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**FOR DEBATE AND GUIDANCE**

## SEVENTH ITEM ON THE AGENDA

**Developments concerning the question  
of the observance by the Government  
of Myanmar of the Forced Labour  
Convention, 1930 (No. 29)****Background**

1. Following discussion of the item at its 294th Session (November 2005), the Governing Body adopted the following conclusions:

In the light of the documents before the Governing Body and after listening to the Ambassador of Myanmar, the Governing Body had a thorough exchange about developments.

There was a general feeling of grave concern about the degradation of the situation which these developments – including the most recent condemnation of Aye Myint, the situation of Su Su Nwe, and other individual cases raised during the discussion – reflected. It was also one of firm rejection of what appeared as attempts to influence the ILO's position through various forms of pressures and intimidation, including that of withdrawal, in contradiction with the commitment that the authorities have consistently pledged to the eradication of forced labour in cooperation with the Organization.

Members of the Governing Body were particularly concerned and critical about the threats which have been made against the Liaison Officer a.i., as well as to the former Acting Liaison Officer and Informal Facilitator (Mr. Léon de Riedmatten), following a public campaign against the ILO and which resulted in paralysing his capacity to discharge his responsibilities. The Governing Body reiterated its full confidence and support for the Liaison Officer of the ILO. The authorities of Myanmar were urgently requested to guarantee full exercise of his functions. They were also earnestly warned about the responsibility they would have to bear under international law for any consequence that could result from their attitude.

A number of Members were of the view that, as already contemplated by the International Labour Conference in its conclusions last June, the only way which was left to the Organization, in light of the further very disturbing developments which had taken place, was to enable the Conference itself to revisit the measures adopted in the 2000 International Labour Conference resolution under article 33 of the Constitution, by placing a specific item for that purpose on its 2006 agenda in order to review and, as appropriate, to strengthen them.

However, taking into account the willingness expressed by the Ambassador to cooperate and the fact that any step relating to action by the Conference would in any case need to be reconfirmed at its next session, the Governing Body, firstly, requests the Government at various levels, including the senior leadership, to take advantage of the time available between now and March 2006 to resume an effective dialogue with the Office. Secondly, it was understood, however, that to be meaningful any future dialogue which the Office would conduct with the Government should be based on the mandate provided by the conclusions of

the International Labour Conference. Thirdly, the dialogue would also have to address the issues and cases raised in the present debate and conclusions. Fourthly, the authorities should, in the meantime, cease prosecuting victims of forced labour or their representatives and instead should take action against the perpetrators.

2. Mr. Richard Horsey continued to act as interim ILO Liaison Officer. The present report summarizes his activities since November 2005 together with discussions that have taken place between ILO headquarters and the Permanent Representative of Myanmar in Geneva followed by a mission to Yangon from 12 to 13 March.
3. The Governing Body should be informed that Mr. Léon de Riedmatten, the Yangon representative of the Centre for Humanitarian Dialogue and Informal Facilitator for the ILO, has been unable to secure an extension for his Myanmar visa beyond the end of March 2006. Consequently, he will have to leave the country at that time and close his office.
4. In November 2005, the Myanmar authorities announced that they had begun moving to a new administrative capital near the town of Pyinmana, 390 km north of Yangon. Construction of the new capital is scheduled for completion by the end of 2007. Most Ministries, including Labour, Foreign Affairs and Home Affairs have already relocated. The Department of Labour, which is the main counterpart for the Liaison Officer, is currently maintaining a contact point in Yangon at the level of director.
5. At its first organizational session held in New York in January 2006, the United Nations Economic and Social Council (ECOSOC) had before it the request from the Director-General dated 30 June 2005 for it to reactivate its consideration of the item concerning forced labour in Myanmar that had been placed on its agenda in 2001. It is foreseen that ECOSOC will discuss this matter at its substantive session in July 2006 under item 14 of its agenda.
6. The Governing Body may also be interested to know that the United Nations Security Council held an informal discussion on the situation in Myanmar on 16 December 2005. A briefing, which included information on the forced labour situation and developments in the ILO, was provided by Undersecretary-General for Political Affairs, Mr. Ibrahim Gambari, at which the Secretary-General was also present.

