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Governing Body

Forced labour in Myanmar (Burma)

Report of the Commission of Inquiry
appointed under article 26 of the Constitution of the
International Labour Organization to examine
the observance by Myanmar of the
Forced Labour Convention, 1930 (No. 29)

Geneva, 2 July 1998

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The Forced Labour Convention, 1930 (No. 29)

Part I

Establishment of the Commission

1. Filing of the complaint and appointment of the Commission

(1) Filing of the complaint

1. By a letter dated 20 June 1996 addressed to the Director-General of the ILO, 25 Workers' delegates to the 83rd Session of the International Labour Conference (June 1996)⁽¹⁾ presented a complaint under article 26 of the Constitution against the Government of Myanmar for non-observance of the Forced Labour Convention, 1930 (No. 29), which it ratified on 4 March 1955 and which came into force for Myanmar on 4 March 1956. The complaint stated, in particular, that:

Myanmar's gross violations of the Convention [No. 29] have been criticized by the ILO's supervisory bodies for 30 years. In 1995, and again in 1996, they have been the subject of special paragraphs in the reports of the Committee on the Application of Conventions and Recommendations, and this year, the Government has also been singled out by the Committee for its "continued failure to implement" the Convention.

In addition, in November 1994, the Governing Body adopted the report of the Committee it had established to examine the representation made by the International Confederation of Free Trade Unions [ICFTU] against the Government of Myanmar for its failure to ensure effective observance of Convention No. 29.

The Government has demonstrated its unwillingness to act upon the repeated calls addressed to it by the ILO's supervisory bodies to abolish and cancel legislation which allows for the use of forced labour and to ensure that forced labour is eliminated in practice. In these circumstances, the Committee on Applications has again expressed deep concern at the systematic recourse to forced labour in Myanmar.

Despite its protestations that the powers available under the offending legislation, the Village Act (1908) and the Towns Act (1907), have fallen into disuse since 1967 and that these laws are currently under review with a view to their repeal, the Government has failed conspicuously to provide the information requested of it concerning concrete action for legislative change.

Indeed, it is clear that the practice of forced labour is becoming more widespread and that the authorities in Myanmar are directly responsible for its increasing use, and actively involved in its exploitation.

The ICFTU representation presented under article 24 of the Constitution in January 1993 addressed the particular case of the forced recruitment and abuse of porters by the military which was, at that time, the primary cause of concern.

Since then, however, forced labour is being used systematically, on an ever larger scale, and in an increasing number of areas of activity. Large numbers of forced labourers are now working on railway, road, construction, and other infrastructure projects, many of which are related to the Government's efforts to promote tourism in Myanmar. In addition the military is engaged in the confiscation of land from villagers who are then forced to cultivate it to the benefit of the military appropriators.

The current situation is that the Government of Myanmar, far from acting to end the practice of forced labour, is engaged actively in its promotion, so that it is today an endemic abuse affecting hundreds of thousands of workers who are subjected to the most extreme forms of exploitation, which all too frequently leads to loss of life.

2. Supplementary evidence was submitted to the ILO in the name of the complainants by a letter dated 31 October 1996 and is appended to the present report.⁽²⁾

(2) Provisions of the Constitution of the International Labour Organization relating to complaints concerning non-observance of ratified Conventions

3. The procedure under which the Workers' delegates filed their complaint against the Government of Myanmar is set out in articles 26 to 29 and 31 to 34 of the ILO Constitution, which read as follows:

Article 26

1. Any of the Members shall have the right to file a complaint with the International Labour Office if it is not satisfied that any other Member is securing the effective observance of any Convention which both have ratified in accordance with the foregoing articles.

2. The Governing Body may, if it thinks fit, before referring such a complaint to a Commission of Inquiry, as hereinafter provided for, communicate with the government in question in the manner described in article 24.

3. If the Governing Body does not think it necessary to communicate the complaint to the government in question, or if, when it has made such communication, no statement in reply has been received within a reasonable time which the Governing Body considers to be satisfactory, the Governing Body may appoint a Commission of Inquiry to consider the complaint and to report thereon.

4. The Governing Body may adopt the same procedure either of its own motion or on receipt of a complaint from a delegate to the Conference.

5. When any matter arising out of article 25 or 26 is being considered by the Governing Body, the government in question shall, if not already represented thereon, be entitled to send a representative to take part in the proceedings of the Governing Body while the matter is under consideration. Adequate notice of the date on which the matter will be considered shall be given to the government in question.

