at Work
International Labour Office
Geneva

For the Union of Myanmar



(Nyunt Maung Shein)
Ambassador
Permanent Representative
Permanent Mission of
the Union of Myanmar
to the United Nations and other
International Organizations
in Geneva

Geneva, 26 February 2007

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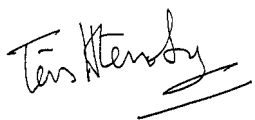
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**An Agreement for Extension to the Supplementary Understanding and
its Minutes of the Meeting dated 26th February, 2007, done at
Geneva**

This Agreement is hereby concluded between the Government 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) and the Minutes of the Meeting dated 26th February, 2007, (hereinafter Minutes of the Meeting) it is herewith agreed as follows:-

- 1. Both parties agreed to extend, on the same trial basis, the SU and its Minutes of the Meeting being an integral part of the SU, for one year with the extension period commencing on 26th February, 2008, to the day one year thereafter being 25th February, 2009.**
- 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 Governing Body in accordance with its conclusions at its 300th Session.**

This Agreement is done at Nay Pyi Taw, the Union of Myanmar on the 26th day of February, 2008.



**(Brig-Gen. Tin Tun Aung)
Deputy Minister
Ministry of Labour
Government of the Union of Myanmar**



**(Mr. Kari Tapiola)
Executive Director
International Labour Office**

Copy of the register of cases as of 19 May 2008

Register of Cases

Case	Date received	Accepted	Intervention-date	Status	Comments
001	28-Feb-07	Yes	9-Mar-07	Closed	Prosecution- 2 x imprisonment 1x acquitted
002	28-Feb-07	Yes	29-May-07	Closed	Child Released, disciplinary action-formal reprimand
003	5-Mar-07	No		Closed	Not related to mandate (worker welfare issue).
004	13-Mar-07	Yes	20-Mar-07	Closed	Not forced recruitment-under age-discharged to parents
005	29-Mar-07	No		Closed	Not related to mandate (land issue).
006	6-Apr-07	No		Closed	Not related to mandate (pension issue).
007	6-Apr-07	No		Closed	Not related to mandate (pension issue).
008	6-Apr-07	Yes	16-May-07	Closed	Compensation paid. Instigator dismissed.
009	9-Apr-07	Yes	10-Apr-07	Closed	Civil Sanctions and reprimands
010	9-Apr-07	No		Closed	Insufficient basis to proceed at this stage.
011	19-Apr-07	No		Closed	Insufficient information at this stage
012	19-Apr-07	No		Closed	Not related to mandate (employment dispute).
013	23-Apr-07	No		Closed	Complaints unwilling to be identified
014	23-Apr-07	No		Closed	Complaints unwilling to be identified
015	23-Apr-07	Yes	16-May-07	Open	Further verification in process
016	25-Apr-07	No		Closed	Not related to mandate (employment dispute).
017	26-Apr-07	Yes	22-Aug-07	Closed	Administrative instructions issued and educative activity undertaken .
018	9-May-07	Yes	22-May-07	Closed	Military Officer disciplined-joint training seminar re-proposed.
019	9-May-07	No		Closed	Not related to mandate (property dispute).
020	9-May-07	No		Closed	Insufficient basis to proceed.
021	9-May-07	Yes	10-May-07	Closed	Victim discharged to parents-disciplinary action as the result of Military Enquiry inadequate.
022	18-May-07	No		Closed	No evidence that the work constituted forced labour
023	18-May-07	Yes	23-May-07	Closed	Field Visit, Education activity undertaken
024	25-May-07	No		Closed	Insufficient information to proceed
025	22-Jun-07	Yes	14-Aug-07	Closed	4 officials dismissed, administrative instructions re-issued
026	26-Jun-07	Yes	13-Aug-07	Closed	Local Authorities instructional activity undertaken.
027	28-Jun-07	No		Closed	Not related to mandate-Pension/gratuity matter
028	7-Jun-07	No		Closed	Not related to mandate-Pensions matter
029	14-Jun-07	Yes	2-Aug-07	Closed	Village Chairman dismissed.
030	31-Jul-07	Yes	31-Jul-07	Closed	Child released-summary military trial-recruiting officer disciplined
031	25-Jun-07	No		Closed	Not related to mandate-Mass termination
032	29-Jun-07	No		Closed	Not related to mandate-land confiscation
033	6-Jul-07	Yes	9-Aug-07	Closed	Child Released, Training seminar proposed and agreed
034	12-Jul-07	No		Closed	Not related to mandate-hours of work/ Overtime issue
035	23-Jul-07	Yes	17-Aug-07	Closed	Gvt instructions issued, retrospective remuneration, Joint field trip for awareness education undertaken
036	24-Jul-07	No		Closed	Insufficient basis to proceed at this stage.
037	29-Jun-07	No		Closed	Not related to mandate-Migrant worker/payment of wages
038	25-Jul-07	No		Closed	Not related to mandate-termination of employment issue
039	12-Jun-07	No		Closed	Insufficient basis on which to proceed.
040	31-Jul-07	Pending		Pending	Assessment in process.
041	6-Aug-07	No		Closed	Not related to mandate-termination grievance
042	7-Aug-07	Yes	8-Aug-07	Closed	Not within mandate of forced labour SU-Issue of FOA remains.
043	15-Aug-07	Yes	16-Aug-07	Closed	Child Released, disciplinary action as the result of Military Enquiry inadequate.
044	16-Aug-07	No		Closed	Not related to mandate-wages/fees payment issue
045	20-Aug-07	Yes	10-Sep-07	Closed	New instructions issued.
046	24-Aug-07	No		Closed	Not related to mandate-commercial dispute
047	27-Aug-07	Yes	12-Sep-07	Open	Government response receive. Joint-mission undertaken, further recommendation made, awaiting government's response.
048	7-Sep-07	No		Closed	Insufficient evidence to proceed
049	7-Sep-07	Yes	19-Dec-07	Closed	Compensation package. One perpetrator demoted. Recommendation on policy review made.
050	14-Sep-07	Yes	20-Sep-07	Closed	Child released-Military enquiry resulted in disciplinary reprimand.

Register of Cases

Case	Date received	Accepted	Intervention-date	Status	Comments
051	20-Sep-07	Yes	25-Feb-08	Open	Awaiting Government response
052	20-Sep-07	Yes	22-Feb-08	Open	Government Response received and under consideration
053	10-Oct-07	Yes	9-Nov-07	Open	Government Response received-further verification sought and joint mission proposed.
054	17-Oct-07	Yes	18-Oct-07	Open	Clause 9 breach-negotiation continues
055	19-Oct-07	Yes	31-Oct-07	Closed	Child released-Military enquiry resulted in disciplinary reprimand.
056	25-Oct-07	Yes	09-Nov-07	Closed	Child released-Military enquiry resulted in disciplinary reprimand.
057	7-Nov-07	No		Closed	Not related to mandate - cross-border trafficking & HIV and AIDS
058	15-Nov-07	Yes	23-Nov-07	Closed	Child released-summary military trial-recruiting officer disciplined
059	15-Nov-07	Yes	30-Nov-07	Closed	Official translation approved
060	19-Nov-07	No		Closed	Not related to mandate - wages claim issue
061	17-Dec-07	Yes	19-Dec-07	Open	Government response under consideration
062	20-Dec-07	Yes	28-Dec-07	Closed	Victim discharged to custody of parents. Responsible recruiting officer officially reprimanded.
063	7-Dec-08	Yes	14-Jan-08	Closed	Victim discharged, recruiting officer reprimanded, instruction on humane treatment of trainees issued. Ongoing procedure recommendation made.
064	7-Dec-08	Yes	11-Feb-08	Open	Awaiting Government response
065	08-Jan-08	No		Closed	Not related to mandate-corruption allegation
066	14-Jan-08	Yes	22-Feb-08	Open	Government Response received and under consideration
067	16-Jan-08	Pending		Pending	Further info. from complainants required.
068	16-Jan-08	Yes	25-Feb-08	Open	Awaiting Government response - associated with 080
069	31-Jan-08	Yes	25-Feb-08	Open	Submitted in association with Case 051
070	6-Feb-08	Yes	12-Feb-08	Closed	Victim discharged, recommendation on proof of age documentation procedure made.
071	29-Jan-08	No		Closed	Not related to mandate - compensation for damaged crop
072	30-Jan-08	Yes	11-Mar-08	Open	Awaiting Government response
073	20-Feb-08	Yes	3-Mar-08	Open	Awaiting Government response
074	21-Feb-08	No		Closed	Insufficient basis to proceed.
075	03-Mar-08	Yes	11-Mar-08	Open	Victim discharged, follow up communication re disciplinary action
076	03-Mar-08	Yes	10-Mar-08	Closed	Child discharged - recruitment officer reprimanded. Victim admits voluntary recruitment - referred to UNICEF for reintegration
077	5-Mar-08	No		Closed	Not within SU mandate -FOA issue <u>subject to separate consideration</u>
078	5-Mar-08	No		Closed	Not within SU mandate -FOA issue <u>subject to separate consideration</u>
079	14-Mar-08	No		Closed	Not within SU mandate -FOA issue <u>subject to separate consideration</u>
080	14-Mar-08	Yes	08-Apr-08	Open	Awaiting Government response - associated with 068
081	17-Mar-08	Pending		Pending	Assessment in process.
082	17-Mar-08	No	21-Mar-08	Closed	Complainants unwilling to be identified
083	20-Mar-08	Yes	08-Apr-08	Open	Awaiting Government response
084	26-Mar-08	Pending		Pending	Assessment in process.
085	28-Mar-08	Pending		Pending	Assessment in process.
086	28-Mar-08	Yes	07-Apr-08	Open	Awaiting Government response
087	11-Apr-08	Yes	11-Apr-08	Open	Awaiting Government response
088	22-Apr-08	Pending		Pending	Awaiting supporting documentation
089	19-May-08	Pending		Pending	Awaiting supporting documentation

Document D.6

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

Contents

1. 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
2. Conclusions of 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, 96th Session, June 2007)
3. Documents before the Governing Body at its 300th Session (November 2007) (documents GB.300/8 and GB.300/8(Add.))
4. Documents before the Governing Body at its 301st Session (March 2008) (documents GB.301/6/1, GB.301/6/2, GB.301/6, Appendices I, II, III and IV to document GB.301/6/2, as well as document GB.301/6/3)

1. 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)

Historical background

1. In previous comments the Committee has drawn attention to gross breaches of the Convention by the Government of Myanmar and the failure by the Government to implement the recommendations of the Commission of Inquiry, appointed by the Governing Body in March 1997.

