



FIFTH ITEM ON THE AGENDA

**Developments concerning the question
of the observance by the Government
of Myanmar of the Forced Labour
Convention, 1930 (No. 29)****Report of the ILO technical cooperation
mission to Myanmar (19-25 February 2002)*****Contents***

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I. Origin of the mission

1. As part of its conclusions adopted after examination of the report of the High-Level Team in November 2001, the Governing Body: (1) requested the Director-General to “pursue the dialogue with the authorities in order to define the modalities and parameters of continued and effective ILO representation in Myanmar, which should be put in place as soon as possible”; (2) indicated that the Director-General should “continue to provide assistance to the authorities with a view to giving effect to the other concrete suggestions put forward in the report, including with regard to establishing a form of ombudsperson”; and (3) invited the Director-General to report to its next session on the different points under consideration, “including criminal proceedings concerning the allegations mentioned in paragraph 28 of the report [of the High-Level Team] if they are founded”.¹
2. Accordingly, on 23 November 2001, the Director-General sent a letter to Senior General Than Shwe, Chairman of the State Peace and Development Council, extending to the Myanmar authorities, at the earliest mutually convenient time, the assistance required to reach the objectives agreed upon by the Governing Body. This letter is reproduced in Appendix I.
3. In a communication to the Director-General dated 11 February 2002, the Permanent Mission of Myanmar indicated that the Myanmar authorities were ready for an ILO team to visit Myanmar to discuss the conclusions adopted by the Governing Body. In reply, the Office sent a note verbale stating that it was understood, as on previous occasions, that the ILO team would have “full freedom to establish such contacts as may be appropriate”.
4. During a meeting in Geneva on 12 February the Permanent Representative of Myanmar in Geneva, Ambassador Mya Than, confirmed that the authorities were prepared to discuss all outstanding issues. It was pointed out to the Ambassador that it was important for the ILO team to have full freedom of contacts, as on previous occasions. In particular, a meeting with Daw Aung San Suu Kyi was essential.
5. The technical cooperation mission (TCM) departed from Geneva on 16 February 2002.² Two members of the TCM stopped off in Kuala Lumpur for a meeting with the United Nations Secretary-General’s Special Envoy for Myanmar, Ambassador Tan Sri Razali Ismail, before proceeding to Yangon along with the other two members of the mission on 19 February. The detailed programme of meetings is given in Appendix X.
6. As on previous occasions, the TCM was fortunate to benefit from the assistance of its “facilitator” in Yangon, Mr. Léon de Riedmatten of the Centre for Humanitarian Dialogue.

¹ See GB.282/4/2.

² The members of the TCM were as follows: Mr. Francis Maupain, Special Adviser to the Director-General; Mr. Dominick Devlin, former ILO Legal Adviser; Mr. Muneto Ozaki, Director of Research and Policy Development, InFocus Programme on Strengthening Social Dialogue; and Mr. Richard Horsey, Secretary.

II. Discussion at the political level on the general approach to the issues relevant to the mandate

7. Before entering into discussions of the specific issues covered in the Governing Body's conclusions, the TCM had expressed the wish to have a broader discussion with the Minister for Labour who had the central responsibility for the present discussions. This was granted on the first day, and the next day the TCM also had the same opportunity with the Deputy Minister for Foreign Affairs.

Meeting with the Minister for Labour (Tuesday, 19 February, afternoon)

8. During this meeting, the TCM pointed out that this mission in particular was a critical one. Contrary to previous occasions the object of the mission was not limited to one subject but covered three main issues resulting from the mandate given to the Director-General in the conclusions of the Governing Body. Each of these issues was very sensitive and difficult.
9. Because of the diversity and sensitivity of these issues there might be a strong temptation to adopt, as in previous cases, a step-by-step approach. The fact was, however, that it might be easier to make progress on each of these issues if they were dealt with jointly, rather than by trying to make progress only on one of them before dealing with the others. This was because there was some natural complementarity or interdependence between them and in particular between the first two: willingness to envisage the establishment of an institution like the Ombudsperson would alleviate the burden/demands on the ILO representation. Furthermore, as pointed out by Sir Ninian, the existence of an Ombudsperson or the ILO presence could provide an answer to the question of how conflicting allegations and refutations could be dealt with in the future. However, in the case of the specific allegation referred to in paragraph 28 of the HLT's report, it might be considered preferable to find an ad hoc solution should the authorities be willing to seek an independent confirmation of the conclusions of the investigation.
10. Such a global approach to the various issues would also have the advantage of conveying a strong message to the international community. The TCM pointed out that the HLT had opened a new perspective by referring to the need to address the root causes of forced labour in addition to the need to find a way to overcome the obstacles to the effective enforcement of the legislation, designed to give effect to Myanmar's obligations under Convention No. 29. This made it possible to widen the range of cooperation activities that could be considered for the elimination of forced labour. However, these activities could be channelled only through an effective ILO presence in the country. This is why it was essential to discuss the parameters of such a presence.
11. From the comments made by the Minister for Labour, several important points emerged: as regards the ILO presence, the Minister indicated that ILO technical cooperation was acceptable, but if the ILO received complaints, travelled around the country and carried out "monitoring", this would be less acceptable as it would impinge on the country's sovereignty. Confidence had to be progressively built up, which could help to develop cooperation from an initially modest start, as had happened in the case of the ICRC. The TCM pointed out that in view of the findings of the HLT, any meaningful technical cooperation would have to cover the various parts of the country and therefore would itself imply freedom of movement and contacts. As for the element of "monitoring" (which was not the word used by the HLT), it was obvious that in any case the issue would largely

become moot if the “ownership” of an effective implementation process could be vested in a national institution such as a form of Ombudsperson.

12. As regards the issue of the Ombudsperson, the Minister pointed out that this had been discussed with the Attorney-General (although not yet with the Chief Justice, as he was unwell) and it was noted that this institution was neither familiar nor popular in the region; only Thailand had provision for such a possibility in the Constitution. He understood that for the ILO the Ombudsperson would need to have national and international credibility. The Government did not, however, close the door to further discussion on the issue.
13. Finally, as regards the issue of the allegations, the Minister referred to the information given by the TCM, according to which the report from Lt.-Gen. Khin Nyunt, together with Sir Ninian’s reply, would be submitted to the Governing Body. The Minister felt that the authorities had done what they had to do and would wait for the Governing Body’s reactions.

Meeting with the Deputy Minister for Foreign Affairs

14. The visit the next morning to the Deputy Minister for Foreign Affairs, U Khin Maung Win, was also an occasion to discuss the general approach, i.e. how to tackle the three issues in a coherent way that might make solutions easier to find for each of them, rather than to preempt a more thorough discussion of each of them at the technical level.
15. The Minister emphasized in particular that if there were sceptics in the Governing Body who considered that the authorities were always acting under pressure at the last moment and only with incremental moves, there was also scepticism within the Government of Myanmar about the ILO, as it always seemed that whatever the authorities were trying to achieve there would be some quarters, perhaps inspired by a political agenda, who would consider that it was not enough and who were deliberately confronting Myanmar with unreasonable demands. If decisions took time, it was because the Government had its own processes, and if the situation was difficult in the Governing Body, it was not easy on the domestic front either. However, good working relations had been established because both sides were working towards the same goal, and the Government had realized that by working with the ILO it could reach this goal faster.
16. As regards the issue of ILO representation, the Minister recalled that without rejecting the concept outright, the authorities had been thinking of different modalities in the form of regular visits from Bangkok or Geneva. They knew that this might not be considered suitable and were willing to discuss further the issue of the ILO presence.
17. As regards the Ombudsperson, the Minister pointed out that this was a new idea and the authorities were not completely clear as to what it meant and what relationship was envisaged with the ILO representation. Again, the TCM indicated it would be willing to provide clarification on this issue in due course.
18. As regards the allegations, the Minister emphasized that investigations had been conducted by the highest investigative bodies in the country. The issue was all the more sensitive because the response had been given by Lt.-Gen. Khin Nyunt himself. The TCM replied that it was very well aware of the sensitivity of the subject, but again pointed out that the purpose was not to cast doubt on the thoroughness of the investigations; its purpose was to assist the authorities in obtaining confirmation that allegations which were made against them should not necessarily be taken at face value. But as noted by Sir Ninian, this implied recourse to an independent and objective third party.

