



Eighth item on the agenda

Report of the ILO technical cooperation mission to Myanmar

Origin and progress of the mission

The exchange of letters reproduced in Annex II of document CRP4 between the Government of Myanmar and the Director-General from 14 October 1999 onwards explains the origin and the purpose of the mission. As a result of this exchange, the Director-General agreed to send the mission only after obtaining the agreement of the Myanmar authorities that the sole object of such a mission would be to provide direct assistance to implement immediately the recommendations of the Commission of Inquiry under the terms of the resolution adopted on this subject by the International Labour Conference at its 87th Session (1999). In addition, in a letter dated 10 May 2000 the Director-General insisted that the members of the mission team should have the necessary facilities (in particular the freedom of action to make all contacts that they considered useful) and the immunities needed to carry out their task. It was not until Saturday, 20 May 2000, that the Director-General received confirmation, in terms that he regarded as sufficiently precise, that this would be the case.

The mission departed for Yangon on Monday, 22 May. Its members were as follows: Mr. Francis Maupain, Special Adviser to the Director-General; Mr. Max Kern, Chief, Freedom of Workers Section; Labour Branch; Mr. Carmelo Noriel, an official from the Regional Office for Asia and the Pacific.

The mission was accompanied by Mr. Rueben Winston Dudley, Deputy-Director, ILO Regional Office for Asia and the Pacific, and Mr. Richard Horsey, Adviser, ILO.

The mission was received in Yangon on the evening of Tuesday, 23 May. It left Yangon on the afternoon of Saturday, 27 May, so as to be able to report to the International Labour Conference in good time. With only three full days available to it, the mission was obliged to fit into a very short space of time a programme of intensive discussions with senior officials from the various ministry departments concerned, talks with the Ministers of Labour, Home Affairs and Foreign Affairs and, at the last moment, with Secretary-1 of the SPDC, as well as meetings and talks with representatives of the National League for Democracy (NLD), ambassadors and diplomats based in Yangon, and representatives of several international organizations.

The mission wishes to acknowledge that the government authorities fully honoured their commitment to give the mission the necessary freedom of action to make contacts and agreed to adjust the programme of meetings with government representatives in order to allow other talks to take place.

Appendix 3 contains the detailed programme of meetings and talks held by the mission, as well as a list of individuals involved in those meetings.

Technical discussions with the Government

The provisional programme proposed by the Government's Coordination Committee envisaged a series of separate meetings with the various ministerial departments concerned (the Ministries of Labour, Home Affairs and Foreign Affairs), and with representatives of the Attorney-General's Office and of the Supreme Court.

The mission proposed to the organizing committee that, given the limited time available and the need to achieve tangible results within that time, it would be preferable to begin with a joint session in which all the ministry departments concerned could be briefed on the overall context within which the mission was taking place and on the objectives which it believed it could set itself.

A joint meeting accordingly took place on Wednesday morning. During that meeting (in the light of certain articles that had appeared in the press), the mission observed that the ILO's image was not necessarily a friendly one in certain quarters but that, even if it could not make the image more friendly, it could at least endeavour to make it more accurate. To that end, it was essential to be as frank and open as possible in order to establish a basis of trust. Contrary to allegations that were often made, the ILO's intention was not in any way to encroach on national sovereignty. The ILO's philosophy was based on the principle of voluntarism and dialogue. According to the first of these principles, any country was free to become a Member of the ILO and to ratify its Conventions. However, once a country freely agreed to ratify a given Convention, it was bound to honour the commitments it had freely accepted. The mission also emphasized that, under the terms of the Declaration on Fundamental Principles and Rights at Work, the obligation to eliminate forced labour was now regarded as being inherent in ILO membership, whether or not a country had accepted the specific obligations arising from Convention No. 29.

With regard to the second pillar of the ILO's philosophy, that of dialogue, the mission recalled that the issues which constituted the object of the visit were certainly not new. They had for many years been the subject of observations made by the Committee of Experts with a view to eliminating the discrepancies that had been noted between national laws and the obligations arising from the Conventions. However, the Constitution of the ILO imposed certain limits on the possibility of dialogue. Those limits had been reached with the decision of the Governing Body to place on the agenda the question of the application by Myanmar of article 33 of the Constitution, in the light of its failings in the implementation of the recommendations made by the Commission of Inquiry. The mission briefly recalled the three categories of measures which would be before the Conference at the proposal of the Governing Body, and gave some information regarding the procedures which would be used to examine them.

Apart from those proposals, the Conference would also have before it the mission's report, which it intended should be full and objective. It would be for the Conference in its wisdom to draw the appropriate conclusions from the report and from the findings of the mission.

However, the mission also wished to emphasize that, in order to convince the Conference, the results would have to be concrete and precise and involve a commitment by the authorities at the highest level. There was a need to overcome the credibility gap which had arisen over the years as a result of promises that had not been kept, and which had to a certain extent been exacerbated by the attitude towards the Commission of Inquiry

and its recommendations and by recent attempts to excuse deficient action to amend the legislation. If, as had often been stated, forced labour did not exist or was gradually disappearing, it should be all the easier to remove the discrepancies in the Towns and Village Acts inherited from the colonial era. In this regard, Order No. 1/99 left considerable gaps in terms of scope and content.

Amending the legislation should not only be relatively easy; it was also clearly in the country's own interests. It would give the international community and other organizations a very strong signal regarding its willingness to change. It would also allow the ILO to provide assistance for a possible follow-up, in the form of technical cooperation.

