



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

Report of the Committee on the Application of Standards

PART THREE

OBSERVATIONS AND INFORMATION CONCERNING PARTICULAR COUNTRIES

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

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

The Chairperson of the Governing Body addressed the Committee in order to provide an overview of the outcome of the High-level Tripartite Mission that the Officers of the Governing Body had undertaken to Myanmar on 1–5 May 2012. The report of the Officers would be discussed the following week at the Selection Committee of the International Labour Conference which would undertake a comprehensive review of this question. Even though the present discussion focused on the application of Convention No. 29, the Committee would benefit from information on the broader developments to be discussed the following week, so that they could be taken into consideration.

In its March 2012 session, the Governing Body, taking into account increasingly positive developments in Myanmar, had decided that a High-level Tripartite Mission would take place to get first-hand information on the state of progress and hold discussions with Government and non-governmental representatives. The purpose was to assist the Conference, in particular, the Selection Committee, in its consideration of a review of the resolutions adopted by the Conference in 1999 and 2000 which were aimed at securing compliance by Myanmar with the recommendations of the Commission of Inquiry. The High-level Mission had met with the full cooperation and positive support of the Government and all facilities had been provided to it, allowing it to travel freely throughout the country and hold meetings with a wide range of counterparts. The discussions had been full, frank and informative. The parties with whom the Mission had held meetings included senior officials at the highest level, including the President, the Commander-in-Chief of the Defence Services, the Minister of Labour, the Minister of Foreign Affairs, the Attorney-General. The Mission had also met with employers' organizations and recently registered trade unions and opposition members of Parliament. It had had the opportunity to hold open exchanges during which the Minister of Labour had admitted that the resolutions of 1999 and 2000 had been justified and that the Government had lacked the capacity to respond appropriately at the time of their adoption.

The speaker informed the Committee of recent changes in the area of freedom of association as this was also important in combating forced labour. The Labour Organizations Law 2012 had entered into force, leading to the registration of 15 workers' and ten employers' organizations by the time of the Mission, with 40 additional applications having been processed after the Mission. The Mission had met with representatives of the workers' organizations and was completely satisfied that they were genuine worker-based trade unions. It had also met with the Chamber of Commerce and its affiliates and was equally satisfied. The development of a strong labour administration system with capacity to process the applications for registration and provide relevant advice was essential to the effective application of the law. There was recognition that there would be a need for significant ILO support in this regard. As far as the release of detainees for trade union activities was concerned, the authorities had confirmed in discussions with the Mission that the issue would be dealt with during the next amnesty. New legislation prohibiting forced labour had entered into force. On 1 May 2012, the President had issued a first statement on the abolition of forced labour which was retransmitted by the media throughout the country in all languages. The Commander-in-Chief had issued instructions to the military according to which forced labour was to cease and any members of the armed forces found to engage in these practices would be punished. The Mission had been informed that the Military Code provided for penalties which were even more significant than those envisaged in

the Penal Code. Translated copies of the instructions had been widely disseminated to ensure a high level of awareness.

The Mission had also held discussions on the situation on the ground with workers' organizations, opposition parties and 33 voluntary facilitators in the rural areas. There was strong recognition of the significant reduction of cases of forced labour and the quick reaction from the authorities once these cases were revealed. Overall, there were reports of fewer incidents, quicker reaction and greater awareness of the prohibition of forced labour. These were extraordinarily positive developments. A Memorandum of Understanding had been signed by the Government and the ILO to achieve the full abolition of forced labour by 2015. All parties were committed to moving as quickly as possible to achieve this objective by 2015 as the absolute end date. There was universal commitment in the joint working group which would oversee the strategy, to move as quickly and effectively as possible and this commitment had been reiterated by the President, the Commander-in-Chief and the Labour Minister in their meetings with the Mission.

With regard to the future relationship between the ILO and Myanmar, the report of the Officers of the Governing Body to the Selection Committee of the Conference would certainly herald a new era of relations between the ILO and Myanmar. This having been said, there was still an enormous amount of work to be done. There was cautious optimism on the ground and among the Governing Body Officers on the prospects of permanent and positive change in the country. The ILO still had a significant role to play to ensure that the commitments were implemented in full and that appropriate support was provided to the Government in this regard. The speaker concluded by thanking the Government for the full cooperation and the ILO Liaison Officer in Myanmar for the excellent organization of the Mission.

A Government representative of Myanmar indicated that within a very brief period since the advent of the new Government, Myanmar had been able to fulfil all the recommendations of the Commission of Inquiry by taking the necessary steps in the executive, legislative and judicial branches. The first recommendation of the Commission of Inquiry on the need for a legislative realignment in the context of Convention No. 29 had now been implemented with the promulgation of the Ward or Village Tract Administration Act in February 2012, which had repealed the Village Act and the Towns Act of 1907. The definition of forced labour in the new Act directly derived from Convention No. 29 and section 27A of the Act outlawed and penalized the use of forced labour. The Act also enacted penalties carrying the same gravity as section 374 of the Penal Code. The second recommendation of the Commission of Inquiry was to take concrete action through public acts of the Executive promulgated and made known to all levels of the military and to the whole population. The ILO Liaison Officer had been appointed in 19 March 2002 to assist the Government in its efforts to ensure the prompt and effective elimination of forced labour in the country. A complaints mechanism for victims of forced labour had first been established in 2007 and had been functioning smoothly since then. Even though these days, the mechanism was receiving a higher number of complaints, the incidents of the exaction of forced labour by both civilian and military authorities had been declining. This trend had been confirmed by the ILO Liaison Officer in his report. The Office of the Commander-in-Chief of the Defence Services had recently issued relevant orders. The Order issued on 21 March 2012 was a reminder advising all military personnel that strict and stern military disciplinary action should be

taken against perpetrators of under-age recruitment in the military. The Orders issued on 10 and 20 April 2012 required that the new law, making forced labour a criminal offence, also applied to the military and also that the military personnel accused of the use of forced labour should be prosecuted under section 374 of the Penal Code. Copies of some of the Orders had been transmitted to the ILO Liaison Officer in Myanmar.

A Memorandum of Understanding signed by the Government of Myanmar and the ILO on 16 March 2012 provided the framework for a comprehensive strategy for the full elimination of forced labour in Myanmar by 2015 at the latest. In the context of this framework, a draft Action Plan had been developed and finalized on 21 May 2012 and was expected to be approved in due course. The draft text was now available as a Conference document. The speaker assured the Committee that the total and complete elimination of forced labour in Myanmar would be achieved, well before the deadline of 2015. In order to alleviate the possible sources of forced labour, necessary budget allocations had been made for the payment of wages for public works at all levels for the 2012–13 fiscal year. The local governments were allowed by law to request additional funds to meet the actual cost for community infrastructure or service work. Advocacy and awareness-raising activities played a vital role in the efforts to eliminate forced labour. In addition to training courses, seminars and educative talks to all stakeholders, the brochure on forced labour and the complaints mechanism had been distributed widely in Shan, Kayin (Pwo), Chin, Kayah and Myanmar languages. It would also be distributed in Kayin (Sgaw), Rakhine and Mon languages soon.

The speaker referred to the message conveyed by the President of Myanmar on the occasion of May Day (Workers' Day) on 1 May 2012, a section of which read as follows: "Our elected Government has been in office for over a year and it is high time we should eliminate all forms of forced labour once and for all for enhancing the eternal principles of justice, liberty, equality in the Union. Forced or compulsory labour shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily. Therefore, the process of eradicating forced labour in Myanmar has been accelerated and the International Labour Organization and the Government of the Republic of the Union of Myanmar have launched a Joint Strategy for the absolute elimination of forced labour in Myanmar by 2015." The full text of the President's message had been widely published in the national media and reproduced in full on the front pages of the national press, in both English and the Myanmar languages.

The third recommendation of the Commission of Inquiry was that the penalties which might be imposed under section 374 of the Penal Code for the exaction of forced or compulsory labour should be strictly enforced, in conformity with Article 25 of Convention No. 29. As the penalty stipulated in the Ward or Village Tract Administration Act was the same as the punishment stipulated under section 374 of the Penal Code, the Government believed that the recommendation had now been implemented. Since the establishment of the complaints mechanism, military disciplinary measures had been taken against 166 military personnel (27 officers and 139 members of other ranks) for committing offences of forced labour and under-age recruitment. To date, action had been taken under section 374 of the Penal Code against 28 officers and 142 other officials supervising the recruitment process. Five military personnel had been prosecuted under the Penal Code in accordance with the new Order issued by the Commander-in-Chief of the Defence Services.

In the light of the above measures taken by the Government, Myanmar had sufficiently implemented the de-

cisions of previous Conferences and the Governing Body and was now adequately compliant with the recommendations of the Commission of Inquiry. The Government's genuine political will and sincere cooperation with the ILO was not limited to the implementation of the Convention. In order to provide the Committee with a fuller picture of this cooperation, the speaker informed the Committee of recent significant developments relative to the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). The Labour Organizations Law, which had entered into force on 9 March 2012, provided for the formation of more than one Confederation in the country. There were currently 15 workers' and ten employers' organizations registered under the Labour Organizations Law and another 26 were in the process of registration. The speaker was pleased to inform the Committee that a Workers' delegate from Myanmar who had been democratically elected by the workers' organizations, was attending the current session of the Conference. On the sidelines of the Conference, a meeting had taken place on 29 May 2012 between representatives of the Government and Mr Maung Maung, Secretary-General of the Federation of Trade Unions of Burma (FTUB). During the discussion, the modalities of the return to the country of Mr Maung Maung had been discussed as well as the issue of registration of the FTUB under the existing law. Both sides considered that the meeting was positive and that progress had been made. Representatives of the ILO and the International Trade Union Confederation (ITUC) had also been present at the meeting.

These encouraging and tangible achievements in the promotion and protection of the rights and well-being of workers had led to a recent visit of the Officers of the Governing Body to Myanmar. In their report, the Officers shared the view that it was now time to recognize the extent of positive change in Myanmar and also that consideration should be given to the needs of its 60 million citizens. The Mission had also concluded in their report that the legislative changes introduced by the new Government were increasingly taking effect. The Government was of the view that it was irrelevant and unjustifiable to keep the 1999 resolution, which had been adopted at the time on the reasoning that the Government had failed to take necessary action to implement the recommendations of the Commission of Inquiry. It would also be inappropriate to keep the 2000 resolution, which was adopted to secure the compliance of Myanmar with the recommendations of the Commission of Inquiry. Both the 1999 resolution and the 2000 resolution came as a package linked to the implementation of the three recommendations of the Commission of Inquiry. Myanmar was now adequately compliant with all these conditions and, therefore, it would only be just, fair and equitable to lift both resolutions in their entirety. Therefore, a strict and equitable legal interpretation should be applied when the Conference reviewed its resolutions.

The consideration for lifting the resolutions together with the actions they called for, should be based solely and logically on the merits of Myanmar's compliance with the recommendations of the Commission of Inquiry on Convention No. 29. It should not be linked to any other unrelated issues or circumstances. The international community and the ILO in particular, should duly recognize the tangible results, the tireless efforts and the commitment of the Government of Myanmar in implementing the recommendations of the Commission of Inquiry. Time was now ripe for workers in Myanmar to receive fair and equitable treatment from the international community, including the ILO, on a par with workers in other member States of the Organization. The 2000 resolution paid particular attention to the activities of other international organizations. In this context, the recent official visit to Myanmar by the Secretary-General of the United Nations

reflected the move towards engagement with Myanmar by the United Nations and other organizations in the multi-lateral system. The Secretary-General in his speech to the joint session of Myanmar's Parliament had urged the international community "to go even further in lifting, suspending or easing trade restrictions and other sanctions".

In this new era of Myanmar, one of the immediate priorities of the new Government was job creation and income generation. But the Government alone could not achieve this task. It needed a helping hand from the international community and from the ILO in particular. So long as the Conference resolutions remained in place, an adequate flow of foreign direct investment would not be directed towards the country. And the latter would not be able to benefit from the Generalized System of Preferences for its export industries. The workers would be the ones to suffer in that scenario, as they were the most vulnerable members of society. In the best interests of the workers, the resolutions on Myanmar should come to an end at the current session of the Conference. Any further delay in lifting the resolutions would not improve their livelihoods. The thoughtful and sympathetic consideration of this Committee would be vital to making a big difference to the workers. The speaker concluded by emphasizing that, in accordance with the primary goal of the ILO which was to achieve social justice, the Government had high hopes that the current session of the Conference would favourably consider doing justice to the workers of Myanmar, in a fair and logical manner, by lifting the resolutions on Myanmar.

The Employer members thanked the Government for the very helpful information. This year's special sitting on the observance by Myanmar of Convention No. 29 was of fundamental importance, especially in light of the developments that had recently occurred in the country. The Employer members welcomed the report and the proposals of the High-level Tripartite Mission, touching on three main points: (i) the need to lift previous limitations on ILO technical cooperation and assistance, allowing such cooperation and assistance to be available to the Government on all issues within the ILO's mandate; (ii) the need to allow the Government, and its social partners, to participate fully in all ILO activities, including meetings, symposia and seminars; and (iii) the need to suspend reporting obligations of ILO's constituents regarding their relations with Myanmar until 2013. Continued communication, transparency and collaboration between the Government, the ILO and the social partners had been and would continue to be key in this regard. It was by its continued participation in tripartite efforts at the local, national and international levels that the Government would be able to demonstrate unambiguously its willingness to address the relevant issues and comply with the Convention. The genuine willingness of the Government to effect change was supported by a clear and precise statement made in May 2012 by the President of Myanmar, in which he had communicated the Government's commitment to eliminate all forms of forced labour "once and for all".

The Employer members welcomed the Memorandum of Understanding by the ILO and the Government on a joint strategy to eliminate all forms of forced labour in Myanmar by 2015 which had been signed during the March 2012 session of the Governing Body. The elaborated and detailed Action Plan was welcomed by the Employer members who looked forward to further information from the new Working Committee on the Joint Strategy for the Elimination of Forced Labour with regard to progress made in its implementation. With regard to legislation, it was important to refer to the newly adopted Labour Organizations Law, which was key to facilitating freedom of association and genuine dialogue between the social partners in the country. The Employer members welcomed the confirmation of the Mission that legislative changes

had been made with a view to securing compliance with Convention No. 29. Such legislative changes included the repeal of the Village Act and the Towns Act of 1907, through the adoption of the Ward or Village Tract Administration Act in 2012, section 27 of which built on the definition of forced labour in Convention No. 29 and stipulated that "anyone who exacts work or service from any person under the menace of any penalty and for which the said person has not offered himself voluntarily shall be punished" by imprisonment or fine. They viewed this new law as an important step towards the abolition of forced labour throughout Myanmar, and emphasized the importance of the full implementation of the new legislation. The Employer members requested clarifications concerning article 359 of the Constitution, which exempted from the prohibition of forced labour "duties assigned by the Union in accordance with the law in the interest of the public". This provision still allowed much discretion for the exaction of forced labour and they trusted that it would be amended forthwith and brought in line with the Convention.

With regard to the military, the Commander-in-Chief had stated that provisions of the new Ward or Village Tract Administration Act also applied to the military and that any personnel accused of forced labour, and specifically under-age forced recruitment, would be prosecuted under the Penal Law. The Commander-in-Chief had also issued Orders instructing that no civilian personnel should be used in military support activities of any kind and that any civilian labour needed should be freely engaged and paid. Information had been received on 166 military prosecutions, with penalties ranging from reprimands, loss of promotions, fines, demotion, discharge and imprisonment. Since the last session of the Conference, for instance, five military personnel had been prosecuted under the Penal Code. The Employer members commended the Government on the progress that had been made to address the use of forced labour by members of the military, including the investigation, prosecution and punishment of perpetrators, and the initiation and continuation of direct discussions with the armed forces. They encouraged the Government to monitor the situation concerning forced labour in the military to ensure the continued application of the recently issued Orders. The Employer members were also encouraged by the news, having been noted by the Committee of Experts on the Application of Conventions and Recommendations and the Governing Body, of an increased discharge of under-age military recruits and previously detained labour activists. They hoped for the Government's continued cooperation in locating and releasing other activists in detention, and in discharging and reintegrating other under-age recruits.

They noted that the budget for the 2012–13 fiscal year, currently under development, foresaw that provisions would be made for the payment of wages for public works, with allocations in the budget in the ratio of 60 per cent for materials and 40 per cent for labour. Additionally, provision would be included allowing for supplementary allocations, if local authorities required additional funds to meet operational demands, including for the cost of labour. They expressed appreciation at these changes as they believed that the allocation of funds for appropriate remuneration was an important step in alleviating pressures that might contribute to the use of forced labour by civilian authorities. The Mission had also indicated that a brochure explaining the law pertaining to forced labour and available complaints mechanisms was in the process of being translated into a number of national languages. Increased access to such information was important to timely investigation, and where necessary, prosecution and punishment of forced labour. The Employer members welcomed the news, noted by the Governing Body, of an increased resolution of complaints in the Magwe region, noting that the investigation into

and resolution of disputes was critical to demonstrating that the use of forced labour would not be tolerated. Clarifications were requested on the issue of protection from negative repercussions due to initiating complaints. From the report of the Mission, it appeared that the environment for complaints to be made had changed but there was still a need to ensure that complainants faced no obstacles or consequences from raising issues under the Supplementary Understanding complaints mechanism.

The Employer members considered that the abolition of forced labour was but one facet in the promotion of international labour standards and that the Government should continue with the newly established policies towards civil rights and social justice. Despite progress being made in a number of issue areas, the Employer members underlined that the newly elected member of Parliament Ms Aung San Suu Kyi had cautioned that the rule of law, which had yet to be established completely, was a necessary precondition for real democracy and change. While the ILO Liaison Office had contributed much to the improvements in Myanmar since its establishment in 2007, the extension of the Supplementary Understanding had not relieved the Government of its own obligations to take all outstanding measures to abolish the use of forced labour. The Employer members reiterated their support for the Joint Strategy between the ILO and the Government. As the full abolition of forced labour was still to be achieved and instances of forced labour still occurred, the Government should work quickly on the Joint Action Programme and bring about the total abolition of forced labour as soon as possible. The Employer members trusted that the ILO would be able to do its part in assisting the Government and the social partners in this regard.

The Worker members observed that although the Conference Committee was meeting yet again especially to address the case of forced labour in Myanmar, it was the first time that it could report the existence of changes. These had occurred so rapidly that the Committee of Experts for the Application of Conventions and Recommendations had not yet been able to review and assess the new developments relating to the implementation of the 1998 recommendations of the Commission of Inquiry. The Commission of Inquiry had made three recommendations to the Government: to bring the legislative texts into line with Convention No. 29; to eliminate the practice of forced labour imposed by the authorities, in particular the military; and to strictly enforce the applicable criminal penalties. Furthermore, the Government had been required to take a number of specific measures immediately: to disseminate specific instructions to the civil and military authorities; to ensure extensive publicity of the prohibition on forced labour; to allocate financial resources in order to pay workers who had been hired for forced or unpaid labour; and to implement the prohibition on forced labour.

The Worker members noted that the Village Act and the Towns Act of 1907 had finally been repealed and replaced with a new law which stated explicitly that the use of forced labour was a criminal offence. Although the Committee of Experts still needed to examine the conformity of this new law with Convention No. 29, the Worker members already noted that the applicable penalties were not in line with the Convention. They recalled that the Committee of Experts had stated, in its 2007 General Survey on forced labour, that the imposition of just a fine or a maximum one-year prison sentence could not be considered effective, given the seriousness of the offence and the dissuasive effect that the penalties should have. The Worker members also observed that article 359 of the National Constitution still permitted labour imposed by the State in the interest of the public, which amounted to a blanket authorization for the use of forced labour.

With regard to the changes that had been observed, the Worker members noted that: (1) the instructions concerning the ban on forced labour had been addressed to the civil and military authorities and that complainants no longer seemed to be harassed or prosecuted for having lodged a complaint; (2) a simple leaflet explaining the legislation on forced labour and the channels of appeal had been disseminated in the official language as well as in several local languages; (3) the next budget provided for initial allocations for the funding of public works; and (4) further penalties for forced labour had been established. However, the penalties were administrative or disciplinary rather than criminal, except in certain cases of forced under-aged recruitment in the army. Although progress had been made, it was limited. Even though the use of forced labour had decreased in scale, the use of compulsory labour and also the confiscation of land were still sources of concern in several regions of the country, according to recent reports. The Worker members had always affirmed that the absence of democracy and of freedom of association perpetuated forced labour. The previous year, changes had been recorded in the political landscape rather than in the social sphere. Even though some trade unionists and political prisoners had been freed in the meantime, others were still in prison.

A new law had been adopted to provide a framework for the operation of trade unions, for collective bargaining and for the settlement of labour disputes. Furthermore, in March 2012, a new Memorandum of Understanding between the Ministry of Labour and the ILO had been signed, followed this week by a joint Action Plan which established an overall strategy to completely eliminate forced labour by 2015.

The Worker members welcomed the admirable work done by the ILO Liaison Officer, despite the lack of available resources, in the areas of awareness raising, the collection of complaints and the release of young people recruited into the army. However, they recalled that while the Supplementary Understanding was a valuable instrument, other levers were also needed to reach the objective of eliminating forced labour and re-establishing freedom of association. The social partners should also be involved in the development and implementation of this Supplementary Understanding. The same applied to the new joint Action Plan. The Worker members expressed their concern that the new Joint Strategy fell short of the stated objectives. The time frame given for the abolition of all forced labour was very long, even too long. In addition, the Action Plan did not contain any objective as regards criminal prosecution, nor did it define any specific progression or make provision for sufficient financial resources for the commitments listed.

In a new and promising situation, it was important to assess the efforts of the ILO and draw conclusions for future action, particularly because foreign investment was going to flow into the country without a legal framework and without any guarantee of conditions for decent work.

An observer representing the International Trade Union Confederation (ITUC), the Secretary-General of the FTUB, indicated that the consensus within the Committee with regard to the violations of workers' rights in Burma and then Myanmar had been outstanding for the last 20 years. Although improvements had been seen in the country, including less forced labour and fewer child soldiers, and action had been taken against perpetrators, not all was well, and more needed to be done. The FTUB had objected to the recently concluded Memorandum of Understanding because it allowed for violations concerning forced labour to continue for another three years, until 2015. There was also no comprehensive report on the impact of the extensive training provided by the ILO Liaison Office and a lack of logic underpinning the three-year Action Plan. The FTUB considered that the Action Plan

was more or less repeating the work of previous years and believed that the method should be changed.

Referring to the public statements made by the President and the Commander-in-Chief, who had committed themselves to the total eradication of forced labour, the speaker queried why it would take another three years to achieve this goal. Despite the emphasis placed by the President in his speech to National Parliament of 1 March 2012 on the rule of law, the eradication of forced labour was still not associated with the prosecution of perpetrators or the imposition of penalties in the country.

An alternative approach proposed by the FTUB was to launch, as a country, an “End forced labour by the end of 2013” campaign. He indicated that everybody in the Committee would surely be more than happy to see this concerted campaign for a total eradication of forced labour. The FTUB called for an examination of available resources which should be put towards coordinated action. Examples would include requesting the Democratic Voice of Burma (DVB) to launch TV and radio broadcasts aimed at the eradication of forced labour in various ethnic languages (the DVB already had the human resources and funding provided by the Norwegian Government which could be supplemented by the ILO); discussing with respective ethnic organizations that had entered ceasefire talks to help with translation into their languages, and with distribution and documenting (resources could be provided by the ILO); supporting and encouraging the reports of forced labour through the newly established communications offices of the ethnic nationalities (resources could be provided by the ILO); educating, supporting and requesting the Parliamentarians to raise awareness among their own constituents; raising awareness, and having discussions with the employers and requesting those who had ventures in rural areas to enforce the calls by the President and the Commander-in-Chief for the eradication of forced labour (some companies had already done so when there had been threat of legal action against them); and collaborating with the many non-governmental organizations and civil society organizations that had already been working on the eradication of forced labour in order for them to be a part of the campaign – the trade unions could be the bridge between them and the Government. Such action would allow the people to understand that the eradication of forced labour was a national issue, and that it affected the way in which the country was perceived by the rest of the world.

The FTUB was ready to discuss this alternative approach with both the ILO and the Government. This approach would allow the whole population to become part of the campaign and become part of helping the country. The FTUB proposed this people-oriented approach to eradicate forced labour in one and half years instead of the three-years set out in the Action Plan (half-year for preparation and one year for implementation), followed by independent reporting to the ILO by all concerned. This approach was more participatory, more transparent, less costly, less rigid and provided space for the people to take an active part in the eradication of forced labour.

The Government member of Denmark, speaking on behalf of the Governments of Member States of the European Union (EU) attending the Conference, as well as the Acceding Country (Croatia), the Candidate Countries (The former Yugoslav Republic of Macedonia, Montenegro, Iceland and Serbia), the European Free Trade Association Country (Norway) and the Republic of Moldova, welcomed the statement by the Government representative of Myanmar/Burma. They had followed with respect and appreciation the historic changes in the country over the past years and encouraged the wide ranging reforms to continue in a partnership with political and civil society actors. They were pleased to be able to welcome Ms Aung San Suu Kyi at the Conference the following week. Although these reforms would need time to bear fruit, the

peaceful nature of the process and the readiness of the parties to work toward the same goals, with a shared vision for political, social and economic reforms, should be praised. They welcomed the concrete steps taken by the Government to eliminate the use of forced labour and to comply with the recommendations of the Commission of Inquiry, which, as acknowledged by the Government, had been justified.