19. The Minister also underlined, from a more general point of view, that the authorities were ready to discuss the various issues “not just for appearance’s sake”. The very fact that the TCM was in Yangon and the authorities were willing to discuss the issues was in itself a sign of flexibility and accommodation. The authorities were well aware of the importance and consequences of the mission. If, as pointed out by the TCM, things could go either way in the Governing Body, the same was true on the Myanmar side. The TCM expressed its strong conviction that in view of all the efforts made and what had been accomplished in less than two years, the positive trend had reached a point of no return.

III. Discussions at the technical level

20. Since the Myanmar side had indicated that they needed to consult among themselves on Wednesday afternoon, on the basis of these preliminary discussions, the substantive discussions at the technical level on the three main issues covered in the mandate given to the Director-General could only start the following day. (As will be seen from the programme, the Wednesday afternoon was thus used for contacts and briefings arranged by the United Nations Resident Coordinator with various diplomatic missions and representatives of United Nations agencies.)
21. The TCM’s interlocutors in the technical discussions were the Directors-General of the Ministerial Departments mainly concerned with the issue (Labour, Foreign Affairs, the Attorney-General’s Office, the Supreme Court, and the Department of General Administration).
22. On opening the discussions, the Director-General of the Department of Labour recalled that the HLT’s report had been positive; one important aspect was that it had pointed out the need for economic development. This had to be kept in mind. Recently 20,000 workers had lost their jobs as a result of trade or investment measures. He stressed also that there were no preconditions or rigidities concerning the discussions.
23. The TCM replied that a very positive momentum had been created and should be maintained. The HLT report had indeed provided new perspectives as regards the nature and scope of future technical cooperation by referring to the need to address, in addition to the institutional causes for the lack of enforcement action, the developmental factors relevant to forced labour.
24. At the invitation of their counterparts, the TCM then proceeded to give some clarifications on the possible actions that could be envisaged on the three main issues.

ILO representation in Myanmar

25. The TCM recalled that the idea of what had been initially called a “permanent presence” in fact meant simply that the ILO should have representation in Myanmar for as long as it may prove useful for the achievement of the objective it was designed to serve, i.e. to assist the authorities in fulfilling their commitment to the eradication of forced labour.
26. The functions and status of the ILO presence should therefore derive very closely from this fundamental objective rather than being tailored to more standard types of functions entrusted to traditional ILO country or area offices. These should thus enable the ILO to: (i) give efficient assistance, information and advice with regard to the implementation of the supplementary orders, with a view to ensuring compliance with Convention 29; (ii) develop technical cooperation projects to help the authorities to address the root causes of

forced labour and assist in mobilizing resources for that purpose; and (iii) keep the ILO competent bodies regularly informed of progress towards the objective.

27. As regards status and facilities, the ILO would not be claiming anything out of the ordinary. What was important to emphasize, however, was the need to grant the staff of the Office of the ILO Representative the same freedom of movement and of contacts, in order to clearly fulfil the objective of presence, as had been granted and scrupulously respected in the case of the HLT.
28. Following this presentation, the Myanmar side acknowledged that the original idea of occasional visits from Geneva or Bangkok might not be adequate. They were thus now prepared to agree to an ILO presence in the form of a Liaison Officer. This could then be developed subsequently following the successful pattern established with the ICRC.
29. The TCM underlined that the original suggestion had not been acceptable because it would not match the objectives of a representation as previously sketched out, i.e. to provide effective assistance of different kinds for the effective eradication of forced labour. Effective cooperation of the magnitude required did call for a continued meaningful presence.
30. The same considerations seemed to apply to what was called a “Liaison Officer”, depending on what was really meant by this term. In this respect, it was first necessary to obtain some clarification as regards certain questions: did it imply just one person? In reply, the Myanmar side said that it could be one or perhaps two persons, but it could then build on the basis of the experience and confidence gained.
31. A second question was then whether the Myanmar side was prepared to accept the establishment of a legal framework that would formally recognize the objectives, functions and status of such an “establishment”. Contrary to the ICRC, which was not an intergovernmental organization and fulfilled very specific functions on a confidential basis, the ILO could not start on an experimental basis without an appropriate and transparent framework defining the relevant and necessary parameters accepted by its representative organs. The TCM reminded its interlocutors that it would have been inconceivable to have the visit of the HLT without a clear understanding on its objectives and status.
32. In short, the “Liaison Officer” could be considered as a very positive step if it was taken with reference to clearly stated objectives and functions to be progressively implemented. From that perspective the concept of the Liaison Officer and the idea of a progressive development mentioned by the Myanmar side could be reconciled with that of a “meaningful” presence if the appointment of the “Liaison Officer” was recognized as an interim measure towards the establishment of such a meaningful presence for the purpose of achieving shared objectives. The Myanmar side recognized that the idea could indeed be an interesting one, and the TCM volunteered to draft a text that would illustrate it more concretely.
33. This draft text was presented the next day (Friday morning) and is reproduced in Appendix IV. Following an adjournment to allow the Myanmar side to examine it, the latter presented a much shorter counter-proposal (Appendix V). While using much of the TCM’s draft preambular paragraph, the operative paragraphs merely provided for: (i) the appointment of an ILO Liaison Officer; and (ii) the details of the Understanding to be worked out subsequently between the ILO and the Ministry of Labour. It was explained that this short version should not be disheartening, but was on the contrary intended to enable a successful conclusion to be reached. The Myanmar side pointed out, in particular, that the details of status, privileges and immunities as contained in the TCM’s text would take too much time to work out and would require ministerial approval. The last sentence

allowed for these further details to be worked out. The Myanmar side added that, as regards the other issues, any ideas the TCM might have would come in useful.