The representatives of the various ministerial departments said that they appreciated the frankness of the mission's explanation of the context and objectives of its visit. Subsequent meetings were devoted to discussions on more specific legal aspects of the task of bringing national legislation into conformity and of a possible follow-up.

Technical discussions on the implementation of the recommendations of the Commission of Inquiry

In accordance with the terms of reference of the mission, which related to the implementation of the recommendations of the Commission of Inquiry,¹ an extensive exchange of views took place between the mission and Government representatives from the Ministries of Labour, Foreign Affairs and Home Affairs, the Attorney-General's Office and the Supreme Court. These exchanges touched upon the following points.

A. Amendment of legislation

The Government representatives expressed the view that Order No. 1/99 issued by the Ministry of Home Affairs on 14 May 1999 (an Order directing not to exercise powers under certain provisions of the Towns Act, 1907, and the Village Act, 1907)² had given effect to the first recommendation of the Commission of Inquiry by amending the offending legislation. Under the legal system of Myanmar, the Government had the power to legislate and amend laws, and Order No. 1/99, was issued under the directive of the State Peace and Development Council, the law-making body, and had the full force of law.

The mission took due note of the Government's power to change legislation by an amending order but observed that, as had been noted by the Committee of Experts on the Application of Conventions and Recommendations in its most recent report,³ the Village and Towns Acts had not been amended; the difference between amending the Acts themselves and merely directing certain authorities not to exercise powers under the Acts had implications, inter alia, for the rights and obligations of others, including citizens who may be called up for service or labour under the Acts. Moreover, as noted by the Committee of Experts,⁴ Order No. 1/99 had reserved the exercise of powers under the relevant provisions of the Village Act and the Towns Act in several ways incompatible

¹ Reproduced in Appendix 1.

² The text of Order No. 1/99 is reproduced in GB.276/6, Appendix I, [Sub-] Appendix III.

³ International Labour Conference, 88th Session, 2000, Report III (Part 1A), Observations concerning ratified Conventions, C.29, Myanmar.

⁴ *ibid.*, paras. 8-14.

with the Convention; only the exception for emergencies as defined in section 5(a) of the Order was in conformity with the Convention and could be retained in amending the Acts themselves. Beyond this, specific drafting suggestions were offered.

B. *Measures to stop the exaction in practice of forced or compulsory labour*

The mission noted that the Government had not challenged the report and conclusions of the Commission of Inquiry before the International Court of Justice under the relevant provisions of the Constitution. The Government representatives indicated that, following the issuance of Order No. 1/99 and its wide circulation and publication, the exaction of forced or compulsory labour had stopped in practice, and offered reports by various agencies under the Ministry of Home Affairs on their implementation of the Order. They also repeated earlier indications that no complaints of forced or compulsory labour had come to the notice of the law enforcement bodies since the issuance of Order No. 1/99. The mission recalled that its own terms of reference did not include fact-finding, and noted that the continued imposition of forced labour in practice, in particular by the military, had been noted by the Committee of Experts.

In reply to the mission's observation that Order No. 1/99 concerned only the powers of certain civilian authorities under the Village Act and Towns Act and did not touch upon the powers of the military, who could still order the local authorities to provide assistance, the Government representatives pointed out that the Order was circulated to all ministries, including the Ministry of Defence, and that therefore the military had to take account of the Order. The mission recalled that, according to the findings of the Commission of Inquiry, orders from the military for the supply of labour or services never referred to the Village or Towns Acts and that, according to the Committee of Experts, this practice continued. To give effect to the second recommendation of the Commission of Inquiry, the mission suggested replacing Order No. 1/99 with an order from the SPDC instructing state authorities, and in particular military authorities, border security forces and their officers, not to requisition persons to provide labour or services for any purpose, nor to order others to requisition such labour or services, regardless of whether or not payment was made for said labour or services, except in cases of emergency (as listed in Order No. 1/99). It was suggested that it should be made clear in the Order that this prohibition included, but was not limited to, the requisition of labour or services for a range of specifically listed purposes.⁵ Finally, the prohibition was to be complemented by positive indications for state authorities or officers requiring labour or services for any purpose to make prior budgetary arrangements to obtain these by a public tender process or by providing market rates to persons wishing to offer their labour or services.

There also was an exchange of views as to the scope of the exception provided for under Article 2(2)(e) of the Convention for minor communal services.⁶

The Government representatives declined the mission's offer to present in writing possible illustrations of the amendments required at this stage.

⁵ The list suggested was drawn from paras. 274 et seq. of the report of the Commission of Inquiry.

⁶ cf. paras. 213 and 484-502 of the report of the Commission of Inquiry.

C. Punishment of those imposing forced labour

With regard to the application to the military of section 374 of the Penal Code of Myanmar, which provides for the punishment of whoever compels any person to labour against the will of that person, the Government representatives indicated that the Penal Code applied to everybody, civilian or military, and that in case of violation of section 374 of the Penal Code military officers would be liable to punishment under both the Penal Code and section 72 of the Defence Services Act, 1959. Noting the further explanation given by the government authorities that the exaction of labour had to be “unlawful” to be punishable under section 374 of the Penal Code, the mission recalled that the provisions of the Village and Towns Acts allowing military officers to call on local authorities for the supply of labour or services might have to be amended in order to make the corresponding exaction of labour “unlawful” in national law and thus punishable under section 374 of the Penal Code.⁷

Assistance with implementation and follow-up

Bearing in mind the complexity of the context in which forced labour practices occurred, the mission raised the question of how the ILO might give its support to the implementation of legal provisions and practical measures aimed at implementing the recommendations of the Commission of Inquiry so that those provisions would be translated effectively into practice. The Government representatives objected to the notion of “monitoring” used during the discussions, noting that the concept went beyond the recommendations of the Commission of Inquiry and therefore also the mandate of the mission. The mission stated that, setting aside the term in question, the issue was the possibility of assisting Myanmar in putting into effect a credible plan of action of the kind mentioned in the Director-General’s letter of 10 May. Once Myanmar had shown its determination to put into place the legislative, administrative and practical measures envisaged in the recommendations of the Commission of Inquiry, the Office might be able to provide in this regard various forms of assistance and support, which might include an ILO presence in the country.

