



## 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)****Further developments**

1. In her letter dated 2 September to the Convention 29 Implementation Committee, the Liaison Officer had requested the Committee to send a field observation team to Kachin State to investigate two allegations of forced labour noted by the Liaison Officer a.i. during his visit to the region in August. The Liaison Officer also recommended that she accompany this team in an observer capacity.<sup>1</sup> As she had pointed out to the Committee, there was a need for more detailed information on how such teams conducted their work. This was all the more necessary given that these teams had so far concluded that all allegations transmitted by the Liaison Officer were unfounded, and had found no other cases or allegations of forced labour during their visits. The Liaison Officer's recommendation was accepted and, together with her deputy, she accompanied a field observation team to Kachin State from 6 to 8 November.<sup>2</sup>
2. The Liaison Officer's observations concerning the investigations conducted by the field observation team were that the manner in which the team conducted its work, while appropriate for information dissemination, was not well suited to investigating allegations and that it would be difficult, if not impossible, to determine the veracity of allegations in such a manner.
3. The Liaison Officer had a range of further contacts, including with the diplomatic community in Yangon and the UN country team. She also had the opportunity to have a meeting with the Special Rapporteur of the Commission on Human Rights on the situation of human rights in Myanmar, during his visit to Myanmar in early November.

<sup>1</sup> See GB.288/5, para. 11.

<sup>2</sup> The team visited the towns of Myitkyina and Putao in Kachin State. It was headed by a member of the Convention 29 Implementation Committee (U Khin Maung Yee, the Director-General of the Office of the Central Trade Disputes Committee); the other members of the team were local officials from Myitkyina and Putao, respectively. Because of flight cancellations, the return from Putao to Yangon had to be postponed from 9 November to 14 November.

4. Prior to her departure for Kachin State, the Liaison Officer was informed that it would not be possible to arrange a meeting with the Convention 29 Implementation Committee. However, some further information concerning outstanding issues before the Committee was transmitted to the Liaison Officer in letters dated 29 October, and 7, 11, 12 and 14 November. As regards the allegations transmitted to the Committee by the Liaison Officer concerning the use of forced labour on three road projects, the Committee indicated that field observation teams had been sent to the respective areas and had concluded that the allegations were unfounded. Information was provided by the representative of the Ministry of Defence on the Convention 29 Implementation Committee concerning the various instructions governing the hiring of porters by the army. It was indicated that after the orders prohibiting forced labour had been issued there had been one case of action being taken against a member of the armed forces for failing to follow these orders and instructions. This concerned a private who had taken money from a person in order that this person not be requisitioned as a porter. As regards the question of forced recruitment into the armed forces, particularly of children, the representative of the Ministry of Defence again indicated that Myanmar's domestic legislation, as well as its obligations under the Convention on the Rights of the Child, prevented recruitment of persons under the age of 18 into the armed forces, and that all recruitment into the armed forces was voluntary. As regards military training of citizens, he indicated that this was carried out as provided for in the previous constitutions of the country.<sup>3</sup> In addition, further information was also provided on the distribution of the ethnic translations of the orders prohibiting forced labour.
5. In a letter dated 4 November to the Minister for Labour, the Liaison Officer requested a meeting with the Minister, as well as the possibility of paying a final courtesy call on Prime Minister Khin Nyunt as this was the end of her assignment as Liaison Officer.
6. The Minister for Labour hosted a dinner for the Liaison Officer on 14 November. The Liaison Officer was able to briefly report her observations on the visit to Kachin State. Although she had certain comments on the procedures followed by the field observation team, it was positive that she had been able to observe the work of such teams. She would provide more details in writing to the Convention 29 Implementation Committee.<sup>4</sup> More generally, she was pleased with the more substantive dialogue she was now able to have with the Committee. The Liaison Officer also underlined the fact that it would send a positive signal if she were able to have certain important meetings, including with the Prime Minister; she offered to delay slightly her departure to Geneva if this would be necessary. The Minister responded that the Prime Minister's schedule was very full until later the following week; he also stressed that he was doing his best to improve cooperation in the eradication of forced labour, but that certain political matters, which he felt should not be linked to the issue of forced labour, did not fall under his authority. He thanked the Liaison Officer for her excellent cooperation with the authorities which had made it possible to reach agreement on the Joint Plan of Action, and expressed the hope that the ILO would soon be able to go ahead with the implementation of this Plan. The Liaison Officer reaffirmed the commitment of the ILO to the Plan, but stressed that, in order to address the concerns expressed by the International Labour Conference, it was necessary to demonstrate that the climate within which the ILO operated had not been affected by political events in the country. An aspect of this was that the ILO should have access to all the relevant groups and persons as it had previously.

