



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)

Addendum

1. In paragraph 40 of its report, the mission indicated that following the announcement made by Secretary-1, new elements in the form of a document issued by the SPDC itself would probably be made available.
2. The Director-General on Friday, 3 November received a letter from the Minister of Labour which communicated the text of an instruction signed by Lieutenant-General Khin Nyunt in his capacity as Secretary-1 of the SPDC. In addition, in a separate communication addressed to the head of the mission, the Director-General of the Department of Labour specifies the measures adopted to ensure that forced labour is no longer imposed in practice. These communications are attached (Annexes A and B).
3. The following observations may assist the Governing Body in its assessment of the import of these new elements:

(i) *The chain of command in Myanmar*

4. The highest authority in Myanmar is the State Peace and Development Council (SPDC), which includes all military regional commanders and the chiefs of staff of the army, navy and air force, but does not include government ministers. Thus, the SPDC is the highest military authority and the highest civilian authority in the country.
5. Myanmar is divided into 14 administrative areas (7 States and 7 Divisions), which are further subdivided into districts, townships, and then village tracts (in rural areas) and

wards (in towns). There are Peace and Development Councils (PDCs) at each of these levels, usually made up of local military personnel of appropriate rank. Although PDCs are generally made up of military personnel, they are independent of the military chain of command.

6. The Myanmar military is made up of 12 regional Commands, as well as 10 mobile Light Infantry Divisions (which do not come under the command of the regional commanders). Military units in the field thus come under the command of either a regional commander, or of the commander of a Light Infantry Division. They do not come under the command of any PDCs (other than the State Peace and Development Council itself) or any ministries (other than the Ministry of Defence, whose Minister is in any case the Chairman of the SPDC).

(ii) The document signed by Secretary-1 (Annex A)

7. This document:

- draws attention to the contents of the supplementary Order of the Minister of Home Affairs, and in particular calls on the PDCs of the territorial subdivisions to adopt the necessary supplementary directives;
- draws attention to the possible legal consequences for anyone guilty of violations, including military and police personnel etc.

8. The document appears to be in line with what Lieutenant-General Khin Nyunt had announced during talks with the mission. As regards its contents, it retains the tenor of the supplementary Order without adding anything new. However, in terms of its form, there is reason to think that the importance of an instruction from the SPDC itself is not negligible, in particular when, in its final paragraph, it draws to the attention of all the authorities, including the military authorities, the question of the application of section 374 of the Penal Code. It also provides confirmation that there is political will at the highest level to reach a solution.

(iii) The communication of the Director-General of the Department of Labour (Annex B)

9. This communication contains elements that relate to the executive and administrative measures within the framework required under the Conference resolution. It announces (i) the establishment of an inter-ministerial committee chaired by the Minister of Labour and comprising other ministers concerned; (ii) the establishment of a committee on the implementation of Convention No. 29, comprising senior officials of those ministries under the chairmanship of the Deputy Minister of Labour; this committee will be the key element in a supervisory mechanism; (iii) the enactment of specific instructions addressed to various decentralized or territorial authorities.

10. *As regards the instructions:* the communication confirms the elements contained in the circulation list of the supplementary Order (see Annex 17 of the mission's report). The fact that these instructions appear to have been adopted in the intervening period is new. It would thus be useful to have these instructions in order to gain an idea of their nature and precise contents. This would also enable us to verify whether, for example, the "supervision" referred to implies more active measures such as prosecutions.

