Observation

The Committee notes the comments submitted by the International Trade Union Confederation (ITUC) in a communication dated 24 August 2010, referring to grave matters already noted by the Committee. The Committee notes the conclusions of the Conference Committee on the Application of Standards of June 2010. The Committee notes, in particular, that the Conference Committee noted with great concern the continued failure by the Government, over several years, to eliminate serious discrepancies in the application of the Convention.

Civil liberties. In its previous observation, the Committee recalled the ITUC’s reference to the arrest, heavy-handed interrogation and 20 years’ imprisonment sentence for sedition imposed on six workers as well as the additional prison sentences imposed on Thurein Aung, Wai Lin, Kyaw Win and Myo Min (five years sentence for association with the Federation of Trade Unions of Burma (FTUB) and three years sentence for illegally crossing a border). It further noted the arrest of Burma Railway Union leader U Tin Hla and of Su Su Nway, who was sentenced to 12-and-a-half years in prison. Moreover, the ITUC indicated that, at the end of 2008, three workers – Khin Maung Cho (aka Pho Toke), Nyo Win and Kan Myint – employed at the A21 Soap Factory in Hlaing Thayar Industrial Zone, were sentenced to long jail terms for involvement with exiled groups, sedition and other charges.

Furthermore, in its previous observation, the Committee recalled that the ITUC had previously referred to numerous other grave violations of the Convention, including:

- the imprisonment of Myo Aung Thant, member of the All Burma Petro-Chemical Corporation Union, who has now been in jail for over 12 years after having been convicted for high treason for maintaining contacts with the FTUB (under section 122(1) of the Penal Code);
- the killing of Saw Mya Than, FTUB member and official of the Kawthoolei Education Workers’ Union (KEWU), who was allegedly murdered by the army in retaliation for a rebel attack, and in respect of whose murder the Committee on Freedom of Association had requested the Government to institute an independent inquiry in the framework of Case No. 2268;
- the disappearance on 22 September 2007 of Lay Lay Mon, a female labour activist who is a former political prisoner, after helping organize workers to support protesting monks and citizens in the uprising in Yangon; she was believed to be incarcerated in Insein prison but there was no news of if, or when, she would be brought to trial;
- the disappearance of labour activist Myint Soe during the last week of September 2007 after being active in engaging with workers to increase their involvement in the September uprising;
- the arrest by the military authorities on 8 and 9 August 2006 of seven members of the family of the FTUB member and activist Thein Win at their house in the Kyun Tharyar section of Pegu city. Three of Thein Win’s siblings (Tin Oo, Kyi Thein and Chaw Su Hlaing) were sentenced to 18 years in
jail under sections 17(1) and (2) of the Unlawful Associations Act. Tin Oo was reported to have suffered such intensive torture during detention that he has now become mentally unstable and there are fears for his health;

– the arrest in March 2006, and subsequent sentencing, of five underground democracy and labour activists for a variety of offences connected to efforts to provide information to the FTUB and other organizations considered as illegal by the regime, and to organize peaceful anti-State Peace and Development Council (SPDC) demonstrations (U Aung Thein, 76 years old, sentenced to 20 years; Khin Maung Win, sentenced to 17 years; Ma Khin Mar Soe, 17 years; Ma Thein Thein Aye, 11 years; and U Aung Moe, 78 years old, sentenced to 20 years);

– the intimidation by the army of the 934 workers at Hae Wae Garment, located in South Okkapala Township in Yangon, who went on strike on 2 May 2006 to demand better terms and conditions of work. The 48 workers allowed to meet with the authorities were forced to sign a written statement that indicated that there were no problems at the factory;

– the arrest and sentencing to a four-year prison term with hard labour of Naw Bey Bey, an activist member of the Karen Health Workers’ Union (KHWU);

– the arrest, torture and killing of Saw Thoo Di (aka Saw Ther Paw), a Karen Agricultural Workers’ Union (KAWU) committee member from Kya-Inn township, Karen State, by an armed column of Infantry Battalion 83 outside his village on 28 April 2006;

– the shelling of the Pha village with mortars and rocket propelled grenades by Light Infantry Battalion 308 which had been sent by the SPDC military upon learning that, on 30 April 2006, the FTUB and Federation of Trade Unions – Kawthoolei (FTUK) were preparing a May Day workers’ rights commemoration; and

– the arrest, torture, and sentencing by a special court established in prison of ten FTUB activists to prison sentences, from three to 25 years, for having used satellite phones to convey information to the ILO and to the international trade union movement through an intermediation by the FTUB.

