

Developments since the 280th Session of the Governing Body (March 2001): Arrangements for an objective assessment of the situation of forced labour following measures taken by the Myanmar Government

(Mission to Yangon, 17-19 May 2001)

Introduction

While considering that the conditions had not been met for the provisions contained in the Conference resolution of June 2000 to be rendered inappropriate, the Governing Body noted during its 279th Session in November 2000 that the Director-General should continue to extend cooperation to the Government of Myanmar in order to promote full implementation of the recommendations of the Commission of Inquiry.

During its 280th Session in March 2001, the Director-General informed the Governing Body, in opening the discussion on the report concerning the implementation of the measures decided by the Conference (GB.280/6), of the efforts which he had undertaken with the Myanmar authorities in order to fulfil the second aspect of his responsibilities. In his letter of 1 March 2001 to the Minister for Labour ([Appendix 1](#)), he had expressed the view that the Myanmar authorities could not expect to receive any recognition for the framework of measures and subsequent action which they said they had taken, in the absence of an objective assessment by the ILO of their practical implementation and actual impact on the forced labour situation. Following that letter, he had received a visit from the Deputy Minister for Foreign Affairs, Mr. Khin Maung Win, on 22 March 2001. During a very frank discussion, the Deputy Minister had indicated that the authorities were disposed to enter quickly into discussions on the modalities of an objective assessment.

That information was received with interest, and the Governing Body decided that any further developments should be reflected in the report to be submitted to the Conference Committee on the Application of Standards at its meeting in 2001, in accordance with paragraph 1(a) of the resolution adopted in June 2000. The present report follows up that decision. Its purpose is to set out the developments that have taken place since the Governing Body's last session, and in particular to give an account of the origin and results of the mission which visited Yangon between 17 and 19 May 2001 in order to decide on the modalities for an objective assessment of the implementation and impact of the framework of measures put in place from October 2000 onwards.

Origin of the mission

During a meeting with the Director-General on 22 March 2001, Mr. Khin Maung Win had said that the Permanent Representative of Myanmar in Geneva, Ambassador U Mya Than, would be appointed to undertake discussions with the Office regarding the modalities of the objective assessment. During those preliminary discussions, it soon became clear that it was not realistic to expect the two successive stages of the implementation process (agreement on modalities and, in the case of such agreement being reached, the carrying out of the assessment itself) could be undertaken before the Conference, given the logistical constraints and the deadlines associated with the second stage. The parties therefore set a target of reaching a clear and firm commitment from the authorities regarding the modalities of such an assessment before the International Labour Conference, on the understanding that such a commitment would be followed up as soon as possible by the assessment itself, so that the Governing Body could be informed of the results during its November 2001 session. The letter of the Minister for Labour dated 26 April 2001 ([Appendix 2](#)) and the Director-General's reply of 10 May 2001 ([Appendix 3](#)) are the two principal reference points in the development of discussions on that subject.

It followed from the Director-General's letter of 10 May that, in order to finalize the modalities in question and obtain before the Conference a specific and definitive commitment based on parameters previously discussed with the Ambassador (concerning issues such as who would carry out the assessment, when it would begin and how long it would last, and what practical and legal guarantees would be provided for it), discussions would have to be held in Yangon with all the ministries concerned.

It was for this reason that a new mission visited Yangon between 17 and 19 May 2001. Its members were as follows:

- Mr. Francis Maupain, representative of the Director-General;
- Mr. Dominick Devlin, Legal Adviser;
- Mr. Rueben Dudley, Deputy Director, ILO Regional Office for Asia and the Pacific;
- Mr. Richard Horsey, Secretary.

Progress and findings of the mission

The mission, like the previous ones, attracted a degree of interest among the diplomatic community in Yangon and among the United Nations agencies. In order to respond to that interest, and despite the limited time available, the mission was anxious to organize a number of information sessions, with the assistance of the United Nations Resident Coordinator. The mission's detailed programme is given in [Appendix 4](#).