While welcoming the basic legislation put in place to meet the first recommendation of the Commission of Inquiry, the speaker stated that they expected the Government to ensure full implementation of the legislation to ensure without delay that no forced or compulsory labour was imposed by the authorities, including the military, inside or outside conflict zones. The awareness-raising activities at community level and with Government authorities, including the police and the military was welcomed. The ILO and the Government were encouraged to continue these activities and to ensure widespread distribution of the information brochure in all relevant languages. Stressing that forced labour must be eliminated in practice, the Governments on whose behalf he spoke, regretted that incidents of forced labour continued to be reported, albeit at a substantially reduced level over the last few months. The presentation by the Government of the joint Action Plan for the full elimination of forced labour by 2015 was also welcomed. Its implementation was important to meet the recommendations of the Commission of Inquiry. They noted the effective prosecution of forced labour perpetrators which demonstrated the Government’s willingness to implement Convention No. 29 and encouraged the Government to continue to apply the law against any offenders, including civilians and military. The Government activities to protect its workers abroad and their rights should be welcomed and reflected in domestic policy as well.

The EU would like to collaborate actively and constructively with the country, to assist the reform process and to contribute to economic, political and social development. All actors would be assisted in their endeavour to strengthen the rule of law and the respect for human rights. European companies would be encouraged to explore trade and investment opportunities, notably by promoting the practice of the highest standards of corporate social responsibility, on the basis of all the internationally recognized instruments and principles on corporate social responsibility and multinational enterprises.

Recognizing that two recommendations of the Commission of Inquiry had been fulfilled, they encouraged the authorities to avail themselves of ILO assistance to ensure full compliance with the third recommendation to eliminate in practice forced labour from the country, if possible before 2015 as had been expressed by the Government representative of Myanmar.

The Government member of Viet Nam, speaking on behalf of the Government members of the Committee who are Member States of the Association for Southeast Asian Nations (ASEAN), welcomed the positive developments in Myanmar and the commitment of the Government to implement democratic reforms, promote national reconciliation, and support socio-economic development. The international community, including the Secretary-General of the United Nations, had recognized that significant progress had been achieved. ASEAN echoed the Secretary-General’s call for the international community to lift or suspend trade restrictions on Myanmar. They also expressed appreciation for Myanmar’s continued cooperation with the ILO in the context of the relevant ILO Conventions. Efforts to promote and protect the rights of workers in Myanmar were gaining momentum. They noted with satisfaction the political commitment made by the President of Myanmar on 1 May 2012 to eliminate all forms of forced labour. Although progress had been achieved, it was acknowledged that challenges remained.

The Government of Myanmar was encouraged to continue to engage with and seek assistance from the international community, including the ILO. They called upon the ILO to reciprocate Myanmar's genuine efforts, tangible achievements and continued political will in eliminating forced labour by reviewing the resolutions adopted at the 87th and 88th Sessions of the Conference in 1999 and 2000, and lifting the restrictions prescribed in these resolutions. Such restrictions were incompatible with the current status of Myanmar's compliance with the ILO's requirements, and their immediate removal would constitute a positive step by the ILO and lead to the creation of jobs and income generation.

The Government member of Japan expressed his Government's appreciation for the positive developments concerning forced labour in Myanmar and acknowledged both the dedicated work of the ILO and the proactive steps being taken by the Government. The promulgation of the Ward or Village Tract Administration Act, which penalized forced labour, was welcomed and the successful completion of the Mission to Myanmar by the Officers of the Governing Body was commended. He stated that the actual incidents of forced labour must be fully eradicated, including by prohibiting the recruitment of under-age soldiers by the military, and the recent orders issued in this regard were welcomed. The speaker indicated the expectation that the joint Action Plan related to the prohibition of forced labour would be enacted in a timely manner. Regarding the resolutions adopted at the 87th and 88th Sessions of the Conference, an appropriate response should be developed given the concrete progress taking place in Myanmar.

The Worker member of France recalled that, despite the recommendations of the Commission of Inquiry, forced labour persisted. Referring to specific examples, she recalled that land was still being confiscated; the military was still forcing people to build roads and bridges; children were still being conscripted into the army by force; and citizens were still being used to clear mines. Since the 2011 session of the Conference, cases of forced labour involving the carrying of sacks of rice or water for the armed forces and building military bases or roads had been reported, affecting children as well as adults. Such examples showed that, even though some progress had been made, particularly in terms of communication on the subject of forced labour, the practice was still a reality that must be eradicated immediately, without waiting for the 2015 deadline. The persistent nature of the problem made it necessary to hold the regular special sitting on Myanmar again during the next session of the Conference, in 2013. From then on, all trade unions, including the FTUB, should be able to enjoy complete freedom of association, so that they could fight forced labour more effectively, and the charges still pending against Mr Maung Maung and the FTUB activists and officials should be dropped to allow them to resume their trade union responsibilities.

The Government member of the United States noted that over the past few months, the Conference Committee had witnessed a dramatic change in the way the issue of forced labour was addressed by the Government. The changes in law and policy indicated that efforts were under way to finally eradicate the practice of forced labour. Her Government welcomed and strongly endorsed these efforts and urged the Government to ensure that they were definitively achieved as soon as possible. The reports of the recent tripartite ILO Mission and of the ILO Liaison Officer described the many initiatives being undertaken by the Government. The repeal of the Village Act and the Towns Act and the passage of the amended Ward or Village Tract Administration Act of 2012 was encouraging. Her Government commended the Government for signing the Joint Strategy for the Elimination of Forced Labour with the ILO and for creating an inter-agency process so

that all components of the Government could address these issues. Her Government also applauded the President for his strong commitment to eliminate forced labour, as expressed in his May Day message, and Parliament's actions to advance important legislation. However, she noted that the real test would be the extent to which these changes were realized in practice and were sustainable. There were significant challenges in achieving the goal of eliminating forced labour by 2015. Much work would have to be done to ensure that the legal system had the means to implement the new laws, that rural authorities were empowered to root out forced labour at the local level and that all citizens were aware of the legislative changes. A substantial reduction in the use of forced labour had been reported, but there were many credible reports of it continuing. A transparent monitoring mechanism should be developed and implemented so that the Government and the ILO could evaluate progress being made. The addition of a new international officer to the ILO Office would help support its mission. Her Government endorsed expanding both the size and scope of the ILO Office in the country and its programmes. The continued use and expansion of the complaints mechanism developed in the 2007 Supplementary Understanding was also supported.

The Government member of Thailand indicated that his Government aligned itself with the statement made by the Government member of Viet Nam on behalf of ASEAN. The encouraging developments in Myanmar with regard to the observance of the Convention and the implementation of the recommendations of the Commission of Inquiry were welcomed. The international community had witnessed much progress in Myanmar within the first 14 months of the new Government: the broadening of political space, the improvement of the legislation and the establishment of the National Human Rights Commission, among others. Myanmar's ongoing efforts were coupled with serious commitment, political will and action, as demonstrated by the signing of the Memorandum of Understanding on the elimination of all forms of forced labour by 2015, on the basis of which a joint Action Plan was being prepared. Although many challenges remained, it was important that the international community recognized and supported these efforts. Fair recognition of the positive efforts by the Government was important to nurture the much needed social and economic development. It was therefore important to lift the measures enunciated in the 1999 and 2000 Conference resolutions, to review the international community's means of engagement and to support the efforts and aspirations of Myanmar.

The Government member of New Zealand, speaking also on behalf of the Government of Australia, recalled the three recommendations of the 1997 Commission of Inquiry. She noted that significant and tangible progress had been made by the Myanmar authorities towards compliance with the Commission of Inquiry's recommendations over the past 12 months, including the enactment of new legislation that repealed the Village Act and the Towns Act of 1907. The new legislation also specifically prohibited forced labour by any party; made such action a criminal offence; and specified penalties under the Penal Code for those persons convicted of acting contrary to the new law. The speaker welcomed the new legislation, commended the President for his commitment to the eradication of forced labour in Myanmar, and expressed support for the Order issued by the Commander-in-Chief of the Defence Services, stating that the new legislation applied equally to the Defence Services. This demonstrated legal and political will. Nevertheless, she noted that such promising developments did not automatically mean that forced labour was no longer present or occurring in Myanmar, and there was a long road ahead. In this regard, the Governments of New Zealand and Australia welcomed the joint Action Plan that had been agreed to by

the Myanmar Government with the ILO, which established specific objectives, set timelines for the commencement and completion of each activity, and stated who was responsible for both delivery of and funding the activity. The joint Action Plan should go a long way towards eliminating forced labour in Myanmar. The Myanmar Government and the ILO were called upon to ensure that they made available both the human and financial resources necessary to fulfil the obligations under the Plan.

The Government member of Indonesia indicated that his Government associated itself with the statement made by the Government member of Viet Nam on behalf of ASEAN. His Government supported the democratization and national reconciliation process in Myanmar and believed that this process would be of benefit to the country's economic development. Parliamentary elections had run smoothly and safely, positive measures had been taken by the Government to establish a better democratic system, and the Government had committed itself to eradicating forced labour. The extension of the Supplementary Understanding and awareness-raising activities on the complaints mechanism for victims of forced labour, the recent release of labour activists from prison, and the adoption of the legislation repealing the Village Act and the Towns Act of 1907, implied the strong commitment of the Government to protect the rights of its people and eradicate forced labour. While there was still a lot to do, Myanmar had shown its full commitment to the implementation of the recommendations of the Commission of Inquiry. His Government would continue to support Myanmar in implementing various programmes to improve democracy and labour conditions.

The Worker member of Australia stated that it was the task of the Conference Committee to examine progress made by the Burmese Government in implementing the recommendations of the Commission of Inquiry. She regretted that despite measurable improvements in other areas, progress was limited with respect to the recommendation that perpetrators of forced labour, whether civil or military, were prosecuted under the Penal Code, and that sufficiently dissuasive sanctions were applied. Legal provisions providing for the prosecution and sanctioning of perpetrators of forced labour were in place. Section 374 of the Penal Code provided for the punishment of anyone who unlawfully compelled any person to labour against his or her will, and imposed a punishment of up to one year imprisonment. In addition, recent legislation, the Ward or Village Tract Administration Act, defined forced labour and provided for the criminal prosecution of perpetrators. Nevertheless, the speaker stated that there was as of yet no evidence of investigations, prosecutions or sentencing of those found guilty on a scale commensurate with the scale of the problem. It was encouraging that the Committee of Experts on the Application of Conventions and Recommendations in its report published in 2012, noted that the Government had provided information on administrative and criminal action taken with respect to a number of military personnel responsible for the recruitment of minors. The ILO Liaison Officer's report to the Conference Committee detailed more progress with 166 prosecutions under military regulation in response to complaints made under the complaints mechanism, and the prosecution of five military personnel under the Penal Code. In addition, one officer of the Land Records Department had been dismissed for his responsibility in relation to a forced labour complaint. Moreover, the Officers of the Governing Body noted in their Mission report that they were encouraged by the explicit commitment of the Government and the Commander-in-Chief of the Defence Services to prosecute and punish all perpetrators of forced labour in accordance with the Penal Code. However, this commitment had not yet been supported by major and sustained efforts to ad-

dress the culture of impunity that had long prevailed in the country, and the longstanding and pervasive violations of workers' rights needed to be addressed. The speaker emphasized that if forced labour in Burma were to be eliminated, there must be the rule of law, and legislation consistent with international standards must be enforced through an independent, professional judicial system. An independent and impartial judiciary was critical to ending and preventing other human rights abuses that were committed in Burma and to ensuring that the positive developments that had been seen taking place in recent months were sustained. It would similarly ensure that increased foreign investment into Burma was done in a way that respected human rights and benefitted the Burmese people.

The Government member of Cuba stated that her Government recognized the efforts that the Government of Myanmar had been making to eliminate forced labour and to comply with the Convention, in particular the legislative reform currently under way which aimed at restoring the country's judicial system and bringing its legislation into line with the Convention. Under the new Ward or Village Tract Administration Act, forced labour was classified as a crime and perpetrators were liable to severe penalties. Other provisions were also being reviewed. She drew attention to the signing of the Memorandum of Understanding between the ILO and the Government of Myanmar, under which a strategy had been designed to eliminate all forms of forced labour by the year 2015, and to the Government's intention to reach that goal in advance of the date set. She stressed that the strategy was to be carried out on the basis of continuing technical cooperation and dialogue.

The Government member of the Russian Federation recalled that for a number of years, the observance by the Government of Myanmar of the Convention had been under review by the ILO supervisory bodies, the Governing Body and the Conference. While recognizing the efforts of the ILO leadership to address the problem of forced labour in Myanmar, his Government considered that no notable success could have been achieved without the political will demonstrated by the Government. Practically all of the recommendations of the Commission of Inquiry had been implemented or were being implemented: the legislative framework had been improved; criminal responsibility for acts of forced labour had been reinforced; and the message of the President reaffirmed the Government's commitment to the eradication of forced labour. Together with the ILO, the Government of Myanmar had created a special mechanism to address the issue of forced labour and had drafted a Joint Strategy for the elimination of forced labour. The ILO Liaison Officer continued his work in the country and the Government had created all the necessary conditions therefor. Any future progress would depend on the amendment of the legislation regulating activities of independent trade unions so as to make it less restrictive, as well as on the enhancement of the authority of trade unions and strengthening their role in the society. The Government of Myanmar was called upon to continue to raise awareness on the issue of forced labour among its population and to take the necessary measures in order to ensure that all cases of forced labour were investigated and prosecuted. His Government considered that it was time to review the actions called for by the 1999 and 2000 Conference resolutions and indicated that his Government was ready to play its part in this regard during the current session of the Conference.

The Government member of Canada indicated that her Government welcomed the Governing Body's report findings that Burmese authorities had taken meaningful steps over the past few months to follow through on their commitment to improve the human rights and democracy situation in the country. These steps had included the re-

lease of hundreds of political prisoners, meaningful engagement with the opposition members, the adoption of new legislation and cooperation with the ILO to address the use of forced labour. In response to these developments, the Government of Canada had eased its economic sanctions in April 2012. However, significant concerns remained, including the continued detention of political prisoners, the conflict in the Kachin State and the continued prevalence of forced labour, particularly in conflict areas. The Government of Canada therefore urged the Burmese authorities to continue to implement reforms and cooperate with the ILO to ensure that proper policies and practices were put in place to eliminate forced labour and that new laws and policies were implemented fully and transparently. Her Government would continue to support those working to promote human rights and democracy for the Burmese people.

The Worker member of Italy acknowledged the great efforts in the eradication of forced labour by the ILO Liaison Office and recognized the positive political commitment and the adoption of legislative measures by the Government of Burma. The speaker noted that the Worker members had continuously underlined that the eradication of forced labour could only take place if the Government adopted and implemented without further delay the necessary financial, legislative and administrative measures foreseen in the Commission of Inquiry recommendations. She underlined that despite such progress, not all of the Commission of Inquiry's recommendations had yet been met. She recalled that the November 2011 Governing Body had regretted "the absence of consultation" in the elaboration of the new law repealing the Village Act and the Towns Act, which the January 2012 High-level Mission had requested be brought into conformity with the Convention, particularly on sanctions for the perpetrators. She expressed concern that the new law did not meet these requirements. Regarding the Memorandum of Understanding on a comprehensive joint strategy for the elimination of all forms of forced labour by 2015, she expressed disappointment that the Governing Body had not previously discussed a draft of this document and that the Worker members had only received a copy thereof the previous day. The Worker members had previously criticized this last minute approach, and had asked for broad consultation with the FTUB and the international trade union movement in the definition of such Joint Strategy. The speaker noted that the ILO Liaison Office operated under an extremely heavy workload, and had limited capacity to service an increasing number of complaints, which resulted in a backlog of unprocessed complaints. She advised that the Conference Committee needed to tackle the causes of such constraints in order not to undermine the quality of the ILO's role in Burma. With regard to the Memorandum of Understanding and its related Action Plan, she noted that the stated deadline for the elimination of forced labour by the end of 2015 was not in line with the Commission of Inquiry's recommendations, which requested the elimination of forced labour without delay. In this regard, she urged the Government of Burma and the Office to amend the strategic objective, which should be the immediate elimination of forced labour, through specific actions and clear benchmarks to measure progress. She requested that the special sitting mechanism continue until forced labour was fully eradicated. Similarly, the Memorandum of Understanding and the Action Plan needed to be revised to ensure that the FTUB was included as an integral part of all activities, and that language be added regarding the legislative amendments of the land acquisition law and of article 359 of the Constitution. Due to the noted scarcity of human and financial resources, the success of the Memorandum of Understanding and the Action Plan would be better achieved if they were limited to the strict implementation of the Commission of Inquiry's recommendations. She

requested that a specific budget be elaborated for implementation of the Action Plan. She suggested that the Conference Committee define a transparent monitoring procedure that identified the constraints and the delivery capacity of such a Plan.

The Government member of Cambodia stated that his Government associated itself with the statement made by the Government member of Viet Nam on behalf of ASEAN. The speaker noted the encouraging progress made by the Government of Myanmar since its formation in 2011, including the promotion of democratic policy reforms and the improvement of the socio-economic standards in the country. His Government welcomed the recent signing of the Memorandum of Understanding on the elimination of all forms of forced labour by 2015 between the Government of Myanmar and the ILO, which demonstrated another positive step taken to improve conditions for workers, and expressed support for the Government's cooperation with the ILO Liaison Officer. The message conveyed by the President of Myanmar on 1 May 2012 was an expression of political commitment towards this end. There was additional progress in other areas and continued efforts by the Government towards the promotion and the protection of the rights of workers, in compliance with the Convention. The ILO should continue to provide further technical support and assistance in this context. The recent High-level Tripartite Mission by the Governing Body Officers to Myanmar was an example of the extensive cooperation between the ILO and Myanmar, as the delegation met not only with Government representatives, but also with other stakeholders, including Ms Aung San Suu Kyi. The Government of Myanmar had committed itself to the process of reform in addressing the remaining challenges ahead. The Government was encouraged to seek support and cooperation from the international community. Given these pledges, the Government of Cambodia reaffirmed the statement expressed by the Government of Viet Nam on behalf of ASEAN calling for the removal or easing of sanctions and other restrictive measures to be considered by the ILO. Constructive dialogue was the most practical way to improve socio-economic development and bring about further democratic reform and national reconciliation.

The Government member of the Bolivarian Republic of Venezuela noted that his Government recognized the considerable will of the Government to move forward in effectively eradicating forced labour. He drew attention to the report of the High-level Tripartite Mission that had visited Myanmar recently, in which the progress and measures taken by the Government were highlighted. He recalled that the Governing Body had taken note of the measures, commitments and initiatives being put in place with a view to complying fully with the recommendations of the Commission of Inquiry. The Government, the social partners and the ILO were urged to continue their joint efforts towards the absolute elimination of forced labour in the context of democracy, justice, liberty, equality and respect for human rights, and he expressed his Government's desire for that goal to be achieved before 2015.

The Government member of India expressed his Government's appreciation of the efforts made by the Government of Myanmar with regard to the observance of the Convention. The main developments in Myanmar included economic and social reforms as well as major legislative and policy reforms involving Parliamentary debates and interactions with the business community, United Nations agencies and the international community. Since the advent of the new Government, the Government of Myanmar had fulfilled the recommendations of the Commission of Inquiry by taking concrete measures which involved the executive, legislative and judicial branches. He noted with satisfaction that the Village Act and the Towns Act of 1907 had been repealed by the

promulgation of the Ward or Village Tract Administration Act in February 2012, which penalized the use of forced labour. His Government further welcomed the commitment expressed by the President in his message on the occasion of the May Day Ceremony in 2012 to eradicate forced labour by 2015 and commended the strict imposition of penalties under section 374 of the Penal Code for the exaction of forced or compulsory labour. The Government of India had always encouraged dialogue and cooperation between the ILO and member States in resolving the outstanding issues. In this context, he acknowledged the signing, in March 2012, of a Memorandum of Understanding between the ILO and the Government of Myanmar on the elimination of all forms of forced labour and considered that it was time for the international community to recognize the progress made to comply with the Convention. When visiting Myanmar in April 2012, the Secretary-General of the United Nations appealed to the international community to suspend or ease trade restrictions and other sanctions. The Government of India encouraged the Government of Myanmar to continue its constructive engagement with the ILO and urged the ILO to reply positively to the endeavours taken by the Government of Myanmar so as to fulfil the aspirations of the people of Myanmar.

The Worker member of Japan indicated that while some important changes had taken place, the widespread and systematic use of forced labour by the military continued and had even increased in 2011 in some areas, forcing villagers to work as porters, as well as on infrastructure projects, camp construction or food production. Recourse to forced labour on projects related to foreign direct investment also remained a serious issue in the context of the suspension or elimination of trade or investment sanctions by some governments increasingly seeking to take advantage of the country's abundant natural resources and lower labour costs, as well as the lack of adequate regulation and public accountability. The ILO should set up a tripartite monitoring mechanism to review the compliance of multinational enterprises with the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy as well as with ILO Conventions and other international instruments focusing in particular on the extractive industries, major infrastructure projects, timber, agribusiness and large-scale tourism projects. States had the duty to protect human rights and fundamental rights at work. This also applied to enterprises regardless of States' abilities to fulfil their human rights obligations. All businesses had the responsibility to prevent or mitigate adverse impacts on human rights that were linked to their operations, products or services by their business relationships, as well as their supply chains. International monitoring of business relationships was crucial since the rule of law was extremely weak in Burma and there was no independent judiciary, as underlined by Ms Aung San Suu Kyi. This factor would facilitate the rampages of powerful corporations in Burma and would not lead to fair and sustainable development, the creation of jobs and promotion of decent work. Social partners were essential in ensuring that multinational enterprises respected their obligations. The social partners should be involved in the establishment and implementation of any mechanism to monitor the observance of human rights by enterprises. The speaker concluded by calling on the Government to respect its obligation under the Convention to immediately eliminate forced labour in practice and to ensure that those responsible for exacting that labour were effectively punished.

The Government member of China stressed that the Government of Myanmar had taken effective measures, in particular legislative, executive and judicial measures, to combat forced labour and had committed to financing such measures. Tangible positive results had been achieved. The collaboration between the Government and

the ILO played an essential role in this respect. The good will and endeavours of the Government in eliminating forced labour must be fully recognized and encouraged. The ILO should continue to provide technical assistance to the Government in order to ensure the complete elimination of forced labour by 2015. His Government considered that the sanctions against Myanmar should be lifted at this session of the Conference.

The Government member of Pakistan acknowledged the positive developments brought about by the Government of Myanmar, which appeared to indicate that freedom of association and protection of labour rights was a priority pursued by the Government. His Government welcomed the Government of Myanmar's continued cooperation with the ILO and encouraged it to remain firm in the objective of the abolition of forced labour. There was no doubt that the Government of Myanmar would pursue these positive developments in a more results-oriented manner, which should be acknowledged by the Conference Committee.

The Worker member of Sweden, speaking on behalf of the Worker members of Denmark, Norway and Iceland, presented some information regarding land rights and land confiscation. She described a dispute between security guards from a company owned by businessman and parliamentarian, and local farmers in Rangoon's Minqaladon township. In May 2012, employees from the Zaykabar company began to bulldoze land in Shwenanthar village, and farmers in the area responded by taking to the fields with two tractors and standing their ground. The farmers eventually left the field after Minqaladon township's authorities mediated the situation, but the Zaykabar bulldozers later demolished embankments built by the farmers. In similar circumstances, farmers in Hlaingtharyar township claimed they lost about 600 acres of their land after the Zaykabar company cleared the area for an industrial zone. Zaykabar had appropriated 800 acres of land from locals in Hlaingtharyar township to make way for an industrial project. The company offered farmers 300,000 Kyat in compensation per acre. After receiving several complaints from the farmers, state authorities told the company to suspend their projects, but the orders were ignored. The issue of land rights in Burma was a sensitive one; existing laws did little to prevent confiscation by government aligned figures. This phenomenon had to stop and the speaker urged the Government to ensure that it did.

The Government representative of Myanmar thanked the Committee for the discussion and interest in the various measures taken or envisaged by his Government. He noted that the three main points raised in the discussion concerned the revision of the national Constitution, the perceived culture of impunity and the rule of law. In this respect, he stressed that the Constitution was approved by the people of Myanmar in 2008 and could be amended only if such was the people's wish and desire. As regards the alleged culture of impunity, he assured the Committee that impunity was not tolerated in Myanmar. Lastly, while the rule of law was maybe not yet perfectly applied, it did exist. He recalled in this respect that the President had recently reiterated the importance of the rule of law and governance.

The Government member of Switzerland noted that his Government welcomed the recent changes that had occurred in Myanmar, including the preparation of detailed action plans to implement the Memorandum of Understanding signed on 16 March 2012. The creation of the new Joint Working Group on a Joint Strategy was a significant step that was important to take in order to eradicate all forms of forced labour by 2015 at the latest. It was time to lift the restrictions on technical cooperation and assistance provided by the Office and a report by the Director-General should be prepared on activities that could be undertaken. The ILO's mandate on the ground should

also be extended and sufficient resources allocated to the Liaison Office in Myanmar. On 9 May 2012, following the recent progress made on human rights issues, the Swiss authorities had lifted its sanctions against Myanmar, apart from the embargo on military equipment and materials that could be used for the purposes of repression, but remained on the alert for information regarding any case of forced labour in Myanmar.