The Committee notes that the Government reiterates in its report that the six persons arrested for allegedly participating in the May Day event, including Thurein Aung, were not workers. The Government’s report adds that no workers were sanctioned for the exercise of trade union activities, that workers have the right to request the respect of their rights, individually or collectively, that thousands of workers do so annually and that no worker has taken any action as regards May Day activities. Furthermore, the Committee notes that during the meeting of the Conference Committee, the Government representative reiterated that the Ministry of Home Affairs had declared the FTUB to be a terrorist organization and that it could therefore not be recognized as a legitimate workers organization.

The Committee notes that the Conference Committee observed with extreme concern that many people remained in prison for exercising their rights to freedom of expression and association, despite calls for their release, and that it 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, and called upon the Government to ensure the immediate release of Thurein Aung, Wai Lin, Nyi Nyi Zaw, Kyaw Kyaw, Kyaw Win and Myo Min, as well as all other persons detained for exercising their basic civil liberties and freedom of association rights.

The Committee can only deplore the fact that the Government has not provided any information, in its report, on the situation of the numerous persons referred to above and fails to provide any evidence of the measures taken to implement the Committee’s previous requests, in particular as regards the need to establish independent investigations into these matters. Once again, the Committee deeply regrets the paucity of the information provided, which is in stark contrast to the extreme gravity of the issues
raised by the ITUC.

The Committee recalls that respect for the right to life and other civil liberties is a fundamental prerequisite for the exercise of the rights contained in the Convention and workers and employers should be able to exercise their freedom of association rights in a climate of complete freedom and security, free from violence and threats. Furthermore, as regards the reported torture, cruelty and ill-treatment, the Committee once again points out that trade unionists, like all other individuals, should enjoy the safeguards provided by the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights and governments should give the necessary instructions to ensure that no detainee suffers such treatment (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 30).

Finally, the Committee recalls that while trade unions are expected under Article 8 of the Convention to respect the law of the land, “[t]he law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in this Convention”, the authorities should not interfere with legitimate trade union activities through arbitrary arrest or detention and allegations of criminal conduct should not be used to harass trade unionists by reason of their union membership or activities.

The Committee therefore once again most deeply deplores the serious allegations of murder, arrest, detention, torture and sentencing to many years of imprisonment of trade unionists for the exercise of ordinary trade union activities. The Committee once again strongly urges the Government to provide information on the measures adopted and instructions issued so as to ensure respect for the fundamental civil liberties of trade union members and officers and to take all necessary measures to secure the immediate release of Thurein Aung, Wai Lin, Nyi Nyi Zaw, Kyaw Kyaw, Kyaw Win, Myo Min, and all those who have been imprisoned for the exercise of trade union activities and to ensure that no worker is sanctioned for the exercise of such activities, in particular for having contacts with workers’ organizations of his/her own choosing.

Furthermore, recalling that the right of workers and employers to freely establish and join organizations of their own choosing cannot exist unless such freedom is established and recognized both in law and in practice, the Committee once again urges the Government to indicate all measures taken, including instructions issued, to ensure the free operation of any form of organization of collective representation of workers, freely chosen by them to defend and promote their economic and social interests, including organizations which operate in exile.

Legislative framework. In its previous comments, the Committee recalled the issues it has been raising over the years with respect to the legislative framework, including the prohibition of trade unions and the absence of any legal basis for freedom of association in Myanmar (repressive anti-union legislation, obscure legislative framework, military orders and decrees further limiting freedom of association, a single trade union system established in the 1964 Law and an unclear constitutional framework); the FTUB forced to work underground and accused of terrorism; “workers’ committees” organized by the authorities; the repression of seafarers even overseas and the denial of their right to be represented by the Seafarers’ Union of Burma, which is affiliated to the FTUB and the International Transport Workers’ Federation (ITF).

