



FACULTY OF LAW
Lund University

Gunnar Narfi Gunnarsson

Combating human rights violations
and forced labour in Myanmar:
the approach of the UN and the ILO

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Supervisor:
Lee Swepston

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Summary

The practice of forcing a person to perform work without his or her consent and the denial of freedom to leave work has been part of human history for centuries. Despite great effort by the international community to combat forced labour, this scourge is still a prevalent practice in both developed and developing countries, with old as well as new forms of coercion being carried out every day. Millions of people are victims of forced labour and there are no particular signs that it is decreasing.

The purpose of this thesis is to examine how human rights violations and forced labour in Myanmar have been approached by the two most prominent international human rights organizations in the world, the United Nations (UN) and the International Labour Organization (ILO). Forced labour is most commonly imposed by private agents, but has been carried out in Myanmar for decades by the state (the military and civilian authorities). In addition to forced labour, other egregious human rights violations have been taking place there for decades.

The thesis describes the human rights situation in Myanmar, both with regard to general human rights as well as so-called labour related human rights. The national legislation of Myanmar is examined, as well as the international obligations that the country is bound by.

The thesis examines what international mechanisms are available in general under the UN and the ILO system to address human rights violations, and describes how they have been applicable with regard to Myanmar. The approach of the UN and the ILO over a long period is analysed and what actions those two organizations have taken with regard to Myanmar, and also how the government has responded to those actions.

The thesis concludes that neither the UN nor the ILO have made substantial success in convincing the government to eradicate forced labour, or other human rights abuses, and that the Myanmar authorities have only implemented a handful of recommendations of both organizations. The approach of the ILO has however been reacted to more positively by the government and despite not having implemented the main recommendations of the ILO, there are some positive signs that the government is moving in the right direction. The response of the government has however been small and grudging.

The thesis further concludes that neither the ILO nor the UN have the power to force Myanmar to change its fundamental systems or the way it treats its citizens. The few positive steps identified in the thesis will however hopefully result in a regime change in the near future, where the ILO, because of its detailed analysis, technical assistance offered and the specific

and concrete recommendations to problems the ILO has identified, is in a position to shape the changes that come about.

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Abbreviations

CAT	Convention against Torture and other Cruel, Inhuman or Degrading Treatment
CEDAW	Convention on the Elimination of all Forms of Discrimination against Women
CHR	Commission on Human Rights
CRC	Convention on the Rights of the Child
ECOSOC	Economic and Social Council
GA	General Assembly of the United Nations
HRC	Human Rights Council
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
ILO	International Labour Organization
LO	Liaison Officer of the ILO in Myanmar
NGO	Non-Governmental Organization
OHCHR	Office of the High Commissioner for Human Rights
OP	Optional Protocol
SU	Supplementary Understanding
UDHR	Universal Declaration on Human Rights
UN	United Nations
UPR	Universal Periodic Review

1 Introduction

1.1 Background

*“Not only is forced labour a serious violation of a fundamental human right, it is a leading cause of poverty and a hindrance to economic development”.*¹

Work is a fundamental aspect in peoples’ lives. Every human being works or is closely connected to someone that does. Through work people provide for themselves and their families and through work people prosper as individuals. As a basic principle, people should be able to choose the work they want to pursue, allowing them to live in dignity.²

This important principle, which is called the right to work, is reflected in several fundamental human rights instruments, most notably in article 23(1) of the Universal Declaration of Human Rights (UDHR) of 1948³ and more comprehensively in article 6(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966.⁴ This right should however not be understood as an absolute and unconditional right to obtain employment, but rather a right of every human being to decide freely to accept or choose work and not to be forced in any way to engage in employment.⁵

As with all other human rights, three levels of obligations are incumbent on the State: to respect, to protect and to fulfil. The obligation to respect requires the State to refrain from interfering with the enjoyment of the right to work, directly or indirectly. The obligation to protect requires the State to take measures that prevent third parties from interfering with that right and the obligation to fulfil requires the State to promote, provide and facilitate that right.⁶ Thus, states parties are under the obligation to respect, protect and fulfil the right to work by, inter alia, prohibiting forced or compulsory labour.^{7 8}

¹ *Rules of the Game: A brief introduction to International Labour Standards, International Labour Office, International Labour Organisation, Revised Ed., Geneva, 2009, p. 30.*

² Committee on Economic, Social and Cultural Rights: *General Comment No. 18, the Right to Work*, E/C.12/GC/18, 6 February 2006, p. 2, para. 1.

³ Article 23(1) of UDHR: “Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.”

⁴ Article 6(1) of the ICESCR: “The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.”

⁵ *General Comment No. 18, the Right to Work*, op. cit. p. 3, para. 6.

⁶ *Ibid.*, p. 7, para. 22.

⁷ *Ibid.*, p. 7, para. 23-26.

⁸ For the remainder of the thesis the term “forced labour” will for the most part be used to incorporate also “compulsory labour”.

Despite this important human right, for millions of human beings across the world, full enjoyment of this right remains a remote prospect.⁹ In 2005 the International Labour Organization (ILO) estimated that over 12 million people were victims of forced labour worldwide. No similar estimates have been carried out since 2005, but there are no indications that these numbers have decreased since then, now six years later. This figure reflects the global scope of this problem, which affects nearly all countries and all kinds of economies.¹⁰

Historically, freedom from forced labour and the prohibition of slavery were among the first basic human rights subjects that were dealt with in international legal instruments¹¹ and they are generally considered to be *jus cogens*, or peremptory norms of international law,¹² where no derogation is permitted.¹³ Forced labour is universally condemned¹⁴ and most countries have legislation that prohibits it, either in their constitution, criminal, labour, administrative or other law, but still this heinous offence survives.¹⁵ However, in spite of legislation prohibiting it, forced labour is very rarely punished, and when forced labour cases are prosecuted the sanctions are often minimum compared to the seriousness of the offence.

Today, the main forms of forced labour include: slavery; compulsory participation in public works projects; forced labour in agriculture and remote rural areas; domestic workers in forced labour situations; bonded labour (or debt bondage); forced labour imposed by the military; forced labour in the trafficking in persons; and some aspects of prison labour and rehabilitation through work.¹⁶

All these different types of forced labour share two common features; the exercise of coercion and the denial of freedom.¹⁷ Thus, a person is forced against his or her will to work, and if the person wishes to quit, he or she is denied the freedom to do so.

⁹ *General Comment No. 18, the Right to Work*, op. cit. p. 3, para. 4.

¹⁰ Report of the Director-General, *The Cost of Coercion: A Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work*, International Labour Conference, 98th Session, 2009, International Labour Office, Geneva, p. 1. Hereinafter: *The cost of coercion*.

¹¹ *General Survey concerning the Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105)*, International Labour Conference, 96th Session 2007, Report III (Part 1B), p. 1, 4 and 111. Hereinafter: *General Survey 2007*.

¹² *Jus cogens* or a peremptory norm of general international law is defined in article 53 in the Vienna Convention on the Law of Treaties of 1969.

¹³ *General Survey 2007*, op. cit. p. xi. See also Report of the Director-General, *Stopping Forced Labour*, A Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, International Labour Conference, 89th Session, 2001, International Labour Office, Geneva, p. 2. Hereinafter: *Stopping forced labour*.

¹⁴ *Stopping forced labour*, op. cit. p. vii.

¹⁵ *The cost of coercion*, op. cit. p. 1 and 35.

¹⁶ *Stopping forced labour*, op. cit. p. 2.

¹⁷ *Ibid.*, p. 1.

Certain groups are more vulnerable to coercion than others, such as children, women, ethnic or racial minorities, migrants and poor people. When forced labour takes place in the context of armed conflict it can also add to the problem.¹⁸

As was mentioned above, forced labour is for the most part exacted by private agents rather than constituting State practice.¹⁹ However, one example where the State is the main instigator is in a country called Myanmar, where extreme cases of forced labour have been exacted by the government for several decades.

1.2 Statement of the problem and research questions

According to a General Survey by the ILO in 2007 systematic state practices of imposing forced labour on the population, for either economic or political purposes, is on the decline worldwide and has practically disappeared in most countries.²⁰ However, one exception is the case of Myanmar. For nearly five decades the country, which has been ruled by a military junta since 1962, has witnessed severe cases of forced and compulsory labour exacted by the military and civilian authorities.

The issue of forced labour has been on the agenda of the international community since then and numerous attempts have been made to combat and eradicate it. In 1998, a Commission of Inquiry, under the auspices of the ILO, issued a report on forced labour in Myanmar and found abundant evidence of pervasive use of forced labour imposed on the people by civilian authorities and the military.²¹ In its conclusion, the Commission stated the following:

“[...] the use of forced or compulsory labour is violated in Myanmar in national law[...] as well as in practice in a widespread and systematic manner, with total disregard for the human dignity, safety and health and basic needs of the people of Myanmar.”²²

¹⁸ Ibid., p. 2. See also *Combating Forced Labour: A Handbook for Employers and Business*, International Labour Office, 2008, p. 44.

¹⁹ Report of the Director-General, *A Global Alliance Against Forced Labour: A Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work*, International Labour Conference, 93rd Session, 2005, International Labour Office, Geneva, p. 17. Hereinafter: *A global alliance against forced labour*.

²⁰ *General Survey 2007*, op. cit. p. 49.

²¹ *Stopping forced labour*, op. cit. p. 45.

²² 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, para. 536. Hereinafter: *Report of the Commission of Inquiry*.

Both the UN and the ILO have through the years addressed forced labour practices in Myanmar. In addition, the UN has also addressed a range of other flagrant human rights violations that take place there, but this has all been with limited success. Notwithstanding the fact that the situation of forced labour is very serious in the country and the government has generally been extremely reluctant to accept that it exists, some signs of improvement have been identified in recent years by the government to recognize and to tackle this problem. For instance, there has been increased willingness of carrying out awareness-raising activities and the government recently indicated that legislative amendments will soon be introduced to prohibit forced labour. However, any improvements have been small and grudging.

The focus of this thesis is to examine the efficacy of how the United Nations and the International Labour Organization have approached human rights violations and forced labour practices in Myanmar. The approach of the UN could be characterized as a general human rights approach, compared to a so-called specific labour-related human rights approach by the ILO.

An attempt will be made to analyse the characteristics of each approach and research whether an argument can be put forward that any particular approach is more effective than the other. Do these organizations approach the problem differently and how has the government of Myanmar responded so far to those approaches? Can an argument be made that the government is more cooperative or reacts more positively when dealing with either the UN or the ILO?

The research questions will therefore focus on the efficacy of these different approaches to combat human rights violations, with particular emphasis on forced labour in Myanmar and whether one approach has worked better than the other in practice, how the government of Myanmar has reacted to these approaches etc.

There is also the possibility that neither approach is effective because the country may be immune to outside pressure for different reasons, and the minor advances there have been at the government's own speed. In that case the thesis will try to analyse whether those advances can be attributed to a particular approach and the reasons the country has been able to resist the pressures applied.

1.3 Methodology

The isolation of the country and the difficulty for people to report or express what they have experienced or witnessed to the outside world on issues which reflect the government in a negative light will make the methodology for this thesis somewhat different than when dealing with most other countries. The government has a strong hold on the media and the freedom of expression is very limited. Most international organizations are not

allowed to visit the country, and if they do, they are given strict orders where they can travel and whom they can meet.

An exception to this hostile attitude is the presence of an ILO Liaison Officer, who under an Understanding between the government of Myanmar and the ILO, has had a permanent presence in the former capital, Yangon, since 2002, receiving complaints of forced labour cases among other things. The officer is however short-staffed and there are difficulties for people living outside Yangon, for instance in rural areas, to lodge complaints. His office therefore cannot reach other parts of the country where forced labour is more widespread and common.

The methodology will therefore be mainly restricted to analyzing official reports by the UN and the ILO, including reports from the government of Myanmar on forced labour. In some of these reports there is a first-hand testimony given by victims or relatives of victims of forced labour which have been able to meet with UN or ILO representatives in the country.

Although UN or ILO officials have been permitted to visit the country, their visits have often been quite scrutinized and they are regularly denied access to some areas where there have been reports of serious cases of forced labour. They have therefore not been able to gather evidence from the areas where the most serious forced labour abuses occur (mainly in the rural parts of the country where there is a strong military presence) and often have to rely on second-hand reports. Thus, the sources and reports that will be used in the thesis have to be viewed in that light.

In addition to official reports and statistics by international organizations and NGO's, other sources will be used for this thesis, such as books and articles written by different scholars, on international law and human rights law, but also on political, social, historical and economic affairs.

1.4 Structure

The structure of the thesis will consist of five chapters:

In chapter 1, an introduction is given to the principle of the right to work and how it is connected with the concept of forced and compulsory labour, in addition to some basic information on forced labour.

Chapter 2 will begin with exploring the historical antecedents of forced labour and its connection with slavery. The chapter will list the relevant international legal instruments that have been adopted against forced labour, both in a universal and a regional context, and the most relevant provisions will be highlighted. Next, the concept of forced labour will be analyzed, how it is defined and interpreted, in addition to mentioning the exceptions to it. Then a short overview of the main forms and typologies of forced labour

will be given and finally the problem will be put in perspective by giving a global estimate of forced labour in the world.

Chapter 3 will focus on the institutional framework to promote and protect international human rights. The chapter describes how human rights are secured in the current international legal framework by the two main international organizations, the UN and the ILO, that have been involved with human rights violations and forced labour practices in Myanmar. The chapter describes how the UN and the ILO machinery function in order to promote and protect human rights and what are the main bodies and procedures at the disposal of these organizations to secure human rights.

In chapter 4, a case study will be made on Myanmar. After a short summary on the historical background of the country, the main human rights violations that have occurred or are currently happening there will be described, with particular emphasis on forced labour abuses. The relevant national legislation will be analysed as well as the country's international legal obligations. A substantive part of the chapter will be devoted to describing and analyzing the approaches of the UN and the ILO with respect to human rights violations and forced labour issues. In this part, the main observations and recommendations will be analyzed as well as the response of the Myanmar authorities. Is one approach more productive than the other or is the government immune from outside pressure? The chapter will conclude that the Myanmar authorities have not been very responsive to proposed action by the UN or ILO and it will reflect briefly on possible explanations why Myanmar has been able to resist outside pressure.

Finally in chapter 5, there will be conclusions for this research.

2 Understanding forced labour

2.1 Historical background and relevant legal instruments

In order to understand what is meant today when we speak about forced and compulsory labour it is necessary to give a brief historical background of the concept in relation to the main international instruments that have been adopted against this phenomenon.

Action by the international community to combat forced or compulsory labour has historically been directed against slavery,²³ which is the most severe form of bondage, as opposed to freedom.²⁴ The first international legal instrument that dealt with slavery, which has probably existed as long as civilization,²⁵ was the Declaration Relative to the Universal Abolition of the Slave Trade, adopted by the Congress of Vienna in 1815, followed by a number of agreements, both bilateral and multilateral.²⁶ By the end of the 19th century slavery had been outlawed around the world,²⁷ but it wasn't until after the First World War that the League of Nations (the predecessor to the United Nations) adopted the Slavery Convention in 1926. The Convention prohibited all aspects of the slave trade, including “*all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery*”, which was defined by the Convention as “*the status or condition of a person over whom any or all of the powers attaching to the rights of ownership are exercised*” (article 1(1) and (2)). According to the preamble of the Convention “*it is necessary to prevent forced or compulsory labour from developing into conditions analogous to slavery*”.

At the time, forced labour²⁸ was mainly seen as a colonial phenomenon and many countries and areas in the world were under colonial rule. In those areas it was common to use coercion to obtain labour from the native populations for the development of communications and the general economic infrastructure, as well as for other activities.²⁹ In 1930, the ILO³⁰

²³ *General Survey 2007*, op. cit. p. 49.

²⁴ Knott, Lucas: *UNOCAL revisited: On the difference between slavery and forced labour in international law*, 28 *Wisconsin International Law Journal*, 201, 2010, p. 209.

²⁵ *Ibid.*

²⁶ *General Survey 2007*, op. cit. p. 4.

²⁷ *Stopping forced labour*, op. cit. p. 10.

²⁸ Slavery and forced labour are two separate but interrelated legal concepts. Slavery is one form and the most severe manifestation of forced labour. Forced labour on the other hand can however be both an overarching concept, which includes slavery and debt bondage among other things, and it can also be a specific act, for example when it is imposed by the military or when imposed for agricultural purposes. The prohibitions of slavery and the slave-trade are absolute, but the prohibition on forced and compulsory labour is subject to certain exemptions.

²⁹ *General Survey 2007*, op. cit. p. 5. See also *Stopping forced labour*, op. cit. p. 10.

adopted the Forced Labour Convention (No. 29). According to article 1 of the Convention all member states are required “*to suppress the use of forced and compulsory labour in all its forms within the shortest possible time.*” The Convention was wider in scope than the one adopted by the League of Nations four years earlier, thus prohibiting forced labour generally, including but not limited to slavery.³¹

After the devastating consequences of the Second World War, where the world had witnessed forced labour being used on a massive scale, both within and outside a colonial setting, such as in the concentration camps of Nazi Germany, came the next major period of standard setting in the field of forced labour.³² In 1944 the Declaration of Philadelphia was adopted (which became part of the ILO Constitution in 1946) where it said that “*all human beings...have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, economic security and equal opportunity.*” The Universal Declaration of Human rights, adopted in 1948, reaffirmed the principle of the Declaration of Philadelphia that “*no one shall be held in slavery or servitude; slavery and the slave-trade shall be prohibited in all their forms*” (article 4), as well as the right to “*free choice of employment*” (article 23(1)).

An interesting point worth mentioning here is that when the ILO was founded in 1919, its main aim was to promote social justice³³ through dialogue and cooperation between workers, employers and governments, to overcome social and economic conflicts of interest.³⁴ The labour standards that the ILO adopted from its inception and until after the Second World War were therefore mainly couched in terms of government obligations, rather than specific rights of workers or individuals. Also, the Covenant of the League of Nations did not contain a commitment to human rights. In fact, the word “right” in the Treaty of Versailles is almost entirely used in reference to territorial and other sovereign rights of states, the only exception being the right of workers and employers to organize.³⁵ However, with the Declaration of Philadelphia of 1944 the ILO moved into human rights territory by stating its aims in terms of human values and aspirations.³⁶ Influenced by the atrocities of the Second World War, the UN

³⁰ The ILO was established in 1919 with the Treaty of Versailles, along with the League of Nations, as part of the Paris Peace Conference after the First World War. The main aim of the creation of the ILO was to address the poor working conditions during the industrial revolution by international regulation through certain standards, which became recognized as international labour standards. These standards take the form of conventions and recommendations

³¹ *A global alliance against forced labour*, op. cit. p. 8.

³² *Stopping forced labour*, op. cit. p. 10.

³³ The ILO Constitution of 1919 states in its preamble that “universal and lasting peace can be established only if it is based upon social justice”.

³⁴ *An international organization for social justice, The ILO and the Quest for Social Justice, 1919-2009*, Geneva, 2009, p. 2.

³⁵ *Ibid.*, p. 38-39.

³⁶ Swepston, Lee: *ILO and Human Rights*, International Human Rights Monitoring Mechanisms, Essays in honour of Jakob Th. Möller, 2nd Revised Ed., 2009, Martinus Nijhoff Publishers, p. 292.

started as well to adopt instruments with a focus on human rights. First with the Charter of the United Nations in 1945 (both in the preamble and article 1) and then with the UDHR of 1948, which for the first time set out fundamental human rights to be universally protected and remains today the broadest and most fundamental international expression of human rights.³⁷

At this time, the colonial era was nearing its end, and consequently more and more human rights instruments were being adopted. To recognize for example the principle of racial equality during the colonial era would have called into question the colonial system then in place,³⁸ which would probably not have fared well in the eyes of the colonial empires at the time, that would have to grant the same human rights to people in their colonial areas (many of whom were slaves) in the same way as to their own people.

In the 1950s both the UN and the ILO adopted further conventions on forced labour. The UN adopted a Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices similar to Slavery in 1956 and the following year the ILO adopted the Abolition of Forced Labour Convention (No. 105). In the preamble of this latter Convention reference is made to human rights where it says that “*the abolition of certain forms of forced and compulsory labour constituting a violation of the rights of man referred to in the Charter of the United Nations and enunciated by the Universal Declaration of Human Rights[...].*” The convention does not change the basic definition in international law, but specifies certain situations where forced labour can never be imposed.³⁹ At the same time, very important changes were happening in Europe as well, and in 1950 the European Convention on Human Rights was adopted. Regarding forced labour and slavery, the Convention stipulates in article 4(1) that “*No one shall be held in slavery or servitude*” and that “*No one shall be required to perform forced or compulsory labour*” in article 4(2).

In the 1960s and 1970s new issues were emerging with regard to forced labour, such as laws involving an obligation to work in the Communist bloc countries in Eastern Europe and in some newly independent states, especially in the African region and land and tenancy reforms, often accompanied by expanded labour rights and some social benefits, were enacted in Latin America and Asia.⁴⁰ In 1966, the United Nations adopted two very important human rights conventions, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). One of the reasons behind their adoption was to translate the UDHR into hard legal substance, which was originally enacted as a resolution by the United Nations General

³⁷ *The ILO and the Quest for Social Justice*, op. cit. p. 39.

³⁸ Tapiola, Kari and Swepston, Lee: *The ILO and the Impact of Labour Standards: Working on the Ground after an ILO Commission of Inquiry*, Stanford Law and Policy Review, Vol. 21, Issue 3 (2010), p. 513.

³⁹ *The cost of coercion*, op. cit. p. 5.

⁴⁰ *Stopping forced labour*, op. cit. p. 11.

Assembly and thus lacking any binding force.⁴¹ The former covenant contains a specific provision on the prohibition on forced labour which stipulates in article 8(3)(a) that “*no one shall be required to perform forced or compulsory labour.*” The covenant also has a special provision prohibiting slavery where it says in article 8(1) that “*no one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.*” On a regional level, the American Convention on Human Rights, the Pact of San José, was adopted in 1969, which proclaims in article 6(1) that “*No one shall be subject to slavery or to involuntary servitude, which are prohibited in all their forms, as are the slave trade and traffic in women*” and in paragraph 2 that “*No one shall be required to perform forced or compulsory labor.*”

In the 1980s and 1990s there was growing awareness on gender issues, with special focus on women as victims of forced labour, in situations such as domestic servants and sex trafficking.⁴² Child labour was also getting more and more worldwide attention which resulted in the adoption of the ILO’s Worst Forms of Child Labour Convention of 1999 (No. 182). The Convention lists in article 3(a) “*all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced and compulsory labour, including forced or compulsory recruitment of children for use in armed conflict*” as one of the practices prohibited by the Convention. In a regional context, the African Charter on Human and People’s Rights was adopted in 1981 which inter alia prohibits in article 5 all forms of exploitation and degradation of man, mentioning particularly slavery and the slave-trade. There is however no mention in the Charter of forced or compulsory labour *per se*.

In 1998 the ILO reaffirmed its two fundamental conventions on forced labour, the Forced Labour Convention, 1930 (No. 29) and the Abolition of Forced Labour Convention, 1957 (No. 105), through the Declaration of Fundamental Rights and Principles at Work. The Declaration covers four fundamental principles and rights at work, one of them being the elimination of all forms of forced or compulsory labour.⁴³ Under article 2 of the Declaration all member States have an obligation, even if they have not ratified the Conventions in question, arising from the very fact of membership in the ILO “*to respect, promote and realize*” inter alia the elimination of all forms of forced or compulsory labour. This obligation is therefore incumbent on all ILO member states, whether they have ratified any of the conventions in the four core fields or not.

⁴¹ Swepston, Lee: *ILO and Human Rights*, op. cit. p. 292. See also Tomuschat, Christian: *Human Rights, Between Idealism and Realism*, Second Ed., 2008, Oxford University Press, New York, p. 30.

⁴² *Stopping forced labour*, op. cit. p. 12.

⁴³ The other three principles are the freedom of association and the effective recognition of the right to collective bargaining, effective abolition of child labour and elimination of discrimination in respect of employment and occupation.

Since then no major effort worth mentioning has been undertaken by the international community on setting new standards on forced labour or slavery.⁴⁴ This might suggest that the necessary standards are currently in place, but the main challenge is probably in getting countries to abide by their international legal obligations.

The practice of coercing a person to perform work without his or her consent and the denial of freedom to leave work has been part of human history for hundreds, if not thousands of years. Despite great effort by the international community to combat it, this scourge is still a prevalent practice in both developed and developing countries, with old as well as new forms of coercion being carried out every day.

The next section will shed light on forced labour today, starting with a definition of the concept of forced and compulsory labour and listing the exceptions to it. Then a short explanation will be made on the different forms and types that are prevalent in the world today and finally a global estimate on the phenomenon will be given.

2.2 Forced labour today

2.2.1 What is forced labour?

2.2.1.1 Definition

In order to be able to understand what forced labour is it is perhaps first of all necessary to understand what it is not. Low salary, poor or even abusive working conditions, or situations when a worker feels unable to leave a job because there are no employment alternatives should not be put on par with forced labour.⁴⁵ Those situations, important as they may be, do not represent forced labour situations and fall under other themes of labour law.

Forced labour on the other hand represents a severe violation of fundamental human rights.⁴⁶ It is widely described as being a peremptory norm of international law,⁴⁷ or *jus cogens*, where no derogation is permitted,

⁴⁴ It must be noted that in addition to these conventions the ILO has adopted several other standards which address the issue of forced labour, either directly or indirectly. These include: the Forced Labour (Indirect Compulsion) Recommendation, 1930 (No. 35), the Special Youth Schemes Recommendation, 1970 (No. 136), the Employment Policy Convention, 1964 (No. 122), the Indigenous and Tribal Peoples Convention, 1989 (No. 169) and the Migration for Employment Convention (Revised), 1949 (No. 97). See here *General Survey 2007*, op. cit. p. 7-8.