34. After an adjournment to allow it to consider the draft, the TCM, in an effort to reach a compromise, presented a short text based on the Myanmar draft. Instead of a “Liaison Officer”, the text could provide for the establishment of an “ILO representation in Myanmar” in the first operative paragraph; and in the second operative paragraph it could specify that the modalities for the implementation of the Understanding would need to be subsequently worked out between the Ministry for Labour and the ILO, and the latter would have to take due account of the parameters provided by the TCM in its first draft (Appendix IV) which made reference to the appointment of a “Liaison Officer” as an interim measure.
35. The TCM explained that the term “liaison”, and even more so the concept of “Liaison Officer”, conveyed a very specific and restrictive meaning in ILO practice. If left as it stood, it would not be in accordance with the mandate given by the Governing Body to pursue the dialogue with a view to establishing an “effective representation in Myanmar” to achieve the objectives sketched out in the HLT’s report and endorsed in the Governing Body’s conclusions. The TCM had, however, done its utmost to try to reconcile this strict mandate with Myanmar’s concern to leave room for progressive development. In order to limit the scope of the amendments, it had refrained from adding a very important consideration that would, however, have to be reflected in the report, i.e. that the modalities should be worked out as soon as possible, taking into account the fact that the matter would be before the International Labour Conference at its next session in June.
36. During subsequent discussions, further efforts were made to reach a mutually acceptable draft that could be acceptable *ad referendum* by both sides. The TCM was thus willing to make reference to a “representation/liaison” and even to a “liaison/representation” rather than “representation” alone. It was also willing to envisage adding a reference to the views expressed by the government side on the parameters during the discussion on the second operative paragraph to make it more balanced. On this basis, the text could be initialled by the TCM, but any departure from it would have to be submitted to the Director-General.
37. When it became clear that these efforts were not enough to reach agreement, the TCM made it clear that the last (short) version they had submitted, including the amendments discussed in paragraph 36 above, was in their view the limit of what could be reasonably considered compatible with the Director-General’s mandate. Obviously there was no obligation for either of the two sides to initial an understanding with which they would not feel reasonably comfortable. Thus, if the Myanmar side could not move from their proposal, that proposal would simply be reported to the Governing Body which in any case had the final say.
38. The Myanmar side then agreed at this point that the text presented by the TCM, with the two amendments referred to in paragraph 36 above, would be submitted by both sides to their respective authorities (this text is reproduced in Appendix VI).
39. When discussions resumed (the next day – Saturday morning, 23 February), the Myanmar side indicated that they were under strict instructions to keep the original operative paragraphs. This would not, however, preclude further cooperation with the ILO. The TCM indicated that after consultation with Geneva, it would have been possible to initial the compromise version which the two sides had accepted to refer to their authorities, it being understood that the need to work out the modalities as soon as possible, taking into account the forthcoming discussion in the ILC, was well understood and would be reflected in the report. However, the discussions now seemed far from that point. All that could be done in the circumstances was to record the acceptance by Myanmar of the

appointment of a Liaison Officer as per their draft. The TCM at the same time insisted that it would be important that the TCM itself should have an opportunity to apprise the authorities at the highest level of the consequences that could result from a lack of progress even on this key issue, in particular in terms of loss of momentum and the goodwill that had accumulated over nearly two years.

40. The Myanmar side said that the offer of the appointment of a “Liaison Officer” paved the way for future cooperation, and that goodwill should not be lost, although the offer would not necessarily be maintained indefinitely. They noted that the speed with which things had been moving as regards ILO matters was literally unprecedented with any other organization; it was also stressed that no international organization, tourist, company or any other person had ever been given the freedom that the HLT had enjoyed during its visit.
41. An adjournment was then agreed to give an additional opportunity to the Myanmar side to have further consultations with their authorities, who were all involved in an important ceremony. A final meeting took place on Saturday evening, where the instructions on the Myanmar side were confirmed (the final text, which they submitted at this time, is reproduced in Appendix VII).
42. The TCM pointed out that the difference between the two sides was not merely a question of semantics. It concerned the commitment to accept the principle of a meaningful representation beyond the appointment of a “Liaison Officer”, which was lacking in their text. A step-by-step approach was fine as long as the existence of a staircase and the will to climb it were recognized. This objective boiled down to two very simple ideas that should find their way into the operative paragraphs, leaving aside the complications to which “negotiated drafting” inevitably led, these operative paragraphs could thus recall: (i) that the Government of Myanmar was ready to accept the immediate appointment of a Liaison Officer in Myanmar to start working towards the objectives referred to in the preambular paragraphs common to all versions; and (ii) that the Government agreed to work out the modalities for the establishment of a meaningful representation of the ILO as soon as possible, due account being taken of the parameters provided by the TCM and the Government’s views thereon, referred to in the most recent draft.
43. The ILO did not formally submit a draft along these lines, in order not to make matters more complicated at this late stage, but gave its assurances that should the Myanmar side be interested in working out a text on this basis, an agreement could still be reached before the end of the mission, especially as the return of two members of the TCM had had to be postponed to allow for a rescheduled appointment with Daw Aung San Suu Kyi on Monday afternoon.
44. As will be seen in the section below, this appointment did not actually take place. As they were about to leave for the airport, the two remaining members of the TCM were instead informed that the Minister for Labour was ready to see them, and had cancelled other appointments for that purpose.

Ombudsperson/allegations

45. The TCM also had occasion to give some further clarifications on the remaining two issues during the first meeting at the technical level. As regards the Ombudsperson, it was underlined that the term, which has certain broad connotations, should not be misleading. The proposal resulted from the finding by the HLT that victims of forced labour were afraid to use the channels which were open to them to seek remedy. The idea of the HLT to establish “a form of ombudsperson” was not at all intended to graft on a foreign institution

but on the contrary to develop national “ownership” of the process of eradicating forced labour with the necessary credibility. Any other name such as “independent commissioner” or “mediator” could be used. What was important was the intention.

46. The Myanmar side considered that there were some interesting aspects in the proposal but further details would have to be worked out, for instance who the person would be and how he/she would build up domestic confidence. The TCM pointed out that the question was not so much who should be Ombudsperson (normally it would be a national, but it was perfectly conceivable to appoint a non-national), but rather how he/she would be appointed and what would be the appropriate legal framework to enable him/her to credibly discharge his/her responsibilities.
47. A certain number of parameters seemed essential in this regard: he/she should have a mandate of a fixed duration which could not normally be extended and could not be interrupted except in case of dereliction of duty. The Ombudsperson would not have power to take any decisions or corrective action, but would propose ways to remedy the situation to the appropriate authorities. The Ombudsperson should have sufficient administrative support to carry out his/her responsibilities in the various regions of the country. As it was clear that this could represent a heavy financial burden, provision should be made for the Ombudsperson to accept funds under conditions that would safeguard the complete independence of the institution. The TCM was quite prepared to provide some elements for consideration in that respect. More generally, the ILO could assist the authorities in finding the right person although it was entirely up to the authorities to make that choice.
48. The Myanmar side again noted that the idea was very unusual in the region and expressed concern that this institution might overlap with the police and judicial authorities. The TCM replied that the intervention of the Ombudsperson would not prejudge the right of a victim to use the normal judicial channels. There would thus be complementarity rather than overlap.
49. Finally, as regards the allegations, the TCM recalled that Sir Ninian had transmitted to the ILO the letter which he had received from Lt.-Gen. Khin Nyunt on 24 January 2002 (Appendix II), together with his reply dated 31 January 2002 (Appendix III).³ It was indicated that these documents would, of course, be submitted to the Governing Body, together with the report of the TCM. As such, the reply would be available to the public and it was to be expected that NGOs and, in particular, the one which had filed the allegation would not readily accept the refutation. This is why Sir Ninian had rightly pointed out in his reply the need to have an objective device to settle this kind of situation. In this specific case, an ad hoc solution might be more appropriate than the possible Ombudsperson or ILO representation referred to in his letter. The ILO would certainly be ready to assist in finding such an ad hoc solution. The Myanmar side commented that this was an extremely sensitive question and that authorities had done their utmost to investigate and clarify the matter. They had the feeling of being confronted once more by the ILO with a never-ending process whereby any effort on their part would inevitably result in further demands.

³ On 27 October 2001 when it was in Geneva for the approval of its report, the HLT had written a further letter to Lt.-Gen. Khin Nyunt concerning an allegation from an NGO that one person interviewed by the team in South Maungdaw had been arrested together with four other people. Lt.-Gen. Khin Nyunt replied on 3 November that after inquiry it appeared that there was nobody under the name indicated living in that area, nor detained. Subsequently, the ILO was told by the same NGO that the person in question had been released.