Talks with the competent ministers

Talks with the Minister of Labour, Major General Tin Ngwe

The mission explained to the Minister the context and objectives of its visit as set out in the first paragraph of this report. It emphasized that, although it was obviously not realistic to expect new legislation and credible follow-up to be decided upon in the very short time available, the mission could at least offer the Government an opportunity to demonstrate concretely and precisely its desire to implement the Commission’s recommendations.

The Minister outlined in detail the situation of the country and the position of the Government. The country was in a transition period. The Government was not an elected Government and must therefore be careful how it handled any changes to acts and regulations. That was why it issued directives and orders, and Order No. 1/99 had seemed to be the most appropriate measure. The Village and Towns Acts were just one of many

⁷ cf. para. 514 of the report of the Commission of Inquiry.

examples of an outdated set of laws that needed to be entirely and systematically reviewed. However, that would take a considerable time. Meanwhile, Order No. 1/99 would be applied and any violators punished. No complaint had so far been received by the authorities, however. The Minister was intrigued by the fact that the complaints (referred to by the ICFTU) had only appeared after 1990, whereas it was before that date that, in order to deal with widespread insurgency, the need for porters for military operations had been greatest. The mission recalled that it had no fact-finding mandate, but only one of seeing to the implementation of the Commission of Inquiry's recommendations. It stressed the urgency of rapid action to that effect, since the Conference would be dealing with the matter the following week; even if it had not been elected, the Government could provide undertakings regarding the steps it intended to take. The mission again observed that an improvement in the situation could only make it easier to introduce the changes called for and that they would be altogether in the interests of the country and of the re-establishing of normal relations with the international community. The Minister replied that the Government had already evinced a commitment in spirit but that it had to follow the correct procedures. The mission welcomed that commitment while hoping that this commitment might be given more concrete form before the mission left the country.

Talks with the Minister of Home Affairs, Colonel Tin Hlaing

The mission again explained the origin and objectives of its visit and emphasized the need to overcome the credibility gap that had arisen as a result of earlier promises that had not been fulfilled, as well as the need for concrete and specific measures to be taken to bring about the necessary changes in the legislation and to put in place a credible mechanism for their follow-up. The mission explained that it had already discussed the technical and legal discussions on the problems with the Village and Towns Acts and the shortcomings of Order No. 1/99 in terms of both its scope and its content. It trusted that the Minister would do what he could to see that a precise and concrete undertaking was given that action would very soon be taken on the question of the legislation and its implementation.

The Minister assured the mission that any forced labour practices would be dealt with and punished in accordance with the law. However, he denied that there were any such practices at present. He emphasized the efforts that the Government had made to develop the country despite the absence of external assistance and affirmed that it was the Government's intention to turn over the administration of the country to a democratically elected government as soon as sufficient political and military stability had been restored.

Responding to a remark by the Minister that the ICRC's experience sufficed to disprove a number of allegations from abroad to the effect that the Government was concealing the real situation, the mission stressed that it was indeed interested in the ICRC's experience and would have the opportunity to hear more about it. It observed, moreover, that not only did changes to the legislation appear to be possible, judging from the technical discussions that had already been held, but that such changes and the message they would send to the outside world were very clearly in the interests of the country. The mission emphasized that the ILO, for its part, would certainly be in a position to advise on where and how the legislation could be amended and on how its recommendations might be implemented. First, though, the Government had to demonstrate a genuine willingness to take action. While thanking the mission for its opinion, the Minister stressed that the Government had already demonstrated its commitment and would endeavour to take the necessary action in the light of what the mission had requested.

Talks with the Minister of Foreign Affairs, Mr. Win Aung

The mission again outlined the context and objectives of its visit. The Minister rejected the accusations of forced labour and pointed out that they related to an economic and military situation that no longer existed. Thanks to the progress that had been made in pacifying the country, the requisitioning of porters had ceased, as had the use of forced labour on infrastructural works. He said that the authorities could not be accused of harbouring any sentiment other than the greatest good will towards the people of Myanmar, whose human and spiritual qualities the mission could appreciate for itself. What was important was the willingness of the Government and not the long-obsolete provisions of the Village and Towns Acts. He hoped that the ILO's mission would be followed by other missions and that the ILO would cooperate further with Myanmar. The mission observed that, though all its members would certainly be happy to return in a personal capacity to a country that they had unfortunately only been able to see very little of, the possibility of a mission returning would depend on the decisions that would be taken by the International Labour Conference in the light of the present mission's results. At the same time, the mission felt that it must make it very clear that, although it was indeed the willingness of the Government that mattered, it was up to the Government to take the relevant actions and in particular ensure that texts dating back to colonial times – which it described as obsolete – would be amended in line with the Commission of Inquiry's recommendations. Once the commitment to take such action was sufficiently clear, the ILO would certainly be in a position to provide assistance in bringing about changes in the legislation and in setting up a credible plan of action for their follow-up. An ILO presence could certainly be contemplated in such a context. The Minister expressed his good will and said he would do what he could to have the mission meet Secretary-1 of the SPDC, as the mission had requested.