⁴⁵ *The cost of coercion*, op. cit. p. 5.

⁴⁶ *A global alliance against forced labour*, op. cit. p. 5.

⁴⁷ See here for example *General Survey 2007*, op. cit. p. xi. The ILO Commission of Inquiry described in its report from 1998 in para. 538 that “a State which supports, instigates, accepts or tolerates forced labour on its territory commits a wrongful act and

a standard which only the most serious human rights violations are considered to reach, such as genocide, crimes against humanity and piracy.⁴⁸ One of the most serious manifestation of forced labour, namely forced prostitution, constitutes a crime against humanity when committed in a systematic or a widespread manner according article 7(1)(g) of the Rome Statute of the International Criminal Court of 1998.⁴⁹

The most universally recognized understanding⁵⁰ of the concept of forced and compulsory labour is in article 2 of the ILO's Forced Labour Convention, 1930 (No. 29). The article defines the concept as "*all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.*"

This definition comprises two basic elements that are of great importance: the work or service is exacted under the *menace of a penalty* and it is undertaken *involuntarily*.⁵¹

2.2.1.1.1 Menace of any penalty

The penalty here in question does not need to be in the form of penal sanctions. A person who refuses to perform voluntary labour might receive another kind of penalty, for example in the form of loss of rights or privileges.⁵² In addition, the menace of penalty can take many different forms, the most extreme cases involving physical violence or restraint, or even death threats. A minor form would be of a psychological nature, such as threats to denounce victims of forced labour to the authorities. Other forms of menace could be of a financial nature, such as economic penalties linked to debts or when employers require workers to hand over their identity papers and even threaten to confiscate the documents in order to exact forced labour from them.⁵³

2.2.1.1.2 Voluntary offer

Employment is a contractual relationship based on free will. Thus, a person cannot, as a general rule, be forced to perform a particular job (there are

engages its responsibility for the violation of a peremptory norm in international law". This report will be further mentioned in chapters 3 and 4.

⁴⁸ Brownlie, Ian: *Principles of Public International Law*, 6th Ed., Oxford University Press, New York, 2003, p. 488-489.

⁴⁹ The ILO Commission of Inquiry said in its report from 1998 about forced labour and crimes against humanity the following in para. 538: "Whatever may be the position in national law with regard to the exaction of forced or compulsory labour and the punishment of those responsible for it, any person who violates the prohibition of recourse to forced labour under the [ILO Forced Labour] Convention is guilty of an international crime that is also, if committed in a widespread or systematic manner, a crime against humanity."

⁵⁰ The concept of forced and compulsory labour is in fact not defined in any other international binding legal instrument.

⁵¹ *The cost of coercion*, op. cit. p. 5.

⁵² *General Survey 2007*, op. cit. p. 20.

⁵³ *The cost of coercion*, op. cit. p. 5-6.

some exceptions to this which will be mentioned below). However, when a person is coerced or forced to do a job, he or she cannot be said to have offered him or herself voluntarily. The freedom to choose or accept an employment (as was mentioned in chapter 1) and the freedom to leave employment is an inalienable right of the worker.⁵⁴

Forced labour situations are determined by the relationship between a person and the employer, and not by the type of activity performed, however hazardous the working conditions may be. A defining criterion is neither the legality or illegality of the activity to determine if the situation amounts to forced labour. For example, a woman who is forced into prostitution or a child that is coerced to sweep landmines, are in a situation of forced labour, not because the activity is legal or not, but because of the involuntary nature of the work and the menace under which they are working.⁵⁵

2.2.1.2 Exceptions

While the ILO Forced Labour Convention No. 29 requires states to abolish all forms of forced and compulsory labour, it identifies certain exceptions in article 2(2)(a)-(e).

First, a person can be compelled to do *military service* without it being characterized as forced labour in the meaning of the Convention (point a). The work or service exacted must however be of a purely military character, which means that those who serve in the army cannot be called up for public works, for example to be put into economic development projects or similar activity, which has nothing to do with military purposes.⁵⁶

Second, *normal civil obligations* are exempt from the Convention as being cases of forced or compulsory labour (point b). Examples of this would be jury duty or the duty to assist a person in danger.⁵⁷

Third, compulsory labour can be exacted from a person as a consequence of a *conviction in a court of law* (point c). Under this exemption a person can be required do hard labour work, even for several years, while in prison, for example smashing rocks or digging holes. However, there has to be supervision over that work by a public authority. Also, the Convention prohibits that persons are hired to or placed at the disposal of an outside party.⁵⁸ This would for example preclude the prison warden from lending his most prolific machinist to an outside steel factory.

Fourth, work or service can be exacted from a person in *cases of emergency* (point d). This exception was meant to be used in cases of force majeure, or

⁵⁴ *General Survey 2007*, op. cit. p. 21.

⁵⁵ *The cost of coercion*, op. cit. p. 6.

⁵⁶ *General Survey 2007*, op. cit. p. 22-23.

⁵⁷ *Ibid.*, p. 24.

⁵⁸ *Ibid.*, p. 26-27

a sudden, unforeseen happening that calls for an instant response, such as in the event of war or natural disasters. The duration and the extent of the compulsory labour here should not be longer than absolutely necessary and is strictly required by the seriousness of the situation.⁵⁹

The final exception is *minor communal service*. This means service being performed by the members of the community in the direct interest of the community (point e). The service here is of a “minor” nature, for example maintenance work, erection of certain buildings to improve the social conditions of the community (a small school) and it must be “communal”, i.e. performed in the direct interest of the community and not relate to a wider group of beneficiaries.⁶⁰

2.2.2 The main forms and types

At the time the two ILO conventions on forced labour were adopted (in 1930 and 1957) the state was seen as the main perpetrator involved in the exaction of forced and compulsory labour, but non-state actors, or private agents, were however not excluded from their coverage.⁶¹ Today it seems that systematic state practices of imposing forced or compulsory labour on the population has declined worldwide and that it has in fact practically disappeared in most countries. Exceptions to this are quite rare⁶² and concern mostly legislative provisions that are in force but not used anymore and the governments concerned have indicated that measures are being taken to repeal them.⁶³

Today, the main perpetrators of forced labour are private agents or enterprises, and not the state and its institutions. Although the state is no longer, or at least not as much as before, the main instigator, private agents often act with impunity or acquiescence from the state. This does however not absolve the state from its human rights obligations to protect people under its jurisdiction by preventing third parties from interfering with their human rights. The state is therefore responsible if forced labour is not prevented, prosecuted or punished.⁶⁴

Forced or compulsory labour can be categorized in different ways, such as by old (slavery) and newer forms (human trafficking), by the perpetrator (the state or private agents) and by purpose (such as for sexual exploitation, economic development or in armed conflicts). According to the 2005 Global Report by the ILO forced labour situations are grouped into three main types depending on who is imposing the act (and for what purposes):

⁵⁹ Ibid., p. 32.

⁶⁰ Ibid., p. 34.

⁶¹ *Stopping forced labour*, op. cit. p. 13.

⁶² The situation in Myanmar is probably the most prominent exception.

⁶³ *General Survey 2007*, op. cit. p. 49.

⁶⁴ *Stopping forced labour*, op. cit. p. 13-14.

- 1) Forced labour imposed by the *State*, which includes forced labour exacted by the military, and rebel military groups, compulsory participation in public works and forced prison labour.
- 2) Forced labour imposed by *private* agents for commercial *sexual* exploitation, such as forced prostitution and human trafficking.
- 3) Forced labour imposed by *private* agents for *economic* exploitation, including slavery, bonded labour, forced domestic work and forced labour in agriculture and remote rural areas.⁶⁵

2.2.3 A global estimate of forced labour

In 2005 the ILO estimated that at least 12,3 million people were victims of forced labour worldwide.⁶⁶ This number corresponds to at least two victims of forced labour per thousand inhabitants in relation to the current world population and to at least four persons per thousand workers *vis-à-vis* the total world labour. Of these, 9,8 million were exploited by private agents, or roughly 80%, and 2,5 million, or 20% were forced to work by the State or by rebel military groups.⁶⁷ The highest number of victims of forced labour come from Asia and the Pacific area (9,5 million), Latin America and the Caribbean (1,3 million), Sub-Saharan Africa (660 thousand) and industrialized countries (360 thousand). Also, more women and girls are victims of forced labour, accounting for about 56% of all persons in forced labour situations.⁶⁸

These numbers are not accurate numbers of victims of forced labour in the world.⁶⁹ An attempt to reflect the actual number of victims would realistically speaking be impossible and would require each and every country to systematically gather statistics on an activity that is probably among the most hidden of all crimes in the world today, especially with regard to human trafficking. According to the ILO, the total number of victims of forced labour in the world is however a cautious estimate and represents a minimum number.⁷⁰ Other sources suggest that this number could be relatively lower or even much higher, reaching up to 27 million people worldwide.⁷¹

However, regrettably, despite the global condemnation of forced labour and nearly universal acceptance and endorsement of the two ILO Conventions No. 29 and No. 105, the problem of forced labour still continues to exist in many countries and millions of people around the world are still subjected

⁶⁵ *A global alliance against forced labour*, op. cit. p. 10.

⁶⁶ *Ibid.*

⁶⁷ *Ibid.*, p. 12.

⁶⁸ *The cost of coercion*, op. cit. p. 1.

⁶⁹ *A global alliance against forced labour*, op. cit. p. 11-12.

⁷⁰ *Ibid.*, p. 12.

⁷¹ *Trafficking in Persons Report*, U.S. State Department, June 2007, p. 8.

to it.⁷² This scourge on human society needs to be eradicated. However, given that forced labour is illegal, its existence is sometimes denied.⁷³

As a starting point, two important, but not wholly out of reach, prerequisites need to be fulfilled. First, forced labour needs to be dealt with as a serious crime and freedom from forced labour must be treated as one of the most important human rights. That can however only happen if states have in place the necessary legislation and ensure that the penalties imposed by law are strictly enforced and thus ending the cycle of impunity forced labour seems to enjoy in several countries (particularly in Myanmar). Secondly, states and communities also need to raise awareness among the population of their rights and the obligations of the state in handling this egregious activity.⁷⁴ A well informed general public is at least a necessary starting point for realizing its human rights and making states respect their human rights obligations.

⁷² *General Survey 2007*, op. cit. p. xi.

⁷³ *Stopping forced labour*, op. cit. p. 2.

⁷⁴ *Ibid.*, p. 2-3

3 The institutional framework to promote and protect international human rights

3.1 Introduction

The protection of human rights should as a general rule start at the national level. When a state has ratified an international human rights instrument, the state, as the duty bearer, has an obligation to secure the rights therein to individuals, the right holders, under its jurisdiction. If there occurs a violation of a human right in that instrument the state must take the adequate measures to redress the violation. Generally speaking, it is only when the state is either unwilling or unable to do this that recourse may be had to international human rights mechanisms. International protection of human rights is therefore a supplementary line of defence in case national systems prove to be inadequate to handle a situation.⁷⁵ The international mechanisms available are either universal, such as the United Nations human rights mechanisms, or regional, for example the European Court of Human Rights or the Inter-American Court of Human Rights.

Other mechanisms may also be applicable when international human rights have been violated. One such mechanism is available under the International Labour Organization (ILO). The International Labour Organization, as the name suggests, is however mainly concerned with the promotion of decent work through international labour standards and is *per se* not concerned with the promotion and protection of human rights *in general*.⁷⁶ That role is, as a main rule, left to the UN and the various regional human rights mechanisms. There are however four core fields that the ILO considers as its fundamental human rights standards, one of them being the freedom from forced labour.⁷⁷ It should be noted, that many other subjects covered by the ILO standards have implications for human rights in the broader sense, such as safety and health at work, the right to a fair and reasonable wage and access to social security.⁷⁸

Under both the UN system and the ILO system a number of different bodies and procedures exist that deal with human rights violations. The next sections of this chapter will describe how these two systems function in practice.

⁷⁵ Tomuschat, op. cit. p. 97.

⁷⁶ This will be further explained in chapter 3.3.1.

⁷⁷ Swepston, Lee: *ILO and Human Rights*, op. cit. p. 292.

⁷⁸ *Ibid.*, p. 293.

3.2 The UN system

3.2.1 Introduction

The promotion and protection of human rights and fundamental principles is one of the main functions of the UN, as set out in its Charter.⁷⁹ Article 1(3) stipulates that “*The purposes of the United Nations are [...] to achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion.*”

Since its inception in 1945 and the adoption of the Universal Declaration of Human Rights in 1948, the UN has developed a great number of international human rights standards and norms, as well as various mechanisms to promote and protect them.⁸⁰

The United Nations human rights monitoring arrangements are comprised of two main bodies; charter-based bodies and treaty-based bodies.

Charter-based bodies derive their legal authority from the UN Charter, but not from any specific human rights treaty and have therefore been described as non-treaty-based bodies or “extra-conventional mechanisms”.⁸¹ These bodies hold broad human rights mandates, and address every member state of the UN, regardless of whether it has ratified a treaty or not.⁸²

Treaty-based bodies on the other hand exist on the basis of a specific human rights treaty. They hold more narrow mandates than charter-based bodies, as they monitor a state’s observance of the specific human rights set forth in a particular treaty,⁸³ and thus address only those countries that have ratified a specific treaty.

3.2.2 Charter-based bodies

The principal organs created by the United Nations Charter are the Security Council, General Assembly (GA), Economic and Social Council (ECOSOC), Trusteeship Council,⁸⁴ the Secretariat and the International Court of Justice (ICJ). Some of these organs are more concerned with

⁷⁹ *The United Nations Human Rights System: How To Make It Work For You*, United Nations, New York and Geneva 2008, UNCTAD/NGLS/2008/2, p. 1.

⁸⁰ *Ibid.*

⁸¹ Sunga, Lyal S.: *What Effect if Any Will the UN Human Rights Council Have on Special Procedures*, International Human Rights Monitoring Mechanisms, Essays in honour of Jakob Th. Möller, 2nd Revised Ed., Martinus Nijhoff Publishers, 2009, p. 169.

⁸² *Ibid.*

⁸³ *Ibid.*

⁸⁴ It is now defunct and suspended its work in 1994. See Steiner, Henry, Alston, Philip and Goodman, Ryan: *International Human Rights in Context*, Third Ed., Oxford University Press, New York, 2007, p. 737.

human rights in their mandates than other organs. The General Assembly and the Secretariat, probably play the biggest role of the UN principal organs in promoting and protecting human rights, but the Security Council, ECOSOC and to some extent the ICJ,⁸⁵ are also concerned with the issue.

3.2.2.1 The General Assembly

The significant feature of the General Assembly is the fact that it is composed of all members of the UN, where each member has one vote, regardless of population, wealth or other factors.⁸⁶ When it comes to human rights, the General Assembly has a broad mandate. The UN Charter empowers the GA to “*discuss any question or any matters within the scope of the...Charter*” (article 10) and to “*initiate studies and make recommendations for the purpose of...[inter alia] assisting in the realization of human rights*” (article 13). In carrying out its mandate, it inter alia regularly adopts resolutions on a wide range of human rights issues that are pressing at each time, either in its regular sessions, special sessions or emergency special sessions.⁸⁷

The main charter-based bodies that fall under the GA and are important for promoting and protecting human rights are the following:

3.2.2.1.1 The Human Rights Council

The Human Rights Council (HRC), which was established by General Assembly Resolution 60/251 on 15 March 2006 to replace the former Commission on Human Rights, is the principal UN intergovernmental body responsible for strengthening the promotion and protection of human rights around the globe.⁸⁸ It consists of 47 Member States, based on equitable geographical distribution, elected for three-year terms by an absolute majority of the General Assembly (article 7 of the resolution).

The mandate of the Council consists among other things of: 1) promoting universal respect for the protection of all human rights and fundamental freedoms for all, without distinction of any kind and in a fair and equal manner (article 2); 2) addressing situations of violations of human rights,

⁸⁵ As the International Court of Justice only deals with cases between states, and not with cases where individuals can file complaints against a state, the Court will not be included in this analysis. The Court has however in recent years delivered some very important judgments and advisory opinions that are very relevant for the human rights discourse, in fields such as genocide and the right to development. See here Higgins, Rosalyn: *Human Rights in the International Court of Justice*, Leiden Journal of International Law, 20 (2007), p. 746-747.

⁸⁶ Steiner *et al.*, op. cit. p. 739.

⁸⁷ An overview of all the GA resolutions since 1946 can be found here: <http://www.un.org/documents/resga.htm>.

⁸⁸ *The United Nations Human Rights System: How To Make It Work For You*, op. cit. p. 7. See also information from the homepage of the HRC: <http://www2.ohchr.org/english/bodies/hrcouncil/> [Accessed on 18 March 2011].

including gross and systematic violations and to make recommendations thereon (article 3); and 3) promoting the effective coordination and the mainstreaming of human rights within the UN system (article 4).

In carrying out its mandate the HRC maintains a system of special procedures and undertakes regularly a so-called Universal Periodic Review. In addition, there is also a procedure available for individuals or groups to bring complaints to the Council in the case of gross violations of human rights. Further, the HRC makes annual reports, as well as regularly adopting resolutions on various human rights situations.

3.2.2.1.1 The Universal Periodic Review (UPR)

The Universal Periodic Review or the UPR is a feature that was introduced with the creation of the Human Rights Council in 2006. Through the UPR, each of the 192 Member States of the UN have the opportunity to declare what actions they have taken to improve the human rights situations of their countries and to fulfil their human rights obligations.⁸⁹ The review shall be a cooperative mechanism based on an interactive dialogue, with the full involvement of the country concerned, and with consideration given to its capacity-building needs (article 5(e) of GA resolution 60/251). The review of states is carried out in a Working Group of the Council, which is made up of the Council's 47 Member States.

There are three main sets of documents that serve as the basis for the review of each state. First is a national report, prepared by the state under review. Second is a compilation of information collected by various bodies of the UN on the state (such as reports of treaty bodies, information from special rapporteurs etc.). Third is a summary of stakeholders' submissions, prepared by the Office of the High Commissioner for Human Rights (OHCHR). Such stakeholders include national human rights institutions, NGO's, regional organizations, academic institutions *et al.*⁹⁰

When the Working Group has reviewed all the relevant information it conducts an inter-active dialogue with each state under review, where the state is given an opportunity to present the information it has prepared for the review. Following the State review by the Working Group a report is prepared by three rapporteurs, known as the *troika*, with the involvement of the State under review and assistance from the OHCHR. The report is then adopted at a plenary session of the Human Rights Council.⁹¹

⁸⁹ Information taken from the website of the OHCHR: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRmain.aspx> [Accessed on 18 March 2011].

⁹⁰ *The United Nations Human Rights System: How To Make It Work For You*, op. cit. p. 10.

⁹¹ Information taken from the website of the OHCHR: <http://www.ohchr.org/en/hrbodies/upr/pages/BasicFacts.aspx> [Accessed on 18 March 2011].

The ultimate aim of the UPR is to improve the human rights situation in all countries and address human rights violations wherever they occur.⁹² The uniqueness of this procedure is that all UN member states are required to submit reports regularly on the situation of human rights in their respective countries. The idea behind this procedure is thus to avoid arbitrary selectivity,⁹³ i.e. only selecting countries with bad human rights records and not others, and ensuring that all countries are covered and treated equally (article 5(e)).

Myanmar recently underwent the UPR process for the first time, which will be further examined in chapter 4.

3.2.2.1.1.2 Special Procedures

Another mechanism to promote and protect human rights under the charter-based bodies is the so-called special procedures. This mechanism was established by the former Commission of Human Rights (CHR), but was assumed with the creation of the HRC (article 6 of GA resolution 60/251). The purpose of the special procedures is to address either specific country situations⁹⁴ (country mandates) or specific themes⁹⁵ in all parts of the world (thematic mandates).⁹⁶ Currently, there are 42 special procedures: 33 thematic mandates and 9 country mandates.⁹⁷

Special procedures are carried out by independent human rights experts (called “Special Rapporteur”, “Special Representative of the Secretary-General” *et al.*) or by working groups, which are usually composed of five persons.⁹⁸ The special procedures undertake various activities, such as responding to individual complaints, conducting studies and engaging in general promotional activities.⁹⁹

Unlike many international human rights mechanisms, special procedures do not require that domestic remedies have to be exhausted before they are

⁹² Information taken from the website of the OHCHR: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRmain.aspx> [Accessed on 18 March 2011].

⁹³ Tomuschat, *op. cit.* p. 143.

⁹⁴ There are currently nine country mandates: Burundi, Cambodia, Democratic People’s Republic of Korea, Haiti, Myanmar, Palestinian territories occupied since 1967, Somalia and Sudan. The HRC announced in a press release on 24 March 2011 that it had adopted a country mandate for Iran.

⁹⁵ The thematic mandates range from issues such as adequate housing, food, extreme poverty, freedom of opinion and expression, health, indigenous peoples, slavery and migrants.

⁹⁶ *The United Nations Human Rights System: How To Make It Work For You*, *op. cit.* p. 10-11.

⁹⁷ Information taken the website of the OHCHR. Thematic mandates: <http://www2.ohchr.org/english/bodies/chr/special/themes.htm> and country mandates: <http://www2.ohchr.org/english/bodies/chr/special/countries.htm> [Accessed on 30 March 2011].

⁹⁸ *The United Nations Human Rights System: How To Make It Work For You*, *op. cit.* p. 11.

⁹⁹ Information taken from the website of the OHCHR: <http://www2.ohchr.org/english/bodies/chr/special/index.htm> [Accessed on 18 March 2011].

applied, and unlike the treaty-based bodies, they can be used even if a state has not ratified the relevant instrument or treaty.¹⁰⁰

In doing their work, the mandate holders of special procedures have developed various methods. Some send urgent letters of allegation of a particular human rights violation to governments asking for clarification, while others may carry out studies on human rights issues by visiting a country at the invitation of the state concerned.¹⁰¹ In some cases, countries have issued so-called “standing invitations”, which means that they are, in principle, prepared to receive a visit from any special procedures mandate holder. After they have carried out their studies, special procedures’ mandate-holders issue a report containing their findings and recommendations.¹⁰²

Since 1992, there has been a Special Rapporteur on the situation of human rights in Myanmar, who regularly issues a report on the status of human rights in the country. This will be further examined in chapter 4.

3.2.2.1.1.3 Complaint procedure

A procedure exists under the charter-based bodies where individuals and groups can file complaints of gross violations of human rights to the HRC. A similar procedure exists under the treaty-based bodies, but in relation to a specific human rights violation of a particular human rights treaty. The complaint procedure here is however not in connection with any specific treaty and a complaint could therefore be filed against any member state of the UN and with regard to any human rights violation.

This procedure, which started with the Commission of Human Rights, in a so-called 1503 procedure, was assumed when the HRC was created and derives its legal bases from GA resolution 60/251 and HRC resolution 5/1 of 18 June 2007 (articles 85-109 of the annex to the resolution). According to article 87 of the annex to the resolution a complaint must meet certain criteria for being admissible, such as not being politically motivated, not referring to another case that is already being dealt with by special procedures, a treaty body or other UN complaints procedure and all domestic remedies must be exhausted.

The outcome of a complaint is not in the form of a binding decision by the HRC. The Council may however decide to keep the situation under review and request the state concerned to provide further information within a reasonable time or to appoint an independent and highly qualified expert to monitor the situation and report back to the Council *et al.* (article 109 (points b and c)).

¹⁰⁰ *The United Nations Human Rights System: How To Make It Work For You*, op. cit. p. 11.

¹⁰¹ *Ibid.*

¹⁰² Information taken from the website of the OHCHR: <http://www2.ohchr.org/english/bodies/chr/special/index.htm> [Accessed on 18 March 2011].

This complaint mechanism has never been resorted to with regard to Myanmar.

3.2.2.1.1.4 The Human Rights Council Advisory Committee

The Advisory Committee of the HRC consists of 18 individual experts and operates as a think-tank for the Council, by providing expertise and advice, and undertaking research at the Council's request.¹⁰³ It replaced the former Sub-Commission on the Promotion and Protection of Human Rights of the CHR by HRC resolution 5/1.

The Committee does not adopt resolutions or decisions, but is in place to ensure that the best possible expertise is made available to the Council in matters relating to the promotion and protection of all human rights.¹⁰⁴

3.2.2.1.2 The Third Committee of the General Assembly

According to the General Assembly's Rules of Procedure, the Third Committee of the General Assembly is one of six specialized committees that fall under the GA (article 98).¹⁰⁵ The Third Committee concentrates on a wide range of issues in the field of social affairs, humanitarian affairs and human rights that affect people all over the world. Every year it holds a general discussion on wide range of human rights issues and has interactive dialogues with the High Commissioner of Human Rights and a number of special procedure mandate holders of the HRC. The Committee adopts resolutions on human rights issues and recommends their adoption to the GA.¹⁰⁶

3.2.2.2 The Secretariat

3.2.2.2.1 The Secretary-General

The Secretariat is led by the Secretary-General who is appointed for five years by the General Assembly on the recommendation of the Security Council. The Secretary-General is the chief administrative officer of the United Nations (article 97 of the UN Charter) and has important moral authority within the wider international system.¹⁰⁷

¹⁰³ *The United Nations Human Rights System: How To Make It Work For You*, op. cit. p. 12.

¹⁰⁴ Information taken from the website of the OHCHR: <http://www2.ohchr.org/english/bodies/hrcouncil/advisorycommittee.htm> [Accessed on 18 March 2011].

¹⁰⁵ *The Rules of Procedure of the General Assembly of 2007*: http://www.un.org/ga/search/view_doc.asp?symbol=A/520/rev.17&Lang=E [Accessed on 18 March 2011].

¹⁰⁶ *The United Nations Human Rights System: How To Make It Work For You*, op. cit. p. 13.

¹⁰⁷ Steiner *et al*, op. cit. p. 738.

