



Governing Body

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Institutional Section

INS

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SEVENTH ITEM ON THE AGENDA

Follow-up to the resolution concerning remaining measures on the subject of Myanmar adopted by the Conference at its 102nd Session (2013)

Purpose of the document

The document provides an update on ILO activities in Myanmar as required by the resolution adopted by the International Labour Conference at its 102nd Session (2013).

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

Policy implications: None.

Legal implications: None.

Financial implications: None.

Follow-up action required: Ongoing application of the ILO programme of work.

Author unit: Liaison Office in Myanmar.

Related documents: Resolution concerning remaining measures on the subject of Myanmar adopted under article 33 of the ILO Constitution, adopted by the Conference at its 102nd Session (2013).

1. The Governing Body at its 323rd Session (March 2015) adopted the following decision:

The Governing Body noted that while progress had been made, a number of fundamental activities required under the Action Plan for the Elimination of Forced Labour in Myanmar by 2015 had not yet been implemented.

In that context the Governing Body:

- (a) requested the Director-General to prepare a report for consideration at the 325th Session of the Governing Body (November 2015) on the implementation and possible need for extension of the Action Plan, the status of any outstanding individual cases including those specifically referred to in the report, and steps necessary to ensure prosecution and accountability of those who had exacted forced labour; and
- (b) called on the Government of Myanmar to take all necessary actions to ensure compliance with the Forced Labour Convention, 1930 (No. 29), and requested the Government to submit, to the 325th Session of the Governing Body (November 2015), a report on the measures it would take to do so in the shortest possible time.

2. This report is presented in response to that decision and also in accordance with article 6 of the ILO–Government of Myanmar Supplementary Understanding, which provides that the Governing Body should receive a report at each of its sessions on progress in the operation of the complaints mechanism contained therein.

Background

3. Following numerous previous debates and in exercising due process the 268th Session of the Governing Body (March 1997) decided to set up a Commission of Inquiry under article 26, paragraph 4, of the ILO Constitution, concerning the systematic use of forced labour in Myanmar.

4. In 1998, an extensive report was received from the Commission of Inquiry and its recommendations, summarized below, were accepted:

- (a) that Myanmar National legislation be brought into line with Convention No. 29 without further delay, 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; that concrete action be taken immediately to stop the practice of all forms of forced labour; that public acts of the Executive be promulgated and made known to all levels of the military and to the whole population; that whilst ensuring that nobody is compelled to work against his or her will, national budgeting ensure that adequate means exist to hire free wage labour for the public activities; and
- (c) that the penalties which may be imposed for the exaction of forced labour be strictly enforced, with thorough investigation, prosecution and adequate punishment of those found guilty.

5. Owing to the refusal of the then of Myanmar to respond positively to these recommendations, two resolutions were passed by the International Labour Conference at its 87th (1999) and 88th (2000) Sessions, respectively.

6. The first resolution adopted in 1999 provided:

- (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.

7. The second resolution adopted in 2000, under article 33 of the Constitution, provided:

- (a) 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) 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) 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.

8. In 2002, an Understanding was agreed between the Government of Myanmar and the ILO that permitted the appointment of an ILO Liaison Officer in Myanmar who was tasked with supporting the Government in the elimination of forced labour and monitoring forced labour policy and practice within Myanmar.

9. In 2007, a Supplementary Understanding was agreed, which contained necessary procedures and protections for the operation of a forced labour complaints mechanism under which residents of Myanmar could complain to the Liaison Officer if their rights in respect to the imposition of forced labour were allegedly impinged. The Liaison Officer had the right to assess complaints and, if such assessment supported the allegation, to submit that case to the authorities for investigation and appropriate action under the law.

10. During the period 2007–11, complaints were received in increasing numbers each year as awareness of the complaints mechanism increased and confidence in its operation was

gained. A major awareness-raising programme was initiated and the beginnings of the application of justice were seen, both in respect of justice for the complainant(s) and accountability against perpetrators – particularly in respect of the military in its responses to underage recruitment complaints. However, in parallel, serious problems remained, with arrests, detentions and other retributive actions being taken against complainants and civil society members acting as voluntary complaints mechanism facilitators. During that period, none of the specific recommendations of the Commission of Inquiry were conclusively met.

