



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)****I. Discussion in the Committee on the
Application of Standards**

1. In June 2003, at its special sitting set aside to consider the observance by Myanmar of Convention No. 29, the Committee on the Application of Standards of the International Labour Conference had before it, inter alia, a report from the Liaison Officer including the text of a joint Plan of Action agreed between the ILO and the Government of Myanmar on 27 May.¹ Following its discussion, the Committee adopted the following conclusions:

The Committee recalled that its debate was taking place at a moment when the international community was deeply concerned at the events which were occurring in Myanmar, namely the incommunicado detention of the leadership of the National League for Democracy, in particular its General Secretary, Daw Aung San Suu Kyi, and the alleged killing and disappearance of an unknown number of people. In this connection, a number of speakers expressed their concern at the personal situation of Daw Aung San Suu Kyi and asked that she immediately be released. These events, and the resulting climate of uncertainty and fear, called seriously into question the will and ability of the authorities to make significant progress in the elimination of forced labour. The Committee requested the Government representative to convey its profound concern to his Government.

In its observation, the Committee of Experts had noted that the three recommendations of the Commission of Inquiry had still not been implemented: the Village and Towns Acts had not been amended, although Order 1/99 and its Supplementary Order could, if applied in good faith, provide a statutory basis for ensuring compliance with the Convention in practice; measures to stop the exaction of forced labour in practice, such as concrete and specific instructions to the civilian and military authorities and budgetary allocations for the effective

¹ International Labour Conference, 91st Session, Geneva, June 2003, document C.App./D.5. The joint Plan of Action was initialled by both sides, and formal signature was to have taken place in Geneva during the International Labour Conference. However, the process was overtaken by events, and the ILO did not go ahead with the planned signature.

replacement of forced and unpaid labour, had not been taken; and there had been no prosecution of or sanctions imposed on persons for exacting forced labour.

The Committee took note of the statement of the Government representative, as well as the other information and documents before it. It noted with appreciation the Government's cooperation with the ILO Liaison Officer in Myanmar since she had taken up her position in October 2002. It had to note, however, that the measures taken by the Government to publicize widely Order 1/99 and its Supplementary Order, including the translation of these texts into six languages of national minorities, and the field visits carried out by the field observation teams of the Convention No. 29 Implementation Committee, still had not resulted in tangible progress in the application of the Convention. It was clear from the information available from various sources, including the impressions of the Liaison Officer, as reflected in her report to the 286th Session of the Governing Body, that recourse to forced labour continued in practice and that the situation was particularly serious and appeared to have changed very little in certain areas with a heavy presence of the army. It also noted that despite the discussions between the authorities and the Liaison Officer in the Convention No. 29 Implementation Committee, all the investigations carried out by that Committee into the allegations of forced labour presented by the Liaison Officer had found that these allegations were unfounded.

Taking into account the urgent need expressed repeatedly by the Committee of Experts, the Governing Body and the present Committee to move from procedural steps to substantive progress in putting an end to forced labour, the Committee welcomed the fact that the Government and the ILO had agreed on 27 May 2003 on a joint Plan of Action for the elimination of forced labour and expressed its support for this Plan. It noted with interest that, on the basis of the suggestion made by the High-Level Team, the Plan envisaged the designation of an independent Facilitator to assist victims of forced labour to obtain redress under national legislation. It was noted that the Facilitator would carry out his functions throughout the country. Under the Plan of Action, the Government had undertaken to strictly enforce the prohibition on forced labour in the pilot region. While emphasizing that the implementation of the Plan of Action was without prejudice to the general obligation of the Government to put an end to forced labour in the whole of the country, the Committee felt that this Plan of Action, if it was applied in good faith, could enable tangible progress to be made in the elimination of forced labour and could open the way to more substantial progress. The Committee urged the Government to take all the measures required for this purpose. The reports of the Facilitator to the Governing Body, as well as the evaluation reports on the implementation of the Plan of Action, should allow the results obtained to be judged.

In view of this, the Committee was bound to deplore the situation created by recent events in Myanmar. A climate of uncertainty and intimidation did not provide an environment in which the Plan of Action, and in particular the Facilitator mechanism which it established, could be implemented in a credible manner. The Committee trusted that the Government would take the necessary measures to bring an end to this situation. The Committee hoped that the implementation of the joint Plan of Action would go ahead as soon as the Director-General considered that the conditions were met for its effective implementation. The Director-General was expected to report to the Governing Body at its November 2003 session on developments in the situation, in the light of the discussions in the present Committee.