The Secretary-General does not have a clearly defined role under the UN Charter when it comes to human rights promotion and protection. How much Secretary-Generals have been concerned with human rights issues often depends on the person holding the position. Some have been hesitant to take an active part in human rights concerns in order not to offend governments and jeopardize their wider role in the promotion of international peace and security, while others have been more active.¹⁰⁸

The Secretary-General, through his Special Envoy or Advisor, has annually issued reports on the human rights situation in Myanmar, which will be mentioned in chapter 4.

3.2.2.2 The Office of the High Commissioner for Human Rights

The High Commissioner for Human Rights is the UN official with principal responsibility for human rights.¹⁰⁹ The High Commissioner is, alongside the Secretary-General, one of the world's leaders on human rights, and is expected to provide moral and intellectual leadership on human rights issues.¹¹⁰ The position of the High Commissioner, which was established by a General Assembly resolution on 7 January 1994,¹¹¹ gives the office-holder an extremely wide mandate¹¹² to act for the promotion and the protection of all human rights. The High Commissioner acts under the authority of the Secretary-General and reports annually to the General Assembly, through the Human Rights Council.¹¹³

The High Commissioner is the administrative head of the Office of the High Commissioner for Human Rights. The Office performs a broad range of activities, such as providing secretariat services (for example with personnel, research and logistical support)¹¹⁴ for the various charter-based and treaty-based human rights bodies, preparing reports and studies requested by UN human rights bodies and providing expert advice and assistance requested by governments.¹¹⁵ The Office also issues a range of reports, either on specific human rights themes or on the human rights situation in a particular country or territory. One of the great advantages of the OHCHR is its capacity to establish a field presence in countries around the world¹¹⁶ and to act in a quick and flexible way to situations of

¹⁰⁸ Ibid.

¹⁰⁹ Ibid.

¹¹⁰ Ramcharan, Bertie G.: *The Office of the UN High Commissioner for Human Rights*, International Human Rights Monitoring Mechanisms, Essays in honour of Jakob Th. Möller, 2nd Revised Ed., Martinus Nijhoff Publishers, 2009, p. 199.

¹¹¹ General Assembly Resolution A/RES/48/141, 20 December 2003.

¹¹² Tomuschat, op. cit. p. 153.

¹¹³ Ramcharan, op. cit. p. 199-200.

¹¹⁴ *The United Nations Human Rights System: How To Make It Work For You*, p. 11.

¹¹⁵ Ramcharan, op. cit. p. 200.

¹¹⁶ At the end of 2010, the OHCHR had 10 country offices, as well as two stand-alone offices. The OHCHR does not have a country office in Myanmar. See here information on the website of the OHCHR:

emergency by drawing the attention of the international community to situations that require swift response.¹¹⁷

3.2.2.3 Other principal organs

The other principal organs of the United Nations, ECOSOC and the Security Council, are also concerned with the promotion and protection of human rights, but their involvement with human rights issues is not as clear or at least not in the same amount as in the case of the General Assembly and the Secretariat.

3.2.2.3.1 The Economic and Social Council (ECOSOC)

According to article 62(2) of the UN Charter, the Economic and Social Council “*may make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all*” and it “*shall set up commissions in economic and social fields and for the promotion of human rights, and such other commission as may be required for the performance of its functions.*” One such commission was the Commission on Human Rights, which was established in 1946 as a subsidiary body of ECOSOC.¹¹⁸

Since 1970, the substantive contributions of ECOSOC to the human rights debate has been very limited. It used to act as an intermediary between the General Assembly and the Commission on Human Rights, but when the Human Rights Council was established, the human rights role of ECOSOC diminished. One of the aims with the creation of the HRC was to bypass the role of ECOSOC, so that the HRC could report directly to the General Assembly.¹¹⁹

Although its role in human rights issues has diminished with the establishment of the Human Rights Council, ECOSOC plays a part with regard to the treaty-based bodies, as the Committee on Economic, Social and Cultural Rights, which monitors the implementation of the International Covenant on Economic, Social and Cultural Rights, reports to ECOSOC. The other treaty-bodies report to the General Assembly.¹²⁰

3.2.2.3.2 The Security Council

According to article 24 of the UN Charter, the Security Council bears the primary responsibility for the maintenance of international peace and

<http://www.ohchr.org/EN/Countries/Pages/CountryOfficesIndex.aspx> [Accessed on 22 March 2011].

¹¹⁷ Tomuschat, op. cit. p. 153.

¹¹⁸ Sunga, op. cit. p. 170.

¹¹⁹ Steiner *et al*, op. cit. p. 736.

¹²⁰ *The United Nations Human Rights System: How To Make It Work For You*, op. cit. p. 15.

security. The Charter does not mention *per se* that the Security Council plays any role in safeguarding human rights. That role is assumed by other organs of the UN, foremost by the General Assembly and the Secretariat. However, it must be borne in mind that serious violations of human rights may lead to situations that endanger international peace and many of the Security Council's resolutions are designed to stop human suffering, and could therefore be described as having a human rights character.¹²¹

Although it was originally created to intervene during conflicts or possible conflicts, the Security Council can affect human rights in two distinct ways. On the one hand, it can have a positive effect, by taking action in response to human rights violations by states or other actors. On the other hand, it can have a negative impact on human rights through its own activities, for example by imposing sanctions on states that result in food or medicine crises.¹²² Those sorts of action are provided for in chapter VII of the UN Charter.

The relationship between the Security Council and human rights is not clear-cut,¹²³ and until the mid 1990s the Security Council was very reluctant to become involved with human rights affairs. Since then, its role in human rights issues has increased.¹²⁴ In a world where the actual enforcement of human rights violations is very limited, action by the Security Council is the most powerful measure – but not necessarily the most effective one – and often the last and only resort. Action by the Security Council however depends on the fact that the concept of security is interpreted broad enough to justify a finding that gross human rights violations form a threat to international peace and security.¹²⁵ Also, action by the Security Council is often hampered by the veto power of the five permanent members of the Council, which can cause human rights violations to continue, because the Council cannot agree how to approach a particular situation.

3.2.3 Treaty-based bodies

The other part of the United Nation's machinery to promote and protect human rights is carried out through the so-called treaty-based bodies. When a state has ratified an international convention, it becomes accountable not only to the people under its jurisdiction, but also to the international community regarding the implementation of the convention.¹²⁶ The main

¹²¹ Klabbers, Jan: *The Security Council and Human Rights*, International Human Rights Monitoring Mechanisms, Essays in honour of Jakob Th. Möller, 2nd Revised Ed., International Human Rights Monitoring Mechanisms, Essays in honour of Jakob Th. Möller, 2nd Revised Ed., Martinus Nijhoff Publishers, 2009, p. 241.

¹²² *Ibid.*, p. 242.

¹²³ *Ibid.*, p. 246.

¹²⁴ Steiner *et al*, *op. cit.* p. 738.

¹²⁵ Klabbers, *op. cit.* p. 246.

¹²⁶ Kjørsum, Morten: *State Reports*, International Human Rights Monitoring Mechanisms, Essays in honour of Jakob Th. Möller, 2nd Revised Ed., Martinus Nijhoff Publishers, 2009, p. 17.

UN human rights conventions¹²⁷ establish monitoring bodies, with quasi-judicial power,¹²⁸ to oversee the implementation of the treaty provisions. The bodies¹²⁹ consist of independent experts (ranging from 10 to 23 individuals)¹³⁰ who consider states parties' reports as well as individual, and in some cases inter-state, complaints or communications. In addition, they also publish general comments¹³¹ on the treaties they oversee. Some treaty-based bodies operate on all three levels, others on only one or two.¹³²

For the purpose of this thesis, and to avoid a lengthy description of the main features of all the nine different treaty bodies, the next part will be limited to describing the main features of one of the treaty-bodies, of the two UN human rights conventions that Myanmar has ratified, namely the Convention on the Elimination of Discrimination against Women (CEDAW).¹³³ It should however be noted, that while there are some procedural variations between the existing nine treaty-bodies mechanisms, their design and operation is generally very similar.¹³⁴

3.2.3.1 Complaints procedure

The different treaty-based bodies have a procedure in place where an individual or groups of individuals can file complaints against a state. So-called inter-state complaints, where one state files a complaint against another state, are not available under CEDAW. This procedure has never

¹²⁷ There are nine conventions that are considered to be the core UN human rights treaties: the International Covenant on Civil and Political Rights (ICCPR), the Covenant on Economic, Social and Cultural Rights (ICESCR), the International Convention on the Elimination of Racial Discrimination (ICERD), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Convention on the Rights of the Child (CRC), the International Convention on the Protection of the Rights of All Migrant Workers and their Families (ICMW), the International Convention on the Protection of All Persons from Enforced Disappearance (ICED) and the Convention on the Rights of Persons with Disabilities (CRPD).

¹²⁸ *OHCHR Fact-sheet No. 7 (Rev. 1) on Complaints procedure*, p. 2.

¹²⁹ There are nine human rights treaty-based bodies that monitor the core UN human rights conventions: the Human Rights Committee, which monitors the ICCPR, the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Racial Discrimination, the Committee on the Elimination of Discrimination against Women, the Committee against Torture, Committee on the Rights of the Child, Committee on Migrant Workers, Committee on the Rights of Persons with Disabilities and the Committee on Enforced Disappearance.

¹³⁰ *The United Nations Human Rights System: How To Make It Work For You*, p. 14.

¹³¹ All the treaty-based bodies (except for CMW which has not yet done so) publish their interpretation of the content of specific human rights provisions in the form of general comments (or recommendations) on thematic issues. They can provide substantive guidance on specific articles of a treaty or more general guidance for states parties, on topics such as how to prepare their reports for treaty bodies. See here: *Simple Guide to the UN Treaty Bodies*, International Service for Human Rights (ISHR), 9 July 2010, p. 33.

¹³² Kjærum, op. cit. p. 17.

¹³³ The other UN human rights convention that Myanmar has ratified is the Convention on the Rights of the Child.

¹³⁴ *OHCHR Fact-sheet No. 7*, op. cit. p. 2.

been used under any of the treaty bodies, which is quite understandable, given the political ramifications of such a complaint, and would probably be considered a hostile act by the state that is being complained of.¹³⁵

The procedure to file an individual complaint is based either on the convention itself or on an optional protocol to the Convention. There are two requisites that have to be fulfilled before a complaint can be brought against a state. First, the state must be party to the treaty in question, and second, the state party must have recognized the competence of the committee established under the relevant treaty to consider complaints from individuals.¹³⁶

With regard to CEDAW, a State recognizes the Committee's competence by becoming a party to a separate treaty, the Optional Protocol to the Convention.¹³⁷ Under article 2 of the Optional Protocol (OP) to CEDAW, an individual or groups of individuals may submit communications (the term normally used is complaints) to the CEDAW Committee if they have been victims of a violation of the rights in the Convention by a particular state party. As the name of the protocol suggests, this procedure is optional and only available where state parties have accepted to be bound by the protocol.

The Committee shall not consider a communication if domestic remedies have not been exhausted, unless the application of such remedies is unreasonably prolonged or unlikely to bring effective relief (article 4(1) of the OP). A communication also has to pass other admissibility criteria, such as not being manifestly ill-founded or incompatible with the provisions of the Convention (article 4(2)).

If the Committee receives reliable information indicating grave or systematic violations by a state party of the rights in the Convention, it shall according to article 8(1) of the OP, invite the state to cooperate in the examination of the information. In some situations, the Committee may designate one or more of its members to conduct an inquiry into the situation, for example by making a visit to the country in question (article 8(2)). After examining the findings of such an inquiry the Committee shall transmit the findings to the state party concerned, together with any comments and recommendations (article 8(3)), such as providing compensation to the individual or amending the national legislation. The state party then has to submit its observations to the Committee's findings within six months (article 8(4)). This kind of inquiry shall be conducted confidentially and cooperation of the state party shall be sought at all stages of the proceedings (article 8(5)).

Notwithstanding that treaty-based bodies possess some quasi-judicial characteristics, it is very difficult to enforce their recommendations,

¹³⁵ *Simple Guide to the UN Treaty Bodies*, op. cit. p. 31.

¹³⁶ *OHCHR Fact-sheet No. 7*, op. cit. p. 2-3.

¹³⁷ *Ibid.*, p. 3.

observations and decisions. However, a state party to a particular treaty is expected to implement the findings of the treaty body, and provide an appropriate remedy for the complainant.¹³⁸

The complaints procedure under the CEDAW or CRC has never been resorted to with regard to Myanmar.

3.2.3.2 State reporting

The obligation of a state to submit a national report is laid down in each of the nine human rights treaties. This is an obligation which each state party to each treaty has to fulfil. This obligation is found in article 18 of CEDAW.

According to article 18(1), state parties have to regularly submit to the Secretary-General of the UN, for consideration by the Committee, “*a report on the legislative, judicial, administrative or other measures which they have adopted to give effect to the provisions of the [...] Convention*” and on the “*progress made*” in that respect. States have different time frames for sending those reports, but in the case of CEDAW this must be done “*within one year after the entry into force for the State concerned*” (article 18(1)(a)), “*and thereafter at least four years and further whenever the Committee so requests*” (article 18(1)(b)).

During its sessions, the Committee studies each State party report and may, according to rule 53 of the Committee’s Rules of Procedure,¹³⁹ make “*concluding comments on the report with a view to assisting the State party in implementing its obligations under the Convention*”, such as making legislative amendments or to raise awareness to promote women’s rights. The Committee may also highlight some aspects that it feels the state party has carried out or implemented in a positive manner.

There have been some concerns and criticism about this procedure. States do often not comply with its state reporting obligation, and when they do, the reports are handed in significantly late. It has also been noted that the reports are often only superficial. The Committees themselves have been criticised of not having enough expertise and the independence of the members of the committees has been questioned. In addition, the concluding observations addressed to states are often in very general terms and there is inadequate follow-up mechanism to recommendations for governments.¹⁴⁰ Also, the increasing number of treaty bodies has made it difficult for some states to fulfil all their reporting obligations on time, especially with regard to poor countries.¹⁴¹ Lastly, given the number of treaty bodies, there are

¹³⁸ *Simple Guide to the UN Treaty Bodies*, op. cit. p. 24.

¹³⁹ *Rules of Procedure of the Committee on the Elimination of Discrimination against Women*: http://www2.ohchr.org/english/bodies/cedaw/docs/CEDAW_Rules_en.pdf [Accessed on 22 March 2011].

¹⁴⁰ Steiner *et al*, op. cit. p. 919.

¹⁴¹ Kjærøum, op. cit. p. 19.

often uncoordinated responses by the different treaty bodies and identical reports might draw out different responses from different committees.¹⁴²

3.3 The ILO system

3.3.1 Introduction

In addition to the charter- and treaty-based bodies mentioned earlier, other mechanisms exist under the United Nations machinery to promote and protect human rights. One of these are mechanisms under the United Nations so-called Specialized Agencies.¹⁴³

The ILO became the first specialised agency of the United Nations system in 1945.¹⁴⁴ It is the oldest of the UN organizations dealing with human rights¹⁴⁵ and the only one surviving the League of Nations system. Since its creation in 1919, the ILO has developed its own separate legal system, apart from the UN system, to deal with labour-related human rights violations. Neither ILO nor UN conventions take legal precedence, but because the ILO is a part of the UN system it must remain consistent with the parameters of UN standards. The ILO has however often led the way in setting basic standards, which are usually considerably more detailed and narrower than the general principles laid down by the UN.¹⁴⁶

Although both the UN and the ILO deal with the promotion and protection of fundamental rights, a slight difference can be detected between the kinds of rights that these organizations aim to secure. Whereas the ILO deals specifically with labour rights, the UN's focus is on all human rights, i.e. on civil and political rights, on economic, social and cultural rights and on rights ranging from the right to development and the right to environment. The UN's focus is therefore on human rights in general or general human rights. However, while the ILO deals mainly with labour rights, some of those rights are however of such a principal character that they are considered to be fundamental human rights,¹⁴⁷ which can be described as labour-related human rights.

¹⁴² Steiner *et al*, op. cit. p. 921.

¹⁴³ Other mechanisms worth mentioning are the two International Criminal Tribunals in the former Yugoslavia and Rwanda, established by the Security Council in the 1990s by resolutions 827 (1993) and 955 (1994) respectively. Another important mechanism to secure human rights is the International Criminal Court, established by the UN Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court in 1998 which adopted the Rome Statute. Although these mechanisms are important for protecting human rights, they are probably more linked to international humanitarian law and international criminal law.

¹⁴⁴ Swepston, Lee: *ILO and Human Rights*, op. cit. p. 292.

¹⁴⁵ *Ibid.*, p. 291.

¹⁴⁶ *The ILO and the Quest for Social Justice*, op. cit. p. 40.

¹⁴⁷ According to article 2 of the ILO Declaration on Fundamental Principles and Rights at Work of 1998 some labour rights are considered to be fundamental rights, including freedom from forced labour. See also Swepston: *ILO and Human Rights*, op. cit. p. 292.

3.3.2 Structure and function

The ILO is different from the UN, and from any other international organization for that matter, as it is the only inter-governmental institution where governments do not have all the votes when it comes to setting standards and policies.¹⁴⁸ The power to decide matters is thus not solely in the hands of governments, but is divided among governments, workers' and employers' organizations.¹⁴⁹ Non-governmental organizations are therefore given a formal and equal role to governments in deciding on the organization's matters.¹⁵⁰ This unique feature of the ILO, compared to other inter-governmental organizations such as the UN, is called *tripartism* and is stipulated in article 3 of the ILO Constitution.

The ILO is composed of three main organs; the International Labour Conference, the Governing Body and the International Labour Office.

The International Labour Conference, also called the General Conference, meets once a year and is the ILO's legislature and supreme organ.¹⁵¹ It is composed of all ILO member states, where each national delegation consists of two government representatives, and of one employer and one worker representative (article 3 of the Constitution). The basic function of the Conference is the discussion and adoption of international labour standards, which are called Conventions, that are binding on countries and require ratification, and Recommendations, which serve as non-binding guidelines and are much more detailed than Conventions.¹⁵²

The day-to-day governance of the ILO is performed by an executive organ called the *Governing Body*.¹⁵³ Just like the General Conference, it is tripartite in structure, consisting of 56 persons; 28 representing governments, 14 representing employers and 14 representing workers (article 7 of the Constitution).¹⁵⁴ It meets three times a year, in March, June and November, and takes decisions on ILO policy, decides the agenda of the

¹⁴⁸ *The ILO and the Quest for Social Justice*, op. cit. p. 12.

¹⁴⁹ All ILO bodies are tripartite, with the exceptions of the Finance Committee of the International Labour Conference, which is exclusively composed of governments, and the Committee of Experts, which is described below. See here the *ILO and the Quest for Social Justice*, op. cit. p. 12.

¹⁵⁰ Swepston: *ILO and Human Rights*, op. cit. p. 292.

¹⁵¹ Information taken from the ILO website: <http://www.ilo.org/public/english/bureau/pardev/civil/index.htm> [Accessed on 29 March 2011].

¹⁵² Information taken from the ILO website: <http://www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang-en/index.htm> [Accessed on 29 March 2011]. See also Swepston: *ILO and Human Rights*, op. cit. p. 292.

¹⁵³ *The ILO and the Quest for Social Justice*, op. cit. p. 12.

¹⁵⁴ In both the General Conference and the Governing Body, governments have half the votes and workers and employers have the other half. However, on the committee level as a general rule, the governments, workers and employers each have one third of the votes.

International Labour Conference and adopts the draft programme and budget of the ILO.¹⁵⁵

The third principal organ is the *International Labour Office*, which is headed by a Director-General (article 8 of the Constitution) and acts as the ILO's secretariat.

In addition to discussing and adopting various labour standards, the ILO has an elaborate and thorough system of supervising the standards adopted.¹⁵⁶ Through this system, the ILO regularly examines whether standards have been adequately applied and identifies areas where they could be better applied. If any problems arise in the application of standards, the ILO tries to assist countries through social dialogue and technical assistance.¹⁵⁷ This supervisory system consists of a regular supervisory system and special procedures.

There has been a standing Governing Body agenda item on Myanmar since the adoption by the 87th Session (1999) of the International Labour Conference of a resolution on the widespread use of forced labour in Myanmar.¹⁵⁸ With reference to that resolution, the Governing Body thus regularly addresses the activities that have been undertaken and the progress made by the Myanmar authorities, for instance by referring to reports of the Liaison Officer and statements made by the government of Myanmar.¹⁵⁹

3.3.3 Regular system of supervision

3.3.3.1 State reporting

When a member state has ratified a convention, it has an obligation under article 22 of the ILO Constitution to send periodic reports to the International Labour Conference on the measures it has taken to implement it. With regard to the eight fundamental¹⁶⁰ conventions and the four so-called priority conventions members are required to submit reports every three years. Reports must be submitted every six years for all other conventions.¹⁶¹ At the same time, a government is required under article 23(2) of the Constitution to submit copies of its reports to employers and

¹⁵⁵ Information taken from the ILO website: <http://www.ilo.org/gb/AboutGB/lang--en/index.htm> [Accessed on 29 April 2011].

¹⁵⁶ Swepston: *ILO and Human Rights*, op. cit. p. 294.

¹⁵⁷ *Rules of the Game*, op. cit. p. 79.

¹⁵⁸ *Resolution on the widespread use of forced labour in Myanmar*, International Labour Conference, 87th Session, Geneva, June 1999.

¹⁵⁹ See here for instance *Developments concerning the question of the observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29)*, Governing Body, 310th Session, Geneva, GB.310/5, March 2011, Overview.

¹⁶⁰ The Forced Labour Convention, 1930 (No. 29) is one of them.

¹⁶¹ *Reports of the Committee on Legal Issues and International Labour Standards, Second report: International labour standards and human rights*, Governing Body, 306th Session, Geneva, November 2009, GB.306/10/2(Rev.), p. 13, para. 44(e).

workers' organizations in the country.¹⁶² Tripartism is reflected very well at this stage of the process, where employers' and workers' organizations can make their own comments on these reports,¹⁶³ but they may also send comments on the application of conventions directly to the ILO.¹⁶⁴ This system makes it much more difficult for governments to submit false information to the ILO.¹⁶⁵ This unique procedure in international law¹⁶⁶ is very much different from the process under the UN state reporting system, where non-governmental entities or individuals are not direct participants in this process and cannot comment formally on state reports to the various UN bodies, although the practice of shadow reports has developed.

3.3.3.1.1 The Committee of Experts on the Application of Conventions and Recommendations

Government's reports and the comments of the employers' and workers' organizations are then examined by the Committee of Experts on the Application of Conventions and Recommendations. This committee is not tripartite, but composed of 20 independent jurists from different geographic regions, legal systems and cultures. The role of the committee is to give an impartial and technical evaluation of the state of application of international labour standards.¹⁶⁷

In case the Committee notices problems in the application of ratified conventions, it can react in two ways.¹⁶⁸ On the one hand, it can make *direct requests*, which are sent directly to governments, but also to workers' and employers' organizations in the countries concerned.¹⁶⁹ Direct requests relate more to technical questions or requests for further information.¹⁷⁰ If governments take the requested measures or provide the necessary information, the matter stops there, for instance, the direct request is not published by the Committee. On the other hand, in more serious cases, the Committee can make *observations*, that are published in its annual report, and contain comments on fundamental questions raised by the application of a state of a specific convention.¹⁷¹

The Committee has regularly published observations on the application by Myanmar of various labour standards, especially in the case of forced labour. The substantive issues that the Committee has had and still has with Myanmar will be examined in chapter 4.

¹⁶² Swebston: *ILO and Human Rights*, op. cit. p. 294.

¹⁶³ Ibid.

¹⁶⁴ *Rules of the Game*, op. cit. p. 80.

¹⁶⁵ *The ILO and the Quest for Social Justice*, op. cit. p. 20.

¹⁶⁶ Tapiola and Swebston, op. cit. p. 515-516.

¹⁶⁷ *Rules of the Game*, op. cit. p. 80.

¹⁶⁸ Swebston, Lee: *Human Rights at Work, Supervisory Mechanisms of the International Labor Organisation*.

¹⁶⁹ Swebston: *ILO and Human Rights*, op. cit. p. 294.

¹⁷⁰ *Rules of the Game*, op. cit. p. 80.

¹⁷¹ Ibid.

3.3.3.1.2 The Conference Committee on the Application of Conventions and Recommendations

The next level of supervision after the Committee of Experts, is a standing committee of the International Labour Conference, the Conference Committee on the Application of Conventions and Recommendations. Unlike the Committee of Experts, the Conference Committee reflects the ILO's tripartite structure of governments and of workers' and employers' delegates.¹⁷² On the basis of the annual report submitted by the Committee of Experts, the Conference Committee selects a certain number of observations to discuss (cases that are important or persistent) and gives governments the opportunity to appear before it to account for themselves and provide information on the situation in question.¹⁷³ In many cases the Conference Committee makes conclusions where it recommends that the governments take specific action to mend a particular problem or to invite technical assistance by the ILO. The discussion and conclusions of the Committee are published in its report.¹⁷⁴

The major difference of the regular reporting procedure of the ILO from the UN treaty body system is that the proportion of reporting to the ILO is much higher (some 65-70% of reports are received by the ILO on time). Also, the analyses of the reports are carried out in the ILO with substantial technical assistance from the secretariat, to ensure higher technical consistency and accuracy.¹⁷⁵

Thus with regard to Myanmar, there are mainly three bodies under the ILO system that carry out supervision on ratified conventions; the Governing Body, the Committee of Experts and the Conference Committee. The Committee of Experts reviews the reports that the State is required to submit, and makes observations if there are fundamental questions to be raised by the application of the particular convention. It then publishes its reports annually, having regard to what has been said about the subject in the Conference Committee, which meets each year in June, and also refers to any comments made by the Governing Body, which meets three times a year, in March, June and November. This ensures that matters that are considered very important or reflect persistent violations, are examined with regular intervals throughout the year, by bodies composed of individuals in different capacity, from legal experts on the one end of spectrum to government, employer and worker delegates on the other end of the spectrum. This system is thus like a continuous cycle, with three different supervisory bodies, that regularly look into the matter and remind the

¹⁷² Swebston: *Human Rights at Work, Supervisory Mechanisms of the International Labor Organisation* op. cit.

