



THIRD PART

**Special sitting to examine developments concerning the question of the observance
by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29)**

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A. RECORD OF THE DISCUSSION IN THE COMMITTEE ON THE APPLICATION OF STANDARDS

A Government representative of Myanmar informed the Committee that the Supreme Court of the Union of Myanmar had revised and commuted the death sentences on the three individuals as follows: (1) the sentence on Shwe Mann (a) Zeyar Oo had been commuted to transportation for life under section 122(1) of the Myanmar Penal Code; (2) the sentence on Min Kyi (a) Naing Min Kyi had been commuted to three years' imprisonment under section 123 of the Myanmar Penal Code; and (3) the sentence on Aye Myint (a) Myint Aye Maung had been commuted to three years' imprisonment under section 123 of the Myanmar Penal Code. It should be noted that not only those three individuals but also the remaining six persons had received commutations of their sentences. Out of the nine individuals, four received commutations to three years' imprisonment and five received commutations to transportation for life. He recalled the content of his letter dated 3 June 2004, addressed to the Director-General of the International Labour Office, which had been distributed in document C. App/D.5(Add 2).

With regard to the Facilitator, the speaker said that, although the joint Plan of Action was not yet in force, the Myanmar authorities, on their part, were already implementing it in good faith. For instance, the Myanmar authorities had recognized the Facilitator designated by the ILO, as provided for in the joint Plan of Action, and had been cooperating with him in the performance of his duties. In this context, it is also relevant to note paragraph 10 of the report (GB.289/8/1) of the Special Adviser to the ILO Director-General who visited Myanmar from 3 to 8 March 2004. The mechanism of the Facilitator was a new concept. The terms of reference for the Facilitator had been clearly set out in the joint Plan of Action and the mechanism was already functioning effectively.

The speaker then referred to other measures taken by his Government. These included field observation teams. The seven field observation teams (FOT), headed by the Directors-General and heads of departments under the Ministry of Labour, continued to undertake field observation trips to various parts of the country. These teams oversaw the implementation measures in the field and carried out investigations into the allegations of the use of forced labour whenever they occurred. Their findings were submitted to the Convention No. 29 Implementation Committee for appropriate and necessary actions. The Ministry of Labour, under close supervision of the Convention No. 29 Implementation Committee and in collaboration with the ILO Liaison Officer a.i., compiled these findings and actions and submitted them to the Director-General of the ILO and the Committee of Experts on a regular basis. He also noted that the ILO Liaison Officer a.i. was enjoying freedom of movement in the country. The ILO Liaison Officer a.i. travelled through the length and breadth of Myanmar including remote areas such as the Chin Hills, Kachin State and Kayah State.

The speaker also pointed to the holding of a workshop on the implementation of Convention No. 29. A total of 120 participants in the workshop included: responsible officials from the peace and development councils at the division, district, township and village tract levels; high officials from various government departments; and representatives from NGOs. The subjects discussed included, inter alia: cooperation between Myanmar and the ILO; Order No. 1/99 and the Order Supplementing Order No. 1/99; Criminal Procedure Code; rights of Myanmar nationals; the role of the police force in the eradication of forced labour; and complaints within the region. The workshop proved to be very useful. There were plans to organize more similar workshops and seminars.

The Myanmar judiciary and the ministries and departments concerned were also taking necessary enforcement measures and legal actions whenever there appear *prima facie* cases with sufficient evidence. One significant development was the legal proceedings under section 374 of the Myanmar Penal Code in respect of two defendants for their alleged use of forced labour in Htanmanaing Village, Kawhmu township. In the past, a number of representatives, including the Worker members, insisted on the need to invoke section 374 of the Myanmar Penal Code. This was the first case prosecuted under section 374. Necessary actions were also being taken against those found guilty of infringing Order No 1/99 and the Order Supplementing Order No. 1/99.

The speaker then turned to Myanmar's observance of Convention No. 87. He noted that the National Convention, which had been entrusted with the drafting of a new state Constitution, was currently in session. He concluded by stating that the aforementioned measures bore testimony to the determination, dedication and commitment of the Myanmar authorities to the eradication of forced labour in the country. He wished to make it clear, once again, that no linkage between the ILO issue and politics or the internal situation in the country could be accepted.

The Worker members stated that yet another special session on the Forced Labour Convention, 1930 (No. 29), was being devoted to addressing the issue of forced labour in Myanmar. Several years ago, the Commission of Inquiry had already made the following specific recommendations to the Government: (a) to modify the laws relating to forced labour; (b) to terminate forced labour practices, particularly those imposed by the military; and (c) to apply effective criminal sanctions in cases of forced labour. The Committee of Experts had noted that the laws dating from 1907 were never modified, as recommended by the Commission of Inquiry. In this regard, the Government continued to claim that the Orders of 1999 had amended the laws in question. Then, why not modify the laws of 1907 themselves if the Government had already indicated that these laws were no longer applicable? Concerning the second recommendation of the Commission of Inquiry, the Government had not undertaken any of the four types of measures which were requested with a view to terminating forced labour practices. Hence the Government had not provided the relevant copies of the concrete specific instructions addressed to local authorities and the military; nor had the Government provided any definitions of forced labour or indicated how work in the country could be carried out otherwise than through forced labour. Apparently, no instructions had been provided to the military and nothing showed that the translation of the instructions in the local languages had been effectively disseminated. Moreover, if budgetary allocations had been made, they had not been used to envisage the carrying out of the necessary work in the country through other means. Strangely enough, all the investigations carried out by Convention No. 29 Implementation Committee had led nowhere. Concerning the third recommendation, it was observed that no sanctions had been imposed against the perpetrators of forced labour practices even where a complaint was lodged for the first time before a judiciary body. They concluded that the situation of Myanmar continued to be extremely serious and worrying particularly in the periphery and ethnic parts of the country where there was a strong military presence. Hence the overall situation was very depressing and affected a significant number of people. The Worker members emphasized the importance of continuing the Committee discussion in addition to the Governing Body discussion that had tended to focus more on procedural matters rather than substance until substantial progress could be demonstrated toward the complete elimination of forced labour in Burma.

This was the fourth year in a row that this case was discussed in a special session in accordance with the ILC resolution under article 33 of the ILO Constitution. Last year, the discussion of the then recently concluded agreement on a Plan of Action was coloured by the attack on Aung San Suu Kyi by forces associated with the military regime only days before the International Labour Conference began. Scores of her supporters were massacred, Daw Suu and many of her supporters were arrested and remained in detention to date, and all activities of the National League for Democracy (NLD) were suspended. Since the climate of fear and repression resulting from the massacre raised substantial concerns about the ability to implement the newly agreed Plan of Action, especially the work of the Facilitator that depended on the confidence of victims of forced labour to come to him as well as the Liaison Officer without fear of reprisal from the regime, this Committee concluded that it was not possible to begin implementation of the Plan of Action at that time. The Governing Body reviewed the situation not only at its November session but also once again at its session in March. On both occasions the Governing Body decided that the climate inside the country was not conducive for the implementation of the Plan of Action.

The Worker members recalled that the Governing Body in March asked this Committee to review developments under the circumstances and that the conclusions reached by the Governing Body "are of course without prejudice to the views expressed by some that the lack of substantive progress would call for reactivation of the review of relations between the ILO constituents and Myanmar under article 33 of the Constitution". The Governing Body in March expressed three fundamental concerns about the sentencing to death of nine persons for high treason, in particular Shwe Mahn, Naing Min Kyi and Aye Myint. It should be emphasized that the Facilitator designated by the ILO was of the opinion that "the matter had not been dealt with in accordance with an appropriate and credible procedure, and that the charge of high treason was unfounded and needed to be reviewed". The first concern expressed by the Governing Body in March was that contacts or exchange of information with the ILO could in any way have judicial consequences in Burma. The second concern focused on

whether contacts with “third parties” on matters of concern to the ILO could similarly be punished. And the third concern raised the issue as to whether, in light of the court decision, the Plan of Action and more specifically the Facilitator mechanism could be credibly implemented.

The Committee took note of two letters that had been sent to the Minister of Labour since the March session of the Governing Body – one from the Liaison Officer and one from the ILO Director-General himself. These letters could be found in document D.5. There was also the letter sent by the Ambassador only a couple of days ago that appeared to be in response to the Director-General's letter of 2 June. In this letter, the Ambassador indicated: firstly, that the three defendants somehow had the right for a second appeal to the Supreme Court; secondly, that the lower court inadvertently and incorrectly made reference to the ILO in its original decision; and, thirdly, that under no circumstances did contact or cooperation with the ILO constitute an offence under existing law. They also recalled that this year's discussion was taking place under a similar pall as last year's discussion. Aung San Suu Kyi remained under house arrest and was virtually incommunicado. None other than the UN Special Rapporteur on Human Rights in Burma/Myanmar, who had been refused a visa to enter the country, had called the Constitutional National Convention now taking place at a secure location outside Rangoon “an enormous effort for a meaningless and undemocratic exercise”. He had accused the Government of condemning the carefully selected 1,088 people attending the convention to house arrest and publicly stated that the democratic transition would be impossible unless Myanmar's generals eased curbs on free, open discussion at the convention. The ethnic groups agreeing to a ceasefire participating in the convention were already making demands about fundamental changes in the documents drafted nearly a decade ago and now being dusted off for this National Convention or they would walk out.

The Worker members stated that the spirit of cooperation contained in the Government representative's remarks stood in stark contrast to what was happening inside Burma today which could only be described as a victory by those inside the military most resistant to reform of any kind. To the ILO the face of the Government was a civilian diplomat, but to the Burmese people the face of the regime was the soldier with his gun. In view of the above, they turned to four points in reaction to recent developments. First, the Worker members fully supported the view expressed by the Facilitator designated by the ILO that the convictions of Shwe Mahn, Naing Min Kyi and Aye Myint were unfounded. Their only alleged crime appeared to be their association with pro-democracy groups opposed to the regime, particularly the Federation of Trade Unions of Burma. On account of this association, they had been labelled terrorists and convicted of high treason. While they were relieved that the sentences for Naing Min Kyi and Aye Myint had been reduced, they demanded the immediate release of all three. They further demanded the release of the other six defendants, five of whom continued to face prison sentences. They hoped that this second review by the Supreme Court was completed in due haste and the defendants were exonerated. Second, regarding the matter of whether contact and cooperation with the ILO constituted a crime in Burma, the Government representative's assurances contained in his letter of 4 June, whilst appreciated, were insufficient. They hoped that any second judgement by the Supreme Court would make it absolutely clear that contact with the ILO was not a crime and should in fact be encouraged. This had to be clearly communicated throughout the country in all the appropriate languages. Third, clarity also needed to be brought to the issue of contact with third parties on matters of concern to the ILO. Court decisions made it clear that what was meant by third party is the Federation of Trade Unions of Burma and its Secretary-General, Mr. Maung Maung, who had addressed the Committee earlier and who had been convicted *in absentia* of high treason. Without such clarity, the implementation of the Plan of Action, especially the work of the Facilitator, would be fundamentally compromised.

Given the current political climate inside the country, the Worker members did not believe that the Plan of Action could be effectively implemented at present. The speaker emphasized that the Worker members had reacted positively toward the Plan of Action, especially the facilitator framework, both in this Committee last year and in the Governing Body. They looked forward to the day when the climate existed for the Plan of Action to be tested to determine the degree to which it actually contributed to the elimination of forced labour in Burma. In this regard, they noted with interest the information provided in document D.5 concerning the activities of the Liaison Officer, specifically the fact that he had received 40 complaints thus far in 2004. They deplored the fact that the regime had admitted that only three of the 40 were the victims of forced labour and it did not appear that any action had been taken by the authorities to date. Nonetheless, they saw value in the work of the Liaison Officer and would be open to exploring ways to

expand and make more effective such work if the circumstances emerged for such a consideration.

The Worker members recalled that the Commission of Inquiry report had noted that “all the information and evidence before the Commission shows the utter disregard by the authorities for the safety and health as well as the basic needs of the people performing forced or compulsory labour ... Forced labourers, including those sick or injured, are frequently beaten or otherwise physically abused by soldiers, resulting in serious injuries, some are killed, and women performing compulsory labour are raped or otherwise sexually abused by soldiers ...”. The Worker members were compelled to emphasize that, despite the ongoing engagement between the Office and the Government, very little had improved concerning the widespread use of forced labour, particularly by the military, and on infrastructure projects. Confirmation of this was contained in the Experts' comments once again this year and supported by the continual flow of information coming out of Burma. Unless significant progress was made in the next couple of months toward the implementation of all three Commission of Inquiry recommendations, the Governing Body would have no choice but to direct the Director-General to strengthen his call under article 33 of the Constitution that all of the ILO's constituents should review their relations with Myanmar to ensure that such relations did not perpetuate or extend the system of forced or compulsory labour in that country.

The Employer members stated that the Government of Myanmar still refused to comply with obligations they had voluntarily accepted under international law. This increasing isolation was detrimental to their economy and their people and, if it continued, would lead to contempt by the international community. It was too early, however, for resignation. The Employer members recalled that the Committee's mandate was to examine the measures taken to implement the resolution adopted by the Conference in 2000 which, for its part, was based on the Committee of Experts' observation of 1998. They observed that there were still massive violations of Convention No. 29. The legal basis for these violations, the Village Act and the Towns Act, continued to be in force. The abolition of forced labour would only be possible if the Government was prepared to act. While the Government representative in his statement had indicated a willingness to act, documents D.5 and D.6 had shown that little progress was evident at all. They turned to specific issues regarding forced labour in the country. They noted that instructions issued by the military authorities banning forced labour needed to be disseminated and translated into local languages. The aforementioned Acts allowing forced labour needed to be abrogated. Furthermore, the pamphlet on forced labour mentioned in paragraph 14 of the Committee of Experts' observation still had to be drafted. Financial resources for development were also necessary to ensure the abolition of forced labour, since many projects depended on forced labour for their completion. Finally, he noted that sanctions for the use of forced labour existed only on paper and that no information had been received on their application in practice.

The Employer members noted the long history of this case and recalled the various missions that had led to the appointment of a Liaison Officer in Myanmar in May 2002. The Government only reacted slowly and under pressure. In spite of this, it was not even possible for the Liaison Officer to effectively examine allegations of forced labour brought to his attention, as indicated in document D.5. They further noted that new information had revealed that forced labour was also a problem in border regions and was practised in the context of military service. More specifically, there were allegations that young persons under the age of 18 years were being recruited for compulsory military training. They noted that, when the Government replied to such allegations, such responses were always received just before the Conference. Referring to the Plan of Action of May 2003, they noted that an independent facilitator was supposed to carry out duties mentioned in paragraphs 38-45 of this year's observation by the Committee of Experts. The commencement of the Plan of Action should be determined by the Director-General. Until now nothing had happened. They further noted that, in March 2004, the Governing Body had concluded that the conditions in Myanmar were not sufficiently convincing to proceed with the implementation of the Plan of Action.

The Employer members noted that there were some positive developments. The Liaison Officer had received a considerable number of complaints regarding forced labour, which he had transmitted to the Convention No. 29 Implementation Committee for investigation and action. These cases concerned, *inter alia*, instances of forced recruitment of persons under the age of 18 into the military service. Most of these cases had not yet been investigated. The Employer members drew special attention to the cases of nine persons sentenced to death for high treason, including three persons whose convictions were related to their contacts with the ILO. These sentences gave rise to the suspicion that contacts with third parties on matters of concern to the ILO constituted a basis for

punishment. This had been confirmed by the letter of the Ambassador of Myanmar of 3 June 2004 addressed to the Director-General, in which the Ambassador referred to the judgement of 28 November 2003 and had indicated that contact and cooperation by a Myanmar citizen with the ILO did not constitute an offence under national law.

The Employer members concluded that the preliminary summary of this case gave rise to deep concern. The Plan of Action envisaged one year ago had not yet been implemented. Although the latter contained only some measures which would lead to a radical change of the situation, it would be a start. The implementation of the Plan of Action was also required in order to render the contacts between the ILO and the Government meaningful. More effective measures needed to be taken now. They further expressed their hope that the Government would not provide the latest information on developments only just before the beginning of the Conference.

The Government member of Indonesia, speaking on behalf of the ASEAN countries, expressed his appreciation to the Director-General of the ILO for his continuing support and cooperation with the Government of Myanmar in its efforts to eliminate the practice of forced labour in the country. He also acknowledged the role played by the ILO Liaison Officer a.i. in Myanmar, in assisting the Myanmar authorities in the observance of ILO Convention No. 29. His delegation welcomed the commitment of the Government of Myanmar to observing ILO Convention No. 29, and to eliminating the practice of forced labour in the country. He noted the agreement reached between the Myanmar Government and the ILO on 27 May 2003 on the joint Plan of Action and urged both sides to jointly implement it as soon as possible. In this connection, he welcomed the visit of the ILO Mission to Myanmar from 4 to 6 March 2004, led by the Special Adviser to the ILO Director-General. Myanmar and the ILO should proceed to implement the joint Plan of Action and continue their cooperation. He believed that a cooperative approach would enable the International Labour Conference to play a constructive role in this respect, and encouraged the Government of the Union of Myanmar and the ILO to continue amicable cooperation until the issue was completely resolved.

The Government member of Ireland spoke on behalf of the European Union. She indicated that the candidate countries Bulgaria, Romania and Turkey and the countries of the Stabilization and Association Process and potential EU candidates Albania, Bosnia and Herzegovina, Croatia, The former Yugoslav Republic of Macedonia, Serbia and Montenegro and the EFTA countries Iceland, Norway and Switzerland, had aligned themselves with her statement. The European Union (EU) wished to underline its support for and appreciation of the work of the International Labour Office and that of its former and current liaison officers in their work on forced labour in Burma/Myanmar. The speaker recalled that, in March, the Governing Body had concluded that while positive developments had occurred since November 2003, the court judgement against certain persons in relation to contacts or exchange of information with the ILO had undermined the credibility and prospects for future cooperation. Three separate concerns were identified in the Conclusions. The Office was to examine this question more thoroughly in light of the results of the review of the recent cases and any further assurances provided by the Government. It was to report on the results of this examination to the Officers of the Governing Body, with the proviso that the results should be found sufficiently convincing before proceeding to the implementation of the Plan of Action. The speaker said that the EU did not find the additional information provided sufficiently convincing to permit implementation of the Plan of Action.

The European Union was gravely concerned that the three persons whose conviction had an ILO connection continued to be imprisoned, one for a sentence equivalent to a term of life imprisonment. She was further concerned that they had not been granted access to their defence lawyer. It was now learned that they had been granted a second appeal, but that appeal should lead, at the very least, to a satisfactory outcome in the terms expressed in their letters by both the Director-General and the Ambassador of Burma/Myanmar. Only then could further steps be considered, be they positive or, if the results were disappointing, a further utilization of measures to ensure the respect of Convention No. 29 by Burma/Myanmar. The EU noted that the ILO Liaison Officer a.i. had continued with his activities, including discussions with the Minister for Labour and the Director-General of his department, and that he was able to travel to Chin State in a visit conducted independently of the authorities. The EU acknowledged that the ILO Liaison Officer a.i. was able to travel to all areas that he wished without any restrictions or escort, and was able to meet freely with a range of persons, as well as with members of the Chin State Peace and Development Council, including its secretary. However, she noted that, despite the increasing number of allegations received by the ILO Liaison Officer a.i., none brought to the attention of the Conven-

tion No. 29 Implementation Committee had been found by the Committee to be justified. The EU was concerned that the Committee had not found any cases of forced labour, since there was evidence of cases thereof. The EU shared the view of the Liaison Officer a.i. that if the official position of the Convention No. 29 Implementation Committee remained that the allegations were unfounded, this would inevitably cast doubt on the credibility of the Committee and its work.

The European Union was concerned and deeply disappointed that the authorities of Burma/Myanmar, despite previous assurances, had not released Daw Aung San Suu Kyi, or her deputy, U Tin Oo, and had not allowed the National League for Democracy (NLD) to reopen their offices. The EU regretted this failure by the authorities of Burma/Myanmar to create the conditions which would have allowed the NLD to take part in the National Convention. They were further concerned at the restrictions placed on participants in the National Convention. She regretted that this opportunity to begin a real process of national reconciliation and a peaceful transition to democracy had not been taken by the Burmese authorities. They were also concerned that the UN Special Rapporteur on Human Rights in Burma/Myanmar had not been able to gain entry. The EU reiterated its commitment to democratic change in Burma/Myanmar as well as ongoing humanitarian assistance to the people of Burma/Myanmar and remained committed to working with its Asian and other partners to that end.

The Government member of the United States stated that her Government had carefully studied the documentation prepared for the Committee on developments concerning the question of Burma's observance of Convention No. 29 on forced labour. She had also listened with great interest to the presentation made this morning by the Government of Burma. The inevitable conclusion was that forced labour continued in Burma. The Committee of Experts, in its current report, found that "while there may have been some decrease in forced labour since the report of the Commission of Inquiry in 1998, in particular for civil infrastructure work, forced labour continues to be exacted in many parts of the country". The ILO Liaison Officer a.i. provided additional credible evidence of the ongoing use of forced labour and the forced recruitment of children into the armed forces. Some Burmese individuals had demonstrated remarkable courage by contacting the ILO Liaison Office to report incidents of forced labour. Two individuals even filed a complaint in a Burmese Court under section 374 of the Burmese Penal Code – the first time this had happened. Still, the Burmese people lived in a climate of fear. Her Government was appalled to learn in March that three people were sentenced to death for contacting the ILO. The Governing Body was assured by the Burmese authorities that the cases would be reviewed. But the recent decision of the Supreme Court was merely to reduce the sentences. This was unacceptable. No one should be punished, and no one should fear punishment, for contacting the ILO. She urged the Burmese authorities to guarantee that the Supreme Court would review these cases, and that the three persons would have access to effective legal assistance in preparing their appeals. To do otherwise, as the Governing Body previously noted, would undermine the credibility and prospects for future cooperation. She agreed with the conclusion of the Officers of the Governing Body that the latest developments in the situation in Burma were not sufficiently convincing to proceed with the implementation of the Plan of Action. Indeed, she urged the ILO to defer signing the Plan of Action until the prospects for successful implementation had improved sufficiently. If the situation did not improve significantly – and soon – the November session of the Governing Body would need to consider reactivating measures under article 33 of the ILO Constitution. It was now almost 50 years since Burma committed "to suppress the use of forced or compulsory labour in all its forms" under the Forced Labour Convention, 1930 (No. 29). The Burmese authorities had to live up to their obligations and end this intolerable practice. Concrete actions that demonstrated resolve to implement the Commission of Inquiry's three recommendations were the only way in which the Plan of Action could go forward.