Implementation Committee

50. The TCM had expressed the wish to have a meeting with the Implementation Committee established pursuant to the supplementary order, in order to follow up on certain other questions raised in the HLT's report. As this meeting could not be organized before its departure, the TCM submitted a reminder (Appendix VIII) of the outstanding questions.⁴

IV. Wrap-up meeting with the Minister for Labour (Monday, 25 February, 5.15 p.m.)

51. The TCM expressed appreciation for this appointment which offered the possibility to convey important messages from the Director-General, even though in the meantime some unfortunate developments had taken place which also called for some clarification. The meeting was important not because the ILO called into question the decisions the authorities considered appropriate in the exercise of their sovereignty, but because the TCM felt that the authorities should be in a position at the highest level to make such decisions in full knowledge of the likely ramifications.
52. This was the fifth mission of the ILO to Myanmar, and it should have been an auspicious one. A lot had been accomplished in less than two years, and there was even more to gain in the coming weeks. The report of the HLT had opened the way to broader cooperation which would have to address not only the implementation of the supplementary Order, but also the root causes of forced labour. This cooperation, however, could only be channelled through an effective presence of the ILO in Myanmar.
53. The TCM stressed again that it was a matter of record that it had always tried to assist in finding solutions that could prove acceptable to both sides; it also always tried to place emphasis on the positive advantages that the authorities could derive from further cooperation; however, the authorities should also be fully aware of what they stood to lose if no progress was made. The TCM had not stressed this point up to now, because the positive argument seemed to be overwhelming. The Director-General had specifically requested, however, that attention be drawn to the fact that the goodwill that had been built up during that period could be lost. But it was also important to recall that the Governing Body's conclusions clearly indicated that the consequences that it would be called upon to draw at its March session could go either way depending on the progress or lack thereof. If, on the other hand, an ILO presence could be agreed upon, this would send a very positive message to the international community, business and consumers.
54. The TCM then stressed that, specifically regarding the issue of the ILO presence, some progress seemed to have been made towards a solution that was more or less acceptable *ad referendum* to both sides. However, the discussions had reached an impasse because of "strict instructions" that came from higher authorities and which severely limited the scope of discussions on modalities for the ILO representation to just the question of a "Liaison Officer". These strict instructions did not seem incompatible with the very mandate of pursuing a meaningful "dialogue" given by the Governing Body; the Director-General, when he was informed of the situation, asked the TCM to convey his feeling that, had he known this limitation earlier, he would not have fielded the present mission.

⁴ It should be noted in this regard that at the meeting with the Minister for Labour on the first day, Burmese and English language versions of an edition of *The Myanmar Times* newspaper dated 24 December 2001-6 January 2002, Vol. 5, Nos. 95 and 96 were provided to the TCM. An article in this newspaper cited the full text of the Order supplementing Order 1/99.

55. This position could only have arisen out of a misunderstanding; it was not at all the ILO's intention to impose an ILO presence against the Government's will or their sovereign rights. The TCM was just trying to assist the authorities in fulfilling their own stated commitment to eradicate forced labour in the interests of their people. The ILO understood very well that this could not be done overnight, that it was a complex problem with historical roots, and that the ILO representation should accordingly be developed on a progressive basis provided the objective was clear.
56. The situation was similar as regards the second subject referred to in the Governing Body's conclusions, the possible establishment of a form of Ombudsperson. During discussions at the technical level, the TCM had heard certain misgivings expressed on the Myanmar side: that the transplanting of a foreign institution to the region for a very specific situation would be inappropriate. However, it should be stressed that the HLT's suggestion had a completely different intention. It was indeed designed to create a national institution and as had been explained at the working level, through it to develop "national ownership" on the eradication of forced labour. In the hope that this sort of misunderstanding could be dispelled, the TCM had informed its counterparts that it would try to put on paper the main parameters for such an institution and it was now pleased to hand over to the Minister a two-page note to that effect (reproduced in Appendix IX).
57. Finally, as regards the issue of the "allegations", the TCM fully realized how sensitive this issue was. Again, it was not the ILO's intention to call into question the seriousness of the efforts which had been made by the authorities at the highest level in carrying out the investigation. The question was how these efforts could be given due recognition and weight in the Governing Body. If the Government of Myanmar wanted to show that this type of allegation should not always be taken at face value, they had an excellent opportunity to do so, but they could not do it alone since they would be judge and party. They had to find independent, reliable confirmation, as implied in Sir Ninian's letter to Secretary-1. The ILO was quite prepared to assist in finding an independent person to carry out this task, who would be completely acceptable to the authorities and would have the required international credibility.
58. To conclude these remarks, however, the TCM noted that although the results of this visit were disappointing and sad because the improvement in the lot of the people concerned could be delayed for many months, if not years, there were still three weeks to go before the Governing Body and it was still the hope of the TCM that this time could be put to good use.
59. The Minister explained that, as regards the first subject, he understood that the TCM had accepted the idea of a "Liaison Officer" and could hardly see the difference between the respective final texts. The Myanmar proposal was indeed a very significant step forward and had to be seen in the light of similar experiences conducted with the ICRC and the UNHCR. The TCM observed that, without repeating the arguments which had previously been exchanged at the technical level, two points had to be emphasized. The first was that the problem was not one of semantics and the TCM had indeed been ready to accommodate the concept of a "liaison officer" provided the objectives and framework were clear. The second was that there was a fundamental difference between the two texts precisely to the extent that the second operative paragraph in the Myanmar proposal failed to make a clear commitment to the objective of a meaningful (i.e. effective) representation which could be progressively achieved; it thus limited the scope of the discussion to the modalities of the "Liaison Officer" rather than to those of an effective representation.
60. As regards the Ombudsperson question, the Minister observed that this seemed to be a good idea, but the present Government was a transitional government and was careful about taking steps which would commit the future of the country or create embarrassment

with others. The TCM observed that this situation should not prevent the authorities from at least paving the way for such a possible reform to be adopted in the future. The Minister, in any case, noted that he would examine the TCM's ideas in the text which it had submitted.

61. Finally, the TCM referred to the incident which had occurred that afternoon near Daw Aung San Suu Kyi's residence. The TCM reminded its interlocutors that two of its members had postponed their return to Geneva in order to make it possible to have the appointment with Daw Aung San Suu Kyi, which had been rescheduled from Saturday to Monday at her request. The TCM could not understand the reasons for the incident, but it was particularly unfortunate since the Governing Body attached a lot of importance to such TCMs meeting with Daw Aung San Suu Kyi and the incident would have to be reported. The Minister expressed surprise, as he had not been informed of any such difficulties.
62. To conclude the meeting, the Minister recalled Sir Ninian's comment at the meeting with Senior General Than Shwe. Sir Ninian had acknowledged the courage of the Government of Myanmar in accepting the HLT's visit and the facilities granted to it which not all countries, including his own, would be ready to do. The TCM noted that indeed the appreciation for the courage shown by the Government of Myanmar in accepting the HLT had been reflected in its report. However, the current situation also required a courageous decision and it was also clear from the experience of the HLT that courage did pay off with the Governing Body.

V. Other contacts/discussions

63. Shortly after its arrival in Yangon, the mission had the opportunity to have a discussion with Professor Pinheiro, Special Rapporteur on the situation of Human Rights in Myanmar, who was just completing a visit to the country and who was scheduled to have a meeting with the Minister for Labour that same afternoon.
64. As on previous occasions, the TCM tried, to the extent possible within its schedule of discussions, to meet with Ambassadors or representatives of the diplomatic community present in Yangon. Two such meetings were kindly organized by the United Nations Resident Coordinator, Mr. Coeur-Bizot, on the second day of the visit. These two meetings were followed by a discussion with representatives of a number of United Nations agencies.
65. As indicated above, the TCM also planned to pay a visit to Daw Aung San Suu Kyi, General Secretary of the National League for Democracy. The appointment, which had been arranged in the same manner as on previous occasions, had to be rescheduled from Saturday, 23 February to Monday, 25 February at 3.30 p.m. Unfortunately, however, access to Daw Aung San Suu Kyi's residence was prevented. A note verbale concerning this incident was sent by the Office to the Permanent Mission of Myanmar on the TCM's return to Geneva (Appendix X).

