



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)**I. Discussions on the steps needed to give effect to the conclusions of the November 2003 session of the Governing Body**

1. Following discussion of the item at its 288th Session (November 2003), the Governing Body adopted the following conclusions:

The Governing Body has taken note of the reports of the Liaison Officer, as well as of the explanations provided by the representative of Myanmar. It would like to express its appreciation to the Liaison Officer, Ms. Hông-Trang Perret Nguyen, for all the good work she has accomplished in very difficult circumstances since her appointment.

Grave concern has been expressed by the Employers, Workers and Governments about the lack of substantive progress on the eradication of forced labour and on the fact that, in the absence of any significant change in the general context since the International Labour Conference, or clear signals from the authorities in reply to the Director-General's letter in August, it has not proved possible to move ahead with the implementation of the Plan of Action, including the formal understanding on the Facilitator, which could be a key element towards the effective elimination of forced labour. Concern has also been expressed about restrictions that had occurred on the freedom of movement and contacts of the Liaison Officer.

In the circumstances, the Worker members proposed that a new review by the membership of the Organization of the measures contemplated under the 2000 resolution should be carried out and an appropriate letter sent by the Director-General, with the results reported to the March session of the Governing Body.

The Chair has however noted the commitment to the implementation of the Plan of Action expressed by the authorities through the introductory remarks of the Myanmar representative. In this regard, as the Chair understands the sense of these remarks, the Myanmar authorities should make it possible for the Director-General's representatives to carry out a full evaluation of the situation with a view to proceeding as quickly as possible with the implementation of the Plan of Action. This evaluation would be carried out in accordance with modalities which have been applied successfully in the past.

With this understanding, the Governing Body agrees to postpone consideration of the proposal to reactivate the measures under the 2000 resolution, in order to allow the urgent evaluation of the situation I just mentioned, as well as concrete steps by the Myanmar authorities to be taken before March 2004. It is understood that at that time we would in any case have before us a full report on the situation from the Director-General including any appropriate recommendations.

2. Ms. Hông-Trang Perret-Nguyen completed her appointment as Liaison Officer at the end of November 2003. Mr. Richard Horsey was appointed Liaison Officer ad interim from 1 December.
3. Following the Governing Body discussion, on 28 November 2003 the Director-General wrote to the Minister for Labour of Myanmar noting that consideration now had to be given to the steps needed to promptly give effect to the Governing Body's conclusions, and indicating that the Office stood ready to have the necessary discussions in this regard, in Yangon and Geneva. In a reply dated 14 December, the Minister for Labour indicated that he looked forward to the revitalization of cooperation with the ILO with a view to implementing the Joint Plan of Action, provided that there was no linkage of labour affairs with the political situation, something which was beyond the purview of his Ministry.
4. A meeting on 16 December between the Liaison Officer a.i. and the Minister for Labour provided an opportunity to further discuss how effect could be given to the Governing Body's conclusions. The Minister reiterated the full commitment of the authorities to implementing the Joint Plan of Action, and he saw no reason why this could not now proceed. The Liaison Officer a.i. noted that the Governing Body had requested a review of the context for the implementation of the Joint Plan of Action. The idea was that this could be conducted through a visit of the Director-General's representatives, the modalities for which would be the same as those successfully applied to technical cooperation missions in the past. The Minister replied that his Government had always welcomed visits of such missions, but expressed his reservations both about the need for such a visit, and the modalities under which it would take place given the sensitive nature of the current political situation. He subsequently expressed the same views to the former Liaison Officer ad interim, Mr. Léon de Riedmatten, who continues to act as "facilitator" between the authorities and the ILO.
5. Parallel to the discussions in Yangon, the Office had regular dialogue with the Permanent Representative of Myanmar in Geneva. Following these discussions, the Director-General wrote to the Minister for Labour on 30 January to clarify the background and significance of the understanding reached by the Governing Body in November 2003 and to insist that urgent consideration should be given to giving effect to it, under appropriate modalities. This letter is attached as Appendix 1.
6. Following further discussions and contacts in Yangon and Geneva, the Liaison Officer a.i. was advised at the time his report was completed on 26 February that the authorities were prepared for the preliminary phase of the review whose purpose, as suggested in the abovementioned letter of the Director-General, would be to assess the context for the possible implementation of the Plan of Action.

