

Comments made by the Committee of Experts on the Application of Conventions and Recommendations (from 1990)

[Forced Labour Convention, 1930 \(No. 29\)](#)

Myanmar (ratification: 1955)

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CEACR 2010/81st Session

★ Observation

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

Historical background

In its earlier comments, the Committee has discussed in detail the history of this extremely serious case, which has involved the Government's gross, long-standing and persistent non-observance of the Convention, as well as the failure by the Government to implement the recommendations of the Commission of Inquiry, appointed by the Governing Body in March 1997 under article 26 of the Constitution. The continued failure by the Government to comply with these recommendations and the observations of the Committee of Experts, as well as other matters arising from the discussion in the other bodies of the ILO, led to the unprecedented exercise of article 33 of the Constitution by the Governing Body at its 277th Session in March 2000, followed by the adoption of a resolution by the Conference at its June 2000 session.

The Committee recalls that the Commission of Inquiry, in its conclusions on the case, pointed out that the Convention was violated in national law and in practice in a widespread and systematic manner. In its recommendations (paragraph 539(a) of the report of the Commission of Inquiry of 2 July 1998), the Commission urged the Government to take the necessary steps to ensure:

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

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

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

and

- ensuring the enforcement of the prohibition of forced labour.

Developments since the Committee's previous observation

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

- The report of the ILO Liaison Officer submitted to the Conference Committee on the Application of Standards during the 99th Session of the International Labour Conference in June 2010, as well as the discussions and conclusions of that Committee (ILC, 99th Session, *Provisional Record* No. 16, Part Three(A) and document D.5(D));
- the documents submitted to the Governing Body at its 307th and 309th Sessions (March and November 2010), as well as the discussions and conclusions of the Governing Body during those sessions;
- the communication made by the International Trade Union Confederation (ITUC) received in August 2010 together with the detailed appendices of more than 1,400 pages;
- the communication made by the Federation of Trade Unions Kawthoolei (FTUK) received in September 2010 with appendices; and
- the reports of the Government of Myanmar received on 16 December 2009, 4 January, 4 February, 12 and 18 March, 6 April, 19 May, 19 August, 8 September and 6 October 2010.

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

In its earlier comments, the Committee discussed the significance of the Supplementary Understanding (SU) of 26 February 2007 between the Government and the ILO, which supplemented the earlier Understanding of 19 March 2002 concerning the appointment of an ILO Liaison Officer in Myanmar. As the Committee previously noted, the SU sets out a complaints mechanism, which has as its object “to formally offer the possibility to victims of forced labour to channel their complaints through the services of the Liaison Officer to the competent authorities with a view to seeking remedies available under the relevant legislation and in accordance with the Convention”. The Committee notes that the trial period of the SU was extended for the third time, on 19 January 2010, for a further 12 months from 26 February 2010 until 25 February 2011 (ILC, 99th Session, *Provisional Record* No. 16, Part Three, document D.5(F)). The Committee further discusses the information on the functioning of the SU below, in the context of its comments on the other documentation, discussions and conclusions regarding this case.

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

The Committee on the Application of Standards once again discussed this case in a special sitting during the 99th Session of the Conference in June 2010. The Conference Committee acknowledged some limited steps on the part of the Government, such as: the further extension of the SU for another year; the agreement for publication and distribution of an informative brochure on forced labour; certain activities concerning awareness raising of the complaints mechanism established by the SU, including newspaper articles in the national language; and certain improvements in dealing with underage recruitment by the military. The Conference Committee was, however, of the view that those steps remained totally inadequate. It noted that none of the three specific and clear recommendations of the

Commission of Inquiry had been implemented and strongly urged the Government to: fully implement without delay these recommendations and, in particular, to take the necessary steps to bring the relevant legislative texts into line with the Convention; to ensure the total elimination of the full range of forced labour practices, including the recruitment of children into the armed forces and human trafficking for forced labour that are still persistent and widespread; to strictly ensure that perpetrators of forced labour, whether civil or military, are prosecuted and punished under the Penal Code; to release immediately complainants and other persons associated with the use of the complaints mechanism who are currently detained, etc. The Conference Committee also called for strengthening of the capacity available to the ILO Liaison Officer to assist the Government in addressing all of the recommendations of the Commission of Inquiry, and to ensure the effectiveness of the operation of the complaints mechanism.