Talks and meetings with various institutions, embassies and persons

Talks with the National League for Democracy (NLD)

The mission had the privilege of meeting Ms. Aung San Suu Kyi, General Secretary of the NLD, in the presence of Mr. Aung Shwe, Chairman of the NLD, and of other senior NLD members. It was thus able to explain the purpose of the mission, the advisability of which Ms. Suu Kyi had initially questioned. The mission emphasized that the Director-General had decided to send the mission only after receiving assurances that it would take place strictly within the framework of the June 1999 resolution of the International Labour Conference, i.e. that its purpose would be to secure the implementation of the recommendations of the Commission of Inquiry. The mission then proceeded to a fairly detailed exchange on certain rules governing the functioning of the International Labour Conference.

On the subject of forced labour specifically, Ms. Suu Kyi stated that the NLD was the only organization from within the country that was concerned with the matter and with following it up. She stressed the continuing gravity of forced labour, particularly in the light of its use by the military, and the extreme form that it could take with the enlistment of child soldiers. She also described in more general terms the extreme poverty and precarious situation of the entire workforce, which did not have access to any real social protection, including workers who were employed by foreign multinational corporations. The mission pointed out that its role was not to reopen the discussion on the facts of the situation but to secure the implementation of the Commission of Inquiry's

recommendations by means of changes in the legislation and the establishment of a credible follow-up mechanism. Ms. Suu Kyi wished the mission success and urged it to be firm in its resolve.

Meetings with ambassadors resident in Yangon

The mission outlined the context and objectives of its visit and responded as far as possible to the interest that its presence had elicited from a number of embassies and diplomatic missions. The clarification provided was particularly appropriate as certain media reports seemed to have presented it as a fact-finding mission.

In conformity with the mission's mandate, the purpose of its meetings with ambassadors was not to collect information on the facts of the situation, although certain ambassadors and diplomatic representatives it had met had spontaneously voiced their views on the subject. Rather the purpose of these meetings was to explain the relevance of the mission to the steps that the International Labour Conference would be called upon to take the following week, and in which the delegates of all the countries concerned would be involved. The object of the meetings was also to hear the views of the diplomats concerned as to how the ILO could contribute to helping Myanmar realistically and effectively to implement the changes that had been called for. The mission heard a broad range of views on all these questions – which, for obvious reasons, will not be discussed further in this report.

Meeting/discussion with the United Nations Country Team and specialized agencies in Yangon

Prior to its departure, the mission had contacted the UNDP in Yangon. The Resident Coordinator of the United Nations in Yangon, Mr. Patrice Coeur-Bizot, organized a meeting with representatives of the United Nations organizations and specialized agencies (UNICEF, FAO, UNHCR, WFP, UNAIDS). The mission was thus able both to respond to the interest and curiosity of its United Nations colleagues regarding an unprecedented development in the cooperation between the United Nations and Myanmar, and to learn about and compare their respective experiences in so far as they might be of interest and relevance to the follow-up to any changes in legislation and practice in Myanmar. The representatives of the various agencies spoke very freely and the information they contributed complemented very usefully that which the mission had obtained elsewhere, especially from the embassies.

Meeting with the ICRC delegate in Yangon

The mission was privileged to have a fairly long meeting with Mr. Léon de Riedmatten, delegate of the ICRC. He shared with it his experiences in visiting the prisons and camps, where he had been allowed to talk both to common-law prisoners and to political prisoners. The ICRC's experience seemed to be very much worthy of interest from several points of view. In the first place, Mr. de Riedmatten was generally thought to be the foreigner with the most extensive knowledge of the real situation in Myanmar, thanks to his many visits to prisons and camps throughout the country. Secondly, the ICRC's experience in its cooperation with the authorities would appear to be particularly significant. In 1995 the ICRC had left the country because of the impossibility of obtaining acceptable conditions to carry out its work. Its return in 1999 had initially given rise to a certain number of reservations, especially on the part of the opposition and of the NLD.

Yet today its presence was unanimously appreciated. The delegate of the ICRC was thus able to explain how he had won the confidence of all the parties concerned.

Visit to the Venerable Myatha Sayadaw

Shortly before its departure, the mission had the opportunity of meeting a senior representative of the Buddhist clergy. Although the meeting was very brief given the limited time remaining, and despite the fact that the issue of labour provided upon a requisition order could only be approached from the standpoint of doctrine and on no account from the standpoint of facts and practice, the mission was nevertheless able to obtain enlightening information. In particular, it was pointed out to the mission that where voluntary labour was meritorious, an individual could acquire merit only if he or she was carrying out this work of his or her own free will.

Conclusions of the technical discussions and visits to Secretary-1 of the SPDC, Lieutenant-General Khin Nyunt

The mission held a meeting on Saturday morning with representatives of the various ministries and organizations to wrap up its work.