During the first working session following the mission's arrival in Yangon, the representatives of the various ministries concerned informed the mission that they had taken a number of measures since the adoption of the new framework of legislative, executive and administrative measures. To illustrate those efforts, the Secretary of the "Implementation Committee for [Convention No. 29](#)", U Soe Nyunt, drew attention to action which had been taken to publicize those measures as well as to the visits that had been organized to different parts of the country in order to examine the realities of the situation in the light of previous allegations.

The mission emphasized that the purpose of its present visit was quite different from that of the previous missions. The purpose was not to re-examine the substantive issues dealt with in the report of the Commission of Inquiry. Neither was it the purpose of the visit to set up a new Commission of Inquiry, although the Government was free to request such a step under article 34 of the ILO Constitution. As the Director-General had made clear in his letter of 1 March and in his presentation to the Governing Body in March, the purpose of the objective assessment now being considered was more specific: it was to assess the practical implementation of the legislative, executive and administrative framework that had been put in place and its actual impact on the forced labour situation in the country.

The mission drew attention to the fact that the Committee of Experts on the Application of Conventions and Recommendations had discussed the framework of measures at its previous meeting in December 2000, and its observation in its report to the Conference provided some valuable indications as to the points to be considered when the objective assessment was undertaken. The Committee of Experts, while expressing regret that the views of the October 2000 Technical Cooperation Mission had not been fully taken into account, nevertheless noted that the legislative measures adopted “could provide a statutory basis for ensuring compliance with the Convention in practice, if given effect bona fide not only by the local authorities empowered to requisition labour under the Village and Towns Acts, but also by civilian and military officers entitled to call on the assistance of local authorities under the Acts”. With that in mind, the Committee had given a number of indications regarding further measures that could be undertaken (Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1A), 2001, page 149).

The object and scope of the assessment being thus delineated, the mission emphasized that the modalities were of necessity dictated by the nature of the task: they had to provide every possible guarantee that the assessment would be objective and credible. The members of the High-Level Team (HLT) responsible for the assessment would therefore have to be appointed by the Director-General solely on the basis of their recognized impartiality, experience and technical competence including knowledge of the region; the duration of the HLT’s visit should be sufficient to allow it to form an opinion, while recognizing the possible constraints as regards the availability of the HLT’s members; and finally, the HLT needed to be allowed complete discretion with regard to the organization of its programme of activities and meetings. The mission expressed the hope that those parameters could be translated into a specific text during the course of the visit.

Those basic considerations led to discussions during which the mission drew up an initial draft “Understanding”. That in turn gave rise to numerous proposed amendments and counter amendments until quite late in the afternoon of Saturday, 19 May. Two main difficulties had to be faced. The first concerned the appointment by the Director-General of the members of the HLT, which the authorities wished to be subject to their prior approval. That demand was not accepted. It was, however, made clear that the expression “recognized qualifications” used in point I of the text implied that the qualifications required of members of the HLT would have to be recognized by all, including the Myanmar authorities; that interpretation was subsequently confirmed in writing, at the latter’s request. The second difficulty related to the discretion of the HLT to determine the programme which it regarded as necessary for conducting the assessment. The solution that was adopted acknowledged that that discretion could be limited by considerations of security – including the security of members of the HLT itself – but stipulated that those considerations must be “valid”; it also provided for a mechanism to overcome any difficulties that might arise in that regard, namely, the possible assistance of an independent “facilitator” recognized as knowledgeable and fair by all parties concerned. On that basis, the full text of an “Understanding” was finally agreed.

Before leaving Yangon, the mission was received by the Deputy Minister for Foreign Affairs, Mr. Khin Maung Win, who had been kept regularly informed of the progress of the discussions and who welcomed the news that they had finally led to an “Understanding”. He expressed the willingness of the Government to make the assessment process a success and asked the mission to communicate to the Director-General his Government’s wish to assist the HLT as much as possible in achieving its objectives. If difficulties arose, they could be discussed openly. The Government was firmly committed to resolving the issue.

