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Governing Body

309th Session, Geneva, November 2010

GB.309/6

FOR DEBATE AND GUIDANCE

SIXTH ITEM ON THE AGENDA

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

Overview

Issue covered

This report fulfils the obligation stemming from the resolution on the widespread use of forced labour in Myanmar adopted by the 87th Session (1999) of the International Labour Conference that there be a standing Governing Body Agenda item on this subject. The paper addresses activities undertaken and progress made since the last report.

Policy implications

See above.

Financial implications

None.

Action required

Submitted for debate and guidance. The Governing Body may care to draw its own conclusions from that debate.

References to other Governing Body documents and ILO instruments

Governing Body members may find reference to document GB.307/6, "Conclusions concerning Myanmar", and to *Provisional Record* No. 16, Part III of the 99th Session (2010) of the International Labour Conference, useful in their consideration of this report.

Introduction

- 1. Activity since the last report has taken place against the backdrop of the General Election, which is scheduled for 7 November 2010. Whilst this has obviously raised a number of sensitivities, it has not unduly disrupted the operation of the complaints mechanism as set out in the Supplementary Understanding between the Government of Myanmar and the ILO or any of the associated activities.
- 2. This paper is presented in three parts with a view to assisting the Governing Body in its deliberations. Part I recapitulates developments related to the recommendations of the Commission of Inquiry, established in 1997 to examine the complaint concerning the non-observance by Myanmar of the Forced Labour Convention, 1930 (No. 29); Part II provides statistics and commentary on the operation of the Supplementary Understanding complaints mechanism; and Part III addresses other matters directly or indirectly related to the mandate of the ILO Liaison Officer in Myanmar.

Part I. Developments related to the recommendations of the Commission of Inquiry

Recommendation 1: "That the relevant legislative texts be brought into line with the Forced Labour Convention 1930 (No. 29)"

- **3.** The Towns Act and Villages Act of 1907 have not been repealed or amended because of, inter alia, the absence of a Parliament. Following discussions with an ILO mission, the Government of Myanmar issued, in May 1999, Order No. 1/99 and, in October 2000, Supplementary Order No. 1/99. These Orders stipulated that notwithstanding the provisions of the Towns and Villages Acts, work or services should not be requisitioned by civilian or military authorities and that breaches of this were offences under the Penal Code. A number of exceptions related to emergencies were specified. To date, Order No. 1/99 and Supplementary Order No. 1/99 have remained the reference point for the Government in its instructions and other activities.
- **4.** The supervisory bodies of the ILO have considered that, although these Orders were a possible step towards meeting the recommendations of the Commission of Inquiry, by themselves they did not constitute an adequate response.
- **5.** The Government has recently indicated that legislation which encapsulates both Order No. 1/99 and Supplementary Order No. 1/99, and repeals or amends the Towns and Villages Acts, is being drafted as the Constitution adopted by referendum in 2008 contains a section on forced labour. The supervisory bodies have stressed the need for the Constitution and subsequent legislation to be in conformity with the Forced Labour Convention, No. 29. According to the Government, legislation is scheduled to be introduced in the Parliament after the elections of November 2010.

Recommendation 2: "That in actual practice, no more forced or compulsory labour be imposed by the authorities, in particular the military"

- **6.** Responsibility for complying with Convention No. 29 rests with the Government including, inter alia, through the full implementation of the Commission of Inquiry's recommendations. The mandate of the ILO Liaison Officer based in Myanmar is to assist the Government of Myanmar, on its request, in its efforts to ensure the prompt and effective elimination of forced labour.
- 7. This assistance is materialized, not only by educational and awareness-raising activities relevant to the above objective, but also through the operation of a complaints mechanism based on the Supplementary Understanding concluded on 26 February 2007, intended to give full credibility to both the Government's and the ILO's commitment to the eradication of forced labour. The trial period of this Supplementary Understanding has been extended in 2008, 2009 and 2010, each time for one year.
- **8.** Part II of this report provides an update on progress in the operation of the Supplementary Understanding.

