



Second report of the Director-General to the members of the Governing Body on measures taken by the Government of Myanmar following the recommendations of the Commission of Inquiry established to examine its observance of the Forced Labour Convention, 1930 (No. 29)

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Introduction

1. At its 276th Session (November 1999), the Governing Body requested that I inform the members of the Governing Body, by means of an update to my written report dated 21 May 1999,¹ to be communicated to them by 28 February 2000 at the latest, of the measures taken by the Government of Myanmar to give effect to the recommendations of the Commission of Inquiry, taking into account in its preparation all the comments made by the Government of Myanmar, the information provided by the employers' and workers' organizations, and all other reliable sources.²
2. Under the regular supervisory procedures based on article 22 of the Constitution, the Committee of Experts on the Application of Conventions and Recommendations (hereafter CEACR), at its 70th Session, held in Geneva from 25 November to 10 December 1999, assessed the observance of the Forced Labour Convention, 1930 (No. 29), and the implementation of the recommendations of the Commission of Inquiry by the Government of Myanmar. The Committee's findings are reproduced as Appendix I.
3. By letter of 10 December 1999, referring to the decision made by the Governing Body at its 276th Session (November 1999), I asked the Government of Myanmar to send, by 31 January 2000, detailed information on any measures taken by the Government on each of the recommendations set out in paragraphs 539 and 540 of the Commission of Inquiry's report. In reply, the Government sent a letter dated 21 January 2000 which is reproduced as Appendix II.
4. Requests for any available information on the effect given by the Government of Myanmar to the recommendations of the Commission of Inquiry were also sent to international employers' and workers' organizations having consultative status with the ILO, to a number of intergovernmental organizations and to governments of member States of the ILO. By 21 February 2000, replies had been received from the International Confederation of Free Trade Unions, the Food and Agriculture Organization of the United Nations, the International Maritime Organization, the International Monetary Fund, the United Nations, the United Nations High Commissioner for Refugees, the World Bank, the World Health Organization and the Governments of Australia, Bahrain, Barbados, Belarus, Belgium, Brazil, Bulgaria, Colombia, Costa Rica, Croatia, El Salvador, Finland, Indonesia, Iraq, Jordan, Lithuania, Luxembourg, Malawi, Mauritius, Mexico, Morocco, Pakistan, Panama, Papua New Guinea, Peru, the Philippines, Qatar, Romania, Surinam, Swaziland, Switzerland, Togo, the United Kingdom and the United States.
5. Information on the effect given to the recommendations of the Commission of Inquiry will be set out in three parts, dealing with: (i) the amendment of legislation; (ii) any measures to stop the exaction in practice of forced or compulsory labour, and information available on actual practice; and (iii) the enforcement of penalties which may be imposed under the Penal Code for the exaction of forced or compulsory labour.

¹ Reproduced as Appendix I to: ILO Governing Body, 276th Session (November 1999), document GB.276/6.

² See draft minutes of the Governing Body, 276th Session (November 1999), second sitting.

I. Amendment of legislation

6. In its report, the Commission of Inquiry noted:

... that section 11(d), read together with section 8(1)(g), (n) and (o) of the Village Act, as well as section 9(b) of the Towns Act provide for the exaction of work or services from any person residing in a village tract or in a town ward, that is, work or services for which the said person has not offered himself or herself voluntarily, and that failure to comply with a requisition made under section 11(d) of the Village Act or section 9(b) of the Towns Act is punishable with penal sanctions under section 12 of the Village Act or section 9(a) of the Towns Act. Thus, these Acts provide for the exaction of “forced or compulsory labour” within the definition of Article 2(1) of the Convention.³

The Commission further noted that the wide powers to requisition labour and services under these provisions do not come under any of the exceptions listed in Article 2, paragraph 2, of the Convention and are entirely incompatible with the Convention.⁴ Recalling that the amendment of these provisions had been promised by the Government for over 30 years and again announced in the Government's observations on the complaint, the Commission urged the Government to take the necessary steps to ensure that the Village Act and the Towns Act be brought into line with the Convention without further delay, and at the very latest by 1 May 1999.⁵

7. At its 70th Session, held in November-December 1999, the CEACR noted that “by the end of November 1999, neither the Village Act nor the Towns Act had been amended, nor has any draft law proposed or under consideration for that purpose been brought to the knowledge of the Committee”.⁶

8. It appears that there has not been any change since. In its letter of 21 January 2000, the Government confirms that, having reviewed the Village Act and the Towns Act “with a view to either amend or, supplement or repeal the two acts in conformity with the changing security administrative, economic and social situations and conditions”, it chose to neither amend nor repeal the offending provisions, thus failing to act upon the first recommendation of the Commission of Inquiry.

³ Para. 470 of the Commission's report. See also paras. 237 et seq. of the report for details of these Acts.

⁴ See paras. 471 and 472 of the Commission's report.

⁵ *ibid.*, para. 539(a).

⁶ Appendix I to the present report, para. 5.

II. Measures to stop the exaction in practice of forced or compulsory labour and information available on actual practice

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

9. In the second part of its recommendations, the Commission of Inquiry indicated that:

... besides amending the legislation, concrete action needs to be taken immediately 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.⁷

10. While no action has so far been taken to amend the legislation,⁸ the Government issued, nine months after receiving the Commission's report, Order No. 1/99 of 14 May 1999 entitled "Order Directing Not to Exercise Powers Under Certain Provisions of the Towns Act, 1907, and the Village Act, 1907", which was already reproduced and referred to in my report of 21 May 1999.⁹ In a memorandum of 7 June 1999, the Government stated that Order No. 1/99 "specifically orders ... that any and all unpaid or compulsory labour be terminated henceforth".¹⁰ In its letter dated 21 January 2000, the Government emphasizes that the Order "has the full force of law" and was given "the widest possible publicity" and "circulated to the state bodies and local authorities concerned". Referring also to information that no complaints whatsoever have been made as of 15 January 2000 under section 374 of the Penal Code, providing for the punishment of whoever unlawfully compels any persons to labour against the will of that person, the Government concludes that "it is now amply clear that positive and effective measures have been virtually taken in accordance with the ILO [Forced Labour] Convention, 1930 (No. 29)".¹¹ Different conclusions were drawn by the CEACR from its examination of Order No. 1/99 of 14 May 1999.¹² These will be reflected in the following paragraphs, before turning to information available on actual practice.

11. Noting the Government's statement, in its memorandum of 7 June 1999, that Order No. 1/99 "specifically orders ... that any and all unpaid or compulsory labour be terminated henceforth", the CEACR observed that:

⁷ Para. 539(b) of the Commission's report.

⁸ See paras. 7 and 8 above.

⁹ GB.276/6, [Sub-] Appendix III to Appendix I and paras. 48 to 55 of Appendix I.

¹⁰ GB.276/6, Appendix II, p. 37, 3rd para. of "Observations and conclusions".

¹¹ Appendix II to the present document.

¹² Appendix I to the present document, paras. 8 to 16.

In fact, the Order does not refer to “any and all unpaid or compulsory labour”, but only to the exercise of powers under the Village Act and the Towns Act. The Commission of Inquiry pointed out in paragraph 539(b) of its report that in national practice “the powers to impose compulsory labour appear to be taken for granted, without any reference to the Village Act or the Towns Act”. This is confirmed by information available on actual practice followed by military authorities since the publication of the report of the Commission of Inquiry (see Part B below), including orders for the contribution of labour issued both before and after 14 May 1999 without ever referring to the Village Act or the Towns Act or any other legal basis.”¹³

- 12.** Moreover, as regards the powers to impose compulsory labour under the Village Act and the Towns Act, the CEACR noted that Order No. 1/99 reserves their exercise in several ways: restrictions are to be effective only “until and unless any further directive is issued”, and a permanent exception made in section 5(b) of the Order provides for the requisition of persons for work or service of public interest, i.e. forced or compulsory labour that should have been suppressed under the Convention.¹⁴
- 13.** In conclusion, the CEACR noted that the concrete measures called for by the Commission of Inquiry “to ensure that nobody is compelled to work against his or her will” have not yet been taken.¹⁵ In its letter of 21 January 2000,¹⁶ the Government has not reported any action beyond what was examined by the CEACR.