The final text, as initialled by both parties at the airport after final amendments, is reproduced in [Appendix 5](#). Before leaving, the representative of the Director-General expressed the concern that the content of the Understanding and its implications should be communicated to the General Secretary of the National League for Democracy (NLD). Since it had been unable to do so directly, given the various constraints which it had had to face, the mission, on behalf of the Director-General, asked Mr. Léon de Riedmatten, former ICRC delegate and currently representative of the Centre for Humanitarian Dialogue, to do so instead.

The mission could not conclude its report without thanking Mr. Patrice Coeur-Bizot, the United Nations Resident Coordinator, and his assistant, Ms. Jeanne Lennkh, for their valuable support in the organization of meetings and in ensuring the smooth progress of the mission. It also wishes to thank Mr. Léon de Riedmatten for the very useful advice which he imparted to the mission on the basis of his particular experience and role. The mission was encouraged by the contacts which it had with the international organizations represented in Yangon and with the current ICRC delegate, Mr. Michel Ducraux. Overall, those organizations expressed a strong interest in contributing in a concrete way to the success of the present undertaking and in particular to promoting the development and implementation of the programme of the future high-level team as far as their knowledge and resources permit.

Geneva, 31 May 2001.

Appendix 1

Communication dated 1 March 2001 from the Director-General to the Minister for Labour of the Government of Myanmar

Dear Mr. Minister,

I acknowledge receipt of your letter dated 11 February 2001 in reply to mine of 22 December 2000, and would like to offer the following comments.

As regards the second paragraph of your letter, I can assure you that your views, as well as the text of the statement which your Ambassador intended to make and which reached the Chairman's Office after the closure of the session, will be reflected appropriately in the documentation before the next session of the Governing Body.

I have taken note of your statement that Myanmar is "resolute in our endeavours to implement the framework of legislative, executive and administrative measures which we have put in place" with a view to the total elimination of the practice of forced labour in Myanmar, and in particular of the information that some action has already been taken against the perpetrators of such practices.

However it is clear that Myanmar cannot expect to receive credit for these endeavours in the absence of an objective assessment of their practical implementation and actual impact. The ILO alone is in a position to provide such an assessment with the authority necessary to carry legal, practical and political consequences at the international level. This is all the more relevant in the light of the continuing flow of information from various sources concerning the issues in question.

For these reasons I would like to reiterate that the Office stands ready to engage in discussions about the possible format and modalities such an objective assessment could take. In my view, it would be highly desirable that such discussions take place before the next session of the Governing Body. It should be recalled that the International Labour Conference will, in accordance with paragraph 1(a) of its resolution, review the situation at its next session in June, on the basis of all relevant information then available.

Yours sincerely,

(Signed) Juan Somavia.

Appendix 2

Communication dated 26 April 2001 from the Minister for Labour of the Government of Myanmar to the Director-General

Excellency,

I acknowledge receipt of your letter dated 1 March 2001 which responded to my letter of 11 February 2001.

I note with satisfaction that, as assured by you in the letter under reference, the statement of my Ambassador as well as our views on the issue of forced labour in Myanmar had been reflected in the documentation submitted to the 280th Session of the Governing Body of the ILO held last month. I wish to express thanks to you for that.

I fully appreciate your Office's continued readiness to engage in discussions about the possible format or modalities for an objective assessment of the actual implementation of the legislative, executive and administrative measures that we have taken to eliminate forced labour in Myanmar. In this regard I would like to reiterate Myanmar's willingness to occasionally accept an ILO representative based in the Regional Office in Bangkok or Geneva and/or a mutually acceptable person. We are convinced that such a representative would be able to assess objectively the implementation of the abovementioned measures and their impact. For the assessment to be generally effective, in our view, it would require the involvement of an independent and unbiased entity.