Discussions in the Governing Body

The Governing Body continued its discussions of this case during its 307th and 309th Sessions in March and November 2010 (GB.307/6, GB.309/6). The Committee notes that, following the discussion in November 2010, the Governing Body reconfirmed all of its previous conclusions and those of the International Labour Conference and called upon the Government and the Office to work proactively towards their realization. In the light of the commitment made by the Permanent Representative of the Government, the Governing Body called on the new Parliament to proceed without delay to bring legislation into line with the Convention. While noting the increased number of the complaints received under the SU complaints mechanism, the Governing Body considered it essential that the movement towards an environment free from harassment or fear of retribution be sustained, and called upon the Government to cooperate with the Liaison Officer on cases raised at the Officer's own initiative. Notwithstanding the reported progress in increased awareness of both government personnel and the community at large of their rights and responsibilities under the law, further committed action is required to end all forms of forced labour, including under-age recruitment into the military and human trafficking, as well as the strict application of the Penal Code to all perpetrators, in order to bring an end to the impunity. The Governing Body also called for the continuation and intensification of awareness-raising activities undertaken jointly and severally by the Government and the ILO Liaison Officer encompassing government personnel, the military and civil society. Finally, the Governing Body welcomed the release of Daw Aung San Suu Kyi and urged that other persons still in detention, including labour activists and persons associated with the submission of complaints under the SU, would be similarly given their liberty as soon as possible.

Communication received from workers' organizations

The Committee notes the comments made by the ITUC in its communication received in August 2010. Appended to this communication were 51 documents, amounting to more than 1,400 pages, containing extensive and detailed documentation referring to the persistence of widespread forced labour practices by civil and military authorities in almost all of the country's states and divisions. In many cases, the documentation refers to specific dates, locations, circumstances, specific civil bodies, military units and individual officials. Specific incidents referred to in the ITUC documentation involve allegations of a wide variety of types of work and services requisitioned by authorities, including work directly related to the military (portering, construction and forced recruitment of children), as well as work of a more general nature, including work in agriculture, construction and maintenance of roads and other infrastructure work. The ITUC documentation includes, inter alia, reports submitted to it by the Federation of Trade Unions of Burma (FTUB) and its affiliate, the FTUK, which contain allegations that victims of forced labour who were encouraged by these organizations to report to the ILO, have been prosecuted for it and subsequently jailed. The ITUC documentation also includes translated copies of numerous written orders ("Order documents" or "Order letters") apparently from military and other

authorities to village authorities in Karen State, Chin State and some other states and divisions, containing a range of demands, entailing in most cases a requisition for compulsory (and uncompensated) labour. Thus, the report submitted by the FTUK, which was also directly communicated to the ILO in a communication received in September 2010 referred to above, includes translated copies of 94 Order documents issued by military authorities to village heads in Karen State between January 2009 and June 2010. The tasks and services demanded by these documents involved, inter alia, portering for the military, bridge repair, collection of raw materials, production and delivery of thatch shingles and bamboo poles, attendance at meetings, provision of money, food and other supplies, provision of information on individuals and households, etc. The report states that the above orders illustrate the persistent exaction of forced labour by the military in the rural Karen State, which significantly contributes to poverty, livelihoods vulnerability, food insecurity and displacement of large numbers of villagers. Copies of the above communications by the ITUC and the FTUK with annexes were transmitted to the Government, in September 2010, for such comments as it may wish to make on the matters raised therein.

The Government's reports

The Committee notes the Government's reports, referred to in paragraph 4 above, which include replies to the Committee's previous observation. It notes, in particular, the Government's indications concerning the Government's continued cooperation with the various functions of the ILO Liaison Officer, including monitoring and investigating the forced labour situation and the operation of the SU complaints mechanism, as well as the Government's efforts in the field of the awareness-raising and training activities on forced labour, including the joint ILO–Ministry of Labour (MOL) presentation made at the Deputy Township Judges' training course in Yangon in March 2010 and the distribution of booklets on the SU and informative, simply worded brochures on forced labour. The Committee also notes the Government's indications concerning measures taken to prevent recruitment of under-age children and to release newly recruited under-age soldiers from September 2009 up to August 2010. As regards the amendment of the legislation, the Government indicates that the Ministry of Home Affairs has been coordinating with the concerned departments in reviewing the Village Act and Towns Act. However, no action has been taken or contemplated to amend section 359 of the Constitution. The Committee also notes that the Government has not yet supplied its comments on the numerous specific allegations contained in the communications from the ITUC and the FTUK referred to above, as well as in the communication by the ITUC received in September 2009. ***The Committee urges the Government to respond in detail in its next report to the numerous specific allegations of continued, widespread imposition of forced or compulsory labour by military and civil authorities throughout the country, which are documented in the above communications from the ITUC and the FTUK, making particular reference to the "Order documents", which constitute conclusive evidence of the systematic imposition of forced labour by the military.***

