



## Governing Body

312th Session, Geneva, November 2011

GB.312/INS/7

Institutional Section

INS

### SEVENTH ITEM ON THE AGENDA

## **Complaint concerning the non-observance by Myanmar of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), made by delegates to the 99th Session (June 2010) of the International Labour Conference under article 26 of the ILO Constitution**

### Overview

#### Summary

This document provides information on the developments in the review of the application of Convention No. 87 in Myanmar by the ILO supervisory bodies and the follow-up given to the Governing Body's decision on this matter when it last reviewed the article 26 complaint at its 310th Session in March 2011.

#### Policy implications

Depending on the decision taken.

#### Legal implications

Yes, depending on the decision taken.

#### Financial implications

The cost of an eventual Commission of Inquiry was approved by the Governing Body in March 2011. (See GB.310/PV, para. 140).

#### Decision required

Paragraph 6.

#### Follow-up action required

Depending on the decision taken.

**Author unit**

International Labour Standards Department (NORMES).

**References to other Governing Body documents and ILO instruments**

GB.309/7, GB.309/PV, GB.310/PV. Governing Body members may find reference to document GB.312/INS/6 useful to their overall consideration.

## Background

1. At its 309th Session (November 2010), the Governing Body decided on the admissibility of a complaint concerning the non-observance by Myanmar of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), made by some Workers' delegates to the 99th Session (2010) of the International Labour Conference and requested the Director-General to invite the Government of Myanmar to transmit its observations for the Governing Body's consideration as to the question of the appointment of a Commission of Inquiry at its 310th Session (March 2011).<sup>1</sup>
2. After considering the initial allegations in the article 26 complaint and the observations of the Government of Myanmar dated 18 January 2011 at its 310th Session, the Governing Body made the following decisions:
  - (a) to request the Government of Myanmar to transmit to the Office, without delay, the draft law on labour organizations currently under preparation so as to allow a full and meaningful consultation; and
  - (b) to defer a decision on the appointment of a Commission of Inquiry to its 312th Session (November 2011).<sup>2</sup>
3. Since the adoption of those decisions, the Conference Committee on the Application of Standards had an opportunity to review the question of the application of Convention No. 87 in Myanmar during the 100th Session of the International Labour Conference (June 2011). In its conclusions, that were endorsed by the Conference, the Committee highlighted the intrinsic link between freedom of association and democracy and called upon the Government to take steps to ensure the full and genuine participation of all sectors of society, regardless of their political views, in the review of the legislative framework and practice so as to bring them fully into line with the Convention without delay. The Committee called upon the Government to ensure the immediate release of Thurein Aung, Wai Lin, Nyi Nyi Zaw, Kyaw Kyaw, Kyaw Win and Myo Min, as well as other persons detained for exercising their basic civil liberties and freedom of association rights. The Committee further recalled the link between lack of freedom of association and forced labour and reiterated its previous request to the Government to accept an extension of the ILO presence to cover the matters relating to Convention No. 87 and to establish a complaints mechanism for violation of trade union rights. Finally, the Committee urged the Government to transmit to the ILO the draft law on Labour Organizations and called upon it to take the steps that would enable the Governing Body to be in a position to observe significant progress on all of the matters raised before it at its November session.<sup>3</sup>

## Further developments

4. In July 2011, the Government of Myanmar invited specialists from the ILO to undertake a mission to the country to discuss in detail the draft law on labour organizations. This mission took place from 23 to 27 July 2011 and was led by the Deputy Director of the International Labour Standards Department responsible for freedom of association,

<sup>1</sup> See GB.309/PV, para. 238 and GB.309/7.

<sup>2</sup> See GB.310/PV, para. 85.

<sup>3</sup> See *Provisional Record* No. 18, International Labour Conference, 100th Session, Geneva, Part 1, paras 192–201 and 207–208.

accompanied by the Senior Standards Specialist for Asia and the Pacific and the ILO Liaison Officer and Deputy Liaison Officer.

5. The mission was provided with a copy of the draft law on labour organizations and was able to work intensively with the Government officials, reviewing draft provisions and making suggestions based on established jurisprudence of the ILO supervisory bodies. The ILO has been informed that a text of the draft law, including changes discussed with the mission, were approved by the Cabinet of the President, as well as the Amyotha Hluttaw (Upper House) and Pyithu Hluttaw (Peoples Parliament) and at the time of writing is with the Patron of the Pyidaungsu Hluttaw (Union Parliament) for presentation to the President for signature. In a communication dated 31 August 2011, the Government has indicated that the text has now been gazetted and is in the public domain.<sup>4</sup> Subject to any decision to be taken by the Governing Body on this matter, the abovementioned text will be submitted to the Committee of Experts on the Application of Conventions and Recommendations for consideration of its conformity with the provisions of Convention No. 87.
  
6. *The Governing Body may wish to consider whether, in the light of the information available, it wishes to institute the procedure provided for in article 26, paragraph 4, of the Constitution and, consequently, proceed to appoint a Commission of Inquiry to consider the allegations in the complaint referred to in paragraph 1 above.*

Geneva, 6 October 2011

*Point for decision:* Paragraph 6

<sup>4</sup> The draft, as introduced into Parliament, may be found on the Governing Body website.