11. *As regards the establishment of an implementation mechanism* for the entire legislative framework and the instructions, the matter of follow-up is entrusted to the committee on

the implementation of Convention No. 29 (with regard to general measures), and to the Directors-General of the Supreme Court, the general administration department and the police (in respect of more specific follow-up action). It goes without saying that the establishment of an institutional mechanism to carry out administrative follow-up of the new legislation is a step in the right direction. However, questions might be raised concerning the institution's status and the powers and means available to it to carry out its task. The committee on the implementation of Convention No. 29 is composed of senior officials of the relevant ministries. It does not appear to have the mandate or status that would enable it to investigate violations independently. Similarly, the follow-up activity for which the Directors-General of the Supreme Court, the general administration department (Ministry of Home Affairs) and police are responsible within their respective areas of competence consists in issuing instructions with a view to being kept regularly informed of any infractions; they do not appear to be called on to carry out more active investigative or inspection activities. Again, these questions could be clarified if the text of the instructions were available.

12. Finally, the question – raised in the report of the Commission of Inquiry – regarding the budgetary measures needed to ensure that workers employed on community projects can be remunerated is not addressed. The same is true of the question of a possible ILO presence in the country.
13. The foregoing remarks appear to justify the conclusion that the new elements reflected in the annexes: (i) tend to confirm the assessment contained in paragraph 39 of the mission's report; (ii) suggest that the assessment reflected in paragraph 40 of that report should be modified towards a more positive interpretation, although a final evaluation cannot be given at this stage; and (iii) confirm that the general observation developed in paragraph 41 remains entirely valid.

Annex A

Communication dated 3 November 2000 from the Government of Myanmar to the Director-General

Dear Director-General,

In my letter of 26 October I have informed you that to strengthen Order No. 1/99 and Order Supplementing Order No. 1/99, a separate instruction will be issued by the State Peace and Development Council, the highest organ of State Power in Myanmar. I am happy to inform you that on 1 November the State Peace and Development Council issued a separate instruction to all the Chairmen of the State and Divisional Peace and Development Councils, who are also Regional Commanders of the Armed Forces in the respective areas. I am enclosing the instruction herewith.

We have also instituted the necessary measures by the Office of the State Peace and Development Council, the General Administration Department of the Ministry of Home Affairs, the Ministry of Defence, the Ministry of Progress of Border Areas and National Races and Development Affairs, the People's Police Force, the Bureau of Special Investigation and the Prisons Department to put in place a concrete and detailed legislative, executive and administrative framework effectively:

- (1) rendering all practices constituting forced labour in the sense of Convention No. 29 illegal under national law, and to bring our domestic law in line with Convention No. 29;
- (2) giving specific instructions to the responsible persons, including local authorities, members of the armed forces, members of the police force and other public service personnel to abide by the Order and not to exercise requisition of work or service inconsistent with Convention No. 29 and that failure to abide by the Order shall result in action taken against him under section 374 of the Penal Code or any other existing law;
- (3) informing the entire population adequately and completely regarding the measures to ensure that forced labour is illegal under national law and is an offence under section 374 of the Penal Code as well as under any other existing law.

We have also set up the necessary mechanism to supervise and ensure that the Legislative Order will be strictly enforced. In view of the concrete and detailed steps we have taken, as recommended by the ILC, to ensure that there is no practice of forced labour in Myanmar, it is my hope that the Governing Body will come to the conclusion that the actions the ILC resolution have envisaged are no longer required. Such a happy situation would be of great benefit to all parties as well as the cause of labour.

Yours sincerely,

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

The Union of Myanmar
The State and Development Council

Letter No. 04 / Na Ya Ka (U) / Ma Nya
Dated: 1 November 2000

To

Chairman
All State and Divisional Peace and Development Councils

Subject: PROHIBITING REQUISITION OF FORCED LABOUR

1. The Ministry of Home Affairs which administers the Towns Act, 1907, and the Village Act, 1907, issued, under the directive of the State Peace and Development Council, Order No. 1/99 on 14 May 1999. The Order directs responsible persons not to exercise powers under certain provisions of the said Acts relating to requisition of forced labour and stipulates actions that are to be taken against any violation. (The copy of the said Order is attached hereto as Annexure-1.)