¹⁷³ Swebston: *ILO and Human Rights*, op. cit. p. 294. See also *Rules of the Game*, op. cit. p. 81. Approximately twenty-five cases are discussed in public session each year. Further, see Tapiola and Swebston, op. cit. p. 516.

¹⁷⁴ *Rules of the Game*, op. cit. p. 81.

¹⁷⁵ Tapiola and Swebston, op. cit. p. 518. See also Swebston: *ILO and Human Rights*, op. cit. p. 295.

government of its legal obligations in the form of observations, recommendations and conclusions.

3.3.4 Special Procedures

The supervision of standards in the ILO system is generally conducted through the regular examination of member states' reports. Where this regular supervision is not enough to ensure compliance with the ILO standards, a procedure exists to consider complaints whether ILO Conventions or basic principles have been correctly applied or not.¹⁷⁶ This complaints procedure, which is provided for in the ILO Constitution, consists of representations and complaints.¹⁷⁷ Both procedures are however only applicable where a member state to the ILO has ratified the concerned Convention and do thus not apply to Conventions that have not been ratified.

3.3.4.1 Representations

According to article 24 of the ILO Constitution, representations may be made by organizations of employers and of workers that a government has “*failed to secure in any respect the effective observance*” of a convention it has ratified. Representations may be made by both national and international organizations of employers and workers, but individuals, however, cannot make representations directly to the ILO. They can however pass on relevant information to their workers' or employers' organization, as applicable.¹⁷⁸ The next step is to set up a three-member tripartite committee of the Governing Body, composed of one worker, one employer and one government representative, to examine the representation and the government's response, which then submits its report to the Governing Body. The report details any problems in observance and concludes with recommendations for improvement.¹⁷⁹ The Governing Body then makes its finding on the report and passes the case to the Committee of Experts for follow-up. In more serious cases, the Governing Body could at this point ask for a Commission of Inquiry to deal with the matter as a complaint.¹⁸⁰

3.3.4.2 Complaints

¹⁷⁶ Swepston: *Human Rights at Work, Supervisory Mechanisms of the International Labor Organisation*, op. cit. See also Tapiola and Swepston, op. cit. p. 515.

¹⁷⁷ Swepston: *ILO and Human Rights*, op. cit. p. 294. The third type of procedure, which will however not be further examined here, is the complaint procedure concerning freedom of association under the Committee on Freedom of Association.

¹⁷⁸ *Rules of the Game*, op. cit. p. 84.

¹⁷⁹ Swepston: *ILO and Human Rights*, op. cit. p. 294, and *Rules of the Game*, op. cit. p. 84.

¹⁸⁰ *Rules of the Game*, op. cit. p. 85.

Under article 26 of the Constitution, a complaint may be instituted against a member state for not complying with a ratified convention, by another member state that has ratified the same convention (an inter-state complaint), a delegate to the International Labour Conference or the Governing Body by its own.¹⁸¹ Complaints are reserved for the most serious cases, and generally lead to a Commission of Inquiry.

3.3.4.2.1 Commission of Inquiry

A Commission of Inquiry is the ILO's highest-level investigative procedure¹⁸² and its strongest measure among the organizations supervisory procedures. It is usually a last resort, when other avenues of supervision, pressure and engagement have proved to be unsuccessful¹⁸³ and is reserved in practice for the most serious allegations of violations of the ILO's core conventions.¹⁸⁴ A Commission of Inquiry is set up when a member state has been accused of committing persistent and serious violations of international labour standards and has repeatedly refused to do anything to address them. It generally consists of three independent experts who are tasked with carrying out a full investigation of the complaint, ascertaining all the facts of the case, for example by making a visit to the country in question, and making recommendations on the measures to be taken to address the problems raised by the complaint. A recommendation could for instance suggest legislative amendments or practical measures to give effect to a convention's provisions.¹⁸⁵ When the Commission of Inquiry has concluded its report its findings become final¹⁸⁶ and are published by the ILO. Usually, the Committee of Experts and the Conference Committee will continue to examine implementation of the Conventions concerned, with reference to the findings of the Commission of Inquiry.¹⁸⁷

A government that does not accept the findings of the Commission of Inquiry can refer the complaint to the International Court of Justice according to article 29(2) of the Constitution or may request a new Commission of Inquiry for a second opinion, however neither one has ever happened.¹⁸⁸ The International Court of Justice can affirm, vary or reverse the findings of the recommendations of the Commission of Inquiry (article 32 of the Constitution) and its decision is final (article 31). As a general rule, countries accept the findings and recommendations of the Commission of Inquiry, even they will in practice only do the minimum effort to

¹⁸¹ Ibid., p. 86.

¹⁸² Ibid.

¹⁸³ Tapiola and Swepston, op. cit. p. 517.

¹⁸⁴ Ibid., p. 519.

¹⁸⁵ *Rules of the Game*, op. cit. p. 86.

¹⁸⁶ Tapiola and Swepston, op. cit. p. 518.

¹⁸⁷ Swepston: *Human Rights at Work, Supervisory Mechanisms of the International Labor Organisation*, op. cit.

¹⁸⁸ Tapiola and Swepston, op. cit. p. 518.

implement them. A good example here is Myanmar,¹⁸⁹ which will be examined further in chapter 4.

If the government in question refuses to fulfil the recommendations of the Commission of Inquiry, the Governing Body can go one step further and take action under article 33 of the Constitution. This provision states that “[i]n 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.”

This article was invoked for the first time in 2000 by the Governing Body¹⁹⁰ in the case of violations by Myanmar of the Forced Labour Convention, 1930 (No. 29), where it suggested that the General Conference called on all member States, employers’ and workers’ organizations and other international organizations to “review their relationship with the Government of Myanmar” and to “take appropriate measures” to guarantee that they are not supporting forced or compulsory labour in the country.¹⁹¹ An article 26 complaint had been made against Myanmar in 1996 and the resulting Commission of Inquiry had found “widespread and systematic use” of forced labour in the country.¹⁹² The Commission of Inquiry for Myanmar will be further examined in chapter 4.

In order for a Commission of Inquiry to be most effective, certain conditions need to be met by the country under investigation. There needs to be an agreement by the country to take part in the investigation and to implement the findings of the Commission. It is also crucial to allow a Commission of Inquiry access into the country so that it can establish the facts and determine the gravity of the situation first hand. In case of Myanmar, this access was denied.¹⁹³ Although the impediment of physical access to a country prevents a full analysis based on first hand evaluations and discussion, it does not preclude a Commission of Inquiry from hearing witnesses and gaining other relevant information. But without access, this has to be done outside the country.¹⁹⁴

The most serious cases that a Commission of Inquiry deals with are also by their very nature political and Commissions of Inquiry are usually convened in cases where serious problems with labour rights are a part of the whole

¹⁸⁹ Ibid.

¹⁹⁰ *Measures recommended by the Governing Body under article 33 of the Constitution – Implementation of recommendations contained in the report of the Commission of Inquiry entitled Forced Labour in Myanmar (Burma)*, International Labour Conference, 88th Session, Geneva, 2000, Appendix, Resolution submitted to the Conference, p. 21, para. 1(b).

¹⁹¹ Swepston: *Human Rights at Work, Supervisory Mechanisms of the International Labor Organisation*, op. cit.

¹⁹² *Rules of the Game*, op. cit. p. 86.

¹⁹³ Tapiola and Swepston, op. cit. p. 519-520.

¹⁹⁴ Ibid., p. 521.

political situation.¹⁹⁵ The task of a Commission of Inquiry is however not to criticise a government for its political situation, but rather to try to approach an issue from a technical rather than a political standpoint. This way a Commission of Inquiry is better able to gain trust and respect from governments for its technically-focused support, which may reduce resistance to the ILO's investigations and suggestions. It takes the government as it is and tries to gradually change how the government treats its citizens, and above all, workers, employers and their organizations.¹⁹⁶

3.3.4.3 Supervision of unratified conventions

Article 19(5)(e) of the ILO Constitution provides that Member States may also be required to report on non-ratified conventions. This provision of the ILO Constitution, has been used since 1946 to request reports from member states to be used for so-called "General Surveys" which the ILO publishes.¹⁹⁷ The tripartism is reflected here, as workers' and employers' organizations may submit their own comments to the ILO. This procedure makes it possible to put pressure on states which fail to pursue widely agreed goals and basic human rights in the world of work.¹⁹⁸

3.3.5 Technical assistance and training

The main goals of the ILO are to set international labour standards to improve the conditions of workers and to ensure that these standards are sufficiently implemented and observed. This is done through different supervisory and monitoring mechanisms that have been briefly described above. Supervision of labour standards is however not the only way to ensure that (or help) countries live up to their legal obligations. It is also necessary to provide technical assistance and training to assist countries to address problems in legislation and practice.¹⁹⁹

Various forms of technical help and training is provided by the ILO to its member States, such as advisory and direct contact missions, where ILO officials sit down with government officials to discuss problems and try to find solutions to them. The ILO also carries out promotional activities, including seminars and national workshops, with the aim of raising

¹⁹⁵ Ibid.

¹⁹⁶ Ibid., p. 522.

¹⁹⁷ Swepston: *ILO and Human Rights*, op. cit. p. 295. General Surveys are in-depth studies on member State's national law and practice that are established on the basis of reports received from member States. They allow the Committee of Experts to examine the effects of Conventions and Recommendations, to analyze any difficulties indicated by governments and to find means of overcoming these difficulties. See here information taken from the ILO website: <http://www.ilo.org/ilolex/english/surveyse.htm> [Accessed on 28 March 2011].

¹⁹⁸ *The ILO and the Quest for Social Justice*, op. cit. p. 20-21.

¹⁹⁹ *Rules of the Game*, op. cit. p. 91.

awareness of standards and providing technical advice on how to apply them.²⁰⁰

²⁰⁰ Ibid. Also, information taken from the ILO website: <http://www.ilo.org/global/standards/applying-and-promoting-international-labour-standards/technical-assistance-and-training/lang--en/index.htm> [Accessed on 29 March 2011].

4 Myanmar: a case study

4.1 Description of the country and historical background

4.1.1 Basic facts

The Union of Myanmar, as it is now called,²⁰¹ is a country located in Southeast Asia, covering 678.500 square kilometres and with a population of roughly 59 million people. The population consists of about 100 national races, where Buddhism is the religion professed by the vast majority (about 90%). Other religions include Christianity and Islam.²⁰² The country is divided into seven divisions and seven states,²⁰³ which are then further divided into districts, each comprised of several townships.²⁰⁴ The gross domestic product per capita in 2006 was calculated between US\$200 to US\$300, and its main official exports consist of natural gas, oil, agricultural products, gems and jewellery, forest products and fisheries.²⁰⁵ It sits very low on the Human Development Index, ranking number 132 out of 169 countries in 2010,²⁰⁶ despite its rich natural resources. The government had over US\$3,1 billion in foreign exchange reserves in 2008, but has not used these resources to improve the quality of life of its people.²⁰⁷

4.1.2 Historical antecedents

Over the last 50 years or so Myanmar has lived in isolation from the outside world and the government's consistent pattern of human rights violations has been well-documented and condemned by the international community. To get a better understanding of the problems inherent in Myanmar society, it is necessary to give a brief introduction of its contemporary history.²⁰⁸

Myanmar, or Burma as it was called then, came under British rule in the three Anglo-Burmese wars between 1824 and 1885. It remained part of the

²⁰¹ The government changed the name from Burma to Myanmar in 1989. The name is not uniformly accepted or used, for instance the United States refers to the country as Burma and not Myanmar.

²⁰² Universal Periodic Review, *National Report of Myanmar*, 10 November 2010, p. 2, para. 6-7.

²⁰³ Steinberg, David I.: *Burma/Myanmar: What Everyone Needs to Know*, Oxford University Press, New York, 2010, p. xxiii.

²⁰⁴ *Report of the Commission of Inquiry*, para. 219.

²⁰⁵ Steinberg, op. cit. p. xxv.

²⁰⁶ Information taken from the United Nations Development Program (UNDP) website: <http://hdr.undp.org/en/statistics/> [Accessed on 4 April 2011].

²⁰⁷ Steinberg, op. cit. p. 14.

²⁰⁸ Burke, Robert Joseph Jr., *Turning the Lens Inward: Focusing on International Human Rights Issues in Burma*, *Williamette Bulletin International Law & Policy*, Vol 4:87, 1996, p. 89.

British Empire until 1948 when it gained independence, except for a few years during the Second World War when it was under Japanese occupation.²⁰⁹ Shortly thereafter, it adopted its first constitution, which for instance contained a provision on the prohibition on forced labour, where it stated that “*forced labour in any form and involuntary servitude, except as punishment for a crime...shall be prohibited.*” After its independence, a brief period of civilian rule followed, but it was troubled by ethnic and political insurgency.²¹⁰

The military took the reins of the country in a coup in 1962 and assumed full legislative and judicial power.²¹¹ The leaders behind the coup proclaimed that it had been necessary because of the severe breakdown of the political process, decline in the economy and continued insurgency.²¹² The new regime instituted a socialist government and a new constitution was adopted in 1974, where the socialist program was strengthened and codified.²¹³ Between 1974 and 1988, the government ruled with a strong hand, cracking down on minority groups that sought to reclaim their country, under the guise of maintaining law and order.²¹⁴

In 1988, a nationwide mass movement developed, led by Aung San Suu Kyi,²¹⁵ that was fed up with the poor economic situation in the country and the suppression of political freedom by the government.²¹⁶ This movement began to demonstrate peacefully in the streets and in August of 1988 a general strike was called in the country. The government responded by opening fire on the demonstrators, which resulted with thousands being injured and killed. The demonstrations continued, but in September the military announced a coup, suspended the 1974 constitution, abolished all state organs and established the State Law and Order Restoration Council (SLORC) to take their place. The government however promised to hold free elections two years later, for which all political parties were allowed to register.²¹⁷

The elections took place in May 1990, where the National League for Democracy (NLD) won a landslide victory. The elections were held under very restrictive conditions and several party leaders were detained, including

²⁰⁹ *Report of the Commission of Inquiry*, para. 224.

²¹⁰ *Ibid.*, para. 225.

²¹¹ Maupain, Francis: *Is the ILO Effective in Upholding Workers' Rights?: Reflections on the Myanmar Experience*, in Philip Alston's (Ed.), *Labour Rights as Human Rights*, Oxford University Press, New York, 2005, p. 97.

²¹² Burke, op. cit. p. 90.

²¹³ *Ibid.*, p. 90-91.

²¹⁴ *Ibid.*

²¹⁵ Aung San Suu Kyi has been a prominent political opposition leader of the National League of Democracy and as such a thorn in the eyes of the government for over two decades. She was detained before the 1990 elections, but was recently released after having spent a total of fifteen years under house arrest. She received the Nobel Peace Prize in 1991.

²¹⁶ *Report of the Commission of Inquiry*, para. 226.

²¹⁷ *Ibid.*

Aung San Suu Kyi,²¹⁸ who was put under house arrest. The military government, the SLORC,²¹⁹ refused to accept the result of the elections and the situation quickly worsened. The military regime continued to hold a tight grip on the people of Myanmar and reportedly committed numerous human rights violations.²²⁰

Mass demonstrations were not seen again until 2007, when the government raised the price of fuel by 500 per cent, thereby substantially affecting the livelihood of the population.²²¹ A huge number of ordinary citizens - accompanied by several thousand Buddhist monks²²² - came to the streets and demonstrated against the government.²²³ The government responded very harshly and several people were arrested and injured, and even killed.²²⁴ This was the first time the international community was able to witness what was happening in Myanmar. The government had sealed off the country to foreign journalists and several sources with ties in Thailand had smuggled out of the country or published via the internet the accounts of what had happened.²²⁵ This prompted a strong response from the international community, for instance by the UN, condemning the military regime for its actions.²²⁶

In 2008, the government announced that it had adopted a new constitution, which was ratified in a referendum the same year. At the same occasion, it announced that new elections would be held in 2010.²²⁷ The elections took place on 7 November, but the NLD, that won the elections in 1990, decided to boycott the 2010 elections on the grounds that they were bound to be a sham.²²⁸ The latest reports from Myanmar indicate that the SDPC has been dissolved as a result of the elections, and that a new president has been sworn into office in March 2011, launching a nominally civilian government (including several ministers who were in the former military regime) and ending the almost 50 years of military rule.²²⁹

²¹⁸ Ibid., para. 226-227.

²¹⁹ The SLORC dissolved itself in 1997 and appointed a new 19 member State Peace and Development Council (SDPC) in its place. See here Report of the Commission of Inquiry, op. cit. para. 229.

²²⁰ Burke, op. cit. p. 92.

²²¹ *Report of the Special Rapporteur*, Human Rights Council, A/HRC/7/24, 7 March 2008, p. 4, para. 1.

²²² This demonstration soon came to be called “the Saffron revolution”, referring to the colour of the robes of the Buddhist monks.

²²³ Information taken from the BBC website: <http://news.bbc.co.uk/2/hi/7010202.stm> [Accessed on 4 April 2011].

²²⁴ See here for instance a statement by Ms. L. Arbour, former UN High Commissioner for Human Rights on the occasion of the 5th Special session of the Human Rights Council, Geneva, 2 October 2007.

²²⁵ Information taken from the New York Times website: <http://www.nytimes.com/2007/09/24/world/asia/24myanmar.html> [Accessed on 4 April 2011].

²²⁶ See for instance a statement by Ms. L. Arbour, op. cit.

²²⁷ Martin, Michael F.: *Burma's 2010 Elections: Implications of the New Constitution and Elections Laws*, Congressional Research Service, 29 April 2010, p. 4.

²²⁸ Information taken from the BBC website: http://news.bbc.co.uk/2/hi/asia-pacific/country_profiles/1300003.stm#facts [Accessed on 4 April 2011].

²²⁹ Ibid.

4.2 Human rights situation

4.2.1 General description

The human rights problems facing Myanmar are many, complex and interdependent.²³⁰ Various international organizations and NGO's have throughout the years regularly reported that human rights violations in Myanmar are systematic and widespread, supported by a prevailing culture of impunity of the wrongdoers. The judiciary has been described as lacking independence and the rule of law is considered weak.²³¹

For a substantial part of the last 50 years or so, the country has been ruled by a military junta,²³² which has by no means placed human rights promotion and protection as its main concern. The military regime has committed flagrant human rights violations on its citizens, which in many cases have been primarily against ethnic minorities. The violations include killings, rape, torture, arbitrary arrests, denial of freedom of movement²³³ and forced displacement.²³⁴ Trials are usually secret, sentences disproportionately long and prison conditions are deplorable.²³⁵ Prisoners are often transferred to facilities far from their hometowns, in isolated areas around the country, making it difficult for their families to visit them regularly.²³⁶ There are tight restrictions on press and religion,²³⁷ and the large number of prisoners of conscience (2,189 as of January 2011)²³⁸ demonstrates the total disrespect of the fundamental rights to freedom of expression, assembly and association.²³⁹ Dissenting voices are not allowed and all publications are subject to censorship.²⁴⁰ No legal framework exists

²³⁰ *Progress report of the Special Rapporteur on the situation of human rights in Myanmar*, Human Rights Council, A/HRC/13/48, 10 March 2010, p. 5, para. 13.

²³¹ *Ibid.*

²³² The junta is supported by an army, consisting of roughly 400.000 active duty members, which is one of the largest in the world. See here Steinberg, *op. cit.* p. 101, and a news paper article in the Boston Globe from 9 January 2011: http://www.boston.com/news/world/asia/articles/2011/01/09/myanmar_enacts_military_draft_law/ [Accessed on 6 April 2011].

²³³ Arendshorst, John: *The Dilemma of Non-Interference: Myanmar, Human Rights and the ASEAN Charter*, Northwestern Journal of International Human Rights, Vol. 8, Issue 1 (Fall 2009), p. 105.

²³⁴ *Human Rights Council draft resolution on the situation of human rights in Myanmar*, A/HRC/16/L.11, 18 March 2011, p. 4, para. 19. All resolutions of the Human Rights Council can be found on this link: http://ap.ohchr.org/documents/dpage_e.aspx?c=125&su=129 [Accessed on 6 April 2011].

²³⁵ Steinberg, *op. cit.* p. 129.

²³⁶ *Progress report of the Special Rapporteur*, 10 March 2010, *op. cit.* p. 6, para. 17.

²³⁷ Arendshorst, *op. cit.* p. 105.

²³⁸ *Progress report of the Special Rapporteur on the situation of human rights in Myanmar*, Human Rights Council, A/HRC/16/59, 7 March 2011, p. 8, para. 28.

²³⁹ *Progress report of the Special Rapporteur*, 10 March 2010, *op. cit.* p. 5, para. 13.

²⁴⁰ *Ibid.*, p. 10, para. 44.

to ensure freedom of association and, in practice, trade unionists are severely persecuted.²⁴¹

Human rights violations are, however, not only confined to civil and political rights, but also economic, social and cultural rights. For example, the government has not provided for an effective educational system, and health care is greatly underfunded.²⁴² To put this into context, the government spends 0.5 per cent of the gross domestic product (GDP) on health care, and 0.9 per cent on education, while the military and state-owned enterprises together account for 80 per cent of total state spending.²⁴³ Also, infant mortality remains high, with an estimated 1 in 10 births resulting in the death of the infant, and 25 per cent of the population lacks access to safe drinking water.²⁴⁴ Other violations include the deprivation of means of livelihood, the destruction of houses, targeting of food production, confiscation of land and property,²⁴⁵ excessive taxation and extortion, to name a few.²⁴⁶

4.2.2 Forced labour

One of the most serious human rights violations in Myanmar, that has taken place as early as 1962, and still takes place, is forced and compulsory labour. Opposed to the general tendency of the worldwide decline of state practice of imposing forced labour on the population, Myanmar presents the most serious case of a gross human rights violation committed by a government in a country.²⁴⁷

The ILO Commission of Inquiry, mentioned in chapter 3.3.4.2.1, concluded in 1998 on the situation of forced labour in Myanmar the following:

*“There is abundant evidence before the Commission showing the pervasive use of forced labour imposed on the civilian population throughout Myanmar by the authorities and the military [...] none of which comes under any of the exceptions listed in Article 2(2) of the [Forced Labour] Convention.”*²⁴⁸

According to the ILO, forced labour in Myanmar falls largely into three broad categories: (1) forced labour exacted by the military, such as

²⁴¹ 351st Report of the Committee on Freedom of Association, 303rd Session, Geneva, November 2008, p. 283, para. 1032 and *Complaint concerning the 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 (June 2010) of the International Labour Conference under article 26 of the Constitution of the ILO, Governing Body, 310th Session, Geneva, March 2011, p. 1, para. 1.

²⁴² Steinberg, op. cit. p. 128.

²⁴³ *Progress report of the Special Rapporteur*, 10 March 2010, op. cit. p. 18, para. 98.

²⁴⁴ *Ibid.*, p. 18, para. 97.

²⁴⁵ *Human Rights Watch, World Report 2011: Burma, Country summary*, January 2011, p. 3.

²⁴⁶ Arendshorst, op. cit. p. 105.

²⁴⁷ *General Survey 2007*, op. cit. p. 52.

²⁴⁸ *Report of the Commission of Inquiry*, para. 528.

portering, sentry duty and labour to support commercial activity; (2) forced labour exacted by the civilian authorities, for instance public works such as infrastructure repair, maintenance and construction; and (3) forced and/or under-age recruitment into the military.²⁴⁹

In its report, the Commission described in detail the types of forced labour performed, which will now be briefly mentioned:

a) Portering for the military

Because of the rugged terrain and lack of roads and other infrastructure in many parts of the country, the report described that civilians were often required to carry equipment and supplies on foot. In addition, civilians also had to carry out other duties at military camps, such as sentry-duty, or staying on guard. Porters were often also sent ahead of soldiers in potential danger situations, to draw out enemy fire.²⁵⁰

b) Military camp work

When a new military camp was established, land was confiscated from local villages. Villagers were then required to send at least one person from each house-hold to work on the camp, starting with clearing and levelling the land and then building the camps. This could also entail digging trenches, bunkers and fences around the camps. The workers would have to supply all their equipment for the construction and repair the work at regular intervals. In addition, the workers would also have to carry out numerous services at the camps, such as cleaning and maintenance, cooking, washing clothes and collecting firewood. All this would be done without compensation for the land owners and the workers.²⁵¹

c) Other work in support of the military

In addition to portering and working on military camps, civilians also had to perform other work in support of the military. This included acting as guides and messengers or as human shields and minesweepers, by sweeping roads with brooms or tree branches to detect or detonate mines.²⁵²

d) Forced recruitment

Civilians were often arbitrarily conscripted into the military and various militia groups, without reference to any compulsory military service laws, even children under the age of 18 years.²⁵³

²⁴⁹ *Developments concerning the question of the observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29), 309th Session, Geneva, GB.309/6, November 2010, p. 2, para. 9.*

²⁵⁰ *Report of the Commission of Inquiry, op. cit. para. 300.*

²⁵¹ *Ibid.*, para. 351-353.

²⁵² *Ibid.*, para. 375.

