



Governing Body

309th Session, Geneva, November 2010

GB.309/7

FOR DECISION

SEVENTH ITEM ON THE AGENDA

Complaint concerning the non-observance by Myanmar of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), made by delegates to the 99th Session (2010) of the International Labour Conference under article 26 of the ILO Constitution

1. By a letter dated 17 June 2010 addressed to the Director-General of the International Labour Office, a number of Workers' delegates at the 99th Session (2010) of the International Labour Conference presented a complaint under article 26 of the ILO Constitution against the Government of Myanmar for persistent and grave violations of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). The letter was signed by five titular delegates: Sir Leroy Trotman (Barbados), Mr Luc Cortebeeck (Belgium), Ms Halimah Yacob (Singapore), Mr Syed Shahir Syed Mohamud (Malaysia) and Ms Helen Kelly (New Zealand); one adviser, Ms Salome Sithole (South Africa), who at the time of lodging the complaint had been authorized in writing to act on behalf of the titular Workers' delegate of South Africa (Mr Ntshalintshali); one adviser and substitute delegate, Mr Shigeru Nakajima (Japan) and one adviser, Mr N.M. Adyanthaya (India). The text of the complaint is attached as Appendix I.
2. Furthermore, at its 13th plenary sitting held on 17 June 2010, Sir Leroy Trotman made a statement introducing briefly the complaint with the purpose of serving notice to the Government of Myanmar and to all members of the Conference. The Government reacted by stating that it reserved all its legal rights under law in that matter.¹
3. At the 308th Session of the Governing Body (June 2010), Sir Leroy Trotman, the Worker Vice-Chairperson of the Governing Body, orally informed the Governing Body of the complaint presented during the Conference.

¹ See *Provisional Record* No. 20, International Labour Conference, 99th Session, Geneva, 2010, pp. 44–45.

4. Article 26 of the ILO Constitution provides as follows:

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.

5. Convention No. 87 was ratified by the Union of Burma, now Myanmar, on 4 March 1955 (see Appendix II), and thus has been in force for that country since 4 March 1956. Six of the authors of the complaint were Workers' delegates of their respective countries to the 99th Session of the Conference on the date of filing the complaint. They accordingly had the right to file a complaint, under article 26, paragraph 4, of the Constitution, if they were not satisfied that Myanmar was securing the effective observance of this Convention. This means that the conditions set forth in paragraph 1 of article 26 of the Constitution for the receivability of the complaint are satisfied.

6. The authors of the complaint have called upon the Governing Body to propose measures for the effective observance of this fundamental Convention in law and in practice. It is for the Governing Body to decide on this request.

7. No discussion on the merits of the complaint is admissible at this stage. Indeed, it would 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 the 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 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.

8. It will be recalled that the Committee on Freedom of Association has been examining a number of complaints submitted by workers' organizations alleging violation of trade union rights in Myanmar.

9. It will also be remembered that the Committee of Experts on the Application of Conventions and Recommendations has made observations to the Government of Myanmar regarding the observance of the Convention referred to in the complaint

submitted under article 26 of the Constitution and that the Committee on the Application of Standards of the Conference has been discussing matters relating to the observance, in practice and under law, of Convention No. 87 for many years.

10. In accordance with established practice, when a Commission of Inquiry is appointed, the relevant matters before the various ILO supervisory bodies are referred to this Commission.
11. The Officers, considering the complaint as receivable, have agreed to refer the matter to the Governing Body for consideration. It is now for the Governing Body to adopt the necessary decisions as to procedure regarding the complaints submitted under article 26 of the Constitution.
12. *In the light of the above, the Officers of the Governing Body recommend that the Governing Body decide at its present session:*
 - (a) *that the Government of Myanmar be requested by the Director-General to communicate its observations on the complaint so as to reach him not later than 31 January 2011;*
 - (b) *that the Government of Myanmar be invited to send a representative to take part in the proceedings of the Governing Body concerning this matter at its future sessions, in accordance with article 26, paragraph 5, of the Constitution. When so inviting the Government of Myanmar, the Director-General should inform it that the Governing Body intends to continue its discussion of this case at its 310th Session, which is to take place in Geneva in March 2011;*
 - (c) *the decision on whether the complaint should be referred as a whole to a Commission of Inquiry in accordance with article 26, paragraph 4, of the Constitution be postponed to a later stage, in the light of the information provided to the Governing Body in connection with the complaint.*

Geneva, 11 November 2010

Point for decision: Paragraph 12

Appendix I

Mr Juan Somavia
Director-General
International Labour Organisation
1211 Geneva 22

Geneva, June 17, 2010

Complaint under article 26 of the ILO Constitution against the Government of Myanmar for non-observance of Convention No. 87 on Freedom of Association and Protection of the Right to Organise

We, Worker delegates to the 99th Session of the International Labour Conference (Geneva, June 2010), whose names are included hereunder, support the conclusions on Myanmar adopted in the Committee on Application of Standards which details the persistent and grave violations of the Government of Myanmar concerning the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) ratified by Myanmar on 4 March 1955.