The Worker members welcomed the undeniable progress made with regard to the abolition of forced labour and the restoration of freedom of association and considered that this had to be consolidated and increased as quickly as possible. Accordingly, they called for the immediate release of all political prisoners and labour activists; an examination by the Committee of Experts on the Application of Conventions and Recommendations of the new legislation concerning forced labour and the Labour Organizations Law; the abolition of article 359 of the Constitution concerning forced labour; and the allocation of the budgetary resources needed for the remuneration of work performed in place of forced labour. They wished to echo the concern voiced by the Employer members concerning the need for an effective judicial system to ensure that rights were respected in practice. In order to achieve these goals, the Government, workers and employers should be able to avail themselves of technical assistance from the ILO and participate in its work. The new Joint Strategy would be even more effective if it set as a goal the immediate stoppage of forced labour, fixed precise objectives and indicators, focused on actions relating to the recommendations of the Commission of Inquiry, and established a budget for each of those actions. In the spirit of the ILO Constitution, the social partners, including the FTUB, should be associated with the implementation and monitoring of the Action Plan both at the national level and within the ILO. The involvement of the greatest number of players should enable the expected results to be achieved by 2015. Finally, the establishment of a compulsory mechanism for monitoring foreign investment operating both within the country and at the ILO was essential for ensuring compliance with the most stringent international standards. In conclusion, the Worker members indicated that they firmly expected their demands to be taken into account when the measures adopted by the Conference to ensure the implementation of measures by the Committee of Experts on the Application of Conventions and Recommendations were reviewed, and insisted that the Conference should be in a position to note in 2013 the progress made regarding the elimination of forced labour in Myanmar.

The Employer members took stock of the overview report from the Governing Body, and wholeheartedly supported the goal of ending forced labour in Myanmar by 2015. While cautiously optimistic, the Employer members recognized that much work remained, and the key role the ILO would continue to play. The work of the ILO Liaison Officer in Myanmar, and the effective High-level Mission which had taken place in January 2012 was admirable. They thanked the Government of Myanmar for its participation and noted that the Employer members would be following up on the requested constitutional amendments. Moreover, the Employer members were in favour of continued use of the complaints mechanism elaborated under the Supplementary Understanding. The Government of Myanmar had achieved much in a short period of time; concrete steps of progress had been taken, it had requested the assistance of the international community, and there was an operational strategy in place to end forced labour by 2015. The Employer members welcomed the Government's statement that it was entering a "new era", including in the area of job creation; if the creation of new jobs was to be in alignment with corporate social responsibility, the process must include adequate protection for workers. In this same vein, given the various international

frameworks which existed in this sphere, such as the United Nations Guiding Principles on Business and Human Rights and the Guidelines of the Organisation for Economic Co-operation and Development, the Employer members requested guidance as to how to apply these frameworks in Myanmar going forward.

Conclusions

The Committee took note of the observations of the Committee of Experts on the Application of Conventions and Recommendations on the application of Convention No. 29 by the Government of Myanmar, as well as the report of the ILO Liaison Officer in Yangon that included the latest developments in the implementation of the complaints mechanism on forced labour established on 26 February 2007 with its trial period extended in February 2012, for a further 12 months to 25 February 2013.

The Committee also noted the decisions of the Governing Body of November 2011 and March 2012. It welcomed the several advances enumerated in these documents and further elaborated in the statement of the Government representative and in the discussion in the Committee.

The Committee noted, in particular, the Government's detailed information on: the promulgation of the Ward or Village Tract Administration Act in February 2012, its definition of forced labour and penalties for its use and the repeal of the Village Act and the Towns Act of 1907; the orders issued by the Commander-in-Chief of the Defence Services in March 2012 advising all military personnel that strict and stern military disciplinary actions shall be taken against perpetrators of military under-age recruitment and those of April 2012 which make the new law prohibiting forced labour applicable to the military with perpetrators being prosecuted under section 374 of the Penal Code; the draft Action Plan concluded for the implementation of the Memorandum of Understanding on the Elimination of Forced Labour in Myanmar; budget allocations made for the payment of wages for the public works at all levels for 2012–13; the progress made on the translation into local languages of the brochure on the complaints mechanism; the statement made by the President on May Day 2012 committing the Government to acceleration of action to ensure the eradication of all forms of forced labour; disciplinary measures taken against 166 military personnel, action taken under section 374 of the Penal Code against 170 other government officials and five military personnel prosecuted under the Penal Code. The Government representative also referred to the adoption and the implementation of the Labour Organizations Law and the registration of 41 workers' organizations and ten employers' organizations and the discussion of modalities for the return of Mr Maung Maung and the registration of the Federation of Trade Unions of Burma (FTUB) under existing law.

The Committee welcomed the progress achieved towards complying with the 1998 recommendations of the Commission of Inquiry. It observed that many important steps had been taken by the Government in this regard since its meeting last year and expected that the Committee of Experts would review the latest legislative and practical steps taken to combat and punish the use of forced labour at its meeting this year.

The Committee did, however, raise its continuing concern over the Constitutional provision which provided an exception from the prohibition of forced labour for "duties assigned by the Union in accordance with the law in the interest of the public". It welcomed the Government representative's statement that the Constitution could be amended where it was the will of the people and trusted that steps would be taken to ensure that any exception to forced labour provided for in the constitutional and legislative framework was strictly limited to the narrow scope of exceptions under Convention No. 29.

The Committee welcomed the elaborate and detailed Action Plan developed between the Government and the ILO,

and insisted that all the social partners and civil society organizations would play an active role in prioritizing and assisting in the accelerated application of the elements in the Plan most relevant to the immediate implementation of the Commission of Inquiry recommendations. Prioritized objectives, clear targets, and effective monitoring mechanisms, accompanied by sufficient budgetary and human resources, would be essential elements for transposing these steps into a proactive and preventive campaign for the eradication of all forms of forced labour and the advancement of workers' rights.

The Committee welcomed the Government representative's statement that a culture of impunity was not tolerated and that the President had called for steps to be taken to ensure the respect for the rule of law throughout the country. The Committee considered that the action taken to prosecute forced labour should continue to be reinforced and the newly adopted legislation effectively applied so as to ensure complete accountability under the law. The Committee trusted that effective and dissuasive sanctions would be imposed to punish the use of forced labour in all sectors and requested the Government to review the impact of the measures that it had reported on so as to be in a position to strengthen them where necessary. It firmly emphasized the importance of the rule of law and the independence of the judiciary as necessary preconditions for real democratization and change.

The Committee encouraged the Government and the ILO to monitor closely the progress made in the implementation of the Action Plan, especially as regards the use of forced labour by the military, and requested that information be

provided in this regard to the Committee of Experts this year.

Welcoming the release of numerous political and labour activist detainees, the Committee expected that all further such prisoners would be immediately released.

The Committee renewed its call for continuing collaboration of all agencies in the United Nations system in the efforts for the effective elimination of forced labour in Myanmar.

It once again called on all investors to ensure that their activity in Myanmar was not used to perpetuate or extend the use of forced labour but rather made a positive contribution to its complete eradication, in full respect for international labour standards, and recalled the availability of the ILO to provide appropriate support in this regard.

The Committee called for the strengthening of the capacity of the ILO Liaison Office to assist the Government, the social partners and all other relevant stakeholders, to play a full and constructive role in the efforts made to eliminate forced labour, including through the empowerment of communities in the knowledge and exercise of their rights and responsibilities. The Committee trusted that complainants and facilitators would continue to be protected in relation to their use and activities under the complaints mechanism, the retention of which it considered to be critically important.

The Committee urged the Government to provide detailed information on the steps taken on all the abovementioned matters to the Committee of Experts for its examination this year and trusted that the Conference would be in a position to take note of significant developments at its next session.

Document D.5

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

Myanmar (ratification: 1955)

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

Historical background

In its earlier comments, the Committee has discussed in detail the history of this extremely serious case, which has involved the Government's gross, long-standing and persistent non-observance of the Convention, as well as the failure by the Government to implement the recommendations of the Commission of Inquiry, appointed by the Governing Body in March 1997 under article 26 of the Constitution.

The Committee recalls that the Commission of Inquiry concluded that the obligation under the Convention to suppress the use of forced or compulsory labour 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:

- that the relevant legislative texts, in particular the Village Act and the Towns Act, be brought into line with the Convention;
- that in actual practice, no more forced or compulsory labour be imposed by the authorities, in particular the military; and
- that the penalties which may be imposed under section 374 of the Penal Code for the exaction of forced or compulsory labour be strictly enforced, which required thorough investigation, prosecution and adequate punishment of those found guilty.

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

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

- ensuring the enforcement of the prohibition of forced labour.

Developments since the Committee's previous observation

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

- The report of the ILO Liaison Officer submitted to the Conference Committee on the Application of Standards during the 100th Session of the International Labour Conference in June 2011, as well as the discussions and conclusions of that Committee (ILC, 100th Session, *Provisional Record* No. 18, Part Three (A) and Doc. D.5(C)).
- The documents submitted to the Governing Body at its 310th and 312th Sessions (March and November 2011), as well as the discussions and conclusions of the Governing Body during those sessions.
- The communication made by the International Trade Union Confederation (ITUC) received in August 2011, with appendices.
- The communication made by the Federation of Trade Unions Kawthoolei (FTUK) received in October 2011, with appendices.
- The reports of the Government of Myanmar received on 9 December 2010, 16 February, 4 April, 2 and 27 June, 31 August, 27 September, 14 October and 18 November of 2011.

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

In its earlier comments, the Committee discussed the significance of the Supplementary Understanding (SU) of 26 February 2007 between the Government and the ILO, which supplemented the earlier Understanding of 19 March 2002 concerning the appointment of an ILO Liaison Officer in Myanmar. The Committee noted, in particular, that the SU set out a complaints mechanism, which had as its object “to formally offer the possibility to victims of forced labour to channel their complaints through the services of the Liaison Officer to the competent authorities with a view to seeking remedies available under the relevant legislation and in accordance with the Convention”. The Committee notes that the Supplementary Understanding was extended for the fourth time, on 23 February 2011, for a further 12-month period from 26 February 2011 until 25 February 2012 (ILC, 100th Session, *Provisional Record* No. 18, Part Three, Doc. D.5.F). The Committee further discusses the information on the functioning of the SU below, in the context of its comments on the other documentation, discussions and conclusions regarding this case.

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

The Committee on the Application of Standards once again discussed this case in a special sitting during the 100th Session of the Conference in June 2011. The Conference Committee took note of certain steps taken by the Government, such as: the further extension of the SU for another year; certain awareness raising activities, including in ethnic minority regions; allocation of funds for the purpose of alleviating the chances of unpaid labour on the part of the Government; and certain improvements in dealing with under-age recruitment by the military, including release of children and disciplinary action taken against military personnel, as well as dismissal of some officers and the imposition

of penal sentences in certain cases. However, the Conference Committee regretted to note that there had been no substantive progress achieved towards complying with the recommendations of the Commission of Inquiry and strongly urged the Government to fully implement, without delay, these recommendations, as well as the comments and observations of the Committee of Experts, and in particular, to submit the draft proposals for amendment of the relevant legislative texts to the ILO for comment and advice aimed at ensuring their full conformity with the Convention, and ensure their early adoption into law and application in practice; to take all necessary measures to prevent, suppress and punish the full range of forced labour practices, including the recruitment of children into the armed forces, forced conscription into fire brigade and militia reservist units, portering, construction, maintenance and servicing of military camps, agricultural work and human trafficking for forced labour, that are still persistent and widespread; to strictly ensure that perpetrators of forced labour, whether civil or military, are prosecuted under the Penal Code and that sufficiently dissuasive sanctions are applied; to release immediately complainants and other persons associated with the use of the complaints mechanism who are currently detained, etc. The Conference Committee also called for the strengthening of the capacity available to the ILO Liaison Officer to assist the Government in addressing all of the recommendations of the Commission of Inquiry, and to ensure the effectiveness of the operation of the complaints mechanism.

Discussions in the Governing Body

The Governing Body continued its discussions of this case during its 310th and 312th Sessions in March and November 2011 (GB.310/5, GB.312/INS/6). The Committee notes that, following the discussion in November 2011, the Governing Body welcomed the positive developments in Myanmar since March 2011 but remained concerned that serious problems in the use of forced labour persisted. It called for the continuation of strengthened resolute and proactive action for the full implementation of the recommendations of the 1998 Commission of Inquiry. The Governing Body noted that legislation prohibiting the use of forced labour in all its forms and repealing both the Village Act and the Towns Act of 1907 is before Parliament; it urged the early adoption and coming into force of that legislation. The Governing Body urged that the practice of the imposition of forced labour on prisoners, particularly as porters in conflict areas, cease immediately and again invited the Government to avail itself of the technical assistance of the ILO in the review of the Jail Manual. The Governing Body welcomed the commencement of direct discussion with the Tatmadaw (armed forces) and looked forward to further substantive policy and behavioural change for the elimination of forced labour and ending impunity. It also welcomed the commencement of direct discussion with the Ministries of Finance and Planning and looked forward to confirmation that planning and financial management processes sufficiently provide for the payment of wages in government operational and project activities. While welcoming the release of a number of labour activists, the Governing Body strongly urged the early release of other labour activists remaining in detention. The Governing Body stressed again the critical importance of a comprehensive proactive approach encompassing not only the continuation of awareness-raising activities and the management of the complaints mechanism but also the effective prosecution of forced labour perpetrators, military and civilian, under the Penal Code. While welcoming the expanded awareness-raising activities being undertaken, including the production and distribution of the information brochure in Shan language, the Governing Body encouraged the continuation of this partnership activity and its expansion into other languages. Whilst recalling all of its previous conclusions and recommendations, the Governing Body encouraged the ILO and the Government in their continuing positive collaboration within the framework of the Understanding and its Supplementary Understanding, which should be further extended in February 2012. Finally, in the light of the above, the Governing Body considered it essential to strengthen the capacity of the Liaison Office and reiterated its repeated calls on the Government to issue without delay the visas necessary to that effect.

Communication received from workers' organizations

The Committee notes the comments made by the ITUC in its communication received in August 2011. In these comments, the ITUC refers to several recent reports which contain detailed allegations about the continued use of forced labour, largely for portering, but also for road construction, collection and provision of bamboo and leaves to military camps, etc., which have occurred in the Karen, Shan and Arakan States. Appended to this communication was a report which contained allegations about the forced labour practices by civil and military authorities in North Arakan State/North Rakhine State over the nine months period which followed the national elections in November 2010. The report noted the observers' estimate that 35–40 per cent of forced labourers were children, some as young as ten years old. The report attributed the increase in forced labour to construction and repair of the border fence between Myanmar and Bangladesh, but noted that forced labour was also used for large scale road construction projects, construction of bridges, portering, military camp maintenance, patrol duties, collection of logs and bamboo poles and plantation work. The Committee also notes the comments made by the FTUK in its communication received in October 2011, which contained a report including translated copies of 207 Order documents issued by military and civilian officials to village heads in eastern Myanmar between March 2008 and July 2011. The tasks and services demanded according to these documents involved, inter alia, portering for the military; bridge construction and repair; production and delivery of thatch, bamboo and other materials; attendance at meetings; provision of money and food; forced recruitment into armed ceasefire groups; provision of information on individuals, households and non-state armed groups; etc. The report states that, in almost all cases, demands were uncompensated and backed by implicit or explicit threats of violence or other punishments for non-compliance. Copies of the above communications by the ITUC and the FTUK with annexes were transmitted to the Government, in September and October 2011 respectively, for its comments.

The Government's reports

The Committee notes the Government's reports referred to above, which include replies to the Committee's previous observation. It notes, in particular, the Government's indications concerning its continued cooperation with the various functions of the ILO Liaison Officer, including monitoring and investigating the forced labour situation, discussion on the follow-up to the 100th Session of the International Labour Conference and the operation of the SU complaints mechanism. As regards the amendment of the legislation, the Government indicates that draft legislation prohibiting the use of forced labour in all its forms and repealing both the Village Act and the Towns Act of 1907 has been submitted to Parliament. However, no action has been taken or contemplated to amend section 359 of the Constitution. The Committee notes the Government's ongoing efforts in the field of the awareness-raising and training activities on forced labour, including the joint ILO–Ministry of Labour (MOL) Awareness Raising Workshop held in Chin State in May 2011 and the distribution of booklets on the SU and informative simply worded brochures on forced labour. The Committee also notes the Government's indications concerning measures taken to prevent recruitment of under-aged children and to release newly recruited under-aged soldiers, disciplinary action taken against military personnel, as well as dismissal of some officers and the imposition of penal sentences in certain cases. However, the Committee notes that the Government has not yet supplied its comments on the numerous specific allegations contained in the communications from the ITUC of August 2011 and the FTUK of October 2011 referred to above, as well as in the previous communication by the ITUC received in August 2010. ***The Committee urges the Government to respond in detail in its next report to the numerous specific allegations of continued imposition of forced or compulsory labour by military and civil authorities, which are documented in the above communications from the ITUC and FTUK, making***

particular reference to the “Order documents”, which provide evidence of the systematic imposition of forced labour throughout the country.

Assessment of the situation

Assessment of the information available on the situation of forced labour in Myanmar in 2011 and in relation to the implementation of the recommendations of the Commission of Inquiry and compliance with the Convention by the Government will be discussed in three parts, dealing with: (i) amendment of legislation; (ii) measures to stop the exaction of forced or compulsory labour in practice; and (iii) enforcement of penalties prescribed under the Penal Code and other relevant provisions of law.

(i) Amendment of legislation

The Committee notes from the discussions in the Governing Body in November 2011, as well as from the Government’s reports referred to above, that draft legislation prohibiting the use of forced labour in all its forms and repealing both the Village Act and the Towns Act of 1907 has been submitted to Parliament. ***While noting these positive developments, the Committee trusts that legislation prohibiting the use of forced labour in all its forms and repealing the Village Act and the Towns Act of 1907 will be adopted without delay in order to ensure compliance with the Convention, and that the Government will communicate to the ILO a copy of the new legislation, as soon as it is adopted.***

In its earlier comments, the Committee referred to section 359 of the Constitution (Chapter VIII – Citizenship, Fundamental Rights and Duties of Citizens), which excepts from a prohibition of forced labour “duties assigned by the Union in accordance with the law in the interest of the public”. The Committee observed that the exception encompasses permissible forms of forced labour that exceed the scope of the specifically defined exceptions in *Article 2(2) of the Convention* and could be interpreted in such a way as to allow a generalized exaction of forced labour from the population. The Committee notes with ***regret*** the Government’s repeated statement in its reports that it is impossible to amend the 2008 Constitution, since it has been approved by 92.48 per cent of citizens’ votes. ***The Committee expresses the firm hope that, following the legislative amendment referred to above, the necessary measures will be taken with a view to amending section 359 of Chapter VIII of the Constitution, in order to bring it into conformity with the Convention.***

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

Information available on current practice.

The Committee notes that the communications received from the ITUC and the FTUC referred to above contain well-documented allegations that forced and compulsory labour continued to be exacted from local villagers in 2010–11 by military and civil authorities in some of the country’s States. The information in the appendices refers to specific dates, locations and circumstances of the occurrences, as well as to specific civil bodies, military units and individual officials responsible for them. According to these reports, forced labour has been exacted both by military and civil authorities; it has taken a wide variety of forms and involved a variety of tasks.

The Committee notes from the report of the ILO Liaison Officer to the Conference Committee in June 2011 (Doc. D.5.C) that, notwithstanding the awareness raising and training activities, complaints alleging the use of forced labour by both military and civilian authorities continue to be received (paragraphs 12–14). A considerable number of forced labour complaints have been lodged by farmers in Magway Region; they refer to

the actions of the military in support of their commercial projects and self-sufficiency policy (paragraph 19). The ILO Liaison Officer also states that the generally positive responses from the Adjutant-General's Office in respect of under-age military recruitment and associated complaints is in contrast to the continuing difficulty in reaching satisfactory conclusions regarding complaints that allege the use of forced labour by the military. The ILO Liaison Officer further states that "non-verifiable evidence continues to suggest that the use of forced labour by the civilian authorities has been reduced, at least in some parts of the country" and suggests to verify this trend in a proposed labour force survey (paragraph 15). An increasing number of complaints under the SU mechanism continue to be received, which may be also seen as a sign of greater awareness among the public of their right under the law to complain and their increased confidence in seeking redress through the use of the complaints mechanism (paragraph 10). However, according to the Governing Body document submitted to its 312th Session in November 2011, "Whilst recognizing the progress made in respect of civilian authorities, the Governing Body and the Conference called on the Government to provide for meaningful consultations between the ILO and the Ministry of Defence and senior army representatives to address both the policy and behavioural practices driving the use of forced labour by the military, including, in particular: the recruitment of children into the armed forces; forced conscription into the armed forces, fire brigade and militia reservist units; portering; construction, maintenance and servicing of military camps; and forced agricultural work" (GB.312/INS/6, paragraph 28). In response to this call, the Working Group for the Elimination of Forced Labour facilitated the first direct meeting between the ILO and the Tatmadaw (armed forces) Committee on ILO Affairs, at which all the issues and practices indicated above were discussed, and further meetings to clarify these issues were scheduled (GB.312/INS/6, paragraph 29). Regarding the under-age recruitment, the Committee notes that, since March 2011, 33 victims of under-age recruitment have been released or discharged from the military in response to complaints launched under the SU; the total number of under-age recruits released or discharged under the SU since February 2007 was 208 (GB.312/INS/6, paragraph 31).

Issuing specific and concrete instructions to the civilian and military authorities

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

Ensuring that the prohibition of forced labour is given wide publicity

In relation to ensuring that the prohibition of forced labour is given wide publicity, and noting, in particular, that the Governing Body and the Conference called for the continuing expansion of awareness-raising activities at community level, the Committee notes from the report of the ILO Liaison Officer referred to above, from the documents submitted to the Governing Body and to the Conference Committee, as well as from the Government's reports, that a number of awareness-raising activities concerning the forced labour situation, the legal prohibitions of forced labour and existing avenues of recourse for victims were carried out in 2011. These included, inter alia, a joint ILO–MOL awareness-raising seminar in Chin State for local authority personnel (military, police, judges and civilian authorities); two presentations on the law and practice concerning forced labour to senior police, immigration and Ministry of Home Affairs personnel, and to the Myanmar Women's Affairs Federation; and six training seminars/workshops (one of them on a regular two-months basis) for journalists, various NGO's and community-based organizations. The Government's translation of the information brochure in the Shan language (the most widely used of the national languages after the Myanmar language) was in the process of printing and distribution, and the brochure in the official Myanmar language was widely distributed in every State and region by the Government and the ILO with support from NGO's and community-based organizations (GB.312/INS/6, paragraphs 22–24). ***Considering that the awareness-raising activities are of crucial importance in helping to ensure that the prohibition of forced labour is widely known and applied in practice, the Committee expresses the firm hope that such activities will continue and be expanded, both at State and community level.***

Noting also from the report of the ILO Liaison Officer to the Conference Committee in June 2011 referred to above that complaints alleging the use of forced labour by both military and civilian authorities continue to be received, the Committee reiterates its view that the complaints mechanism under the SU provides in itself an opportunity for the authorities to demonstrate that continued recourse to forced labour practices is illegal and would be punished as a penal offence, as required by the Convention. ***The Committee therefore reiterates its hope that the Government will continue to use the SU complaints mechanism as an important modality of awareness raising, and that it will provide, in its next report, the information on the impact the awareness-raising activities 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.***

Making adequate budgetary provisions for the replacement of forced or unpaid labour

In its earlier comments, the Committee observed that budgeting of adequate means for the replacement of forced labour, which tends also to be unpaid, is necessary if recourse to the practice is to end. The Committee recalled in this regard that, in its recommendations, the Commission of Inquiry stated that “action must not be limited to the issue of wage payment; it must ensure that nobody is compelled to work against his or her will. Nonetheless, the budgeting of adequate means to hire free wage labour for the public activities which are today based on forced and unpaid labour is also required.” Recalling also that both the Governing Body and the Conference have consistently called for the Government to facilitate ILO meetings with the Ministry of Finance and the Ministry of Planning towards ensuring that adequate budgetary allocations are made so that workers may be freely contracted and adequately remunerated, the Committee notes from the Governing Body document submitted to its November 2011 session (GB.312/INS/6) that the first meetings of the ILO with the above Ministries took place in 2011, during which the budget formulation procedure and the basic procedures for pre-allocation planning

were explained, and it was clarified that, under the new administration, financial policy was in the process of being reformed in accordance with the new Constitution. It was also recognized that the potential for forced labour arose particularly at municipal level when the demand for infrastructure or repairs and maintenance outstripped budgeted allocations, and it was expected that such matters would be addressed under new governance and accountability structures (paragraphs 35–40). The Committee notes that the Government's reports referred to above contain no new information on this issue, and that the Government merely repeats, in its report received on 2 June 2011, its previous indication that the budget allotments including the expense of labour costs for all ministries have been allocated to implement their projects. *The Committee therefore hopes that the Government will provide, in its next report, detailed and precise information on the measures taken to budget adequate means for the replacement of forced or unpaid labour, as well as the information on the impact of the financial policy reform on these issues.*

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

In its earlier comments, the Committee referred to section 374 of the Penal Code, which provides for the punishment, by a term of imprisonment of up to one year, of anyone who unlawfully compels any person to labour against his or her will. It recalls that, following the recommendations of the Commission of Inquiry, both the Governing Body and the Conference have sought to ensure that perpetrators of forced labour, whether civil or military, are prosecuted under the Penal Code and that sufficiently dissuasive sanctions are applied. The Committee notes from the Governing Body document submitted to its 312th Session in November 2011 (GB.312/INS/6) that, in respect of military personnel deemed responsible for the recruitment of minors, action under the military disciplinary code is now routinely taken, punishments ranging from a formal reprimand to a monetary penalty, the loss of service entitlements for pension and promotion, discharge and imprisonment (paragraph 42). The Government indicates in its reports received on 2 June and 31 August 2011 that, in the under-age recruitment cases, action was taken against 20 military officials and 110 other ranks for breaching the rules, five officials and five other ranks were dismissed and imprisoned. However, in respect of cases concerning forced labour exacted by the military, the ILO has received no information concerning the prosecution of any perpetrator under the abovementioned provision of the Penal Code. As regards the exaction of forced labour by civilian authorities, the Committee previously expressed concern that the only prosecution of perpetrators under the Penal Code in response to complaints submitted had been reported in respect of a case in 2007 already noted by the Committee in its earlier comments. The ILO has been advised that another prosecution has been initiated under the Penal Code in respect of a civilian accused of being a party to the exaction of forced labour, though no information has yet been received as to the outcome of this prosecution (GB.312/INS/6, paragraph 42).

