



SIXTH ITEM ON THE AGENDA

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

**Introduction**

1. At its 279th Session (November 2000), the Governing Body had before it the report of the ILO technical cooperation mission which visited Myanmar from 20 to 26 October 2000 and subsequent documents provided by the Government.<sup>1</sup> The Governing Body concluded that the conditions set out in paragraph 2 of the Conference resolution had not been met and that effect should accordingly be given to the provisions of paragraph 1 of the resolution adopted by the International Labour Conference at its 88th Session (June 2000). The measures mentioned in paragraph 1 of that resolution therefore came into effect on 30 November 2000.<sup>2</sup> In the light of the discussion, it was however noted that the Director-General should continue to extend cooperation to the Government of Myanmar in order to promote full implementation of the recommendations of the Commission of Inquiry.<sup>3</sup>
2. In accordance with the Conference resolution, by letter of 8 December 2000, the Director-General brought subparagraph (b) of operative paragraph 1 of the resolution to the attention of governments of member States of the ILO, and requested that they inform him of any action taken or envisaged in this regard. The Director-General also requested that the recommendations contained in the resolution be brought to the attention of the employers' and workers' organizations in the country so that they might take relevant measures and inform him either directly or through their government. A copy of this letter was also sent to the relevant national organizations of employers and workers.

<sup>1</sup> GB.279/6/1 and the three addenda to that document.

<sup>2</sup> The text of the resolution is reproduced in Appendix 6.

<sup>3</sup> The recommendations of the Commission of Inquiry are reproduced in Appendix 7.

3. In addition, international employers' and workers' organizations and other non-governmental organizations having consultative status with the ILO were also informed of the Governing Body actions.
4. In accordance with the Conference resolution, by letter of 8 December 2000, the Director-General informed the international organizations referred to in article 12, paragraph 1, of the Constitution of Myanmar's failure to comply with the recommendations of the Commission of Inquiry and called on the relevant bodies of these organizations to reconsider, within their terms of reference and in the light of the conclusions of the Commission of Inquiry, any cooperation they might be engaged in with Myanmar and, if appropriate, to cease as soon as possible any activity that could have the effect of directly or indirectly abetting the practice of forced or compulsory labour.<sup>4</sup> The Director-General also requested these organizations to inform him of any action taken in this regard by the competent bodies of the organization. In addition, the Director-General has been in close touch with Ambassador Razali Ismail, the UN Secretary-General's special envoy to Myanmar, in connection with his two recent visits to the country on 9-12 October 2000 and 5-9 January 2001. The Office has also discussed the matter with the Special Rapporteur on the situation of human rights in Myanmar, Mr. Paulo Pinheiro.
5. With regard to subparagraph (d) of operative paragraph 1 of the Conference resolution, the Director-General has after close consultations with the United Nations secretariat set in motion the procedures necessary to have the question of Myanmar's failure to implement the recommendations of the Commission of Inquiry placed on the agenda of the July 2001 session of the United Nations Economic and Social Council (ECOSOC), seeking the adoption of recommendations directed by ECOSOC or by the General Assembly, or by both, to governments and to other specialized agencies and including requests similar to those contained in subparagraphs (b) and (c) of paragraph 1 of the Conference resolution.
6. In addition to the information communicated pursuant to the Conference resolution, a substantial amount of information was also received from other sources. This was in large part due to the wide publicity attracted by the coming into effect of the measures contained in the Conference resolution. A number of NGOs and individuals volunteered information to the Office regarding measures taken and other action initiated in support of the Conference resolution, as well as information regarding the current practice of forced labour in Myanmar.
7. Information received on measures taken in regard to the Conference resolution will be set out in four parts: (i) developments as regards the Government of Myanmar; (ii) measures taken by the Organization's constituents; (iii) measures taken by international organizations; (iv) other relevant information received.

<sup>4</sup> Letters were sent to the following 59 organizations: United Nations, UNHCR, UNICEF, UNDP, UNFPA, OHCHR, UNCTAD, WFP, UNEP, UNODCCP, UNRWA, UNAIDS, Economic Commission for Africa, ECE, Economic and Social Commission for Asia and the Pacific, Economic Commission for Latin America and the Caribbean, Economic and Social Commission for Western Asia, FAO, WHO, UNESCO, UNIDO, IAEA, WIPO, ICAO, UPU, IMO, WMO, ITU, IFAD, PAHO, IMF, World Bank, WTO, OECD, European Commission, Council of Europe, African Development Bank, Asian Development Bank, Inter-American Development Bank, European Bank for Reconstruction and Development, Caribbean Development Bank, League of Arab States, Organization of African Unity, CARICOM, Organization of American States, ASEAN, SAARC, Andean Community, SELA, LAIA, Nordic Council, OIC, CERN, ECOWAS, Arab Labour Organization, World Tourism Organization, IOM, Asian Productivity Organization and the Inter-Parliamentary Union.

## Developments as regards the Government of Myanmar

8. Due to early closure of the Governing Body's 279th Session, a letter from the Permanent Mission of Myanmar to the Chairperson of the Governing Body stating its position following the Governing Body's conclusions reached his office too late to be brought to the attention of the Governing Body. This statement is reproduced in Appendix 1 for information.
9. In a letter dated 6 December 2000 to the Chairman of the 279th Session of the Governing Body, the Permanent Representative of the Myanmar Mission reiterated the concerns raised in the letter referred to in the preceding paragraph. The letter also contained an annex entitled "Resumé of the concrete measures taken by the Myanmar Government", which included information on the Government's position prior to the Governing Body's conclusions. This document is reproduced in Appendix 2 for information.
10. In a letter dated 22 December 2000 to the Government of Myanmar, reproduced in Appendix 3, the Director-General informed the Government that he had notified ILO Members and international organizations of the decision of the Governing Body, as contemplated in the relevant paragraph of the resolution, but stressed that he continued to extend cooperation to the Government in order to promote the full implementation of the recommendations of the Commission of Inquiry. He expressed the sincere hope that the measures currently in force would soon become unnecessary as a result of the Government's full application of these recommendations.
11. In reply to the Director-General's letter of 22 December 2000, the Government sent a letter dated 11 February 2000, reproduced in Appendix 4, in which it recalled that it had received two technical cooperation missions from the ILO in its efforts to make its domestic legislation fully in line with Convention No. 29. It had put into place a framework of legislative, executive and administrative measures to make forced labour illegal both in law and in practice. However, "... powerful forces in the ILO Governing Body totally ignored the concrete measures taken by Myanmar as well as its demonstrated desire to cooperate with ILO". The letter further stated that despite this, Myanmar was resolute in its endeavours to implement the framework of measures that it had put in place. The Committee for Implementation of Convention No. 29 was holding regular meetings to review the situation. The national monitoring mechanism which had been put in place was also functioning smoothly. There had been a few cases where the latest legislative order had been breached. These cases had been investigated and necessary legal action was taken against the perpetrators. The Government thanked the Director-General for his readiness to extend cooperation to Myanmar, and fully realized that its national efforts would receive better acceptance by its detractors if they involved the ILO. However, until such time that Myanmar received fair and equitable treatment, it would have to itself continue its efforts for the total elimination of the practice of forced labour in Myanmar. The Government gave its assurances that it would continue to take steps to ensure that forced labour was illegal in Myanmar and that the framework of measures put in place would be resolutely implemented.
12. The Director-General responded to this reply by letter dated 1 March 2001, reproduced in Appendix 5. The Director-General will inform the Governing Body of any future developments.

## Measures taken by the Organization's constituents

### Measures taken by member States

13. By 5 March 2001, responses had been received from 39 member States, as well as a number of national employers' and workers' organizations. A summary of these responses follows. Given the ongoing nature of some of the reported measures, the present report will be completed, as appropriate, with any further relevant information for the International Labour Conference as indicated in paragraph 67 below. As a result of member States forwarding information pursuant to the Conference resolution to national employers' and workers' organizations, a considerable amount of information was received separately from these organizations about actions they had taken in relation to the resolution.
14. In a letter dated 19 January 2001, the Government of the United States indicated that it had worked continuously and with bipartisan support to seek a return to democracy and improvements in human rights, including an end to forced labour, in Myanmar. In this regard, the Government had imposed a series of diplomatic and economic sanctions against Myanmar in recent years, including suspension of economic assistance, downgrading diplomatic representation to chargé level, an arms embargo, suspension of trade benefits under its GSP programme, opposition to support programmes from international financial institutions, restriction on visas for Myanmar individuals involved in the suppression of democracy and human rights, and a ban on US investment in Myanmar. The Government had also supported a number of actions taken by the ILO with regard to forced labour in Myanmar, including the November 2000 finding by the Governing Body that insufficient progress had been made to withhold the measures adopted by the Conference. At the same time, the Government noted that the Myanmar authorities and Daw Aung San Suu Kyi of the National League for Democracy had confirmed that they were engaged in dialogue. The Government hoped that this was a genuine effort to achieve national reconciliation, and that it brought concrete and timely progress towards ending forced labour and other human rights abuses in Myanmar. The Government hoped this process succeeded, but believed that in the absence of significant and measurable progress, ILO Members, including the United States, should be prepared to consider additional measures, including trade sanctions, in response to the article 33 decision of the Conference. The Government stressed that there was no evidence yet before the Governing Body or the Conference that suggested the recommendations of the Commission of Inquiry had been fully implemented. Finally, the Government expressed continued misgivings regarding an ILO presence in Myanmar.
15. In a letter dated 15 February 2001, the Government of *Thailand* stated that in order to take measures in compliance with the Conference resolution, on 10 January 2001 the Ministry of Labour and Social Welfare had held a meeting of relevant government agencies, workers' and employers' organizations and others, and that the Government could therefore give assurances that no Thai investment in Myanmar contributed, directly or indirectly, to the exaction of any form of forced labour. Every possible effort would be made to discourage the practice of forced labour, should the Government become aware of its existence in any form. In order to resolve this issue effectively and strengthen cooperation with the ILO, agreement had been reached to set up a steering committee in order to monitor and follow up the case.
16. The Governments of *Denmark, Finland, France, Germany, Ireland, Italy, Netherlands, Sweden* and *United Kingdom* indicated that the matter of how best to give effect to the recommendations contained in the Conference resolution had been discussed with employers' and workers' organizations, among EU Member States and with the European

Commission. They shared the international concern at the practice of forced labour in Myanmar, a practice which they feared had not yet ended. The European Community suspended GSP trade privileges in 1997 as a result of this practice. The European Union had also taken a number of other measures over the last four years, set out in its Common Position, in response to the political situation in Myanmar. The Myanmar regime had taken certain steps aimed at ending the practice of forced labour, but it needed to be outlawed legally, ended in practice, and any continuing practitioners punished. The European Union was monitoring the situation closely and, should the authorities in Myanmar fail to take the necessary action in this respect, the European Union stood ready to take further measures. The European Union made clear its concerns regarding forced labour during the visit of its Troika mission to Myanmar in January 2001. It sincerely hoped that contacts would be renewed between the ILO and Myanmar and that an ILO presence might be established in the country in order to verify the definitive end to the practice of forced labour. The Government of *Ireland* added that it intended to write to any companies with trade or investment links with Myanmar to express its support for the ILO resolution. The Government of *Denmark* added that its Standing Committee for ILO matters had recommended that Danish enterprises consider their relations with Myanmar. The Government of *France* added that it had undertaken an exhaustive assessment of its cooperation with and assistance to Myanmar, currently limited to the humanitarian field, in order to ensure that these relations could not in any way perpetuate or extend the practice of forced labour in the country. A census of French companies working in Myanmar was also underway, in order to inform them of the ILO resolution. The Government of *Italy* added that it had instituted an in-depth review of bilateral relations with Myanmar to ensure that they could not be taken advantage of to perpetuate the system of forced labour in that country. Italian commercial relations with Myanmar had been reduced to a minimum following the deterioration in the political and human rights situation. Between January and October 2000, the most recent period for which figures were available, the total trade with Myanmar had been 32 million euros, and there was no Italian investment in Myanmar, nor was any currently planned. The number of Italian tourists visiting Myanmar between 1999 and 2000 was minor. The Government of the *Netherlands* added that its policy was neither to encourage Dutch companies to enter into activities in Myanmar nor to discourage them. Total trade amounted to around US\$19 million annually. The Government of *Sweden* added that its relations with Myanmar were of limited extent. Its economic relations were negligible, with imports for the period January-October 2000 standing at around SEK20 million (mostly wooden and textile products) and exports for the same period standing at SEK1.2 million. It was ready to take measures to ensure that the country's trade with Myanmar did not support the system of forced labour. As one measure, it would officially inform Swedish importers of the Conference resolution and the recommendations of the Commission of Inquiry.

