

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

### **Report of the Liaison Officer to the Special Sitting on Myanmar (Convention No. 29) of the Committee on the Application of Standards**

#### **I. Follow up to the 96th Session (2007) of the International Labour Conference**

1. Following the 96th Session (2007) of the International Labour Conference, the Office continued discussions with the Government of Myanmar on the implementation of the recommendations of the Commission of Inquiry, including through the complaints mechanism established on a trial basis by the Supplementary Understanding between the Office and the Government, which had been concluded on 26 February 2007. On 26 February 2008, the trial period was extended for another 12 months.
2. Reports on the application of the Supplementary Understanding were submitted to the Governing Body at its 300th (November 2007) and 301st (March 2008) Sessions. Documents GB.300/8, GB.300/8(Add.), GB.301/6/1 and GB.301/6/2 are attached to this report. It is also important to recall that over the past 12 months, two events have had an impact on the framework in which the ILO activities are carried out. They are the civil unrest and its suppression in September–October 2007 and the devastation caused by Cyclone Nargis in early May 2008.
3. In the conclusions of its 300th sitting, the Governing Body noted progress made in the operation of the Supplementary Understanding, including educational activity jointly undertaken by the Ministry of Labour and the ILO Liaison Officer. However, it did so against the backdrop of the Government's crackdown on the peaceful protests of September 2007 as well as the detention and imprisonment of persons who had exercised their fundamental rights of expression and freedom of association. The Governing Body noted with concern reports of harassment and detention of persons associated with the application of the complaints mechanism. It called for the release of those persons, together with the issuance of a highest level statement which would unambiguously reconfirm that forced labour, including the recruitment of child soldiers, is illegal and the Government of Myanmar remains committed to its elimination.
4. At its 301st Session, the Governing Body welcomed the extension of the trial period of the Supplementary Understanding. It noted with serious concern however that a number of persons associated with the application of the complaints mechanism remained in detention, as did six labour activists who after their detention on 1 May 2007 were finally sentenced on 7 September 2007, receiving long prison terms for exercising their freedom of association rights (see also CFA 349th Report, GB.301/8, Case No. 2591). The

Governing Body again called for the release of the detained persons, Min Aung and Su Su Nway, as well as the six labour activists. It further called on the Government to approve the translated text of the Supplementary Understanding for free distribution to administrators, the military and the general public, to increase awareness of the rights and responsibilities it contains. The Governing Body repeated its call for a high-level public statement on the Government's policy on the prohibition of forced labour.

5. The Governing Body further took note of the Government's acceptance of the appointment of an additional international staff member to support the Liaison Officer. It also noted the undertaking of a joint presentation to a deputy township judges' refresher training course.

## **II. Activities since the 301st Session (March 2008) of the Governing Body**

6. On 2 May 2008, the Cabinet of the Government of Myanmar approved a translation of the Supplementary Understanding for distribution for awareness-raising purposes. A draft ILO text for a proposed brochure, in accessible language, is currently under consideration by the Government.
7. 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, has 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. The second programme of this kind is scheduled for the last week of June. It will be followed by the participants leading multiplier training courses around the country.
8. The Liaison Officer undertook a joint mission with the Ministry of Labour on 20–21 May 2008. This mission followed the receipt of the report of the Government's inquiry into a complaint of forced sentry/guard duty. It was agreed to in order to clarify some areas which remained unclear and also for the purpose of awareness raising. It was ascertained that following the lodging of the complaint, all of the activity that was subject to the complaint had been stopped. One army officer has been reprimanded for his actions. A further recommendation for disciplinary action has been made, and copies of interview statements in respect of the alleged detention/harassment of the case facilitator have been requested. The Government is expected to respond on these matters.
9. In April and early May 2008, the Government proceeded with the preparations for the referendum for the adoption of a new Constitution. The referendum went ahead as planned on 10 May 2008 although the Government postponed the voting for people in 47 townships affected by Cyclone Nargis until 24 May 2008. On 16 May, the Government publicly announced an interim result, declaring a 99.07 per cent turnout with 92.4 per cent voting their support for the Constitution, 6.12 per cent voting against and 1.49 per cent of votes not being accepted. There has been considerable commentary on both the process adopted and the content of the new Constitution. The Constitution contains specific articles on the right to freedom of association, freedom of expression and the right to organize. The article banning the use of forced labour contains qualifications which could raise the question of its conformity with the Forced Labour Convention, 1930 (No. 29). Time and future events will determine whether, and how, the rights contained in the two fundamental ILO Conventions ratified by Myanmar will be applied in practice following the adoption of the Constitution. No new high-level statement on forced labour as requested by the Governing Body has been made; the Government has considered that the new Constitution restates the commitment to the elimination of forced labour.
10. At the time of writing, Min Aung, Su Su Nway and the six labour activists sentenced in September 2007, all remain in prison. The Liaison Officer has requested permission to visit