<sup>3</sup> The previous Constitution, adopted in 1974, was suspended in 1988 and there is currently no Constitution in force in Myanmar.

<sup>4</sup> The details of the Liaison Officer's observations were communicated to the Convention 29 Implementation Committee in a letter dated 16 November.

7. No meeting could be arranged with the Prime Minister prior to the Liaison Officer's departure for Geneva.

## Concluding comments

8. Parallel to discussions in Yangon, the Office has continued its dialogue with the Permanent Representative of Myanmar in Geneva. As reflected in recent exchanges,<sup>5</sup> it was made clear during these consultations that in the framework established by the conclusions of the Applications Committee, the Office would need to get certain clear signals to go ahead with the implementation of the Plan of Action. On the one hand, it would need confirmation of the continued and genuine interest and commitment of the Authorities to this Plan of Action. On the other hand, it would also be necessary for all concerned, including potential donors, to have sufficient confidence that there was an environment in which the Plan of Action could be credibly implemented. One element which could contribute to such confidence would be for the ILO to have the same degree of access as throughout the process since the first technical cooperation mission in 2000.
9. As regards the first point, the Authorities have reiterated their commitment to the Plan of Action, and the general evaluation of the Liaison Officer provides clear confirmation of the great value and importance that would attach to the implementation of the Plan of Action including the Formal Understanding on the Facilitator. As regards the second point, however, at this stage no clear signal has emerged, either through the formal reply to the Director-General's communication, or as a result of the abovementioned consultations, that could provide sufficient confidence that the environment existed for the credible implementation of the Plan of Action. It is now for the Governing Body to examine the situation in the light of the present report and any further information the Authorities may provide, and to give the guidance it may deem appropriate to the Office.

Geneva, 17 November 2003.

<sup>5</sup> See appendices 1-4.

## Appendix 1

25 August 2003

Dear Minister,

As you are aware, at the International Labour Conference last June, in its conclusions, the Committee on the Application of Conventions and Recommendations specifically bestowed upon me responsibilities as regards the implementation of the Plan of Action which had been initiated before the Conference. I am also expected to report on developments to the Governing Body next November on progress or lack thereof.

I am sorry that circumstances did not allow the meeting with you which had been scheduled to take place as it would have offered an opportunity to discuss the way I propose to discharge these responsibilities.

As time is passing, I wish to express my serious concerns. Since the Conference there have been virtually no contacts between the ILO Liaison Officer in Yangon and the authorities despite her repeated requests, and I understand there have been no further discussions even at the level of the implementation committee. I need not elaborate on the consequences that may derive from such a stalemate in November.

At the same time, I hope you share my conviction that it would be a terrible loss to the people of your country and to the ILO itself if all efforts which have been made jointly would now be frustrated. As pointed out by the High-Level Team in 2001, the effective eradication of forced labour is part and parcel of the modernization of your country. A positive engagement of the international community with your development efforts would no doubt be helped by cooperation with the ILO.

As in the past, I can assure you that the Office stands ready to resume the dialogue in good faith in Yangon as well as in Geneva as regards any step you may wish to take. It is not too late for that to happen.

Conversely, for our efforts towards the eradication of forced labour to move forward, consideration must be given to the repeated international concerns relating to the rule of law and freedom from fear.

Yours sincerely,

Juan Somavia

His Excellency  
Mr. Tin Winn  
Minister for Labour  
Ministry of Labour  
Ministers' Office  
Theinbyu Road  
YANGON

## Appendix 2

THE GOVERNMENT OF THE UNION OF MYANMAR  
MINISTRY OF LABOUR  
OFFICE OF THE MINISTER

Ref.: 0510/5/DOL(RP-2) 2003

Date: 8 September 2003

Dear Mr. Director-General,

We would like to refer to your fax of 25th August which we received it only on the 2nd September as it has been mistakenly transmitted to the Ministry of Culture. And yet, few lines are missing and some are distorted in the fax copy probably due to some technical problems in transmission. Accordingly, we have to look for a fair copy from the Myanmar Permanent Mission in Geneva rightaway.