Article 27

The Members agree that, in the event of the reference of a complaint to a Commission of Inquiry under article 26, they will each, whether directly concerned in the complaint or not, place at the disposal of the Commission all the information in their possession which bears upon the subject-matter of the complaint.

Article 28

When the Commission of Inquiry has fully considered the complaint, it shall prepare a report embodying its findings on all questions of fact relevant to determining the issue between the parties and containing such recommendations as it may think proper as to the steps which should be taken to meet the complaint and the time within which they should be taken.

Article 29

1. The Director-General of the International Labour Office shall communicate the report of the Commission of Inquiry to the Governing Body and to each of the governments concerned in the complaint, and shall cause it to be published.
2. Each of these governments shall within three months inform the Director-General of the International Labour Office whether or not it accepts the recommendations contained in the report of the Commission; and if not, whether it proposes to refer the complaint to the International Court of Justice.

Article 31

The decision of the International Court of Justice in regard to a complaint or matter which has been referred to it in pursuance of article 29 shall be final.

Article 32

The International Court of Justice may affirm, vary or reverse any of the findings or recommendations of the Commission of Inquiry, if any.

Article 33

In the event of any Member failing to carry out within the time specified the recommendations, if any, contained in the report of the Commission of Inquiry, or in the decision of the International Court of Justice, as the case may be, the Governing Body may recommend to the Conference such action as it may deem wise and expedient to secure compliance therewith.

Article 34

The defaulting government may at any time inform the Governing Body that it has taken the steps necessary to comply with the recommendations of the Commission of Inquiry or with those in the decision of the International Court of Justice, as the case may be, and may request it to constitute a Commission of Inquiry to verify its contention. In this case the provisions of articles 27, 28, 29, 31 and 32 shall apply, and if the report of the Commission of Inquiry or the decision of the International Court of Justice is in favour of the defaulting government, the Governing Body shall forthwith recommend the discontinuance of any action taken in pursuance of article 33.

(3) Summary of the measures taken by the Governing Body of the International Labour Office following the filing of the complaint and establishment of the Commission

4. At its 267th Session (November 1996), the Governing Body had before it a report by its Officers (GB.267/16/2) concerning the subject of the complaint. The report recalled, inter alia, the dates of ratification and entering into force of the Forced Labour Convention, 1930 (No. 29) (hereinafter "Convention No. 29") for Myanmar. It also pointed out that the 25 complainants were, on the date of filing the complaint, Workers' delegates of their countries to the 83rd Session of the International Labour Conference. Accordingly, they had the right to file a complaint under article 26, paragraph 4, of the Constitution, if they were not satisfied that the Government of Myanmar was securing the effective observance of Convention No. 29. In addition, the report indicated the following:

No discussion on the merits of the complaint is admissible at the present stage. It would indeed be inconsistent with the judicial nature of the procedure provided for in article 26 and the following articles of the Constitution that there should be any discussion in the Governing Body on the merits of a complaint until the Governing Body has before it the contentions of the government against which the complaint is filed, together with an objective evaluation of these contentions by an impartial body. Nor would such discussion be appropriate while a proposal to refer the complaint to a Commission of Inquiry is pending before the Governing Body or while the complaint is *sub judice* before a Commission of Inquiry. If there is to be a Commission of Inquiry -- which it is for the Governing Body to decide under article 26, paragraph 4, of the Constitution -- it is when the Commission of Inquiry has reported on the merits of the complaint that the Governing Body may be called upon to take action in the matter.

5. At the same session, the Governing Body took the following decisions:

- (a) The Government of Myanmar should be requested by the Director-General to communicate its observations on the complaint so as to reach him not later than 31 January 1997.
 - (b) In accordance with article 26, paragraph 5, of the Constitution, the Governing Body should invite the Government of Myanmar to send a representative to take part in the proceedings of the Governing Body concerning this matter at its future sessions. When so inviting the Government of Myanmar, the Director-General should inform it that the Governing Body intended to continue its discussion of this case at its 268th Session, which was to take place in Geneva in March 1997.
6. In a letter dated 23 December 1996, the Director-General informed the Government of Myanmar of the decisions mentioned above.
7. By a letter dated 5 February 1997, the Permanent Mission of the Union of Myanmar in Geneva transmitted the observations of the Government of Myanmar on the complaint and the further supplementary evidence submitted. The document (without its confidential annexes) is appended to the present report ([Appendix II](#)).
8. At its 268th Session (March 1997), the Governing Body had before it another report of its Officers (GB.268/15/1) which noted that:

