

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

Myanmar (ratification: 1955)

MYANMAR (ratification: 1955)

[extracted from Provisional Record 16 (part 2) of the 99th Session of the International Labour Conference, June 2010. The full document can be found at

http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_141871.pdf

The debate took place on 17 June 2010]

A Government representative stated that Myanmar was fully cognizant of its obligations under Convention No. 87. During the visit of the ILO Executive Director for Standards and Fundamental Principles and Rights at Work to Myanmar earlier in 2010, the Government Working Group had had the opportunity to discuss with the Deputy Director of the International Labour Standards Department matters relating to freedom of association, particularly in the process of drafting legislation for the formation of workers' organizations. The drafting process would be based on three pillars: the new Constitution of Myanmar, continued assistance and advice from the International Labour Standards Department and the Convention itself.

Citizens' rights were guaranteed in the new Constitution under Chapter VIII on Citizenship, Fundamental Rights and Duties of Citizens. Citizens' rights included the right to express their convictions and opinions freely, the right to assemble peacefully and the right to form associations and organizations. There could be no doubt that workers' organizations would soon come into existence once the new Constitution came into legal effect. Myanmar was in transition and was in the process of being transformed into a democratic society. Even at this critical juncture, all efforts were being made in order to lay the foundations for observance of Convention No. 87. After the elections scheduled for later in 2010, the *Pyidaungsu Hluttaw* (parliament, which would comprise two houses: *Amyotha Hluttaw* and *Pyithu Hluttaw*) would be formed. In accordance with the Constitution, draft legislation to implement the Convention would be presented to the *Pyidaungsu Hluttaw*. This was just a matter of time. In this legal process, promulgated laws that were not contrary to the Constitution would remain in force unless they were repealed or amended. The Constitution, as in all countries,

was the supreme law of the land. This process, however, would not open the door to any unlawful association or terrorist organization. There was no place for them.

With regard to the alleged cases of grave violations mentioned by the Committee of Experts in its report, the Government had provided written information on previous occasions. The speaker reiterated that no one had been or was apprehended in Myanmar for their implicit or explicit exercise of rights that might derive from the Convention. However, the rights that might derive from the Convention could not be abused or used as a pretext to violate the law. Any person who violated the law would be dealt with according to the law.

In conclusion, the speaker noted that the situation of the observance of Convention No. 87 by Myanmar did not warrant any urgent attention by the ILO. It would be misleading to listen to some quarters that wanted to exploit the current, important political process of Myanmar to their advantage, for personal motives. The ILO should not be seen by the outside world as a platform to meet the political objectives of some on the pretext of workers' rights. The speaker emphasized that the efforts by Myanmar to put in place domestic legislation that was in line with Convention No. 87 was not a question of "if", it was just a matter of time.

The Worker members said that the same situation had been occurring without change for 20 years. The Committee of Experts expressed its regret at having to raise the same issues in its report, the Government repeated the same information and the Worker members were obliged to denounce murders, arrests of trade unionists and violations of freedom of association.

The Worker members indicated that they were once again under the obligation to list the persons arrested, imprisoned or murdered merely for having exercised trade union or political activities. Six workers, Thurein Aung, Wai Lin, Nyi Nyi Zaw, Kyaw Kyaw, Kyaw Win and Myo Min, had been sentenced to imprisonment for having participated in the 2007 May Day demonstration, and for their association with the Federation of Trade Unions of Burma (FTUB). The Committee on Freedom of Association had called for their release. A member of the Petro-Chemical Corporation Union, Mr Myo Aung Thant, had been imprisoned for 12 years for maintaining contacts with the FTUB. The Committee on Freedom of Association