We are fully aware of your concern to carry out your responsibilities concerning the implementation of the Joint Plan of Action which had already been initialed between Myanmar and the ILO.

We placed our high hope for official signing occasion between the two sides during 91st Session of the ILC. To our disappointment, it could not have taken place as expected. As you are already aware, ILO informed us that donor countries could not be found for the implementation of relevant projects incorporated in the Joint Plan of Action. It is to our knowledge that the ILO declined to take further action associating our bilateral cooperation with internal affairs of our country.

Since our Joint Plan of Action called for the commencement of its implementation on the 1st July, our Field Observation Teams (FOTs) have been making their field visits to the respective State and Division as outlined in the Action Plan. It is evident that we, on our part are carrying out as much as we can for the eradication of forced labour. The FOTs, the personnel of the General Administration Department, Township SPDCs and the Myanmar Police Force are on the alert to take necessary steps concerning the Order No. 1/99 and the Order Supplementing Order No. 1/99. So, the lack of discussion which you interpreted as stalemate actually does not mean that there is no activity on our part. We are carrying out the task in hand as usual.

Moreover, it is also to inform you that MOL has already received two letters from the ILO Liaison Officer on 6th August and 29th August respectively, informing us about her health problem and also of her return to her station. She is also requesting for a meeting with the Implementation Committee. In this regard, the Committee will be willing to meet her and inquiring about the items that she might wish to include in the meeting agenda.

Taking this opportunity, it is to be stressed that we have repeatedly assured the prevailance of law and order throughout the country. A single unfortunate incident should not be the reason to draw a hasty irrelevant generalization or conclusion. As regards the eradication of forced labour, we are determined to proceed in our own way until we reached our desired goal with or without technical assistance or financial support. If we can have cooperation and support we can accomplish our mission earlier and vice versa. Our view is that linking our bilateral cooperation with internal political climate can not produce any fruitful result.

Finally, we wish to provide you with Fax numbers of the Ministry of Labour and the Department of Labour for our convenience and unnecessary delay in further communications.

- (a) Ministry of Labour  
Fax No.: 951-256185
- (b) Department of Labour  
Fax No.: 951-371629

Yours sincerely,

For the Minister  
(U Soe Nyunt, Director-General)

H.E. Mr. Juan Somavia  
Director-General  
ILO Office, Geneva.

## Appendix 3

Permanent Mission of the Union of Myanmar  
to the United Nations Office and other  
International Organizations, Geneva

Permanent Representative

Date: 22 October 2003

Mr. Kari Tapiola,  
Executive Director,  
The International Labour Office,  
Geneva.

Dear Kari,

I should like to keep you informed of Myanmar's ongoing endeavours to eliminate forced labour in the country.

You may recall that the Formal Understanding on the Facilitator was initialled by your good self and myself at the ILO Office on 8 May 2003. The Joint Plan of Action was initialled by U Soe Nyunt, Director-General, Ministry of Labour and Mr. Hong-Trang Perret Nguyen, ILO Liaison Officer, in Yangon on 27 May 2003.

Since the conclusion of the ninety-first International Labour Conference, the Myanmar authorities, on their part, have continued implementing the Joint Plan of Action. These implementation measures include, among other things:

- visits by the Field Observation Team (FOT) to Myeik District to oversee the progress of the implementation measures as well as visits by FOTs to various other parts of the country, including Kayah, Karen, Mon, Rakhine States and Bago Division and
- translation into ethnic languages and distribution of Order No. 1/99 and Order Supplementing Order No. 1/99.

These activities are still in progress, and they will be carried forward as the implementation of the Joint Plan of Action further progresses.

As you are aware, I met, and held consultations with the high officials of the ILO on more than a dozen occasions between June and November 2003 on matters relating to facilitating the implementation of the Joint Plan of Action (JPA). We discussed, in particular, on ways and means to initiate the joint implementation of the Joint Plan of Action by the Myanmar side and the ILO. The latest meeting was the one at the Permanent Mission of Myanmar on 24 September 2003.