The Government member of Australia, speaking also on behalf of the Government of Canada, said that both countries' positions on forced labour in Burma were clearly on the record both at the ILO and in supporting United Nations resolutions on Burma. They acknowledged the role played by the ILO Liaison Officer a.i. in Yangon, particularly his efforts to assist the Burmese authorities to observe ILO Convention No. 29. Canada and Australia strongly supported the Plan of Action and they were deeply disappointed that no change at all seemed to have occurred in Burma since the International Labour Conference last June to eliminate the practice of forced labour. It was time for Burma to demonstrate its commitment to eliminating forced labour by cooperating fully with the ILO to implement the Plan of Action. He reaffirmed that, in principle, Australia and Canada favoured the signature of the Plan of Action. Canada and Australia remained convinced that urgent

action was required to assist the citizens of Burma experiencing, or under threat of, forced labour. A basic element of the Plan of Action was that the people of Burma should be able to cooperate with the ILO with full confidence and without fear of retribution. They sought a clear commitment from the Burmese Government that contact with the ILO would not constitute a criminal offence. Until they were satisfied that this was the case, reluctantly, they could not endorse signature and implementation of the Plan of Action. Although it was not appropriate for this Committee to become involved in broader political debates, it should convey clearly to the Burmese Government that past events brought into question its intentions regarding implementation of the Plan of Action. Australia and Canada had made it clear on many occasions that all political detainees, including the Secretary-General of the NLD, Aung San Suu Kyi, should be released immediately and unconditionally. It was now more than 12 months since Aung San Suu Kyi was detained in Burma where she remained under house arrest. There was no justification for her continued detention and her release was a prerequisite for democratization in Burma as outlined in the Road Map. He called on Burma to implement the Road Map to democracy, including drafting a new constitution with broad participation and open debate. The National Convention which commenced on 17 May 2004 was not credible because it did not meet that test. It was up to the Burmese Government to create a climate to give parties confidence about their participation in the National Convention.

The Worker member of Malaysia said that no progress had been noted in this case since it began, despite yearly assurances by the Government of Myanmar to the contrary. He suggested that the Government representative travel to Myanmar to see the facts first hand, or that the military junta attend the next meeting of the Committee. Reports indicated that forced labour occurred every day. He pointed to mainly Muslim refugees who had appeared at the Malaysian border and who were fleeing forced labour practices. With regard to paragraph 28 of the Committee of Experts' comment on Myanmar and Convention No. 29, he pointed out that there was evidence that the army recruited persons under the age of 18. Turning to the topic of freedom of association, he urged the Myanmar Government to listen to its people and to make freedom of association a reality.

An observer representing the International Confederation of Free Trade Unions (ICFTU), speaking with the authorization of the Officers of the Committee, stated that he was the Secretary-General of the Federation of Trade Unions-Burma (FTUB), an independent workers' organization, working underground inside Burma and maintaining offices and training structures in neighbouring countries. As such, the FTUB received information concerning forced labour and other violations of fundamental workers' rights sent by Shwe Man, Min Kyi and Aye Myint, who had remained in jail in Burma since July 2003 and whose cases were amply described in the documents presented by the Office to the Committee. He assured that there was absolutely nothing subversive, revolutionary nor anti-State about this information. He held and would make available to the ILO a folder containing the reports sent to him since 2001 by his imprisoned colleagues. Far from constituting any grounds for a death sentence, or even one single day in jail, these documents provided undisputable evidence of forced labour, exploitation and extortion by Burma's military authorities.

This other document which he held was the latest forced labour report sent by the FTUB to the ICFTU less than three weeks ago, covering a period from September 2003 to April 2004. It contained details of at least 3,000 villagers forced to work on road construction, to deliver food to the army, to keep guard, to build military barracks, to provide building materials, to dig channels, to provide boats, trucks, bullocks and even elephants, to plough fields for the army or to pay cash in exchange for labour they could not perform. In Tan-tabin township, last December, Tactical Commander Khin Soe ordered 254 villagers from Baw-gali to clear undergrowth and landmines along the road. In Lashee township, in Sagaing Division, over 900 households had to provide labourers to construct a road between 18 and 24 April 2004. They had to crush gravel, chop down trees, remove heavy rocks and construct a bridge. The FTUB's report was supported by 17 forced labour orders, all of which were identical in content and shape to the thousands of orders which they had supplied over the years to the ILO and which had been found by the Committee of Experts to be authentic. They were issued in Sagaing Division, in Pegu Division, in Karen State and in many other places; they contained dates, locations, battalion numbers, names and rank of army officers and descriptions of civilian authorities.

The continuation of forced labour in Arakan State was confirmed by Forum Asia, a human rights NGO based in Bangkok, and whose reports on Burma were well known to the ILO. Its latest report, dated 1 June, gave details of forced labour on a road construction project to link South Maungdaw with Rathedaung township.

While the work initially started with the use of an army bulldozer, it stopped for a few months when the bulldozer reached a rocky hill in the Manyu mountain range. It resumed in March this year with forced labourers taken from five village tracts in the area. Two forced labourers had already died on this road project, in March and in April, when they were hit by rocks falling from the cliffs. This clearly demonstrated not only that the army still very much used forced labour, but also that it did so on major infrastructure projects, contrary to assurances given by the junta to the international community. It should be noted, however, that forced labour had stopped in the area for a while in 2002 and 2003, but resumed when an army battalion was deployed in the area. In other words, forced labour was still very much imposed at will by the army, according to the whims and decisions of local commanders over which central authorities seemed unwilling or unable to impose effective control.

The FTUB, the workers and the people of Burma were grateful to the ILO for its efforts on the ground to eliminate forced labour. They were encouraged by the opening of the Rangoon Office, and thought that at least two new ILO offices should be opened, one in Upper Burma, and one in southern Burma for all people of rural areas to have access to the ILO. They were very concerned, however, by the fact that, over the last few weeks, many people wanting to report cases of forced labour to the ILO had been turned away by security officials from the Rangoon hotel where the office was located. He called for the assurances made by the authorities that contact with the ILO was not a crime to be announced publicly, including in ethnic languages and by all technical means used in this regard, such as radio and television. The same assurances should be given as concerned the right of Burmese workers to contact independent trade union organizations, including the FTUB. These requirements, as well as the need for the immediate and unconditional release of the detainees sentenced last November on charges of high treason, were the minimum prerequisites for further ILO initiative or action in the country, such as the implementation of the Plan of Action. Failing genuine and measurable progress, the ILO should implement the actions and measures foreseen by the 2000 resolution adopted by the International Labour Conference under article 33 of the Constitution.

The Worker member of the Netherlands stated that he had two observations to make in order to review certain points that he had made last year during the special sitting on Myanmar. The first point concerned the OECD Guidelines for Multinational Enterprises as an instrument to help governments, employers and trade unions to make a contribution to the elimination of forced labour. He considered that in the past year, this instrument, which was not binding, had lost a great deal of its potential as a consequence of a decision by the OECD member States to limit the scope of its application to direct investments and to exceptional cases, to be decided on an ad hoc basis, dealing with investment related trade. Governments had taken this decision while complaint procedures against companies with economic activities in Burma other than direct investment, for instance, travel agencies, were well under way in the Netherlands, and had been considered as receivable by the National Contact Point. Earlier this year, the Government had told the travel agencies that it would prefer them to discontinue organizing trips to Burma and that it would take certain measures vis-à-vis their customers if they would choose to ignore the Government's policy of discouraging business with Burma, which gave the trade unions at least some satisfaction. Quite a few travel agencies had meanwhile indeed stopped their activities in Burma as a result of the campaign by NGOs and trade unions, but some continued. In addition to this, the trade unions had been successful in one case addressed under the OECD Guidelines in their efforts to change the behaviour of a major Dutch investor in Burma, namely, the dredging, shipbuilding and engineering company IHC CALAND, which did business in Burma jointly with Premier Oil Inc., and since September of last year with its successor in the joint venture, Petronas of Malaysia. After two years of discussions, the Dutch company had decided to change its policies, pledged not to engage in further investments (while maintaining to serve their contractual obligations in the earlier concluded joint ventures), and expressed concern about forced labour in that country. At the request of the Dutch trade union confederations FNV and CNV, the company in question had also addressed Petronas Malaysia, urging it to respect the OECD guidelines and rules on forced labour, something which the Malaysian company had recently promised to do.

The speaker continued with his second point which concerned the follow-up to the 2000 resolution on Myanmar under article 33 of the ILO Constitution. He recalled that last year he had pleaded for a new reporting round on the implementation of the resolution which would have given a picture of the way in which the ILO constituents indeed had reviewed their relations with Burma. In fact, the Committee did not have any information in this respect as the first reporting round had been carried out just a few months after the adoption of the resolution and the time span covered was so

short that one could not have realistically expected that policies of Government, employers and trade unions had, by then, already changed. By now, however, the Committee should be able to examine the impact that the resolution had had in practice in terms of compliance by those who had adopted it. He wondered whether the phrase "reactivating the resolution" meant that there was a tacit understanding that nobody should for the time being implement it and that the ILO should be silent about it. If that was the case, then he found it disappointing that in a field where the ILO had a strong and well-deserved reputation, i.e. careful monitoring of policy implementation, it should have acted with such lack of transparency and in such a hesitant manner. He therefore repeated his strong plea for a follow-up of the resolution in terms of regular reporting on its application in practice by the tripartite constituents of the Organization.

The Worker member of Japan, speaking on behalf of the Japanese Trade Union Confederation-RENGO, observed that in spite of the promises made by the Government of Burma, forced labour was still exacted widely in Burma as the Committee of Experts pointed out in its report. Noting the large efforts that the ILO had made to eliminate forced labour in Burma, he expressed the hope that the Government would take the necessary steps to make it possible for the joint Plan of Action to be implemented as soon as possible. He recalled that the 2000 resolution on Myanmar, adopted under article 33 of the ILO Constitution, called upon ILO member States to revise their relations with the Government of Burma and asked all parties not to give any advantage to the Government of Burma. He expressed the view that this resolution would be effective in practice if all member States could get together to put pressure on Burma, while recognizing that, at the same time, the international community should give the necessary assistance to the country to eradicate forced labour. In this respect, he regretted to observe that a few countries and some multinational companies supported financially and politically the Government of Burma. Although he did not deny that international investment could open societies and bring democratic changes, he emphasized that this was not the case in Burma. For instance, domestic law required that foreign direct investment (FDI) be carried out through joint ventures with the military regime, so that fees and benefits from investment went straight to the generals. He noted that according to the Union of Myanmar Economic Holding Annual Report 1990-2002, which was fully owned by the Burmese military regime, FDI had been growing significantly, and that most top investors in Burma were ASEAN countries such as Singapore, Thailand, Malaysia and Indonesia. One-third of total FDI was for the oil and gas sectors. Major countries with FDI in Burma from 1990 to 2002 were Singapore, the United Kingdom, Thailand, Malaysia, France and Japan. The leading companies in the oil and gas sectors were: (1) the Daewoo Corporation from Korea; (2) TotalFinaElf; (3) Uncoal from the United States; (4) Petroleum Inc. from Canada; and (5) TG World Energy Ltd. from Canada. Most importantly, investment was increasing rapidly even after the adoption of the ILO resolution in 2000. There was no doubt that this kind of support helped the military regime to continue to survive and oppress the people of Burma and ultimately led to having forced labour in Burma. In conclusion, he urged the representatives of the governments and the employers of these countries to stop giving any advantage to the military regime, as this was the shortest and most effective way to stop forced labour in Burma.

The Worker member of Italy observed that despite the promises made by the Burmese military regime in past years, the situation concerning the widespread violations of the Convention was not really improving and it was now urgent to assess the consistency of the Government. Although some measures had been taken, they were rather superficial, and did not really address the heart of the problem. The recent high treason cases before the Supreme Court concerning nine persons sadly provided support for this dark assessment. While after the Governing Body session of March the death penalty had been commuted by the Supreme Court, all persons convicted of high treason for having merely contacted a trade union remained in prison and should be immediately released while their criminal penalties, including the euphemistic penalty of "rigorous labour", should be cancelled as a prerequisite to any other action. The speaker further observed that the main points identified by the Commission of Inquiry had not been implemented. For instance, the Village Act and the Towns Act had not been amended, although Order No. 1/99 and its supplementing Order had been adopted and could be used as a legal basis to eliminate forced labour under the condition of being strictly applied. Concrete instructions to stop forced labour as requested by the Committee of Experts for a number of years had not been issued and nothing justified this delay on the part of the Government. The only point where admittedly some measures had been taken concerned the publicity given to the Orders even though its efficiency was close to nothing. She emphasized that only if people were aware that forced

labour was a crime would they have the courage to resist, and that extensive publicity measures should target the population, the civilian authorities and the military. However, no publicity measures seemed to have been taken yet with regard to the military, while the Convention No. 29 Implementation Committee had not reached the civilian authorities in all 16 states and divisions and a huge amount of people in Burma had never heard about the Orders.

The speaker also emphasized the fundamental urgency of shifting the nowadays huge budget allocated for the army and weapons to the elimination of forced labour and the promotion of fair social conditions. As regards the monitoring mechanism, she noted that the dialogue between the Convention No. 29 Implementation Committee and the ILO Liaison Officer should be used so as to bring more rapid and concrete results, for instance, by establishing after each meeting a list of the tasks undertaken and the persons responsible for their implementation, so that developments could be better assessed by the Governing Body. In addition to this, she considered that the investigating methods of the Implementation Committee were clearly not appropriate and expressed serious concern at the fact that all the allegations of forced labour transmitted by the ILO Liaison Officer for investigation had been either found baseless or not followed by an investigation. The Government needed to understand that the rule of law required not only the establishment of machinery but guarantees of fair, transparent and effective procedures, which was far from the case. As for the issue of enforcement, she recalled that, although the Commission of Inquiry had urged the Government to take the necessary steps to ensure that the penalties which might be imposed under section 374 of the Penal Code for the exaction of forced labour be strictly enforced, to date no sanction had ever been imposed and no complaint had ever been filed, except for the two recently reported cases by the ILO Liaison Officer. This was not an indication that there was no forced labour, but rather evidence that the machinery did not have the confidence of the victims. She found it encouraging, however, that the presence of the ILO Liaison Officer somewhat compensated for this serious defect, since he had reported that he had received detailed allegations from victims of forced labour. In this regard, she noted that the situation concerning the interim nature of the Liaison Officer should be overcome by creating, even in the absence of the Plan of Action, a Liaison Office strong in terms of human resources and means, headed in such a way as to separate, on the one hand, the political relations with the national authorities and, on the other hand, the practical work to be carried out in the field, the follow-up action and the evaluation. She concluded by suggesting that between now and November the structure of the ILO Liaison Office be enlarged in the field, starting with Mandalay and the southern town of Moulmein.

The Government member of New Zealand recalled that her Government had repeatedly called on the Government of Myanmar to set in place the conditions through which the abhorrent practice of forced labour could be eliminated from the country and reaffirmed her Government's strong support for the joint Plan of Action which offered a worthy path forward. She recalled that last year, this special sitting had expressed its grave concern at developments in Myanmar that stood in the way of the implementation of the Plan of Action and that over the past year the Governing Body had twice echoed these concerns, citing further worrying cases that ran counter to the objectives of the Plan of Action. She expressed her Government's appreciation at some action that had been taken to address in part some specific cases, but also conveyed her Government's dismay at the few, if any, signs of progress or political will to take concrete actions so as to create the conditions under which the Plan of Action could be implemented. She emphasized that her Government remained deeply concerned at the situation in Myanmar, including the continued detention of political prisoners, restrictions of the right to freedom of opinion and expression and freedom of association, and that this deplorable practice had continued far too long. She concluded by saying that there were still numerous concrete measures that could be taken by the Government of Myanmar even outside the Plan of Action in order to remove these practices, and that higher priority should be accorded to making substantive progress in this respect.

The Government member of Sri Lanka welcomed the efforts made by the Government of Myanmar in cooperation with the ILO towards the elimination of forced labour. The Myanmar authorities had revised and commuted the sentences passed on citizens to lighter sentences in response to the views and concerns expressed by the ILO Governing Body. He encouraged Myanmar and the ILO to continue to work together with a view to a final resolution of this issue and the removal of measures taken against Myanmar by the International Labour Conference.

The Worker member of Burundi addressed two forms of forced labour still practised in Burma: forced recruitment of children into the army and forced use of workers as "human minesweepers". He illustrated these widespread practices with two examples: first, on

6 May 2004 a young boy of 16 years old named Wai Zim was arrested near his family dwelling in the borough of Hlaing Thaya. He was a young deserter from the light infantry battalion No. 215. He was recruited by force in December 2003, at the age of 13, and his name had been changed by the army to make it more difficult for his parents to find him. There was a double irony in his arrest for desertion last month. On the one hand, his arrest order indicated that he had to be arrested with a view to be officially dismissed from the army. On the other hand, his arrest order was signed by Lieutenant-General Tayn Sayn, who was also a Secretary of the Governmental Committee for Prevention of Use of Children Soldiers. The boy, Wai Zim, was one of 70,000 child soldiers actually used by force by the Burmese army. Second, the use of "human minesweepers" by the Burmese army was a practice which was well known to the ILO and this Committee. It was still very widely used at present. Thus, during the military offensive against the rebels of the State of Karen in October 2003, at least 300 persons were forced to work as porters and "human minesweepers". At least three of them died, torn into pieces by mines on which they put their feet. In conclusion, the speaker hoped that the Committee would consider it to be its duty to severely condemn these disgusting practices of the Burmese army.

The Employer member of India observed that the issue of Myanmar continued to be in the spotlight despite the time that had elapsed since the report of the Commission of Inquiry and the historic invocation of article 33 of the ILO Constitution. He emphasized that the purpose of this Committee should be not only to punish any guilty parties but also to ensure that ILO action became effective and yielded definitive results. He therefore had a few suggestions to make on how to improve ILO effectiveness in this respect. First, the joint Plan of Action should be made unconditional and should not depend on meeting prior conditions for its effective implementation. This would lead to a vicious circle whereby the situation would not improve precisely because the Plan of Action had not gone ahead. Second, technical cooperation programmes should be multiplied so that awareness could be raised in the country, especially through massive education programmes. Third, although the supervision and monitoring of the situation should continue, this Committee should not hold a special sitting on this case every year, but rather every two or three years after the ILO took action in the country and the situation had drastically improved.

The Government member of India stated that his delegation had carefully noted the information provided by the Office, particularly on the events that had taken place since the question of the observance by Myanmar of Convention No. 29 had been examined by the Governing Body in March this year, when positive developments had been noted and the Myanmar authorities had demonstrated an openness to cooperate. The Government member considered that the initialling of the joint Plan of Action in May last year was an important step which marked a new beginning in the process of cooperation between the ILO and the Myanmar authorities. He urged both sides to move forward towards implementing this Plan of Action, and noted with satisfaction that the two parties had been holding consultations on steps that needed to be taken towards its implementation, in particular the fact that the ILO Liaison Officer had been able to travel to several areas as he wished without any restriction or escort from 10 to 15 May, and had also been able to meet freely with a range of persons. He suggested that such developments needed to be viewed positively by the Committee as they conveyed the desire of both the ILO and the Government of Myanmar to improve the situation. He informed the Committee of his Government's view that Myanmar should be provided with adequate assistance to bring about the necessary changes without linking it to the internal political process in the country. Steps that had the potential of derailing this process had to be avoided.

The Government member of Japan emphasized the importance attached by his Government to the early and effective elimination of forced labour in Myanmar. He noted that this should be achieved by appropriate measures taken by the Government of Myanmar in line with the recommendations of the Commission of Inquiry, and expressed the hope that steady progress would be made towards this end through dialogue and cooperation between the ILO and Myanmar. He considered that the key to the implementation of the joint Plan of Action was to promote steady implementation of the facilitator activities and pilot projects, through which confidence between the ILO and the Government of Myanmar would be enhanced and further positive measures by Myanmar encouraged. Finally, he expressed the hope that progress would be made on various questions surrounding this issue.

The Government member of China stated that he had carefully listened to the opinions expressed from all sides during the discussion and expressed the hope that all of them would be put on record. He observed that Myanmar had been making efforts to improve the application of the Convention and expressed the hope that further cooperation and dialogue between the Government of

Myanmar and the ILO would facilitate a rapid implementation of the joint Plan of Action.

The Government member of Bangladesh affirmed that forced labour anywhere and in any form should be eradicated and that no effort should be spared towards this objective. He expressed his appreciation to the ILO Director-General for the continuing cooperation between the ILO and Myanmar. He also expressed his appreciation for the work of the ILO Liaison Officer. He emphasized that the implementation of the joint Plan of Action was of critical importance and therefore urged both sides to make sincere efforts to this end. In this context, he called upon the Myanmar Government to extend the fullest possible cooperation to the ILO and invited the Office to remain constructively engaged with the Myanmar Government for an early resolution of this issue.

The Government member of Pakistan thanked the Government representative of Myanmar for the information he had provided on measures taken to address the issue of forced labour in his country. He retained in particular from this information that, for the first time in the country, the judiciary had reviewed and commuted sentences in response to the views and concerns expressed by an international organization. Thus, as promised during the last meeting of the Governing Body, the Appeals Court had reviewed the cases of nine defendants in its judgement of 12 May 2004. The Government member welcomed this development and considered that it should be appreciated. Moreover, he expressed satisfaction at the fact that the ILO Liaison Officer had been allowed to travel in the country and access all defendants. He finally called for providing further technical assistance to the Government of Myanmar in response to these welcome developments.

