

Document D.5

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

Myanmar (ratification: 1955)

Historical background

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

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

- (1) that the relevant legislative texts, in particular the Village Act and the Towns Act, be brought into line with the Convention;
- (2) that, in actual practice, no more forced or compulsory labour be imposed by the authorities, in particular the military; and
- (3) that the penalties which may be imposed under section 374 of the Penal Code for the exaction of forced or compulsory labour be strictly enforced.

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. In its earlier comments, the Committee of Experts has identified four areas in which measures should be taken by the Government to achieve the recommendations of the Commission of Inquiry. In particular, the Committee indicated the following measures:

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

Developments since the Committee's previous observation

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

- the discussions and conclusions of the Conference Committee on the Application of Standards during the 97th Session of the International Labour Conference in June 2008;
- the documents submitted to the Governing Body at its 301st and 303rd Sessions (March and November 2008), as well as the discussions and conclusions of the Governing Body during those sessions;
- the comments made by the International Trade Union Confederation (ITUC) in a communication received in September 2008 together with the detailed appendices of more than 600 pages; and
- the reports of the Government of Myanmar received on 4 and 20 March, 2 and 19 June, 26 September and 31 October 2008.

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

5. In its previous observation, the Committee discussed the significance of the Supplementary Understanding (SU) of 26 February 2007, which supplemented the earlier Understanding of 19 March 2002 concerning the appointment of an ILO Liaison Officer in Myanmar, and the role of the Liaison Officer in its implementation, as an important new development and a subject of major discussion in ILO bodies. As the Committee previously noted, 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 Committee notes that the complaints mechanism was extended on 26 February 2008 on a trial basis for one year, until 25 February 2009 (ILC, 97th Session, *Provisional Record* No. 19, Part 3, document D.5). The Committee further discusses the SU below, in the context of its comments on the other documentation, discussions and conclusions regarding this case.

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

6. The Committee on the Application of Standards once again discussed this case in a special sitting during the 97th Session of the Conference in June 2008 (ILC, 97th Session, *Provisional Record* No. 19, Part 3). The Conference Committee observed that, although certain steps had been taken in the application of the SU, “much more needed to be done with commitment and urgency”. The Conference Committee expressed its concern that awareness of the existence of the complaints mechanism under the SU “remained very low”, and it 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 SU. The Conference Committee noted that, although the complaints mechanism continued to operate, penalties were not being imposed under the Penal Code, and no criminal convictions of members of the armed forces had taken place. The Conference Committee also emphasized that it was critical that the ILO Liaison Officer had sufficient resources available to undertake his responsibilities, and it underlined the urgent need for the Government to accept a strengthened network of facilitators to deal with complaints from all over the country. The

Conference Committee also noted with concern the reported cases of retaliation and harassment against complainants and volunteer facilitators who cooperated with the Liaison Officer, and it called on the Government to ensure that all retaliation and harassment, based on any legal or other pretext, cease with immediate effect and that the perpetrators be punished with the full force of the law.

Discussions in the Governing Body

7. The Committee notes from the report submitted to the 303rd Session of the Governing Body in November 2008 (GB.303/8/2), regarding the progress of the SU complaints mechanism that, as of 6 November 2008, the Liaison Officer had received 121 complaints (GB.303/8/2, paragraph 3). Of those complaints, 70 had been formally submitted for investigation and appropriate action to the Government Working Group on Forced Labour. Of the cases submitted, 50 had been responded to in a manner considered satisfactory and were subsequently closed, while 20 cases were either still awaiting government response or remained open while the process continued. Thirty-nine of the cases submitted involved individual complaints of under-age recruitment into the military (GB.303/8/2, paragraph 3).

8. The Committee notes in the same report to the Governing Body the indications of the Liaison Officer that it was evident that awareness levels among a large majority of the population regarding their right and possibility to complain were very low; that this low level of awareness together with the physical difficulties of actually lodging a complaint meant that the complaints facility currently did not reach out significantly beyond Yangon and neighbouring divisions (paragraph 9); that “extensive negotiations” were continuing to take place on the translation of the SU and the original Understanding of 2002 and final approval had yet to be granted (paragraph 8); and that the Government had yet to consider or approve the text of a simply worded brochure to be translated into local languages, for wide public distribution, explaining the law and the procedure for lodging a complaint under the SU (paragraph 9).

9. In its conclusions (GB.303/8), the Governing Body, inter alia, stressed the urgency of giving full effect to the recommendations of the Commission of Inquiry and to the subsequent decisions of the International Labour Conference (paragraph 1). While recognizing a certain degree of cooperation to make the SU complaints mechanism function, it expressed its continued concern about the slow pace of progress and the urgent need for much more to be done (paragraph 2). The Governing Body underlined the urgent need to raise the awareness of military and civil authorities, as well as the general public, concerning the legislation prohibiting forced labour and the rights contained in the SU. It also pointed out that those guilty of exacting forced labour, including under-age recruitment into the military, must be prosecuted and meaningfully punished, and victims must be entitled to reparation (paragraph 3). It emphasized the need for the Liaison Officer to be able to carry out his functions effectively throughout the country, and for public access to the ILO Liaison Office to be unhindered and free from the fear of reprisals (paragraph 4). Finally, the Governing Body called for an end to the harassment and detention of persons exercising their rights under the SU (paragraph 5).

Communication received from the International Trade Union Confederation

10. The Committee notes the comments made by the ITUC in its communication received in September 2008. Appended to this communication were 49 documents, amounting to more than 600 pages, containing extensive and detailed documentation referring to the persistence of widespread forced labour practices by 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. It includes allegations of government-imposed compulsory labour taking place in all but one

of the 14 states and divisions of the country. Specific incidents referred to involve allegations of a wide variety of types of work and services requisitioned by the authorities, including work directly related to the military or militia groups (portering, construction and maintenance of military camps, other tasks for the benefit of the military such as human minesweeping and sentry/security duty, and forced recruitment of children and of prisoners upon completion of their sentences), as well as work of a more general nature, including work in agriculture (such as forced cultivation of castor oil nuts), construction and maintenance of roads, bridges and dams, and other infrastructure work.

11. The ITUC documentation includes translated copies of 59 written orders from military and other authorities to village authorities in Karen and Chin States, containing a range of demands, entailing in most cases a requisition for compulsory (and uncompensated) labour. The information also includes reports of allegations that persons turning to the ILO Liaison Office to file complaints of forced labour often face retaliation and harassment. One such case involved 20 villagers from Pwint Phyu Township in the Magwe Division who, after filing a complaint of forced labour with the ILO, were questioned five times within one month by local authorities. Another case involved 70 residents from Arakan State, who were questioned by officers of the Military Affairs Security Department of the Labour Ministry after submitting a forced labour complaint to the ILO and were forced to sign a document stating they had been coerced into filing their petition. The ITUC communication also refers to information alleging that forced labour has been exacted by military and local authorities in the Irrawaddy Delta region for reconstruction work in the wake of cyclone Nargis in May 2008. It refers, for example, to allegations that: at the Maubin camp for displaced people, 1,500 men and women were forced to work in quarries; that in Ngabyama village in Southern Bogale Township, authorities forced survivors to cut trees and reconstruct roads; and that in Bogalay soldiers were imposing forced labour on local villagers. The documentation also includes testimonies alleging the forced appropriation of money by military commanders from villages in SPDC-controlled areas, allegedly as “donations” being collected for distribution to survivors of the cyclone. A copy of the ITUC’s communication and its annexes was transmitted to the Government on 22 September 2008 for such comments as it may have wished to provide.

The Government’s reports

12. The Committee notes the Government’s reports, referred to in paragraph 4 above. It is grateful for the very lengthy report received on 31 October 2008, which is in large part a compilation of information the Government previously supplied, but which also includes a lengthy summary of the history of developments in this case from the Government’s point of view with an emphasis on its history of cooperation with the International Labour Office, as well as several pages of updated information concerning measures which, according to the Government, are being taken to implement the June 2008 conclusions of the Conference Committee, as well as this Committee’s observations. The Committee notes, however, that, in its most recent reports, the Government did not respond in detail to the numerous specific allegations contained in the communication from the ITUC referred to above, other than to provide information about the status of several court cases involving the criminal prosecution and punishment of persons who were acting as volunteer facilitators for the SU complaints mechanism or who were labour activists with links to the ILO or engaged in associational activities aimed at promoting labour rights. These cases have also been matters of particular concern to ILO supervisory bodies. The Committee notes that the information about these cases contained in the Government’s most recent report is a repetition of the information included in the reports received on and before 19 June 2008. The Committee notes the updated information on these cases in the report of the Liaison Officer of 7 November 2008 submitted to the 303rd Session of the Governing Body (GB.303/8/2). ***The Committee urges the Government to respond in detail in its next report to the numerous specific allegations of continued, widespread***

imposition of forced or compulsory labour by military and civil authorities throughout the country, which are documented in the recent communication from the ITUC.

Assessment of the situation

Issuing specific and concrete instructions to the civilian and military authorities

13. The Committee notes initially that in its latest reports the Government has given no indication that it has taken measures to formally repeal the relevant provisions of the Village Act and the Towns Act. With regard to Order No. 1/99 as supplemented by the Order of 27 October 2000, which prohibit forced labour, the Government repeats its reference to instructions it states had previously been issued, yet once again it has not supplied details as to the content of those instructions. The Committee notes the reference to a lecture to deputy township judges on 18 February 2008, delivered jointly at an “On-Job Training Course No. 18” by the Director-General of the Department of Labour and the ILO Liaison Officer, which was aimed at raising those participants’ awareness “about forced labour broadly” and to enable them to “make right decisions”. The Committee also notes that the report of the Liaison Officer submitted to the Conference Committee in June 2008 referred to 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, which it states had 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, and the second programme of this kind was scheduled for the last week of June and was to be followed by the participants leading multiplier training courses around the country (ILC, 97th Session, *Provisional Record* No. 19, Part 3, document D.5, paragraph 7). The Committee notes the information in the Government’s reports received on 20 March and 26 September 2008, on activities undertaken by the Committee for the Prevention of Military Recruitment of Under-age Children. This information also refers to a plan for “multiplier courses” on measures for the prevention of child recruitment into the military to be given to military officers and lower ranking trainees at a number of military training centres during 2008. It indicates, inter alia, that in June 2008 representatives of the Committee for the Prevention of Military Recruitment of Under-age Children and the Ministry of Defence issued “guidance” to assistant judge advocates-general and to department heads of division and regional commands and military training schools, which, in turn, was intended to support “legal education” lectures on the prevention of recruitment of children into the military that were to be given to military officers and lower ranking military personnel at a number of regiments and units. The Committee notes that in its latest reports the Government provided no further information about the plans for multiplier courses or legal education lectures referred to earlier.

14. The Committee considers that steps taken to issue instructions to civilian and military authorities on the prohibition of forced and compulsory labour, such as those referred to above, are vital and need to be intensified. However, given the continued dearth of information regarding such measures, including the detailed content of materials referred to, the Committee remains unable to ascertain that clear instructions have been effectively conveyed to all civil authorities and military units, and that bona fide effect has been given to the orders. The Government has provided no information that would support an observation that, in actual practice, recourse to forced or compulsory labour by the authorities, and in particular the military, has declined on account of instructions regarding the prohibition of forced labour, which the Government indicates has been conveyed to them. ***The Committee stresses that, in order for the Government to eradicate forced labour, the activities referred to above are vital and need to take place on a larger scale and in a more systematic way. The Committee requests the Government to report in greater detail on these activities, including the full content of the materials and curricula***

utilized, as well as information about their effectiveness in bringing about a decline, in actual practice, in the imposition of forced or compulsory labour.

15. In its previous observation, the Committee expressed the hope that the Government would also bring constitutional clarity to the prohibition of forced labour. In its latest report, the Government states that application of the Convention has “been included in the New State Constitution”, which was approved in a constitutional referendum in May 2008 and is due to take effect in 2010, and it refers to section 359 (paragraph 15 of Chapter VIII – “Citizenship, Fundamental Rights and Duties of Citizens”) of that instrument, which states: “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.” The Committee, referring also to paragraph 42 of its General Survey of 2007 on the eradication of forced labour, recalls that, for purposes of the Convention, certain forms of compulsory work or service, which would otherwise fall under the general definition of “forced or compulsory labour”, are expressly excluded from its scope by Article 2(2) of the Convention, and that these exceptions are subject to the observance of certain conditions which define their limits. The Committee notes with regret that the exemption from the prohibition of forced labour in the new Constitution for “duties assigned thereupon by the State in accord with the law in the interests of the people” encompasses permissible forms of forced labour that exceed the scope of the specifically defined exceptions in Article 2(2). The Committee also expresses deep concern about the fact that the Government not only failed to repeal legislative texts identified by the Commission of Inquiry and this Committee, but also included in the text of the Constitution a provision which may be interpreted in such a way as to allow a generalized exaction of forced labour from the population. Moreover, as the Committee pointed out in paragraph 67 of its General Survey referred to above, even those constitutional provisions which expressly prohibit forced or compulsory labour may become inoperative where forced or compulsory labour is imposed by legislation itself. ***The Committee therefore trusts that the Government will at long last take the necessary steps to amend or repeal the relevant legislative texts, in particular the Village Act and the Towns Act, and that it will also amend paragraph 15 of Chapter VIII of the new Constitution, in order to bring its law into conformity with the Convention.***

***Ensuring that the prohibition of forced labour
is given wide publicity***

16. In relation to ensuring that the prohibition of forced labour is given wide publicity, the Committee notes the indication from the report of the Liaison Officer dated 7 November 2008, which was submitted to the Governing Body at its 303rd Session, that, since March 2008, the Liaison Officer had undertaken two joint awareness-raising missions with senior Department of Labour officials (GB.303/8/2, paragraph 6). The Government appears to refer in its report received on 31 October 2008 to the same activities, indicating that joint field visits were planned by the Director-General of the Department of Labour and the ILO Liaison Officer to Myitkyinar and Monywa in late October 2008 to carry out awareness-raising workshops. The Committee reiterates its view that such activities are critical in helping to ensure that the prohibition of forced labour is widely known and applied in practice, and they should continue and be expanded. It notes the indication of the Liaison Officer in his report to the Governing Body (GB.303/8/2), that there still had been no response to repeated calls from ILO supervisory bodies for a widely publicized, high-level statement reconfirming the Government’s commitment to the elimination of forced labour (paragraph 10).