had called for his release. An FTUB member, leader of the Education Workers' Union, Mr Saw Mya Than, had been killed by the army in retaliation for acts that it claimed amounted to a rebel attack. The Committee on Freedom of Association had called for an independent inquiry into the circumstances of his death. Mr U Tin Hla, a railway electrician, had been arrested with his whole family on 20 November 2007 and sentenced to seven years' imprisonment for the possession of explosives, which were in fact merely a harmless toolbox, but in reality for having incited railway workers to support the popular uprising of September 2007. Ms Su Su Nway, who had lodged a complaint for forced labour with the ILO which had resulted in the conviction of four guilty persons, had been arrested in November 2007 and detained by reason of her support for the September 2007 movement. Two trade union activists, Ms Lay Lay Mon and Ms Myint Soe, had disappeared at the end of September 2007 after having participated actively in the protest. Moreover, in 2006, FTUB activist Thein Win had been arrested with seven members of his family. Three of his children had been sentenced to 18 years in prison. One of his children had been tortured and had become mentally unstable. Ms Naw Bey Bey, a member of the Karen Health Workers' Union (KEWU), had been sentenced to four years hard labour. Mr Saw Thoo Di, an activist in the Karen Agricultural Workers' Union, had been arrested, tortured and murdered on 28 April 2006 by Infantry Battalion 83. On 30 April 2006, the village of Pha had been shelled with mortars and grenades because the authorities considered that the FTUB and the Federation of Trade Unions – Kawthoolei (FTUK) had been holding a demonstration. In June 2005, ten FTUB activists had been arrested and then tortured and sentenced by a special court set up in the prison, and prison sentences of between three and 25 years had been imposed for having used satellite phones to convey information to the ILO and to the international trade union movement through the FTUB.

The Worker members affirmed that it was the responsibility of the Conference Committee to denounce these serious cases of arrest, long prison sentences and murders to suppress the mere exercise of ordinary trade union activities, such as public speeches on socio-economic issues, the commemoration of May Day, or sending information to the trade union movement. The authorities of Myanmar had never granted those concerned any of the fundamental rights envisaged in Convention No. 87, nor any public freedom. There was no right of appeal in these

cases, as in cases of forced labour, and the authorities claimed that they consisted of illegal acts, terrorist organizations or interference in domestic matters.

While Article 8 of Convention No. 87 established the obligation for trade unions to respect the law of the land, the same provision provided that national legislation should not impair the guarantees provided for in the Convention. Every member State of the ILO was under the obligation to comply with the Conventions that it had ratified freely.

The previous year, the Conference Committee had emphasized the intrinsic links between freedom of association and democracy. However, the Government was now organizing elections without first having created the required conditions for their reliability, namely the recognition of freedom of association and trade union rights. The truth was that there was, at present, no legal basis in Myanmar for freedom of association. The new Constitution subjected the right to freedom of association “to the laws enacted for State security, prevalence of law and order, community peace and tranquillity or public order and morality”. Several legislative provisions directly or indirectly restricted freedom of association: Order No. 6/88 requiring prior authorization for the establishment of an organization; Order No. 2/88 prohibiting the gathering, walking or marching in procession by a group of five or more people; the Unlawful Association Act of 1908; the 1926 Trade Union Act; and the 1964 Law instituting an obligatory system of organization and representation of workers. In short, there was still no freedom of association in Myanmar.

The Employer members recalled that Myanmar had ratified the Convention 50 years ago, that this case had been discussed at the Conference Committee for 20 years, and that the previous year the Committee of Experts had marked the extreme gravity of this case through a double footnote. The Committee of Experts had included in its report serious acts of murder, arrest, detention, torture, and sentencing to many years imprisonment for exercising normal trade union activities. The Committee of Experts had stressed, and the Employer members had also highlighted during last year’s discussion, the fundamental impact of the right to life and other civil liberties as fundamental prerequisites to the implementation of Convention No. 87. The Government had mentioned that it was evolving into a democracy, but it was hard to see this as

really being the case. The legislative issues raised by the Committee of Experts constituted fundamental violations of the Convention. The Government had referred, as in 2009, to the adoption of the new Constitution but it had not mentioned any steps to adopt legislation allowing for the establishment of trade unions. There was obviously a need for ILO assistance in drafting legislation which would be in compliance with the Convention, whether or not the Constitution provided an adequate basis for freedom of association.

It was clear that independent and free trade unions did not exist in Myanmar. The Credentials Committee had found, again this year, that the delegation was not tripartite. The non-government delegate was not therefore entitled to vote at the Conference. The Employer members emphasized that tripartism was the cornerstone of the ILO and of a fully fledged freedom of association system. This was a serious case which needed to be placed in a special paragraph of the report like last year.