2. The Commission of Inquiry, appointed in 1997 under article 26 of the Constitution, concluded that the Convention was violated in national law and in practice in a widespread and systematic manner, and made the following recommendations:

- (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.

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, in particular by the military.

3. The continued failure of the Government to comply with those 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 detailed history of this extremely serious case has been set out at length in previous observations of this Committee in recent years.

4. Each of the ILO bodies, in discussing this case, had focused attention on the recommendations of the Commission of Inquiry. The Committee of Experts has in its previous observations identified four areas in which measures should be taken by the Government to achieve those recommendations. Specifically, 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 last observation

5. There has been a number of discussions and conclusions by ILO bodies and also further documentation received which the Committee has considered in the course of making this observation. In particular the Committee notes:

- the discussions and conclusions of the Conference Committee on the Application of Standards during the 96th Session of the International Labour Conference in June 2007;
- the documents submitted to the Governing Body at its 298th and 300th Sessions (March and November 2007) as well as the discussions and conclusions of the Governing Body during the sessions;
- the comments made by the International Trade Union Confederation (ITUC) in a communication received on 31 August 2007 together with the detailed appendices of some 740 pages;
- the reports of the Government of Myanmar received on 17 and 20 August, 10 September and 12 and 23 October as well as 3 December 2007; and
- the Supplementary Understanding (SU) of 26 February 2007 to the earlier Understanding of 19 March 2003 concerning the appointment of an ILO Liaison Officer in Myanmar.

The Supplementary Understanding of 26 February 2007

6. The Committee notes at this point that the SU is a very important development and its significance is discussed in greater detail towards the end of this observation. It is important for the SU to be viewed in the context of the other documentation, discussions and conclusions referred to above.

7. The SU concerns the appointment and role of an ILO Liaison Officer in Myanmar, and was concluded after long negotiations between the ILO and the Government of Myanmar. The SU provides for a new complaints mechanism to be established and put into operation, and has as its prime 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”. The mechanism was to be implemented on a trial basis over a period of 12 months and could thereafter be extended by mutual agreement (GB.298/5/1, appendix).

8. The role of the Liaison Officer in the context of the SU and the impact of his work in the circumstances in which he was required to perform it in the country, was a major subject of later discussion in ILO bodies.

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

9. The conclusion of the Conference Committee during the 96th Session in June 2007, was that, whilst the complaints mechanism set up under the SU was continuing to function, it had to be assessed against the ultimate goal of eliminating forced labour.

10. In this connection, the Committee notes that the Committee on the Application of Standards in its conclusions in June 2007 (ILC, 96th Session, *Provisional Record* No. 22, Part 3) “observed that the mechanism had to be assessed against the ultimate goal of eliminating forced labour, and it remained to be seen what the impact would be”; and that the recent documentation submitted to the Governing Body stated that “it is both

physically and financially very difficult for victims of forced labour or their relatives to lodge a complaint if they live outside Yangon” noting that “informal networks have been developed” which “although valuable ... do not necessarily extend to all parts of the country” (GB.300/8, paragraph 9). The Committee also notes from the documentation that “regarding the mechanism set up by the Supplementary Understanding, it is not possible today to say to what extent it is fully functional after the civil unrest and its suppression, and thus to what extent experiences from it can be built upon” (GB.300/8, Add, paragraph 9).

Discussions in the Governing Body

11. The Committee notes that the reports to the Governing Body at its 300th Session in November 2007 regarding the progress of the complaints mechanism indicated that as of 7 November 2007, the Liaison Officer had received 56 complaints (GB.300/8(Add.), paragraph 3). Of those complaints, 19 were assessed as falling outside the mandate of the Liaison Officer and 24 were formally submitted for investigation and appropriate action to the Deputy Minister of Labour in his capacity as Chairman of the Government Working Group on Forced Labour. Four complaints were closed after being assessed as having an insufficient basis to proceed, and nine complaints were still being processed or could not proceed until further information was received from the complainants (GB.300/8, paragraph 5, and GB.300/8(Add.), paragraph 5).

12. In addition, the Governing Body called upon the Government to ensure that the mechanism provided by the SU remained fully functional with no further detention or harassment of complainants, facilitators or others, and that it should be fully applied to the military authorities. It considered that full attention should also be given to preventing the recruitment of child soldiers (paragraph 5). Importantly, the Governing Body also called for the putting into place of an appropriate network towards ensuring that the nationwide application of the SU, including in the combat zones, and to ensure that forced labour victims are able to easily access the complaints mechanism (paragraph 6).

Communication received from the International Trade Union Confederation

13. The Committee notes the comments made by the International Trade Union Confederation (ITUC) in a communication received on 31 August 2007. Appended to this communication were 45 documents, amounting to more than 740 pages, containing extensive and detailed documentation referring to forced labour practices on the part of civil and military authorities. In many cases, the documentation refers to specific dates, detailed locations and circumstances, and specific civil bodies, military units and individual officials. The documentation covers a broad area of the country (including many parts of Chin, Kayah, Kayin, southern Mon, northern Rakhine and Shan States, and of Ayeyarwady, Bago, Mandalay and Tanintharyi Divisions) during the period from the second half of 2006 through the first half of 2007. The incidents referred to involve the alleged requisition of labour for the full range of tasks identified by the Commission of Inquiry:

- portering for the military (or other military/paramilitary groups, for military campaigns or regular patrols);
- construction or repair of military camps/facilities;
- other support for camps (guides, messengers, cooks, cleaners, etc.);
- income-generation by individuals or groups (including work in army-owned agricultural and industrial projects);

- various infrastructure projects; and
- cleaning/beautification of rural or urban areas.

14. The documentation includes copies of 145 written orders apparently from military and other authorities to villages in Kayin State, containing a range of demands entailing in most cases a requirement for (uncompensated) labour. It also includes photographs purporting to show people in Mon State being forced to work on military development projects, as detailed in an accompanying report. It further includes a video in which five men state that they were forced to work for the Myanmar army since April 2007 as porters, sentries, carrying out construction projects, building fences and doing various tasks in army camps, as well as being forced to provide ox carts and tractors to the army. A copy of the ITUC's communication and its annexes was transmitted to the Government for such comments as it may wish to provide.

The Government's reports

15. The Committee notes the Government's reports received on 17 and 20 August, 10 September, 12 and 23 October, and 3 December 2007. These reports make reference to information contained in a communication from the ITUC to the Committee dated 31 August 2006 that was forwarded to the Government and to which reference was made in the Committee's previous observation. The Government has not responded in detail to the information contained in the ITUC's communication, except to state its view that "most of the issues raised by the [ITUC] are totally groundless" and to note that such cases "would be covered by the mechanism to deal with the forced labour complaints under the Supplementary Understanding" agreed between the ILO and Myanmar on 26 February 2007.

16. The Committee must point out that agreement on the Supplementary Understanding and the establishment of the complaint mechanism provided for thereunder, in no way relieves the Government of its obligation under the Convention to suppress the use of forced labour. Rather, they are a means to assist the Government in meeting this obligation through the full implementation of the recommendations of the Commission of Inquiry.

17. *The Committee requests the Government to respond in detail in its next report to the numerous specific allegations contained in the most recent communication from the ITUC as well as that of the previous year.*

Assessment of the situation

Issuing specific and concrete instructions to the civilian and military authorities

18. The Committee notes that in its report the Government has again referred to a series of letters, directives, telegrams and rules issued by various civil and military authorities relating to the Orders prohibiting forced labour. However, as noted in its previous observation, since the Government has supplied minimal details of the content of these instructions, and given that all the indications suggest that the imposition of forced labour continues to be widespread, the Committee is yet to be convinced that clear instructions have been effectively conveyed to all civil authorities and military units. ***The Committee reinforces the need for appropriate publicity to be given to these Orders.***

19. The Committee must also emphasize that, even if the Orders provide a statutory basis in practice for ensuring compliance with the Convention, this still falls far short of the formal repeal of the provisions of the relevant legislation requested by the Commission of Inquiry. ***The Committee therefore hopes that the Government will take the necessary***

steps to amend these provisions as soon as possible, something it has been promising to do for 40 years. The Committee also hopes that the Government will take advantage of the opportunity to bring constitutional clarity to the prohibition of forced labour.

Ensuring that the prohibition of forced labour is given wide publicity

20. In relation to ensuring that the prohibition of forced labour is given wide publicity, the Committee refers to its comment above. The Committee also notes the agreement on 26 February 2007 of a Supplementary Understanding between the ILO and the Government, which is a welcome development. The mechanism that it establishes to deal with complaints of forced labour provides an opportunity to the authorities to demonstrate that continued recourse to the practice is illegal and will be punished as a penal offence, as required by the Convention. The fact that Order No. 1/99 as supplemented by the Order of 27 October 2000, has been used as a legal basis for criminal convictions of government officials for exacting forced labour, is in line with the Committee's conclusion in its observation published in 2001, that these Orders "could provide a statutory basis for ensuring compliance with the Convention in practice, if given bona fide effect not only by the local authorities empowered to requisition labour under the Village and Towns Acts, but also by civilian and military officers entitled to call on the assistance of local authorities under the Acts".

