



SIXTH ITEM ON THE AGENDA

**Effect given by the Government of Myanmar to the recommendations of the Commission of Inquiry established to examine the observance of the Forced Labour Convention, 1930 (No. 29)**

**Report of the ILO technical cooperation mission to Myanmar (Friday, 20 October-Thursday, 26 October 2000)**

**1. Origin of the mission**

1. In talks with the Permanent Representative of Myanmar, Ambassador U Mya Than, shortly after the conclusion of the 88th Session of the International Labour Conference, the Director-General emphasized the need for urgent action on the part of the Myanmar authorities to give effect as quickly as possible to the resolution adopted by the Conference at its 88th Session. He recalled that the resolution in question had authorized the Office to respond positively to all requests by Myanmar for assistance in attaining that goal. On 14 July, the Director-General followed up this conversation with a letter addressed to the Minister of Labour of Myanmar (Annex 1).
2. In an interim reply dated 7 August (Annex 2), the Minister of Labour, while expressing regret that the Conference had not chosen the path of cooperation to resolve the issue, stated that consultations were in progress in Yangon with a view to the adoption of a considered position.
3. On 8 September, the Director-General met the Minister of Foreign Affairs of Myanmar, Mr. Win Aung, at the United Nations Millennium Summit. During the meeting, the Director-General again emphasized the increasing urgency of action on the part of the Myanmar authorities to give effect to the Conference resolution, given that the next session of the Governing Body was only two months away, and recalled that such action was needed in the three main areas indicated in the resolution, namely legislative, executive and administrative measures. In the absence of any concrete action in those areas, the measures adopted by the Conference would take effect. The Minister assured the Director-

General of his cooperation and said that he would communicate to the highest authorities the clear message that had been given.

4. In a letter dated 15 September (Annex 3), the Minister of Labour informed the Director-General that Myanmar would be happy to welcome a technical cooperation mission at the beginning of October. In his reply of 21 September (Annex 4), the Director-General specified the conditions in which the mission could take place. Those conditions related, on the one hand, to the purpose of the mission (helping the authorities to establish the framework of legislative, executive and administrative measures requested by the Conference) and, on the other hand, to the legal status and the freedom of action and contacts of the mission, which had been recognized and respected during the previous mission in May 2000. A letter confirming those conditions in general terms was transmitted to Geneva on 6 October (Annex 5). Unlike the original intentions indicated in the letter of 15 September (which referred to the beginning of October), the letter proposed that the visit should take place only from 20 October onwards. Despite the efforts by the Director-General to bring that date forward (see his letter of 9 October, reproduced in Annex 6), it was confirmed as 20 October and the mission left Geneva on Thursday, 19 October, arriving in Yangon on Friday, 20 October. The mission consisted of:

- Mr. Francis Maupain, Special Adviser to the Director-General;
- Mr. Max Kern, Chief, Freedom of Workers Section;
- Mr. Muneto Ozaki, Director of Research and Policy Development, InFocus Programme on Strengthening Social Dialogue;
- Mr. Rueben Winston Dudley, Deputy Director, ILO Regional Office for Asia and the Pacific;
- Mr. Richard Horsey, Adviser, ILO.

## 2. The technical discussions

5. On its arrival, the mission was presented with a proposed programme in which the first two days (Saturday and Sunday) would have been taken up with a visit to Kanbauk, the headquarters of a natural gas extraction project. The mission declined this part of the programme, on the grounds that its mandate related solely to the establishment of the framework of measures referred to by the Conference in its resolution, and that it would have no time left over from the few days that it had planned to spend in Yangon to assist the Government in establishing that framework. The mission was thus able to hold its first working session on Saturday morning. The detailed programme of discussions and the list of the officials met by the mission are reproduced in Annex 7.

### (a) *The parameters of the discussion*

6. During its first meeting, the mission was anxious to recall the context in which the discussions should take place and in particular the need for the authorities to be able to report on the concrete actions undertaken in the legislative, executive and administrative areas, as the Director-General had reminded the Minister of Foreign Affairs, Mr. Win Aung.
7. With regard to its objective and the limits of its mandate, the mission recalled that its job was to offer technical assistance to the authorities in establishing the required framework by providing any clarification that might be needed as to the meaning of the

recommendations of the Commission of Inquiry to which the Conference resolution refers. It was no part of the mission's mandate to negotiate any compromise, but simply to report objectively to the Governing Body on the progress and outcome of the discussions. It is for the Governing Body in November to assess the degree to which the requirements have been fulfilled.

**(b) Analysis of the results**

8. A fairly detailed record of the discussions is reproduced in the appendix, in the chronological order of the meetings.
9. However, a more synthetic approach to the examination of the results obtained in relation to the stated objectives would appear to be necessary to enable the Governing Body to determine whether and to what extent the terms of the resolution adopted by the Conference at its 88th Session (Annex 8), which itself refers to the recommendations of the Commission of Inquiry (Annex 9) and to the conclusions of the first technical mission to Myanmar between 23 and 27 May 2000 (Annex 10) have been satisfied. This analysis will be based on two main aspects: on the one hand, the legislative measures, and on the other hand, the executive and administrative measures required to eliminate forced labour in Myanmar in law and in practice.

**(i) Results in the area of legislation**

10. The objective, as summarized in point (i) of the conclusions in the report of the ILO technical cooperation mission in May and stated again in the Conference resolution, consists in "rendering all practices constituting forced labour in the sense of Convention No. 29 illegal under national law, and ensuring that all legislative provisions in force that permit the imposition of forced labour are repealed or appropriately amended".
11. **That objective implies "in particular" that the Village Act and the Towns Act be brought into line with the Forced Labour Convention, 1930 (No. 29).** Two obstacles to the attainment of that goal have become apparent, one in terms of form and the other in terms of substance.
12. *With regard to the form*, the Myanmar authorities, referring in particular to the fact that they were not an elected government, did not consider that they could directly amend the Acts in question. For that reason, with Order No. 1/99, they adopted the solution of a text that had force of law in the country's legal system and which directed all the authorities concerned not to exercise certain powers granted under the Acts in question to requisition labour. The Committee of Experts on the Application of Conventions and Recommendations noted that this could lead to the risk of a return to the previous state of affairs.<sup>1</sup>
13. The mission endeavoured more directly to obtain the amendment or withdrawal of the relevant provisions of the Towns Act and the Village Act. While retaining the form of an Order, which appeared to be the only type of instrument which the authorities could imagine, the first proposal presented by the mission (Annex 13) envisaged the simple deletion of the offending provisions, or amendments where appropriate. This proposal was not retained in the third draft presented by the representatives of the Myanmar authorities

<sup>1</sup> ILO, *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 1A), International Labour Conference, 88th Session, 2000, pages 107-112.

(Annex 14). The Government representatives considered that the report of the Commission of Inquiry did not require the amendment of the offending provisions, but simply that those provisions be “brought into line” with the Convention. The second proposal presented by the mission (Annex 16) – which was also not accepted – was based on another approach: it proposed that a statement of the general principle according to which any imposition of forced labour is illegal and constitutes an offence under Myanmar law, which the authorities had agreed to include in the preamble of the Order, should be followed by a clause to the effect that any inconsistent provision in existing legislation was repealed or amended to the extent necessary; this would have covered the offending provisions of the two Acts in question.

14. Although these two proposed formulas were not accepted, the text of the supplementary Order nevertheless marks a significant departure from the first version of the addendum. In the first draft addendum to Order No. 1/99 (Annex 11), which was shown to the mission on its arrival, no amendment on this point was made to Order No. 1/99. Clause 5 of the first draft addendum merely reinforces clause 6 of the original Order by specifying that persons who fail to abide by the Order would be prosecuted under section 374 of the Penal Code or any other existing laws. (As the mission observed, this was paradoxically tantamount to saying that anyone invoking the provisions of the law would be liable to criminal sanctions.) Following discussions, the second draft addendum (Annex 12) introduced an amendment to Order No. 1/99 stating much more directly that the exaction of labour was prohibited. This appears to have the merit of preventing, at least to some extent, the risk of a step backwards, a risk which, as the Committee of Experts observed, was inherent in the original wording. The final text of the supplementary Order (Annex 19) reflects the wording of the third draft presented by the authorities: it directs all competent authorities without restriction not to requisition labour or services, notwithstanding the relevant provisions of the Village Act and Towns Act.
15. *As regards substance*, the above Acts authorize the competent authorities to requisition labour under conditions that go far beyond the exceptions allowed under Convention No. 29. As the Committee of Experts observed, Order No. 1/99 corrected this state of affairs in only a very partial manner. Under the terms of clause 5(b) of the Order, requisitions for work or services of the kind referred to in Article 10 of the Convention are still allowed, that is to say, work or services that were only acceptable during a “transitional” period which has long since passed.
16. The first and second versions of the addendum submitted by the Myanmar authorities also perpetuated this incompatibility. However, in the light of the discussions, the third version as reproduced in the final text clearly indicates in clause 1(b) that the only cases in which the authorities may invoke these Acts in order to requisition labour or services are cases of *force majeure* allowed for under Article 2, paragraph 2(d), of the Convention. It will also be noted that clause 2 of the final text establishes additional limits to the conditions under which requisitions authorized by the Convention may be made.
17. **However, the objective of rendering all practices constituting forced labour in the sense of Convention No. 29 illegal under national law is not merely a question of amending the Towns Act and the Village Act.** As the Commission of Inquiry stated in its report, labour is requisitioned without reference to these Acts, particularly by the military. It therefore appeared desirable, in the interest of greater legal certainty, to announce the prohibition of all forms of forced labour in more general terms, in such a way as to extend section 374 of the Penal Code, which provides for sanctions only in the case of *illegal* requisitions of labour, to cover all such requisitions, whether or not they are based on the provisions of the Towns Act and Village Act. This objective, which must be promoted through specific instructions which will be dealt with under the second main area of measures required, may also be attained through a clause of general scope.

18. The difficulty here is that the scope of Order No. 1/99 is strictly limited to the area covered by the Towns Act and Village Act; the title of the Order itself indicates that it directs “not to exercise powers under certain provisions” of the Acts in question. This difficulty remained with the first two versions of the proposed addendum presented by the Government (Annexes 11 and 12). However, the third version (Annex 14) that was proposed following discussions contains something new: a preamble of general scope, which states that requisitioning of forced labour is illegal and is an offence under the existing laws of Myanmar. The scope of this innovation is reinforced in the final version (Annex 19), which is no longer presented in the form of an addendum to Order No. 1/99 but as an “Order supplementing Order No. 1/99”. In the light of the discussions which led to it, this change must be interpreted as meaning that the scope of the supplementary Order is not restricted to that of Order No. 1/99 (which related to the Towns Act and Village Act) but has general applicability.

(ii) Results in terms of executive and administrative measures

19. The Commission of Inquiry in its recommendations, to which the resolution refers, emphasized the necessity of going beyond legislative changes and adopting concrete measures in all areas affected by forced labour to ensure “that in actual practice, no more forced or compulsory labour be imposed by the authorities”. This objective calls for different types of action: instructions must be issued to all levels of the military hierarchy; measures are needed to inform the public (of the consequences of violating the laws); and effective sanctions must be imposed on those responsible for violations, etc.

20. No explicit proposal concerning this aspect was included in the first draft addendum presented by the authorities. That draft, as noted above, was limited to modifying the application of the Towns Act and Village Act. However, it was planned that it should be communicated to the different authorities at the national and local level, in some cases with a transmittal letter requesting them to adopt the directives needed for implementation and thereby ensure that requisitions could not be effected in the areas under their authority.

21. In order to make good this deficiency, the mission proposed that the addendum should be reinforced with a supplementing Order (see Annex 13) giving more explicit instructions to all the authorities concerned, including the military and police authorities, not to impose or order the imposition of forced labour, and to specify the practices covered by this prohibition in order to dispel the all too prevalent uncertainty regarding the distinction between forced labour and voluntary labour noted by the Commission of Inquiry. This idea was not adopted. A second formula (see Annex 16) was proposed by the mission during the final work session. This involved adding to the text of the supplementary Order two paragraphs taken from the mission’s first proposal with a view to “marking out” the territory pending the adoption of more detailed instructions. This solution, too, was rejected. However, it will be noted that in the final version of the supplementary Order, the Minister of Defence is among the authorities that are asked to issue directives to their subordinate units to ensure that forced labour can no longer be imposed. It will also be seen that among the intended addressees are the Supreme Court and the Attorney-General’s Office, although no specific instructions are given to these authorities regarding the need to expedite prosecutions in connection with violations. The Managing Director of the Printing and Publishing Enterprise was also informed with a view to publication of the Order in the *Official Gazette* of Myanmar; however, it is reasonable to think that this publication is not read by “the whole population”, in the words of the previous mission’s recommendation.

