



FOR DEBATE AND GUIDANCE

EIGHTH ITEM ON THE AGENDA

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

Report of the Liaison Officer

Introduction

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

Functioning of the Supplementary Understanding

3. The Liaison Officer continues to receive complaints under the mechanism established by the Supplementary Understanding in February 2007. A copy of the case register summary as at 6 November 2008 is attached as an appendix. Altogether, 121 complaints have now been received. Of these, 70 have been assessed as falling within the forced labour definition and have been submitted to the Government Working Group for its attention and follow-up. Of the cases submitted (39 being individual under-age recruitment complaints and 31 being multiple complainant forced labour complaints), 50 have been responded to

¹ GB.301/6/2.

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

³ GB.301/6/2; GB.301/6.

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

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

⁴ GB.301/6/2.

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

The post-cyclone response

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

Concluding observations

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

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

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

Geneva, 7 November 2008.

Submitted for debate and guidance.

⁵ GB.303/8/1.

Appendix

Register of Cases

06-Nov-08		12:21:37 PM			
Case	Date received	Accepted	Intervention-date	Status	Comments
001	28-Feb-07	Yes	9-Mar-07	Closed	Prosecution- 2 x imprisonment 1x acquitted
002	28-Feb-07	Yes	29-May-07	Closed	Child Released, disciplinary action-formal reprimand
003	5-Mar-07	No		Closed	Not related to mandate (worker welfare issue).
004	13-Mar-07	Yes	20-Mar-07	Closed	Not forced recruitment-under age-discharged to parents
005	29-Mar-07	No		Closed	Not related to mandate (land issue).
006	6-Apr-07	No		Closed	Not related to mandate (pension issue).
007	6-Apr-07	No		Closed	Not related to mandate (pension issue).
008	6-Apr-07	Yes	16-May-07	Closed	Compensation paid. Instigator dismissed.
009	9-Apr-07	Yes	10-Apr-07	Closed	Civil Sanctions and reprimands
010	9-Apr-07	No		Closed	Insufficient basis to proceed at this stage.
011	19-Apr-07	No		Closed	Insufficient information at this stage
012	19-Apr-07	No		Closed	Not related to mandate (employment dispute).
013	23-Apr-07	No		Closed	Complaints unwilling to be identified
014	23-Apr-07	No		Closed	Complaints unwilling to be identified
015	23-Apr-07	Yes	16-May-07	Open	Communication ongoing
016	25-Apr-07	No		Closed	Not related to mandate (employment dispute).
017	26-Apr-07	Yes	22-Aug-07	Closed	Administrative instructions issued and educative activity undertaken .
018	9-May-07	Yes	22-May-07	Closed	Military Officer disciplined-joint training seminar undertaken
019	9-May-07	No		Closed	Not related to mandate (property dispute).
020	9-May-07	No		Closed	Insufficient basis to proceed.
021	9-May-07	Yes	10-May-07	Closed	Victim discharged to parents-disciplinary action as the result of Military Enquiry inadequate.