them but this has not as yet been agreed. The number of charges against one of the facilitators, U Thet Wai, who was freed from detention in early March 2008 has been reduced, but the court hearings on the remaining charges continue. The Government has been reminded that the Governing Body underlined that U Thet Wai should remain out of prison, as the initial charges against him were related to his contacts with the ILO.

### **III. The functioning of the Supplementary Understanding**

- 11.** As of 19 May 2008, a total of 89 complaints have been received under the Supplementary Understanding. Of those complaints, 46 have been assessed and submitted to the Government for investigation and action, while 36 have been assessed as not being within the mandate or not sufficiently supported or substantiated for submission. At present seven complaints are under assessment towards acceptance or otherwise for submission. The number of complaints dropped immediately after the unrest and its suppression in September–October 2007, but complaints have been steadily received since then. It is still too early to assess what effect Cyclone Nargis has had.
- 12.** Of the 46 cases submitted to the Government, 28 cases have been closed following an investigation by the authorities. In two of these cases, a note has been made that the Liaison Officer considers the action taken by the Government against the perpetrators as inadequate. Responses continue to be in discussion in eight cases, and responses have not yet been received to the original letter of complaint in respect of the remaining ten cases. In 15 of the closed cases, recommendations have been made towards improving ongoing practice.
- 13.** The complaints submitted can be broken down into the following categories:
  - (a) forced labour under the instruction of civil authorities – 17 cases;
  - (b) forced labour under the instruction of military authorities – five cases;
  - (c) recruitment of minors into the military – 21 cases;
  - (d) complaints concerning the application of the Supplementary Understanding – harassment/detention – three cases.
- 14.** In general the Ministerial Working Group, chaired by the Deputy Minister of Labour and supported by the Department of Labour, has responded in a reasonably timely manner to the complaints that were submitted. However, it must also be said that the absence of a translation of the Supplementary Understanding has acted to keep awareness of the rights it contains low, and the incidence of harassment and detention of persons associated with its application has severely limited its operation. The number of complaints therefore cannot be seen to reflect the size of the issue.
- 15.** There are continuing practical problems in the physical ability of victims of forced labour or their families to complain. The ILO Liaison Officer is in Yangon, and the facilities available consist of one additional international professional staff, supported by six local staff contracted to the ILO for interpretation, administrative and transport support purposes. Myanmar is a very large country with somewhat unreliable communication systems and where it is not easy for citizens to travel. Therefore, a network of complaints facilitators is necessary. Facilitators undertake this activity because they are socially aware and committed to support the elimination of forced labour, including the use of child soldiers. They are not paid and receive no financial support or reimbursement of their costs

in accepting this responsibility. They also accept a level of risk of potential harassment and even detention.