17. In a communication dated 28 February 2001, the Government of *Switzerland* stated that due to lack of progress in democratization in Myanmar and due to systematic violation of human rights (including workers' rights), it had passed a law on 2 October 2000 instituting measures against Myanmar. This law, a copy of which was provided, imposed an arms embargo and prohibited the export to Myanmar of equipment that could be used for the purposes of internal repression. In addition, members of the Government of Myanmar and their families were subject to a freeze of their assets in Switzerland and were prohibited from entry into or transit through Switzerland. Consultations had established that relations between Switzerland and Myanmar were minor, with imports over the period January to November 2000 standing at Sw.frs.2.2 million and exports at Sw.frs.3.5 million. The number of Swiss tourists visiting Myanmar was also minor. In addition, the Government pointed out that the international "Clean Clothes" campaign had particularly targeted an underwear company based in Switzerland. The Swiss tripartite consultation commission, while welcoming recent legal measures taken by the Government of Myanmar, hoped that these would be translated into action. It further hoped that Myanmar would accept a

permanent ILO presence, which would be able to verify the implementation of the recommendations of the Commission of Inquiry, and in this way that a normalization of relations between Myanmar and the international community might be facilitated. Taking into account the fact that existing bilateral economic relations were minor, and given the initial steps taken by the Government of Myanmar towards a political opening, it was not envisaged for the moment that the Government would take additional measures against Myanmar.

18. In a communication dated 26 January 2001, the Government of *Norway* confirmed its continued support for the EU's Common Position on Myanmar. It did not provide humanitarian assistance to organizations or activities that contributed in any way to forced labour in Myanmar. Half of the Norwegian assistance related to Myanmar was applied to human rights and democracy measures. In 1998 the Government issued a call, which remained in effect, to Norwegian firms not to trade with Myanmar. Current trade with Myanmar was marginal. In December 2000 the Government had met with the Norwegian Federation of Trade Unions to discuss the question of a possible boycott.
19. In a communication dated 1 March 2001, the Government of *Australia* stated that it had conducted a review of relations with Myanmar, which had established that no Australian government-funded aid programmes or activities supported or perpetuated the practice of forced labour. The Government was unaware of any Australian firms engaging in activities in Myanmar which were linked with forced labour, but its embassy in the country had advised Australian companies known to be working or investing there of its review and recommended that they ensure their compliance with the Conference resolution. In addition, the Australian Government had taken constructive steps in other areas to encourage the Myanmar authorities to eliminate forced labour. It had funded a series of human rights training workshops in Yangon in 2000 for some 50 middle-level officials, one of which was an "international law overview" during which participants openly discussed sensitive issues including the issue of forced labour.
20. The Governments of *Austria, Croatia, Ecuador, Nicaragua, Saudi Arabia, Trinidad and Tobago* and *Ukraine* stated that they had communicated the details of the Conference resolution to their employers' and workers' organizations, but did not have any further information to provide at this stage.
21. The Governments of *Chile, Cuba, Czech Republic, Iceland, Islamic Republic of Iran, Jordan, Kenya, Lithuania, Malaysia, Mali, Morocco, Panama, Philippines, Romania, Singapore, Suriname* and *Togo* stated that they had no relations with Myanmar that could be taken advantage of to perpetuate or extend the practice of forced or compulsory labour referred to by the Commission of Inquiry. The Government of *Singapore* also reiterated that the adoption of promotional measures rather than sanctions would be more appropriate and effective in addressing the issue of forced labour in Myanmar. The Government of the *Czech Republic* also stated that it had joined the EU Common Position on Myanmar, adopted in 1996 and subsequently extended. It had also joined the EU embargo on weapons, ammunition and military equipment export to Myanmar, had cancelled aid which was not of a clear humanitarian character as well as development aid programmes. Bilateral relations were also suspended, including those of social partners. The Government of *Malaysia* also stated that it would continue, along with other ASEAN members, to urge the Myanmar authorities to implement measures that would bring an end to all practices described as forced labour by the Commission of Inquiry. It looked forward to an amicable solution which would address the issue effectively.

## Measures taken by national employers' and workers' organizations

22. The *Confederation of Free Trade Unions of the Slovak Republic* noted that the Slovak Republic followed the EU position on Myanmar. The Slovak Republic did not maintain any bilateral political relations with Myanmar, but did maintain trade contacts within the EU restrictions. There was not thought to be any investment in Myanmar by Slovak enterprises, but a review of the type of commodities imported from Myanmar to the Slovak Republic showed that the majority belonged to sectors which were subject to violation of fundamental labour rights. Attached to the letter was a list of Slovak enterprises exporting to and importing from Myanmar as well as a breakdown of this trade by sector and whether it was likely to involve forced labour.
23. In a communication dated 20 February 2001, the *Confédération Générale du Travail Force Ouvrière* indicated that it had requested the French Government to provide it with a list of French companies having relations with Myanmar as well as details and amount of business dealings with that country. In addition, the organization had written to a certain French company involved in hotels and tourism to request them to reconsider their activities in Myanmar. The Confederation was not satisfied with the company's response that its presence would have positive effects. Moreover, the Confederation had repeatedly pressed the French Government to become involved in the question of the presence in Myanmar of a certain French multinational company. The Confederation had also requested that a special session of the consultation commission for ILO matters be held, dedicated exclusively to the question of Myanmar.
24. Communications from Norwegian employers' and workers' organizations were forwarded by the Government of Norway. The *Norwegian Confederation of Trade Unions* stated that together with other Norwegian voluntary organizations it had played an active part in trying to bring about a statutory Norwegian economic boycott of Myanmar. The *Confederation of Vocational Unions* indicated that it strongly urged the Government to implement such a boycott. The *Confederation of Norwegian Business and Industry* welcomed the Government's requests for abstention from economic cooperation with Myanmar and would encourage member enterprises to comply with this request. In a separate communication, the *Norwegian Confederation of Trade Unions* provided translations of correspondence between itself and the Government of Norway regarding the Confederation's call for a Norwegian economic boycott of Myanmar.
25. The *Swedish Trade Union Confederation* indicated that it had requested the Swedish Government to take additional measures against Myanmar, including a ban on investments and on the import of products from Myanmar. Its affiliated national unions would undertake a review to ensure that no Swedish companies or authorities were economically active in Myanmar, including imports, exports, investment and trade. The organization also requested that Sweden, as holder of the EU presidency, should seek a decision by the EU Council of Ministers banning investments by all companies based in the European Union and banning imports of all products originating in Myanmar.
26. Information from German workers' organizations was forwarded by the Government of Germany. A report on the elimination of forced labour in Myanmar by the *German Confederation of Trade Unions* discussed the background to the case and noted that most forms of economic relations with Myanmar made at least some use of infrastructure built with forced labour. All German companies were advised to take a critical look at their economic ties to business partners in Myanmar. The works councils of enterprises that had economic relations with Myanmar should request management for detailed information about the nature of these ties, and urge management to cut any ties which could not be maintained without making use of infrastructure constructed using forced labour. Such

requests were covered by paragraph 80 of the Works Constitution Act, since such an enterprise would be party to what the international community considered a grave violation of the law. A letter to the Government of Germany from the *German Union of Salaried Employees* supported any action the Government could take regarding the situation in Myanmar, including representations to the Government of Myanmar via its embassy.

27. The *Union Syndicale Suisse* provided information on the extent of trade relations between Myanmar and Switzerland, set out the details of the law passed by the Government of Switzerland against Myanmar on 2 October 2000, and noted that the Swiss-based textile company had been targeted by the “Clean Clothes” campaign. Similar information was provided by the Government of Switzerland and is set out in more detail in paragraph 17 above.
28. Information from the *Confederation of British Industry* (CBI) was forwarded by the Government of the United Kingdom. In a letter dated 8 February 2001 to the Government of the United Kingdom, the Confederation indicated that its member companies had had the Government’s policy towards Myanmar brought to their attention. The CBI was one of the strongest proponents of tough action against Myanmar and would continue to support the ILO action.
29. The Government of Finland forwarded information from the *Confederation of Finnish Industry and Employers*. The Confederation indicated that it did not have any relations with Myanmar or business organizations there. It supported the EU position and informed its membership (constituting 85 per cent of Finnish industry) on a regular basis about the ILO’s recommendations. Finnish enterprises did not operate in Myanmar nor have industrial investments or networks there. Trade between Finland and Myanmar was minor, with exports over the period January-November 2000 standing at 248,000 euros and imports over the same period standing at 2 million euros (mostly clothing).
30. The *Barbados Workers’ Union* and the *National Confederation of Free Trade Unions of Romania* indicated that they had no relations with Myanmar that could be taken advantage of to perpetuate or extend the practice of forced or compulsory labour referred to by the Commission of Inquiry.
31. The *International Organisation of Employers* informed all its member federations of the November Governing Body debate and highlighted the employers’ position, clarified the meaning of the resolution and accompanying measures and informed them that one of the measures would be to ask constituents to review their relations with Myanmar. Employers have been involved in discussions with governments at national level on the country response to the resolution.

## Measures taken by international organizations

32. By 5 March 2001, responses had been received from 20 international organizations. These came from the secretariats of these organizations, and no information was provided at this stage about any discussions in the relevant bodies of these organizations regarding the reconsidering of any cooperation they may be engaged in with the member concerned.
33. The *United Nations* Secretary-General indicated that the matter had been brought to the attention of all offices concerned in the United Nations. The United Nations and its programmes and funds could not be involved in any activities that might have the effect of directly or indirectly abetting the practice of forced or compulsory labour as this would be contrary to Article 1 of the United Nations Charter.