Geneva, 6 March 2002.

Appendix I

Communication dated 23 November 2001 from the Director-General to Senior General Than Shwe

Excellency,

Your willingness to receive the ILO High-Level Team, and to explain to them the views of the Myanmar authorities, has been an important element in assessing the situation and the prospects for an effective eradication of forced labour in the country. It was thus carefully reflected in the report they submitted to the Governing Body of the ILO and which was discussed at the end of last week.

I considered it would be in keeping with this spirit of dialogue to send you personally the conclusions which were adopted by the Governing Body at the end of a dignified discussion to which your representative had the opportunity to contribute. I am confident that, in view of the personal interest you have shown in the matter, you may wish to give these conclusions the careful and positive consideration they deserve. It is at the same time my duty to emphasize two points. The first is that time is of the essence. As indicated in paragraph 8, the Governing Body will have to review progress made on the various relevant issues – or lack thereof – and draw the consequences next March. The second is that, as in the past, and as I am now specifically requested in paragraphs 6 and 7 of the conclusions, I stand ready to extend to the Myanmar authorities, at the earliest mutually convenient time, the assistance required to reach the objectives unanimously agreed upon by the Governing Body.

Yours sincerely,

(Signed) Juan Somavia

Appendix II

Communication dated 24 January 2002 from Lieutenant-General Khin Nyunt to Sir Ninian Stephen

Excellency,

I wish to refer to my letter of 26 October 2001 in which I informed you that in response to the matter raised in your letter of 13 October, a thorough investigation would be conducted regarding the alleged incident in the Shan State and that the results of the investigation would be made known to you.

I personally regard the matter as extremely serious and I have taken it upon myself to form a team of investigators from my headquarters with strict instructions to thoroughly investigate the matter, not to leave any clues left unchecked and to bear in mind the importance of seeking the truth and nothing but the truth.

At this juncture when we are building our nation, national unity is of utmost importance. We consider that any unfair and unlawful action against the national races would only have an adverse affect upon the Union that we seek to establish. We are determined to take legal action against anyone who transgresses the law, whosoever the individual may be.

The investigators from my headquarters have conducted a full-scale investigation and have submitted their findings to me. Village elders and villagers of the region concerned were systematically interviewed. Administrative officials and police officials of Mong Nai Township and relevant military officials were also interviewed. Altogether 41 persons were interviewed.

The investigators devoted time and energy to fathom the truth. I have studied their report and made further enquires till I was completely satisfied with the findings.

In the alleged episode mentioned in your letter, I was supposed to have told the villagers that starting from that day onwards there would not be any use of forced labour. The fact of the matter is that I have never visited that area. On the date mentioned, I was in Yangon attending a meeting of the Union Solidarity and Development Association. It is obvious that the account was fabricated from the very outset.

It is alleged that seven villagers went to see Maj. Gen. Maung Bo, the visiting Eastern Command Commander, on 11 July 2001 and filed a complaint with him regarding the continued use of forced labour by military units in the area.

The investigators found that while Maj. Gen. Maung Bo visited the area five times in the year 2001, on 18 February, 19 April, 13 May, 17 July and 23 October, he was not in the area on 11 July 2001 as alleged. Village elders and villagers testified that although the Commander met the villagers on two occasions, no complaint whatsoever was raised by the villagers regarding forced labour or mistreatment by the military.

The Commander had always been on friendly terms with the villagers and he tried to fulfil the various requests made by them. In the past the Keng Tawng area was not peaceful. Villagers lived in fear of armed insurgents who roamed the area, pillaging and murdering innocent men, women and children. Today the area has become peaceful and is generally safe. Yet armed insurgents attempt to attack the villagers from time to time.

It has been alleged that seven villagers who filed a complaint with the Commander were detained and killed by one Captain Mya Aung of Kunn Hing-based Infantry Battalion 246 and that their bodies were dumped in the Nam Taeng Creek in Keng Tawng area. It also alleges that the villagers from Ho Kun Village, Kun Long tract found the bodies at "Taad Pha Pha" waterfall, about two miles east of Ho Kun Village. In fact there is no such waterfall in the Ho Kun Village area. The nearest waterfall is in the Nam Taeng Creek, 17 miles south of Ton Hong Village. The drop is so immense and the swirling currents among the huge boulders and rocks at the foot of the fall so fierce that it would be impossible for dead bodies to be found there as alleged. The villagers had not found any dead body at the waterfall, it was learnt.

Of the seven persons named in the alleged account, the following four are non-existent:

1. Sai Khan-Ti, aged 36, Kun Hoong village. (There is no village named Kun Hoong in Nan Sang Township.)
2. Sai Saw-Ya, aged 31, Kun Keng village. (There is no village named Kun Keng in Nan Sang Township.)
3. Sal In-Ta, aged 24, Nawng Ook village. (Villagers abandoned Nawng Ook village 15 years ago and nobody lives there today. There is no one named Sai In-Ta in the region.)
4. Sai Ta Lam, aged 21, Nawng Ook village. (Villagers abandoned Nawng Ook village 15 years ago and nobody lives there today. There is no one named Sal Ta Lam in the region.)

One of the seven mentioned, Sai Aw Lam, aged 28 of Pa Saa Village is actually alive. He is safe and sound together with his family in his village. Pa Saa Village is a small village of 32 households and there are no other individuals by the name of Sai Aw Lam. He himself has no knowledge of the alleged account and has confirmed that he has never been harassed and detained by military units at any time.

It has been ascertained that one of the alleged victims, Lung Haeng Wi, aged 40 of Nawng Tao Village crossed the border into Thailand to work there since a year ago.

The remaining person Sai Ti-Ya, aged 30 of Nam Tum Tai Village appears to be at the centre of the allegations emanating from the SURA insurgent group. The name of the village is Taung Nam Tung not Nam Tum Tai. All the villagers of the area know him well to be a former insurgent and an agent of the SURA who extorts money from the villagers. Brigade 759 of the SURA had been active in Keng Tawng area with small bands exacting taxes from the people and committing atrocities. During March 2001, SURA insurgents mercilessly murdered U Paw San Sa, aged 52, Chairman of Village Peace and Development Council from Ho Ta Village near Kun Mon Village cemetery. During the same period, SURA murdered U Khin Maung Ni (alias) Ko Ta because he refused to render tax to them. In June 2001, their tax collector Win Maung was killed because he attempted to flee without submitting the money he collected. One Maung Htwe, an opium addict from the village, was also killed by SURA on the assumption that he had contacts with military units. The SURA insurgents committed crimes in collaboration with Sai Ti Ya.

According to witness Daw Htay Htay Hlaing, a 46 year old widow from Ton Hong Village, SURA insurgents raided her sawmill on 18 July 2001 and took seven workers captive. About four or five days later, Sai Ti Ya sent his man, Aik Ta and demanded 1 million kyats ransom money. Daw Htay Htay Hlaing was unable to pay the ransom and later learnt that the workers had been brutally killed and their bodies dumped in the Nam Taeng Creek. The bodies have not been found. The seven sawmill workers were:

1. Tun Aung (alias) Lao Li, aged 52 (son of) U Nyunt Sein, Nandawun Quarter, Section (4), Nyaungshwe.
2. Aye Lwin, aged 24 (son of) U Tun Shwe, Nandawun Quarter, Aung Chan Tha Section (6), Nyaungshwe.
3. Nyi Nyi Lwin (alias) U Phyu, aged 22 (son of) U Ba Yi, Nandawun Quarter, Section (4), Nyaungshwe.
4. Ko Pyone, aged 42 (son of) U Ba Yi, Nandawun Quarter, Section (4), Nyaungshwe.
5. Khin Maung Aye, aged 31 (son of) U Htay, Zone (3), Shwe Bontha Quarter, Shwenyaung.
6. Aung Yin, aged 43 (son of) U Kyi Thauung, Zone (3), Shwe Bontha, Shwenyaung.
7. Khin Maung Shwe, aged 49 (son of) U Htay, Zone (3), Shwe Bontha, Shwenyaung

Many village elders had heard of the murder of the seven sawmill workers by SURA insurgents. Apart from that incident they were not aware of any other incidents of missing people.