II. Activities of the Liaison Officer a.i.

7. In addition to his meeting with the Minister for Labour on 16 December, the Liaison Officer a.i. also met with the Director-General of the Department of Labour on 4 December to discuss matters related to the practical elimination of forced labour. The Liaison Officer a.i. also took advantage of his visit to Ayeyawady Division on 20 January with a field observation team (FOT) headed by the Director-General of the Department of

Labour to have further discussions. These matters were followed up in more detail in a meeting on 29 January with the Convention 29 Implementation Committee. Further details are provided in section III below.

8. In addition to these meetings and discussions with the authorities, the Liaison Officer a.i. also had a broad range of other contacts in Yangon and in Bangkok,¹ and travelled in the country, both independently and together with the authorities, to have an understanding of the current realities. From 20 to 21 January he accompanied, in an observer capacity, a FOT to Kyaiklat town in Ayeyawady Division to investigate an allegation of forced labour. From 23 to 26 January he participated in a trip to eastern Shan State, organized by the authorities for diplomats and representatives of United Nations agencies. This provided an opportunity to visit some remote areas that would be otherwise difficult to access for logistical reasons.
9. From 18 to 22 February, the Liaison Officer a.i. travelled by road to Kayah State.² This visit was conducted independently of the authorities. According to the understanding reached with the authorities concerning the freedom of movement of the Liaison Officer, since the area was a restricted one where there could be valid security concerns, the Liaison Officer a.i. informed the authorities of his plans shortly in advance, in order that his travel could be facilitated. No indication was given of his itinerary once he arrived in Kayah State. The Liaison Officer was able to travel to all areas that he wished, both in Kayah State and en route, without any restrictions or escort, and was able to meet freely with a range of persons, as well as meet with members of the Kayah State authorities.

III. The evaluation of the Liaison Officer a.i. concerning current realities

10. *General evaluation.* The Liaison Officer a.i.'s general evaluation regarding forced labour remains, as presented to the Governing Body in March and November 2003³ that, although the situation in the 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. He continues to receive credible reports of forced labour from various sources inside and outside the country, including from individuals or their representatives who have approached him and have presented detailed allegations that they were recently victims of such practices. The Liaison Officer a.i. is encouraged by the general view given by almost everyone he has met that forced labour, including portering, has declined somewhat over recent years, in particular following the visit of the ILO High-Level Team in 2001. He is however concerned by consistent reports that in some cases the decline in forced labour has been accompanied by an increase in other abusive practices such as forced contributions in cash or kind, or the use of convicts

¹ These contacts included diplomats, representatives of UN agencies, representatives of local and international NGOs in the country and in Thailand, the ICRC, and religious and community leaders. Meetings were also held in Yangon with a delegation from Amnesty International during its visit to the country in December and in Bangkok with the regional representative of the United Nations High Commissioner for Human Rights.

² He travelled from Yangon to Loikaw via Pyinmana (in Mandalay Division) and Pinlaung (in southern Shan State) and returned to Yangon via Leiktho and Thandaung (in Kayin State) and Taungoo (in Bago Division). Within Kayah State, the Liaison Officer a.i. based himself in the capital, Loikaw, and from there travelled to Demoso and Hpruso townships.

³ See GB.286/6, para. 7, and GB.288/5, para. 8.

for portering. Both the previous Liaison Officer and the Liaison Officer a.i. have expressed their concerns to the authorities on these points.⁴ The Liaison Officer a.i. continues to be concerned by the question of forced recruitment into the armed forces, including of children, although there have been some positive developments on this matter which are set out below. As regards the translation into ethnic languages of the Orders prohibiting forced labour, although all the translations have been completed, he has yet to see these translations posted in any ethnic area that he has visited, or to meet anyone in these areas who has seen these translations, and he is therefore yet to be convinced that they have been widely distributed by the authorities. In the view of the Liaison Officer a.i., a significant step that the authorities need to take in order to give a clear demonstration of their willingness to seriously address the forced labour issue is to take action on a case of forced labour, including prosecution under section 374 of the Penal Code as appropriate.