The Committee *regrets* to note once again that no new information has been provided by the Government in its 2011 reports about any prosecutions against perpetrators of forced labour being pursued under section 374 of the Penal Code. *The Committee therefore urges the Government to take measures to ensure that penalties imposed by law for the illegal exaction of forced or compulsory labour are adequate and strictly enforced, as required by Article 25 of the Convention, and expresses the firm hope that appropriate measures will be taken in the near future in order to ensure that perpetrators of the exaction of forced labour are prosecuted and punished with penal sanctions under section 374 of the Penal Code. The Committee asks the Government to provide, in its next report, information on the progress made in this regard.*

Concluding remarks

The Committee fully endorses the conclusions concerning Myanmar made by the Conference Committee and the Governing Body, as well as the general evaluation of the forced labour situation by the ILO Liaison Officer. The Committee welcomes the positive developments, such as submission to Parliament of the draft legislation repealing the Towns Act and the Village Act of 1907; the expanded awareness-raising activities; the improvements in dealing with under-age recruitment by the military, including release of children and imposition of disciplinary and penal sanctions on military personnel; cooperation in the functioning of the SU complaints mechanism and its further extension for another year. However, the Committee observes that, in spite of the efforts made towards the implementation of the recommendations of the Commission of Inquiry, the Government has not yet fully implemented these recommendations. Besides the steps taken towards the amendment of the legislation, the Government still has to ensure that, in actual practice, forced labour is no longer imposed by the authorities, in particular by the military; and it still has to ensure that penalties for the exaction of forced labour under the Penal Code are strictly enforced against civil and military authorities. *While noting the positive developments referred to above, the Committee urges the Government to redouble its efforts towards the full implementation of the recommendations of the Commission of Inquiry, by implementing the concrete practical requests addressed by the Committee to the Government. It expresses the firm hope that all the necessary measures will be taken without delay to achieve full compliance with the Convention, both in law and in practice, so as to ensure that all use of forced or compulsory labour in Myanmar is completely eliminated.*

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

I. Introduction

1. The ILO Liaison Officer in Myanmar operates within the framework of the 2002 Understanding signed by the Government of Myanmar and the ILO and a subsequent Supplementary Understanding (SU) agreed in 2007. The Liaison Officer undertakes various activities aimed at supporting the Government in its efforts to ensure the prompt and effective elimination of forced labour in that country, including by implementing the recommendations of the Commission of Inquiry that had been appointed to examine the observance by Myanmar of the Forced Labour Convention, 1930 (No. 29).
2. The SU signed on 26 February 2007 sets out a complaints mechanism under which any person or their representative(s) bona fide residing in Myanmar can forward to the Liaison Officer complaints on alleged cases of forced labour. The SU provided for a 12-month trial period, which was extended for the fifth time in January 2012, to 26 February 2013.
3. The Governing Body has regularly reviewed developments in respect of forced labour in Myanmar at each of its March and November sessions under a specific agenda item. The reports of the Liaison Officer to the Governing Body in November 2011 (GB.312/INS/6) and in March 2012 (GB.313/INS/6) are available for reference on the ILO website. The conclusions of those two Governing Body discussions are attached (see Parts E and F).
4. At the initiative of the Government a new Memorandum of Understanding (MOU) between the Government and the ILO was signed on 16 March 2012. This MOU agreed between the Ministry of Labour and the ILO and witnessed by the Ministry of Defence provides the framework of a comprehensive strategy for the full elimination of forced labour in Myanmar by 2015. It has been agreed that every effort should be made to achieve this objective at an earlier date, with the action plans for implementation reflecting this commitment.
5. At the time of writing, those detailed action plans are in the final stages of discussion. They address each element of the MOU framework, establish a specific objective for each and delineate specific activities for its achievement. Timelines for the commencement and/or completion of each activity have been set and responsibility for both delivery and funding allocated.
6. In response to the request of the Governing Body contained in its March 2012 conclusions, a delegation consisting of the Governing Body Officers accompanied by senior ILO staff members was invited and undertook an official mission to Myanmar from 1 to 5 May 2012. A separate report on this mission is before the Conference in *Provisional Record* No. 2-2.
7. At the request of the Government, during two other ILO staff missions to Myanmar, consultations were held on the draft Ward or Village Tract Administration Act and the Prisons Act as concerns the prohibition of the use of forced labour, as well as the draft Labour Organizations Act and its associated Rules in respect of freedom of association and the Disputes Settlement Act. All of them have subsequently been passed into law, with the exception of the Prisons Act.

8. As decided by the Governing Body in March 2012, the agenda of the International Labour Conference now has an additional item entitled: “Review of measures previously adopted by the Conference to secure compliance by Myanmar with the recommendations of the Commission of Inquiry”. The relevant documents had been prepared by the Office for the discussion.
9. This report provides specific information in response to each of the Committee’s conclusions endorsed by the Conference in 2011 and on the practical operation of the SU complaints mechanism. It also provides new information on the rapidly changing situation in Myanmar.

II. Developments on the implementation of the conclusions adopted by the Conference in 2011

10. The 2011 conclusions of the Committee, which were subsequently endorsed by the Conference, are attached (see Part C) and the following commentary reports on the current position in respect of each of the specific action points contained therein.
11. The conclusions requested the Government to:
 - (1) *submit the draft proposals for amendment of the Village and Towns Acts to the ILO for comment and advice aimed at ensuring their full conformity with Convention No. 29, and ensure their early adoption into law and application in practice; and*
 - (2) *take steps to ensure that the constitutional and legislative framework effectively prohibit the exaction of forced labour in all its forms;*

Current position:

- (i) After consultation with the ILO during a mission undertaken in January 2012, a new law entitled the Ward and Village Tract Administration Act 2012 was adopted by the Parliament and promulgated by the President. This Act specifically confirms the use of forced labour by any party as a criminal offence; it defines forced labour utilizing the definition from Convention No. 29, provides for the criminal prosecution of persons acting contrary to the law and specifies penalties in accordance with article 374 of the Penal Code. It also specifically repeals the Village and Towns Acts of 1907.
- (ii) In his message to the Myanmar Government’s May Day ceremony, the President of the Republic made a firm commitment to the eradication of forced labour, referred specifically to the new legislation, clearly defined forced labour and confirmed his Government’s intention to work with the ILO in an agreed comprehensive strategy towards the full eradication of forced labour. This speech was reproduced in full in all the daily newspapers, both in English and Myanmar languages (see Part D).
- (iii) The Commander-in-Chief of the Defence Services stated that he had issued an order to all military personnel confirming that the provisions of the new Act applied equally to the Defence Services and instructing them that any military personnel accused of forced labour, and specifically under-age or forced recruitment, would be prosecuted under the Penal Law and not under military regulations. Whilst a copy of the order applying this policy to forced and/or under-age recruitment has been received, the ILO has not yet received a copy of the general order.

- (3) *take all necessary measures to prevent, suppress and punish the full range of forced labour practices, including the recruitment of children into armed forces, forced conscription into fire brigade and militia reservist units, portering, construction, maintenance and servicing of military camps, agricultural work, human trafficking for forced labour, that are still persistent and widespread;*

Current position:

Each element listed above is specifically addressed in the Joint Action Plan referred to in paragraph 5 above. Furthermore, the Commander-in-Chief of the Defence Services confirmed that he had issued orders instructing that no civilian personnel (convicts or otherwise) shall be used in military support activities of any kind, including portering and camp maintenance/construction, in conflict zones, and that any civilian labour needed to undertake military support services in non-conflict zones should be freely engaged and paid.

- (4) *strictly ensure that perpetrators of forced labour, whether civil or military, are prosecuted under the Penal Code and that sufficiently dissuasive sanctions are applied;*

Current position:

Detailed information on 166 military prosecutions under military regulation in response to ILO complaints has been received, with penalties ranging from the issuance of a reprimand, loss of promotion and pension entitlements, monetary fines, demotion, dishonourable discharge and in four cases the imposition of prison sentences. Recently, information was received that five military personnel had been prosecuted under the Penal Code in accordance with the new order issued by the Commander-in-Chief and that an officer of the Land Records Department had been dismissed for his responsibility in relation to a forced labour complaint.

- (5) *carry out, without delay, proposed consultations between the ILO and the finance and planning ministries towards ensuring that necessary budget allocations are made so that workers are freely contracted and adequately remunerated;*

Current position:

Consultations between the ILO Liaison Officer and senior staff from the Budgeting Department of the Ministry of Finance and the Ministry of Planning took place during the last quarter of 2011. Information was received that in the budget then being developed for the 2012–13 fiscal year specific provision was being made for the payment of wages in public works at all levels, with allocations being in the ratio of 60 per cent materials and 40 per cent labour. In addition, the new legislation on local government makes provision for a specific process for granting supplementary allocations in the event that a local administrator at village tract or ward level needs funds to meet operational demands, including for the cost of labour for required community infrastructure or service works. Specific provision is made in the Joint Action Plan for the development and distribution of practical guidelines for the engagement of labour to all local authorities and for in-service training of local administrators.

- (6) *provide for meaningful consultations between the ILO and the Ministry of Defence and senior army representatives to address both the policy and behavioural practices driving the use of forced labour by the military;*

Current position:

- (i) The composition of a new joint Strategic Working Group (SWG), which was created to overview the future application of the Joint Action Plan, has been established. The SWG is chaired by the Minister of Labour and has, as its joint secretaries, the Deputy Minister of Labour, the Deputy Minister of Defence and the ILO Liaison Officer. The SWG membership includes all members of the Government Working Group for the Elimination of Forced Labour, supplemented by two additional representatives of the Defence Services and two ILO representatives. This new joint forum should enable direct and meaningful consultation between the ILO and all government representatives, including the military.
- (ii) In addition, from 23 to 27 April 2012, the Deputy Liaison Officer accompanied three government representatives (the Deputy Advocate-General for the Defence Services, a senior officer of the police and a Deputy Director from the Ministry of Labour) on a one-week training programme in the International Training Centre of the ILO in Turin, entitled "Investigation and prosecution of forced labour complaints". It has subsequently been agreed that these four persons will form a focal group for the day-to-day coordination of the SU complaints mechanism.
- (7) *immediately cease all harassment, retaliation and imprisonment of individuals who use, are associated with or facilitate the use of the complaints mechanism;*

Current position:

No new complaints of harassment, retaliation against or imprisonment of complainants or persons associated with or facilitating complaints have been received since the 2011 session of the Conference. A problem persists concerning the arrest of complainants who are under-age recruits accused of desertion. Their release is normally achieved in the context of complaint processing, and recommendations on procedures to avoid this type of situation have been made with further consultations proposed as part of the Joint Action Plan. Negotiations continue concerning the situation of family members of one previously imprisoned complaints facilitator who were demoted and transferred to distant locations by their employer in connection with his activities.

- (8) *release immediately complainants and other persons associated with the use of the complaints mechanism who are currently detained and reinstate any consequentially revoked professional licences;*

Current position:

No complainants or persons otherwise associated with the complaints process remain in prison or in detention. Negotiations continue in respect of the reinstatement of the practicing licences of two lawyers previously imprisoned in connection with their forced labour complaints activity.

- (9) *intensify awareness-raising activities throughout the country including in association with major infrastructure projects and in training of police and military personnel;*

Current position:

Joint ILO/Ministry of Labour awareness-raising seminars continue to be undertaken and the programme of ILO workshops with nationwide coverage, as reported below, has been maintained. A major expansion of awareness-raising activities utilizing a range of new media has been agreed in the Joint Action Plan drafting process.

(10) facilitate, without delay, the production and wide distribution of the brochure in the remaining local languages;

Current position:

The joint ILO/Ministry of Labour brochure has been widely distributed in the Karen (Pwo), Chin and Shan languages, as well as in Myanmar language. Translations into Karen (Sgaw), Rakhine and Mon languages are in preparation.

(11) actively pursue agreement of a meaningful joint action plan with the United Nations Country Task Force on Monitoring and Reporting in respect of children in circumstances of armed conflict, of which the ILO is a member, addressing among other things under-age recruitment.

Current position:

A negotiated draft of the Joint Action Plan required under Security Council Resolution 1612 concerning children in circumstances of armed conflict is currently the subject of final ratification by both parties with tentative arrangements being made for the signing ceremony to take place before the end of June 2012.

As called for in the 2000 resolution of the International Labour Conference, the Committee counted on the collaboration of all agencies in the United Nations system in the efforts for the effective elimination of forced labour in Myanmar. It similarly called on all investors in Myanmar to ensure that their activity in the country is not used to perpetuate or extend the use of forced labour but rather make a positive contribution to its complete eradication.

Current position:

The Committee will be aware that a number of member States have recently moved to either remove or suspend sanctions imposed on Myanmar, including investment embargoes. In doing so, they have expressed the expectation that new investment in Myanmar will be “responsible investment”. During the recent visit to Myanmar of the United Nations Secretary-General, the Global Compact initiative was launched in the country. The Republic of the Union of Myanmar Federation of Chambers of Commerce and Industry has recently launched a corporate social responsibility initiative.

The Committee further called for the strengthening of the capacity available to the ILO Liaison Officer to assist the Government in addressing all of the recommendations of the Commission of Inquiry, and to ensure the effectiveness of the operation of the complaints mechanism, as well as any other additional action necessary for the complete elimination of forced labour. In particular, the Committee firmly expected that the Government would give full assurances without delay for the granting of entry visas for additional international professional staff.

Current position:

Following the granting of an entry visa, an additional international professional staff member will commence duties in Myanmar on 10 June 2012 to further support the SU complaints process. Two additional national staff members have been appointed to act as regional focal points for the network of volunteer complaints facilitators, with two further such appointments planned for July 2012. The Government has agreed to give favourable consideration to the granting of one further visa to permit the engagement of another international professional staff member who will support the application of the forced labour action plans once the funding for that post is secured by the ILO.

The Committee called on the Government to review with the ILO Liaison Officer the references to forced labour orders made during its discussion, as well as the orders and similar documents which have been submitted to the Committee of Experts and requested that the progress made in this regard be reported to the Governing Body at its November session. It encouraged the Government to make use of the ILO Office to put in place a mechanism for the immediate review and investigation of these allegations.

Current position:

The MOU makes specific provision for this activity and procedures for its implementation are expected to be incorporated in the Joint Action Plan.

III. Specific actions under the Understanding and the SU

12. Since 20 May 2011, the following activities have been undertaken:

(a) Training and awareness raising

- 30 ILO training workshops/presentations have been held for 1,201 staff of the United Nations, international non-governmental organizations, local NGOs, and community-based organizations, as well as for individual citizens, on legislation prohibiting forced labour, including under-age recruitment, and the practical operation of the SU complaints mechanism.
- The ILO has participated in one Country Task Force for Monitoring and Reporting training seminar/presentation conducted for members of the armed forces (operational, training and recruitment personnel), the police and the prison service on the law and practice concerning under-age recruitment into the military.

(b) Operational field missions

- Three field missions for complaint assessment were carried out.
- Ten case follow-up/information verification missions were carried out.

(c) Government consultations

- In addition to meetings held in the context of the three ILO missions to Myanmar, there were four meetings with the full Government Working Group for the Elimination of Forced labour on the operation of the SU and two meetings with the newly created SWG.

IV. Statistics on complaints

- 13.** Since the coming into effect of the SU in February 2007, a total of 1,458 complaints have been received by the Liaison Officer. Of these, 541 were outside the ILO mandate in Myanmar.
- 14.** Of the 917 cases accepted as being within the mandate, 286 have been assessed, submitted to the Working Group, investigated by the Government and subsequently closed. Another 273 cases remain open, either awaiting information on the results of the investigations by the Government or being the subject of follow-up negotiations. Another 358 cases either are currently under assessment or require further information prior to submission.

15. A total of 235 children recruited under-age have been discharged/released to the care of their families and 37 persons recruited under-age and imprisoned for alleged desertion and other offences have been released from prison and discharged from the military.
16. Since the last special sitting of the Committee, 738 complaints have been received, of which 367 related to the forced labour mandate.
17. Reports from the network of voluntary facilitators, confirmed by information that the Governing Body Officers' mission received from opposition members of Parliament and labour activists, indicate that the incidence of the use of forced labour by the civilian authorities has decreased considerably and that there has recently been a noticeable reduction in respect of the exaction of forced labour by the military. This reinforces the belief that the increase in complaints received does not reflect an increase in the use of forced labour, but rather a greater awareness of the general population as to their rights under the law and growing confidence in the complaints mechanism established under the SU. Notwithstanding this, the fact that complaints continue to be received confirms the importance of maintaining vigilance, as well as the need for the committed application of the MOU strategy and its associated action plans and the continuation of the operation of the SU. The imminent commencement of additional staff will contribute both to a reduction of the backlog of complaints requiring processing and to the implementation of the joint strategy.

V. Summary

18. In summary, it can be said that important developments have been observed in a number of areas since the Committee last reviewed the situation. In the context of the recommendations of the Commission of Inquiry, the previous legislation has been repealed and new legislation has been adopted, including legislation confirming the exaction of forced labour as a criminal offence. Perpetrators, and in particular military personnel, accused of the use of forced labour are now prosecuted and punished under the law. Whilst there has been a noticeable reduction in the use of forced labour, the problem persists and complaints continue to be received. This has been recognized by the Government through their initiation of a joint strategy with the ILO for the full elimination of all forms of forced labour by 2015, if not before, and by their agreement to detailed action planning for the implementation of that strategy.

D. Conclusions adopted by the Committee on the Application of Standards in its special sitting to examine developments concerning the question of the observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29)
(International Labour Conference, 100th Session, June 2011)

The Committee noted the observations of the Committee of Experts on the application of Convention No. 29 by the Government of Myanmar, as well as the report of the ILO Liaison Officer in Yangon that included the latest developments in the implementation of the complaints mechanism on forced labour established on 26 February 2007 with its trial period extended, in February 2011, for a further 12 months to 25 February 2012.

The Committee also noted the discussions and decisions of the Governing Body of November 2010 and March 2011. It further took due note of the statement of the Government representative and the discussion that followed. In particular, the Government referred to the ongoing revision of the Village Act and the Towns Act and indicated that the draft law explicitly prohibits forced labour and includes reservations in the case of natural disasters. He also referred to ongoing awareness-raising activities, including in ethnic minority regions, and to the allocation of funds for the purpose of alleviating the chances of unpaid labour on the part of the Government. As regards complaints of under-age recruitment, he stated that children had been released, disciplinary action taken against military personnel and some officers dismissed and sentenced to prison terms. He stated that it was evident that action would be taken against any perpetrator, civilian or military, on forced labour and under-age recruitment.

The Committee welcomed the release from house arrest of Daw Aung San Suu Kyi that it had been calling for over many years. It again called for the immediate release of other political prisoners and labour activists.

The Committee referred to the political restructuring that had taken place since the last meeting and noted the initial policy priority statements of the newly elected President on good government and good governance. The Committee firmly expects that these objectives will be transposed into substantive positive actions and proactive and preventive measures for the eradication of all forms of forced labour and the advancement of workers' rights.

Despite the above, the Committee regretted to note that there had been no substantive progress achieved towards complying with the 1998 recommendations of the Commission of Inquiry, namely to:

- (1) bring the legislative texts in line with the Forced Labour Convention, 1930 (No. 29);
- (2) ensure that in actual practice forced labour is no longer imposed by the authorities; and
- (3) strictly enforce criminal penalties for the exaction of forced labour.

The Committee recalled the continued relevance of the decisions concerning compliance by Myanmar with Convention No. 29, adopted by the Conference in 2000 and 2006, and all the elements contained therein.¹ It expressed the firm expectation that the Government move with urgency to ensure that the actions requested are carried out at all levels and by all civil and military authorities. The Committee strongly urged the Government to fully implement, without delay, the recommendations of the Commission of Inquiry and the comments and observations of the Committee of Experts.

The Government in particular should:

- (1) submit the draft proposals for amendment of the Village and Towns Acts to the ILO for comment and advice aimed at ensuring their full conformity with Convention No. 29, and ensure their early adoption into law and application in practice;
- (2) take steps to ensure that the constitutional and legislative framework effectively prohibit the exaction of forced labour in all its forms;
- (3) take all necessary measures to prevent, suppress and punish the full range of forced labour practices, including the recruitment of children into armed forces, forced conscription into fire brigade and militia reservist units, portering, construction, maintenance and servicing of military camps, agricultural work, human trafficking for forced labour, that are still persistent and widespread;
- (4) strictly ensure that perpetrators of forced labour, whether civil or military, are prosecuted under the Penal Code and that sufficiently dissuasive sanctions are applied;
- (5) carry out, without delay, proposed consultations between the ILO and the finance and planning ministries towards ensuring that necessary budget allocations are made so that workers are freely contracted and adequately remunerated;
- (6) provide for meaningful consultations between the ILO and the Ministry of Defence and senior army representatives to address both the policy and behavioural practices driving the use of forced labour by the military;
- (7) immediately cease all harassment, retaliation and imprisonment of individuals who use, are associated with or facilitate the use of the complaints mechanism;
- (8) release immediately complainants and other persons associated with the use of the complaints mechanism who are currently detained and reinstate any consequentially revoked professional licences;
- (9) intensify awareness-raising activities throughout the country including in association with major infrastructure projects and in training of police and military personnel;
- (10) facilitate, without delay, the production and wide distribution of the brochure in the remaining local languages; and
- (11) actively pursue agreement of a meaningful joint action plan with the United Nations Country Task Force on Monitoring and Reporting in respect of children in circumstances of armed conflict, of which the ILO is a member, addressing amongst other things under-age recruitment.

¹ <http://www.ilo.org/public/english/standards/relm/ilc/ilc88/resolutions.htm#I>,
<http://www.ilo.org/public/english/standards/relm/ilc/ilc95/pdf/pr-3-2.pdf>.

As called for in the 2000 ILC resolution of the International Labour Conference, the Committee counted on the collaboration of all agencies in the United Nations system in the efforts for the effective elimination of forced labour in Myanmar. It similarly called on all investors in Myanmar to ensure that their activity in the country is not used to perpetuate or extend the use of forced labour but rather makes a positive contribution to its complete eradication.

The Committee called for the strengthening of the capacity available to the ILO Liaison Officer to assist the Government in addressing all of the recommendations of the Commission of Inquiry, and to ensure the effectiveness of the operation of the complaints mechanism, as well as any other additional action necessary for the complete elimination of forced labour. In particular, the Committee firmly expected that the Government would give full assurances without delay for the granting of entry visas for additional international professional staff.

The Committee called on the Government to review with the ILO Liaison Officer the references to forced labour orders made during its discussion, as well as the orders and similar documents which have been submitted to the Committee of Experts and requested that the progress made in this regard be reported to the Governing Body at its November session. It encouraged the Government to make use of the ILO Office to put in place a mechanism for the immediate review and investigation of these allegations.

The Committee urged the Government to provide detailed information on the steps taken on all the abovementioned matters to the Committee of Experts for its examination this year and expects to be in a position to take note of significant developments at the next session of the Conference.

E. Message of the President of the Republic of Myanmar on the occasion of the May Day Ceremony

NAY PYI TAW, 1 May-The following is the full text of the message sent by President of the Republic of the Union of Myanmar Agga Maha Thayay Sithu, Agga Maha Thiri Thuddhamma U Thein Sein on the occasion of May Day:-

Esteemed workers,

May I extend my warmest regards to you the entire workers of the country who are striving for national economic development within your intellectual and physical capacities and industriousness through might and main in building a modern, developed democratic nation and wish you all physical and spiritual well-being on May Day, 1st May 2012.

Today is an especial day and indeed remarkably meaningful for the workers of Myanmar as May Day is being celebrated nationwide this year to honour the workers like in many other countries that observe this special occasion on 1st May.

