



SEVENTH ITEM ON THE AGENDA

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

**Report of the very High-Level Team**

**I. Establishment and mandate of  
the very High-Level Team**

1. In the conclusions it adopted after the discussions at its 291st Session (November 2004), the Governing Body, *inter alia*, requested the Director-General to field a very high-level mission to Myanmar, in the following terms:

... At the end of the debate, a number of speakers did however consider that the problems identified in the reports as well as the sudden replacement of the previous interlocutors of the Organization following the changes which had occurred among the leadership of the Myanmar Government justified an evaluation of the current attitude of the authorities and their determination to effectively address the continuing practice of forced labour. The attitude that they will adopt, which does not yet seem clearly defined, about the very alarming cases identified in the documents before the Governing Body, constitutes a real test of this determination.

This is why the Governing Body requests the Director-General to field a very high-level mission to evaluate the attitude of the authorities and assess their determination to continue their cooperation with the ILO, the modalities of which must make it possible to address the root causes of the problems described in the reports. The Director-General will have to ensure that the conditions of such a mission and the credentials of those charged with conducting it, as well as the position of its interlocutors at the highest political level, are such that it is able to meet these objectives and ensure the intervention has the required visibility. The Director-General will report on the results of this mission to the next session of the Governing Body. The Governing Body will then be able to determine the necessary consequences on the basis of full knowledge either as regards further action by the Organization under article 33, including as regards foreign direct investment, or for the implementation of the Plan of Action. ...

2. Accordingly, the Director-General constituted a very High-Level Team (vHLT) to fulfil the mandate defined in these conclusions, as follows:

- The Right Honourable Sir Ninian Stephen, former Governor-General of Australia, who chaired the previous High-Level Team in 2001;
  - Her Excellency Madame Ruth Dreifuss, former President of the Swiss Confederation;
  - The Honourable Eui-yong Chung, former Chairperson of the Governing Body of the ILO, Member of the National Assembly of the Republic of Korea and Chairperson of the Foreign Relations Committee of the Uri Party.
3. The composition of the vHLT and the dates when it was ready to visit Myanmar (21-25 February 2005) were communicated to the Myanmar authorities by the Director-General. All precautions were taken to ensure that the modalities for the visit would be such that the vHLT would be able to successfully complete its mandate, and it was on the understanding that the Myanmar authorities had understood and agreed with this essential point that the vHLT agreed to finalize its arrangements. Full details of the relevant exchange of correspondence and discussions are provided in Appendix I.

## II. Programme of meetings

4. The members of the vHLT and their support staff met in Bangkok on 20 and 21 February 2005 for pre-departure discussions.<sup>1</sup> They then proceeded to Yangon on the evening of 21 February.
5. On arrival at the airport in Yangon, the vHLT was provided by the Deputy Minister for Labour with a programme of meetings that had been arranged for it by the authorities. This programme (reproduced in Appendix II) no longer included a meeting with State Peace and Development Council (SPDC) Secretary-1, the explanation being that he was busy with the National Convention, although the vHLT was informed verbally that it could expect a meeting with the Prime Minister the next day.<sup>2</sup> The vHLT's expectation was that this programme would be discussed and finalized as a matter of priority in the meetings it would have the following day.
6. The following morning (22 February) the vHLT met with the Minister for Labour. Sir Ninian Stephen first presented an overview of the background to the visit and the mandate of the team. Mr. Chung, as former Chairperson of the Governing Body, was then able to explain the critical importance of the visit in the light of the previous debates in the Governing Body on this issue. He underlined the positive gesture towards maintaining the ongoing dialogue with the authorities that the decision to appoint the vHLT represented on the part of the Governing Body, as well as the potential risks if this gesture was not

<sup>1</sup> The support staff were as follows: Mr. Francis Maupain (Special Adviser to the ILO Director-General), who acted as the vHLT's Executive Secretary, together with Mr. Richard Horsey (ILO Liaison Officer a.i. in Yangon) and Mr. Léon de Riedmatten (who for several years has been the informal facilitator between the ILO and the authorities). The ILO Executive Director for Standards and Fundamental Principles and Rights at Work, Mr. Kari Tapiola, was in Bangkok on other matters, and was also able to participate in these pre-departure discussions.

