

**Special sitting to examine developments
concerning the question of the observance
by the Government of Myanmar of the
Forced Labour Convention, 1930 (No. 29)**

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I. Brief summary of developments since June 2006

1. Following the 95th Session (2006) of the International Labour Conference, the Office resumed discussions with the Myanmar authorities in Geneva and Yangon on the text of a Supplementary Understanding establishing a complaint mechanism for victims of forced labour in Myanmar. In the course of these discussions, the Office proposed a draft text which, although agreement had not been reached on some important elements, could serve as a basis for more formal discussions. It was on this basis that a mission travelled to Yangon in October 2006. After detailed discussions in Yangon it became clear that no agreement would be reached, and before its departure the mission provided the authorities with a final compromise text that in its view went as far as possible to bridge the remaining gaps.
2. At its 297th Session (November 2006) the Governing Body had before it a report on developments, including the details of the mission's discussions in Yangon (GB.297/8/1). It also had before it a document setting out the legal aspects arising from the Conference (GB.297/8/2).
3. In its conclusions, the Governing Body noted that the Workers, Employers and the majority of Governments had expressed their great frustration that the Myanmar authorities had not been able to agree on a mechanism to deal with complaints of forced labour within the framework set out in the Conference conclusions. The Myanmar authorities should, as a matter of utmost urgency and in good faith, conclude such an agreement, on the specific basis of the final compromise text proposed by the ILO mission. Following the Conference conclusions in June 2006, a specific item would be placed on the agenda of the March 2007 session of the Governing Body to enable it to move on legal options, including, as appropriate, involving the International Court of Justice. The Office was therefore requested to make necessary preparations for the Governing Body to request an advisory opinion of the International Court of Justice on specific legal question(s). As regards the question of making available a record of the relevant documentation of the ILO related to the issue of forced labour in Myanmar to the Prosecutor of the International Criminal Court, it was noted that these documents were public and the Director-General would therefore be able to transmit them. In addition, the Director-General could ensure that developments were appropriately brought to the attention of the United Nations Security Council when it considered the situation in Myanmar.
4. At its 298th Session (March 2007), the Governing Body had before it: (i) documents providing the details of the negotiation and final agreement on 26 February 2007 of a Supplementary Understanding between the ILO and Myanmar which established a mechanism to enable victims of forced labour to seek redress, as well as details of other activities carried out by the Office (GB.298/5/1, GB.298/5/1(Add.1)); (ii) a report from the Liaison Officer a.i. on the initial functioning of the mechanism (GB.298/5/1 (Add.2)); and (iii) a document setting out preparations made by the Office as regards the question of requesting an advisory opinion of the International Court of Justice (GB.298/5/2).
5. The Governing Body welcomed the signing of the Supplementary Understanding. It also welcomed as part of a progressive building of confidence the fact that the implementation of the mechanism had begun, and that action had been taken by the authorities in those cases that involved forced labour. The Governing Body underlined the importance of the mechanism continuing to function effectively in the context of a very serious forced labour situation. In this regard, as foreseen in the Supplementary Understanding, it was vital that the Liaison Officer a.i. had the necessary staff resources to adequately discharge the

responsibilities. The Governing Body requested the Office to move quickly to assign suitable international staff to assist the Liaison Officer a.i., and requested the Government of Myanmar to extend the necessary cooperation and facilities. The Governing Body decided to defer the question of an advisory opinion by the International Court of Justice, on the understanding that the necessary question or questions would continue to be studied and prepared by the Office, in consultation with the constituents and using the necessary legal expertise, to be available at any time that might be necessary.

