



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)****I. Activities of the Liaison Officer**

1. In light of the guidance given by the Governing Body at its 285th Session (November 2002), the Liaison Officer continued her discussions with the Myanmar authorities on issues relating to her mandate, in particular on the content of a plan of action for the elimination of forced labour (see section III below).¹
2. The Liaison Officer also had contacts with a range of individuals and groups, both in Yangon and elsewhere in the country.² In addition, she made a number of field visits in order to gain a personal impression of the situation.
3. From 9 to 13 December, the Liaison Officer visited northern Shan State.³ The trip was conducted independently and without prior notice being given to the authorities. The trip gave the Liaison Officer the opportunity to gain a better understanding of the situation in

¹ As before, the Liaison Officer was assisted by Mr. Richard Horsey. The Liaison Officer had discussions with the Minister for Labour, a Minister at the SPDC Chairman's Office (Brig. Gen. Abel), a senior military intelligence officer (Col. Hla Min), the Implementation Committee and the Director-General of the Department of Labour. The Liaison Officer also had the opportunity to have discussions with Myanmar's Permanent Representative in Geneva, during a visit he made to Yangon.

² The Liaison Officer met with representatives of ethnic political parties, ceasefire groups, the National League for Democracy, including its General-Secretary Daw Aung San Suu Kyi, civil society groups, the diplomatic corps in Yangon, United Nations agencies, international non-governmental organizations and the International Committee of the Red Cross. The Liaison Officer also had the opportunity to meet with two representatives of Amnesty International during a visit they made to Myanmar in early February.

³ The Liaison Officer visited locations on the road between Mandalay and the Chinese border at Muse (including stops at Hsipaw, Lashio and Muse).

the region, including as regards forced labour. She had free discussions with a range of people, including village heads and other community leaders.

4. In January 2003 the Liaison Officer visited northern Rakhine State. From 21 to 4 January she participated in a trip to the area that was organized for diplomats by the UNHCR, to inform them about the situation of refugee returnees as well as the various projects being implemented by UNHCR and other organizations to help stabilize these returnees. At the end of this trip she remained in Rakhine State so as to be able to conduct some independent visits and meetings. She had invited the Implementation Committee to accompany her on this second phase of her trip, and she was joined by the Implementation Committee member with responsibility for Rakhine State from 24 to 28 January.⁴ In addition to meetings with the authorities at various levels,⁵ the Liaison Officer also had the opportunity to travel independently in order to speak with local people and community representatives.⁶
5. From 13 to 14 February, at the invitation of TotalFinaElf the Liaison Officer made a visit to the area of the Yadana Gas Transportation Project in Tanintharyi Division, operated by that company. She was briefed by TotalFinaElf on the situation in the pipeline corridor and on the company's socio-economic programme for the local population. The Liaison Officer also travelled unaccompanied to some villages in the area.
6. In addition to these trips within Myanmar, the Liaison Officer also visited Bangkok and Chiang Mai from 29 November to 3 December in order to meet with representatives of non-governmental organizations working with refugees from Myanmar, including aid organizations and human rights organizations.
7. *General impression of the current situation.* Although not in a position to conduct any form of systematic investigation, the Liaison Officer has been able to form a general impression of the current forced labour situation in the country as a result of her various discussions and visits. It should be recalled that the High-Level Team which visited Myanmar from September to October 2001 found that although the orders prohibiting forced labour had been widely (if unevenly) disseminated, the impact on the practice of forced labour was limited, and that there had been only a very moderate positive evolution in the situation since the Commission of Inquiry. The situation remained particularly serious in places with a large military presence, especially in border areas. The Liaison Officer has heard from a number of sources that forced labour decreased around the time of the visit of the High-Level Team, but that this decrease had not been sustained. While it is her impression that there is probably less use of forced labour in central parts of Myanmar, the situation in areas near to the Thai border where there is continuing

⁴ U Aung Ba Kyi, Chairman of the Social Security Board under the Ministry of Labour.

⁵ Meetings were held with the Secretary and some other members of the Rakhine State Peace and Development Council in Sittwe, the NaSaKa (border immigration) Director in Maungdaw, the Maungdaw District Peace and Development Council, the Buthidaung Township Peace and Development Council, and a NaSaKa sector commander; the Liaison Officer also participated in meetings in Maungdaw and Buthidaung attended by approximately 400 village-tract officials. It did not prove possible to have any meetings with the army.

