

Case No. 2268 (Myanmar)

- 107.** The Committee last examined this case at its March 2010 meeting [see 356th Report, paras 95–100] and recalls that it concerns several issues linked to the absence of freedom of association both in law and in practice in the country: (i) allegations relating to legislative issues: unclear legislative framework covering freedom of association; serious discrepancies between legislation and Convention No. 87; repressive texts, in particular military orders and decrees, detrimental to freedom of association and which contribute to a climate of denial of fundamental freedoms and to annihilate and destroy any form of labour organization; and (ii) allegations relating to factual issues: total lack of legally registered workers' organizations; systematic practice of repression by public authorities of any form of labour organization; the Federation of Trade Unions of Burma (FTUB) cannot function freely and independently on the Myanmar territory and its General Secretary has to face criminal prosecution because of his legitimate trade union activities; murder, detention and torture of trade unionists; continuing repression of seafarers for the exercise of their trade union rights; arrest and dismissal of workers in connection with collective labour protests and claims, in particular at the Unique Garment Factory, the Myanmar Texcamp Industrial Ltd and the Myanmar Yes Garment Factory; and intervention of the army in labour disputes. At its March 2010 meeting, the Committee urged the Government to take advantage in good faith of the technical assistance of the Office so as to remedy the legislative situation and to bring it into line with Convention No. 87 and collective bargaining principles, and requested it to keep it informed of all developments in this respect. The Committee once again requested the Government, pending the adoption in Myanmar of legislation that protects and promotes freedom of association, to take measures to ensure the freely chosen representation of employees and employers in cases conciliated by the various disputes resolution committees operating in the country, and to keep it informed of the measures taken in this regard.
- 108.** In communications dated 3 March, 17 August and 7 October 2010, the Government indicates, notably, that a new Trade Union Law is being drafted and recalls that the draft had been discussed with the ILO mission in January 2010. The Government also indicates that the Pyidaungsu Hluttaw (Parliament) will take the necessary measures regarding the repealing of Orders Nos 2/88, 6/88, the Unlawful Association Act and Declaration No. 1/2006, after the elections of November 2010. As to the dispute settlement mechanisms, the Government reiterates information previously submitted and adds that in 2009, 475 labour disputes were settled and 5,017 workers benefited from 409.47 million kyats (approx. US\$63 million (sic)) and that there were 22 compensation cases. In addition, from January to August 2010, 450 labour disputes were settled and 2,983 workers benefited from 300.74 million kyats (US\$47 million (sic)) and there were 15 compensation cases. As regards the right of seafarers to establish and join organizations of their own choosing and afford them adequate guarantees against acts of anti-union discrimination, the Government indicates that the Constitution of Myanmar Overseas Seafarers Association clearly provides that seafarers have the right to establish and join organizations of their own choosing and that the model agreement in this respect has been dispatched. Finally, as to the recommendations concerning the factual issues of the case, the Government reiterates the information provided previously to the Committee.
- 109.** *The Committee takes note of the information provided by the Government. As regards its recommendations of a legislative nature, the Committee recalls that for a number of years it has emphasized the need to both elaborate legislation guaranteeing freedom of association and ensure that existing legislation which impedes freedom of association would not be applied. It also recalls that the persistent failure to take any measures to remedy the legislative situation constitutes a serious and ongoing breach by the Government of its obligations flowing from its voluntary ratification of Convention No. 87. In light of these principles, the Committee welcomes the information provided by the*

Government that the Parliament will take the necessary measures regarding the repealing of Orders Nos 2/88, 6/88, the Unlawful Association Act and Declaration No. 1/2006 (which the Committee understands as being Declaration No. 1/2006 pronouncing the FTUB to be a terrorist group). The Committee trusts that this means that these orders and the Declaration will indeed be effectively repealed in the very near future and requests the Government to keep it informed in this regard. Noting that the elections have taken place and that the draft legislation which had been discussed with the ILO mission in 2010 is being prepared, the Committee urges the Government in the strongest of terms to enact legislation guaranteeing freedom of association to all workers and employers; to provide a copy of the legislation guaranteeing these rights to seafarers (including the model agreement that was dispatched in this respect); to explicitly protect workers' and employers' organizations from any interference by the authorities, including the army (and to provide a copy of the relevant legislation once adopted); and to ensure that any such legislation so adopted is made public and its contents widely diffused. The Committee once again urges the Government to take advantage in good faith of the technical assistance of the Office so as to remedy the legislative situation and to bring it into line with Convention No. 87 and collective bargaining principles. It requests the Government to keep it informed of all developments in this respect.

