



EIGHTH ITEM ON THE AGENDA

**Developments concerning the question
of the observance by the Government
of Myanmar of the Forced Labour
Convention, 1930 (No. 29)**

**Evaluation visit to Yangon under the November
2003 understanding reached by the
Governing Body**

I. Framework of the visit

1. Under the understanding reached by the Governing Body at its November 2003 session, the Office was to carry out a full evaluation of the situation in Myanmar with a view to determining whether the conditions were now plausibly met for the implementation as soon as possible of the Joint Plan of Action. In anticipation of this mission, the Office endeavoured to establish a list of what could be the relevant parameters, taking into account the time that had elapsed since the Plan had been initialled in May 2003 and the events that had taken place. It came to the following tentative list:

- the commitment of the authorities at the highest level to the implementation of the Plan;
- confirmation specifically of the support given by the authorities at the highest level to the Facilitator both as an institution and as a person as was mutually agreed at the time of the initialling of the Plan;
- the (would-be) Facilitator's own views on whether the present conditions were appropriate for him to effectively discharge his responsibilities;
- confirmation of the continued relevance of the agreement on the Pilot Region and specifically the locations of the labour-based road construction projects that had been agreed on at the time that the Plan was initialled;
- possible views of key representative persons or groups concerning the continued need for the Plan and the plausibility for its credible and effective implementation in the circumstances of today;

- preliminary indications as to the renewed willingness and interest of potential donors to provide funding for the Plan;
- any other relevant elements.

II. Organization of the visit

2. Discussions in Yangon and Geneva between November 2003 and the beginning of 2004 did not make it possible to ascertain that the modalities which had been applied to previous missions, in particular as regards the full freedom to have all relevant contacts, would be afforded to the Director-General's representatives carrying out the evaluation. Under the circumstances, and as the matter was becoming urgent, the Director-General proposed in his letter of 30 January to the Minister of Labour that the visit could take place in two phases, a preliminary phase being designed to establish a mutually satisfactory programme guaranteeing that the abovementioned modalities would be met for the second phase. If agreement could be reached on such a programme, then the competent Executive Director could come in a second phase to finalize the evaluation and draw any conclusions that might be appropriate, including agreement on a new date for the beginning of the implementation of the Joint Plan of Action.

III. Progress of the visit

3. The preliminary phase of the visit was carried out from 4 to 8 March by a team consisting of Mr. Francis Maupain, Special Adviser to the ILO Director-General, and Mr. Richard Horsey, acting ILO Liaison Officer in Yangon.
4. The team had the opportunity to meet on the first day with three ministers (the Minister for Labour, the Minister for Home Affairs and the Deputy Minister for Foreign Affairs). The team recalled the purpose of the mission and underlined that in order for the second phase to take place and possibly to achieve agreement on a new starting date for the Joint Plan of Action, it was necessary that the same facilities should be extended to the second phase as had been extended to previous technical cooperation missions or the High-Level Team. The team especially emphasized that this request was not meant to interfere in potentially sensitive matters, but should rather be seen as a significant indication for the Governing Body that the relations between Myanmar and the ILO had returned to similar conditions as had prevailed when the agreement on the Joint Plan of Action had been reached. While the ministers expressed the unequivocal commitment of the Government to the implementation of the Plan, at the same time they made it clear that the possibilities and modalities which had been extended to previous missions as regards contacts with Daw Aung San Suu Kyi could not be applied in this case. The ministers explained that for reasons owing to the sensitivity of the current political process a strict rule was being applied regarding such contacts, which were strictly limited to the United Nations Secretary-General's Special Envoy, Ambassador Razali, as it was inherent to his mandate, and on one occasion to the Special Rapporteur of the Commission on Human Rights. While regretting this position and the signal it might give to the membership of the ILO, the team considered that under the circumstances it had no alternative but to conclude that the second phase of the mission would not be able to take place. The team considered, however, that it could nevertheless usefully take advantage of the present phase of the visit to collect any information that could be relevant to the evaluation by the Governing Body under the abovementioned parameters.