022	18-May-07	No		Closed	No evidence that the work constituted forced labour
023	18-May-07	Yes	23-May-07	Closed	Field Visit, Education activity undertaken
024	25-May-07	No		Closed	Insufficient information to proceed
025	22-Jun-07	Yes	14-Aug-07	Closed	4 officials dismissed, administrative instructions re-issued
026	26-Jun-07	Yes	13-Aug-07	Closed	Local Authorities instructional activity undertaken.
027	28-Jun-07	No		Closed	Not related to mandate-Pension/gratuity matter
028	7-Jun-07	No		Closed	Not related to mandate-Pensions matter
029	14-Jun-07	Yes	2-Aug-07	Closed	Village Chairman dismissed.
030	31-Jul-07	Yes	31-Jul-07	Closed	Child released-summary military trial-recruiting officer disciplined
031	25-Jun-07	No		Closed	Not related to mandate-Mass termination
032	29-Jun-07	No		Closed	Not related to mandate-land confiscation
033	6-Jul-07	Yes	9-Aug-07	Closed	Child Released, Training seminar proposed and undertaken
034	12-Jul-07	No		Closed	Not related to mandate-hours of work/ Overtime issue
035	23-Jul-07	Yes	17-Aug-07	Closed	Gvt instructions issued, retrospective remuneration paid, Joint field trip for awareness education undertaken
036	24-Jul-07	No		Closed	Insufficient basis to proceed at this stage.
037	29-Jun-07	No		Closed	Not related to mandate-migrant worker/payment of wages
038	25-Jul-07	No		Closed	Not related to mandate-termination of employment issue
039	12-Jun-07	No		Closed	Insufficient basis on which to proceed.
040	31-Jul-07	Pending		Pending	Assessment in process.
041	6-Aug-07	No		Closed	Not related to mandate-termination grievance
042	7-Aug-07	Yes	8-Aug-07	Closed	Not within mandate of forced labour SU-Issue of FOA remains.
043	15-Aug-07	Yes	16-Aug-07	Closed	Child Released, disciplinary action as the result of Military Enquiry inadequate.
044	16-Aug-07	No		Closed	Not related to mandate-wages/fees payment issue
045	20-Aug-07	Yes	10-Sep-07	Closed	New instructions issued.
046	24-Aug-07	No		Closed	Not related to mandate-commercial dispute
047	27-Aug-07	Yes	12-Sep-07	Closed	Joint-mission undertaken, village chairman dismissed, military officer reprimanded, practice stopped.
048	7-Sep-07	No		Closed	Insufficient evidence to proceed
049	7-Sep-07	Yes	19-Dec-07	Closed	Compensation package. One perpetrator demoted. Recommendation on policy review made.
050	14-Sep-07	Yes	20-Sep-07	Closed	Child released-Military enquiry resulted in disciplinary reprimand.
051	20-Sep-07	Yes	25-Feb-08	Closed	Practice of forced labour ceased, awareness raising undertaken
052	20-Sep-07	Yes	22-Feb-08	Open	Government response received, further ILO recommendation made, response awaited.
053	10-Oct-07	Yes	9-Nov-07	Closed	Responsible officer disciplined, practice stopped, joint awareness raising mission agreed.
054	17-Oct-07	Yes	18-Oct-07	Open	Clause 9 breach-negotiation continues, Su Su Nway, Min Aung, Thet Way remain in prison
055	19-Oct-07	Yes	31-Oct-07	Closed	Child released-Military enquiry resulted in disciplinary reprimand.
056	25-Oct-07	Yes	09-Nov-07	Closed	Child released-Military enquiry resulted in disciplinary reprimand.
057	7-Nov-07	No		Closed	Not related to mandate - cross-border trafficking & HIV and AIDS
058	15-Nov-07	Yes	23-Nov-07	Closed	Child released-summary military trial-recruiting officer disciplined