B. Information available on actual practice

(1) Communications from the Government

- 14.** In its letter of 21 January 2000, the Government did not refer to actual practice followed lately in the many fields where forced labour had been identified by the Commission of Inquiry.¹⁷
- 15.** The Government likewise abstained from commenting on observations made by the ICFTU on 19 October 1999 on the practice since mid-May 1999,¹⁸ which were communicated to it.
- 16.** The latest statement by the Government on actual practice was made in its memorandum dated 7 June 1999,¹⁹ where it indicated that my report to the members of the Governing Body dated 21 May 1999, covering the period August 1998 to mid-May 1999:

¹³ *ibid.*, para. 15.

¹⁴ *ibid.*, paras. 8 to 14.

¹⁵ *ibid.*, para 16.

¹⁶ Appendix II.

¹⁷ See Appendix II.

¹⁸ See Appendix I, paras. 22 to 25, and below, paras. 18 and 19.

¹⁹ GB.276/6, Appendix II; relevant parts reproduced in Appendix I to the present document, para. 20.

... is full of unfounded and biased charges deliberately levelled at Myanmar and the Myanmar Government.

The alleged facts in this report are manifestly false accusations concocted with evil intent to bring about the destruction of Myanmar by Myanmar expatriate organizations abroad and renegade groups that oppose all measures undertaken by the Myanmar Government. They are also based on blatantly false accusations made verbally, in writing and in the form of announcements by the National League for Democracy (NLD) ...

The Government went on to indicate that at present construction projects were implemented with proper budget appropriations, any worker employed there was paid fair wages and there was “not a single instance or a shred of evidence” that forced labour was being used on these projects; that work on highways and railroads was being done by servicemen of the armed forces and there was not a single civilian working on them; and any jobs in which the people were involved were confined to the digging of small irrigation ditches for their own private cultivation plots. Finally, porters conscripted by the military had always enjoyed the same rights as soldiers, including the same rations, wages, allowances and compensation, but the issue of military porters was no longer relevant and had become a non-issue since military operations were no longer an urgent necessity.²⁰

(2) Findings of the CEACR

17. Having noted the Government’s memorandum of 7 June 1999, the CEACR observed:

... that the Government in its statement denies what has been established both by the Commission of Inquiry’s findings of July 1998 and by a wealth of concurring information for the period August 1998 to April 1999 supplied by a variety of sources, as well as copies of orders from the army itself or representatives of the administration, as reflected in the Director-General’s report of 21 May 1999. The Committee further notes that the assertions quoted above from the Government’s memorandum of 7 June 1999 are contradicted, *inter alia* by copies of military orders issued at about the same time that have been submitted by the ICFTU.²¹

18. Referring in particular to the practice since mid-May 1999, the CEACR noted that:

In its observations dated 19 October 1999, the ICFTU indicates that over one year after the publication of the report of the Commission of Inquiry, and contrary to its repeated public commitments, the Government has still not desisted from the large-scale and systematic use of forced labour, which has continued and continues to be imposed on the civilian population, as evidenced by a set of recent orders issued by the military and/or bodies under its direct control.

As demonstrated by these orders, army officers have continued, after 14 May 1999, to demand that village heads provide labourers for cultivating food for the army, for road work, for military portering, as well as to supply identified army camps with a steady, rotating supply of forced labourers used as servants, messengers, sentries, builders and for a variety of other duties. The ICFTU stresses that such labourers are not allowed, under threat of being shot at, to leave army premises until their replacement has arrived and that repeated failure to comply with the orders can result in the arrest and torture of village elders.

²⁰ *ibid.*

²¹ Appendix I, para. 21.

The ICFTU has also submitted a report pointing at the use of forced labour in August 1999 for repair and maintenance of the Ye-Tavoy railway road, and a study of the 1999 report of the United Nations Special Rapporteur on Myanmar, which identifies direct financial profit for the army as being at times the sole purpose of forced labour. In this connection, the ICFTU recalls, from the military orders submitted, the forced conscription, by an Order of 12 June 1999, of persons with cattle and ploughs to work on land controlled by a battalion commander in the Kawkareik region as an example confirming the Special Rapporteur's analysis of the exploitation of farmers in the context of land confiscation.²²

19. Noting that the military orders submitted by the ICFTU were quasi-identical in style and content to the hundreds of forced labour orders which the Commission of Inquiry examined and found to be authentic in the course of its investigation, the CEACR concluded in December 1999 that:

... there is no evidence that actual practice has changed since the Commission of Inquiry presented its report; on the contrary the exaction of forced or compulsory labour by the authorities has continued and is well documented.²³

(3) Information received upon my request of December 1999

20. Information received in reply to my request notes the continued use of forced labour by the authorities, in particular by the military. Information on the general pattern observed will be reflected below before dealing with specific forms of labour and services as identified by the Commission of Inquiry in paragraphs 300-461 and 485-502 of its report.

General observations

21. In its communication dated 31 January 2000, the ICFTU indicates that:

The authorities, i.e. the armed forces, which have exercised exclusive rule over the country for the last 12 years, continue, as before and as a matter of routine, to impose forced labour on the civilian population in various parts of the country. Neither have they desisted from committing, in corollary to this process, all the other serious crimes of international law which are all too well known to the Commission of Inquiry: torture, arbitrary and extrajudicial execution, rape, population displacements and others. The only difference that one might notice, on the basis of credible reports appended to this communication, is that these crimes have, if anything, increased in regularity and number.

22. Concerning specifically the period since 14 May 1999, the ICFTU first recalls the detailed information it supplied to the ILO on 19 October 1999. This was taken into account by the CEACR in its observation reproduced in Appendix I to the present document²⁴ and reflected in paragraphs 17 to 19 above.

23. Turning to more recent information, the ICFTU refers to:

²² *ibid.*, paras. 22 to 24.

²³ *ibid.*, paras. 25 and 26.

²⁴ In particular, paras. 22 to 25.

... a number of documents which demonstrate conclusively that forced labour continues to be practised on a wide scale and in various parts of the country and that no interruption of this loathsome practice has taken place after 14 May 1999.

The documents transmitted by the ICFTU were provided by the Karen Human Rights Group, the Human Rights Foundation of Monland, the Karen Agricultural Workers' Union, the Alternative Asean Network on Burma, the Arakan Rohingya National Organization and the Chin Human Rights Organization. Like the earlier submissions by the ICFTU, they include, besides reports and testimony, a great number of written official orders from either the army or representatives of the administration, in Kayin (Karen) State and Bago (Pegu) division, as well as copies of several such orders from Mon State, Chin State and Tanintharyi division.

24. The orders submitted, most of which are dated after 14 May, up to 9 December 1999, demand that village heads provide villagers to perform forced labour as porters or at army camps, or to build or repair roads and bridges and other structures. Although there are also orders requiring the population to pay "porters' fees" or "servants' fees", there is never mention of any payment to those doing the work; on the contrary, there are a number of orders specifying that the workers themselves must bring their own food (and plastic sheets and tools) for the period of service, or that every 15 days a village must pay 1,500 kyats in cash for feeding 15 forced labourers from the village, as well as a variety of orders demanding that the villages provide building materials, equipment, food and money to various military or civilian administration units. A number of orders contain threats of fines or other, mostly unspecified punitive action in case of non-compliance; specific threats include blocking the transport of rice and market goods to and from the village, labelling the chairperson as "being solidly against the nation", to be punished with "serious action to be taken", arresting him or her and up to the menace of relocating the whole village. As pointed out by the ICFTU, these orders are quasi-identical in shape, style and contents to the hundreds of similar orders previously examined and found to be authentic.²⁵
25. Like the earlier orders, those issued after 14 May 1999 never refer to any legal basis for the authority exercised. Thus, the observation of the Commission of Inquiry²⁶ and the CEACR²⁷ that "the powers to impose compulsory labour appear to be taken for granted, without any reference to the Village Act or Towns Act" remains valid.
26. In reply to my request for available information the World Bank supplied a report dated 1 September 1999. Referring to information on mass resettlements of ethnic villages by the Government over the past several years, the report indicates that villagers "have been given two to seven days to move to government-designated locations ..., are given no food or building materials and are forced to help build roads and engage in similar activities".
27. The United Nations High Commissioner for Refugees provided information on the situation in Northern Rakhine State, distinguishing between what is termed "compulsory labour practices", observed to have decreased, and "compulsory labour exacted by the military", which appears not to have decreased in any significant way:

²⁵ See para. 19 above.

²⁶ Paras. 529 and 539(b) of the Commission's report.

²⁷ Appendix I, paras. 15 and 20.