21. The Committee also notes that some publicity has been given to the signing of the Supplementary Understanding and to the subsequent prosecutions of two officials for imposing forced labour (a press release on 26 February 2007; a press conference by the Director-General of the Department of Labour on 26 March 2007; and an article on the prosecutions in the *New Light of Myanmar* on 31 March 2007). The Committee also notes from the report submitted to the 300th Session of the Governing Body that the Government "has undertaken widespread training for administrators to raise awareness of the law and to explain the Supplementary Understanding procedure", that "a further round of such training on a joint ILO/Ministry of Labour basis has been discussed" and that "the Government has drafted a booklet entitled *Eradication of forced labour – Educational Paper No. 1*", consultations on the content and format of which are continuing prior to its dissemination throughout the administration (GB.300/8, paragraph 8).

22. The Committee considers that such publicity is vital in ensuring that the prohibition of forced labour is widely known and applied in practice, and should continue and be expanded. The Committee shares the view of the Governing Body that "an unambiguous public statement that all forms of forced labour are prohibited throughout the country and will be duly punished" from the Government of Myanmar "at the highest level" (GB.300/8, conclusions) would be extremely valuable.

Providing for the budgeting of adequate means for the replacement of forced or unpaid labour

23. In this regard, the Committee stresses the importance of its request, made regularly in previous observations and underlined in the recent conclusions of the Conference Committee on the Application of Standards, that specific instructions be issued to all military units making clear the prohibition of forced labour and the fact that this will be strictly enforced. This requires the budgeting of adequate means for the replacement of forced labour, which tends also to be unpaid, are necessary if recourse to the practice is to end.

24. Similarly, the Committee notes that the Government's report of 17 August 2007 states that it provides a budget allotment including labour costs "for all Ministries to implement their respective projects" and that a signed statement from the Ministry of Construction indicating the sum in question is provided in an annex to the report. Again,

the Committee fails to understand, if adequate resources really are provided to civil and military authorities, why it is that recourse to unpaid forced labour apparently remains widespread, particularly by the military and by local civil administrations. ***The Committee repeats its earlier request that the Government, in its next report, provide detailed information about the measures taken to budget for adequate means for the replacement of forced or unpaid labour.***

Ensuring the enforcement of the prohibition of forced labour

25. The Committee is bound to express its concern that, as stated in the reports submitted by the Office to the Governing Body referred to above, and in the information provided by the Government, that out of 24 complaints (as of 7 November) forwarded by the Liaison Officer to the authorities for investigation and appropriate action, only one case has so far resulted in the prosecution of those responsible (Case No. 001, which led to the prosecution of two civilian officials). A number of other cases have led to administrative action against civilian officials (for example, dismissals or warnings for the officials concerned). Although seven of the cases forwarded to the authorities by the Liaison Officer involved allegations against military personnel (for forced recruitment of children into the army, and imposition of forced labour against villagers), there are so far no indications that any action, criminal or even administrative, has been taken against any military personnel. The Committee notes the recent information provided by the Government on 3 December 2007 that it has taken concrete measures to prevent recruitment of children into the military by setting up a central committee and working committees, with follow-up workshops.

26. The Committee notes the information from the Liaison Officer that the Government Working Group “appears to be more successful in achieving prompt and constructive outcomes in cases associated with civil administrations. It is more difficult to obtain timely and appropriate responses on complaints involving the military” (GB.300/8, paragraph 6). The Committee indicates that this is all the more concerning, as it has previously observed that forced labour is a particular problem in areas of the country with a heavy presence of the army.

27. The Committee reemphasizes that the illegal exaction of forced labour must continue to be punished as a penal offence, rather than an administrative issue, as required by Art. 25 of the Convention. While taking account of the measures to be taken by the Government regarding recruitment of children, it is also essential that the legal penalties be strictly enforced in cases involving military personnel, including in cases of forced recruitment of children into the armed forces.

Conclusion

28. The Committee considers that there are obvious constraints and limits on the contribution that the complaint mechanism can make to the eradication of forced labour. This is due to structural limitations on the mechanism and is magnified by the uncertainties of the present situation in the country. The mechanism can certainly provide welcome relief to individual victims by offering an objective and safe channel for complaints to be raised and addressed, and beyond this it can send a powerful signal to potential perpetrators that they are not free to act with impunity. However, the mechanism is not obviously well-suited to dealing with some of the more extreme and widespread violations in remote areas, of the kind referred to in the documentation submitted by the ITUC.

29. More fundamentally, the complaint mechanism, whilst valuable, does not address the root causes of the forced labour problem that were identified by the Commission of Inquiry and by the High-level Team (see GB.282/4). Namely, it does not address the basic governance relationships prevailing in the country, the role of the army and its self-reliance policy, and the absence of freedom of association and, more generally, freedom of

assembly, which recent events have served to graphically illustrate. The prevailing situation in Myanmar, ten years after the establishment of the Commission of Inquiry, seems to provide sad support to the perception that addressing these root causes remains indispensable.

30. In the light of this, the Committee believes 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. This requires, beyond the agreement of the Supplementary Understanding, that the authorities establish the necessary conditions for the successful functioning of the complaint mechanism, and that they take the long overdue steps to repeal the relevant provisions of domestic legislation and adopt the appropriate legislative and regulatory framework to give effect to the recommendations of the Commission of Inquiry. ***The Committee remains hopeful that, having agreed the Supplementary Understanding, the Government will finally take the required steps to achieve compliance with the Convention in law and in practice and resolve one of the most serious and long-standing cases that this Committee has ever had to address.***

2. Conclusions of 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, 96th Session, June 2007)

The Committee examined the observations of the Committee of Experts and the report from the ILO Liaison Officer a.i. in Yangon, which included the latest developments in the implementation of the complaint mechanism on forced labour that was established on 26 February 2007. The Committee noted the decisions of the Governing Body of March 2007. It also listened to the statement of the Government representative. The Committee expressed its profound concern at the forced labour situation in Myanmar, as reflected in the observation of the Committee of Experts. It concluded that none of the recommendations of the Commission of Inquiry had yet been implemented, and the imposition of forced labour continued to be widespread, particularly by the army to which specific instructions should be issued. The situation in Kayin (Karen) State and northern Rakhine (Arakan) State was particularly serious. The Committee strongly urged the Government to take all the necessary measures to give effect to the recommendations of the Commission of Inquiry. The Committee took due note of the fact that the complaint mechanism on forced labour continued to function, and that the authorities were investigating the cases referred to them by the Liaison Officer and taking action against those officials found to have illegally imposed forced labour. It was observed, however, that in a number of cases the action taken had been limited to administrative measures rather than the required criminal penalties. It was also observed that the mechanism had to be assessed against the ultimate goal of eliminating forced labour, and it remained to be seen what the impact would be, particularly in the border areas. The Committee underlined the need for the Liaison Officer to have sufficient staff resources available to him as provided for in the Supplementary Understanding and requested by the Governing Body in March 2007. It noted with concern that the Government had not yet agreed to the appointment of an international staff member to assist the Liaison Officer, even though the workload continued to increase, and urged that the necessary cooperation and facilities be given without delay. The Committee requested the Myanmar authorities to give full cooperation to the ILO and extend to the new Liaison Officer all the facilities necessary under the agreement and appropriate under usual diplomatic practice. The Government of Myanmar was requested to provide full information to the Committee of Experts in time for its session later this year, including concrete and verifiable evidence of action taken towards the implementation of the Commission of Inquiry's recommendations. Finally, the Committee welcomed the appointment of Mr Stephen Marshall as the new ILO Liaison Officer in Yangon and expressed its deepest appreciation for the work carried out by the outgoing ILO Liaison Officer a.i., Mr Richard Horsey.

3. Documents before the Governing Body at its 300th Session (November 2007)



INTERNATIONAL LABOUR OFFICE

GB.300/8
300th Session

Governing Body

Geneva, November 2007

FOR DEBATE AND GUIDANCE

EIGHTH ITEM ON THE AGENDA

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

Introduction

1. The recent situation in Myanmar has been extensively documented in the world news. The large-scale demonstrations in September 2007 started as protests over rising prices resulting from major fuel price increases following the Government's reduction of fuel subsidies. Actions on the part of the authorities to stop these demonstrations resulted in their gaining momentum and evolving into broader based action, not only in protest against rising prices but also seeking redress to perceived social wrongs and promoting political reform. The serious concerns of the international community with regard to the Government of Myanmar's violent repression of the protest led to high-level intervention by the United Nations Security Council, through the services of the Secretary-General's Special Envoy to Myanmar.
2. At the time of writing this report, steps are being taken to promote negotiation and dialogue between Senior General Than Shwe and his Government and Daw Aung San Suu Kyi and her National League for Democracy (NLD). A relative calm has returned to the streets, but the night-time curfew remains in force. There are continuing reports of home occupancy inspections and the detention of perceived protesters, potential leaders and opposition supporters.
3. This report will be submitted in two parts. This initial part reports on progress since the 298th Session of the Governing Body in respect of the application of the Supplementary Understanding signed between the ILO and the Government of Myanmar on 26 February 2007, establishing a mechanism to enable victims of forced labour to seek redress, and covers the period through to the end of September 2007. The second part will report on the situation after September as regards both the application of the Supplementary Understanding and the activities of the Liaison Officer. It will be distributed at a later date as a separate addendum, so as to be as relevant as possible.