<sup>2</sup> Myanmar is ruled by a military council, the SPDC, and all policy is decided at this level (rather than by ministers) in particular by its two senior leaders, Senior General Than Shwe (SPDC Chairman, Commander-in-Chief of the armed forces, and Minister for Defence) and Vice-Senior General Maung Aye (SPDC Vice-Chairman and Army Commander). The Prime Minister is the fourth-ranking member of the SPDC, with authority over civilian/government matters, but not military matters. This was not the case for the former Prime Minister, who before his removal had been involved in the ILO process and who had authority to some extent over the military.

responded to as expected with a meeting at the highest political level. Madame Dreifuss then elaborated on the concrete points (subsequently provided to the Minister for Foreign Affairs – see below) which would need to be addressed by the vHLT, provided a meeting at the highest level was granted, as well as some explanations of how these points were relevant in the vHLT's view to the resolution of the issue. The Minister for his part explained that the agreement by the authorities to receive the vHLT should be seen as a positive indication of their commitment. He indicated that contribution of labour was an age-old tradition in Myanmar, and that misunderstandings over forced labour often arose because of this. He also asserted that certain groups were giving false information to the media, to the ILO and to the United Nations concerning such matters. He nevertheless recognized that certain incidents of forced labour could arise when village heads exceeded their authority. He underlined that all cases of forced labour, including in his view those raised by the Liaison Officer a.i., occurred at this level. When he received information in this regard an investigation was conducted and those responsible prosecuted as appropriate. He noted that most of the cases raised by the Liaison Officer a.i. had now been disposed of. As regards a meeting with the senior leadership of the SPDC, the Minister indicated that Senior General Than Shwe was very busy with the National Convention and that Vice-Senior General Maung Aye was not in the capital. The vHLT reiterated the critical need for such a meeting, which it had already made clear prior to commencing its visit, and the extremely difficult position that it would be in should assurances in this regard not be given.

7. That afternoon, the vHLT had the opportunity to meet with the Prime Minister. The Prime Minister began by giving a very detailed presentation on the socio-economic and political situation in the country and the progress that had been made in this regard over the last 15 years. He then noted that on matters raised by the ILO there had also been progress in his view. The people of Myanmar were allowed a great degree of freedom and had a strong community spirit, which also extended to their participation in construction of roads and other projects. This gave rise to certain misunderstandings and allegations. So too did the negative views of certain small groups inside and outside the country. Nevertheless, he realized that these age-old practices could not necessarily be transposed to the modern age. It was also possible that some village heads abused their authority, and legal action was taken in such cases. The members of the vHLT then gave an overview similar to that which they had presented to the Minister for Labour that morning. They also again underlined the need for a meeting with the senior leadership. Disturbing reports indicated that the army was responsible for some very serious cases of forced labour, and it was necessary to have discussions with those having authority over the military. This was why their mandate called so explicitly for such a senior-level meeting. The Prime Minister took note of all these points, but did not give any specific responses either to the question of a senior-level meeting, or as regards the concrete steps outlined by the vHLT.
8. The following morning (23 February), having received no further indications regarding a meeting with the senior leadership, the vHLT decided that there was no point in continuing with the remaining meetings at the technical level and therefore cut short its visit. An unfortunate consequence of this was that the other contacts which the vHLT had planned to have also had to be cancelled. The vHLT requested another meeting with the Minister for Labour to explain the position, but he had already departed Yangon. It decided therefore to keep its meeting with the Minister for Foreign Affairs that morning, and to take advantage of that opportunity to explain to him, and through him to the highest authorities, the reasons for its decision, without going into any technical discussions. At the end of that meeting, having given the necessary clarifications, it handed over the prepared statement that it would issue that afternoon on departing the country. Attached to this statement the vHLT provided an informal aide-memoire setting out the main concrete steps on which it believed progress should be made. The vHLT also insisted that despite its early departure the door was still open for further developments. The Minister responded

to these points but was not in a position to provide any of the reassurances sought. As regards the Plan of Action, he was ready to facilitate discussions between the ILO and the Ministry of Labour, whose competence it was. He also gave assurances that if at any time the Liaison Officer a.i. had issues that he wished to raise, his Directors-General were available for discussions.