- 11.** Within the framework of a newly adopted Constitution, and following the largely unopposed electoral success of the military-aligned Union Solidarity Development Party (USDP), a new civilian Government took office in March 2011. Under this structure the military retained significant influence on the governance of the country, with the Commander-in-Chief having constitutional responsibility for directly appointing serving officers to 25 per cent of the parliamentary seats in both National Houses of Parliament and all 14 state/regional Parliaments, appointing one of the national vice-presidents, and appointing serving officers as the ministers of three key ministries: defence, home affairs, and border affairs.
- 12.** The new Government immediately embarked on a major multifaceted reform programme, encompassing the introduction of more democratically based political governance systems, the opening of the economy, the acceptance and strengthening of civil society and the expansion of social policy, and the modernization of public administration structures. The Government's expressed strategy was to achieve an open, transparent economic and social environment, which was people-centred and focused on poverty eradication through rural development.
- 13.** The new programme saw the introduction of limited democratic freedoms, including freedom of the press, freedom of speech, freedom of peaceful assembly and procession and, with the passing of the Labour Organizations Law in 2012, the introduction of freedom of association with associated rights to collectively bargain and to strike/lockout.
- 14.** On 28 March 2012, the Parliament enacted the Ward and Village Tract Administration Amendment Law, which made the use of forced labour, by any party, a criminal offence punishable under the Penal Code. The law contains a definition of forced labour that is drawn from the text of ILO Convention No. 29. The new legislation also repeals all previous laws concerning the use of forced labour.
- 15.** In March 2012, a Memorandum of Understanding was reached between the Government of Myanmar and the ILO, agreeing to a structured plan of action with the objective of achieving the elimination of all forms of forced labour by 2015.
- 16.** In May 2013, President Thein Sein, at the Official May Day celebrations, made a public statement that was widely circulated in the official media, confirming the Government's non-acceptance of the use of forced labour in any of its forms, advising that to use it was a criminal offence, and that this law was of general application to all sectors of society, including the Government and the military.

Progress in the implementation of the Action Plan on the Elimination of Forced Labour by 2015

- 17.** A detailed report was submitted to the 323rd Session of the Governing Body.¹ The current report updates the Governing Body on the issues within that report and discusses additional elements that have arisen since March 2015.
- 18.** The number of complaints received under the complaints mechanism continues to be significant. In 2015, up to the end of August, a monthly average of 24.5 complaints, assessed as being within the mandate, were received – this compares to a monthly average of 33 received during 2014.
- 19.** The Office continues to receive reports indicating that the actual use of forced labour is decreasing overall, which suggests that the continued receipt of a relatively high number of complaints still reflects a continued growth in both awareness of the right to complain and confidence to lodge a complaint. However, it also reflects low levels of community trust and confidence in the national justice system, which causes the Office to believe that it is important, in the interests of both the complainants and the Government, for the Supplementary Understanding to be further extended in January 2016.
- 20.** While the Government has reconfirmed that appropriate budgeting provision is made to cover the cost of wages on public works, the Office continues to receive complaints against local authority personnel at village/township level alleging calls for one “volunteer” per family to support public works projects. This practice takes the form of forced labour with punishment if the demand is not met, resulting in a number of reported instances where children or the elderly are sent to do the “voluntary” work to avoid the imposition of a monetary fine on the family. It is unclear whether this is an indication of continued underfunding or a reflection of local-level corruption. Cases received on this issue continue to be in process so no definitive outcomes can be reported.
- 21.** With the signing of ceasefire agreements between the Government and some 13 non-state armed groups, and with the successful negotiation towards a nationwide ceasefire agreement, a significant reduction in the use of forced labour in conflict-affected areas has been seen. However, reports continue to be received of the use of forced labour in areas not as yet subject to an agreed ceasefire (predominantly in Katchin and Northern Shan States) and in areas where there is ongoing civil unrest (in particular Rakhine State).
- 22.** A significant number of complaints continue to be received concerning the loss of land. While some of these fall outside the mandate of the forced labour complaints mechanism, a number that are accepted as being within the mandate concern the loss of land owing to failure of the land holder to undertake forced labour.
- 23.** An increasing number of complaints are being received alleging forced labour in the private sector. These fall into three main categories: bonded labour (both adult and child); requirement to work excessive overtime (with or without compensation) at risk of losing the job; and trafficking for forced labour (including in domestic work). There continues to be a low level of awareness regarding the concept of forced labour in the private sector, with many people understanding it as a concept applicable only in the public sector. There is a tendency on the part of the authorities to see all such complaints as industrial or civil disputes, under which the principles of Convention No. 29 are not taken into consideration.

¹ GB.323/INS/4.