Position and activities to 30 September 2007

4. As at 30 September 2007, the Liaison Officer had received 53 complaints. Of these, 19 fell outside the Officer's mandate, relating for example to such matters as land confiscation, payment of wage disputes and unjustified termination of employment claims; 21 had been duly assessed and formally submitted to the Deputy Minister of Labour, Major-General Aung Kyi, in his capacity as Chairman of the Government Working Group on Forced Labour; four had been closed after assessment determined insufficient basis to proceed; and nine are still being assessed or cannot proceed until further information is received from the complainants.
5. As at 30 September, of the 21 complaints submitted to the Deputy Minister of Labour, ten had been processed through to a conclusion considered acceptable for the closure of the file. In respect of the other 11, information is still pending from the Government Working Group on the findings of its investigation and the action it proposes to take in response to those findings. A copy of the up to date complaints register will be attached to the addendum to be distributed at a later date.
6. Within the limitations of the Supplementary Understanding, the Government Working Group and the Ministry of Labour have been cooperative in their administration of the procedure and have responded seriously to complaints. While there have been no further prosecutions of offenders resulting in imprisonment or criminal conviction beyond those reported to the Governing Body at its March 2007 session, a number of complaints have resulted in the termination of the employment of the responsible officials and the issuing of administrative warnings. The Government Working Group appears to be more successful in achieving prompt and constructive outcomes in cases associated with civil administrations. It is more difficult to obtain timely and appropriate responses on complaints involving the military.
7. During August and September 2007, two joint ILO/Ministry of Labour mediation, training and awareness-raising exercises were carried out in a number of villages. While there were attempts at some levels to downplay forced labour complaints, the cooperation of the Ministry at the senior level was positive. This approach, combining education and mediation, has been useful in the context of forced labour complaints relating to community-based infrastructure projects. It entails raising the awareness of all the people in a village as to the difference between forced labour and voluntary work. It envisages the introduction of a procedural protocol, acceptable to all parties, for the identification, acceptance, planning and undertaking of beneficial community projects where the requirement for labour is not too great. This approach is, of course, valid only for small projects within a community, where work is to be undertaken on a purely voluntary basis with no reprisal or punishment for non-involvement. An understanding along these lines has been reached in two villages so far. If the planned follow-up and verification show that the approach is effective, this model could potentially be used elsewhere in the country in similar small-scale circumstances.

8. Such an approach is not applicable to activities which quite clearly involve forced labour rather than community projects, including major infrastructure works such as large-scale road- and bridge-building projects. Obviously, such an approach cannot be applied to forced labour exacted by the military. In both of these areas, it is necessary to remind the administration continuously of the legal prohibitions relating to forced labour and of its responsibilities under the law, and also to ensure that the law is enforced. The Government has undertaken widespread training for administrators to raise awareness of the law and to explain the Supplementary Understanding procedure. A further round of such training on a joint ILO/Ministry of Labour basis has been discussed. The Government has drafted a booklet entitled *Eradication of forced labour – Educational Paper No. 1*; consultations on its content and format are continuing prior to the intended publication and dissemination of the booklet throughout the administration. In parallel to this educational activity, measures must be taken to enforce the law, with formal investigations taking place and with perpetrators being charged under the law or otherwise appropriately dealt with. The Supplementary Understanding procedure can only play a limited role in that regard.
9. It is both physically and financially very difficult for victims of forced labour or their relatives to lodge a complaint if they live outside Yangon. Informal networks have been developed to make it easier to lodge complaints. Although valuable, these informal networks do not necessarily extend to all parts of the country. Discussions are under way on the establishment of a more formal network encompassing international organizations, international non-governmental organizations and non-governmental organizations. It is hoped that such a network will facilitate the broader dissemination of materials explaining the law and rights under that law. In the absence of a network of ILO representation throughout the country, such a network could be used as a local repository for the receipt of complaints. Network partners would, by necessity, act solely as “mailboxes” for complaint submissions. If such a network is developed, emphasis must be placed on selecting appropriate partners and providing their field staff with basic training on complaint receipt procedures, confidentiality and security.
10. Although the international press regularly publishes allegations of widespread and brutal forced labour practices, very few of these reported cases are referred directly to the Liaison Officer. The same is true for the publications and reports produced by a number of border organizations. It would be in the interests of all for such allegations and reports to be brought under the ambit of the Supplementary Understanding, to enable the verification of the facts and an investigation into the complaints to be carried out.
11. In May 2007, six labour activists were detained in connection with a May Day meeting held in the American Center in Yangon. The arrests were brought to the Liaison Officer’s attention and the matter was raised with the Government in the context of its responsibilities as a signatory to the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). In July, it was established that the detainees had been charged and that court hearings had commenced. On 7 September, the detainees were convicted and sentenced for alleged offences under the Unlawful Associations Act, the Immigration (Emergency Provisions) Act and the sedition sections of the Penal Code. They each received a prison sentence of between 20 and 28 years. The ILO, through its Geneva headquarters, issued a press statement calling for the review and overturning of those convictions and the release of the individuals concerned. These calls were reconfirmed by the Liaison Officer in communication with the Government, both orally and in writing.

12. Since the last session of the Governing Body, the Government has granted an entry visa for an assistant to the Liaison Officer. Ms Piyamal Pichaiwongse started work in Yangon on 24 July 2007. This additional professional resource has provided valuable support to the Liaison Officer, including with regard to receiving and assessing complaints and undertaking field investigations. It has further permitted the Liaison Officer to involve the ILO as appropriate in such matters as the forced labour aspects of children in armed conflict zones, child soldiers, child protection, juvenile justice and the trafficking of children, in cooperation with other United Nations agencies, in particular the United Nations Children's Fund (UNICEF). Similarly, the presence of additional professional support has permitted the Liaison Officer to be part of the Human Rights Group recently formed by the United Nations Country Team, the aim of which is to ensure that appropriate emphasis is placed on fundamental human rights issues in balance with the humanitarian programmes currently in place. It is hoped that this support base will be maintained in the next biennium.

Geneva, 29 October 2007.

For debate and guidance.



FOR DEBATE AND GUIDANCE

EIGHTH ITEM ON THE AGENDA

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

Addendum

1. Document GB.300/8 has reported on the application of the Supplementary Understanding (SU) signed between the ILO and the Government of Myanmar on 26 February 2007 up to the end of September 2007. As this addendum reports on the period from 1 October 2007, it also covers the period following the civil unrest. In particular, it attempts to assess the impact of recent events on the application of the SU.
2. At the time of writing, the Secretary-General's Special Envoy to Myanmar, Mr Ibrahim Gambari, was still in the country addressing the issues raised by the international community. The Special Rapporteur on Human Rights in Myanmar, Mr Sergio Pinheiro, was due to arrive on 11 November 2007, following the Government of Myanmar's agreeing to receive a visit from him prior to the ASEAN summit.
3. As of 7 November 2007, 56 complaints had been recorded as received by the Liaison Officer. Four new cases have been received since the end of September. An updated copy of the register of cases will be made available to this session of the Governing Body.
4. During the period 20 September to 10 October (the civil protest period) no complaints were received. It is probable that persons who have been involved in transmitting complaints have been discouraged, or deterred, by the public protest activity and the measures taken by the Government to counter the protests.
5. The four new complaints that have been recently received are of a different nature than the previous general pattern. One is an allegation of forced labour directly resulting from the protest activities and concerns the authorities' requirement for ready access to bus transport to meet their potential need for rapid deployment of personnel. One relates to an alleged breach of article 9 of the SU through the detention and harassment of persons involved in the making and facilitation of forced labour complaints. Two allegations concern the forced military recruitment of minors. These complaints have been assessed by the Liaison Officer, in the manner foreseen by the SU, and referred to the responsible Government Working Group for investigation and appropriate action. Their receipt has been acknowledged, and responses are duly awaited. The Liaison Officer has also recently

received follow-up visits from or on behalf of complainants, providing additional information on previously lodged complaints.

6. In respect of the alleged breach of article 9 of the SU referred to above, three of four persons who had recently been detained have now been released. In so doing, the Government has stressed that all of the persons concerned were, in addition to their activities as forced labour facilitators, involved in the protest movement and that this was the cause of their detention. At a meeting on 6 November 2007, between the Liaison Officer and the Director-General of the Department of Labour, acting as the authorized representative of the Minister of Labour, the Government undertook to review the situation of the remaining detainee. The outcome of this review was at the time of writing not known.
7. Among the recent events, the following warrant bringing them to the attention of the Governing Body. Following the visit of the UN Secretary-General's Special Envoy to Myanmar in September 2007, the Government appointed the Deputy Labour Minister, U Aung Kyi, to liaise with Aung San Suu Kyi. On 8 October 2007, U Aung Kyi was appointed Labour Minister.
8. Following the issuance of a United Nations Country Team statement on the situation in the light of the civil unrest and its suppression, the Government on 1 November 2007 asked the UN Resident Representative, Mr Charles Petrie, to leave the country. Mr Petrie has been Resident Representative since 2003. In this capacity, his support to the ILO was particularly valuable when serious threats were made against the Liaison Officer in 2005 (see document GB.294/6/2). Mr Petrie has since 2006 also been Humanitarian Coordinator in Myanmar.
9. It is apparent that the situation is fluid and unstable. A meaningful review of the functioning of the SU and, indeed, of the role of the ILO in general cannot be made at this stage. Regarding the mechanism set up by the SU, it is not possible today to say to what extent it is fully functional after the civil unrest and its suppression, and thus to what extent experiences from it can be built upon. The first report (GB.300/8) already indicated some elements which could be developed further. The Government has reaffirmed that it remains committed to the mechanism, for which the one year trial period comes to an end on 26 February 2008. A more comprehensive report will be made to the Governing Body for its March 2008 session.
10. ILO activities to assist the Government in implementing the forced labour Convention do not take place in isolation. The general environment, and particularly attempts to overcome the current situation through dialogue, is of capital importance if ILO activities are to sustainably contribute to the elimination of forced labour and, through that, in general to improving the rights of all citizens of Myanmar. Consequently, decisions and processes at the national level in general are crucial also for the prospects of immediate and longer term ILO action in Myanmar.