II. Latest developments since March 2007

6. The following update on the functioning of the complaint mechanism should be of interest to the Committee. As of 23 May 2007, some three months after the establishment of the mechanism, the Liaison Officer a.i. had received a total of 23 complaints. These complaints have come from many different parts of the country.¹ The Liaison Officer has made a preliminary assessment of each of these 23 cases. In eight cases, he was of the view that they involved a situation of forced labour, and accordingly transmitted them to the authorities (i.e. the Working Group) for investigation and appropriate action. In five cases, he is awaiting additional information that would allow him to complete his assessment. He has rejected ten cases, either because he did not consider that they involved forced labour (eight cases),² or because the complainants were reluctant to agree to their complaints being transmitted to the authorities for investigation (two cases).
7. Of the eight cases that the Liaison Officer a.i. transmitted to the Working Group, the responses in two cases have already been reported to the Governing Body (see GB.298/5/1 (Add.2), paragraphs 3-4). In three cases, all of which were transmitted to the Working Group in the seven days prior to the finalization of this document, responses are pending. The responses to the other three cases were as follows.
8. In the first case, the Working Group informed the Liaison Officer a.i. that an investigation team headed by the Director-General of the Department of Labour had visited the area and concluded that the work was of a minor communal nature, implemented by community elders in consultation with the villagers. A second investigation carried out by the Director-General of the Central Inland Freight Handling Committee had reached the same conclusion. It was found that the complaint had arisen because the complainant had been treated rudely by a village official and due to improper collection of financial contributions for the project. Accordingly, administrative action would be taken against some village officials. The Liaison Officer a.i. is now seeking the views of the complainant on the outcome.
9. The second case concerned the recruitment of a minor into the armed forces. As provided for in the Supplementary Understanding, this complaint was transmitted by the Working Group to the Office of the Adjutant General for investigation and necessary action. The Working Group informed the Liaison Officer a.i. that the investigation had confirmed that the individual was under the age of 18, and that he had been discharged from the army and returned to the care of the family. The Adjutant General was instituting a Court of Inquiry to take action against the person or persons responsible for the recruitment. The Liaison

¹ The breakdown is as follows: six complaints from Yangon Division; five from Ayeyawady Division; four from Magway Division; three from Kayin State; two from Bago Division; and one complaint each from Chin, Kachin and Rakhine States.

² The majority of these cases concerned labour issues other than forced labour, such as disputes with employers over dismissal, pensions or workers' welfare issues.

Officer a.i. has been able to confirm that the individual has been safely returned to the care of his family.

10. In the third case, the Working Group informed the Liaison Officer a.i. that an investigation team headed by the Director-General of the Central Trade Disputes Committee had visited the area and concluded that the work in question had been organized by the local authorities in agreement with community elders on a self-reliance basis. Contrary to what had been alleged, vehicle owners had been paid for the use of their vehicles on the project, and there was no significant evidence of forced labour, as no punishment, fines or threats had been made against anyone for failing to cooperate. The complainant had been dissatisfied with the actions of a particular individual and this individual had been replaced. Satisfied with this outcome, the complainant had withdrawn the complaint. The Liaison Officer a.i. has received a letter in the name of the complainant stating that he had now been paid for his work and was withdrawing the complaint. The Liaison Officer a.i. is now seeking confirmation from the complainant of the letter's authenticity and the circumstances under which it was written.
11. The Liaison Officer a.i. met with the Deputy Minister for Labour on 8 April. The Deputy Minister was of the view that a certain success had been achieved through the establishment of the mechanism, and he gave his assurances that he would continue to extend full cooperation in dealing with future complaints. The Liaison Officer a.i. raised the question of assigning suitable international staff to assist him, contained in the conclusions of the Governing Body. He noted that it was crucial, as the number of complaints increased, that he had the capacity to deal with these in an efficient manner, which was already becoming difficult. It was also important to ensure that there was always someone available at his office to receive complaints during periods when he was travelling. The Deputy Minister indicated that he had already discussed this matter with the Minister for Labour, and it was the Minister's view that it should be discussed once the workload had increased. The Deputy Minister indicated, however, that he would revert to the Minister and do his best to resolve the matter before the Conference.
12. The Liaison Officer a.i. wrote to the Deputy Minister on 25 April to follow up on this question, indicating that in order to respond to the increased workload in a timely manner, as an interim solution, the ILO had identified an official currently based in its Regional Office in Bangkok who would be available to travel to Yangon for a limited period on mission status. The Deputy Minister replied the following day that additional time should be given for consideration of this matter. After a further meeting on 11 May between the Liaison Officer a.i. and the Director-General of the Department of Labour, the Deputy Minister gave a second response on 19 May, emphasizing that the authorities did not disagree with the appointment of additional staff, but that it required inter-ministerial agreement and a number of administrative procedures. At the time this report was finalized, there had been no further developments.
13. After more than five years based in Yangon for the ILO, and in view of the fact that the complaint mechanism has now been established and is functioning, Mr Richard Horsey has decided to end his assignment as ILO Liaison Officer a.i. as of 4 June 2007. The Director-General has appointed Mr Stephen Marshall to replace Mr Horsey, effective 1 July 2007.