While compulsory labour practices have not stopped entirely, UNHCR's observation is that, as of July 1999, in all the three townships of Maungdaw, Buthidaung and Rathedaung, there was a marked decrease in both the frequencies of labour requisitions as well as the period of compulsory labour services undertaken. There were also noticeable instances when the NASAKA (Border Immigration Headquarters), the Military Intelligence and the VPDCs²⁸ had made some form of payment for the labour requisitioned. The payment were usually in kind or in the form of meals provided, which needless to say, fall well below the equivalent market rate for labour. It was further observed that when compulsory labour was exacted, this was usually used for domestic type of work rather than heavy work.

Unfortunately, it appears that compulsory labour exacted by the military has not decreased in any significant way, although a few isolated incidents of payment were reported in Maungdaw North and Buthidaung North. Reports continued that requisitioning of labour for portage was especially rampant in areas where there were large military establishments, in particular in Buthidaung North. There were also reports that one military unit, in particular, had on at least one occasion, entered villages and conscripted labour during the night without going through the normal procedures of approaching the VPDCs for organising the labour required.

- 28.** The Government of the United States supplied a report on "Conditions in Burma and US policy toward Burma for the period 28 March 1999–28 September 1999". According to the report:

The people of Burma continue to live under a highly repressive, authoritarian military regime ...

The regime has made no progress in the past six months in moving toward greater democratisation, nor has it made any progress toward fundamental improvement in the quality of life of the people of Burma ...

The Government restricts worker rights and uses forced labor on a widespread basis. The use of porters by the army, with attendant mistreatment, illness, and even death for those compelled to serve, remains a common practice. The use of forced labor on some infrastructure development projects appeared to be lessening following the issuance of directives in 1995 to end the practice of forced civilian labor. The military authorities nonetheless continue to force ordinary citizens (including women and children) to "contribute" their labor, often under harsh working conditions, on construction projects in many parts of the country. Some of these projects, such as the moat of the Mandalay palace, were undertaken to promote tourism to the country. In the past few years, the military has begun using soldiers instead of civilians on certain infrastructure projects. Child labor continues to be a serious problem.

- 29.** Another government quoted evidence gathered from all over Myanmar from individuals and organizations, covering the period from May 1999 to January 2000. Contribution of labour was still compulsory, and there were reliable reports of Ward and Village Tract Chairmen meting out extreme physical violence to villagers unable to contribute to community work, and ordering the arrest of people not turning up for community projects. Demands for labour were also still made at inconvenient times (e.g. harvest).

²⁸ Village Peace and Development Councils.

30. The same government reported that while contribution of labour was still compulsory, over the last eight months a significant decline in the numbers of reported incidents of forced labour **without compensation** had been noted. Labourers now received, on average, 25 kyats per day or payment in kind, usually of rice, a negligible amount since a labourer would expect to earn 100-200 kyats per day. At the same time, contributions were forced from the local population in other ways, and there had been a marked increase in arbitrary taxation. Examples included the following:

- Rakhine State: There were numerous first-hand reports between June and October of compulsory donations of rice, livestock and firewood for military and police personnel. Local traders now had to pay large monthly sums in order to sell their wares.
- Sagaing division, Pinlebu township: There were reports in June 1999 of various compulsory financial contributions, e.g. donations for USDA training courses, for permission to pan gold from streams. Authorities in one town reportedly commandeered cars as well as forcing each household to pay 100 kyats for construction of a pagoda. Those who could not give up their cars had to pay 32,500 kyats.
- Magway division, Taungdwingyi township: Local authorities in June reportedly demanded large sums of money from each household to pay for the construction of an embankment. The authorities also demanded large sums of money from each household, and threatened arrest if the money was not forthcoming.
- Rakhine State: There was a first-hand report from October 1999 that 363 acres of paddy land and 887 acres of pasture land had been requisitioned for military use.
- Magway division, Thayet township: local farmers were forced to sell a substantial part of their crop to the Village Tract Chairman, and pay him 250 kyats in October. Four local people who complained were arrested and detained in prison for one month.
- Rakhine State: There were first-hand reports in October of each Village Tract in Buthidaung township being required by the authorities to find a football team to send to Sittwe. Failure to do so resulted in a fine of 10,000 to 20,000 kyats. Each member of the team had to pay a total of 2,500 to 3,500 kyats to police and local authorities in order to participate in the game.

Forms of labour and services requisitioned

(a) Portering, military camp work and other work in support of the military

31. A great number of orders from military officers and more rarely, civilian authorities to village heads or secretaries, dated after 14 May 1999, ask for the supply of labourers or servants to an army camp, sometimes in rotation for three, five, 15 or 20 days with other workers from the same village; often, the workers and/or the village chairperson who is to bring them are required to bring at the same time various kinds of food, bamboo, other materials and money to the military. Most often the work to be done is not specified. In some cases, the request may be specifically for a messenger or guide, for cutting wood or collecting firewood or for sending a bullock cart per day in rotation. Simultaneously, the

same population may be called up to perform forced labour on other tasks; thus, several villages required by a series of orders to supply every two weeks up to 40 persons each for an unspecified duration for use at one army camp have at the same time been ordered, by a different order coming from the same camp commander, to build one bridge per village over a small river within a deadline of five days.

32. The ICFTU also supplied a wealth of reports and testimonies giving details of a great number of cases where forced labour was imposed after 14 May 1999 for portering, military camp work and other work in support of the military, including cases of “round-up” of porters without any formal procedure. Thus, in Central Kayin (Karen) State, following the arrival of several [named] light infantry battalions:

Villagers complain that, though they have already paid heavy fees to avoid forced labour as porters, these troops are still rounding them up as porters and it is usually the porters who are used as human minesweepers. The situation is particularly bad in P...²⁹ village, where another group of unidentified SPDC soldiers has also arrived. This group wears short pants and other civilian clothing and spends most of its time trying to rape the women of the village. They have already raped several women, including (the) village head ...

...

According to the villagers, severe human rights abuses are being committed by SPDC forces against villagers throughout the region. According to a villager from K..., SPDC soldiers conscripted the villagers for forced labour. When SPDC forces arrived in K..., the soldiers commissioned both men and women for forced labour and even children under 10 were ordered to fetch water for the troops. While serving as a porter from K... to ..., the villager also witnessed rapes conducted by the soldiers, including the rape of one mother of two who is mentally handicapped in ... (village). The villager reported that when her husband, ..., grew angry and threatened the rapists with revenge, the soldiers took him outside the village and killed him. The SPDC troops have told the villagers that they will be forced to walk in front of their columns in order to clear landmines, which are laid heavily throughout the area by all sides to the conflict. In the past year, the SPDC army has used villagers as human minesweepers in this region of Pa'an district, killing and maiming dozens of people.

In August, 1999, a woman from ... village, Kyaik Mayaw township, Mon State, reported:

My husband died 15 days ago. The Burmese forced him to do “loh ah pay” [she means portering]. They said that he would only have to go for a few days but they forced him to go for ten days. We couldn't hire someone to go for him because we had no money. They said that the villagers who didn't go had to pay them money; that's why we had to go. He had not even been gone for ten days when people sent me a message that he had died.

Further cases referred to by the ICFTU include the following:

After ... October 1, the Burmese army prepared new offensives at the Thai-Burmese border. In mid-October, troops from LID No. 33 and LID No. 88 were sent to the border and took many hundreds of Karen and Mon villagers as porters. Each village in Mon State and Karen State was asked to provide 2-5 porters for the army.

²⁹ Specific names are omitted in a number of instances from the present report. They were contained in the ICFTU submission.

On October 21 1999, about 1,000 troops from LID No. 88, with several hundred porters, moved to border point of the Three Pagoda Pass to clear opposition groups. On October 22, a similar number of porters were moved by LID No. 33 from Mudon town of Mon State to Kya Inn Selkyi of Karen State. For this purpose, all men in the “Black area” (also named “Free fire zone”) were arrested to be front-line porters. This means also being used as minesweepers and human shields, as well as enduring tortures if they are too weak for the tasks.

In June 1999, in the southern part of Ye township:

Civilian porters were taken in excess of “needs” for military operations. This was done in order to raise a tax (for the deployment of the LIB No. 299) in the form of a ransom for the release of these unnecessary porters.