Witness Daw Khin Htwe, aged 52 from Naung Kyawt Quarter, Mong Nai, testified that she recruited seven workers to be employed at Daw Htay Htay Hlaing's sawmill on 7 July 2001. She said that the SURA insurgents torched the sawmill and took away seven workers on 18 July 2001.

According to the witnesses, Sai Ti Ya was a notorious individual who was involved in criminal activities. He fled from the village and was assumed to be with the SURA insurgents based in Thailand.

The investigation team also conducted an inquiry at the Infantry Battalion No. 246 but found that there was never an officer by the name of Captain Mya Aung posted at the battalion. The battalion had five officers with the rank of captain, but no one by the name of Mya Aung. Moreover there is no one by the name of Mya Aung in the ranks from Second Lieutenant to Lieutenant.

The 246 Battalion was based in Kunn Hing and the only time the battalion had entered the Keng Tawng area was in September 1998 when it stayed for about two weeks. Even then, it entered Keng Tawng Village only once and only for a few hours.

The investigators also made enquiries about the activities of other battalions in the area and found that there were only few villages in the area and there had never been a need to requisition labour.

All battalions had no one by the name of Mya Aung in their officer corps.

The villagers and elders interviewed testified to the fact that the SURA insurgents once dominated the area, and that they lived in fear. The presence of army units had transformed conditions in the area. The villages had become more populated and living conditions had improved considerably.

It is evident from the above the entire episode had been fabricated by the anti-Myanmar groups to tarnish the image of Myanmar and to promote their own selfish ends. It can be concluded from the findings of the investigation that the SURA insurgents who had murdered the seven innocent sawmill workers are trying to divert attention away from themselves by accusing the government military units of carrying out a fictitious act.

As I have mentioned in my letter of 26 October, there is a need to carefully scrutinize reports emanating from such anti-government groups as the Shan Human Rights Foundation since they have resorted to such fabrications in the past.

It is my ardent hope that you will appreciate our commitment to ensure the just outcome of the inquiry.

I avail myself of this opportunity to assure you of my Government's readiness to work with you to achieve our common goal.

Yours sincerely,

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

Appendix III

Communication dated 31 January 2002 from Sir Ninian Stephen to Lieutenant-General Khin Nyunt

Dear Lieutenant-General Khin Nyunt,

Thank you for the detailed account which you have sent me regarding the allegations made concerning the Keng Tawng area.

I much appreciate the investigation which you have instituted and which is described in your letter of 24 January, according to which there is no truth to those allegations, which have been very widely circulated.

As you are aware, this matter is now in the hands of the ILO Governing Body and was referred to in the conclusions adopted at its November session on the basis of our report of 29 October, 2001. I will thus make sure that your reply is communicated to the Governing Body and will refrain from pre-empting in any way the assessment this body may wish to make of the situation. I think that I can safely say, however, that this case does serve to emphasize the great need for the existence of a wholly impartial body able to report on allegations made by groups hostile to your Government in the future. This is, of course, something to which we have already specifically adverted in paragraph 81 of our report of 29 October, 2001.

Again, may I personally thank you for initiating the detailed investigation of this matter.

Sincerely,

(Signed) Ninian Stephen

Appendix IV

Elements for a possible Understanding on an ILO representation, provided to the authorities by the technical cooperation mission (TCM)

Understanding between the Government of Myanmar and the International Labour Office on the parameters for the establishment of a continued and effective ILO representation in Myanmar and the appointment of an interim Liaison Officer

Considering, on the basis of the report of the ILO High-Level Team (HLT) and the subsequent discussion of this report by the Governing Body of the ILO, that the establishment of continued and effective ILO representation in the country is essential to assist the authorities in their efforts to ensure the prompt and effective elimination of forced labour which is illegal and a criminal offence in that country;

Recognizing the desirability of maintaining momentum and opening a new phase in relations as soon as possible and therefore the need to provide for an interim Liaison Officer pending the full finalization of the Understanding as set out below;

Noting paragraph 6 of the conclusions of the Governing Body on the said report under which the Director-General of the ILO is requested to pursue the dialogue with the authorities of Myanmar in order to define the modalities and parameters of the ILO representation;

The Government of the Union of Myanmar and the International Labour Office have agreed on the following:

I. Purposes of the ILO representation

In accordance with the consideration set out in the preamble, the purposes of the ILO representation will be:

- (i) to provide information, advice, training and assistance, as regards their rights and obligations, as appropriate, to all those concerned by forced labour in the general population and the authorities with a view to ensuring full compliance with Convention No. 29 to which Myanmar has reaffirmed its commitment;
- (ii) to develop technical cooperation projects to help the authorities in addressing the root causes of the forced labour situation as identified in the HLT report (especially in the field of training) and assist in mobilizing adequate funding for their implementation from all relevant national and international sources taking into account the nature and dimensions of the problem;
- (iii) to keep the ILO's competent bodies regularly informed of progress in the implementation and enforcement of the relevant legislation as well as the concrete impact in the various regions of the country of practical measures taken by the authorities to eradicate forced labour; and
- (iv) subject to relevant decisions of the International Labour Conference, to provide within the framework of the ILO Regional Office in Bangkok, any other assistance with respect to needs falling within the ILO's competence, in line with the achievement of the decent work strategy in the region.

II. Status, facilities, privileges and immunities

1. Upon finalization of the present Understanding as provided for in section III below, an ILO representative shall be appointed by the Director-General of the ILO, after appropriate consultations with the authorities and other interested parties.
2. The ILO representative and other ILO officials assigned to the Office as he/she may designate for that purpose shall enjoy all the facilities and freedom of movement and contacts necessary to carry out their functions under this Understanding on the same basis and in the same manner as were granted to the HLT.
3. The Government undertakes to grant to the ILO and to its officials (including members of their families forming part of their households) and experts performing functions under this Understanding, as well as to the ILO's property, funds and assets, the same privileges, immunities and facilities as those enjoyed by the United Nations and its officials and experts under the Convention on the Privileges and Immunities of the United Nations adopted by the General Assembly of the United Nations on 13 February 1946 and under specific agreements and understandings concluded between the Government and the United Nations.

III. Finalization of the Understanding and transitional arrangements

The present Understanding will be complemented as soon as possible by a comprehensive agreement concerning the establishment of continued and effective ILO representation in Myanmar. Pending finalization and ratification or approval as appropriate of such agreement, the Director-General of the ILO will appoint, after consultation with the authorities and other interested parties, a Liaison Officer whose function shall be to immediately start substantive work in accordance with section I above. The Liaison Officer as well as any other ILO officials who may be assigned to assist him/her shall enjoy, *mutatis mutandis*, the facilities, privileges and immunities set out in section II.