2. After the issuance of Order No. 1/99, to be in conformity with the changing situations, the Ministry of Home Affairs under the direction of the State Peace and Development Council issued the Order Supplementing Order No. 1/99 on 27 October 2000. The Supplementing Order renders the requisition of forced labour illegal and stipulates that it is an offence under the existing laws of the Union of Myanmar. Responsible persons, including the local authorities, members of the armed forces, members of the police force and other public service personnel are also prohibited not to requisition forced labour and are instructed to supervise so that there shall be no forced labour. (The copy of the said Order is attached hereto as Annexure-2.)

3. Therefore, it is hereby directed that the state and divisional peace and development councils shall issue necessary instructions to the relevant district and township peace and development councils to strictly abide by the prohibitions contained in Order No. 1/99 and the Supplementing Order of the Ministry of Home Affairs and also to effectively supervise to ensure that there shall be no forced labour within their respective jurisdictions.

4. Responsible persons, including members of the local authorities, members of the armed forces, members of the police force and other public service personnel who fail to abide by the said Order No. 1/99 and the Supplementing Order shall be prosecuted under section 374 of the Penal Code or any other existing laws.

By order,

(Signed) Khin Nyunt,
Lieutenant-General,
Secretary (1),
The State Peace and Development Council.

Copies to:

- (1) Office of the Chairman of the State Peace and Development Council;
- (2) Office of the Government;
- (3) Supreme Court;
- (4) Office of the Attorney-General;
- (5) Office of the Auditor-General;
- (6) Public Services Selection and Training Board; and
- (7) All Ministries.

Annex B

Excerpts from a communication dated 31 October 2000 from the Director-General of the Myanmar Department of Labour

In order to strengthen this legislative document a separate directive has been issued by the State Peace and Development Council, the highest organ of State Power, to all Chairmen of State and Divisional Peace and Development Councils. As you are aware, the Chairmen of the State and Divisional Peace and Development Councils are also the Regional Commanders of the Armed Forces.

I am also happy to inform you of the concrete steps we have adopted rendering all practices constituting forced labour in the sense of Convention No. 29 illegal under national law and to ensure that in practice no forced labour is imposed by any authority.

1. *Ministerial Committee.* A Ministerial Committee chaired by the Minister of Labour, comprising the Minister of Home Affairs, the Minister for Foreign Affairs, the Chief Justice of the Supreme Court, and the Attorney-General as members and the Deputy Minister of Labour as Secretary, has been established to oversee the entire framework.
2. *Implementation Committee for Convention No. 29.* An Implementation Committee for Convention No. 29 has been set up, chaired by the Deputy Minister of Labour with the Director-General of Labour as Secretary of the Implementation Committee. The members include heads of service organization, heads of concerned departments and senior officials of the Supreme Court, the Attorney-General's Office, Ministry of Foreign Affairs, General Administration Department, Ministry of Defence, and the People's Police Force. The list of members is attached in Annex A.
3. *Issuing follow-up instructions by the Departments concerned*
 - (a) *Instructions by the Office of the State Peace and Development Council.* The Office of the State Peace and Development Council has issued the necessary instructions to all state, divisional, district and township peace and development councils to issue necessary instructions and to make necessary supervision to ensure that there is no requisition of forced labour in their respective areas.
 - (b) *Instructions by the Ministry of Defence.* The Ministry of Defence has issued instructions to all units under its command to issue necessary directives and to make necessary supervision to ensure that there is no requisition of forced labour in areas under their command.
 - (c) *Instructions by the Ministry of Progress of Border Areas and National Races and Development Affairs.* The Ministry has issued necessary directives to relevant departments and regional work committees stationed at border areas to make necessary supervision to ensure that there is no requisition of forced labour in their respective areas.
 - (d) *Instructions issued by the Director-General, General Administration Department.* The Director-General has issued instructions to State Commissioners, Division Commissioners, Deputy Commissioners and Township Officers to issue necessary directives and to make necessary supervision to ensure that there is no requisition of forced labour in their areas.
 - (e) *Instructions by the Director-General, Myanmar Police Force.* The Director-General of the Myanmar Police Force has issued the necessary instructions to the Police Commanders of state, divisional, district, and township

police stations to issue necessary instructions and to make necessary supervision to ensure that there is no requisition of forced labour in their areas.