22. Except for the transmittal letter referred to in paragraph 20 above, the original draft submitted by the authorities did not refer to the “administrative” measures required. The mission recalled the need to tackle this aspect, and put forward the idea (see Annex 13)

that among the accompanying administrative measures, the authorities could envisage an independent inspectorate which, provided that it offered the necessary guarantees, would make it possible to monitor application of the law with the necessary degree of credibility and, where necessary, investigate any deficiencies, while retaining the option of such other procedures as might be applicable.

**(c) *An ILO presence in Myanmar***

23. From the very first meeting, the mission recalled that at the appropriate time, when discussions on the required framework were sufficiently advanced, this question, which had been raised in the resolution of the Conference, would have to be discussed. The Government representatives expressed the opinion that this question should rather be discussed after the Governing Body meeting. While acknowledging that an ILO presence presupposed that the legislative, executive and administrative framework required under the terms of the resolution was in place, the mission pointed out that the acceptance of such a presence was intended to give greater credibility to the will of the authorities to give effect in practice to those measures; consequently, the authorities needed to define their position on this matter before the measures were submitted to the Governing Body.

**3. Talks with the competent ministers**

24. On Wednesday, 25 October, the mission had the opportunity of separate meetings with each of the Ministers chiefly concerned by this issue: the Minister of Foreign Affairs, U Win Aung; the Minister of Labour, Major-General Tin Ngwe; and the Minister of Home Affairs, Colonel Tin Hlaing. During the talks, the mission recalled that the context in which the Governing Body would be examining the question in three weeks' time was different from the one in which it had been presented to the International Labour Conference. It had become imperative to adopt the comprehensive framework of legislative, executive and administrative measures that had been requested by the Conference and were obviously in the country's own interests. This should be possible, given the very frank and open atmosphere that had been established between the participants. The views expressed by the three Ministers tended to confirm that there was a common political will to achieve a definitive solution. The Minister of Foreign Affairs emphasized the need for simple and clear legal texts which could be easily understood by all, which would help to dispel any suspicion of equivocation or manipulation. The matter of a possible future ILO presence was brought up with the Minister. After requesting some clarification concerning the ILO's decentralized structure in Asia, the Minister indicated that the question undoubtedly merited further consideration.

**4. Other meetings and contacts**

25. As is evident from the Director-General's letter of 21 September (Annex 4), the status and the freedom of action that had been requested, granted and fully respected during the first mission were among the conditions laid down for this one. However, the practical arrangements were different.
26. Given the limited time available, and in view of the very purpose of the mission, it was not possible to hold individual talks with a certain number of ambassadors, as the mission had done in May. The sole exception was the Ambassador of Japan, Mr. Shigeru Tsumori, who met the mission on the Friday evening of its arrival at the hotel, in the company of a counsellor and the First Secretary of the Embassy. The Ambassador assured the mission of the importance which the Government of Japan attached to this new visit and presented some information.

27. However, in response to the interest which its presence in Yangon had stimulated, the mission held two collective meetings, one with a group of ambassadors of Asian countries and one with OECD representatives. Without commenting on the discussions that were under way, the mission endeavoured to explain its general context and objectives and to answer the many questions concerning the scope of the recommendations of the Commission of Inquiry and the applicable procedure for a future implementation of article 33 of the ILO Constitution.
28. As it had done in May, the mission finally held a meeting at the UNDP Office with representatives of all the specialized agencies with a presence in Myanmar (UNICEF, FAO, WHO, HCR, UNAIDS, WFP, UNDP).
29. During its visit in May, the mission had met Daw Aung San Suu Kyi, General Secretary of the National League for Democracy (NLD). On arriving, the head of the mission was informed that, given that there had recently been a visit by the Special Envoy of the Secretary-General of the United Nations, Ambassador Ismail Razali, a further meeting with the NLD General Secretary would be inopportune. The mission emphasized that it was for it to decide whether or not such a visit was opportune and relevant in the light of its objectives, and pointed out that the possibility of conducting such a meeting was part of the freedom of action and contact to which the Myanmar authorities had agreed. The Government representatives drew attention to the fact that the situation had changed since May; the obstacle to such a visit did not lie in the fact that the mission was forbidden to meet Daw Aung San Suu Kyi, but rather in the fact that she was no longer authorized to receive visits. The Government representatives nevertheless agreed to pass on the mission's request, which was repeated during subsequent days at the highest level. At the meeting on 25 October referred to previously, the Minister of Foreign Affairs responded to the mission's request with his own request not to press the matter, given the process that had been initiated by the Special Envoy with the authorities and with Daw Aung San Suu Kyi herself.

## **5. Visit to Lieutenant-General Khin Nyunt, Secretary-1 of the SPDC**

30. Before returning to Geneva in the early evening of Thursday, the mission was received by Lieutenant-General Khin Nyunt in the presence of the Deputy Prime Minister, the Foreign Affairs, Home Affairs and Labour Ministers, and the Attorney-General.
31. The mission took the opportunity to recall the basic elements of the problem and to draw up a tentative account of the discussions so far. It recalled that during its previous visit, the discussion it had been able to have with Secretary-1 had prompted the authorities to take a step which, although limited, had led to important consequences. A far more decisive step was now needed, and the mission hoped that this new meeting might help to achieve this. In the current context, what was at stake was the credibility of the Myanmar authorities. As the Director-General had already indicated to the Minister of Foreign Affairs in September, the legislative, executive and administrative measures requested by the Conference as part of a comprehensive framework of measures would have to be presented to the Governing Body.
32. The mission recalled that its role was not to negotiate any form of compromise but to provide technical advice regarding the interpretation of the demands made by the Commission of Inquiry and by the Conference and regarding the manner in which progress might be made in implementing them. This role had been facilitated by the favourable climate of discussions which had made it possible to take a number of steps in the right

direction. In this regard the mission had been encouraged by the common political will of the three Ministers involved to find a satisfactory solution to the problem.

33. Nevertheless, with the same objectivity and openness that had prevailed during the technical discussions, the mission was bound to draw attention to a number of deficiencies that persisted in the three main aspects of the comprehensive framework requested. With regard to the legislative aspects, some progress had been made; for example, the authorities had agreed new steps towards revoking the legal force of the offending provisions of the Towns Act and Village Act and to issue a more general prohibition, even if this did not take the form of a direct amendment to the Acts in question.
34. With regard to the executive and administrative measures required, serious deficiencies remained, and it was in order to remedy these, at least partially, that the mission had proposed the same morning to include certain clarifications regarding the practices referred to by the Commission of Inquiry in the legislative text itself. The mission expressed the hope that those proposals could be taken into consideration by the time the Governing Body met. It emphasized that the establishment of the framework required should not be regarded as merely defensive, but should be seen in more positive terms as one means by which Myanmar could end its isolation at a time of economic globalization. Clear and resolute action would open up new prospects for international cooperation. The credibility of such action could not fail to be enhanced if the authorities agreed to an ILO presence in the country, once the necessary framework had been put in place.
35. Secretary-1 thanked the Office and the mission for this further visit. He had learned that the discussions had been constructive. The Government had always wanted to cooperate with the ILO and the Governing Body. However, the prevailing circumstances had to be taken into consideration. It had to be frankly admitted that forced labour had occurred in the past, in particular in the form of requisitioning of porters for military purposes. This had to be seen in a context in which the Government had faced 18 insurgencies. The Government was now endeavouring to rebuild the infrastructure in areas where insurgencies had occurred. In some cases, the work of reconstruction had made use of the goodwill of the people, but such labour had always been duly remunerated, even though the economic situation was such that it was not possible to pay adequate rates. Wages were sometimes paid into a common fund to finance community infrastructure projects – for example, schools.
36. Given the progress that had been made, forced labour was no longer necessary. Replying to certain reservations expressed by the mission, he emphasized that the Order would not be just on paper but would have an effect right down to local level, and violations of its provisions would be punished. Secretary-1 also said in this regard that, while in accordance with practice the Order had to be issued by the Ministry of Home Affairs and as such would have force of law, it was now planned that, in order to meet the concerns expressed by sceptics, the Order would be reinforced by a document issued by the SPDC itself.

## **6. The end of the mission and conclusions**

37. As it was about to board the plane to return to Geneva, the mission received a communication from the Minister of Labour addressed to the Director-General (Annex 17), to which was attached the text of an “Order supplementing Order No. 1/99”. This communication also included some informal comments addressed to the head of the mission. First, it emphasized that, pursuant to the mission’s talks with Secretary-1, the SPDC would itself reinforce the legislative document with a separate instruction enacted in its own name.



38. At the same time, the communication explained on behalf of the Government that, even if there was no commitment on the part of the SPDC itself for the moment, the question of an ILO presence would be considered favourably by Secretary-1. Having verified that this point could be mentioned in its report, the mission pointed out that agreeing to that presence would not in itself remedy any deficiencies in the framework which would have to be put in place before the matter was brought before the Governing Body for examination.
39. It seems appropriate to conclude with a number of observations of a more general nature. As regards the first objective of the resolution, it follows from what has been said that progress has been made in the area of legislation in bringing Myanmar legislation into line with Convention No. 29, even if the way chosen for correcting the offending provisions of the Towns Act and Village Act is not that of a direct amendment but the indirect way of seeking to deprive the provisions in question of legal force.
40. At the time of completing this report, progress is far less in evidence in terms of appropriate executive measures and the accompanying administrative and budgetary measures. Details of the practices that had been included in the version proposed that same morning by the mission were not included in the text of the new “supplementary Order” presented at the airport. In reply to the mission’s questions, it was stated, on the one hand, that the text now provided every guarantee that the imposition of forced labour in all its forms was now illegal and would be punished rigorously and, on the other, that the Convention itself did not contain such details. Nevertheless, it would appear that the authorities have been attentive to the frequently expressed view of the mission that the efforts of the authorities must not falter after the mission has gone. The SPDC document announced in the letter of the Minister of Labour of 26 October may in this respect introduce some new elements which, however, were not available at the time when this report was completed.<sup>2</sup>
41. Whatever the case may be, one important consideration undoubtedly needs to be borne in mind. Even if positive developments are seen in terms of executive and administrative measures by the time the Governing Body comes to examine this question, the effectiveness of their implementation in practice and their actual impact in practical terms (for example, in terms of legal proceedings against those responsible for violations) will not immediately be clear. It will thus be difficult at this stage to assess the extent to which “in actual practice no more forced or compulsory labour (is) imposed”, in the words of the Commission of Inquiry in its recommendations. However, in order to conclude that the implementation of one or more of the measures agreed by the Conference would be inappropriate, the Governing Body must be satisfied that the intentions expressed by the Minister of Labour of Myanmar in his letter of 27 May are translated into a framework of legislative, executive and administrative measures that are sufficiently concrete and detailed “*to demonstrate that the recommendations of the Commission of Inquiry have been fulfilled*”.
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<sup>2</sup> See GB.279/6/1(Add.1).

42. The mission could not conclude this report without thanking the Government representatives for receiving it and for the efficient practical arrangements made by them. It also wishes to thank the Resident Coordinator of the United Nations Mr. Patrice Coeur-Bizot, Mrs. Minako Nakatani of the UNDP and Mr. Léon de Riedmatten of the Centre for Humanitarian Dialogue for their very valuable support in fulfilling a very full programme in the limited time available.