The Worker member of Indonesia expressed regret at the lack of progress in this serious and long-standing case. Although the ASEAN countries had decided two years ago to take the big step of promoting human rights by establishing the ASEAN Human Rights Committee, Myanmar remained the only country in the region which was still considered a dictatorship. Despite some answers by the Myanmar Government, it was difficult to believe that any progress had been made in this case, given that arrests, disappearances, intimidation and imprisonment of labour and democratic activists had continued. Evidence of just some of the killings by the military which had taken place in 2010 included the following:
Saw Mya Kaw Htoo, member of KEWU, killed on 17 January 2010 by SPDC soldiers at Keh Der village, Kyauk Kyi district, Taungoo; Saw Aye Mu, a member of Karen Agriculture Workers' Union, was shot and killed on 19 January 2010 by the same infantry. In addition, excessive sentences had been imposed on many labour and democratic activists, including Myo Aung Thant, FTUB central committee member, who had remained imprisoned since 1996, and Pho Toke, an organizer of FTUB, whose sentence had been extended by eight years, on top of the 24 years he had already received, simply for protesting to a prison officer.

Having participated in the FTUB congress at the Thailand border at the end of 2008, the speaker could testify

that the policy and action plan of the FTUB constituted normal trade union activity and that there was not a single FTUB activity directed against the country and its people. The speaker therefore wondered why the Myanmar Government kept accusing the FTUB of being a terrorist organization. The ITUC unanimously supported the full membership of the FTUB in the ITUC, the recognition of the Seafarers Union of Burma (SUB) within the International Transport Workers' Federation (ITF) and the inclusion of the FTUB as a new member of the ASEAN Trade Union Confederation. The Myanmar Government should therefore immediately change the 1964 Law that imposed a single trade union and the 1929 Trade Disputes Act which contained numerous prohibitions on the right to strike and recognize the FTUB.

The Government member of China observed that the Government had reported on its efforts to apply the fundamental principles of freedom of association, the drafting of revised legislation, and technical assistance received from the ILO. It should be acknowledged that concrete and effective measures had been taken by the Government to promote and give effect to trade union rights. The Government of Myanmar should continue its dialogue and cooperation with the ILO with a view to promoting Convention No. 87.

The Worker member of India expressed his deep, heartfelt anguish at the way the ruling junta had been curbing the minimum rights of the working people of Burma for ventilating and demonstrating their woes. Strike was the universal democratic action of the aggrieved workers to express their sufferings and obtain improvements when all other avenues had been closed. It was a sacred right, like those of freedom of association and collective bargaining, guaranteed under various instruments of the ILO and hailed as cornerstones of democracy. From December 2009 to March 2010, 22 workplace disputes had taken place in Burma in the industrial zones of the suburbs of Rangoon. Almost all the cases related to unfair pay, denial of public holidays, basic workplace amenities, compulsory overtime, lack of compensation for workplace injuries, and the issues that workers faced all over the world. Contrary to workers in most other countries, however, these striking workers had no organized representation or legal assistance, as workers had learned the hard way that it was too dangerous to select union leaders or worker representatives. Thus, negotiations with management were very difficult. By denying the workers the right to

organize or to go on strike and thus the right to collective bargaining, the junta was condemning the Burmese people to live in sheer poverty and slavery. These recent reports of strikes were just the tip of the iceberg in a country where fundamental workers' rights were being violated on a daily basis. Burma should adopt legislation

allowing for free trade unions in the country and protect the right of the workers to organize and bargain collectively.

The Government member of the United States observed that once again, the Committee of Experts had used the strongest language available to it to deplore the persistent failure of the Government to guarantee the fundamental and inalienable right of freedom of association. It was deeply disturbing that people in Burma were punished for exercising their basic human rights and that even the most ordinary trade union activities were considered to be criminal offences, subject to severe punishment. Worse yet, were the alleged acts of murder and torture as the result of trade union involvement. As noted by the Committee of Experts, there was no legal basis for the respect for, and realization of, freedom of association in Burma. The speaker called on the Government to take the necessary steps to remedy this situation.

Recalling the link between freedom of association and the elimination of forced labour, the speaker was pleased to note that a meeting on freedom of association had been held in the context of the ILO mission to Burma last January, and that the Government had requested further exchanges and advice on the issue. She hoped that these discussions would lead to an extension of the ILO presence in Burma to cover matters relating to freedom of association. In the meantime, however, the speaker called upon the Government to urgently address the concrete measures recommended by the Committee of Experts. The Government should rectify the complete absence of freedom of association and cease the systematic persecution of those who attempted to exercise the right to organize.