The principled position of the Myanmar Government is that there should be no linkage between the ILO issue and the internal political situation in Myanmar. Such a linkage is totally unacceptable to us. As a matter of fact, I have stated the aforementioned position of the Myanmar Government at the Committee on Application of Standards on 14 June 2003 and at the plenary meeting of the 91st International Labour Conference on 19 June 2003.

In the meantime, positive developments are evolving in Myanmar, following the announcement of the seven-step Road Map by General Khin Nyunt, Prime Minister of the Union of Myanmar on 30 August 2003.

The Ninth ASEAN Summit, held in Bali, Indonesia, on 7 and 8 October 2003, “welcomed” the recent positive developments in Myanmar and endorsed the Road Map as “a pragmatic approach and deserves understanding and support”.

I hope that there will be more significant developments in Myanmar in the near future and that the ILO will soon join the Myanmar side in the joint implementation of the JPA.

As a matter of fact, discussions and communications are already underway between the ILO Liaison Officer and the members of the Implementation Committee on Convention 29. Mr. Richard Horsey, Assistant to the ILO Liaison Officer has already accompanied the Field Observation Teams on their field trips. Mr. Richard Horsey has indeed travelled very extensively in the country, and he has been even to the northernmost regions of Myanmar, including Putao.

The Myanmar authorities, on their part, are ready and willing to cooperate with the ILO in the joint implementation of the JPA, while continuing their implementation of the JPA on their own.

With kind regards,

Yours sincerely,

(Mya Than)  
Ambassador  
Permanent Representative

## Appendix 4

31 October 2003

Dear Ambassador,

Thank you for your letter sent from New York on 22 October 2003.

In the spirit of frankness which we have always had in our many discussions to achieve our common objectives, I would like to clarify a certain number of points raised in that letter as well as in U Soe Nyunt's reply to the Director-General. As you will no doubt recall, I emphasized in this respect, on the occasion of one of our most recent informal meetings, that the Office was deliberately refraining from replying to this letter in the hope that through your interventions some positive developments might correct the situation and make such comments unnecessary.

I confirm that we have had many contacts during Summer. It is all the more disturbing to note that, despite these discussions and all the clarifications provided in Geneva and Yangon, both your letter and that of U Soe Nyunt seem to keep questioning the binding framework adopted by the International Labour Conference for reasons which are not linked to the political situation as such but which reflect a legitimate and common sense appraisal of conditions that would make the implementation of the path-breaking agreements we have concluded both possible and plausible.

As we have explained, the Office, for its part, did not interpret this framework to mean that the context and situation, as it prevailed when the agreement and understanding was initialled, should be fully restored to make it possible to go ahead. What was required was a clear indication that the implementation was found possible and useful by all those concerned by, or involved in, such implementation. We discussed ways in which this could be done with the assistance of the authorities if they continue to give the highest priority to this matter as well as to the road map announced by Prime Minister Khin Nyunt. Unfortunately your letter does not contain new information about the authorities' reaction on these ideas.

Your letter also contains in the penultimate paragraph some inaccuracies as regards the travel of the Liaison Officer ad interim and his association with field trips organized by the authorities that I need not elaborate on this as a detailed and accurate report of the LO's activities will be provided to the Governing Body. May I, however, take the opportunity provided by this paragraph: (i) to express the concerns of the Office about the limitations that were placed on his freedom of movement which, as you are aware, is imperative under the understanding; and (ii) to reiterate the one possible way to give some credibility to these field visits organized by the authorities and related "inquiries", pending the implementation of the Formal Understanding on the Facilitator, would be to give the Liaison Officer or her assistant the opportunity to witness the procedures and method used. I am happy to see from a copy of a letter just received from Yangon that serious consideration is now given to this second point.

We have now reached the end of October, and there is little time left before the Governing Body session. I hope however that, as the Director-General himself pointed out in his letter, it is not too late, and that the above clarifications might trigger some distinct positive steps from the authorities. As usual, the Office stands ready to discuss at any time, both in Yangon and in Geneva.

Yours sincerely,

*(Signed)* Kari TAPIOLA

His Excellency  
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