Both parties realized however that the detailed discussions of a technical and legal nature that had taken place during the previous meetings could only find a satisfactory solution – or at least result in specific progress – if there was intervention at the highest political level. According to the institutional structure of Myanmar at present, this level is represented by the SPDC (State Peace and Development Council) – previously known as the State Law and Order Restoration Council – which represents the highest authority, holds the legislative power in the absence of an elected parliament and exercises control over the executive represented by the various ministers. Just a few hours before the mission returned to Geneva (Lieutenant-General Khin Nyunt had been absent from Yangon on the previous days), Secretary-1 of the SPDC agreed, despite his very full programme, to meet for talks. The Minister of Foreign Affairs and the Minister of Labour also attended the meeting.

Secretary-1 stressed that Myanmar wished to have cordial relations with the ILO. He gave a detailed account of the very rapid changes that were occurring in Myanmar and which, sometimes, caused certain difficulties. Myanmar differed from other countries in many respects. It still had far to go to catch up with its neighbours. But Myanmar did not wish to remain an “island” among the other States. It wanted to develop relations with its neighbours, the international community and the international organizations. Discussions such as those that were taking place might make it possible to create the basis of trust necessary for this purpose.

The mission thanked Secretary-1 for giving it the opportunity to meet him. It expressed its appreciation for the practical arrangements made by the authorities and for the freedom that it had been granted to fulfil its mandate. The mission had been able to put forward its views with complete frankness during the talks and that in itself constituted a certain success. This same frank approach was giving the mission a further opportunity, during this last talk, to stress at the highest state level that the major obstacle in Myanmar’s relations with that of the ILO was the existence of a credibility gap – due largely to the Government’s attitude towards the Commission of Inquiry. To a certain extent, this credibility gap was being widened by the arguments put forward to justify the absence of progress at the legislative level. If forced labour no longer existed or was in the process of

disappearing, as had often been stated, amendments to legislation that had become obsolete as well as other relevant actions should no longer present an insurmountable problem. The in-depth talks the mission had had on technical and legal matters had made it possible to pinpoint what needed to be done. If appropriate measures were taken on these specific points and applied effectively, this would send a very strong message to the international community so that it would understand, as Secretary-1 had said, that Myanmar did not want to remain an island. However, it was up to the Government itself to draw, in full freedom, the logical conclusions of its wish to open up to the outside world. The mission's role was only to report on any specific and precise measures that the Government was willing to take to give effect to the recommendations of the Commission of Inquiry. The mission was providing Myanmar with an exceptional opportunity to make known its willingness to take a certain number of tangible and specific steps to implement the recommendations of the Commission.

Secretary-1 thanked the mission for the frankness with which it had expressed itself and said that he quite understood what it meant. He explained once again in detail the efforts made by the Government to ensure the development of the country and to re-establish unity through political, economic and social reforms. It had, to a great extent, succeeded in its peace efforts with the armed insurgencies. However, because it had been isolated for very many years, its infrastructure was extremely precarious and the improvements being made could only be gradual. The economic sanctions imposed on Myanmar only added to its other problems. Although he acknowledged that there might have been recourse to so-called forced labour when work was being carried out on the infrastructure, these practices had ceased before the ILO report had been completed.

The mission recalled that its mandate was not to discuss the situation *de facto* and *de jure* described in the Commission of Inquiry's report which, in legal terms, now had the force of *res judicata*. The Government's concern with providing for the economic and social development of its country was entirely in conformity with the constitutional objectives of the ILO; but this objective was, according to the ILO's philosophy, subject to the respect of a certain number of basic principles and rights. Each worker should have the possibility of freely developing all of his or her human potential – and this freedom was also a prerequisite of true economic efficiency. Furthermore, it was clear that the economic development of the country could be boosted by international cooperation and investment. The mission was convinced that a clear and specific commitment on the part of the Government to guarantee the full application of the recommendations of the Commission could be decisive. If the Conference could be convinced by such concrete proof, assistance from the ILO – and, possibly its presence on the spot – might be envisaged.

Secretary-1 was confident that the mission would submit a balanced report to the Conference. The Government was fully aware that it could not remain isolated at this time of globalization. He hoped that the International Labour Conference would be guided by considerations of justice and not by political preoccupations. Human rights should not give rise to discrimination. The mission concluded with its assurances that the ILO's procedures provided every guarantee that the matter would be dealt with in an objective way. It was, however, up to the Government to give tangible proof of its intentions. The mission expressed the hope that this might still happen before the work of the Conference began.

Following these talks, as it was taking leave of its hosts three hours later at the airport, the mission received a communication from the Minister of Labour, addressed to the Director-General. The full text of this communication is contained in Appendix 2.

The mission's conclusions

During its talks the mission stressed on several occasions that its role was to explain to the authorities of Myanmar what needed to be done to give credible effect to the recommendations of the Commission of Inquiry, and subsequently to report to the Conference on the measures that the Government intended to take in this respect. The letter from the Minister of Labour to the Director-General constitutes, in a way, the results of the mission. Even if by its nature this report can only afford a somewhat kaleidoscopic view of the talks, it should help the Conference to place this response into perspective.

That said, it may however be useful to add two concluding remarks in the light of this report.

Firstly, the mission believes that the Commission of Inquiry's recommendations could be satisfied in a coherent and practical way if a comprehensive framework of legislative, executive, and administrative measures were adopted:

- (i) rendering all practices constituting forced labour in the sense of Convention No. 29 illegal under national law, and ensuring that all legislative provisions in force that permit the imposition of forced labour are repealed or appropriately amended;
- (ii) giving specific instructions to the state authorities, and notably to the responsible military authorities, regarding the consequences to be drawn from the above as regards the various forms of work mentioned in the Commission's report, and monitoring their application, so that in practice no forced or compulsory labour is imposed by any authority;
- (iii) informing the entire population adequately and completely about the above measures as well as the penalties applicable pursuant to section 374 of the Penal Code to all those imposing forced labour; and taking concrete action to ensure that these penalties are strictly applied in practice.