17. In its previous observation the Committee noted that the complaints mechanism of the SU in itself provided an opportunity to the authorities to demonstrate that continued recourse to the practice is illegal and would be punished as a penal offence, as required by the Convention. In that vein, the Committee notes with concern the statements of the

Liaison Officer about the continued shortcomings of the SU in his latest report to the Governing Body (GB.303/8/2), which are referred to above in the discussion of the Governing Body proceedings. *The Committee hopes that the Government will, without further delay, take measures to intensify and expand the scale and scope of its efforts to give wide publicity to and raise public awareness about the prohibition of forced labour, including the use of the SU complaints mechanism as an important modality of awareness raising, and that in its next report it will provide information about such measures as well as the impact they are having on the enforcement of criminal penalties against perpetrators of forced labour and on the imposition in actual practice of forced or compulsory labour, particularly by the military.*

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

18. In this regard, the Committee recalls that in its recommendations the Commission of Inquiry stated that: “(A)ction must not be limited to the issue of wage payment; it must ensure that nobody is compelled to work against his or her will. Nonetheless, the budgeting of adequate means to hire free wage labour for the public activities which are today based on forced and unpaid labour is also required.” The Committee, in its previous observations, has also stressed that budgeting of adequate means for the replacement of forced labour, which tends also to be unpaid, is necessary if recourse to the practice is to end. The Committee notes that, in its latest reports, the Government provides no new information, stating as it has previously that it “provides the budget allotment including labour costs for all the Ministries to implement their respective projects”, and “to confirm that the budgetary allotment for the workers are already allocated to the respective Ministry”. *The Committee repeats its earlier request for the Government, in its next report, to provide precise, detailed information about the measures it has taken to budget for adequate means for the replacement of forced or unpaid labour.*

Ensuring the enforcement of the prohibition of forced labour

19. With regard to the enforcement of prohibitions of forced labour, the Committee notes the assessment of the Liaison Officer, as reported to the Governing Body in November 2008, that: “In the main, complaints lodged (under the SU) have been dealt with expeditiously by the Government Working Group” (GB.303/8/2, paragraph 5); and that: “The Government’s response to the complaints mechanism at senior level remains reasonably positive” (GB.303/8/2, paragraph 20). However, in its previous observation the Committee expressed its concern that only one case forwarded by the Liaison Officer to the authorities for investigation and appropriate action had so far resulted in the prosecution of those responsible (Case No. 001, which led to the prosecution of two civilian officials), and there were no indications that, in the cases forwarded which involved allegations against military personnel, any action, criminal or even administrative (other than reprimands), had been taken against any military personnel. The Committee notes that this situation remained largely unchanged in 2008, except for three cases against military personnel, referred to in the report of 7 November 2008 submitted to the 303rd Session of the Governing Body, in which fines (28 days’ and one 14 days’ salary; in one case loss of one year’s seniority) rather than reprimands were imposed (GB.303/8/2, paragraph 7). The Committee notes in the same report the statements of the Liaison Officer that administrative penalties against military personnel continue to be proportionately lighter than those imposed on their civilian counterparts, and that, during the period following the submission of previous reports to the ILO supervisory bodies, no further prosecutions of alleged perpetrators under either the Penal Code or military regulations, resulting in imprisonment, had taken place (GB.303/8/2, paragraph 7).

20. The Government has in its latest reports provided no new information about any prosecutions against perpetrators of forced labour being pursued in the court system

outside the framework of the SU complaints mechanism. The Committee notes that, in its report received on 31 October 2008, the Government makes reference, as in previous years, to a mechanism that has been put in place for the public to register complaints directly with law enforcement authorities, and it also refers, as it has previously, to an appendix containing a table of cases with notations indicating that in 2003 and 2004 ten cases involving complaints of forced labour were filed directly in the Myanmar courts, several of which resulted in convictions and the imposition in January and February of 2005 of prison sentences under section 374 of the Penal Code. The Committee previously noted these cases in its observation published in its 2005 report. The Committee notes that three of the cases were dismissed, and in the remaining cases the persons convicted and sentenced were all civil administration officials, despite the fact that at least two of the cases involved allegations against military personnel.

21. The Committee emphasizes once again that the illegal exaction of forced labour must be punished as a penal offence, rather than treated as an administrative issue, and the penalties which may be imposed under section 374 of the Penal Code for the exaction of forced or compulsory labour be strictly enforced, in conformity with Article 25 of the Convention. As emphasized by the Commission of Inquiry, this requires thorough investigation, prosecution and adequate punishment of those found guilty, including cases involving military personnel.

Concluding remarks

22. The Committee fully endorses the conclusions concerning Myanmar of the Governing Body and the general evaluation of the forced labour situation by the Liaison Officer. In the light of these conclusions and evaluation, the Committee continues to believe that the only way that genuine and lasting progress in the elimination of forced labour can be made is for the Myanmar authorities to demonstrate unambiguously their commitment to achieving that goal. This requires, beyond the agreement of the SU, that the authorities redouble their efforts to establish the necessary conditions for the successful functioning of the complaint mechanism, and that they take without further delay 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 trusts that the Government will demonstrate its commitment to rectify the violations of the Convention identified by the Commission of Inquiry, by implementing the very explicit practical requests addressed by the Committee to the Government, and that all the required steps will be taken to achieve compliance with the Convention, both in law and in practice, so that the most serious and long-standing problem of forced labour will be finally resolved.***

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

I. Follow-up to the 97th Session (2008) of the ILC

1. Following the 97th Session (2008) of the International Labour Conference, the Liaison Officer has continued work on the ground with the Government of Myanmar on the implementation of the recommendations of the 1998 Commission of Inquiry and the subsequent decisions and recommendations of the Conference and the Governing Body. One important element is the complaints mechanism established on a trial basis by the Supplementary Understanding between the Office and the Government, which had been initially concluded on 26 February 2007. On 26 February 2009, the trial period was extended for a further twelve months.
2. Reports on the developments concerning the question of the observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29) were submitted to the Governing Body at its 303rd (November 2008) and 304th (March 2009) sessions. Documents GB.303/8/2 and GB.304/5/1(Rev.) as well as the conclusions of the Governing Body are attached to this report. Over the past 12 months considerable international focus has also been directed to the recovery programme following the devastation caused by cyclone Nargis in the beginning of May 2008. The ILO has been involved in this activity through a community, labour-based, infrastructure project as a model against the use of forced labour and has also been monitoring the incidence of forced labour in the overall relief operation.
3. In the conclusions of its 303rd sitting, the Governing Body recognized a certain degree of cooperation on the part of the Government to make the complaints mechanism under the Supplementary Understanding work. However, it also stressed the urgency of giving full effect to the recommendations of the Commission of Inquiry and the need for widespread awareness raising on the rights of people and the responsibilities of the authorities in respect of forced labour. To this end the Governing Body highlighted the need for the production and wide distribution of a translation of both the Supplementary Understanding and a clearly and simply worded explanatory brochure. The Governing Body considered that people must have access to the ILO unhindered and without fear of reprisals. In that regard the Governing Body condemned the severe prison sentences imposed on Ma Su Su Nway and U Thet Wai who both were long time supporters of the ILO forced labour program and active facilitators of complaints under the Supplementary Understanding. The Governing Body called for their release as well as the release of other activists imprisoned for the pursuit of their fundamental rights including freedom of association. It reiterated its earlier call for a statement from the highest political level which would unambiguously reconfirm that forced labour is illegal and the Government remains committed to its elimination.
4. At its 304th sitting the Governing Body welcomed the further extension of the trial period of the Supplementary Understanding. It called for the continuation of the sustained measures needed for the full implementation of the Commission of Inquiry recommendations for the elimination of forced labour in Myanmar. It noted with serious concern the continuing arrest and sentencing of persons who had been associated with the application of the complaints mechanism. While noting the release of U Thet Wai the Governing Body called for the urgent review of the cases concerning U Zaw Htay, a facilitator of complaints under the Supplementary Understanding, his lawyer Ko Po Phyu, and of other similar cases towards their immediate release from custody. The Governing

Body again expressed the view that all persons should have access to the complaints mechanism without the risk of harassment or retribution. To that end they called for the wide distribution of the translation of the Supplementary Understanding, for the production of a simply worded publication and the undertaking of systematic awareness raising seminars including in sensitive areas of the country. While welcoming the Minister of Labour's public statement made at the time of the extension of the Supplementary Understanding the Governing Body again reminded the Government of the continuing need for an authoritative statement at the highest level clearly confirming to the people the Government's policy for the elimination of forced labour and its intention to prosecute perpetrators, both civilian and military, under the Penal Code.

5. The Governing Body noted the progress reported in the rural infrastructure project in the cyclone affected region. It recommended that the Liaison Officer and the Government continue to work together to identify modalities for the continuation of this activity, within the existing framework, in the Irrawaddy Delta region and potentially in other parts of the country.
6. In line with the current ILO mandate in Myanmar, the Governing Body welcomed the Liaison Officer's acceptance of responsibility under UN Security Council Resolution 1612 for monitoring and reporting underage recruitment and child soldiers. It called on the Government to continue to cooperate with the Liaison Officer and his staff in this regard and to facilitate the presence of an additional international professional for this purpose.

II. The functioning of the Supplementary Understanding

7. As of 15 May 2009, a total of 152 complaints have been received under the Supplementary Understanding. Of those complaints 95 have been assessed and submitted to the Government for investigation and action, and 39 have been assessed as not being within the mandate or not sufficiently supported or substantiated for submission. Five complaints were accepted as being within the mandate but were not proceeded with due to concerns on the part of the complainants of possible retribution. Another five complaints have concerned issues relating to freedom of association. At present eight cases are under assessment towards possible submission.
8. Of the 95 cases submitted to the Government, 70 cases have been closed following an investigation by the authorities. In 13 of these cases the Case Register has been noted either that the action taken by Government against the perpetrators is considered inadequate or recommendations made for a more comprehensive solution have been rejected. Responses continue to be in discussion in 12 cases, and responses have not yet been received to the original letter of complaint in respect of the remaining 13 cases. In 23 of the closed cases recommendations have been made towards improving ongoing practice.
9. The complaints submitted fall into the following categories:
 - (a) forced labour under the instruction of civil authorities: 25 cases;
 - (b) forced labour under the instruction of military authorities: 18 cases;
 - (c) recruitment of minors into the military: 52 cases.
10. In 15 cases complaints alleging harassment/reprisals connected with the application of the Supplementary Understanding have been received.

11. The Ministerial Working Group, chaired by the Deputy Minister of Labour and supported by the Department of Labour, has responded in a reasonably timely and constructive manner to the complaints that have been submitted and to recommendations made. However, it must also be said that the arrest and sentencing of facilitators and the ensuing publicity has worked against the lodging of complaints in particular on the use of traditional forced labour. In contrast, complaints concerning underage recruitment into the military have increased, and in these cases there have been no reports of harassment or reprisal being experienced.
12. The number of complaints cannot be seen as a reflection of the extent of forced labour practices in Myanmar. 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 seven local staff contracted to the ILO for interpretation, administrative and transport support purposes. Myanmar is a large country with a somewhat unreliable communication systems, and it is not easy for citizens to travel. Therefore, a network of complaints facilitators remains a necessity. 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. They also accept a level of risk of potential harassment and even detention.
13. Some facilitators belong to political or social organizations while others are ordinary committed individuals. The Government continues to maintain that some facilitators use the provisions of the Supplementary Understanding against the State by actively seeking out and encouraging complaints, or as a means to gain protection under the non-retribution provision of the Supplementary Understanding. The Liaison Officer has stressed the fact that he 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 is the substance of the complaint and not the identity or motivations of the facilitator. In respect of protection, the Liaison Officer has the responsibility to exercise judgment in the acceptance of complaints of reprisal/harassment. However, he must also be convinced that the alleged offences with which these persons are charged are genuine.
14. A number of forced labour complaints result from the application of other government policies, economic and agricultural, such as the policies on bio-fuel, mandated crops and irrigation. These are not questions of the legitimacy of policies, but the problems have arisen with their application: farmers tend to be obliged to change their crop under threat of penalties, including the loss of their land. In response to such complaints the Liaison Officer has been able to negotiate the return of confiscated land and to obtain guarantees for those farmers that they may grow the crops they choose. However, this can only be done in response to a specific complaint, and the Government has not agreed to consider joint policy application training designed to stop the application of these policies in a way which leads into complaints.
15. In cases of underage recruitment, the standard government response remains that the child voluntarily joined the army, but the actual response is generally positive with the victim being relatively promptly located and discharged to the care of family. Only two children thought to have been recruited and being the subject of complaints have not been located and discharged. The Liaison Officer continues to take the stance that even if a child does 'volunteer', under the law no person under 18 years can join the Myanmar Military Services and that military personnel accepting such volunteers are breaking the law. 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 applicants age prior to accepting a recruit. In his report to the Conference in 2008 the Liaison Officer advised that notwithstanding the facts of particular cases, the

penalty for military personnel for recruitment of minors has at most been a serious reprimand on the officer's personal file. Over the past year this situation has changed with a small number of perpetrators being additionally fined 14 or 28 days' salary and in one instance losing service for benefits and promotion consideration. The Liaison Officer has continued to consider that in the most serious cases these penalties remain inadequate; there remains an expectation that the punishment should fit the crime. In particularly blatant cases of forced recruitment or the recruitment of very young children, the full force of civil and military law should be applied with protagonists receiving the penalties provided under those laws including dishonourable discharge and/or imprisonment. To date neither has occurred.

16. Since the last report to the Conference, there has been an acceptance that a child illegally recruited into the military cannot legally be charged and sentenced as a deserter. To date, four children in this situation have been identified with the result being that so far three have been released from prison with their conviction quashed and/or sentence remitted. On release they have been formally discharged to the care of their family.
17. The ILO Liaison Officer has accepted responsibility within the UN Country Team taskforce under Security Council Resolution 1612 for the monitoring and reporting responsibly relating to child soldiers and underage recruitment into the military. The Government of Germany has agreed to fund this activity on an initial 12-month basis.

III. Activities since the 304th Governing Body Session (March 2009)

18. Following the Government's approval of the translation of the extension agreement on 28 March 2009, 20,000 copies of a booklet containing approved translations of the Supplementary Understanding, its extension and associated documents into Myanmar language were produced. This was in addition to the printing of 10,000 copies of a first edition after the Government's earlier approval of the translated texts on 15 December 2008. This booklet has been distributed to appropriate members of civilian and military authorities nationwide, to civil society groups, other UN organizations, INGOs, NGOs and the general public for awareness raising purposes. The production of a proposed brochure based on draft ILO text, in accessible language, has not been approved by the Government and alternative methods of increasing awareness are under discussion.
19. Two recent joint awareness raising seminars for both civilian and military personnel have been held in Karen State and Northern Shan State. Agreement has been reached that such seminars should be held regularly throughout the country from now on. Planning for the next seminar to be held in Rhakine State is currently in progress.
20. The Liaison Officer was again invited to give a lecture on International and National Law relating to Forced Labour including underage recruitment, and its application, to the annual Deputy Township Judges training course held on 2 April 2009.
21. A second four-day training-for-trainers' course, led by the Assistant to the Liaison Officer, in association with UNICEF and the Ministry of Social Welfare and Resettlement, has been completed. Its 39 participants were officers from the recruitment regiment, basic training camps, the police, the prison service and senior personnel of the Social Welfare Department. A similar training course by Save the Children, supported by the Assistant to the Liaison Officer in December 2008, and further similar courses are in planning stages.
22. Joint missions with the Ministry of Labour were undertaken on 15 to 17 December 2008 and on 10 to 12 March 2009. These missions were follow-up to complaints which had been submitted to the Liaison Officer. They resulted in settlements being reached in respect of

two large forced labour complaints involving forced cropping, destruction of traditional crops and confiscation of land for non-compliance. Regrettably there are indications that, as at time of writing, the terms of settlement have not been fully complied with by the local authorities concerned.

23. In response to Government requests the Liaison Officer has agreed to assist in the proposed review of the Jail Manual in respect of its compliance with Convention No. 29.
24. No new statement from the highest levels of Government on forced labour as requested by the Governing Body has been made. The Government has considered that the statement of the Minister of Labour at the time of the extension of the Supplementary Understanding and the provisions contained in the new Constitution restates the high level commitment to the elimination of forced labour.
25. At the time of writing the former facilitators U Min Aung, Ma Su Su Nway and U Zaw Htay as well as lawyer Ko Po Phyu all remain in prison. The Liaison Officer has requested permission to visit them but this has not as yet been accorded.
26. One of the important recommendations of the Commission of Inquiry was to prosecute those responsible for the forced labour under the Penal Code. The Liaison Officer has not been informed of any such prosecutions since March 2007.