9. At the request of the vHLT, the Liaison Officer a.i., who remained in Yangon, held a briefing for the diplomatic community and the press that afternoon concerning its early departure, at which the statement and aide-memoire were distributed. These are reproduced in Appendix III.

### III. Conclusions

10. Although the vHLT regrettably had to cut short its visit to Yangon it is nevertheless in a position to contribute some significant clarifications to the Governing Body's consideration of the issue.
11. The main achievements of this visit may indeed be the fact that on the one hand it has allowed information to pass to the top level of the hierarchy and on the other hand has allowed the vHLT to pass back to the Governing Body a direct and independent assessment of the attitude of the authorities based on its experience over two days.
12. First, the decision of the vHLT to cut short its meetings at the technical level in the absence of any concrete commitments to have a meeting at the highest political level has undoubtedly managed to reach the senior leadership, despite the general reluctance on the part of the technical level to pass on negative news to that level. It is thus reasonable to think that even without having seen the vHLT, the senior leadership are now at least aware of the concrete points which according to the ILO require urgent attention if there is to be credible progress towards eradication of forced labour.
13. Second, beyond the assurance that the authorities are fully committed to the eradication of forced labour and that the ILO should take the word of the Ministry of Labour and of the Prime Minister as a fully reliable and sufficient expression of the commitment of the SPDC, the vHLT was disturbed by some eloquent silences or omissions:
  - No direct reference was made to the implementation of the Plan of Action, except by the Minister for Foreign Affairs, although he then pointed out that this matter fell within the competence of the Ministry of Labour. Nothing was said about the Facilitator mechanism despite repeated reference to it by the vHLT itself.
  - Behind the resurgence of the traditional theme about the lack of understanding on the part of the international community for the cultural dimension of practices which had nothing to do with forced labour, and the emphasis on the fact that the only real cases of forced labour were now credibly taken care of for the first time through criminal proceedings against village heads under section 374 of the Penal Code, the vHLT felt there was an implicit message that the Plan of Action may now have become unnecessary.
  - There was no direct answer to the repeated plea made by the vHLT about the need to address cases involving the military, which was the justification for its insistence to have access to the top level of leadership and which was the object of specific proposals attached to the statement communicated to the Minister for Foreign Affairs (that is, issuance of an executive instruction to all military units, and the establishment of a focal point within the army).

- 14.** These are fundamental questions to which a credible answer can come only from the highest authorities, as it is only at this level that the Government and military chains of command are integrated. There is still time before the discussion in the Governing Body for the authorities to correct any misinterpretation which may have occurred because of the circumstances within which the mission took place (which was the main reason cited at the start of the mission for the difficulty of finalizing the programme as the vHLT wished). This is why the vHLT was careful to leave a door open in the statement they issued upon departure, and to give a chance to the authorities to show in the few weeks to come that they are indeed interested in having a meaningful and bona fide dialogue on these issues.
- 15.** It is obviously not for the vHLT to make any suggestions as regards the course of action which the Governing Body may wish to take depending on what may happen between now and its discussion. All that it wishes to say to both parties as an independent team is its conviction as a result of this visit that a bona fide and meaningful dialogue at the required level of decision-making could bring positive results. In the view of the vHLT this has been borne out by the remarkable achievements which have been made possible by the ILO presence, which certainly needs to be further strengthened, and to which the vHLT wishes to pay tribute in concluding this report.

Bangkok, 25 February 2005.

*(Signed)* Ninian Stephen,

Ruth Dreifuss,

Eui-yong Chung.