To have a decent work for every one is a fundamental objective of the Republic of the Union of Myanmar that is implementing the Rural Development and Poverty Alleviation task by setting up (8) work programmes. To realize the said objective, efforts are being made for ensuring rapid flow of domestic and foreign investments into the country. As for the number of factories, industrial estates, industrial zones and special economic zones, small and medium enterprises and regional business is increasing, the labour market that could create more job opportunities and establish sustainable professions emerges. The work efficiency promotion policy has also been adopted as it is crucially important for the productivity of a country.

Currently, the Government is focusing on ensuring rights based on Social Justice for entire workers. So, the Government enacted Law, rules and regulations and permitted the formation of independent labour organizations to protect the rights of workers, to foster better relations among workers and between employers and workers.

Moreover, a new Social Security Law which could provide more social protection including the right of medical care, cash benefit, free medical care after retirement, family assistance, superannuation pension benefit and unemployment benefit, invalidity benefit, employment injury benefit, funeral benefit, survivor's benefit and benefits of social security housing project has been drafted.

Our elected government has been in the office for over a year and it is high time we should eliminate all forms of forced labour once and for all for the enhancing the eternal principles of justice, liberty, equality in the Union. Forced or compulsory labour shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.

Therefore, the process of eradicating forced labour in Myanmar has been accelerated and International Labour Organization and the government of the Republic of the Union of Myanmar have launched a Joint Strategy for the absolute elimination of forced labour in Myanmar by 2015.

Esteemed workers,

In conclusion, I would like to urge all the workers and workers' organizations, employers' and employers' organizations to work together with the Union Government in unity having a strong determination in building a modern, developed democratic nation.

F. Document before the Governing Body at its 312th Session (November 2011) and Governing Body conclusions

INTERNATIONAL LABOUR OFFICE



Governing Body

312th Session, Geneva, November 2011

GB.312/INS/6

Institutional Section

INS

SIXTH ITEM ON THE AGENDA

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

Overview

Summary

This report fulfils the obligation stemming from the 1999 International Labour Conference resolution that there be a standing item on the Governing Body agenda on this subject. The paper addresses activities undertaken and developments since the last report (March 2011).

Policy implications

None.

Legal implications

None.

Financial implications

None.

Decision required

The paper is submitted for debate and guidance.

Follow-up action required

Depending on the conclusions of the Governing Body.

Author unit

ILO Liaison Officer in Myanmar (ILO-Yangon).

References to other Governing Body documents and ILO instruments

GB.310/5 and related Governing Body conclusions; GB.312/INS/7.

Members may also find reference to *Provisional Record* No. 18, Part 3, of the International Labour Conference, 100th Session (2011), useful in their considerations of this report.

Forced Labour Convention, 1930 (No. 29).

Introduction

1. Considerable activity has taken place since the last reports to the Governing Body at its 310th Session (March 2011)¹ and to the International Labour Conference at its 100th Session (June 2011).² Following the general elections in November 2010, the elected Government took office in March 2011 and, in parallel with the workings of the new parliamentary structure, has commenced work on a broad policy reform agenda.
2. The complaints mechanism under the Supplementary Understanding which was extended for a further 12 months in February 2011 continues to operate, with positive developments in a number of areas and an environment of increased dialogue and cooperation. The number of complaints received continues to grow – an average of 30 per month since March 2011 compared with 21 per month in the same period of 2010, ten per month for 2009 and five per month for both 2008 and 2007. This is seen as reflecting the increased awareness of the complaints mechanism and increasing confidence about its use.
3. Since the 310th Session of the Governing Body, 210 formal complaints have been received which have been assessed as coming within the ILO forced labour mandate. Of these, 155 (75 per cent) relate to under-age recruitment, with the balance being evenly spread between the issues of trafficking for forced labour and military forced labour. A number of cases are starting to be received alleging the use of forced labour in the private sector, particularly in, but not limited to, domestic work. Over the same period, the number of complaints alleging the use of forced labour by the civilian authorities has continued to fall. There is growing evidence too that, with all parties being better informed and people being more empowered, forced labour incidents are better able to be resolved at local level without recourse to the complaints mechanism.
4. This paper is presented in two parts with a view to assisting the Governing Body in its deliberations. Part I discusses the current political background. Part II provides a commentary concerning developments in the implementation of the recommendations of the 1998 Commission of Inquiry and of the conclusions adopted by the Governing Body at its 310th Session and by the Conference at its 100th Session.

Part I. The current political background

5. The activities and developments outlined in Part II of this document have taken place against a background of rapid political change. General elections were held in November 2010 under the terms of the Constitution adopted by referendum in 2008. Views on the legitimacy and credibility of that electoral process vary widely. They were contested by a number of political parties, but the main opposition group, the National League for Democracy, did not take part.
6. As a result, a parliamentary system is now in place comprised of upper and lower houses at the national level, as well as 14 state and regional assemblies. The party sponsored by the previous regime holds a majority of elected seats in all of these bodies, in which the military is entitled to appoint 25 per cent of members. Opposition parties and those representing the main ethnic groups also hold elected seats in each of them.

¹ GB.310/5.

² See ILO: *Provisional Record* No. 18, Part 3, International Labour Conference, 100th Session (Geneva, 2011), pp. 21–26.

7. During the first session of Parliament (3 February–31 March 2011), the Constitution was formally adopted, a national President elected, a new Government formed, appointments made to the judiciary and the civil service restructured. Corresponding actions were also taken at the state and regional levels.
8. Since taking office, the President and his Government have begun a major programme of legislative and policy reform. This has involved published parliamentary debates and consultations with the business community, United Nations (UN) agencies, and the international community.
9. The second session of Parliament (22 August 2011 to present) has, to a large extent, been committed to a broad legislative programme.
10. The major initiatives taken to date include the following:
 - introduction into Parliament of draft legislation on local administration which would repeal the Village and Towns Acts (see paragraph 18 below);
 - adoption by Parliament of a Labour Organizations' Act (see GB.312/INS/7), which repeals the provisions of the Trade Union Act, 1926. The Parliament has also repealed the Myanmar Labour Law, 1964, which made provision for a single union;
 - release from house arrest of Daw Aung San Suu Kyi, General Secretary of the National League for Democracy, who has undertaken dialogue with the Government;
 - declaration of two amnesties, involving the release of some 10,000 prisoners, most of whom were serving criminal sentences. The number of political prisoners benefiting remains unclear and many are believed to remain in detention. At the time of writing further releases are expected;
 - elaboration and implementation of a rural development and poverty-alleviation strategy;
 - relaxation of media censorship rules;
 - introduction of land reform legislation;
 - appointment of a Human Rights Commission in conformity with the Paris Principles relating to the Status of National Institutions;³
 - beginning of peace negotiations with non-state armed groups, seen by the Government as a key to "ethnic reunification". At the time of writing, two agreements had been reached, although fighting between the Myanmar armed forces and at least three non-state armed groups continued;
 - increase of pensions for ex-government and service personnel, with a review of private sector social security policy under way and the introduction of draft legislation into Parliament planned;
 - inviting the International Monetary Fund (IMF) to visit the country to advise on reform of macroeconomic policy;
 - beginning of financial sector reform;

³ *The Principles and Guidelines on children associated with armed forces or armed groups*, February 2007.

- joint initiatives with the Government of Thailand to protect the rights and interests of Myanmar migrant workers in that country;
 - introduction of tax relief on foreign currency earnings; and
 - suspension of a major Myanmar–China hydroelectric project in response to public petitioning.
11. These developments have attracted considerable attention internationally. Positive moves by the Government, including in matters of long-standing concern to the ILO, have been welcomed and the need to proceed further towards full respect of all human rights and democratic freedoms has been underlined.
 12. In her video message to the Conference in June 2011, Daw Aung San Suu Kyi stated, amongst other things: “We look to the ILO to expand its activities in Burma to help usher in an era of broad-based social justice in our country.”⁴ In discussion with the ILO Liaison Officer, Daw Aung San Suu Kyi has expressed the view that whilst many issues remained to be addressed, the new President appeared sincere in the pursuit of reforms at many levels. While questions remained in respect of the depth and sustainability of the reform, the capacity of the Government to deliver, and possible areas of resistance, she said that appropriate effort should be directed at supporting reform efforts and ensuring their successful introduction while maintaining a firm principled approach – including on the issues of forced labour and freedom of association.
 13. The Governing Body will no doubt wish to keep this background in mind when considering the developments reported below in the implementation of the recommendations of the 1998 Commission of Inquiry on Forced Labour and in drawing up its conclusions on the future activities of the ILO in the country.

Part II. Developments in implementing the recommendations of the 1998 Commission of Inquiry, and the conclusions of the Governing Body at it 310th Session and of the Conference at its 100th Session

14. All activities are undertaken in pursuit of the recommendations of the 1998 Commission of Inquiry, which examined the observance by Myanmar of the Forced Labour Convention, 1930 (No. 29), namely:
 - A. that the relevant legislative texts [...] be brought into line with the Forced Labour Convention, 1930 (No. 29);
 - B. that in actual practice, no more forced or compulsory labour be imposed by the authorities, in particular the military; and
 - C. that the penalties which may be imposed under Section 374 of the Penal Code for the exaction of forced or compulsory labour be strictly enforced, in conformity with Article 25 of the Convention.

⁴ ILO: *Provisional Record* No. 16(Rev.), International Labour Conference, 100th Session (Geneva, 2011), p. 20. The video message is available at: http://www.ilo.org/global/about-the-ilo/press-and-media-centre/videos/video-interviews/WCMS_157494/lang--en/index.htm.

15. The working agenda of the Liaison Officer is guided by the conclusions of the Governing Body and of the Conference on the practical issues to be addressed in order to meet the Commission of Inquiry's recommendations. The following commentary records activity undertaken in response to the conclusions adopted by the Governing Body at its 310th Session and by the Conference at its 100th Session.

Follow-up expectations

16. Recognizing the political restructuring and positive developments which have taken place following the November general elections, both the Governing Body and the Conference expressed the expectation that these would result in a revitalization of the programme, with substantive positive actions and proactive and preventive measures for the eradication of all forms of forced labour and the advancement of workers' rights.

Update

17. Following both the 310th Session of the Governing Body and the 100th Session of the Conference, the Liaison Officer had three meetings with the Government Working Group for the Elimination of Forced Labour, chaired by the newly appointed Deputy Minister of Labour to review their conclusions and identify priority issues for follow-up action. These meetings took place in a new, more constructive, atmosphere with substantive discussion of issues, priorities identified and agreed, and concrete commitments made, as described in the following paragraphs.

Legislative reform

18. Both the Governing Body and the Conference called for the rapid amendment of the Village and Towns Acts, 1907, the review of the *Jail Manual*, and the introduction of proposed new labour legislation prohibiting the use of forced labour in all its forms, advising that the technical support services of the ILO should be taken advantage of so as to ensure full conformity with Convention No. 29.

Update

19. The Ministry of Labour has advised that the Ward and Villages Administration Bill has been submitted to Parliament and is under parliamentary discussion at the time of writing. The text of the Bill, managed by the Ministry of Home Affairs, remains confidential until the first round of parliamentary discussion is completed, but a copy may be transmitted shortly to the ILO. The ILO is advised that this Bill makes the use of forced labour illegal with the sole exception being under the emergency disaster provisions of Convention No. 29. It is further advised that the Bill repeals the forced labour provisions of the previous Village and Towns Acts, 1907. It is hoped that a copy of this legislation will be available prior to the November 2011 session of the Governing Body.

20. The ILO has also been informed that the review of the *Jail Manual* continues and that it is included in Parliament's legislative reform schedule. In the interim, discussion on current practices in respect of the use of convict labour for military portering purposes has commenced with the armed forces (see paragraph 29 below).

Expansion of community awareness

21. Both the Governing Body and the Conference called for the continued expansion of awareness-raising activities at community level and with government authorities, including the police and the military, as well as for the production and distribution of the information brochure on forced labour in languages other than the official Myanmar language in which it already exists.

Update

22. Since the last session of the Governing Body, the following forced labour presentations, seminars and workshops have been held:
- a joint Ministry of Labour/ILO awareness-raising seminar in Chin state for 162 local authority personnel (military, police, judges and civilian authorities);
 - a presentation to the Myanmar Women's Affairs Federation;
 - a presentation to some 120 senior police, immigration and Ministry of Home Affairs personnel, as part of the government training course on "Promotion and Protection of Human Rights (2011)";
 - a one-day workshop held for 34 journalists;
 - regular one-day forced labour workshops now held on a twice-monthly basis, with the participation of 582 community-based organization personnel, monks, teachers, elected politicians and individual citizens from all over the country;
 - a half-day seminar with 40 Save the Children and partner organizations' field staff;
 - a half-day seminar with 43 members of the Women's Protection Technical Working Group;
 - a half-day workshop with 18 field staff of partner organizations of the Office for the Coordination of Humanitarian Affairs; and
 - a one-and-a-half-day seminar with Thai-based international non-governmental organizations (NGOs).
23. The Government's translation of the information brochure into the Shan language has been received and, at the time of writing, is in the process of printing for distribution. It has been agreed that the Shan language, as the most widely used of the national languages after Myanmar, would be given priority with others to follow.
24. The brochure in the official Myanmar language has been widely distributed in every state and region by the Government and by the ILO with support from NGOs and community-based organizations.
25. UNICEF as the co-chair of the Country Task Force on Monitoring and Reporting on Children and Armed Conflict (CTFMR), of which the ILO is a member, has undertaken a

number of training activities for military personnel in cooperation with the Ministry of Defence. Another similar training session is scheduled for December 2011, at which the ILO will present a section on under-age recruitment in the context of the operation of the Supplementary Understanding.

26. The Government Working Group for the Elimination of Forced Labour has confirmed agreement to include ILO presentations on forced labour, including under-age recruitment, in police in-service training curricula. This is expected to commence in early 2012.
27. Activity continues with the TOTAL Company, in respect of its pipeline operation, and initial discussions, as yet inconclusive, have been held with Ital–Thai and Daewoo, in respect of potential partner training/awareness-raising activities on their respective projects. It is hoped that discussions with the China National Petroleum Corporation (CNCP) and the Petroleum Authority of Thailand Exploration and Production Company (PTTEP) can be held shortly.

Military use of forced labour

28. Whilst recognizing the progress made in respect of the civilian authorities, the Governing Body and the Conference called on the Government to provide for meaningful consultations between the ILO and the Ministry of Defence and senior army representatives to address both the policy and behavioural practices driving the use of forced labour by the military, including in particular: the recruitment of children into the armed forces; forced conscription into the armed forces, fire brigade and militia reservist units; portering; construction, maintenance and servicing of military camps; and forced agricultural work.

Update

29. In response to this call, the Working Group for the Elimination of Forced Labour facilitated the first direct meeting between the ILO and the Tatmadaw (Armed Forces) Committee on ILO Affairs. These initial discussions were constructive. The Committee indicated its understanding that the political environment had changed and now required greater accountability. All of the issues and practices outlined above were discussed and a second meeting with the Committee Chairperson was held in October, at which a number of issues were clarified. Another meeting to consider what and how issues can be acted on further is tentatively scheduled for December. In the interim, the Tatmadaw Committee has requested that a schedule of the various allegations presented to the Committee of Experts be submitted for its consideration and follow-up as appropriate.

Under-age recruitment

30. The Conference called for the active pursuit of a joint action plan with the CTFMR in respect of children in circumstances of armed conflict, addressing among other things under-age recruitment.

Update

31. Since 1 March 2011, 33 victims of under-age recruitment have been released or discharged from the military in response to complaints lodged under the Supplementary Understanding, including six who were released from prison with their desertion charges quashed. The total number of under-age recruits released or discharged in response to Supplementary Understanding complaints since February 2007 now stands at 208.
32. Negotiations between the Government and the CTFMR for a joint action plan under UN Security Council Resolution 1612 concerning children in circumstances of armed conflict have been resumed in recent months, with indications that the new Government is keen to finalize an agreement.
33. The armed forces continue to respond to under-age recruitment complaints and to deal with them relatively efficiently. In the meeting with the Tatmadaw Committee referred to above, a number of practical areas of action, proactive rather than reactive, were discussed and are under consideration.
34. Of these, two may be highlighted. The first concerns the need to put in place a policy and procedure under which a copy of a genuine official proof-of-age document is required to be produced and attached to the recruit's file before recruitment is confirmed. The second concerns the need to adopt a verification procedure to be followed prior to the arrest, prosecution and imprisonment of recruits for alleged "desertion". In some instances, such arrests occur in full knowledge that the child was illegally recruited and that a complaint under the Supplementary Understanding is being investigated. Responses are awaited on both of these issues.

Budgeting for wages

35. Both the Governing Body and the Conference have consistently called for the Government to facilitate ILO meetings with the Ministry of Finance and the Ministry of Planning towards ensuring that adequate budgetary allocations are made so that workers may be freely contracted and adequately remunerated.

Update

36. Following the 100th Session of the Conference, the Government Working Group facilitated the first meeting of the ILO with the Ministry of Finance on this matter. The meeting was constructive; the Ministry of Finance senior officials shared information on policy and practice and were responsive to questions asked. The budget formulation procedure was explained and it was clarified that, under the new administration, financial policy has been and continues to be reformed in accordance with the new Constitution. Government departments must submit project proposals to the Ministry of Planning as part of their annual budget forecasting process, and such proposals must make provision for payment of wages against a template policy of a standard daily wage of 1,100 Kyat (approximately US\$1.30) per day and a standard cost ratio of 60 per cent materials and 40 per cent wages. Once approved by the Ministry of Planning, the proposed budget is vetted and confirmed by the Ministry of Finance prior to acceptance. In the case of minor works, repairs and maintenance, the responsible departments must make global projections using the same prescribed daily wage and materials:wages ratio.
37. It was recognized that the potential for forced labour arose particularly at municipal level when the demand for infrastructure or repairs and maintenance outstripped budgeted allocations. Whilst a procedure for supplementary allocations existed, it was acknowledged

that local authority personnel could resort to the use of forced labour to fill the funding gap. It is expected that such matters will be addressed under new governance and accountability structures.

38. The Ministry of Finance was not in a position to clarify specific budgeting and financial management practices adopted by the defence services, as the Ministry simply provides the defence services the required overall allocation in respect of both current and capital accounts without being party to details of the budget breakdown or policy for its application. The issue of Ministry of Defence and armed services funding as a potential driver of forced labour is among the items in continuing discussion with the Tatmadaw Committee on ILO Affairs.
39. An introductory meeting with the Ministry of Planning was held on 20 October 2011 at which the basic procedures for pre-allocation planning were explained. Tentative arrangements have been made for a more in-depth follow-up meeting in December 2011.
40. It should be noted that, during the meeting with the Ministry of Finance, it was indicated that with the introduction of the new political environment and the establishment of state and regional parliaments the whole financial management system was being reconfigured. It is understood that, as from 1 October 2011, a transitional phase was entered into under which the national budget has been split and decentralized for state and regional parliament management. As from the financial year commencing April 2012, state and regional parliaments will, within the national budgeting framework, have full responsibility for the development of their own budgets, with the right to impose local taxes, under the overall supervision of a newly formed national Parliamentary Finance Commission.

Application of the law and punishment

41. Both the Governing Body and the Conference have sought to ensure that perpetrators of forced labour, whether civil or military, are prosecuted under the Penal Code and that sufficiently dissuasive sanctions are applied.

Update

42. In respect of military personnel deemed responsible for the recruitment of minors, action under the military disciplinary code is now routinely taken. Punishments range from a formal reprimand to a monetary penalty, the loss of service entitlements for pension and promotion, demotion, imprisonment and dishonourable discharge. In the case of civilian government personnel, the only prosecution under the Penal Code that the ILO has been informed of took place in respect of a case in 2007 with punishments since then being limited to the imposition of administrative penalties. While advice has been received that a prosecution, under the Penal Code, has been initiated in respect of a civilian accused of being party to the exaction of forced labour, no information has as yet been received as to the outcome of this or any other similar prosecutions.

Release of detainees

43. The Committee of Experts, the Conference and the Governing Body have at every opportunity called for the release of labour activists imprisoned for their association with forced labour complaints or their pursuit of freedom of association. This call has been made in respect of all such persons and, in particular: U Zaw Htay; U Nyan Myint; Daw Su Su Nway; U Min Aung; U Myo Aung Thant; U Thurein Aung; U Wai Lin; U Nyi Nyi Zaw; U Kyaw Kyaw; U Kyaw Win and U Myo Min. They have also called for the

reinstatement of licences to practice law of U Aye Myint and Ko Pho Phyu, which were revoked following their prosecution in connection with ILO activities.

Update

44. As part of the general presidential amnesty of 17 May 2011, U Nyan Myint was released. Under the second general presidential amnesty of 12 October 2011, U Min Aung, U Zaw Htay, U Myo Aung Thant and Daw Su Su Nway were also released, reportedly together with a further 13 labour activists.
45. At the time of writing, U Thurein Aung, U Wai Lin, U Nyi Nyi Zaw, U Kyaw Kyaw, U Kyaw Win and U Myo Min remain in prison, as reportedly do 16 other labour activists. As a result, there are currently no persons imprisoned in connection with ILO elimination of forced labour activities.
46. With respect to the reinstatement of licences to practice law, the Government has advised that this matter rests with the Bar Council which, to date, continues to reject applications for their reinstatement.

Harassment

47. The Governing Body and the Conference renewed their call for the cessation of all harassment, retribution and detention against complainants or persons supporting the submission of a complaint.

Update

48. A limited number of incidents in which complainants, their families or persons supporting their complaint have been subjected to verbal abuse have come to the ILO's notice. However, no reports of serious harassment have been received and no arrests or detentions in this connection have been experienced since the last quarter of 2009.

The Magwe Region cases

49. The Governing Body has identified a number of long-standing cases from the Magwe Region, largely concerning the loss of land as a penalty for refusal to undertake forced labour demanded by businesses owned by the Ministry of Defence or by operational military units. It has called for the Government to work with the Liaison Officer to find lasting solutions to these cases.

Update

50. Ongoing attention has been given to these five cases which involve the well-being and livelihood of many hundreds of farmers. In three of the cases, it is understood that the complainant farmers have been permitted to return to their land with no restrictions being placed on them as to its use. In one case, where the land was required for government use, compensation has been offered and has been accepted by the complainants. In the remaining case, the facts remain in dispute. All the cases remain, for the time being, open on the basis that it is necessary to verify final outcomes and to clearly establish the facts in respect to the last outstanding case. An ILO field mission has been scheduled for 3–5 November 2011 to this end.

Strengthening the capacity of the Liaison Office

- 51.** In light of the demands placed on the Liaison Office by the considerable increase in complaints received, together with the extensive demand for awareness-raising and training activities, the Governing Body and the Conference have called on the Government to grant a visa for an additional international Professional staff member and to facilitate a licence for an additional vehicle required for assessment missions.

Update

- 52.** An import licence has been issued and an additional vehicle ordered. The Government continues to advise that they consider the engagement of additional international Professional staff as unwarranted and that the ILO is free to engage national staff as deemed appropriate. The Office has recently been able to engage, on a temporary basis, international consultants resident in Myanmar who will assist in processing the substantial backlog of cases requiring assessment.
- 53.** Operating with limited staff requires the Liaison Officer to utilize the voluntary services of a number of community networks – currently some 250 persons – all of whom have received basic training in case facilitation work. To manage this operation, the Liaison Officer has engaged the services of national staff with regional network focal point responsibilities.
- 54.** Additional staffing and the provision of extensive awareness raising has been generously supported by targeted project funding from the European Union, the Government of Sweden and the Government of the United States.

Geneva, 3 November 2011

312th Session of the Governing Body of the International Labour Office

(November 2011)

SIXTH ITEM ON THE AGENDA

GB.312/INS/6

Draft conclusions concerning Myanmar

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

- (1) The Governing Body welcomes the positive developments in Myanmar since March 2011 but remains concerned that serious problems in the use of forced labour persist. The Governing Body calls for the continuation of strengthened resolute and proactive action for the full implementation of the recommendations of the 1998 Commission of Inquiry.
- (2) The Governing Body notes that legislation, prohibiting the use of forced labour in all its forms and repealing both the Towns and Villages Acts of 1907, is before Parliament. The Governing Body regrets the absence of consultation and urges the early adoption and coming into force of that legislation. It underlines that full conformity of the new law with Convention No. 29 is required to meet the relevant recommendation of the Commission of Inquiry.
- (3) The Governing Body urges that the practice of the imposition of forced labour on prisoners, particularly as porters in conflict areas, cease immediately and again invites the Government to avail itself of the technical assistance of the ILO in the review of the Jail Manual.
- (4) The Governing Body welcomes the commencement of direct discussion with the Tatmadaw (armed forces) and looks forward to further substantive policy and behavioural change for the elimination of forced labour and the ending of impunity.
- (5) The Governing Body also welcomes the commencement of, and encourages the continuation of, direct discussion with the Ministries of Finance and Planning and looks forward to confirmation that planning and financial management processes sufficiently provide for the payment of wages in government operational and project activities.
- (6) The Governing Body welcomes the release of U Zaw Htay, U Nyan Myint, Daw Su Su Nway, U Min Aung, U Myo Aung Thant and other labour activists and strongly urges the early release of U Thurein Aung, U Wai Lin, U Nyi Nyi Zaw, U Kyaw Kyaw, U Kyaw Win and U Myo Min, as well as other labour activists remaining in detention.
- (7) The Governing Body again calls on the Government to facilitate the free access of the Liaison Officer to detainees and to effect the reinstatement of the advocacy licences of U Aye Myint and Ko Pho Phyu.