The Government representative of Myanmar stated that he would respond briefly to the points raised during the discussion. With regard to questions raised by a few members about the National Convention, he explained that Myanmar was a country in transition, striving to establish a modern, developed and democratic State. With this vision, the Prime Minister, General Khin Nyunt, had proclaimed on 30 August 2003 a seven-step Road Map which had been welcomed by countries in the region and beyond. The ninth ASEAN Summit and the seventh ASEAN+3 Summit, held in Bali in October 2003, had welcomed the Road Map as a pragmatic approach and an important programme. The first step of the Road Map, i.e. the reconvening of the National Convention, was being implemented. The National Convention was currently in session. On 20 May 2004, the National Convention had provided clarifications and conducted deliberations on the basic principles for the social sector, including the rights of workers. The deliberations also dealt with the basic principle of forming workers' organizations, a point to be discussed later on by this Committee.

With regard to questions raised about the criminal procedure and the legal proceedings in respect of three individuals whose conviction for high treason had an ILO dimension, he wished to emphasize that Myanmar had a very comprehensive and elaborate legal system and criminal procedural code. The Myanmar Penal Code, the Myanmar Criminal Procedure Code, the Evidence Act and the Myanmar Civil Procedure Code had been drawn up during the colonial years. Investigations, seizures and collection of evidence, legal proceedings and appeal procedures were carried out systematically in accordance with the aforementioned laws. Out of a total of nine individuals convicted of high treason in this case, five were found by the court to have been involved in criminal acts and four were found to be guilty of abetting the criminals. Their right to second appeal had already been explained during his first intervention.

With regard to the amendment of the Village Act and the Towns Act, he informed the Committee that his Government had been exploring ways and means to modify certain of their provisions and had consulted extensively with various parties in this respect. He added that his Government had promulgated Order No. 1/99 and its supplementary Order which had the force of law and, as the Committee of Experts had recognized, could provide a statutory basis for implementing Convention No. 29. This showed that the Government had taken the necessary steps to establish a sound statutory basis for the elimination of forced labour. He added with regard to comments made about the Penal Code that, as he had already mentioned earlier on, for the first time legal proceedings were under way based on article 374 of the Penal Code and that necessary action would be taken against those found guilty of violating the law. The Government representative protested against the abuse of the forum of the Standards Committee by Mr. Maung Maung and recalled that he had already delivered a letter concerning this matter to the Chairperson the previous day.

With regard to comments made by some members to the effect that progress in Myanmar's implementation measures and cooperation with the ILO was rather slow, he repeated that, in his view, steps taken by the Myanmar authorities, particularly in the past few months, had been at the very least prompt, timely and transparent.

He added that the Government was doing its utmost to advance the process of cooperation with the ILO in its endeavours to implement the provisions of Convention No. 29. The Myanmar authorities were ahead of the formal signing and entry into force of the joint Plan of Action, as far as its implementation was concerned, by having already started to implement certain of its provisions. However, he emphasized that, given the delicate and sensitive nature of the issue and constraints, the Government had to adopt a step-by-step approach. This judicious and prudent approach did not mean that actions would be necessarily slow, but that progress should be achieved step by step and systematically. In conclusion, he observed that the process of dialogue and cooperation between Myanmar and the ILO had been working very well until now and he assured the Committee that the Government would continue this process of dialogue and cooperation.

The Employer members noted that, for the last four years, the Committee had been holding a serene discussion on a matter which could give rise to disquiet as it did not concern a minor matter but rather fundamental human rights. They observed that the Government had never denied the existence of forced labour in the country and had promised steps in numerous discussions on this issue. However, the effective implementation of these promises depended in the end on the Government itself. In this year's discussion, the Employer members had noted some progress but also some worrying steps backwards. For instance, the Government representative's statement that Order No. 1/99 and its supplementary Order had force of law could be seen as implying that there was no need for amending the Village and Towns Acts. Such an assertion would be very dubious since these Orders were in contradiction with older laws allowing and, indeed, calling for forced labour, which had to be repealed in order to clarify the state of the law. They also explained that the Conference had decided that the Committee would be examining this case every year in its resolution of 2000 which was binding upon the Committee. Turning to the conduct of other governments, the Employer members observed that the sanctions that had been adopted 16 years ago had not achieved any results and any adverse effect that they might have caused had been passed on to the people of Myanmar. It seemed that the governments did not have a clear plan as to what should be done in this respect. The Employer members therefore considered that the ILO should continue alone, in the absence of a strategic partner. They emphasized that the ILO had achieved remarkable results in this case but more needed to be done. The Plan of Action was a great achievement and its implementation was necessary. The Employer members expressed the hope that the Myanmar authorities would gain awareness of the fact that the abolition of forced labour would be to the benefit of all and, in particular, the country and its people.

The Worker members stated that they did not accept the criticism directed by the Government representative of Myanmar at Mr. Maung Maung's intervention. The debate confirmed the initial observations regarding the gravity of the situation in Myanmar and the continued non-observance by that Government of the recommendations of the Commission of Inquiry as well as the Committee of Experts. The practice of forced labour imposed on the population including in the domains of road construction, the use of child soldiers and civilians for mine detection, was extremely poignant and worrying. The recommendations of the Commission of Inquiry had, in the final analysis, to be respected and adhered to. The Burma Government had to: revise the laws covering certain crimes; define what it meant by "forced labour"; disseminate such a definition to the civil and military authorities as well as to the population at large; provide in its budgetary line the necessary funding allowing for the execution of needed work by means other than forced labour. Furthermore, the Convention No. 29. Implementation Committee established by the Government had to report on how it examined complaints presented. The Liaison Officer had also to be able to follow on the examination of complaints, submit cases to tribunals and propose solutions. These competencies were initially attributed to the Facilitator in the Action Plan established in the preceding year. However, the implementation of the aforementioned Plan of Action depended largely on the evolution of the political and legal situation in the country. In view of the above, the Worker members requested the Government to make an official declaration confirming that contact with the ILO or the possession of information provided by the ILO did not constitute a criminal offence. The Government was also requested to confirm that contact with third parties on matters of concern to the ILO would not be subject to punishment. Such a declaration by the Government was to be published and disseminated by appropriate means. The Worker members equally requested that the Supreme Court of Myanmar issue a judgement in due form on the status of the nine

condemned persons and to immediately liberate the workers who were sentenced following their contact with the ILO and trade unions. The Government was also to clarify the notion of "transportation for life".

Finally, in order to create a political climate conducive to the implementation of the Plan of Action, the Government had to, as a priority, release Miss Aung San Suu Kyi; re-open the offices of the National League for Democracy and annul all the restrictions imposed on the National Convention participants. If the Government was non-responsive to the Worker members' requests before November, they intended to seize the Governing Body in order for the latter to stress the call previously made to member States on the basis of article 33 of the ILO Constitution.

After taking note of the information provided by the Government representative, the Committee noted with deep concern the observation of the Committee of Experts which examined the measures taken by the Government to give effect to the recommendations of the Commission of Inquiry. The Committee of Experts had noted in its observation that the three main recommendations of the Commission of Inquiry were still to be implemented. In spite of the Government's assurances of its good intentions, the measures taken had not brought about significant progress in actual practice and forced labour continued to be exacted in many parts of the country. No person responsible for imposing forced labour had ever been prosecuted or sentenced under the relevant provision of the Penal Code. In view of the slowness of progress, the Committee of Experts had expressed the hope that the process of dialogue and cooperation which had developed between the ILO and the Government could offer a real chance of bringing about more rapid and concrete progress, in particular through the implementation of the Plan of Action.

In this regard the Committee had to note its grave concern at the fact that three persons had been convicted of high treason, including on grounds of contacts with the ILO. The Committee was further deeply concerned that although on appeal the Supreme Court had commuted the death sentences, it had failed to bring clarity on this crucial point, despite the earlier assurances of the Government that contacts with the ILO could not be considered illegal in Myanmar. The Committee also expressed its concern at the freedom of association issues raised by the Supreme Court's findings. It joined the Governing Body in endorsing the recommendations put forward by the informal facilitator as regards the grounds for convicting the three persons and the need to release them. It agreed that this situation clearly was not one in which the Plan of Action could be credibly implemented.

The Committee had also taken note of the information provided by the Liaison Officer ad interim on his activities. It noted with appreciation the continued cooperation extended to the Liaison Officer by the Government and the freedom of movement that he enjoyed. It considered the fact that individuals were lodging complaints concerning forced labour with the Liaison Officer in increasing numbers, demonstrating the usefulness of the ILO presence. However, the Committee had to note with concern that the response to the individual allegations so far raised was inadequate and that to date not a single one of these allegations had been verified by the authorities nor had anyone so far been prosecuted for illegally imposing forced labour. This cast serious doubt on the willingness of the authorities to take the concrete steps necessary to ensure the elimination of forced labour in practice.

In that respect, reference was made to the fact that certain forms of forced labour referred to by the Commission of Inquiry such as work on infrastructure projects, using forced labour, forced recruitment of children and even the use of persons as minesweepers were still in use. The dissemination of information in relevant languages also left much to be desired.

The Committee took due note of the assurances provided by the Government representative that a further review by the Supreme Court would take place which would, inter alia, clarify the question of the legality of contacts with the ILO. The Committee was of the opinion that the Government now had a final opportunity to give practical effect to these assurances and to the recommendations of the informal facilitator. It noted that the Governing Body at its next session should be ready to draw the appropriate conclusions, including reactivation and review of the measures and action taken including those regarding foreign direct investment, called for in the resolution of the International Labour Conference of 2000, unless there was a clear change in the situation in the meantime.

Finally, the Committee recalled that the Government would have to supply a detailed report for examination by the Committee of Experts at its next session on all the steps taken to ensure compliance with the Convention in law and in practice.

B. OBSERVATION OF THE COMMITTEE OF EXPERTS ON THE APPLICATION OF CONVENTIONS AND RECOMMENDATIONS ON THE OBSERVANCE OF THE FORCED LABOUR CONVENTION, 1930 (No. 29) BY MYANMAR

Myanmar (ratification: 1955)

1. Since 1999, the Committee has examined the measures taken by the Government in giving effect to the recommendations of the Commission of Inquiry appointed by the Governing Body to examine the observance by Myanmar of the Convention. In 1999 and 2000, two orders were issued to render the requisition of forced labour illegal and subject to penal sanction. Since then the ILO has been involved in a number of activities to follow up the recommendation of the Commission of Inquiry. Between May 2000 and February 2002, several technical cooperation missions were undertaken in Myanmar by a representative of the Director General. In September-October 2001, a High-Level Team visited Myanmar to conduct an assessment of the measures taken by the Government in regard to the application of the Convention. In March 2002, as recommended by the HLT, the Government agreed to the appointment of an ILO Liaison Officer in Myanmar in order to assist the Government to ensure the prompt and effective elimination of forced labour. A Liaison Officer ad interim was appointed in May 2002. Since October 2002 a permanent Liaison Officer has been functioning, and reports on the activities of the Liaison Officer, including her travels in the country and her discussions with the authorities, are presented at each session of the Governing Body. On 27 May 2003, the Government and the ILO reached agreement on a Joint Plan of Action for the Elimination of Forced Labour Practices in Myanmar.

2. In 2002, in concluding its observation, the Committee noted that some measures had been taken by the Government to disseminate the prohibition of forced labour and that discussions were under way between the ILO and the Government on a plan of action. The Committee, however, observed that in spite of the indications and rhetoric of the Government, none of the three recommendations of the Commission of Inquiry – namely that the relevant legislative texts be amended; that in actual practice no more forced or compulsory labour be imposed by the authorities, in particular the military; and that the penalties provided for by the Penal Code for the exaction of forced labour be strictly enforced – had so far been met.

3. The Committee takes note of the discussions in the Conference Committee on the Application of Standards in June 2003 (*Provisional Record* No. 24, Part three). It also notes the statements made by the representative of the Government in the Governing Body and at the Conference Committee, as well as the following reports and information supplied by the Government:

- further progress report concerning the implementation of Convention No. 29, dated 4 February 2003;
- further developments on Convention No. 29, dated 24 March 2003;
- replies to comments made by the Committee of Experts, dated 30 May 2003 (received on 6 June 2003);
- report on the application of Convention No. 29, received on 2 October 2003;
- five letters addressed to the Liaison Officer by representatives of the Government in the Convention No. 29 Implementation Committee, including the representative of the Ministry of Defence, in October and November 2003, replying to questions raised in the Implementation Committee.

4. The Committee has also taken note of the following information:

- the reports on “Developments concerning the question of the observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29)”, presented to the Governing Body at its 285th (November 2002), 286th (March 2003) and 287th (November 2003) Sessions, which include the reports of the Liaison Officer;
- the discussions and conclusions of the Governing Body on these reports (GB.288/PV);
- a communication dated 20 November 2003, in which the International Confederation of Free Trade Unions (ICFTU) submitted fresh documentation referring to the continuing recourse to forced labour in Myanmar. A copy of this communication was transmitted to the Government on 30 November 2003 for such comments it may wish to present.

5. As in previous years, the Committee will examine the observance of the Convention by the Government under three main

parts: (i) the amendment of legislation; (ii) the measures taken 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. The Committee shall then review the measures taken in regard to the Joint Plan of Action (iv).

I. Amendment of legislation

6. In its report, the Commission of Inquiry had urged the Government to take the necessary steps to ensure that the Village Act, 1907, and the Towns Act, 1907, which confer local authorities wide powers to requisition labour and services in violation of the Convention, be brought into line with the Convention without further delay. In its 2001 observation, the Committee noted that, although the Village Act and Towns Act still needed to be amended, an “Order directing not to exercise powers under certain provisions of the Town Act, 1907, and the Village Act, 1907” (Order No. 1/99), as modified by an “Order Supplementary to Order No. 1/99” dated 27 October 2000, could provide a statutory basis for ensuring compliance with the Convention in practice, if given bona fide effect not only by the local authorities empowered to requisition labour under the Village and Towns Acts, but also by civilian and military officials entitled to call on the assistance of local authorities under the Acts.

7. The Committee notes that, as at the end of November 2003, the amendment of the Village and Towns Acts has still not been made. Noting the Government’s statement in its reply to the Committee’s comments dated 30 May 2003 that Order No. 1/99 and its supplementary order have the force of law and the Towns Act and the Village Act are no longer referred to, the Committee trusts that the Government will therefore have no difficulty in repealing the relevant provisions of these Acts, in order to bring the legislation fully into conformity with the Convention. Pending this, the Committee trusts that the Government will make every effort to ensure that the prohibition on forced labour contained in Order No. 1/99 and its supplementary order is strictly applied and enforced.

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

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

8. In its recommendations, the Commission of Inquiry had stressed that besides amending the legislation, concrete action needed to be taken immediately to stop the imposition of forced labour in practice, in particular by the military. In the Commission’s view, this was all the more important since the powers to impose compulsory labour appear to be taken for granted, without any reference to the Village or Towns Acts. In its previous observations, the Committee had identified four areas in which action needed to be taken by the Government in order to achieve this goal: issuing specific and concrete instructions to the civilian and military authorities; giving wide publicity to the prohibition of forced labour; making adequate budgetary provisions for the replacement of forced or unpaid labour; and monitoring the prohibition of forced labour.

9. *Specific and concrete instructions.* In its observations in 2001 and 2002, the Committee noted that, in the absence of specific and concrete instructions to the civilian and military authorities containing a description of the various forms and manners of exaction of forced labour, the application of the provisions adopted so far turns upon the interpretation in practice of the notion of “forced labour”. This cannot be taken for granted, as shown by the various Burmese terms used sometimes when labour was exacted from the population – including “loh-ah-pay”, “voluntary”, or “donated” labour.

10. In its 2002 observation, the Committee took note of a Directive issued on 1 November 2000 by Secretary 1 of the State Peace and Development Council (SPDC) (Letter No. 4/Na ya ka U/Ma Nya) directing “the State and Divisional Peace and Development Councils to issue necessary instructions to the relevant District and Township Peace and Development Councils to strictly abide by the prohibitions contained in Order No. 1/99 and its supplementary order”. The Committee notes that the reports of the Government and the statements made by representatives of the Government contain many references to “explanations”, “instructions” and “directives” given at offices of the Peace and Development

Councils at various levels and offices of the General Administration Department, the Department of Justice and the police forces and township courts, and to the guidance provided by the Field Observation Teams during their visits in the country. However, the Government has supplied no details on the contents of the explanations, instructions, directives or guidance, nor has it provided the text of any instruction or directive which contains details of the tasks for which the requisition of labour is prohibited or the manner in which the same tasks are to be performed without resorting to forced labour.

11. In its reply to the Committee's observation dated 30 May 2003, the Government indicates that the Myanmar Police Force has issued further directives and explanations with regard to Order No. 1/99 and its supplementary order to police force personnel in order that they may be made more aware of their obligations to the public concerning the "full meaning of the use of forced labour", and provides a copy of Letter No. 1002 (3) /202/G4 "to prevent illicit summon on the requisition of forced labour", dated 27 October 2000 and signed by the Director-General of the Police Force. The Committee notes that this Letter again draws attention to the contents of Order No. 1/99 and its supplementary order, and indicates the procedure to be followed by police officers in dealing with complaints on forced labour, without explaining the kind of tasks which constitute forced labour or how these tasks should be performed.

12. Regarding the defence forces, the Committee notes, from the written reply given to the Liaison Officer by the representative of the Ministry of Defence in the Convention No. 29 Implementation Committee, the reference made to a letter of 2001 of the Office of the Minister of Defence "instructing that the orders be made comprehensive to the staff at the lower levels" in its main offices and directorates, and two letters of 1999 and 2000 and a telegram of 2001 issued by the Office of the Chief of Staff (Army) "to make personnel to the lowest level will follow orders explicitly". The Committee requests the Government to supply copies of these letters and telegram with its next report.

13. On the basis of the information available to the Committee, it appears that clear instructions are still required to indicate to all officials concerned, including members of the armed forces, both the kinds of practices that constitute forced labour and for which the requisition of labour is prohibited, and the manner in which the same tasks are henceforth to be performed. The Committee notes that in the September 2003 meeting of the Convention No. 29 Implementation Committee, it was pointed out to the Liaison Officer that there could be differences of opinion over whether certain practices constituted forced labour and that it was important to take into account the traditional customs of the country. The Liaison Officer offered to meet with a small group of the Implementation Committee to develop common concepts relating to the application of Convention No. 29 in the Myanmar context, the results of which could be reflected in a pamphlet for public distribution. The Committee hopes that with the assistance of the Liaison Officer, the necessary detailed instructions will be issued without delay, and that they will, inter alia, cover each of the tasks listed in paragraph 13 of its 2002 observation.

14. *Publicity given to orders.* The Committee notes from the information supplied by the Government that measures continue to be taken in order to make the prohibition of forced labour contained in Order No. 1/99 and its supplementary order widely known by all the authorities concerned and the general public. These measures include:

- distributing and posting copies of the orders at various administrative levels throughout the country;
- including information on Convention No. 29 in the monthly bulletin of the Ministry of Labour, which is widely circulated;
- preparing a pamphlet on forced labour and Convention No. 29;
- sending Field Observations Teams led by members of the Convention No. 29 Implementation Committee to various parts of the country, to make the local authorities and the public aware of the orders; and translating the orders into ethnic languages.

15. The Committee recalls that in its 2001 observation, it referred to an allegation made by the ICFTU to the effect that villagers had to forcibly buy the "green book" containing the text of the orders, or were forced to purchase the boards on which the orders had to be posted. The Committee takes note of the Government's reply that according to the General Administration Department the "green books" were distributed free of charge, at no cost to anyone.

16. In its communication received in November 2002, the ICFTU also alleged that "in certain areas villagers had never heard of any orders from Rangoon to the effect that forced labour was now banned, and that many villagers interviewed in Shan State, Karenni State, Karen State, Pegu Division and Mandalay Division still had never heard of announcements or proclamations that forced labour

practices should be ended". The Government has provided no answer to this allegation.

17. Regarding the translation of the orders into ethnic languages, the Committee notes that as at the end of November 2003, the orders had been translated and published in two dialects of the Kayin language, Kayah, Mon, Shan and Kachin, and copies of these translations have been communicated to the ILO. It hopes that the next report of the Government will contain copies of the translations into the four Chin dialects.

18. The Committee notes the statement contained in the Liaison Officer's first report to the November 2003 session of the Governing Body, to the effect that "there is so far no indication that the translations have been distributed and displayed in the ethnic areas".

19. The Committee expresses the hope that the Government will continue its efforts to give the widest publicity to the prohibition of forced labour throughout the country, including in the remote areas where most of the allegations of continuing forced labour refer to. In particular:

- (a) As the measures taken until now appear to be addressed mainly if not exclusively to the civilian authorities, the Committee requests the Government in its next report to provide information on the measures taken or envisaged to make the members of the defence forces at all levels fully aware of the existing orders and of the sanctions for their violation. The Government is requested to provide copies of the information provided to the defence forces as well as information about meetings, workshops and seminars organized to disseminate the information to the defence forces.
- (b) As the Field Observation Teams of the Convention No. 29 Implementation Committee do not cover all the 16 states and divisions in the country, the Committee hopes that the work of the Implementation Committee will be extended to cover the whole country and that the next report will contain information on the progress made in this regard.
- (c) The Committee hopes that the pamphlet which has been in preparation since last year will be finalized soon, with the advice of the Liaison Office, and that a copy will be provided with the next report.
- (d) The Committee trusts that measures will be taken to ensure the distribution and display of the translations in the ethnic areas, which are those where the prevalence of forced labour practices appear to be the highest.

20. *Budgeting of adequate means.* In its recommendations, the Commission of Inquiry had drawn attention to the need to make adequate budgetary provisions to hire free wage labour for the public activities which are today based on forced and unpaid labour. In its report, the High-Level Team stated that it had received no information allowing it to conclude that the authorities had indeed provided for any real substitute for the cost-free forced labour imposed to support the military or public works projects. In its two previous observations, the Committee has pursued the matter and sought to obtain concrete evidence that adequate budgetary provisions exist to hire voluntary paid labour.