110. As to its recommendations relating to factual issues, the Committee once again expresses its deep regret that the Government does not provide any new information in this respect. It is therefore bound to repeat its previous recommendations and urges the Government to take all necessary measures to ensure that they are given full effect and to provide concrete, updated and detailed information on the situation of all the persons concerned by the allegations:

- The issuance of instructions to civil and military agents as a matter of urgency so as to ensure that the authorities fully refrain from any act preventing the free operation of all forms of organization of collective representation of workers, freely chosen by them to defend and promote their economic and social interests, including seafarers' organizations and organizations which operate in exile and which cannot be recognized in the prevailing legislative context of Myanmar and the need to ensure that all those working for such organizations can exercise trade union activities free from harassment and intimidation.
- The institution of an independent inquiry into the alleged murder of Saw Mya Than, to be carried out by a panel of experts considered to be impartial by all the parties concerned.
- The steps taken for the immediate release from prison of Myo Aung Thant.
- The issuance of appropriate instructions so as to ensure that the SECD authorities immediately refrain from all acts of anti-union discrimination against seafarers who engage in trade union action, and the revision of the text of the model agreement concerning Myanmar seafarers so as to bring it into conformity with Convention No. 87 and collective bargaining principles.
- The steps taken to investigate the dismissals of Min Than Win and Aung Myo Win from the Motorcar Tyre Factory.
- The measures taken to inquire into the specific part of the production of the Unique Garment Factory which was stopped in July 2001 and the exact criteria for the selection of the 77 night-shift workers who were retrenched.
- The provision of full information, including official company documents where available, on the Myanmar Texcamp Industrial Ltd's decision to retain skilled and

service workers over unskilled and non-service workers in undertaking its retrenchment of 340 employees.

- *The measures taken to investigate the allegations relating to the Yes Garment Factory.*

Case No. 2591 (Myanmar)

- 111.** The Committee last examined this case at its March 2010 meeting [see 356th Report, paras 101–103]. This case concerns the arrest of six labour activists, their trial for sedition and association with the Federation of Trade Unions of Burma (FTUB) and the extremely harsh prison sentences which were handed down against them after they had tried to organize celebrations and a seminar on labour issues for International Labour Day on 1 May 2007. At its March 2010 meeting, the Committee, in particular, urged the Government to take the necessary measures for the immediate release of Thurein Aung, Wai Lin, Nyi Nyi Zaw, Kyaw Kyaw, Kyaw Win and Myo Min and to keep it informed in this respect.
- 112.** In communications dated 17 August 2010, 31 August 2010 and 7 October 2010, the Government replies to the recommendations of the Committee in this case. The Government provides the following information in respect of the outstanding recommendations: as to the recommendation of the Committee to take the necessary measures to amend the national legislation so as to allow trade unions to operate in conformity with Conventions Nos 87 and 98 and to recognize the FTUB as a legitimate trade union organization, the Government, while indicating once again that new legislation would be drafted in conformity with Convention No. 87, reiterates that the FTUB is considered to be a terrorist organization. As to the recommendation of the Committee to carry out an independent investigation without delay into the allegation of ill treatment of the detained persons, the Government provides general information related to the efforts made by the Department of Prison under the Ministry of Home Affairs to be in line with the 1988 United Nations Standard Minimum Rules for the Treatment of Prisoners, on the basis of which it considers that the allegation of ill treatment of the detained persons concerned in this case is unfounded. As to the recommendation to release Thurein Aung, Wai Lin, Nyi Nyi Zaw, Kyaw Kyaw, Kyaw Win and Myo Min without delay, the Government reiterates that these persons “were not workers and never worked in any factories and establishments” and that they have been punished only for breaching existing laws, not for their labour-related activities. As to the recommendation to ensure that no person will be punished for exercising his or her rights to freedom of association, opinion and expression, the Government indicates that people shall be punished for breaching existing laws. Finally, as to the recommendation of the Committee to refrain from any acts preventing 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, such as the FTUB, the Government provides that the rights of citizens, including the freedoms of expression, peaceful assembly and association, are guaranteed in the Constitution but that the drafting process of legislation will not open the door for any unlawful association or terrorist organization which is not allowed to exist anywhere in the world.
- 113.** *The Committee takes note of the information provided by the Government and in particular, once again, the information concerning its intention to draft new legislation in conformity with Convention No. 87. The Committee, however, once again deeply regrets that the Government’s communications essentially repeat those previously submitted, while failing to provide any new concrete information or present any evidence that it has taken concrete measures in respect of the serious matters presented in this case. It therefore deplors that the Government has failed to implement its recommendations and*

finds itself obliged to refer to its previous examination of this case and to firmly urge the Government to fully implement as a matter of urgency its previous recommendations. The Committee requests the Government, in particular, to provide specific and detailed information on the situation of Thurein Aung, Wai Lin, Nyi Nyi Zaw, Kyaw Kyaw, Kyaw Win and Myo Min. It requests the Government to take all the necessary measures to ensure their immediate release, as well as their access to legal and medical assistance while detained. Finally, the Committee urges the Government to immediately undertake real and concrete steps to ensure full respect for freedom of association in law and in practice.