11. It appears significant to note that the increasing trend of allegations being received by the Office of the Liaison Officer directly from alleged victims or their representatives has been confirmed in recent weeks. A majority of the specific allegations mentioned below was received in this way.
12. *Developments on specific allegations.* On 8 December the Liaison Officer a.i. transmitted to the Convention 29 Implementation Committee two allegations of forced labour that he had received. In one case, it was alleged that the army had forced villagers earlier in the year to upgrade a road in the area of Nabu village, Kayin State. A response to this case was provided by the representative of the Ministry of Defence during the 29 January meeting with the Committee, who indicated that following an investigation it had been found that 12 miles of the 15-mile road in question had been constructed by the army itself, but the last three miles could not be completed because of security problems. The local villagers near the uncompleted part had therefore willingly completed the construction so as to be able to fully benefit from the new road, and the army had assisted them by providing cash and necessary materials. The Liaison Officer a.i. requested that a full written report on the investigation be provided.⁵
13. The second allegation transmitted to the Committee on 8 December concerned a detailed report to the Liaison Officer a.i. from an individual living in Kyaiklat township, Ayeyawady Division to the effect that villagers in the township were currently being forced by the local authorities to upgrade a 5,000-foot section of road. In response to this allegation, a FOT headed by the Director-General of the Department of Labour was dispatched to Kyaiklat from 20 to 21 January to investigate, and the Liaison Officer a.i. accompanied this FOT in an observer capacity. The FOT found that while the details of the road project as stated in the allegation were broadly accurate, people had taken part voluntarily and it was not true that anyone had been forced to participate.⁶
14. The previous Liaison Officer had already accompanied a similar FOT which investigated an allegation of forced labour in Kachin State, and had made certain observations to the Convention 29 Implementation Committee on the procedures used.⁷ The observations of the Liaison Officer a.i. regarding the procedure used by the FOT which visited Kyaiklat,

⁴ See also ILC, 90th Session, Geneva, June 2002, doc. C.App./D.6(Corr.), para. 27.

⁵ This had not been received at the time this report was finalized.

⁶ A full written report on this investigation was provided by the Convention 29 Implementation Committee on 13 February.

⁷ See GB.288/5/1, paras. 1 and 2.

which were transmitted to the Committee following the visit, were that the team conducted a serious investigation and that many of the observations made by the Liaison Officer following the previous visit had been taken into account. However, certain aspects of the procedure adopted by the FOT could still cast doubt on the credibility of the findings. The Liaison Officer a.i. also stressed to the authorities that ultimately the credibility of the FOT mechanism, and the effectiveness of the procedures used, would be judged by the results obtained, and that a continued lack of confirmed cases of forced labour would inevitably cast doubt on the credibility and effectiveness of the mechanism.