- 16.** Some facilitators belong to political or social organizations while others are ordinary committed individuals. The Government has maintained on a number of occasions that facilitators may use the provisions of the Supplementary Understanding as a means of undermining the State by actively seeking out and encouraging complaints, and as a means to gain protection for themselves under the non-retribution provision of the Supplementary Understanding. The Liaison Officer has in response stressed the fact that he accepts, and exercises, his responsibility to properly assess every complaint to ensure as best as possible its legitimacy. This includes verification that there is a genuine complaint and a willing complainant, the critical issue being the substance of the complaint not the identity or motivations of the personality. In respect of protection, the Liaison Officer has the responsibility to exercise judgement in the acceptance of complaints of reprisal/harassment. However, he must also be convinced that the alleged offences are genuine.
- 17.** A number of recent complaints concerned obliging farmers to change their crop under threat of penalties, including the loss of their land. The Government has stressed that its actions in this regard are due to the importance of agriculture for the development of the national economy. It has for some time been actively building dams for both electricity generation and irrigation. It has expressed the view that some complaints have been encouraged by politically motivated facilitators seeking to undermine its policy of agricultural enhancement. The Liaison Officer has assured the Government that complaints that he has received and submitted further are not due to any opposition to government policy. Many of the farmers concerned have welcomed the irrigation projects and enhanced income prospects. The complaints have concerned the insistence of certain authorities that farmers change the crop on all of their land notwithstanding whether or not it is appropriate to do so in light of the need to rotate crops, the soil type and the particular specifications of the land in question. In other instances complaints have related to the requirement that crops be changed to meet the supply demands of government-owned food processing and refining facilities without consideration of the economic consequences of such a change to the farmer.
- 18.** In respect to the issue of child soldiers and recruitment of minors, the Government has raised concerns that facilitators are encouraging parents to make a complaint when in fact they and their child are in favour of the child adopting a military career. The Government claims to have ascertained that most children subject of complaints were volunteer recruits who entered the military of their own free will. It has further objected to the lodging of retrospective complaints of recruitment taking place before the Supplementary Understanding was signed. The Liaison Officer has advised that even if a child does “volunteer”, under the law no person under 18 years can join the Myanmar military services. Whilst some young men do offer themselves for recruitment, others are coerced, tricked or forced to do so. It is the recruiting officer’s responsibility to apply the law and regulations and to verify the applicant’s age prior to accepting a recruit. The Liaison Officer has also noted that notwithstanding the facts of a particular case, the penalty for military personnel for recruitment of minors has at most been a serious reprimand on the officer’s personal file. The Liaison Officer has considered that this is not credible, as there is an expectation that the punishment fits the crime. In particularly blatant cases of forced recruitment or the recruitment of very young children, the full force of either penal or military law should be applied with protagonists receiving the penalties provided under those laws, i.e. fines and/or imprisonment.
- 19.** The question of whether an illegally recruited child can legally be considered a deserter if he tries to run away and go back home has also been discussed. There is a continuing tendency for underage recruits who have tried to go home to be considered absent without

leave or deserters and to be punished, including being imprisoned, notwithstanding that this is both legally flawed and constitutes a severe human rights violation.

#### **IV. The continuing situation**

- 20.** Myanmar has been severely hit by a major cyclone, with the loss of many tens of thousands of lives (the final death toll is yet to be determined) and major dislocation of a huge number of people. Every sympathy is due to all affected, as reflected by the large humanitarian response from all over the world. It is critical at this time that in addition to making every effort to restore the lives of victims to some form of normality, both the Government and its partners, including the UN and all relief agencies and actors, are conscious of the increased risk of incidences of forced labour, child labour, human trafficking and migrant labour as the authorities and individuals come to grips with the sheer size of the tragedy and the ongoing implications for the population in the affected areas. An early return to relative normality and the ability of individuals and families to generate sustainable income through access to decent work to support their and the nation's recovery is critical. The ILO Liaison Officer and his team in Yangon are currently working with others, including the authorities and the people of Myanmar, to help to ensure that the reconstruction effort does not involve the use of forced labour in any of its forms.
- 21.** The UN Country Team is working closely together. The ILO is supporting a range of agencies working within the cluster system that has been adopted to achieve coordinated and integrated responses to the various post-crisis issues. Across the board, attention is being given to ensure that relief and recovery operations do not inadvertently accommodate forced labour or other human rights abuses. Under the protection cluster, particular emphasis is being placed on preventing displaced and orphaned children from dropping into forced labour, and in the early recovery cluster programming, emphasis is being placed on the promotion of sound employment practice to avoid forced labour.
- 22.** The ability to raise public awareness as to citizens' and workers' rights under both Myanmar law and the Supplementary Understanding will be significantly enhanced by the publication and distribution of the recently approved translation of the text of the Supplementary Understanding, supported by a simply worded brochure which hopefully can be approved and carried out shortly. The continuation of targeted training activity and the undertaking of joint missions in follow-up to specific complaints will also assist to this end. However, awareness of the law and the rights and responsibilities under it is only one part of the equation. It is critical that there is an increased ability for victims of forced labour complaints to physically submit their complaints directly or indirectly, with the help of facilitators, and to be able to do so without fear of retribution. The Government has agreed in principle to a second round of training sessions within the administrative authorities, and this will go some way towards achieving this objective. However, given that the facilities available to the Liaison Officer are unlikely to be expanded, the continued development of a network of facilitators is vital. Similarly important would be an assurance by the Government that victims of forced labour can complain and facilitators can support the complaints without fear of reprisal.

Yangon, 23 May 2008

## **Appendices**

Supplementary Understanding dated 26 February 2007

Extension of the Supplementary Understanding dated 26 February 2008

Copy of the register of cases as of 19 May 2008