34. The *European Commission* stated that it strongly supported the significant position the ILO had taken on Myanmar, and had consequently engaged in discussions with the European Union Member States on the implementation of the terms of the Conference resolution. Action had already been taken in 1997 following an investigation into allegations by European trade union organizations of forced labour in Myanmar. As a result, Myanmar's access to the European Union's Generalised System of Preferences had been removed. The European Union had also taken a number of other measures over the last four years which were set out in its Common Position, first adopted in 1996 and strengthened on a number of occasions since. The Commission considered that the authorities of Myanmar needed to take rapid steps to ensure full compliance with ILO recommendations on the elimination of forced labour. The Commission, in common with the Member States of the European Union, was monitoring the situation closely and, should the authorities fail to take the necessary steps, the Commission would be ready to propose further measures to be decided by the Council, including possible measures in the field of trade and investment relations.
35. The *Office of the United Nations High Commissioner for Refugees* (UNHCR) indicated that it had made an assessment of its activities in Myanmar and concluded that there were no activities which might be considered as directly or indirectly abetting the practice of forced labour. Attached to the communication was a "note on UNHCR's activities in Myanmar and compulsory labour", which described the nature of UNHCR's operations in Myanmar in relation to each of its six areas of intervention and discussed any impact this assistance might have on the practice of forced labour. This note is reproduced in Appendix 9.
36. The *United Nations Development Programme* (UNDP) indicated that its country office in Myanmar had recently carried out a thorough review of its project activities in Myanmar in the context of the Conference resolution and had confirmed that there were no UNDP-funded activities which directly or indirectly supported the practice of forced or compulsory labour. The UNDP would continue to monitor this situation very closely during the implementation of its project activities. Attached to the communication was a "note on UNDP's activities in Myanmar in the context of the ILO resolution", which gave details of UNDP's assistance to Myanmar and discussed any impact this assistance might have on the practice of forced labour. This note is reproduced in Appendix 10.
37. The *United Nations Children's Fund* (UNICEF) indicated that it had evaluated the impact that its activities might have on forced labour and concluded that by design and practice its programme in Myanmar neither directly nor indirectly abetted the practice of forced labour. A new country programme had just taken effect and during development great care had been taken to avoid association with parties involved in the practice of forced labour. Community participation in its projects was strictly on a volunteer basis, and at all levels, all possible precautions were taken to prevent support of forced labour in the organization's operations.
38. *UNAIDS* indicated that with respect to its activities in Myanmar its co-sponsors had established close working relationships with the Ministry of Health as well as international, national and local non-government organizations. It had reviewed the modalities of its work in light of operative paragraph 1 of the Conference resolution and had no reason to believe that the Ministry of Health had violated this provision. It also noted that all UN agencies operating in Myanmar had their programmes examined by their respective Boards to ensure adherence to international conventions. Its partnerships with international NGOs had been consistently guided by protocols widely recognized in the humanitarian field. In addition, those organizations were signatories to a code of conduct that ensured a high level of ethical programming and operations.

39. The *United Nations Population Fund* (UNFPA) indicated that although Myanmar was one of the priority countries under its resource allocation programme, it had not yet supported a full-scale country programme due largely to the prevailing political situation. It allocated less than \$1 million annually for reproductive health activities. No UNFPA-funded activities benefited from or contributed to any form of forced labour, be it directly or indirectly.
40. The *World Food Programme* (WFP) stated that it operated exclusively in the Northern Rakhine State of Myanmar, which was a food deficit area. It had been working in the area, in coordination with UNHCR, since 1994 in such activities as relief, food for education, and food for community asset creation (FCAC). Workers received a daily food ration of 3.5 kg of rice for a family of five. FCAC activities were community based and voluntary, and mainly involved the building of irrigation dams, village access roads and the upgrading of township roads.
41. The *International Civil Aviation Organization* (ICAO) stated that it conducted technical cooperation activities in Myanmar which were for the safety and efficiency of civil aviation in the country and to facilitate safe movement of international civil aviation overflying the airspace of Myanmar. Its ongoing technical cooperation activities in this regard were related to the procurement of essential communication and navigation equipment and for the enhancement of capabilities with respect to the overseeing of flight safety. Technical assistance had also been offered to the Department of Civil Aviation of Myanmar to upgrade the capability of the Civil Aviation Training Centre and for the expansion of Hanthawadi International Airport at Yangon. The ICAO stressed that its technical cooperation activities in Myanmar did not, to its knowledge, directly or indirectly abet the practice of forced or compulsory labour.
42. The *International Maritime Organization* (IMO) indicated that Myanmar had been chosen to participate in four regional projects for Asia, which were still ongoing. These projects promoted ship inspections by port States, safety of non-convention ships, training for maritime instructors and examiners and port State control officers. In addition, some IMO courses and publications had been provided to Myanmar in 2000, following a needs assessment of the maritime training institutes in the country. Accordingly, the IMO's technical assistance in improving the competency and skills of maritime personnel did not have the effect of directly or indirectly abetting the practice of forced or compulsory labour in Myanmar.
43. The *World Trade Organization* (WTO) indicated that the matter would be followed up in the WTO with the Chairperson of the General Council. WTO rules did not afford the secretariat authority to adopt an independent line of action in matters such as these. WTO members had to decide on any course of action.
44. The *Universal Postal Union* (UPU) stated that it had looked into the matter and was not aware of any practice of forced or compulsory labour in the postal sector in Myanmar. If there were at all any such practice then it would most likely exist in remote rural areas. Myanmar was not a member of the UPU's elective bodies and the UPU had a rather limited cooperation with Myanmar at the official ministerial level. It was aware, however, that postal services were still under the direct supervision of the Myanmar Government, which meant that fundamental human rights were more likely to be fully observed in this sector. It therefore felt that there were no legal or other reasons for ceasing any official postal relations with Myanmar.
45. The *Inter-Parliamentary Union* (IPU) stated that since Myanmar did not have a parliament, no contacts were maintained with the authorities in the country. The only dealings with Myanmar were in the context of the IPU's Committee on the Human Rights

of Parliamentarians which since 1991 had examined the cases of members of the Myanmar Parliament who were selected in 1990 and were to date prevented from exercising the mandate that was entrusted to them, in particular the cases of those who were in detention and could therefore be subject to forced labour. The IPU provided the text of its most recent resolution on Myanmar, adopted in October 2000, which “called again on its member parliaments to press for the respect of democratic principles in Myanmar and to show their solidarity with their elected colleagues from the Pyithu Hluttaw [Myanmar Parliament] by whatever means they deemed appropriate ...”.

46. The *African Development Bank Group*, the *International Telecommunication Union*, the *Nordic Council*, the *Organisation for Economic Co-operation and Development (OECD)*, the *Pan American Health Organization*, and the *Arab Labour Organization* stated that they had no relations with Myanmar that could be taken advantage of to perpetuate or extend the practice of forced or compulsory labour referred to by the Commission of Inquiry. The *Asian Development Bank* stated that it presently had no active operations in Myanmar and that the latest loan dated back to 1987 and the latest technical assistance to 1988.

## Other relevant information received

### Correspondence between the Government of Myanmar and the United Nations

47. The Office received from the United Nations copies of correspondence between the Government of Myanmar and the United Nations Secretary-General. In a communication dated 8 January 2001 the Government of Myanmar informed the Secretary-General of certain action that it had taken to implement the recommendations of the Commission of Inquiry and stated that the decision of the Governing Body was “a grave injustice”. The Government also considered that the measures contained in the Conference resolution calling on other international organizations to “impose sanctions” against Myanmar “clearly overstepp[ed] the constitutional mandate of the ILO”. The Government called on the Secretary-General in his role as the Chief Executive of the entire UN system to use his good offices to prevent these measures being taken. The Government was greatly concerned that the outcome from such extreme measures would set a dangerous precedent for the entire UN system. The Secretary-General responded in a letter dated 24 January 2001, noting that the Conference resolution was a decision of an inter-governmental body and that the ILO Director-General was mandated to implement it. The Secretary-General also suggested that the Government might wish to consider writing to the ILO Director-General expressing its readiness to receive a mission to assess and verify the progress made on the forced labour issue before the next meeting of the Governing Body.

### Communications from groups in Myanmar regarding the Governing Body conclusions

48. An “open letter regarding ILO decision on Myanmar” dated 29 November 2000 from “Workers of Myanmar” was received by the Director-General. The letter stated that it was from 18 million workers employed by public and private enterprises. The workers believed that the Governing Body’s conclusions would have a direct and immediate negative impact on the workforce. The Government of Myanmar had passed strong penal laws to prohibit forced labour and the workers believed that the ILO had already succeeded in bringing better working conditions for the workers in Myanmar. The workers therefore petitioned the ILO to reconsider its actions and maintain a constructive partnership with Myanmar.

49. An open letter of the same title and same date was also received from the “International Business Community in Myanmar”. The letter stated that the International Business Community was deeply disappointed by the Governing Body’s conclusions. The wide range of businesses it represented employed a total of over half a million workers in Myanmar, and indirectly provided employment to many more. It suggested that the “sanctions” would only hurt the majority of Myanmar workers, rather than helping them. The ILO had secured the issuance by the Myanmar authorities of a number of orders making forced labour illegal and the ILO should remain constructively engaged with Myanmar to review compliance with these orders. It urged the ILO member States and workers’ and employers’ organizations to carefully reconsider their position, as it was concerned for the real welfare of workers in Myanmar. It also urged the Government of Myanmar to maintain a positive dialogue with the ILO.

### **Information on action taken in support of the Conference resolution**

50. The Office received copies of letters from a number of national workers’ organizations to their governments regarding the Conference resolution.
51. The National Automobile, Aerospace, Transportation and General Workers’ Union of Canada (CAW) called on the Canadian Government to act upon the Conference resolution without delay, beginning with an immediate halt to the activities of all Canadian commercial and economic interests in Myanmar, including a ban on imports from that country, pending a comprehensive review. Such a review had to prove unequivocally that these activities did not benefit in any way, or encourage in any form, the practice of forced labour. The Confédération des syndicats nationaux requested information from the Canadian Government regarding the mechanisms set up by the Government to ensure that Myanmar implemented the recommendations of the Commission of Inquiry, and insisted that Canada took all means at its disposal to ensure the implementation of these recommendations. The Canadian Labour Congress communicated to the Canadian Government the text of a statement on Myanmar to be adopted by its Executive Committee and Council. The Congress would continue to monitor Canadian investment directly or indirectly connected to forced labour in Myanmar. The Congress was encouraging its members to boycott products imported from Myanmar. The Canadian Government should now take a number of concrete steps regarding Myanmar, including researching, monitoring and reporting on investments and imports, reviewing the Special Economic Measures Act to allow for concrete and specific measures to be taken, and convening a meeting, with the participation of the Congress, of the Government’s Working Group on Corporate Social Responsibility to jointly develop steps to address the issue.
52. The Centrale des Syndicats des Travailleurs du Rwanda and the Bangladesh Jatio Sramik League urged their respective governments to take action with regard to the Conference resolution.
53. The Lanka Jathika Estate Workers’ Union recommended that the Sri Lankan Government take up the matter of the Conference resolution with the Government of Myanmar and urge it to implement the recommendations of the Commission of Inquiry, suggested that the leading government trade union, possibly with the assistance of the Labour Ministry, coordinate a joint representation of all unions to the Government of Myanmar, and noted that a similar protest and appeal by the Employers’ Federation would be appropriate.
54. The Office also received information from two international workers’ organizations regarding action taken in support of the Conference resolution.