## Appendix

### Chronological summary of discussions

#### ***Preliminary examination of the Government's original draft***

1. As this text resulted from the exchange of correspondence and in particular from the letter of 9 October 2000, the Director-General and the senior officials of the Office had impressed upon the authorities that, in order to save time, the mission would need to have access to the proposed legislative texts before it left Geneva if possible. Despite this, it was not given the initial draft until its arrival (see Annex 11). As will be seen from an examination of this text, it takes the form of an addendum to Order No. 1/99 of 14 May 1999 which would be issued by the Minister of Foreign Affairs under the directive of the SPDC. The principal amendment to this Order is contained in clause 5: this specifies simply that section 374 of the Penal Code will be applied to any person who fails to abide by Order No. 1/99 (by "exercising" powers derived from the Towns Act and the Village Act).
2. During the first meeting, the Government representatives presented this draft and gave a number of explanations to help the mission to understand how in the view of its authors the text responded to the demands formulated by the International Labour Conference with regard to the three main aspects of the general framework and to what extent it was meant to be complemented by other executive and administrative action. During this presentation, the following clarifications were made in response to the mission's questions.
  - *Legal scope of the text:* The Government representatives explained that the text took the form of an addendum to Order No. 1/99; since the latter had been promulgated on the authority of the SPDC, whose directives had force of law, it would have been inappropriate to proceed in a different way.
  - *The choice of an amendment to Order No. 1/99 rather than a direct amendment to the Towns Act and Village Act* (which had been requested for a long time – even before the Commission of Inquiry – and which at certain times appeared to have the support of the authorities): The Government representatives expressed the view that the Commission of Inquiry had not called expressly for the amendment of these Acts but had merely said that they should be "brought into line" with the Convention.
  - *Maintenance of an exemption based on the "transitional" provisions of Article 10 of the Convention* (although the Committee of Experts had already drawn attention to the incompatibility between clause 5(b) of the Order and the Convention, given that the transitional period to which Article 10 referred had long passed): The Government representatives argued that, since forced labour was now for the first time subject to a clear prohibition, the transitional period should logically be applicable again.
  - *Executive measures and specific instructions.* It is evident from the circulation list which accompanies the proposed addendum that it is intended to be communicated to certain authorities, in accordance with the transmittal letter, but it is not clear whether the military authorities are under the authority of the Minister of the Interior, or to what extent specific instructions are supposed to be given and to whom concerning specific practices. It was explained that the Minister of the Interior had 14 commissioners under his authority (one for each territorial subdivision), who in turn had assistant commissioners under their command in charge of each district. The military were placed under the authority of regional commanders in the different territorial subdivisions.
3. In the light of this presentation session and the questions asked by the mission, which suggested a number of possible changes, the Government representatives decided to prepare a revised draft. This is reproduced in Annex 12.

4. Taking due note of the revised draft and in particular the preamble, the mission suggested that instead of undertaking a point-by-point analysis of the text, it appeared more opportune to adopt a more systematic method of analysis. To that end it appeared to be necessary to recapitulate the desired objectives and to consider the extent to which successive texts, including the revised addendum, had led to progress in attaining those objectives or allowed deficiencies to persist.
5. As regards the legislative measures, the mission recalled that the stated objective of the Conference resolution is to render all forced labour illegal under national law. This objective involves, first, amendments to the Towns Act and the Village Act; those texts authorize the requisitioning of forced labour under conditions that go far beyond the exceptions authorized by the Convention. Order No. 1/99 was intended to remedy this state of affairs but fell far short of actually doing so, for reasons stated notably by the Committee of Experts. To summarize, this Order merely directed authorities “not to exercise powers under” certain provisions of the Towns Act and Village Act, rather than deleting or repealing those provisions, and thus left open the possibility of reverting to past practices. Furthermore, while the exceptions provided for under clause 5(a) of the Order were acceptable, the same was not true of clause 5(b), which corresponded to the “transitional” provisions of Article 10 of the Convention; these provisions long ago ceased to be applicable as justification for the imposition of forced or compulsory labour.
6. The question is thus whether the addendum and its revised version overcome these difficulties. As regards the problem of amending the pertinent provisions of the Towns Act and the Village Act, the second version (Annex 12) defines the term “not to exercise powers” as meaning “forbidding requisition of forced labour”. This does not remove the risk of reverting to the previous state of affairs except in a way which still appears very indirect and, in the end, relative. With regard to the incorrect use of the transitional provisions, the second version, like the original version before it, does nothing to solve the problem. This said, the two versions of the addendum, and in particular clause 6 of the second, contain positive elements which may open up useful opportunities. The clause in question specifically includes members of the armed forces and the police among the persons covered by the prohibition of the exercise of powers under the Towns Act and the Village Act, with the possibility of sanctions under section 374 of the Penal Code. This indirectly confirms that it is possible in general terms to define through an Order the forced labour practices that must be considered illegal for the purposes of the Penal Code and to punish such practices. Unfortunately, this prospect is completely vitiated by the preamble. Possibly as a result of translation difficulties, the preamble appears at best circular and at worst a retrograde step in that it prohibits practices that are illegal under the terms of existing legislation in Myanmar, when it is precisely that legislation that poses the problem.
7. Assuming that these flaws in the addenda can be corrected, other deficiencies will still have to be made good. While the necessity of rendering forced labour illegal concerns “in particular” the Towns Act and Village Act, as the Commission of Inquiry stated, the mission recalled that the matter did not stop there. The Commission of Inquiry’s report showed that in practice forced labour was imposed without reference to those Acts, and the legal uncertainty with regard to these practices meant that it was unclear whether they were covered by the prohibition under section 374 of the Penal Code. For that reason, it was all the more important that forced labour in all its forms be rendered illegal in clear terms, whether or not it was based on these particular legal texts, and that, in accordance with the findings of the Commission of Inquiry, specific instructions be issued to identify clearly the various practices covered by the prohibition.

### ***Presentation and discussion of an alternative proposal***

8. In the light of the preceding analysis, the mission then asked whether, given the time constraints and without encroaching on the prerogative of the Myanmar authorities to determine the final form of the framework requested by the Conference, it might be useful for the mission to submit a possible proposal in order to give a more concrete illustration of the way in which the points raised by the Conference might be implemented. By responding to such a proposal, the authorities could help the mission to understand the true nature of the obstacles and constraints which they have to face. The Government representatives accepted this proposal, but emphasized that any decision regarding such a proposal could only be taken at the political level.

9. The text prepared by the mission is reproduced in Annex 13. The following comments should be borne in mind:
- (i) In order to meet the concern of the Government representatives, this proposal takes the form of a new Order and retains, as far as possible, the non-contentious elements of Order No. 1/99.
  - (ii) Instead of attempting, as had been done with Order No. 1/99, to attain the desired objective by blocking the legal effect of the Towns Act and Village Act, the new draft Order directly amends the offending provisions of those Acts.
  - (iii) The Order is supported by a supplementary Order containing more specific instructions which, among other things, list the practices which, as the Commission of Inquiry emphasized in its report, are not always regarded by the authorities as forced labour.
  - (iv) Lastly, the document recalls that the accompanying budgetary and administrative measures must be an integral part of the overall framework, in accordance with the findings of the Commission of Inquiry and the Conference resolution. This schematic draft includes a reference to the possibility of an independent inspectorate. Replying to one question by the Government representatives, the mission said that this could be a national inspection system quite unconnected with any future ILO presence referred to previously.
10. The Government representatives received this presentation favourably. They asked for time to carry out consultations on the matter. Following the consultations, the mission was informed on Wednesday of a third draft addendum (Annex 14) which, according to the Government representatives, reflected all the concerns addressed by the mission's own proposal. The third draft was quickly followed by another variant (the fourth draft, reproduced in Annex 15), which differs from the previous one only in one additional clause (2) concerning the conditions in which labour may be requisitioned under the exceptional circumstances of *force majeure* authorized under Article 2(a) of the Convention.

### ***Discussion concerning the third and fourth government drafts and presentation of a new proposal by the mission***

11. To begin with, the mission noted the progress in terms of simplicity and clarity that had been made in the third and fourth drafts by comparison with the second version. The preamble states far more clearly than before the general principle that the requisition of forced labour is illegal, and exceptions based on "transitional" provisions of the Convention that are no longer applicable have been removed. Unfortunately, the scope of the text, as an addendum, remains limited to the implementation of the Towns Act and the Village Act and does not amend those texts, and leaves a deficiency with regard to the executive measures and other instructions that are needed to eliminate specific practices that have taken place without reference to those Acts. In order to make the best use of the time available, the mission agreed to consider whether and how it might be possible to make greater progress towards its objectives while remaining within the framework of this text.
12. At the final working meeting on Thursday morning, the mission presented a new proposal (reproduced in Annex 16). The following points should be noted:
- (i) It contains a general statement that forced labour is prohibited; this prohibition is not restricted to an amendment of the Towns Act and Village Act, and for that reason, rather than taking the form of a simple addendum to Order No. 1/99, it was drafted as a "supplementary Order". Similarly, the preamble specifies that all inconsistent laws are repealed or amended to the extent necessary (which also covers the Towns Act and the Village Act), and the provisions of the Penal Code become applicable to all forced labour practices, whether or not they are based on those Acts.
  - (ii) The ILO draft also includes two clauses (2 and 3) which, in the mission's previous draft were to be included under the executive measures as a supplementary Order. The purpose of these two paragraphs is to identify and prohibit all the forms of requisitioning of labour covered by the Commission of Inquiry. Incorporating these clauses under the legislative measures would,

in the absence of more detailed instructions, make it possible to “mark out” the territory before the Governing Body meets.

13. The Government representatives again received the ILO proposal favourably and described it as “innovative”. They stated their willingness to take account of the proposal in a final version which they hoped to be able to provide as soon as possible, while emphasizing that it had to be referred to their respective Ministers and public authorities.
14. The mission emphasized that the concern to obtain a satisfactory outcome for the Governing Body should take precedence over the desirability of finalizing the text before its departure. The time remaining before the Governing Body’s meeting could still be used to make as much headway as possible with the necessary amendments.

## Annex 1

### Communication dated 14 July 2000 from the Director-General to the Minister of Labour of the Government of Myanmar

Dear Mr. Minister,

Thank you for your letter of 27 May, handed to Mr. Francis Maupain, the leader of the ILO technical cooperation mission which visited Myanmar on 23-27 May.

As you are aware, your letter and the technical cooperation mission's report were brought to the attention of the 88th Session of the International Labour Conference, Geneva 30 May-15 June, and considered by it within the framework of item 8 of its agenda "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)'".

For your official information, I attach *Provisional Records* 4, 6-4, and 8 of the Conference containing the documents presented to the Conference under this item and an account of its examination of them. Your particular attention is drawn to the appendix of *Provisional Record* 6-4 which contains the text of the resolution adopted by the Conference by 257 votes to 41, with 31 abstentions.

In relation to your aforementioned communication the Conference resolution stated "Considering that, while this letter contains aspects which seem to reflect a welcome intention on the part of the Myanmar authorities to take measures to give effect to the recommendations of the Commission of Inquiry, the factual situation on which the recommendations of the Governing Body were based has nevertheless remained unchanged to date".

In these circumstances, the Conference approved in principle the actions recommended by the Governing Body, but decided that they would take effect only on 30 November of this year unless, before that date, the Governing Body is satisfied that the intentions expressed by the Government of Myanmar in your letter of 27 May "have been translated into a framework of legislative, executive and administrative measures that are sufficiently concrete and detailed to demonstrate that the recommendations of the Commission of Inquiry have been fulfilled, and therefore render the implementation of one or more of these measures inappropriate".

The Conference made clear the need for the Myanmar authorities to take promptly the concrete action required to implement the recommendations of the Commission of Inquiry, and authorized me, as Director-General, to respond positively to all requests by your Government made with the sole purpose of establishing the abovementioned framework within the deadline that it set.

For these reasons it is my sincere hope that your Government will make use of this opportunity and take early and explicit initiatives to bring an end to forced labour in your country. I reiterate that the services of this Office are at your disposal for this purpose, in line with the terms of the Conference resolution. I have already stressed these points to Ambassador U Mya Than of the Myanmar Mission in Geneva, who called on me after the Conference.

A month has gone by since the Conference decision. For reasons that will be evident to you, I believe the need for action by your Government to be urgent, in order to ensure a timely implementation of the recommendations on your part before the next meeting of the Governing Body.

I look forward to hearing from you in the very near future.

Yours sincerely,

*(Signed)* Juan Somavia.



## Annex 2

### Communication dated 7 August 2000 from the Government of Myanmar to the Director-General

Excellency,

I received your letter of 14 July 2000 regarding the resolution by which the 88th Session of the International Labour Conference had approved in principle the action recommended by the Governing Body. Needless to say we deeply regret that such a course of action had been taken by the powerful forces within the ILC, particularly when Myanmar has clearly demonstrated its genuine desire for cooperation with the ILO to resolve the issue. As had been explained repeatedly by myself and my delegation and strongly urged by many delegations during the Conference, the path of cooperation would have been the wise course of action. However, since this particular course of action had been taken by the ILC, we are now engaged in a review process regarding the future course of action that we should take.