I hope that continued discussions between you and our Permanent Representative Ambassador U Mya Than, who has been designated as our contact point in this matter, will lead to some significant progress before the 89th Session of the International Labour Conference (ILC) in our search for the effective format or modalities acceptable to both sides.

I can assure you that, regardless of any outcome in this joint effort, we will continue to take steps to ensure that forced labour does not exist in Myanmar both in law and in practice and to implement the framework we have put in place.

Yours sincerely,

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

Appendix 3

Communication dated 10 May 2001 from the Director-General to the Minister for Labour of the Government of Myanmar

Dear Mr. Minister,

Thank you for your letter of 26 April reacting to my letter of 1 March in the light of subsequent developments, including the discussions at the 280th Session of the Governing Body.

As envisaged in your letter, discussions have in the meantime continued with Ambassador Mya Than with a view to clarifying the process whereby the objective assessment mentioned in my letter could actually take place.

It now seems clear on both sides that this process would be in two stages. The first stage would be to reach a clear and firm commitment on the modalities of such an assessment on the basis of parameters which have been presented to the Ambassador. It is very urgent that this commitment be finalized so that, as envisaged on both sides, the outcome could be reported to the Conference in June. To reach this outcome as expeditiously as possible, my representatives – whose names have been communicated to the Ambassador – are ready to travel to Yangon as soon as the competent authorities confirm their interest, but no later than early next week.

If this first stage is successful, the second stage would be to undergo the objective assessment itself, in accordance with the abovementioned modalities. This assessment would have to take place not later than the end of the summer so that a report could be prepared for the Governing Body in November.

I hope the above clarification may help the authorities to quickly finalize their position on the matter.

Yours sincerely,

(Signed) Juan Somavia.

Appendix 4

List of meetings held

The mission held 16 meetings in Yangon over three days. It met with the Deputy Minister for Foreign Affairs, senior officials from three ministries (Foreign Affairs, Home Affairs, and Labour), and from the Attorney-General's Office and the Office of Strategic Studies, representatives of 26 diplomatic missions, seven United Nations agencies, a representative of the Geneva-based Centre for Humanitarian Dialogue, and a representative of the ICRC.

Thursday, 17 May 2001

9.40 a.m., Arrival in Yangon

10.30-11.00 a.m., Traders Hotel

Patrice Coeur-Bizot	United Nations Resident Coordinator
Jeanne Lennkh	Assistant to United Nations Resident Coordinator
Léon de Riedmatten	Centre for Humanitarian Dialogue

11.00 a.m.-1.00 p.m., Traders Hotel

Soe Nyunt	Director-General, Department of Labour
Win Mya	Director-General, International Organizations and Economic Department, Ministry of Foreign Affairs
Dr. Tun Shin	Director-General, Attorney-General's Office
Lt.-Col. Hla Min	Deputy Head, Department of International Affairs, Office of Strategic Studies
Aung Thein	Director-General, Department of General Administration, Ministry of Home Affairs
Zaw Win	Chief of General Staff, Police Force

2.30-4.30 p.m., Traders Hotel

Soe Nyunt	Director-General, Department of Labour
Win Mya	Director-General, International Organizations and Economic Department, Ministry of Foreign Affairs
Dr. Tun Shin	Director-General, Attorney-General's Office
Lt.-Col. Hla Min	Deputy Head, Department of International Affairs, Office of Strategic Studies
Aung Thein	Director-General, Department of General Administration, Ministry of Home Affairs
Zaw Win	Chief of General Staff, Police Force

5.00-6.00 p.m., Japanese Embassy

Shigeru Tsumori	Japanese Ambassador
Kiyoshi Koinuma	Deputy Chief of Mission
Head of Political Section	
Naoki Ito	Counsellor