### **Activities of the Liaison Officer**

7. On 30 November 2005, the Liaison Officer a.i. met with the Minister for Labour to discuss ways to give concrete effect to the pledge given by the Government of Myanmar to continue cooperation with the ILO. He noted in particular the importance of a credible mechanism for dealing with complaints of forced labour. There were, however, two matters which needed to be speedily resolved in order for meaningful progress to be made, as the Governing Body had indicated. These concerned, on the one hand, the legal action that had been taken against a number of persons having a connection with the ILO and, on the other hand, his own security and freedom of movement. As regards the death threats, the Minister gave assurances that the Government of Myanmar was taking the matter seriously, and the competent authorities were investigating. The Government could assure him of his safety. The Minister also noted that the Liaison Officer a.i. was free to travel in the country and did not need to be accompanied by a staff member of the Ministry. No assurances were however obtained as regards the legal action against persons having a connection with the ILO. As regards the next steps, the Minister noted that the authorities were not at present agreeable to any strengthening of the ILO presence, but were committed to cooperating with the current presence, including as regards complaints of forced labour. Following the meeting, the Liaison Officer a.i. confirmed in writing with the

Minister the assurances regarding his security, and underlined that these should apply equally in respect of Mr. de Riedmatten. As a result of the assurances provided by the Minister concerning his security, the Liaison Officer is willing to consider this particular matter closed.<sup>1</sup>

8. In addition to this meeting with the Minister for Labour, the Liaison Officer also wrote on 7 December to the designated army focal point for the ILO to request a meeting. No response has been received to this request.
9. Since November 2005, the Liaison Officer a.i. has had a range of meetings in Yangon and Bangkok with members of the diplomatic community, representatives of international organizations, and representatives of non-governmental organizations. On 23 February he had the opportunity to meet in Bangkok with the Special Rapporteur on the Situation of Human Rights in Myanmar.
10. From 18 to 21 January the Liaison Officer a.i. travelled to Taninthayi Division in the south of Myanmar.<sup>2</sup> This trip was conducted independently of the authorities. In line with the previously established practice, he informed the authorities shortly before his departure of his plans. He was able to freely visit all areas that he wished to, including some restricted areas. In addition, on 21 February he travelled to Lashio town (northern Shan State) for a government press conference.
11. The Liaison Officer a.i. continues to receive complaints from individuals alleging they have been subjected to forced labour, or from representatives of such persons. Regrettably, he continues to be unable to refer these cases to the competent Myanmar authorities for further investigation, as the authorities still maintain that they will prosecute anyone who lodges what they consider to be a false complaint. Indeed, a number of individuals are currently being prosecuted on this basis (see below). The Liaison Officer a.i. is concerned that the lack of investigation of the cases of forced labour reported to him, and the signal sent by the recent prosecutions of complainants, will tend to reinforce the climate of impunity surrounding government officials who have recourse to forced labour. This in turn will undermine any progress made in this regard as a result of the convictions of several local government officials in early 2005 for illegal imposition of forced labour.
12. The Liaison Officer a.i. has continued to closely follow developments in three cases previously reported to the Governing Body in which individuals who had lodged complaints of forced labour have subsequently been prosecuted.<sup>3</sup>
  - Ma Su Su Nwe, who had successfully prosecuted local officials in January 2005 for imposition of forced labour, was convicted on 13 October 2005 of criminal intimidation and sentenced to 18 month's imprisonment in a case brought against her by some other local officials. Appeals to the district and divisional courts were summarily rejected in November 2005, and on 1 February 2006 the Supreme Court of

<sup>1</sup> In its English-language edition dated 28 November, the semi-official weekly newspaper *Myanmar Times* carried an article headlined "Government pledges to continue cooperation with ILO" which reported the comments made by the Permanent Representative of Myanmar to the Governing Body, including as regards the measures to ensure the safety of the Liaison Officer a.i.. The Burmese-language version carried a similar article in its 25 November edition.