IV. The continuing situation

27. In the 12 months since Cyclone Nargis devastated large areas of southern Myanmar leaving some 140,000 persons dead or missing a major humanitarian response has been undertaken. While good cooperation has been experienced between the Government, ASEAN, the UN, INGOs NGOs and the donor community, the disaster was on such a scale that much more remains to be done. Many thousands of people remain vulnerable owing to inadequate shelter and inadequate access to food and water, with livelihood rebuilding being hampered by poor yields from the damaged land, a lack of other income generating opportunities, low commodity prices and the inability of many to finance asset replacement. The Government and the UN and all relief agencies and actors are working to remove the factors which directly or indirectly result in the use of forced labour, child labour, human trafficking and the exploitation of migrant labour. There have been two reported cases of forced labour related to cyclone Nargis recovery which on being raised with central authorities were immediately stopped. Considerable effort has been made by the Government, supported by the Liaison Officer, to ensure that all Government authorities operational in the region (Military and Civilian) are not only aware of the law against the use of forced labour but also respect that law.
28. With the approval of the Governing Body and in cooperation with the Ministry of Labour the ILO Liaison Officer and his team have undertaken a major community based rural tertiary level infrastructure project in the Cyclone affected area. This project was funded by both a regular budget contribution and through the support of DFID, and it was designed as a best practice employment model for the elimination of forced labour. It uses the labour-based employment model and is community driven utilizing the established UNDP community committees to establish the priorities for the work, accepting governance responsibility for the project in their village and together with the ILO technical team engaging community contractors to undertake the work through the employment of villagers most in need from their area. Through this activity some 65,000 person days of labour have been generated with 9,977 persons employed. (67 per cent male and 33 per cent female) and 167 million kyats (\$162,000) paid into the community as wages. 158 community contracts were issued with those contractors receiving training from the ILO technical team in respect of good employment practice and procedures respecting ILO

Standards, commercial skills in competitive bidding and procurement as well as the required technical/engineering training to do the work. The physical outcomes have been 54.4 miles (87.5 kms) of raised concrete footpaths, 55 bridges, 40 pit latrines and 25 jetties. This has given increased mobility within and between 65 villages and has facilitated access to markets for villagers' products as well as normal social interactions such as access to schools and medical facilities. The project has now been completed and is in abeyance for the monsoon period. The ILO technical team will be undertaking work in the interim for UNDP and it is hoped that subject to funding and continuing agreement of the Government that activities will resume post-monsoon in the cyclone affected area and/or in other parts of the country.

29. Since the last report a UN Country Team Human Rights Sub-Group has been formed with the participation of the ILO. The Task Force has held a meeting with the Government Human Rights Body and a further meeting is planned to discuss priorities with a view to establishing an agreed joint work plan. During the February 2009 visit of the UN Special Rapporteur on Human Rights to Myanmar the ILO Liaison Officer was invited by the Government to travel with him to Karen State to meet State Authorities, two armed ceasefire groups and to visit the Hpa-An prison. This was useful in progressing awareness and understanding of the law for the elimination of forced labour and the operation of the Supplementary Understanding as well as providing opportunity to follow up on both child soldier issues with the Non-State armed ceasefire groups and prison labour issues.
30. Two matters have arisen since the last report to Conference which are not directly linked to the matter of forced labour but they are important in respect of the ILO mandate and relations with the Government of Myanmar.
 - (1) The government-owned daily newspaper The New Light of Myanmar reported on 8 September 2008 on the arrest of a group of persons being members of an organization called "the Human Rights Defenders and Promoters" for terrorism activities involving the detonation of bombs. One of the persons arrested had previously facilitated the lodging of a number of legitimate forced labour complaints to the ILO Liaison Officer. The Government spokesperson announcing the arrests was quoted as saying that "the HRDP organization had actively gathered false and exaggerated news concerning forced labour, child soldiers and land use and submitted that information to the ILO". The headline of the published report referred directly to the ILO. This matter was raised with the Government who advised that there had been no intention to suggest that terrorist bomb activities could have a link with the ILO; the question was of an unfortunate journalistic mistake.
 - (2) On 1 April 2009 four persons were detained on their return to Myanmar after attending the FTUB Congress in Thailand. Information on the detentions was received from the ITUC to the ILO on 8 April 2009 with a request for intervention. The ILO intervened with the Government and, while not related to the operation of the Supplementary Understanding, members of the Government Working Group on the elimination of forced labour were commissioned to undertake an internal investigation on the matter. On 10 April all four persons were released. On 25 April the Liaison Officer had the opportunity to meet with them to verify their good health and freedom. However, the six labour activists who had been sentenced on 7 September 2007 to long prison terms for exercising their freedom of association rights remain in prison (see also CFA 349th Report, GB.301/8, Case No. 2591).

V. Concluding remarks

31. Notwithstanding the limitations in its scope and application, the complaints mechanism contained in the Supplementary Understanding continues to function. It is naturally only

one element in the overall work of the Liaison Officer, whose mandate since 2002 has been to assist the Government in the implementation of the recommendations of the Commission of Inquiry. The Supplementary Understanding confirms and strengthens the rights of citizens of Myanmar under the law, and it is also designed to support the Government's policy for the elimination of forced labour in Myanmar.

32. As has been noted in paragraph 12 above, it does not give a picture on the extent of the forced labour situation in the country. It was designed at a time when there was a divergence on the rights of citizens to raise cases on forced labour without possible negative consequences, including the threat of prosecution. It has to be seen against the broader action in this field, and many of the related activities have been described in this report as well as the reports to the Governing Body. At the same time, it is fair to say that it continues to act as a valuable catalyser, it provides further insight into the problems of forced labour on the ground, and it is a channel which citizens of Myanmar can continue to use to claim their rights.

Yangon
19 May 2009

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, land use remains in dispute [Case 129].
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	Complainants unwilling to be identified.
014	23-Apr-07	No		Closed	Complainants unwilling to be identified.
015	23-Apr-07	Yes	16-May-07	Closed	Government denied portering and alleged victim to be an insurgent who was captured but subsequently escaped. Any connection between the facilitator subsequent imprisonment and this case was denied.
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 undertaken
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 Inquiry 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	Four 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 undertaken.
034	12-Jul-07	No		Closed	Not related to mandate-hours of work/overtime issue.

Case	Date received	Accepted	Intervention-date	Status	Comments
035	23-Jul-07	Yes	17-Aug-07	Closed	Government instructions issued, retrospective remuneration paid, joint field trip for awareness education undertaken.
036	24-Jul-07	No		Closed	Insufficient basis to proceed.
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	No		Closed	Insufficient information to proceed at this stage.
041	6-Aug-07	No		Closed	Not related to mandate-termination grievance.
042	7-Aug-07	Yes	8-Aug-07	Closed	Not within SU mandate – Issue of FOA remains. 5 labour activists remain imprisoned.
043	15-Aug-07	Yes	16-Aug-07	Closed	Child released, disciplinary action as the result of military inquiry 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	Closed	Joint-mission undertaken, village chairman dismissed, military officer reprimanded, practice stopped.
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 prison labour policy review made.
050	14-Sep-07	Yes	20-Sep-07	Closed	Child released – Military inquiry resulted in disciplinary reprimand.
051	20-Sep-07	Yes	25-Feb-08	Closed	Practice of forced labour ceased, awareness raising undertaken.
052	20-Sep-07	Yes	22-Feb-08	Closed	Forced labour stopped, travel restriction removed.
053	10-Oct-07	Yes	9-Nov-07	Closed	Responsible officer disciplined, practice stopped, joint awareness-raising mission agreed.
054	17-Oct-07	Yes	18-Oct-07	Open	Clause 9 breach-negotiations continue, Thet Wei released, Su Su Nway, Min Aung remain in prison.
055	19-Oct-07	Yes	31-Oct-07	Closed	Child released – military inquiry resulted in disciplinary reprimand.
056	25-Oct-07	Yes	09-Nov-07	Closed	Child released – military inquiry resulted in disciplinary reprimand.
057	7-Nov-07	No		Closed	Not related to mandate – cross-border trafficking and 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	Agreed to discharge, victim left country, negotiations continue.
062	20-Dec-07	Yes	28-Dec-07	Closed	Victim discharged to custody of parents. Responsible recruiting officer officially reprimanded.
063	7-Jan-08	Yes	14-Jan-08	Closed	Victim discharged, recruiting officer reprimanded, instruction on humane treatment of trainees issued. Ongoing procedure recommendation made.

Case	Date received	Accepted	Intervention-date	Status	Comments
064	7-Jan-08	Yes	11-Feb-08	Closed	Sentence remitted, victim discharged from military to care of family.
065	08-Jan-08	No		Closed	Not related to mandate – corruption allegation
066	14-Jan-08	Yes	22-Feb-08	Open	Joint mission undertaken, negotiated settlement reached, agreement not yet honored by local authorities. Negotiation continues.
067	16-Jan-08	No		Closed	Not within mandate of forced labour, land confiscation.
068	16-Jan-08	Yes	25-Feb-08	Closed	Official dismissed, education activity undertaken, ongoing situation to be monitored
069	31-Jan-08	Yes	25-Feb-08	Closed	Closed in association with Case 051 following assessment mission.
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	Closed	Awareness-raising activity undertaken.
073	20-Feb-08	Yes	3-Mar-08	Closed	Portering allegation denied, disciplinary action re: serious assault on complainant considered inadequate.
074	21-Feb-08	No		Closed	Insufficient basis to proceed.
075	03-Mar-08	Yes	11-Mar-08	Closed	Victim discharged, responsible officer reprimanded, government investigation to locate broker continues.
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 subject to separate consideration.
078	5-Mar-08	No		Closed	Not within SU mandate – FOA issue subject to separate consideration.
079	14-Mar-08	No		Closed	Not within SU mandate – FOA issue subject to separate consideration.
080	14-Mar-08	Yes	08-Apr-08	Closed	Associate with Case 068, ongoing situation to be monitored.
081	17-Mar-08	No		Closed	Not related to mandate – labour market dispute.
082	17-Mar-08	No		Closed	Complainants unwilling to be identified.
083	20-Mar-08	Yes	08-Apr-08	Closed	Victim discharged. Recruiting officer seriously reprimanded, disciplinary response considered inadequate.
084	26-Mar-08	No		Closed	Being dealt within context of Case 015.
085	28-Mar-08	No	02-Aug-08	Closed	Being dealt within context of Case 066.
086	28-Mar-08	Yes	07-Apr-08	Closed	Victim discharged to care of parents. Responsible senior officer reprimanded. Disciplinary action considered inadequate.
087	11-Apr-08	Yes	11-Apr-08	Closed	Child discharged – recruitment officer reprimanded.
088	22-Apr-08	Yes	16-Jun-08	Closed	Child discharged.
089	19-May-08	Yes	20-Jun-08	Closed	Victim discharged, charge dropped, responsible officer reprimanded.
090	20-May-08	Yes	17-Jul-08	Closed	Victim discharged, responsible officer seriously reprimanded. No response in respect of other reported minors in same unit.
091	23-May-08	No		Closed	Complaint withdrawn.

Case	Date received	Accepted	Intervention-date	Status	Comments
092	27-May-08	No		Closed	Not related to the mandate – labour dispute.
093	28-May-08	Yes	16-Jun-08	Closed	Victim discharged, responsible officer reprimanded.
094	28-May-08	Yes	02-Sep-08	Closed	Division-wide joint training seminar for civilian, judicial, police and army authorities undertaken.
095	11-Jun-08	No		Closed	Not related to mandate – land confiscation.
096	11-Jun-08	Yes	14-Jul-08	Closed	Victim discharged, two officers responsible disciplined. One with 28 days' salary deduction and one with 14 days' salary deduction and a serious reprimand.
097	14-Jun-08	Yes	20-Jun-08	Closed	Child discharged – recruitment officer reprimanded.
098	15-Jun-08	Yes	17-Jun-08	Open	Government response received, communication continues.
099	18-Jun-08	Yes	24-Jun-08	Closed	Victim released from prison, desertion sentence remitted, discharged from military.
100	23-Jun-08	Yes	09-Oct-08	Open	Awaiting government response
101	02-Jul-08	Yes	09-Oct-08	Closed	Allegation denied, Ministry of Defence instruction on recruiting process issued.
102	11-Jul-08	No		Closed	Insufficient evidence to proceed.
103	16-Jul-08	Yes	18-Jul-08	Closed	Victim discharged to care of parents.
104	17-Jul-08	Yes	21-Jul-08	Closed	Victim located, allegedly now of age and wishing to remain in army. ILO independent verification request denied.
105	21-Jul-08	Yes	24-Jul-08	Closed	Child discharged – recruitment officer disciplined by the loss of 28 days' salary.
106	31-Jul-08	Yes	31-Jul-08	Closed	Community work-related. Government guidance distributed through General Administration Department as to appropriate approach to be adopted.
107	28-Jul-08	Yes	04-Aug-08	Closed	Victim discharged, perpetrator fined 28 days-salary.
108	29-Jul-08	Yes	28-Aug-08	Open	Government response received, further ILO recommendations made, response awaited.
109	11-Aug-08	Yes	23-Oct-08	Open	Joint-mission undertaken, negotiated settlement re: forced labour and land confiscation reached, agreements not yet fully applied by local authorities, negotiations continue. Facilitator and lawyer imprisoned, allegation re: harassment of facilitator's family.
110	13-Aug-08	Yes	10-Oct-08	Closed	Victim not located, prison labour policy review proposed.
111	14-Aug-08	Yes	21-Aug-08	Open	Government response received, victim not located, further investigation proposed.
112	19-Sep-08	Yes	29-Sep-08	Closed	Victim discharged, three military personnel seriously reprimanded.
113	24-Sep-08	Yes	-	Closed	Parents decided not to pursue the case.
114	25-Sep-08	Yes	29-Oct-08	Open	Under-age recruit (now of majority age) located, communication re: discharge continues.
115	26-Sep-08	Yes	29-Oct-08	Closed	Victim discharged, two military personnel seriously reprimanded.
116	01-Oct-08	No		Closed	Insufficient information to proceed.

Case	Date received	Accepted	Intervention-date	Status	Comments
117	01-Oct-08	Yes	10-Nov-08	Closed	Victim released, compensation paid, ongoing medical treatment provided, prison labour policy review proposed and agreed in principle, awaiting outcome.
118	01-Oct-08	No		Closed	Not within SU mandate – Industrial dispute.
119	22-Oct-08	Yes	22-Oct-08	Closed	Awareness raising activity undertaken, practice ceased.
120	30-Oct-08	Yes	06-Nov-08	Closed	Victim discharged, non-commission officer seriously reprimanded with loss of 28 days' salary and allowances. Disciplinary action considered inadequate.
121	04-Nov-08	Yes	10-Nov-08	Closed	Victim discharged, senior officer responsible reprimanded.
122	10-Nov-08	Yes	20-Feb-09	Closed	ILO offer of support for the production of guidelines for agricultural policy application to avoid forced labour complaints stands.
123	14-Nov-08	Yes	14-Nov-08	Closed	Victim discharged, perpetrator seriously reprimanded with loss 14 days' salary, disciplinary action considered inadequate.
124	14-Nov-08	No		Closed	Not within Su mandate – land confiscation
125	05-Dec-08	Yes	15-Dec-08	Open	No response received from government, however victim discharged.
126	11-Dec-08	Yes	11-Dec-08	Closed	State-wide awareness-raising held in Karen State and Northern Shan State.
127	15-Dec-08	Yes	22-Dec-08	Closed	Victim discharged, perpetrator had retired, recommendation for criminal prosecution rejected.
128	14-Jan-09	Yes	30-Jan-09	Open	Victim discharged, recommendation re: action against perpetrator made, government response awaited.
129	30-Jan-09	Yes	09-Mar-09	Open	Related to Case 01 – Government response awaited.
130	4-Feb-09	Yes		Closed	Settlement incorporated within Case 66 solutions.
131	13-Feb-09	Yes	09-Mar-09	Open	Awaiting government response.
132	13-Feb-09	Yes	20-May-09	Open	Awaiting government response.
133	13-Feb-09	Yes	20-May-09	Open	Awaiting government response.
134	16-Feb-09	Pending		Pending	Awaiting further information from complainant.
135	16-Feb-09	Yes	09-Mar-09	Open	Government declared victim as deserter – has not been located, further recommendation made, response awaited.
136	17-Feb-09	Pending		Pending	Further information to complete assessment required.
137	5-Mar-09	Pending		Pending	Assessment in process.
138	6-Mar-09	Yes	10-Mar-09	Open	Awaiting government response.
139	9-Mar-09	Yes	08-Apr-09	Open	Awaiting government response.
140	30-Mar-09	Yes	08-Apr-09	Open	Awaiting government response.
141	30-Mar-09	Yes	27-Apr-09	Open	Awaiting government response.
142	31-Mar-09	Yes	18-May-09	Open	Awaiting government response.
143	01-Apr-09	Pending		Pending	Awaiting complainant's approval to proceed.
144	22-Apr-09	Yes	27-Apr-09	Open	Awaiting government response.
145	22-Apr-09	Yes	22-Apr-09	Open	Date for Rakhine State/NRS awareness-raising session to be agreed.
146	30-Apr-09	Yes	30-Apr-09	Open	Awaiting government response.
147	08-Apr-09	Yes	08-Apr-09	Closed	Not within SU mandate, 4 labour activists released. Issue of FOA remains.