5. *Confirmation of the commitment of the authorities at the highest level to the implementation of the Plan, including the Facilitator mechanism.* The team obtained confirmation from all ministers met of the full support of the authorities for the Joint Plan of Action and specifically their confidence in Mr. de Riedmatten to carry out his most sensitive responsibilities as Facilitator. On the occasion of a second visit to the Minister for Labour on Sunday afternoon, 7 March, where the question of a meeting with the Prime Minister was discussed, certain other matters were also raised, including the possibility to address the problems concerning freedom of association in the context of the drafting of a new Constitution for Myanmar as provided for under the road map announced by the Prime Minister on 30 August 2003.
6. At the end of its visit on 8 March, the team, accompanied by Mr. de Riedmatten, had the opportunity to be received by the Prime Minister General Khin Nyunt in the presence of the Minister for Labour, the Minister for Home Affairs and the Minister and Deputy Minister of Foreign Affairs. The Prime Minister described the efforts of his Government to improve the conditions of workers, including efforts to address the question of forced labour about which there had been so much international concern. He noted in this regard that despite the positive transformation that had occurred in the forced labour situation, allegations continued to be levelled at Myanmar which did not seem to take account of this transformation and which he felt were politically motivated. The team noted that this was the first occasion that an ILO mission had met with General Khin Nyunt in his present capacity as Prime Minister. It extended its thanks to him for taking the time to receive them and for the practical cooperation he had extended to the Liaison Officer, as well as for the information he had just provided. As regards the allegations of forced labour, the team underlined that this was precisely the reason why the Facilitator mechanism represented such a significant new step, as it would provide a credible procedure to deal with those allegations which were prima facie plausible. For reasons that the Prime Minister was aware of, the second phase of the mission had not been able to go ahead, but this phase had nevertheless enabled useful elements in the assessment to be gathered. Very important among these was the continued commitment of the authorities at the highest level to the implementation of the Plan, including to the Facilitator both as an institution and as a person. The team also noted that, as had been discussed with the Minister for Labour, the road map being implemented under the leadership of the Prime Minister could become of special significance when the stage of drafting a new Constitution was reached, as it could help to settle outstanding issues of concern to the ILO, not only as regards forced labour but also freedom of association. The ILO would certainly be ready to provide technical assistance for this at the appropriate time. The Prime Minister explained the details of the road map and indicated that the National Convention, the body charged with drafting the new Constitution, would be reconvened this year. The Prime Minister was confident that through constructive cooperation between the two sides their mutual objective would be achieved, and on his part he would do his best to ensure this. The competent minister had his full authority to finalize any arrangements still required for the implementation of the Joint Plan of Action.
7. *Views of responsible persons or groups.* The team was fortunate to meet, at the very beginning of the visit, with the United Nations Secretary-General's Special Envoy, Ambassador Razali, as he was completing a three-day visit, which included two meetings with Daw Aung San Suu Kyi. Ambassador Razali expressed his optimism regarding the current political climate and the determination of the Prime Minister to carry out reforms set out in his road map, leading to the reconvening of the National Convention and the drafting of a new Constitution. Ambassador Razali indicated that in his view the ILO should now go ahead with the implementation of the Plan.

8. The team then had an opportunity to meet with the United Nations Country Team under the leadership of the Resident Coordinator, Mr. Charles Petrie. In addition to their general evaluation of the present context, the team requested any views that the representatives of the various United Nations agencies and the Resident Coordinator might have concerning the plausibility of the satisfactory implementation of the Plan in the present circumstances, especially as regards the functions of the Facilitator. The general reaction was that if anything the need for such a scheme was no less than before and there was no reason to think that the conditions for implementing it would be more difficult than they were at the time when the Plan was initialled. The advice given specifically by some was that in view of the need and demand for the Plan the ILO should at least try and implement it. The United Nations Country Team expressed its commitment to supporting the work of the Facilitator, as well as the contribution that could be made under the umbrella of the UN system through its presence and projects in different areas of the country to enhancing awareness of and the confidence to make use of the Facilitator mechanism. The team also had an occasion during its visit to usefully raise the same points with the representative of the ICRC.
9. The team also had a meeting with the diplomatic community in Yangon to provide information about the present situation and obtain their views about the Plan and its implementation in the present circumstances. Some of those present had already had consultations on this subject among themselves, and the overwhelming view of the diplomatic community was in fact very similar to the one expressed by the United Nations Country Team, that there was no reason to wait to make the benefit of the Plan and the potentially significant Facilitator mechanism available to victims. After hearing these views, the team reminded the diplomatic community that in such a case it would then become more urgent that their support should materialize as soon as possible in a concrete way. One of the ambassadors present supported the possibility of some limited funds being made available by his Government.
10. *Views of the Facilitator.* In anticipation of the full visit, the team had formally approached the would-be Facilitator in writing to seek his considered opinion on the possibility of discharging his responsibilities in the present context (this letter is attached as Appendix 1). In a written reply to this request (attached as Appendix 2), Mr. de Riedmatten provided some important relevant information as regards Daw Aung San Suu Kyi's views on the matter. His overall view is that he would be able to discharge his functions under current circumstances and as soon as the Plan is implemented. This assessment appears to be supported by the recent experience of the Liaison Officer a.i., who has been approached by an increasing number of possible victims or their representatives.¹ This seems to indicate a growing awareness of the existence and usefulness of the ILO presence and suggests that despite inhibitions or fears that may exist, the climate prevailing at this point in time does not necessarily deter victims from using this channel. The same would thus presumably apply to the Facilitator.
11. *Other elements of the evaluation.* The team attempted during its discussions to seek clarification of the continued relevance of certain aspects of the Plan. During its meeting with the Minister for Home Affairs it raised the question of the impact of ongoing ceasefire discussions and the autonomy recognized in ceasefire areas on the existence and