⁶ By prior arrangement, during independent visits the Liaison Officer was escorted by one police vehicle for security purposes, which remained well behind her own car and waited at the outskirts of villages that she entered. This arrangement was fully respected, but the Liaison Officer was concerned that she was closely followed by two men on a motorcycle, who attempted to listen in on her private conversations with local people despite her protests and interventions from the police escort.

insecurity and a heavy presence of the army, as well as in northern Rakhine State,⁷ is particularly serious and appears to have changed little. It is also her impression that there have been some changes in the manner in which forced labour is imposed. For example, she has heard from several sources that military units tend to no longer issue written orders to village heads to provide forced labour, and instead give these instructions verbally. Demands for labour appear to have been substituted in some cases by forced contributions (of materials, provisions or cash). It also appears that the authorities are more commonly making payments to those whom they requisition, although usually at well below prevailing rates. In the view of the Liaison Officer, the wide dissemination of the Orders undertaken by the authorities has not been sufficient to have a significant impact on the practice, as it has not been accompanied by other measures, such as providing alternative means to those currently imposing forced labour to carry out the tasks which is their responsibility to perform. This lack of alternatives could be one reason for the weakness in enforcing the Orders.

8. The Liaison Officer's impression of the situation and the importance for alternatives to be given to those currently imposing forced labour was reinforced by various meetings with ethnic political leaders, ceasefire groups and the National League for Democracy (NLD), including a meeting on 20 January with its General Secretary, Daw Aung San Suu Kyi. The Liaison Officer is also convinced of the importance of the national reconciliation process for achieving greater security for the population in border areas, which could lead to substantial improvements in the forced labour situation there.

II. Developments in the Implementation Committee

9. In a meeting on 20 December 2002 with the Convention No. 29 Implementation Committee, the Liaison Officer had the opportunity to review progress since the last meeting in November. A letter dated 15 November from the Department of Labour to the Liaison Officer⁸ had set out three developments: (1) the Orders prohibiting forced labour were to be translated into six ethnic languages; (2) a representative of the army was now included in the Implementation Committee;⁹ (3) a pamphlet about forced labour was in preparation and would be published in early January. The Committee indicated that the texts of three translations were complete, and preparations were now being made to distribute them; copies of these had already been provided to the Liaison Officer. As regards the representative from the army, the Liaison Officer welcomed the fact that he was now included in the Committee, but expressed surprised that he was from the Office of Strategic Studies, which was part of military intelligence, rather than from the Office of the Inspector General as had been announced.¹⁰ Of course, the formal designation of the person in question was not of primary importance, provided that he had authority to

⁷ Which also has a heavy presence of security forces.

⁸ The text of this letter was reported to the Governing Body at its 285th Session (November 2002). See GB.285/4(Add.2), appendix.

⁹ The new member of the Committee was Lt. Col. Maung Maung Aye from the Office of Strategic Studies, Ministry of Defence.

¹⁰ It should be noted that the appointment of this new member of the Committee does not represent any significant change in the composition of the Committee, since Col. Hla Min – senior in rank and also designated as being from the Office of Strategic Studies – had been included in the Committee since its establishment. See GB.279/6/1(Add.1)(Rev.1), Annex B.

represent the army.¹¹ Concerning the pamphlet, the Liaison Officer requested to see a draft before it was published, so that she would be able to offer comments and advice.

10. As regards progress on the various allegations presented to the Committee, the Liaison Officer was disappointed to note that to date she had received no written reports on any investigations.¹² Concerning the alleged killing of trade unionist Saw Mya Than while he was being forced to work as a porter, the Department of Labour indicated in a letter dated 18 November to Mr. Tapiola that, despite reservations as to the credibility of the allegation and the organization that had made it, all necessary inquiries would be made in consultation with the ministries and departments concerned. In the meeting on 20 December the Implementation Committee reiterated these reservations, without giving details of any investigation. The Liaison Officer stated that this allegation was particularly serious and that she had been requested by the ILO Director-General to follow it up. She was therefore willing to have some involvement in any investigation.
11. The need for urgent investigation of allegations, and for written reports of these investigations to be provided by the Committee was underlined by the Liaison Officer in a letter dated 6 January 2003 to the Director-General of the Department of Labour. The letter pointed out that three recent allegations in particular required urgent investigation by the authorities. These were (1) the alleged killing of Saw Mya Than; (2) the allegation concerning TotalFinaElf, to which that company had responded, but which still required a response by the authorities; and (3) the credible and very serious allegations of the forced recruitment of children into the armed forces.