21. In its reply of 30 May 2003, the Government reiterates its previous statements that there is always a budget allotment for each and every project, with allocations which include the cost of material and labour. This has been the case for each project carried out by the Department for the Development of Border Areas. In addition, the Department under the Yangon City Development Committee, the Ministry of Construction and the Ministry of Home Affairs have issued instructions "to strictly follow the rules concerning the hiring of labour, forbidding any form of forced labour as regards the provisions for labour costs".

22. The Committee takes note of this statement. However, as the information available on actual practice shows that forced labour continues to be imposed in many parts of the country, in particular in those areas with a heavy presence of the army, the Committee can only conclude that the budgetary allocations that may exist are not adequate to make recourse to forced labour unnecessary unless the use of these allocations is not adequately controlled. In this regard, it draws attention to the Liaison Officer's comment in her first report to the March 2003 session of the Governing Body that the dissemination of Order No. 1/99 and its supplementary order has not been sufficient to have a significant impact on the practice, as it has not been accompanied by other measures, such as providing alternative means to those currently imposing forced labour to carry out the tasks which is their responsibility to perform. The Committee reiterates the hope that adequate budgetary provisions will be made for the civilian and for the military authorities to allow them to carry out their tasks without using forced labour and that the next report will indicate the measures taken in this regard.

23. *Monitoring machinery.* The Committee takes note of the information supplied by the Government and the reports of the Liaison Officer on the activities carried out by the Convention No. 29 Implementation Committee in monitoring the forced labour situation and making the public aware of the orders prohibiting forced labour. Between December 2002 and November 2003, the Implementation Committee held three meetings with the Liaison Officer, in which a number of allegations of forced labour transmitted by the Liaison Officer were discussed. In these meetings, the newly appointed representative of the Ministry of Defence participated, which allowed certain issues concerning the use of forced labour by the army to be discussed. The Field Observation Teams of the Implementation Committee undertook frequent field trips in the country, to investigate allegations of forced labour and disseminate knowledge about the orders and reports on their findings were made to the Implementation Committee. In addition, the Liaison Officer received several written communications from the Implementation Committee, reporting on findings of the Field Observation Teams on the allegations transmitted by the Liaison Officer.

24. The Committee welcomes the dialogue which has developed between the Implementation Committee and the Liaison Officer. It notes however that all the investigations carried out by the authorities, including the FOTs, on allegations of forced labour have concluded that these allegations were unfounded. In this regard, it notes that as part of her proposals to the Government on a Joint Plan of Action, the Liaison Officer had made specific suggestions for a reformed system of inspection, which were not retained by the Government. The Committee also notes that following a request by the Liaison Officer, the Government agreed to let her accompany Field Observation Team on a field trip to Kachin State, in order to observe its methods of work. The Liaison Officer's observation, as reported in her second report to the November 2003 session of the Governing Body, was that "the manner in which the team conducted its work, while appropriate for information dissemination, was not well suited to investigating allegations and that it would be difficult, if not impossible, to determine the veracity of allegations in such a manner". The Committee trusts that the Government will take steps to develop a fair and more effective procedure for investigating allegations of forced labour, in particular those involving the army, and that it will continue its dialogue with the Liaison Officer in this regard.

B. Information available on actual practice

25. During its visit to Myanmar in October 2001, the High-Level Team had found that "although the orders prohibiting forced labour had been widely, if unevenly, distributed, the impact on the practice of forced labour was limited and there had been only a very moderate positive evolution since the Commission of Inquiry. The situation remained particularly serious in places with a large military presence, especially in border areas".

26. In its 2001 and 2002 observations, the Committee noted two communications of the ICFTU which contained a large number of allegations, many of them referring to the continued use by the military authorities of Burma of forced labour on a massive scale. In support of its claims, the ICFTU enclosed a large number of reports and other documents, totalling hundreds of pages, which often included interviews and precise indications of times, places, military battalions or companies involved, and the names of the commanders. The Committee had hoped that the Government would examine the allegations made by the ICFTU and supply detailed information on any action taken to prosecute all persons found responsible for ordering forced labour. The Committee notes that with the exception of two allegations, which were raised by the Liaison Officer in the Convention No. 29 Implementation Committee, the Government has provided no information in reply to the communications of the ICFTU. On the two allegations, which concerned the death of trade unionist U Saw Mya Than, while forced to work as a porter for the army, and the use of forced labour by Total-FinElf to build a highway between Kanbauk and Maung Ma Gan, the Government's answers were that in both cases, no forced labour had been used and the allegations were aimed at tarnishing the image of the Government.

27. In her first report presented to the Governing Body in March 2003, the Liaison Officer stated her impression that "while there is probably less use of forced labour in central parts of Myanmar, the situation in areas near the Thai border where there is continuing insecurity and a heavy presence of the army, as well as in Northern Rakhine State, is particularly serious and appears to have changed little (since the HLT mission)". This impression is reiterated in her first report to the November 2003 session of the Governing Body, in which she states:

The Liaison Officer continues to receive credible reports of forced labour from various sources inside and outside the country, and fresh

allegations have come to light during the recent trips to various parts of the country. The Liaison Officer continues to be concerned by the question of forced recruitment into the armed forces, including of children, on which no detailed response has been received from the authorities. Another matter which has come to the attention of the Liaison Officer is the current widespread and apparently systematic programme of military training for civilians, affecting very large numbers of people across the country since May. Trainees include government employees (for example, teachers), as well as local villagers and townspeople, who are required to participate in this training and in some cases also have to cover the cost of materials (such as bamboo sticks).

28. Regarding the forced recruitment of children into the army, the Committee has noted the answer provided by the representative of the Ministry of Defence in the Implementation Committee and repeated in his letter to the Liaison Officer, that the armed forces only recruit in accordance with the laws and regulations in force and since the Defence Services Act, 1959, provides that only those between the ages of 18 and 25 may be recruited voluntarily, there is no forced recruitment into the armed forces, and no young persons have been found to be recruited into the armed forces. The Committee requests the government to provide information on any investigation that may have been undertaken to ascertain that in practice no person under 18 is recruited into the armed forces. In view of the seriousness of the issue, the Committee hopes that the Government, with the assistance of the ILO, will make every effort to make a thorough assessment of the extent of this practice and will take necessary action to put an end to it.

29. Regarding the programmes of compulsory military training, the Committee notes from the letter of the representative of the Ministry of Defence to the Liaison Officer that "they are done as mentioned in the previous Constitutions saying that ... the State may in a particular part of the country or all over the country conduct military trainings"; "every citizen shall in accordance with law: (a) undergo military training; and (b) undertake military service for the defence of the State"; and "the basic trainings (are) conducted so as to protect the State from all forms of destructive elements". The Committee observes that the previous Constitutions are no longer in force; that in any event the obligation that they impose on citizens to undergo military training or service is "in accordance with the law"; and that the Defence Services Act, 1959, only provides for voluntary, and not compulsory, recruitment. It would appear therefore that the programmes of compulsory military training have no legal basis and constitute a form of forced or compulsory labour under the Convention. The Committee hopes that the Government will put an end to these programmes and that in its next report it will indicate the measures taken in this regard.

Current information

30. In a letter dated 19 November 2003, the ICFTU transmits information on actual practice coming from various sources and covering many parts of the country (Chin, Kayah, Kayin, Mon, Rakhine and Shan States and Ayeyarwady, Magway, Sagaing and Taninthayi Divisions) over the period September 2002 to October 2003. The ICFTU states that this information "ranges from extortion of money and goods in exchange for exemption from forced labour to violent death during forced portering and serving as 'human minesweepers' for the armed forces". The documents appended to the ICFTU letter include:

- An August 2003 report by the Karen Human Rights Group containing translations of some 200 orders mostly from the Myanmar army to villages, requisitioning labour for various tasks as well as materials. There are also translations of more than 100 orders summoning village heads to meetings with the army, at which it is alleged that verbal demands for forced labour were made.
- Documents from the Federation of Trade Unions of Burma (FTUB) containing 17 similar orders from the army to villagers requisitioning labour or materials.
- Three reports from Forum Asia dated 2 December 2002, 29 May 2003 and 31 August 2003 which include numerous allegations of forced labour in Northern Rakhine State, in particular affecting the Muslim population.
- Documents from the FTUB containing details of interviews with 73 villagers who allege they were requisitioned for forced labour. In addition, the documents contain details of interviews with a number of prisoners who had escaped after allegedly being sent to work as porters for the army.
- A document dated February 2003 from the Pa'An Agriculture Workers Union concerning forced labour allegedly requisitioned from 12 villages for a road project in Kayin State.

The Committee requests the Government to examine the allegations of the ICFTU and the documents attached thereto and to

supply detailed information on its investigations and any action taken thereupon to prosecute persons found responsible for ordering forced labour.

31. In summary, on the basis of the information at its disposal on actual practice, the Committee must conclude that while there may have been some decrease in forced labour since the report of the Commission of Inquiry in 1998, in particular for civil infrastructure work, forced labour continues to be exacted in many parts of the country. The situation is particularly serious in the border areas which are mostly inhabited by ethnic nationalities and where there is a heavy presence of the army. This clearly shows that in spite of the commitment to the elimination of forced labour expressed repeatedly by the Government the measures taken until now have not been sufficient to bring about rapid and significant progress, in particular as concerns the army.

III. Enforcement

32. In its report, 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, in the Commission's view, required thorough investigation, prosecution and adequate punishment of those found guilty.

33. The Committee notes, from the information provided by the Government, that although the Order supplementing Order No. 1/99 and the Directive dated 1 November 2000 from the Secretary 1 of the State Peace and Development Council provide for the prosecution under section 374 of the Penal Code of persons responsible for violating the prohibition on forced labour contained in Order No. 1/99, as of November 2003, no sanction has ever been imposed under section 374 of the Penal Code. Similarly, no complaint concerning the imposition of forced labour has been received until now, although procedures exist for such complaints to be filed, inter alia, at a police station in a court of law or at the Office of the Attorney-General.

34. The Committee is of the opinion that the lack of complaints and prosecutions under section 374 of the Penal Code cannot be taken as indicating that there is no forced labour. Rather, it casts doubt on the credibility of the existing complaint and investigation mechanism and on the real commitment of the Government to completely eliminate forced labour.

35. The Committee recalls that in order to overcome the feeling of fear and the lack of trust in the system of redress which in its view was the reason for the lack of complaints and prosecutions, the High-Level Team had suggested the appointment of an ombudsman, to whom complaints regarding forced labour could be submitted and who would have a mandate and the necessary means to conduct direct investigations without fear or favour and with the required confidence of all parties concerned.

36. The Committee notes with interest that in the Joint Plan of Action agreed on 27 May 2003 between the Government and the ILO, the Government accepted the establishment of an independent Facilitator to receive complaints of forced labour and assist victims in obtaining redress under the national legislation. Under the Formal Understanding on the Facilitator, the Facilitator shall perform his/her functions in strict confidentiality and have free access to the complainant and witnesses and no measures of any kind shall be taken by the authorities against the complainants and witnesses. When seized with a prima facie case of subjection to forced labour, the Facilitator may seek an informal solution with the authority concerned, or transmit the complaint to the competent authority to initiate legal proceedings and take necessary action, and he/she shall be informed of the decisions reached. The Facilitator and his/her assistance and support shall be extended the facilities, assistance, protection and status necessary to carry out their function effectively and in full independence and impartiality. The services of the Facilitator will be available in the whole country and will be tested in the pilot region established in the Plan of Action.

37. The Committee considers that, if applied in good faith, the Formal Understanding on the Facilitator could be an important tool in assisting victims of forced labour to make complaints and obtain redress, and result in the prosecution and punishment of persons responsible for imposing forced labour. As indicated below, the Committee hopes that the Government will take the necessary steps to make it possible for the Understanding to be implemented as soon as possible.

IV. Joint Plan of Action

38. Following the appointment of an ILO Liaison Officer in Yangon, the Director-General had suggested to the Minister for

Labour the development of a plan of action capable of making a concrete and verifiable impact towards the complete elimination of forced labour. The Committee notes with interest that, as a result of the discussions which took place over the last year between the Liaison Officer and the authorities in Yangon and between representatives of the Director-General and representatives of the Government in Geneva, a Joint Plan of Action for the Elimination of Forced Labour Practices in Myanmar was agreed on 27 May 2003. The Plan consists of a plan of action proposed by the Government, with a number of work programmes covering, inter alia, dissemination of information and awareness-raising programmes on the prohibition of forced labour, the expansion of animal transportation as an alternative to the use of porters, and the work of Field Observation Teams; a Formal Understanding on the Facilitator, described in paragraph 36 above, and a Formal Understanding on a pilot region. The pilot region is a region where the prohibition of forced labour will be strictly enforced and where a number of activities, including a local road construction project, will be implemented with the technical assistance and support of the ILO. The designated region is the Myeik District, consisting of four townships in the Tanintharyi Division in the south of the country.

39. The Joint Plan of Action was discussed at the 91st Session of the International Labour Conference during the special sitting on Myanmar of the Committee on the Application of Standards (hereinafter called "Special Sitting"). On this occasion, a Government representative stated that the Joint Plan of Action was a breakthrough, a landmark agreement which was the outcome of a long process of continuous and intensive negotiations and recalled his Government's determination and commitment to resolving the issue of forced labour and to implement it. The Conference Committee welcomed the Plan of Action as follows:

The Committee welcomed the fact that the Government and the ILO has agreed on 27 May 2003 on a Joint Plan of Action for the elimination of forced labour and expressed its support for this Plan. It also noted with interest that, on the basis of the suggestion made by the HLT, the Plan envisaged the designation of an independent Facilitator to assist victims of forced labour to obtain redress under national legislation. It was noted that the Facilitator would carry out his function throughout the country. Under the Plan of Action, the Government had undertaken to strictly enforce the prohibition on forced labour in the pilot region. While emphasizing that the implementation of the Plan of Action was without prejudice to the general obligation of the Government to put an end to forced labour in the whole of the country, the Committee felt that this Plan of Action, if it was applied in good faith, could enable tangible progress to be made in the elimination of forced labour and could open the way to more substantial progress. The Committee urged the Government to take all the measures required for this purpose.

40. At the same time, the Conference Committee noted in the Special Sitting that its debate was taking place at a moment when the climate of uncertainty and fear prevailing in the country as a result of recent events called seriously into question the will and ability of the authorities to make significant progress in the elimination of forced labour. The Committee expressed the view that:

... a climate of uncertainty and intimidation did not provide an environment in which the Plan of Action, and in particular the facilitator mechanism which it established, could be implemented in a credible manner. The Committee trusted that the Government would take the necessary measures to bring an end to this situation. The Committee hoped that the implementation of the Plan of Action would go ahead as soon as the Director General considered the conditions were met for its effective implementation.

41. The Committee shares the concern of the Conference Committee that a climate of fear and intimidation is not an environment where the Joint Plan of Action, and in particular the Understanding on the Facilitator, can be implemented in a credible manner. Taking note of the assurances given by the Minister for Labour in his meeting of 14 November 2003 with the Liaison Officer, as well as those contained in the statement of the representative of the Government at the November 2003 session of the Governing Body, that the Government is firmly committed to the Joint Plan of Action and is ready to go ahead with its implementation, the Committee trusts that the Government will shortly take the necessary steps to restore a climate which will make it possible for the Plan of Action to be implemented in an effective and credible manner.

42. To summarize, in the last three years, the Government, at the highest levels, has given repeated assurances of its intention to put an end to the widespread violations of the Convention which had been noted by the Commission of Inquiry in its report. As noted in the Committee's observation, a number of steps have been taken in this direction, in particular, orders have been issued to prohibit the use of forced labour. These orders have been translated into six ethnic languages and measures have been taken to make them known to public officials and the general public. A mechanism has been established to promote the observance of the orders and to disseminate awareness of them. An intensive dialogue has developed between the ILO and the authorities, which has resulted

in the establishment of a presence in the country in the form of an ILO Liaison Officer.

43. The Committee is bound to observe that the three main recommendations of the Commission of Inquiry are still to be implemented. In spite of the Government's assurances of its good intentions, the measures taken until now have not brought about significant progress in actual practice. Forced labour continues to be exacted in many parts of the country, mainly by the army. No person responsible for imposing forced labour has ever been prosecuted or sentenced under the relevant provision of the Penal Code.

44. In view of the slowness of the progress, it could be hoped that the process of dialogue and cooperation which has developed between the ILO and the Government can offer a real chance of bringing about more rapid and concrete results. The Committee

considers that the Joint Plan of Action agreed in May 2003 offers an opportunity for the Government, with the technical assistance of the ILO and the financial support of the international community, to move from procedural steps to substantive progress and to dispel the doubts that the current reality may cast about the seriousness of its commitment. The Committee can only express the hope that the Government will do its utmost to ensure the continuation of this process of dialogue and cooperation and will take all the necessary steps in the very near future to make it possible for the Joint Plan of Action to be implemented.

45. The Committee reminds the Government that in any event the obligation under the Convention to suppress the use of all forms of forced or compulsory labour remains its responsibility.

[The Government is asked to supply full particulars to the Conference at its 92nd Session.]

C. Brief summary of developments since June 2003

1. In the conclusions it adopted last year at the close of the special sitting concerning the application by Myanmar of the Forced Labour Convention, 1930 (No. 29), the Committee on the Application of Standards *inter alia* noted with appreciation the Government's cooperation with the ILO Liaison Officer in Myanmar, but had to note that the measures taken by the Government still had not resulted in tangible progress in the application of the Convention. The Committee welcomed the fact that the Government and the ILO had agreed on 27 May 2003 on a joint Plan of Action for the elimination of forced labour and expressed its support for this Plan, but deplored the situation created by recent events in Myanmar, noting that a climate of uncertainty and intimidation did not provide an environment in which the Plan of Action, and in particular the Facilitator mechanism which it established, could be implemented in a credible manner. The Committee expressed the hope that the implementation of the joint Plan of Action would go ahead as soon as the Director-General considered that the conditions were met for its effective implementation. The following brief overview of the main developments since its last session should be of interest to the Committee.
2. At its 288th Session (November 2003), the Governing Body had before it two reports from the Liaison Officer on her activities and other developments since June 2003.¹ The Governing Body endorsed the Chairperson's conclusions, in particular regarding the importance he felt should be accorded to the introductory statement made by the representative of Myanmar, from which it appeared that the Myanmar authorities were in agreement that the representatives of the Director-General should undertake, according to the modalities that had been successfully applied previously, a complete review of the situation with the aim of an implementation of the Plan of Action as rapidly as possible. On this basis, the Governing Body agreed to postpone until its March 2004 session the consideration of the proposal to reactivate the measures envisaged under the resolution adopted in June 2000 by the Conference, on the understanding that a complete report on the situation, with appropriate recommendations, would be submitted to it by the Director-General.
3. The Liaison Officer, Ms. Hông-Trang Perret Nguyen, completed her appointment at the end of November 2003. Mr. Richard Horsey was appointed Liaison Officer *ad interim* from 1 December.

¹ GB.288/5 and GB.288/5/1.

4. The 289th Session (March 2004) of the Governing Body had before it three reports: (i) a report from the Liaison Officer *a.i.* on his activities,² (ii) a report of the preliminary phase of an evaluation visit to Yangon under the November 2003 understanding reached by the Governing Body, carried out by Mr. Francis Maupain, Special Adviser to the ILO Director-General, together with the Liaison Officer *a.i.*,³ and (iii) a report on the latest developments in the case of certain persons sentenced to death for high treason, including the observations of the future Facilitator concerning his visit to two of the detained persons.⁴ The Governing Body concluded that while positive developments had taken place since November 2003 and the authorities had demonstrated an openness to cooperate, the discovery of a court judgement against certain persons in relation to contacts or exchange of information with the ILO had undermined the credibility and prospects for future cooperation. The conclusions identified three separate concerns which had been expressed. The first concern was that contacts or exchange of information with the ILO could in any way have judicial consequences in Myanmar. In this regard it took note of the assurances given by the Myanmar Ambassador and the Minister for Labour. It also supported the future Facilitator's clear recommendations for action as regards the persons involved. The second concern was that contacts with third parties on matters of concern to the ILO could similarly be punished, as it may call into question freedom of association principles. The third concern was whether in light of the court judgement the Plan of Action, and more specifically the Facilitator mechanism, could be credibly implemented. The Office was to examine this question more thoroughly in light of the results of the review of the recent cases and any further assurances provided by the Government and report on the results of this examination to the Officers of the Governing Body, which should be found sufficiently convincing before proceeding to the implementation of the Plan of Action.

² GB.289/8.

³ GB.289/8/1.

⁴ GB.289/8/2.

D. Latest developments since the 289th Session of the Governing Body (March 2004)

Activities of the Liaison Officer *a.i.*

5. On 9 April the Liaison Officer *a.i.* met with the Minister for Labour in order to discuss the outcome of the Governing Body debate and the steps which could be envisaged to give effect to the Governing Body's conclusions. The Liaison Officer *a.i.* had further meetings with the Minister on 7 and 24 May, together with the informal facilitator Mr. de Riedmatten.
6. In a meeting on 29 April with the Director-General of the Myanmar Department of Labour, the Liaison Officer *a.i.* had the opportunity to discuss matters relating to the practical elimination of forced labour. A meeting on 5 May with the Convention 29 Implementation Committee provided the opportunity to have more detailed discussions in this regard, as set out in paragraphs 18-20 below. In a subsequent meeting on 18 May with the Director-General of the Department of Labour, the Liaison Officer *a.i.* was able to reiterate some of the comments and concerns that he had expressed in the meeting with the Convention 29 Implementation Committee.
7. In addition to these meetings with the authorities, the Liaison Officer *a.i.* also had the opportunity to have discussions with the diplomatic community in Yangon and Bangkok, as well as with representatives of United Nations agencies, international non-governmental organizations and the International Committee of the Red Cross.
8. From 10 to 15 May, the Liaison Officer *a.i.* travelled to Chin State.⁵ This trip was conducted independently of the authorities. The Liaison Officer *a.i.* was able to travel to all areas that he wished without any restrictions or escort, and was able to meet freely with a range of persons, as well as with members of the Chin State Peace and Development Council including its Secretary.