- 33.** A government reports that most offensives carried out by the Myanmar army against ethnic insurgents take place in the dry season. The eight months since I compiled my last report have fallen mainly in the rainy season so demand for porters to help in military operations appears to have been low. In addition, the majority of these offensives take place in so-called “Black areas”, areas from which it is hard to receive reliable reports. However, reports of compulsory portering for military personnel continued coming in, including sightings of children as young as 7 years old carrying bags for army staff. There also were reliable reports from the region close to the border to India that groups of over 100 persons are regularly rounded up to carry rice and other foodstuffs to a military camp. Elderly men and young boys are not exempt. The villagers are given no food for their long trip (approximately four days). For 500 kyats, a person can be excused from this duty: less than loss of earnings for four days but few have the necessary ready cash savings.
- 34.** Among the numerous reports on military camp work in various parts of Myanmar that were submitted by the ICFTU in addition to the orders referred to in paragraph 31 above, the following cases from Rakhine (Arakan) State and Mon State are not exceptional:

In the month of July 1999, work on construction of an army brigade barrack had begun on the 522 acres of land confiscated from the Muslims by uprooting 300 Muslim houses at village Kagyapa Kanbyin, under Buthidaung township near the newly built Laymyetna Buddhist pagoda, by using Rohingya forced labour. The works have been carried out under the direct supervision of Lt. Col. ..., Commanding Officer of the No. 15 military operational area.

In the same month of July, two Muslim villages – Doctorgona and Hadama under Buthidaung township – have been uprooted and over 210 acres of village and farmland have been confiscated and declared as property of Army Regiment No. 551. Hundreds of Rohingya forced labourers have been engaged in jungle clearing earthwork and building activities over the site.

In June 1999, a new battalion, LIB No. 299, was deployed in the southern part of the Ye township and hundreds of acres of fruit and rubber plantations were confiscated without compensation. To prepare the military compound and barracks on the confiscated land, villagers from the whole Ye southern area were conscripted to clear the ground, build fences and bunkers, and build the barracks.

- 35.** A government also reported that it still received many reports of local people forced to do menial chores for the army or police on a regular basis.

(b) **Work on agricultural and other production projects**

36. Information submitted by the ICFTU includes an order dated 12 June 1999 from No. 97 Infantry Battalion in Kawkareik to the chairpersons of several village groups “to send volunteer servants”:

For cultivation at No. 97 Infantry Battalion [camp] send 5 cattle (with plough) and 15 people (with mattocks) to ... on 13-6-99, you are hereby informed.

A comment on the above order submitted by the IFCTU indicates that:

... the villagers are often instructed to bring along their own oxen, bullock carts and tools to use while working, eliminating the possibility of family members tending the fields while they are gone. As one villager bluntly describes it: **“We had to pay four different ways: our own labour, fees, our bullock carts and our cattle”** ... Due to the increasing and constant demands for forced labour from both the DKBA³⁰ and the SPDC³¹ – which can amount to several times per month, or even half the work week – the villagers must neglect their fields, leaving little possibility of harvesting enough rice to sustain them throughout the year. Hunger is thus an ever-present worry among villagers. Following last year’s drought, villagers were hoping for a good harvest this year but the call for forced labour, often at great distances from their villages, obligates them to remain away from their fields for days on end at crucial times in the crop cycle. When they return, they are often too exhausted to satisfy the demands their own fields require.

37. In a number of cases submitted by the ICFTU, villagers are reported to have been forced, after 14 May 1999, to cultivate for the army what used to be their own fields. Thus, in Central Kayin (Karen) State:

Villagers from the area around T’Nay Hsah (Nabu) report that SPDC troops have come into their villages, occupied their houses, looted their belongings and livestock, then burned the farm field huts, leaving them homeless. The army then informed the villagers that they must continue working in their fields and that, once they finish harvesting the rice (in December), they will be expected to deliver all baskets to the soldiers. If they wish to get their own rice back, they will have to buy it back from the army for 250 kyats per basket. By confiscating most of the rice for the army’s own use, there will be little left over for the villagers’ consumption. This situation is particularly desperate because the villagers have virtually no money, and their gardens and livestock have already been confiscated by the army with the occupation of their villages.

Similarly, in Rakhine State, it is reported that the Rohingya are engaged in forced unpaid labour for agricultural projects carried out by Military Intelligence (M.I) and Na Sa Ka (border security force). For example:

- In the month of November 1999, the border security force known as Na Sa Ka and Military Intelligence (M.I) have confiscated five acres of land belonging to Yin Ma village mosque endowment property and seven acres of farmland in the west of Taung Bazaar about 16 km north of Buthidaung

³⁰ Democratic Kayin Buddhist Army.

³¹ State Peace and Development Council.

township and are carrying out agricultural projects by engaging Rohingya forced labourers.

- A large tract of Muslim land (about 200 acres) has been confiscated from the Rohingyas of village Taminchaung, ten miles west of Buthidaung, where a big cantonment known as Aung Mingla army cantonment was established about four years ago. All the lands around the cantonment have been put to agricultural farming every year by Rohingya forced labour.
- Large tracts of land west of the headquarters of Na Sa Ka in Maungdaw township have been confiscated by uprooting of Muslim villages – all these lands are put to agricultural farming projects every year by Rohingya forced labour.

38. Further examples of unpaid forced labour given by the ICFTU from Mon State and Tanintharyi division include the following:

- As the military battalions in Ye township had confiscated land from farmers, they conscripted the local farmers to farm these confiscated lands during both the 1998 and 1999 rainy seasons (= June, July, August 1999). This concerns about 150 acres of farmland situated about 20 kilometres in the northern part of Ye town, between the two Mon villages of Tamorkanin and Taungbon. The forcible conscription of farmers is on a rotation basis, with about 30 farmers from the nearby villages at work every day. The farmers also had to bring their own oxen to plough the land in the battalions' farms.
- From August 1999, villagers from Mintha, Eindayaza, Kwethonyima and Natkyisin villages of Yebyu township have again been conscripted to work in clearing the land which will be used for battalions to grow paddy. They are instructed to complete exploring the new farmlands during this rainy season. LIB No. 273 has taken responsibility in conscripting forced labourers to complete the building of dike embankment. In August 1999, each family in Kwethonyima had the duty to completely clear an area 85 by 55 feet, level the land, discard the waste matter.
- In the whole rainy season, from June to September 1999, the local military battalions forced the local villagers to clear the lands close to Yapu village (east of the Ye Tavoy railway). One villager testifies: "We had to work for seven days in August 1999 and another seven days in the next month (September) for LIB No. 406's land exploration to grow rubber in Layin-Gwin area ..."
- A military outpost of LIB No. 401 led by Lt. Col. ... near Kaleing-Aung village always demands about 20 labourers from eight nearby villages to work in their battalion ... They were instructed to grow vegetables and fruit trees, make charcoal (to be sold for battalion fund), make food, carry water, etc.

39. A government reported that, as Myanmar's economy continues to slide, the Government is focusing its attention on agricultural projects. The land reclamation projects that were reported in May³² to have taken a great toll on local people have continued over the last eight months:

³² See para. 33 of my report in GB.276/6, Appendix I.

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- Southern Shan State: There were first-hand reports of migrant labourers, who had illegally arrived in Shan State looking for work, being forced to work in paddy fields, apparently in exchange for not being returned to their place of origin.
 - Magway division, Taungdwingyi township: There were reports from June that local people were forced to provide free labour for agricultural construction projects.
 - Sagaing division, Yinmarbin township: Reports were received in June of demands for labour from several villages for work on a land reclamation project. Each village tract was asked to provide 200 people for five sessions; no food or money was offered as recompense. Persons unable to attend had to pay 1,000 kyats.
 - Ayeyarwady (Irrawaddy) division, Mawlamyine township: Reports were received of an army unit demanding labour or money to work on a wetlands project in August. Each household had to provide one worker or pay 6,000 to 7,000 kyats.
 - Kachin State, Mohyin township: In November, there were reports of labour to work on an agricultural project being demanded from 20 villages. No compensation was given to the villagers and two reportedly died whilst working on the project.