Appendix V

Proposal by the authorities for an Understanding on the appointment of an ILO Liaison Officer in Myanmar

Understanding between the Government of Myanmar and the International Labour Office concerning the appointment of an ILO Liaison Officer in Myanmar

Considering, on the basis of the report of the ILO High-Level Team (HLT) and the subsequent discussion of this report by the Governing Body of the ILO, that the establishment of continued and effective ILO representation in the country is essential to assist the authorities in their efforts to ensure the prompt and effective elimination of forced labour in that country;

Noting paragraph 6 of the conclusions of the Governing Body on the said report under which the Director-General of the ILO is requested to pursue the dialogue with the authorities of Myanmar in order to define the modalities and parameters of the ILO representation;

Recognizing the desirability of maintaining momentum and opening a new face in relations as soon as possible and therefore the need to provide for a Liaison Officer;

The Government of the Union of Myanmar has agreed to the appointment of an ILO Liaison Officer in Myanmar.

The details of the aforementioned Understanding shall be worked out between the ILO and the Ministry of Labour.

Appendix VI

Suggested text (revised) of an Understanding on an ILO representation, provided to the authorities by the technical cooperation mission (TCM)

Understanding between the Government of Myanmar and the International Labour Office concerning the appointment of an ILO liaison/representation in Myanmar

Considering, on the basis of the report of the ILO High-Level Team (HLT) and the subsequent discussion of this report by the Governing Body of the ILO, that the establishment of continued and effective ILO representation in the country is essential to assist the authorities in their efforts to ensure the prompt and effective elimination of forced labour in that country;

Noting paragraph 6 of the conclusions of the Governing Body on the said report under which the Director-General of the ILO is requested to pursue the dialogue with the authorities of Myanmar in order to define the modalities and parameters of the ILO representation;

Recognizing the desirability of maintaining momentum and opening a new phase in relations as soon as possible;

The Government of the Union of Myanmar has agreed to the appointment of an ILO representation [/representative]⁵ in Myanmar.

The necessary modalities for the implementation of the present Understanding shall be worked out between the ILO and the Ministry of Labour taking due account of the parameters provided to the Government⁶ by the Team during the discussion of this question.

⁵ Subsequently amended to representation/liaison or liaison/representation.

⁶ Subsequently amended with the adjunction “and of the views expressed thereon by the Government side”.

Appendix VII

Revised proposal by the authorities for the appointment of an ILO Liaison Officer in Myanmar

Understanding between the Government of Myanmar and the International Labour Office concerning the appointment of an ILO Liaison Officer in Myanmar

Considering, on the basis of the report of the ILO High-Level Team (HLT) and the subsequent discussion of this report by the Governing Body of the ILO, that the establishment of continued and effective ILO representation in the country is essential to assist the authorities in their efforts to ensure the prompt and effective elimination of forced labour in that country;

Noting paragraph 6 of the conclusions of the Governing Body on the said report under which the Director-General of the ILO is requested to pursue the dialogue with the authorities of Myanmar in order to define the modalities and parameters of the ILO representation;

Recognizing the desirability of maintaining momentum and opening a new phase in relations as soon as possible and therefore the need to provide for a Liaison Officer;

The Government of the Union of Myanmar has agreed to the appointment of an ILO Liaison Officer in Myanmar representing the ILO to assist the Myanmar Government in matters related to paragraph 1.

The necessary modalities for the implementation of the present Understanding shall be worked out between the ILO and the Ministry of Labour taking into due account the parameters provided by the ILO Team and the views expressed thereon by the Government side during the discussion of this question.

Appendix VIII

Reminders of questions to be raised with the Implementation Committee

1. New or additional cases.
2. Prosecutions, particularly under section 374 of the Penal Code.
3. Evidence of budgetary provision for payment of labour on public works projects.
4. Further publicity given to the Orders, including dissemination via the mass media (newspapers, radio, television) and dissemination in all appropriate languages, including major ethnic languages.
5. Texts of any additional instructions issued to the military or other authorities containing specifications both of the kinds of tasks for which the requisition of labour is prohibited, as well as the manner in which the same tasks are henceforth to be performed.

Appendix IX

Letter dated 25 February 2002 handed over to the Minister for Labour by the technical cooperation mission on its departure from Yangon

Dear Mr. Minister,

The discussions that the ILO technical cooperation mission has had with its Myanmar counterparts suggest that a certain number of misunderstandings may still exist as regards the subject of the “Ombudsperson”. This may be due to the fact that the concept, which has a broad scope in certain national systems, would be transplanted to a very specific situation, and for narrow and specific purposes.

This is why the suggestion contained in the report of the High-Level Team referred, as you know, to “a form of Ombudsperson”. My colleagues and I considered – as was conveyed to our counterparts – that it might be useful, in order to assist you in any further thinking you and your colleagues may wish to give to the idea in the coming weeks, to provide you with some elements that would illustrate succinctly what in our view the High-Level Team’s suggestion, which received the support of the Governing Body, may concretely imply. I am therefore pleased to attach a document containing “Parameters to be considered for the establishment of an Office of the Ombudsperson in Myanmar”.

Even though it is now too late for you and your colleagues to give them before the mission departs, your reactions to this document will certainly be welcome. There are still a few weeks before a critical session of the Governing Body and I do sincerely hope that they can be used to make further progress.

I wish in any case to take this opportunity to once again express our thanks to you for the facilities and hospitality extended to the Team.

Yours sincerely,

(Signed) Francis Maupain

Parameters to be considered for the establishment of an Office of the Ombudsperson in Myanmar

Selection/qualifications

An Office of the Ombudsperson would be created by an Order of the Chairman of the SPDC or any appropriate way to perform the functions set out below.

The Ombudsperson shall be chosen exclusively on the basis of her/his proven ability to discharge the functions and responsibilities defined in the Order in full independence and impartiality and with the required credibility within and outside the country. Appropriate consultations shall take place for that purpose before the appointment. She/he may be a non-national.

Her/his term of office shall be years and can(not) be extended. She/he shall not be removed from Office except at her/his request or under the following conditions: in case of alleged incapacity or dereliction of duty, an independent audit shall be conducted at the Government's request by a person/body selected by the Government from a list of three established by [the Director-General of the ILO]/[the President of the International Court of Justice]/[the President of the Administrative Tribunal of the Asian Development Bank]. In the event that the audit concludes that the allegations are founded, the Ombudsperson may be removed from office.

Functions

The Ombudsperson shall be responsible for investigating and reporting on any individual or collective allegations from persons or groups claiming to have been subjected to forced labour.

She/he will not have the power to take any decision or corrective action but may, in cases where allegations are found to be well founded, propose to the appropriate authorities action to remedy the situation as well as appropriate compensation where necessary, or refer the case to the relevant judicial authorities.

The Ombudsperson's action shall not prejudice the right of the alleged victim to institute criminal proceedings under the relevant provisions and within the relevant time limits set out in the Code of Criminal Procedure.

The Ombudsperson may also carry out investigations on her/his own initiative into situations where she/he has reason to believe that forced labour may be involved.

Procedure

To be receivable, allegations should: (i) relate to facts subsequent to the entry into force of the Order; and (ii) be submitted to the Ombudsperson within one year from the date when the said facts are alleged to have occurred.

Allegations may be submitted by the victims directly or by their representative, or through appropriate channels. Allegations may also be submitted by representative bodies. Provisions shall be made to ensure easy and confidential access of complainants to the Ombudsperson (through heads of wards/villages or otherwise) in the various states and divisions.

The Ombudsperson shall establish a strictly confidential report on each case. In cases where she/he considers the complaint well founded, the Ombudsperson shall require a response by the person(s) under investigation and shall then make appropriate recommendations to the authorities concerned to take immediate corrective action and, as appropriate, to provide for compensation/indemnity. She/he shall report to the complainant and the complainant's representative the results of her/his investigations and, as the case may be, her/his recommendations.