Assessment of the situation

Assessment of the information available on the situation of forced labour in Myanmar in 2010 and in relation to the implementation of the recommendations of the Commission of Inquiry and compliance with the Convention by the Government will be discussed in three parts, dealing with: (i) amendment of legislation; (ii) measures to stop the exaction of forced or compulsory labour in practice; and (iii) enforcement of penalties prescribed under the Penal Code and other relevant provisions of law.

(i) Amendment of legislation

The Committee previously noted the Government's statement in its report received on 27 August 2009 that the Village Act and the Towns Act "have been put into dormant [sic] effectively and legally" by Order No. 1/99 (Order directing not to exercise powers under certain provisions of the Towns Act 1907,

and the Village Act 1907) as supplemented by the Order of 27 October 2000. The Committee observed that the latter orders had yet to be given bona fide effect and do not dispense with the separate need to eliminate the legislative basis for the exaction of forced labour. ***Noting the Government's indication in its report received on 19 August 2010, that the Ministry of Home Affairs has been coordinating with the concerned departments in reviewing these Acts, the Committee expresses the firm hope that the long overdue steps to amend or repeal them will soon be taken and that legislation will be brought into conformity with the Convention. The Committee asks the Government to provide, in its next report, information on the progress made in this regard.***

In its earlier comments, the Committee referred to section 359 of the Constitution (Chapter VIII – Citizenship, fundamental rights and duties of citizens), which excepts from the prohibition of forced labour “duties assigned by the Union in accordance with the law in the interest of the public”. The Committee observed that the exception encompasses permissible forms of forced labour that exceed the scope of the specifically defined exceptions in *Article 2(2) of the Convention* and could be interpreted in such a way as to allow a generalized exaction of forced labour from the population. The Committee notes with ***regret*** the Government's statement in its report received on 19 August 2010, that “it is completely impossible to amend the Constitution ... as it was ratified by the referendum held in May 2008 with 92.48 per cent affirmative votes”. ***The Committee urges the Government once again to take the necessary measures with a view to amending section 359 of Chapter VIII of the Constitution, in order to bring it into conformity with the Convention.***

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

Information available on current practice. In paragraph 8 of this observation, the Committee referred in detail to the communications received from the ITUC and the FTUK, which contain well-documented allegations that forced and compulsory labour continued to be exacted from local villagers in 2010 by military and civil authorities in almost all of the country's states and divisions. The information in the numerous appendices refers to specific dates, locations and circumstances of the occurrences, as well as to specific civil bodies, military units and individual officials responsible for them. According to these reports, forced labour has been requisitioned both by military personnel and civil authorities, and has taken a wide variety of forms and involved a variety of tasks.

The Committee notes from the report of the ILO Liaison Officer to the Conference Committee in June 2010 (ILC, 99th Session, *Provisional Record*, No. 16, Part Three, document D.5(C)) that, while the SU complaints mechanism continues to function and the awareness-raising activities continue to take place, complaints alleging the use of forced labour by both military and civil authorities continue to be received (paragraphs 5 and 6). The ILO Liaison Officer also refers to numerous requests to the authorities to release identified victims of under-age military recruitment and states that the work related to under-age recruitment under the SU supports the activity of the UN Country Task Force on Monitoring and Reporting on Children Affected by Armed Conflict under Security Council Resolution 1612 (paragraphs 8 and 12). According to the report, a number of complaints of human trafficking for forced labour have been received; three such cases have been referred to the ILO anti-trafficking projects based outside the country and have resulted in the release of 56 persons from a forced labour situation in neighbouring countries. The ILO Liaison Officer further states that “non-verifiable available evidence does suggest that the use of forced labour by the civilian authorities has been reduced at least in some locations and parts of the country”, which is most likely due to the extensive awareness-raising activities and the heightened awareness of local authority personnel (paragraphs 7 and 11). However, according to the Governing Body document submitted to its 307th Session in March 2010, “Whilst there are indications from some parts of the country that the actual incidence of forced labour imposed by civilian authorities has diminished to some extent, this on its own would not account for the reduction in complaints. The use of forced labour, particularly by the military, remains an issue

throughout the country” (GB.307/6, paragraph 5).