- (8) The Governing Body again stresses the critical importance of a comprehensive proactive approach encompassing not only the continuation of awareness-raising activities and the management of the complaints mechanism but also the effective prosecution of forced labour perpetrators, military and civilian, under the Penal Code.
- (9) The Governing Body notes the priority action taken towards the resolution of a number of long-standing complaints in the Magwe Region and looks forward to receiving confirmation that they are at last satisfactorily resolved.
- (10) The Governing Body welcomes the expanded awareness-raising activities being undertaken, including the production and distribution of the information brochure in Shan language, and encourages the continuation of this partnership activity and its expansion into other languages. The Governing Body further notes the positive initiative of the proposed training of police personnel to ensure their understanding of their role and responsibilities, in collaboration with the military, in the elimination of forced labour, including in respect of procedures to address the continuing problems of under-age recruitment and their alleged desertion.
- (11) The Governing Body, whilst recalling all of its previous conclusions and recommendations, encourages the ILO and the Government in their continuing positive collaboration within the framework of the Understanding and its Supplementary Understanding which should be further extended in February 2012. It also encourages the Government to respond positively to all ILO related recommendations made by the Human Rights Council during the Universal Periodic Review.
- (12) In light of the above, the Governing Body considers it essential to strengthen the capacity of the Liaison Office and therefore reiterates in the strongest terms its repeated calls on the Government to issue without delay the visas necessary to this effect.
- (13) The Governing Body notes the calls for a review by the International Labour Conference of the mandate defined by the 1999 resolution and will consider this issue at its March 2012 session.

Geneva, 16 November 2011

G. Document before the Governing Body at its 313th Session (March 2012) and Governing Body conclusions

INTERNATIONAL LABOUR OFFICE



Governing Body

313th Session, Geneva, 15–30 March 2012

GB.313/INS/6

Institutional Section

INS

Date: 15 March 2012
Original: English

SIXTH ITEM ON THE AGENDA

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

Purpose of the document

This document informs the Governing Body about activities undertaken by the Office since the 312th Session (November 2011), includes a report of the Liaison Officer pursuant to paragraph 6 of the Supplementary Understanding and provides factual background information on the current situation. It also addresses the question of possible review of the measures adopted by the International Labour Conference.

Relevant strategic objective: Promote and realize standards and fundamental principles and rights at work.

Policy implications: These will depend on the decisions taken or guidance provided.

Legal implications: These will depend on the decisions taken or guidance provided.

Financial implications: None.

Follow-up action required: This will depend on the decisions taken or guidance provided.

Author unit: ILO Liaison Office in Myanmar, Office of the Legal Adviser (JUR) and Executive Director of the Standards and Fundamental Principles and Rights at Work Sector (ED/NORM).

Related documents: Governing Body members may find reference to the conclusions of GB.312/INS/6 and GB.313/INS/7 useful to their deliberations.

1. Considerable activity has taken place since the last session of the Governing Body, against a background of major political change in Myanmar. Following general elections in November 2010 and a new Government taking office in March 2011, the new Parliament and the Government have continued to work on a broad reform agenda.
2. The complaints mechanism under the Supplementary Understanding (SU), which was extended for a further 12 months in January 2012, continues to operate with positive developments in a number of areas in an environment of increased dialogue and cooperation.
3. Furthermore, agreement has been reached in principle on the development and implementation of a joint Government/ILO strategy for the elimination of all forms of forced labour by 2015. A framework agreement for such a strategy is under discussion and at the time of writing is expected to be available in time for the current session of the Governing Body.
4. Since the 312th Session (November 2011) of the Governing Body, 91 formal complaints have been received which have been assessed as coming within the ILO forced labour mandate. Of these, 63 related to under-age recruitment. While still an issue in some states and regions, the number of complaints alleging the use of forced labour by the civilian authorities continues to fall. There is growing evidence that, in a context of better information and growing confidence, some forced labour incidents, including under-age recruitment, are more amenable to resolution at local level without recourse to the complaints mechanism. The exaction of forced labour by the military and non-state armed groups in conflict situations, while not the subject of many formal complaints because of the obstacles faced by victims, continues to be a problem. Direct discussion with the military has been opened at senior level, and positive initial responses have been received. The proposed joint strategy will, by definition, address all manifestations of forced labour, whether related to the military, the civil Government or the private sector.
5. This paper is presented in four parts, with a view to assisting the Governing Body in its deliberations both in respect of its review of developments and in the context of the conclusions it adopted in November 2011,¹ in which it noted, inter alia, the calls for a review of the mandate defined by the 1999 resolution² and decided to consider this issue at its March 2012 session.
 - Part I provides a brief chronological summary of ILO action in respect of forced labour in Myanmar;
 - Part II discusses the current political climate;
 - Part III discusses developments since the 312th Session (November 2011) of the Governing Body; and
 - Part IV calls for a possible review of the measures decided by the Conference.

¹ GB.312/PV/Draft, para. 112 (the text of the conclusions is contained in Appendix I to this document).

² Resolution on the widespread use of forced labour in Myanmar, adopted by the International Labour Conference at its 87th Session (June 1999) (the text of the resolution is contained in Appendix II to this document).

Part I. A summary of ILO action in respect of forced labour in Myanmar

6. Following a complaint in respect of the observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29), lodged under article 26 of the ILO Constitution, the Governing Body established a Commission of Inquiry in 1997.³ The Commission's report was received by the Governing Body at its 273rd Session (November 1998), and its recommendations were duly adopted.⁴

7. On 21 May 1999, the ILO Director-General presented a report to Governing Body members,⁵ which concluded that:

Despite the Order issued by the Government of Myanmar on 14 May 1999 there is no indication that the three recommendations of the Commission of Inquiry have yet been followed:

- (a) the Village Act and the Towns Act have not been amended;
- (b) in actual practice forced or compulsory labour continues to be imposed in a widespread manner;
- (c) no action appears to have been taken under section 374 of the Penal Code to punish those exacting forced labour.

8. In this context, the International Labour Conference, at its 87th Session (June 1999), adopted a resolution⁶ stating:

- (a) that the attitude and behaviour of the Government of Myanmar were grossly incompatible with the conditions and principles governing membership of the Organization;
- (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; and
- (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.

9. At its 277th Session (March 2000), the Governing Body decided to place on the agenda of the 88th Session of the Conference (June 2000) an item entitled: "Action recommended by the Governing Body under article 33 of the Constitution – Implementation of the recommendations contained in the report of the Commission of Inquiry entitled *Forced Labour in Myanmar (Burma)*".

³ GB.268/15/1.

⁴ GB.273/5 (the text of the recommendations is contained in Appendix III to this document).

⁵ Report of the Director-General to the members of the Governing Body on measures taken by the Government of Myanmar following the recommendations of the Commission of Inquiry established to examine its observance of the Forced Labour Convention, 1930 (No. 29), Geneva, 21 May 1999, para. 61.

⁶ Resolution on the widespread use of forced labour in Myanmar, op. cit. (Appendix II).

10. Subsequently, at its 88th Session (June 2000), the Conference adopted a further resolution⁷ which called, among other measures, on member States, workers' and employers' organizations and international organizations to review their relations with the Government of Myanmar with a view to supporting the objective of the elimination of forced labour. In the absence of further progress, notwithstanding the undertaking of a technical cooperation mission to Myanmar in October 2000, the provisions of the resolution were brought into effect as of November 2000.
11. Following a number of further technical cooperation missions and a mission by a high-level team during the period from September 2001 to February 2002, a formal Understanding between the Government and the ILO was concluded in March 2002 for the appointment of an ILO Liaison Officer based in Yangon. The Liaison Officer was tasked with assisting the Government in its efforts to ensure prompt and effective elimination of forced labour in the country. The tasks of the Liaison Office include cooperation with the Government in the application of its policy against the use of forced labour, undertaking educational activities and monitoring and otherwise supporting progress in the application of that policy.
12. Following a further debate at the 95th Session of the International Labour Conference, in 2006, a number of unsuccessful initiatives to implement practical mechanisms to support the elimination of forced labour and a number of serious incidents, including the arrest and conviction on charges of treason of persons supporting ILO activities, all of which raised serious questions as to the Government's true commitment, further negotiations resulted in the conclusion of an SU which came into effect on a one-year trial period basis as of 26 February 2007.
13. The SU was intended to support better the implementation of the Commission of Inquiry's recommendations. It addressed awareness raising on rights and responsibilities under the law and the application of the law and its enforcement, and also contained a mechanism permitting residents of Myanmar to submit complaints in respect of forced labour to the Liaison Officer, who in turn was authorized to assess those complaints and, if it was established that there was a case to answer, to submit those complaints to a Government Working Group established for the purpose of initiating an investigation and appropriate response.
14. The trial period of the operation of the SU has been extended annually since 2008, and its operation has been the subject of reports of the Liaison Officer to each session of the Governing Body since then. Initially very few complaints were received, largely because of the absence of any public awareness of rights under the law or of the complaints mechanism itself, and of a genuine fear of retribution.
15. With the coming into effect of the SU, a long and difficult process commenced, which initially met with serious obstruction and acts of reprisal, including imprisonment, against persons involved in the process. This situation has improved progressively as the Government's commitment to the process has increased, along with public awareness and confidence in it.

⁷ 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 (June 2000) (the text of the resolution is contained in Appendix IV of this document).

16. At the 98th Session of the Conference (2009), the Office's mandate in respect of Myanmar was extended to permit a positive response to the Government's request for assistance in meeting its obligations under the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), which it has ratified.

Part II. The current situation in Myanmar

17. Rapid change has continued in Myanmar's domestic political situation, which has had consequences for its external relations. Parliament has continued to sit in extended sessions to deliberate on a wide range of legislation. Amendments to the Electoral Act have permitted political organizations previously unable to register as political parties to do so. This includes the National League for Democracy (NLD). By-elections for 48 vacant seats in Parliament will be held on 1 April 2012 with full NLD participation and with its Chair, Daw Aung San Suu Kyi, contesting a Yangon constituency.
18. The Government has launched two major priority campaigns: reduction in poverty; and rural development. It has also begun to address a wide range of issues relating to governance and economic and social policy. These include the development of national and regional budgets, foreign currency exchange rate alignment, taxation and licensing policies, financial institution structures, relaxation of media and information technology restrictions and local authority governance, as well as freedom of association and the right to peaceful assembly.
19. These initiatives have been undertaken in an environment of increased openness and transparency, with consultation being undertaken with, and assistance being sought from, the United Nations, the international financial institutions, other governments, the private sector and, increasingly, civil society.
20. Further amnesties have resulted in the release of a large number of prisoners of conscience, and there are indications that further amnesties could be expected shortly.
21. The Government has recognized that political stability, economic development and social cohesion cannot be achieved fully while hostilities continue with ethnically based, non-state armed groups. A number of ceasefire agreements have been negotiated, resulting in hostilities being halted for the time being in all parts of the country with the exception, at the time of writing, of Kachin State, where negotiations are continuing. These agreements, while fragile, are a critical first step which will need to be followed up with further negotiations for full peace agreements encompassing lasting political, economic and social solutions.
22. In response to these developments, a number of countries have increased their funding of aid to Myanmar and offered technical support, particularly for the transition process. Some of the political and economic sanctions previously imposed have been removed in whole or in part, with those remaining being subject to review in a number of cases. A number of Governments have opened or upgraded their diplomatic relations with Myanmar.

Part III. Developments in respect of the elimination of forced labour

23. The Liaison Office has faced an extremely heavy workload since the November 2011 session of the Governing Body: 214 complaints were submitted under the SU complaints mechanism, of which 91 have been assessed as falling within the forced labour mandate. The majority of those not deemed to be within the mandate relate to issues of land

confiscation and, in increasing numbers, labour disputes. In such instances, complainants are referred to the government departments concerned or to the newly formed National Human Rights Commission, as appropriate.

24. The Office's limited capacity to service the increasing number of complaints has resulted in a backlog of unprocessed complaints. The situation has been aggravated by demands for greater Office involvement in UN development planning activity as well as for support of ILO and numerous other international missions to the country.
25. At the invitation of the Government, an ILO high-level mission visited Myanmar from 21 to 28 January 2012. The mission was led by Mr Guy Ryder (Executive Director for Standards and Fundamental Principles and Rights at Work) accompanied by Ms Karen Curtis (Deputy Director of the International Labour Standards Department), Mr Drazen Petrovic (Principal Legal Officer in the Office of the Legal Adviser) and Mr Tim de Meyer (Standards Specialist, Regional Office for Asia and the Pacific).
26. Since the last session of the Governing Body, the work of the Liaison Officer and the activities of the ILO high-level mission have been concentrated on follow-up to the conclusions of that meeting.⁸
27. The following information on developments in respect of forced labour is structured by reference to the Governing Body's conclusions. Information on developments in respect of freedom of association issues is contained in document GB.313/INS/7.

Conclusion (1): Welcomed the positive developments in Myanmar since March 2011 but expressed concern that serious problems in the use of forced labour persist. The Governing Body called for the continuation of strengthened, resolute and proactive action for the full implementation of the recommendations of the 1998 Commission of Inquiry.

Further developments: A review of the operation of the SU was undertaken by the high-level mission with the Government Working Group for the Elimination of Forced Labour. A government proposal that a joint Government/ILO strategy be developed for the elimination of all forms of forced labour by 2015 was accepted in principle. A Memorandum of Understanding providing a comprehensive framework for the development of such a strategy has been agreed upon. Arrangements have been made for it to be signed, so that it could be presented at the current session of the Governing Body. The Defence Services have confirmed their commitment to cooperate with other government authorities and the ILO in such a strategy.

Conclusion (2): Noted that legislation, prohibiting the use of forced labour in all its forms and repealing both the Towns and Villages Acts of 1907, was before Parliament. The Governing Body regretted the absence of consultation and urged the early adoption and coming into force of that legislation. It underlined that full conformity of the new law with Convention No. 29 was required to meet the relevant recommendation of the Commission of Inquiry.

Further developments: The high-level mission was informed that the Ward or Village Tract Administration Act had been adopted by Parliament, repealing the Village Act and the Towns Act of 1907. Nevertheless, consultations between the mission and the Ministry of Home Affairs responsible for the legislation resulted in a number of recommendations for the amendment of the new Act with a view to bringing it into line with Convention No. 29. Regrettably, those recommendations were not included in a subsequent parliamentary review of the legislation before it was passed into law.

⁸ GB.312/PV/Draft, para. 112 (Appendix I to this document).

According to the Government, although there was insufficient time to insert the ILO recommendations into the legislative review, it remained committed to the policy for the elimination of forced labour. It pointed out that the new legislation repeals the Village Act and the Towns Act of 1907 and contains no provision which in any way condones or permits the use of forced labour. It advised that section 374 of the Penal Code makes the use of forced labour illegal and provides for appropriate penalties. The Government also said that the ILO recommendations for amendments to the Ward or Village Tract Administration Act would be built into the administrative rules which would be published to implement the Act. In response, the Office has brought to the Government's attention previous recommendations of the ILO supervisory bodies regarding the need for specific provision in law expressly prohibiting forced labour in order to remove any ambiguity arising from article 359 of the country's Constitution and to ensure the applicability of section 374 of the Penal Code. The Government may wish to provide further information for the current session of the Governing Body.

Conclusion (3): Urged that the practice of the imposition of forced labour on prisoners, particularly as porters in conflict areas, cease immediately and again invited the Government to avail itself of the technical assistance of the ILO in the review of the Jail Manual.

Further developments: Consultations were undertaken with the high-level mission on a draft revision of the Prisons Act (encompassing the Jail Manual) with recommendations made to ensure that the prison labour provisions meet the requirements of Convention No. 29. The amended draft is expected to be presented to Parliament for debate; however, the time frame is not known at present. It addresses, among other things, the practice of using prison labour for military portering duties in conflict zones. Direct discussion with the military on this matter continues with a view to an immediate end to such practices.

Conclusion (4): Welcomed the commencement of direct discussion with the Tatmadaw (armed forces) and looked forward to further substantive policy and behavioural change for the elimination of forced labour and the ending of impunity.

Further developments: Meetings were held by the high-level mission with the Minister of Defence, senior armed forces personnel and Ministry of Home Affairs officials, resulting in agreement for enhanced cooperation, including agreement to work together to find practical, operational solutions to informal practices which result in breaches of the law.

Conclusion (5): Welcomed the commencement of, and encouraged the continuation of, direct discussion with the Ministries of Finance and Planning and looked forward to confirmation that planning and financial management processes sufficiently provide for the payment of wages in government operational and project activities.

Further developments: National and regional budgets for the 2012 financial year commencing 1 April 2012 are currently under discussion in the respective Parliaments. It is expected that these will include appropriate allocation of funds to cover the cost of wages for public works. Follow-up discussion with officials of the Ministry of Finance and Revenue and the Ministry of National Planning and Economic Development is planned on the completion of the parliamentary budget adoption process to confirm that this is the case.

Conclusion (6): Welcomed the release of U Zaw Htay, U Nyan Myint, Daw Su Su Nway, U Min Aung, U Myo Aung Thant and other labour activists and strongly urged the early release of U Thurein Aung, U Wai Lin, U Nyi Nyi Zaw, U Kyaw Kyaw, U Kyaw Win and U Myo Min, as well as other labour activists remaining in detention.

Further developments: In amnesties since the last Governing Body session, 19 labour activists, including all those named in the conclusion above, have been released. This is in addition to 17 other labour activists released during 2011. Investigation and negotiations continue for the locating and release of 11 other persons who remain in prison or are otherwise unaccounted for at the time of writing.

Conclusion (7): Called on the Government to facilitate the free access of the Liaison Officer to detainees and to effect the reinstatement of the advocacy licences of U Aye Myint and Ko Pho Phyu.

Further developments: No progress can be reported on the issues referred to in the above conclusion. The Office is continuing its efforts in this regard.

Conclusion (8): Stressed the critical importance of a comprehensive proactive approach encompassing not only the continuation of awareness-raising activities and the management of the complaints mechanism but also the effective prosecution of forced labour perpetrators, military and civilian, under the Penal Code.

Further developments: Representatives of the military provided information to the high-level mission concerning the prosecution, in response to complaints lodged with the ILO, of 166 military personnel (27 officers and 139 other ranks) for breaches of the forced labour and under-age recruitment laws. According to this information, penalties ranged from formal reprimands, monetary fines, the loss of promotional and pensionable service, and demotion, to dismissal from the service and imprisonment (three cases). These measures are prescribed by Chapter VII of the Defence Services Act, 1959, and result from a sentence of a court martial. In respect of civilian perpetrators, the ILO has been informed of the prosecution of three persons under the Penal Code of whom two were convicted and received prison sentences. One Government official was recently dismissed from his post and it is understood that further prosecutions under the Penal Code are currently under consideration.

Conclusion (9): Noted the priority action taken towards the resolution of a number of long-standing complaints in the Magwe region and looked forward to receiving confirmation that they are at last satisfactorily resolved.

Further developments: Three of the five major Magwe cases have now been satisfactorily resolved with the farmers concerned having been permitted to return to their land with no restrictions imposed on its use. In one of the remaining two cases, most of the farmers concerned have similarly been permitted to return to their land. Negotiations continue in respect of a significant number of others who as yet have not been allowed to do so. In the other case, negotiations continue in respect of compensation to those unable to return to their land.

Conclusion (10):

- (a) Welcomed the expanded awareness-raising activities being undertaken, including the production and distribution of the information brochure in the Shan language, and encouraged the continuation of this partnership activity and its expansion into other languages.

Further developments: The Government informed the high-level mission that the Attorney-General's Office was currently working on the translation of the brochure

into the Karen (Paw and Sakaw), Kachin, Chin and Rakhine languages, with the Mon language still under consideration.

- (b) Further noted the positive initiative of the proposed training of police personnel to ensure their understanding of their role and responsibilities, in collaboration with the military, in the elimination of forced labour, including in respect of procedures to address the continuing problems of under-age recruits and their alleged desertion.

Further developments: Joint planning is under way for further awareness-raising/training activities for military personnel (including recruitment staff), the police and other relevant government services.

Conclusion (11): Whilst recalling all of its previous conclusions and recommendations, encourages the ILO and the Government in their continuing positive collaboration within the framework of the Understanding and its SU which should be further extended in February 2012. It also encourages the Government to respond positively to all ILO related recommendations made by the Human Rights Council during the Universal Periodic Review.

Further developments: On 23 January 2012, an extension of the SU trial period was agreed for a further 12 months from 26 February 2012.

Conclusion (12): Considered it essential to strengthen the capacity of the Liaison Office and therefore reiterated in the strongest terms the Governing Body's repeated calls on the Government to issue without delay the visas for additional international staff necessary to this effect.

Further developments: The Government informed the high-level mission that an appropriate visa application for an additional international professional to support the operation of the SU would be granted and that further visa applications for the engagement of two further professionals – one on forced labour and one on freedom of association – would be positively considered. It should be possible to provide confirmation of the appointment of the initial additional staff member at the current session of the Governing Body.

Part IV. Possible review of measures adopted by the Conference

- 28. The Office recalls that the Governing Body took note in November 2011 of the calls for a review of the mandate defined by the 1999 resolution on the widespread use of forced labour in Myanmar and decided to consider this issue at its current session. The texts of the 1999 resolution and the resolution on Myanmar adopted by the Conference in 2000 are appended to this document (Appendices II and IV).
- 29. Should the Governing Body consider that there is need to review the measures adopted by the Conference, it may wish to decide (as it did in 2006) to place on the agenda of the 101st Session of the Conference (2012) an additional item that may be entitled "Review of measures adopted by the Conference to secure compliance by Myanmar with the recommendations of the Commission of Inquiry".

Appendix I

Conclusions adopted by the Governing Body at its 312th Session (November 2011)¹

Decision on the sixth item on the agenda: Developments concerning the question of the observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29)

The Governing Body's conclusions

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

- (1) The Governing Body welcomes the positive developments in Myanmar since March 2011 but remains concerned that serious problems in the use of forced labour persist. The Governing Body calls for the continuation of strengthened resolute and proactive action for the full implementation of the recommendations of the 1998 Commission of Inquiry.
- (2) The Governing Body notes that legislation, prohibiting the use of forced labour in all its forms and repealing both the Towns and Villages Acts of 1907, is before Parliament. The Governing Body regrets the absence of consultation and urges the early adoption and coming into force of that legislation. It underlines that full conformity of the new law with Convention No. 29 is required to meet the relevant recommendation of the Commission of Inquiry.
- (3) The Governing Body urges that the practice of the imposition of forced labour on prisoners, particularly as porters in conflict areas, cease immediately and again invites the Government to avail itself of the technical assistance of the ILO in the review of the *Jail Manual*.
- (4) The Governing Body welcomes the commencement of direct discussion with the Tatmadaw (armed forces) and looks forward to further substantive policy and behavioural change for the elimination of forced labour and the ending of impunity.
- (5) The Governing Body also welcomes the commencement of, and encourages the continuation of, direct discussion with the Ministries of Finance and Planning and looks forward to confirmation that planning and financial management processes sufficiently provide for the payment of wages in government operational and project activities.
- (6) The Governing Body welcomes the release of U Zaw Htay, U Nyan Myint, Daw Su Su Nway, U Min Aung, U Myo Aung Thant and other labour activists and strongly urges the early release of U Thurein Aung, U Wai Lin, U Nyi Nyi Zaw, U Kyaw Kyaw, U Kyaw Win and U Myo Min, as well as other labour activists remaining in detention.
- (7) The Governing Body again calls on the Government to facilitate the free access of the Liaison Officer to detainees and to effect the reinstatement of the advocacy licences of U Aye Myint and Ko Pho Phyu.

¹ dec-GB.312/INS/6.

- (8) The Governing Body again stresses the critical importance of a comprehensive proactive approach encompassing not only the continuation of awareness-raising activities and the management of the complaints mechanism but also the effective prosecution of forced labour perpetrators, military and civilian, under the Penal Code.
- (9) The Governing Body notes the priority action taken towards the resolution of a number of long-standing complaints in the Magwe region and looks forward to receiving confirmation that they are at last satisfactorily resolved.
- (10) The Governing Body welcomes the expanded awareness-raising activities being undertaken, including the production and distribution of the information brochure in Shan language, and encourages the continuation of this partnership activity and its expansion into other languages. The Governing Body further notes the positive initiative of the proposed training of police personnel to ensure their understanding of their role and responsibilities, in collaboration with the military, in the elimination of forced labour, including in respect of procedures to address the continuing problems of under-age recruitment and their alleged desertion.
- (11) The Governing Body, whilst recalling all of its previous conclusions and recommendations, encourages the ILO and the Government in their continuing positive collaboration within the framework of the Understanding and its SU which should be further extended in February 2012. It also encourages the Government to respond positively to all ILO related recommendations made by the Human Rights Council during the Universal Periodic Review.
- (12) In light of the above, the Governing Body considers it essential to strengthen the capacity of the Liaison Office and therefore reiterates in the strongest terms its repeated calls on the Government to issue without delay the visas necessary to this effect.
- (13) The Governing Body notes the calls for a review by the International Labour Conference of the mandate defined by the 1999 resolution and will consider this issue at its March 2012 session.