55. In a communication dated 26 January 2001, Union Network International (UNI) transmitted the report of a joint mission to the Thai-Myanmar border that it had conducted with the ICFTU in January 2001. The mission had visited two sites on the border and met with numerous refugees and trade union activists operating in Mon State and Karen State. The persons met noted that the Conference resolution and resulting international pressure had been effective to a certain extent, but there was continuing use of forced labour or payments of money having to be made in lieu of force labour. There were numerous killings and destruction of paddy fields and villages causing thousands to be displaced, particularly in Karen State. The majority of those displaced were starving and suffering from disease. All persons that the mission met, including hundreds of refugees, supported the imposition of more comprehensive sanctions on Myanmar by the international community. While they accepted that ordinary people would suffer as a consequence of sanctions, they were of the strong opinion that it was necessary to force the Myanmar authorities to restore democracy and end the use of forced labour. The mission recommended that trade unions should continue to provide moral and financial support to the Federation of Trade Unions of Burma (FTUB), that UNI should work closely with all its affiliates in the finance sector to develop a coordinated strategy to discourage any investments or provision of financial services to business related to Myanmar, that UNI might consider working closely with its affiliates in other strategic sectors to put further economic pressure on the Myanmar authorities, that UNI would provide training and assistance to the FTUB and other unions, as well as humanitarian assistance for displaced civilians and refugees, and that the ICFTU/Global Unions Conference on Myanmar to be held in Tokyo from 28 February to 1 March 2001 would be a timely opportunity to express commitment to the struggle for the restoration of democracy and respect for human rights and trade union rights in Myanmar.
56. A communication dated 16 February 2001 from the ICFTU provided abundant information regarding the current practice of forced labour in Myanmar (dealt with in the following section of this document), as well as information on action taken by the ICFTU in support of the Conference resolution. As regards action taken, the ICFTU indicated that it had sought to review relations maintained with Myanmar by its constituents to determine which of these relations might have the effect of aiding Myanmar to perpetuate the system of forced labour. However, to the best of its knowledge neither the ICFTU, the international trade secretariats, their regional organizations, nor any of their affiliates maintained any relation with the Myanmar regime. Any relationship which they may have with Myanmar was limited exclusively to the promotion of workers' fundamental and other human rights. In January 2001, the ICFTU issued a circular to all its 221 affiliated national union centres in 148 countries, its regional organizations, all its executive board members and to the international trade secretariats, requesting them to take a number of steps with respect to the Conference resolution. These steps included requesting their respective governments and national employers' organizations to provide a complete list of enterprises based in their respective countries maintaining trade relations with Myanmar, and requesting their respective governments to provide comprehensive information about the total value of that country's trade with Myanmar, taking into account a list of products, provided by the ICFTU, production of which might involve forced labour. A briefing paper appended to the circular discussed far-reaching measures, including trade and investment bans, on the grounds that economic engagement with Myanmar supported the military regime.
57. The ICFTU communication also provided information on other steps taken by it and its affiliates. Prior to the departure of the recent EU delegation to Myanmar, the ICFTU had briefed one of the members of the delegation on its views. An ICFTU affiliate, LO-Sweden, had also briefed its own Government which, as holder of the rotating EU Presidency, led the delegation. In February 2001 the ICFTU had given its views to separate meetings of European NGOs and the Development Committee of the European Parliament.

A number of ICFTU affiliates had reported taking various steps in support of the Conference resolution, including pressing their respective governments to strengthen their position against Myanmar (such as by the adoption of trade and investment bans), and calling for consumer boycotts of brands produced in Myanmar or made by companies having economic relations with Myanmar. A number of other initiatives were also taken at the regional or subregional level.

58. The ICFTU also noted in its communication that several EU governments remained reluctant to contemplate a strengthening of the EU Common Position when it is reviewed in April 2001, and that several governments seemed to be hoping for a notable improvement in the situation as a result of the “secret dialogue” between the Government of Myanmar and Daw Aung San Suu Kyi. These governments seemed to ignore the fact that similar talks in the past had yielded no result and that opposition members, who should never have been arrested in the first place, were often released shortly prior to important diplomatic visits. Some analysts believed that the ILO measures had played an important role in bringing about a dialogue between the Government and the National League for Democracy, and thus any hesitation in implementing the measures at this time might well jeopardize the talks.
59. The ICFTU noted that a comprehensive union strategy on Myanmar would be discussed at a conference to be held in Tokyo at the end of February. The Office was represented at this conference, which brought together trade unionists and international trade secretariats from across the Asia-Pacific regions, as well as from Europe and the United States. The Federation of Trade Unions of Burma (FTUB) was also represented. The conference adopted a Declaration, as well as a Plan of Action which is reproduced in Appendix 11.

### **Information regarding the current practice of forced labour in Myanmar**

60. A considerable amount of information was also received from a number of international workers’ organizations and other non-governmental organizations regarding the current practice of forced labour in Myanmar. The information concerning actual practice since November 2000 is briefly summarized below.<sup>5</sup>
61. In its communication dated 26 January 2001, Union Network International indicated that, according to persons met by its joint mission, the Conference resolution and resulting international pressure had been effective to a certain extent, for example in helping to bring about the dialogue between the Myanmar authorities and Daw Aung San Suu Kyi. There was, however, continuing use of forced labour or payments of money having to be made in lieu of forced labour.
62. In its communication dated 16 February 2001, the ICFTU provided extensive information regarding the current practice of forced labour in Myanmar. The ICFTU noted that the military junta had not taken any action aimed at genuinely curbing, let alone eliminating, forced labour. Rather, military and administration officials at every level had taken action aimed at hiding the extent and nature of forced labour imposed on the civilian population, at weakening or nullifying the effects of any orders preventing forced labour that might have been issued by superior levels, and at preventing and countering, through propaganda,

<sup>5</sup> Information on the practice of forced labour up to November 2000 is contained in the 2001 report of the CEACR. The individual observation concerning the observance of Convention No. 29 by Myanmar is reproduced in Appendix 8.

disinformation and deception, the measures foreseen by the Conference resolution. This action included a massive campaign of letter-writing and petition signing, by so-called “representative workers”. Referring to the open letter discussed in paragraph 47 above, the ICFTU considered that this letter was part of a campaign by the Government to counter the Conference resolution.

63. Appended to the ICFTU communication were 21 documents providing over 300 pages of detailed information on the recent practice of forced labour in Myanmar. According to the ICFTU, this information showed that in practice forced labour had continued unabated. The information included detailed testimonies, reports and photographs of forced labour in various areas. On the basis of one of these reports alone, the ICFTU believed that at least 80,000 individuals, including women, children and elderly persons, from four districts of Karen State were forced to perform labour during the period November 2000 to January 2001. Two army officers were named in the report as having ordered and organised forced labour on road construction.
64. An essential part of the ICFTU submission consisted of translations, as well as many copies of originals, of orders demanding forced labour issued by the military or paramilitary groups under its control, as well as the local administration and the Myanmar Police Force. The submission contained over 500 such orders issued after May 1999, including many that had been issued since November 2000. These orders are similar in style, form and content to the orders already examined by the Commission of Inquiry and the regular ILO supervisory mechanisms and found to be authentic.
65. Details of a large number of specific instances of forced labour were contained in the ICFTU submission, relating to portering for regular patrols and military operations, the construction of roads, bridges and fences, the construction and servicing army camps, including the provision of building materials for these camps, the provision of transport for the military, the collection of firewood for use by army camps or in army-owned brick kilns, work in army-owned rice plantations, and work as unarmed sentries or messengers for the military. One order from an army battalion informed village heads that porters and bullock carts would only be requisitioned for use on military operations, and not for administrative purposes, but in general the pattern of forced labour demands appeared to be essentially unchanged from the practice reported by the Commission of Inquiry. The large number of different military units and other authorities issuing demands for forced labour suggested that the practice remained widespread.
66. A document prepared by the Federation of Trade Unions of Burma, and contained in the ICFTU submission, indicated that a number of means had been used by the authorities to cover up their use of forced labour. These included issuing orders for villagers to attend meetings at the army camp, where they were requisitioned for forced labour, rather than issuing explicit orders for forced labour; issuing undated, unsigned and unstamped orders; demanding that written orders were returned to the issuing army personnel; using civilian authorities to requisition labour on behalf of the military; and arbitrarily arresting young, healthy persons, who after a few days in prison would be sent to work as porters for the military, dressed in used army uniforms (but who could be recognized as porters as they were barefoot).

## Concluding comments

67. In the light of the above, and in accordance with paragraph 1(a) of the Conference resolution, the question of the implementation of the Commission of Inquiry’s recommendations and of the application of Convention No. 29 by Myanmar will be discussed by the 89th Session of the International Labour Conference, at a sitting of the

Committee on the Application of Standards specially set aside for the purpose. *In this connection, the Governing Body may wish to request the Director-General to transmit to the Conference Committee the present report together with the record of its consideration, as well as any further information of relevance for its discussion. The Conference Committee will have before it the report of the CEACR together with any other relevant information.*

Geneva, 9 March 2001.



## Appendix 1

### **Statement by His Excellency U Mya Than, Leader of the Myanmar Observer Delegation at the Plenary of the 279th session of the ILO Governing Body after the adoption of the decision on the situation of Myanmar<sup>1</sup> (Geneva, 16 November 2000)**

Mr. Chairman,

Today is indeed a sad and solemn day for the ILO. It will go down in the history of the ILO as the most deplorable day for this Organization.

Today Myanmar is singled out for punitive action. Tomorrow it may be another developing country. As all of us are aware, judgement of observance or non-observance of labour standards are, more often than not, subjective and arbitrary and, in some instances, even politically-motivated.

In the case of Myanmar, the problem arose from the arbitrary judgement, based on misinformation. This misinformation emanates from elements, opposed to the Myanmar Government, insurgent groups and self-proclaimed workers' organizations which are more politically-motivated than dedicated to promoting the interests of workers. One such dubious workers' organization has only a handful of members, who represent no one but themselves.

Mr. Chairman,

It is the sadder and the more deplorable, because the proponents of the draft decision to apply sanctions to Myanmar completely ignore the concrete and positive measures, taken by the Myanmar Government.

They turn a blind eye to the comprehensive, concrete and solid framework of legislative, executive and administrative measures put in place in Myanmar and the offer by the Myanmar Government to receive an ILO representative, based in the ILO Regional Office in Bangkok or in Geneva, to assist the national supervisory mechanism in the implementation of the ILC's recommendation.

Notwithstanding the more prudent approach, advocated by many of its Member States, the Governing Body has chosen the path of confrontation and coercion by applying sanctions under Article 33. The ASEAN Member States, together with like-minded countries, have expressed reservations against the action taken by the Governing Body. Myanmar appreciates the principled stands, taken by those countries that Article 33 of the ILO Constitution should never be invoked and that, sanctions should not be applied to a Member State.

Mr. Chairman,

It is most regrettable that a drastic decision, contrary to what many members believe in and uphold, was taken by the Governing Body. It is obvious that this unwarranted and unjustified action by the Governing Body is aimed at exerting pressure on Myanmar.

The decision, just taken by the Governing Body, will no doubt place the credibility, the integrity and the reputation of the Governing Body and the ILO in question. It penalizes a Member State which has been voluntarily cooperating with the ILO and has put in place the comprehensive,

<sup>1</sup> This statement could not be given to the 279th Session of the Governing Body and is reproduced here for information.

concrete and solid framework of legislative, executive and administrative measures in accordance with the ILC's resolution.

This action by the Governing Body is most unfair, most unreasonable and most unjust.

This decision is totally unacceptable to my delegation.

For these reasons, my delegation totally and categorically rejects the decision and dissociates itself from it and any activities and effects connected with it.

As such, Myanmar will cease to cooperate with the International Labour Organization in relation to the ILO Convention 29 and any activity connected with it.