The Committee further recalls that, for several years, it has indicated that there exist some pieces of legislation containing serious restrictions to freedom of association or provisions which, although not directly aimed at freedom of association, can be applied in a manner that seriously impairs the exercise of the right to organize. More specifically: (i) Order No. 6/88 of 30 September 1988 provides that the “organizations shall apply for permission to form to the Ministry of Home and Religious Affairs” (section 3(a)), and states that any person found guilty of being a member of, or aiding and abetting, or
using the paraphernalia of, organizations that are not permitted, shall be punished with imprisonment for a term which may extend to three years (section 7); (ii) Order No. 2/88 prohibits the gathering, walking or marching in procession by a group of five or more people regardless of whether the act is with the intention of creating a disturbance or of committing a crime; (iii) the Unlawful Association Act of 1908 provides that whoever is a member of an unlawful association, or takes part in meetings of any such association, or contributes or receives or solicits any contribution for the purpose of any such association, or in any way assists the operations of any such association, shall be punished with imprisonment for a term which shall not be less than two years and more than three years and shall also be liable to a fine (section 17.1); (iv) the 1926 Trade Union Act requires that 50 per cent of workers must belong to a trade union for it to be legally recognized; (v) the 1964 Law Defining the Fundamental Rights and Responsibilities of the People’s Workers establishes a compulsory system for the organization and representation of workers and imposes a single trade union; and (vi) the 1929 Trade Disputes Act contains numerous prohibitions of the right to strike and empowers the President to refer trade disputes to courts of inquiry or to industrial courts. Finally, the Committee recalled that there was no legal basis for the respect for, and realization of, freedom of association and that the broad exclusionary clause of article 354 of the Constitution subjects the exercise of this right “to the laws enacted for State security, prevalence of law and order, community peace and tranquillity or public order and morality”.

The Committee notes that during the June 2010 meeting of the Conference Committee, the Government representative stressed that, in accordance with its roadmap, Myanmar was committed to pursuing its transformation to a democratic society, that freedom of association rights, as well as other basic civil liberties provided for in the new Constitution would set out the framework within which new trade union legislation would be developed, and that no one has been, or is, apprehended for implicit or explicit exercise of the rights derived from the Convention. The Committee notes that the Conference Committee, 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 could be no legal trade unions in the country as yet, once again urged the Government in the strongest terms to immediately adopt the necessary measures and mechanisms to ensure all workers and employers the rights provided for under the Convention and to repeal Orders Nos 2/88 and 6/88, as well as the Unlawful Association Act. The Conference Committee further 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 notes that the Government indicates in its report that the drafting process of legislation on workers’ organizations will be based on three pillars: the new Constitution, continued assistance and advice from the ILO and the Convention. The Committee also notes that the Government indicates that the Pyidaungsu Hluttaw (i.e. Union Assembly/Parliament) will take the necessary measures, after the 2010 elections, to repeal Orders Nos 2/88 and 6/88, the Unlawful Association Act as well as Declaration No. 1/2006. The Government’s reports adds that the first draft of the legislation on workers’ organizations was completed in May 2010 and that it consists of 15 chapters addressing, inter alia, issues linked to the organization, duties, rights, fundraising and disbursement. Furthermore, the Government indicates that this first draft has been submitted to the Attorney-General for legal opinion; that the Government is considering requesting the technical assistance from the Office in this respect and that the Union of Myanmar Federation of Chambers of Commerce and Industry (UMFCCI) as well as the workers’ representatives will be consulted and their views will be taken into consideration to further improve the instrument. The Committee requests the Government to provide a copy of the draft legislation referred to and invites the Government to avail itself of the technical assistance of the Office.
In these circumstances, noting that the planned general elections took place on 7 November 2010, the Committee urges the Government to take, without delay, the necessary measures so that the Pyidaungsu Hluttaw will immediately, upon its constitution, repeal Orders Nos 2/88 and 6/88 as well as the Unlawful Association Act and Declaration No. 1/2006, so that they will no longer be applied in a manner that would infringe upon the rights of workers’ and employers’ organizations. The Committee also requests the Government to ensure that the necessary measures are taken without delay for the elaboration of a Trade Union Law that will fully guarantee the right of workers to establish and join organizations of their own choosing, without previous authorization and to provide a copy of the legislation once adopted.

The Committee once again urges the Government to furnish a detailed report on the concrete measures taken, with the full and genuine participation of workers and employers from all sectors of society regardless of their political views, to enact legislation guaranteeing, to all workers and employers, the right to establish and join organizations of their own choosing, as well as the rights of these organizations to exercise their activities and formulate their programmes and to affiliate with federations, confederations and international organizations of their own choosing without interference from the public authorities. It requests the Government to communicate any relevant draft laws, orders or instructions in this regard so that it may examine their conformity with the provisions of the Convention.

Finally, the Committee encourages the Government to avail itself of the technical assistance of the Office in this regard.

Extension of ILO mandate. The Committee notes that the Conference Committee, recalling 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, reiterated its previous request to the Government to accept an extension of ILO presence to cover the matters relating to the Convention. Recalling that the Government had indicated in its previous report that an extension of ILO presence to cover the matters related to the Convention was under consideration, the Committee once again expresses the firm hope that the Government will be in a position to accept such an extension in the very near future and requests the Government to provide information in this respect.