15. On 28 January the Liaison Officer a.i. transmitted a further allegation of forced labour to the Committee. This detailed allegation, which was made to the Liaison Officer a.i. by an individual concerned, stated that local residents had been requisitioned by the authorities in Twantay township, Yangon Division, in order to construct timber fences along a road in the township, and that a number of residents who refused to take part in this work had been detained and subsequently fined by the local court. The Liaison Officer a.i. requested the Committee to carry out an investigation as soon as possible in order that, if confirmed, appropriate action could be taken against any official found to have acted illegally and compensation provided to those concerned. Although he has been informed that preparations are being made to send a FOT to investigate this allegation, there had been no further developments at the time this report was finalized.
16. On 26 and 29 January, respectively, the Liaison Officer a.i. transmitted to the Committee detailed allegations concerning the forced recruitment of two boys, aged 14 and 15, into the army. According to the allegations, both children were currently undergoing basic military training at separate army training camps. The Liaison Officer a.i. requested the Committee to take urgent action to verify these allegations in order that, if they were confirmed, these children could be returned to the care of their families as soon as possible and an urgent investigation then carried out into the circumstances of their recruitment so that any person found to have acted illegally could be prosecuted. The Liaison Officer a.i. is aware that both of these children have been discharged, and the Ministry of Home Affairs confirmed in letters dated 17 and 23 February that this was done in both cases on 5 February. No indication has so far been given as to the results of any investigation into the circumstances of their recruitment.⁸
17. *Meeting with the Convention 29 Implementation Committee.* In the meeting on 29 January with the Convention 29 Implementation Committee, the Liaison Officer a.i. was briefed about the recent work of the Committee. The Committee noted that there had been significant progress. Allegations that had been received had been investigated, and FOTs had continued to make regular trips around the country.⁹ The Liaison Office a.i. stated that he was pleased by the various positive developments, and by what he viewed as an increasingly substantive cooperation with the Committee. He also raised a number of concerns. Although various allegations which he had transmitted had been investigated, and FOTs continued to travel to various parts of the country, so far the Committee had not found any case of forced labour, which would inevitably cast doubt on its credibility. As regards the recent widespread programme of compulsory military training for civilians, the

⁸ A further development as regards this question was the announcement that a new "Committee for Preventing Recruitment of Child Soldiers" held its first coordination meeting on 16 January (*New Light of Myanmar*, 17 Jan. 2004, p. 8). The Liaison Officer a.i. has requested a meeting with the secretary of this Committee, but such a meeting has not so far proved possible.

⁹ Detailed reports of five FOTs which visited Rakhine, Kayin and Kachin States and Yangon Division in October and November were transmitted to the Liaison Officer a.i. on 29 December.

Committee had so far not indicated any legal basis for this.¹⁰ He also recalled that the possibility had been discussed previously in the Committee of having a seminar with interested members of the Committee to discuss the meaning of the exceptions under Convention No. 29 and develop common concepts, the results of which could be reflected in a pamphlet that would clarify these matters for the people as well as local officials. The Committee agreed that this proposal could be useful, and that the matter would be put up to higher authorities for approval. The Liaison Officer a.i. reiterated the various points he had made in a letter sent to the Committee following the meeting.

18. On 24 February the Liaison Officer a.i. transmitted a further allegation of forced labour to the Committee. According to this allegation, residents of Thandaung township in Kayin State were forced by the army to construct/upgrade two roads in the township in 2004.

Geneva, 27 February 2004.

Submitted for information.

¹⁰ No such information had been received at the time this report was finalized. Since December, few new reports have been received concerning this programme, which suggests that it may have been completed or discontinued.

Appendix 1

INTERNATIONAL LABOUR OFFICE
GENEVA

THE DIRECTOR GENERAL

30 January 2004

Dear Minister,

I refer to your letter of 14 December 2003, in reply to my letter of 28 November.

As time is running, I wish to return specifically to the ways of giving effect to the conclusions of the Governing Body last November. You are certainly aware, through discussions with both our Liaison Officer ad interim Richard Horsey and Mr. Léon de Riedmatten and through reports from your Ambassador in Geneva, that the understanding presented by the Chairperson of the Governing Body in these conclusions was essential for suspending consideration of another course of action, which had been envisaged in the discussion.

The key element in this understanding was the prospect that my representatives could, between the November 2003 and the March 2004 sessions of the Governing Body, make a full review of the situation, to evaluate the possibility of proceeding as quickly as possible with the implementation of all elements of the Joint Plan of Action, including the Agreement on the Facilitator which continued to receive full support.

I would thus request that you give urgent consideration to this matter. The Office continues to be ready to carry out such a review, based on modalities which have been successfully applied in the past to technical cooperation missions. There could even be a preliminary phase for finalizing a mutually acceptable programme for a full mission.

I have requested my representatives both in Yangon and Geneva to be available. I am sure that Mr. de Riedmatten could also, with his previous experience as informal facilitator, be of assistance in the process.

Yours sincerely,

Juan Somavia

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