Observation

Historical background

1. In its earlier comments, the Committee discussed in detail the history of this extremely serious case, which has involved the Government’s long-standing, 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.

2. 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, 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.

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, in particular by the military.

3. In its earlier comments, the Committee of Experts has identified four areas in which measures should be taken by the Government to achieve 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

4. 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 discussions and conclusions of the Conference Committee on the Application of Standards
during the 97th Session of the International Labour Conference in June 2008;

– the documents submitted to the Governing Body at its 301st and 303rd Sessions (March and November 2008), as well as the discussions and conclusions of the Governing Body during those sessions;

– the comments made by the International Trade Union Confederation (ITUC) in a communication received in September 2008 together with the detailed appendices of more than 600 pages; and

– the reports of the Government of Myanmar received on 4 and 20 March, 2 and 19 June, 26 September and 31 October 2008.

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

5. In its previous observation, the Committee discussed the significance of the Supplementary Understanding (SU) of 26 February 2007, which supplemented the earlier Understanding of 19 March 2002 concerning the appointment of an ILO Liaison Officer in Myanmar, and the role of the Liaison Officer in its implementation, as an important new development and a subject of major discussion in ILO bodies. As the Committee previously noted, the SU provides for a new complaints mechanism to be established and put into operation, and has as its prime 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”. The Committee notes that the complaints mechanism was extended on 26 February 2008 on a trial basis for one year, until 25 February 2009 (ILC, 97th Session, Provisional Record No. 19, Part 3, Doc. D.5). The Committee further discusses 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

6. The Committee on the Application of Standards once again discussed this case in a special sitting during the 97th Session of the Conference in June 2008 (ILC, 97th Session, Provisional Record No. 19, Part 3). The Conference Committee observed that, although certain steps had been taken in the application of the SU, “much more needed to be done with commitment and urgency”. The Conference Committee expressed its concern that awareness of the existence of the complaints mechanism under the SU “remained very low”, and it urged the Government to give early approval to the translation, in all local languages, of an easily understandable brochure, for wide public distribution, explaining the law and the procedure for lodging a complaint under the SU. The Conference Committee noted that, although the complaints mechanism continued to operate, penalties were not being imposed under the Penal Code, and no criminal convictions of members of the armed forces had taken place. The Conference Committee also emphasized that it was critical that the ILO Liaison Officer had sufficient resources available to undertake his responsibilities, and it underlined the urgent need for the Government to accept a strengthened network of facilitators to deal with complaints from all over the country. The Conference Committee also noted with concern the reported cases of retaliation and harassment against complainants and volunteer facilitators who cooperated with the Liaison Officer, and it called on the Government to ensure that all retaliation and harassment, based on any legal or other pretext, cease with immediate effect and that the perpetrators be punished with the full force of the law.
Discussions in the Governing Body

7. The Committee notes from the report submitted to the 303rd Session of the Governing Body in November 2008 (GB.303/8/2), regarding the progress of the SU complaints mechanism that, as of 6 November 2008, the Liaison Officer had received 121 complaints (GB.303/8/2, paragraph 3). Of those complaints, 70 had been formally submitted for investigation and appropriate action to the Government Working Group on Forced Labour. Of the cases submitted, 50 had been responded to in a manner considered satisfactory and were subsequently closed, while 20 cases were either still awaiting government response or remained open while the process continued. Thirty-nine of the cases submitted involved individual complaints of under-age recruitment into the military (GB.303/8/2, paragraph 3).

8. The Committee notes in the same report to the Governing Body the indications of the Liaison Officer that it was evident that awareness levels among a large majority of the population regarding their right and possibility to complain were very low; that this low level of awareness together with the physical difficulties of actually lodging a complaint meant that the complaints facility currently did not reach out significantly beyond Yangon and neighbouring divisions (paragraph 9); that “extensive negotiations” were continuing to take place on the translation of the SU and the original Understanding of 2002 and final approval had yet to be granted (paragraph 8); and that the Government had yet to consider or approve the text of a simply worded brochure to be translated into local languages, for wide public distribution, explaining the law and the procedure for lodging a complaint under the SU (paragraph 9).

9. In its conclusions (GB.303/8), the Governing Body, inter alia, stressed the urgency of giving full effect to the recommendations of the Commission of Inquiry and to the subsequent decisions of the International Labour Conference (paragraph 1). While recognizing a certain degree of cooperation to make the SU complaints mechanism function, it expressed its continued concern about the slow pace of progress and the urgent need for much more to be done (paragraph 2). The Governing Body underlined the urgent need to raise the awareness of military and civil authorities, as well as the general public, concerning the legislation prohibiting forced labour and the rights contained in the SU. It also pointed out that those guilty of exacting forced labour, including under-age recruitment into the military, must be prosecuted and meaningfully punished, and victims must be entitled to reparation (paragraph 3). It emphasized the need for the Liaison Officer to be able to carry out his functions effectively throughout the country, and for public access to the ILO Liaison Office to be unhindered and free from the fear of reprisals (paragraph 4). Finally, the Governing Body called for an end to the harassment and detention of persons exercising their rights under the SU (paragraph 5).