Issuing specific and concrete instructions to the civilian and military authorities. In its earlier comments, the Committee emphasized that specific, effectively conveyed instructions to civil and military authorities, and to the population at large, are required which identify each and every field of forced labour, and which explain concretely for each field the means and manner by which the tasks or services involved are to be carried out without recourse to forced labour. The Committee previously noted the Government’s general statement in its report received on 1 June 2009 that “the various levels of administrative authority are well aware of the orders and instructions related to forced labour prohibition issued by the higher levels”. However, the Committee notes that no new information has been provided by the Government in its subsequent reports on this important issue. Given the continued dearth of information regarding this issue, the Committee remains unable to ascertain that clear instructions have been effectively conveyed to all civil authorities and military units, and that bona fide effect has been given to such instructions. It reiterates the need for concrete instructions to be issued to all levels of the military and to the whole population, which identify all fields and practices of forced labour and provide concrete guidance as to the means and manner by which tasks or services in each field are to be carried out, and for steps taken to ensure that such instructions are fully publicized and effectively supervised. ***Considering that measures to issue instructions to civilian and military authorities on the prohibitions of forced and compulsory labour are vital and need to be intensified, the Committee expresses the firm hope that the Government will provide, in its next report, information on the measures taken in this regard, including translated copies of the instructions which have been issued reconfirming the prohibition of forced labour.***

Ensuring that the prohibition of forced labour is given wide publicity. In relation to ensuring that the prohibition of forced labour is given wide publicity, the Committee notes from the report of the ILO Liaison Officer referred to above, from the documents submitted to the Governing Body and to the Conference Committee, as well as from the Government’s reports, that a number of awareness-raising activities concerning the forced labour situation, the legal prohibitions of forced labour and existing avenues of recourse for victims were carried out in 2010. These included, inter alia, three joint ILO–MOL awareness-raising seminars at state/division level for civil and military personnel held in Rhakine State, Magway Division and Bago Division; two joint ILO–MOL presentations on the law and practice on forced labour to a refresher training course for township judges and deputy judges; and three training seminars/presentations for members of the armed forces, the police and the prison service on the law and practice concerning under-age recruitment into the military. During the meeting of the ILO mission with the Minister of Labour (January 2010), the Government agreed to the publication of a simply worded brochure, in Myanmar language, explaining the law pertaining to forced labour, including under-age recruitment, and the procedures available to victims for lodging a complaint (GB.307/6, paragraph 9). The Governing Body, while calling for the continuation and intensification of awareness-raising activities during its November 2010 session, called on the Government to continue to actively support the wide distribution of the agreed brochure and its translation into all local languages (GB.309/6, paragraph 4). ***The Committee reiterates its view that such activities are critical in helping to ensure that the prohibition of forced labour is widely known and applied in practice, and should continue and be expanded.***

The Committee notes from the Governing Body document submitted to its 309th Session in November 2010 (GB.309/6), that the number of complaints received under the SU complaints mechanism continued to increase: over the period 1 June to 21 October 2010, 160 complaints have been received, as compared to 65 complaints received during the corresponding period in 2009 and 25 for the same period in 2008 (paragraph 18). As at 21 October 2010, a total of 503 complaints have been received under the SU mechanism; 288 cases (assessed to be within the ILO mandate) have been submitted to

the Government Working Group for investigation, of which 132 have been resolved with varying degrees of satisfaction; 127 forced and/or under-age recruits have been released/discharged from the military in association with complaints under the SU mechanism (paragraphs 14 and 15). The Committee reiterates its view that the complaints mechanism under the SU in itself provided an opportunity to the authorities to demonstrate that continued recourse to the practice is illegal and would be punished as a penal offence, as required by the Convention. ***The Committee therefore hopes that the Government will intensify and expand the scale and scope of its efforts to give wide publicity to and raise public awareness about the prohibition of forced labour, including the use of the SU complaints mechanism as an important modality of awareness raising; that it will undertake awareness-raising activities in a more coherent and systematic way; and that it will provide, in its next report, information on measures taken or contemplated in this regard. The Committee further hopes that the Government will provide information on the impact of awareness-raising activities on the enforcement of criminal penalties against perpetrators of forced labour and on the imposition in actual practice of forced or compulsory labour, particularly by the military.***