II. Subsequent action by the Liaison Officer

2. Following her return to Yangon in July, the Liaison Officer was not able to arrange any meetings with the Myanmar authorities.² In a letter dated 25 August to the Minister for Labour of Myanmar, the Director-General expressed his serious concerns at such a

² Requests were made for meetings with the Director-General of the Department of Labour, the Convention 29 Implementation Committee, and Col. Hla Min of military intelligence (a government spokesperson). Requests were also made through the Department of Labour to meet with the Minister for Labour.

stalemate and gave his assurances that the Office stood ready to resume the dialogue in good faith. The Director-General also underlined the need for consideration to be given to the repeated international concerns relating to the rule of law and freedom from fear, in order for efforts towards the eradication of forced labour to move forward.

3. In a reply dated 8 September, the Director-General of the Myanmar Department of Labour expressed disappointment that the ILO had not gone ahead with the implementation of the joint Plan of Action, and indicated that the lack of discussions should not be interpreted as a stalemate since the authorities were for their part dispatching field observation teams to various parts of the country as outlined in the Plan of Action. Concerning the eradication of forced labour, the authorities were determined to proceed in their own way until the desired goal was reached, with or without technical assistance or financial support. In their view, linking cooperation to the internal political climate could not produce any fruitful result.
4. The Liaison Officer had a meeting with the Minister for Labour on 8 September. The Minister noted with regret that the ILO had linked the forced labour issue with the domestic political affairs of the country, and reiterated the Government's intention to continue to try its best to eradicate forced labour with or without assistance from the ILO. The Liaison Officer pointed out that the concern of the International Labour Conference had not been the political events in the country as such but their impact on the feasibility of having the Plan of Action credibly implemented. She expressed the hope that measures would be taken soon which would restore a climate allowing this implementation. In the meanwhile, progress could be made in the practical implementation of the Orders prohibiting forced labour. This would demonstrate the real commitment of the Government to eradicate forced labour. This concern was taken up in more detail by the Liaison Officer in a meeting on 23 September with the Convention 29 Implementation Committee (see section III below).
5. In addition to these meetings with the authorities, the Liaison Officer and her deputy³ had a range of other contacts in Yangon and in Bangkok,⁴ and undertook a number of trips in the country to gain a better understanding of the current situation. From 19 to 26 August, the Liaison Officer a.i. travelled to Kachin State, to the towns of Myitkyina and Waingmaw and surrounding areas, and from 13 to 16 October to Hpa-an and Mawlamyine (Moulmein) and surrounding areas of Kayin and Mon States. On 5 September, the Liaison Officer also made a visit to a township close to Yangon. All these trips were undertaken independently, without the participation of the authorities.
6. The Liaison Officer a.i. was able to have the required freedom of movement and contacts during these trips. However, the Liaison Officer a.i. was prevented from travelling to the town of Hpakant in Kachin State. The Liaison Officer's understanding is that although

³ The Liaison Officer had to return to Geneva for health reasons from 8 to 31 August and from 25 September to 2 November. During these periods her deputy, Mr. Richard Horsey, acted as Liaison Officer ad interim.

⁴ These contacts included diplomats, representatives of local and international NGOs in the country and in Thailand, the ICRC, religious and community leaders, ethnic political representatives, and members of the local and international business communities (it did not prove possible, however, to arrange a meeting with the Union of Myanmar Federation of Chambers of Commerce and Industry). Meetings were also held with the United Nations Secretary-General's Special Envoy for Myanmar, Tan Sri Razali Ismail, during his visit to the country from 30 September to 2 October, and in Bangkok with the regional representative of the United Nations High Commissioner for Human Rights.

travel to this town is restricted for non-nationals, there are no serious security concerns which should have prevented such a visit; international NGO staff are able to work in the area. The local authorities cited as the reason for preventing this visit the fact that diplomats and UN staff required advance permission to travel outside Yangon, and seemed to be unaware of the special freedoms of the Liaison Officer in this regard. On returning to Yangon, the need to ensure that local authorities are aware of the special status of the Liaison Officer in order to avoid such situations in the future was underlined.