Geneva, 9 November 2007.

Submitted for debate and guidance.

300th Session of the Governing Body of the International Labour Office

(November 2007)

EIGHTH ITEM ON THE AGENDA

GB.300/8(& Add.)

Conclusions concerning Myanmar

1. The Governing Body considered all of the information before it including the comments and information provided by the Permanent Representative of Myanmar. It noted the progress reported in the operation of the Supplementary Understanding (SU) up to the time of public demonstrations and their suppression at the end of September 2007, including the educational activity that had been jointly undertaken by the Ministry of Labour and the ILO.
2. The Governing Body, however, expressed its serious concern at the Government's crackdown in response to the recent peaceful protests. In this respect, it noted with deep regret the imprisonment of persons exercising their fundamental right to freedom of association and the freedom of expression it entails, and called on the Government to comply fully with its responsibilities in accordance with Convention No. 87, which it has ratified. The long prison sentences given on 7 September 2007 to six activists should be reviewed and the persons concerned released. The Governing Body also noted with concern the detention of persons associated with the facilitation of forced labour complaints under the SU. This clearly contradicted the sense of the SU and the Governing Body called on the Government to immediately release those persons, in particular Daw Su Su Nway and U Min Aung.
3. The Governing Body expressed its full support for the United Nations Country Team in Myanmar and its leadership, expressing its deep regret at the Government's recent decision that the Resident Coordinator should leave the country.
4. The Governing Body recognized that the situation in Myanmar is unstable. It urged the Government to continue the dialogue process, in a balanced and results-orientated manner, towards domestic reconciliation and forward-looking solutions to the current difficulties. It was too early to fully assess what impact the recent civil unrest and its suppression has had on the current and future operational prospects of the SU. The Governing Body further agreed that, whilst the ILO activity for the eradication of forced labour was an important contribution to efforts to improve the rights and lives of citizens in Myanmar, it cannot be considered in isolation and is dependent on the general environment and the evolution of current dialogue initiatives.
5. The Governing Body therefore called on the Government of Myanmar to make at the highest level an unambiguous public statement that all forms of forced labour are prohibited throughout the country and will be duly punished. The Government should ensure that the mechanism provided by the SU remains fully functional with no further detention or harassment of complainants, facilitators or others, and that it fully applies to the military authorities. Full attention should be given to preventing the recruitment of child soldiers.
6. The Governing Body further called for the putting into place of an appropriate network towards ensuring the nationwide application of the SU, including in the combat zones, and

to ensure that forced labour victims are able to easily access the complaints mechanism. It is understood that the SU concluded on 26 February 2007 may be extended. It instructed the Office to undertake a full review of the operation of the SU for submission to the Governing Body at its March 2008 session together with recommendations for both the SU's future and the ILO's ongoing role in Myanmar.

7. Finally, the Governing Body again reminds that all these activities have to serve and strengthen the objective of ending forced labour in Myanmar through the full implementation of the recommendations of the 1998 Commission of Inquiry and all of the related decisions of the International Labour Conference and the Governing Body.

4. Documents before the Governing Body at its 301st Session (March 2008)



INTERNATIONAL LABOUR OFFICE

GB.301/6/1
301st Session

Governing Body

Geneva, March 2008

FOR INFORMATION

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)

1. The Supplementary Understanding between the Government of Myanmar and the ILO concerning the treatment of allegations on the use of forced labour was concluded on a 12-month trial basis on 26 February 2007.¹ It thus is scheduled to expire shortly before the March 2008 session of the Governing Body.
2. The Office has been engaged in discussions, both in Yangon and Geneva, with the Government of Myanmar on how this Understanding has functioned and the options for the future, including its possible extension and related questions. These discussions have also covered all the issues arising from the relevant conclusions of the Governing Body in November 2007.²
3. A mission from ILO headquarters is scheduled to visit Myanmar at the end of February for more in-depth discussions. The outcome will be reported to the members of the Governing Body as soon as possible, together with factual information on the functioning of the Supplementary Understanding. The report will also cover the activities of the ILO Liaison Officer since the November session of the Governing Body.

Geneva, 27 February 2008.

Submitted for information.

¹ GB.298/5/1, para. 6; GB.298/PV, para. 139.

² GB.300/8.



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)

Introduction

1. At its 300th Session (November 2007), the Governing Body called on the Government of Myanmar to consider a number of issues to demonstrate its commitment to the eradication of forced labour. In particular, the Governing Body:

... called on the Government of Myanmar to make at the highest level an unambiguous public statement that all forms of forced labour are prohibited throughout the country and will be duly punished. The Government should ensure that the mechanism provided by the [Supplementary Understanding of 26 February 2007] remains fully functional with no further detention or harassment of complainants, facilitators or others, and that it fully applies to the military authorities. Full attention should be given to preventing the recruitment of child soldiers.

The Governing Body further called for the putting into place of an appropriate network towards ensuring the nationwide application of the Supplementary Understanding, including in the combat zones, and to ensure that forced labour victims are able to easily access the complaints mechanism. It is understood that the Supplementary Understanding concluded on 26 February 2007 may be extended. It instructed the Office to undertake a full review of the operation of the Supplementary Understanding for submission to the Governing Body at its March 2008 session, together with recommendations for both the Supplementary Understanding's future and the ILO's ongoing role in Myanmar.

2. It will be recalled that the Supplementary Understanding signed on 26 February 2007 was for a 12-month trial period. Discussions on its functioning have taken place in particular between the ILO Liaison Officer in Yangon, Mr Steve Marshall, and the interministerial Working Group, which on the side of the Myanmar Government consists of high-level representatives of the Ministries of Labour, Foreign Affairs and Home Affairs, the Office of the Attorney-General and the Supreme Court. The Liaison Officer has continued to receive and process complaints. A list of the 78 cases received up to now is appended to this report.
3. Given both the imminent expiry of the Supplementary Understanding and the follow-up requirements of the conclusions of the November 2007 Governing Body, an ILO mission visited Myanmar from 25 to 28 February 2008. The mission consisted of Mr Kari Tapiola, Executive Director, accompanied by Mr Francis Maupain, Special Adviser to the Director-

General, and the ILO Liaison Officer in Yangon. The mission met with the Minister of Labour, U Aung Kyi, and the Working Group on forced labour in the capital Nay Pyi Taw on 26 February 2008. It met with the members of the Central Executive Committee of the National League for Democracy in Yangon on 27 February. It also met with a group of facilitators, who have been involved in the complaints under the Supplementary Understanding, and with the relatives of detained labour activists. The mission could however not meet with the activists themselves, as visits have been restricted to persons who are on the list of family members of prisoners. Finally, the mission also met with members of the Yangon-based diplomatic community as well as the UN country team.

Meetings with the Government

4. In Nay Pyi Taw on 26 February 2008, the mission first met with the Working Group chaired by the Deputy Minister of Labour, Brigadier General Tin Tung Aun. In his opening statement, the Deputy Minister stated that there was close cooperation with the Liaison Officer on the implementation of the Supplementary Understanding towards the achievement of the Government's objective of the elimination of forced labour. As a continuation of the policy for the elimination of forced labour, the Government was prepared to extend the Supplementary Understanding without any modifications for a further period of 12 months.
5. A large number of the complaints that had been lodged were related to what the Government considered minor community work, and most of the cases related to the military concerned the recruitment of minors. On these, action had been taken promptly. The Government's cooperation was further demonstrated by the opportunities given to the Liaison Officer to undertake internal travel and participate in awareness-raising, training and education activities as well as the recent agreement of the Government to accept the appointment of an international professional as Assistant to the Liaison Officer. The Government had issued Order No. 1/99 and a range of subsequent orders and instructions making forced labour illegal, which provided clear guidance to both civil and military authorities.
6. Regarding specific cases raised by the ILO, including those mentioned in the conclusions of the Governing Body, the Deputy Minister advised that Su Su Nway and U Min Aung, had been convicted for breaches of the national laws unrelated to their relationship with the ILO. As to the six labour activists imprisoned on 1 May and sentenced in September 2007, he indicated that their conviction was for breaches of national law unrelated to the Supplementary Understanding. The Government had responded to the complaint lodged on this matter to the Freedom of Association Committee. The Supreme Court had recently granted an application for an appeal on their convictions and a hearing would be held in the near future.
7. In response, Mr Tapiola indicated that the ILO could, subject to submission to the Governing Body, consider an extension of the trial period of the Supplementary Understanding for a further 12 months. He further indicated that this called for the clarification of a number of points however. The Supplementary Understanding was very clear on the matter of the harassment of complainants and facilitators. Also, given the 2004 Supreme Court case which recognized that it was not illegal for Myanmar citizens to communicate with the ILO, the recent case of detention of U Thet Wai must be resolved. He had been detained on 9 January 2007 in possession of material on the forced labour Conventions and the Supplementary Understanding, and the reason for his detention was clearly related to his connections with the ILO. Mr Tapiola also reiterated the strong concern expressed by the Governing Body regarding the cases of Su Su Nway and U Min Aung as well as the six labour activists who had received very long prison sentences for organizing activities.