## Appendix I

### Exchange of correspondence and discussions on the modalities for the vHLT's visit

1. In a letter dated 12 January 2005 to the Myanmar Minister for Labour, the Director-General informed the Myanmar authorities of the composition of the vHLT and the dates when it was ready to visit Myanmar (21-25 February), and underlined the need for appropriate modalities for the efficient discharge of its mandate to be agreed upon. The reply from the Minister for Labour dated 24 January welcomed the visit of the vHLT and the proposed dates, but gave rise to uncertainties as regards the modalities for the visit. For this reason and to ensure that all precautions had been taken to avoid potential misunderstandings, the Director-General wrote again to the Minister for Labour on 4 February and at the same time discussions were initiated in Yangon between the ILO Liaison Officer a.i. and the Myanmar authorities on the detailed modalities for the visit. Copies of the relevant correspondence are provided herewith.
2. The exchange of letters between the Director-General and the Minister for Labour and the discussions that the Liaison Officer a.i. had with the Ministry of Labour did not result in a clear indication that a meeting between the vHLT and the senior leadership of the State Peace and Development Council (SPDC) would be possible. Informal indications were given in these meetings, however, which suggested that the authorities understood the critical need for a meeting with the senior SPDC leadership in order for the vHLT to successfully discharge its mandate, and that the possibility for such a meeting remained open. The draft programme proposed by the authorities prior to the arrival of the vHLT included a meeting with Secretary-1 of the SPDC, but did not make mention of a meeting with the senior leadership.
3. Given the short time remaining before the proposed visit, the Liaison Officer a.i. wrote to the Minister for Labour on 10 February, confirming that the various meetings proposed at the technical level, as well as with SPDC Secretary-1, were considered by the vHLT to be important and valuable, but that a meeting with the senior leadership – namely, Senior General Than Shwe or Vice-Senior General Maung Aye – was seen by the vHLT as critical to its mandate. The letter also noted that unless clear indications were urgently received concerning the possibility of such a meeting, the vHLT might have to draw the conclusion that it was not possible to fulfil its mandate on the basis of the proposed programme.
4. The Liaison Officer a.i. reiterated these points in a meeting with the Deputy Minister for Labour on 11 February, and he warned that if the vHLT was not able to receive some assurances in this regard, it might have to make the difficult decision not to proceed with its visit. The Deputy Minister replied that there was a strong likelihood that the Prime Minister would meet with the vHLT, but that he was not in a position at that stage to give similar assurances as regards the meeting with the senior leadership. He did however explain that this was not because such a meeting was being ruled out, but rather because certain internal and external constraints made it difficult to give a firm commitment to such a meeting in advance.
5. In the circumstances, and in view of the time constraints, the International Labour Office agreed with the members of the vHLT that it should inform the Myanmar authorities that they were prepared to have the necessary formalities and arrangements for their visit completed, but only on the understanding that a satisfactory programme would be finalized as soon as possible on the vHLT's arrival in Yangon. It was on this understanding that visas were being requested. The Liaison Officer a.i. sent a *note verbale* to the authorities on 15 February to this effect (also reproduced herewith). At the same time, he passed a verbal message to the authorities that if the vHLT's understanding was incorrect, it was extremely important that it should be informed of this prior to commencing its mission in order to avoid a potentially more embarrassing situation.

**(a) Letter dated 12 January 2005 from the Director-General to the Myanmar Minister for Labour**

Dear Minister,

As you are aware, the Governing Body of the ILO at its last session in November 2004 adopted important conclusions concerning the situation of Myanmar, the full text of which is attached for ease of reference.

I have the honour to advise you that, as I was requested by the Governing Body, I have now constituted a very High-Level Team to fulfil the mandate defined in these conclusions, and whose objective is to a large extent to follow up on a previous HLT which successfully visited Myanmar in 2001 and was received by His Excellency Senior General Than Shwe and his colleagues of the State Peace and Development Council (SPDC).