7. At the time this report was finalized, the General Secretary of the National League for Democracy, Daw Aung San Suu Kyi, had been returned to house arrest. No other new development had taken place regarding her release or the release of other NLD leaders or supporters.

III. General evaluation concerning current realities

8. *General evaluation.* The Liaison Officer's general evaluation regarding forced labour remains, as presented to the Governing Body in March,⁵ that although the situation in central parts of Myanmar has improved somewhat since the Commission of Inquiry, the situation in border areas where there is a large presence of the army remains serious and has changed little. The Liaison Officer continues to receive credible reports of forced labour from various sources inside and outside the country, and fresh allegations have come to light during the recent trips to various parts of the country.⁶ The Liaison Officer continues to be concerned by the question of forced recruitment into the armed forces, including of children, on which no detailed response has been received from the authorities. Another matter which has come to the attention of the Liaison Officer is the current widespread and apparently systematic programme of military training for civilians, affecting very large numbers of people across the country since May. Trainees include government employees (for example, teachers), as well as local villagers and townspeople, who are required to participate in this training and in some cases also have to cover the cost of materials (such as bamboo sticks). As regards the ethnic language translations of the Orders prohibiting forced labour, while copies of most of these translations have been received by the Liaison Officer, there is so far no indication that the translations have been distributed or displayed in ethnic areas.
9. *Developments in the Convention 29 Implementation Committee.* In the meeting on 23 September with the Convention 29 Implementation Committee, it was pointed out to the Liaison Officer that agreement had been reached on the joint Plan of Action, and the document had been initialled, but that despite this step forward the ILO had not agreed to sign the Plan of Action and go ahead with its implementation. The Liaison Officer replied that both sides had worked hard on reaching agreement, and the ILO remained fully committed to the Plan of Action. The question of signature was related to the question of implementation, and as soon as the conditions were right for implementation, there would be no obstacle to signature. The Liaison Officer then raised her concerns regarding the forced labour situation. Three specific new allegations were raised, concerning the recent

⁵ See GB.286/6, para. 7.

⁶ In his report to the 58th Session of the General Assembly, the Special Rapporteur of the Commission on Human Rights on the situation of human rights in Myanmar provided details of his own findings concerning forced labour (see UN doc. UNGA A/58/219 of 5 August 2003, in particular paras. 52-55).

use of forced labour on road projects: (1) from Rathedaung to Maungdaw in northern Rakhine State; (2) from Kawbein to Kyondo in Kayin State including an alleged case of physical violence against a village head who complained about the work; and (3) in Twante township near Yangon. Concerning forced recruitment into the armed forces, including of children, the Liaison Officer noted that this serious issue had been raised previously in the Committee, and requested that details of progress in dealing with the issue be provided. As regards the question of military training to civilians, the Liaison Officer requested the authorities to provide details of any legal basis for this practice; no response had been received at the time this report was finalized.⁷ The Committee took note of these issues and indicated that it now planned to provide the Liaison Officer with quarterly reports on its activities. The Committee indicated that notwithstanding the fact that the ILO was not ready to move ahead with the implementation of the joint Plan of Action, it would continue with its work as before. In this regard four field observation teams had been sent to various parts of the country.⁸ These teams had not come across any cases of forced labour, had found that no complaints concerning forced labour had been received, and that the Orders prohibiting forced labour were widely known.

10. The Convention 29 Implementation Committee requested clarification of the meaning of the exceptions provided for in the forced labour Convention. It also pointed out to the Liaison Officer that there could be differences of opinion over whether certain practices constituted forced labour, and that it was important to take into account the traditional customs of the country. The Liaison Officer recalled that the Plan of Action had provided for seminars and public information to help clarify the matter, but in the meantime she proposed that she could meet with a small working group made up of interested members of the Committee in order to clarify details.
11. As regards progress on outstanding allegations before the Convention 29 Implementation Committee, the Director-General of the Department of Labour referred to his letter dated 28 May to the Liaison Officer, which responded to earlier allegations that had been raised.⁹ In a letter dated 2 September, the Liaison Officer had transmitted to the Convention 29 Implementation Committee in advance of the meeting information concerning forced labour in Kachin State received during the visit to that region; she requested that the Committee send a team to investigate these allegations, and recommended that she accompany the team in an observer capacity. The information concerned the use of forced labour for the construction of barracks for a number of new battalions recently stationed in the northern town of Putao, mentioned by a number of sources in Kachin State, and the use of forced labour for an extensive beautification programme in Myitkyina, observed by the Liaison Officer a.i. during his visit to the town. In the Convention 29 Implementation Committee meeting, the representative of the Ministry of Defence indicated that the allegation concerning Putao was false, and that no materials or labour had been requisitioned for the construction of these barracks. The army had procedures for such tasks, just as it had procedures for the proper recruitment of porters, as he had mentioned during the last meeting of the Convention 29 Implementation