I thank you, Mr. Chairman.

## Appendix 2

### Resumé of the concrete measures taken by the Myanmar Government <sup>1</sup>

- Since the 88th Session of the ILC which adopted the resolution on Myanmar, the following steps have been taken to put in place a framework of legislative, executive and administrative measures to comply with the ILC resolution.
- Initially, intensive consultations were made among all departments and agencies concerned regarding the measures needed to fulfil the conclusions of the report of the Technical Cooperation Mission (TCM) and the ILC resolution.
- An independent study group headed by Baron Walter von Marschall, former Ambassador of FRG to Myanmar was invited to have an independent opinion of what constitutes the satisfactory measures regarding the framework that the LC resolution referred to. The group visited Myanmar from 25 September to 6 October, 2000 and gave various options which in their opinion would satisfy the required measures mentioned in the ILC resolution.
- In addition, at the invitation of the Government of Myanmar, a five-member Technical Cooperation Mission (TCM) visited Myanmar from 20 to 26 October, 2000. Based on the advices and suggestions of the TCM, a new legislative order was issued on 27 October 2000. The order made it clear that the requisition of forced labour or involuntary services is illegal and is an offence under the existing laws of the Union of Myanmar. It also spells out the consequences for the breach of the legislative order by explicitly spelling out that any one, including the members of the armed forces shall have action taken against him under Section 374 of the Penal Code or any other existing laws. In the words of the TCM, this order has general applicability.
- This Order was supplemented by a directive from the State Peace and Development Council (SPDC), the highest organ of state power in Myanmar. The SPDC is the legislative authority, and as the TCM has pointed out, the highest military authority and the highest civilian authority in the country. This document, TCM pointed out “provides confirmation that there is political will at the highest level to reach a solution”.
- Apart from this legislative measure, concrete and detailed framework of administrative and executive measures have been instituted.
- This consists of the Ministerial Committee headed by the Minister of Labour and the Implementation Committee on Convention 29 as well as a national supervisory mechanism for monitoring compliance.
- Myanmar has thus put in place a concrete, comprehensive and solid framework of legislative, administrative and executive measures to ensure that there is no forced labour both in law and in practice.
- With regard to the ILO presence, Myanmar is also willing to accept an ILO representative, either based in the Regional Office in Bangkok or based in Geneva, to observe, assess or assist the national supervisory mechanism in the implementation of Convention 29. The representative of ILO will be given full cooperation to effectively carry out his responsibilities. The representative will enjoy, for these purposes and for the duration of his mission, the same legal protection and status accorded to officials of comparable rank in the

<sup>1</sup> Appended to the letter of 6 December 2000 from the Permanent Representative of the Myanmar Mission

United Nations. The representative, either based in the ILO Regional Office in Bangkok or in Geneva, may make frequent visits to Myanmar, as the need arises.

- In view of this concrete, comprehensive and solid framework of legislative and executive measures and Myanmar's willingness to address the issue of the ILO presence, the actions envisaged by the ILC are no longer required and necessary. The Members of the Governing Body ought to take the necessary decision so that the measures envisaged by the ILC will not come into effect on 30 November 2000.

## Appendix 3

### Communication dated 22 December 2000 from the Director-General to the Minister for Labour of the Government of Myanmar

Dear Mr. Minister,

I write concerning the action taken by the Governing Body on 16 November, at its 278th Session, with respect to the effect given by the Government of Myanmar to the recommendations of the Commission of Inquiry concerning the application of Convention No. 29. The Governing Body had before it on this occasion the report of the second ILO technical cooperation mission to Myanmar, which visited your country from 20 to 26 October.

While some of the positive developments reflected in the report of the technical cooperation mission and in subsequent documents provided by the authorities were acknowledged, the Governing Body was, as you know, not satisfied, that the conditions for the non-implementation of the measures listed in paragraph 1 of the Conference resolution had been met. These measures are taking effect on 30 November, and I have notified ILO Members and international organizations concerned accordingly, as contemplated in the relevant paragraph of the resolution.

At the same time, the strong sense of the Governing Body was, as noted by the Chair, that the Director-General should continue to extend cooperation to the Government of Myanmar in order to promote the full implementation by that Government of the recommendations of the Commission of Inquiry. This conclusion is indeed in line with the mandate I have received from the Conference itself.

The Governing Body debate underlined once more that the ILO's objective has always been, and remains, the implementation of the recommendations of the Commission of Inquiry. It is thus my sincere hope that the measures now in force will soon become unnecessary as a result of your Government's full application of these recommendations.

In that connection, I have noted that, according to a statement issued shortly after the debate by the Ministry of Foreign Affairs, Myanmar intends to adhere to and implement the positive measures taken at the end of the technical cooperation mission visit. Let me assure you that, for its part, the Office stands ready to extend its cooperation for the purposes of ensuring the implementation of the recommendations of the Commission of Inquiry in such a way that positive and credible developments could already be reported to the Governing Body at its next session.

Yours sincerely,

*(Signed)* Juan Somavia.

## Appendix 4

### **Communication dated 11 February 2001 from the Government of Myanmar to the Director-General forwarded by the Permanent Mission of Myanmar**

Excellency,

I received your letter of 22 December 2000 in which you were kind enough to inform that your office stands ready to extend cooperation to Myanmar.

Myanmar had received two Technical Cooperation Missions from ILO in our efforts to make our domestic legislation fully in line with Convention 29. With the assistance of the Technical Cooperation Mission which visited Myanmar from 20 to 26 October 2000, we had put in place a framework of legislative, executive and administrative measures to make forced labour illegal both in law and in practice. But powerful forces in the ILO Governing Body totally ignored the concrete measures taken by Myanmar as well as its demonstrated desire to cooperate with ILO. I regret to say that the way things were conducted at the 279th Session of the Governing Body was a grave travesty of the rules of procedure of the ILO. As a result, the proposal put forward by Malaysia on behalf of ASEAN countries, supported by India and China, to defer implementation of the measures in ILC resolution on Myanmar was not put to a vote. The Governing Body's discussions on the matter, therefore, ended inconclusively. This has led to the entry into force of the measures envisaged in the ILC resolution. This is a great injustice on Myanmar, which had in good faith implemented its obligations under Convention 29.

However, we are resolute in our endeavours to implement the framework of legislative, executive and administrative measures which we have put in place. The Committee for implementation of Convention 29 is holding its regular meetings to review the situation. The national monitoring mechanism which we have put in place is also functioning smoothly. There had been a few cases where the latest legislative order was breached. These cases were investigated and necessary legal action was taken against the perpetrators.

I wish to thank you for your readiness to extend cooperation to Myanmar. I fully realize that our national efforts that involved ILO would receive better acceptance by our detractors.

However, under the present circumstances, until such time that Myanmar receives fair and equitable treatment that must necessarily be accorded to all members of the ILO, we must ourselves continue our national efforts for the total elimination of practice of force labour in Myanmar.

I wish to assure you that we will continue to take steps to ensure that forced labour is illegal in Myanmar both in law and in practice. I also wish to assure that we will resolutely implement the framework of legislative, executive and administrative measures we have put in place.

Yours sincerely,

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

## Appendix 5

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

Dear Mr. Minister,

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

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

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

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

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

Yours sincerely,

*(Signed)* Juan Somavia.

## Appendix 6

### Resolution adopted by the International Labour Conference at its 88th Session (June 2000)

The International Labour Conference,

Meeting at its 88th Session in Geneva from 30 May to 15 June 2000,

Considering the proposals by the Governing Body which are before it, under the eighth item of its agenda (Provisional Record No. 4), with a view to the adoption, under article 33 of the ILO Constitution, of action to secure compliance with the recommendations of the Commission of Inquiry established to examine the observance by Myanmar of its obligations in respect of the Forced Labour Convention, 1930 (No. 29),

Having taken note of the additional information contained in the report of the ILO technical cooperation mission sent to Yangon from 23 to 27 May 2000 (Provisional Record No. 8) and, in particular, of the letter dated 27 May 2000 from the Minister of Labour to the Director-General, which resulted from the mission,

Considering that, while this letter contains aspects which seem to reflect a welcome intention on the part of the Myanmar authorities to take measures to give effect to the recommendations of the Commission of Inquiry, the factual situation on which the recommendations of the Governing Body were based has nevertheless remained unchanged to date,

Believing that the Conference cannot, without failing in its responsibilities to the workers subjected to various forms of forced or compulsory labour, abstain from the immediate application of the measures recommended by the Governing Body unless the Myanmar authorities promptly take concrete action to adopt the necessary framework for implementing the Commission of Inquiry's recommendations, thereby ensuring that the situation of the said workers will be remedied more expeditiously and under more satisfactory conditions for all concerned;

1. Approves in principle, subject to the conditions stated in paragraph 2 below, the actions recommended by the Governing Body, namely:

- (a) to decide that the question of the implementation of the Commission of Inquiry's recommendations and of the application of Convention No. 29 by Myanmar should be discussed at future sessions of the International Labour Conference, at a sitting of the Committee on the Application of Standards specially set aside for the purpose, so long as this Member has not been shown to have fulfilled its obligations;
- (b) to recommend to the Organization's constituents as a whole – governments, employers and workers – that they: (i) review, in the light of the conclusions of the Commission of Inquiry, the relations that they may have with the member State concerned and take appropriate measures to ensure that the said Member cannot take advantage of such relations to perpetuate or extend the system of forced or compulsory labour referred to by the Commission of Inquiry, and to contribute as far as possible to the implementation of its recommendations; and (ii) report back in due course and at appropriate intervals to the Governing Body;
- (c) as regards international organizations, to invite the Director-General: (i) to inform the international organizations referred to in article 12, paragraph 1, of the Constitution of the Member's failure to comply; (ii) to call on the relevant bodies of these organizations to reconsider, within their terms of reference and in the light of the conclusions of the Commission of Inquiry, any cooperation they may be engaged in with the Member concerned and, if appropriate, to cease as soon as possible any activity that could have the effect of directly or indirectly abetting the practice of forced or compulsory labour;



- (d) regarding the United Nations specifically, to invite the Director-General to request the Economic and Social Council (ECOSOC) to place an item on the agenda of its July 2001 session concerning the failure of Myanmar to implement the recommendations contained in the report of the Commission of Inquiry and seeking the adoption of recommendations directed by ECOSOC or by the General Assembly, or by both, to governments and to other specialized agencies and including requests similar to those proposed in paragraphs (b) and (c) above;
- (e) to invite the Director-General to submit to the Governing Body, in the appropriate manner and at suitable intervals, a periodic report on the outcome of the measures set out in paragraphs (c) and (d) above, and to inform the international organizations concerned of any developments in the implementation by Myanmar of the recommendations of the Commission of Inquiry;

2. Decides that those measures will take effect on 30 November 2000 unless, before that date, the Governing Body is satisfied that the intentions expressed by the Minister of Labour of Myanmar in his letter dated 27 May have been translated into a framework of legislative, executive and administrative measures that are sufficiently concrete and detailed to demonstrate that the recommendations of the Commission of Inquiry have been fulfilled and therefore render the implementation of one or more of these measures inappropriate;

3. Authorizes the Director-General to respond positively to all requests by Myanmar that are made with the sole purpose of establishing, before the above deadline, the framework mentioned in the conclusions of the ILO technical cooperation mission (points (i), (ii) and (iii), page 8/11 of *Provisional Record* No. 8), supported by a sustained ILO presence on the spot if the Governing Body confirms that the conditions are met for such presence to be truly useful and effective.