In this regard, I wish to inform you that our Permanent Representative in Geneva was even asked to come back to Yangon for consultation so that we can take a considered position. I shall, of course, contact you as soon as our internal review [*text missing*].

I wish to take this opportunity to express my appreciation to you for the kind offer of the services of the International Labour Office as mentioned in your letter.

Yours sincerely,

(Signed) Major General Tin Ngwe,  
Minister for Labour,  
Union of Myanmar.

## Annex 3

### **Communication dated 15 September 2000 from the Government of Myanmar to the Director-General forwarded by the Permanent Mission of Myanmar**

Excellency,

I would like to refer to my letter of 7 August in which I was able to inform you that Myanmar has been making extensive review and internal consultations with regard to future cooperation with the International Labour Office on the resolution adopted at the 88th Session of the International Labour Conference. Moreover, I have learnt from my colleague, Minister for Foreign Affairs U Win Aung about the fruitful discussions he had with your Excellency in New York on 8 September 2000.

In this regard, I wish to inform you that Myanmar will be very happy to welcome the visit of the technical cooperation mission at the beginning of October. I am confident that the technical cooperation mission will be able to have extensive and mutually beneficial discussions with the authorities concerned on future plan of action. If the proposed period is convenient to the ILO, we shall be most obliged to receive the composition and other details of the mission.

Although I am fully aware of your heavy schedules, may I take this opportunity to invite Your Excellency to visit our country at a mutually convenient time. Your Excellency's visit will surely contribute towards strengthening of the relations between Myanmar and the ILO. I therefore hope that I will have the chance to see you in Myanmar.

Yours sincerely,

*(Signed)* Major General Tin Ngwe,  
Minister for Labour,  
Union of Myanmar.

## Annex 4

### Communication dated 21 September 2000 from the Director-General to the Minister of Labour of the Government of Myanmar

Dear Mr. Minister,

I acknowledge receipt of your letter dated 15 September 2000 which was transmitted by the Permanent Mission of Myanmar in Geneva and which follows up on the interim letter that you transmitted on 7 August in reply to my letter of 14 July 2000.

I have taken due note of the fact that Myanmar is now “very happy to welcome the visit of a technical cooperation mission at the beginning of October” with regard to cooperation with the International Labour Office on the resolution adopted at the 88th Session of the International Labour Conference.

As I indicated in my letter of 14 July, the Office is for its part ready to provide assistance to help the authorities to take the actions necessary to put an end to forced labour in conformity with the terms of the Conference resolution. This involves three things.

First, as I confirmed to the Minister for Foreign Affairs, U Win Aung, during our discussions in New York on 8 September, a technical cooperation mission can take place – provided it is clearly understood that its sole purpose will be to assist the authorities to establish, before the next meeting of the Governing Body, the comprehensive framework of legislative, executive and administrative measures referred to in the resolution adopted at the 88th Session of the International Labour Conference, i.e.:

- *rendering all practices constituting forced labour in the sense of Convention No. 29 illegal under national law, and ensuring that all legislative provisions in force that permit the imposition of forced labour are repealed or appropriately amended;*
- *giving specific instructions to the state authorities, and notably to the responsible military authorities, regarding the consequences to be drawn from the above as regards the various forms of work mentioned in the Commission’s report, and monitoring their application, so that in practice no forced or compulsory labour is imposed by any authority;*
- *informing the entire population adequately and completely about the above measures as well as the penalties applicable pursuant to section 374 of the Penal Code to all those imposing forced labour; and taking concrete action to ensure that these penalties are strictly applied in practice.*

The question of the conditions under which a sustained ILO presence on the spot could contribute to supporting this framework, referred to in the resolution, would also need to be considered in this connection.

Second, it will again be essential that for the appropriate discharge of their responsibilities the mission and all its members be granted the same facilities, freedom of action and contacts and legal status as those requested in my letter of 10 May 2000 and duly accepted and respected by the Myanmar authorities with regard to the pre-Conference mission.

Third, it goes without saying that the mission is indeed a technical cooperation mission. It will thus be for the Governing Body itself to assess, in the light of the mission’s report, the extent to which the results sought by the Conference have been achieved.

Subject to all the above understandings being clearly established and confirmed, I have given instructions to make arrangements for such a technical cooperation mission to take place. Our

preference would be to begin work at the end of September, as I mentioned to the Foreign Minister in New York, or, at the latest, in the first week of October.

May I suggest in this connection that, to save as much as possible of the precious time which is left before the Governing Body and to make the mission as productive as possible, it would be extremely useful if you could provide in advance any draft you may already have been considering as regards the action required in respect of legislative provisions in force, the instructions to be given to the relevant state authorities, and the information to the general population referred to in the Conference resolution.

I look forward to an early confirmation of the above understandings in order for us to finalize the arrangements for the technical cooperation mission in consultation with the Permanent Mission of Myanmar in Geneva.

I should also like to thank you for your invitation to visit Myanmar. I am sure you will understand that I will only be able to revert to this matter at the appropriate time, which I hope will be as soon as possible.

Yours sincerely,

*(Signed)* Juan Somavia.

## Annex 5

### Communication dated 6 October 2000 from the Government of Myanmar to the Director-General

Excellency,

I thank you for your letter of 21 September in which you reaffirmed the readiness of the ILO Office to dispatch a technical cooperation mission to provide assistance to the Myanmar authorities with regard to the resolution adopted at the 88th Session of the International Labour Conference. It is clearly understood that the technical cooperation mission will be dispatched by you in conformity with the terms of the Conference resolution. It is also understood that the mission is indeed a technical cooperation mission.

During its previous visit to Myanmar the mission was accorded, for the purpose and duration of the mission, the same legal protection and status accorded to officials of comparable rank in the United Nations and was given full cooperation to effectively carry out its responsibilities. I would like to assure you the same treatment will be provided to the mission which is to be dispatched by you. The Permanent Mission of the Union of Myanmar will also formally communicate to you on this matter.

I share with you the need to save as much as possible of the precious time. The best course of action would be for the mission to visit Myanmar and work with our team from various ministries in an interactive manner. I would therefore like to request you to dispatch the mission any time after 20 October. My Ministry, in cooperation with the various ministries has for the last few months been making the necessary groundwork so that the mission will have a productive time during their stay in Myanmar.

I also wish to renew my invitation to you to visit Myanmar at a mutually convenient time.

Yours sincerely,

*(Signed)* Major General Tin Ngwe,  
Minister for Labour,  
Union of Myanmar.

## Annex 6

### **Communication dated 9 October 2000 from the Director-General to the Minister of Labour of the Government of Myanmar**

Dear Mr. Minister,

I acknowledge receipt of your letter dated 6 October 2000 which was transmitted to the Office by the Permanent Mission of the Union of Myanmar in Geneva.

I appreciate the positive reply given by the authorities as regards the object and modalities of the mission. In respect of these modalities, I understand that your acceptance that the same treatment will be extended to the Mission as on the previous occasion includes the freedom of movement and contact which is part of the conditions necessary for it to discharge its responsibilities.

The date you indicate for dispatching the mission is a matter of concern as its lateness may indeed affect its capacity to discharge its responsibilities and cast some doubts in the Governing Body about the commitment of the authorities to achieve the results sought by the Conference. Given my initial proposal to the Minister of Foreign Affairs and the reference to the beginning of October, it would seem, at the very least, highly advisable that the mission should be operational in Yangon at the beginning rather than at the end of that week.

I note that the various ministries have been doing the necessary groundwork. In case there are overwhelming obstacles to bringing forward the date of arrival, it might at least be envisaged that, to gain time, the mission could have a possibility to examine in advance any draft texts you may have.

I trust that it will be possible to settle these remaining questions and practical arrangements, including a preliminary programme, with the help of the Permanent Mission in Geneva.

Yours sincerely,

*(Signed)* Juan Somavia.

## Annex 7

### List of meetings held

The mission held 19 meetings in Yangon over seven days. It met with Lt. General Khin Nyunt, Secretary-1 of the SPDC, three Ministers (Labour, Home Affairs, Foreign Affairs) and senior officials of the same ministries and of the Office of Strategic Studies, and the Directors-General of the Attorney-General's Office and of the Supreme Court, representatives of 17 diplomatic missions, seven United Nations agencies, and a representative of the Geneva-based Centre for Humanitarian Dialogue.

#### *Friday, 20 October 2000*

7.10-7.30 p.m., Yangon Airport

<b>Thane Myint</b>	Director-General, Consular, International Law and Treaties and Research Department, Ministry of Foreign Affairs
<b>Aye Lwin</b>	Director-General, Department of ASEAN Affairs, Ministry of Foreign Affairs
<b>Kyaw Tint Swe</b>	Director-General, International Organizations and Economic Department, Ministry of Foreign Affairs
<b>Soe Nyunt</b>	Director-General, Department of Labour

8.15-8.50 p.m., Traders Hotel

<b>Shigeru Tsumori</b>	Japanese Ambassador
<b>Yoshinori Yakabe</b>	Japanese First Secretary
<b>Naoki Ito</b>	Counsellor, Japanese Embassy
<b>Patrice Coeur-Bizot</b>	United Nations Resident Coordinator
<b>Minako Nakatani</b>	UNDP Programme Officer
<b>Léon de Riedmatten</b>	Centre for Humanitarian Dialogue

9.00-10.00 p.m., Traders Hotel

<b>Thane Myint</b>	Director-General, Consular, International Law and Treaties and Research Department, Ministry of Foreign Affairs
<b>Aye Lwin</b>	Director-General, Department of ASEAN Affairs, Ministry of Foreign Affairs
<b>Kyaw Tint Swe</b>	Director-General, International Organizations and Economic Department, Ministry of Foreign Affairs
<b>Soe Nyunt</b>	Director-General, Department of Labour

**Saturday, 21 October 2000**

10.00-10.15 a.m., Traders Hotel

**Patrice Coeur-Bizot** United Nations Resident Coordinator

**Minako Nakatani** UNDP Programme Officer

10.30 a.m.-1.00 p.m., Ministry of Foreign Affairs

**Thane Myint** Director-General, Consular, International Law and Treaties and Research Department, Ministry of Foreign Affairs

**Aye Lwin** Director-General, Department of ASEAN Affairs, Ministry of Foreign Affairs

**Kyaw Tint Swe** Director-General, International Organizations and Economic Department, Ministry of Foreign Affairs

**Soe Nyunt** Director-General, Department of Labour

**Tun Shin** Director-General, Attorney-General's Office

**Tin Aye** Director-General, Supreme Court

**Maung Win** Deputy Director-General, Department of General Administration, Ministry of Home Affairs

**Lt.-Col. Hla Min** Deputy Head, Department of International Affairs, Office of Strategic Studies

2.30-3.30 p.m., Ministry of Foreign Affairs

**Thane Myint** Director-General, Consular, International Law and Treaties and Research Department, Ministry of Foreign Affairs

**Aye Lwin** Director-General, Department of ASEAN Affairs, Ministry of Foreign Affairs

**Kyaw Tint Swe** Director-General, International Organizations and Economic Department, Ministry of Foreign Affairs

**Soe Nyunt** Director-General, Department of Labour

**Tun Shin** Director-General, Attorney-General's Office

**Tin Aye** Director-General, Supreme Court

**Maung Win** Deputy Director-General, Department of General Administration, Ministry of Home Affairs

**Lt.-Col. Hla Min** Deputy Head, Department of International Affairs, Office of Strategic Studies



**Sunday, 22 October 2000**

2.30-2.45 p.m., Ministry of Foreign Affairs

<b>Thane Myint</b>	Director-General, Consular, International Law and Treaties and Research Department, Ministry of Foreign Affairs
<b>Aye Lwin</b>	Director-General, Department of ASEAN Affairs, Ministry of Foreign Affairs
<b>Kyaw Tint Swe</b>	Director-General, International Organizations and Economic Department, Ministry of Foreign Affairs
<b>Soe Nyunt</b>	Director-General, Department of Labour
<b>Tun Shin</b>	Director-General, Attorney-General's Office
<b>Tin Aye</b>	Director-General, Supreme Court
<b>Maung Win</b>	Deputy Director-General, Department of General Administration, Ministry of Home Affairs
<b>Lt.-Col. Hla Min</b>	Deputy Head, Department of International Affairs, Office of Strategic Studies