Register of Cases

06-Nov-08

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Case	Date received	Accepted	Intervention-date	Status	Comments
059	15-Nov-07	Yes	30-Nov-07	Closed	Official translation approved
060	19-Nov-07	No		Closed	Not related to mandate - wages claim issue
061	17-Dec-07	Yes	19-Dec-07	Open	Agreed to discharge, Victim left country, negotiations continue
062	20-Dec-07	Yes	28-Dec-07	Closed	Victim discharged to custody of parents. Responsible recruiting officer officially reprimanded.
063	7-Dec-08	Yes	14-Jan-08	Closed	Victim discharged, recruiting officer reprimanded, instruction on humane treatment of trainees issued. Ongoing procedure recommendation made.
064	7-Dec-08	Yes	11-Feb-08	Closed	Sentence remitted, victim discharged from military to care of family.
065	08-Jan-08	No		Closed	Not related to mandate-corruption allegation
066	14-Jan-08	Yes	22-Feb-08	Open	Initial response received, ILO proposed joint mission, Government response awaited.
067	16-Jan-08	No		Closed	Not within mandate of forced labour, land confiscation
068	16-Jan-08	Yes	25-Feb-08	Closed	Official dismissed, education activity undertaken, ongoing situation to be monitored
069	31-Jan-08	Yes	25-Feb-08	Closed	Closed in association with Case 051 following assessment mission
070	6-Feb-08	Yes	12-Feb-08	Closed	Victim discharged, recommendation on proof of age documentation procedure made.
071	29-Jan-08	No		Closed	Not related to mandate - compensation for damaged crop
072	30-Jan-08	Yes	11-Mar-08	Closed	Awareness raising activity undertaken
073	20-Feb-08	Yes	3-Mar-08	Open	Government response received, disciplinary action inadequate, negotiations continue
074	21-Feb-08	No		Closed	Insufficient basis to proceed.
075	03-Mar-08	Yes	11-Mar-08	Closed	Victim discharged, responsible officer reprimanded, Government investigation to locate broker continues
076	03-Mar-08	Yes	10-Mar-08	Closed	Child discharged - recruitment officer reprimanded. Victim admits voluntary recruitment - referred to UNICEF for reintegration
077	5-Mar-08	No		Closed	Not within SU mandate -FOA issue subject to separate consideration
078	5-Mar-08	No		Closed	Not within SU mandate -FOA issue subject to separate consideration
079	14-Mar-08	No		Closed	Not within SU mandate -FOA issue subject to separate consideration
080	14-Mar-08	Yes	08-Apr-08	Closed	Associate with Case 068, ongoing situation to be monitored
081	17-Mar-08	No		Closed	Not related to mandate-labour market dispute
082	17-Mar-08	No		Closed	Complainants unwilling to be identified
083	20-Mar-08	Yes	08-Apr-08	Closed	Victim discharged. Recruiting officer seriously reprimanded, disciplinary response considered inadequate
084	26-Mar-08	No		Closed	Being dealt with in context of Case 015
085	28-Mar-08	No	02-Aug-08	Closed	This case is being dealt with under Case 066
086	28-Mar-08	Yes	07-Apr-08	Closed	Victim discharged to care of parents. Responsible senior officer reprimanded. Disciplinary action considered inadequate.
087	11-Apr-08	Yes	11-Apr-08	Closed	Child discharged - recruitment officer reprimanded.
088	22-Apr-08	Yes	16-Jun-08	Closed	Child discharged
089	19-May-08	Yes	20-Jun-08	Closed	Victim discharged, charge dropped, responsible officer reprimanded
090	20-May-08	Yes	17-Jul-08	Open	Awaiting Government response
091	23-May-08	No		Closed	Complaint withdrawn.
092	27-May-08	No		Closed	Not related to the mandate- labour dispute
093	28-May-08	Yes	16-Jun-08	Closed	Victim discharged, responsible officer reprimanded.
094	28-May-08	Yes	02-Sep-08	Closed	Division wide joint training seminar for civilian, judicial, police and army authorities undertaken
095	11-Jun-08	No		Closed	Not related to mandate - land confiscation
096	11-Jun-08	Yes	14-Jul-08	Closed	Victim discharged, two officers responsible disciplined. One with 28 days salary deduction and one with 14 days-salary deduction and a serious reprove.
097	14-Jun-08	Yes	20-Jun-08	Closed	Child discharged - recruitment officer reprimanded
098	15-Jun-08	Yes	17-Jun-08	Open	Government response received, communication continues
099	18-Jun-08	Yes	24-Jun-08	Open	Victim arrested post complaint, awaiting Government response.
100	23-Jun-08	Yes	09-Oct-08	Open	Awaiting Government response
101	02-Jul-08	Yes	09-Oct-08	Open	Awaiting Government response
102	11-Jul-08	No		Closed	Insufficient evidence to proceed
103	16-Jul-08	Yes	18-Jul-08	Closed	Victim discharged to care of the parents
104	17-Jul-08	Yes	21-Jul-08	Open	Awaiting Government response
105	21-Jul-08	Yes	24-Jul-08	Closed	Child discharged - recruitment officer disciplined by the loss of 28 days salary
106	31-Jul-08	Yes	31-Jul-08	Closed	Community work-related. Government guidance distributed through General Administration Department as to appropriate approach to be adopted
107	28-Jul-08	Yes	04-Aug-08	Closed	Victim discharged, perpetrator fined 28 days-salary

Register of Cases

06-Nov-08

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Case	Date received	Accepted	Intervention-date	Status	Comments
108	29-Jul-08	Yes	28-Aug-08	Open	Government response received, further ILO recommendation made, response awaited.
109	11-Aug-08	Yes	23-Oct-08	Open	Alleged serious harrassment. 3 complainants and facilitator arrested. Awaiting Governmer response.
110	13-Aug-08	Yes	10-Oct-08	Open	Awaiting Government response
111	14-Aug-08	Yes	21-Aug-08	Open	Government response received, victim not located, further investigation proposed.
112	19-Sep-08	Yes	29-Sep-08	Open	Awaiting Government response
113	24-Sep-08	Pending		Pending	Awaiting parental approval to proceed
114	25-Sep-08	Yes	29.Oct.08	Open	Awaiting Government response
115	26-Sep-08	Yes	29.Oct.08	Open	Awaiting Government response
116	01-Oct-08	Pending		Pending	Further info. being sought.
117	01-Oct-08	Pending		Pending	Assessment in process.
118	01-Oct-08	No		Closed	Not within SU mandate - Industrial dispute
119	22-Oct-08	Yes	22-Oct-08	Open	Verification of facts underway - Government advised
120	30-Oct-08	Yes	06-Nov-08	Open	Awaiting Government response
121	04-Nov-08	Pending		Pending	Assessment in process.