(c) Construction and maintenance of roads, railways, bridges and other infrastructure work

40. Information transmitted by the ICFTU from Chin State includes the following:

- In September 1999, 20 villages along the Falam-Rihkhawdar road which extends up to the Indian border were ordered by the military (LIB No. 268) to repair the road, that was damaged as a result of erosion and heavy landslides during the monsoon. The number of labourers from each village ranged from 15 to 30 depending on the size and the population of the village. They were not paid for their labour and had to bring their own tools and rations for three days. One translated order attached as a sample is entitled “Invitation for voluntary labour” and specifies that “Defaulter village will be considered as active supporters of CNF³³ and severe action will be taken for defiance of order”.
- On 25 August 1999, the patrolling troop of LIB No. 266 in position of Lungler army camp arrested 32 villagers in Tlangpi village. They were accused of supporting Chin National Front and were sent to forced labour camps. These 32 captives were not allowed to go outside the camp and were constantly forced to work on the construction of the road between Thantlang and Lungler army camps. The soldiers tightly guarded them and they were beaten up every night by the army for not obeying their orders properly. Moreover, they had to bring their own tools and food to work for the army. Villagers were not paid for their labour. Instead they were kicked, punched and beaten up by the army while working.
- Since 22 September 1999, three villages, Saikah, Ruakhua and Ruabuk, have been rebuilding the road between the Sopum and Sihhmuh village. Each family was ordered to present one person per family with their own tools and food.

³³ Chin National Front.

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- For the entire year of 1999, villagers in Matupi township were forced to build a road between Sabawngte and Lailenpi village. One villager testified:

Thus, the army always compels us to work for them. The situation became much worse in our area last year when the army started to implement a border area development project. In January 1999, Major ... and Lt. ... issued an order to construct a road for cars between Sabawngte village and Lailenpi village under this project.

We were forced to work on the road for the whole year with no time to work for ourselves. We were not paid at all for our labours. Also, we had to carry our own rations, medicines and all the tools necessary for road construction. The work was very hard and we had to work from dawn to dusk.

The food was not very good so we became sick. Some people suffered from malaria and some from diarrhoea. Some people even died from their illnesses. The sick people were allowed two days' rest only when his/her condition was at its very worst.

We were not even allowed to go to church for Sunday worship service. The working conditions were terrible.

The road we constructed had to be 10 feet wide and, as it is a mountainous area, the embankment of the road is about 10 to 20 feet high. The soldiers guarded us when we were working. They forced us to work until 9 or 10 p.m. and, only after that, allowed us to eat our supper. We become very weak and thin because of excessive work and lack of nutrition.

Since the Burmese army battalion stationed itself in our area, forced labour, torture and all kinds of harassment are no longer strange in our daily lives ...

Most of the time we have to spend our labours working for the army and there is no time left to work for ourselves. As a result, we will surely starve in the coming year ...

While working, the soldiers punched, kicked and beat us whenever they wanted ...

The slogan "Border Area Development" sounds great but in reality it means forced labour, torture, displacement of families and destruction of the lives of ordinary villagers in the border areas just like what happened to our village.

41. According to a very recent report from Rakhine State submitted by the ICFTU:

- The 202 miles of Ann-Akyab (Sittwe) section of the Rangoon-Akyab Highway has been under construction before and after 14 May 1999 and is still in progress with massive use of Rohingya and Rakhine forced labourers.

The same source reports that after 14 May 1999:

- A 31 feet wide metal road connecting Aung Mangala army cantonment, six miles west of Buthidaung township with Buthidaung jetty touching Mayu river, has been completed entirely with Rohingya forced labour although the UNHCR had provided 30 million kyats to the authorities for the said project;

and

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- a road connecting a newly established military cantonment at Tami-Panzi village with Bogyichoung village and Paungdawbying village was constructed entirely by engaging Rohingya forced labour.

42. The communication from the ICFTU includes a number of orders dated after 14 May 1999 and sent by military officers in Kayin (Karen) State or Bago (Pegu) division to village heads, for work on roads or bridges. One such order, addressed to five village heads on 25 September 1999, reads as follows:

We ordered you to clear the roadside from 21-Mile to 18-Mile, but we are not satisfied with the clearing. Therefore we ordered all of the village heads to come and meet three times already. We inform you that if you fail *[to come]* this time, according to the instructions of Tactical Command, your villages will have to relocate to appropriate places for security.

Another order, sent to the chairperson of a village tract in Than Daung township on 21 July 1999 states that:

1. ... Regional Commander General ..., Deputy Regional Commander Brigadier General ... and their troops wish to travel to Than Daung Gyi so *[you]* must always open *[the forest]* to the light and clear the road from Than Daung to Than Daung Gyi and *[you]* must clear alongside the Baw Ga Li-Maw Chi-Ko Chaung road and open *[it]* to the light by cutting the scrub and the forest, you are ordered and informed.

2. Therefore, the villagers along the Baw Ga Li-Maw Chi-Ko Chaung road in gentleman's *[your]* village tract, within your own village tract boundary *[you]* must open *[the ground]* to the light, cut the scrub and clear the forest along the road by the deadline of 31.7.99, and when it is finished you must report, you are informed.

Orders to build bridges include the order dated 22 June 1999 already mentioned³⁴ and the following, addressed on 31 May by a camp commander to a village chairperson:

Subject: From ... village, the village head must come and bring the carpenters who will build the bridge and villagers immediately when you receive this letter to ... camp, you are informed.

Bring the rice that you borrowed.

43. From Tanintharyi division, the ICFTU submitted a report that in August 1999:

Because of heavy rain and floods in Yebyu township from end July to mid-August, some parts of the Ye-Tavoy railway (built in 1993 by forced labourers) and bridges near the Malawe-Taung area were destroyed. Forced labourers were taken in August 1999 for the repair work. The officers of LIB Nos. 404 and 406 requested from the Paukpingwin village headman one forced labourer from every one of its 60 households. (This village of 300 households had shrunk to 60 with the building of the Ye-Tavoy railway in 1993 ...)

A further report indicates that in August 1999 in the Myeik-Dawei (Mergui-Tavoy) district, troops from IB 101 ordered one person from each family in every village in the Ka-pyaw area to come to build a road and bridges at Ta-mote village, or pay 10,000 kyats. The villagers had to bring food for five days.

³⁴ Para. 31 above.

44. A government received the following reports of forced labour practices for infrastructure development, mainly road building, over the last eight months:

- Sagaing division, Monywa township: In July it was reported that villagers were being forced to dig a diversion channel for a nearby river. Each group of ten households had to dig a specified section of trench. Any household unable to contribute had to hire a labourer for 800-1,000 kyats per day;
- Rakhine State, Maungdaw – Buthidaung road: In August 1999, more than 20 locals were seen working on the construction of a new checkpoint (that will be used as a taxation point by the military);
- Mon State: There were reports in October 1999 that villagers living along the gas pipeline were ordered to build and man security posts a mile apart, all at their own expense;
- Rakhine State, Mrauk U – Mimbya road: There were first-hand reports from July and from November of villagers being forced to provide labour to break and lay stones for the construction of the road.

III. Punishment of those imposing forced labour

45. In paragraph 539(c) of its recommendations the Commission of Inquiry urged the Government to take the necessary steps to ensure:

... that the penalties which may be imposed under section 374 of the Penal Code for the exaction of forced labour 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 ...

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.

46. No action under section 374 of the Penal Code has so far been brought to the knowledge of the ILO.

47. In its letter of 21 January 2000³⁵ the Government indicated that

With regard to enforcing penalties on those who exact unlawful forced or compulsory labour, I wish to state that action shall be taken under section 374 of the Penal Code of the Union of Myanmar in the event of any complaint by any individual subjected to unlawful forced or compulsory labour. Section 374 of the Penal Code provides as follows:

Whoever unlawfully compels any person to labour against the will of that person shall be punished with imprisonment of either description for a term which may be extended to one year with fine or with both.

³⁵ The full text is reproduced in Appendix II.

According to the official records as of 15 January 2000, there have been no complaints and no charges made or actions taken under section 374 at any law court at the state/division, district and township levels.

Furthermore, the Ministry of Home Affairs directed the state and divisional, district, township, ward and village tract peace and development councils, which are local authorities, and all the police stations in the whole country to notify the Ministry of any complaint lodged under section 374. We have been informed in this regard that no complaints whatsoever have been made as of 15 January 2000.

I wish to inform you that, in view of the above, it is now amply clear that positive and effective measures have been virtually taken in accordance with ILO Convention No. 29 (1930).