**Monday, 23 October 2000**

10.00-11.30 a.m., Ministry of Foreign Affairs

<b>Thane Myint</b>	Director-General, Consular, International Law and Treaties and Research Department, Ministry of Foreign Affairs
<b>Aye Lwin</b>	Director-General, Department of ASEAN Affairs, Ministry of Foreign Affairs
<b>Thaung Tun</b>	Deputy Director-General, Political Affairs Department, Ministry of Foreign Affairs
<b>Soe Nyunt</b>	Director-General, Department of Labour
<b>Tun Shin</b>	Director-General, Attorney-General's Office
<b>Tin Aye</b>	Director-General, Supreme Court
<b>Maung Win</b>	Deputy Director-General, Department of General Administration, Ministry of Home Affairs
<b>Lt.-Col. Hla Min</b>	Deputy Head, Department of International Affairs, Office of Strategic Studies

3.00-4.00 p.m., UNDP Office

<b>Liang Dong</b>	Chinese Ambassador
<b>Chung Jung-Gum</b>	Republic of Korea Ambassador
<b>Shyan Saran</b>	Indian Ambassador
<b>Shigeru Tsumori</b>	Japanese Ambassador

<b>Dato' Mohammad Bin Noh</b>	Malaysian Ambassador
<b>Nasaruddin Mochtar Koro</b>	Indonesian Ambassador
<b>Simon de Cruz</b>	Singapore Ambassador
<b>William Chik Kam Weng</b>	Singapore First Secretary
<b>Pengiran Dato Paduka Asmalee Ahmad</b>	Brunei Ambassador
<b>Nim Chantara</b>	Cambodian Ambassador
<b>Ly Bounkham</b>	Lao People's Democratic Republic Ambassador
<b>Nguyen Dang Khoa</b>	Vietnamese Ambassador
<b>Pablito Mendoza</b>	Philippine Chargé d'Affaire
<b>Patrice Coeur-Bizot</b>	United Nations Resident Coordinator
<b>Renata Lok Dessalien</b>	UNDP Deputy Resident Representative
<b>Minako Nakatani</b>	UNDP Programme Officer
<b>Léon de Riedmatten</b>	Centre for Humanitarian Dialogue
[Apologies: Thai Ambassador]	

4.15-5.00 p.m., UNDP Office

<b>Patrice Coeur-Bizot</b>	United Nations Resident Coordinator
<b>Minako Nakatani</b>	UNDP Programme Officer
<b>Léon de Riedmatten</b>	Centre for Humanitarian Dialogue

*Members of the United Nations Country Team:*

<b>Renata Lok Dessalien</b>	UNDP Deputy Resident Representative
<b>John Bertrand Mendis</b>	UNICEF Representative
<b>Francis Rinville</b>	FAO Representative
<b>Dr. Anton Fric</b>	WHO Medical Officer
<b>Canh Nguyen-Tang</b>	UNHCR Chief of Mission
<b>Jennifer Ashton</b>	UNAIDS Country Programme Adviser
<b>Bradley Guerrant</b>	WFP Emergency Coordinator

**Tuesday, 24 October 2000**

10.00 a.m.-12.15 p.m., Ministry of Foreign Affairs

<b>Thane Myint</b>	Director-General, Consular, International Law and Treaties and Research Department, Ministry of Foreign Affairs
<b>Aye Lwin</b>	Director-General, Department of ASEAN Affairs, Ministry of Foreign Affairs
<b>Thaung Tun</b>	Deputy Director-General, Political Affairs Department, Ministry of Foreign Affairs
<b>Soe Nyunt</b>	Director-General, Department of Labour
<b>Tun Shin</b>	Director-General, Attorney-General's Office
<b>Tin Aye</b>	Director-General, Supreme Court
<b>Maung Win</b>	Deputy Director-General, Department of General Administration, Ministry of Home Affairs
<b>Lt.-Col. Hla Min</b>	Deputy Head, Department of International Affairs, Office of Strategic Studies

**Wednesday, 25 October 2000**

9.30-10.00 a.m., Ministry of Foreign Affairs

<b>Win Aung</b>	Minister of Foreign Affairs
<b>Thane Myint</b>	Director-General, Consular, International Law and Treaties and Research Department, Ministry of Foreign Affairs
<b>Kyaw Tint Swe</b>	Director-General, International Organizations and Economic Department, Ministry of Foreign Affairs

10.00 a.m.-12.00 p.m., Ministry of Foreign Affairs

<b>Thane Myint</b>	Director-General, Consular, International Law and Treaties and Research Department, Ministry of Foreign Affairs
<b>Kyaw Tint Swe</b>	Director-General, International Organizations and Economic Department, Ministry of Foreign Affairs
<b>Thaung Tun</b>	Deputy Director-General, Political Affairs Department, Ministry of Foreign Affairs
<b>Soe Nyunt</b>	Director-General, Department of Labour
<b>Tun Shin</b>	Director-General, Attorney-General's Office
<b>Tin Aye</b>	Director-General, Supreme Court
<b>Maung Win</b>	Deputy Director-General, Department of General Administration, Ministry of Home Affairs
<b>Lt.-Col. Hla Min</b>	Deputy Head, Department of International Affairs, Office of Strategic Studies

12.30-1.30 p.m., UNDP Office

<b>Bernard du Chaffaut</b>	French Ambassador
<b>Horst Rudolf</b>	German Chargé d'Affaire
<b>Dr. John Jenkins</b>	British Ambassador
<b>Priscilla Clapp</b>	United States Chargé d'Affair
<b>Trevor Wilson</b>	Australian Ambassador
<b>Naoki Ito</b>	Japanese Counsellor
<b>Patrice Coeur-Bizot</b>	United Nations Resident Coordinator
<b>Minako Nakatani</b>	UNDP Programme Officer
<b>Léon de Riedmatten</b>	Centre for Humanitarian Dialogue

[Apologies: Italian Ambassador]

2.15-3.00 p.m., Ministry of Labour

<b>Maj.-Gen. Tin Ngwe</b>	Minister of Labour
<b>Soe Nyunt</b>	Director-General, Department of Labour
<b>Col. Tin Win (Retd.)</b>	Director-General, Factories and General Labour Laws Inspection Department, Ministry of Labour
<b>Maung Maung Ohn</b>	Department of Labour
<b>Aung Ba Kyi</b>	Chairman, Social Security Board
<b>Khin Maung Yi</b>	Director-General, Office of the Central Trade Disputes Committee, Ministry of Labour

3.15-4.00 p.m., Ministry of Home Affairs

<b>Col. Tin Hlaing</b>	Minister of Home Affairs
<b>Deputy Minister of Home Affairs</b>	
<b>Aung Thein</b>	Director-General, Department of General Administration, Ministry of Home Affairs
<b>Maung Win</b>	Deputy Director-General, Department of General Administration, Ministry of Home Affairs
<b>Hla Tun</b>	Police Brigadier (Deputy Chief of Police)

5.20-6.00 p.m., Ministry of Foreign Affairs

<b>Thane Myint</b>	Director-General, Consular, International Law and Treaties and Research Department, Ministry of Foreign Affairs
<b>Kyaw Tint Swe</b>	Director-General, International Organizations and Economic Department, Ministry of Foreign Affairs

<b>Thaung Tun</b>	Deputy Director-General, Political Affairs Department, Ministry of Foreign Affairs
<b>Soe Nyunt</b>	Director-General, Department of Labour
<b>Tun Shin</b>	Director-General, Attorney-General's Office
<b>Tin Aye</b>	Director-General, Supreme Court
<b>Maung Win</b>	Deputy Director-General, Department of General Administration, Ministry of Home Affairs
<b>Lt.-Col. Hla Min</b>	Deputy Head, Department of International Affairs, Office of Strategic Studies

**Thursday, 26 October 2000**

9.30-10.30 a.m., Ministry of Foreign Affairs

<b>Thane Myint</b>	Director-General, Consular, International Law and Treaties and Research Department, Ministry of Foreign Affairs
<b>Kyaw Tint Swe</b>	Director-General, International Organizations and Economic Department, Ministry of Foreign Affairs
<b>Thaung Tun</b>	Deputy Director-General, Political Affairs Department, Ministry of Foreign Affairs
<b>Soe Nyunt</b>	Director-General, Department of Labour
<b>Tun Shin</b>	Director-General, Attorney-General's Office
<b>Tin Aye</b>	Director-General, Supreme Court
<b>Maung Win</b>	Deputy Director-General, Department of General Administration, Ministry of Home Affairs
<b>Lt.-Col. Hla Min</b>	Deputy Head, Department of International Affairs, Office of Strategic Studies

3.00-3.30 p.m., Government Guesthouse,  
Ministry of Defence

<b>Lt.-Gen. Khin Nyunt</b>	Secretary-1, State Peace and Development Council
<b>Thaung Tun</b>	Deputy Director-General, Political Affairs Department, Ministry of Foreign Affairs [translator]
<b>Deputy Prime-Minister</b>	
<b>Attorney-General</b>	
<b>Maj.-Gen. Tin Ngwe</b>	Minister of Labour

<b>Col. Tin Hlaing</b>	Minister of Home Affairs
<b>Win Aung</b>	Minister of Foreign Affairs
<b>Kyaw Tint Swe</b>	Director-General, International Organizations and Economic Department, Ministry of Foreign Affairs

## Annex 8

### Resolution adopted by the International Labour Conference at its 88th Session (June 2000)

The International Labour Conference,

Meeting at its 88th Session in Geneva from 30 May to 15 June 2000,

Considering the proposals by the Governing Body which are before it, under the eighth item of its agenda (Provisional Record No. 4), with a view to the adoption, under article 33 of the ILO Constitution, of action to secure compliance with the recommendations of the Commission of Inquiry established to examine the observance by Myanmar of its obligations in respect of the Forced Labour Convention, 1930 (No. 29),

Having taken note of the additional information contained in the report of the ILO technical cooperation mission sent to Yangon from 23 to 27 May 2000 (Provisional Record No. 8) and, in particular, of the letter dated 27 May 2000 from the Minister of Labour to the Director-General, which resulted from the mission,

Considering that, while this letter contains aspects which seem to reflect a welcome intention on the part of the Myanmar authorities to take measures to give effect to the recommendations of the Commission of Inquiry, the factual situation on which the recommendations of the Governing Body were based has nevertheless remained unchanged to date,

Believing that the Conference cannot, without failing in its responsibilities to the workers subjected to various forms of forced or compulsory labour, abstain from the immediate application of the measures recommended by the Governing Body unless the Myanmar authorities promptly take concrete action to adopt the necessary framework for implementing the Commission of Inquiry's recommendations, thereby ensuring that the situation of the said workers will be remedied more expeditiously and under more satisfactory conditions for all concerned;

1. Approves in principle, subject to the conditions stated in paragraph 2 below, the actions recommended by the Governing Body, namely:

- (a) to decide that the question of the implementation of the Commission of Inquiry's recommendations and of the application of Convention No. 29 by Myanmar should be discussed at future sessions of the International Labour Conference, at a sitting of the Committee on the Application of Standards specially set aside for the purpose, so long as this Member has not been shown to have fulfilled its obligations;
- (b) to recommend to the Organization's constituents as a whole – governments, employers and workers – that they: (i) review, in the light of the conclusions of the Commission of Inquiry, the relations that they may have with the member State concerned and take appropriate measures to ensure that the said Member cannot take advantage of such relations to perpetuate or extend the system of forced or compulsory labour referred to by the Commission of Inquiry, and to contribute as far as possible to the implementation of its recommendations; and (ii) report back in due course and at appropriate intervals to the Governing Body;
- (c) as regards international organizations, to invite the Director-General: (i) to inform the international organizations referred to in article 12, paragraph 1, of the Constitution of the Member's failure to comply; (ii) to call on the relevant bodies of these organizations to reconsider, within their terms of reference and in the light of the conclusions of the Commission of Inquiry, any cooperation they may be engaged in with the Member concerned and, if appropriate, to cease as soon as possible any activity that could have the effect of directly or indirectly abetting the practice of forced or compulsory labour;

- (d) regarding the United Nations specifically, to invite the Director-General to request the Economic and Social Council (ECOSOC) to place an item on the agenda of its July 2001 session concerning the failure of Myanmar to implement the recommendations contained in the report of the Commission of Inquiry and seeking the adoption of recommendations directed by ECOSOC or by the General Assembly, or by both, to governments and to other specialized agencies and including requests similar to those proposed in paragraphs (b) and (c) above;
- (e) to invite the Director-General to submit to the Governing Body, in the appropriate manner and at suitable intervals, a periodic report on the outcome of the measures set out in paragraphs (c) and (d) above, and to inform the international organizations concerned of any developments in the implementation by Myanmar of the recommendations of the Commission of Inquiry;

2. Decides that those measures will take effect on 30 November 2000 unless, before that date, the Governing Body is satisfied that the intentions expressed by the Minister of Labour of Myanmar in his letter dated 27 May have been translated into a framework of legislative, executive and administrative measures that are sufficiently concrete and detailed to demonstrate that the recommendations of the Commission of Inquiry have been fulfilled and therefore render the implementation of one or more of these measures inappropriate;

3. Authorizes the Director-General to respond positively to all requests by Myanmar that are made with the sole purpose of establishing, before the above deadline, the framework mentioned in the conclusions of the ILO technical cooperation mission (points (i), (ii) and (iii), page 8/11 of *Provisional Record* No. 8), supported by a sustained ILO presence on the spot if the Governing Body confirms that the conditions are met for such presence to be truly useful and effective.