III. Discussions on a plan of action

12. The development of a plan of action was suggested by the Director-General in a letter dated 21 June 2002 to the Minister for Labour, and reiterated by him in a letter dated 22 July.¹³ At its 285th Session the Governing Body endorsed this suggestion and expressed the hope that a comprehensive plan of action would be discussed between the Government of Myanmar and the ILO and presented to its March 2003 session. The plan of action was to take into account the suggestions of the High-Level Team, including the establishment of a credible system for responding to allegations of forced labour. It would represent convincing evidence of the commitment of the highest authorities of Myanmar to take concrete action for the effective eradication of forced labour.
13. Following her return to Yangon from the November session of the Governing Body, the Liaison Officer resumed discussions with the authorities on the contents of a plan of action. In various meetings, the Liaison Officer stressed that progress should be made on the plan in due time so that the Governing Body could give it proper consideration. If sufficient progress were made, a high-level ILO mission could come to Myanmar in order to finalize the plan.
14. In a meeting on 12 December 2002, the Department of Labour presented the text of a “draft project proposal aimed at the elimination of forced labour practices in Myanmar”.

¹¹ This was called into question, however, when the officer was requested by the Liaison Officer to arrange meetings with army commanders in northern Rakhine State during her visit to the area. The officer’s reply was that he was not in a position to organize meetings with the army.

¹² The outstanding allegations before the Committee are set out in the appendix.

¹³ See GB.285/4, paras. 3 and 4.

This text identified four main programmes to be included in the project: (a) “extension of dissemination of information among the general public”; (b) “reviewing the effectiveness of existing legislative, administrative and executive measures”; (c) “field observation of the regions and areas where there are major and minor development works and economic activities from which most of the allegations on forced labour emanated”; (d) “use of forced labour as porters”. The text tentatively identified five regions for priority implementation of these programmes.¹⁴

- 15.** In oral and written comments provided to the Department of Labour, the Liaison Officer pointed out that while the text contained some positive elements, it provided mainly for the intensification of the current public information and observation measures, which until now had not led to significant results. It would need to be further supplemented in order to form a credible plan of action that would meet the expectations of the ILO. There were two elements in particular that needed to be included:
- a reformed system of investigation (including a mediator or other mechanism to receive and follow up complaints) that would identify violations and would result in offenders being prosecuted and sanctioned;
 - a comprehensive review of current use and possible alternatives to forced labour in all its various forms. In this regard, the ILO had proposed a local road construction project using labour-based technologies, which could be a useful demonstration of an alternative to forced labour for the construction of local infrastructure.¹⁵

A more general but very important point was that since most allegations of forced labour concerned the army, the text needed to reflect the fact that the army would be included in all the areas covered. These comments were also conveyed to the Minister for Labour in a meeting with him on 18 December.

- 16.** A second draft text of the plan of action was presented by the Department of Labour on 26 December. This text no longer mentioned any review of the effectiveness of existing measures, but continued to place strong emphasis on dissemination of information, awareness raising and field observations. It referred to the expansion of animal transportation as an alternative to the use of porters and included the idea of a pilot local-road construction project using labour-based technologies. The text did not include any reference to a more general search for alternatives to the use of forced labour, nor did it suggest any revised system of investigation (or a mediator). In addition, the army was not adequately addressed: it was included in the public information campaign only “in later phases”, and the existing system of inspections did not cover the army directly, but would “coordinate and collaborate” with military personnel concerned. Allegations that concerned the army would be channelled by the Implementation Committee to the Ministry of Defence “for necessary action according to the established procedure”, a procedure which, as far as was known, had not so far identified any cases of forced labour by the military.

¹⁴ The regions identified were Tanintharyi Division and Rakhine, Mon, Kayin and Shan States.

¹⁵ In connection with this proposal, the Liaison Officer had arranged for technical experts from the ILO Regional Office in Bangkok to visit Myanmar in order to give a briefing on the methodology involved, visit the road construction area that had been identified by the interim Liaison Officer in September 2002 and, since the project would require funding, come up with preliminary cost estimates. It would then be possible to incorporate this proposed project into the plan of action once it was finalized. The visit of the technical mission from Bangkok was postponed by the authorities, however, and no new date has yet been set.