48. In this connection, it may be worthwhile to recall the following observations of the Commission of Inquiry in paragraph 514 of its report:

In so far as some of the forced or compulsory labour exacted in violation of the Convention may be imposed in conformity with the provisions of the Village Act or the Towns Act that are themselves contrary to the Convention, the necessary amendments to those provisions of the Village Act or Towns Act may have to be brought into force before the corresponding exaction of forced or compulsory labour becomes "unlawful" in national law and punishable under article 374 of the Penal Code. However, the provisions of the Village Act and the Towns Act authorizing recourse to compulsory labour had at some stage been declared obsolete and are in practice never invoked when imposing forced or compulsory labour. Moreover, there are a number of instances of exaction of forced labour, in particular where people are directly rounded up by the military for compulsory service without a requisition of the village head or ward authorities, which even under the very wide provisions of the Village Act and the Towns Act appear unlawful in national law and should have given rise already to prosecution under article 374 of the Penal Code. The lack of enforcement in practice of article 374 of the Penal Code violates the obligations of Myanmar under Article 25 of the Convention.

Final observations

49. In a communication of 13 January 2000, the United Nations drew attention to the recent General Assembly resolution on the situation of human rights in Myanmar,³⁶ which was adopted without a vote on 17 December 1999. In paragraphs 11 et seq. of the resolution, the General Assembly:

11. *Notes with grave concern* that the Government of Myanmar has failed to review its legislation, to cease to inflict the practice of forced labour on its people and to punish those exacting forced labour, which has forced the International Labour Conference to exclude the Government from further cooperation until such time as it has implemented the recommendations of the Commission of Inquiry;

12. *Strongly urges* the Government of Myanmar to cease the widespread and systematic used of forced labour, and to implement the recommendations of the Commission of Inquiry of the International Labour Organization regarding the

³⁶ A/C.3/54/L.76, as amended (A/RES/54/186).

implementation of the Forced Labour Convention, 1930 (No. 29) of the International Labour Organization, while noting the order by the Government of Myanmar issued in May 1999 directing that the power to requisition forced labour under the Towns Act and the Village Act not be exercised ...;

13. *Deplores* the continued violations of human rights, in particular, those directed against persons belonging to ethnic and religious minorities, including summary executions, rape, torture, forced labour, forced portering, forced relocations, destruction of crops and fields, and dispossession of land and property, which deprive these persons of all means of subsistence;

14. *Deplores* the continuing violations of the human rights of women, especially women who are refugees, internally displaced or belong to ethnic minorities or the political opposition, in particular forced labour, sexual violence and exploitation, including rape, as reported by the Special Rapporteur;

15. *Strongly urges* the Government of Myanmar to ensure full respect for all human rights and fundamental freedoms, including economic and social rights, and to fulfil its obligation to end the impunity of perpetrators of human rights violations, including members of the military, and to investigate and prosecute alleged violations committed by government agents in all circumstances ...

50. It follows from the information available that the three recommendations of the Commission of Inquiry have not yet been complied with:

- (a) the Village Act and the Towns Act have not been amended;
- (b) the Order issued by the Government of Myanmar on 14 May 1999 does not exclude the imposition of forced labour in violation of the Convention, and in actual practice, forced or compulsory labour continues to be imposed in a widespread manner;
- (c) no action has been taken under section 374 of the Penal Code to punish those exacting forced labour.

Appendix I

Committee of Experts on the Application of Conventions and Recommendations, 70th Session, 25 November to 10 December 1999 ¹

Individual observation concerning the observance of the Forced Labour Convention, 1930 (No. 29), by Myanmar (ratification: 1955)

1. The Committee notes that the Government has not supplied a report on the application of the Convention. Following the recommendations of the Commission of Inquiry established to examine its observance of the forced labour Convention, the Committee notes the information presented by the Government in two letters of 12 and 18 May 1999 to the Director-General of the ILO, and the report dated 21 May 1999 of the Director-General to the members of the Governing Body on measures taken by the Government of Myanmar; the Memorandum dated 7 June 1999 of the Government of Myanmar on said report of the Director-General; and the information presented by the Government in June 1999 to the Conference Committee on the Application of Standards and the discussion which took place in that Committee. The Committee also notes the observations made by the International Confederation of Free Trade Unions (ICFTU) in a communication dated 19 October 1999, entitled "Failure by the Government to implement the recommendations of the Commission of Inquiry established under article 26 of the ILO Constitution to examine the complaint concerning observance by Burma of the Forced Labour Convention, 1930 (No. 29)". These observations were transmitted to the Government for any comments which it might deem useful, but no such comments have so far been received.

2. In its previous observation, the Committee recalled that a complaint under article 26 of the Constitution was submitted in 1996, alleging failure by the Government of Myanmar to observe the present Convention, and that a Commission of Inquiry was established to examine the complaint. The Committee noted the conclusions and recommendations of the Commission of Inquiry, which confirmed and expanded its own previous conclusions as to the Government's failure to comply with this fundamental Convention, the findings of the Conference Committee on the Application of Standards, as well as the findings of the Governing Body when it earlier examined a representation on the same subject. It noted further the Government's expression of willingness to implement the recommendations contained in the report of the Commission of Inquiry. The Committee expressed the firm hope that the Government would very shortly be in a position to indicate that it had complied fully with the Convention.

3. Information available on the observance of the Convention by the Government of Myanmar will be set out in three parts, dealing with: (i) the amendment of legislation; (ii) any measures taken by the Government to stop the exaction in practice of forced or compulsory labour and information available on actual practice; (iii) the enforcement of penalties which may be imposed under the Penal Code for the exaction of forced or compulsory labour.

I. Amendment of legislation

4. In paragraph 470 of its report, the Commission of Inquiry noted:

... that section 11(d), read together with section 8(1)(g), (n) and (o) of the Village Act, as well as section 9(b) of the Towns Act provide for the exaction of work or services from any person residing in a village tract or in a town ward, that is, work or services for which the said person

¹ The full report of the Committee, to be submitted to the 88th Session of the International Labour Conference, June 2000, will be published shortly.

has not offered himself or herself voluntarily, and that failure to comply with a requisition made under section 11(d) of the Village Act or section 9(b) of the Towns Act is punishable with penal sanctions under section 12 of the Village Act or section 9(a) of the Towns Act. Thus, these Acts provide for the exaction of “forced or compulsory labour” within the definition of Article 2(1) of the Convention.

The Commission further noted that the wide powers to requisition labour and services under these provisions do not come under any of the exceptions listed in Article 2, paragraph 2, of the Convention and are entirely incompatible with the Convention. Recalling that the amendment of these provisions had been promised by the Government for over 30 years and again announced in the Government’s observations on the complaint, the Commission urged the Government to take the necessary steps to ensure that the Village Act and the Towns Act be brought into line with the Convention without further delay, and at the very latest by 1 May 1999 (paragraph 539(a) of the Commission’s report).

5. All information available indicates that, by the end of November 1999, neither the Village Act nor the Towns Act had been amended, nor has any draft law proposed or under consideration for that purpose been brought to the knowledge of the Committee.

6. However, an “Order Directing Not to Exercise Powers Under Certain Provisions of the Town Act, 1907 and the Village Act, 1907” was issued by the Government on 14 May 1999, which will be considered in paragraphs 8 et seq. below.

II. Measures to stop the exaction in practice of forced or compulsory labour and information available on actual practice

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

7. In paragraph 539(b) of its recommendations of July 1998, the Commission of Inquiry indicated that:

... besides amending the legislation, concrete action needs to be taken immediately 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 ...

8. While the Commission indicated that action needed to be taken immediately, it appears from the information supplied by both the Government of Myanmar and other sources, that the concrete measures called for by the Commission of Inquiry had not been taken by mid-May 1999. However, in its letter of 18 May 1999, the Government indicated that an Order was issued by the Ministry of Home Affairs dated 14 May 1999 directing the relevant authorities not to exercise the powers conferred on them under section 7(1), (l) and (m), and section 9 and 9A of the Towns Act and section 8(1), (g), (n) and (o), section 11(d) and section 12 of the Village Act. This indication does not correspond to the content of Order No. 1/99 issued on 14 May 1999, which reserves the exercise of powers under the relevant provisions of the Village Act, 1908 (erroneously dated 1907 in the published Order), and the Towns Act, 1907, in several ways, as pointed out in paragraphs 48 et seq. of the Director-General’s report of 21 May 1999.

9. In the first place, under section 5 of the Order, restrictions to exercise powers relating to requisition for personal service under the Acts are to be effective only “until and unless any further directive is issued”.

10. Secondly, the Order makes two exceptions under section 5(a) and (b), the language of which corresponds in part to that of Convention No. 29. Exception (a) reproduces the essential wording of the

exception from the scope of the Convention made in its *Article 2(2)(d)* for emergencies. But exception (b) provides for “requisition for personal service in work or service which is of important direct interest for the community and general public and is of present or imminent necessity, and for which it has been impossible to obtain voluntary labour by offer of usual rates of wages and which will not lay too heavy a burden upon the present population”. This provision is incompatible with the requirements of the Convention for several reasons.