Communication received from the International Trade Union Confederation

10. The Committee notes the comments made by the ITUC in its communication received in September 2008. Appended to this communication were 49 documents, amounting to more than 600 pages, containing extensive and detailed documentation referring to the persistence of widespread forced labour practices by civil and military authorities. In many cases, the documentation refers to specific dates, detailed locations and circumstances, and specific civil bodies, military units and individual officials. It includes allegations of government-imposed compulsory labour taking place in all but one of the 14 states and divisions of the country. Specific incidents referred to involve allegations of a wide variety of types of work and services requisitioned by the authorities, including work directly related to the military or militia groups (portering, construction and maintenance of military camps, other tasks for the benefit of the military such as human minesweeping and sentry/security duty, and forced recruitment of children and of prisoners upon completion of their sentences), as well as work of a more general nature, including work in agriculture (such as forced cultivation of castor oil nuts), construction and maintenance of roads, bridges, and dams, and other infrastructure work.
11. The ITUC documentation includes translated copies of 59 written orders from military and other authorities to village authorities in Karen and Chin States, containing a range of demands, entailing in most cases a requisition for compulsory (and uncompensated) labour. The information also includes reports of allegations that persons turning to the ILO Liaison Office to file complaints of forced labour often face retaliation and harassment. One such case involved 20 villagers from Pwint Phyu Township in the Magwe Division who, after filing a complaint of forced labour with the ILO, were questioned five times within one month by local authorities. Another case involved 70 residents from Arakan State, who were questioned by officers of the Military Affairs Security Department of the Labour Ministry after submitting a forced labour complaint to the ILO and were forced to sign a document stating they had been coerced into filing their petition. The ITUC communication also refers to information alleging that forced labour has been exacted by military and local authorities in the Irrawaddy Delta region for reconstruction work in the wake of cyclone Nargis in May 2008. It refers, for example, to allegations that: at the Maubin camp for displaced people, 1,500 men and women were forced to work in quarries; that in Ngabyama village in Southern Bogale Township, authorities forced survivors to cut trees and reconstruct roads; and that in Bogalay soldiers were imposing forced labour on local villagers. The documentation also includes testimonies alleging the forced appropriation of money by military commanders from villages in SPDC-controlled areas, allegedly as “donations” being collected for distribution to survivors of the cyclone. A copy of the ITUC’s communication and its annexes was transmitted to the Government on 22 September 2008 for such comments as it may have wished to provide.

The Government’s reports

12. The Committee notes the Government’s reports, referred to in paragraph 4 above. It is grateful for the very lengthy report received on 31 October 2008, which is in large part a compilation of information the Government previously supplied, but which also includes a lengthy summary of the history of developments in this case from the Government’s point of view with an emphasis on its history of cooperation with the International Labour Office, as well as several pages of updated information concerning measures which, according to the Government, are being taken to implement the June 2008 conclusions of the Conference Committee, as well as this Committee’s observations. The Committee notes, however, that in its most recent reports, the Government did not respond in detail to the numerous specific allegations contained in the communication from the ITUC referred to above, other than to provide information about the status of several court cases involving the criminal prosecution and punishment of persons who were acting as volunteer facilitators for the SU complaints mechanism or who were labour activists with links to the ILO or engaged in associational activities aimed at promoting labour rights. These cases have also been matters of particular concern to ILO supervisory bodies. The Committee notes that the information about these cases contained in the Government’s most recent report is a repetition of the information included in the reports received on and before 19 June 2008. The Committee notes the updated information on these cases in the report of the Liaison Officer of 7 November 2008 submitted to the 303rd Session of the Governing Body (GB.303/8/2). 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 recent communication from the ITUC.

Assessment of the situation

Issuing specific and concrete instructions to the civilian and military authorities