## Annex 9

### Recommendations of the Commission of Inquiry

In paragraph 539 of its report, the Commission of Inquiry urged the Government to take the necessary steps to ensure:

- (a) that the relevant legislative texts, in particular the Village Act and the Towns Act, be brought into line with the Forced Labour Convention, 1930 (No. 29) as already requested by the Committee of Experts on the Application of Conventions and Recommendations and promised by the Government for over 30 years, and again announced in the Government's observations on the complaint. This should be done without further delay and completed at the very latest by 1 May 1999;
- (b) that in actual practice, no more forced or compulsory labour be imposed by the authorities, in particular the military. This is all the more important since the powers to impose compulsory labour appear to be taken for granted, without any reference to the Village Act or Towns Act. Thus, besides amending the legislation, concrete action needs to be taken immediately for each and every of the many fields of forced labour examined in Chapters 12 and 13 [of the Commission's report] to stop the present practice. This must not be done by secret directives, which are against the rule of law and have been ineffective, but through public acts of the Executive promulgated and made known to all levels of the military and to the whole population. Also, action must not be limited to the issue of wage payment; it must ensure that nobody is compelled to work against his or her will. Nonetheless, the budgeting of adequate means to hire free wage labour for the public activities which are today based on forced and unpaid labour is also required;
- (c) that the penalties which may be imposed under section 374 of the Penal Code for the exaction of forced or compulsory labour be strictly enforced, in conformity with Article 25 of the Convention. This requires thorough investigation, prosecution and adequate punishment of those found guilty. As pointed out in 1994 by the Governing Body committee set up to consider the representation made by the ICFTU under article 24 of the ILO Constitution, alleging non-observance by Myanmar of the Forced Labour Convention, 1930 (No. 29), the penal prosecution of those resorting to coercion appeared all the more important since the blurring of the borderline between compulsory and voluntary labour, recurrent throughout the Government's statements to the committee, was all the more likely to occur in actual recruitment by local or military officials. The power to impose compulsory labour will not cease to be taken for granted unless those used to exercising it are actually brought to face criminal responsibility.<sup>1</sup>

<sup>1</sup> Paragraph 539 of the 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). ILO Official Bulletin, Vol. LXXXI, 1998, Series B, Special Supplement. The full text of the report is also available on the ILO website at the following address: <<http://www.ilo.org/public/english/standards/relm/gb/docs/gb273/myanmar.html>>.

## Annex 10

### Conclusions of the previous ILO technical cooperation mission to Myanmar (23-27 May 2000)

During its talks the mission stressed on several occasions that its role was to explain to the authorities of Myanmar what needed to be done to give credible effect to the recommendations of the Commission of Inquiry, and subsequently to report to the Conference on the measures that the Government intended to take this respect. The letter from the Minister of Labour to the Director-General constitutes, in a way, the results of the mission. Even if by its nature this report can only afford a somewhat kaleidoscopic view of the talks, it should help the Conference to place this response into perspective.

That said, it may however be useful to add two concluding remarks in the light of this report.

Firstly, the mission believes that the Commission of Inquiry's recommendations could be satisfied in a coherent and practical way if a comprehensive framework of legislative, executive, and administrative measures were adopted:

- (i) rendering all practices constituting forced labour in the sense of Convention No. 29 illegal under national law, and ensuring that all legislative provisions in force that permit the imposition of forced labour are repealed or appropriately amended;
- (ii) giving specific instructions to the state authorities, and notably to the responsible military authorities, regarding the consequences to be drawn from the above as regards the various forms of work mentioned in the Commission's report, and monitoring their application, so that in practice no forced or compulsory labour is imposed by any authority;
- (iii) informing the entire population adequately and completely about the above measures as well as the penalties applicable pursuant to section 374 of the Penal Code to all those imposing forced labour; and taking concrete action to ensure that these penalties are strictly applied in practice.

Secondly, as the Myanmar authorities were told by the mission, the Office could certainly help formulate and implement such a framework if the Government's commitment to take expeditious action to this effect was made sufficiently clear in the eyes of the Conference.

As the report shows, the mission discussed the support that the Organization could provide for the effective and sustainable implementation of the said framework. It pointed out that the possibility of various forms of follow-up action, including an ILO presence on the spot, should be considered in the light of the credible plan of action mentioned by the Director-General in his letter of 10 May. Obviously, the Government is entirely free to request this assistance or not, just as it will be up to the competent bodies of the ILO to appraise whether the conditions are met for such assistance and presence to be envisaged.

## Annex 11

### First draft of Addendum to Order No. 1/99

#### ***The Government of the Union of Myanmar*** ***The Ministry of Home Affairs***

Addendum to Order No. 1/99 of the  
Ministry of Home Affairs

The Ministry of Home Affairs of the Government of the Union of Myanmar hereby directs that the following addendum shall be made in Order No. 1/99 dated 14 May 1999 issued under the directive of the State Peace and Development Council to facilitate compliance therewith by the relevant responsible persons:

1. The phrase “disasters such as fire, flood, storm, earthquake, epidemic diseases” mentioned in sub-clause (a) of clause 5 of the said Order No. 1/99 also includes war, famine, epidemic or epizootic diseases.<sup>1</sup>
2. The phrase “in work or service which is of important direct interest for the general public and for the people of the region and is of present or imminent necessity” contained in sub-clause (b) of clause 5 of the said Order No. 1/99 also includes such work or the rendering of the service which is directly concerned and is in accordance with the exigencies of religion, social life and agriculture of the general public and the people of the region.<sup>2</sup>
3. [In the event that compulsory work or service is to be requisitioned in accordance with clause 5 of the said Order No. 1/99 it shall not entail the removal of workers from their place of habitual residence.]<sup>3</sup>
4. Moreover, when the relevant responsible persons have to requisition work or service for purposes mentioned in clause 5 of the said Order No. 1/99 and for purposes contained in the present clauses 1 and 2, they shall do so only with the permission of the Deputy Commissioner of the General Administration Department.
5. The phrase “Any person who fails to abide by this Order shall have action taken against him under the existing law” contained in clause 6 of the said Order No. 1/99 means that any person shall have action taken against him under section 374 of the Penal Code or any other existing law.
6. The relevant State and Divisional Commissioners of the General Administration Department shall supervise in compliance with the Order No. 1/99 and this Addendum of the Ministry of Home Affairs.

Col. Tin Hlaing,  
Minister,  
Ministry of Home Affairs.

<sup>1</sup> Forced Labour Convention No. 29, Article 2.2(d).

<sup>2</sup> Forced Labour Convention No. 29, Article 10.2(e).

<sup>3</sup> Forced Labour Convention No. 29, Article 10.2(d),

Letter No.

Dated:

*Circulation:*

- (1) Office of the Chairman of the State Peace and Development Council;
- (2) Office of the State Peace and Development Council;
- (3) Office of the Government;
- (4) Supreme Court;
- (5) Office of the Attorney-General;
- (6) Office of the Auditor-General;
- (7) Public Service Selection and Training Board;
- (8) All Ministries;
- (9) Director-General, General Administration Department; )
- (10) Police Major General, Myanmar Police Force; ) (forwarded for information and further circulation of the copy of this Addendum to relevant departments and organizations subordinate to him)
- (11) Director-General, Bureau of Special Investigation; )
- (12) Director-General, Prisons Department )
- (13) All State/Divisional Peace and Development Councils; ) (forwarded with the directive that supervision be made so that no forced labour or service is requisitioned in their respective regions or areas)
- (14) All District Peace and Development Councils; )
- (15) All Township Peace and Development Councils; (forwarded for information and further circulation of the copy of this Addendum and to make supervision as may be necessary to the relevant wards and village-tracts subordinate to them);
- (16) Managing Director, Printing and Publishing Enterprise (with a request for publication in the Myanmar Gazette).

## Annex 12

### Second draft of Addendum to Order No. 1/99

#### ***The Government of the Union of Myanmar The Ministry of Home Affairs***

Addendum to Order No. 1/99 of the  
Ministry of Home Affairs

The Ministry of Home Affairs of the Government of the Union of Myanmar, with the approval of the State Peace and Development Council, hereby directs that the following Addendum shall be made to Order No. 1/99 dated 14 May 1999 not to requisition forced labour prohibited as illegal and nullified under the existing laws of the Union of Myanmar.

1. The phrase “disasters such as fire, flood, storm, earthquake, epidemic diseases” mentioned in sub-clause (a) of clause 5 of the said Order No. 1/99 shall also include war, famine, epidemic or epizootic diseases.<sup>1</sup>
2. The phrase “in work or service which is of important direct interest for the general public and for the people of the region and is of present or imminent necessity” contained in sub-clause (b) of clause 5 of the said Order No. 1/99 shall also include such work or the rendering of the service which is directly concerned and is in accordance with the exigencies of religion, social life and agriculture of the general public and the people of the region.<sup>2</sup>
3. The phrase “not to exercise powers under certain provisions of the Towns Act, 1907 and the Village Act, 1907” contained in the said Order No. 1/99 means forbidding requisition of forced labour.
4. In the event that compulsory work or service is to be requisitioned in accordance with clause 5 of the said Order No. 1/99 it shall not entail the removal of workers from their place of habitual residence.<sup>3</sup>
5. Moreover, when the relevant responsible persons have to requisition work or service for purposes mentioned in clause 5 of the said Order No. 1/99 and for purposes contained in the present clauses 1 and 2, they shall do so only with the permission of the Deputy Commissioner of the General Administration Department who is a member of the respective District Peace and Development Council.
6. The phrase “Any person who fails to abide by this Order shall have action taken against him under the existing law” contained in clause 6 of the said Order No. 1/99 means that any person including members of the armed forces, members of the police force and other public service personnel shall have action taken against him under section 374 of the Penal Code or any other existing law.
7. The State and Divisional Commissioners of the General Administration Department who is a member of the respective State and Divisional Peace and Development Council shall

<sup>1</sup> Forced Labour Convention No. 29, Article 2.2(d).

<sup>2</sup> Forced Labour Convention No. 29, Article 10.2(e).

<sup>3</sup> Forced Labour Convention No. 29, Article 10.2(d).

supervise to abide by the relevant responsible persons for the compliance with the Order No. 1/99 and this Addendum.

Col. Tin Hlaing,  
Minister,  
Ministry of Home Affairs.

Letter No.