11. While the wording of exception (b) reflects part of *Article 10 of the Convention*, it does not observe the conditions laid down in paragraph 2(d) and (e) thereof “that the work or service will not entail the removal of the workers from their place of habitual residence” and “that the execution of the work or the rendering of the service will be directed in accordance with the exigencies of religion, social life and agriculture”.

12. More importantly, it is indicated in *paragraph 1 of Article 10* of the Convention that forced or compulsory labour of the kind envisaged under this Article “shall be progressively abolished”. As noted by the Commission of Inquiry in paragraph 472 of its report, *Article 10* is part of a series of provisions containing conditions and guarantees “to restrict and regulate recourse to compulsory labour pending its suppression”, that is, during the “transitional period” provided for in *Article 1(2)* of the Convention. In this regard, the Committee recalls its earlier finding that since the Convention, adopted in 1930, calls for the suppression of forced labour within the shortest possible period, to invoke at the current time (69 years after its adoption) the notion that certain forms of forced or compulsory labour comply with one of the requirements of this set of provisions, is to disregard the transitional function of these provisions and contradict the spirit of the Convention. In the view of the Committee, use of a form of forced or compulsory labour falling within the scope of the Convention as defined in *Article 2* may no longer be justified by invoking observance of the provisions of *Article 1, paragraph 2*, and *Articles 4 to 24*, although the absolute prohibitions contained in these provisions remain binding upon the States having ratified the Convention. The Commission of Inquiry in its report shared this view, having regard also to the status of the abolition of forced or compulsory labour in general international law as a peremptory norm from which no derogation is permitted.

13. Moreover, in paragraph 472 of its findings as to compliance with the Convention, the Commission of Inquiry noted that:

... in the present case, the undertaking under *Article 1(1)* of the Convention to suppress the use of forced or compulsory labour in all its forms within the shortest possible period precludes the Government from having recourse to legislation that it had over many years declared obsolete and not applied.

14. In providing for the exercise of powers to impose compulsory labour under an exception patterned after *Article 10, paragraph 2(a) to (c)*, of the Convention, the Order of 14 May 1999 observes neither the conditions laid down in paragraph 2(d) and (e) of *Article 10* itself nor the transitional character of that provision; *a fortiori*, it fails to ensure, as called for by the Commission of Inquiry in its recommendations under paragraph 539(b), “that in actual practice, no more forced or compulsory labour be imposed by the authorities, in particular the military”.

15. In its memorandum of 7 June 1999, the Government stated that Order No. 1/99 “specifically orders ... that any and all unpaid or compulsory labour be terminated henceforth”. In fact, the Order does not refer to “any and all unpaid or compulsory labour”, but only to the exercise of powers under the Village Act and the Towns Act. The Commission of Inquiry pointed out in paragraph 539(b) of its report that in national practice “the powers to impose compulsory labour appear to be taken for granted, without any reference to the Village Act or the Towns Act”. This is confirmed by information available on actual practice followed by military authorities since the publication of the report of the Commission of Inquiry (see Part B below), including orders for the contribution of labour issued both before and after 14 May 1999 without ever referring to the Village Act or the Towns Act or any other legal basis.

16. In conclusion, the concrete measures called for by the Commission of Inquiry “to ensure that nobody is compelled to work against his or her will” have not yet been taken.

B. Information available on actual practice

(a) August 1998 to mid-May 1999

17. In his report dated 21 May 1999 to the members of the Governing Body, the Director-General indicated that all information on actual practice that was received (from workers' and employers' organizations, intergovernmental organizations and governments of member States of the ILO) in reply to his request, referred to continued widespread use of forced labour by the authorities, in particular by the military.

18. There is an abundance of information of concrete instances of recourse to forced labour between August 1998 and April 1999, including a great number of written, official orders from either the army or the representatives of the administration demanding that village heads provide villagers to perform forced labour. Like the earlier orders, those issued after July 1998 never refer to any legal basis for the authority exercised.

19. Forced labour has continued to be imposed for portering, military camp work and other work in support of the military, work on agricultural and other production projects undertaken by the military, the construction and maintenance of roads, railways and bridges, and other infrastructure work ranging from digging canals and building dykes to building pagodas. Information reflected in the Director-General's report included details of a number of cases in which forced labour is reported to have been imposed in conditions of extreme brutality, involving the destruction of villages, torture, rape, the maiming and killing of exhausted, sick or wounded porters and (in one case) of a non-cooperative village head, and the use of civilians, including women and children, as minesweepers and human shields. More generally, the conditions in which forced labour is imposed show utter disregard for the dignity, health and basic needs of the victims.

(b) The Government's comments of 7 June 1999

20. In its memorandum dated 7 June 1999, the Government states that the Director-General's report of 21 May:

... is full of unfounded and biased charges deliberately levelled at Myanmar and the Myanmar Government.

The alleged facts in this report are manifestly false accusations concocted with evil intent to bring about the destruction of Myanmar by Myanmar expatriate organizations abroad and renegade groups that oppose all measures undertaken by the Myanmar Government. They are also based on blatantly false accusations made verbally, in writing and in the form of announcements by the National League for Democracy (NLD) ...

At present the Government is implementing construction projects with systematic planning and proper budget appropriations. Moreover most of the work being done on these projects is through the use of mechanized implements and machinery. In any project where human labour has to be unavoidably employed, there is a budget allotment for payment of wages to the workers, Any worker so employed is paid fair wages and there is not a single instance or a shred of evidence that forced labour is being used in these projects.

Work on the highways under construction in various regions, including the union highway in the Shan State, and new railroads being laid, are being done by servicemen of the armed forces. There is not a single civilian working on them.

Any jobs in which the people are involved are confined to the digging of small irrigation ditches to convey water to their own private cultivation plots. The larger state projects for the building of irrigation canals and dams do not use forced or conscripted labour of civilians. As stated, if people are at work at all, they are working in their own interest and according to their own plans and schedules on their privately owned plots of land.

State construction projects employ only military servicemen. So the accusation that the Government is using forced labour on these projects is baseless and flagrantly false. Since

only members of the armed forces are employed in the construction of rail and motor roads, to say that forced labour is being used is utterly meaningless.

Other ongoing projects such as the reclamation of vacant and fallow lands and the construction of residential housing and hotels are all ventures by private entrepreneurs who have made capital investments. The use of forced labour in such cases is totally out of the question. In fact when incidents arise over labour grievances, the Government stands firmly on the side of the workers in settling such disputes.

Concerning the charge that the army conscripts porters in its military operations, it could be said that this was the practice in former times when the insurgencies were rampant. But the fact remains that these porters were always paid and the defence budget always had an allotment for payment of their wages. These porters enjoyed the same rights as a soldier. He was given the same rations and paid the same wages. Moreover, a porter, if wounded, obtained equal compensation with a serving soldier and he was entitled to the same hardship allowances. But this issue of military porters is no longer relevant and has become a non-issue since military operations are no longer an urgent necessity.

21. The Committee takes due note that the Government in its statement denies what has been established both by the Commission of Inquiry's findings of July 1998 and by a wealth of concurring information for the period August 1998 to April 1999 supplied by a variety of sources, as well as copies of orders from the army itself or representatives of the administration, as reflected in the Director-General's report of 21 May 1999. The Committee further notes that the assertions quoted above from the Government's memorandum of 7 June 1999 are contradicted *inter alia* by copies of military orders issued at about the same time that have been submitted by the ICFTU.

(c) The practice since mid-May 1999

22. In its observations dated 19 October 1999, the ICFTU indicates that over one year after the publication of the report of the Commission of Inquiry, and contrary to its repeated public commitments, the Government has still not desisted from the large-scale and systematic use of forced labour, which has continued and continues to be imposed on the civilian population, as evidenced by a set of recent orders issued by the military and/or bodies under its direct control.

23. As demonstrated by these orders, army officers have continued, after 14 May 1999, to demand that village heads provide labourers for cultivating food for the army, for road work, for military portering, as well as to supply identified army camps with a steady, rotating supply of forced labourers used as servants, messengers, sentries, builders and for a variety of other duties. The ICFTU stresses that such labourers are not allowed, under threat of being shot at, to leave army premises until their replacement has arrived and that repeated failure to comply with the orders can result in the arrest and torture of village elders.