Case	Date received	Accepted	Intervention-date	Status	Comments
148	15-May-09	Pending		Pending	Assessment in process.
149	15-May-09	Pending		Pending	Assessment in process.
150	15-May-09	Pending		Pending	Assessment in process.
151	15-May-09	Pending		Pending	Assessment in process.
152	15-May-09	Pending		Pending	Further information required.

D. 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, 97th Session, June 2008)

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.

E. Documents before the Governing Body at its 303rd Session



INTERNATIONAL LABOUR OFFICE

Governing Body

GB.303/8/1
303rd Session

Geneva, November 2008

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)

Status report on decisions regarding Myanmar

Introduction

1. At the 302nd Session of the Governing Body, the Office undertook to prepare for its next session a status report on the decisions taken by the Organization to promote the compliance of Myanmar with the recommendations of the 1998 Commission of Inquiry. The present report recapitulates those decisions and their implementation to date. It does not, however, cover the decisions which have been addressed in the form of recommendations to the Government. The current status of these decisions will be addressed in the report of the Liaison Officer; furthermore, the Office is prepared to provide, in due course, a more comprehensive overview of the decisions in question. The Committee of Experts regularly reviews the observance by Myanmar of the Forced Labour Convention, 1930 (No. 29), and its observations are discussed by the Conference Committee on the Application of Standards.

The 1999 resolution

2. In 1999, the International Labour Conference, following the procedure set out in article 17(2) of the Standing Orders, adopted a resolution on the widespread use of forced labour in Myanmar¹ in which, inter alia, it resolved:

[...]

¹ Resolution adopted by the International Labour Conference at its 87th Session (Geneva, June 1999).

- (b) that the Government of Myanmar should cease to benefit from any technical cooperation or assistance from the ILO, except for the purpose of direct assistance to implement immediately the recommendations of the Commission of Inquiry, until such time as it has implemented the said recommendations;
- (c) that the Government of Myanmar should henceforth not receive any invitation to attend meetings, symposia and seminars organized by the ILO, except such meetings that have the sole purpose of securing immediate and full compliance with the said recommendations, until such time as it has implemented the recommendations of the Commission of Inquiry.

3. This resolution remains in force and implemented.

The 2000 resolution and its implementation

4. Following a decision by the Governing Body under article 33 of the ILO Constitution,² the Conference held a debate in 2000 on measures to secure compliance with the recommendations of the Commission of Inquiry. The Conference adopted a resolution³ outlining a set of actions to be taken if the authorities of Myanmar did not promptly take concrete action to implement the recommendations. The Conference approved a set of measures on the basis of the proposals by the Governing Body, namely:

- (a) to decide that the question of the implementation of the Commission of Inquiry's recommendations and of the application of Convention No. 29 by Myanmar should be discussed at future sessions of the International Labour Conference, at a sitting of the Committee on the Application of Standards specially set aside for the purpose, so long as this Member has not been shown to have fulfilled its obligations;
- (b) to recommend to the Organization's constituents as a whole – governments, employers and workers – that they: (i) review, in the light of the conclusions of the Commission of Inquiry, the relations that they may have with the member State concerned and take appropriate measures to ensure that the said Member cannot take advantage of such relations to perpetuate or extend the system of forced or compulsory labour referred to by the Commission of Inquiry, and to contribute as far as possible to the implementation of its recommendations; and (ii) report back in due course and at appropriate intervals to the Governing Body;
- (c) as regards international organizations, to invite the Director-General: (i) to inform the international organizations referred to in article 12, paragraph 1, of the Constitution of the Member's failure to comply; (ii) to call on the relevant bodies of these organizations to reconsider, within their terms of reference and in the light of the conclusions of the Commission of Inquiry, any cooperation they may be engaged in with the Member concerned and, if appropriate, to cease as soon as possible any activity that could have the effect of directly or indirectly abetting the practice of forced or compulsory labour;
- (d) regarding the United Nations specifically, to invite the Director-General to request the Economic and Social Council (ECOSOC) to place an item on the agenda of its July 2001 session concerning the failure of Myanmar to implement the recommendations contained in the report of the Commission of Inquiry and seeking the adoption of recommendations directed by ECOSOC or by the General Assembly, or by both, to governments and to other specialized agencies and including requests similar to those proposed in paragraphs (b) and (c) above;

² GB.277/6.

³ Resolution concerning the measures recommended by the Governing Body under article 33 of the ILO Constitution on the subject of Myanmar, adopted by the International Labour Conference at its 88th Session (Geneva, June 2000).

- (e) to invite the Director-General to submit to the Governing Body, in the appropriate manner and at suitable intervals, a periodic report on the outcome of the measures set out in paragraphs (c) and (d) above, and to inform the international organizations concerned of any developments in the implementation by Myanmar of the recommendations of the Commission of Inquiry;

The Conference further decided that the measures would take effect on 30 November 2000 unless, before that date, the Governing Body was satisfied that the intentions expressed by the Minister of Labour of Myanmar in his letter dated 27 May had been translated into a framework of legislative, executive and administrative measures that were sufficiently concrete and detailed to demonstrate that the recommendations of the Commission of Inquiry had been carried out and therefore rendered the implementation of one or more of the measures inappropriate.

- 5. The Governing Body concluded in November 2000⁴ that the measures should enter into force. In 2000 and 2005, the Director-General wrote to the governments of all member States, and through them to employers' and workers' organizations, pursuant to paragraph (b) above, and to international organizations, pursuant to paragraph (c) above. The replies were examined by the Governing Body in March 2001 and November 2005.
- 6. Since 2001, ECOSOC has dealt with the matter on a number of occasions under item 14(b) of its agenda.
- 7. Furthermore, since 2001, the Conference Committee on the Application of Standards has held a special sitting on Myanmar. Since 2002, it has, in addition to the observations of the Committee of Experts, also received a report from the ILO Liaison Officer in Yangon.

Conference discussion in 2006

- 8. Following a decision by the Governing Body at its March 2006 session,⁵ in view of the lack of progress, the Conference at its 95th Session (2006) resumed its consideration of the issue under a separate agenda item.⁶ It reaffirmed the validity of the measures outlined in the 2000 resolution, referred to a number of salient points regarding the promotion of enhanced awareness and implementation of the 2000 resolution, and subsequent Governing Body decisions, and highlighted the following points:
 - The ILO has the possibility to seek an advisory opinion from the International Court of Justice which would, as the Workers stated, require the formulation of a specific legal question relating to the Forced Labour Convention, 1930 (No. 29). This is without prejudice to the fact that member States have the possibility to themselves institute contentious proceedings before the International Court of Justice on their own initiative. It was made clear that such action was complementary to, and not a substitute for, other action to be taken by the ILO itself.
 - The application of the measures could be enhanced by providing more precise indications as regards the kinds of concrete steps by member States which might be more effective, and which would be most relevant to the sectors and types of enterprise in which forced labour appears to be currently employed. Such indications and guidance could be elaborated through examples of concrete actions taken to date.

⁴ GB.279/6/2.

⁵ GB.295/7.

⁶ ILO: *Provisional Record* No. 3-2, International Labour Conference, 95th Session, Geneva, 2006.

- There could be more active involvement of employers’ and workers’ organizations, including at the national level, in the implementation of the measures.
- An enhanced reporting mechanism could also be developed, on the basis of a user-friendly questionnaire addressed to members.
- Multi-stakeholder conferences could be convened in order to exchange ideas of best practice in the implementation of the 2000 resolution.
- Steps should be considered with a view to fostering greater awareness and a consistent attitude on the issue among other international organizations, within their specific fields of competence, in particular ECOSOC.

In addition, it was suggested that the Office should provide information about other remedies that may exist under international criminal law for action against perpetrators of forced labour. It was also suggested that appropriate and effective use should be made of public diplomacy in support of the ILO’s efforts.

9. With regard to the issue of seeking an advisory opinion from the International Court of Justice (ICJ), attention was focused specifically on the contentious question of whether the Forced Labour Convention clearly prohibited the prosecution of persons wishing to complain about the practice. The agenda item for the 95th Session of the Conference, as decided by the Governing Body at its March 2006 session, specified the aim “to ensure that no action is taken against complainants or their representatives”. A number of options were considered in detail in the document presented to the Conference.⁷ These involved: a binding ruling by the ICJ under the terms of article 37(1) of the ILO Constitution; a decision through the establishment by the ILO of a tribunal under article 37(2) of its Constitution; or an advisory opinion from the ICJ.
10. An advisory opinion could be requested by the ILO, as a specialized agency, under article 37(1) of its Constitution and under article IX(2) of the Agreement between the United Nations and the International Labour Organization.⁸ The Governing Body would have to give careful consideration to the precise formulation of the question to be asked. The Court would provide notice of the request for an advisory opinion to all States entitled to appear before it, and these States and international organizations could furnish information on the question. A binding ruling by the ICJ would require a member State to raise the matter with the Court; the Court could invite the ILO to make a submission on the case, and the ILO could submit information on its own initiative. The question of the possible binding nature of an advisory opinion delivered by the International Court of Justice under article 37(1) could also be submitted to the Court.
11. The option involving the establishment by the ILO of a tribunal under article 37(2) of the Constitution “for the expeditious determination of any dispute or question relating to the interpretation of a Convention” would allow the ILO to retain full control of the procedure; it would, however, take up considerable time and involve substantial costs. Moreover, this option might not provide significant additional leverage, as it would have to be enforced through ILO procedures, including those available under article 33 of the Constitution.
12. The question of a possible advisory opinion from the ICJ has been in abeyance in the light of a change in attitude and specific commitments undertaken by the Government through the Supplementary Understanding of 26 February 2007. In March 2007, the Governing Body decided to defer the question, while recalling in its conclusions that “the necessary question or questions would continue to be studied and prepared by the Office, in

⁷ ILO: *Provisional Record* No. 2, International Labour Conference, 95th Session, Geneva, 2006.

⁸ *ibid.*, Appendix III.

consultation with the constituents and using the necessary legal expertise, to be available at any time that might be necessary”.⁹

13. The trial period for the operation of the Supplementary Understanding was extended in February 2008 for another year. In March 2008, the Governing Body welcomed this extension and expressed its strong expectation that during the extension period the Supplementary Understanding would be applied in full and according to the original intent.¹⁰ In particular, the Governing Body singled out the freedom of complainants to access the mechanism without fear of harassment or reprisals; the need to reproduce the Supplementary Understanding in local languages and ensure its wide dissemination; the freedom of movement of the Liaison Officer; and the imposition of meaningful penalties on perpetrators of all forms of forced labour.
14. The question of the possible jurisdiction of the International Criminal Court to entertain some aspects of the conclusions of the Commission of Inquiry has also been raised. In November 2006, the Governing Body concluded that ILO documents relating to the issue are public and the Director-General would therefore be able to transmit them.¹¹ The ILO consequently made relevant documentation available to the Prosecutor of the Court.
15. The Governing Body also noted in November 2006 that the Director-General could ensure that the recent developments were appropriately brought to the attention of the UN Security Council when it considered the situation of Myanmar, which was now on its formal agenda. The Office has cooperated with the United Nations, including the Special Adviser of the Secretary-General on Myanmar, for this purpose. Information has been given to the Special Adviser and for the reports prepared by the Special Rapporteur on Myanmar of the Human Rights Council. Since the ILO's presence in Myanmar was assured in 2002 through the appointment of a Liaison Officer, who also has a team of staff, the ILO has been participating fully in the United Nations Country Team in Myanmar.
16. ILO officials, including the Liaison Officer, have attended international meetings, conferences and academic symposia organized by member States and the social partners. The Office holds regular briefing sessions and consultations with diplomatic representatives and representatives of the social partners in Geneva and elsewhere, including briefings given by the Liaison Officer to embassies in Yangon and Bangkok.
17. Reference has been made on a number of occasions to the proposal for a multi-stakeholder conference, the latest being at the June 2008 session of the Governing Body. The issue was raised by the Workers' group with the general support of the Employers, in the context of possible relief assistance following the devastation caused by Cyclone Nargis in early May 2008 and in the light of the relief efforts of the United Nations and the Association of South-East Asian Nations (ASEAN). Although possible modalities and means of financing such a tripartite conference – or any other separate consultation involving the constituents – have been explored, the Office is not currently in a position to make a concrete proposal.
18. Clearly, more could be done to follow up the measures agreed upon by the Conference in 2000 and 2006. It should be recognized, however, that these recommendations are addressed not only to the Office but also to the member States and the social partners, and in many cases their effect depends on the way in which the constituents carry them out. The cost of the activities of the Liaison Officer and his staff is also a factor, as is the

⁹ GB.298/5.

¹⁰ GB.301/6.

¹¹ GB.297/8.

workload on headquarters staff. In Geneva, the implementation of the recommendations of the Commission of Inquiry is followed up by the International Labour Standards Department and, under the instructions of the Director-General, the Executive Director for Standards and Fundamental Principles and Rights at Work, to whom the Liaison Officer reports.

Geneva, 22 October 2008.

Submitted 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)

Report of the Liaison Officer

Introduction

1. The Liaison Officer reported to the 301st Session (March 2008) of the Governing Body¹ as well as to the special sitting of the Committee on the Application of Standards during the 97th Session of the International Labour Conference (June 2008), in accordance with the Conference resolution of 2000.²
2. This report covers activities on the ground since the last report. It provides an update on the functioning of the complaints mechanism under the Supplementary Understanding. The trial period of this Supplementary Understanding was extended on 26 February 2008 for another year and submitted to the Governing Body at its 301st Session.³ This report will also cover progress on the forced labour aspects of the post-cyclone Nargis response.

Functioning of the Supplementary Understanding

3. The Liaison Officer continues to receive complaints under the mechanism established by the Supplementary Understanding in February 2007. A copy of the case register summary as at 6 November 2008 is attached as an appendix. Altogether, 121 complaints have now been received. Of these, 70 have been assessed as falling within the forced labour definition and have been submitted to the Government Working Group for its attention and follow-up. Of the cases submitted (39 being individual under-age recruitment complaints

¹ GB.301/6/2.

² Document D.5, 97th Session of the ILC, Committee on the Application of Standards.

³ GB.301/6/2; GB.301/6.

and 31 being multiple complainant forced labour complaints), 50 have been responded to in a manner which can be considered satisfactory, and these have been closed; 20 cases either still await government response or remain open while the process continues. Six further cases are currently being assessed by the Liaison Officer prior to their possible submission.