<sup>2</sup> He travelled by air to the town of Dawei (Tavoy), and from there by road to Launglon township and Myitta sub-township.

<sup>3</sup> See doc. GB.294/6/2 (November 2005), paras. 9 and 12; and doc. GB.294/6/2(Add.) (November 2005), paras. 1 and 2.

Myanmar also summarily rejected her appeal. The last avenue remaining is to the Special Appellate Bench of the Supreme Court. As regards her health, recent information received from her family indicates that although there continues to be cause for concern, she is receiving medical attention and necessary medication, including from specialists at Yangon General Hospital, and this has led to some improvements in her condition.

- U Aye Myint, a lawyer who was previously sentenced to death for high treason on the basis of alleged contacts with the ILO but released from custody in January 2005, was rearrested in August 2005 and charged under the 1950 Emergency Provisions Act with “spreading false information”. The basis for this charge appears to be a letter concerning a land confiscation issue that he sent to the authorities on behalf of his clients, and which he copied to the ILO. U Aye Myint was convicted in October 2005 and sentenced to seven years’ imprisonment. His appeals to the district and divisional courts were summarily rejected on 2 January and 7 March, respectively.
- Three persons (U Zaw Htay, U Thein Zan and U Aung Than Tun) are currently being prosecuted in Aunglan township (Magway Division) under section 182 of the Penal Code for “providing false information to a public servant”. The charges relate to the death of a villager in late 2004 which allegedly occurred during forced labour.<sup>4</sup> The three individuals assisted the family of the deceased to report the matter to the ILO and to the authorities. During the investigation of this matter, the family of the deceased was apparently intimidated into signing a statement that the allegation they had made was false. It is on the basis of this statement that the three persons are now being prosecuted for providing false information.

The Liaison Officer a.i. wrote to the Minister for Labour on 16 February to express his concerns over these three cases, and to urge that the Myanmar authorities take steps to resolve them. In a reply from the Deputy Minister for Labour dated 26 February it was indicated that these three prosecutions were not a consequence of contacts with the ILO and that the authorities “had no obligation to interfere in the matters relating to the judicial system.”

- 13.** The Liaison Officer a.i. has also received information concerning the conviction and imprisonment in November 2005 of nine trade unionists under the 1950 Emergency Provisions Act and for contact with illegal organizations.<sup>5</sup> A tenth person arrested in connection with this case, Aung Myint Thein, died in custody in November 2005. The Liaison Officer a.i. has to the best of his knowledge never had any contact or exchange of information with these individuals. Based on the allegations made against them in a government press conference held on 28 August 2005, it appears that the basis for their prosecution was contacts with the exiled Federation of Trade Unions of Burma (FTUB). The Liaison Officer a.i. wrote to the Minister for Labour concerning this case on 15 December and, *inter alia*, requested copies of the court records from these trials. He has not received any response.

<sup>4</sup> See International Labour Conference, 2005, C.App./D.6, Part B, paras. 11 and 14.

<sup>5</sup> These persons were: Thein Lwin Oo, Win Myint, Wai Lin, Myint Lwin, Ye Myint, Aye Thi Khine, Daw Yin Kyi, Aye Chan and Hla Myint Than.