Dated:

*Circulation:*

- (1) Office of the Chairman of the State Peace and Development Council;
- (2) Office of the State Peace and Development Council (forwarded for the issuance of further directives to State, Divisional, District and Township State Peace and Development Councils];
- (3) Office of the Government;
- (4) Supreme Court;
- (5) Office of the Attorney-General;
- (6) Office of the Auditor-General;
- (7) Public Service Selection and Training Board;
- (8) Ministry of Defence (forwarded for the issuance of further directives to all units under its command);
- (9) Ministry of Progress of Border Areas and National Races and Development Affairs (forwarded for the issuance of further directives directing supervision by the departments and regional work committees stationed at border areas subordinate to it);
- (10) All other Ministries;
- (11) Director-General, General Administration Department; )
- (12) Police Major General, Myanmar Police Force; ) (forwarded for the issuance of further directives to departments and organizations subordinate to him)
- (13) Director-General, Bureau of Special Investigation; )
- (14) Director-General, Prisons Department )
- (15) All State/Divisional Peace and Development Councils; ) (forwarded with the directive that supervision be made so that no forced labour is requisitioned in their respective regions or areas)
- (16) All District Peace and Development Councils; )
- (17) All Township Peace and Development Councils (forwarded for the issuance of further directives and supervision to wards and village-tracts subordinate to them);
- (18) Managing Director, Printing and Publishing Enterprise (forwarded for publication in the Myanmar Gazette).

## Annex 13

### Measures suggested to the authorities by the mission

#### *Legislative aspects to be considered*

*Possibly keep Order No. 1/99, with amendments along the following lines:*

*Title: Replace the words “Directing Not To Exercise Powers Under” with either “Amending” or “Concerning”.*

The Ministry of Home Affairs of the Government of the Union of Myanmar, under the directive of the State Peace and Development Council, hereby directs that the following amendment shall be made to Order No. 1/99 dated 14 May 1999 in order to make the requisition of forced labour illegal and an offence under the laws of the Union of Myanmar.

1. *As original order.*
2. *As original order.*
3. *As original order.*
4. *As original order.*
- 5.A. *It is suggested that the main clause be replaced with a provision for the amendment of the Village Act and the Towns Act along the following lines:*

- (i) in subsection (1) of section 8 of the Village Act:

*Delete clause (g) and add the following paragraph at the end of the subsection (after clause (o)):*

*Provided that no headman shall requisition a person for work or service under any of the above clauses, except in the following circumstances: [as in sub-clause (a) of Order No. 1/99 (with or without the amendment in clause 1 of second draft Addendum)]*

- (ii) in subsection (1) of section 7 of the Towns Act:

*Delete clause (l) (with its two attached provisos).*

*In clause (m) replace the full stop with a colon and add the following:*

*Provided that no headman shall requisition a person for work or service, except in the following circumstances: [as in sub-clause (a) of Order No. 1/99 (with or without the amendment in clause 1 of second draft Addendum)]*

- (iii) in section 11, clause (d) of the Village Act, as well as in section 9, clause (b) of the Towns Act:

*Replace the final full stop with a colon and add the following:*

*Provided that no person shall be so requisitioned to perform work or service, except in the following circumstances: [as in sub-clause (a) of Order No. 1/99 (with or without the amendment in clause 1 of second draft Addendum)]*

- 5.B. *Delete sub/clause (b) of clause 5 of the original Order No. 1/99 (including subsequent draft amendments).*
6. *Insert a provision along the lines of clause 6 of Order No. 1/99 (as amended by clause 6 of second draft Addendum) in or after section 10 of the Village Act and section 8 of the Towns Act, aimed at abuse of authority under the relevant provisions of these Acts as amended.*

### ***Executive and administrative aspects to be considered***

#### Supplementary Order/Directive from the Office of the Chairman of the State Peace and Development Council concerning requisition of labour or services

1. This Order complements Order No. 1/99 of 14 May 1999.
2. All state authorities, including military, police and civilian authorities and their officers are hereby ordered not to requisition persons to provide labour or services for any purpose, nor to order others to requisition such labour or services, regardless of whether or not payment is made for said labour or services, except in the following circumstances: [as in sub-clause (a) of Order No. 1/99]
3. The prohibition in paragraph 2 includes but is not limited to the requisition of labour or services for the following purposes:
  - (a) portering for the military (or other military/paramilitary groups, for military campaigns or regular patrols);
  - (b) construction or repair of military camps/facilities;
  - (c) other support for camps (such as guides, messengers, cooks, cleaners, etc.);
  - (d) income generation by individuals or groups (including work in army-owned agricultural and industrial projects);
  - (e) national or local infrastructure projects (including roads, railways, dams, etc.);
  - (f) cleaning/beautification of rural or urban areas.
4. All state authorities, including military, police and civilian authorities and their officers are hereby ordered not to require any person to provide materials or provisions of any kind, nor compel others to carry out such a requisition, regardless of whether or not payment is provided for these materials or provisions, except where these materials or provisions are due to the State under specific legislation.
5. All state authorities, including military, police and civilian authorities and their officers are hereby ordered not to require any other person to pay, nor order others to demand, money for any purpose except where this money is due to the State or to a municipal or town committee as provided for in the relevant legislation.
6. If any state authority or its officers requires labour, services, materials or provisions of any kind and for any purpose, they must make prior budgetary arrangements to obtain these by a public tender process or by providing market rates to persons wishing to supply these services, materials or provisions voluntarily, or wishing to offer their labour.
7. *[Insert a provision along the lines of clause 6 of Order No. 1/99 as amended by draft Addendum.]*



***Administrative and other accompanying  
measures to be considered***

Appropriate budgetary provisions should be made to pay for public works, etc.

[Possible creation of independent inspectorate]

## Annex 14

### Third draft of Addendum to Order No. 1/99

#### ***The Government of the Union of Myanmar The Ministry of Home Affairs***

Addendum to Order No. 1/99 concerning certain provisions of the Towns Act and the Village Act

The Ministry of Home Affairs of the Government of the Union of Myanmar under the direction of the State Peace and Development Council hereby directs that the following amendment shall be made to the Order No. 1/99 dated 14 May 1999 as requisition of forced labour is illegal and is an offence under the existing laws of the Union of Myanmar.

1. Clause 5 of the said Order No. 1/99 shall be substituted as follows:
  - (a) Responsible persons shall not requisition work or service, notwithstanding anything contained in Section 7(1)(l) of the Towns Act, 1907 and Section 8(1)(g) and 11(d) of the Village Act, 1907.
  - (b) 1(a) shall not apply to requisition of a person for work or service when an emergency arises due to fire, flood, storm, earthquake, epidemic diseases, war, famine and epizootic diseases that pose an imminent danger to the general public and the community.
2. When requisition of a person for work or service for purposes mentioned in clause 1(b) of this Addendum is deemed necessary, it shall be done with the permission of the Deputy Commissioner of the General Administration Department who is also a member of the relevant District Peace and Development Council.
3. The State or Divisional Commissioner of the General Administration Department who is also a member of the relevant State or Divisional Peace and Development Council shall supervise the relevant responsible persons to abide by the Order No. 1/99 and this Addendum.
4. The phrase “Any person who fails to abide by this Order shall have action taken against him under the existing law” contained in clause 6 of the said Order No. 1/99 means that any person including members of the armed forces, members of the police force and other public service personnel shall have action taken against him under section 374 of the Penal Code or any other existing law.

Col. Tin Hlaing,  
Minister,  
Ministry of Home Affairs.

Letter No.

Dated:

*Circulation:*

- (1) Office of the Chairman of the State Peace and Development Council;

- 
- (2) Office of the State Peace and Development Council (forwarded for the issuance of further directives to State, Divisional, District and Township Peace and Development Councils for supervision not to requisition forced labour);
  - (3) Office of the Government;
  - (4) Supreme Court;
  - (5) Office of the Attorney-General;
  - (6) Office of the Auditor-General;
  - (7) Public Service Selection and Training Board;
  - (8) Ministry of Defence (forwarded for the issuance of further directives to all units under its command for supervision not to requisition forced labour);
  - (9) Ministry of Progress of Border Areas and National Races and Development Affairs (forwarded for the issuance of further directives to relevant departments and regional work committees stationed at border areas subordinate to it for supervision not to requisition forced labour);
  - (10) All other Ministries;
  - (11) Director-General, General Administration Department; )
  - (12) Police Major General, Myanmar Police Force; ) (forwarded for the issuance of further directives to departments and organizations subordinate to him for supervision not to requisition forced labour)
  - (13) Director-General, Bureau of Special Investigation; )
  - (14) Director-General, Prisons Department )
  - (15) All State/Divisional Peace and Development Councils; ) (forwarded for the issuance of further directives to organizations subordinate to them for supervision not to requisition forced labour)
  - (16) All District Peace and Development Councils; )
  - (17) All Township Peace and Development Councils (forwarded for the issuance of further directives to wards and village-tracts subordinate to them for supervision not to requisition forced labour);
  - (18) Managing Director, Printing and Publishing Enterprise (for publication in the Myanmar Gazette).

## Annex 15

### Fourth draft of Addendum to Order No. 1/99

#### ***The Government of the Union of Myanmar*** ***The Ministry of Home Affairs***

Addendum to Order No. 1/99 concerning certain provisions of the Towns Act and the Village Act

The Ministry of Home Affairs of the Government of the Union of Myanmar, under the direction of the State Peace and Development Council, hereby directs that the following amendment shall be made to Order No. 1/99 dated 14 May 1999 as requisition of forced labour is illegal and is an offence under the existing laws of the Union of Myanmar.

1. Clause 5 of the said Order No. 1/99 shall be substituted as follows:
  - (a) Responsible persons shall not requisition work or service notwithstanding anything contained in sections 7(1) and 9(b) of the Towns Act, 1907 and sections 8(1) and 11(d) of the Village Act, 1907.
  - (b) The above clause (a) shall not apply to requisition work or service when an emergency arises due to fire, flood, storm, earthquake, epidemic diseases, war, famine and epizootic diseases that pose an imminent danger to the general public and the community.
2. When the responsible persons have to requisition work or service for purposes mentioned in clause 1(b) of this Addendum, the following shall be complied:
  - (a) The work or service shall not lay too heavy a burden upon the present population of the region.
  - (b) The work or service shall not entail the removal of workers from their place of habitual residence.
  - (c) The work or service shall be important and of direct interest for the community. It shall not be for the benefit of private individuals, companies or associations.
  - (d) It shall be in circumstances where it is impossible to obtain labour by the offer of usual rates of wages. In such circumstances, the people of the area who are participating shall be paid rates of wages not less favourable than those prevailing in the area.
  - (e) School teachers and pupils shall be exempted from requisition of work or service.
  - (f) In the case of adult able-bodied men who are the main supporters of the necessities of food, clothing and shelter for the family and indispensable for social life, requisition shall not be made except only in unavoidable circumstances.
  - (g) The work or service shall be carried out during normal working hours. The hours worked in excess of normal working hours shall be remunerated at prevailing overtime rates.
  - (h) In case of accident, sickness or disability arising at the place of work, benefits shall be granted in accordance with the Workmen's Compensation Act.
  - (i) The work or service shall not be used for work underground in mines.
3. When the responsible persons have to requisition work or service for purposes mentioned in clause 1(b) of this Addendum, they shall do so only with the permission of the Deputy Commissioner of the General Administration Department who is also a member of the relevant District Peace and Development Council.

4. The State or Divisional Commissioner of the General Administration Department who is also a member of the relevant State or Divisional Peace and Development Council shall supervise the responsible persons to abide by the Order No. 1/99 and this Addendum.
5. The phrase "Any person who fails to abide by this Order shall have action taken against him under the existing law" contained in clause 6 of the said Order No. 1/99 means that any person including members of the armed forces, members of the police force and other public service personnel shall have action taken against him under section 374 of the Penal Code or any other existing law.

Col. Tin Hlaing,  
Minister,  
Ministry of Home Affairs.

Letter No.

Dated:

*Circulation:*

- (1) Office of the Chairman of the State Peace and Development Council;
- (2) Office of the State Peace and Development Council (forwarded for the issuance of further directives to State, Divisional, District and Township Peace and Development Councils for supervision not to requisition forced labour);
- (3) Office of the Government;
- (4) Supreme Court;
- (5) Office of the Attorney-General;
- (6) Office of the Auditor-General;
- (7) Public Service Selection and Training Board;
- (8) Ministry of Defence (forwarded for the issuance of further directives to all units under its command for supervision not to requisition forced labour);
- (9) Ministry of Progress of Border Areas and National Races and Development Affairs (forwarded for the issuance of further directives to relevant departments and regional work committees stationed at border areas subordinate to it for supervision not to requisition forced labour);
- (10) All other Ministries;
- (11) Director-General, General Administration Department; )
- (12) Police Major General, Myanmar Police Force; ) (forwarded for the issuance of further directives to departments and organizations subordinate to him for supervision not to requisition forced labour)
- (13) Director-General, Bureau of Special Investigation; )
- (14) Director-General, Prisons Department )
- (15) All State/Divisional Peace and Development Councils; ) (forwarded for the issuance of further directives to organizations subordinate to them for supervision not to requisition forced labour)
- (16) All District Peace and Development Councils; )
- (17) All Township Peace and Development Councils (forwarded for the issuance of further directives to wards and village-tracts subordinate to them for supervision not to requisition forced labour);
- (18) Managing Director, Printing and Publishing Enterprise (for publication in the Myanmar Gazette).