## Appendix 7

### Recommendations of the Commission of Inquiry (extracts)

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

- (a) that the relevant legislative texts, in particular the Village Act and the Towns Act, be brought into line with the Forced Labour Convention, 1930 (No. 29) as already requested by the Committee of Experts on the Application of Conventions and Recommendations and promised by the Government for over 30 years, and again announced in the Government's observations on the complaint. This should be done without further delay and completed at the very latest by 1 May 1999;
- (b) that in actual practice, no more forced or compulsory labour be imposed by the authorities, in particular the military. This is all the more important since the powers to impose compulsory labour appear to be taken for granted, without any reference to the Village Act or Towns Act. Thus, besides amending the legislation, concrete action needs to be taken immediately for each and every of the many fields of forced labour examined in Chapters 12 and 13 [of the Commission's report] to stop the present practice. This must not be done by secret directives, which are against the rule of law and have been ineffective, but through public acts of the Executive promulgated and made known to all levels of the military and to the whole population. Also, action must not be limited to the issue of wage payment; it must ensure that nobody is compelled to work against his or her will. Nonetheless, the budgeting of adequate means to hire free wage labour for the public activities which are today based on forced and unpaid labour is also required;
- (c) that the penalties which may be imposed under section 374 of the Penal Code for the exaction of forced or compulsory labour be strictly enforced, in conformity with Article 25 of the Convention. This requires thorough investigation, prosecution and adequate punishment of those found guilty. As pointed out in 1994 by the Governing Body committee set up to consider the representation made by the ICFTU under article 24 of the ILO Constitution, alleging non-observance by Myanmar of the Forced Labour Convention, 1930 (No. 29), the penal prosecution of those resorting to coercion appeared all the more important since the blurring of the borderline between compulsory and voluntary labour, recurrent throughout the Government's statements to the committee, was all the more likely to occur in actual recruitment by local or military officials. The power to impose compulsory labour will not cease to be taken for granted unless those used to exercising it are actually brought to face criminal responsibility.<sup>2</sup>

<sup>2</sup> Paragraph 539 of the Report of the Commission of Inquiry appointed under article 26 of the Constitution of the International Labour Organization to examine the observance by Myanmar of the Forced Labour Convention, 1930 (No. 29). ILO Official Bulletin, Vol. LXXXI, 1998, Series B, Special Supplement. The full text of the report is also available on the ILO website at the following address: <<http://www.ilo.org/public/english/standards/relm/gb/docs/gb273/myanmar.html>>.

## Appendix 8

### Observations from the CEACR (2001 Report)

#### *Myanmar (ratification: 1955)*

1. The Committee notes that the Government has not supplied a report on the application of the Convention. Following the recommendations of the Commission of Inquiry established to examine the observance by Myanmar of the Forced Labour Convention, 1930 (No. 29), the Committee has, however, taken note of the following information:
  - the information presented by the Government to the Director-General of the ILO in communications dated 21 January, 20 March, 27 May, 29 October (as supplemented subsequently), and 3, 15 and 17 November 2000;
  - the information submitted to, and the discussions held in, the Governing Body of the ILO at its 277th and 279th Sessions in March and November 2000;
  - the information and discussion at the International Labour Conference at its 88th Session (May-June 2000);
  - the resolution adopted by the International Labour Conference at its 88th Session concerning the measures recommended by the Governing Body under article 33 of the ILO Constitution on the subject of Myanmar to secure compliance with the recommendations of the Commission of Inquiry, and the entry into effect of those measures on 30 November 2000, following consideration of the matter by the Governing Body at its 279th Session (November 2000);
  - the resolutions adopted by the General Assembly of the United Nations at its 54th Session (17 December 1999) and by the United Nations Commission on Human Rights at its 56th Session (March-April 2000) on the situation of human rights in Myanmar (extracts in International Labour Conference, 88th Session, Geneva, 2000, *Provisional Record* No. 4, Annex III);
  - the second report of the Director-General of the ILO to the members of the Governing Body on measures taken by the Government of Myanmar, dated 25 February 2000;
  - the interim report prepared by judge Rajsoomer Lallah, Special Rapporteur of the Commission on Human Rights on the situation of human rights in Myanmar, dated 22 August 2000 [UN document A/55/359]; and the note by the Secretary-General of the United Nations on the same subject, dated 20 October 2000 [UN document A/55/509];
  - the reports of the ILO technical cooperation missions to Myanmar of May 2000 [(ILC, 88th Session, Geneva, 2000, *Provisional Record* No. 8] and October 2000 [GB.279/6/1 and Add.1];
  - a communication dated 15 November 2000 in which the International Confederation of Free Trade Unions submitted to the ILO voluminous documentation referring to the imposition of forced labour in Myanmar during the period June-November 2000, a copy of which was sent to the Government for such comments as it may wish to present;
  - a press release issued on 17 November 2000 by the Ministry of Foreign Affairs of the Union of Myanmar in Yangon, and an information sheet issued by the Myanmar Information Committee in Yangon on a press conference held on 18 November 2000 by the Government on the decision of the ILO Governing Body to activate measures on the subject of Myanmar.
2. Information available on the observance of the Convention by the Government of Myanmar will be discussed in three parts, dealing with: (i) the amendment of legislation; (ii) any measures taken by the Government to stop the exaction in practice of forced or compulsory labour and information

available on actual practice; (iii) the enforcement of penalties which may be imposed under the Penal Code for the exaction of forced or compulsory labour.

I. Amendment of legislation

3. In paragraph 470 of its report of 2 July 1998, the Commission of Inquiry noted:

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

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

4. In its previous observation, the Committee noted that by the end of November 1999, neither the Village Act nor the Towns Act had been amended, nor had any draft law proposed or under consideration for that purpose been brought to the knowledge of the Committee. However, an "Order Directing Not to Exercise Powers Under Certain Provisions of the Town Act, 1907 and the Village Act, 1907" (No. 1/99) was issued by the Government on 14 May 1999, which in fact still reserved the exercise of powers under the relevant provisions of the Village Act and the Towns Act which remain incompatible with the requirements of the Convention.
5. The Committee notes from the report of the October 2000 ILO technical cooperation mission to Myanmar (GB.279/6/1, paragraphs 9 and 10, Annexes 13 and 19) that a draft text providing for the amendment of the Village Act and the Towns Act through an amendment of Order No. 1/99 was not retained by the Government. However, the same report (in Annex 19) reproduces the English text of an "Order Supplementary Order No. 1/99" made by the Ministry of Home Affairs under the direction of the State Peace and Development Council on 27 October 2000 which modifies Order No. 1/99 so as to order "responsible persons including members of the local authorities, members of the armed forces" etc. "not to requisition work or service notwithstanding anything contained" in the relevant sections of the Towns and Village Acts, except in cases of emergency as defined in *Article 2(2)(d)* of the Convention (GB.279/6/1, Annex 19). The Burmese text of this Order of 27 October, which was to be published in the *Myanmar Gazette*, has not yet been supplied to the ILO.
6. The Committee observes that the amendment of the Village and Towns Acts sought by the Commission of Inquiry as well as the present Committee and promised by the Government for many years has not yet been made. It again expresses the hope that the Village Act and the Towns Act will at last be brought into conformity with the Convention.
7. The Committee nevertheless notes that Order No. 1/99 as supplemented by the Order of 27 October 2000 could provide a statutory basis for ensuring compliance with the Convention in practice, if given effect bona fide not only by the local authorities empowered to requisition labour under the Village and Towns Acts, but also by civilian and military officers entitled to call on the assistance of local authorities under the Acts. This, in the view of the Committee, calls for further measures to be undertaken, as indicated by the Commission of Inquiry in its recommendations in paragraph 539(b) of its report.

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

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

8. In its recommendations in paragraph 539(b) of its report of July 1998, the Commission of Inquiry indicated that steps to ensure that in actual practice no more forced or compulsory labour be imposed by the authorities, in particular the military, were:

... all the more important since the powers to impose compulsory labour appear to be taken for granted, without any reference to the Village Act or Towns Act. Thus, besides amending the legislation, concrete action needs to be taken immediately for each and every of the many fields of forced labour examined in Chapters 12 and 13 [of the Commission's report] to stop the present practice. This must not be done by secret directives, which are against the rule of law and have been ineffective, but through public acts of the Executive promulgated and made known to all levels of the military and to the whole population. Also, action must not be limited to the issue of wage payment; it must ensure that nobody is compelled to work against his or her will. Nonetheless, the budgeting of adequate means to hire free wage labour for the public activities which are today based on forced and unpaid labour is also required ... .

9. The Committee notes from the report of the October 2000 ILO technical cooperation mission to Myanmar, the suggestion made by the mission of a Supplementary Order or directive from the Office of the Chairman of the State Peace and Development Council concerning requisition of labour or services (GB.279/6/1, Annex 13). The suggested text was to order all state authorities, including military, police and civilian authorities and their officers, not to requisition persons to provide labour or services for any purpose, nor to order others to requisition such labour or services, regardless of whether or not payment is made for said labour or services, except in cases of emergency as defined in *Article 2(2)(d)* of the Convention. The suggested prohibition was to include but not be limited to the requisition of labour or services for the following purposes:
- (a) portering for the military (or other military/paramilitary groups, for military campaigns or regular patrols);
  - (b) construction or repair of military camps/facilities;
  - (c) other support for camps (such as guides, messengers, cooks, cleaners, etc.);
  - (d) income generation by individuals or groups (including work in army-owned agricultural and industrial projects);
  - (e) national or local infrastructure projects (including roads, railways, dams, etc.);
  - (f) cleaning/beautification of rural or urban areas.

Similar prohibitions were to apply to the requisition of materials or provisions of any kind and to demands of money except where due to the State or to a municipal or town committee under relevant legislation. Furthermore, the suggested text was to provide that if any state authority or its officers requires labour, services, materials or provisions of any kind and for any purpose, they must make prior budgetary arrangements to obtain these by a public tender process or by providing market rates to persons wishing to supply these services, materials or provisions voluntarily, or wishing to offer their labour.

10. The Committee notes that the text suggested by the mission was not adopted, but that the English versions of several instructions dated 27 and 28 October 2000 and 1 November 2000 were forwarded to the ILO after the departure of the mission and reproduced in addenda to the mission's report (GB.279/6/1(Add.1)(Rev.1) and (Add.2)).
11. The instruction dated 27 October 2000 "Prohibiting Requisition of Forced Labour" is signed for the Director-General of the Police Force and addressed to all units of the police force. The instruction

dated 28 October 2000 on the same subject is addressed by the Director-General of the General Administration Department of the Ministry of Home Affairs to all State/Divisional Commissioners and General Administration Departments and requires, inter alia, Order No. 1/99 and the order supplementing it to be displayed separately on noticeboards of all the levels of peace and development councils as well as the General Administration Departments.

12. The instruction dated 1 November 2000 “Prohibiting Requisition of Forced Labour” is signed at the highest level, by Secretary-1 of the State Peace and Development Council, and addressed to the Chairmen of all State and Divisional Peace and Development Councils. The latter instruction thus reaches beyond institutions that come under the authority of the Ministry of Home Affairs. It is, however, primarily directed to the enforcement of Order No. 1/99 and the Order of 27 October 2000 supplementing it, which are limited in scope to the requisition of forced labour under the Village Act and the Towns Act, i.e. not by civilian or military state officers but by local authorities, who may requisition labour under the Acts when called upon to provide assistance to civilian and military state officers. Nevertheless, the instruction dated 1 November interprets the Supplementing Order of 27 October 2000 as follows:

2. ... The Supplementing Order renders the requisition of forced labour illegal and stipulates that it is an offence under the existing laws of the Union of Myanmar. Responsible persons, including the local authorities, members of the armed forces, members of the police force and other public service personnel are also prohibited not to requisition forced labour and are instructed to supervise so that there shall be no forced labour.