Friday, 18 May 2001

8.00-9.00 a.m., Traders Hotel

Trevor Wilson	Australian Ambassador
John Jenkins	British Ambassador
Bernard Lelarge	French Second Secretary
Hauke Kracht	German Third Secretary
Francesco Fedeli	Italian Chargé d'Affaires a.i.
Karl Wycoff	United States Chargé d'Affaires a.i.
Patrice Coeur-Bizot	United Nations Resident Coordinator
Jeanne Lennkh	Assistant to United Nations Resident Coordinator

10.00-10.30 a.m., Traders Hotel

Soe Nyunt	Director-General, Department of Labour
Win Mya	Director-General, International Organizations and Economic Department, Ministry of Foreign Affairs
Dr. Tun Shin	Director-General, Attorney-General's Office
Lt.-Col. Hla Min	Deputy Head, Department of International Affairs, Office of Strategic Studies
Aung Thein	Director-General, Department of General Administration, Ministry of Home Affairs
Zaw Win	Chief of General Staff, Police Force

12.15-1.15 p.m., UNDP Office

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

Members of the United Nations Country Team:

Francis Rinville	FAO Representative
Guillaume Le Hagarat	UNDCP Assistant Representative

Rajiv Kapur	UNHCR Chief of Mission
Dr. Rosella Morelli	UNICEF Officer in Charge
Jos Vandelear	WHO Officer in Charge
Bradley Guerrant	WFP Emergency Coordinator
Renata Dessallien	UNDP Deputy Resident Representative

1.15-2.15 p.m., UNDP Office

Janeh Sukaimi	Brunei First Secretary
In May	Cambodian Counsellor
Nasaruddin Mochtar Koro	Indonesian Ambassador
Ly Bounkham	Lao People's Democratic Republic Ambassador
Dato Mohammad Bin Noh	Malaysian Ambassador
Pablito Mendoza	Philippine Third Secretary
Simon de Cruz	Singapore Ambassador
Buskorn Prugsapongse	Thai Counsellor
Nguyen Van Thanh	Vietnamese Second Secretary
Wang Zongying	Chinese First Secretary
Shyam Saran	Indian Ambassador
Naoki Ito	Japanese Counsellor
Chung Jung-Gum	Republic of Korea Ambassador
Patrice Coeur-Bizot	United Nations Resident Coordinator

2.30-4.00 p.m., Traders Hotel

Soe Nyunt	Director-General, Department of Labour
Win Mya	Director-General, International Organizations and Economic Department, Ministry of Foreign Affairs
Dr. Tun Shin	Director-General, Attorney-General's Office
Lt.-Col. Hla Min	Deputy Head, Department of International Affairs, Office of Strategic Studies
Aung Thein	Director-General, Department of General Administration, Ministry of Home Affairs
Zaw Win	Chief of General Staff, Police Force

6.00-8.00 p.m., Traders Hotel

Soe Nyunt	Director-General, Department of Labour
Win Mya	Director-General, International Organizations and Economic Department, Ministry of Foreign Affairs
Dr. Tun Shin	Director-General, Attorney-General's Office
Lt.-Col. Hla Min	Deputy Head, Department of International Affairs, Office of Strategic Studies
Aung Thein	Director-General, Department of General Administration, Ministry of Home Affairs
Zaw Win	Chief of General Staff, Police Force

Saturday, 19 May 2001

8.00-9.00 a.m., UNDP Office

Mahfuzur Rahman	Bangladesh First Secretary
Harishchandra Ghimire	Nepalese Chargé d'Affaires a.i.
Yusuf Shah	Pakistan Ambassador
Ubayasekara Mapa	Sri Lankan Ambassador
Dr. Farouk Riad Hassan Mabrouk	Egyptian Ambassador
Dimitry Darchenkov	Russian Second Secretary
Vladimir Stamenovic	Yugoslav Attaché
Shigeru Tsumori	Japanese Ambassador
Jeanne Lennkh	Assistant to United Nations Resident Coordinator