Secondly, as the Myanmar authorities were told by the mission, the Office could certainly help formulate and implement such a framework if the Government's commitment to take expeditious action to this effect was made sufficiently clear in the eyes of the Conference.

As the report shows, the mission discussed the support that the Organization could provide for the effective and sustainable implementation of the said framework. It pointed out that the possibility of various forms of follow-up action, including an ILO presence on the spot, should be considered in the light of the credible plan of action mentioned by the Director-General in his letter of 10 May. Obviously, the Government is entirely free to request this assistance or not, just as it will be up to the competent bodies of the ILO to appraise whether the conditions are met for such assistance and presence to be envisaged.

The mission could not end its report without expressing its gratitude to the members of the Coordination Committee for the welcome it received, for the excellent arrangements they made and for their constant availability and efficiency. It would also like to thank the Resident Coordinator of the United Nations, Mr. Coeur-Bizot, and his assistant, Ms. Jeanne Lennkh, for their logistical and practical support in setting up as many meetings as possible in such limited time.

Appendix 1

Recommendations of the Commission of Inquiry

In paragraph 539 of its report, the Commission of Inquiry urged the Government to take the necessary steps to ensure:

- (a) that the relevant legislative texts, in particular the Village Act and the Towns Act, be brought into line with the Forced Labour Convention, 1930 (No. 29) as already requested by the Committee of Experts on the Application of Conventions and Recommendations and promised by the Government for over 30 years, and again announced in the Government's observations on the complaint. This should be done without further delay and completed at the very latest by 1 May 1999;
- (b) that in actual practice, no more forced or compulsory labour be imposed by the authorities, in particular the military. This is all the more important since the powers to impose compulsory labour appear to be taken for granted, without any reference to the Village Act or Towns Act. Thus, besides amending the legislation, concrete action needs to be taken for each and every of the many fields of forced labour examined in Chapters 12 and 13 [of the Commission's report] to stop the present practice. This must not be done by secret directives, which are against the rule of law and have been ineffective, but through public acts of the Executive promulgated and made known to all levels of the military and to the whole population. Also, action must not be limited to the issue of wage payment; it must ensure that nobody is compelled to work against his or her will. Nonetheless, the budgeting of adequate means to hire free wage labour for the public activities which are today based on forced and unpaid labour is also required;
- (c) that the penalties which may be imposed under section 374 of the Penal Code for the exaction of forced or compulsory labour be strictly enforced, in conformity with Article 25 of the Convention. This requires thorough investigation, prosecution and adequate punishment of those found guilty. As pointed out in 1994 by the Governing Body committee set up to consider the representation made by the ICFTU under article 24 of the ILO Constitution, alleging non-observance by Myanmar of the Forced Labour Convention, 1930 (No. 29), the penal prosecution of those resorting to coercion appeared all the more important since the blurring of the borderline between compulsory and voluntary labour, recurrent throughout the Government's statements to the committee, was all the more likely to occur in actual recruitment by local or military officials. The power to impose compulsory labour will not cease to be taken for granted unless those used to exercising it are actually brought to face criminal responsibility.¹

¹ Paragraph 539 of the Report of the Commission of Inquiry appointed under article 26 of the Constitution of the International Labour Organization to examine the observance by Myanmar of the Forced Labour Convention, 1930 (No. 29). ILO Official Bulletin, Vol. LXXXI, 1998, Series B, Special Supplement. The full text of the report is also available on the ILO website at the following address: <<http://www.ilo.org/public/english/standards/relm/gb/docs/gb273/myanmar.html>>.

Appendix 2

Communication dated 27 May 2000 from the Government of Myanmar to the Director-General

Excellency,

I wish to express my appreciation to you for responding positively to our request to send a technical cooperation mission to Yangon.

I am pleased to inform you that the members of the technical cooperation mission and the senior officials from the Ministries of Labour, Home, and Foreign Affairs and Attorney-General's Office were able to hold extensive discussions on Convention No. 29. I also had useful discussions with the members of the technical cooperation mission. Despite their brief stay, they also had the opportunity to call on the Minister for Foreign Affairs and the Minister for Home Affairs. Moreover, His Excellency Lt. General Khin Nyunt, Secretary-1 of the State Peace and Development Council, took time out of his very busy schedule to receive the members of the technical cooperation mission and acquainted them in a frank and open manner with the actual situation in the nation. These discussions had been very useful and clarified issues where there have been differences of perception.

The Government also provided every assistance to facilitate their work and allowed them freedom of action. Our only regret is that due to constraints of time, they were not able to visit outside Yangon so that they would have a better understanding of the situation in the country.

It is our hope that through the discussions and the cooperation the mission enjoyed during the sojourn in Myanmar, we have been able to show that Myanmar is sincere in its efforts to resolve the issue of the allegations of forced labour.

I would also like to take this opportunity to inform you that we have taken and are taking the necessary measures to ensure that there are no instances of forced labour in Myanmar. Allow me to say that Myanmar would take into consideration appropriate measures, including administrative, executive and legislative measures, to ensure the prevention of such occurrences in the future.