13. The Committee notes initially that in its latest reports the Government has given no indication that it has taken measures to formally repeal the relevant provisions of the Village Act and the Towns Act. With regard to Order No. 1/99 as supplemented by the Order of 27 October 2000, which prohibit forced
labour, the Government repeats its reference to instructions it states had previously been issued, yet once again it has not supplied details as to the content of those instructions. The Committee notes the reference to a lecture to deputy township judges on 18 February 2008, delivered jointly at an “On-Job Training Course No. 18” by the Director-General of the Department of Labour and the ILO Liaison Officer, which was aimed at raising those participants’ awareness “about forced labour broadly” and to enable them to “make right decisions”. The Committee also notes that the report of the Liaison Officer submitted to the Conference Committee in June 2008 referred to the first of two five-day training for trainers’ courses, led by the Assistant to the Liaison Officer, in association with UNICEF and the ICRC, which it states had been successfully completed. Its 37 participants were officers and non-commissioned officers of the Recruitment Regiment, the Basic Training Camps, and personnel of the Social Welfare Department, and the second programme of this kind was scheduled for the last week of June and was to be followed by the participants leading multiplier training courses around the country (ILC, 97th Session, Provisional Record No. 19, Part 3, Doc. D.5, paragraph 7). The Committee notes the information in the Government’s reports received on 20 March and 26 September 2008, on activities undertaken by the Committee for the Prevention of Military Recruitment of Under-age Children. This information also refers to a plan for “multiplier courses” on measures for the prevention of child recruitment into the military to be given to military officers and lower ranking trainees at a number of military training centres during 2008. It indicates, inter alia, that in June 2008 representatives of the Committee for the Prevention of Military Recruitment of Under-age Children and the Ministry of Defense issued “guidance” to assistant judge advocates-general and to department heads of division and regional commands and military training schools, which, in turn, was intended to support “legal education” lectures on the prevention of recruitment of children into the military that were to be given to military officers and lower ranking military personnel at a number of regiments and units. The Committee notes that in its latest reports the Government provided no further information about the plans for multiplier courses or legal education lectures referred to earlier.

14. The Committee considers that steps taken to issue instructions to civilian and military authorities on the prohibition of forced and compulsory labour, such as those referred to above, are vital and need to be intensified. However, given the continued dearth of information regarding such measures, including the detailed content of materials referred to, 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 the orders. The Government has provided no information that would support an observation that, in actual practice, recourse to forced or compulsory labour by the authorities, and in particular the military, has declined on account of instructions regarding the prohibition of forced labour, which the Government indicates has been conveyed to them. **The Committee stresses that in order for the Government to eradicate forced labour, the activities referred to above are vital and need to take place on a larger scale and in a more systematic way.** The Committee requests the Government to report in greater detail on these activities, including the full content of the materials and curricula utilized, as well as information about their effectiveness in bringing about a decline, in actual practice, in the imposition of forced or compulsory labour.

15. In its previous observation the Committee expressed the hope that the Government would also bring constitutional clarity to the prohibition of forced labour. In its latest report, the Government states that application of the Convention has “been included in the New State Constitution”, which was approved in a constitutional referendum in May 2008 and is due to take effect in 2010, and it refers to section 359 (paragraph 15 of Chapter VIII – “Citizenship, Fundamental Rights and Duties of Citizens”) of that instrument, which states: “The State prohibits any form of forced labour except hard labour as a punishment for crime duly convicted and duties assigned thereupon by the State in accord with the law in the interests of the people.” The Committee, referring also to paragraph 42 of its General Survey of 2007 on the eradication of forced labour, recalls that, for purposes of the Convention, certain forms of
compulsory work or service, which would otherwise fall under the general definition of “forced or compulsory labour”, are expressly excluded from its scope by Article 2(2) of the Convention, and that these exceptions are subject to the observance of certain conditions which define their limits. The Committee notes with regret that the exemption from the prohibition of forced labour in the new Constitution for “duties assigned thereupon by the State in accord with the law in the interests of the people” encompasses permissible forms of forced labour that exceed the scope of the specifically defined exceptions in Article 2(2). The Committee also expresses deep concern about the fact that the Government not only failed to repeal legislative texts identified by the Commission of Inquiry and this Committee, but also included in the text of the Constitution a provision which may be interpreted in such a way as to allow a generalized exaction of forced labour from the population. Moreover, as the Committee pointed out in paragraph 67 of its General Survey referred to above, even those constitutional provisions which expressly prohibit forced or compulsory labour may become inoperative where forced or compulsory labour is imposed by legislation itself. **The Committee therefore trusts that the Government will at long last take the necessary steps to amend or repeal the relevant legislative texts, in particular the Village Act and the Towns Act, and that it will also amend paragraph 15 of Chapter VIII of the new Constitution, in order to bring its law into conformity with the Convention.**

**Ensuring that the prohibition of forced labour is given wide publicity**

16. In relation to ensuring that the prohibition of forced labour is given wide publicity, the Committee notes the indication from the report of the Liaison Officer dated 7 November 2008, which was submitted to the Governing Body at its 303rd Session, that since March 2008, the Liaison Officer had undertaken two joint awareness-raising missions with senior Department of Labour officials (GB.303/8/2, paragraph 6). The Government appears to refer in its report received on 31 October 2008 to the same activities, indicating that joint field visits were planned by the Director General of the Department of Labour and the ILO Liaison Officer to Myitkyinar and Monywa in late October 2008 to carry out awareness-raising workshops. 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 they should continue and be expanded. It notes the indication of the Liaison Officer in his report to the Governing Body (GB.303/8/2), that there still had been no response to repeated calls from ILO supervisory bodies for a widely publicized, high-level statement reconfirming the Government’s commitment to the elimination of forced labour (paragraph 10).