It would appear to the Committee that a bona fide application of this prohibition should cover the typical case of members of the armed forces who order local authorities to provide labourers, even if the manner of complying with such order – through requisition or hiring of labourers or otherwise – is left to the local authorities.

13. The instruction dated 1 November 2000 continues as follows:

3. Therefore, it is hereby directed that the state and divisional peace and development councils shall 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 the Supplementing Order of the Ministry of Home Affairs and also to effectively supervise to ensure that there shall be no forced labour within their respective jurisdictions.

4. Responsible persons, including members of the local authorities, members of the armed forces, members of the police force and other public service personnel who fail to abide by the said Order No. 1/99 and the Supplementing Order shall be prosecuted under section 374 of the Penal Code or any other existing laws.

It would appear to the Committee that again, as set out in paragraph 12 above, a bona fide application of the instruction would include, in the scope of point 4 of the instruction, members of the armed forces who order local authorities to supply labour.

14. It remains to be seen whether the “necessary instructions” yet to be issued by the state and divisional peace and development councils under point 3 of the instruction of 1 November will contain the kind of details necessary for a feasible implementation. Such details were set out by the Commission of Inquiry in paragraph 539(b) of its report and included by the October 2000 technical cooperation mission in its suggestion mentioned in paragraph 9 above.
15. The three instructions forwarded so far to the ILO do not yet contain any positive indication on the manner in which authorities that have been used to rely on forced and unpaid labour contributions of the population are hereafter to make realistic provision for the labour and services they may require.
16. Furthermore, the three instructions do not spell out the various forms of forced labour found by the Commission of Inquiry and this Committee to be mainly imposed in practice, as listed in paragraph 9 above. In this regard, the Committee recalls that most of the forms of forced labour or services requisitioned concerned the military. The Committee notes that “members of the armed

forces” are specifically included among the responsible persons listed in point 4 of the instruction dated 1 November 2000 (quoted in paragraph 13 above). However, in point 3 of the same instruction, the order to issue the necessary further – and, hopefully, more detailed – instructions is addressed to the state and divisional peace and development councils (which in fact include officers of the armed forces), but not to the regional commanders of the armed forces in their military capacity.

17. 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. The need for clarity on the point is underscored by the Government’s recurrent attempts to link the pervasive exaction of labour and services by mainly military authorities to merit which may be gained in the Buddhist religion from spontaneously offered help. The Commission of Inquiry recalled in paragraph 539(c) of its report that “the blurring of the borderline between compulsory and voluntary labour, recurrent throughout the Government’s statements” was “all the more likely to occur in actual recruitment by local or military officials”.
18. Thus, clear instructions are still required to indicate to all officials concerned, including officers at all levels of the armed forces, both the kinds of tasks for which the requisition of labour is prohibited, and the manner in which the same tasks are henceforth to be performed. The Committee hopes that the necessary detailed instructions will soon be issued, and that, in the words of paragraph 539(b) of the Commission of Inquiry’s report, provision will also be made for “the budgeting of adequate means to hire free wage labour for the public activities which are today based on forced and unpaid labour”.

## **B. Information available on actual practice**

### **(a) The practice August 1998 to December 1999**

19. In his reports dated 21 May 1999 and 25 February 2000 to the members of the Governing Body, the Director-General indicated that all information on actual practice that was received (from workers’ and employers’ organizations, intergovernmental organizations and governments of member States of the ILO) in reply to his requests, referred to continued widespread use of forced labour by the authorities, in particular by the military.

### **(b) Information on the practice up to November 2000**

20. In its communication dated 15 November 2000, the ICFTU refers to the persistence of severe breaches of the Convention by the military authorities. Documentary appendices enclosed by the ICFTU represent over 1,000 pages drawn from over 20 different sources and include reports, interviews of victims; over 300 forced labour orders, photographs, video recordings and other material. A few events described therein took place in the first half of the year 2000; an overwhelmingly large proportion of the documents concerns the period June to November 2000.
21. An essential part of the ICFTU submission consists of hundreds of “forced labour orders”, issued mainly by the army but also by armed groups under its control and elements of the local administration. As stated by the ICFTU, these are similar in kind, shape and contents to the orders already examined by the Commission of Inquiry and the regular ILO supervisory mechanisms and found by same to be authentic. Documentary materials submitted refer to the persistence on a large scale of forced portering, including by women, and the murder of forced porters no longer able to carry their burden. In addition to forced portering, all other forced labour practices identified previously by the Commission of Inquiry are referred to for the period June to November 2000. A great number of specific reported instances include forced labour for the building and maintenance of roads, bridges, railroads, water canals, dikes, dams and reservoirs, as well as for the building, repair, maintenance and servicing of army camps; and the requisition of labour as well as seeds, fertilizer, materials and equipment for army-held agricultural land, forests and installations.

22. As indicated above, copies of the ICFTU communication of 15 November 2000, including the voluminous documentation submitted, were sent to the Government for such comments as it may wish to present.

### III. Enforcement

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

... that the penalties which may be imposed under section 374 of the Penal Code for the exaction of forced labour or compulsory labour be strictly enforced, in conformity with Article 25 of the Convention. This requires thorough investigation, prosecution and adequate punishment of those found guilty.

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

25. The Committee notes that point 4 of the instruction dated 1 November 2000 from the State Peace and Development Council to All State and Divisional Peace and Development Councils, reproduced in paragraph 13, provides for the prosecution of “responsible persons” under section 374 of the Penal Code. Similar clauses are included in point 3 of the instruction dated 27 October, and point 6 of the instruction dated 28 October, referred to in paragraph 11 above. Moreover, under points 4 to 6 of the instruction dated 27 October 2000, addressed by the Director-General of the Police Force to all units of the police force:

4. If any affected person files a verbal or written complaint to the police station of having been forced to contribute labour, the latter shall record the complaint in Forms A and B of the police station and send the accused for prosecution under section 374 of the Penal Code.

5. It is hereby directed that the police stations and units concerned at various levels shall be further instructed to make sure their strict compliance with the said Order as well as to supervise so that there shall be no requisition of forced labour. A copy of the Order Supplementing Order No. 1/99 issued by the Ministry of Home Affairs on 27 October 2000 is enclosed herewith.

6. It is instructed to acknowledge receipt of this directive and to report back actions taken on the matter.

26. With regard to point 4 of the latter instruction (dated 27 October 2000) the Committee hopes that prosecutions under section 374 of the Penal Code will be brought by the law enforcement agencies on their own initiative, without waiting for complaints by the victims, who may not consider it expedient to denounce the “responsible persons” to the police. The Committee hopes that in commenting on indications that the imposition of forced labour has continued beyond October 2000, the Government will also report on any concrete action taken under section 374 of the Penal Code.

27. The Committee has noted the assurance, in the Government’s letter dated 29 October 2000 to the Director-General of the ILO, of the “political will to ensure that there is no forced labour in Myanmar, both in law and in practice”. It also has taken due note of the Order Supplementing Order No. 1/99 and the three instructions issued between 27 October and 1 November 2000, and of the view of the Employer members of the Governing Body at its 279th Session (November 2000) that this was “too little too late”. At a press conference held 18 November 2000 in Yangon on the decision of the Governing Body of the ILO to activate measures on the subject of Myanmar, the Government indicated that it would no longer cooperate with the ILO in relation to the Forced Labour Convention, 1930 (No. 29), but that it would continue to take steps to prevent forced labour, as this was its policy. The Committee hopes that the Government will thus at last take the necessary measures to ensure the observance in law as well as in practice of the Convention, a basic human rights instrument freely ratified by Myanmar. It also hopes that the Government, which had failed to take part in the proceedings before the Commission of Inquiry, will avail itself of the opportunity to present its views and progress in reporting on the application of the Convention, in conformity with its obligations under article 22 of the ILO Constitution.

[The Government is asked to report in detail in 2001.]



## Appendix 9

### Note on UNHCR's activities in Myanmar and compulsory labour

UNHCR has been operational in two districts of Myanmar since 1994 in facilitating repatriation and reintegration of approximately 230,000 Muslim returnees from Bangladesh into Northern Rakhine State. The activities of UNHCR are geared towards reintegration and stabilization of some 800,000 Muslim population including returnees in Maungdaw and Buthiadaung districts. UNHCR and its implementing partners provide assistance activities under various key sectors with the aim to improve and stabilize the social and economic environment in Northern Rakhine State. UNCHR conducts field monitoring of a number of protection issues affecting the Muslim population including forced labour, and is promoting a more secure legal status for this population. As regards compulsory labour, UNHCR undertakes advocacy against its use, in particular through dialogue and engagement with officials at the local level.

#### *Areas of intervention*

##### Agriculture

Considering the chronic rice deficit in the area of operation, efforts to increase the production of rice are a given high priority. WFP's past assistance has helped to ease the shortage of rice. Dams and dykes will also be constructed to produce a second rice crop to targeted areas in three townships. At the same time, livestock and aquaculture projects, combined with training courses to enhance the capacity building of the local population are taking place. There is no recourse to compulsory labour in this field of activities and any labour needed for construction purpose is contracted out or paid for as appropriate.

##### Health

UNHCR recognizes that good health and physical well-being constitute an integral part of any economic and social stability. Compared to other parts of Myanmar, the area of UNHCR's operation is characterized by its remoteness, rough geographical terrain, dense population, and the low literacy rate. These factors contribute to the apparent non-accessibility and underutilization of existing services, which are manifested in the high infant and maternal morbidity and mortality, and high prevalence of malnutrition, malaria, tuberculosis and diarrhoeal diseases. These health challenges are further complicated by the under-equipped and under-staffed health facilities.

UNHCR started its health assistance projects in 1995. It invested not only in upgrading government health facilities, but also in strengthening the conventional health delivery system by improving its planning and management functions, targeting an immediate impact at grass-roots community level to introduce changes in health service provision and utilization. This strategy allows focusing on advocating integrated participatory development initiatives, which link health to education, training, income generation, environmental sanitation and other related sectors.

Health activities make the population more productive in life. Poor health leads the population to poverty as they cannot be economically viable. In this sector, there is no resort to compulsory labour.

##### Education

UNHCR attempts, through a variety of educational undertakings, to strengthen the links between and among the returnee population, the local Muslim residents and other communities in Northern Rakhine State. This is based on the understanding that education helps returnees' awareness. Education activities help the illiterate population to be literate increasing their coping mechanism including their communication with the authorities as well as non-Muslim community. In general it

helps them to be more viable in various functions of life. There is no use of compulsory labour in this sector of activities.

### **Income generation**

Considering that majority of the poorest of the poor – returnees and locals alike – are landless, casual labourers, UNHCR endeavours to promote among them, income-earning activities. Positive effects have been frequently reported in terms of an increased level of self-sufficiency which also resulted in affected family sending more children to schools for education.