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## Discussions in Geneva and visit to Yangon

14. In accordance with the conclusions of the Governing Body, the Office endeavoured to resume a meaningful dialogue also in Geneva through the Permanent Representative of Myanmar in order to find some acceptable solution to the outstanding issues.
15. In the light of the objections to the facilitator system, explicitly voiced for the first time by the authorities through the Minister for Labour in Yangon and the Permanent Representative in Geneva last November, the Office first tried to find whether another system could be developed which would offer similar guarantees but would address the concerns expressed by the Myanmar authorities that it offended their sovereignty.
16. Immediately after the November 2005 session of the Governing Body, the Office started informal discussions with the Permanent Representative of Myanmar in Geneva, during which it raised the possibility of establishing a mechanism which – unlike the facilitator system – would seek to place the two sides on an equal footing. In the light of some preliminary encouraging reactions, the Office then elaborated in an informal document a Joint Panel mechanism<sup>6</sup> which would confidentially address complaints submitted by alleged victims and make a prima facie determination of the validity of the complaint. In this informal document, the Office also elaborated on the possibility of building up the capacity to address complaints within the framework of the Office of the ILO Liaison Officer.
17. This informal document gave rise to some comments and requests for clarification from the Myanmar side, which ultimately resulted in their indicating that the Joint Panel was not the preferred option, but they indicated their willingness to consider the possibility to accommodate complaints within the Liaison Officer framework; at the same time, they emphasized the strong views of the Myanmar side regarding their right to take legal action against persons making false allegations, in line with the position taken by the Minister for Labour when he met with the Liaison Officer in November 2005. The Office pointed out that this could be an issue of fundamental significance which needed to be clarified before entering into any discussion of specific modalities.
18. In this context a mission took place to Yangon.<sup>7</sup> The discussions were held with the Minister for Labour in two comprehensive meetings (on 12 and 13 March), in which the Permanent Representative of Myanmar in Geneva, U Nyunt Maung Shein, also participated.
19. The mission made it clear from the outset that it was prepared to explore in detail the modalities of all the options which had been envisaged so far, including as appropriate the facilitator system, to find a solution that could be acceptable to both sides. There was, however, as indicated in Geneva, a preliminary question of great significance concerning the stated intention of the authorities to use what they viewed as their right to take legal action against persons lodging complaints which the authorities considered to be false as a “deterrent against the proliferation of false allegations with ulterior motives”.

<sup>6</sup> It was envisaged that a Joint Panel could be composed of two members having the required credentials appointed by the two sides, and a third person appointed by an unimpeachable institution to arbitrate in cases of possible disagreement.

<sup>7</sup> On the ILO side, the mission consisted of Mr. Francis Maupain, Special Adviser to the ILO Director-General, together with Mr. Richard Horsey, the interim Liaison Officer.

- 20.** The mission made it clear that this raised three major problems. The first related to the specific mandate given by the International Labour Conference and the Governing Body according to which “no action would be taken against persons lodging complaints of forced labour or their representatives”. The second was that it would defeat the very purpose of any mechanism which – in line with the conclusions of the High-Level Team in 2001 from which the idea of such a mechanism derived – was that victims should have the possibility of lodging complaints without fear of reprisals. The third was that it would arguably be against the letter and spirit of the forced labour Convention itself, which makes it an obligation on the authority to establish a really adequate system of enforcement.
- 21.** The mission indicated, however, that it understood the concern of the authorities that whatever mechanism could be established should not be manipulated by the submission of false complaints. The strong view of the mission was, however, that in practice, the best deterrent to such political manipulation would precisely be the establishment of an objective, impartial mechanism involving persons of unimpeachable integrity that would have the required credibility in dismissing such false complaints. This would moreover give real credibility to the repeated pledge of the authorities to eradicate forced labour.
- 22.** During the discussions, the Minister for Labour clarified the following points. Under the clear instructions that he had received from the authorities, the joint panel option was ruled out. They considered it to be a system parallel to the judiciary and which would bring in a foreign arbitrator which would go against the requirements of Myanmar law. The only solution he was authorized to consider was that complaints be addressed through the Office of the ILO Liaison Officer with its current composition. He pointed out that the Liaison Officer would have the possibility to meet with complainants before referring the complaints to the Ministry of Labour. As regards the question of prosecutions, the Minister strongly insisted that the situation in Myanmar was different from that of other countries in view of the fact that political forces were taking full advantage of issues such as forced labour to politicize the situation and tarnish the reputation of the Myanmar authorities. This is why the authorities were determined to use the relevant provisions of the Penal Code <sup>8</sup> to deter such political manipulation. The Minister indicated that it was of the view of the authorities that a distinction had to be made between genuine complaints, which they could accept, and politically motivated allegations, which they could not. In the course of the discussion, the Myanmar side said that as a compromise they could possibly consider to wait until a person had made more than one or two false allegations before enforcing these provisions of the Penal Code.
- 23.** The mission noted that the option they had envisaged within the framework of the Liaison Officer – which would require necessary legal guarantees and sufficient administrative support – was a far cry from the one which the authorities seemed to have in mind. It was to build up a credible mechanism with sufficient administrative support and legal guarantees to address the complaints that were received, whereas the authorities indicated that the Liaison Office had to remain as it was – that is, at below its initial strength. It was not clear at all that the Liaison Officer would have the necessary facilities to carry out such a task in view of the repeated suggestion that he enjoyed the same facilities as other United Nations staff in Myanmar as well as in view of the guidelines recently issued by the