An observer representing the International Trade Union Confederation (ITUC) stated that the Credentials Committee of this year's session of the International Labour Conference had decided that, due to incomplete and nonaccredited delegations, the Myanmar non-governmental delegate should be excluded from voting in accordance with article 4(2) of the ILO Constitution. This underlined the fact that there were no trade unions or workers' organizations

in the country and that the Government ignored the long-standing recommendations by the Conference Committee and the Committee of Experts in this regard.

From December 2009 to March 2010, 22 strikes had taken place in factories in industrial zones, as reported by the FTUB to the ITUC. All these cases had been resolved through talks under the orders of the local military commander and not through regular negotiations. Despite the denial of freedom of association, many FTUB members and trade union activists tried to raise awareness on basic trade union rights and develop underground trade unions. The junta had arrested 34 FTUB members, eight of whom were women, for attempting to hold May Day events, host discussions on organizing, and raise awareness and disseminate documentation on basic trade union rights, workers' rights and human rights. These were according to the junta, criminal activities. The speaker called for the immediate release of these trade unionists. The speaker also called for the immediate release of Myo Aung Thant, who had been arrested in June 1996 and remained in Myitkyina prison, having reportedly developed mental problems. Many other political prisoners who had been arrested at the same time had been released, but he had not.

In March 2010, certain persons from Burma had been arrested with arms in a neighbouring country and were reported to have been sent by the SPDC Military Intelligence to assassinate the FTUB leaders. The Constitution, which had been forced on the people immediately after Cyclone Nargis, did not guarantee freedom of association. Article 354 of that Constitution stated that trade unions could only be formed if they assembled peacefully in processions and did not disturb tranquility and security. This left no room for freedom at all. In accordance with the resolution adopted under article 33 of the ILO Constitution in 2000, the ILO and its constituents should consider implementing targeted sanctions on the junta and its income. Sanctions could focus on areas that would not hurt the general population, who did not have any kind of involvement in international investments. An example was the insurance sector, which, if targeted, would have an immediate impact on international trade and investment controlled by either the junta or its cronies.

The Government member of India expressed appreciation for the ongoing collaborative efforts between the Government of Myanmar and the ILO, acknowledged the

process of transition that Myanmar was undergoing towards a democratic society, and welcomed the new Constitution, the rights of citizens and the intention to enact laws for labour organizations in line with Convention No. 87. These steps were progressive, indicating the commitment of the Government of Myanmar to address the issues arising out of the Convention and further encourage a climate of dialogue that facilitated constructive cooperation between Myanmar and the ILO. He concluded by commending the technical assistance which was being rendered by the ILO in this direction.

The Worker member of Colombia reaffirmed that the case was particularly serious for at least three reasons, and necessitated the adoption of special measures to contribute to the restoration of freedom of association in Myanmar and to give credibility to the ILO standards system. The first reason related to the extremely serious situation with regard to political and civil liberties in which those who attempted to organize in trade unions were murdered, detained, tortured and sentenced to imprisonment. The ITUC had documented these cases fully over the years. The second reason was that freedom of association did not exist in Myanmar in law or in practice, since it was a State which, through violence and institutional means, prevented workers from being able to exercise freedom of association. He recalled that the Committee of Experts had once again called for guarantees of the right to associate freely, to organize programmes, and to affiliate with federations and international confederations without any interference. The third reason why the case was serious was that these and other situations in relation to Myanmar had been raised for many years and the situation had still not been resolved. Total failure to comply with Convention No. 87 persisted and this seriously prejudiced the credibility of the ILO supervisory bodies. For these reasons, he reiterated the need for special measures to unblock the situation. He noted that the Committee of Experts had requested Myanmar to accept an extension of the ILO presence in the country, but he hoped that the Committee would be able to propose other measures.

The Government member of the Russian Federation said that his country recognized the importance of ILO member States respecting ILO Conventions, particularly Convention No. 87. In the present case concerning Myanmar, it must be observed that a wide-reaching constitutional reform was under way and that national elections were planned for the end of the year. The policy of reform was

aimed at guaranteeing freedom of association for independent trade unions, as enshrined in Chapter VIII of the new Constitution of Myanmar. The Government had also reported that a new act on trade unions was being drafted, with ILO assistance. In such circumstances, it was important to strengthen cooperation between the Government and the ILO in order to ensure the success of the legislative reforms being undertaken. It was also to be hoped that the reforms referred to by the Government representative in his opening speech would become reality.