Developments on specific allegations

9. Since the finalization of his report to the 289th Session of the Governing Body in March, the Liaison Officer *a.i.* has received a considerable number of additional complaints, mostly from alleged victims or their representatives, concerning incidents of forced labour. This brings the total number of complaints received so far in 2004 to 40. The Liaison Officer *a.i.* has now transmitted 21 of these cases to the Convention 29 Implementation Committee for investigation

⁵ He travelled from Mandalay to Chin State via Kalemmyo, returning to Mandalay via Gangaw. In Chin State he visited the townships of Tiddim, Falam and Hakha.

and action.⁶ In two further cases, the individuals who presented allegations to the Liaison Officer *a.i.* had also lodged direct complaints with a Myanmar court under section 374 of the Penal Code. This is the first time that a complaint has been lodged under this section of the Penal Code.⁷ In these cases, the Liaison Officer *a.i.* wrote to the Convention 29 Implementation Committee informing it that he had received copies of the complaints and underlining that, particularly as these were the first complaints of this kind and as such could be expected to generate considerable interest, it was important for the credibility of the process that they be handled in a fully transparent manner. He indicated that he would remain in contact with the complainants throughout the case and asked that he be kept informed of developments.

10. On 12 March the Liaison Officer *a.i.* transmitted to the Convention 29 Implementation Committee an allegation of forced labour that he had received from an individual from Naukmee village in Bogalay township (Ayeyawaddy Division). This individual alleged that they had very recently been forced by the local authorities to participate in the upgrading of a village access road along with hundreds of other villagers from several villages in the area. The individual also alleged that forced labour had been imposed for a number of other projects in the recent past.
11. On 7 April the Liaison Officer *a.i.* transmitted to the Convention 29 Implementation Committee an allegation of forced labour that he had received from a number of individuals from Toungup township (Rakhine State). These individuals alleged that an army battalion had very recently forced them and around 800 other villagers from several villages in the area to work under difficult conditions on the construction of embankments as part of a land reclamation project. The Liaison Officer *a.i.* also received a separate allegation containing similar information concerning the same project.
12. On 9 April the Liaison Officer *a.i.* transmitted to the Convention 29 Implementation Committee three further allegations of forced labour that he had received. The first of these allegations was made by three individuals from Pantanaw township (Ayeyawaddy Division). These individuals alleged that villagers from one village tract in the area were currently being forced by the local authorities to carry out guard duty at a local official's house and at a nearby fish-breeding project being implemented by the local authorities. They also had to work clearing land for a football field.
13. The second allegation transmitted to the Committee on 9 April was made by an individual from Magu village tract in Bogalay township (Ayeyawaddy Division). According to this allegation, two villagers were required by the local authorities at all times for general duties at the village tract office. Villagers carried out this duty on a rotation basis, and anyone who failed to be present was subject to a fine. Villagers were also forced to participate in other projects, such as constructing embankments and widening the access road. Copies of two orders from the local authorities requisitioning such labour were provided.

⁶ Of the remaining cases, five were rejected on the grounds that they were not sufficiently precise or credible for action to be taken, five cases were judged not to fall within the mandate of the Liaison Officer, seven cases of forced recruitment had already been the subject of interventions by another agency, and two cases were sub judice as the complainants had made direct complaints to a court under section 374 of the Penal Code (see below).

⁷ Section 374 of the Penal Code makes forced labour a criminal offence, in the following terms: "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 extend to one year, or with fine, or with both."

14. The third allegation transmitted to the Committee on 9 April was made by an individual from Ama village tract in Bogalay township (Ayeyawaddy Division). According to this allegation, one person from each household had been forced by the local authorities for the previous three weeks to participate in the construction of 13 government offices as part of a project to upgrade Ama to a sub-township.
15. On 29 April the Liaison Officer *a.i.* transmitted to the Convention 29 Implementation Committee an allegation of forced labour that he had received from an individual from Monywa township (Sagaing Division). According to this allegation, villagers from five villages were being forced to work on the resurfacing with rocks of a five-mile section of road. In addition to the labour the villagers had to provide the rock chippings, which entailed financial costs.
16. On 20 May the Liaison Officer *a.i.* transmitted to the Convention 29 Implementation Committee a case of forced labour that had come to his attention during his recent visit to Chin State, including photographs he had taken showing the nature and scope of the work. The Liaison Officer *a.i.* had found that work was under way at the time of his visit to Tiddim and Falam towns to widen the main road passing through these towns. The households along these roads were required to carry out this work, which included considerable excavation of the steep hill into which the road was cut, as well as the construction of a high retaining wall and surfacing of the newly widened section with rock.
17. In letters dated 11 and 18 March, and 8, 23 and 30 April, the Liaison Officer *a.i.* transmitted to the Convention 29 Implementation Committee nine detailed allegations concerning forced recruitment into the army. Information concerning the alleged circumstances of the recruitment, together with copies of identification documents of the boys, was provided to the Committee. Seven of these allegations concerned the forcible recruitment of boys between the ages of 13 and 16. The Liaison Officer *a.i.* requested the Committee to ensure that urgent action was taken to verify these allegations in order that, if they were confirmed, these children could be returned to the care of their families as soon as possible and an urgent investigation then carried out into the circumstances of their recruitment so that any person found to have acted illegally could be prosecuted. Of the remaining two cases, one concerned a 15-year-old boy who it was alleged was forcibly recruited into the army, but then ran away after two months and resumed his education. He was subsequently arrested and sentenced by court martial to four years' imprisonment for desertion. The Liaison Officer *a.i.* requested the Committee to ensure that an urgent investigation was carried out in order that, if the information was confirmed, the court martial verdict would be reviewed and the individual released as appropriate. The other case concerned a 13-year-old boy who it was alleged was recruited into the military against his will. A few months later, after completing basic training and being posted to a battalion, he was allowed a home visit and subsequently did not return to his battalion. He was therefore now facing the possibility of being arrested and court-martialled for desertion. The Liaison Officer *a.i.* requested the Committee to ensure that urgent action was taken to verify this information in order that, if it was confirmed, the individual could be given a formal discharge from the military and assurances that no action would be taken against him. In both of these cases, the Liaison Officer *a.i.* also requested the Committee, if the information was confirmed, to ensure that investigations were carried out into the circumstances of recruitment so that any person found to have acted illegally could be prosecuted.
18. *Meeting with the Convention 29 Implementation Committee.* On 5 May the Liaison Officer *a.i.* met with the Implementation Committee and was briefed on the recent work of the Committee and the action taken in light of the various allegations, as detailed below. The Liaison Officer *a.i.* thanked the Committee for the information on its work and for the cooperation that he had

received. The Liaison Officer *a.i.* noted the increasing number of allegations he was receiving from individuals, as well as the first complaint under section 374 of the Penal Code. This demonstrated not only a degree of confidence in the ILO, but also showed that complainants had a degree of confidence that the authorities would take action in cases of forced labour. It was important that the Committee continue to take concrete and credible action in response to allegations. In this regard, the Liaison Officer *a.i.* noted that most of the allegations transmitted in the last few months were still under investigation, and he was still awaiting written reports on those investigations that had been completed. So far, none of the allegations that had been brought to the attention of the Committee had been found by the Committee to be correct, and the Committee had not found any cases of forced labour through its field observation teams.⁸ The Liaison Officer *a.i.* was aware that in some cases forced labour practices had been stopped and administrative action had been taken against local officials as a result of allegations that he had transmitted. However, if the official position of the Committee continued to be that the allegations were unfounded, this would inevitably cast doubt on the credibility of the Committee and its work, particularly given the increasing number of allegations. These comments and concerns were reiterated by the Liaison Officer *a.i.* in a letter to the Committee following the meeting, and in subsequent meetings with the Minister for Labour and the Director-General of the Department of Labour.

19. *Detailed responses to allegations.* During the Implementation Committee meeting, the representative of the Ministry of Defence provided information on action that had been taken with regard to allegations concerning the military. He indicated that the allegation of forced labour in Thandaung township (Kayin State) transmitted by the Liaison Officer *a.i.* after his visit to the area⁹ was still under investigation. As regards the nine allegations of forced recruitment, investigations had been completed in four cases. In three cases, the information transmitted by the Liaison Officer *a.i.* had been confirmed. However, no information was provided on any action that had been taken to return these boys to their families or to investigate the circumstances of their recruitment. In the fourth case, the investigation had found that the information was incorrect as no person fitting the description in the allegation had been located in the battalion mentioned. The other five cases were still under investigation. The representative of the Ministry of Defence then gave some details on the recruitment procedure used by the military. He underlined that all soldiers were recruited voluntarily and had to be over the age of 18. In 2003, 75 recruits had been rejected as they had been found to be under age. If information was subsequently received that recruitment procedures had been violated and a recruit had not been voluntarily recruited or was under age, the case was investigated and the recruit discharged as appropriate. As a result of such investigations, there had been 68 discharges in 2002, and 12 discharges in 2003. Officials found to have violated recruitment procedures had action taken against them. There had been 17 such cases in 2002 and five in 2003.
20. The Committee then provided information on action that had been taken on allegations concerning local authorities. As regards the allegation of forced labour in Twantay township (Yangon Division),¹⁰ the Committee indicated that this allegation was unfounded, but that the district chairman had nevertheless been removed from his post for “being a burden to the

⁸ No new visits by field observation teams had taken place since the last meeting with the Committee on 29 January. However, in a letter dated 26 May the Director-General of the Department of Labour (who serves as Joint Secretary of the Implementation Committee) indicated that he had held a two-day workshop for 120 participants, including a number of senior officials, on “Raising awareness of ILO Convention 29” in Myeik township, Tanintharyi Division.

⁹ This allegation was transmitted to the Committee on 24 February. See GB.289/8, para. 18.

¹⁰ This allegation was transmitted to the Committee on 28 January. See GB.289/8, para. 15.

people”. This was confirmed in a letter from the Director-General of the Department of General Administration received that day. The remaining allegations were still under investigation.

21. On 26 May the Liaison Officer *a.i.* received information from the Ministry of Defence, transmitted in a letter from the Department of Labour. According to this information, investigations had been carried out into five allegations of forced recruitment transmitted by the Liaison Officer *a.i.* In one case, it was found that the person was not serving in the battalion alleged, and in the other four cases the information in the allegations was confirmed, except as regards the dates of birth of the persons concerned, which in all cases were such that the persons would have been 18 or over at the time of recruitment.¹¹ In three cases the information indicated that after interviewing the persons and confirming that they were voluntary recruits it had been learned that their parents “had been persuaded to make false allegations”. In the fourth case it was indicated that the person was serving a sentence for desertion. The Liaison Officer *a.i.* notes that he saw original identification documents (such as birth certificates and family registration lists) showing the age of the individuals in all these cases, and that copies of these were transmitted to the authorities together with the allegations. The evidence received thus contradicts the assertions of the authorities.

Developments in the high treason case

22. On 12 May the Supreme Court of Myanmar issued a judgement following an appeal on behalf of nine persons sentenced to death for high treason, including the three persons whose conviction had an ILO element.
23. On 14 May, the Liaison Officer *a.i.* received a letter from the Department of Labour providing some details of the Supreme Court judgement. The conviction of U Shwe Mahn for high treason had been upheld, but the sentence was commuted from death to transportation for life.¹² The convictions of Nai Min Kyi and U Aye Myint were altered to section 123 of the Penal Code (encouraging, harbouring or comforting persons guilty of high treason) and their sentence was commuted from death to three years’ imprisonment.
24. The Liaison Officer *a.i.* then requested that the authorities provide a copy of the Supreme Court judgement as soon as possible. The Liaison Officer *a.i.* reiterated this request in a letter to the Minister for Labour dated 20 May, together with a request for access to the convicted persons for himself and the informal facilitator, Mr. Léon de Riedmatten. The Liaison Officer *a.i.* and Mr. de Riedmatten were informed in a meeting with the Minister on 24 May that access had been granted to the three detainees the following day, and that the Supreme Court judgement would also be provided the following day.
25. On the morning of 25 May, the Liaison Officer *a.i.* and Mr. de Riedmatten met with the three convicted persons, U Shwe Mahn, Nai Min Kyi and U Aye Myint, in Insein Prison. The

¹¹ There were also some slight discrepancies in the dates of recruitment. Four of the five cases were those that the representative of the Ministry of Defence had provided information on in the Implementation Committee, although there were further discrepancies between his statement and the letter concerning the ages of the persons concerned.

¹² This is equivalent to a term of life imprisonment.

observations of Mr. de Riedmatten following this visit were transmitted to the Minister for Labour in a letter dated 25 May (this letter is reproduced in the Appendix).

26. Just as this report was being completed, the Liaison Officer *a.i.* received from the Myanmar authorities an authentic translation into English of the Supreme Court judgement.
27. An appropriate summary of the judgement together with any further information, including any action proposed by the Officers of the Governing Body in the framework of the conclusion adopted by the Governing Body at its March 2004 session, will be provided separately to the Committee (see paragraph 4 above).

Appendix

Letter dated 25 May 2004 from the Liaison Officer *a.i.* to the Myanmar Minister for Labour

Excellency

I am writing on behalf of Mr. de Riedmatten to convey his observations following this morning's visit to the three detained persons (that is, Nai Min Kyi, U Aye Myint and U Shwe Mahn) in Insein Prison.

Mr. de Riedmatten and myself were able to visit the three persons in Insein Prison and discuss freely with them in a place of our own choosing within the prison. The prison authorities gave their full cooperation.

All three persons expressed their wish to appeal against the judgement of the Supreme Court. Their defence lawyer will be informed accordingly. Mr. de Riedmatten recommends that the authorities expedite this appeals procedure as quickly as possible, and believes that it would be important for the authorities to be able to confirm, in advance of the forthcoming International Labour Conference, that such an appeal has been accepted.

In this regard, Mr. de Riedmatten notes that the defence lawyer has not yet been granted access to the three persons. It is important for the three persons to be able to meet with their lawyer at any time, in particular so that the appeals process can be facilitated.

Following these meetings, Mr. de Riedmatten continues to be firmly of the view that the only grounds for convicting U Shwe Mahn is possession of an unregistered satellite telephone, which he had used to contact the FTUB on matters relating to forced labour and workers' rights. There would therefore be no grounds for charging U Shwe Mahn with high treason or aiding and abetting high treason. He also continues to be firmly of the view that the contacts that Nai Min Kyi and U Aye Myint had with U Shwe Mahn on matters relating to forced labour and workers' rights do not constitute grounds for charging these two persons with aiding and abetting high treason.

With the assurances of my highest consideration,

Yours sincerely,

(Signed) Richard Horsey.

Addendum

1. In the framework of the conclusions of the Governing Body at its 289th Session (March 2004), the Officers of the Governing Body have considered the latest developments in the situation and found that they were not sufficiently convincing to proceed with the implementation of the Plan of Action at this time. The letter sent by the Director-General to the Minister for Labour of Myanmar in this regard on 2 June is appended.
2. The following is a concise summary of the contents of the judgement of the Myanmar Supreme Court. The full text can be made available by the Office. The judgement on the appeal of the three persons convicted of high treason contains the arguments of the defence, the prosecution and the findings of the court.
 - (a) The Supreme Court reviewed the case following an appeal by the convicted persons.
 - (b) The defence argued for the acquittal of all nine persons in the case (including the three with an ILO connection, Shwe Mahn, Min Kyi and Aye Myint). In the case of Shwe Mahn, it was argued that the only illegal item seized from him was a satellite phone. No evidence was presented during the original trial to support the finding that he had used this phone to contact an exiled opposition group (the Federation of Trade Unions of Burma (FTUB)). Although Shwe Mahn was arrested along with some of the other defendants in an apartment where explosive devices were found, these devices were not his property. There was therefore no grounds for high treason. In the case of Min Kyi, the only evidence presented was possession of certain documents and no evidence was presented which would support the charge that he was transmitting false information about the Government. In the case of Aye Myint, while he was a close friend of Min Kyi, there was no evidence that he had any connection with the other defendants, and no evidence that he collaborated with Min Kyi to transmit false information to exiled opposition groups.
 - (c) The prosecution (Deputy Director of the Attorney-General's Office) argued that Shwe Mahn and Min Kyi had contact with one of the other defendants and that the three persons had had direct contact with Maung Maung and one other member of FTUB in exile and sent false anti-state information which made them responsible for anti-state activities. Maung Maung was a fugitive from justice himself charged with high treason *in absentia* and a hard-core supporter of the parallel exile government, the NCGUB. The three persons had had contacts with anti-state opposition groups and abetted anti-state activists by collecting and sending rumours amounting to the commission of an offence under section 123 of the Penal Code (encouraging, harbouring or comforting persons guilty of high treason).

- (d) After hearing the arguments of both parties and studying the proceedings of the original Court, the Supreme Court found that Shwe Mahn had contact with one of the other defendants who had been found with explosives. A satellite phone was found in Shwe Mahn's house which he received from FTUB. He had previously served two years in prison in 1990 under the Unlawful Associations Act. It was therefore not appropriate to alter his conviction to section 123, and the original conviction under section 122(1) (high treason) was upheld. In the case of Min Kyi, the court found that he knew Shwe Mahn and Aye Myint and that in collaboration with Aye Myint he sent false accusations against the State based on rumours to illegal exiled groups through Shwe Mahn. The three persons had connections with one another and with one of the defendants implicated in the bomb plot. However, there was no evidence that Min Kyi and Aye Myint were involved in the bomb plot itself. Nevertheless, they knowingly abetted Shwe Mahn in committing high treason and were therefore guilty under section 123.
- (e) The court commuted the sentence of Shwe Mahn from death to transportation for life (now equivalent to life imprisonment) and of Min Kyi and Aye Myint from death to three years' imprisonment. The detention period was to be deducted from the prison terms.

Appendix

Letter dated 2 June 2004 from the Director-General to the Myanmar Minister for Labour

Dear Minister,

In accordance with the conclusions adopted by the Governing Body at its last session, the Officers of the Governing Body have considered the situation on the basis of an examination by the Office of recent developments, including the judgement of the Supreme Court. These developments were, however, not found sufficiently convincing to proceed with the implementation of the Plan of Action at this time.

It is my duty to convey the serious concern of the Office about certain aspects of the judgement. Firstly, it raises obvious freedom of association issues which presumably will be pursued in accordance with relevant ILO procedures. The other matter which the new judgement raises directly concerns the prospects for implementing the Plan of Action and indeed the very presence of the ILO in the country. This question is whether contacts with the ILO of whatever nature and form could have “judicial consequences” in Myanmar, to use the wording in the Governing Body’s conclusions. Clear assurances to the contrary had been given on behalf of the authorities by yourself to the informal Facilitator and the Liaison Officer a.i. in Yangon. They have been publicly confirmed by your Ambassador and acknowledged by the Governing Body, which based its conclusions on this affirmation. I was therefore troubled to see that the new judgement failed to acknowledge that there had been an error in law on this point in the previous judgement. Moreover, the Attorney-General’s representative failed to raise it in her submission to the court.

It is, of course, vital that legal and judicial clarity be brought on that point, in addition to the fact that careful consideration should be given to the various recommendations of the informal Facilitator. As you know, the International Labour Conference is now in session and the relevant committee will be dealing with the matter on the morning of 5 June. This is why I feel obliged to draw this matter to your serious attention for urgent action.

Yours sincerely,

(Signed) Juan Somavia.

Addendum

***Letter dated 3 June 2004 from the Permanent
Representative of Myanmar to the Director-General***

Dear Mr. Director-General,

I refer to my letter of 24 May 2004 and your letter of 2 June 2004, addressed to His Excellency U Tin Winn, Minister for Labour. In this connection, I should like to inform you as follows:

- (1) Min Kyi (a) Naing Min Kyi, Aye Myint (a) Myint Aye Maung and Shwe Mann (a) Zeyar Oo still have the right to second appeal to the full bench of the Supreme Court for a further review of their cases.
- (2) On 28 November 2003, the Judge of the Yangon Northern District Court, in passing judgement on Min Kyi (a) Naing Min Kyi and Aye Myint (a) Myint Aye Maung made a reference inadvertently and incorrectly to the ILO. This is one of the reasons why review of the cases of nine individuals including Min Kyi (a) Naing Min Kyi, Aye Myint (a) Myint Aye Maung and Shwe Mann (a) Zeyar Oo have to be undertaken.
- (3) We can assure you, once again, that under no circumstances does contact and cooperation by a Myanmar citizen with the ILO constitute an offence under the existing Myanmar law.
- (4) We hope that these points, including points (2) and (3) will be duly reflected in the judgement on the second appeal by the Supreme Court, accordingly.

I also wish to take this opportunity to inform you that, as provided in the Formal Understanding on the Facilitator, Mr. Leon de Riedmatten has already been accorded “free access to the said persons and witnesses at every stage of the procedure”, and that he has enjoyed the full cooperation of the Myanmar authorities in the performance of his duties. This has been demonstrated by the role he has played in the case of the three individuals. He will continue to enjoy the same kind of free access and the same kind of cooperation in future, as well.

As regards Convention No. 87, I should also like to apprise you that the National Convention, on 20 May 2004, discussed the basic principles relating to the rights of workers, including basic principles concerning labour organizations.

I believe that this letter will be helpful in clarifying the remaining issues and that it will lead to a conducive situation that will enable the Bureau of the ILO Governing Body to recommend for implementation without further delay of the Joint Plan of Action, agreed upon by the Myanmar Government and the ILO.

I thank you very much for your kind cooperation.

With warm regards,

Yours sincerely,

(Signed) Mya Than,
Ambassador,
Permanent Representative.

Committee on the Application of Standards

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



INTERNATIONAL LABOUR OFFICE

GB.288/5
288th Session

Governing Body

Geneva, November 2003

FIFTH ITEM ON THE AGENDA

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

**I. Discussion in the Committee on the
Application of Standards**

1. In June 2003, at its special sitting set aside to consider the observance by Myanmar of Convention No. 29, the Committee on the Application of Standards of the International Labour Conference had before it, inter alia, a report from the Liaison Officer including the text of a joint Plan of Action agreed between the ILO and the Government of Myanmar on 27 May.¹³ Following its discussion, the Committee adopted the following conclusions:

¹³ International Labour Conference, 91st Session, Geneva, June 2003, document C.App./D.5. The joint Plan of Action was initialled by both sides, and formal signature was to have taken place in Geneva during the International Labour Conference. However, the process was overtaken by events, and the ILO did not go ahead with the planned signature.

