

A Critique by the Union Solidarity and Development Association on the resolution adopted by the 295th Session of the ILO Governing Body

1. This document is a critique by the Union Solidarity and Development Association (USDA) on the resolution adopted by the 295th Session of the ILO Governing Body. The 23.22 million-strong USDA is an inclusive social organization that welcomes all nationalities, religious faiths, men and women of all ages and people from all walks of life. It was formed on 15 September 1993 with the following objectives: perpetuation of the Union of Myanmar; unity and harmony among all nationalities; peace, tranquility and prevalence of law and order in the country; and emergence of a peaceful modern developed society and nation.

2. Since Myanmar became a member of the ILO in 1948, it has had a longstanding cooperation with the ILO. Myanmar contributes its annual membership fees regularly and it has been cooperating with the ILO in its affairs for 58 years now.

3. Being a responsible member, Myanmar follows fundamental rules of the ILO and other acceptable rules including rules under Convention 29 which Myanmar has followed since 1955. It has now been 51 years and that until 1991, there was neither big disagreements between Myanmar and the ILO nor strong criticisms from the organization on Myanmar. But from 1991 onwards, an absconder named Maung Maung (a) Pyithit Nyunt Wai of FTUB who fled to the neighbouring country for fear of arrest on embezzlement of gems and jewellery in Myanmar, began to use the ILO as a political tool and has taken advantage of it against the Myanmar government. In order to create a false image of Myanmar at the ILO, he has been sending spurious information to the ICFTU which is operating under the ILO.

4. Maung Maung of FTUB tried to get a membership in the ICFTU, an influential international labour organization, in order to submit misinformation through it to the ILO. It is learnt that he started by lobbying many labour groups with persistent criticisms on Myanmar. Then he tried to influence through them at the ILO Governing Body sessions and conferences with misinformation and urged the institutions to take actions on Myanmar.

5. Because of false accusations made by the ICFTU which based on misinformation sent from FTUB, the ILO has passed a series of unjust and unreasonable resolutions on Myanmar since 1991 up to the present 2006, and that it has been exerting political pressures against Myanmar.

6. In 1998, the ILO formed an Inquiry Commission on Myanmar which came up with the following three recommendations:

- (1) to bring the Village Act (1907) and the Towns Act (1907) of Myanmar in line with Convention 29, not later than 1-5-99;
- (2) to take measures to stop the current practice through public acts and to make them public;

(3) to enforce the penalties that may be imposed for exaction of forced or compulsory labour, under section 374 of the Penal Code.

7. To carry out the first recommendation, an Order No. 1/99 was issued to amend the Village Act and the Towns Act in line with Convention 29 and Myanmar gave its full cooperation with ILO-TCM teams. According to their recommendations, a Supplementary Order to Order 1/99 was also issued and the ILO acknowledged that those two orders had the force of law.

8. Later, those two orders which were issued in Myanmar and in English, were translated into various ethnic languages such as Kachin, Kayah, Kayin, Chin, Mon, Shan and distributed to 14 States and Divisions, 65 Districts, 325 Townships and over 63,000 Village Tracts, to ensure the awareness that forced labour is an offence punishable under Article 374. To publicize, the Ministry of Labour sent Field Observation Teams (FOTs) to the areas in question and made necessary investigations. Those cases needed further action were forwarded to departments concerned.

9. Although Myanmar has fully cooperated with the ILO as mentioned above, the 88th ILO Conference held in 2000, had passed a resolution to take action on Myanmar under ILO Constitution Article 33, after analyzing that Myanmar still required to fully implement the recommendations made by the ILO Inquiry Commission. The resolution which included the following points, was totally unjust and absolutely unreasonable :-
(1) Member countries are to review their cooperation with the Myanmar government;
(2) International organizations are to review their assistance to Myanmar; and
(3) A permanent Liaison Officer of ILO is to be stationed in Myanmar for such matters.

10. Workshops and seminars were organized in Kayah State, Kayin State, Rakhine State, Sagaing Division, Yangon Division, Tanintharyi Division and Ayeyarwaddy Division to educate the public against the practice of forced labor. After cooperating with ILO-TCM on five occasions and once with the HLT, the Director General of the ILO proposed that Myanmar should systematically make it known to the international community on its actions against forced labour and that a Plan of Action should be drawn. Myanmar therefore, accepted to implement the Plan of Action on the eradication of forced labor.