4. The previously identified trend of a change in the ratio between traditional forced labour complaints and under-age recruitment complaints has continued. The majority of recent complaints concern forced recruitment of minors into the military. Some possible reasons for this development are discussed below.
5. In the main, complaints lodged have been dealt with expeditiously by the Government Working Group. The cases that have been resolved have on average taken three months. While five cases have been in negotiation for longer than six months, the longest outstanding case on which a first substantive response is awaited is four months old.
6. Since March 2008 the Liaison Officer has undertaken two unaccompanied assessment missions and two joint awareness missions with senior Department of Labour officials. Missions of this kind provide the opportunity to increase awareness of rights and responsibilities under Myanmar law and the Supplementary Understanding among civil and military authorities at village, township and division/state levels, as well as among the wider public. The Supplementary Understanding commits the Government to enable the carrying out of such field visits.
7. No further prosecutions of alleged perpetrators under either the Penal Code or military regulations, resulting in imprisonment, have taken place since previous reports to the Governing Body and the Conference. However, it should be noted that while administrative penalties against military personnel continue to be proportionately lighter than those imposed on their civilian counterparts, there has been some progress beyond the imposition of a simple reprimand. Since the last report, three military perpetrators have been fined 28 days' and one 14 days' salary and one officer has lost one year of seniority for his actions.
8. Extensive negotiations have taken place on translations of the Supplementary Understanding and its 2008 extension as well as the original 2002 Understanding (on the establishment of the Liaison Officer function) and the minutes thereto. As soon as final approval is received the booklet containing these translations will be printed and distributed.
9. The Government has so far not considered or approved the text of a simply worded brochure until the translation of the formal Supplementary Understanding and the associated documents was finalized. It is hoped that approval on the text of such a brochure, as submitted in May 2008, can now be obtained. The Government asserts that the relatively low number of forced labour complaints reflects the progress made in eliminating forced labour. It is, however, evident that awareness levels among a large majority of the population regarding their right and possibility to complain are very low. The preparation of a brochure explaining the law and the procedure for exercising the right to complain and its wide distribution were agreed to when the trial period of the Supplementary Understanding was extended.⁴ This could be expected to provide a better measure of progress. This low level of awareness together with the physical difficulties of actually lodging a complaint means that the complaints facility currently does not reach out significantly beyond Yangon and neighbouring divisions.

⁴ GB.301/6/2.

10. The Constitution, on which a referendum was held in May 2008, contains in article 359 a provision which states that forced labour is illegal. The Constitution does not, however, come into effect until after elections which the Government has scheduled for 2010. In the meantime, there has been no response to repeated calls from the Governing Body for a widely publicized high-level statement reconfirming the Government's commitment to the elimination of forced labour. Such a statement would, if undertaken, be a further indication not only of government seriousness but would also act to further raise awareness of citizens' rights and give increased confidence to the general population in exercising their right to complain.
11. The complaints mechanism does not operate in a political vacuum. In receiving, assessing and submitting complaints the Liaison Officer makes every effort to ensure that cases are considered on their facts, remaining independent as much as possible from political considerations. The Government for its part has a tendency to place heavy emphasis on the actual or perceived political affiliation and motivations of complainants and the facilitators who act as intermediaries on behalf of possible victims of forced labour. In this process, the government representatives occasionally also express their concerns on the impartiality of the ILO Liaison Officer.
12. Notwithstanding calls from the Governing Body and the Committee on the Application of Standards of the Conference for one of the facilitators, U Thet Way, to remain free, he was convicted on 16 September 2008 of obstructing an official in the course of his duty and sentenced to two years' hard labour, the maximum penalty. Whilst the offence on which he was ostensibly sentenced bore no formal relation to the ILO, two other charges, on which evidence was heard before they were withdrawn, did. The ILO repeatedly intervened on his behalf, both through conclusions of the Governing Body and the Conference and statements by the Office. The severity of the sentence suggests that the prosecution was motivated by the defendant's association with the ILO's complaints mechanism. Similarly, two activists – Su Su Nwe and Min Aung, both of whom have had close association with the ILO – remain incarcerated in connection with offences which formally are not related to their complaints through the ILO on forced labour. In respect of labour activists Thurein Aung, Wai Lin, Nyi Nyi Zaw, Kyaw Kyaw, Kyaw Min and Myo Min, imprisoned following their 2007 May Day activities, recent information has been received of their separation and transfer to different remote prisons throughout the country. Besides this having an obvious impact on their Yangon-based families, it is to be recalled that the Governing Body has specifically called for their release.
13. In August 2008 a member of an organization called the Human Rights Defender and Promoters (HRDP) was arrested, together with five other persons, on charges of terrorism and alleged bomb attacks. During the official government press conference, reported in the newspaper *The New Light of Myanmar*, a negative association was made between this organization and the ILO. Two other members of that organization, neither of whom was arrested, have been associated with complaints submitted to the Government Working Group under the Supplementary Understanding, all of which have been upheld as valid. After the matter was raised with the Government in Nay Pyi Taw, verbal regret was expressed by the Government representatives to the ILO both in Yangon and in Geneva, at the mistake on the part of the reporting media. The Government gave its assurance that there had been no intention to link the ILO with allegations of terrorism.
14. Progress has been made with the recent release and quashing of a conviction of an underage recruit jailed for desertion. Regrettably, this precedent has not as yet been generally applied. In one case, the victim was arrested and interned, allegedly in shackle as an escapee, after the complaint seeking his discharge was lodged.

The post-cyclone response

15. Following discussion at both the 2008 International Labour Conference and the June 2008 meeting of the Governing Body, the ILO has placed special emphasis on the forced labour aspect of the post-cyclone response. This natural disaster has left hundreds of thousands of people in extremely vulnerable positions, having lost their family members, their homes and their means of livelihood. As part of the international response, a protection and vulnerability cluster was formed consisting of UN, INGO and NGO representatives. The assistant to the Liaison Officer, Ms Piyamal Pichaiwongse, has played an active role in this cluster.
16. On the advice of the ILO Liaison Officer, an instruction was issued by the General Administration Department of the Government reminding all authorities in the cyclone-affected areas of the law against forced labour and providing appropriate guidance on the approach to genuine voluntary community responses. To date, no formal complaints of forced labour in the cyclone-affected areas have been received but there have been two recent media reports on the alleged use of forced labour on road construction and repair and rehabilitation of public buildings. The ILO will shortly be undertaking a mission to the area in order to gain more information on these reports.
17. Seminars arranged by the ILO for other UN agencies' in-country staff and for staff of INGOs have commenced to both sensitize them to the issue and to ensure their understanding of the ILO's role in eliminating and preventing the use of forced labour.
18. As a working model against the use of forced labour, an ILO labour-intensive employment project has been launched with the agreement of the Government. The project is aimed at providing temporary decent employment to the most needy cyclone victims. It is targeted at adding value to the FAO's agricultural restoration activity and the UNDP's village community rehabilitation and microfinancing work. The design and focus of this project is in line with the discussions at the June 2008 Governing Body session. The ILO's output is the rehabilitation and restoration of tertiary-level infrastructure, such as rural tracks, footpaths, drains, culverts, small bridges and jetties, to provide safe village-level mobility and to facilitate access to markets. A pilot project, utilizing regular budget technical cooperation funds, is under way in five villages in the Mai Za Li Oou Toe Village tract in the Mawlamyinegyun township region. The pilot project will cover some 8,200 workdays. The actual work priorities have been determined in direct consultation with village community-level committees.
19. The methodology of the project has been discussed and explained, as part of good practice modeling, to both senior-level officials and township field staff, for potential use in primary and secondary infrastructure restoration activities. A donor contribution of approximately US\$1 million has so far been committed, and this will permit the extension of activities into 12 further village tracts (approximately 60 villages). Subject to funding, the total project is planned to continue until 30 September 2009, working in some 180 villages and covering a projected 250,000 workdays with associated training and community development.

Concluding observations

20. While there has no doubt been some progress since the recommendations of the 1998 Commission of Inquiry and those of the 2001 High-Level Team, with the issuance of Order 1/99 and Supplementing Order 1/99 amending the Town and Village Acts, the establishment of the Liaison Officer function and the putting in place of the current complaint mechanism on a trial basis, clearly much more needs to be done. The Yangon

Office remains at the same strength as before the Supplementary Understanding, which places limitations on the number of field missions that can be undertaken and the ability to function proactively. Despite the failure to publicly reconfirm, at the highest level, its commitment to the eradication of forced labour, the Government's response to the complaints mechanism at senior level remains reasonably positive. There is still, however, an evident and persistent disconnect between this acceptance in principle and the practice at grass-roots level.

21. In recent discussions, the Government has again expressed its belief that further progress is limited by the absence of support in the broader ILO technical cooperation areas. The Liaison Officer, and the Office as a whole, will continue to abide by the objectives set within the framework of the relevant decisions of the Conference and the Governing Body.⁵

Geneva, 7 November 2008.

Submitted for debate and guidance.

⁵ GB.303/8/1.

Appendix

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	Complainants unwilling to be identified.
014	23-Apr-07	No		Closed	Complainants unwilling to be identified.
015	23-Apr-07	Yes	16-May-07	Open	Communication ongoing.
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 undertaken.
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 inquiry 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 undertaken.
034	12-Jul-07	No		Closed	Not related to mandate-hours of work/overtime issue
035	23-Jul-07	Yes	17-Aug-07	Closed	Government instructions issued, retrospective remuneration paid, 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

Case	Date received	Accepted	Intervention-date	Status	Comments
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	No		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 inquiry 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	Closed	Joint mission undertaken, village chairman dismissed, military officer reprimanded, practice stopped.
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 inquiry resulted in disciplinary reprimand.
051	20-Sep-07	Yes	25-Feb-08	Closed	Practice of forced labour ceased, awareness raising undertaken.
052	20-Sep-07	Yes	22-Feb-08	Open	Government response received. Further ILO recommendation made, response awaited.
053	10-Oct-07	Yes	9-Nov-07	Closed	Responsible officer disciplined, practice stopped, joint awareness-raising mission agreed.
054	17-Oct-07	Yes	18-Oct-07	Open	Clause 9 breach – negotiation continues, Thet Wei released, Su Su Nway, Min Aung remain in prison.
055	19-Oct-07	Yes	31-Oct-07	Closed	Child released – Military inquiry resulted in disciplinary reprimand.
056	25-Oct-07	Yes	09-Nov-07	Closed	Child released-Military inquiry resulted in disciplinary reprimand.
057	7-Nov-07	No		Closed	Not related to mandate – cross-border trafficking and 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	Agreed to discharge, Victim left country, negotiations continue.
062	20-Dec-07	Yes	28-Dec-07	Closed	Victim discharged to custody of parents. Responsible recruiting officer officially reprimanded.
063	7-Jan-08	Yes	14-Jan-08	Closed	Victim discharged, recruiting officer reprimanded, instruction on humane treatment of trainees issued. Ongoing procedure recommendation made.
064	7-Jan-08	Yes	11-Feb-08	Closed	Sentence remitted, victim discharged from military to care of family.
065	08-Jan-08	No		Closed	Not related to mandate – corruption allegation
066	14-Jan-08	Yes	22-Feb-08	Open	Initial response received, ILO propose joint mission, government response awaited.
067	16-Jan-08	No		Closed	Not within mandate of forced labour, land confiscation.
068	16-Jan-08	Yes	25-Feb-08	Closed	Official dismissed, education activity undertaken, ongoing situation to be monitored.
069	31-Jan-08	Yes	25-Feb-08	Closed	Closed in association with Case 051 following

Case	Date received	Accepted	Intervention-date	Status	Comments
					assessment mission.
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	Closed	Awareness-raising activity undertaken.
073	20-Feb-08	Yes	3-Mar-08	Open	Government response received, disciplinary action inadequate, negotiations continue.
074	21-Feb-08	No		Closed	Insufficient basis to proceed.
075	03-Mar-08	Yes	11-Mar-08	Closed	Victim discharged, responsible officer reprimanded, Government investigation to locate broker continues.
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 subject to separate consideration.
078	5-Mar-08	No		Closed	Not within SU mandate – FOA issue subject to separate consideration.
079	14-Mar-08	No		Closed	Not within SU mandate – FOA issue subject to separate consideration.
080	14-Mar-08	Yes	08-Apr-08	Closed	Associate with Case 068, ongoing situation to be monitored.
081	17-Mar-08	No		Closed	Not related to mandate – labour market dispute.
082	17-Mar-08	No		Closed	Complainants unwilling to be identified.
083	20-Mar-08	Yes	08-Apr-08	Closed	Victim discharged. Recruiting officer seriously reprimanded, disciplinary response considered inadequate.
084	26-Mar-08	No		Closed	Being dealt with in context of Case 015.
085	28-Mar-08	No	02-Aug-08	Closed	This case is being dealt with under Case 066.
086	28-Mar-08	Yes	07-Apr-08	Closed	Victim discharged to care of parents. Responsible senior officer reprimanded. Disciplinary action considered inadequate.
087	11-Apr-08	Yes	11-Apr-08	Closed	Child discharged - recruitment officer reprimanded.
088	22-Apr-08	Yes	16-Jun-08	Closed	Child discharged.
089	19-May-08	Yes	20-Jun-08	Closed	Victim discharged, charge dropped, responsible officer reprimanded.
090	20-May-08	Yes	17-Jul-08	Open	Awaiting government response.
091	23-May-08	No		Closed	Complaint withdrawn.
092	27-May-08	No		Closed	Not related to the mandate – labour dispute.
093	28-May-08	Yes	16-Jun-08	Closed	Victim discharged, responsible officer reprimanded.
094	28-May-08	Yes	02-Sep-08	Closed	Division-wide joint training seminar for civilian, judicial, police and army authorities undertaken.
095	11-Jun-08	No		Closed	Not related to mandate – land confiscation
096	11-Jun-08	Yes	14-Jul-08	Closed	Victim discharged, two officers responsible disciplined. One with 28 days' salary deduction and one with 14 days' salary deduction and a serious reprove.
097	14-Jun-08	Yes	20-Jun-08	Closed	Child discharged - recruitment officer reprimanded.
098	15-Jun-08	Yes	17-Jun-08	Open	Government response received, communication continues.
099	18-Jun-08	Yes	24-Jun-08	Open	Victim arrested post complaint, awaiting government response.
100	23-Jun-08	Yes	09-Oct-08	Open	Awaiting government response.
101	02-Jul-08	Yes	09-Oct-08	Open	Awaiting government response.

Case	Date received	Accepted	Intervention-date	Status	Comments
102	11-Jul-08	No		Closed	Insufficient evidence to proceed.
103	16-Jul-08	Yes	18-Jul-08	Closed	Victim discharged to care of the parents.
104	17-Jul-08	Yes	21-Jul-08	Open	Awaiting government response.
105	21-Jul-08	Yes	24-Jul-08	Closed	Child discharged - recruitment officer disciplined by the loss of 28 days' salary.
106	31-Jul-08	Yes	31-Jul-08	Closed	Community work-related. Government guidance distributed through General Administration Department as to appropriate approach to be adopted.
107	28-Jul-08	Yes	04-Aug-08	Closed	Victim discharged, perpetrator fined 28 days' salary.
108	29-Jul-08	Yes	28-Aug-08	Open	Government response received, further ILO recommendation made, response awaited.
109	11-Aug-08	Yes	23-Oct-08	Open	Alleged serious harassment. Three complainants and facilitator arrested. Awaiting government response.
110	13-Aug-08	Yes	10-Oct-08	Open	Awaiting government response.
111	14-Aug-08	Yes	21-Aug-08	Open	Government response received, victim not located, further investigation proposed.
112	19-Sep-08	Yes	29-Sep-08	Open	Awaiting government response.
113	24-Sep-08	Yes	-	Pending	Awaiting parental approval to proceed.
114	25-Sep-08	Yes	29-Oct-08	Open	Awaiting government response.
115	26-Sep-08	Yes	29-Oct-08	Open	Awaiting government response.
116	01-Oct-08	No		Pending	Further information being sought.
117	01-Oct-08	Yes	10-Nov-08	Pending	Assessment in process.
118	01-Oct-08	No		Closed	Not within SU mandate – Industrial dispute.
119	22-Oct-08	Yes	22-Oct-08	Open	Verification of facts under way. Government advised.
120	30-Oct-08	Yes	06-Nov-08	Open	Awaiting government response.
121	04-Nov-08	Yes	10-Nov-08	Pending	Assessment in process.