Making adequate budgetary provisions for the replacement of forced or unpaid labour. In its earlier comments, the Committee observed that budgeting of adequate means for the replacement of forced labour, which tends also to be unpaid, is necessary if recourse to the practice is to end. The Committee recalls in this regard that, in its recommendations, the Commission of Inquiry stated that “action must not be limited to the issue of wage payment; it must ensure that nobody is compelled to work against his or her will. Nonetheless, the budgeting of adequate means to hire free wage labour for the public activities which are today based on forced and unpaid labour is also required”. The Committee has noted the Government’s repeated indication in its reports, including the report received on 19 August 2010, that the budget allotments including the expense of labour costs for all ministries have been allocated to implement their projects. ***Noting that no other information has been provided by the Government on this important issue, the Committee requests the Government once again to provide, in its next report, detailed and precise information on the measures taken to budget adequate means for the replacement of forced or unpaid labour.***

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

The Committee previously noted that section 374 of the Penal Code provides for the punishment, by a term of imprisonment of up to one year, of anyone who unlawfully compels any person to labour against his or her will. It also noted that Order No. 1/99 and its Supplementing Order of 27 October 2000, as well as the series of instructions and letters issued by government authorities in 2000–05 with a view to securing the enforcement of those Orders, provide for persons “responsible” for forced labour, including members of the armed forces, to be referred for prosecution under section 374 of the Penal Code. The Committee notes from the Governing Body document submitted to its 309th Session in November 2010 (GB.309/6) that, in respect of cases concerning forced labour exacted by the military, the ILO has received no information concerning the prosecution of any perpetrator under the above provision of the Penal Code. The ILO has been advised that, in four instances, disciplinary action has been taken under military procedures in response to complaints submitted under the SU mechanism, and that in some instances the solution to the complaint has resulted in the issuance of orders requiring behavioural change (paragraph 11). As regards cases concerning forced labour exacted by civilian authorities, prosecution of perpetrators under the Penal Code in response to complaints submitted has been reported only in respect of Case No. 1, which has been already noted by the Committee in its earlier comments and resulted in the prosecution of two civilian officials, who were punished with penalties of imprisonment. In other instances, the solution has involved administrative penalties, including dismissal or transfer, with the majority of cases being resolved by addressing the situation of the complainants without punitive action being taken against the perpetrators (paragraph

12). As regards cases of forced and/or under-age recruitment, a punitive and disciplinary process has increasingly been applied and military perpetrators have been referred to summary trial under military regulations, which resulted in imprisonment in three instances; other penalties which appear to be regularly administered included the loss of seniority, pensionable rights or several days' pay, as well as the issuance of various levels of formal reprimand (paragraph 13).

The Committee notes with *regret* that no new information has been provided by the Government in its 2010 reports about any prosecutions against perpetrators of forced labour being pursued under section 374 of the Penal Code. ***The Committee points out once again that the illegal exaction of forced labour must be punished as a penal offence, rather than treated as an administrative issue, and expresses the firm hope that appropriate measures will be taken in the near future in order to ensure that the penalties which may be imposed under section 374 of the Penal Code for the exaction of forced or compulsory labour are strictly enforced, in conformity with Article 25 of the Convention. It asks the Government to provide, in its next report, information on the progress made in this regard.***

Concluding remarks

The Committee fully endorses the conclusions concerning Myanmar made by the Conference Committee and the Governing Body, as well as the general evaluation of the forced labour situation by the ILO Liaison Officer. The Committee observes that, in spite of the efforts made, particularly in the field of awareness raising, cooperation in the functioning of the SU complaints mechanism and in the release of under-age recruits from the military, the Government has not yet implemented the recommendations of the Commission of Inquiry: it has failed to amend or repeal the Towns Act and the Village Act; it has failed to ensure that, in actual practice, forced labour is no longer imposed by the authorities, in particular by the military; and it has failed to ensure that penalties for the exaction of forced labour under the Penal Code have been strictly enforced against civil and military authorities. The Committee continues to believe that the only way that genuine and lasting progress in the elimination of forced labour can be made is for the Myanmar authorities to demonstrate unambiguously their commitment to achieving that goal. ***The Committee urges the Government once again to demonstrate its commitment to rectify the violations of the Convention identified by the Commission of Inquiry, by implementing the concrete practical requests addressed by the Committee to the Government, and that all the long-overdue steps will be taken to achieve compliance with the Convention, both in law and in practice, so that the most serious and long-standing problem of forced labour will be finally resolved.***