The Worker member of Japan observed that despite the recurrent examination of this case by the Committee and the repeated inclusion of its conclusions in a special paragraph, trade unionists were still under the threat of acts of murder, arrest, detention, torture and sentencing to many years of imprisonment for the exercise of ordinary trade union activities, including the mere sending of information to the FTUB and participation in May Day rallies. Still no concrete measures had been taken to enact legislation guaranteeing all workers the right to establish and join organizations of their own choosing, or to repeal Orders Nos 2/88 and 6/88 as well as the Unlawful Associations Act, which constituted the most serious obstacles to the right to organize. The Government was confined to repeating that several sections of the Constitution would give effect to the provisions of the Convention and that new laws would be drafted. However, the Constitution should be amended as it contained broad exclusionary clauses in its controversial article 354 which would lead to continued violations of freedom of association in law and in practice.

The workers could not wait much longer. This very serious situation was a persistent breach of the Convention which had been going on for several decades. The words by the Government were empty, fundamental human rights were given no importance and even the dignity of life was being treated like a mere commodity by the Government. The Government should understand that society was not sustainable without free, independent and democratic trade unions and that genuine freedom of association could not be realized without civil liberties and respect for civil society. In this regard, Aung San Suu Kyi and more than 2,100 political prisoners, including labour activists, should be released immediately. Faced with the Government's failure to implement the recommendations of this Committee after many years of discussion on this alarming case, the speaker felt strongly that additional and

stronger measures were necessary.

The Government member of Cuba expressed appreciation for the presentation given by the Government of Myanmar, which had illustrated the efforts made to apply Convention No. 87. Technical cooperation and bilateral dialogue between the Government of Myanmar and the ILO were fundamental tools for the effective implementation of the Convention, and he therefore encouraged further technical cooperation and open and unconditional dialogue, along with analysis of the domestic situation.

The Worker member of France stated that Burma continued to commit grave violations of the Convention. National laws on freedom of association should be reformed urgently and, in any case, before the forthcoming elections. Appropriate pressure should be maintained on the regime to carry out such reform, which was of fundamental importance both for trade unions and democratic political movements. While the ILO continued to condemn the grave violations of the Convention, it should also remind multinational companies that operated in Burma and their unions that they had an important role to play in bringing about respect for the Convention in the country. Many such multinationals had their head offices in OECD countries covered by the OECD Guidelines for Multinational Enterprises which included reference to fundamental principles such as the fundamental ILO Conventions. The National Contact Points (NCPs) set up in each OECD country, including in several Asian countries, acted on these companies when they breached labour standards in Burma. The governments, unions and employers' organizations, together with the NCP, could and did condemn the practices of multinationals operating in Burma which did not respect Convention No. 87. They should play an active role in relation to Burma in this respect and the ILO should closely follow developments. Multinationals must keep persuading the Burmese regime that trade unions were not scary, by showing that they had trade union structures in their companies, that social dialogue did take place and resulted in freely negotiated collective agreements, and that worker participation could exist on issues such as health and safety in the workplace. Observing that the country exported every year tens of thousands of metric tons of gas and timber, the speaker called for economic pressure to be exerted on Burma in a targeted manner so that it did not affect the population but effectively made the regime change the Constitution and allow for free and fair elections.

The Government member of Canada expressed continuing concern about the critical human rights situation in Burma and referred to the real concerns reported regularly by the ILO and other United Nations bodies in this regard. The speaker underlined the importance of respecting and implementing commitments to freedom of association as it was the condition sine qua non for the realization of all labour rights and commitments to the ILO made by the Government. The Government had announced plans to implement legislation on freedom of association after the adoption of the Constitution pursuant to the 2010 elections. This presented a historic opportunity to commit to legislation that incorporated the best international standards. To this end, it was important that the authorities took advantage of the wealth of knowledge and experience that the ILO possessed and could share with them. The speaker therefore urged the Government to invite a tripartite ILO delegation to engage in dialogue on the review of national legislation and the drafting of new laws in line with Convention No. 87. Such an invitation would send a clear signal and further demonstrate the Government's commitment to labour rights. Although the commitment to legislation after elections was to be welcomed, some reforms were needed immediately. The speaker also urged the Government, as part of its renewed commitment to freedom of association and labour rights, to take immediate steps to release labour activists currently imprisoned.