Appendix II

Resolution on the widespread use of forced labour in Myanmar, adopted by the International Labour Conference at its 87th Session (June 1999)

The International Labour Conference,

Reaffirming that all member States have an obligation to apply fully, in law and in practice, the Conventions that they have voluntarily ratified,

Recalling that Myanmar ratified the Forced Labour Convention, 1930 (No. 29), and the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), on 4 March 1955,

Taking note of the provisions of United Nations General Assembly resolution 53/162 of 9 December 1998 and of United Nations Commission of Human Rights resolution 1999/17 of 23 April 1999, which also address the use of forced labour in Myanmar,

Recalling the decision of the Governing Body to place on the agenda of its November 1999 session an item entitled: “Measures, including recommendations under article 33 of the ILO Constitution, to secure compliance by the Government of Myanmar with the recommendations of the Commission of Inquiry”,

Gravely concerned by the Government’s flagrant and persistent failure to comply with the Convention, as concluded by the Commission of Inquiry established to examine the observance of the Forced Labour Convention, 1930 (No. 29),

Appalled by the continued widespread use of forced labour, including for work on infrastructure projects and as porters for the army,

Noting the report (dated 21 May 1999) of the Director-General to the members of the Governing Body on measures taken by the Government of Myanmar following the recommendations of the Commission of Inquiry in its report on “forced labour in Myanmar (Burma)”;

1. Deeply deplores that:

- (a) the Government has failed to take the necessary steps to bring the relevant legislative texts, in particular the Village Act and Towns Act, into line with the Forced Labour Convention, 1930 (No. 29), by 1 May 1999, as recommended by the Commission of Inquiry;
- (b) at the end of the twentieth century, the State Peace and Development Council (SPDC) has continued to inflict the practice of forced labour – nothing but a contemporary form of slavery – on the people of Myanmar, despite repeated calls from the ILO and from the wider international community for the past 30 years;
- (c) there is no credible evidence that those exacting forced labour in Myanmar have been punished under section 374 of the Penal Code;

2. Reaffirms that this issue should be further considered by the Governing Body in November 1999;

3. Resolves:

- (a) that the attitude and behaviour of the Government of Myanmar are grossly incompatible with the conditions and principles governing membership of the Organization;

- (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.

Appendix III

Recommendations of the Commission of Inquiry appointed under article 26 of the Constitution of the International Labour Organization to examine the observance by Myanmar of the Forced Labour Convention, 1930 (No. 29)¹

539. In view of the Government's flagrant and persistent failure to comply with the Convention, the Commission urges the Government to take the necessary steps to ensure:

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

540. The recommendations made by the Commission require action to be taken by the Government of Myanmar without delay. The task of the Commission of Inquiry is completed by the signature of its report, but it is desirable that the International Labour Organization should be kept informed of the progress made in giving effect to the recommendations of the Commission. The Commission therefore recommends that the

¹ Forced labour in Myanmar (Burma), report of the Commission of Inquiry appointed under article 26 of the Constitution of the International Labour Organization to examine the observance by Myanmar of the Forced Labour Convention, 1930 (No. 29), Geneva, 2 July 1998, GB.273/5.

Government of Myanmar should indicate regularly in its reports under article 22 of the Constitution of the International Labour Organization concerning the measures taken by it to give effect to the provisions of the Forced Labour Convention, 1930 (No. 29), the action taken during the period under review to give effect to the recommendations contained in the present report. In addition, the Government may wish to include in its reports information on the state of national law and practice with regard to compulsory military service.

Appendix IV

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 (June 2000)

The International Labour Conference,

Meeting at its 88th Session in Geneva from 30 May to 15 June 2000,

Considering the proposals by the Governing Body which are before it, under the eighth item of its agenda (*Provisional Record* No. 4), with a view to the adoption, under article 33 of the ILO Constitution, of action to secure compliance with the recommendations of the Commission of Inquiry established to examine the observance by Myanmar of its obligations in respect of the Forced Labour Convention, 1930 (No. 29),

Having taken note of the additional information contained in the report of the ILO technical cooperation mission sent to Yangon from 23 to 27 May 2000 (*Provisional Record* No. 8) and, in particular, of the letter dated 27 May 2000 from the Minister of Labour to the Director-General, which resulted from the mission,

Considering that, while this letter contains aspects which seem to reflect a welcome intention on the part of the Myanmar authorities to take measures to give effect to the recommendations of the Commission of Inquiry, the factual situation on which the recommendations of the Governing Body were based has nevertheless remained unchanged to date,

Believing that the Conference cannot, without failing in its responsibilities to the workers subjected to various forms of forced or compulsory labour, abstain from the immediate application of the measures recommended by the Governing Body unless the Myanmar authorities promptly take concrete action to adopt the necessary framework for implementing the Commission of Inquiry's recommendations, thereby ensuring that the situation of the said workers will be remedied more expeditiously and under more satisfactory conditions for all concerned;

1. Approves in principle, subject to the conditions stated in paragraph 2 below, the actions recommended 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;
- (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;

2. Decides that those measures will take effect on 30 November 2000 unless, before that date, the Governing Body is satisfied that the intentions expressed by the Minister of Labour of Myanmar in his letter dated 27 May have been translated into a framework of legislative, executive and administrative measures that are sufficiently concrete and detailed to demonstrate that the recommendations of the Commission of Inquiry have been fulfilled and therefore render the implementation of one or more of these measures inappropriate;

3. Authorizes the Director-General to respond positively to all requests by Myanmar that are made with the sole purpose of establishing, before the above deadline, the framework mentioned in the conclusions of the ILO technical cooperation mission (points (i), (ii) and (iii), page 8/11 of *Provisional Record* No. 8), supported by a sustained ILO presence on the spot if the Governing Body confirms that the conditions are met for such presence to be truly useful and effective.



Governing Body

313th Session, Geneva, 15–30 March 2012

GB.313/INS/6(Add.)

Institutional Section

INS

Date: 19 March 2012

Original: English

SIXTH ITEM ON THE AGENDA

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

Addendum

1. As stated in paragraph 2 of document GB.313/INS/6, the Supplementary Understanding was extended for an additional one-year trial period until 25 February 2013. The text of this Agreement for Extension is reproduced in Appendix I.
2. In paragraph 27 of document GB.313/INS/6, the Office announced the signature of a Memorandum of Understanding regarding the development of a comprehensive, joint and benchmarked strategy for the elimination of all forms of forced labour in Myanmar by 2015. The Memorandum of Understanding was signed by both the ILO and the Government of Myanmar on 16 March 2012. Its text is reproduced in Appendix II.

Appendix I

An Agreement for Extension of the Supplementary Understanding and its Minutes of the Meeting dated 26 February 2007, for an additional one year trial period from 26 February 2012 to 25 February 2013

This Agreement is hereby concluded between the Government of the Republic of the Union of Myanmar and the International Labour Organization represented by the undersigned authorized representatives.

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

Noting the four preceding Extensions of the SU and its Minutes of the Meeting, of 26 February 2008, 26 February 2009, 26 February 2010 and 26 February 2011,

It is herewith agreed as follows:

1. Both parties agree to extend, on the same trial basis, the SU and the Minutes of the Meeting, for one year with the extension period commencing on 26 February 2012, to the day one year thereafter being 25 February 2013.
2. The spirit and letters of the SU and the Minutes of the Meeting remain *in toto* unchanged.
3. The SU and the Minutes of the Meeting shall continuously remain in legal effect upon signing by the authorized representatives of the parties mentioned below.
4. This agreement will be submitted to the forthcoming session of the Governing Body of the International Labour Office.

This Agreement is done at Nay Pyi Taw, the Republic of the Union of Myanmar on the 23rd day of January 2012.



(U Myint Thein)
Deputy Minister
Ministry of Labour
The Government of the Republic
of the Union of Myanmar



(Mr. Guy Ryder)
Executive Director
International Labour Office

Appendix II

MEMORANDUM OF UNDERSTANDING

This understanding is reached between:

The Government of the Republic of the Union of Myanmar (Hereinafter referred to as 'the Government'),

and

The International Labour Organization (Hereinafter referred to as 'the ILO')

Jointly referred to as 'the Parties',

The Memorandum of Understanding records the Parties agreement to develop, by no later than 31 May 2012, a comprehensive, joint, benchmarked strategy for the elimination of all forms of forced labour in Myanmar by 2015.

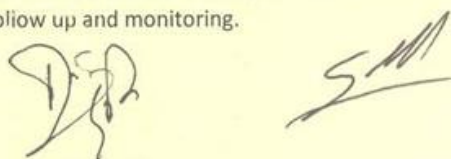
In so agreeing the Parties recall:

- the obligation placed on the Government through its ratification in 1955 of the Forced Labour Convention, 1930 (No. 29);
- the 1998 recommendations of the Commission of Inquiry appointed under article 26 of the ILO Constitution and the subsequent decisions of the International Labour Conference and the conclusions of the Governing Body;
- the commitment of the Government and the ILO for the elimination of forced labour as contained in the Understanding between them dated 19 March 2002; and
- the progress made through the co-operative, joint application of the Supplementary Understanding dated 26 February 2007.

The joint strategy will be administered by a Joint Working Group consisting of the members of the current Government Working Group for the elimination of forced labour supplemented by up to three nominated representatives from each of the Ministry of Defence and the ILO. The Deputy Minister of Labour, a senior nominee of the Ministry of Defence and the ILO Liaison Officer shall act as joint secretaries and the operational focal points of this new body.

It is agreed that the joint strategy shall encompass all necessary activities for the total elimination of forced labour by 2015 including:

- An enhanced awareness raising/training project targeting all sectors of society including the civilian authorities, defence services personnel, the police, justice system personnel, civil society (UN, INGO's, NGO's and CBO's), employers and employers' Organizations, workers and workers' organizations, ceasefire groups and national races organizations, and the general public, towards full understanding of their respective rights and responsibilities under the law.
- Continued and increased co-operation and co-ordination in the operation of the Supplementary Understanding including in the strengthening of the existing capacity of the defence services, Ministry of labour and ILO liaison office to receive, assess, investigate and resolve forced labour complaints and to undertake necessary follow up and monitoring.



- Undertaking investigations and taking necessary remedial action in response to all, as yet, unanswered allegations of the use of forced labour as documented in the comments of the ILO supervisory bodies.
- Jointly agreed and prioritized, time-bound action plans designed to stop forced labour practices nationwide and to, where appropriate, identify alternative operational solutions to each identified element of forced labour including but not limited to the following:
 - a. Forced labour directly or indirectly associated with Public Works and major construction projects.
 - b. Forced labour directly or indirectly associated with energy projects.
 - c. Forced labour resulting from the absence of necessary funding at local level for local authority services and infrastructure requirements.
 - d. Forced recruitment into the defence services and militia.
 - e. Underage (under 18 years) recruitment into the defence services and militia.
 - f. Human trafficking for forced labour.
 - g. Forced/bonded child labour.
 - h. Forced labour in the private sector including in domestic work.
 - i. The use, by the defence services, of civilian (and convict) porters particularly in combat zones.
 - j. The forced use, by the defence services and civilian authorities, of civilians on guard and/or sentry duty.
 - k. Forced labour imposed through land acquisition/confiscation activities.
 - l. Forced labour associated with the Ministry of Defence self-sufficiency policy.
 - m. Forced labour in association with the construction and/or maintenance of military camps.
- Supporting the final agreement of a joint action plan in respect of children in armed conflict (Security Council Resolution 1612) and collaborating in its implementation.
- Supporting the justice system (civilian and military) and other institutions such as parliamentary committees/commissions and the human rights commission in the evolution of their roles particularly in the context of the continued development and enforcement of legislation and policy against the use of forced labour.
- Supporting, in cooperation with the appropriate authorities and other International organizations, the peace process including in such areas as the social and economic reintegration of member of ceasefire groups, small and medium enterprise development and the provision of necessary infrastructure and community facilities with particular focus on the prevention of the use of forced labour.

Any differences between the parties shall, to the extent possible, be settled through consultation amicably.

In reaching this agreement the parties demonstrate their commitment to the objective – namely the elimination of all forms of forced labour by 2015 – in the context of the reform agenda of the Government, and their intent to work together to that end.

This Memorandum of Understanding shall enter into force on the date of signing and shall remain in force up to the 31st day of December 2015.




In WITNESS WHEREOF, the undersigned representatives being duly authorized thereto by their respective parties, done at Nay Pyi Taw on the 16th day of March 2012.

For and on behalf of
The Government of the Republic of
the Union of Myanmar



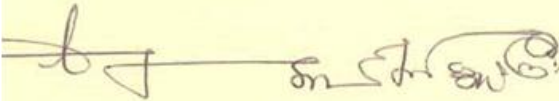
U Myint Thein
Deputy Minister
Ministry of Labour

For and on behalf of
the International Labour Organization



Mr. Steve Marshall
ILO Liaison Officer
International Labour Organization

WITNESSES



Captain (Navy) Aung Thaw
Deputy Minister
Ministry of Defence



Ms. Piyamal Pichaiwongse
Deputy ILO Liaison Officer
International Labour Organization



U Chit Shein
Director General
Department of Labour



Governing Body

313th Session, Geneva, 15–30 March 2012

GB.313/INS/6(Add.2)

Institutional Section

INS

Date: 26 March 2012

Original: English

SIXTH ITEM ON THE AGENDA

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

Addendum



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

Ref: 91-Ah La/Div (1)2012(1879)
Date: 23 March 2012

Dear Mr. Marshall,

First of all, I would like to mention, it is regrettable that the ILO High Level Mission's recommendations provided in the consultations undertaken during the January 2012 were unable to be included in the Ward or Village Tract Administration Law as the concerned Ministry has submitted the Draft of the said Law to the Hluttaw (Parliament) already at that time. I deeply regrets for it.

In this regard, although we make every possible effort and find the approach how could the recommendations made by the ILO experts be amended in the Ward or Village Tract Administration Law before the Union Hluttaw (Parliament) session concludes with determination, because of the limitation of the time available, it was fail to be included all the intended facts.

However Ministry of Home Affairs submitted the Draft Amending Ward or Village Tract Administration Law to the Union Hluttaw (Parliament) on 21th March 2012 and fortunately the most crucial two essence points are approved by the Parliament in the last day of the third session of the Parliament. In the amended Ward or Village Tract Administration Law, Article 27 A, the definition of Forced Labour and the Penalty which is equivalent to the power of the Penal Code Article 374 are unambiguously legislated. It is also clearly seen that although maximum prison sentence in this law is 6 months, forced labour penalty is one year in order to be matched with the penal code.

In this context, your report to the 313th Session Governing Body in Part III, under the title of "Developments in respect of the elimination of Forced Labour", further developments of Conclusion (2) is to be updated since what you mentioned "the previous recommendations of the ILO supervisory body regarding the need for specific provision in law expressly prohibiting forced labour in order to remove any ambiguity arising from Article 359 of the Constitution and to ensure the applicability of Section 374 of the Penal Code" is already solved out.

You would recognize, this is a remarkable accomplishment that forced labour could be defined as a legislation clearly and to be recorded in Myanmar's history for the very first time.

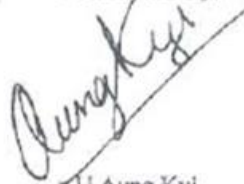
Since this law has been approved by the Parliament, it will be enforced immediately throughout the country within (14) days. I also believe that we could set up the very first basic foundation to implement the Joint Strategy together with other concerned Ministries in future effectively and efficiently.

Therefore, I am much obliged to request you to support for lifting the long lasting Sanctions on Myanmar which cause Myanmar people suffer a lot.

- Attachment:** (1) Unofficial translation of amended Ward or Village Tract Administration Law
(2) Amended Ward or Village Tract Administration Law (Myanmar Version)

With regards,

Yours sincerely,



U Aung Kyi
Union Minister

Cc:

- Office copy

Unofficial translation (Ministry of Labour, Myanmar)

The Law Amending the Ward or Village Tract Administration Law

(The Pyidaungsu Hluttaw Law No. /2012)

The ---- waning Day of Tabauung, 1373 M.E.

(March 2012)

The Pyidaungsu Hluttaw hereby enacts the following law

1. This Law shall be called the Law Amending the Ward or Village Tract Administration Law.
 2. In the Article 27 of the Ward or Village Tract Administration Law,
Article 27 A shall be supplemented as follows:
27 A - Anyone who exacts work or service from any person under the menace of any penalty and for which the said person has not offered himself voluntarily shall be punished with imprisonment for a term not exceeding one year or with a fine not more than one hundred thousand Kyats or with both by the relevant Court."
-

313th Session of the Governing Body of the International Labour Office (March 2012)

Decision on the sixth item on the agenda: Developments concerning the question of the observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29)

Governing Body conclusions

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

1. Welcomes the important and positive developments in Myanmar since the 312th Session of the Governing Body (November 2011) and in particular the further extension of the Supplementary Understanding (SU) and the adoption of legislation repealing the Village and Towns Acts of 1907 defining forced labour and providing for the criminal prosecution of perpetrators.
2. Further welcomes the initiative of the Government, including the defence services, in formalizing its commitment to develop a comprehensive, proactive, joint strategy with the ILO for the full elimination of all forms of forced labour by 2015. In so doing, it is emphasized that immediate effective measures are required and that every effort should be made to meet that objective earlier. The intention to maintain ongoing direct cooperation between the defence services and the ILO in this regard is an important part of the process as all sectors of the Government must respect the new legislation.
3. Whilst recognizing that these represent major steps towards meeting the recommendations of the Commission of Inquiry, notes that both the strict application of the new law and the prosecution and appropriate punishment of those who may violate it are critical to achieving the objective and as such should be built into the proposed strategy. This new strategy should be accompanied by a high-level public commitment to its implementation and to full compliance with Convention No. 29.
4. Notes the importance of ensuring that policy coverage and application encompasses the entire territory of Myanmar including border areas in context of achieving sustainable peace agreements.
5. Notes the information concerning the prosecution of some perpetrators and encourages the Government to maintain a process based on preventative education/awareness, the full application of the law and accountability by way of criminal prosecution of perpetrators as a means for combating impunity.
6. Welcomes the expansion of awareness-raising activities including the availability of the joint Government/ILO brochure in the Myanmar language and four other national languages and looks forward to further translations and their wide distribution.
7. Welcomes also the recent release from prison of a further number of labour activists and seeks the immediate unconditional release of all remaining imprisoned labour activists and prisoners of conscience.

8. Urges the Government to avail itself of the technical assistance of the Office including in further consultation in the drafting of relevant legislation.
9. Expresses its appreciation for the work of the Office and especially of the Liaison Officer and his small dedicated team and re-emphasizes the need to strengthen and expand the Liaison Office capacities including through the provision of adequate resources, the Government's expeditious approval of necessary visas on request and the engagement of local focal points for the strengthening and support of community networks.
10. Strongly encourages the Government and the people of Myanmar to continue their ongoing democratization efforts and emphasizes in that regard the need for full respect of human rights and international standards.
11. Decides to place on the agenda of the 101st Session of the International Labour Conference (June 2012) an additional item enabling a review of measures previously adopted by the Conference to secure compliance by Myanmar with the recommendations of the Commission of Inquiry.
12. Finally it requests the Officers of the Governing Body to undertake a mission to Myanmar and to report to the Conference on all relevant issues with a view to assisting its consideration of that review.
13. The total cost of the above mission, estimated at US\$58,000, will be financed in the first instance from savings in Part I of the budget or, failing that, through Part II of the budget.

(Documents GB.313/INS/6, GB.313/INS/6(Add.) and GB.313/INS/6(Add.2).)

Document D.5(Add.1)

H. Draft Action Plan concluded for the implementation of the Memorandum of Understanding on the Elimination of Forced Labour In Myanmar

Final draft – [Subject to approval by the Cabinet of the Government of the Republic of the Union of Myanmar]

Joint Government of the Republic of the Union of Myanmar/International Labour Organization Strategy for the Elimination of Forced Labour

This strategy is based on the Memorandum of Understanding (MOU) signed by the parties on 16 March 2012. That MOU provides the framework under which the parties will work together for the successful achievement of the objective.

The objective

The elimination of all forms of forced labour by 31 December 2015.

The approach

The strategy will be overviewed by a joint working group chaired by the Minister of Labour, with the Deputy Minister of Labour, the Deputy Minister of Defence and the ILO Liaison Officer acting as joint secretaries. Membership shall consist of the members of the Government Working Group for the elimination of forced labour (membership of which is determined by the Government) supplemented by two further representatives of the Ministry of Defence and two further representatives nominated by the ILO.

It is the hope and intention of the parties that the above objective can be attained at an earlier date – 31 December 2014. Action plans (attached) will therefore be front loaded and will address identified priorities. They will be applied in a coordinated manner so as to maximize impact. The joint working group shall undertake four monthly reviews of progress against benchmarks and will adjust geographic and sector targeting with corresponding resource reallocation being made as appropriate.

In the application of the strategy a proactive stance will be adopted – each of the seven identified MOU elements will be addressed in a separate action plan with causes identified, challenges to progress addressed and positive action steps proposed to put in place policies and practices which are compliant with both Myanmar law and the Forced Labour Convention, 1930 (No. 29).

During the implementation of this strategy the operation of the complaints mechanism under the Supplementary Understanding concluded by the ILO and the Government will

continue. The ILO, Ministry of Labour and Ministry of Defence will, subject only to the availability of necessary funds, deploy appropriate human resources for the efficient receipt, assessment and investigation of complaints and their move to closure with, as appropriate, the provision of justice, with restitution as appropriate, to complainants and the criminal prosecution of perpetrators.

Common practices, developing patterns and/or geographic priorities will be identified from analysis of complaints received. The media will be monitored for the same purpose. Both will serve to inform strategy reviews.

The MOU identifies three elements for parallel attention in this strategy – these are consistent with the recommendations of the 1998 Commission of Inquiry:

- (1) ensuring that the laws, policy, rules, regulations and instructions making forced labour illegal are in place, are consistent with each other and comply with both the constitutional right to freedom from forced labour and the Government's obligations under the Forced Labour Convention, 1930 (No. 29);
- (2) ensuring that the above laws, policy, rules, regulations and instructions are known, understood and applied for the ending of remaining practice of the use of forced labour; and
- (3) ensuring that the rule of law is applied, through justice systems (civilian and military), which deal with breaches of the law against forced labour under formal criminal proceedings, administering appropriate penalties to perpetrators and providing justice to the victims.

The previous efforts of the Government in these respects are recognized, particularly in respect of extensive awareness-raising activities undertaken. This strategy will build on that positive foundation through a broader and more targeted educational activity, the addressing of identified causes and the provision of specific support to the justice system.