⁷ On a number of occasions the authorities have informed the Liaison Officer, however, that the Myanmar armed forces are made up only of volunteers and that there is no law providing for conscription.

⁸ Teams were sent in July and August to Kayin/Mon States, Magway Division, Bago Division and Kayah/southern Shan States.

⁹ This information is reproduced in the Appendix. To date no response has been received on allegations of forced labour contained in a 17 July 2002 report by Amnesty International, raised by the Liaison Officer in 2002.

Committee. The Director-General of the General Administration Department indicated that the allegations of forced labour in the beautification of Myitkyina had not involved the use of forced labour, and that the authorities in question had a budget for this work. The Liaison Officer asked for copies of these procedures to be provided. She noted that while it was encouraging that the army had procedures for such activities, it was important that a specific investigation be carried out into this matter to determine whether the proper procedures had been followed in this particular case. She also recalled that at the last meeting she had requested details of cases where action had been taken against members of the army for violating the Orders prohibiting forced labour, and asked again that these be provided.

- 12.** The Liaison Officer reiterated these points in a letter sent to the Convention 29 Implementation Committee following the meeting. A further letter dated 20 October was sent to the Director-General of the Department of Labour following the visit to Kayin and Mon states, reiterating the need to provide information on any legal basis for the programme of compulsory military training, about which further information had been received during this trip. Information was also requested on the status of the distribution of the ethnic translations of the Orders prohibiting forced labour, since there did not appear to have been any distribution of the translations in the ethnic areas visited recently. In addition, the Liaison Officer requested a further meeting with the Convention 29 Implementation Committee in early November, so that all outstanding matters could be discussed.

Geneva, 28 October 2003.

Appendix

Findings on allegations of forced labour in Myanmar during 2002 (transmitted by the Director-General of the Myanmar Department of Labour in a letter dated 28 May 2003 to the ILO Liaison Officer)

I. The allegation concerning the situation in northern Rakhine State

1. Allegations

- (a) In September 2002, it was alleged that villagers were forced to plant trees beside Yangon-Sittwe highways; the seedlings had to be bought at Ks.25 each.
- (b) Villagers were forced to contribute money to build primary schools.
- (c) Na-Sa-Ka and Na-Ta-La used forced labour in building villages.

2. Findings of the above allegations

- (a) State Peace and Development Council, Township Peace and Development Councils and Ward/Village Peace and Development Councils distributed the seedlings; the people plant the seedlings on their own so as to make their land green and beautiful covered with trees. They were not forced to buy the seedlings because villages had their own nursery of plants. The seedlings were distributed free of charge.

The people being interviewed were Daw Saw Yee of Kyauk-taw township, Daw Khin Khin Htay of Mrauk-U and Daw Tin Tin Hla of Ponna-Kyun.

- (b) The State paid for the building of these schools. Also, there were donations made by villagers and NGOs. No one was forced to contribute.

The people being interviewed were U Kyaw Mya and Daw Saw Yi of Kyauk-taw, U Maung Maung Lat and Daw Khin Khin Htay of Mrauk-U, U Maung Kyaw Oo and U Ba Cho of Ponna-Kyun.

- (c) Na-Ta-La offered minimum wages of Ks.100 per day for part-time workers. According to their skills, workers were offered Ks.400, Ks.500, Ks.800, Ks.1,000 and Ks.1,500. There were 345 workers, not 703 workers as alleged. It was not forced labour. There were receipts with signatures and thumb prints.

The person being interviewed was Col. Aung Ngwe, Commanding Officer of Na-Sa-Ka.

II. The complaint concerning the requisitioning of vehicles and forced labour for artillery base construction in Kyaikhto area of Mon State

1. Allegation

- (a) In Kyaikhto township, the vehicle drivers were forced to transport officers and troops of Battalion 44 and their families to Kyaikhtiyo Pagoda. No payment was given. The drivers were detained.