²⁵³ *Ibid.*, para. 389.

e) Work on agriculture, logging, and other production projects for civilian authorities

Villagers, and to a lesser extent urban residents, were forced to work on a variety of projects undertaken by civilian authorities. This could include cultivation of rice and other food crops, and would be used by the military or sold, without compensation being paid to the workers. The workers would be used for the whole process, from clearing the land to harvesting the crops. For logging, villagers would have to fall the trees and saw them into timber. The workers would not be paid and would have to provide their own tools and equipment.²⁵⁴

f) Construction and maintenance of roads, railways and bridges

This kind of work could range from a small sized project, requiring the labour of a few local villages, such as the clearing of a dirt road, to projects using tens or hundreds of thousands of labourers, such as work on railways. The workers would also have to repair what had been built, for instance when roads and other infrastructure washed out in the rainy season. The workers would have to provide their own tools and equipment and make their own arrangements for accommodation. Usually no sanitation was provided for at the work site.²⁵⁵

g) Other infrastructure work

These include irrigation works, work on dams, canals, power-stations, a gas pipeline, airports, helipads, schools and hotels, as well as work on infrastructure related to specific events.²⁵⁶

h) General work

People throughout the country were forced to carry out regular tasks, such as cleaning and beautifying public areas, particularly when important officials were due to visit.²⁵⁷

Since 1998, there has not been a similar, thorough investigation carried out to establish whether some or all of these types of forced labour are still performed. The Committee of Experts however regularly refers to these particular types or forms of forced labour in its annual report.²⁵⁸ Notwithstanding the fact that a similar investigation has not been carried out since 1998, both the ILO and the UN, have since then kept the situation of forced labour under close surveillance and have regularly visited the country. The ILO established a permanent presence in Yangon of a Special

²⁵⁴ Ibid., para. 394-395.

²⁵⁵ Ibid., para. 408 and 410.

²⁵⁶ Ibid., para. 444.

²⁵⁷ Ibid., para. 458.

²⁵⁸ See here for instance Report of the Committee of Experts on the Application of Conventions and Recommendations, International Labour Conference, 97th Session, 2008, p. 233, para. 13. Hereinafter: *Report of the Committee of Experts from 2008*.

Liaison Officer, by an agreement with the government of Myanmar. Under the agreement, a complaints mechanism was set up, whereby the Liaison Officer regularly receives complaints on forced labour and has discussions with people who claim to be victims of or have witnessed forced labour.

Although there seems to be a more positive tone in the government of Myanmar in the recent years in eliminating forced labour, there are no concrete indications that the situation has drastically changed since 1998. The Commission of Inquiry proposed several recommendations to the government in order to eliminate forced and compulsory labour, none of which have today been fully implemented. The culture of impunity still seems to be prevalent, especially with regard to the military, and recourse to penal sanctions for perpetrators of forced labour is for the most part totally absent.²⁵⁹ The national legislation is also still not in conformity with international standards for the purpose of eliminating forced labour²⁶⁰ and the government even seems to be reluctant to accept the fact that forced labour is a substantial problem in Myanmar.²⁶¹

It is quite difficult to ascertain the magnitude of forced labour in Myanmar today. Some sources indicate that it has probably diminished, at least to some extent, especially with regard to the worst cases, which are portering and use of forced labour by the military in zones of ethnic conflict, for instance because of cease-fire agreements between the government and insurgent groups in those areas.²⁶² Whether this reflects the actual situation or not, judging by different reports and resolutions by UN and ILO bodies, forced labour is still a very big problem which is far from being eliminated.

4.3 International human rights obligations

Myanmar is unfortunately not a party to many international conventions containing human rights provisions. It is however a member state of both the United Nations and the ILO.

4.3.1 UN Conventions

One of the main purposes of the UN under its Charter is to promote universal respect for, and observance of, human rights and fundamental freedoms for all (article 55). As a member state, Myanmar has an obligation to take joint and separate action, in cooperation with the UN, to achieve this purpose (article 56). This is, however, a very broad and general obligation

²⁵⁹ *Developments concerning observance by Myanmar of the Forced Labour Convention*, November 2010, op. cit. para. 11 and 12.

²⁶⁰ Report of the Committee of Experts on the Application of Conventions and Recommendations, International Labour Conference, 100th Session, 2011, p. 242. Hereinafter: *Report of the Committee of Experts from 2011*.

²⁶¹ *Report of the Committee on the Application of Standards*, 99th Session, Geneva, 2010, p. 16, Part III/3.

²⁶² Tapiola and Swepston, op. cit. p. 524.

and it is hard to determine the exact responsibilities assumed by each member state under these articles.²⁶³

Myanmar has ratified only three conventions that fall under the United Nations human rights category;²⁶⁴ the Genocide Convention of 1948, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC). Prohibition of forced and compulsory labour is not mentioned in any of these conventions. The CRC, however, states in article 32 that “*States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.*”

Myanmar is not party to the two fundamental conventions on human rights; the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). As has been mentioned earlier, both Conventions have very important provisions on work and forced labour. Article 8(3)(a) of the ICCPR stipulates that “*no one shall be required to perform forced or compulsory labour*” and article 6(1) of the ICESCR states that “*The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.*”

Myanmar is also not party to the Convention against Torture (CAT), which prohibits any torture and other cruel, inhuman or degrading treatment or punishment. Although this convention does not refer to forced labour as such, many of its provisions have relevance and are related to the practice of forced and compulsory labour, as has been evidenced by the abuses of Myanmar’s military regime of its citizens.

Under all of these treaties, specific committees have been established to monitor state parties’ compliance with treaty obligations, the process of which has been explained in chapter 3.2.3. If Myanmar were a party to these treaties, the particular measures under those treaty bodies could, at least in theory, be a possible avenue of relief for victims of Myanmar’s oppressive regime.²⁶⁵

²⁶³ Burke, op. cit. p. 96.

²⁶⁴ An overview of all existing UN human rights treaties: <http://treaties.un.org/pages/Treaties.aspx?id=4&subid=A&lang=en> [Accessed on 7 April 2011]. ILO Conventions will be dealt with in the next section.

²⁶⁵ Burke, op. cit. p. 97.

4.3.2 ILO Conventions

Myanmar became a member of the UN and the ILO in 1948.²⁶⁶ However, its record of ratifying ILO conventions, has been much better than in ratifying UN conventions. At the time of this writing, Myanmar has ratified 19 ILO conventions²⁶⁷ (out of the total 188 conventions that are in force as of 18 May 2011).

There are two specific conventions under the ILO system that deal with forced labour; the Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105). The ILO considers these two conventions as its fundamental human rights standards, along with six other conventions, that are generally held to embody the core principles of the ILO.²⁶⁸

Myanmar has ratified the Forced Labour Convention, which not only defines and prohibits the use of forced and compulsory labour, in articles 1 and 2, as already mentioned in chapter 2, but it also has a quite interesting provision in article 25, that is not that common to see in human rights treaties.²⁶⁹ The article stipulates that “[t]he illegal exaction of forced or compulsory labour shall be punishable as a penal offence, and it shall be an obligation on any Member ratifying this Convention to ensure that the penalties imposed by law are really adequate and are strictly enforced.” This article has been heavily relied on by the ILO in urging the government of Myanmar to eliminate forced labour, and its main recommendations through the years have centred on criminalising and effectively enforcing the penalties on those who are guilty of forced labour.

Myanmar has not ratified the Abolition of Forced Labour Convention, which however does not change the basic definition of forced labour, but was designed to supplement it by specifying certain situations where forced labour can never be imposed.²⁷⁰ Although Myanmar has not ratified this convention, it has “an obligation arising from the very fact of membership in the [ILO], to respect, to promote and to realize, in good faith and in accordance with the [ILO] Constitution, the principles concerning the fundamental rights which are the subject of [the ILO’s core] Conventions”,²⁷¹ including the Abolition of Forced Labour Convention. Although Myanmar has not ratified this particular convention, it submits annual

²⁶⁶ Information taken from the ILO and the UN websites: <http://www.ilo.org/ilolex/english/mstatede.htm#msm> and <http://www.un.org/en/members/#m> [Accessed on 7 April 2011].

²⁶⁷ Information taken from the ILOLEX database of the ILO website: <http://www.ilo.org/ilolex/cgi-lex/ratifce.pl?Myanmar> [Accessed on 7 April 2011].

²⁶⁸ Swepston: *ILO and Human Rights*, op. cit. p. 293.

²⁶⁹ A comment by Swepston, Lee in a lecture on forced labour at the University of Lund on 14 April 2010.

²⁷⁰ *General Survey 2007*, op. cit. p. 6-7.

²⁷¹ Article 2 of the ILO Declaration on fundamental principles and rights at work.

reports under the follow-up procedure to the ILO Declaration of Fundamental Principles and Rights at Work.²⁷²

4.4 National legislation

One of the main challenges in eliminating forced labour in Myanmar, has been to convince the government, on the one hand, to amend or repeal parts of its legislation, and, on the other hand, to enforce its legislation. In its report in 1998, the Commission of Inquiry, recommended the government to take the necessary steps to ensure:

“(1) that the relevant legislative texts, in particular the Village Act and Towns Act, be brought into line with the [Forced Labour] Convention;

(2) that in actual practice, no more forced or compulsory labour be imposed by the authorities, in particular the military; and

(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, which required thorough investigation, prosecution and adequate punishment of those found guilty.”²⁷³

Section 359 of the Myanmar Constitution of 2008 (Chapter VIII – Citizenship, fundamental rights and duties of citizens) prohibits forced labour but allows for exceptions. The section is as follows: “*The Union prohibits forced labour except hard labour as a punishment for crime duly convicted and duties assigned thereupon by the Union in accordance with the law in the interest of the public.*” The Committee of Experts has regularly observed that this exception exceeds the scope of the specifically defined exceptions in article 2(2) of the Forced Labour Convention and has said that it could be interpreted in a way as to allow a generalised exaction of forced labour from the population.²⁷⁴

While article 374 of the Penal Code unequivocally prohibits forced labour and provides for the punishment, by a term of imprisonment of up to one year, of anyone who unlawfully compels any person to labour against his or her will,²⁷⁵ there is ambiguity when it comes to other legislation on forced labour. The Towns Act of 1907 and the Village Act of 1908 confer broad powers upon the local authorities to requisition labour, and under particular

²⁷² *Review of Annual reports under the ILO Declaration on Fundamental Principles and Rights at Work*, Governing Body, GB.310/3, 310th Session, Geneva, March 2011. In those reports, an overview is given of how fundamental principles and rights at work are promoted and realized in countries that have not yet ratified the relevant core Conventions.

²⁷³ *Report of the Commission of Inquiry*, op. cit. para. 539 (a)-(c).

²⁷⁴ See here for example Report of the Committee of Experts on the Application of Conventions and Recommendations, International Labour Conference, 99th Session, 2010, p. 253, para. 11. Hereinafter: *Report of the Committee of Experts from 2010*.

²⁷⁵ *Ibid.*

sections of these acts, non-voluntary work or services may be exacted from any person who lives in a village or town, and failure to comply may be punishable with penal sanctions.²⁷⁶

The Committee of Experts has repeatedly called for the amendment or repeal of these acts and the government of Myanmar has responded by saying that these acts “have been put into dormant [state] effectively and legally” by Order No. 1/99 as supplemented by the Order of 27 October 2000. The Committee has then noted that these orders could provide a statutory basis for ensuring compliance with the Forced Labour Convention, but only if “bona fide” effect were given to these orders by the local authorities and by civilian and military officers.²⁷⁷ This has however not yet happened, and therefore the orders do not dispense with the separate need to eliminate the legislative basis for the exaction of forced labour.²⁷⁸

Also, the problem with strictly enforcing forced labour, by investigating, prosecuting and punishing those found guilty, has to be viewed in light of article 445 of the Myanmar Constitution, which could be seen as to preserve impunity through permanent amnesties for crimes committed by military leaders and civilian personnel. The article states that “*no proceeding shall be instituted against the said Councils [SLORC and SPDC] or any member thereof or any member of the Government, in respect of any act done in the execution of their respective duties.*”²⁷⁹

4.5 How the UN and the ILO have approached the human rights situation in Myanmar

4.5.1 Introduction

Both the UN and the ILO have been involved with the human rights situation in Myanmar for decades. However, their involvement has been different. The UN has maintained a general human rights approach, concentrating on promoting and protecting human rights that fall under the UN Charter, the Universal Declaration of Human Rights and the two fundamental human rights conventions that the country has ratified (CEDAW and CRC), mentioned in chapter 3.2.3. The rights that are covered in those instruments, cover nearly all human rights. The ILO on the other hand, has been mainly concerned with two labour-related human rights issues in Myanmar, namely freedom of association and forced labour.

²⁷⁶ Report of the Committee of Experts on the Application of Conventions and Recommendations, International Labour Conference, 93rd Session, 2005, p. 172-173, para. 3. Hereinafter: *Report of the Committee of Experts from 2005*.

²⁷⁷ *Report of the Committee of Experts from 2005*, op. cit. p. 173, para. 4.

²⁷⁸ *Report of the Committee of Experts from 2011*, op. cit. p. 242.

²⁷⁹ *Progress report of the Special Rapporteur*, 10 March 2010, op. cit. p. 12, para. 57.

The purpose of this part of the thesis is to highlight what measures these two international organizations have taken over the years in order to improve the human rights situation in Myanmar, what have been their main concerns and recommendations, and whether the government of Myanmar has responded in any way to those actions. The purpose here is not to describe in detail every resolution, report, observation, recommendation or country visit that has been carried out, but rather to mention the main actions that have been taken, and try to assess their impact on the government. This part of the paper will also describe how the two organizations have in practice approached the human rights situation, and in which terms the observations and recommendations are phrased, for instance if they are broad and general or very specific and precise.

4.5.2 Examination by United Nations bodies of the human rights situation (particularly with respect to forced labour)

4.5.2.1 Background

The human rights situation in Myanmar was first examined by a UN body when the Commission on Human Rights considered it in 1990 under the procedure established by the ECOSOC resolution 1503.²⁸⁰ Since then, several human rights bodies have addressed the human rights situation. Notwithstanding the fact that the ILO is the organization that is mainly responsible for supervising forced labour issues, the UN has also been following it closely through various bodies. Forced labour is however only one small part of the range of issues the UN has been concerned with in Myanmar.

As was described in chapter 4.2.1, the human rights situation in Myanmar is deplorable and has been for many years, ranging from violations of the right to life, torture, inhuman or degrading treatment, rape, summary and arbitrary executions, enforced disappearances, forced labour, freedom of expression, opinion and assembly, just to name a few. But how has the UN approached this? How have the different bodies under the UN system dealt with the human rights situation, including forced labour, in Myanmar over the years and how has the government of Myanmar responded so far?

4.5.2.2 General Assembly

The General Assembly first considered the human rights situation in Myanmar in 1991²⁸¹ and since then, it has annually adopted resolutions on

²⁸⁰ *Report of the Commission of Inquiry*, op. cit. para. 170.

²⁸¹ *Ibid.*, para. 171.

the situation as it stands at each time. It expresses its concern on areas that are negative or it identifies issues that are positive, which over last 20 years or so have in fact been very few. The wording used by the General Assembly is for instance that it is “deeply concerned”, “call[s] upon the Government”, “strongly condemns”, “strongly urges”, “reaffirms”, “expresses grave concern”, “expresses deep concern”, “appeals to”, “stresses the importance of”, “regrets”, “welcom[es]”, “notes with appreciation”, “expresses its appreciation” etc. These resolutions, which are not of a binding character, are usually worded in a rather general manner and do not include a detailed description on how to rectify a specific problematic area. That may however be understandable, as the General Assembly lays out the general situation and other bodies under the UN mechanism, for instance the Special Rapporteur or the treaty-based bodies, may make further, more detailed observations and ways to move forward.

Since the first resolution was adopted in the early 1990s, the General Assembly has commented on and recommended the government of Myanmar to address a whole range of different human rights issues.²⁸² When dealing with forced labour, the General Assembly has not made any independent assumptions or recommendations, but has referred to the recommendations of the ILO. After having analyzed General Assembly resolutions from a 20 year period, from 1991-2011, it is safe to say that there have not been very big steps or positive signs by the government of Myanmar with respect to human rights (the release of Aung San Suu Kyi must however be considered an immensely positive step). The most positive steps during these 20 years are the following:²⁸³

- accession to the CEDAW convention;²⁸⁴
- cooperation with the International Committee of the Red Cross in allowing the CHR to communicate with and visit prisoners;²⁸⁵
- increased contact between the government and the international community;²⁸⁶

²⁸² In order to avoid duplication, the observations and recommendations of the General Assembly will not be described in detail here, as they are substantively more or less the same ones that the Special Rapporteur on the situation of human rights in Myanmar has made since 1992. A compilation of the main observations and recommendations of the Special Rapporteurs will be given in a separate section below.

²⁸³ It is necessary to emphasise, that these positive steps that are highlighted are not necessarily where things stand at the year 2011, but the ones that have been identified since 1991.

²⁸⁴ See here for instance *General Assembly Resolution, A/RES/53/162*, 25 February 1999, p. 3, para. 12. All General Assembly Resolutions can be found on this link: <http://www.un.org/documents/resga.htm> [Accessed on 16 April 2011].

²⁸⁵ See here for instance *General Assembly Resolution, A/RES/54/186*, 29 February 2000, p. 2, para. 3.

²⁸⁶ See here for instance *General Assembly Resolution*, 29 February 2000, op. cit. p. 2, para. 3 and *General Assembly Resolution, A/RES/64/238*, 26 March 2010, p. 4, para. 21.

- willingness to receive country visits from the ILO High-level team in 2001, the UN Special Rapporteur and the Special Envoy of the Secretary-General of the UN;²⁸⁷
- reopening of most university courses;²⁸⁸
- relaxation of some of the constraints governing the operation of legal political parties;²⁸⁹
- allowing some political functions to be resumed by the opposition, including the reopening of some branch of political parties and the cessation of the negative media campaign;²⁹⁰
- dissemination of human rights standards for public officials through a series of human rights workshops;²⁹¹
- establishment of a national human rights committee;²⁹²
- establishment of a committee for the prevention of military recruitment of underage children;²⁹³
- resumption of peace talks between the government of Myanmar and the Karen National Union;²⁹⁴
- the ratification of the United Nations Convention against Transnational Organized Crime of 2004;²⁹⁵
- submission of replies to a number of official communications by the UN special procedures on human rights;²⁹⁶
- some initial measure to combat impunity concerning forced labour, including a six-month moratorium on arrests of individuals who report forced labour and the release of prominent detainees;²⁹⁷
- cooperation with the international community, including the UN, in delivering humanitarian assistance to the people affected by Cyclone Nargis, despite its initial denial of access;²⁹⁸

²⁸⁷ *General Assembly Resolution*, A/RES/56/231, 28 February 2002, p. 2.

²⁸⁸ See here for instance *General Assembly Resolution*, A/RES/55/112, 1 March 2001, p. 3, para. 13.

²⁸⁹ See here for instance *General Assembly Resolution*, 1 March 2001, op. cit. p. 3, para. 13.

²⁹⁰ See here for instance *General Assembly Resolution*, 1 March 2001, op. cit. p. 3, para. 7.

²⁹¹ See here for instance *General Assembly Resolution*, 1 March 2001, op. cit. p. 3, para. 8.

²⁹² See here for instance *General Assembly Resolution*, A/RES/57/231, 28 February 2003.

²⁹³ *General Assembly Resolution*, A/RES/59/263, 17 March 2005, p. 2, para. 1(c).

²⁹⁴ *Ibid.*

²⁹⁵ *General Assembly Resolution*, A/RES/60/233, 23 March 2006, p. 2, para. 1(f).

²⁹⁶ *General Assembly Resolution*, A/RES/61/232, 13 March 2007, p. 2, para. 1(f).

²⁹⁷ *Ibid.*, p. 2, para. 1(g).

²⁹⁸ *General Assembly Resolution*, A/RES/63/245, 23 January 2009, p. 2.

- some limited progress in implementing the supplementary understanding between the ILO and the government of Myanmar signed in 2007, designed to provide a mechanism to enable victims of forced labour to seek redress;²⁹⁹
- in relation to forced labour, some positive steps have been taken in relation to awareness-raising; and³⁰⁰
- the release of Aung San Suu Kyi from house-arrest and the release of a number of political prisoners.³⁰¹

Although these signs are definitely very important in promoting and securing human rights in Myanmar, they are however very few, especially when having in mind that the General Assembly has for twenty years repeatedly called for those steps to be taken, and numerous other, so that Myanmar can strengthen and secure the human rights of its people. With regard to the resolutions by the General Assembly and the progress achieved by Myanmar, and reported in those resolutions, it seems that Myanmar has only scratched the surface of improving its human rights record.

4.5.2.3 Human Rights Council/Commission on Human Rights

The Human Rights Council, which replaced the Commission on Human Rights by General Assembly Resolution 60/251 on 15 March 2006, has, like the General Assembly, regularly adopted resolutions on the situation of Myanmar, and has done so since the early 1990s. When comparing the resolutions adopted by these two bodies, many resemblances come to light. The structure and content is very similar and the positive steps identified by the HRC/CHR and taken by the government of Myanmar are more or less the same. The thesis will therefore not go deeper into describing what has been recommended and what positive areas have been highlighted. Instead, it will focus on the special procedures available under the HRC, namely the Special Rapporteur, but will also reflect on the possible impact of the newly established Universal Periodic Review.

4.5.2.4 Special Rapporteurs

By paragraph 3 of resolution 1992/58, the former Commission on Human Rights decided to nominate a special rapporteur to establish direct contacts with the government and with the people of Myanmar for the purposes of examining the situation of human rights in Myanmar and to report to the

²⁹⁹ Ibid., p. 3, para. 3(b).

³⁰⁰ *General Assembly Resolution*, A/RES/65/241, 21 March 2011, p. 4, para. 19.

³⁰¹ Ibid., p. 2, para. 2.

General Assembly and to the Commission on Human Rights.³⁰² Since 1993, the Special Rapporteur has annually issued a detailed report on the human rights situation in Myanmar. He has often been allowed to visit the country to examine the situation first hand, but a number of times he has been denied access by the authorities. In his reports, the Special Rapporteur reviews the general human rights situation, including civil, political, economic, social and cultural rights, makes concluding observations, where he identifies areas where no, very little, or some, progress has been achieved from his previous reports, and issues recommendations on how to improve the human rights situation for the future. His observations and recommendations also include references to forced labour issues.

In order to give a clear idea what the Special Rapporteur has concluded on Myanmar and what he has recommended the country to do, in order to improve its human rights record, this thesis has analysed the reports of the Special Rapporteur from 1993 to his latest report this year, in March 2011. This part of the thesis will begin with compiling all the main observations and recommendations from this eighteen year period, which have been numerous, and then mention some areas where the Special Rapporteur notes that there has been progress, which sadly have not been that many.

The main observations and recommendations that have been made by the Special Rapporteur on the situation of human rights in Myanmar are:

1. Accession to international human rights and humanitarian conventions

The government of Myanmar should consider accession to the core international human rights conventions that fall under the United Nations, such as the two International Covenants on Human Rights, the Convention against Torture, and the two additional Protocols to the Geneva Conventions of 1949.³⁰³

2. Punish officials and end impunity

The government should establish an effective mechanism to ensure that all officials committing human rights abuses and violations are subject to strict disciplinary control and punishment and put an end to the culture of impunity, which remains a very serious problem that prevails at present in the public and military sectors.³⁰⁴

³⁰² *Resolution by the Commission on Human Rights*, C/EN.4/1993/37, 17 February 1993, para. 2. Resolutions by the Commission on Human Rights can be found on this link: http://ap.ohchr.org/documents/dpage_e.aspx?c=125&su=129 [Accessed on 18 April 2011].

³⁰³ See here for instance *report by the Special Rapporteur*, E/CN.4/1993/37, 17 February 1993, p. 49, para. 242(2) and *report by the Special Rapporteur*, A/HRC/10/19, 11 March 2009, p. 18, para. 88(a). All reports by the Special Rapporteur can be found on this link: http://ap.ohchr.org/documents/dpage_e.aspx?c=125&su=129 [Accessed on 18 April 2011].

³⁰⁴ See here for instance *report by the Special Rapporteur*, E/CN.4/1997/64, 6 February 1997, p. 29, para. 108(18), his report, A/HRC/4/14, 12 February 2007, p. 20, para. 87(c) and his report from 7 March 2008, op. cit. p. 22, para. 100(m).

3. Free all political prisoners/prisoners of conscience

The government should release all political prisoners or prisoners of conscience and put an end to harassment and persecution of National League for Democracy (NLD) members and representatives of ethnic groups.³⁰⁵

4. Bring Myanmar legislation in line with international standards

Myanmar law should be brought into line with accepted international standards, regarding protection of physical integrity rights, including the right to life, protection against disappearance, prohibition of torture, cruel, inhuman or degrading treatment, providing humane conditions for all persons under detention and insurance of the minimum standards of judicial guarantees.³⁰⁶ The government should ensure that all laws rendering violations of human rights legitimate are urgently repealed.³⁰⁷

5. Let people take part in the political process to accelerate the process of transition to democracy

To ensure that the institutions of government genuinely reflect the will of the people, in conformity with article 21 of the Universal Declaration of Human Rights, steps should be taken to allow all citizens to participate freely in the political process, in accordance with the principles of the Declaration, and to accelerate the process of transition to democracy, in particular through the transfer of power to the democratically elected representatives.³⁰⁸ Even though the first elections in over 20 years were recently held, a number of people and political parties were not allowed to take part, and therefore a more inclusive political process is needed.³⁰⁹

6. Political parties should be free to exercise their activities without restriction

The government of Myanmar should take all necessary measures to guarantee and ensure that all political parties may freely exercise their activities without restrictions. Immediate measures should be taken to put an end to the harassment of the leaders and the members of the NLD and to ensure that all political parties are able freely to carry out their activities.³¹⁰

³⁰⁵ See here for instance *report by the Special Rapporteur*, A/61/369, 21 September 2006, p. 18, para. 73(a) and his report from 11 March 2009, op. cit. p. 19, para. 93-96.

³⁰⁶ See here for instance *report by the Special Rapporteur* from 6 February 1997, op. cit. p. 27, para. 108(3) and his report from 11 March 2009, op. cit. p. 19, para. 93-96.

³⁰⁷ See here for instance *report by the Special Rapporteur* from 6 February 1997, op. cit. p. 28, para. 108(8).

³⁰⁸ See here for instance *report by the Special Rapporteur*, E/CN.4/1998/70, 15 January 1998, p. 21, para. 78.