24. Awareness raising with all sectors of society remains a critical requirement. Although considerable work has been undertaken in cooperation with the Government, social partners and civil society, levels of awareness of rights and responsibilities in respect of the use of forced labour and knowledge of the existence of the ILO and Government complaint mechanisms remain relatively low. To rectify this, the Government has committed to the continued broadcast of radio and television awareness-raising clips, and discussions are under way, but not yet finalized, on the placement of billboards in strategic locations identified as forced labour hotspots. Three DVDs have been developed on different aspects of forced labour, which are shortly to be distributed through the ILO voluntary facilitators' network for use in local awareness-raising/training activities. Negotiations with the Government continue as to the adaption of at least one of these DVDs into documentary format for potential television broadcast.
25. On 19–20 August 2015, the ILO team, led by the Deputy Liaison Officer in cooperation with the Ministry of Labour, undertook the first training of trainers for 33 commissioned military officers.
26. In respect of accountability, the report to the 323rd Session (March 2015) of the Governing Body indicated that some 274 prosecutions, resulting in punishments ranging from the issuance of formal reprimands, monetary fines, demotion, loss of service time against promotion and pension rights, dishonourable discharge or imprisonment, have been made against military personnel in response to complaints under the Supplementary Understanding. Since then, advice has been received of the prosecution and conviction under summary trial of a further two commissioned officers and three other rank personnel. The commissioned officers received reprimands, two of the other rank personnel had a service reduction imposed and the third received a monetary fine.
27. The ILO has still received no information concerning the prosecution of any person under the forced labour provisions of the Ward or Village Tract Amendment Act 2012.
28. An apparent reluctance to bring a number of cases to final closure was reported to the 323rd Session of the Governing Body. This referred in particular to cases where farmers, having lost their land owing to their refusal to accept the imposition of forced labour, had been allowed to return to that land, but had not been granted official registration as occupier of that land, leaving them in a position of considerable vulnerability. Assurances have been made by the Forced Labour Working Group that this would be rectified. However, as yet this has not come to fruition.
29. In respect of the previously reported case of Air Force Captain Chit Ko, this person contacted the ILO by email in December 2011 enquiring as to the legality of a military practice that would not permit his resignation on completion of his contracted term of service. He was subsequently imprisoned for ten years in December 2012 on a charge of sending the ILO secret military information. On 25 June 2015, after repeated requests over some two years, the ILO Liaison Officer was granted permission to visit Captain Chit Ko in Insein Prison. The facts of the case were further verified and the ILO has as a consequence again raised the issue, seeking review of his case and his release from prison.

Summary

30. Considerable progress has been made, with recorded reductions in the actual use of forced labour since the Government took office in 2011, and particularly following the commencement of peace negotiations.

31. In response to the recommendations of the Commission of Inquiry, Myanmar domestic legislation has been brought into compliance with the provisions of Convention No. 29, a public statement has been made at the highest level confirming the Government's political commitment to achieve the elimination of all forms of forced labour, an extensive Government–ILO awareness-raising activity has been undertaken and continues, assurances have been received as to the policy of full budget provision for the undertaking of public works, and a substantial number of military personnel have been held to account for their continued use of forced labour.
32. However, complaints continue to be received under the Government–ILO complaints mechanism, including in respect of village and township level public works; awareness levels and understanding of concepts remain relatively low; and there is no evidence of commitment to accountability for breach of the law, other than in the case of the military.
33. This would suggest that, while high-level political commitment exists, there continue to be serious problems in respect of the application of that commitment at lower levels.
34. The Memorandum of Understanding and its associated Action Plan on the Elimination of Forced Labour by 2015 continue to be a key reference point to measure progress and to retain focus across all areas of the issue. While not all activities under the Action Plan have been completed, each area has been addressed. However, this has not, as yet, resulted in the behavioural change required at all levels to achieve the objective of the elimination of all forms of forced labour.

Draft decision

35. *The Governing Body, while noting with appreciation the reports received from both the Director-General and the Government of Myanmar and the progress made towards the elimination of all forms of forced labour, and also the fact that the use of forced labour in Myanmar continues and that a number of activities required to achieve the objective of the elimination of forced labour require further work, decides to:*
 - (a) *extend the Memorandum of Understanding for the elimination of the use of forced labour in Myanmar and its associated Action Plan for a further period of 12 months;*
 - (b) *continue providing its support to the Government of Myanmar towards the effective elimination of the systematic use of forced labour;*
 - (c) *extend the Supplementary Understanding encompassing the Government–ILO complaints mechanism for a further 12 months from January 2016 and to place emphasis during this extended period of operation on:*
 - (i) *the continuation and strengthening of awareness-raising activities;*
 - (ii) *the extension of accountability to the civil authorities and the private sector through the application of national law including the provisions of the Ward and/or Village Tract Amendment Act 2012;*
 - (iii) *the bringing of all outstanding cases to final closure;*
 - (iv) *the eventual transition of the operation of the complaints mechanism into a strengthened national justice system supported by the National Human Rights Commission operating as an independent entity.*