The objective of these activities is to help them settle and integrate in the area, attain self-sufficiency, and be able to find their niches within the local economy. To meet this objective, an extensive programme providing financial assistance, training and agriculture activities has been implemented since 1995. For example, the population in general have more money than before. In view of no taxation, villagers are expected to contribute to the development of Northern Rakhine State. In the past this was seen as a direct contribution of labour, so called compulsory or even forced labour. Now more villagers can afford paying a small amount of contribution in money so that if there is a need to fix a bridge the money they contribute could be used to hire casual labourers.

### **Rural infrastructure**

Aside from the ongoing work of construction school jetties, health centres, ponds, wells, dams, etc., UNHCR, BAJ and the Government of the Union of Myanmar are working together to develop a permanent road link from Maungdaw township to the southernmost point of Maungdaw with the ultimate goal of a road link from Maungdaw to Sittwe. This important artery will accelerate the development of the area, creating new economic opportunities as well as providing immediate assistance in the form of training and cash for work as well as food for work (WFP) to the poorest villagers along the route. In undertaking construction activities, UNHCR and BAJ have ensured that all labour is appropriately compensated, including through food for work programmes.

Additionally, infrastructure activities have a direct effect. By building bridges and improving infrastructure in general, there is less demand for compulsory labour.

### **Community social services**

It is estimated that up to 10 per cent of returnee population falls under the category of Extremely Vulnerable Individuals (EVIs). These are the female-headed households, widows, orphans, physically or mentally disabled or elderly. Some 7,213 EVIs have been identified and various agencies, including UNHCR, are actively targeting these groups for assistance recognizing that inadequate social services and opportunities for self-reliance exist. The ultimate goal is to identify and implement interventions that will help these individuals and their families attain self-sufficiency. Myanmar Red Cross Society (MRCS) is actively implementing training and assistance activities in this sector, as UNHCR's implementing partner.

Community Social Service helps EVIs who are not subject to compulsory labour any way to be self-reliant. It also encourages community participation including their obligation and responsibility to the community. In some instances, this transforms potentially "compulsory labour" into "voluntary community work". UNHCR encourages this trend as after all, villagers have to maintain what UNHCR built for the general development of the society.

On top of all the activities mentioned above which are interrelated, UNHCR is doing general advocacy, i.e. sensitizing the authorities not to impose compulsory labour. The important point is UNHCR has nothing to do with "abetting" the practice of compulsory labour, but on the contrary, it has been striving to reduce the frequency of forced labour and to promote payment for labour.

### **Conclusion**

It is UNHCR's observation that, due in part to its advocacy efforts, there has been a decreasing trend in compulsory labour practices over the past years. There has been improvement to the

situation in terms of the frequency of labour calls, the number of labourers required as well as the number of days of labour. There also appears to have been more attempts made to pay labourers for their work in money or in kind, although the amounts paid are usually far below market rate. Nonetheless, it is also observed that compulsory labour practices are continuing in areas where there is heavy military presence and where portage is required by the military. UNHCR plans to maintain its presence and activities in the area to consolidate the progress made. Its humanitarian activities are intended to curtail practices such as forced labour.

21 December 2000.

## Appendix 10

### Note on UNDP's activities in Myanmar in the context of the ILO resolution

#### *Background*

Since 1993, United Nations Development Programme (UNDP) assistance to Myanmar has been provided under the framework of the UNDP Governing Council's decision 93/21 of June 1993 which stipulates that "assistance from the United Nations Development Programme and related funds to Myanmar should be clearly targeted towards programmes having grass-roots level impact in a sustainable manner, particularly in the areas of primary health care, the environment, HIV/AIDS, training and education, and food security". Consequently, a set of individual projects known as the Human Development Initiative, or HDI, has been implemented since 1994.

In January 1996 and again in July 1998, the above mandate 93/21 was reaffirmed by the successor body to the Governing Council, the UNDP Executive Board, in its decision No. 96/01 and No. 98/14 respectively.

The HDI has three overarching objectives:

- helping communities to meet their basic humanitarian needs;
- involving local people in planning and implementing activities that will benefit them; and
- building local capacities for self-help activities.

While the UNDP Country office and the HDI projects and their executing agencies continually seek to improve and refine the HDI's outreach and benefits, the Governing Council and Executive Board decisions continue to provide the parameters within which all HDI activities are planned, implemented and evaluated.

Today, 11 projects work in an integrated manner with each other and with grass-roots communities to meet basic needs and alleviate poverty in 23 townships with over 10,000 community groups and organizations in the Dry Zone, the Ayeyarwaddy Delta, and the Shan, Chin, Kachin and Rakhine States in Myanmar. An exception is the HIV/AIDS project, which covers areas with high prevalence of HIV across the country. The HDI is now in its third phase, which will end in 2001.

#### *Project specific analysis*

Three of the 11 HDI projects focus on **agriculture and food security**. They aim at helping poor farmers and the landless improve their production and increase their incomes from forestry, agriculture, aquaculture and livestock. They are implemented by the Food and Agriculture Organization of the United Nations (FAO) in the Dry Zone, the Shan State and the Delta.

The **primary health care** project aims to help local people meet their own primary health care needs, and to improve their access to basic health services. It focuses on the major threats of malaria, leprosy, iodine deficiency and tuberculosis. It trains midwives and auxiliary workers, and promotes family planning. This project is executed by the United Nations Office for Project Services (UNOPS).

The **community water supply and sanitation** project builds water-supply systems for villages that lack a supply of clean water and that often have no water at all in the dry season. It also improves sanitation, for example by promoting simple pit-latrines, and helps people build small bridges and other facilities that they themselves identify. This project is managed by the United Nations Center for Human Settlements (UNCHS).

The **HIV/AIDS** project, implemented by UNOPS, educates people to avoid infection by the deadly AIDS virus, and how to care for people who have the disease. It targets groups at greatest risk of infection: commercial sex workers and their clients, transport and mineworkers, fisher-folk and refugees.

The **primary education** project aims to improve the access to and the quality of primary education, for example by building and renovating schools in deprived areas, loaning textbooks to the neediest children, and by training teachers. The project also works to bring literacy through non-formal education activities to children and adults who cannot attend regular school classes. This project is executed by the United Nations Educational, Scientific and Cultural Organization (UNESCO).

The **micro-finance** project loans small amounts of money to villagers to help them build small businesses. The implementation of this project is subcontracted to non-governmental organizations (NGOs): Private Agencies Collaborating Together (PACT) in the Dry Zones, Groupe de Recherche et d'Echanges Technologiques (GRET) in the Shan State, and Grameen Trust in the Delta. This project is managed by the United Nations Office for Project Services (UNOPS).

The **remote townships** project provides integrated community development services (encompassing social development, income generation and local capacity building in agriculture, health, education, water supplies and credit) in ten townships – in Rakhine, Kachin and Chin States. This project is executed by the United Nations Office for Project Services (UNOPS).

The **HDI Support** project provides operational and technical support for the HDI projects. It also undertakes key activities including social mobilization and integrated development planning and management.

Finally, a **preparatory assistance project** is laying the groundwork for a Basic Needs Assistance Programme in Northern Rakhine State.

### ***HDI project activities and compulsory labour***

HDI projects, both by design and practice, are neither physical inputs-driven nor construction-oriented. Conceptually, HDI relies more on “software” improvements than hardware improvement of the local rural communities at the grass-roots level.

The limited physical improvements supported by the projects (e.g. renovation and construction of rudimentary village basic health care centres, small water-supply systems such as water ponds, hand-dug wells, rain-water collection tanks, community learning centres and primary schools, village access roads and small bamboo/wooden bridges, farm level soil conservation bunds, gully-plugs, community woodlot nurseries, etc.) are invariably small in size, limited in scope, demonstrative in purpose and focused directly at serving a specific community only. HDI projects support and facilitate these activities as strategic entry points to initiate social mobilization of the rural communities concerned.

Both in theory and practice, the HDI approach is basically antithema to compulsion. HDI is strictly based on voluntary participation. All HDI activities by design are planned, implemented, monitored, operated and maintained by the beneficiary communities themselves. If there are any inputs, willing and able to be contributed by the beneficiaries, the type, quantity and nature of these are proposed and decided by consensus of the concerned community. HDI thus inculcates a more sustainable community development approach based on voluntarism as an alternative to non-voluntary administrative method of implementing development activities.

Thus, if and when HDI projects assist activities which could involve some construction and earth work where labour inputs might be called upon, the nature of the labour contribution (amount, timing, mode of remuneration, etc.) must be proposed, discussed, agreed upon and monitored by the concerned communities themselves, all strictly on voluntary basis. HDI projects never force (and the projects have no authority to force) the communities to contribute any inputs (including labour) in any of its activities.

In response to the EB mandate, HDI was designed to implement its project activities through UN Executing Agencies and not through or with the government line departments. Government institutions concerned, from central to the village level, are informed of what HDI is doing. Decision-making authority, however, is strictly with the project management which is not shared with the Government. HDI projects are implemented through their own separate, independent channels managed by their own project staff, down to the community beneficiaries level and not through any existing government bureaucracy.

As required by the successive EB mandates, regular assessments by independent missions have been made on HDI performance. The EB in its decision 98/14 requested the Administrator, to continue to provide the Board, on an annual basis, with a report on the progress and challenges in the implementation of HDI project activities. In compliance with this request, the latest independent assessment and evaluation mission was fielded during the period 27 May through 15 July of 2000. After reviewing the extensive documentation on each of the 11 HDI projects and visiting selected project villages, including extensive consultation with village beneficiaries in these project areas, the mission concluded that “the content and objectives of all HDI projects were in full conformity with the relevant provisions of the Governing Board and Executive Council decisions”.

### **Conclusion**

In light of the above analysis we firmly believe that the ongoing HDI project activities (the only UNDP-funded programme in the country) do not and could not have the effect of directly or indirectly abetting the practice of forced or compulsory labour in Myanmar.

## Appendix 11

### International ICFTU/ICFTU-APRO/ITS Conference

#### ***The global unions' Plan of Action on Burma (adopted in Tokyo on 1 March 2001)***

1. Strengthen material support to the FTUB.
2. Strengthen implementation of the ILO Burma resolution of June 2000, including:
  - review of your government's bilateral relations with junta;
  - support holding of special Burma session during the International Labour Conference, 2001;
  - support inclusion of this issues at the next session of the United Nations Economic, Social and Cultural Committee;
  - seek consultations on Burma measures with your government under the ILO Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144);
  - seek improved coordination of United Nations specialized agencies and programmes so that they do not in practice aid or abet forced labour.
3. Increase pressure on international financial institutions (IFTs) with the same purpose.
4. Lobby European Union presidency and Member States to further strengthen existing Burma sanctions, in cooperation with the ETUC.
5. Lobby ASEAN member States to help bring about an end to forced labour and the establishment of democracy.
6. Seek early discussions with companies maintaining business relations with Burma in order that they withdraw trade and investments in Burma, or alternatively face public exposure, union-driven consumer pressure and boycotts.
7. Expand and strengthen workers' shareholder action against companies trading with or operating in Burma.
8. Better inform rank-and-file membership, as well as the wider community, about the situation.
9. Organize an International Day of Union Action for Burma on 1 May 2001 and use the occasion, in cooperation with civic and religious group, NGOs and others to:
  - lobby governments;
  - pressure companies;
  - create public awareness;
  - target Burmese embassies;
  - link the Burma situation with the ILO Declaration on Fundamental Principles and Rights at Work.
10. Keep the Burma Plan of Action on union agendas and inform your membership of progress.