³⁰⁹ *Report by the Special Rapporteur* from 7 March 2011, op. cit. p. 19, para. 102.

³¹⁰ See here for instance *report by the Special Rapporteur* from 6 February 1997, op. cit. p. 27, para. 108(6).

7. Forced labour

The government of Myanmar should take measures to comply with its obligations under ILO Convention No. 29 by eradicating forced labour in all its forms. In this connection the government should urgently take the appropriate measures to repeal the offensive legal provisions under the Village Act and Towns Act to prevent the continuation of forced labour. In this regard, the government of Myanmar is encouraged to cooperate with ILO to that end.³¹¹ Detailed reports and photographs seen by the Special Rapporteur lead him to conclude that forced labour, among other violations, continues to occur in Myanmar, particularly in the context of development programmes and of counter-insurgency operations in ethnic minority regions.³¹²

The government of Myanmar should take the necessary steps to bring the acts of soldiers, including privates and officers, in line with accepted international human rights and humanitarian standards so as to prevent forcing persons into acts of labour, portering, or otherwise treating persons without respect to their dignity as human beings. When villagers are hired for portering and other works, adequate wages should be paid. The nature of work should be reasonable and in accordance with established international labour standards.³¹³

8. No under-age recruitment into the army

The government of Myanmar should take all steps to end recruitment of child soldiers into the armed forces.³¹⁴ This is actually in accordance with article 38(3) of the Convention of the Rights of the Child, which Myanmar has ratified.

9. Freedom of opinion, expression and association

The government of Myanmar should take all the necessary steps to facilitate and guarantee the enjoyment of the freedoms of opinion, expression and association, in particular by decriminalizing the expression of oppositional views, relinquishing government controls over the media and literary and artistic works.³¹⁵

10. Freedom of association (in an ILO context)

³¹¹ See here for instance *report by the Special Rapporteur* from 6 February 1997, op. cit. p. 28, para. 108(14) and his report from 11 March 2009, op. cit. p. 19, para. 93-96.

³¹² See here for instance *report by the Special Rapporteur*, E/CN.4/1996/65, 5 February 1996, p. 34, para. 173.

³¹³ See here for instance *report by the Special Rapporteur* from 6 February 1997, op. cit. p. 28-29, para. 108(15).

³¹⁴ See here for instance *report by the Special Rapporteur* from 12 February 2007, op. cit. p. 21, para. 87(m).

³¹⁵ See here for instance *report by the Special Rapporteur* from 6 February 1997, op. cit. p. 28, para. 108(10).

The government of Myanmar should fulfil its obligations under ILO Convention No. 87 concerning Freedom of Association and Protection of the Right to Organize of 1948 and should guarantee by law the right of trade unions to exist and operate freely. In that respect, it is encouraged to cooperate more closely with the ILO through a technical cooperation programme so that the very serious discrepancies between the law and the practice on the one hand, and the Convention on the other hand, are urgently eliminated.³¹⁶

11. Training and information for the military and law-enforcement

Military and law-enforcement personnel, including prison guards, should be thoroughly informed and trained as to their responsibilities for the treatment of all persons, as set out by international human rights instruments and humanitarian laws standards, which should be incorporated into Myanmar national legislation.³¹⁷ The army, for instance, has been implicated in human rights abuses resulting in displacement, which is partly attributable to the fact that the armed forces constitute the only institution that has law enforcement power. The armed forces are occasionally involved in restoring public order, although no specific training is given for this task and those involved in such operations merely resort to the use of military equipment and military tactics.³¹⁸

12. Improvement of the judiciary

Independence and impartiality of the judiciary remains an outstanding issue in Myanmar.³¹⁹ The government of Myanmar is encouraged to seek international technical assistance with a view to establishing an independent and impartial judiciary that is consistent with international standards and principles,³²⁰ such as fair trial, including the right to the presumption of innocence, the right to a public trial and the right to appeal to a higher tribunal. The judiciary must not be influenced by the military, either directly or indirectly. It should be permitted to determine each case without interference from the executive branch of the government.³²¹

13. Official condemnation

Given the magnitude of the human rights abuses, official condemnation should be made by the government of all acts by authorities involving human rights violations. Such acts, including all acts of intimidation, threat

³¹⁶ See here *report by the Special Rapporteur* from 15 January 1998, op. cit. p. 22, para. 87.

³¹⁷ See here for instance *report by the Special Rapporteur*, E/CN.4/1994/57, 16 February 1994, p. 27, para. 74(f).

³¹⁸ See here *report by the Special Rapporteur*, E/CN.4/1999/35, 22 January 1999, p. 17, para. 77.

³¹⁹ *Report by the Special Rapporteur* from 11 March 2009, op. cit. p. 22, para. 99.

³²⁰ See for instance *report by the Special Rapporteur* from 12 February 2007, op. cit. p. 21, para. 87(e).

³²¹ *Interim report of the Special Rapporteur*, A/60/221, 12 August 2005, p. 22, para. 110.

or reprisal, should not benefit from the present system of almost complete denial by, and impunity under, the government.³²²

14. Remove restrictions on freedom of movement

The government of Myanmar should remove all restrictions relating to the entry and exit of citizens into and out of the country, as well as their movement within the country.³²³

15. Improvement of prison conditions

The government of Myanmar should give particular attention to improve the conditions in the country's prisons and take all the necessary steps to allow international humanitarian organizations to have access thereto and to communicate freely and confidentially with prisoners.³²⁴

16. End enforced displacement

The government of Myanmar should take urgent steps to put an end to the enforced displacement of persons and to create appropriate conditions to prevent the flow of refugees to neighbouring States.³²⁵

17. Put an end to criminalization of the peaceful exercise of fundamental freedoms

The government is urged to put an end to the criminalization of the peaceful exercise of fundamental freedoms by human rights defenders, victims of human rights abuses and their representatives.³²⁶

18. Freedom of property

All discriminatory policies which interfere with the free and equal enjoyment of property, including illegal land confiscation,³²⁷ should cease and adequate compensation should be paid to those who have been arbitrarily or unjustly deprived of their property.³²⁸

What has been described here have been the observations and recommendations by the Special Rapporteur for the last 18 years.³²⁹ Some

³²² See here for instance *report by the Special Rapporteur*, E/CN.4/1995/65, 12 January 1995, p. 36, para. 155(i).

³²³ *Report by the Special Rapporteur* from 5 February 1996, op. cit. p. 37, para. 180(h).

³²⁴ See here for instance *report by the Special Rapporteur* from 15 January 1998, op. cit. p. 22, para. 83.

³²⁵ *Report by the Special Rapporteur* from 6 February 1997, op. cit. p. 29, para. 108(16).

³²⁶ *Report by the Special Rapporteur* from 21 September 2006, op. cit. p. 18, para. 73(d).

³²⁷ *Report by the Special Rapporteur* from 7 March 2008, op. cit. p. 22, para. 100(n).

³²⁸ See here for instance *report by the Special Rapporteur* from 15 January 1998, op. cit. p. 22, para. 86.

³²⁹ Many of those observations and recommendations are the very same ones that the General Assembly has made.

have been made repeatedly, year after year, while other are not so frequently mentioned. There have of course been quite a number of other observations and recommendations, which have not been mentioned here, but these are the ones that stand out after examining what the Special Rapporteurs have proposed in this period.

But how has the response been by the government of Myanmar to these observations and recommendations? Unfortunately, the response has not been very positive, and the Special Rapporteurs have only identified a very few areas where some (often very minor) steps or positive signs have been recognized. To give an idea what these positive areas have been, the main points have been summarized as follows:³³⁰

- the first positive step identified, which is immensely important for the change from military dictatorship to democracy, and a prerequisite for promoting and protecting human rights, is that the first parliamentary elections in over 20 years were held in Myanmar on November 7 last year. The elections were criticized for a number of reasons, which were mentioned to some extent in chapter 4.1.2., but they seem at least to be the first step in ending the 50 years of military rule in the country. It is premature to speculate what change this will have for the future of Myanmar. Safe to say, it is at least a very important step on the path for Myanmar to democracy, and hopefully to the rule of law where human rights will be secured and protected;
- the government of Myanmar has continued to release persons who have been detained for political activities, including Aung San Suu Kyi. There are however still over 2,100 political prisoners believed to be remain in detention;³³¹
- the ratification by Myanmar of the Convention on the Elimination of All Forms of Discrimination against Women has been welcomed by the Special Rapporteur;
- the government has withdrawn the two reservations it had made to articles 15 and 37 of the Convention on the Rights of the Child;
- the government has undertaken various training programmes for military officers and soldiers with the cooperation of the International Committee of the Red Cross and the Myanmar Red Cross Society in the area of international humanitarian law;

³³⁰ Many of the positive steps identified by the General Assembly above, have also been identified by the Special Rapporteurs in its reports. To avoid duplication, an attempt will be made not to repeat them here.

³³¹ *Report by the Special Rapporteur* from 7 March 2011, op. cit. p. 8, para. 28.

- there has been expanding cooperation between the government of Myanmar and various United Nations organs and with international humanitarian non-governmental organizations; and,
- the Special Rapporteur has acknowledged as an important development the opening of an ILO Office in Yangon and the appointment in October 2002 of the ILO Liaison Officer to cover all activities relevant to ensuring the prompt and effective elimination of forced labour in the country.

It is evident, apart from the first two points, the November 2010 elections and the release of Aung San Suu Kyi, and other political prisoners, that the government of Myanmar has responded very reluctantly to recommendations of the Special Rapporteur, and also to the recommendations by the UN General Assembly. The Special Rapporteur has frequently expressed in his reports since 1993 that he regrets to find it necessary to repeat most or all of his recommendations in earlier reports.³³² He often reports that very unfortunately no concrete progress can be reported on the general situation of human rights in Myanmar.³³³ In his report from 2006 he said for instance that the human rights concerns enumerated in the present report are largely the same as those highlighted by the successive Special Rapporteurs since 1992.³³⁴ In the same report he said that recommendations formulated by the General Assembly, the former Commission on Human Rights, the Secretary-General of the United Nations and his former Special Envoy as well as those advocated by the Special Rapporteur and relevant human rights treaty bodies, have not been implemented.³³⁵ In a report the subsequent year, the Special Rapporteur also said that the human rights concerns enumerated in the present report are largely the same as those highlighted by the Special Rapporteur in his reports since 2001.³³⁶ There are no indications in reports after that time and until 2011 that suggest that there has been any fundamental change in this respect. In a report from 2008, the Special Rapporteur said that the representatives of Myanmar, despite treating him courteously, have preferred to denounce his finding as inaccurate or biased instead of investigating the allegations reported by him.³³⁷

4.5.2.5 Universal Periodic Review

The Universal Periodic Review (UPR) is a quite recent phenomenon. Myanmar underwent the UPR in late 2010 and at the time of this writing a

³³² *Report by the Special Rapporteur* from 6 February 1997, op. cit. p. 26, para. 108.

³³³ See here for instance *report by the Special Rapporteur* from 15 January 1998, op. cit. p. 19, para. 70.

³³⁴ *Report by the Special Rapporteur* from 21 September 2006, op. cit. p. 17, para. 66.

³³⁵ *Ibid.*, p. 17, para. 67.

³³⁶ *Report by the Special Rapporteur* from 12 February 2007, op. cit. p. 19, para. 79 and his report from 7 March 2008, op. cit. p. 22, para. 100(m).

³³⁷ *Report by the Special Rapporteur* from 7 March 2008, op. cit. p. 20, para. 92.

final report is not finished. The purpose of the UPR is however to give Myanmar an opportunity to submit a national report with an overview of its human rights situation. Other countries can, and have indeed, commented on that report. In a draft report that was issued on 2 February 2011,³³⁸ several countries recommended Myanmar to adopt various measures to promote and protect human rights. Myanmar has responded positively to many of those recommendations, such as to consider ratifying the remaining UN Conventions,³³⁹ fully cooperating with the Special Rapporteur³⁴⁰ and with the ILO, by implementing the recommendations of the Commission of Inquiry and ending forced labour.³⁴¹ However, Myanmar claimed that it would not support several of the recommendations put forward, such as repealing article 445 of the 2008 Constitution, which effectively grants total immunity to State and military personnel to act with impunity,³⁴² even for criminal offences, or extending the ILO office mandate to the overall territory of the country.³⁴³

As the UPR for Myanmar is not finished, it is very difficult to assess if it will have any effect in convincing the government of Myanmar to change its human rights situation. Like most other procedures under the UN system, the UPR outcome is not formulated in a binding form, but its purpose is to assist the government to recognize areas where further progress is needed and to guide it to the path of promoting, securing and protecting human rights. However, given the experience of the General Assembly and the HRC/CHR in dealing with Myanmar, a fair assumption would be that the UPR will not result in any giant leap towards a better human rights situation. Far from it. It is thus very unlikely that the UPR will have much impact on Myanmar, but of course, it may lead to some positive steps.

4.5.2.6 Secretary-General

The Secretary-General has been concerned with the human rights situation in Myanmar since the early 1990s. His work there has been carried out by a Special Envoy, who annually makes visits to Myanmar, concludes reports and submits them to the General Assembly. The role of the Special Envoy is distinct from the role of the Special Rapporteur. The Special Envoy carries out a role that is called “good offices”, in order to assist the government of Myanmar to respond positively to the concerns of other Member States of the UN.³⁴⁴ The Special Rapporteur, on the other hand, is entrusted with a fact-finding mandate by the Human Rights Council (and previously the

³³⁸ *Draft report of the Working Group on the Universal Periodic Review, Myanmar*, Human Rights Council, A/HRC/WG.6/10/L.7, 2 February 2011.

³³⁹ *Ibid.*, p. 13, para. 104.1-104.7.

³⁴⁰ *Ibid.*, p. 14, para. 104.27.

³⁴¹ *Ibid.*, p. 15, para. 104.33 and 104.41.

³⁴² *Ibid.*, p. 21, para. 107.6.

³⁴³ *Ibid.*, p. 23, para. 107.36.

³⁴⁴ *Report of the Secretary-General*, E/CN.4/1995/110, 21 February 1995, para. 2. All reports of the Secretary-General can be found on this link: http://ap.ohchr.org/documents/dpage_e.aspx?c=125&su=129 [Accessed on 17 April 2011].

Commission of Human Rights) in the human rights situation in Myanmar.³⁴⁵ The reports of the Special Envoy are therefore not an analysis of the general situation of human rights at each time, and therefore the substance and conclusions of those reports will not be further examined in this thesis.

4.5.2.7 Security Council

The most powerful, concrete and visible action (not necessarily the most productive and fruitful one) available under the whole international system in forcing a state to guarantee its international legal obligations, is perhaps the action that is afforded to the United Nation's Security Council under chapter VII of the UN Charter, where the Council is allowed to take military and non-military action to restore world peace and security.

The Security Council has, however, never been able to agree on a resolution to take action with regard to the human rights violations in Myanmar, grave as they be. In 2007, for example, a draft resolution failed to be adopted by the Security Council, as both China and Russia, two of the Council's five permanent members, vetoed the adoption. China for instance claimed that the human rights situation was an internal matter of a sovereign government and did not pose a threat to international peace and security. While Myanmar was faced with serious challenges, similar problems existed in many parts of the world, and the Council's involvement would both exceed its mandate and also hinder discussion by other relevant UN agencies.³⁴⁶ The Security Council has therefore not proved to be a useful channel to address the human rights situation in Myanmar.

4.5.2.8 Treaty bodies

Myanmar is only party to two of the nine core UN human rights conventions, the Convention on the Elimination of All Discrimination Against Women and the Convention on the Rights of the Child, and the committees established under those conventions have examined national reports submitted by Myanmar.

The CEDAW Committee examined a report from Myanmar in 2008 where it expressed concerns on a range of human rights violation, for instance that Muslim women in the Northern part of the country endure multiple forms of restrictions and forms of discrimination which have an impact on their lives, such as forced labour.³⁴⁷ The Committee urged the government of Myanmar to eliminate all forms of violence and discrimination against women, but the government did not respond to those concerns in any meaningful way, other

³⁴⁵ *Report of the Secretary General, A/51/660*, 8 November 1996, para. 2.

³⁴⁶ Information taken from the UN website:

<http://www.un.org/News/Press/docs/2007/sc8939.doc.htm> [Accessed on 16 April 2011].

³⁴⁷ Committee on the Elimination of Discrimination against Women, *Concluding Observations, Myanmar*, CEDAW/C/MMR/CO/3, 7 November 2008, p. 12, para. 42.

than by stating that women in Myanmar are provided with equal opportunity in various fields and enjoy a wide variety of rights and freedoms.³⁴⁸

The CRC Committee last examined a report from Myanmar in 2004, where it for instance noted that it was extremely concerned at practices of forced labour among children, notably those organized by the armed forces³⁴⁹ and recommended the government to amend and strengthen the implementation of forced labour laws, notably through prosecution of those who make use of forced labour.³⁵⁰ The Myanmar authorities have however not responded to this report.

4.5.2.9 Concluding remarks

After having examined how the various bodies of the UN have approached the human rights situation in Myanmar, especially what has been observed and recommended by the General Assembly and the Special Rapporteurs, it is evident that the government of Myanmar has not been very responsive. Whether it has been recommendations regarding human rights in general or on forced labour, the government does not seem to react or respond well to the UN machinery to promote and protect human rights. This is very well reflected in the part where the positive responses of the government was examined, which is painfully limited. The government seems to be very sceptical of the UN's analyses of the human rights situation and doesn't acknowledge that they could be true. It therefore rejects most of what is proposed and continues to commit human rights violations on its people.

As Myanmar is party to only two of the nine core UN human rights conventions - and is not party to the two fundamental UN covenants on human rights, the ICCPR and the ICESCR - and therefore not subjected to the monitoring mechanisms of most of the core UN conventions, the UN has more or less only been able to approach the human rights situation through its charter-based bodies, from a broad and general perspective. Its focus has in fact been on all human rights and as a result, it does not thoroughly examine each and every human rights violations. The recommendations of the UN to the Myanmar authorities (referring here mainly to the General Assembly and the Special Rapporteurs) are therefore phrased in rather general terms, without identifying or describing concrete obligations that the country has to carry out under the legal instruments it has ratified, and without recommending specific and detailed ways to move forward. It must however not be misunderstood that the UN has not identified ways to move forward, but perhaps they are not, because of this broad approach, as

³⁴⁸ *Response by Myanmar to the recommendations contained in the concluding observations of the Committee following the examination of the combined second and third periodic report of Myanmar on 3 November 2008*, CEDAW/C/MMR/CO/3/Add.2, 3 December 2010.

³⁴⁹ Committee on the Rights of the Child, *Concluding observations, Myanmar*, CRC/C/15/Add.237, 30 June 2004, p. 16, para. 68.

³⁵⁰ *Ibid.*, p. 16, para. 69(b).

specific as, for instance, the ones that the ILO has suggested. It is difficult to ascertain whether this approach could be one of the reasons the government has not been very responsive to the UN's recommendations. However, it could perhaps be part of the explanation.

This paper will examine in the next part how the ILO has approached the government of Myanmar and whether the government has shown better reaction to observations and recommendations by the ILO.

4.5.3 Examination by ILO bodies of forced labour

4.5.3.1 Background

Forced labour issues in Myanmar have been remarked upon as early as 1964 by the Committee of Experts,³⁵¹ and have since then been regularly on the agenda of the different ILO bodies. By a letter dated 20 June 1996 to the ILO, twenty-five Workers' delegates to the 83rd Session of the International Labour Conference presented a complaint under article 26 of the ILO Constitution against the government of Myanmar for non-observance of the Forced Labour Convention, 1930 (No. 29).³⁵² The complaint stated inter alia the following accusation: "*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*", and further, "*[t]he current situation is that the Government of Myanmar, far from acting to end the practice of forced labour, is engaged actively in its motion, 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.*"³⁵³

This led the Governing Body to establish a Commission of Inquiry in March 1997, which published its report in July 1998.³⁵⁴ As has been previously mentioned, the Commission concluded that the Forced Labour Convention was violated in national law and in practice in a widespread and systematic manner,³⁵⁵ and made recommendations to the government of Myanmar.

The government did not comply with the recommendations of the Commission of Inquiry and continued to fail to comply with the observations of the Committee of Experts, as well as other matters that had been discussed in other ILO bodies. This then led to the exercise of article 33 of the ILO Constitution by the Governing Body in March 2000,

³⁵¹ Tapiola and Swepston, op. cit. p. 518-519.

³⁵² *Report of the Commission of Inquiry*, op. cit. para. 1.

³⁵³ *Ibid.*, para. 2.

³⁵⁴ *Report of the Committee of Experts from 2005*, op. cit. p. 172, para. 2.

³⁵⁵ *Report of the Committee of Experts from 2011*, op. cit. p. 240.

something that the ILO had never resorted to before in its history. This was then followed by the adoption of a resolution by the International Labour Conference at its June session the same year,³⁵⁶ which was mentioned to some extent in chapter 3.3.4.2.1. What is interesting here is that this resulted very quickly in a significant change in the behaviour of the Myanmar authorities, which then accepted the visit of the first Technical Cooperation Mission to discuss the implementation of the Commission of Inquiry's recommendations,³⁵⁷ and subsequently other missions, such as the High-level Team in 2001. In addition, as a result of this first mission, the government finally recognized for the first time, even though in not very clear terms, that forced labour had occurred in Myanmar and announced that it would take the appropriate measures (legislative, administrative and executive) to ensure the prevention of forced labour in the future.³⁵⁸

But did those recommendations, and the apparent positive change of attitude of the Myanmar authorities in 2000, have any effect in changing forced labour issues in the country? What exactly did those recommendations require the government of Myanmar to do, and perhaps more importantly, how has it reacted or responded to them to this day?

4.5.3.2 Observations and recommendations by the ILO and response by the Myanmar authorities

Since the Commission of Inquiry published its report in 1998, the main focus of the ILO's work with regard to forced labour in Myanmar, has been on trying to convince the government of Myanmar to implement the Commission's three recommendations, which are:

“(1) that the relevant legislative texts, in particular the Village Act and Towns Act, be brought into line with the [Forced Labour] Convention;

(2) that in actual practice, no more forced or compulsory labour be imposed by the authorities, in particular the military; and

(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, which require thorough investigation, prosecution and adequate punishment of those found guilty.”³⁵⁹

The Commission of Inquiry emphasized that, besides changing or amending the legislation, clear and specific action needed to be taken immediately to

³⁵⁶ Report of the Committee of Experts on the Application of Conventions and Recommendations, International Labour Conference, 98th Session, 2009, p. 230, para. 1. Hereinafter: *Report of the Committee of Experts from 2009*.

³⁵⁷ Maupain, op. cit. p. 99.

³⁵⁸ Ibid., p. 100.

³⁵⁹ *Report of the Commission of Inquiry*, op. cit. para. 539 (a)-(c).

bring an end to the exaction of forced labour in practice, in particular by the military.³⁶⁰

Based on the Commission of Inquiry's report, the Committee of Experts has, since its annual report from 2002, identified four areas in which measures should be taken by the government to achieve the recommendations of the Commission of Inquiry. In particular, the Committee has indicated the following measures:³⁶¹

- issuing specific and concrete instructions to the civilian and military authorities;
- ensuring that the prohibition of forced labour is given wide publicity;
- providing for the budgeting of adequate means for the replacement of forced or unpaid labour; and
- ensuring the enforcement of the prohibition of forced labour.

Each of these proposed measures will now be described, as well as, to what extent the government of Myanmar has responded to them.

1. Amendment of legislation

The ILO has been trying for over 40 years to appeal to the government to change its legislation,³⁶² namely the Towns Act of 1907 and the Village Act of 1908, which confer broad powers on the authorities to requisition forced labour and failure to comply may be punishable with penal sanctions. Since the Commission of Inquiry published its report, both the Committee of Experts and the Conference Committee have repeatedly called for the amendment or the repeal of those acts so that they are in conformity with the Forced Labour Convention.

However, after all those years, the government has never been willing to amend or repeal the legislation and has referred to an Order No. 1/99 (Order directing not to exercise powers under certain provisions of the Towns Act and the Village Act) as modified by an "Order Supplementing Order No. 1/99", dated 27 October 2000, which the government has claimed has put the Town and Village act "into dormant [state] effectively and legally".³⁶³

³⁶⁰ *Report of the Committee of Experts from 2009*, op. cit. p. 230, para. 2.

³⁶¹ Report of the Committee of Experts on the Application of Conventions and Recommendations, International Labour Conference, 95th Session, 2006, p. 155, para. 3. Hereinafter: *Report of the Committee of Experts from 2006*.

³⁶² Report of the Committee of Experts on the Application of Conventions and Recommendations, International Labour Conference, 90th Session, 2002, para. 3. Hereinafter: *Report of the Committee of Experts from 2002*.

³⁶³ *Report of the Committee of Experts from 2011*, op. cit. p. 242.

The ILO seems to have been partly satisfied with this, but only as long as some additional measures were fulfilled. In the Committee of Experts reports³⁶⁴, it has said that these orders could provide a statutory basis ensuring compliance with the Forced Labour Convention, but only if “bona fide” effect were given to these orders by the local authorities and by civilian and military officers.³⁶⁴ A bona fide application of this Order, however, needed to involve the adoption of the measures indicated by both the Commission of Inquiry in paragraph 539(b) of its report and by the Committee of Experts in its previous comments, for instance issuing concrete instructions to the civilian and military authorities, which are given wide publicity.³⁶⁵ The Committee has said, however, that that in itself would not dispense with the separate need to eliminate the legislative basis for the exaction of forced labour.

As was mentioned, the government has been very determined not to amend or repeal the Towns and Village Acts, and has maintained that the Orders provide a sufficient legal basis to prohibit forced labour. There is, however, a recent indication from the government that a draft legislation aimed at achieving legislative conformity with the Forced Labour Convention is in the process of preparation³⁶⁶ by the Ministry of Home Affairs in Myanmar.³⁶⁷ At this point, it is too early to tell if or when this draft legislation will become a reality and to what extent it will be in conformity with the Forced Labour Convention.