[Apologies: Israeli Ambassador]

10.45 a.m.-1.30 p.m., Traders Hotel

Soe Nyunt	Director-General, Department of Labour
Win Mya	Director-General, International Organizations and Economic Department, Ministry of Foreign Affairs
Dr. Tun Shin	Director-General, Attorney-General's Office
Lt.-Col. Hla Min	Deputy Head, Department of International Affairs, Office of Strategic Studies
Aung Thein	Director-General, Department of General Administration, Ministry of Home Affairs
Zaw Win	Chief of General Staff, Police Force

4.15-5.15 p.m., Traders Hotel

Soe Nyunt	Director-General, Department of Labour
Win Mya	Director-General, International Organizations and Economic Department, Ministry of Foreign Affairs
Dr. Tun Shin	Director-General, Attorney-General's Office
Lt.-Col. Hla Min	Deputy Head, Department of International Affairs, Office of Strategic Studies
Aung Thein	Director-General, Department of General Administration, Ministry of Home Affairs
Zaw Win	Chief of General Staff, Police Force

5.30-5.45 p.m., Ministry of Foreign Affairs

Khin Maung Win	Deputy Minister for Foreign Affairs
Officials from the Ministry	

6.00-6.30 p.m., Traders Hotel

Michel Ducraux	ICRC Head of Delegation
Jeanne Lennkh	Assistant to United Nations Resident Coordinator

7.00-7.30 p.m., Yangon Airport (initialling of the "Understanding")

Soe Nyunt	Director-General, Department of Labour
Win Mya	Director-General, International Organizations and Economic Department, Ministry of Foreign Affairs
Dr. Tun Shin	Director-General, Attorney-General's Office
Jeanne Lennkh	Assistant to United Nations Resident Coordinator

Appendix 5

Understanding on an ILO objective assessment

Recalling previous discussions which were reported to the Governing Body at its March 2001 session relating to the possibility of an objective assessment being carried out by the ILO with respect to the practical implementation and actual impact of the framework of legislative, executive and administrative measures reported by the Government, within the overall objective of the complete elimination of forced labour in law and in practice;

Recognizing now the desirability of such an assessment being carried out as soon as practicable;

Noting the importance in this connection of the observation made by the ILO Committee of Experts on the Application of Conventions and Recommendations in its 2001 report;

Aware of the need to respect the sovereign right of the country as well as the independence of the Organization in the discharge of its functions;

The Government of Myanmar agrees to receive a high-level team (HLT) to carry out an objective assessment under the following conditions designed to ensure its credibility:

1. The team will be composed of high-level persons appointed by the ILO Director-General on the basis of their recognized qualifications, impartiality and knowledge of the region.
2. Taking into consideration seasonal weather conditions, the assessment shall be carried out in September 2001. The time needed to carry out the assessment in Myanmar could involve up to three weeks.
3. The members of the HLT shall enjoy, for the purpose and duration of the mission, the same protection and status accorded to officials of comparable ranks in the United Nations.
4. The HLT shall have complete discretion to establish and implement its program of work, meetings and visits, taking into account the indications provided, inter alia, in the aforementioned observation of the Committee of Experts on the Application of Conventions and Recommendations, and subject only to valid considerations of security. For this purpose, the HLT shall be accorded full cooperation from the relevant Myanmar authorities. During the establishment and implementation of the HLT's programme, the HLT and the Government may call upon the assistance of a facilitator recognized by all parties concerned as being a knowledgeable and fair intermediary.
5. Based on the results of the assessment, the HLT may provide such advice and comments as it deems appropriate.
6. The report of the HLT will promptly be made available to the Director-General and the Government and transmitted to the Governing Body for consideration at its November 2001 session.

19 May 2001.

(Initialled) U Soe Nyunt,
Chairman of the Myanmar
Negotiating Team.

Francis Maupain.