24. The ICFTU has also submitted a report pointing at the use of forced labour in August 1999 for repair and maintenance of the Ye-Tavoy railway road, and a study of the 1999 report of the United Nations Special Rapporteur on Myanmar, which identifies direct financial profit for the army as being at times the sole purpose of forced labour. In this connection, the ICFTU recalls, from the military orders submitted, the forced conscription, by an Order of 12 June 1999, of persons with cattle and ploughs to work on land controlled by a battalion commander in the Kawkareik region as an example confirming the Special Rapporteur's analysis of the exploitation of farmers in the context of land confiscation.

25. While the Government has not commented on the observations made by the ICFTU dated 19 October, the Committee notes that, as pointed out before by the ICFTU in relation to an earlier set of military orders, the orders submitted are quasi-identical in style and content to the hundreds of forced labour orders which the Commission of Inquiry examined and found to be authentic in the course of its investigation.

26. In conclusion, there is no evidence that actual practice has changed since the Commission of Inquiry presented its report; on the contrary the exaction of forced or compulsory labour by the authorities has continued and is well documented.

III. Enforcement

27. In paragraph 539(c) of its recommendations the Commission of Inquiry urged the Government to take the necessary steps to ensure:

... that the penalties which may be imposed under section 374 of the Penal Code for the exaction of forced labour 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.

28. In its memorandum of 7 June 1999, the Government draws attention to paragraph 6 of Order 1/99 of 14 May 1999 which reads: "any person who fails to abide by this Order shall have action taken against him under existing laws". This, according to the Government, places "beyond all reasonable doubt that offenders will be punished under section 374 of the Penal Code".

29. The Committee notes that section 6 of Order 1/99 refers neither to the exaction of forced labour nor to punishment under section 374 of the Penal Code, but specifically to failure to abide by the Order and to action "under existing laws". The Committee further recalls that the Order does not generally prohibit the exaction of forced or compulsory labour, but specifically restricts the use of powers under the Village and Towns Acts, while military orders calling for the supply of forced labour do not refer to any legal basis.

30. In practice, no action whatsoever under section 374 of the Penal Code has so far been brought to the knowledge of the Committee.

31. It is relevant to recall in this connection that the continued exaction of forced or compulsory labour by the authorities was flatly denied by the Government in its memorandum of 7 June 1999, echoing the similar denial made by Lt. General Khin Nyunt in his address to the ASEAN Labour Ministers Meeting on 14 May 1999, where he referred to "misconception and misunderstanding of the situation and the mentality of our people" who "have voluntarily contributed labour" for "immediate material benefit" and "merit for future life cycles"; then again, "to dispel these wrong impressions", the Government had "issued instructions that only remunerated labour must be used in infrastructure projects", while at the same time "we are now mainly using our military personnel".

32. As pointed out before by a Governing Body Committee in 1994, by the present Committee in its subsequent observations under the Convention and by the Commission of Inquiry in concluding its recommendations under paragraph 539 of its report, the blurring of the borderline between compulsory and voluntary labour, recurrent throughout the Government's statements, is 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.

* * *

33. The Committee deplores the continued brutal imposition of forced labour on the civilian population by military officers in conditions of apparent impunity; the failure by the Government to implement the three recommendations of the Commission of Inquiry; and persistent failure by Myanmar to observe the Forced Labour Convention, 1930 (No. 29). In its concluding observations, the Commission of Inquiry noted that the experience of the past years tended to prove that the establishment of a government freely chosen by the people and the submission of all public authorities to the rule of law were in practice indispensable prerequisites for the suppression of forced labour in Myanmar. The Committee urges the Government to implement the recommendations of the Commission of Inquiry, to halt the scourge of forced labour and to restore its credibility within the international community as a government which is prepared to comply with its international obligations.

Appendix II

GOVERNMENT OF THE UNION OF MYANMAR
DEPARTMENT OF LABOUR
YANGON, MYANMAR

REF: 1/DL (R-2) 2000

DATE: 21 January, 2000

To,

Mr. Juan Somavia
Director-General
International Labour Office
Geneva

Subject: Positive and effective measures taken concerning
certain labour matters in Myanmar

Dear Director-General,

In recent years, there had been repeated allegations of practice of forced labour in Myanmar and also that the relevant sections of the existing Village Act of 1907 and the Towns Act of 1907 were incompatible with the Forced Labour Convention, 1930 (No. 29).

Under the instruction of the Government of the Union of Myanmar, the Ministry of Home Affairs, which oversees the execution of the Village Act of 1907 and the Towns Act of 1907, embarked on a review process in co-ordination with the relevant ministries, organs and departments of the country with a view to either amend or, supplement or repeal the two acts in conformity with the changing security, administrative, economic and social situations and conditions.

As a result of the review process, the Ministry of Home Affairs issued Order No. 1/99 on 14 May 1999 under the Directive of the State Peace and Development Council, instructing the Chairmen of the Ward and Village Tract Peace and Development Councils and other local authorities concerned not to exercise the powers under those provisions relating to requisition for personal services, prescribed in the Village Act, 1907 and the Towns Act, 1907.

A member of the International Labour Organization, which has ratified an ILO Convention, if it is required to bring the relevant internal legislation in line with the Convention which it has ratified. In taking necessary steps towards that end, however, it is the prerogative of the country concerned to decide on the most effective and appropriate means.

In this regard, I wish to emphasize that Order 1/99 of 14 May 1999 by the Ministry of Home Affairs was issued under the Directive of the State Peace and Development Council, the law making body and that it has the full force of law.

I wish to also underscore that various means at our disposal were utilized to give the widest possible publicity to the Order. First, the issuance of the Order was clearly explained to local and international media at the press conference held at the conclusion of the ASEAN Labour Ministers' Meeting held in Yangon from 14 to 15 May 1999. In addition, the Order was circulated to the state bodies and local authorities concerned. (List attached)

Finally, the Order was promulgated and published in Gazette No. 26; Vol. V; dated 25-6-99 of the Official Myanmar Gazette, where all laws, notifications, rules, regulations, directives and orders are officially published.

With regard to enforcing penalties on those who exact unlawful forced or compulsory labour, I wish to state that action shall be taken under section 374 of the Penal Code of the Union of Myanmar in the event of any complaint by any individual subjected to unlawful forced or compulsory labour. Section 374 of the Penal Code provides as follows:-

“Whoever, unlawfully compels any person to labour against the will of that person, shall be punished with imprisonment of either description for a term which may be extended to one year with fine or with both”.

According to the official records as of 15 January 2000, there have been no complaints and no charges made or actions taken under section 374 at any law court at the State/Division, District and township levels.

Furthermore, the Ministry of Home Affairs directed the State and Divisional, District, Township, Ward and Village Tract Peace and Development Councils, which are local authorities, and all the Police Stations in the whole country to notify the Ministry of any complaint lodged under section 374. We have been informed in this regard that no complaints whatsoever have been made as of 15 January 2000.

I wish to inform you that, in view of the above, it is now amply clear that positive and effective measures have been virtually taken in accordance with the ILO Convention, 1930 (No. 29).

Myanmar has been a long-standing member of the International Labour Organization (ILO) and has maintained the tradition of closely cooperating with the Organization. I am confident that we will be able to keep up this tradition.

Yours sincerely,

(Soe Nyunt)
Director-General

Distribution list

- (1) Office of the Chairman of the State Peace and Development Council;
- (2) Office of the State Peace and Development Council;
- (3) Office of the Government;
- (4) Supreme Court;
- (5) Office of the Attorney General;
- (6) Office of the Auditor General;
- (7) Public Services Selection and Training Board;
- (8) All Ministries;
- (9) Director-General, Department of General Administration (forwarded for information and for further circulation of the copy of this Order to the State, Divisional, District and Township Administrative Officers subordinate to him);
- (10) Police Major-General, Myanmar Police Force (forwarded for information and for further circulation of the copy of this Order to the relevant department and organizations subordinate to him);
- (11) Director-General, Department of Special Investigation (forwarded for information and for further circulation of the copy of this Order to the relevant departments and organizations subordinate to him);
- (12) Director-General, Prisons Department (forwarded for information and for further circulation of the copy of this Order to the relevant departments and organizations subordinate to him);
- (13) All State and Divisional Peace and Development Councils;
- (14) All District Peace and Development Councils;
- (15) All Township Peace and Development Councils (forwarded for information and for further circulation of the copy of this Order to the Chairmen of the ward and Village Tract Peace and Development Councils subordinate to it).