- (f) *Instructions by the Director-General, Bureau of Special Investigation.* The Director-General has issued directives to the departments and organizations subordinate to him to make the necessary supervision to ensure that there is no requisition of forced labour.
 - (g) *Directives by the Director-General, Prison Department.* The Director-General has issued directives to the departments and organizations subordinate to him to make the necessary supervision to ensure that there is no requisition of forced labour.
4. Under this arrangement, all state, divisional, district and township peace and development councils have issued further directives to organizations subordinate to them to ensure that there is no requisition of forced labour. Similarly, all township peace and development councils have issued further directives to ward and village-tract peace and development councils to ensure that there is no requisition of forced labour and to report to them any breaches of Order No. 1/99 and Order Supplementing Order No. 1/99 on a regular basis.
5. *Supervision mechanism.* The supervision mechanism would be carried out by the Implementation Committee on Convention No. 29. Apart from the framework mentioned above,
- (a) the Director-General of the Supreme Court has instructed all departments and organizations subordinate to him to report any breaches of Order No. 1/99 and Order Supplementing Order No. 1/99 on a regular basis;
 - (b) the Director-General of the General Administration Department has instructed all State Commissioners, Division Commissioners, Deputy Commissioners, Township Officers, Heads of Wards and Village Tracts to report to him any breaches of Order No. 1/99 and Order Supplementing Order No. 1/99 on a regular basis;
 - (c) the Director-General of the Myanmar Police Force has instructed all Police Commanders of State, Division, District and Township Police Stations to report to him any breaches of Order No. 1/99 and Order Supplementing Order No. 1/99 on a regular basis.

I wish to take this opportunity to assure you that we have made every effort to render all practices constituting forced labour in the sense of Convention No. 29 illegal under national law. We have also put in place an effective framework of legislative, executive and administrative measures and these measures would be strictly enforced.

Yours sincerely,

(Signed) Soe Nyunt,
Director-General.

**Members of the Implementation
Committee for Convention No. 29**

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| 1. | Brigadier-General Win Sein
Deputy Minister
Ministry of Labour | Chairman |
| 2. | U Tin Aye
Director-General
Office of the Chief Justice | Member |
| 3. | Dr. Tun Shin
Director-General
Attorney-General's Office | Member |
| 4. | U Kyaw Tint Swe
Director-General
International Organizations and
Economic Department
Ministry of Foreign Affairs | Member |
| 5. | U Aung Thein
Director-General
General Administration Department
Ministry of Home Affairs | Member |
| 6. | Colonel Than Tun
Office of Strategic Studies
Ministry of Defence | Member |
| 7. | Lt. Colonel Hla Min
Office of Strategic Studies
Ministry of Defence | Member |
| 8. | U Aung Ba Kyi
Chairman
Social Security Board
Ministry of Labour | Member |
| 9. | U Maung Maung Ohn
Director-General
Central Inland Freight Handling Committee
Ministry of Labour | Member |
| 10. | U Tin Win
Director-General
Factories and General Labour Laws
Inspection Department
Ministry of Labour | Member |
| 11. | U Khin Maung Yi
Director-General
Office of the Central Trade
Disputes Committee
Ministry of Labour | Member |

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| 12. | U Thaung Tun
Deputy Director-General
Political Department
Ministry of Foreign Affairs | Member |
| 13. | Police Brigadier-General Hla Tun
Deputy Director-General
Myanmar Police Force | Member |
| 14. | U Soe Nyunt
Director-General
Department of Labour
Ministry of Labour | Secretary |
| 15. | U Sein Myint
Deputy Director-General
Department of Labour
Ministry of Labour | Joint Secretary |