8. Further, confirmation of government agreement to the text of a translation of the Supplementary Understanding was required so that it could be reproduced and more widely distributed. Similarly, government cooperation in the endorsement of information and educational material in Myanmar language was necessary. Mr Tapiola recalled in particular that the Governing Body sought the reconfirmation of the Government's commitment to the eradication of forced labour by way of a high-level public statement.
9. A proposed text for the extension of the trial period of the Supplementary Understanding was agreed. As a number of issues, including that of a public statement, should be addressed in a meeting with the Minister of Labour, the discussions continued with him prior to the signature of the extension. The Minister, U Aung Kyi, welcomed the mission as a confirmation of both parties' commitment to continue the policy for the elimination of forced labour. He advised that unfortunately the Prime Minister was unable to meet the delegation owing to prior diary commitments. However, he handed over a letter on behalf of the Prime Minister confirming Myanmar's commitment to the policy of eradication of forced labour.
10. The Minister confirmed that the provisions of the Supplementary Understanding should permit all citizens of Myanmar to use the mechanism without prosecution or other reprisals. The mission was also advised that the proposed Myanmar language translation of the Supplementary Understanding was in the Attorney-General's Office, and action on it would be taken as soon as possible. Regarding the requested high-level statement, a discussion took place on the significance of possible provisions of the proposed new Constitution which will be put to a referendum in May 2008. The principles for inclusion in the Constitution included wording on both forced labour and freedom of association. The Minister indicated that, if adopted, the new Constitution would provide both a basis for transition to full democracy and a legal basis from which existing national laws, orders and instructions could be reviewed. Such a move could address the request expressed both in the conclusions of the Commission of Inquiry and in repeated observations of the Committee of Experts that national legislation be brought into line with the Forced Labour Convention, 1930 (No. 29).
11. On the basis of the above considerations, an extension of the trial period of the Supplementary Understanding for a further period of 12 months from 26 February 2008 was signed (Appendix I). This was on the formal understanding that the parties would apply the Understanding in full and in a manner consistent with the intent as agreed at the time of initial agreement. The extension agreement would be submitted to the 301st Session of the Governing Body.
12. Following the signature of the 12-month extension of the trial period of the Supplementary Understanding, discussion continued informally over lunch. The Minister, the Deputy Minister and the members of the Working Group were joined by the Assistant Attorney-General. The case of U Thet Wai was further discussed following which an undertaking of early review was received. It should be noted here that one of the charges clearly based on his relationship with the ILO was formally withdrawn on 4 March 2008. On the same day he was released from detention on bail until the case on the remaining charges is held.
13. A letter received on 5 March 2008 from the Deputy Minister provided the wording of the proposed provisions of the draft Constitution related to the abolition of forced labour and the rights to assembly, association and the forming of trade unions (Appendix II).

Meeting with the NLD

14. The mission met with members of the Central Executive Committee of the NLD in Yangon on 27 February 2008. They expressed their appreciation of the extension of the Supplementary Understanding and summarized their position in writing as follows:

- (1) The continued existence of the Liaison Office of the International Labour Organization (ILO) in Burma is essential to take care of the various labour problems in the future.
- (2) In accordance with the additional agreement (Supplementary Understanding) made between the ILO and the State Peace and Development Council (SPDC) in respect of the forced labour problems:
 - (a) Effective actions should be taken against the already initiated complaints regarding forced labour issues.
 - (b) Effective measures shall be taken to restrain the persecution of the complainants, their representatives and other related persons giving various pretexts.
- (3) The ILO should prevail upon the authorities to permit the formation of free and independent trade unions.
- (4) The ILO should take initiatives for mass education of the people to make them aware that the local authorities have no right to force the public to give involuntary labour and that they have the right to make complaint in case of forced labour.
- (5) The mass media such as radio, TV, newspaper, journals should be used for such education works.

Activities of the Liaison Officer since the November 2007 Governing Body

15. The Liaison Officer received a further 21 complaints since the previous session of the Governing Body. Of these, ten were assessed and submitted to the Working Group for inquiry, six did not fall within the mandate (two of these concerned issues of freedom of association), and five were under assessment at time of writing. An updated record of cases is attached in Appendix III.
16. The Working Group, supported by the Ministry of Labour, continues to respond to complaints lodged. This is most notable in cases related to complaints against civil authorities, with complaints against the military obviously being more difficult for the Working Group to manage. However, since the last Governing Body, 11 young persons who had been the subject of underage recruitment complaints were discharged and returned to their families.
17. One mission has been undertaken by the Liaison Officer to Magway Division with three forced labour complaints being assessed. As a result, two of those complaints were formally submitted for inquiry, and the Liaison Officer awaits confirmation of a mediated understanding in respect of the third.
18. A number of further initiatives have been taken:
 - On 18 February the Liaison Officer gave a lecture to 60 deputy township judges (46 women and 14 men) covering international Conventions and national laws on forced labour, the rights and responsibilities of Myanmar citizens under those laws and the Supplementary Understanding, and the operation of the complaints mechanism.

- The Liaison Officer has been invited by the Ministerial Working Group on Trafficking to join a task force so as to provide input on the forced labour aspects of its work.
- The Assistant to the Liaison Officer has been appointed lead consultant in a joint Government, UNICEF, ICRC and ILO team charged with developing and delivering a training for trainers' course to military recruiting staff on the law and practice concerning underage recruitment.

The operation of the Supplementary Understanding over the first trial period

19. A table of statistics covering the full 12 months of the operation of the Supplementary Understanding is attached as Appendix IV. It shows that, while the number of cases is significant in terms of the number of people affected, the spread of types of forced labour and the geographic spread, the actual number of cases is not large. Thus, the data does not reflect the size of the forced labour problem in Myanmar. It is likely that it reflects more the lack of awareness of a large proportion of the population as to the existence of the mechanism set up by the Supplementary Understanding and their right to complain; the logistical difficulty for people to physically lodge a complaint; and the fear of reprisals notwithstanding the protection provisions in the Understanding. In respect of the receipt of complaints, there has been little change in terms of numbers received prior to September 2007 and since that time. There was a short period during which complaints were not received which can be put down directly to the public unrest. The structure of complaints has changed however. Prior to September, the majority of complaints received concerned public works under local administration with only a few military-related complaints and cases of underage recruitment. Since September that pattern has been reversed with the majority of complaints now being military-related and underage recruitment cases.
20. Awareness levels will only increase through education, promotion and publicity. This is why it is important to ensure the production and distribution of the Supplementary Understanding in the Myanmar language and brochures explaining the law, rights and responsibilities under the law and the procedure for accessing the complaints mechanism. These matters have been agreed to in principle by the Government but they have not yet led to concrete results. An information paper has been developed by the Government, with input from the Assistant to the Liaison Officer, for distribution to the various authorities, but this has not as yet been published in Myanmar language. The Government has undertaken a first round of educational seminars for civil administrative personnel. A proposal for a second round to be undertaken jointly by the Ministry of Labour and the ILO has been agreed in principle, but has become operational only on two occasions where joint missions were undertaken in response to specific complaints. A training of trainers' course for military recruitment officers is under development and the first course is scheduled for the last week of April 2008. There have been some reports of outcomes of cases in the official national media but this has not been sufficient to effectively raise the awareness of the broader population. The external media remain at this stage the channel through which a considerable amount of the information on the Supplementary Understanding mechanism is received, about which the Government obviously is not pleased.
21. The communication between the Working Group and the Liaison Officer has demonstrated an acceptable level of responsiveness. There continue to be differences of opinion as to the appropriate remedy for complaints and punishment for perpetrators. The Working Group established by the Government continues to express concern as to the political affiliations and motivations of complainants and facilitators. The Liaison Officer has consistently reminded that he has an obligation to be objective in his assessment of complaints,

concentrating on the substance of the complaint not the identity of the persons concerned. He is satisfied that the mechanism is not being abused in any way.

22. During the first trial period of the Supplementary Understanding, the Government has re-emphasized its previously released guidelines for international organizations covering in particular new rules on internal travel. As explained to the authorities, it must be clear that the provisions relating to the movement of the Liaison Officer agreed at the time of the 2002 Understanding and the specific provisions in this regard contained in the Supplementary Understanding are a necessary requirement inherent to the specific functions entrusted to him/her and are a key consideration in assessing the effective implementation of these Understandings. The agreement to extend the trial period of the Understanding without any wording change was based on that assumption, notwithstanding any other regulations.
23. There have been a number of cases of reported harassment of complainants, facilitators and other related persons. This covers such actions as the interrogation of persons distributing unofficial translations of the Supplementary Understanding; verbal abuse of complainants for embarrassing the authorities; threats if complaints are not retracted; and actions which are intended to detrimentally affect the livelihood of persons involved in complaints. There have also been cases of detention and/or placement on good behaviour reporting bonds, arrest and conviction on charges not related to forced labour complaints, and recently in the case of U Thet Wai, arrest for direct involvement with the ILO. As reported above, this case has now been partially resolved but it remains under close review in respect of the remaining charges against him. It should be recognized that a proportion of these difficulties stem from the divisional, township and village authority attitudes, which are not condoned by senior authorities. The Government has issued a number of supplementary instructions on such matters, but at this stage the message does not appear to have been received and fully understood by all.
24. The demonstrations in September 2007 and the Government's subsequent crackdown on public opposition have impacted both on the society and on the application of the Supplementary Understanding. The general public is now undoubtedly more politically aware and more openly questioning restrictions of their rights. The recently announced referendum to be held in May 2008 on a draft Constitution is being widely discussed even in the absence of a published draft at the time of writing. Similarly, the announcement of intended general elections in 2010 has been welcomed, although often with a large amount of scepticism.
25. The Government has recently reconfirmed its acceptance of the fact that the Liaison Officer needs an assistant. Although the caseload is relatively limited, each case generates a considerable amount of follow-up work. In the event of a growing workload as a result of increased public awareness, the existing professional staff resources would be inadequate.
26. Overall, the trial period has shown an improved working relationship between the Government and the ILO and a slight but still insufficient increase in awareness on the part of local authorities, the military and the general public as to rights and responsibilities under the Forced Labour Convention, 1930 (No. 29), national law and the Supplementary Understanding. The Supplementary Understanding is a valuable tool, albeit within existing limitations, and with the cooperation of all parties, it has the potential to be far more effective in supporting the objective of abolishing forced labour. Activities directed at the forced labour aspects of trafficking and underage recruitment are important for the total forced labour problem. Possible further extension of the scope of action to encompass the forced labour aspects of child labour could deserve future consideration.