The Committee recalled that its debate was taking place at a moment when the international community was deeply concerned at the events which were occurring in Myanmar, namely the incommunicado detention of the leadership of the National League for Democracy, in particular its General Secretary, Daw Aung San Suu Kyi, and the alleged killing and disappearance of an unknown number of people. In this connection, a number of speakers expressed their concern at the personal situation of Daw Aung San Suu Kyi and asked that she immediately be released. These events, and the resulting climate of uncertainty and fear, called seriously into question the will and ability of the authorities to make significant progress in the elimination of forced labour. The Committee requested the Government representative to convey its profound concern to his Government.

In its observation, the Committee of Experts had noted that the three recommendations of the Commission of Inquiry had still not been implemented: the Village and Towns Acts had not been amended, although Order 1/99 and its Supplementary Order could, if applied in good faith, provide a statutory basis for ensuring compliance with the Convention in practice; measures to stop the exaction of forced labour in practice, such as concrete and specific instructions to the civilian and military authorities and budgetary allocations for the effective replacement of forced and unpaid labour, had not been taken; and there had been no prosecution of or sanctions imposed on persons for exacting forced labour.

The Committee took note of the statement of the Government representative, as well as the other information and documents before it. It noted with appreciation the Government's cooperation with the ILO Liaison Officer in Myanmar since she had taken up her position in October 2002. It had to note, however, that the measures taken by the Government to publicize widely Order 1/99 and its Supplementary Order, including the translation of these texts into six languages of national minorities, and the field visits carried out by the field observation teams of the Convention No. 29 Implementation Committee, still had not resulted in tangible progress in the application of the Convention. It was clear from the information available from various sources, including the impressions of the Liaison Officer, as reflected in her report to the 286th Session of the Governing Body, that recourse to forced labour continued in practice and that the situation was particularly serious and appeared to have changed very little in certain areas with a heavy presence of the army. It also noted that despite the discussions between the authorities and the Liaison Officer in the Convention No. 29 Implementation Committee, all the investigations carried out by that Committee into the allegations of forced labour presented by the Liaison Officer had found that these allegations were unfounded.

Taking into account the urgent need expressed repeatedly by the Committee of Experts, the Governing Body and the present Committee to move from procedural steps to substantive progress in putting an end to forced labour, the Committee welcomed the fact that the Government and the ILO had agreed on 27 May 2003 on a joint Plan of Action for the elimination of forced labour and expressed its support for this Plan. It noted with interest that, on the basis of the suggestion made by the High-Level Team, the Plan envisaged the designation of an independent Facilitator to assist victims of forced labour to obtain redress under national legislation. It was noted that the Facilitator would carry out his functions throughout the country. Under the Plan of Action, the Government had undertaken to strictly enforce the prohibition on forced labour in the pilot region. While emphasizing that the implementation of the Plan of Action was without prejudice to the general obligation of the Government to put an end to forced labour in the whole of the country, the Committee felt that this Plan of Action, if it was applied in good faith, could enable tangible progress to be made in the elimination of forced labour and could open the way to more substantial progress. The Committee urged the Government to take all the measures required for this purpose. The reports of the Facilitator to the Governing Body, as well as the evaluation reports on the implementation of the Plan of Action, should allow the results obtained to be judged.

In view of this, the Committee was bound to deplore the situation created by recent events in Myanmar. A climate of uncertainty and intimidation did not provide an environment in which the Plan of Action, and in particular the Facilitator mechanism which it established,

could be implemented in a credible manner. The Committee trusted that the Government would take the necessary measures to bring an end to this situation. The Committee hoped that the implementation of the joint Plan of Action would go ahead as soon as the Director-General considered that the conditions were met for its effective implementation. The Director-General was expected to report to the Governing Body at its November 2003 session on developments in the situation, in the light of the discussions in the present Committee.

II. Subsequent action by the Liaison Officer

2. Following her return to Yangon in July, the Liaison Officer was not able to arrange any meetings with the Myanmar authorities.¹⁴ In a letter dated 25 August to the Minister for Labour of Myanmar, the Director-General expressed his serious concerns at such a stalemate and gave his assurances that the Office stood ready to resume the dialogue in good faith. The Director-General also underlined the need for consideration to be given to the repeated international concerns relating to the rule of law and freedom from fear, in order for efforts towards the eradication of forced labour to move forward.
3. In a reply dated 8 September, the Director-General of the Myanmar Department of Labour expressed disappointment that the ILO had not gone ahead with the implementation of the joint Plan of Action, and indicated that the lack of discussions should not be interpreted as a stalemate since the authorities were for their part dispatching field observation teams to various parts of the country as outlined in the Plan of Action. Concerning the eradication of forced labour, the authorities were determined to proceed in their own way until the desired goal was reached, with or without technical assistance or financial support. In their view, linking cooperation to the internal political climate could not produce any fruitful result.
4. The Liaison Officer had a meeting with the Minister for Labour on 8 September. The Minister noted with regret that the ILO had linked the forced labour issue with the domestic political affairs of the country, and reiterated the Government's intention to continue to try its best to eradicate forced labour with or without assistance from the ILO. The Liaison Officer pointed out that the concern of the International Labour Conference had not been the political events in the country as such but their impact on the feasibility of having the Plan of Action credibly implemented. She expressed the hope that measures would be taken soon which would restore a climate allowing this implementation. In the meanwhile, progress could be made in the practical implementation of the Orders prohibiting forced labour. This would demonstrate the real commitment of the Government to eradicate forced labour. This concern was taken up in more detail by the Liaison Officer in a meeting on 23 September with the Convention 29 Implementation Committee (see section III below).
5. In addition to these meetings with the authorities, the Liaison Officer and her deputy¹⁵ had a range of other contacts in Yangon and in Bangkok,¹⁶ and undertook a number of trips in the

¹⁴ Requests were made for meetings with the Director-General of the Department of Labour, the Convention 29 Implementation Committee, and Col. Hla Min of military intelligence (a government spokesperson). Requests were also made through the Department of Labour to meet with the Minister for Labour.

¹⁵ The Liaison Officer had to return to Geneva for health reasons from 8 to 31 August and from 25 September to 2 November. During these periods her deputy, Mr. Richard Horsey, acted as Liaison Officer ad interim.

country to gain a better understanding of the current situation. From 19 to 26 August, the Liaison Officer a.i. travelled to Kachin State, to the towns of Myitkyina and Waingmaw and surrounding areas, and from 13 to 16 October to Hpa-an and Mawlamyine (Moulmein) and surrounding areas of Kayin and Mon States. On 5 September, the Liaison Officer also made a visit to a township close to Yangon. All these trips were undertaken independently, without the participation of the authorities.

6. The Liaison Officer a.i. was able to have the required freedom of movement and contacts during these trips. However, the Liaison Officer a.i. was prevented from travelling to the town of Hpakant in Kachin State. The Liaison Officer's understanding is that although travel to this town is restricted for non-nationals, there are no serious security concerns which should have prevented such a visit; international NGO staff are able to work in the area. The local authorities cited as the reason for preventing this visit the fact that diplomats and UN staff required advance permission to travel outside Yangon, and seemed to be unaware of the special freedoms of the Liaison Officer in this regard. On returning to Yangon, the need to ensure that local authorities are aware of the special status of the Liaison Officer in order to avoid such situations in the future was underlined.
7. At the time this report was finalized, the General Secretary of the National League for Democracy, Daw Aung San Suu Kyi, had been returned to house arrest. No other new development had taken place regarding her release or the release of other NLD leaders or supporters.

III. General evaluation concerning current realities

8. *General evaluation.* The Liaison Officer's general evaluation regarding forced labour remains, as presented to the Governing Body in March,¹⁷ that although the situation in central parts of Myanmar has improved somewhat since the Commission of Inquiry, the situation in border areas where there is a large presence of the army remains serious and has changed little. The Liaison Officer continues to receive credible reports of forced labour from various sources inside and outside the country, and fresh allegations have come to light during the recent trips to various parts of the country.¹⁸ The Liaison Officer continues to be concerned by the question of forced recruitment into the armed forces, including of children, on which no detailed response has been received from the authorities. Another matter which has come to the attention of the Liaison Officer is the current widespread and apparently systematic programme of military training for civilians, affecting very large numbers of people across the country

¹⁶ These contacts included diplomats, representatives of local and international NGOs in the country and in Thailand, the ICRC, religious and community leaders, ethnic political representatives, and members of the local and international business communities (it did not prove possible, however, to arrange a meeting with the Union of Myanmar Federation of Chambers of Commerce and Industry). Meetings were also held with the United Nations Secretary-General's Special Envoy for Myanmar, Tan Sri Razali Ismail, during his visit to the country from 30 September to 2 October, and in Bangkok with the regional representative of the United Nations High Commissioner for Human Rights.

¹⁷ See GB.286/6, para. 7.

¹⁸ In his report to the 58th Session of the General Assembly, the Special Rapporteur of the Commission on Human Rights on the situation of human rights in Myanmar provided details of his own findings concerning forced labour (see UN doc. UNGA A/58/219 of 5 August 2003, in particular paras. 52-55).

since May. Trainees include government employees (for example, teachers), as well as local villagers and townspeople, who are required to participate in this training and in some cases also have to cover the cost of materials (such as bamboo sticks). As regards the ethnic language translations of the Orders prohibiting forced labour, while copies of most of these translations have been received by the Liaison Officer, there is so far no indication that the translations have been distributed or displayed in ethnic areas.

9. *Developments in the Convention 29 Implementation Committee.* In the meeting on 23 September with the Convention 29 Implementation Committee, it was pointed out to the Liaison Officer that agreement had been reached on the joint Plan of Action, and the document had been initialled, but that despite this step forward the ILO had not agreed to sign the Plan of Action and go ahead with its implementation. The Liaison Officer replied that both sides had worked hard on reaching agreement, and the ILO remained fully committed to the Plan of Action. The question of signature was related to the question of implementation, and as soon as the conditions were right for implementation, there would be no obstacle to signature. The Liaison Officer then raised her concerns regarding the forced labour situation. Three specific new allegations were raised, concerning the recent use of forced labour on road projects: (1) from Rathedaung to Maungdaw in northern Rakhine State; (2) from Kawbein to Kyondo in Kayin State including an alleged case of physical violence against a village head who complained about the work; and (3) in Twante township near Yangon. Concerning forced recruitment into the armed forces, including of children, the Liaison Officer noted that this serious issue had been raised previously in the Committee, and requested that details of progress in dealing with the issue be provided. As regards the question of military training to civilians, the Liaison Officer requested the authorities to provide details of any legal basis for this practice; no response had been received at the time this report was finalized.¹⁹ The Committee took note of these issues and indicated that it now planned to provide the Liaison Officer with quarterly reports on its activities. The Committee indicated that notwithstanding the fact that the ILO was not ready to move ahead with the implementation of the joint Plan of Action, it would continue with its work as before. In this regard four field observation teams had been sent to various parts of the country.²⁰ These teams had not come across any cases of forced labour, had found that no complaints concerning forced labour had been received, and that the Orders prohibiting forced labour were widely known.
10. The Convention 29 Implementation Committee requested clarification of the meaning of the exceptions provided for in the forced labour Convention. It also pointed out to the Liaison Officer that there could be differences of opinion over whether certain practices constituted forced labour, and that it was important to take into account the traditional customs of the country. The Liaison Officer recalled that the Plan of Action had provided for seminars and public information to help clarify the matter, but in the meantime she proposed that she could meet with a small working group made up of interested members of the Committee in order to clarify details.
11. As regards progress on outstanding allegations before the Convention 29 Implementation Committee, the Director-General of the Department of Labour referred to his letter dated 28

¹⁹ On a number of occasions the authorities have informed the Liaison Officer, however, that the Myanmar armed forces are made up only of volunteers and that there is no law providing for conscription.

²⁰ Teams were sent in July and August to Kayin/Mon States, Magway Division, Bago Division and Kayah/southern Shan States.

May to the Liaison Officer, which responded to earlier allegations that had been raised.²¹ In a letter dated 2 September, the Liaison Officer had transmitted to the Convention 29 Implementation Committee in advance of the meeting information concerning forced labour in Kachin State received during the visit to that region; she requested that the Committee send a team to investigate these allegations, and recommended that she accompany the team in an observer capacity. The information concerned the use of forced labour for the construction of barracks for a number of new battalions recently stationed in the northern town of Putao, mentioned by a number of sources in Kachin State, and the use of forced labour for an extensive beautification programme in Myitkyina, observed by the Liaison Officer a.i. during his visit to the town. In the Convention 29 Implementation Committee meeting, the representative of the Ministry of Defence indicated that the allegation concerning Putao was false, and that no materials or labour had been requisitioned for the construction of these barracks. The army had procedures for such tasks, just as it had procedures for the proper recruitment of porters, as he had mentioned during the last meeting of the Convention 29 Implementation Committee. The Director-General of the General Administration Department indicated that the allegations of forced labour in the beautification of Myitkyina had not involved the use of forced labour, and that the authorities in question had a budget for this work. The Liaison Officer asked for copies of these procedures to be provided. She noted that while it was encouraging that the army had procedures for such activities, it was important that a specific investigation be carried out into this matter to determine whether the proper procedures had been followed in this particular case. She also recalled that at the last meeting she had requested details of cases where action had been taken against members of the army for violating the Orders prohibiting forced labour, and asked again that these be provided.

12. The Liaison Officer reiterated these points in a letter sent to the Convention 29 Implementation Committee following the meeting. A further letter dated 20 October was sent to the Director-General of the Department of Labour following the visit to Kayin and Mon states, reiterating the need to provide information on any legal basis for the programme of compulsory military training, about which further information had been received during this trip. Information was also requested on the status of the distribution of the ethnic translations of the Orders prohibiting forced labour, since there did not appear to have been any distribution of the translations in the ethnic areas visited recently. In addition, the Liaison Officer requested a further meeting with the Convention 29 Implementation Committee in early November, so that all outstanding matters could be discussed.

Geneva, 28 October 2003.

²¹ This information is reproduced in the Appendix. To date no response has been received on allegations of forced labour contained in a 17 July 2002 report by Amnesty International, raised by the Liaison Officer in 2002.

Appendix

Findings on allegations of forced labour in Myanmar during 2002 (transmitted by the Director-General of the Myanmar Department of Labour in a letter dated 28 May 2003 to the ILO Liaison Officer)

I. The allegation concerning the situation in northern Rakhine State

1. Allegations

- (a) In September 2002, it was alleged that villagers were forced to plant trees beside Yangon-Sittwe highways; the seedlings had to be bought at Ks.25 each.
- (b) Villagers were forced to contribute money to build primary schools.
- (c) Na-Sa-Ka and Na-Ta-La used forced labour in building villages.

2. Findings of the above allegations

- (a) State Peace and Development Council, Township Peace and Development Councils and Ward/Village Peace and Development Councils distributed the seedlings; the people plant the seedlings on their own so as to make their land green and beautiful covered with trees. They were not forced to buy the seedlings because villages had their own nursery of plants. The seedlings were distributed free of charge.

The people being interviewed were Daw Saw Yee of Kyauk-taw township, Daw Khin Khin Htay of Mrauk-U and Daw Tin Tin Hla of Ponna-Kyun.

- (b) The State paid for the building of these schools. Also, there were donations made by villagers and NGOs. No one was forced to contribute.

The people being interviewed were U Kyaw Mya and Daw Saw Yi of Kyauk-taw, U Maung Maung Lat and Daw Khin Khin Htay of Mrauk-U, U Maung Kyaw Oo and U Ba Cho of Ponna-Kyun.

- (c) Na-Ta-La offered minimum wages of Ks.100 per day for part-time workers. According to their skills, workers were offered Ks.400, Ks.500, Ks.800, Ks.1,000 and Ks.1,500. There were 345 workers, not 703 workers as alleged. It was not forced labour. There were receipts with signatures and thumb prints.

The person being interviewed was Col. Aung Ngwe, Commanding Officer of Na-Sa-Ka.

II. The complaint concerning the requisitioning of vehicles and forced labour for artillery base construction in Kyaikhto area of Mon State

1. Allegation

- (a) In Kyaikhto township, the vehicle drivers were forced to transport officers and troops of Battalion 44 and their families to Kyaikhtiyo Pagoda. No payment was given. The drivers were detained.

The drivers were forced to work on construction of artillery base on the 4,000 ft. Kalama Hill, 80 miles from Kyaikhto. Drivers who refused had their licences revoked and banned from the route.

2. Findings of the above allegation

- (a) Local authorities were being investigated. There were no such forcing civilian drivers for military operation.

While visiting Kyaikhtiyo Pagoda, the families of military personnel and staff might have used these vehicles. But all this was done through local authorities from association of vehicle owners. They were given petrol or diesel oil and also fare for the use of their vehicles.

No vehicles were forced to work for any military purpose.

The organizations being interviewed are Village/Ward Peace and Development Councils and Township Peace and Development Council of Kyaikhto Township.

- (b) In some forward areas, supplies are needed to be dumped in open season. Sometimes it was necessary to hire civilian vehicles when more vehicles were needed.

But these vehicles were hired through local authorities from owners' association.

They were given fees for the hire of their vehicles and also necessary petrol and diesel oil.

In cases of road being damaged on the way it is customary that both the soldiers and drivers have to repair the road.

Drivers' licences were not revoked for these purpose.

The organization being interviewed are Village/Ward Peace and Development Councils, Township Peace and Development Council.

III. *Allegations concerning forced labour in two townships of Bago Division*

1. Allegation

- (a) Local people were forced to clear the bushes and shrubs that were growing along the roadside in Thaygone and Padaung townships.

2. Findings of the above allegation

- (a) It was found that no one from any organs of State's Power issued any order to clear the roadside bushes and shrubs. It is customary that after every raining season that roadside bushes and shrubs are cleared by residents of every quarter by their own accord. These civic activities are traditional and they are voluntary.

People/organizations being interviewed are Township and District Peace and Development Councils and local people picked up at random and questioned.

IV. Allegation concerning the killing of trade unionist U Saw Mya Than while he was being forced to work as a porter

1. Allegation

- (a) U Saw Mya Than who was claimed as an official of the FTUB and Kaw-thoo-lei Education Workers' Union, and had been elected as headman of his village, Kaleiktoat, in Ye township (Mon State) was alleged as forced to work as a porter for the army's LIB No. 588. When the army column came under attack from elements of the ethnic independence movement, shortly before nightfall of 4 August 2002, Saw Mya Than was killed in cold blood by the soldiers, in retaliation for the rebels' attack.

2. Findings of the above allegation

- (a) We would like to refer our letter No. 0511/1/DL(RP-2)2002, 18 November 2002, to the ILO Executive Director Mr. Tapiola's communications of date 7 November 2002.

In the above letter as we have mentioned that Myanmar-Tatmadaw (Myanmar armed forces) is a well-disciplined military organization. Such random killing of our own brethrens is therefore unthinkable. However, we don't want to deny that there can be casualties of both civilians and armed forces personnel in combat areas. In many areas, Myanmar-Tatmadaw (the army) has always taken care of those civilians and armed forces personnel and even captured enemies who suffered injury during the fighting.

We had made a systematic investigation in consultation with the ministries and departments concerned about the allegation of killing of U Saw Mya Than. He was killed by a clay mould mine during an ambush staged by KNU insurgents. His death had nothing to do with Tatmadaw Men (the armed forces).

In our view, such allegations will come up every now and then with a view to tarnish the image of the Government.

V. The allegation concerning Total FinaElf contained in the submission of the ICFTU to the Committee of Experts

1. Allegation

- (a) The ICFTU considers that it knowingly continues to resort to forced labour for road building and maintenance and other infrastructure work connected to its Yadana pipeline operation. Civilians and at least 16 villages in Taninthayi Division (Southern Myanmar) were forced to construct a highway between Kanbauk and Maung Ma Gan. These events took place as recently as April 2002, if not after that date. Families were often forced to work for 20 days or more per month, each having to build a 20-metre long, 4-metre wide stretch of road.

2. Finding of the above allegation

- (a) The allegation made against the TotalFinaElf by ICFTU were aimed at the company and at the same time trying to tarnish the image of the Government of Myanmar. We have studied the case including the report made by the company. We found that the allegation of ICFTU was not true by the senior officials of the field observation teams who are members of the Implementation Committee. They had made a thorough examination of the case, interviewed concerned personnel and organizations.



FIFTH ITEM ON THE AGENDA

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

Further developments

1. In her letter dated 2 September to the Convention 29 Implementation Committee, the Liaison Officer had requested the Committee to send a field observation team to Kachin State to investigate two allegations of forced labour noted by the Liaison Officer a.i. during his visit to the region in August. The Liaison Officer also recommended that she accompany this team in an observer capacity.²² As she had pointed out to the Committee, there was a need for more detailed information on how such teams conducted their work. This was all the more necessary given that these teams had so far concluded that all allegations transmitted by the Liaison Officer were unfounded, and had found no other cases or allegations of forced labour during their visits. The Liaison Officer's recommendation was accepted and, together with her deputy, she accompanied a field observation team to Kachin State from 6 to 8 November.²³
2. The Liaison Officer's observations concerning the investigations conducted by the field observation team were that the manner in which the team conducted its work, while appropriate for information dissemination, was not well suited to investigating allegations and that it would be difficult, if not impossible, to determine the veracity of allegations in such a manner.
3. The Liaison Officer had a range of further contacts, including with the diplomatic community in Yangon and the UN country team. She also had the opportunity to have a meeting with the Special Rapporteur of the Commission on Human Rights on the situation of human rights in Myanmar, during his visit to Myanmar in early November.

²² See GB.288/5, para. 11.