In this regard, the talks held between Myanmar and the ILO technical cooperation mission have been most useful in providing a better understanding of the issues involved and it is our ardent hope that this process of consultation and technical cooperation within the framework of the ILO recommendation will continue in working toward the resolution of the matter. On my part, I look forward to meeting you during the coming ILC.

Accept, Excellency, the assurances of my highest consideration.

(Signed) Major General Tin Ngwe,
Minister for Labour,
Union of Myanmar.

Appendix 3

List of meetings held

The mission held 27 meetings over five days. In Yangon it met with Lt. General Khin Nyunt, Secretary-1 of the SPDC, three Ministers (Labour, Home Affairs, Foreign Affairs) and senior officials of the same ministries and of the Office of Strategic Studies, the Directors-General of the Attorney-General's Office and of the Supreme Court, NLD Chairman Aung Shwe, Aung San Suu Kyi and two other representatives of the NLD, representatives of 11 diplomatic missions, six United Nations agencies and the ICRC, and a representative of the Buddhist clergy. Before arriving in Yangon the mission received an extensive briefing from the ILO Regional Director, Asia and Pacific Region, at Bangkok Airport.

Tuesday, 23 May

2.00-4.00 p.m., Bangkok Airport

Mitsuko Horiuchi ILO Regional Director, Asia and Pacific Region

8.30-9.10 p.m., Traders Hotel

Thaung Tun Deputy Director-General, Ministry of Foreign Affairs
Kyaw Tint Swe Director-General, International Organizations and Economic Department,
Ministry of Foreign Affairs
Tun Shin Director-General, Attorney-General's Office

9.30-11.20 p.m., UNDP Office

Patrice Coeur-Bizot United Nations Resident Coordinator
Jeanne Lennkh Assistant to United Nations Resident Coordinator

Wednesday, 24 May

11.00-11.45 a.m., Traders Hotel

Htay Maung Director-General, Department of General Administration, Ministry of Home Affairs
Thaung Tun Deputy Director-General, Ministry of Foreign Affairs
Soe Nyunt Director-General, Department of Labour
Tin Kyaw Hlaing Retired Ambassador, Special Adviser to Department of Labour
Tin Aye Director-General, Supreme Court
Sein Myint Deputy Director-General, Department of Labour
Jeanne Lennkh Assistant to United Nations Resident Coordinator

12.30-12.55 p.m., Traders Hotel

Aung Min Police Lieutenant-General
Htay Maung Director, Department of General Administration, Ministry of Home Affairs
Thaung Tun Deputy Director-General, Ministry of Foreign Affairs
Kyaw Tint Swe Director-General, International Organizations and Economic Department, Ministry of Foreign Affairs
Soe Nyunt Director-General, Department of Labour
Tun Shin Director-General, Attorney-General's Office

Tin Kyaw Hlaing	Retired Ambassador, Special Adviser to Department of Labour
Tin Aye	Director-General, Supreme Court
Sein Myint	Deputy Director-General, Department of Labour
Kyaw Win	Director, Department of Labour
Jeanne Lennkh	Assistant to United Nations Resident Coordinator

2.20-3.45 p.m., Traders Hotel

Aung Min	Police Lieutenant-General
Htay Maung	Director, Department of General Administration, Ministry of Home Affairs
Thaung Tun	Deputy Director-General, Ministry of Foreign Affairs
Soe Nyunt	Director-General, Department of Labour
Tun Shin	Director-General, Attorney-General's Office
Tin Kyaw Hlaing	Retired Ambassador, Special Adviser to Department of Labour
Tin Aye	Director-General, Supreme Court
Sein Myint	Deputy Director-General, Department of Labour
Kyaw Win	Director, Department of Labour
Members of the Attorney-General's Office	
Jeanne Lennkh	Assistant to United Nations Resident Coordinator

4.00-4.50 p.m., Ministry of Labour

Maj.-Gen. Tin Ngwe	Minister of Labour
Thaung Tun	Deputy Director-General, Ministry of Foreign Affairs [interpreting for Minister]
Kyaw Win	Director, Department of Labour
Jeanne Lennkh	Assistant to United Nations Resident Coordinator

5.10-5.50 p.m., Ministry of Home Affairs

Col. Tin Hlaing	Minister of Home Affairs [with interpreter]
Director-General of Prisons	
Director-General of Police	
Director-General of the Department of General Administration	
Jeanne Lennkh	Assistant to United Nations Resident Coordinator

6.10-6.45 p.m., Thai Embassy

Pensak Chalarak	Thai Ambassador
------------------------	-----------------

Evening, Traders Hotel

Phoebe Gomez (<i>Informal meeting</i>)	Philippine Ambassador
--	-----------------------

Evening

Lt.-Col. Hla Min (<i>Informal meeting</i>)	Deputy Head, Department of International Affairs, Office of Strategic Studies
--	---

Thursday, 25 May

8.30 a.m., Malaysian Embassy

Dato' Mohammad Bin Noh	Malaysian Ambassador
-------------------------------	----------------------

9.50 a.m.-12.00 p.m., Traders Hotel

Hla Tun	Police Brigadier-General
Aung Thein	Director-General, Department of General Administration, Ministry of Home Affairs
Thaung Tun	Deputy Director-General, Ministry of Foreign Affairs
Soe Nyunt	Director-General, Department of Labour
Tun Shin	Director-General, Attorney-General's Office
Tin Kyaw Hlaing	Retired Ambassador, Special Adviser to Department of Labour
Tin Aye	Director-General, Supreme Court
Sein Myint	Deputy Director-General, Department of Labour
Kyaw Win	Director, Department of Labour