Concluding remarks

27. As noted in the beginning of this report, the conclusions of the Governing Body mandated the Office to undertake a full review of the operation of the Supplementary Understanding and make recommendations for its future and the ILO's ongoing role in Myanmar. On the basis of what has been covered in this report, the following remarks would seem warranted.
28. The Office trusts that the Governing Body appreciates the circumstances in which the extension of the trial period of the Supplementary Understanding appeared to be the most viable solution. It is too early to make a definitive pronouncement on the mechanism, given the various questions which have been underlined by the developments recorded by the Liaison Officer and the discussions that the ILO mission held in Nay Pyi Taw and Yangon from 25 to 28 February 2008. Concrete measures are expected on the follow-up of specific cases, on translations and distribution of information material, educational activities and the ways to reach better the population in the country.
29. Forced labour in Myanmar continues to be a serious problem. While a mechanism such as the one introduced by the Supplementary Understanding will not be able on its own to have a major impact on the problem, it demonstrates how, given political will and the necessary legal and administrative safeguards, it can make a difference.
30. In this respect, whatever the shortcomings as regards the content and process for the adoption of a new Constitution, it has the potential of providing the authorities with an opportunity to bring legal clarity to the prohibition of forced labour. Although the Government has not yet made a high-level public statement of the kind that the Governing Body has called for in November 2007, following up a possible future constitutional commitment vigorously, genuinely and transparently would be a significant and concrete expression of the commitment of the authorities to abandoning the still prevalent use of forced labour throughout the country.

Geneva, 10 March 2008.

Submitted for debate and guidance.

301st Session of the Governing Body of the International Labour Office (March 2008)

SIXTH ITEM ON THE AGENDA

GB.301/6

Conclusions concerning Myanmar

1. The Governing Body considered all the information before it including the Statement made by the Permanent Representative of the Union of Myanmar.
2. The Governing Body welcomed the extension of the trial period of the operation of the Supplementary Understanding (SU) for a further 12 months as of 26 February 2008. In so doing, it expressed its strong expectation that during this extension period the SU would be applied in full and according to the original intent. This includes, in particular: the freedom of complainants to access the complaints mechanism without fear of harassment or reprisal; the need to urgently reproduce the SU in the appropriate local languages and ensure its wide dissemination together with other awareness-raising materials; the freedom of movement of the Liaison Officer to carry out his responsibilities; and the requirement that penalties imposed on the perpetrators of all forms of forced labour are meaningful and enforced.
3. The Governing Body again called on the authorities of Myanmar at the highest level to make an unambiguous public statement – disseminated in the appropriate local languages – reconfirming the prohibition of any form of forced labour and their ongoing commitment to the enforcement of that policy, including through the application of the SU.
4. The Governing Body recognized that certain awareness-raising and educational activities have recently taken place. However, it expressed its serious concern at the lack of awareness of both relevant government policy and obligations under Convention No. 29 as evidenced by continuing reports of harassment of persons associated with supporting the operation of the SU. Of particular concern to the Governing Body is the case of U Thet Wai who whilst on bail still has two outstanding charges against him. The Governing Body expects that U Thet Wai and other persons who have been associated with activities against forced labour, in line with the objective of the SU, remain free and experience no further harassment. The Governing Body reaffirmed its call for the immediate release of Su Su Nway and U Min Aung, as well as the six labour activists whose cases are to be reviewed by the Supreme Court.
5. Concerning the comments made on freedom of association and the rights of all trade unions, the Governing Body underlines that this had been clearly addressed in the conclusions on Case No. 2591 of the Committee on Freedom of Association, the report of which was adopted at this session of the Governing Body.

6. The Governing Body draws once again the attention of the Government to its past conclusions and decisions as well as those of the International Labour Conference in the expectation that these matters be efficiently addressed. The Governing Body requested the Liaison Officer to provide an update of the situation to the Committee on the Application of Standards at the 97th International Labour Conference in connection with its special sitting on the application of Convention No. 29 in Myanmar.
7. The Governing Body called on the Government to strengthen its cooperation with the ILO, and in particular with the Liaison Officer, to ensure the effective operation of the SU and the implementation of the obligations under Convention No. 29 to prohibit the use of forced labour as well as the recruitment of minors into the military.

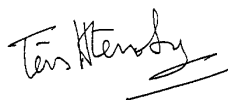
Appendix I

**An Agreement for Extension to the Supplementary Understanding and
its Minutes of the Meeting dated 26th February, 2007, done at
Geneva**

This Agreement is hereby concluded between the Government 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) and the Minutes of the Meeting dated 26th February, 2007, (hereinafter Minutes of the Meeting) it is herewith agreed as follows:-

1. Both parties agreed to extend, on the same trial basis, the SU and its Minutes of the Meeting being an integral part of the SU, for one year with the extension period commencing on 26th February, 2008, to the day one year thereafter being 25th February, 2009.
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 Governing Body in accordance with its conclusions at its 300th Session.

This Agreement is done at Nay Pyi Taw, the Union of Myanmar on the 26th day of February, 2008.



(Brig-Gen. Tin Tun Aung)
Deputy Minister
Ministry of Labour
Government of the Union of Myanmar



(Mr. Kari Tapiola)
Executive Director
International Labour Office

Appendix II



THE GOVERNMENT OF THE UNION OF MYANMAR
MINISTRY OF LABOUR
OFFICE OF THE MINISTER

ED / NORM
- 5 MARS 2008

Ref: 81 - Aha La/Div (1)2008

Date: 5 March 2008

To

Mr. Kari Tapiola
Executive Director
International Labour Office
Geneva

Subject : The visit of Mr. Kari Tapiola, Executive Director and Party to Myanmar

The Minister for Labour received you and party in the morning of 26 February, 2008 in Nay Pyi Taw during your visit to Myanmar.

At the meeting, you and Mr. Francis Maupain discussed about the future cooperation between Myanmar and ILO including the implementation of SU, signing the agreement on extension of SU for another one year. In addition, you asked whether there are some provisions by which the government expresses its intention to undertake necessary measures concerning the application of Convention 29 and 87 in the State Constitution (draft).

With this regard, I would like to inform you that there are some provisions such as para (354) (a), (b), (c) and para (359) of Chapter VIII, Citizenship, Fundamental Rights and Duties of Citizen in the Draft Constitution of the Republic of the Union of Myanmar that obviously reflect the commitment to surely observe Convention 29 and 87 ratified by Myanmar, and those facts are herewith attached for your perusal and to be able to add in the 301st GB report.

With regards,

Yours Sincerely,

for Deputy Minister
Than Win, Head of Office

Cc: - Office Copy

BT-3D/2008/Mr. Kari Tapiola (301 GB)

Chapter VIII
Citizenship, Fundamental Rights and Duties of Citizens

x x x x x x x x x x x

354. There shall be liberty in the exercise of the following rights subject to the laws enacted for State security, prevalence of law and order, community peace and tranquility or public order and morality:

- (a) The right of the citizens to express freely their convictions and opinions;
- (b) The right of the citizens to assemble peacefully without arms;
- (c) The right of the citizens to form associations and unions;

x x x x x x x x x x x

359. The State prohibits any form of forced labour except hard labour as a punishment for crime duly convicted and duties assigned thereupon by the State in accord with the law in the interests of the people.

Appendix III

Summary review of caseload

This summary reflects the caseload situation for the application of the Supplementary Understanding on the elimination of forced labour (SU) agreed between the Government of Myanmar and the International Labour Organization for the 12-month trial period between 26 February 2007 and 25 February 2008.

Overall statistics

Number of complaints received and accepted for the register of cases	74
Number of complaints accepted for assessment as being within the mandate of the SU	53
Number of complaints submitted to the Working Group	37
Number of complaints not submitted owing to insufficient evidence or request for anonymity	10
Number of complaints still in assessment	5
Number of submitted cases satisfactorily closed	20
Number of submitted cases closed with inadequate Working Group response	3
Number of submitted cases for which government response awaited	10
Number of submitted cases with findings/decisions still in discussion/under consideration	4
Number of submitted cases outside of SU but within ILO mandate	1
Number of infrastructural/agricultural civil administration submitted cases	16
Number of military/police/prison administration submitted cases	5
Number of child soldier/forced recruitment cases	16
Number of child soldier/forced recruitment cases submitted	15
Number of child soldier/forced recruitment cases still in assessment	0

Outcome statistics

Number of perpetrators prosecuted	4
Number of civilian administration perpetrators dismissed	7
Number of cases for which compensation paid	3
Number of child soldiers discharged	11
Number of military perpetrators reprimanded	11
Number of cases resulting in new or reissue of instructions	5
Number of assessment missions undertaken	1
Number of joint awareness-raising missions undertaken	2
Number of joint presentations/symposia proposals agreed	2
Number of joint presentations/symposia proposals in discussion	2