However, to complicate matters a bit, the Constitution of Myanmar, contains a provision in section 359 (Chapter VII – Citizenship, fundamental rights and duties of citizens) that could be interpreted in such a way as to allow a generalized exaction of forced labour from the population. The government has recently expressed to the ILO in its report from 19 August 2010, that “it is impossible to amend the Constitution ... as it was ratified by the referendum held in May 2008 with 92,48 per cent affirmative votes”. Despite this position of the government, the Committee of Experts has urged the government to change its Constitution in order to bring it in conformity with ILO standards.³⁶⁸

It must be noted, that the recent willingness of the government to introduce a new legislation to achieve conformity with ILO standards is a very welcomed and a positive step to eliminate forced labour. At the same time, however, it must be questioned what effect, if any, this new legislation will have, if the government is determined not to change the Constitution.

³⁶⁴ *Report of the Committee of Experts from 2005*, op. cit. p. 173, para. 4.

³⁶⁵ *Report of the Committee of Experts from 2006*, op. cit. p. 156, para. 11 and 12.

³⁶⁶ *Developments concerning the question of the observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29)*, dec-GB.310/5, 24 March 2011, Conclusions concerning Myanmar, para. 3.

³⁶⁷ *Report of the Committee of Experts from 2011*, op. cit. p. 242.

³⁶⁸ *Ibid.*

2. Measures to stop the exaction of forced or compulsory labour in practice

a) Issuing specific and concrete instructions to the civilian and military authorities

In order to be able to identify each and every field of forced labour, the Committee of Experts has noted that the Myanmar authorities must issue specific and concrete instructions to the civilian and military authorities, and also to the general population.³⁶⁹ The government has stated that it has made every effort to ensure the prohibition of the use of forced labour under Order No. 1/99 and its Supplementing Order,³⁷⁰ by referring to a series of letters, rules and directives issued by various civil and military authorities relating to those orders.³⁷¹ The Committee has noted that, with one exception (namely, the “Additional Instruction” issued by the Department of General Administration of the Ministry of Home Affairs, dated 2 June 2005), that these series of documents do not contain any details of the content of the instructions.³⁷² The Committee has also noted the government’s general statement in its report received on 1 June 2009 that “the various levels of administrative authority are well aware of the orders and instructions related to forced labour prohibition issued by the higher levels”.³⁷³

In its most recent reports, the Committee of Experts has said that the information provided by the government on this point is grossly deficient.³⁷⁴ It remains unable to verify that clear and concrete instructions have been effectively communicated to all civil authorities and military units, and that bona fide effect has been given to such instructions.³⁷⁵ Any progress in this area, has thus been very limited, despite the fact, which has been pointed out by the Committee, that it does not appear to be a difficult endeavour to construct the content of such instructions.³⁷⁶

b) Ensuring that the prohibition of forced labour is given wide publicity

It is not only vital to issue concrete and specific instructions about the prohibition on forced labour, but also to ensure that they are given wide publicity. Over the last few years, the Myanmar authorities seem to have been taking some positive steps in this area, and have been carrying out various activities to fulfil the recommendations of the ILO. The Committee of Experts has noted, from reports of the Liaison Officer (LO), documents submitted to the Governing Body and to the Conference Committee, as well as from the government’s reports, that a number of awareness-raising activities regarding forced labour have been carried out, such as seminars

³⁶⁹ *Report of the Committee of Experts from 2010*, op. cit. p. 254, para. 15.

³⁷⁰ *Report of the Committee of Experts from 2005*, op. cit. p. 173, para. 8.

³⁷¹ *Report of the Committee of Experts from 2008*, op. cit. p. 233, para. 18.

³⁷² *Report of the Committee of Experts from 2010*, op. cit. p. 254, para. 15.

³⁷³ *Report of the Committee of Experts from 2011*, op. cit. p. 243.

³⁷⁴ *Report of the Committee of Experts from 2010*, op. cit. p. 254, para. 16.

³⁷⁵ *Report of the Committee of Experts from 2011*, op. cit. p. 243.

³⁷⁶ *Report of the Committee of Experts from 2006*, op. cit. p. 157, para. 15.

and lectures for civil and military personnel, judges, the police and prison services.³⁷⁷ In addition, a booklet comprised of the texts of the SU and related documents, translated into the Myanmar language, was prepared and distributed to civilian and military authorities nationwide, to civil society groups and the general public.³⁷⁸ These are all positive steps in raising awareness in society about the prohibition on forced labour, however, as the LO has reported, these activities do not seem to have reached rural areas, where awareness levels remain low³⁷⁹ and the prevalence of forced labour practices appear to be the highest.³⁸⁰

For a few years now, the ILO supervisory bodies have been urging the government to issue a simply worded brochure, translated into all local languages, which outlines the law against forced labour and the procedures available to victims to exercise their rights under the law.³⁸¹ The government has agreed to the publication of such a brochure,³⁸² however, regretfully, it has said that is not possible to be produced in any other than the official language (Myanmar) provided for in the Constitution.³⁸³ Such a brochure could be a useful tool, but its effect is quite limited if only part of the population understands it.

The Committee of Experts has noted that these publicity and awareness-raising activities represent a step forward, but they must be undertaken in a more coherent and systematic way, reaching all areas of the country. Such activities are vital in ensuring that the prohibition on forced labour is widely known and applied in practice and they need to continue and be expanded.³⁸⁴ A very important step on this course, would be a widely publicised, public statement at the highest level, reconfirming the government's commitment to the eradication of forced labour. The ILO supervisory bodies have made repeated calls on this point, but unfortunately without any luck so far.³⁸⁵

c) Making adequate budgetary provision for the replacement of forced and unpaid labour

The Commission of Inquiry emphasised in its recommendations to Myanmar the need to budget for adequate means to hire free wage labour for the public activities that are today based on forced and unpaid labour. The Committee of Experts has repeatedly called for adequate budgetary

³⁷⁷ *Report of the Committee of Experts from 2011*, op. cit. p. 243.

³⁷⁸ *Report of the Committee of Experts from 2010*, op. cit. p. 255, para. 18.

³⁷⁹ *Ibid.*

³⁸⁰ *Report of the Committee of Experts from 2005*, op. cit. p. 174, para. 13.

³⁸¹ *Report of the Committee of Experts from 2010*, op. cit. p. 255, para. 18.

³⁸² *Developments concerning the question of observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29)*, Governing Body, 307th Session, GB.307/6, March 2010, p. 2, para. 9.

³⁸³ *Developments concerning observance by Myanmar of the Forced Labour Convention*, March 2011, op. cit. p. 4, para. 24.

³⁸⁴ *Report of the Committee of Experts from 2009*, op. cit. p. 233, para. 16.

³⁸⁵ *Ibid.*

provisions for the replacement of forced and unpaid labour, and the Committee has pursued the matter and sought to obtain concrete evidence that adequate means are budgeted for to hire voluntary labour.³⁸⁶

Since the Commission's report, the response by the Myanmar authorities has always been in a similar way. It maintains that there is always a budget allotment for each and every project, with allocations which include the cost of material and labour. The Committee of Experts has responded by referring to the information available on the actual practice which shows that forced labour continues to be carried out in many parts of Myanmar, especially in areas where there is a heavy presence of the army. It is therefore obvious that any budgetary allocations that may exist have not been adequate to make recourse to forced labour unnecessary.³⁸⁷

This is an area where in fact no progress has been shown by the Myanmar authorities, despite repeated calls by the ILO supervisory bodies.

3. Ensuring the enforcement of the prohibition of forced labour – monitoring and complaints machinery

A major problem with forced labour in Myanmar has been the level of impunity that it seems to enjoy, particularly with the civilian authorities and the military. The ILO has for years advocated to ensure that forced labour violations are monitored and rigorously enforced in practice. A very positive step to monitor forced labour violations, was taken in 2002, when the International Labour Office and the government of Myanmar reached an Understanding concerning the appointment of an ILO Liaison Officer in Myanmar. The idea, to have a permanent presence of an international organization located in Yangon, was a novel one, and makes the ILO the only international human rights organization to have reached such an agreement with the authorities,³⁸⁸ that are usually not keen on giving access to its country to foreign organizations. According to this understanding, the Liaison Officer's (LO) role covers all activities which are relevant to ensure, in cooperation with the Myanmar authorities, the swift and effective eradication of forced labour in the country.³⁸⁹

Another very important step was made, when a Supplementary Understanding (SU) was reached between the same parties in 2007, which established a complaints mechanism with the principal object "to formally offer the possibility to victims of forced labour to channel their complaints through the services of the Liaison Officer to the competent authorities with a view to seeking remedies available under the relevant legislation."³⁹⁰ An

³⁸⁶ *Report of the Committee of Experts from 2005*, op. cit. p. 174, para. 15.

³⁸⁷ See here for instance *Report of the Committee of Experts from 2010*, op. cit. p. 255, para. 17, and *Report from the Committee of Experts from 2005*, op. cit. p. 174, para. 15.

³⁸⁸ Tapiola and Swepston, op. cit. p. 523.

³⁸⁹ Information taken from the ILO website:

<http://www.ilo.org/yangon/lang--en/index.htm> [Accessed on 21 April 2011].

³⁹⁰ See here for instance *Report of the Committee of Experts from 2008*, op. cit. p. 232, para. 7.

informal complaint-type arrangement had already begun through the LO in 2004, but was made official and systematic with the SU.³⁹¹ Since 2007, the SU has been extended every year, for one year, and the latest SU was extended from 26 February 2011 to 25 May 2012.³⁹² On the basis of the broad mandate of the Understanding of 2002 and within the framework of the SU complaints mechanism, the LO has an important role in assisting the government with monitoring and investigating the situation of forced labour in Myanmar, including enforcement of rights and obligations arising out of the prohibitions of forced labour.³⁹³

The LO publishes regularly a report on his activities, which includes the number of cases that go through the complaints mechanism as well as information on how the system is functioning in practice. The Conference Committee noted with concern a couple of years ago some reported cases of retaliation and harassment against complainants of forced labour and volunteer facilitators who cooperated with the LO. The Committee called on the government to ensure that retaliation and harassment, based on any legal or other ground, would stop and that the perpetrators be punished with full force of the law.³⁹⁴ The ILO bodies have since then commented on this unfortunate situation. However, in a recent report, the LO said that in the majority of cases received in the most recent period, no harassment or retaliation was reported in respect of either complainants or persons facilitating the submission of complaints.³⁹⁵ It is however clear, that harassment and retaliation of complainants and their supporters undermines the mechanism of the SU.³⁹⁶

Since the inception of the SU mechanism, the total number of complaints received is 630, with a total of 127 new complaints received from October 2010 to February 2011.³⁹⁷ Complaints alleging under-age recruitment into the military accounts for roughly 60 per cent of the total complaints received.³⁹⁸ Although the total number of complaints is very low, considering the total population of Myanmar, the number of complaints is increasing. This might reflect the growing awareness among residents of Myanmar, at least in the area near Yangon, of their rights under the law, greater knowledge of the complaints mechanism and improved confidence in making use of it. The LO has reported that non-verifiable evidence suggest that the use of forced labour by civilian authorities has reduced at least in some parts and locations of the country, which the LO considers is

³⁹¹ Tapiola and Swepston, op. cit. p. 523.

³⁹² *An agreement for the extension of the Supplementary Understanding between the Government of Myanmar and the ILO*, dated 23 February 2011.

³⁹³ *Report of the Committee of Experts from 2010*, op. cit. p. 255, para. 20.

³⁹⁴ *Report of the Committee of Experts from 2009*, op. cit. p. 231, para. 6.

³⁹⁵ *Developments concerning the observance by Myanmar of the Forced Labour Convention*, March 2011, op. cit. p. 2, para. 12.

³⁹⁶ *Report of the Committee of Experts from 2010*, op. cit. p. 256, para. 20.

³⁹⁷ *Developments concerning the observance by Myanmar of the Forced Labour Convention*, March 2011, op. cit. p. 1, para. 4.

³⁹⁸ *Ibid.*, p. 2, para. 7.

very likely due to extensive awareness-raising activities and increased awareness of local authorities to the issue itself.³⁹⁹

Notwithstanding these positive steps, the reach of the SU mechanism in a country the size of Myanmar is still very limited. The LO is based in Yangon, making it physically difficult of lodging a complaint beyond that city and especially in areas in the countryside. In addition, the LO has reported that he is provided with meagre facilities and a small staff, and the continuing growth of the number of complaints received has put considerable additional strain on the LO to service them efficiently.⁴⁰⁰ Thus, there are constraints and limits on the contribution that the complaints mechanism can make to the elimination of forced labour. The mechanism can however provide a relief to victims of forced labour by offering an objective and safe channel for their complaints to be raised and addressed, and possibly also send a message to potential perpetrators that they are not free to act with impunity.⁴⁰¹

It must be borne in mind, that the LO does not have the authority to initiate complaints on the basis of his own observation or information.⁴⁰² Once the LO receives a complaint, he undertakes an objective assessment of the facts submitted, and then submits the facts together with his opinion and/or suggestions to the Government Ministerial Working Group for the elimination of forced labour.⁴⁰³ The LO therefore only acts as monitoring body, which can refer cases of forced labour to the Myanmar authorities. It is the obligation of the Myanmar authorities under article 25 of the Forced Labour Convention to enforce the prohibition of forced labour.

The Myanmar authorities have been very reluctant to bring cases to the courts of Myanmar under section 374 of the Penal Code concerning the illegal exaction of forced labour. This is especially true if the perpetrators are believed to be civilian officials or military personnel. In 2005 the Committee of Experts noted that for the first time, cases of forced labour had been brought to the courts under the Penal Code. None, of them, however led to the initiation of proceedings, nor even a recognition of a situation of forced labour. However, in a few of those cases, the complainants were even sentenced to imprisonment for defamation after bringing the cases to the courts under section 374 of the Penal Code.⁴⁰⁴ These are not isolated incidents, and there have been reports by the LO that

³⁹⁹ *Report of the Liaison Officer to the Special Sitting on Myanmar (Convention No. 29) of the Committee on the Application of Standards*, International Labour Conference, 99th Session, Geneva, June 2010, p. 10, para. 7.

⁴⁰⁰ *Developments concerning the observance by Myanmar of the Forced Labour Convention*, March 2011, op. cit. p. 1, para. 6.

⁴⁰¹ *Report of the Committee of Experts from 2008*, op. cit. p. 235, para. 28.

⁴⁰² *Report of the Committee of Experts from 2010*, op. cit. p. 256, para. 20.

⁴⁰³ Information taken from the ILO website: <http://www.ilo.org/yangon/complaints/lang--en/index.htm> [Accessed on 22 April 2011].

⁴⁰⁴ *Report of the Committee of Experts from 2005*, op. cit. p. 177, para. 29.

the government has systematically prosecuted victims of forced labour who lodge what the government considers to be “false complaints”.⁴⁰⁵

The most recent report from the Committee of Experts indicates that the ILO has received no information concerning prosecution of any military personnel under the Penal Code. In four instances, disciplinary action was taken under military procedures in response to complaints submitted under the SU, such as orders requiring behavioural change. Regarding civilian officials, prosecution of perpetrators under the Penal Code in response to complaints submitted, has been reported in only one case. In that case, two civilian officials were prosecuted and punished with penalties of imprisonment. In other cases, the solution has involved administrative penalties, including dismissal and transfer, with the majority of cases being resolved without punitive action.⁴⁰⁶ Recent cases regarding complaints of under-age recruitment into the military have resulted in discharge of the child victims, but only with administrative sanctions, if any, imposed on the perpetrators, and with no prosecutions under the Penal Code.⁴⁰⁷

Both the Committee of Experts and the Conference Committee have repeatedly urged the government of Myanmar to ensure that the illegal exaction of forced labour must be punished as a penal offence, rather than be treated as an administrative issue and that the perpetrators, whether civil or military, are prosecuted and punished under the Penal Code. This plea does however not seem to influence the government of Myanmar to any major extent, and any progress in the enforcement of the prohibition of forced labour has been extremely small and slow.

4.5.3.3 Concluding remarks

The ILO has for several decades now been involved with forced labour issues in Myanmar. Ever since the Commission of Inquiry issued its report, the ILO supervisory bodies have been repeatedly urging the government to take action in a few important, but very concrete and specific areas. The ILO has approached the forced labour situation from a technical, rather than a political standpoint. It has taken the government as it is and gradually tried to change its behaviour towards its citizens, with particular emphasis on improving the labour situation in the country.

The ILO has carried out its work with regard to Myanmar by referring to a few specific actions that need to be implemented on the basis of the Forced Labour Convention. In doing so, it has offered the Myanmar authorities various technical assistance, for example through the LO in Yangon. This has for instance ranged from conducting or organizing joint or separate Ministry of Labour/ILO awareness-raising and training seminars, workshop

⁴⁰⁵ *Report of the Committee of Experts from 2006*, op. cit. p. 159, para. 25.

⁴⁰⁶ *Report of the Committee of Experts from 2011*, op. cit. p. 244.

⁴⁰⁷ *Report of the Committee of Experts from 2010*, op. cit. p. 256, para. 21.

activity,⁴⁰⁸ technical support for the review of the Jail Manual, which relates to the use of prison labour,⁴⁰⁹ and advice on how to amend key legislation, so that it is in conformity with international labour standards (particularly the Village and Towns Act and the introduction of a new labour legislation).⁴¹⁰ The assistance is not only materialized by educational and awareness-raising activities and assistance on amending legislation, but also through the operation of the complaints mechanism based on the SU.⁴¹¹

The ILO supervisory bodies have identified a few areas where some progress has been achieved by the authorities. Awareness-raising activities continue to increase and are well received by the government, cooperation in the functioning of the SU complaints mechanism is going well and positive signs have been recognized in the release of under-age recruits from the military. The government has however not yet implemented any of the recommendations of the Commission of Inquiry. It has not amended or repealed the Towns and Village Acts. It has failed to ensure that, in actual practice, forced labour is no longer imposed by the authorities, especially the military, it has failed to make adequate budgetary provision for the replacement of forced and unpaid labour and it has failed to ensure that penalties for the exaction of forced labour under the Penal Code have been strictly enforced against civil and military authorities.⁴¹² Thus, although there are indications that the use of forced labour by civilian authorities has reduced at least in some parts and locations of the country, it seems that there is still a long road ahead in convincing the government to change its course and eliminating forced labour practices in Myanmar.

4.6 Why has Myanmar been able to resist proposed actions?

It would be beyond the scope of this thesis to try to determine in detail why Myanmar has been able for such a long time to resist the proposed action by the UN and the ILO to improve its human rights record and cease practices of forced labour. The reports and resolutions examined for this paper provide no conclusive answers and one can in fact only speculate on the reasons for it.

⁴⁰⁸ See here for instance *Developments concerning the observance by Myanmar of the Forced Labour Convention*, March 2011, op. cit. p. 1, para. 5.

⁴⁰⁹ *Developments concerning the question of the observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29)*, Governing Body, GB.304/5/1(Rev.), 304th Session, Geneva, March 2009, p. 3, para. 8.

⁴¹⁰ *Developments concerning the observance by Myanmar of the Forced Labour Convention, Conclusions concerning Myanmar*, March 2011, op. cit. para. 3.

⁴¹¹ *Developments concerning the observance Myanmar of the Forced Labour Convention*, November 2010, p. 2, para. 6.

⁴¹² *Report of the Committee of Experts from 2011*, op. cit. p. 244.

In contrast to most national legal systems, where an executive power exists to enforce obligations, usually through law enforcement, no global supranational body exists to hold a state in breach of international human rights obligations accountable for its actions.⁴¹³ The most powerful and visible action available under the whole international system in forcing a state to guarantee its international legal obligations, is perhaps the action that is afforded to the United Nation's Security Council under chapter VII of the UN Charter, where the Council is allowed to take military and non-military action to restore world peace and security (for instance to impose sanctions). One of the drawbacks of this, however, is that any action rests on consensus of the five permanent members, and with regard to Myanmar, the Security Council has never been able to agree on a resolution to take action, because of a veto by China and Russia.

The ILO on the other hand cannot apply sanctions and has been criticised of not having sufficient "teeth" to force governments to implement basic principles, when they fail, or refuse, to comply.⁴¹⁴ It did however take action under article 33 of its Constitution and adopted a resolution in 2000, which resulted in a significant change in the attitude of the Myanmar authorities, by allowing a technical mission to visit the country.⁴¹⁵ This however did not result in a fundamental change towards eliminating forced labour practices, as has been witnessed to this day by reports of the ILO supervisory bodies.

It must also be borne in mind, that forced labour has very deep historical roots in Myanmar⁴¹⁶ and has been a necessary component for the functioning of the military, as was described in the report of the Commission of Inquiry. It must also be noted that Myanmar is very rich with natural resources and has trade relationships with various multinational corporations⁴¹⁷ and economic and political bonds with powerful countries such as China.⁴¹⁸

Based on the fact that international organizations have not been (or are not) able to effectively force Myanmar to abide by its international obligations, and the fact it has strong economic and political ties with important actors, one assumption could thus be that Myanmar is perhaps not as influenced by proposed action by the international community as it otherwise would be. It has acted the way it has done for several decades, without any substantial problems affecting the government and the ruling elite. Economic sanctions have been tried against the country, by both the United States and the European Union, without any real ramifications for the military regime, but

⁴¹³ Ewing-Chow, Michael: *First Do No Harm: Myanmar Trade Sanctions and Human Rights*, Northwestern University Journal of International Human Rights, Vol. 5, Issue 2 (Spring 2007), p. 153.

⁴¹⁴ *ILO and the Quest for Social Justice*, op. cit. p. 25.

⁴¹⁵ Maupin, op. cit. p. 99.

⁴¹⁶ *Ibid.*, p. 115.

⁴¹⁷ Steinberg, op. cit. p. 99.

⁴¹⁸ Ewing-Chow, op. cit. p. 160.

affecting instead the civilian population.⁴¹⁹ In addition, the Myanmar authorities have been very reluctant to publicly acknowledge that force labour is a widespread problem in the country. The Commission of Inquiry's report even mentions that the government says that there were no practices whatsoever of forced labour in the country.⁴²⁰ Since then, it has acknowledged that forced labour exists in the country, but refuses to accept that it is a widespread problem.⁴²¹

It would be an overstatement to say that the Myanmar authorities are immune from outside pressure, as was for instance reflected when the ILO adopted its resolution in 2000 and the government allowed the first technical mission to visit the country. However, after examining the proposed actions by the UN and the ILO and responses by the government, it at least seems for the most parts that the government makes the proposed changes at its own speed.

⁴¹⁹ Ibid., p. 173-174. See also Yaraslau, Kryvoi: *Why European Union Trade Sanctions Do Not Work*, Minnesota Journal of International Law, Vol. 17, Issue 2 (Summer 2008), p. 242-243.

⁴²⁰ *Report of the Commission of Inquiry*, op. cit. para. 144.

⁴²¹ *Report of the Committee on the Application of Standards*, 99th Session, op. cit. 16 Part III/3.

5 Conclusions

Forced labour practices have been carried out throughout the world for centuries. The latest global statistics suggest that there are over twelve million victims of forced labour and there are no particular signs that the number is decreasing. The main perpetrators of forced labour today are private agents or enterprises. Systematic state-endorsed forced labour seems to have declined worldwide and even disappeared altogether in most countries. One exception to this is in Myanmar, where the state has systematically and in a widespread manner imposed forced labour on the population, through civilian authorities and the military. In addition to forced labour, other egregious human rights violations have been taking place there for decades.

As a general rule, the protection of human rights should start at the national level. When a state has ratified an international human right instrument, it has an obligation to secure the rights therein to individuals under its jurisdiction. Only when the state has proven to be unable or unwilling to do this, recourse may be had to international human rights mechanisms. The mechanisms available are either universal or regional.

Myanmar is a member state to the United Nations and the International Labour Organization, both of which have a detailed and thorough mechanisms to secure the promotion and protection of human rights in general and labour-related human rights, such as forced labour. This paper has attempted to describe how these different mechanisms function and to what extent the measures available under them are applicable to Myanmar.

Through the available mechanisms, the United Nations and the International Labour Organization have been urging the government of Myanmar to improve its human rights record. The United Nations have approached this situation from a broad and general perspective, identifying areas of concern, which have in fact been on a wide set of human rights, ranging from civil, political, economic and social rights, including freedom from forced labour. The International Labour Organization on the other hand, has concentrated on issues which fall under its area of expertise, namely freedom of association and forced labour.

As Myanmar is a party to only a few UN conventions – and is not a party to the two fundamental human rights covenants that deal inter alia with the right to work and forced labour – the United Nations has more or less only been able to approach Myanmar through its charter-based bodies, notably the General Assembly and the Human Rights Council. Through those mechanisms, the UN has regularly adopted resolutions and issued reports, urging the government to improve its human rights record. Although these measures have identified ways forward, it seems that they have not described in a specific and detailed way what exactly needs to be done.

Ever since the Commission of Inquiry issued its report in 1998, the ILO has carried out its work with regard to Myanmar by referring to a few specific actions that need to be implemented on the basis of the Forced Labour Convention. In doing so, it has offered the Myanmar authorities various technical assistance, for instance support and advice on how to amend fundamental legislation on forced labour to bring it in conformity with international labour standards, conducting awareness-raising activities *et al.* The assistance has not only been by educational and awareness-raising activities and assistance on legislative amendments, but also through the operation of the complaints mechanism based on the Supplementary Understanding.

In order to be able to measure the efficacy of the approaches of the UN and the ILO, and how the government of Myanmar has responded to action taken by those organizations, the thesis has examined a substantial amount of resolutions and reports over a long period (since the early 1990s in the case of the UN, and since early 2000 in the case of ILO). The result seems to be, that neither the UN nor the ILO have had breakthrough success in convincing the government to improve its human rights record in general (the UN) or with particular regard to forced labour violations (the ILO and the UN). It is very difficult to determine the reason for this, but some explanations as to why Myanmar has been able to resist outside pressure were given in chapter 4.6.