Recommendation 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, in conformity with Article 25 of the Convention"

- **9.** Forced labour largely falls within three broad categories in Myanmar: (1) forced labour extracted by the military, such as portering, sentry duty and labour to support commercial activity; (2) forced labour extracted by the civilian authorities, for instance public works such as infrastructure repair, maintenance and construction; and (3) forced and/or underage recruitment into the military.
- **10.** Complaints under the Supplementary Understanding have been received in respect of each of these categories.
- 11. In respect of cases received under the category of forced labour extracted by the military, the ILO has received no information concerning the prosecution of any perpetrator under the Penal Code. In four instances the ILO has been advised that disciplinary action has been taken under military procedures in response to complaints submitted under the Supplementary Understanding. In some instances the solution to the complaint has resulted in the issuance of orders requiring behavioural change. One example is the requirement to use military personnel as railway security sentries, as opposed to using civilians on a 24 hour/7 days a week rotational roster system. In other instances the solution has involved the reissuing of instructions reconfirming Order No. 1/99 and Supplementary Order No. 1/99 in parallel with awareness-raising and training activities and, in yet other instances, the response has been an effective denial of the claim.
- 12. In respect of cases received under the category of forced labour extracted by civilian authorities, prosecution of perpetrators under the Penal Code in response to complaints submitted has been reported only in respect of Case No. 1. In that instance three persons were prosecuted under the Penal Code, resulting in one acquittal and the imprisonment of two persons. In other instances the solution has involved an administrative penalty, including dismissal or transfer, with the majority of cases being resolved by addressing the

- situation of the complainant(s) without punitive action being taken against the perpetrator(s).
- 13. In respect of cases received under the category of forced and/or under-age recruitment, a punitive and disciplinary process has increasingly been applied. Currently, the Adjutant General's Office, working with Regimental Commanders and other senior personnel, routinely refer military perpetrators of forced and/or under-age recruitment to summary trial under military regulations. There have been no reported cases of the use of the Penal Code but three instances of military personnel being imprisoned for their part in under-age recruitment cases have been recorded. Other penalties, such as the loss of seniority, loss of pensionable rights, loss of seven, 14 or 28 days pay, and the issuance of various levels of formal reprimand, appear to be regularly administered. There have been no reported prosecutions of civilian intermediaries in the recruitment process.

Part II. Operational update of the complaints mechanism

- 14. As at 21 October 2010, a total of 503 complaints have been received under the Supplementary Understanding. Of these, 81 complaints were assessed as not being within the ILO mandate, 24 were assessed as receivable but were not submitted owing to the complainants' concern at possible retribution. In a further six cases the under-age recruit was released/discharged while the case was under ILO assessment and investigation. Altogether, 288 cases have been submitted to the Government Working Group for investigation, of which 132 have been resolved with varying degrees of satisfaction. Some 104 cases are currently either in assessment or cannot be submitted until further information is obtained.
- 15. To date, 127 forced and/or under-age recruits have been released/discharged from the military in association with complaints under the Supplementary Understanding. Government responses in these cases, subject to the Liaison Officer's ability to substantiate the facts of the case and produce proof-of-age evidence, are normally positive and relatively efficient. The principle that an under-age recruit who runs away cannot be considered a deserter has been agreed upon, and a number of such victims have been released from prison accordingly regrettably this, at this stage, is in response to Supplementary Understanding complaints only, with no understanding as yet being reached that the age on recruitment of an alleged deserter should be formally verified prior to the arrest. Whilst the principle that the reaching of 18 years of age does not legitimize an under-age recruitment has been agreed, the ILO has been consistently refused access to verify the wishes of under-age recruits who are now of majority age and who allegedly have voluntarily chosen to continue their military career.
- 16. As previously reported, there is some anecdotal evidence that the incidence of forced labour extracted by civilian authorities appears to be reducing. The number of such complaints received is slowly coming back to the levels experienced immediately prior to the publicized arrest of persons associated with the lodging of complaints. This would suggest that there is a return of confidence to complain, which could be explained by the publicity surrounding the release of the persons who have been imprisoned and the continued distribution of the jointly agreed Ministry of Labour/ILO brochure.
- **17.** There continues to be no evidence by way of complaints received of the systematic use of forced labour in the private sector. A small number of complaints concerning trafficking for forced labour continue to be received.