The composition of this very High-Level Team is designed to ensure the highest possible degree of integrity, continuity and credibility in the discharge of the above mandate. It is as follows:

- The Right Honourable Sir Ninian Stephen, KG, AK, GCMG, GCVO, KBE, PC, former Governor-General of Australia, who chaired the former HLT in 2001;
- Her Excellency Madame Ruth Dreifuss, former President of the Swiss Confederation;
- The Honourable Eui-yong Chung, former Chairperson of the Governing Body of the ILO, Member of the National Assembly of the Republic of Korea and Chairperson of the Foreign Relations Committee of the Uri Party.

The very High-Level Team will be ready to visit Myanmar during the week of 21-25 February 2005 it being understood that appropriate modalities for the efficient discharge of its mandate will have been agreed well ahead between the Myanmar authorities and the ILO.

I am glad to inform you in that respect that my colleagues stand ready both in Yangon and in Geneva to undertake the necessary consultations for that purpose at the earliest convenience of the Myanmar authorities.

I trust that in view of the extreme importance of this visit for the future cooperation between Myanmar and the ILO and indeed with the international community at large, you will no doubt wish to bring the contents of this letter to Senior General Than Shwe's personal attention.

Yours sincerely,

*(Signed)* Juan Somavia.

**(b) Letter dated 24 January 2005 from the Myanmar  
Minister for Labour to the Director-General**

Excellency,

I would like to acknowledge the receipt of your letter dated 12 January 2005 concerning the visit of the ILO very High-Level Team to be headed by the Right Honourable Sir Ninian Stephen, former Governor-General of Australia.

I am pleased to inform you that we welcome the visit of the very High-Level Team during the week of 21-25 February. It will be a busiest time for all of us because the National Convention will be in session at the time. Despite this situation, we assure you for all possible arrangement for the activities of very High-Level Team. It is my pleasure to inform you that the Chief Justice, Attorney-General and the ministers from the ministries concerned will be available to have separate meetings for constructive dialogue.

Freedom of contact will be granted with the exception of the meeting with the persons who are under detention or have been put under restraint according to the existing law.

The members of the very High-Level Team will be granted the privileges accorded to the personnel from the UN organizations as in the case of previous ILO missions to Myanmar.

I am looking forward to the fruitful cooperation between Myanmar and ILO.

Yours sincerely,

*(Signed)* U Thaug.



**(c) Letter dated 4 February 2005 from the Director-General to the Myanmar Minister for Labour**

Dear Minister,

Thank you for your letter dated 24 January 2005 in reply to my letter of 12 January 2005 concerning the visit of a very High-Level Team.

I note that the dates for the visit are acceptable to the authorities despite some inconvenience it may create and I wish to thank you for that.

As regards other modalities, I would first like to remind you that the recognition of the freedom of contacts which is mentioned in your letter is essential to enable each mission to discharge its specific mandate. The nature of such contacts of course varies with the specific object of the mission. In the present case, the mandate given by the Governing Body does not call for the same type of contacts as the previous one. However, it must be clear that it is ultimately for the members of the very High-Level Team to determine what contacts may be relevant to the effective discharge of the mandate entrusted to them by the Governing Body, and to approach the authorities for that purpose as appropriate. The contents of your letter seem to fully allow for this.

The most critical aspect of the modalities now is to agree on a programme which enables the very high-level mission to discharge the mandate of the Governing Body. While of course discussions at the technical level such as those indicated in your letter are necessary and welcome, the said mandate implies that the very High-Level Team will meet the senior leadership. It is with that understanding that the members of the very High-Level Team have accepted to participate. The Office is ready to discuss urgently a programme that meets this requirement.

Yours sincerely,

*(Signed)* Juan Somavia.

**(d) Note verbale dated 15 February 2005 from  
the Office of the Liaison Officer to the  
Minister for Labour**

The Office of the ILO Liaison Officer presents its compliments to the Minister for Labour of Myanmar and has the honour to convey to His Excellency the following information.