17. In its previous observation the Committee noted that the complaints mechanism of 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. In that vein, the Committee notes with concern the statements of the Liaison Officer about the continued shortcomings of the SU in his latest report to the Governing Body (GB.303/8/2), which are referred to above in the discussion of the Governing Body proceedings. **The Committee hopes that the Government will, without further delay, take measures to 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, and that in its next report it will provide information about such measures as well as the impact they are having 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.**

**Providing for the budgeting of adequate means for the replacement of forced or unpaid labour**

18. In this regard, the Committee recalls that in its recommendations the Commission of Inquiry stated that: “(A)ction 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, in its previous observations, has also stressed 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 notes that, in its latest reports, the Government provides no new information, stating as it has previously that it “provides the budget allotment including labour costs for all the Ministries to implement their respective projects”, and “to confirm that the budgetary allotment for the workers are already allocated to the respective Ministry”. The Committee repeats its earlier request for the Government, in its next report, to provide precise, detailed information about the measures it has taken to budget for adequate means for the replacement of forced or unpaid labour.

Ensuring the enforcement of the prohibition of forced labour

19. With regard to the enforcement of prohibitions of forced labour, the Committee notes the assessment of the Liaison Officer, as reported to the Governing Body in November of 2008, that: “In the main, complaints lodged (under the SU) have been dealt with expeditiously by the Government Working Group” (GB.303/8/2, paragraph 5); and that: “The Government’s response to the complaints mechanism at senior level remains reasonably positive” (GB.303/8/2, paragraph 20). However, in its previous observation the Committee expressed its concern that only one case forwarded by the Liaison Officer to the authorities for investigation and appropriate action had so far resulted in the prosecution of those responsible (Case No. 001, which led to the prosecution of two civilian officials), and there were no indications that, in the cases forwarded which involved allegations against military personnel, any action, criminal or even administrative (other than reprimands), had been taken against any military personnel. The Committee notes that this situation remained largely unchanged in 2008, except for three cases against military personnel, referred to in the report of 7 November 2008 submitted to the 303rd Session of the Governing Body, in which fines (28 days’ and one 14 days’ salary; in one case loss of one year’s seniority) rather than reprimands were imposed (GB.303/8/2, paragraph 7). The Committee notes in the same report the statements of the Liaison Officer that administrative penalties against military personnel continue to be proportionately lighter than those imposed on their civilian counterparts, and that, during the period following the submission of previous reports to the ILO supervisory bodies, no further prosecutions of alleged perpetrators under either the Penal Code or military regulations, resulting in imprisonment, had taken place (GB.303/8/2, paragraph 7).

20. The Government has in its latest reports provided no new information about any prosecutions against perpetrators of forced labour being pursued in the court system outside the framework of the SU complaints mechanism. The Committee notes that, in its report received on 31 October 2008, the Government makes reference, as in previous years, to a mechanism that has been put in place for the public to register complaints directly with law enforcement authorities, and it also refers, as it has previously, to an appendix containing a table of cases with notations indicating that in 2003 and 2004 ten cases involving complaints of forced labour were filed directly in the Myanmar courts, several of which resulted in convictions and the imposition in January and February of 2005 of prison sentences under section 374 of the Penal Code. The Committee previously noted these cases in its observation published in its 2005 report. The Committee notes that three of the cases were dismissed, and in the remaining cases the persons convicted and sentenced were all civil administration officials, despite the fact that at least two of the cases involved allegations against military personnel.

21. The Committee emphasizes once again that the illegal exaction of forced labour must be punished as a penal offence, rather than treated as an administrative issue, and the penalties which may be imposed under section 374 of the Penal Code for the exaction of forced or compulsory labour be strictly enforced, in conformity with Article 25 of the Convention. As emphasized by the Commission of Inquiry, this requires thorough investigation, prosecution and adequate punishment of those found guilty, including cases involving military personnel.
Concluding remarks

22. The Committee fully endorses the conclusions concerning Myanmar of the Governing Body and the general evaluation of the forced labour situation by the Liaison Officer. In the light of these conclusions and evaluation, 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. This requires, beyond the agreement of the SU, that the authorities redouble their efforts to establish the necessary conditions for the successful functioning of the complaint mechanism, and that they take without further delay the long-overdue steps to repeal the relevant provisions of domestic legislation and adopt the appropriate legislative and regulatory framework to give effect to the recommendations of the Commission of Inquiry. *The Committee trusts that the Government will demonstrate its commitment to rectify the violations of the Convention identified by the Commission of Inquiry, by implementing the very explicit practical requests addressed by the Committee to the Government, and that all the required 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.*