11. Although Myanmar has been implementing the Plan of Action on eradication of forced labor and making it widely known in the international community, the Director General of the ILO announced at the 91st ILC held in 2003 that the Plan of Action has been suspended on account of Depeyin incident occurred on 30 May 2003. This unilateral suspension of the plan of action proposed by the ILO itself aimed at exerting political pressure on Myanmar. Myanmar's annual cooperation with the ILO throughout every year, shows her true intention to implement under own arrangement, on the eradication of forced labor in the country. It has been carrying out under her own political conviction, with or without the cooperation of the ILO. Therefore, the above events at the ILC might have been proved that ILO itself has no genuine desire of carrying out the eradication of forced labour in Myanmar.

12. The ILO again failed to implement the plan of action on forced labor, at the 92nd ILC held in 2004, due to unrelated account of the three persons convicted under Myanmar's domestic laws. The ILO's action was totally unjustifiable and it was a clear evident of interfering in the internal jurisdiction of the Union of Myanmar.

13. Although Myanmar was aware that it was clearly an outside interference in our domestic affairs, Myanmar reduced sentences of those 3 persons for the sake of showing its political determination to eradicate forced labour and its true intention of maintaining good relationship with the international community as well as with the international organizations. Even though their sentences were reduced, the continued demands by the ILO to release those who are convicted under criminal laws, are well beyond the concern of the ILO. It has become a clear interference in the domestic jurisdiction of a member state.

14. When it was pointed out that no directives had been issued to the military on forced labor, directives and sub-directives were made by the military down to the base level, on Order 1/99 and its Supplementary Order that forced labor is an offence punishable under Article 374 of the Penal Code. Furthermore, directives and guidelines were issued down to the base level by the Ministry of Home Affairs, Myanmar Police Force and General Administrative Department, respectively. The High Court has also distributed forms to report on cases of forced labor, down to the lowest courts. Even though above steps are taken for practical purposes, the ILO still refused to recognize them and still repeatedly saying that the directives are not yet complete. It is quite obvious that the ILO emphasizes on exerting political pressure instead of performing its plan of action.

15. The ILO-TCM is well aware that measures to end forced labor cannot be implemented in a short period of time. Within a short period of time, and before and during meetings of the Governing Body and conferences, Myanmar has accepted visiting teams from the ILO and has made continuous efforts in carrying out coordination works with the ILO, which clearly indicates its true intention to eradicate forced labor. But it is evident that the ILO has no intention to recognize cooperative efforts of the Myanmar side.

16. The ILO-TCM teams always make various demands after performing each and every cooperative task. Although the Myanmar side has fulfilled their demands, they never recognized or appreciated and that the ILO continues to exert pressure on Myanmar in different forms, for political purposes.

17. For example, although the ILO has a regional office in Bangkok, Thailand, the Myanmar side showed its compliance by allowing the ILO liaison office in Myanmar. All the member states and Asean Dialogue Partners unanimously welcomed and recognized that accepting the ILO liaison office in Myanmar was the highest form of cooperation with the ILO for the eradication of forced labor in Myanmar. Regarding travel permission to various parts of Myanmar for the ILO Interim Liaison Officer, he is allowed to travel

like other personnel from the UN and its other agencies. He is also permitted to travel within a short notice. He had already traveled freely to several remote parts of Myanmar.

18. The ILO refused to recognize such compliances of the Myanmar side in connection with the travel permits of the ILO Liaison Officer. Instead, the ILO continues to put up this matter at every Governing Body meetings and conferences of the ILO for the adoption of resolutions which can be clearly seen as exerting more political pressure on Myanmar. At every labor conference, the relentless attacks on Myanmar by labor group representatives and some of the anti-Myanmar western nations, are in fact a discredit to the ILO itself. At the various committees of the ILO, the one-sided criticisms whether they were right or wrong, from the labor group representatives, are taken as recommendations and that actions were taken by the committee chairman and then the ILO itself had to pass it as resolutions. Apparently, the ILO needs to rectify such one-sided procedures and unfair practices of those various committees.