¹ Several additional allegations of this kind were quite recently reported to the Liaison Officer a.i. On the other hand, just at the time the present report was being issued, the Office received in Geneva documentation according to which a court, in its judgement against nine persons found guilty of high treason and sentenced to death last November, referred to alleged evidence of contacts, communications or information on ILO matters entertained by some of the convicted persons. Clarification is urgently being sought from the authorities on this matter.

investigation of forced labour allegations and in particular to the discharge by the Facilitator of his responsibilities in these areas. The Minister indicated that the authorities were very conscious of these concerns and had already had discussions with ceasefire groups on this matter.² During discussions at the working level,³ the team sought some clarification about some work which had already been undertaken at the site of the road projects envisaged under the Plan and on the continued relevance of other elements of the Plan in the current context. The continued relevance of these aspects of the Plan was confirmed, and it was agreed that a possible new date for the start of the Plan could therefore be the beginning of July, as had been originally envisaged a year earlier.

Geneva, 12 March 2004.

Submitted for information.

² Although it was confirmed by the team in the course of working-level discussions (see below) that so far no complaints of forced labour had been received through the national mechanism and there had been no prosecution of any person under section 374 of the Penal Code for imposing forced labour, the Minister for Home Affairs did provide some brief statistical information on cases of administrative action taken by his Ministry against local officials for violations of the Orders prohibiting forced labour. According to this information, action had been taken in 13 such cases. Indications of the names of the persons against whom action had been taken and the location were provided, but there were no details of the cases or of the precise nature of the administrative action taken.

³ These discussions were held with a group consisting of the competent senior officials (a Deputy Attorney-General, the Director-General of the Department of Labour, a Director-General from the Ministry of Foreign Affairs, the Deputy Director-General of the General Administration Department and the Deputy Director-General of the Myanmar police force) under the guidance of the Deputy Minister for Labour.

Appendix 1

Letter dated 4 March from Mr. Maupain to Mr. de Riedmatten

Dear Mr. de Riedmatten,

As you know, the main object of the ILO Mission which is to take place following the present preliminary phase, is to assess whether the context is now appropriate for proceeding with the implementation of the Joint Plan of Action.

It is clear that a key consideration in this assessment is the ability of the Facilitator to effectively and confidently discharge his responsibilities in this context.

As these most sensitive responsibilities will fall on your shoulders, the Director-General would be extremely grateful for any views you may wish to share with us, taking into account any contacts and information you may have had or may find appropriate to have in that connection. This is, of course, without prejudice to contacts which the Mission may consider relevant to have for the purpose of its review in accordance with the framework established for previous missions of this kind.

Your views will of course remain strictly confidential if you so wish.

Yours sincerely,

(Signed) Francis Maupain,
Special Adviser to the Director-General.

Appendix 2

Letter dated 5 March from Mr. de Riedmatten to Mr. Maupain

Dear Mr. Maupain,

I acknowledge receipt of your letter dated 4th March 2004 and I hope that the present ILO mission will manage to get all the information useful for a full evaluation of the situation.

In this context, you may be interested to know that Daw Aung San Suu Kyi, the General Secretary of the National League for Democracy, at the occasion of the visit of the UNSGSE, Ambassador Razali, indicated to me that ILO should be more engaged in the frame of eradication of forced labour since there is a permanent presence in the country. She believes that the Plan of Action will put in place mechanisms of investigation which will be more efficient and credible.

I believe that this information is valuable when it comes to assess if the environment is favourable for implementing the Plan of Action.

I see no reason to keep this confidential if it could facilitate your action.

Yours sincerely,

(Signed) Léon de Riedmatten.