303rd Session of the Governing Body of the International Labour Office (November 2008)

EIGHTH ITEM ON THE AGENDA

GB.303/8

Conclusions concerning Myanmar

The Governing Body discussed the reports submitted by the Office and considered the statement made by Ambassador Wunna Maung Lwin of the Government of the Union of Myanmar. Taking all of the discussion into account, the Governing Body concludes as follows:

1. The Governing Body stresses once again the urgency of giving full effect to the recommendations of the Commission of Inquiry and to the subsequent decisions of the International Labour Conference. These continue to be the focus for the ILO's work for the eradication of forced labour in Myanmar.
2. Whilst recognizing a certain degree of cooperation to make the complaints mechanism under the Supplementary Understanding function, the Governing Body continues to be concerned at the slow pace of progress and remains convinced that much more needs to be done as a matter of urgency.
3. The Governing Body underlines the urgent need to raise the awareness of both the military and civil authorities as well as the general public concerning Myanmar's legislation on the prohibition of forced labour and the rights contained in the Supplementary Understanding. Translations of the relevant texts must be distributed throughout the country without any further delay and a clearly worded explanatory brochure must be produced. Those guilty of exacting forced labour, including under-age recruitment into the military, must be prosecuted and meaningfully punished, and victims must be entitled to reparation.
4. The Liaison Officer must be able to carry out his functions effectively throughout the country. People must have access to the ILO unhindered and without fear of reprisals.
5. The Governing Body expresses its condemnation of the severe prison sentences given to Su Su Nway and U Thet Way, which will further discourage the people of Myanmar from exercising their right to complain about the use of forced labour. It calls for an urgent review of their sentences and for their immediate release. The harassment and detention of persons exercising their rights under the Supplementary Understanding must cease. The Governing Body also calls for the release of all those who have been imprisoned for their pursuit of their fundamental rights including the right to freedom of association as underlined by the conclusions of the Committee on Freedom of Association.
6. The Governing Body again expressed its concern that an authoritative statement has not been made at the highest level that forced labour, including under-age recruitment, is prohibited and those using it will be prosecuted and meaningfully punished. It urges the Government to issue such a statement without further delay.

7. The Governing Body notes with appreciation the progress made on the post-cyclone relief work that has been started in line with its discussion at its 302nd Session in June 2008, and encourages the Office to continue its efforts within the framework of its mandate. This should include working to ensure that the Government's policy framework respects core labour standards and does not result in forced labour.
8. The Governing Body further notes that a framework in which the aims of the Supplementary Understanding can be guaranteed efficiently in the future has to be negotiated before the next Governing Body session and requests the Office and the Government to take all the necessary steps towards that end, including a work programme. The Office should continue to engage the tripartite constituents on an ongoing basis in this process, in consultation with the Officers of the Governing Body.

F. Documents before the Governing Body at its 304th Session



INTERNATIONAL LABOUR OFFICE

GB.304/5/1(Rev.)

304th Session

Governing Body

Geneva, March 2009

FOR DEBATE AND GUIDANCE

FIFTH ITEM ON THE AGENDA

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

Introduction and summary

1. This report updates the activities of the Liaison Officer since the 303rd Session of the Governing Body in November 2008. It covers information on the operation of the Supplementary Understanding regarding the treatment of complaints on the use of forced labour; various other activities undertaken by the Liaison Officer, Mr Stephen Marshall, and his assistant, Ms Piyamal Pichaiwongse; a report of the mission from headquarters to Myanmar from 24 February to 1 March 2009 concerning, inter alia, the extension of the trial period of the Supplementary Understanding; a progress report on the ILO activities as a response to cyclone Nargis; and information on ILO participation in the UN Country Team activities in Myanmar.
2. This report highlights a number of issues. The first relates to the mechanism for treating complaints on forced labour, which has now been extended for another year. This mechanism continues to function but the overall forced labour situation remains serious in the country. Certain steps for awareness raising have been taken or agreed upon. The report refers to the public statement by the Minister of Labour on the Government's commitment concerning the prohibition of forced labour. A serious issue is the ILO's concern about the potential harassment of facilitators and complainants. One of the former facilitators, U Thet Wai, has only recently been released from prison. Other issues dealt with concern about the announcement by the Government of its intention to review the practice of prison labour and the further activities planned by the ILO regarding children in armed conflict. Finally, the report contains information on ILO activities for post-Nargis recovery which are proceeding and could have wider application in the country.

Update on the Supplementary Understanding

3. In the period since the 303rd Session of the Governing Body, 13 new complaints on the use of forced labour have been received. While the number may be low as compared to earlier reports, a considerable number of follow-up negotiations and communications on

previously lodged complaints continue to take place. The status of complaints is shown in the attached Register (see Appendix I). As of 9 March, the Liaison Officer had received altogether 137 complaints since the mechanism became operational in early 2007. Of these, 81 have been assessed and submitted to the Government for investigation and action. Sixty-three complaints lodged have been closed, of which 55 were recorded as having a satisfactory outcome while in respect of eight a degree of dissatisfaction at the result has been expressed and/or recommendation made for further action. Eighteen complaints are currently under consideration by the Government. A further eight complaints are currently under assessment by the Liaison Officer for a submission decision. Of the 81 submitted cases, 45 relate to forced and/or under-age recruitment resulting in 35 victims receiving their discharge papers with eight cases still under investigation by the Government. Generally, the Government has provided a reply within four months of the lodging of a case.

4. Booklets with the text of the Supplementary Understanding and related documents exist in English and in the Myanmar language. A booklet containing the official translation of the Supplementary Understanding and associated documents has now been approved and printed. Its distribution has started with 2,500 copies through government channels to Headquarters and Township Officers in the General Administration Department, Department of Labour, the Supreme Court and the Attorney-General's Office. The Liaison Officer has distributed a further 3,500 copies through international organizations, INGOs and NGOs. These translations are much in demand. Whilst the production of a simply worded brochure has not yet been agreed upon by the Government, alternative practical methods of increasing awareness are under discussion.
5. Awareness-raising activities have been undertaken in formal meetings and seminars with the local authorities and the public at district/township level as well as in informal village-level meetings held during in-country missions. The Liaison Officer and the Ministry of Labour carried out a joint investigation mission to Magwe Division from 15 to 17 December 2008. The Liaison Officer made an inspection tour of the jade mining area in Kachin State from 16 to 18 January 2009 and a tour of agricultural and irrigation projects in Magwe Division on 28 January 2009. On 15 and 16 February the Liaison Officer participated in a joint mission to Kayin State with the UN Special Rapporteur on the Situation of Human Rights in Myanmar. A further joint investigation mission with the Ministry of Labour was planned to take place in Magwe Division on 11 and 12 March 2009.
6. Presentations have been made to the Inter-Agency Standing Committee, INGOs, NGOs and civil society groupings explaining the complaints mechanism and seeking their support in community awareness raising and forced labour observation and reporting as they undertake their normal programme of activities. The Government has advised that the General Administration Department has issued instructions through the state and divisional administrative structures reconfirming the prohibition of forced labour. According to the Government, this instruction has been transmitted to township and village tract level with a requirement that forced labour be a standing agenda item for all regular meetings and any issues arising therefrom be reported to the General Administration Department on a monthly basis.
7. With respect to complaints concerning under-age recruitment, where a complaint is accompanied by the documentation of age, clear identification details and the specific location, the victim is invariably discharged to his parents or guardian. This has been the outcome in 35 cases to date. There is no agreement yet for initiating an investigation where an alleged under-age recruit is identified by other means than a complaint from a parent or relative. The Government has accepted the principle that an under-age recruit cannot be found guilty of desertion. In two cases, desertion sentences have been quashed and the

victim has been released from prison and discharged. However, it is not clear whether the policy itself has been amended to ensure that minors are not charged with desertion in the first place. Over recent months the penalties imposed on military personnel held responsible for under-age recruitment have been extended beyond the previous standard of a reprimand recorded on the personnel file to encompass serious reprimands, the loss of one month's wages and the loss of seniority. Except in the first case (March 2007), there has been no prosecution under criminal law. Although perpetrators have been identified under the mechanism of the Supplementary Understanding, to date no military perpetrators have been dishonourably discharged or prosecuted under the Penal Code for their actions.

8. Two cases raising concern of the use of forced prison labour have recently been closed. One concerned the use of forced prison labour in private sector business activity. The person concerned was seriously injured and has subsequently been released from prison, received a compensation lump sum and support for both ongoing medical treatment and the fitting of an artificial limb. In the second case a prisoner was delivered to the army as a porter. When he was due for release it was established that he went missing from his portering duties in 2005 and has not been heard of since. This outcome is unsatisfactory. During the discussions of the ILO mission with the Government Working Group, the Government announced a review of the *Jail Manual* as it relates to the use of prison labour. The ILO has offered technical support for that review in order to ensure compliance with the obligations under Convention No. 29.
9. In a number of forced labour complaints the situation has its origins in the current agricultural and land use policy of the Government. The absence of land tenure in agricultural land, together with mandated cropping in line with irrigation investment, means that farmers can lose income as the result of instructions to grow new crops on their land. Frequently the land is not receptive to these designated crops or the new crop takes many years to reach harvest maturity, creating major livelihood problems. In such situations, complaints on the use of forced labour arise when farmers are required to plant the specified crop under threat that they will otherwise lose the right to use their traditional land.
10. The number of new complaints has diminished since November 2008. This cannot be taken as an indication of changes in the situation; nor is it an indication of the nature or severity of cases received. The reach of the mechanism in a country of the size of Myanmar is still very limited. The reduction in complaints is more prevalent in other forced labour cases than those concerning under-age recruitment. Information through Internet services and the external media have suggested a link between the detention and severe sentencing of activists and their support of complaints to the ILO. A number of persons with a record of active support in the facilitation of complaints to the ILO have over recent months been sentenced to lengthy prison terms. The formal charges against them appear to have no direct bearing to their ILO relationship and the government authorities regularly underline that sentences are unrelated to their facilitator activities. There are indications that in some such cases evidence presented which refers to the ILO or the complaints mechanism under the Supplementary Understanding has been declared irreceivable and struck from the record, thus removing any legal basis for ILO follow-up action. The ILO continues to raise these cases with the Government as the possibility of a link between the charges laid, the sentences imposed and the facilitation of forced labour complaints can in practice deter people from pursuing their rights under the Supplementary Understanding.

11. The persons concerned are:

Ma Su Su Nway	A total of twelve-and-a-half years for five charges covering offence to public tranquility, rioting, public mischief, libel against a foreign power and incitement of unrest. All charges relating to a single incident. Sentence reduced to eight-and-a-half years in February 2009.
U Min Aung	Two years for allegedly giving offence to Buddhism and a further ten years on a charge laid under the Electronics Act just prior to completion of first term.
U Thet Wai	Two years' hard labour for allegedly obstructing an official in discharging his duties. Released February 2009 in general amnesty.
U Zaw Htay	Ten years under the Official Secrets Act.
U Nyi Pu	Fifteen years for alleged offences including charges under the Electronics Act and defaming the Government.
U Than Zin Oo	Six months for reading out loud the provisions of the <i>Jail Manual</i> in the visiting room of Insein prison.
U Po Phyu	A lawyer charged under Special Act, section 6, for allegedly trying to establish an illegal association. Case continues.
U Aye Myint	Loss of lawyers' practising licence.
U Thein Hlaing	Loss of tutors' licence.

**Extension of the trial period of the
Supplementary Understanding**

12. Kari Tapiola (Executive Director, Standards and Fundamental Principles and Rights at Work) led a mission to Myanmar from 24 February to 1 March 2009. In addition to the Liaison Officer, the mission included Mr Drazen Petrovic (Principal Legal Officer, Office of the Legal Adviser). Discussions took place with the Labour Minister, U Aung Kyi, and the Government of Myanmar Working Group for the Elimination of Forced Labour in Nay Pyi Taw on 25–26 February 2009. Following the discussions, the trial period of the Supplementary Understanding was extended under the same terms for a further 12 months. A copy of the new agreement signed on 26 February 2009 can be found in Appendix II. At the same time, it was agreed that the Myanmar language version could be immediately included in the published compilation of the relevant texts.
13. During the discussions, the Minister of Labour, U Aung Kyi, said that the Government wished to spread information on the complaints mechanism under the Supplementary Understanding as wide as possible, including to remote areas of the country. The existing booklets had already been distributed to all district, county and other offices of the ministry. Mr Tapiola raised both with the Minister and the Working Group the potentially negative effect on the mechanism of situations where facilitators or complainants may be subject to negative repercussions, including detention and imprisonment. The Minister indicated that no one has been charged for activities relating to the ILO but people could not claim exemption from violations of civilian laws on the basis that they are facilitators. Mr Tapiola stated that the complaints mechanism was strictly neutral as regards the other activities and affiliations of facilitators or complaints and that the concern remains that in certain cases being involved with the ILO could have had an influence on the charges and sentences.

14. The Minister noted that one of the facilitators, U Thet Wai, whose release the Governing Body had called for, had just been freed. From the ILO side, this was noted as a positive step; a number of other cases remained, however, and their details continue to be discussed with the Government. Prior to the mission, a request had been made for a visit to U Thet Wai in Insein prison where he was serving a sentence of two years of hard labour. He was released in a general amnesty on 21 February 2009, and the mission later met with him in Yangon.
15. The Minister of Labour issued a press release announcing the renewal of the trial period of the Supplementary Understanding. This was reproduced in both English- and Myanmar-language newspapers nationwide. A copy of the press release is included in Appendix III. The Minister confirms in his statement: “the Government of Myanmar’s high-level commitment to its policy for the prohibition of forced labour”. The press release also underlines the right of Myanmar citizens to, with protection from reprisal, seek justice under the law if they are subjected to forced labour.
16. In conjunction with the renewal of the Supplementary Understanding, it was agreed that there should be joint awareness-raising activities at state and divisional levels on a regular basis throughout the current year. The locations for the first three such sessions have been identified and it was specifically agreed that two of them would take place before the end of May 2009.
17. During discussions with the Working Group, the operation of the Supplementary Understanding was discussed in detail. It was stressed that, whilst the cooperation of the Government was recognized in the prompt management and forthcoming responses to individual complaints, the problem of forced labour remained an important one. The issue of ensuring awareness and understanding as to the rights and responsibilities on the part of both government personnel and the general public remains critical. The ILO mission drew attention to the request, also made by the Governing Body, for a brochure explaining in simple terms the Supplementary Understanding. The Working Group explained that questions of agricultural policy should be addressed by the future Parliament, following the elections foreseen for 2010. Regarding prison labour, there was an intention to revise the relevant manual. The ILO mission again highlighted the expectation stemming from the Commission of Inquiry recommendations and subsequent Conference and Governing Body conclusions that proven complaints would lead to the prosecution of perpetrators of forced labour under the Penal Code.
18. In the context of the recruitment of minors and the application of UN Security Council Resolution 1612, the Working Group agreed that the ILO – as a member of the UN Country Team’s 1612 Task Force – could deal directly with the Government Monitoring and Reporting Taskforce on Prevention of Military Recruitment of Underage Children.
19. The ILO mission briefed the UN Country Team on the outcome of its discussions with the Government and the extension of the trial period of the Supplementary Understanding. The mission held briefings with a number of ambassadors and other representatives of Yangon-based embassies. The mission also met with the Myanmar Chamber of Commerce.