The Office of the ILO Liaison Officer has been instructed by ILO headquarters in Geneva to inform His Excellency the Minister for Labour, and through him the State Peace and Development Council, that following consultations with the members of the very High-Level Team and on the basis of the indications provided through the Liaison Officer as regards the tentative programme of their visit and the prospects for a meeting at the highest level, they have agreed to have the necessary formalities and arrangements for their visit completed. These steps are being taken, however, on the understanding that the tentative programme will be adjusted, complemented and finalized as appropriate as soon as possible upon their arrival in Yangon.

It is on this understanding that the necessary visas are being urgently requested, in the case of Sir Ninian Stephen and His Excellency Eui-yong Chung through the Myanmar embassies in their respective countries, and through the Permanent Mission of Myanmar in Geneva for Her Excellency Madame Ruth Dreifuss and for Mr. Francis Maupain, who is to accompany the vHLT as its Executive Secretary.

The Office of the ILO Liaison Officer avails itself of this opportunity to renew to the Minister for Labour of Myanmar the assurances of its highest consideration.

## Appendix II

### Programme of meetings arranged by the authorities and provided to the vHLT on its arrival in Yangon

*[Note that this was not the programme of meetings that actually took place, as explained in the main text of this report.]*

#### **Monday, 21 February**

18:45        Arrival at Yangon International Airport  
(H.E. Deputy Minister for Labour will meet the team at the airport)

#### **Tuesday, 22 February**

10:00        Call on H.E. U Thaung (Minister for Science and Technology and Labour)

16:00        Call on H.E. Maj. Gen. Maung Oo (Minister for Home Affairs)

19:30        Dinner to be hosted by H.E. the Minister for Labour

#### **Wednesday, 23 February**

11:30        Call on H.E. U Nyan Win (Minister for Foreign Affairs)

15:00        Call on H.E. U Aung Toe (Chief Justice)

#### **Thursday, 24 February**

10:00        Meeting with Implementation Committee

p.m.        —

#### **Friday, 25 February**

a.m.        —

p.m.        —

19:45        Departure from Yangon  
(H.E. the Deputy Minister for Labour will see the team off at the airport)

## Appendix III

### (a) Statement by the ILO very High-Level Team at the close of its visit to Myanmar

The mandate which had been entrusted to the vHLT by the Governing Body of the ILO at its 291st Session (November 2004) was to evaluate the attitude of the Myanmar authorities at the highest level to the elimination of forced labour and assess their determination to continue their cooperation with the ILO in this regard. Its composition had been established accordingly. The Myanmar authorities were fully aware of these terms of reference before the mission departed for Yangon. However, the mission was informed on its arrival that for various reasons linked to the National Convention the programme did not include the meetings that would have enabled it to successfully complete its mandate as it understood it.

Under the circumstances, and after having discussions and making its views known to the Minister for Labour and to the Prime Minister, the mission decided that there would be no point at this stage to have more in-depth discussions at the technical level on the concrete steps outlined in those meetings which in the mission's view could contribute to alleviating recent concerns expressed in the Governing Body.

The vHLT will submit its report to the next session of the ILO Governing Body in March.

Yangon, 23 February 2005.

*(Signed)* Sir Ninian Stephen  
on behalf of the vHLT.

### (b) Aide-memoire

#### ***Additional concrete steps considered by the mission to be important for the effective eradication of forced labour***

- Issuing a public executive instruction from the competent SPDC level to give effect to the provision in Order Supplementing Order 1/99 that the Ministry of Defence should issue further directives to all units under its command not to requisition forced labour, and giving adequate publicity to same.
- Reconfirmation of the commitment of the authorities to the terms of the joint Plan of Action on forced labour, including identification of the Facilitator, together with the appointment of a high-level focal point in the army to deal with allegations that concern the army.
- Renewing the commitment of the authorities to the freedom of movement of the ILO Liaison Officer.
- Taking additional measures that could build confidence vis-à-vis the people of Myanmar as regards the possibilities to lodge complaints regarding forced labour. Such measures should include extending the amnesty which was granted to the two persons in the high-treason case to the third person whose conviction had an ILO dimension, as well as credible solutions to the serious forced labour cases identified by the ILO Governing Body in November 2004.