She/he shall establish appropriate procedures to ensure that no action is taken against the authors of the allegations or their representatives.

The Ombudsperson shall provide to the authorities with an annual report on her/his activities, the obstacles she/he may have encountered in the discharge of her/his functions and the evolution of the situation of forced labour and any possible reprisal action she/he may have noticed. This report shall be made available to the public.⁷

Administrative and financial guarantees

The Ombudsperson shall carry out her/his functions in full independence and shall be immune from prosecution for acts performed in carrying out her/his official duties. The public/police/authorities shall provide her/him with any assistance she/he may request.

The Ombudsperson shall be assisted by such staff as may be necessary to effectively discharge her/his responsibilities throughout the country. She/he will have full freedom and responsibility to select these staff, who shall report exclusively to her/him and be independent of any external interference. She/he shall establish the rules applicable to them.

Appropriate budgetary allocations shall be made in the national budget for the Ombudsperson to immediately start discharging her/his activities. The Ombudsperson shall subsequently be entitled to accept subsidies, contributions, grants and legacies from private or public sources from within or outside the country provided that such acceptance shall not directly or indirectly affect the total independence of his/her Office. She/he shall establish rules for that purpose which shall provide in particular that donations from appropriate private non-commercial sources may be allowed provided that: (i) no conflict of interest arises; (ii) they cannot be used to promote private commercial or other sectoral interests; and (iii) an annual statement of amounts received, their sources, and their use shall be made and annexed to the annual report referred to above.

⁷ It is of course understood that this report will constitute an important element of the reports that the Government will submit to the Director-General of the ILO under article 22 of the ILO Constitution.

Appendix X

List of meetings held

The team met with Ambassador Razali in Kuala Lumpur, and then held 13 meetings in Yangon over seven days. It met with the Minister for Labour twice, with the Deputy Minister for Foreign Affairs, senior officials from three ministries (Labour, Foreign Affairs, and Home Affairs) and from the Attorney-General's Office and the Supreme Court, eight ambassadors, representatives of four United Nations agencies and a representative of the Geneva-based Centre for Humanitarian Dialogue.

Monday, 18 February 2002

0830–0930, Nikko Hotel, Kuala Lumpur

Ambassador Tan Sri Razali Ismail	United Nations Special Envoy for Myanmar
Damon Bristow	Special Assistant to Ambassador Razali

Tuesday, 19 February 2002

1200, Arrival in Yangon

1245–1330, Pansea Hotel

Prof. Paulo Sérgio Pinheiro	Special Rapporteur on the Situation of Human Rights in Myanmar
Léon de Riedmatten	Centre for Humanitarian Dialogue
Patrice Coeur-Bizot	United Nations Resident Coordinator

1400–1500, Ministry of Culture

U Tin Winn	Minister for Labour
Brig.-Gen. Win Sein	Deputy Minister for Labour
U Soe Nyunt	Director-General, Department of Labour

1620–1650, Office of the Centre for Humanitarian Dialogue

Léon de Riedmatten	Centre for Humanitarian Dialogue
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Wednesday, 20 February 2002

0830–0915 Ministry of Foreign Affairs

U Khin Maung Win	Deputy Minister for Foreign Affairs
U Win Mra	Director-General, International Organizations and Economic Department

1430–1510, UNDP Office

Dr. John Jenkins	British Ambassador
Bernard du Chaffaut	French Ambassador
Dr. Marius Haas	German Ambassador
Patrice Coeur-Bizot	United Nations Resident Coordinator

1530–1630, UNDP Office

Nim Chantara	Cambodian Ambassador
Nassaruddin Koro	Indonesian Ambassador
Ly Bounkham	Lao Ambassador
Phoebe A. Gomez	Philippine Ambassador
Simon de Cruz	Singapore Ambassador
Patrice Coeur-Bizot	United Nations Resident Coordinator

1630–1700, UNDP Office

Patrice Coeur-Bizot	United Nations Resident Coordinator
Bhaskar Barua	FAO
Minako Nakatani	UNDP
Shannon Kahnert	UNHCR
Dr. Agostino Borra	WHO

Thursday, 21 February 2002

0930–1200, Ministry of Culture

Soe Nyunt (Chair)	Director-General, Department of Labour
Win Mra	Director-General, International Organizations and Economic Department, Ministry of Foreign Affairs
Dr. Tun Shin	Director-General, Attorney-General's Office
Aung Thein	Director-General, Department of General Administration, Ministry of Home Affairs
Tin Aye	Director-General, Supreme Court

1530–1630, Ministry of Culture

Soe Nyunt (Chair)	Director-General, Department of Labour
Win Mra	Director-General, International Organizations and Economic Department, Ministry of Foreign Affairs
Dr. Tun Shin	Director-General, Attorney-General's Office
Aung Thein	Director-General, Department of General Administration, Ministry of Home Affairs
Tin Aye	Director-General, Supreme Court

Friday, 22 February 2002

1000–1200 Ministry of Culture

Soe Nyunt (Chair)	Director-General, Department of Labour
Win Mra	Director-General, International Organizations and Economic Department, Ministry of Foreign Affairs
Dr. Tun Shin	Director-General, Attorney-General's Office
Aung Thein	Director-General, Department of General Administration, Ministry of Home Affairs
Tin Aye	Director-General, Supreme Court

1550–1745, Ministry of Culture

Soe Nyunt (Chair)

Win Mra

Dr. Tun Shin

Aung Thein

Tin Aye

Director-General, Department of Labour

Director-General, International Organizations and Economic Department, Ministry of Foreign Affairs

Director-General, Attorney-General's Office

Director-General, Department of General Administration, Ministry of Home Affairs

Director-General, Supreme Court

Saturday, 23 February 2002

1000–1200, Ministry of Culture

Soe Nyunt (Chair)

Win Mra

Dr. Tun Shin

Aung Thein

Tin Aye

Director-General, Department of Labour

Director-General, International Organizations and Economic Department, Ministry of Foreign Affairs

Director-General, Attorney-General's Office

Director-General, Department of General Administration, Ministry of Home Affairs

Director-General, Supreme Court

Monday, 25 February 2002

1710–1740, People's Assembly

U Tin Winn

U Soe Nyunt

Minister for Labour

Director-General, Department of Labour

Officials from the Prime Minister's Office

Appendix XI

Note verbale dated 26 February 2002 from the ILO to the Permanent Mission of the Union of Myanmar

The International Labour Office presents its compliments to the Permanent Mission of the Union of Myanmar and wishes to express its grave concern and its strong protest at the fact that the technical cooperation mission (TCM) which was due to meet Daw Aung San Suu Kyi in Yangon yesterday, 25 February at 3.30 p.m., was prevented from doing so at the checkpoint near her house, with the explanation that they had not received the appropriate instructions.

The Permanent Mission will recall that the freedom to establish contacts for the purpose of such visits has been one of the *sine qua non* for all of the TCM visits since the first in May 2000. The Permanent Mission will also recall that the intention of this last TCM to meet Daw Aung San Suu Kyi on the occasion of its visit was made clear even before it left for Yangon. Furthermore, on several occasions during the mission, the authorities were made aware that arrangements had been made for an appointment, and when the initial appointment had to be postponed, they were expressly told that the TCM was delaying its return accordingly.

The International Labour Office considers that this situation constitutes a breach of the commitments and understandings under which such missions have been fielded. The International Labour Office therefore urges the Permanent Mission to kindly provide appropriate explanations about this unfortunate incident as soon as possible.

The International Labour Office avails itself of this opportunity to renew to the Permanent Mission of the Union of Myanmar the assurances of its highest consideration.