The Worker member of South Africa emphasized that the FTUB was a genuine trade union fighting for workers' rights, including the right to freedom of association. Yet, it was a banned organization wrongly accused of terrorism. Freedom of association and worker representation could only be meaningful if workers' organizations were allowed to exist in conditions of freedom. Free and fair elections were an essential step towards meaningful democracy, genuine social stability and dialogue, and progress towards the eradication of forced labour. The military junta in Burma had characterized the upcoming elections as a fifth step on its "road map to democracy". But how could there be democracy when the Government was based on the rule of military might; the regime had identified workers as one of the key and prime targets of state terrorism; when the election law had been deliberately designed to exclude several parties from the election process, especially the National League for Democracy (NLD) led by Daw Aung San Suu Kyi; when the design by the junta ensured that the military and the junta's

political creation, the Union Solidarity and Development Association (USDA), would each take 25 per cent of the parliament seats, effectively excluding all other parties from political power.

These sham elections should not be allowed to justify business with Burma and the FTUB should be supported on a continuous basis in its struggle for legal recognition and the right to represent workers of Burma. Coming from a country where sanctions had finally led to the dismantling of the Apartheid system, the speaker expressed support for the call for disinvestment in Burma. All ILO constituents were already under an obligation to review their economic ties with the military junta, under the resolution adopted under article 33 of the ILO Constitution in 2000. This should apply not only with regard to forced labour but also freedom of association. The resources brought into this country through multimillion investments by large corporations unfortunately went directly to the military junta which trampled on the people's rights and were reportedly also funding a nuclear project.

Twenty years after the last democratic elections in Burma, the junta should urgently revise its action and finally allow for full and free elections. The authorities should be urged to reflect on a national process of genuine, meaningful and lasting dialogue, as well as cessation of aggression against the people and workers, so as to advance towards the restoration of democratic civilian rule and meaningful workers' representation.

Another Government representative categorically rejected all comments not relevant to the ILO's work, as well as all comments and criticism concerning his country's political process. He viewed these comments as attempts to interfere in his country's internal affairs. He believed that the destiny of Myanmar should be decided by its own people. The democratization process was moving forward steadily. Democratic elections would take place later in the year, as the fifth step of the road map to democracy. Laws necessary for the elections had already been promulgated and 32 political parties had been registered and permitted for the upcoming elections. The Constitution had been approved by 92.48 per cent of eligible voters. This overwhelming support had clearly reflected the will of the people and should be respected by all. The new Constitution had been thoroughly discussed with the participation of all interested parties. Its section 354 adequately captured the spirit of the Convention, and the

process for promulgating new legislation would begin once the Constitution came into legal effect. Meanwhile, the drafting process had already begun and any legislation ensuing from this process would be in accordance with the Constitution and the Convention.

With regard to the FTUB, he referred to what had already been said in the statement by the Permanent Representative of Myanmar, Ambassador U Wunna Maung. In accordance with the Constitution, a drafted legislation to implement the Convention would proceed to the *Pyidaungsu Hluttaw*. Promulgated laws not contrary to the Constitution would remain in force. This process, however, would not open the door for any unlawful association or terrorist organization. A fictitious account relating to a criminal by the name of Maung Maung and his associate Thein Win had been dramatized and made important.

These persons were not Myanmar nationals and were residing outside Myanmar. The Government had no interest in them or responsibility for them. Perhaps the insecurity of living abroad illegally as fugitives and hiding from the law over decades had compelled them to such a story, to draw attention and generate sympathy. These persons were endangering and violating the security of Myanmar's people by plotting, financing and carrying out several bomb attacks leading to loss of lives and numerous injuries. His Government had reported their terrorist acts to Interpol and the Executive Directorate of the Counter-Terrorism Committee, guided by Security Council Resolutions Nos 1373 (2001) and 1624 (2005).