Only a handful of positive steps have been identified by the UN since it first started to get involved with the human rights situation in Myanmar. The human situation remains today largely the same as it did in 1992 and recommendations formulated by the General Assembly, the former Commission on Human Rights, the Secretary-General of the United Nations and his Special Envoy as well as those advocated by the Special Rapporteur and relevant human rights treaty bodies, have not been implemented. The most positive signs have been the elections that were recently held (the first one in over 20 years) and the release of Aung San Suu Kyi. Other positive steps have been relatively minor ones. Whether this is due to action or pressure applied by the UN, or some other reason, is very hard to determine.

With regard to the ILO, none of the three recommendations of the Commission of Inquiry have been implemented, in the 13 year period since the Commission issued its report. The government of Myanmar has not amended or repealed the Towns and Village Acts. It has failed to ensure that, in actual practice, forced labour is no longer imposed by the authorities, especially the military, it has failed to make adequate budgetary provision for the replacement of forced and unpaid labour and it has failed to ensure that penalties for the exaction of forced labour under the Penal Code have been strictly enforced against civil and military authorities.

Although none of the recommendations have been fully implemented, there are however some positive signs that the ILO is getting its message across to

the government and that it is gradually moving in the right direction. Awareness-raising activities are increasing and are well received by the government, cooperation in the functioning of the complaints mechanism is going well and positive signs have been recognized in the release of underage recruits from the military. In addition, there is recent indication by the government that it will make the necessary legislative amendments to prohibit forced labour. However, so long as the government does not make amendments to the constitution, these legislative amendments do not carry much weight. Another positive sign is that the authorities have recently started to prosecute and sentence civilian officials who have committed forced labour violations on the basis of the Penal Code. There has however regrettably been no information concerning prosecution of any military personnel under the Penal Code. Although the Myanmar authorities have up until now not been very responsive to action by the ILO, *and* especially not to action by the UN, one must hope that those few positive steps identified are indications of a brighter future for Myanmar.

It must be borne in mind that neither the ILO nor the UN, or any other part of the international system, have the power to force Myanmar to change its fundamental systems or the way it treats its citizens. It is only when Myanmar has truly shown that it is ready to make that change, particularly by setting up a new regime that reflects the will of the people and puts emphasis on human rights, that international organizations are in a position to shape the changes that come about.

If or when this change will in fact happen sometime in the future, the detailed analysis, the technical assistance offered and the specific and concrete recommendations of the ILO to problems it has identified – compared to much more general recommendations by the UN that do not describe in a specific and detailed way what exactly needs to be done – will likely provide a useful guidance which a new regime could look for to eradicate forced labour and better secure human rights. The necessary steps have been clearly identified, but they need to be effectively implemented by a willing government.

It is the hope of this author that the release of Aung San Suu Kyi, the November 2010 elections and other positive steps identified are an indication that Myanmar is willing to move in a direction to make such a fundamental change, where human rights are secured and forced labour practices cease to exist.

Bibliography

Books and articles

An international organization for social justice, The ILO and the Quest for Social Justice, 1919-2009, Geneva, 2009.

Arendshorst, John: *The Dilemma of Non-Interference: Myanmar, Human Rights and the ASEAN Charter*, Northwestern Journal of International Human Rights, Vol. 8, Issue 1 (Fall 2009).

Brownlie, Ian: *Principles of Public International Law*, 6th Ed., Oxford University Press, New York, 2003.

Burke, Robert Joseph Jr.: *Turning the Lens Inward: Focusing on International Human Rights Issues in Burma*, Williamette Bulletin International Law & Policy, Vol. 4:87, 1996.

Ewing-Chow, Michael: *First Do No Harm: Myanmar Trade Sanctions and Human Rights*, Northwestern University Journal of International Human Rights, Vol. 5, Issue 2, spring 2007.

Higgins, Rosalyn: *Human Rights in the International Court of Justice*, Leiden Journal of International Law, 20, 2007.

International Human Rights Monitoring Mechanisms, Essays in honour of Jakob Th. Möller, 2nd Revised Edition, 2009:

- Kjærøum, Morten: *State Reports*.

- Klabbers, Jan: *The Security Council and Human Rights*.

- Ramcharan, Bertie G.: *The Office of the UN High Commissioner for Human Rights*.

- Sunga, Lyal S.: *What Effect if Any Will the UN Human Rights Council Have on Special Procedures*.

- Swepston, Lee: *ILO and Human Rights*.

Knott, Lucas: *UNOCAL revisited: On the difference between slavery and forced labour in international law*, 28 Wisconsin International Law Journal, 201, 2010.

Maupain, Francis: *Is the ILO Effective in Upholding Workers' Rights?: Reflections on the Myanmar Experience*, in Philip Alston's (Ed.), *Labour Rights as Human Rights*, Oxford University Press, New York, 2005.

Steinberg, David I.: *Burma/Myanmar: What Everyone Needs to Know*, Oxford University Press, 2010.

Steiner, Henry, Alston, Philip and Goodman, Ryan: *International Human Rights in Context*, Third Ed., Oxford University Press, New York, 2007.

Swepston, Lee: *Human Rights at Work, Supervisory Mechanisms of the International Labor Organization*. Available at:
<http://www.leeswepston.net/supersys.htm> [Accessed on 28 March 2011].

Tapiola, Kari and Swepston, Lee: *The ILO and the Impact of Labour Standards: Working on the Ground after an ILO Commission of Inquiry*, Stanford Law and Policy Review, Vol. 21, Issue 3(2010).

Tomuschat, Christian: *Human Rights, Between Idealism and Realism*, Second Ed., Oxford University Press, New York, 2008.

Yaraslau, Kryvoi: *Why European Union Trade Sanctions Do Not Work*, Minnesota Journal of International Law, Vol. 17, Issue 2 (Summer 2008).

Handbooks and guidelines

Combating Forced Labour: A Handbook for Employers and Business, International Labour Office, 2008. Available at:
http://www.ungift.org/docs/ungift/Steering-committee/ILO_EGI.pdf
[Accessed on 3 March 2011].

Simple Guide to the UN Treaty Bodies, International Service for Human Rights (ISHR), 9 July 2010. Available at:
<http://www.ishr.ch/guides-to-the-un-system/simple-guide-to-treaty-bodies>
[Accessed on 22 March 2011].

The Rules of the Game: a Brief Introduction to International Labour Standards, International Labour Office, International Labour Organization, Revised Edition, Geneva, 2009. Available at:
http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_108393.pdf [Accessed on 28 February 2011].

The United Nations Human Rights System: How To Make It Work For You, United Nations, UNCTAD/NGLS/2008/2, New York and Geneva 2008. Available at:
http://www.un-ngls.org/IMG/pdf/Final_logo.pdf [Accessed on 17 March 2011].

International legal instruments

United Nations

Charter of the United Nations, adopted on 26 June 1945.

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the United Nations General Assembly, Resolution 39/46, on 10 December 1984.

Convention on the Elimination of all Forms of Discrimination against Women, adopted by the United Nations General Assembly on 18 December 1979.

Convention on the Rights of Persons with Disabilities, adopted by the United Nations General Assembly on 13 December 2006.

Convention on the Rights of the Child, adopted by the United Nations General Assembly, Resolution 44/25, on 20 November 1989.

Convention on the Prevention and Punishment of the Crime of Genocide, adopted by the United Nations General Assembly on 9 December 1948.

International Convention on the Elimination of all Forms of Racial Discrimination, adopted by the United Nations General Assembly, Resolution 2106 (XX), on 21 December 1965.

International Convention on the Protection of All Persons from Enforced Disappearance, adopted by the United Nations General Assembly, Resolution A/RES/61/177, on 20 December 2006.

International Convention on the Protection of the Rights of All Migrant Workers and their Families, adopted by the United Nations General Assembly, Resolution 45/158, on 18 December 1990.

International Covenant on Civil and Political Rights, adopted by the General Assembly of the United Nations, Resolution 2200A (XXI), 16 December 1966.

International Covenant on Economic, Social and Cultural Rights, adopted by the United Nations General Assembly, Resolution 2200A (XXI), 16 December 1966.

Rome Statute of the International Criminal Court, adopted on 17 July 1998.

Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices similar to Slavery, adopted by the United Nations Conference of Plenipotentiaries, on 7 September 1956.

Universal Declaration of Human Rights, adopted by the United Nations General Assembly, on 10 December 1948.

Vienna Convention on the Law of Treaties, adopted by the United Nations General Assembly on 22 May 1969.

International Labour Organization

Abolition of Forced Labour Convention, 1957 (No. 105), adopted by the General Conference of the International Labour Organization on 25 June 1957, Geneva.

Constitution of the International Labour Organization, adopted by the Paris Peace Conference in April 1919.

Declaration of Philadelphia, adopted by the General Conference of the International Labour Organization on 10 May 1944.

Declaration of Fundamental Rights and Principles at Work, adopted by the General Conference of the International Labour Organization on June 18 1998.

Forced Labour Convention, 1930 (No. 29), adopted by the General Conference of the International Labour Organization on 28 June 1930.

Forced Labour (Indirect Compulsion) Recommendation, 1930 (No. 35), adopted by the General Conference of the International Labour Organization on 28 June 1930.

Migration for Employment Convention (Revised), 1949 (No. 97), adopted by the General Conference of the International Labour Organization on 1 July 1949.

The Employment Policy Convention, 1964 (No. 122), adopted by the General Conference of the International Labour Organization, on 9 July 1964, Geneva.

The Indigenous and Tribal Peoples Convention, 1989 (No. 169), adopted by the General Conference of the International Labour Organization on 27 June 1989.

The Special Youth Schemes Recommendation, 1970 (No. 136), adopted by the General Conference of the International Labour Organization on 23 June 1970.

Worst Forms of Child Labour Convention, 1999 (No. 182), adopted by the General Conference of the International Labour Organization, on 17 June 1999, Geneva.

Regional organizations

African (Banjul) Charter on Human and People's Rights, adopted on 27 June 1981.

American Convention on Human Rights (the Pact of San José), adopted on 22 November 1969.

Convention for the Protection of Human Rights and Fundamental Principles (European Convention on Human Rights), adopted on 4 November 1950.

Other international instruments

Declaration Relative to the Universal Abolition of the Slave Trade, adopted by the Congress of Vienna on 8 February 1815.

Internet sources

An overview of all Conventions that Myanmar has ratified, International Labour Organization. Available at: <http://www.ilo.org/ilolex/cgi-lex/ratific.pl?Myanmar> [Accessed on 7 April 2011].

An overview of all existing UN human rights treaties, United Nations. Available at: <http://treaties.un.org/pages/Treaties.aspx?id=4&subid=A&lang=en> [Accessed on 7 April 2011].

An overview of all the GA resolutions since 1946. Available at: <http://www.un.org/documents/resga.htm> [Accessed on 29 April 2011].

Basic facts about the Universal Periodic Review, The Office of the High Commissioner for Human Rights. Available at: <http://www.ohchr.org/en/hrbodies/upr/pages/BasicFacts.aspx>

British Broadcasting Corporation (BBC). Available at: <http://news.bbc.co.uk/2/hi/7010202.stm>
http://news.bbc.co.uk/2/hi/asia-pacific/country_profiles/1300003.stm#facts
[Accessed on 4 April 2011].
http://news.bbc.co.uk/2/hi/asia-pacific/country_profiles/1300003.stm#facts
[Accessed on 4 April 2011].

Conventions and Recommendations, International Labour Organization. Available at: <http://www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang--en/index.htm>

Country Offices/Stand-alone Offices, The Office of the High Commissioner for Human Rights. Available at: <http://www.ohchr.org/EN/Countries/Pages/CountryOfficesIndex.aspx>

Development Cooperation, International Labour Organization. Available at:
<http://www.ilo.org/public/english/bureau/pardev/civil/index.htm>

General Surveys, International Labour Organization. Available at:
<http://www.ilo.org/ilolex/english/surveyse.htm>

Human Development Reports, United Nations Development Programme.
Available at:
<http://hdr.undp.org/en/statistics/>

Human Rights Council Advisory Committee, The Office of the High Commissioner for Human Rights. Available at:
<http://www2.ohchr.org/english/bodies/hrcouncil/advisorycommittee.htm>

Member States of the ILO, International Labour Organization. Available at:
<http://www.ilo.org/ilolex/english/mstasee.htm#msm> [Accessed on 7 April 2011].

Member States of the UN, United Nations.
Available at: <http://www.un.org/en/members/#m> [Accessed on 7 April 2011].

Office of the ILO Liaison Officer in Myanmar (ILO-Yangon), International Labour Organization. Available at:
<http://www.ilo.org/yangon/lang--en/index.htm> [Accessed on 21 April 2011].
<http://www.ilo.org/yangon/complaints/lang--en/index.htm> [Accessed on 22 April 2011].

Security Council Press Release 12 January 2007, United Nations. Available at: <http://www.un.org/News/Press/docs/2007/sc8939.doc.htm> [Accessed on 16 April 2011].

Special Procedures assumed by the Human Rights Council, Thematic mandates, The Office of the High Commissioner for Human Rights.
Available at:
<http://www2.ohchr.org/english/bodies/chr/special/themes.htm>

Special Procedures assumed by the Human Rights Council, Country mandates, The Office of the High Commissioner for Human Rights.
Available at:
<http://www2.ohchr.org/english/bodies/chr/special/countries.htm>

Special Procedures of the Human Rights Council, the Office of the High Commissioner for Human Rights.
Available at: <http://www2.ohchr.org/english/bodies/chr/special/index.htm>

Statement by Ms. Louise Arbour, former UN High Commissioner for Human Rights on the occasion of the 5th Special session of the Human Rights

Council, Geneva, 2 October 2007, United Nations. Available at: <http://www.unhcr.ch/hurricane/hurricane.nsf/view01/28705E13C6B50750C1257368004CB6D6?opendocument> [Accessed on 4 April 2011].

Technical assistance and training, International Labour Organization. Available at: <http://www.ilo.org/global/standards/applying-and-promoting-international-labour-standards/technical-assistance-and-training/lang--en/index.htm>

The Boston Globe. Available at: http://www.boston.com/news/world/asia/articles/2011/01/09/myanmar_enacts_military_draft_law/ [Accessed on 6 April 2011].

The New York Times. Available at: <http://www.nytimes.com/2007/09/24/world/asia/24myanmar.html>

UN General Assembly Resolutions, United Nations. Available at: <http://www.un.org/documents/resga.htm>

Universal Periodic Review, The Office of the High Commissioner for Human Rights. Available at: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRmain.aspx>

Reports

United Nations

Special Rapporteurs

Report by the Special Rapporteur on the situation of human rights in Myanmar, E/CN.4/1993/37, 17 February 1993.

Report by the Special Rapporteur on the situation of human rights in Myanmar, E/CN.4/1994/57, 16 February 1994.

Report by the Special Rapporteur on the situation of human rights in Myanmar, E/CN.4/1995/65, 12 January 1995.

Report by the Special Rapporteur on the situation of human rights in Myanmar, E/CN.4/1996/65, 5 February 1996.

Report by the Special Rapporteur on the situation of human rights in Myanmar, E/CN.4/1997/64, 6 February 1997.

Report by the Special Rapporteur on the situation of human rights in Myanmar, E/CN.4/1998/70, 15 January 1998.

Report by the Special Rapporteur on the situation of human rights in Myanmar, E/CN.4/1999/35, 22 January 1999.

Interim report of the Special Rapporteur on the situation of human rights in Myanmar, A/60/221, 12 August 2005.

Report by the Special Rapporteur on the situation of human rights in Myanmar, A/61/369, 21 September 2006.

Report by the Special Rapporteur on the situation of human rights in Myanmar, A/HRC/4/14, 12 February 2007.

Report of the Special Rapporteur on the situation of human rights in Myanmar, Human Rights Council, A/HRC/7/24, 7 March 2008.

Report by the Special Rapporteur on the situation of human rights in Myanmar, A/HRC/10/19, 11 March 2009.

Progress report of the Special Rapporteur on the situation of human rights in Myanmar, Human Rights Council, A/HRC/13/48, 10 March 2010.

Progress report of the Special Rapporteur on the situation of human rights in Myanmar, Human Rights Council, A/HRC/16/59, 7 March 2011.

Special Envoy to the Secretary-General

Report of the Secretary-General on the situation of human rights in Myanmar, E/CN.4/1995/110, 21 February 1995.

Report of the Secretary-General on the situation of human rights in Myanmar, A/51/660, 8 November 1996.

Universal Periodic Review

Draft report of the Working Group on the Universal Periodic Review, Myanmar, A/HRC/WG.6/10/L.7, 2 February 2011. Available at: http://lib.ohchr.org/HRBodies/UPR/Documents/Session10/MM/Myanmar-A_HRC_WG.6_10_L.7-eng.pdf [Accessed on 10 May 2011].

Universal Periodic Review National Report of Myanmar, A/HRC/WG.6/10/MMR/1, 10 November 2010. Available at: <http://www.ohchr.org/EN/HRBodies/UPR%5CPAGES%5CMMSession10.aspx> [Accessed on 5 April 2011].

International Labour Organization

Committee of Experts

Report of the Committee of Experts on the Application of Conventions and Recommendations, International Labour Conference, 90th Session, 2002.

Report of the Committee of Experts on the Application of Conventions and Recommendations, International Labour Conference, 93rd Session, 2005.

Report of the Committee of Experts on the Application of Conventions and Recommendations, International Labour Conference, 95th Session, 2006.

Report of the Committee of Experts on the Application of Conventions and Recommendations, International Labour Conference, 97th Session, 2008.

Report of the Committee of Experts on the Application of Conventions and Recommendations, International Labour Conference, 98th Session, 2009.

Report of the Committee of Experts on the Application of Conventions and Recommendations, International Labour Conference, 99th Session, 2010.

Report of the Committee of Experts on the Application of Conventions and Recommendations, International Labour Conference, 100th Session, 2011.

Committee on the Application of Conventions and Recommendations

Report of the Committee on the Application of Standards, 99th Session, Geneva, June 2010. Available at:

http://www.ilo.org/global/standards/information-resources-and-publications/WCMS_145220/lang--en/index.htm [Accessed on 7 April 2011].

Commission of Inquiry

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), 2 July 1998, International Labour Office, Geneva. Available at:

<http://www.ilo.org/public/english/standards/relm/gb/docs/gb273/myanmar.htm> [Accessed on 4 March 2011].

Committee on Legal Issues and International Labour Standards

Reports of the Committee on Legal Issues and International Labour Standards, Second report: International labour standards and human rights, Governing Body, 306th Session, Geneva, November 2009.

Committee on the Freedom of Association

351st Report of the Committee on Freedom of Association, 303rd Session, Geneva, November 2008. Available at:
http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_100625.pdf [Accessed on 6 April 2011].

Director-General

Report of the Director-General, *Stopping Forced Labour*, A Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, International Labour Conference, 89th Session, 2001, International Labour Office, Geneva. Available at:
<http://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/meetingdocument/kd00014.pdf> [Accessed on 3 March 2011].

Report of the Director-General, *A Global Alliance Against Forced Labour: A Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work*, International Labour Conference, 93rd Session, 2005, International Labour Office, Geneva. Available at:
<http://www.ilo.org/public/english/standards/relm/ilc/ilc93/pdf/rep-i-b.pdf>.

Report of the Director-General, *The Cost of Coercion: A Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work*, International Labour Conference, 98th Session, 2009, International Labour Office, Geneva. Available at:
http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_106268.pdf

Governing Body

Developments concerning the question of the observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29), Governing Body, GB.304/5/1(Rev.), 304th Session, Geneva, March 2009.

Developments concerning the question of observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29), Governing Body, 307th Session, GB.307/6, March 2010.

Developments concerning the question of the observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29), Governing Body, GB.309/6, 309th Session, Geneva, November 2010.

Developments concerning the question of the observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29), Governing Body, 310th Session, Geneva, March 2011, GB.310/5, Overview.

Developments concerning the question of the observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29), dec-GB.310/5, 24 March 2011, Conclusions concerning Myanmar.

Review of Annual reports under the ILO Declaration on Fundamental Principles and Rights at Work, Governing Body, GB.310/3, 310th Session, Geneva, March 2011. Available at:

http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_152684.pdf [Accessed on 29 April 2011].

International Labour Conference

Measures recommended by the Governing Body under article 33 of the Constitution – Implementation of recommendations contained in the report of the Commission of Inquiry entitled Forced Labour in Myanmar (Burma), International Labour Conference, 88th Session, Geneva, 2000, Appendix, Resolution submitted to the Conference. Available at:

<http://www.ilo.org/public/english/standards/relm/ilc/ilc88/pdf/pr-6-4.pdf> [Accessed on 29 March 2011].

General Survey concerning the Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105), International Labour Conference, 96th Session 2007, Report III (Part 1B). Available at:

[http://www.ilo.org/public/libdoc/ilo/P/09661/09661\(2007\)1B.pdf](http://www.ilo.org/public/libdoc/ilo/P/09661/09661(2007)1B.pdf) [Accessed on 3 March 2011].

Liaison Officer

Report of the Liaison Officer to the Special Sitting on Myanmar (Convention No. 29) of the Committee on the Application of Standards, International Labour Conference, 99th Session, Geneva, June 2010.

Other reports

Martin, Michael F.: *Burma's 2010 Elections: Implications of the New Constitution and Elections Laws*, Congressional Research Service, 29 April 2010. Available at: <http://www.fas.org/sgp/crs/row/R41218.pdf> [Accessed on 4 April 2011].

Trafficking in Persons Report, U.S. State Department, June 2007. Available at: <http://www.state.gov/documents/organization/82902.pdf> [Accessed on 10 March 2011].

World Report 2011: Burma, Country summary, Human Rights Watch, January 2011. Available at: <http://www.hrw.org/en/world-report-2011/burma> [Accessed on 6 April 2011].

Resolutions

United Nations

Commission on Human Rights Resolution, 1992/58, 3 March 1992.

Commission on Human Rights Resolution, C/EN.4/1993/37, 17 February 1993.

General Assembly Resolution A/RES/48/141, 20 December 1993.

General Assembly Resolution, A/RES/53/162, 25 February 1999.

General Assembly Resolution, A/RES/54/186, 29 February 2000.

General Assembly Resolution, A/RES/55/112, 1 March 2001.

General Assembly Resolution, A/RES/56/231, 28 February 2002.

General Assembly Resolution, A/RES/57/231, 28 February 2003

General Assembly Resolution, A/RES/59/263, 17 March 2005.

General Assembly Resolution, A/RES/60/251, 15 March 2006.

General Assembly Resolution, A/RES/60/233, 23 March 2006.

General Assembly Resolution, A/RES/61/232, 13 March 2007.

General Assembly Resolution, A/RES/63/245, 23 January 2009.

General Assembly Resolution, A/RES/64/238, 26 March 2010.

General Assembly Resolution, A/RES/65/241, 21 March 2011.

Human Rights Council draft resolution on the situation of human rights in Myanmar, A/HRC/16/L.11, 18 March 2011.

Human Rights Council Resolution 5/1, 18 June 2007.

International Labour Organization

Resolution on the widespread use of forced labour in Myanmar, International Labour Conference, 87th Session, Geneva, June 1999. Available at:

<http://www.ilo.org/public/english/standards/relm/ilc/ilc87/com-myan.htm>
[Accessed on 29 April 2011].

Other documents

United Nations

Committee on Economic, Social and Cultural Rights: General Comment No. 18, the Right to Work, Adopted on 25 November 2005, Article 6 of the International Covenant on Economic, Social and Cultural Rights, Economic and Social Council, E/C.12/GC/18, 6 February 2006. Available at: <http://tb.ohchr.org/default.aspx?Symbol=E/C.12/GC/18> [Accessed on 28 February 2011].

Committee on the Elimination of Discrimination against Women, Concluding observations, Myanmar, CEDAW/C/MMR/CO/3, 7 November 2008. Available at: <http://tb.ohchr.org/default.aspx?country=mm> [Accessed on 27 April 2011].

Committee on the Rights of the Child, Concluding observations, Myanmar, CRC/C/15/Add.237, 30 June 2004. Available at: <http://tb.ohchr.org/default.aspx?country=mm> [Accessed on 27 April 2011].

Fact Sheet No. 7/Rev.1, Complaints Procedure, Office of the High Commissioner for Human Rights. Available at: <http://www.ohchr.org/Documents/Publications/FactSheet7Rev.1en.pdf>. [Accessed on 22 March 2011].

Response by Myanmar to the recommendations contained in the concluding observations of the Committee following the examination of the combined second and third periodic report of Myanmar on 3 November 2008, CEDAW/C/MMR/CO/3/Add.2, 3 December 2010. Available at: <http://tb.ohchr.org/default.aspx?country=mm> [Accessed on 27 April 2011].

Rules of Procedure of the Committee on the Elimination of Discrimination against Women.

Rules of Procedure of the General Assembly of 2007.

International Labour Organization

An agreement for the extension of the Supplementary Understanding between the Government of Myanmar and the ILO, dated 23 February 2011. Available at: http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-yangon/documents/legaldocument/wcms_152627.pdf [Accessed on 21 April 2011].

Complaint concerning the 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 (June 2010) of the International Labour Conference under article 26 of the Constitution of the ILO, Governing Body, 310th Session, Geneva, March 2011. Available at: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_153021.pdf [Accessed on 6 April 2011].

Response by Myanmar to the recommendations contained in the concluding observations of the Committee following the examination of the combined second and third periodic report of Myanmar on 3 November 2008, CEDAW/C/MMR/CO/3/Add.2, 3 December 2010.

National documents

Constitution of the Union of Myanmar from 2008.

Oral sources

Swepston, Lee, ILO's Senior Advisor on Human Rights, Lecture speech, University of Lund, Sweden, 14 April 2010.