- 18. The number of complaints received continued to increase over the period 1 June to 21 October 2010, 160 complaints were received. This compares to 65 received in the corresponding period for 2009, 25 for the same period in 2008 and 31 in 2007. Each complaint received must be individually assessed as to whether it falls within the forced labour mandate, any additional evidence required to substantiate the complaint must be obtained, and after submission there is considerable correspondence undertaken before the process can be concluded. This, together with the other responsibilities of the Liaison Officer and his staff in such areas as awareness raising and training is putting the process under considerable stress, as is evidenced by the number of cases currently in assessment.
- **19.** To relieve this pressure, and with the support of funding from the Government of Germany, an additional local translator/interpreter, a local community liaison officer, a part-time local case worker and a locally employed international programme officer have been engaged until the end of the year. Their work is predominantly related to activities concerning children in armed conflict and under-age recruitment. Negotiations are currently under way towards obtaining the necessary funding to continue these roles in 2011–12.
- 20. The Supplementary Understanding contains the provision that residents of Myanmar have the right to lodge a complaint without fear of any form of judicial or retaliatory action. There have been no reports of harassment or reprisals against persons associated with under-age recruitment complainants. Similarly, in most instances of forced labour complaints lodged against government personnel (military or civilian), no harassment or reprisals are reported.
- 21. There are however two major areas where this has not been the case. The first relates to those facilitators for complaints under the Supplementary Understanding who are considered by the Government as being political activists. These persons tend to be arrested, prosecuted and imprisoned on charges seemingly unrelated to their complaints facilitation activities under the Supplementary Understanding. It is however believed that the association of these persons with the ILO is, in part, responsible for their incarceration and is a significant factor in determining the severity of the sentence. Daw Su Su Nway, U Min Aung and U Zaw Htay have all been previously active voluntary facilitators and they remain in prison serving lengthy sentences.
- 22. The second such area is geographical. Complainants from a relatively small area within the Thayet District of Magwe region, encompassing Natmauk and Aunglan townships, have experienced serious harassment in association with their forced labour complaints. Some 16 forced labour complaints, involving hundreds of complainants, have been received from this area since the Supplementary Understanding was agreed. Six remain open and unresolved even though they have now been in process for in excess of one year. Notwithstanding continuing negotiation, two of the 14 complainants imprisoned in association with these complaints remain in prison. Other complainants continue to be barred access to their traditional land, which creates obvious livelihood problems. No specific reason can be identified as to why this particular area is problematic; there may be a number of contributing factors. These could include the fact that two local authority personnel from this area have received prison sentences and six have been dismissed in response to complaints, or the fact that the area has a high military presence, both operational and commercial. However, the situation is compounded by the communities' apparent heightened awareness of their rights and preparedness to exercise those rights, in contrast to other areas. The Central Government Working Group for the elimination of forced labour continues to address these issues. However, there appears to be reluctance on the part of the local authorities in the area to reach lasting solutions.

- 23. The Liaison Officer considers that it would be important that he be granted full access to the court files in such cases in order to satisfy himself that the charges and subsequent prison sentences are indeed unrelated to the lodging of a complaint and do not comprise any retaliatory action in respect of the defendants regarding their involvement with the implementation of the Supplementary Understanding.
- **24.** All requests to visit these persons in prison have been declined.

Part III. Other related activities/issues

- **25.** From 7 to 9 September 2010, a series of awareness-raising/training activities was undertaken in cooperation with TOTAL Oil, the Ministry of Labour and Myanmar Oil and Gas Enterprises in Kanbauk township, Tanintharyi region. These activities encompassed a training-for-trainers seminar for TOTAL social and community development staff, a seminar on the management of community projects for community representatives from 26 villages, and an awareness-raising seminar for local authority representatives.
- **26.** On 13 and 14 September 2010, a joint Ministry of Labour/ILO awareness-raising mission was undertaken to Kyaukyi and Tantabin townships in East Bago region. Two sessions were held with over 100 participants, including senior local authority personnel and senior representatives of the local police force, the judiciary and the local army regiments.
- **27.** On 24 June 2010, a full training-for-trainers' presentation on the complaints mechanism with emphasis on under-age recruitment was made to 40 officers and staff of the Mandalay Military Recruitment Centre.
- **28.** Between June and October 2010, three one-day workshops on forced labour were held for the staff of local non-governmental organizations. In total some 125 persons participated from all regions of the country.
- **29.** During the same period, a two-day workshop for some 40 field staff of the United Nations Development Programme and a half-day workshop for 15 UN-HABITAT staff were held. Presentations were also made to 50 members of the Myanmar Humanitarian Country Team, the Myanmar NGO Gender Group and the Bogale township protection meeting.
- **30.** The Liaison Officer and his staff continue to be active members of the Country Task Force for Monitoring and Reporting in respect of Security Council Resolution 1612, concerning children in armed conflict the primary initial objective being the reaching of agreement on a joint action plan with the Government armed forces.
- **31.** Similarly, as part of the UN Country Team Human Rights Sub-group, the Liaison Officer continues to provide support, within the limits of the current mandate, to the Myanmar Human Rights Universal Periodic Review process.

Geneva, 3 November 2010

Submitted for debate and guidance