Project activities

20. Following the discussion at the Governing Body session in June 2008, a project was put in place, in agreement with the Government, in response to the devastation caused by cyclone Nargis in the Irrawaddy Delta area in May 2008. This project aims at being a practical best practice employment model, specifically against the use of forced labour, through a “cash

for work” scheme based on community contracting for the rehabilitation and reconstruction of village-level footpaths, pedestrian bridges and jetties.

21. With the support of the Director-General, regular budget funding was provided for the establishment of a pilot project. This project, which commenced in September 2008 and ended in December 2008, created 5,556 person days of work for 518 villagers (60 per cent men, 40 per cent women) providing a cash injection of \$64,000 through wages and local materials procurement into the local economy. The output was the provision of 20,599 feet of raised concrete footpaths which can be used in all weather conditions, five pedestrian bridges, two jetties and a 60 feet x 12 feet concrete pad outside the local school. All this has given the occupants of five villages inter-village mobility and supported their access to markets. Under the guidance of ILO personnel, 16 community contractors received training in the necessary business and employment skills for the operation of a sustainable enterprise. The project owners are community committees established in conjunction with the UNDP for the purpose of creating opportunities for the transfer of both governance and community development knowledge.
22. The project was extended after the pilot project showed the capacity to deliver and had positive community outcomes. The second phase is currently operational in a further 60 villages with funding from the Government of the United Kingdom. On 28 February 2009 the ILO mission visited the project sites together with representatives of the Government and the donor.
23. The project has played a valuable role in raising awareness in the cyclone-affected area as to the rights and responsibilities in employment, in particular those relating to the prohibition of forced labour. On 25 February 2009 the Labour Minister, U Aung Kyi, expressed in Nay Pyi Taw the Government’s appreciation regarding the completed pilot project and the ongoing second phase. In discussing this activity with the Government, the ILO mission suggested that activities of the same kind, and with the purpose of preventing the use of forced labour, could also be carried out in other parts of the country. This will be an item for future discussions, both with the Government and with potential donors as well as, naturally, with the ILO’s constituents.

ILO participation in UN activities in the country

24. In response to the conclusions relating to Myanmar issued in July 2008, under Security Council Resolution 1612 (2005), the UN Country Team established a task force on monitoring and reporting on children and armed conflict. The task force is required to monitor and report to the Security Council on the five areas of grave child rights violations, one of which is the recruitment and use of children in the armed forces. Given the ILO mandate in Myanmar and the existence of the mechanism under the Supplementary Understanding, the ILO Liaison Office will have the responsibility for the child soldier monitoring and reporting element. The Government of Germany has recently agreed in principle to provide the additional resources required for such an activity during the first year of the project. In December 2008, the assistant to the Liaison Officer assisted the Save the Children organization in the preparation of a training programme for military recruitment personnel and social welfare department staff. Further sessions are planned to be held shortly.
25. The ILO Liaison Officer participated on 5 February 2009 in the first meeting between the Government of Myanmar Human Rights Body and the Human Rights Subgroup of the UN Country Team in Nay Pyi Taw. A further meeting will be held in April 2009 at which potential areas for ongoing discussion can be identified. The Government Group consists of senior representatives of the government departments responsible for the various human

rights policy areas (including the Ministry of Labour). Their objective, in line with the ASEAN Human Rights Charter and the obligation under the Paris Principles, is the establishment of an independent human rights body.

26. The Liaison Officer was invited by the Government and the UN Special Rapporteur on Human Rights in Myanmar, together with the UN Resident Coordinator and the UNICEF representative, to join the Special Rapporteur on his mission to Kayin (Karen) State on 15 and 16 February 2009. This was an opportunity to visit a special region with active insurgent activity and to meet local senior government officials as well as meeting the leaders of armed groups with ceasefire agreements with the Government of Myanmar.

Geneva, 12 March 2009.

Submitted for debate and guidance.

Appendix I

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, land use remains in dispute.
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 government information awaited.
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 undertaken
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 Inquiry 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 reissued.
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 undertaken.
034	12-Jul-07	No		Closed	Not related to mandate hours of work/overtime issue.
035	23-Jul-07	Yes	17-Aug-07	Closed	Government instructions issued, retrospective remuneration paid, 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	No		Closed	Insufficient information to proceed at this stage.
041	6-Aug-07	No		Closed	Not related to mandate-termination grievance.

Case	Date received	Accepted	Intervention-date	Status	Comments
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 inquiry 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	Closed	Joint-mission undertaken, village chairman dismissed, military officer reprimanded, practice stopped.
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 inquiry resulted in disciplinary reprimand.
051	20-Sep-07	Yes	25-Feb-08	Closed	Practice of forced labour ceased, awareness raising undertaken.
052	20-Sep-07	Yes	22-Feb-08	Closed	Forced labour stopped, travel restriction removed.
053	10-Oct-07	Yes	9-Nov-07	Closed	Responsible officer disciplined, practice stopped, joint awareness raising mission agreed.
054	17-Oct-07	Yes	18-Oct-07	Open	Clause 9 breach – negotiation continues, Su Su Nway, Min Aung, Thet Way remain in prison.
055	19-Oct-07	Yes	31-Oct-07	Closed	Child released – military inquiry resulted in disciplinary reprimand.
056	25-Oct-07	Yes	09-Nov-07	Closed	Child released-military inquiry resulted in disciplinary reprimand.
057	7-Nov-07	No		Closed	Not related to mandate – cross-border trafficking and HIV/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	Agreed to discharge, victim left country, negotiations continue
062	20-Dec-07	Yes	28-Dec-07	Closed	Victim discharged to custody of parents. Responsible recruiting officer officially reprimanded.
063	7-Jan-08	Yes	14-Jan-08	Closed	Victim discharged, recruiting officer reprimanded, instruction on humane treatment of trainees issued. Ongoing procedure recommendation made.
064	7-Jan-08	Yes	11-Feb-08	Closed	Sentence remitted, victim discharged from military to care of family.
065	08-Jan-08	No		Closed	Not related to mandate – corruption allegation.
066	14-Jan-08	Yes	22-Feb-08	Open	Initial response received, ILO proposed joint mission to be undertaken March 2009.
067	16-Jan-08	No		Closed	Not within mandate of forced labour, land confiscation
068	16-Jan-08	Yes	25-Feb-08	Closed	Official dismissed, education activity undertaken, ongoing situation to be monitored.
069	31-Jan-08	Yes	25-Feb-08	Closed	Closed in association with case 051 following assessment mission.
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	Closed	Awareness-raising activity undertaken.

Case	Date received	Accepted	Intervention-date	Status	Comments
073	20-Feb-08	Yes	3-Mar-08	Closed	Government response received, disciplinary action inadequate.
074	21-Feb-08	No		Closed	Insufficient basis to proceed.
075	03-Mar-08	Yes	11-Mar-08	Closed	Victim discharged, responsible officer reprimanded, government investigation to locate broker continues.
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 subject to separate consideration.
078	5-Mar-08	No		Closed	Not within SU mandate – FOA issue subject to separate consideration.
079	14-Mar-08	No		Closed	Not within SU mandate – FOA issue subject to separate consideration.
080	14-Mar-08	Yes	08-Apr-08	Closed	Associate with case 068, ongoing situation to be monitored.
081	17-Mar-08	No		Closed	Not related to mandate-labour market dispute.
082	17-Mar-08	No		Closed	Complainants unwilling to be identified.
083	20-Mar-08	Yes	08-Apr-08	Closed	Victim discharged. Recruiting officer seriously reprimanded, disciplinary response considered inadequate.
084	26-Mar-08	No		Closed	Being dealt with in context of case 015.
085	28-Mar-08	No	02-Aug-08	Closed	This case is being dealt with under case 066.
086	28-Mar-08	Yes	07-Apr-08	Closed	Victim discharged to care of parents. Responsible senior officer reprimanded. Disciplinary action considered inadequate.
087	11-Apr-08	Yes	11-Apr-08	Closed	Child discharged – recruitment officer reprimanded.
088	22-Apr-08	Yes	16-Jun-08	Closed	Child discharged.
089	19-May-08	Yes	20-Jun-08	Closed	Victim discharged, charge dropped, responsible officer reprimanded.
090	20-May-08	Yes	17-Jul-08	Closed	Victim discharged, responsible officer seriously reprimanded.
091	23-May-08	No		Closed	Complaint withdrawn.
092	27-May-08	No		Closed	Not related to the mandate – labour dispute.
093	28-May-08	Yes	16-Jun-08	Closed	Victim discharged, responsible officer reprimanded.
094	28-May-08	Yes	02-Sep-08	Closed	Division wide joint training seminar for civilian, judicial, police and army authorities undertaken.
095	11-Jun-08	No		Closed	Not related to mandate - land confiscation.
096	11-Jun-08	Yes	14-Jul-08	Closed	Victim discharged, two officers responsible disciplined. One with 28 days' salary deduction and one with 14 days' salary deduction and a serious reprove.
097	14-Jun-08	Yes	20-Jun-08	Closed	Child discharged – recruitment officer reprimanded.
098	15-Jun-08	Yes	17-Jun-08	Open	Government response received, communication continues.
099	18-Jun-08	Yes	24-Jun-08	Closed	Victim released from prison, desertion sentence remitted, discharged from military.
100	23-Jun-08	Yes	09-Oct-08	Open	Awaiting government response.
101	02-Jul-08	Yes	09-Oct-08	Closed	Allegation denied, Ministry of Defence instruction on recruiting process issued.
102	11-Jul-08	No		Closed	Insufficient evidence to proceed.
103	16-Jul-08	Yes	18-Jul-08	Closed	Victim discharged to care of parents.
104	17-Jul-08	Yes	21-Jul-08	Closed	Victim located, allegedly now of age and wishing to remain in army. ILO independent verification request denied.
105	21-Jul-08	Yes	24-Jul-08	Closed	Child discharged - recruitment officer disciplined by the loss of 28 days' salary.

Case	Date received	Accepted	Intervention-date	Status	Comments
106	31-Jul-08	Yes	31-Jul-08	Closed	Community work-related. Government guidance distributed through General Administration Department as to appropriate approach to be adopted.
107	28-Jul-08	Yes	04-Aug-08	Closed	Victim discharged, perpetrator fined 28 days' salary.
108	29-Jul-08	Yes	28-Aug-08	Open	Government response received, further ILO recommendation made, response awaited.
109	11-Aug-08	Yes	23-Oct-08	Open	Monitoring of partial solution and negotiation concerning arrest continues.
110	13-Aug-08	Yes	10-Oct-08	Closed	Victim not located, prison labour policy review proposed.
111	14-Aug-08	Yes	21-Aug-08	Open	Government response received, victim not located, further investigation proposed.
112	19-Sep-08	Yes	29-Sep-08	Closed	Victim discharged, three military personnel seriously reprimanded.
113	24-Sep-08	Pending		Pending	Awaiting parental approval to proceed.
114	25-Sep-08	Yes	29-Oct-08	Open	Government response received, negotiation continues.
115	26-Sep-08	Yes	29-Oct-08	Closed	Victim discharged, two military personnel seriously reprimanded.
116	01-Oct-08	Pending		Pending	Further information being sought.
117	01-Oct-08	Yes	10-Nov-08	Closed	Victim released, compensation paid, ongoing medical treatment provided, prison labour policy review proposed and agreed.
118	01-Oct-08	No		Closed	Not within SU mandate – Industrial dispute.
119	22-Oct-08	Yes	22-Oct-08	Closed	Awareness raising activity undertaken.
120	30-Oct-08	Yes	06-Nov-08	Closed	Victim discharged, non-commission officer seriously reprimanded, and loss of 28 days' salary and allowances.
121	04-Nov-08	Yes	10-Nov-08	Closed	Victim discharged, senior officer responsible reprimanded.
122	10-Nov-08	Yes	20-Feb-09	Open	Agriculture policy application review proposed, awaiting government response.
123	14-Nov-08	Yes	14-Nov-08	Closed	Victim discharged, corporal seriously reprimanded, and loss of 14 days' salary.
124	14-Nov-08	Pending		Pending	Assessment in process.
125	05-Dec-08	Yes	15-Dec-08	Open	Awaiting government response.
126	11-Dec-08	Yes	11-Dec-08	Open	Awaiting government response.
127	15-Dec-08	Yes	22-Dec-08	Open	Awaiting government response.
128	14-Jan-09	Yes	30-Jan-09	Open	Awaiting government response.
129	30-Jan-09	Yes	09-Mar-09	Open	Awaiting government response.
130	4-Feb-09	Pending		Pending	Assessment in process.
131	13-Feb-09	Yes	09-Mar-09	Open	Awaiting government response.
132	13-Feb-09	Pending		Pending	Further information sought.
133	13-Feb-09	Pending		Pending	Further information sought.
134	16-Feb-09	Pending		Pending	Further information sought.
135	16-Feb-09	Yes	09-Mar-09	Open	Awaiting government response.
136	17-Feb-09	Pending		Pending	Assessment in process.
137	5-Mar-09	Pending		Pending	Assessment in process.

Appendix II

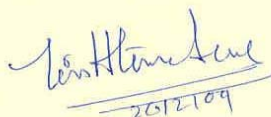
Agreement on extending the trial period of the Supplementary Understanding

**An Agreement for Extension to the Supplementary Understanding and
its Minutes of the Meeting dated 26th February 2007, done at Geneva
and its Extension Agreement for one year trial period dated
26th February 2008 done at Nay Pyi Taw**

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), the "Minutes of the Meeting" dated 26th February, 2007, (hereinafter Minutes of the Meeting) and an " Agreement for Extension to the Supplementary Understanding and its Minutes of the Meeting" done at Nay Pyi Taw on 26th February 2008, 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, 2009, to the day one year thereafter being 25th February, 2010.
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 conclusion at its November 303rd Session.

This Agreement is done at Nay Pyi Taw, the Union of Myanmar on the 26th day of February, 2009.



(Brig-Gen. Tin Htun Aung)

Deputy Minister

Ministry of Labour

Government of the Union of Myanmar



(Mr. Kari Tapiola)

Executive Director

International Labour Office

Appendix III

Press release by the Labour Minister

Press Release No. 1/2009

Supplementary Understanding for the elimination of forced labour
in Myanmar extended

Following an ILO mission led by Executive Director Mr. Kari Tapiola to Myanmar which took place from 24 February to 1 March this year, the Supplementary Understanding between the Government of the Union of Myanmar and the ILO establishing a complaint mechanism was extended on 26 February 2009 for a further period of one year. In this regard, the Government of the Union of Myanmar has issued the Press Release as a High Level Statement in the daily local newspapers on the stipulated date. The following is the text of the said Press Release issued in Nay Pyi Taw:

Quote (.)

The Government of the Union of Myanmar and the International Labour Office (ILO) today extended the Supplementary Understanding on the treatment of complaints regarding forced labour for a further twelve months.

This Supplementary Understanding supports the application of existing laws prohibiting the use of forced labour in Myanmar. It provides a complaints' mechanism, facilitated by the ILO Liaison Officer in Yangon. Under Article 1 of the Supplementary Understanding, Myanmar citizens can, with protection from reprisal, seek justice under the law if they are subjected to forced labour.