²³ The team visited the towns of Myitkyina and Putao in Kachin State. It was headed by a member of the Convention 29 Implementation Committee (U Khin Maung Yee, the Director-General of the Office of the Central Trade Disputes Committee); the other members of the team were local officials from Myitkyina and Putao, respectively. Because of flight cancellations, the return from Putao to Yangon had to be postponed from 9 November to 14 November.

4. Prior to her departure for Kachin State, the Liaison Officer was informed that it would not be possible to arrange a meeting with the Convention 29 Implementation Committee. However, some further information concerning outstanding issues before the Committee was transmitted to the Liaison Officer in letters dated 29 October, and 7, 11, 12 and 14 November. As regards the allegations transmitted to the Committee by the Liaison Officer concerning the use of forced labour on three road projects, the Committee indicated that field observation teams had been sent to the respective areas and had concluded that the allegations were unfounded. Information was provided by the representative of the Ministry of Defence on the Convention 29 Implementation Committee concerning the various instructions governing the hiring of porters by the army. It was indicated that after the orders prohibiting forced labour had been issued there had been one case of action being taken against a member of the armed forces for failing to follow these orders and instructions. This concerned a private who had taken money from a person in order that this person not be requisitioned as a porter. As regards the question of forced recruitment into the armed forces, particularly of children, the representative of the Ministry of Defence again indicated that Myanmar's domestic legislation, as well as its obligations under the Convention on the Rights of the Child, prevented recruitment of persons under the age of 18 into the armed forces, and that all recruitment into the armed forces was voluntary. As regards military training of citizens, he indicated that this was carried out as provided for in the previous constitutions of the country.²⁴ In addition, further information was also provided on the distribution of the ethnic translations of the orders prohibiting forced labour.
5. In a letter dated 4 November to the Minister for Labour, the Liaison Officer requested a meeting with the Minister, as well as the possibility of paying a final courtesy call on Prime Minister Khin Nyunt as this was the end of her assignment as Liaison Officer.
6. The Minister for Labour hosted a dinner for the Liaison Officer on 14 November. The Liaison Officer was able to briefly report her observations on the visit to Kachin State. Although she had certain comments on the procedures followed by the field observation team, it was positive that she had been able to observe the work of such teams. She would provide more details in writing to the Convention 29 Implementation Committee.²⁵ More generally, she was pleased with the more substantive dialogue she was now able to have with the Committee. The Liaison Officer also underlined the fact that it would send a positive signal if she were able to have certain important meetings, including with the Prime Minister; she offered to delay slightly her departure to Geneva if this would be necessary. The Minister responded that the Prime Minister's schedule was very full until later the following week; he also stressed that he was doing his best to improve cooperation in the eradication of forced labour, but that certain political matters, which he felt should not be linked to the issue of forced labour, did not fall under his authority. He thanked the Liaison Officer for her excellent cooperation with the authorities which had made it possible to reach agreement on the Joint Plan of Action, and expressed the hope that the ILO would soon be able to go ahead with the implementation of this Plan. The Liaison Officer reaffirmed the commitment of the ILO to the Plan, but stressed that, in order to address the concerns expressed by the International Labour Conference, it was necessary to demonstrate that the climate within which the ILO operated had not been affected by political events in the country. An aspect of this was that the ILO should have access to all the relevant groups and persons as it had previously.

²⁴ The previous Constitution, adopted in 1974, was suspended in 1988 and there is currently no Constitution in force in Myanmar.

²⁵ The details of the Liaison Officer's observations were communicated to the Convention 29 Implementation Committee in a letter dated 16 November.

7. No meeting could be arranged with the Prime Minister prior to the Liaison Officer's departure for Geneva.

Concluding comments

8. Parallel to discussions in Yangon, the Office has continued its dialogue with the Permanent Representative of Myanmar in Geneva. As reflected in recent exchanges,²⁶ it was made clear during these consultations that in the framework established by the conclusions of the Applications Committee, the Office would need to get certain clear signals to go ahead with the implementation of the Plan of Action. On the one hand, it would need confirmation of the continued and genuine interest and commitment of the Authorities to this Plan of Action. On the other hand, it would also be necessary for all concerned, including potential donors, to have sufficient confidence that there was an environment in which the Plan of Action could be credibly implemented. One element which could contribute to such confidence would be for the ILO to have the same degree of access as throughout the process since the first technical cooperation mission in 2000.
9. As regards the first point, the Authorities have reiterated their commitment to the Plan of Action, and the general evaluation of the Liaison Officer provides clear confirmation of the great value and importance that would attach to the implementation of the Plan of Action including the Formal Understanding on the Facilitator. As regards the second point, however, at this stage no clear signal has emerged, either through the formal reply to the Director-General's communication, or as a result of the abovementioned consultations, that could provide sufficient confidence that the environment existed for the credible implementation of the Plan of Action. It is now for the Governing Body to examine the situation in the light of the present report and any further information the Authorities may provide, and to give the guidance it may deem appropriate to the Office.

Geneva, 17 November 2003.

Appendix 1

25 August 2003

Dear Minister,

As you are aware, at the International Labour Conference last June, in its conclusions, the Committee on the Application of Conventions and Recommendations specifically bestowed upon me responsibilities as regards the implementation of the Plan of Action which had been initiated before the Conference. I am also expected to report on developments to the Governing Body next November on progress or lack thereof.

I am sorry that circumstances did not allow the meeting with you which had been scheduled to take place as it would have offered an opportunity to discuss the way I propose to discharge these responsibilities.

As time is passing, I wish to express my serious concerns. Since the Conference there have been virtually no contacts between the ILO Liaison Officer in Yangon and the authorities despite her repeated requests, and I understand there have been no further discussions even at the level of the implementation committee. I need not elaborate on the consequences that may derive from such a stalemate in November.

At the same time, I hope you share my conviction that it would be a terrible loss to the people of your country and to the ILO itself if all efforts which have been made jointly would now be frustrated. As pointed out by the High-Level Team in 2001, the effective eradication of forced labour is part and parcel of the modernization of your country. A positive engagement of the international community with your development efforts would no doubt be helped by cooperation with the ILO.

As in the past, I can assure you that the Office stands ready to resume the dialogue in good faith in Yangon as well as in Geneva as regards any step you may wish to take. It is not too late for that to happen.

Conversely, for our efforts towards the eradication of forced labour to move forward, consideration must be given to the repeated international concerns relating to the rule of law and freedom from fear.

Yours sincerely,

Juan Somavia

His Excellency
Mr. Tin Winn
Minister for Labour
Ministry of Labour
Ministers' Office
Theinbyu Road
YANGON

Appendix 2

THE GOVERNMENT OF THE UNION OF MYANMAR

MINISTRY OF LABOUR

OFFICE OF THE MINISTER

Ref.: 0510/5/DOL(RP-2) 2003

Date: 8 September 2003

Dear Mr. Director-General,

We would like to refer to your fax of 25th August which we received it only on the 2nd September as it has been mistakenly transmitted to the Ministry of Culture. And yet, few lines are missing and some are distorted in the fax copy probably due to some technical problems in transmission. Accordingly, we have to look for a fair copy from the Myanmar Permanent Mission in Geneva rightaway.

We are fully aware of your concern to carry out your responsibilities concerning the implementation of the Joint Plan of Action which had already been initialed between Myanmar and the ILO.

We placed our high hope for official signing occasion between the two sides during 91st Session of the ILC. To our disappointment, it could not have taken place as expected. As you are already aware, ILO informed us that donor countries could not be found for the implementation of relevant projects incorporated in the Joint Plan of Action. It is to our knowledge that the ILO declined to take further action associating our bilateral cooperation with internal affairs of our country.

Since our Joint Plan of Action called for the commencement of its implementation on the 1st July, our Field Observation Teams (FOTs) have been making their field visits to the respective State and Division as outlined in the Action Plan. It is evident that we, on our part are carrying out as much as we can for the eradication of forced labour. The FOTs, the personnel of the General Administration Department, Township SPDCs and the Myanmar Police Force are on the alert to take necessary steps concerning the Order No. 1/99 and the Order Supplementing Order No. 1/99. So, the lack of discussion which you interpreted as stalemate actually does not mean that there is no activity on our part. We are carrying out the task in hand as usual.

Moreover, it is also to inform you that MOL has already received two letters from the ILO Liaison Officer on 6th August and 29th August respectively, informing us about her health problem and also of her return to her station. She is also requesting for a meeting with the Implementation Committee. In this regard, the Committee will be willing to meet her and inquiring about the items that she might wish to include in the meeting agenda.

Taking this opportunity, it is to be stressed that we have repeatedly assured the prevailance of law and order throughout the country. A single unfortunate incident should not be the reason to draw a hasty irrelevant generalization or conclusion. As regards the eradication of forced labour, we are determined to proceed in our own way until we reached our desired goal with or without technical assistance or financial support. If we can have cooperation and support we can accomplish our mission earlier and vice versa. Our view is that linking our bilateral cooperation with internal political climate can not produce any fruitful result.

Finally, we wish to provide you with Fax numbers of the Ministry of Labour and the Department of Labour for our convenience and unnecessary delay in further communications.

(a) Ministry of Labour

Fax No.: 951-256185

(b) Department of Labour

Fax No.: 951-371629

Yours sincerely,

For the Minister
(U Soe Nyunt, Director-General)

H.E. Mr. Juan Somavia
Director-General
ILO Office, Geneva.

Appendix 3

Permanent Mission of the Union of Myanmar
to the United Nations Office and other
International Organizations, Geneva

Permanent Representative

Date: 22 October 2003

Mr. Kari Tapiola,
Executive Director,
The International Labour Office,
Geneva.

Dear Kari,

I should like to keep you informed of Myanmar's ongoing endeavours to eliminate forced labour in the country.

You may recall that the Formal Understanding on the Facilitator was initialled by your good self and myself at the ILO Office on 8 May 2003. The Joint Plan of Action was initialled by U Soe Nyunt, Director-General, Ministry of Labour and Mr. Hong-Trang Perret Nguyen, ILO Liaison Officer, in Yangon on 27 May 2003.

Since the conclusion of the ninety-first International Labour Conference, the Myanmar authorities, on their part, have continued implementing the Joint Plan of Action. These implementation measures include, among other things:

- visits by the Field Observation Team (FOT) to Myeik District to oversee the progress of the implementation measures as well as visits by FOTs to various other parts of the country, including Kayah, Karen, Mon, Rakhine States and Bago Division and
- translation into ethnic languages and distribution of Order No. 1/99 and Order Supplementing Order No. 1/99.

These activities are still in progress, and they will be carried forward as the implementation of the Joint Plan of Action further progresses.

As you are aware, I met, and held consultations with the high officials of the ILO on more than a dozen occasions between June and November 2003 on matters relating to facilitating the implementation of the Joint Plan of Action (JPA). We discussed, in particular, on ways and means to initiate the joint implementation of the Joint Plan of Action by the Myanmar side and the ILO. The latest meeting was the one at the Permanent Mission of Myanmar on 24 September 2003.

The principled position of the Myanmar Government is that there should be no linkage between the ILO issue and the internal political situation in Myanmar. Such a linkage is totally unacceptable to us. As a matter of fact, I have stated the aforementioned position of the Myanmar Government at the Committee

on Application of Standards on 14 June 2003 and at the plenary meeting of the 91st International Labour Conference on 19 June 2003.

In the meantime, positive developments are evolving in Myanmar, following the announcement of the seven-step Road Map by General Khin Nyunt, Prime Minister of the Union of Myanmar on 30 August 2003.

The Ninth ASEAN Summit, held in Bali, Indonesia, on 7 and 8 October 2003, “welcomed” the recent positive developments in Myanmar and endorsed the Road Map as “a pragmatic approach and deserves understanding and support”.

I hope that there will be more significant developments in Myanmar in the near future and that the ILO will soon join the Myanmar side in the joint implementation of the JPA.

As a matter of fact, discussions and communications are already underway between the ILO Liaison Officer and the members of the Implementation Committee on Convention 29. Mr. Richard Horsey, Assistant to the ILO Liaison Officer has already accompanied the Field Observation Teams on their field trips. Mr. Richard Horsey has indeed travelled very extensively in the country, and he has been even to the northernmost regions of Myanmar, including Putao.

The Myanmar authorities, on their part, are ready and willing to cooperate with the ILO in the joint implementation of the JPA, while continuing their implementation of the JPA on their own.

With kind regards,

Yours sincerely,

(Mya Than)
Ambassador
Permanent Representative

Appendix 4

31 October 2003

Dear Ambassador,

Thank you for your letter sent from New York on 22 October 2003.

In the spirit of frankness which we have always had in our many discussions to achieve our common objectives, I would like to clarify a certain number of points raised in that letter as well as in U Soe Nyunt's reply to the Director-General. As you will no doubt recall, I emphasized in this respect, on the occasion of one of our most recent informal meetings, that the Office was deliberately refraining from replying to this letter in the hope that through your interventions some positive developments might correct the situation and make such comments unnecessary.

I confirm that we have had many contacts during Summer. It is all the more disturbing to note that, despite these discussions and all the clarifications provided in Geneva and Yangon, both your letter and that of U Soe Nyunt seem to keep questioning the binding framework adopted by the International Labour Conference for reasons which are not linked to the political situation as such but which reflect a legitimate and common sense appraisal of conditions that would make the implementation of the path-breaking agreements we have concluded both possible and plausible.

As we have explained, the Office, for its part, did not interpret this framework to mean that the context and situation, as it prevailed when the agreement and understanding was initialled, should be fully restored to make it possible to go ahead. What was required was a clear indication that the implementation was found possible and useful by all those concerned by, or involved in, such implementation. We discussed ways in which this could be done with the assistance of the authorities if they continue to give the highest priority to this matter as well as to the road map announced by Prime Minister Khin Nyunt. Unfortunately your letter does not contain new information about the authorities' reaction on these ideas.

Your letter also contains in the penultimate paragraph some inaccuracies as regards the travel of the Liaison Officer ad interim and his association with field trips organized by the authorities that I need not elaborate on this as a detailed and accurate report of the LO's activities will be provided to the Governing Body. May I, however, take the opportunity provided by this paragraph: (i) to express the concerns of the Office about the limitations that were placed on his freedom of movement which, as you are aware, is imperative under the understanding; and (ii) to reiterate the one possible way to give some credibility to these field visits organized by the authorities and related "inquiries", pending the implementation of the Formal Understanding on the Facilitator, would be to give the Liaison Officer or her assistant the opportunity to witness the procedures and method used. I am happy to see from a copy of a letter just received from Yangon that serious consideration is now given to this second point.

We have now reached the end of October, and there is little time left before the Governing Body session. I hope however that, as the Director-General himself pointed out in his letter, it is not too late, and that the above clarifications might trigger some distinct positive steps from the authorities. As usual, the Office stands ready to discuss at any time, both in Yangon and in Geneva.

Yours sincerely,

(Signed) Kari TAPIOLA

His Excellency
Mr. Mya Than
Ambassador
Permanent Representative
Permanent Mission of the Union of Myanmar
to the UN and other international organizations
47, avenue Blanc
1202 GENEVA



EIGHTH ITEM ON THE AGENDA

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

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

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

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

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

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

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

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

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

II. Activities of the Liaison Officer a.i.

7. In addition to his meeting with the Minister for Labour on 16 December, the Liaison Officer a.i. also met with the Director-General of the Department of Labour on 4 December to discuss matters related to the practical elimination of forced labour. The Liaison Officer a.i. also took advantage of his visit to Ayeyawady Division on 20 January with a field observation team (FOT) headed by the Director-General of the Department of Labour to have further discussions. These matters were followed up in more detail in a meeting on 29 January with the Convention 29 Implementation Committee. Further details are provided in section III below.
8. In addition to these meetings and discussions with the authorities, the Liaison Officer a.i. also had a broad range of other contacts in Yangon and in Bangkok,²⁷ and travelled in the country, both independently and together with the authorities, to have an understanding of the current realities. From 20 to 21 January he accompanied, in an observer capacity, a FOT to Kyaiklat town in Ayeyawady Division to investigate an allegation of forced labour. From 23 to 26 January he participated in a trip to eastern Shan State, organized by the authorities for diplomats and representatives of United Nations agencies. This provided an opportunity to visit some remote areas that would be otherwise difficult to access for logistical reasons.
9. From 18 to 22 February, the Liaison Officer a.i. travelled by road to Kayah State.²⁸ This visit was conducted independently of the authorities. According to the understanding reached with the authorities concerning the freedom of movement of the Liaison Officer, since the area was a restricted one where there could be valid security concerns, the Liaison Officer a.i. informed the authorities of his plans shortly in advance, in order that his travel could be facilitated. No indication was given of his itinerary once he arrived in Kayah State. The Liaison Officer was able to travel to all areas that he wished, both in Kayah State and en route, without any restrictions or escort, and was able to meet freely with a range of persons, as well as meet with members of the Kayah State authorities.

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

10. *General evaluation.* The Liaison Officer a.i.'s general evaluation regarding forced labour remains, as presented to the Governing Body in March and November 2003²⁹ that, although the situation in the central parts of Myanmar has improved somewhat since the Commission

²⁷ These contacts included diplomats, representatives of UN agencies, representatives of local and international NGOs in the country and in Thailand, the ICRC, and religious and community leaders. Meetings were also held in Yangon with a delegation from Amnesty International during its visit to the country in December and in Bangkok with the regional representative of the United Nations High Commissioner for Human Rights.

²⁸ He travelled from Yangon to Loikaw via Pyinmana (in Mandalay Division) and Pinlaung (in southern Shan State) and returned to Yangon via Leiktho and Thandaung (in Kayin State) and Taungoo (in Bago Division). Within Kayah State, the Liaison Officer a.i. based himself in the capital, Loikaw, and from there travelled to Demoso and Hpruso townships.

²⁹ See GB.286/6, para. 7, and GB.288/5, para. 8.

of Inquiry, the situation in border areas where there is a large presence of the army remains serious and has changed little. He continues to receive credible reports of forced labour from various sources inside and outside the country, including from individuals or their representatives who have approached him and have presented detailed allegations that they were recently victims of such practices. The Liaison Officer a.i. is encouraged by the general view given by almost everyone he has met that forced labour, including portering, has declined somewhat over recent years, in particular following the visit of the ILO High-Level Team in 2001. He is however concerned by consistent reports that in some cases the decline in forced labour has been accompanied by an increase in other abusive practices such as forced contributions in cash or kind, or the use of convicts for portering. Both the previous Liaison Officer and the Liaison Officer a.i. have expressed their concerns to the authorities on these points.³⁰ The Liaison Officer a.i. continues to be concerned by the question of forced recruitment into the armed forces, including of children, although there have been some positive developments on this matter which are set out below. As regards the translation into ethnic languages of the Orders prohibiting forced labour, although all the translations have been completed, he has yet to see these translations posted in any ethnic area that he has visited, or to meet anyone in these areas who has seen these translations, and he is therefore yet to be convinced that they have been widely distributed by the authorities. In the view of the Liaison Officer a.i., a significant step that the authorities need to take in order to give a clear demonstration of their willingness to seriously address the forced labour issue is to take action on a case of forced labour, including prosecution under section 374 of the Penal Code as appropriate.

11. It appears significant to note that the increasing trend of allegations being received by the Office of the Liaison Officer directly from alleged victims or their representatives has been confirmed in recent weeks. A majority of the specific allegations mentioned below was received in this way.
12. *Developments on specific allegations.* On 8 December the Liaison Officer a.i. transmitted to the Convention 29 Implementation Committee two allegations of forced labour that he had received. In one case, it was alleged that the army had forced villagers earlier in the year to upgrade a road in the area of Nabu village, Kayin State. A response to this case was provided by the representative of the Ministry of Defence during the 29 January meeting with the Committee, who indicated that following an investigation it had been found that 12 miles of the 15-mile road in question had been constructed by the army itself, but the last three miles could not be completed because of security problems. The local villagers near the uncompleted part had therefore willingly completed the construction so as to be able to fully benefit from the new road, and the army had assisted them by providing cash and necessary materials. The Liaison Officer a.i. requested that a full written report on the investigation be provided.³¹
13. The second allegation transmitted to the Committee on 8 December concerned a detailed report to the Liaison Officer a.i. from an individual living in Kyaiklat township, Ayeyawady Division to the effect that villagers in the township were currently being forced by the local authorities to upgrade a 5,000-foot section of road. In response to this allegation, a FOT headed by the Director-General of the Department of Labour was dispatched to Kyaiklat from 20 to 21 January to investigate, and the Liaison Officer a.i. accompanied this FOT in an observer capacity. The FOT found that while the details of the road project as stated in the

³⁰ See also ILC, 90th Session, Geneva, June 2002, doc. C.App./D.6(Corr.), para. 27.

³¹ This had not been received at the time this report was finalized.

allegation were broadly accurate, people had taken part voluntarily and it was not true that anyone had been forced to participate.³²

14. The previous Liaison Officer had already accompanied a similar FOT which investigated an allegation of forced labour in Kachin State, and had made certain observations to the Convention 29 Implementation Committee on the procedures used.³³ The observations of the Liaison Officer a.i. regarding the procedure used by the FOT which visited Kyaiklat, which were transmitted to the Committee following the visit, were that the team conducted a serious investigation and that many of the observations made by the Liaison Officer following the previous visit had been taken into account. However, certain aspects of the procedure adopted by the FOT could still cast doubt on the credibility of the findings. The Liaison Officer a.i. also stressed to the authorities that ultimately the credibility of the FOT mechanism, and the effectiveness of the procedures used, would be judged by the results obtained, and that a continued lack of confirmed cases of forced labour would inevitably cast doubt on the credibility and effectiveness of the mechanism.
15. On 28 January the Liaison Officer a.i. transmitted a further allegation of forced labour to the Committee. This detailed allegation, which was made to the Liaison Officer a.i. by an individual concerned, stated that local residents had been requisitioned by the authorities in Twantay township, Yangon Division, in order to construct timber fences along a road in the township, and that a number of residents who refused to take part in this work had been detained and subsequently fined by the local court. The Liaison Officer a.i. requested the Committee to carry out an investigation as soon as possible in order that, if confirmed, appropriate action could be taken against any official found to have acted illegally and compensation provided to those concerned. Although he has been informed that preparations are being made to send a FOT to investigate this allegation, there had been no further developments at the time this report was finalized.
16. On 26 and 29 January, respectively, the Liaison Officer a.i. transmitted to the Committee detailed allegations concerning the forced recruitment of two boys, aged 14 and 15, into the army. According to the allegations, both children were currently undergoing basic military training at separate army training camps. The Liaison Officer a.i. requested the Committee to take urgent action to verify these allegations in order that, if they were confirmed, these children could be returned to the care of their families as soon as possible and an urgent investigation then carried out into the circumstances of their recruitment so that any person found to have acted illegally could be prosecuted. The Liaison Officer a.i. is aware that both of these children have been discharged, and the Ministry of Home Affairs confirmed in letters dated 17 and 23 February that this was done in both cases on 5 February. No indication has so far been given as to the results of any investigation into the circumstances of their recruitment.³⁴

³² A full written report on this investigation was provided by the Convention 29 Implementation Committee on 13 February.