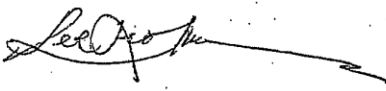
The persistent failure of the government of Myanmar to implement Convention 87 has been examined by the Conference Committee in 1989, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 2001, 2003, 2004, 2005, 2009, and again this year. The Conference Committee has consistently attempted to create a constructive dialogue with the Government to find durable solutions to the very serious violations of this Convention to no avail.

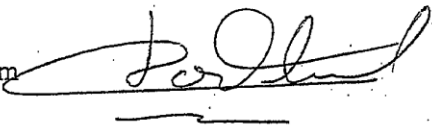
During the discussion this year, the government contended that the planned elections for 2010 will bring about democracy, and that the elections will solve the violations of the convention. However, the planned election is fundamentally flawed, and cannot be seen to be legitimate in a situation where the military is guaranteed 25 % of the seats in parliament, and where other political parties have been denied the right to participate.


The fact remains that grave violations of freedom of association persist and the government's pledge to hold elections in 2010 has not altered this fact. The legislation does still not provide for the right to freedom of association in Burma in law or practice. Persecution of trade unionists remains of a very serious nature involving murder, torture and continued imprisonment of those trying to organize or defend workers' interests. The FTUB remains banned and is constantly persecuted, despite being a legitimate trade union organisation.

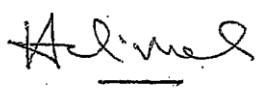
Furthermore, the government did not make any comments to the Conference Committee that could lead us to believe that it would be willing to introduce full freedom of association for trade unions, which necessarily implies a possibility of pluralism, and to recognise the FTUB. On the contrary it continued to make unsubstantiated allegations against the FTUB in the Committee, again labelling it a terrorist organisation while only a few months ago, assassination attempts of trade union leaders were uncovered in Thailand.

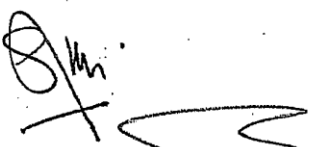
Taking into account all of the above factors, we, the undersigned, feel obliged to lodge a complaint under article 26 of the ILO Constitution and call upon the Governing Body to propose measures for the effective observance of this fundamental Convention in law and in practice. The complainants reserve the right to submit additional information hereto at the appropriate time.

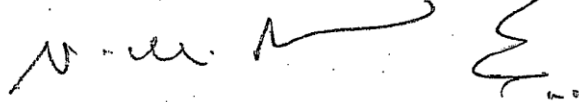
TROTMAN Leroy, Barbados 

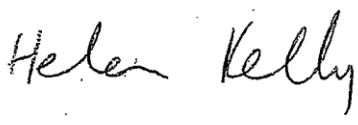
CORTEBEECK Luc, Belgium 

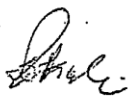
NAKAJIMA Shigeru, Japan 

YACOB Halimah, Singapore 

SYED MOHAMUD Syed Shahir, Malaysia 

ADYANTHAYA N., India 

KELLY Helen, New Zealand 

SITHOLE Salomé, South Africa 

Appendix II



Foreign Office

Rangoon

INSTRUMENT OF ACCEPTANCE OF THE OBLIGATIONS OF THE FORCED OR COMPULSORY LABOUR CONVENTION, 1930, THE STATISTICS OF WAGES AND HOURS OF WORK IN THE PRINCIPAL MINING AND MANUFACTURING INDUSTRIES, INCLUDING BUILDING AND CONSTRUCTION AND IN AGRICULTURE CONVENTION, 1938 AND THE FREEDOM OF ASSOCIATION AND PROTECTION OF THE RIGHT TO ORGANISE CONVENTION, 1948, ADOPTED BY THE INTERNATIONAL LABOUR CONFERENCE AT ITS FOURTEENTH, TWENTYFOURTH AND THIRTYFIRST SESSIONS RESPECTIVELY.

WHEREAS, the competent authorities of the Government of the Union of Burma have approved the Forced or Compulsory Labour Convention, 1930, the Statistics of Wages and Hours of Work in the Principal Mining and Manufacturing Industries including Building and Construction and in Agriculture Convention, 1938 and the Freedom of Association and Protection of the Right to Organise Convention 1948, I, SAO HKUN HKIO, Minister for Foreign Affairs, Government of the Union of Burma, do hereby formally accept, under the provisions of Article 19, Clause 5(d) of the Constitution of the International Labour Organization, and on behalf of the Government of the Union of Burma, the obligations of the Forced or Compulsory Labour Convention, 1930, the Statistics of Wages and Hours of Work in the Principal Mining and Manufacturing Industries including Building and Construction and in Agriculture Convention, 1938 and the Freedom of Association and Protection of the Right to Organise Convention 1948, adopted by the International Labour Conference at its Fourteenth, Twentyfourth and Thirtyfirst Sessions respectively and solemnly undertake in the name of the Union of Burma that each and every of the provisions thereof shall be fully and faithfully performed.

IN WITNESS WHEREOF I have signed the Instrument of Acceptance and affixed hereto my Seal.

Signed and sealed in the Foreign Office, Rangoon,
this Fourth Waning of Tabetwe in the year of
the Burmese Era One Thousand Three Hundred and Sixteen.
(the 11th February 1955).



(SAO HKUN HKIO)
Minister for Foreign Affairs.