In welcoming the signing of the extension, the Minister of Labour, His Excellency U Aung Kyi stated that he *"welcomed this continuation of the cooperation between the Government and the ILO which once again confirms the Government of Myanmar's high level commitment to its policy for the prohibition of forced labour"*. The Minister stated further that *"the Supplementary Understanding supports the Government's political commitment to the eradication of forced labour. The rights of citizens are fully guaranteed under the title, Citizen: Fundamental Rights and Duties of the Citizens in Chapter (VIII), and the provision on the prohibition of forced labour in Section 359 of the Constitution of the Republic of the Union of Myanmar which was ratified by the referendum held in May 2008."*

Unquote (.)

Geneva, 3 March 2009.

304th Session of the Governing Body of the International Labour Office (March 2009)

FIFTH ITEM ON THE AGENDA

GB.304/5

Conclusions concerning Myanmar

The Governing Body took note of the report of the Liaison Officer and listened with interest to the statement made by the Permanent Representative of the Government of the Union of Myanmar. In light of the information available, and considering the interventions made during the debate, the Governing Body concludes as follows:

1. Sustained measures continue to be needed for the full implementation of the recommendations of the Commission of Inquiry and to ensure that the use of forced labour in Myanmar is totally eliminated.
2. An effective ILO presence in the country is useful and the extension of the trial period of the Supplementary Understanding (SU) for a further 12 months from 26 February 2009 is therefore welcomed.
3. All citizens of Myanmar should have access to the complaints mechanism established by the SU and actions to that end need to be intensified during the extended trial period. These include promoting the need for wider public understanding on the availability and use of the complaints mechanism and the guarantee of access to it without risk of any harassment or retribution. The criminal prosecution and punishment of those guilty of exacting forced labour is also essential for the credibility of the process.
4. The Governing Body notes certain, albeit limited, positive steps taken by the Government of Myanmar as recorded in the Liaison Officer's report. These include, amongst other things, the agreement to further and more systematic awareness-raising activities including in sensitive areas, the distribution of translations of the relevant texts and the facilitation of the Liaison Officer's access to people and his freedom of movement around the country to carry out his responsibilities under the SU.
5. The translation of the SU trial period extension and of the Minister of Labour's public confirmation of the Government's commitment to the objective of the elimination of forced labour and of the right of citizens to use the complaints mechanism without fear of retribution are welcomed. However, those translations as well as a simply worded publication should be made available also in minority languages and widely distributed.
6. The Governing Body reminds the Government that an authoritative statement at the highest level remains necessary to clearly reconfirm to the people the Government's policy for the elimination of forced labour and its intention to prosecute the perpetrators of forced labour, both civilian and military, so that they are appropriately and meaningfully punished under the Penal Code.
7. The release from prison of U Thet Wai, in response to the Governing Body's previous calls, is noted. However, the recent arrests and sentencing of U Zaw Htay and of his

lawyer U Po Phyu, being clearly linked to the activity of the facilitation of the SU complaints mechanism, are viewed as being extremely serious. The Governing Body calls for the urgent review of these and all other similar cases and for the immediate release of the persons concerned.

8. The Governing Body views extremely seriously the harassment of those who make use of their right to seek redress from the use of forced labour through the ILO or the harassment of others supporting that process. Such harassment is contrary to the letter and intent of the SU and seriously affects the credibility of the complaints mechanism.
9. The progress reported in the rural infrastructure project under way in the cyclone affected Delta region is noted. In addition to the humanitarian and livelihood benefits arising from this activity, this project has proven to be a valuable tool providing a best practice employment model against the use of forced labour. The cooperation of the Government in this regard is also noted. The Governing Body recommends that the Liaison Officer and the Government continue to work together to identify possible modalities for the continuation of this activity, within the existing framework, in the Delta region and potentially in other parts of the country.
10. In line with the current ILO mandate in Myanmar, the Governing Body welcomes the Liaison Officer's acceptance of responsibility under UN Security Council Resolution 1612 for monitoring and reporting on under-age recruitment and child soldiers. It calls on the Government of Myanmar to continue its cooperation with the Liaison Officer and his staff in this regard and to facilitate the presence of an additional international professional for this purpose.
11. The Governing Body expects to receive a report in November 2009 on substantial progress made on all of the matters referred to in these conclusions.

Document D.6

G. Information received from the Government of Myanmar – Communication received by the Office on 1 June 2009

The Government of the Union of Myanmar
Ministry of Labour
Department of Labour
Nay Pyi Taw

To: Ms Cleopatra Doumbia-Henry
Director of the International Labour Standards Department
International Labour Office

Subject: **The progress of the implementation of Convention No. 29**

Ref: Your reference No. ILC 98-500-7, dated 12 May 2009

Dear Madame

Development on the Eradication of Forced Labour by signing the Supplementary Understanding-SU

1. In the Conclusion of the March GB 304 Session, we have noticed the mentioning of “an effective ILO Presence in the country to be needed for the full implementation of the Trial period of the Supplementary Understanding SU for a further 12 months from 26 February 2009 is therefore welcomed”.

The current implementation of the Cases of Forced Labour transmitted by the ILO Liaison Officer and resolving the cases under SU: -

2. Implementing the para 3 of the Conclusion of March GB 304 Session of “All citizens of Myanmar should have access to the complaints mechanism established by the SU and actions to that end need to be intensified during the extended trail period”. As regarding the cooperation of both parties under the SU, the ILO Working Group headed by the Deputy Minister for Labour, comprising the Director-Generals from the Ministry of Foreign Affairs, Ministry of Home Affairs, Office of the Supreme Court, Attorney General’s Office and Department of Labour as members, has made necessary investigations and taken actions, with the guidance of the Minister for Labour on the forced labour complaints forwarded by the ILO Liaison Officer. Up to date, there were **(87)** complaints submitted to the ILO Working Group by the ILO Liaison Officer. Of those, **(12)** have already been replied to ILO Liaison Officer after necessary investigations conducted by the Myanmar side. **(64)** Cases had been closed and **(11)** are still under investigation and collaborating with the concerned Departments to be finalized in the near future. In resolving some of the cases, the ILO Liaison Officer, himself paid field visit together with the responsible persons from the Ministry of Labour and sometimes educate the responsible persons and the local people, by conducting the awareness raising workshop of forced labour.

3. **In order to implement para (4) of the conclusions of March GB 304 Session, 2009:** The Ministry of Labour allowed the ILO Liaison Officer for facilitation his access to people and his freedom of movement around the country to carry out his responsibilities

under the SU. Also allowed him to go for undertaken the awareness raising workshop and field visits to the said areas together with the Director-General of the Department of Labour under Ministry of Labour and sometimes, by himself. He can also carry out his functions effectively.

4. As a result of the field visits the ILO Liaison Officer could observe that any person who was exacted forced labour could make a complaint as the implementation of complaint mechanism under the SU has been given wide publicity to the people including those from the remote areas as well as the various levels of administrative authority are well aware of the orders and instructions related to forced labour prohibition issued by the higher levels. It could be observed that some complaints were concerned with personal issues focused on a few local authorities in carrying out the community development activities in some wards/villages. Anti-government groups also use wrongly the clause contained in the SU which says that “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” as a tool of politicization, so, we would like to say that this situation would be inconsiderately”.

Implementing about the para (4) of the conclusions of March GB 304 Session, 2009 concerning “the agreement to further and more systematic awareness raising activities including in remote areas”

5. Awareness Raising Seminar held in Lashio: **It has been undertaken Joint Mission MOL/ILO to Lashio, Shan State (Northern) on (7-5-2009) and conducting the awareness raising Seminar for eradication of forced labour and participating including the Members of District and Township Peace and Development Council, the representative from District Court of Justice, the representative from District Law Office, the representative from Department of Prison, the representative from Myanmar Police force, the representative from Ministry of Immigration & Population, the Officials and staffs from the Ministry of Defence, the (9) representatives from (6) national race groups which have returned to the legal fold and total of (133) representatives were attended.** The ILO Liaison Officer gave lecturing them the implementation of Convention No. 29. The Director-General of the Department of Labour also explained about the eradication of forced labour and Convention No. 29.

6. **The awareness Raising Workshop held in Hpa-An, Kayin State: The representative from the Ministry of Labour and the ILO Liaison Officer, Mr Steve Marshall have undertaken the awareness raising Seminar, in Hpa-An Kayin State on (27-4-2009) for eradication of forced labour and participating including the Members of District and Township Peace and Development Council, the representative from District Court of Justice, the representative from District Law Office, the representative from Department of Prison, the representative from Myanmar Police force, the representative from Ministry of Immigration & Population, the Officials and staffs from the Ministry of Defence, the representatives from national race groups which have returned to the legal fold and total of (64) representatives were attended.** This The ILO Liaison Officer gave lecturing them the implementation of Convention No. 29. The Director-General of the Department of Labour also explained about the eradication of forced labour and Convention No. 29.

Implementing of para 5 of the conclusions of March GB 304 Session, 2009, concerning the translation of the SU trial period extension and of the Minister of Labour’s public confirmation of the Government’s commitment to the objective of the elimination of forced labour

7. We would also like to inform the implementing the para (5) of the conclusions of the March GB 304 Session, 2009, concerning the translation of the SU trial period extension

and of the Minister for Labour's public confirmation of the Government's commitment to the objective of the elimination of forced labour, it has reproduced the SU in Myanmar Language and it has ensured that the translation of SU into Myanmar Language has already been informed and transmitted to the Liaison Officer, Mr Marshall for publishing as a Booklet.

8. Concerning SU Booklet: As we have mentioned above, it has been allowed to translate the SU into Myanmar Language and also 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 in 2002, the Minutes of the Meeting concerning the SU and An Agreement for Extension to the "Supplementary Understanding and its Minutes of the Meeting" dated 26 February 2007 done at Geneva and its "Extension Agreement" of SU for one year trial period dated, 26 February 2008 done at Nay Pyi Taw and moreover, because of the request of the ILO Liaison Officer, Mr Marshall and Mr Kari Tapiola, the Executive Director of the ILO Office, we agree to be included the "Extension Agreement" of SU for another one year trial period, done at Nay Pyi Taw on 26 February 2009, in the present Booklet.

9. Information of the Situation of the distribution of BOOKLET: We would also like to inform the information of the situation of the distribution of Booklet of the Eradication of forced labour and other related papers. We have received the information that the Booklet including (4) items was produced (6,000) copies, the ILO Liaison Officer had distributed (1,000) booklet to Department of Labour under the Ministry of Labour (haves received), (1,500) booklet to the Ministry of Labour, Office of the Attorney General, Supreme Court, (650) to UN Agencies, (500) to Union Solidarity and Development Association, (100) to Myanmar Women Affairs Federation, (500) to NLD, (1,500) to INGO's and individuals, (100) to National Unity Party and total of (5,850). According to the information from Mr Marshall's Office, it is going to produce (20,000) Booklets including (5) items during January 2009 to 22 February 2009. At the present moment, it has produced (6,000) and (1,000) to Department of Labour and the Ministry of Labour, (100) has been distributed at the Joint Missions, (1,500) to UN Agencies, NGOs and INGOs and (500) to individuals. It will be going to distribute to other organizations, Departments and ministries.

Implementing para (9) of the Conclusions of March GB 304 Session 2009, the progress reported in the rural infrastructure project under way in the Cyclone affected Delta Region and continuation of this activity, within the existing framework

10. In order to implement para (9) of the Conclusions of March GB 304 Session 2009, Myanmar Government has cooperated with the ILO for the rehabilitation and reconstructions work, which are undertaken, showing no use of forced labour and in a spirit of cooperative and constructive dialogue and in fully respect of civil rights and international standards, the Ministry of Labour has signed the MOU with ILO for implementation of job creation for the local people. Consequences of this, the Myanmar Government is cooperating with the international Organizations in carrying out the said recovery, rehabilitation and reconstruction process for the damages by the cyclone. According to some of the results from the Post Nargis Joint Assessment of the Tripartite Core Group, comprising the Government of the Union of Myanmar, the UN and the ASEAN, the ILO Liaison Officer has drafted a Project Proposal as the ILO noted that it will need to cooperate with the Ministry of Labour for rapid restoration of access and creating sustainable Decent Jobs for the local people in the areas affected by the Cyclone in Irrawaddy Division. The ILO Liaison Officer submitted his project proposal to the TCG through the UN. After the necessary consultations were made it has selected Mawlamyine Gyun Township and Dedaye Township for field mission with the intention to consult with the local authority and community in the identification of potential worksites.

11. **The pilot project, from (21-11-2008) to (5-1-2009):** After the assessment has been made by the expertise of ILO side, it has successfully drawn up of the work plan and reaches an agreement between the ILO Liaison Officer and the Director General of the Department of Labour. This work plan has approved by the Foreign Affair Political Committee-FAPC and Cabinet. This is the prominent evident of Myanmar Government, which shows the implementation of the Convention No. (29). The pilot project has been carried out from (21-11-2008) to (5-1-2009) and we have already submit the information of work activities and cost in the previous report.

12. **Stage Two of the Schedule (II) of the Department for International Development-DFID Project:** For Stage Two, the Schedule (II) of the Project Work Plan, is being carried out under the funds of UK-Department for International Development-DFID. It has agreed to start from (13-2-2009) and up to (20-5-2009), it has been made contracts for (13) works. The project activities are being carried out in (60) villages in (12) village tracks. The project works included (50) bridges of total length 2720 feet, (23) jetties, concrete footpaths of total length 266,500 feet. The contract amount has been spent the Myanmar Currency Kyats (698,650,550/-) for project works and used (5,849) skilled Labour, General Workers (65,976) and totally altogether Job Creation for (71,828) workers and they have enjoyed the wages of (155,347,284/-) in Myanmar Currency.

13. **Implementing para (9) of the Conclusions of March GB 304 Session, 2009:** We would like to confirm that the above cooperative activities of the prominent evidence shows to ensure the Government Policy Framework respects core Labour Standards and does not result in forced labour mentioning in para (7) of the conclusions of November 303 GB 2008/8 and implementing para (9) of the Conclusions of March GB 304 Session, 2009.

14. **Implementing para (6) of the Conclusions of March GB 304 Session, 2009:** Concerning the Government's policy for the elimination of forced labour and its intention to prosecute the perpetrators of forced labour, both civilian and Military, so that they are appropriately and meaningfully punished under the penal code", we would like to inform the committee that if the perpetrators of forced labour are civilian, he/she will probably be taken action against provisions under the penal code. But the perpetrators of forced labour are from the army, the action will be taken the provisions under the military laws/acts and regulations. So, we hope that the committee would understand the channel of the action taken by the respective one.

15. **Implementing the para (5) of Conclusion of March GB 304 Session, 2008 and in order to implement the para (6) of the conclusions of the November 303 GB, 2008, concerning the government commitment to the objective of the elimination of forced labour:** An authoritative statement has been made by the Higher Level during the visit of Mr Kari Tapiola for showing her cooperation and the implementing of the SU signed by ILO and Myanmar and an agreement for extension to the Supplementary Understanding, publishing the High Level Statement and given wide publicity in the Daily Newspaper, such as New Light of Myanmar in English and Myanmar Version and, the Mirror. Mr Kari Tapiola reveled that the said matters showed the constructive of the government political will of the eradication of forced labour and it will also be supportive matters. But the conclusion of the GB 304 concluded that the government that an authoritative Statement at the Highest Level remains necessary to clearly reconfirmed to the people the government's policy for the elimination of forced labour. We would like to mention that the Minister for Labour is the highest authorized person for Labour Affairs and we would also like to reconfirm that this matters are already mentioned in the Daily Newspaper and every Nationals know that this Statement is the commitment of the highest level.

The Department is looking forward to cooperation with ILO and it will be greatly appreciated if you could kindly send a message of the receipt of this communication.

With Best Regards,

Truly yours,

(Signed) Chit Shein
Director General

Cc:

Ministry of Labour
Permanent Mission of the Union of Myanmar to the United Nations
Office and other International Organizations, Geneva
Office Copy