Action Plan 1. Awareness raising

Objective – To ensure that all Myanmar citizens are aware of what constitutes forced labour, have access to information as to their rights and responsibilities under the law and have the ability to exercise those rights as appropriate

Index	Activity	Date	Responsibility	Funding
1. 1. Brochures: Further development and distribution	1.1.1. Complete translations into Karen (Sakaw), Rakhine and Mon languages	30 June 2012	MOL and Ministry of Culture	GoRUM
	1.1.2. Print national language translations	31 July 2012	ILO	ILO donor funding
	1.1.3. Distribution through ILO awareness-raising seminars	Ongoing	ILO	
	1.1.4. Distribution through joint ILO/GoRUM awareness-raising seminars	Ongoing	GoRUM/ILO	ILO donor funding
	1.1.5. Targeted distribution of national language translations	30 September 2012 and ongoing	GoRUM/ILO through national race organizations, NGOs and CBOs	ILO donor funding
	1.1.6. Distribution through General Administration Department to township, ward and village tract administrators	30 September 2012	MOL/MoHA/regional/state governments	GoRUM
	1.1.7. Distribution through Ministry of Defence to military units	30 September 2012	MOL/MOD	GoRUM
1.2. Awareness through the media	1.2.1. Brochure in appropriate languages reproduced in full in local newspapers	30 November 2012	MOL/M of INFO	GoRUM
	1.2.2. Feature articles in national newspapers/journals	Ongoing	MOL/M of INFO	GoRUM
	1.2.3. Series of 60-second radio ads in Myanmar and agreed national languages as per brochures	Commencing 1 December 2012 and ongoing	ILO/MOL/MIN of INFO	Subject to ILO obtaining donor funding
	1.2.4. Series of TV ads	Commencing 1 February 2013 and ongoing	ILO/MOL/MIN of INFO	Subject to ILO obtaining donor funding
	1.2.5. Key message billboards commissioned at strategic points at township level nationwide	Commencing 1 December 2012 and ongoing	ILO/MOL/MIN of INFO	Subject to ILO obtaining donor funding
1.3. Targeted joint seminars	1.3.1. New round of joint state/division seminars for all government authorities, UN agencies, INGOs and local NGOs in the region	One per month commencing 1 July 2012	MOL/ILO/MoHA/regional/state government	Each party carries own costs
	1.3.2. One-off targeted joint seminars for all stakeholders in locations identified by the SWG as hot spots from complaints analysis	Commencing 1 October 2012 and ongoing	MOL/ILO and other authorities as relevant to the issues	Each party carries own costs
	1.3.3. Joint presentations to police new recruit and officer in-service training sessions	Commencing 1 July 2012 and ongoing	MOL/ILO/MoHA	MoHA

Action Plan 1. Awareness raising

Objective – To ensure that all Myanmar citizens are aware of what constitutes forced labour, have access to information as to their rights and responsibilities under the law and have the ability to exercise those rights as appropriate

Index	Activity	Date	Responsibility	Funding
	1.3.4. Joint presentations to registered national NGOs	Commencing 1 September 2012 and ongoing	MOL/ILO	Each party carries own costs
	1.3.5. Joint presentations with prior permission to each new military academy intake	Commencing 1 January 2013 and ongoing	MOL/ILO/MOD	Each party carries own costs
	1.3.6. Joint presentations with prior permission to Tatmadaw commanding officers and other officer and NCO in-service training sessions	Commencing 1 January 2013 and ongoing	MOL/ILO/MOD	Each party carries own costs
	1.3.7. Continuation of joint presentations to judges and trainee judges in-service training sessions	Ongoing	MOL/ILO/Supreme Court	Each party carries own costs
	1.3.8. Joint presentations facilitated by SWG to relevant universities, faculties for use in appropriate courses of study	Commencing 1 March 2013 and ongoing	MOL/ILO/Min. of Ed.	Each party carries own costs
	1.3.9. Joint presentations to national, state and regional parliamentarians and parliamentary commissions/committees in agreement with the appropriate parliamentary authorities	Commencing 1 January 2013 and ongoing	MOL/ILO	Each party carries own costs
	1.3.10. Joint presentations/workshops at planned trainings for labour inspectorate and other labour department staff	Commencing 1 October 2012 and ongoing	MOL/ILO	MOL
	1.3.11. Joint presentations/workshops/TOT training to teachers	Commencing 1 April 2013 and ongoing	MOL/ILO/Min. of Ed.	Each party carries own costs
	1.3.12. Joint presentations to fire service officers and NCO in-service training sessions	Commencing 1 January 2013 and ongoing	MOL/ILO/Fire Service	Each party carries own costs
1.4. ILO workshops (with MOL support, as required)	1.4.1. Continuation of ILO one-day workshops and TOT programmes for private citizens and CBO rep.	Ongoing, 1–2 per month in Yangon or the field subject to demand	ILO	Subject to continuation of funding
	1.4.2. Half-day workshops for journalists	Commencing 1 September 2012 and ongoing, as required	ILO	Subject to continuation of funding
	1.4.3. Presentations to INGO forums	Ongoing	ILO	ILO
	1.4.4. Training workshops for UN agencies, INGO and NGO staff	Ongoing	ILO	ILO/UN agencies/INGOs

Action Plan 1. Awareness raising

Objective – To ensure that all Myanmar citizens are aware of what constitutes forced labour, have access to information as to their rights and responsibilities under the law and have the ability to exercise those rights as appropriate

Index	Activity	Date	Responsibility	Funding
1.5. GoRUM awareness raising (with ILO support, as required)	1.5.1. Issuance in consultation with the SWG of new (SWG-approved instructions) practical guidelines to all government departments and authorities in follow-up to the introduction of the Ward and Village Tract Administration Act and its Rules	Within 60 days of the Act and Rules coming into force	SWG	MoHA
	1.5.2. Issuance of practical guidelines to all military personnel on the application of the Ward and Village Tract Administration Act and its Rules	Within 60 days of the Act and Rules coming into force	MOD/SWG	MOD
	1.5.3. TOT for selected military personnel for delivery of extended awareness activities	Commencing 1 April 2013 and ongoing	MOD/MOL with ILO support, as required	MOD
	1.5.4. The register of forced labour prosecutions (refer to 6.4 below) be published for public information on a quarterly basis	1 June 2012 and ongoing	SWG and Min. of INFO	Subject to ILO donor funding
	1.5.5. Other activities to be determined			

Action Plan 2. Continued activities under the Supplementary Understanding				
Objective – To support the overall strategy for the elimination of forced labour through the effective operation and use of the complaints mechanism				
Index	Activity	Date	Responsibility	Funding
2.1	Establish focal point group for the day-by-day management of cases with representatives from MOL, MOD, MoHA, ILO with initial membership being the four persons who attended the Turin training course, April 2012	1 July 2012	SWG	Each party carries own costs
2.2	To support the operation of the voluntary facilitators network and to work in collaboration with the local Department of Labour Office, ILO appoint four local focal points one each in Kalay, Mandalay, Bago and Mawlamyaing townships	All to be in place by 1 August 2012	ILO/MOL	Donor funding in place
2.3	Review cases submitted, four months and older, towards their movement to satisfactory closure	ILO list submitted by 1 August 2012 to the SWG to review progress no later than 1 December 2012	ILO/MOL/SWG	Each party carries own costs
2.4	Analysis of complaint patterns to inform awareness-raising/special intervention activities	First list submitted to SWG by 1 August 2012 and thereafter to each formal SWG review	ILO/MOL/SWG	ILO
2.5	Introduce a forced labour public hotline	Target launch 1 March 2013	MOL/ILO	Subject to ILO donor funding

Action Plan 3. Undertake investigation and take necessary remedial action in respect of unanswered allegations as documented in the comments of the ILO supervisory bodies

Objective – To satisfactorily fulfil legal requirements under the ILO supervisory mechanism

Index	Activity	Date	Responsibility	Funding
3.1	Schedule of as yet unanswered allegations contained in Committee of Experts' comments to be developed by category, geographic location and alleged perpetrators	By 1 November 2012	ILO HQ Standards Department	ILO
3.2	SWG subcommittee/focal point group to review schedule and propose a joint investigation procedure and timetable	By 1 January 2013	SWG subcommittee	Each party carries own costs
3.3	SWG to adopt procedure and timetable and initiate commencement	By 1 February 2013	SWG	Investigation costs covered by party under investigation possibly supplemented by donor funding
3.4	SWG to receive investigation reports as each investigation completed and initiate remedial action as appropriate	Ongoing	SWG	Each party carries own costs
3.5	Reports on process and outcomes to be submitted to responsible ILO supervisory body	As requested and ongoing	MOL	MOL

Action Plan 4. Specific activities in policy areas and categories of work identified as actual or potential causes of the use of forced labour				
Objective – To provide for sustainable policy and sound practice without recourse to forced labour				
Index	Activity	Date	Responsibility	Funding
4.A. Forced labour directly or indirectly associated with public works and major construction projects including SEZs				
4 A 1	List of major public works and construction projects to be developed	By 1 November 2012	SWG	Each carries their own cost
4 A 2	Government focal point (project labour officer) to be appointed in Kyaukphyu SEZ as is the case in Dawei and Thilawa SEZs)	On project commencement	MOL	MOL
4 A 3	Special awareness-raising seminars to be held for management and supervisory staff of project principal, contractors and subcontractors, associated government authorities (military and civilian) and local communities	Within 90 days of government focal point appointment	ILO/SWG	Costs covered by project principal
4 A 4	Local community groups to be established for liaison and consultation throughout the length of each identified project	Within 60 days of government focal point appointment	Project principal/state/regional government/MOL	Costs covered by project principal
4 A 5	In each SEZs and major construction project a tripartite consultative committee will be formed with equal representation of the project principal and the workers and/or their registered organization(s), chaired by the government focal point which, in addition to working together on labour related issues for the effective undertaking of project activities, shall monitor labour practices in and associated with the project to ensure an absence of forced labour	Within 60 days of government focal point appointment	SEZ's management committee/MOL/project principal/	Costs covered by project principal
4 A 6	Each SEZ's project focal point and responsible township labour officers shall report to the SWG through the MOL on their activities for review and appropriate responses	For each meeting of the SWG	SWG/MOL/government project focal point	MOL
4.B. Forced labour directly or indirectly associated with energy projects				
4 B 1	List of major energy projects including pipelines to be developed	By 1 November 2012	SWG	Each carries their own cost
4 B 2	SEZ project officers and/or township labour officers shall be responsible for major project liaison activities	At the commencement of the project	MOL	MOL
4 B 3	Special awareness-raising seminars to be held for management and supervisory staff of project principal, contractors and subcontractors and associated government authorities (military and civilian)	Within 30 days of the confirmation of 4 B 2	SWG/MOL/ILO/Min. of Energy	Costs covered by project principal

Action Plan 4. Specific activities in policy areas and categories of work identified as actual or potential causes of the use of forced labour

Objective – To provide for sustainable policy and sound practice without recourse to forced labour

Index	Activity	Date	Responsibility	Funding
4 B 4	Special joint awareness-raising seminars to be held for residents (village community committees) affected by and/or in proximity to the project activities	To be commenced within 60 days of the completion of 4 B 2	MOL/ILO/project principal	Costs covered by project principal
4 B 5	Each project government focal point shall report to the SWG on their activities for review and appropriate responses	For each meeting of the SWG	SWG/MOL/Gov. focal point	MOL
4.C. Forced labour resulting from the absence of local level funding				
4 C 1	Specific guidelines for township, ward and village tract administrators developed for their understanding of the forced labour definition, procedure for funding and the engagement of workers for necessary local project activities	For distribution: In parallel with the rules on the Ward and Village Tract Administration Act or 1 September 2012, whichever is the earliest	Drafting: MOL/MoHA/ILO Distribution: MoHA	Each party carries own costs
4 C 2	Joint MOL/ILO presentations to any planned in-service training sessions for district, township, ward and/or village tract administrators with reference to the previously issued instructions/guidelines (refer to action plan 1.5.1)	Ongoing	MOL/MoHA/ILO	MoHA
4 C 3	Reporting requirement for township administrators in respect of complaints received alleging forced labour for submission to SWG through the appropriate channel	1 November 2012	MoHA/state/regional government	MoHA
4 C 4	State or regional audit offices to undertake random audits of local project activity, funds utilization and employment practices with those reports together with advice as to any remedial action taken provided to the SWG on request and on a case-by-case basis	Procedure to be in place by 1 March 2013	SWG/National Audit Office/MOD Audit Office	Regional Audit Offices
4.D. Forced recruitment into the defence services and militia				
4 D 1	Instructions to be issued to all defence services units reconfirming military regulation that recruitment into the military is voluntary and that any breach of this regulation will be the subject of criminal prosecution	By 1 July 2012	MOD	MOD

Action Plan 4. Specific activities in policy areas and categories of work identified as actual or potential causes of the use of forced labour**Objective – To provide for sustainable policy and sound practice without recourse to forced labour**

Index	Activity	Date	Responsibility	Funding
4 D 2	All recruits to sign a declaration that their recruitment is voluntary in the presence of the commanding officer of their basic training camp prior to commencement of training. the commanding officer to co-sign verifying that the recruit understood the declaration he is making	Policy introduced by 1 July 2012	MOD	MOD
4 D 3	Investigation to be undertaken in respect of any recruit declaring his recruitment involuntary with a summary report of the outcome of each such investigation submitted to the SWG	Ongoing	MOD	MOD
4 D 4	In the event that any declaration of voluntary recruitment is proven to have been gained by application of threat or physical assault or by trick, all responsible personnel will be the subject of criminal prosecution	Ongoing	MOD	MOD
4 D 5	Militia group leaders to be included in general and targeted awareness-raising seminars under Action Plan 1 with the approval of the government peace negotiating authorities	Ongoing	MOL/MOD/ILO	Each party covers own costs

4.E. Under-age (under 18 years) recruitment into defence services and militia

See separate Action Plan 5

4.F. Human trafficking for forced labour

4 F 1	ILO representative to be appointed to the COMMIT Task Force	By 1 July 2012	MoHA	Each party covers own costs
4 F 2	Trafficking for forced labour complaints received under the SU to be received by the government WG for the elimination of forced labour and referred to the anti-human trafficking WG for investigation with outcomes being reported back	By 1 July 2012	SWG/AHTTF	Each party covers own costs
4 F 3	Activities under this strategy related or connected to human trafficking for forced labour and under-age recruitment to be integrated into the anti-human trafficking action plan	By 1 November 2012	AHTTF/MOL/ILO	Each party covers own costs

4.G. Forced/bonded child labour

4 G 1	Announcement of Government's consideration for the ratification of Convention No. 182 on the worst forms of child labour	By 1 September 2012	MOL/GoRUM/MOL/ Attorney-General's Office/ MoSW	
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Action Plan 4. Specific activities in policy areas and categories of work identified as actual or potential causes of the use of forced labour
Objective – To provide for sustainable policy and sound practice without recourse to forced labour

Index	Activity	Date	Responsibility	Funding
4 G 2	Consideration be given to the introduction of an International Programme for the Elimination of Child Labour (IPEC) project in Myanmar based on IPEC-provided concept documentation to support the Government in addressing the worst forms of child labour	Concept document provided by IPEC by 31 December 2012	MOL/ILO-IPEC	Subject to agreed position and availability of finance
4 G 3	Awareness-raising activity and media activity under Action Plan 1 to include specific information on forced child and bonded labour	Ongoing	MOL/ILO/Min. of INFO	As per general awareness raising
4.H. Forced labour in the private sector including in domestic work				
4 H 1	Workshops with RUMFCCI and registered employer organizations nationally and regionally	Commencing 1 October 2012 and ongoing as required	ILO/MOL	Each party covers own costs
4 H 2	Workshops with registered workers' organizations nationally and regionally	Commencing 1 January 2013 and ongoing as required	ILO/MOL	Each party covers own costs
4 H 3	Awareness-raising activity and media activity under Action Plan 1 to include specific information on forced labour in the domestic sector	Ongoing	MOL/ILO/Min. of INFO	As per general awareness raising
4.I. The use, by the defence service, of civilian (or convict) porters particularly in conflict zones				
4 I 1	The policy for the non-use of civilians as porters in conflict zones be confirmed with all operational units, publicized and strictly enforced	Immediate and ongoing	MOD	MOD
4 I 2	Practical guidance for the voluntary contracting of civilian porters and/or civilian modes of transport for the transportation of supplies and equipment in non-conflict environments provided to operational units	By 1 October 2012	MOD	MOD/GoRUM
4 I 3	The policy for the non-use of convicted convicts as porters in both conflict and non-conflict zones be confirmed and applied	Immediate and ongoing	MOD	MOD
4 I 4	The draft Prisons Act incorporating the proposals out of consultation undertaken with ILO experts to ensure compliance with Convention No. 29 and incorporating inputs from other international organizations to ensure compliance with international standards be enacted	As soon as possible and after appropriate consultation.	MoHA/GoRUM	Each party covers own costs

Action Plan 4. Specific activities in policy areas and categories of work identified as actual or potential causes of the use of forced labour
Objective – To provide for sustainable policy and sound practice without recourse to forced labour

Index	Activity	Date	Responsibility	Funding
4.J. The forced use by the defence services and civilian authorities of civilians on guard and/or sentry duty				
4 J 1	The principle that civilians shall not be forced to undertake work in support of military activity be formally confirmed with appropriate instructions issued and publicized noting the definition of forced labour contained in the Ward and Village Tract Administration Act and the exemptions thereto	By 1 October 2012	MOD/Min. of INFO	Each party covers own costs
4 J 2	Practical guidance be available to operational units and local authorities for the voluntary contracting of civilians to undertake military and community support activities including sentry or guard duty in non-conflict environments	By 1 October 2012	MOD/MoHA	Each party covers own costs
4 J 3	Persons accused of breach of the above principle to be the subject of criminal forced labour prosecution	Ongoing	MOD/police	Each party covers own costs
4 J 4	SWG guidelines on the difference between forced labour and voluntary community work be developed and distributed to all township, ward and village tract administrators	By 1 December 2012	ILO/SWG/MoHA	GoRUM – supported by donor funding as available
4.K. Forced labour imposed through land acquisition/confiscation activity				
4 K 1	Support to be provided for the ongoing development and application of the Agricultural Land Law and Fallow Land and Waste Land Management Law providing enhanced security of land users' rights	Immediate and ongoing	SWG	Each party covers own costs
4 K 2	Policy for the payment of realistic compensation or provision of alternative land use rights in cases of authorized land acquisition be confirmed, with instructions issued and publicized	1 August 2012	Relevant government authorities with the support of the SWG	Each party covers own costs
4 K 3	Policy confirmation and distribution of publicized instructions recognizing that the acquisition of land by and for any party with the subsequent imposition of rent, in cash or kind, on the traditional occupier under threat of losing traditional land usage rights constitutes forced labour	1 August 2012	Relevant government authorities with the support of the SWG	Each party covers own costs

Action Plan 4. Specific activities in policy areas and categories of work identified as actual or potential causes of the use of forced labour

Objective – To provide for sustainable policy and sound practice without recourse to forced labour

Index	Activity	Date	Responsibility	Funding
4.L. Forced labour associated with the Ministry of Defence self-sufficiency policy				
Operational modality – In addressing this issue the agreed objective of the parties is to facilitate the provision of the necessary practical support and assistance required for the efficient operation of Government/Ministry of Defence policy within the framework of Myanmar law, fully recognizing the legitimacy of the self-sufficiency principle				
4 L 1	Procedures ensuring ongoing efficient operations which comply with both Myanmar law and international obligations under Convention No. 29 developed with necessary implementation support	By 1 March 2013 and ongoing	MOD/ILO/MOL	GoRUM – supported by donor funding as available
4.M. Forced labour in association with the construction and/or maintenance of military camps				
4 M 1	Specific instructions to be issued on recruitment process for camp construction/maintenance activity incorporating definition of forced labour and confirming its use as a criminal offence subject to prosecution	By 1 September 2012	MOD/ILO/MOL	MOD
4 M 2	Promulgation of policy that civilians not to be engaged for any duties including camp construction, maintenance or fortification in conflict zones in association with instruction under 4 L 1 above	Immediate and ongoing	MOD	MOD
4 M 3	The contracting of civilian workers for camp construction, maintenance or fortification work shall be contingent on sufficient funds being available for their engagement	By 1 October 2012	MOD	MOD/GoRUM

Action Plan 5. Forced labour by way of under-age (under 18) recruitment into the defence services and militia including support for the final agreement and implementation of a joint action plan in respect of children in armed conflict (Security Council Res 1612)

Operational modality – Under-age recruitment by definition is forced labour in the context of Convention No. 29 – as such complaints received under the SU alleging under-age recruitment are and continue to be receivable. Child soldiers in the context of Res 1612 includes the recruitment and/or use of children under 18 years of age in the military. The GoRUM is negotiating a joint action plan with the Country Task Force for Monitoring and Reporting (CTFMR) under Res 1612 towards ensuring compliance with international obligations and subsequent delisting. The ILO is a member of the CTFMR. On this basis the operation of the SU will serve to inform the CTFMR activities and support the implementation of the 1612 Joint Action Plan with both procedures operating in parallel on an added value basis. Such an approach will support enhanced awareness-raising programmes, support consistent application of Government policy and provide necessary accountability responses towards both the stopping of the practice of under-age recruitment and the Tatmadaw subsequent delisting

Index	Activity	Date	Responsibility	Funding
5.1	Support the early conclusion of a comprehensive Res 1612 Joint Action Plan (JAP)	(Target date for signing 30 June 2012)	SWG	Each party covers own costs
5.2	Modality for communication/coordination/cooperation between SWG and 1612 JAP Structure developed	Within 60 days of signing of 1612 JAP	SWG/JAP Mgt. Body	Each party covers own costs
5.3	Analysis of ILO case register identifying recruitment practices and procedures associated with under-age recruitment completed	By 1 September 2012	ILO	ILO
5.4	Consultation on findings from analysis (see 5.3 above) undertaken towards development and promulgation of alternative practices and procedures	By 1 December 2012	SWG	Each party covers own costs
5.5	Analysis of ILO case register identifying practices and procedures associated with the arrest and prosecution of under-age recruits completed	By 1 September 2012	ILO	ILO
5.6	Consultation on findings from analysis (see 5.5 above) undertaken towards development and promulgation of alternative practices and procedures	By 1 December 2012	SWG	Each party covers own costs
5.7	Identify current or ex-military personnel serving prison sentences for the production of a schedule listing those recruited under age	By 1 December 2012	MOD/MoHA/SWG	MOD
5.8	Consultation on findings from review (see 5.7 above) undertaken, including schedule verification as required, towards initiating individual review of prosecution validity	By 1 February 2013	SWG	Each party covers own costs
5.9	As part of the review under 2.3 above, review cases submitted, four months and older, towards their movement to satisfactory closure	ILO list submitted by 1 August 2012 to the SWG to review progress no later than 1 December 2012	ILO/MOD/SWG	Each party carries own costs

Action Plan 5. Forced labour by way of under-age (under 18) recruitment into the defence services and militia including support for the final agreement and implementation of a joint action plan in respect of children in armed conflict (Security Council Res 1612)

Operational modality – Under-age recruitment by definition is forced labour in the context of Convention No. 29 – as such complaints received under the SU alleging under-age recruitment are and continue to be receivable. Child soldiers in the context of Res 1612 includes the recruitment and/or use of children under 18 years of age in the military. The GoRUM is negotiating a joint action plan with the Country Task Force for Monitoring and Reporting (CTFMR) under Res 1612 towards ensuring compliance with international obligations and subsequent delisting. The ILO is a member of the CTFMR. On this basis the operation of the SU will serve to inform the CTFMR activities and support the implementation of the 1612 Joint Action Plan with both procedures operating in parallel on an added value basis. Such an approach will support enhanced awareness-raising programmes, support consistent application of Government policy and provide necessary accountability responses towards both the stopping of the practice of under-age recruitment and the Tatmadaw subsequent delisting

Index	Activity	Date	Responsibility	Funding
5.10	On-site meetings held and troop inspections undertaken with listed militias for awareness and intervention purposes with the approval of the Government's peace negotiating authorities	By 1 October 2012 and ongoing	MOD/ILO/MOL	Each party carries own costs

Action Plan 6. Support for the justice system (civilian and military) and other institutions such as parliamentary commissions/committees and the National Human Rights Commission in the evolution of their roles particularly in the context of the continued development and enforcement of legislation and policy against the use of forced labour

Objective – To ensure that policy and legislation continues to comply with the constitution, Convention No. 29 and other relevant international instruments and to support citizens rights through rule of law

Index	Activity	Date	Responsibility	Funding
6.1	Continuation of joint presentations to judges and trainee judges in-service training sessions (see 1.3.7 above)	Ongoing	Supreme Court/MOL/ILO	Each party carries own costs
6.2	In conjunction with 1.3.6 above, introduce joint presentations to military officers in respect of their responsibilities in conducting summary trials	1 September 2012 and ongoing	Judge Advocates Office/MOL/ILO	Each party carries own costs
6.3	Modality for consultation between the responsible drafting authority/body and the SWG to support the development of policy and drafting of legislation/regulation with direct or indirect forced labour implications be established	1 February 2013	GoRUM/SWG	Each party carries own costs
6.4	A register of forced labour prosecutions, both military and civil, be developed, maintained and reviewed on a quarterly basis to identify areas of further training needs and/or necessary intervention	1 July 2012 and ongoing	MOL/ILO supported by Supreme Court and Advocate-General's Office	Each party carries own costs
6.5	Modality for cooperation, information sharing and process knowledge transfer in respect to the operation of their parallel complaints mechanisms be established between the SWG and the National Human Rights Commission	1 December 2012 and ongoing	SWG/National Human Rights Commission	Each party carries own costs

Action Plan 7. Providing assistance in poverty reduction and employment creation in the border areas where peace agreements have been achieved through good employment practice modelling

Objective – To ensure that the parties to ceasefire and/or peace agreements respect the laws against the use of forced labour, and through community led labour-intensive infrastructure programming support post-conflict rural community development encompassing ex-combatant reintegration, job creation, small and medium enterprise development, vocational skills transfer and access to markets whilst providing good practice modelling against the use of forced labour. The activities below being subject of approval by the Government's peace negotiating authorities

Index	Activity	Date	Responsibility	Funding
7.1	Location of potential pilot project locations in Karen State to be identified	By 1 August 2012	ILO, in consultation with SWG, the parties to ceasefire/peace agreements, and other relevant national and international stakeholders with approval of the Government's peace negotiating authorities	ILO subject to donor fund
7.2	Location of potential pilot project locations in Shan State to be identified	By 1 August 2012	ILO and United Nations Office on Drugs and Crime (UNODC) in consultation with SWG, parties to peace agreements, and other relevant national and international stakeholders with approval of the Government's peace negotiating authorities	ILO subject to donor fund
7.3	Consultation with local communities in respect of 7.1 and 7.2 above undertaken to identify project parameters	By 1 September 2012	ILO in Karen and ILO/UNODC in Shan in consultation with other parties planning any parallel projects so as to maximize added value	ILO subject to donor fund
7.4	Project proposals for funding support developed and submitted to potential donors	By 1 October 2012	ILO in respect of Karen and UNODC/ILO in Shan	Each party carries own costs
7.5	Preparation, planning and initial orientation/training of selected local communities undertaken	Between 1 October 2012 and 30 November 2012	ILO in respect of Karen and ODC/ILO in Shan	Each party carries own costs

Action Plan 7. Providing assistance in poverty reduction and employment creation in the border areas where peace agreements have been achieved through good employment practice modelling

Objective – To ensure that the parties to ceasefire and/or peace agreements respect the laws against the use of forced labour, and through community led labour-intensive infrastructure programming support post-conflict rural community development encompassing ex-combatant reintegration, job creation, small and medium enterprise development, vocational skills transfer and access to markets whilst providing good practice modelling against the use of forced labour. The activities below being subject of approval by the Government's peace negotiating authorities

Index	Activity	Date	Responsibility	Funding
7.6	Project work commences	1 December 2012 or as soon as possible thereafter	ILO in respect of Karen and UNODC/ILO in Shan	Subject to project approval and availability of donor funds
7.7	Schedule for joint workshops with parties to ceasefire groups/parties to peace agreements agreed and commenced – beginning with those related to project areas identified in the context of 7.1 and 7.2 above	1 August 2012 and ongoing	MOL/ILO	Subject to donor funding support

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