³³ See GB.288/5/1, paras. 1 and 2.

³⁴ A further development as regards this question was the announcement that a new "Committee for Preventing Recruitment of Child Soldiers" held its first coordination meeting on 16 January (*New Light of Myanmar*, 17 Jan. 2004, p. 8). The Liaison Officer a.i. has requested a meeting with the secretary of this Committee, but such a meeting has not so far proved possible.

17. *Meeting with the Convention 29 Implementation Committee.* In the meeting on 29 January with the Convention 29 Implementation Committee, the Liaison Officer a.i. was briefed about the recent work of the Committee. The Committee noted that there had been significant progress. Allegations that had been received had been investigated, and FOTs had continued to make regular trips around the country.³⁵ The Liaison Office a.i. stated that he was pleased by the various positive developments, and by what he viewed as an increasingly substantive cooperation with the Committee. He also raised a number of concerns. Although various allegations which he had transmitted had been investigated, and FOTs continued to travel to various parts of the country, so far the Committee had not found any case of forced labour, which would inevitably cast doubt on its credibility. As regards the recent widespread programme of compulsory military training for civilians, the Committee had so far not indicated any legal basis for this.³⁶ He also recalled that the possibility had been discussed previously in the Committee of having a seminar with interested members of the Committee to discuss the meaning of the exceptions under Convention No. 29 and develop common concepts, the results of which could be reflected in a pamphlet that would clarify these matters for the people as well as local officials. The Committee agreed that this proposal could be useful, and that the matter would be put up to higher authorities for approval. The Liaison Officer a.i. reiterated the various points he had made in a letter sent to the Committee following the meeting.

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

Geneva, 27 February 2004.

Submitted for information.

³⁵ Detailed reports of five FOTs which visited Rakhine, Kayin and Kachin States and Yangon Division in October and November were transmitted to the Liaison Officer a.i. on 29 December.

³⁶ No such information had been received at the time this report was finalized. Since December, few new reports have been received concerning this programme, which suggests that it may have been completed or discontinued.

Appendix 1

INTERNATIONAL LABOUR OFFICE

GENEVA

THE DIRECTOR GENERAL

30 January 2004

Dear Minister,

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

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

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

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

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

Yours sincerely,

Juan Somavia

His Excellency Mr. Tin Winn
Minister for Labour
Ministry of Labour
Ministers' Office
Theinbyu Road
YANGON



EIGHTH ITEM ON THE AGENDA

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

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

I. Framework of the visit

1. Under the understanding reached by the Governing Body at its November 2003 session, the Office was to carry out a full evaluation of the situation in Myanmar with a view to determining whether the conditions were now plausibly met for the implementation as soon as possible of the Joint Plan of Action. In anticipation of this mission, the Office endeavoured to establish a list of what could be the relevant parameters, taking into account the time that had elapsed since the Plan had been initialled in May 2003 and the events that had taken place. It came to the following tentative list:
 - the commitment of the authorities at the highest level to the implementation of the Plan;
 - confirmation specifically of the support given by the authorities at the highest level to the Facilitator both as an institution and as a person as was mutually agreed at the time of the initialling of the Plan;
 - the (would-be) Facilitator's own views on whether the present conditions were appropriate for him to effectively discharge his responsibilities;
 - confirmation of the continued relevance of the agreement on the Pilot Region and specifically the locations of the labour-based road construction projects that had been agreed on at the time that the Plan was initialled;

- possible views of key representative persons or groups concerning the continued need for the Plan and the plausibility for its credible and effective implementation in the circumstances of today;
- preliminary indications as to the renewed willingness and interest of potential donors to provide funding for the Plan;
- any other relevant elements.

II. Organization of the visit

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

III. Progress of the visit

3. The preliminary phase of the visit was carried out from 4 to 8 March by a team consisting of Mr. Francis Maupain, Special Adviser to the ILO Director-General, and Mr. Richard Horsey, acting ILO Liaison Officer in Yangon.
4. The team had the opportunity to meet on the first day with three ministers (the Minister for Labour, the Minister for Home Affairs and the Deputy Minister for Foreign Affairs). The team recalled the purpose of the mission and underlined that in order for the second phase to take place and possibly to achieve agreement on a new starting date for the Joint Plan of Action, it was necessary that the same facilities should be extended to the second phase as had been extended to previous technical cooperation missions or the High-Level Team. The team especially emphasized that this request was not meant to interfere in potentially sensitive matters, but should rather be seen as a significant indication for the Governing Body that the relations between Myanmar and the ILO had returned to similar conditions as had prevailed when the agreement on the Joint Plan of Action had been reached. While the ministers expressed the unequivocal commitment of the Government to the implementation of the Plan, at the same time they made it clear that the possibilities and modalities which had been extended to previous missions as regards contacts with Daw Aung San Suu Kyi could not be applied in this case. The ministers explained that for reasons owing to the sensitivity of the current political process a strict rule was being applied regarding such contacts, which were strictly limited to the United Nations Secretary-General's Special Envoy, Ambassador Razali, as it was inherent to his mandate, and on one occasion to the Special Rapporteur of the Commission on Human Rights. While regretting this position and the signal it might give to the membership of

the ILO, the team considered that under the circumstances it had no alternative but to conclude that the second phase of the mission would not be able to take place. The team considered, however, that it could nevertheless usefully take advantage of the present phase of the visit to collect any information that could be relevant to the evaluation by the Governing Body under the abovementioned parameters.

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

Razali indicated that in his view the ILO should now go ahead with the implementation of the Plan.

8. The team then had an opportunity to meet with the United Nations Country Team under the leadership of the Resident Coordinator, Mr. Charles Petrie. In addition to their general evaluation of the present context, the team requested any views that the representatives of the various United Nations agencies and the Resident Coordinator might have concerning the plausibility of the satisfactory implementation of the Plan in the present circumstances, especially as regards the functions of the Facilitator. The general reaction was that if anything the need for such a scheme was no less than before and there was no reason to think that the conditions for implementing it would be more difficult than they were at the time when the Plan was initialled. The advice given specifically by some was that in view of the need and demand for the Plan the ILO should at least try and implement it. The United Nations Country Team expressed its commitment to supporting the work of the Facilitator, as well as the contribution that could be made under the umbrella of the UN system through its presence and projects in different areas of the country to enhancing awareness of and the confidence to make use of the Facilitator mechanism. The team also had an occasion during its visit to usefully raise the same points with the representative of the ICRC.
9. The team also had a meeting with the diplomatic community in Yangon to provide information about the present situation and obtain their views about the Plan and its implementation in the present circumstances. Some of those present had already had consultations on this subject among themselves, and the overwhelming view of the diplomatic community was in fact very similar to the one expressed by the United Nations Country Team, that there was no reason to wait to make the benefit of the Plan and the potentially significant Facilitator mechanism available to victims. After hearing these views, the team reminded the diplomatic community that in such a case it would then become more urgent that their support should materialize as soon as possible in a concrete way. One of the ambassadors present supported the possibility of some limited funds being made available by his Government.
10. *Views of the Facilitator.* In anticipation of the full visit, the team had formally approached the would-be Facilitator in writing to seek his considered opinion on the possibility of discharging his responsibilities in the present context (this letter is attached as Appendix 1). In a written reply to this request (attached as Appendix 2), Mr. de Riedmatten provided some important relevant information as regards Daw Aung San Suu Kyi's views on the matter. His overall view is that he would be able to discharge his functions under current circumstances and as soon as the Plan is implemented. This assessment appears to be supported by the recent experience of the Liaison Officer a.i., who has been approached by an increasing number of possible victims or their representatives.³⁷ This seems to indicate a growing awareness of the existence and usefulness of the ILO presence and suggests that despite inhibitions or fears that may exist, the climate prevailing at this point in time does not necessarily deter victims from using this channel. The same would thus presumably apply to the Facilitator.

³⁷ Several additional allegations of this kind were quite recently reported to the Liaison Officer a.i. On the other hand, just at the time the present report was being issued, the Office received in Geneva documentation according to which a court, in its judgement against nine persons found guilty of high treason and sentenced to death last November, referred to alleged evidence of contacts, communications or information on ILO matters entertained by some of the convicted persons. Clarification is urgently being sought from the authorities on this matter.

11. *Other elements of the evaluation.* The team attempted during its discussions to seek clarification of the continued relevance of certain aspects of the Plan. During its meeting with the Minister for Home Affairs it raised the question of the impact of ongoing ceasefire discussions and the autonomy recognized in ceasefire areas on the existence and investigation of forced labour allegations and in particular to the discharge by the Facilitator of his responsibilities in these areas. The Minister indicated that the authorities were very conscious of these concerns and had already had discussions with ceasefire groups on this matter.³⁸ During discussions at the working level,³⁹ the team sought some clarification about some work which had already been undertaken at the site of the road projects envisaged under the Plan and on the continued relevance of other elements of the Plan in the current context. The continued relevance of these aspects of the Plan was confirmed, and it was agreed that a possible new date for the start of the Plan could therefore be the beginning of July, as had been originally envisaged a year earlier.

Geneva, 12 March 2004.

Submitted for information.

³⁸ Although it was confirmed by the team in the course of working-level discussions (see below) that so far no complaints of forced labour had been received through the national mechanism and there had been no prosecution of any person under section 374 of the Penal Code for imposing forced labour, the Minister for Home Affairs did provide some brief statistical information on cases of administrative action taken by his Ministry against local officials for violations of the Orders prohibiting forced labour. According to this information, action had been taken in 13 such cases. Indications of the names of the persons against whom action had been taken and the location were provided, but there were no details of the cases or of the precise nature of the administrative action taken.

³⁹ These discussions were held with a group consisting of the competent senior officials (a Deputy Attorney-General, the Director-General of the Department of Labour, a Director-General from the Ministry of Foreign Affairs, the Deputy Director-General of the General Administration Department and the Deputy Director-General of the Myanmar police force) under the guidance of the Deputy Minister for Labour.

Appendix 1

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

Dear Mr. de Riedmatten,

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

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

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

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

Yours sincerely,

(Signed) Francis Maupain,

Special Adviser to the Director-General.

Appendix 2

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

Dear Mr. Maupain,

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

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

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

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

Yours sincerely,

(Signed) Léon de Riedmatten.



EIGHTH ITEM ON THE AGENDA

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

Latest developments

**I. Allegation relating to persons sentenced
to death for high treason**

1. On 11 March 2004, the Office received documentation in the form of an alleged translation of a Myanmar court judgment against nine persons found guilty of high treason and sentenced to death last November, which referred to alleged evidence of contacts, communications or information on ILO matters entertained by some of the convicted persons.⁴⁰ On 12 March the Office wrote to the Myanmar Minister for Labour concerning this matter (see Appendix 1).
2. Following subsequent contacts between the Office and the Myanmar authorities in Geneva and Yangon, the Liaison Officer a.i. had a meeting on 17 March with the Minister for Labour. The Minister indicated that although the authorities considered that the translation of the court judgment was not fully accurate, they did not contest the general veracity of the document. The Minister stressed that it was certainly not the case that contacts with the ILO could be considered illegal. Even if the charge had been providing false information, this carried a maximum penalty of six months imprisonment. In his view, therefore, it was clear that the judge had made mistakes and the case would have to be reviewed. The Liaison Officer a.i. indicated that, as stated in Mr. Tapiola's letter, in order to clarify the facts in this case it was important to have copies of the original trial documents and, particularly in light of what the Minister had just said, access to the relevant convicted persons. The Minister agreed to provide

⁴⁰ See footnote 1 of GB.289/8/1. This same information was subsequently transmitted formally to the ILO in a letter dated 12 March from the General Secretary of the Burma Lawyers' Council to ILO Executive Director Mr. Kari Tapiola. This information is on file with the Office and is available for consultation.

copies of the relevant documents and indicated that he would urgently discuss with the relevant authorities the matter of access to those persons whose conviction had an ILO dimension.

3. In a meeting on 18 March with the Deputy Minister for Labour, the Liaison Officer a.i. was informed that authorization had been given for him and Mr. de Riedmatten to have access to the two persons in the case whose conviction had an ILO dimension, that is, Min Kyi and Aye Myint. An authentic translation of the judgment would also be provided. The Liaison Officer a.i. received assurances that the access would be provided under appropriate modalities and indicated that it might be important to also meet other persons involved in the case if there appeared to be an ILO dimension to their conviction. He also underlined the importance for the authorities to provide copies of the original court judgment rather than only an English translation.⁴¹

II. Visit to Insein Prison to meet with detained persons

4. On 19 March, the informal facilitator, Mr. Léon de Riedmatten, accompanied by the ILO Liaison Officer a.i., Mr. Richard Horsey, met in Insein Prison with two persons who, according to the unofficial translation of the court judgment, had been convicted in part because of contact or exchange of information with the ILO. The persons met were Min Kyi (alias Nai Min Kyi) and Aye Myint (alias Myint Aye Maung). These persons were met individually in private, in a randomly selected place within the prison.⁴² The meetings lasted approximately two hours each – sufficient for all relevant information to be collected. The prison authorities gave their full cooperation.
5. After confirming that they had no major concerns regarding their current conditions of detention, the two persons described the circumstances of their arrest and their subsequent interrogation in a military intelligence detention centre. During this period of interrogation by military intelligence officers, which lasted for several days, the persons described being deprived of food, water and sleep and being beaten.
6. On the basis of the information provided by the two persons, and that contained in the trial judgment itself, Mr. de Riedmatten considered that the case was not investigated or prosecuted in a systematic or credible way. It appeared that police or intelligence officers initially used methods of entrapment and that the subsequent procedures of investigation and prosecution were unsound, without any of the fundamental guarantees necessary to produce a credible outcome. He believes in this context that it is important for the authorities to make available, in addition to the original judgment, the full transcript of the trial proceedings. He understands from the persons met that a first appeal has been made to the Divisional Court, the verdict of which was so far unknown to the persons. The persons indicated that this appeal had been prepared for them by the authorities and that it had not been possible for them either to hire a lawyer to represent them in the appeal or to prepare the appeal themselves. It is understood

⁴¹ On 19 March the Liaison Officer a.i. received an English translation of the judgment prepared by the Office of the Attorney General of Myanmar (this information is on file with the Office and is available for consultation). The Burmese-language original has not been received.

⁴² Since Mr. Horsey speaks Burmese, no third-party interpreter was required.

from the persons that under Myanmar law a second appeal to the Supreme Court is also provided for.⁴³

7. After the detailed discussions with the two persons, it became more clear than had originally been apparent from the unofficial translation of the court judgment that a third person in the case had a significant ILO dimension to his conviction (namely, Shwe Mahn, alias Zaya Oo).⁴⁴ Following the meetings with Min Kyi and Aye Myint, a meeting was therefore then requested with Shwe Mahn. The prison authorities indicated that this request would be put to the appropriate minister.⁴⁵ The team found no indications that there was an ILO dimension in the convictions of the other six persons. Nevertheless, Mr. de Riedmatten's general concerns regarding the investigation and prosecution of the case apply equally to these persons.
8. On the basis of all the information available, the only conclusion that Mr. de Riedmatten could come to was that the convictions of these three persons for high treason were unsound. They should be released pending a full review of the case. He considers it vital that he be given free access to the persons at any time, whether in prison or following any release.

Geneva, 19 March 2004.

Submitted for information.

⁴³ It is relevant to note in this context that both Min Kyi and Aye Myint have previously worked as higher grade pleaders and therefore have a good understanding of the Myanmar legal system.

⁴⁴ It was also clear that in addition to the ILO dimension in these three cases, contacts with the Thai-based Federation of Trade Unions of Burma (FTUB) had also played a part in their arrest and conviction.

⁴⁵ No immediate response to this request proved to be possible since the minister was out of Yangon.

Appendix 1

Letter dated 12 March from Mr. Tapiola to the Myanmar Minister for Labour

Dear Minister,

On behalf of the Director-General, I would like to express our gratitude for the opportunity that our recent mission had to discuss with you as well as for the commitment your Government, and in particular His Excellency the Prime Minister, expressed to our cooperation for eradicating forced labour.

I feel obliged to draw your urgent attention and, through you, the attention of the Prime Minister to the following developments.

As the report of the recent evaluation visit to Yangon was being completed for the Governing Body, the Office received in Geneva a copy of an alleged translation into English of a death sentence issued last November against persons convicted of high treason. The sentence was passed, taking into account of evidence relating to information received from, or passed to, the ILO by some of the persons convicted.

While the ILO was aware through Amnesty International reports and the UN Special Rapporteur Mr. Pinheiro's report that such sentences had been passed, through this alleged translation we are for the first time made aware of a possible ILO dimension in these sentences. If the translation is an authentic one, it could affect the very basis of the ILO's presence in the country. It would indeed seem impossible to reconcile the commitment of your Government to eradicate forced labour in cooperation with the ILO with the notion that contacts with the ILO could constitute an act of high treason.

It is my earnest duty under the circumstances to urgently request that the competent authorities take the appropriate steps to withhold any action for the execution of these sentences and assist in clarifying the facts. For that purpose, the future facilitator, Mr. Léon de Riedmatten possibly accompanied by the Liaison Officer a.i., should be allowed to have urgently access to the original judgments and to the persons who may have been convicted under charges related to contacts with the ILO. Parallel clarification is being sought from the Geneva end with the Office of the Special Rapporteur to check if they have had any access to the original judgments and were aware of a possible ILO dimension. I would hope that these actions can be taken in Yangon and in Geneva as soon as possible.

I am confident that the ILO will be able to count once more on the firm personal commitment you and the Prime Minister have again expressed on the occasion of the recent evaluation visit, and thank you in advance.

Yours sincerely,

(Signed) Kari Tapiola.

Extracts

FIFTH SITTING

Thursday, 25 March 2004, afternoon

The sitting opened at 5.50 p.m., with Mr. Chung in the Chair.

Eighth item on the agenda⁴⁶

DEVELOPMENTS CONCERNING THE QUESTION OF THE OBSERVANCE BY THE GOVERNMENT OF MYANMAR OF THE FORCED LABOUR CONVENTION, 1930 (No. 29)

The Chairperson informed the Committee that the Facilitator, Mr. Léon de Riedmatten, had that morning met with the third person detained and accused of high treason. During the visit, which took place under the same conditions as the two previous ones, the prisoner said that his current conditions of detention did not pose any serious problems. He also stated that he had been struck during his arrest and during the subsequent interrogation. In the light of this information, the Facilitator remained of the opinion that the matter had not been dealt with in accordance with an appropriate and credible procedure, and that the charge of high treason was unfounded and needed to be reviewed.

The Chairperson presented the following conclusions:

1. We have taken note of the reports at our disposal including the latest one containing clarifications sought on the judgement referred to in the footnote to document GB.289/8/1. We have also taken note of the additional clarifications and information provided by the Ambassador of Myanmar.
2. While noting that positive developments have taken place since November and the authorities have demonstrated an openness to cooperate, the discovery of a court judgement against certain persons in relation to contacts or exchange of information with the ILO has undermined the credibility and prospects for future cooperation.
3. The subsequent action taken and explanations given, while demonstrating a welcome degree of transparency, have not yet alleviated the doubts and concerns that the situation has given rise to. It is clear that further convincing evidence is required. For that purpose it is important to clearly distinguish three separate concerns which have been expressed.
4. The first concern is that contacts or exchange of information with the ILO could in any way have judicial consequences in Myanmar. This concerns the very foundation of the ILO

⁴⁶ See also fourth sitting.

presence in the country. We have taken note of the assurances given by the Ambassador in that respect, as well as by the Minister for Labour. The Facilitator has made clear recommendations for action as regards the persons involved and these are widely supported in the Governing Body. In this connection, the Governing Body notes a further positive development subsequent to its debate, that in accordance with one of these recommendations the Facilitator has been able to visit the third person whose conviction has an ILO dimension.

5. The second concern is that contacts with third parties on matters of concern to the ILO could similarly be punished. This is of major concern to all Governing Body members, especially as it may call into question freedom of association principles. In that respect, and taking into account the questions raised during the recent visit and several interventions in the debate, the Government should avail itself of technical assistance from the Office to ensure that this matter is dealt with adequately in the course of the constitutional process.
6. The third concern is whether in light of the court judgement, the Plan of Action, and more specifically the Facilitator mechanism, can be credibly implemented. Taking into account inter alia the views expressed through the Facilitator by Daw Aung San Suu Kyi, there is general agreement on the potential usefulness of the Facilitator mechanism. The question which remains, however, is whether there can be sufficient confidence that the guarantees which are built into the mechanism offer the necessary protection to victims who want to make a complaint and whether the necessary conditions and safeguards were put into place to allow the Plan of Action to go ahead. The Office will have to examine this question more thoroughly in light of the results of the review of the recent cases and any further assurances provided by the Government. The results of this examination should then be submitted to the Officers of the Governing Body and should be found sufficiently convincing before proceeding to the implementation of the Plan of Action.
7. The situation as it stands by the end of May on these various issues should be reported to the International Labour Conference through the Committee on the Application of Standards.
8. These conclusions are of course without prejudice to the views expressed by some that the lack of substantive progress would call for reactivation of the review of relations between ILO constituents and Myanmar under article 33 of the Constitution.

The Governing Body took note of the conclusions.