1.00-2.20 p.m., UNDP Office

Members of the United Nations Country Team:

Patrice Coeur-Bizot	United Nations Resident Coordinator
John Mendis	UNICEF representative
Francis Rinville	FAO representative
Canh Nguyen-Tang	UNHCR Chief of Mission
Bradley Guerrant	WFP representative
Jennifer Ashton	UNAIDS representative
Jeanne Lennkh	Assistant to United Nations Resident Coordinator

3.00-4.45 p.m. Aung San Suu Kyi's residence

Aung Shwe	Chairman, NLD
Aung San Suu Kyi	General Secretary, NLD
Than Tun	Labour Secretary, NLD
U Lwin	Legal Secretary, NLD

6.10 p.m., Ministry of Foreign Affairs

Win Aung	Minister of Foreign Affairs
Khin Maung Win	Deputy Minister of Foreign Affairs
Directors-General from the Ministry	
Patrice Coeur-Bizot	United Nations Resident Coordinator

Friday, 26 May

9.00-9.50 a.m., Japanese Embassy

Yoshihiko Kamo	Japanese Chargé d'Affaires
Yoshinori Yakabe	Japanese First Secretary
Naoki Ito	Counsellor

10.00-10.30 a.m., United States Embassy

Priscilla Clapp	United States Chargé d'Affaires
Debbie Kingsland	United States First Secretary

10.30-11.30 a.m., United States Embassy

Priscilla Clapp	United States Chargé d'Affaires
Debbie Kingsland	United States First Secretary
John Jenkins	British Ambassador
Victoria Billing	British Second Secretary

11.45 a.m.-12.35 p.m., French Embassy

Ambassadors of the EU countries:

John Jenkins	British Ambassador
Bernard du Chaffaut	French Ambassador
Marius Haas	German Ambassador
Cesare Capitani	Italian Ambassador

1.00-2.00 p.m.

Léon de Riedmatten ICRC Head of Delegation

2.45-3.30 p.m., Traders Hotel

Hla Tun	Police Brigadier-General
Aung Thein	Director-General, Department of General Administration, Ministry of Home Affairs
Thaung Tun	Deputy Director-General, Ministry of Foreign Affairs
Kyaw Tint Swe	Director-General, International Organizations and Economic Department, Ministry of Foreign Affairs
Soe Nyunt	Director-General, Department of Labour
Tun Shin	Director-General, Attorney-General's Office
Tin Kyaw Hlaing	Retired Ambassador, Special Adviser to Department of Labour
Tin Aye	Director-General, Supreme Court
Sein Myint	Deputy Director-General, Department of Labour
Kyaw Win	Director, Department of Labour

4.30-5.10 p.m., Chinese Embassy

Wang Zong Ying Chief of Political Section and First Secretary, Chinese Embassy

Evening, Australian Club

Douglas Foskett Chargé d'Affaires of Australian Embassy
(*Informal meeting*)

Saturday, 27 May

10.15-10.55 a.m., Traders Hotel

Aung Min	Police Lieutenant-General
Thaung Tun	Deputy Director-Department of General, Ministry of Foreign Affairs
Kyaw Tint Swe	Director-General, International Organizations and Economic Department, Ministry of Foreign Affairs
Soe Nyunt	Director-General, Department of Labour
Tun Shin	Director-General, Attorney-General's Office
Tin Kyaw Hlaing	Retired Ambassador, Special Adviser to Department of Labour
Tin Aye	Director-General, Supreme Court
Sein Myint	Deputy Director-General, Department of Labour
Kyaw Win	Director, Department of Labour
	Representative from the Department of General Administration

2.00-2.50 p.m., Government Guesthouse

Lt.-Gen. Khin Nyunt	Secretary-1, State Peace and Development Council
Win Aung	Minister of Foreign Affairs
Maj.-Gen. Tin Ngwe	Minister of Labour
Thaung Tun	Deputy Director-General, Ministry of Foreign Affairs [translator]

3.30-3.50 p.m., Meditation Centre

Venerable Myatha Sayadaw Senior Abbot of Buddhist Meditation Centre

CONTENTS

	<i>Page</i>
Origin and progress of the mission.....	1
Technical discussions with the Government	2
Technical discussions on the implementation of the recommendations of the Commission of Inquiry.....	3
A. Amendment of legislation	3
B. Measures to stop the exaction in practice of forced or compulsory labour	4
C. Punishment of those imposing forced labour	5
Assistance with implementation and follow-up	5
Talks with the competent ministers	5
Talks with the Minister of Labour, Major General Tin Ngwe	5
Talks with the Minister of Home Affairs, Colonel Tin Hlaing	6
Talks with the Minister of Foreign Affairs, Mr. Win Aung	7
Talks and meetings with various institutions, embassies and persons	7
Talks with the National League for Democracy (NLD).....	7
Meetings with ambassadors resident in Yangon	8
Meeting/discussion with the United Nations Country Team and specialized agencies in Yangon.....	8
Meeting with the ICRC delegate in Yangon	8
Visit to the Venerable Myatha Sayadaw	9
Conclusions of the technical discussions and visits to Secretary-1 of the SPDC, Lieutenant-General Khin Nyunt	9
The mission's conclusions.....	11
Appendix 1. Recommendations of the Commission of Inquiry	13
Appendix 2. Communication dated 27 May 2000 from the Government of Myanmar to the Director-General	14
Appendix 3. List of meetings held.....	15