



EIGHTH ITEM ON THE AGENDA

**Developments concerning the question
of the observance by the Government
of Myanmar of the Forced Labour
Convention, 1930 (No. 29)****Latest developments****I. Allegation relating to persons sentenced
to death for high treason**

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

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

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

3. In a meeting on 18 March with the Deputy Minister for Labour, the Liaison Officer a.i. was informed that authorization had been given for him and Mr. de Riedmatten to have access to the two persons in the case whose conviction had an ILO dimension, that is, Min Kyi and Aye Myint. An authentic translation of the judgment would also be provided. The Liaison Officer a.i. received assurances that the access would be provided under appropriate modalities and indicated that it might be important to also meet other persons involved in the case if there appeared to be an ILO dimension to their conviction. He also underlined the importance for the authorities to provide copies of the original court judgment rather than only an English translation.²

II. Visit to Insein Prison to meet with detained persons

4. On 19 March, the informal facilitator, Mr. Léon de Riedmatten, accompanied by the ILO Liaison Officer a.i., Mr. Richard Horsey, met in Insein Prison with two persons who, according to the unofficial translation of the court judgment, had been convicted in part because of contact or exchange of information with the ILO. The persons met were Min Kyi (alias Nai Min Kyi) and Aye Myint (alias Myint Aye Maung). These persons were met individually in private, in a randomly selected place within the prison.³ The meetings lasted approximately two hours each – sufficient for all relevant information to be collected. The prison authorities gave their full cooperation.
5. After confirming that they had no major concerns regarding their current conditions of detention, the two persons described the circumstances of their arrest and their subsequent interrogation in a military intelligence detention centre. During this period of interrogation by military intelligence officers, which lasted for several days, the persons described being deprived of food, water and sleep and being beaten.
6. On the basis of the information provided by the two persons, and that contained in the trial judgment itself, Mr. de Riedmatten considered that the case was not investigated or prosecuted in a systematic or credible way. It appeared that police or intelligence officers initially used methods of entrapment and that the subsequent procedures of investigation and prosecution were unsound, without any of the fundamental guarantees necessary to produce a credible outcome. He believes in this context that it is important for the authorities to make available, in addition to the original judgment, the full transcript of the trial proceedings. He understands from the persons met that a first appeal has been made to the Divisional Court, the verdict of which was so far unknown to the persons. The persons indicated that this appeal had been prepared for them by the authorities and that it had not been possible for them either to hire a lawyer to represent them in the appeal or to prepare

² On 19 March the Liaison Officer a.i. received an English translation of the judgment prepared by the Office of the Attorney General of Myanmar (this information is on file with the Office and is available for consultation). The Burmese-language original has not been received.

³ Since Mr. Horsey speaks Burmese, no third-party interpreter was required.

the appeal themselves. It is understood from the persons that under Myanmar law a second appeal to the Supreme Court is also provided for.⁴

7. After the detailed discussions with the two persons, it became more clear than had originally been apparent from the unofficial translation of the court judgment that a third person in the case had a significant ILO dimension to his conviction (namely, Shwe Mahn, alias Zaya Oo).⁵ Following the meetings with Min Kyi and Aye Myint, a meeting was therefore then requested with Shwe Mahn. The prison authorities indicated that this request would be put to the appropriate minister.⁶ The team found no indications that there was an ILO dimension in the convictions of the other six persons. Nevertheless, Mr. de Riedmatten's general concerns regarding the investigation and prosecution of the case apply equally to these persons.
8. On the basis of all the information available, the only conclusion that Mr. de Riedmatten could come to was that the convictions of these three persons for high treason were unsound. They should be released pending a full review of the case. He considers it vital that he be given free access to the persons at any time, whether in prison or following any release.

Geneva, 19 March 2004.

Submitted for information.

⁴ It is relevant to note in this context that both Min Kyi and Aye Myint have previously worked as higher grade pleaders and therefore have a good understanding of the Myanmar legal system.

⁵ It was also clear that in addition to the ILO dimension in these three cases, contacts with the Thai-based Federation of Trade Unions of Burma (FTUB) had also played a part in their arrest and conviction.

⁶ No immediate response to this request proved to be possible since the minister was out of Yangon.

Appendix 1

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

Dear Minister,

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

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

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

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

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

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

Yours sincerely,

(Signed) Kari Tapiola.