The drivers were forced to work on construction of artillery base on the 4,000 ft. Kalama Hill, 80 miles from Kyaikhto. Drivers who refused had their licences revoked and banned from the route.

2. Findings of the above allegation

- (a) Local authorities were being investigated. There were no such forcing civilian drivers for military operation.

While visiting Kyaikhtiyo Pagoda, the families of military personnel and staff might have used these vehicles. But all this was done through local authorities from association of vehicle owners. They were given petrol or diesel oil and also fare for the use of their vehicles.

No vehicles were forced to work for any military purpose.

The organizations being interviewed are Village/Ward Peace and Development Councils and Township Peace and Development Council of Kyaikhto Township.

- (b) In some forward areas, supplies are needed to be dumped in open season. Sometimes it was necessary to hire civilian vehicles when more vehicles were needed.

But these vehicles were hired through local authorities from owners' association.

They were given fees for the hire of their vehicles and also necessary petrol and diesel oil.

In cases of road being damaged on the way it is customary that both the soldiers and drivers have to repair the road.

Drivers' licences were not revoked for these purpose.

The organization being interviewed are Village/Ward Peace and Development Councils, Township Peace and Development Council.

III. Allegations concerning forced labour in two townships of Bago Division

1. Allegation

- (a) Local people were forced to clear the bushes and shrubs that were growing along the roadside in Thaygone and Padaung townships.

2. Findings of the above allegation

- (a) It was found that no one from any organs of State's Power issued any order to clear the roadside bushes and shrubs. It is customary that after every raining season that roadside bushes and shrubs are cleared by residents of every quarter by their own accord. These civic activities are traditional and they are voluntary.

People/organizations being interviewed are Township and District Peace and Development Councils and local people picked up at random and questioned.

IV. Allegation concerning the killing of trade unionist U Saw Mya Than while he was being forced to work as a porter

1. Allegation

- (a) U Saw Mya Than who was claimed as an official of the FTUB and Kaw-thoo-lei Education Workers' Union, and had been elected as headman of his village, Kaleiktoat, in Ye township (Mon State) was alleged as forced to work as a porter for the army's LIB No. 588. When the army column came under attack from elements of the ethnic independence movement, shortly before nightfall of 4 August 2002, Saw Mya Than was killed in cold blood by the soldiers, in retaliation for the rebels' attack.

2. Findings of the above allegation

- (a) We would like to refer our letter No. 0511/1/DL(RP-2)2002, 18 November 2002, to the ILO Executive Director Mr. Tapiola's communications of date 7 November 2002.

In the above letter as we have mentioned that Myanmar-Tatmadaw (Myanmar armed forces) is a well-disciplined military organization. Such random killing of our own brethrens is therefore unthinkable. However, we don't want to deny that there can be casualties of both civilians and armed forces personnel in combat areas. In many areas, Myanmar-Tatmadaw (the army) has always

taken care of those civilians and armed forces personnel and even captured enemies who suffered injury during the fighting.

We had made a systematic investigation in consultation with the ministries and departments concerned about the allegation of killing of U Saw Mya Than. He was killed by a clay mould mine during an ambush staged by KNU insurgents. His death had nothing to do with Tatmadaw Men (the armed forces).

In our view, such allegations will come up every now and then with a view to tarnish the image of the Government.

V. *The allegation concerning Total FinaElf contained in the submission of the ICFTU to the Committee of Experts*

1. Allegation

- (a) The ICFTU considers that it knowingly continues to resort to forced labour for road building and maintenance and other infrastructure work connected to its Yadana pipeline operation. Civilians and at least 16 villages in Taninthayi Division (Southern Myanmar) were forced to construct a highway between Kanbauk and Maung Ma Gan. These events took place as recently as April 2002, if not after that date. Families were often forced to work for 20 days or more per month, each having to build a 20-metre long, 4-metre wide stretch of road.

2. Finding of the above allegation

- (a) The allegation made against the TotalFinaElf by ICFTU were aimed at the company and at the same time trying to tarnish the image of the Government of Myanmar. We have studied the case including the report made by the company. We found that the allegation of ICFTU was not true by the senior officials of the field observation teams who are members of the Implementation Committee. They had made a thorough examination of the case, interviewed concerned personnel and organizations.