Appendix IV

Register of cases

Case	Date received	Accepted	Intervention-date	Status	Comments
001	28-Feb-07	Yes	9-Mar-07	Closed	Prosecution- 2 x imprisonment 1x acquitted
002	28-Feb-07	Yes	29-May-07	Closed	Child Released, disciplinary action-formal reprimand
003	5-Mar-07	No		Closed	Not related to mandate (worker welfare issue).
004	13-Mar-07	Yes	20-Mar-07	Closed	Not forced recruitment-under age-discharged to parents
005	29-Mar-07	No		Closed	Not related to mandate (land issue).
006	6-Apr-07	No		Closed	Not related to mandate (pension issue).
007	6-Apr-07	No		Closed	Not related to mandate (pension issue).
008	6-Apr-07	Yes	16-May-07	Closed	Compensation paid. Instigator dismissed.
009	9-Apr-07	Yes	10-Apr-07	Closed	Civil Sanctions and reprimands
010	9-Apr-07	No	5-Mar-08	Closed	Insufficient basis to proceed at this stage.
011	19-Apr-07	Pending		Pending	Assessment in process.
012	19-Apr-07	No		Closed	Not related to mandate (employment dispute).
013	23-Apr-07	No		Closed	Complaints unwilling to be identified
014	23-Apr-07	No		Closed	Complaints unwilling to be identified
015	23-Apr-07	Yes	16-May-07	Open	Further verification in process
016	25-Apr-07	No		Closed	Not related to mandate (employment dispute).
017	26-Apr-07	Yes	22-Aug-07	Closed	Administrative instructions issued and educative activity undertaken .
018	9-May-07	Yes	22-May-07	Closed	Military Officer disciplined-joint training seminar proposal declined.
019	9-May-07	No		Closed	Not related to mandate (property dispute).
020	9-May-07	No		Closed	Insufficient basis to proceed.
021	9-May-07	Yes	10-May-07	Closed	Victim discharged to parents-disciplinary action as the result of Military Enquiry inadequate.
022	18-May-07	No		Closed	No evidence that the work constituted forced labour
023	18-May-07	Yes	23-May-07	Closed	Field Visit undertaken - Education activity undertaken
024	25-May-07	No		Closed	Insufficient information to proceed
025	22-Jun-07	Yes	14-Aug-07	Closed	4 officials dismissed, administrative instructions re-issued
026	26-Jun-07	Yes	13-Aug-07	Closed	Local Authorities instructional activity undertaken.
027	28-Jun-07	No		Closed	Not related to mandate-Pension/gratuity matter
028	7-Jun-07	No		Closed	Not related to mandate-Pensions matter
029	14-Jun-07	Yes	2-Aug-07	Closed	Village Chairman dismissed.
030	31-Jul-07	Yes	31-Jul-07	Closed	Child released-summary military trial-recruiting officer disciplined
031	25-Jun-07	No		Closed	Not related to mandate-Mass termination
032	29-Jun-07	No		Closed	Not related to mandate-land confiscation
033	6-Jul-07	Yes	9-Aug-07	Closed	Child Released, Training seminar proposed
034	12-Jul-07	No		Closed	Not related to mandate-hours of work/ Overtime issue
035	23-Jul-07	Yes	17-Aug-07	Closed	Gvt instructions issued, retrospective remuneration, Joint field trip for awareness education undertaken
036	24-Jul-07	No	5-Mar-08	Closed	Insufficient basis to proceed at this stage.
037	29-Jun-07	No		Closed	Not related to mandate-Migrant worker/payment of wages
038	25-Jul-07	No		Closed	Not related to mandate-termination of employment issue
039	12-Jun-07	No		Closed	Insufficient basis on which to proceed.
040	31-Jul-07	Pending		Pending	Assessment in process.
041	6-Aug-07	No		Closed	Not related to mandate-termination grievance
042	7-Aug-07	Yes	8-Aug-07	Closed	Not within mandate of forced labour SU-Issue of FOA remains.
043	15-Aug-07	Yes	16-Aug-07	Closed	Child Released, disciplinary action as the result of Military Enquiry inadequate.
044	16-Aug-07	No		Closed	Not related to mandate-wages/fees payment issue
045	20-Aug-07	Yes	10-Sep-07	Closed	Government Response received. New instructions issued.
046	24-Aug-07	No		Closed	Not related to mandate-commercial dispute
047	27-Aug-07	Yes	12-Sep-07	Open	Government Response under consideration
048	7-Sep-07	No		Closed	Insufficient evidence to proceed
049	7-Sep-07	Yes	19-Dec-07	Closed	Compensation package. One perpetrator demoted. Recommendation on policy review made.
050	14-Sep-07	Yes	20-Sep-07	Closed	Child released-Military enquiry resulted in disciplinary reprimand.
051	20-Sep-07	Yes	25-Feb-08	Open	Awaiting Government response
052	20-Sep-07	Yes	22-Feb-08	Open	Awaiting Government response
053	10-Oct-07	Yes	9-Nov-07	Open	Government Response under consideration
054	17-Oct-07	Yes	18-Oct-07	Open	Clause 9 breach-negotiation continues
055	19-Oct-07	Yes	31-Oct-07	Closed	Child released-Military enquiry resulted in disciplinary reprimand.

Case	Date received	Accepted	Intervention-date	Status	Comments
056	25-Oct-07	Yes	09-Nov-07	Closed	Child released-Military enquiry resulted in disciplinary reprimand.
057	7-Nov-07	No		Closed	Not related to mandate - cross-border trafficking & HIV and AIDS
058	15-Nov-07	Yes	23-Nov-07	Closed	Child released-summary military trial-recruiting officer disciplined
059	15-Nov-07	Yes	30-Nov-07	Open	Awaiting Government response re: translation
060	19-Nov-07	No		Closed	Not related to mandate - wages claim issue
061	17-Dec-07	Yes	19-Dec-07	Open	Awaiting Government response.
062	20-Dec-07	Yes	28-Dec-07	Closed	Victim discharged to custody of parents. Responsible recruiting officer officially reprimanded.
063	7-Dec-08	Yes	14-Jan-08	Open	Awaiting Government response
064	7-Dec-08	Yes	11-Feb-08	Open	Awaiting Government response
065	08-Jan-08	No		Closed	Not related to mandate-corruption allegation
066	14-Jan-08	Yes	22-Feb-08	Open	Awaiting Government response.
067	16-Jan-08	Pending		Pending	Assessment in process.
068	16-Jan-08	Yes	25-Feb-08	Pending	Awaiting Government response.
069	31-Jan-08	Yes	25-Feb-08	Pending	Submitted in association with Case 051
070	6-Feb-08	Yes	12-Feb-08	Open	Awaiting Government response
071	29-Jan-08	No		Closed	Not related to mandate - compensation for damaged crop
072	30-Jan-08	Pending		Pending	Assessment in process.
073	20-Feb-08	Pending		Pending	Assessment in process.
074	21-Feb-08	No		Closed	Insufficient basis to proceed.
075	03-Mar-08	Pending		Pending	Assessment in process.
076	03-Mar-08	Pending		Pending	Assessment in process.
077	5-Mar-08	No		No	Not within SU mandate -FOA issue subject to separate consideration
078	5-Mar-08	No		No	Not within SU mandate -FOA issue subject to separate consideration



FOR INFORMATION

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)

Under the present agenda item, document GB.301/6/2 contains, in Appendix IV, a register of cases. In accordance with most recent developments and information, the register of cases should now read as overleaf.

Geneva, 19 March 2008.

Submitted for information.

Register of cases

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001	28-Feb-07	Yes	9-Mar-07	Closed	Prosecution- 2 x imprisonment 1x acquitted
002	28-Feb-07	Yes	29-May-07	Closed	Child Released, disciplinary action-formal reprimand
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010	9-Apr-07	No	5-Mar-08	Closed	Insufficient basis to proceed at this stage.
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012	19-Apr-07	No		Closed	Not related to mandate (employment dispute).
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047	27-Aug-07	Yes	12-Sep-07	Open	Government Response received - further Government consideration sought
048	7-Sep-07	No		Closed	Insufficient evidence to proceed
049	7-Sep-07	Yes	19-Dec-07	Closed	Compensation package. One perpetrator demoted. Recommendation on policy review made.
050	14-Sep-07	Yes	20-Sep-07	Closed	Child released-Military enquiry resulted in disciplinary reprimand.
051	20-Sep-07	Yes	25-Feb-08	Open	Awaiting Government response
052	20-Sep-07	Yes	22-Feb-08	Open	Awaiting Government response
053	10-Oct-07	Yes	9-Nov-07	Open	Government Response received - joint mission proposed
054	17-Oct-07	Yes	18-Oct-07	Open	Clause 9 breach-negotiation continues

Case	Date received	Accepted	Intervention-date	Status	Comments
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061	17-Dec-07	Yes	19-Dec-07	Open	Awaiting Government response.
062	20-Dec-07	Yes	28-Dec-07	Closed	Victim discharged to custody of parents. Responsible recruiting officer officially reprimanded.
063	7-Dec-08	Yes	14-Jan-08	Open	Victim discharged to parents - additional follow-up needs under consideration.
064	7-Dec-08	Yes	11-Feb-08	Open	Awaiting Government response
065	08-Jan-08	No		Closed	Not related to mandate-corruption allegation
066	14-Jan-08	Yes	22-Feb-08	Open	Awaiting Government response.
067	16-Jan-08	Pending		Pending	Assessment in process.
068	16-Jan-08	Yes	25-Feb-08	Open	Awaiting Government response.
069	31-Jan-08	Yes	25-Feb-08	Open	Submitted in association with Case 051
070	6-Feb-08	Yes	12-Feb-08	Open	Awaiting Government response
071	29-Jan-08	No		Closed	Not related to mandate - compensation for damaged crop
072	30-Jan-08	Yes	11-Mar-08	Open	Awaiting Government response.
073	20-Feb-08	Pending		Pending	Assessment in process.
074	21-Feb-08	No		Closed	Insufficient basis to proceed.
075	03-Mar-08	Yes	10-Mar-08	Open	Awaiting Government response.
076	03-Mar-08	Yes	11-Mar-08	Open	Awaiting Government response.
077	5-Mar-08	No		No	Not within SU mandate -FOA issue subject to separate consideration
078	5-Mar-08	No		No	Not within SU mandate -FOA issue subject to separate consideration