The Worker members denounced the killings, tortures, detentions and arrests of trade unionists for activities that would pose no problems in other countries. These persistent violations of freedom of association, in law and in practice, would continue as long as the basic civil liberties were not restored and respected. It was therefore appropriate to request the following five measures: (1) the revision of the Constitution, especially the articles on freedom of association and forced labour; (2) the repeal of ordinances and laws on illegal associations; (3) the legalization and recognition of the FTUB; (4) the immediate release of Ms Aung San Suu Kyi and all trade union activists and political prisoners who had exercised their freedom of expression and freedom of association rights; and (5) the cessation of impunity for criminal acts of violence against trade unionists and acts of forced labour. They

requested the Office to use all legal and practical means at its disposal, including the designation of a liaison officer dealing with complaints relating to the exercise of the rights contained in the Convention. In conclusion, given the gravity and persistence of the situation, the Worker members considered that all means available to the ILO should be used, including the establishment of a new commission of inquiry, as well as the designation of a liaison officer responsible for dealing with complaints relating to the exercise of the rights enshrined in Convention No. 87.

The Employer members expressed scepticism with regard to this case. There appeared to be no democracy, no civil liberties, no tripartism and no freedom of association in the country, where a climate of fear, violence and intimidation prevailed. The existing legislation violated freedom of association. The Government urgently needed the help of the ILO: it needed to submit the text of section 354 of the new Constitution to the Committee of Experts and to adopt specific legislation which would guarantee the application of the Convention. They concluded by stating that the case should be noted as a case of continued failure to implement the Convention.

Conclusions

The Committee took note of the statement made by the Government representative and the detailed discussion that followed. The Committee also recalled that it had discussed this serious case on numerous occasions over the last two decades and that its conclusions had been listed in a special paragraph for continuous failure to implement the Convention since 1996.

The Committee observed that the Committee of Experts had for many years now deplored the gravity of the allegations of arrest, detention, long prison sentences, torture and denial of workers basic civil liberties, as well as the longstanding absence of a legislative framework for the establishment of free and independent trade union organizations.

The Committee took note of the statement made by the Government representative in which he stressed that, in accordance with its road map, Myanmar was committed to pursuing its transformation to a democratic society. Freedom of association rights, as well as other basic civil liberties, were provided for in the new Constitution and would set out the framework within which new trade union legislation would be developed. The Government representative added that no one has been or is apprehended in Myanmar for

implicit or explicit exercise of the rights derived from the Convention. As regards requests for recognition of a certain organization, the Government representative reiterated that the Ministry of Home Affairs had declared the FTUB to be a terrorist organization and it could therefore not be recognized as a legitimate workers' organization.

Recalling the long-standing and fundamental divergences between the national legislation and practice, on the one hand, and the Convention, on the other, and observing that the Government itself has admitted that there can be no legal trade unions in the country as yet, the Committee once again urged the Government in the strongest terms to adopt immediately the necessary measures and mechanisms to ensure all workers and employers the rights provided for under the Convention. It once again urged the Government to repeal Orders Nos 2/88 and 6/88, as well as the Unlawful Association Act.

The Committee once again highlighted the intrinsic link between freedom of association and democracy and observed with regret that the Government had yet to ensure the freedom of association ground rules necessary for any credible transition to democracy. The Committee therefore called upon the Government to take concrete steps prior to the upcoming election process 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. It emphasized that it was crucial that the Government take all necessary measures to ensure a climate wherein workers and employers could immediately exercise their freedom of association rights without fear, intimidation, threat or violence.

The Committee continued to observe with extreme concern that many people remained in prison for exercising their rights to freedom of expression and association, despite the calls for their release. The Committee was bound once again to call 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 all other persons detained for exercising their basic civil liberties and freedom of association rights. The Committee once again recalled the recommendations made by the Committee of Experts and the Committee on Freedom of Association for the recognition of trade union organizations, including the FTUB, and urged the Government immediately to put an end to the practice of persecuting workers or other persons for having

contact with workers' organizations, including those operating in exile.

The Committee recalled its previous conclusion that the persistence of forced labour could not be disassociated from the prevailing situation of a complete absence of freedom of association and the systematic persecution of those who tried to organize. It 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. The Committee urged the Government to transmit any relevant draft laws as well as a detailed report on the concrete measures taken to ensure significant improvements in the application of the Convention both in law and in practice to the Committee of Experts at its meeting this year. In light of the assurances provided by the Government, the Committee expected that it would be in a position to observe significant progress on all the above matters at its next session.

The Committee decided to include its conclusions in a special paragraph of its report. It also decided to mention this case as a case of continued failure to implement the Convention.