## Annex 16

### **Suggested text of Supplementing Order provided to the authorities by the mission (based on fourth draft of Addendum [Annex 15])**

#### ***Order Supplementing Order No. 1/99***

The Ministry of Home Affairs of the Government of the Union of Myanmar, under the direction of the State Peace and Development Council, hereby directs that requisition of forced labour is illegal and is an offence under the laws of the Union of Myanmar, and that any inconsistent laws are repealed or amended to the extent necessary.

1. In particular, clause 5 of the said Order 1/99 shall be replaced with the following:
  - (a) Responsible persons shall not requisition work or service notwithstanding anything contained in sections 7(1) and 9(b) of the Towns Act, 1907, and sections 8(1) and 11(d) of the Village Act, 1907.
  - (b) The above clause (a) shall not apply to the requisition of work or service when an emergency arises due to fire, flood, storm, earthquake, epidemic disease, war, famine and epizootic disease that poses an imminent danger to the general public and the community.
2. When the responsible persons have to requisition work or service for purposes mentioned in clause 1(b) of this Addendum ... (as clause 2 of fourth draft Addendum [Annex 15]).
3. All state authorities, including military, police and civilian authorities and their officers are ordered not to requisition persons to provide labour or services for any purpose, nor to order others to requisition such labour or services regardless of whether or not payment is made for said labour or services, except when an emergency arises due to fire, flood, storm, earthquake, epidemic disease, war, famine and epizootic disease that poses an imminent danger to the general public and the community.
4. The prohibition in the introductory paragraph of this Order, and in clause 3 above, includes but is not limited to the requisition of labour or services for the following purposes:
  - (a) portering for the military (or other military/paramilitary groups, for military campaigns or regular patrols);
  - (b) construction or repair of military camps/facilities;
  - (c) other support for camps (such as guides, messengers, cooks, cleaners, etc.);
  - (d) income generation by individuals or groups (including work in army-owned agricultural and industrial projects);
  - (e) national or local infrastructure projects (including roads, railways, dams, etc.);
  - (f) cleaning/beautification of rural or urban areas.
5. When the responsible persons have to requisition work or service for purposes mentioned in clause 1(b) of this Order, they shall do so only with the permission of the Deputy Commissioner of the General Administration Department who is also a member of the relevant District Peace and Development Council.

6. The State or Divisional Commissioner of the General Administration Department who is also a member of the relevant State or Divisional Peace and Development Council shall supervise the responsible persons to abide by the Order No. 1/99 and this Supplementary Order.
7. The phrase “Any person who fails to abide by this Order shall have action taken against him under the existing law” contained in clause 6 of the said Order No. 1/99 means that any person including members of the armed forces, members of the police force and other public service personnel shall have action taken against him under section 374 of the Penal Code or any other existing law.

## Annex 17

### Communication dated 26 October 2000 from the Government of Myanmar to the Director-General

Excellency,

I wish to express my appreciation to you for sending the technical cooperation mission, headed by your special adviser Mr. Francis Maupain, to Yangon from 20 to 26 October.

During their brief mission to Myanmar, we benefited greatly from the suggestions and advice from the mission members in our efforts to put in place the necessary administrative, executive and legislative measures to ensure that there are no instances of forced labour in Myanmar.

I am happy to inform you that they had fruitful discussions with their counterparts in the various ministries. I myself had useful discussion with the mission members, as had the Minister for Foreign Affairs and the Minister of Home Affairs.

I enclose herewith the draft legislative document, namely “Order Supplementing Order No. 1/99”,<sup>1</sup> to be issued under the direction of the legislative authority of Myanmar, the State Peace and Development Council, by the Minister of Home Affairs. The Order Supplementing Order No. 1/99 clearly spelled out that forced labour is illegal and is an offence under the existing laws of Myanmar. By issuing this Legislative Order, we have rendered all practices constituting forced labour in the sense of Convention No. 29 illegal under national law. I wish also to inform you that the abovementioned Supplementary Order will be issued with effect from 27 October 2000. This Legislative Order will be widely circulated, and will be included in the *Myanmar Gazette* where all laws and legislative orders are published so that the entire population would be adequately and completely informed.

To strengthen this legislative document, which has the force of law, and as part of the administrative and executive measures and to ensure that the responsible persons, including the responsible military authorities, comply with this legislative document, a separate instruction will be issued by the State Peace and Development Council which is the highest organ of state power in the nation.

It is my hope to be able to inform you in the near future of these administrative and executive measures.

Yours sincerely,

(Signed) Major-General Tin Ngwe,  
Minister of Labour,  
Union of Myanmar.

<sup>1</sup> The text of the Order attached to this communication was the same as that reproduced in Annex 19, except that the preambular paragraph read “... under the laws of the Union of Myanmar” rather than “... under the existing laws of the Union of Myanmar”.



## Annex 18

### Communication dated 29 October 2000 from the Government of Myanmar to the Director-General

Dear Director-General,

The technical cooperation mission, headed by your special adviser Mr. Francis Maupain, had been in Yangon from 20 to 26 October and worked hard with their counterparts from the Myanmar side, including the team from the Ministry of Foreign Affairs. During their stay in Myanmar, I had met with the mission members and reiterated to them our commitment to render all practices of forced labour in the sense of Convention No. 29 illegal under national law. They also had useful meetings with the Minister of Labour and the Minister of Home Affairs. On 26 October, they had the occasion to meet Secretary-1 of the State Peace and Development Council, together with the Attorney-General and the Chief Justice of the Supreme Court.

We received valuable advice and suggestions from the mission members, and we were able to draft an Order Supplementing Order No. 1/99. This Supplementary Order, like Order 1/99, is issued by the Ministry of Home Affairs by the direction of the legislative authority of Myanmar, the State Peace and Development Council, and has the force of law. This legislative document was issued on 27 October and a copy of the Order has already been forwarded to you through our Permanent Mission in Geneva.

I wish to take this opportunity to reiterate to you our political will to ensure that there is no forced labour in Myanmar, both in law and in practice. As the Supplementary Order clearly spelled out, any person who fails to abide by the Order, including members of local authorities, members of armed forces, members of the police force and other public service personnel shall have action taken against him under section 374 of the Penal Code or any other existing law. The Order will be strictly enforced.

Additionally, the State Peace and Development Council, the highest organ of state power in Myanmar, will soon issue a separate instruction to further strengthen the Order. I hope to be able to forward it to you in the near future.

Yours sincerely,

*(Signed)* Win Aung,  
Minister for Foreign Affairs,  
Yangon.

## Annex 19

### **Text of Supplementing Order, transmitted by the Permanent Mission of the Union of Myanmar<sup>1</sup>**

***The Government of the Union of Myanmar  
The Ministry of Home Affairs  
Yangon, 1st Waxing of Tazaungmon 1362, M.E.  
(27 October 2000)***

#### **Order Supplementing Order No. 1/99**

The Ministry of Home Affairs of the Government of the Union of Myanmar, under the direction of the State Peace and Development Council, hereby directs that the following amendment shall be made to Order No. 1/99 dated 14 May 1999 as requisition of forced labour is illegal and is an offence under the existing laws of the Union of Myanmar.

1. Clause 5 of the said Order 1/99 shall be substituted with the following:
  - (a) Responsible persons including members of the local authorities, members of the armed forces, members of the police force, and other public service personnel shall not requisition work or service notwithstanding anything contained in sections 7(1) and 9(b) of the Towns Act, 1907, and sections 8(1) and 11(d) of the Village Act, 1907.
  - (b) The above clause (a) shall not apply to the requisition of work or service when an emergency arises due to fire, flood, storm, earthquake, epidemic disease, war, famine and epizootic disease that poses an imminent danger to the general public and the community.
2. When the responsible persons have to requisition work or service for purposes mentioned in clause 1(b) of this Supplementary Order the following shall be complied:
  - (a) The work or service shall not lay too heavy a burden upon the present population of the region.
  - (b) The work or service shall not entail the removal of workers from their place of habitual residence.
  - (c) The work or service shall be important and of direct interest for the community. It shall not be for the benefit of private individuals, companies or associations.
  - (d) It shall be in circumstances where it is impossible to obtain labour by the offer of usual rates of wages. In such circumstances, the people of the area who are participating shall be paid rates of wages not less favourable than those prevailing in the area.
  - (e) Schoolteachers and pupils shall be exempted from requisition of work or service.

<sup>1</sup> The text of this Order is essentially the same as that attached to the letter from the Minister of Labour (Annex 17), except that the phrase “under the laws of the Union of Myanmar” in the preambular paragraph has been replaced here with the phrase “under the existing laws of the Union of Myanmar”.

- (f) In the case of adult able-bodied men who are the main supporters of the necessities of food, clothing and shelter for the family and indispensable for social life, requisition shall not be made except only in unavoidable circumstances.
  - (g) The work or service shall be carried out during the normal working hours. The hours worked in excess of the normal working hours shall be remunerated at prevailing overtime rates.
  - (h) In case of accident, sickness or disability arising at the place of work, benefits shall be granted in accordance with the Workmen's Compensation Act.
  - (i) The work or service shall not be used for work underground in mines.
3. When the responsible persons have to requisition work or service for purposes mentioned in clause 1(b) of this Supplementary Order, they shall do so only with the permission of the Deputy Commissioner of the General Administration Department who is also a member of the relevant District Peace and Development Council.
  4. The State or Divisional Commissioner of the General Administration Department who is also a member of the relevant State or Divisional Peace and Development Council shall supervise the responsible persons to abide by the Order No. 1/99 and this Supplementary Order.
  5. The phrase "Any person who fails to abide by this Order shall have action taken against him under the existing law" contained in clause 6 of the said Order No. 1/99 means that any person including local authorities, members of the armed forces, members of the police force and other public service personnel shall have action taken against him under section 374 of the Penal Code or any other existing law.

*(Signed)* Col. Tin Hlaing,  
Minister,  
Ministry of Home Affairs.

Letter No. Pa-Hta-Ya /2-3 (3140)/Oo3

Dated: 27 October 2000

*Circulation:*

- (1) Office of the Chairman of the State Peace and Development Council;
- (2) Office of the State Peace and Development Council (forwarded for the issuance of further directives to State, Divisional, District and Township Peace and Development Councils for supervision not to requisition forced labour);
- (3) Office of the Government;
- (4) Supreme Court;
- (5) Office of the Attorney-General;
- (6) Office of the Auditor-General;
- (7) Public Service Selection and Training Board;
- (8) Ministry of Defence (forwarded for the issuance of further directives to all units under its command for supervision not to requisition forced labour);
- (9) Ministry of Progress of Border Areas and National Races and Development Affairs (forwarded for the issuance of further directives to relevant departments and regional work committees stationed at border areas subordinate to it for supervision not to requisition forced labour);

- (10) All other Ministries;
- (11) Director-General, General Administration Department; )  
)
- (12) Police Major General, Myanmar Police Force; ) (forwarded for the issuance of further  
) directives to departments and  
) organizations subordinate to him for  
) supervision not to requisition forced  
) labour)
- (13) Director-General, Bureau of Special Investigation; )  
)
- (14) Director-General, Prisons Department )  
)
- (15) All State/Divisional Peace and Development Councils; ) (forwarded for the issuance of further  
) directives to organizations subordinate to  
) them for supervision not to requisition  
) forced labour)
- (16) All District Peace and Development Councils; )  
)
- (17) All Township Peace and Development Councils (forwarded for the issuance of further  
directives to wards and village-tracts subordinate to them for supervision not to requisition  
forced labour);
- (18) Managing Director, Printing and Publishing Enterprise (for publication in the  
Myanmar Gazette).