Contradictions exist between the facts presented in the allegations and those set out in the observations of the Government of Myanmar. It would, however, not be appropriate to enter into a discussion of the substance if it is envisaged to set up a Commission of Inquiry under article 26, paragraph 4, of the Constitution in order to make an objective assessment of the situation. As was pointed out in the report of the Officers of the Governing Body at the latter's 267th Session, it would be incompatible with the judicial nature of the procedure thus instituted to open up such a discussion before the Commission of Inquiry submits its conclusions. In light of the foregoing, the Governing Body decided that the whole matter should be referred, without further discussion, to a Commission of Inquiry set up in accordance with article 26 of the Constitution. The Governing Body recalled that the members of the Commission would be nominated in accordance with the same criteria, and would serve in the same conditions, as the members of commissions previously appointed under article 26 of the Constitution. They would serve as individuals in their personal capacity, would be chosen for their impartiality, integrity and standing. They would undertake by solemn declaration, similar to that made by judges of the International Court of Justice, to carry out their tasks and exercise their powers as members of the Commission "honourably, faithfully, impartially and conscientiously". The Governing Body added that the Commission was to establish its own procedure in accordance with the provisions of the Constitution.

9. At the same session, the Governing Body decided that the Commission be composed as follows, as proposed by the Director-General (GB.268/14/8):

Chairperson: The Right Honourable Sir William DOUGLAS, PC, KCMG (Barbados), former Ambassador; former Chief Justice of Barbados; former Chairman, Commonwealth Caribbean Council of Legal Education; former Chairman, Inter-American Juridical Committee; former Judge of the High Court of Jamaica; Chairperson of the Committee of Experts on the Application of Conventions and Recommendations.

Members: Mr. Prafullachandra Natvarial BHAGWATI (India), former Chief Justice of India; former Chief Justice of the High Court of Gujarat; former Chairman, Legal Aid Committee and Judicial Reforms Committee, Government of Gujarat; former Chairman, Committee on Juridicare, Government of India; former Chairman of the Committee appointed by the Government of India for implementing legal aid schemes in the country; member of the International Committee on Human Rights of the International Law Association; member of the Editorial Committee of Reports of the Commonwealth; Chairman of the National Committee for Social and Economic Welfare of the Government of India; Ombudsman for the national newspaper *Times of India*; Chairman of the Advisory Board of the Centre for Independence of Judges and Lawyers, Geneva; Vice-President of El Taller; Chairman of the Panel for Social Audit of Telecom and Postal Services in India; member of the United Nations Human Rights Committee; member of the Committee of Experts on the Application of Conventions and Recommendations.

Ms. Robyn A. LAYTON, QC (Australia), Barrister-at-Law; Director, National Rail Corporation; former Commissioner on Health Insurance Commission; former Chairperson of the Australian Health Ethics Committee of the National Health and Medical Research Council; former Honorary Solicitor for the South Australian Council for Civil Liberties; former Solicitor for the Central Aboriginal Land Council; former Chairman of the South Australian Sex Discrimination Board; former Judge and Deputy President of the South Australian Industrial Court and Commission; former Deputy President of the Federal Administrative Appeals Tribunal; member of the Committee of Experts on the Application of Conventions and Recommendations.

1. The Workers' delegates were: Messrs. E. About-Risk (Lebanon), C. Agyei (Ghana), K. Ahmed (Pakistan), M. Blondel (France), W. Brett (United Kingdom) and U. Edström (Sweden), Ms. U. Engelen-Kefer (Germany), Messrs. R. Falbr (Czech Republic), C. Gray (United States), S. Itoh (Japan), Y. Kara (Israel), A. Lettieri (Italy), I. Mayaki (Niger), S. Mookherjee (India), B.P. Mpangala (United Republic of Tanzania) and J.-C. Parrot (Canada), Ms. P. O'Donovan (Ireland) and Messrs. F. Ramirez Leon (Venezuela), Z. Rampak (Malaysia), I. Sahbani (Tunisia), A. Sanchez Madariaga (Mexico), G. Sibanda (Zimbabwe), L. Sombes (Cameroon), L. Trotman (Barbados) and T. Wojcik (Poland).

2. [Appendix I](#).

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