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<sup>8</sup> He indicated that these were the following sections: 182(b) (giving false information with intent to cause a public servant to use his lawful power to the injury or annoyance of any person), 420 (cheating and dishonesty), 469 (forgery for the purpose of harming reputation) and 499 (defamation).

authorities which could further restrict such facilities.<sup>9</sup> Lastly, there was no guarantee that his evaluation of the prima facie validity of a case would not be reversed when transmitted to the Ministry of Labour and the complainant then prosecuted. This was indeed the very situation that had led to the decision of the Director-General, confirmed by the Governing Body, to request him to no longer entertain complaints for fear the complainants would subsequently be victimized. This was prompted by the specific cases referred to in the conclusions of the Governing Body and which have so far not been resolved (see above).

24. As far as the “compromise solution” referred to by the Minister was concerned, the mission pointed out that it could not make any commitment that would prejudice the correct interpretation of the forced labour Convention. Under the ILO Constitution, only the International Court of Justice (or a tribunal specially established for that purpose) would be competent to provide such an interpretation at the Governing Body’s request. In any case such a compromise was unlikely to be found acceptable by the Governing Body given the mandate contained in its conclusions from November 2005. However, the mission considered that there was indeed a possible compromise that could be explored. The mission could understand that the authorities may have doubts as to whether the mechanism would act as a sufficient deterrent against false allegations. However, the best way to overcome these doubts was to establish the joint panel mechanism on a time-bound experimental basis. In that framework it might be possible to build in to the mechanism some provision for summarily dismissing complaints coming from a source which had a history of lodging complaints which had subsequently been reliably found to be without basis. The functioning of this system would then be reviewed after a certain period of time. In the meantime, the acceptance of such a mechanism would give enormous credit to the determination of the authorities to eradicate forced labour.
25. Since the Minister reiterated, however, that he had no authority to discuss any other solution than the one he had elaborated on, the mission then had no alternative but to draw his attention to the possible consequences that could derive from such a position, should this attitude not change in the meantime, and raised the question of what could possibly be the reaction of the Myanmar side to such consequences. The mission finally expressed the hope that in the light of the discussions and explanations it had given, the authorities might take advantage of the remaining time to leave greater flexibility to their representatives. The Office for its part would remain ready to continue these discussions in an open and frank manner through the Permanent Mission in Geneva, and in Yangon.

Yangon, 13 March 2006.

*For debate and guidance.*

<sup>9</sup> In February 2006, the Myanmar Ministry of National Planning and Economic Development issued a set of “Guidelines for UN Agencies, International Organizations and NGOs/INGOs” which inter alia provide that counterpart ministries must give their approval for any travel within Myanmar by United Nations staff (it is necessary that such a request be made in writing at least two weeks in advance), and that an official from the Myanmar side will accompany them.