19. Before the ILO Liaison Officer was appointed, there were many accusations against forced labor in Myanmar. But after the appointment, and when the cases were screened, there were less accusations. Therefore, a decrease in false accusations clearly showed that there are no widespread forced labor problems as alleged by the anti-groups. The ILO should recognized this fact and put it on record.

20. Myanmar accepted the ILO Liaison Office in compliance with the resolution adopted in 2000 with the recommendation of the HLT of the ILO. The acceptance clearly indicates Myanmar's willingness to eradicate forced labor. Although Myanmar has fulfilled the recommendations of the HLT in 2001, it is found that the ILO in return has failed to fulfill until today, on HLT's recommendations on Myanmar such as to accommodate Myanmar's rightful place in the international community, to modernize its economy, etc. Moreover, the special high level team which visited Myanmar again and the ILO Governing Body meeting both failed to mention the HLT's recommendations and totally ignored the ILO's reciprocal obligations towards Myanmar.

21. There is an apparent lack of justice in the way the ILO has made one-sided demands on a small country and exerted unfair pressures on it to comply. The resolution in 2000 to take action against Myanmar under Article 33 of the ILO Constitution was without precedence and its unfairness was of historic proportions. It also raises doubts on the justice of subsequent resolutions of the ILO.

22. This strong resolution against Myanmar was adopted in spite of requests from many other member countries for more moderate and other appropriate measures. At that time, the resolution on Myanmar was a cause of concern among member countries and that such extreme measures might also be taken against other countries.

23. In keeping with its tradition of exerting political pressure on Myanmar, the ILO Governing Body adopted another resolution at its 295th meeting in March this year to include the following separate agenda for Myanmar at 95th ILO Conference to be held in June 2006,

(1) to ensure Myanmar's compliance with the recommendations of the inquiry commission

(2) To work out measures in accordance with the ILO Constitution to ensure that complainants and their representatives are not prosecuted.

24. With regard to the second resolution of the 295th Meeting of the Governing Body, the main disagreement between the ILO and Myanmar concerns false complaints. The ILO calls for a guarantee that false complainants will not be prosecuted. But Article 25 of Convention 29 calls for the prosecution of the perpetrators of forced labour and action has been taken against them in accordance with Article 374 of the Penal Code. But those who filed false complaints are to be prosecuted in accordance with domestic legislation. As Myanmar is a member of both the ILO and the United Nations, the ILO should abide by the UN stipulation that there should be no interference in the affairs that are within the domestic jurisdiction of member countries and should make decisions on technical matters from a technical point of view in an objective manner.

25. In case of false complaints, Myanmar authorities are to notify the false complainants for the first time, give them warning for the second time and then only to prosecute in accordance with domestic legislation on the third time so that filing of false complaints can be prevented. This is a case of internal jurisdiction and the ILO's call at its 295th Meeting of the Governing Body not to prosecute such persons amounts to interference in the internal affairs of our country. The Union Solidarity and Development Association therefore solemnly calls upon the ILO not to interfere in the internal affairs of our country.

26. It has come to our attention that the ILO plans to seek opinion of the ICJ concerning the case of false complaints, which are not covered by Convention 29 and we call upon the ILO to accept application of existing domestic legislation of one's own country and desist from interfering and exerting pressure on such matters.

27. As a final analysis, the continued membership in the ILO has done our country more harm than good. Trade sanctions imposed in accordance with conference resolutions have brought loss of jobs and bring unnecessary hardships each day to the people of Myanmar - the bitter consequences which the ILO has ignored. Series of resolutions that are being adopted by the ILO include presenting the issue to ECOSOC and the United Nations Security Council, imposing embargoes on foreign investments, trade and economy and import and export of Myanmar, and that in the future they are likely to bring only adverse consequences rather than the benefits. The Union Solidarity and Development Association strongly and solemnly object the submission of the resolution of the 295th Governing Body Meeting as a separate agenda for the 95th ILO Conference to be held in June 2006. On behalf of the Association, secretaries of the State/Division level associations have put their signatures to this document.