17. These comments were first made in writing and were reiterated to the Director-General of the Department of Labour during a meeting on 10 January. The Liaison Officer also pointed out that the idea of a pilot region, mentioned in the Director-General's letter of 22 July to the Minister for Labour, might present an opportunity for the authorities to demonstrate concrete progress. The area selected could incorporate the proposed local-road construction project and the use of animal transportation to replace porters. The other components of the plan, such as the public information campaign, could also be intensively applied in the region and a reformed system of investigation (including a mediator or similar mechanism) could also be implemented. These ideas were incorporated by the Liaison Officer into a text presenting proposals for a plan of action, which was communicated to the Department of Labour on 13 January and sent to the Minister for Labour on 20 January. The draft plan of action proposed by the Liaison Officer had four elements:

- a public information campaign;
- specific suggestions for a reformed system of inspections and verification of allegations, including an independent mediator;
- the establishment of a working group to identify and recommend alternatives to the current use of forced labour, and the immediate implementation of two alternatives: the use of animals to replace porters, and a local-road construction project;
- a pilot area around the local-road construction project where the prohibition of forced labour would be strictly enforced and the various elements of the plan intensively implemented.

The draft noted that, subject to the endorsement of the Governing Body, the ILO could provide assistance for the implementation of the plan (in the form of technical advice as well as help with mobilizing financial support from donors for technical cooperation projects). Implementation of the plan could begin in April and would be expected to last approximately 18 months. In addition to a final evaluation, progress reports would be made on a four-monthly basis.

18. The Liaison Officer had an opportunity on 31 January to discuss her ideas with the Minister for Labour. The Minister indicated that the authorities had no difficulty with the Liaison Officer's proposals, except the proposal for a reformed system of investigation, which was a question for the future; he also expressed reservations over the idea of a mediator. He indicated that he would form a discussion team to work with the Liaison Officer on the draft text.

19. The Liaison Officer met with this discussion team on 6 February.¹⁶ A third draft text was presented to her at the start of this meeting. The only substantive change was a new section titled "Role of facilitator" in which it was stated that Mr. Leon de Riedmatten could continue to act as facilitator in "resolving problems relating to instances of forced labour in the country". The Liaison Officer reiterated her concerns with the text. She stressed that Mr. de Riedmatten's current role was facilitating relations between the ILO and the Government of Myanmar, and therefore that the word "facilitator" in the draft could lead to confusion. The text should therefore refer to him as a "mediator" and should spell out more clearly what role he would play in the verification of allegations. She also noted that

¹⁶ The team was chaired by the Deputy Minister for Labour and composed of the Director-General of the Department of Labour, the Director-General of the International Organizations and Economic Department of the Ministry of Foreign Affairs, and a Deputy Attorney-General.

although the draft mentioned a “pilot road construction project”, it still did not include a pilot area where the prohibition of forced labour would be strictly enforced and other aspects of the plan would also be intensively applied. The discussion team agreed to redraft the text to reflect this point.

20. At the time this report was finalized, on 21 February, no new draft had been communicated to the Liaison Officer.

Geneva, 4 March 2003.

Appendix

Details of outstanding allegations before the Implementation Committee

- A number of specific allegations contained in the report by Amnesty International entitled “Myanmar: Lack of security in counter-insurgency areas” (17 July 2002) [raised with the Implementation Committee in a letter dated 24 July 2002].
- Allegations from a credible source concerning increased imposition of forced labour in certain parts of northern Rakhine State [raised with the Implementation Committee in a letter dated 7 August 2002].
- A complaint received from within the country that vehicle owners in a part of Mon State were being requisitioned along with their vehicles to transport troops and supplies as well as work on the construction of an artillery base [raised with the Implementation Committee in a letter dated 4 October 2002].
- Allegations by UNICEF and Human Rights Watch of the forced conscription of children into the armed forces [raised with the Implementation Committee at a meeting on 9 November 2002].
- An allegation from the Federation of Trade Unions of Burma (FTUB), transmitted to the ILO by the ICFTU, concerning the killing of trade unionist Saw Mya Than while he was being forced to work as a porter [raised with the Implementation Committee at a meeting on 9 November 2002].
- Specific allegations contained in the documents submitted to the Committee of Experts by the ICFTU on 14 October, including an allegation concerning TotalFinaElf [raised with the Implementation Committee at a meeting on 9 November 2002].
- Allegations from a reliable source within the country concerning forced labour in two towns of Bago Division [raised with the Implementation Committee at a meeting on 9 November 2002].