



THIRD PART

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

CONTENTS

	Page
A. Record of the discussion in the Committee on the Application of Standards	2
B. Observation of the Committee of Experts on the Application of Conventions and Recommendations on the observance of the Forced Labour Convention, 1930 (No. 29) by Myanmar	11
C. Other developments concerning the question of the observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29)	26
D. Report of the High-Level Team (Governing Body documents GB.282/4 and GB./282/4/Appendices)	36
E. Minutes of the discussion in the Governing Body (at its 282nd Session) on developments concerning the question of the observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29) (Governing Body document GB.282/PV)	97
F. Report of the ILO technical cooperation mission to Myanmar (19-25 February 2002) (Governing Body document GB.283/5/2)	111
G. Further developments following the return of the ILO technical cooperation mission (Governing Body document GB.283/5/3)	141

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

The Chairperson recalled that this special sitting was being held to determine whether Myanmar was complying with its obligation to give effect to the provisions of the Forced Labour Convention, 1930 (No. 29). This item had been placed on the Committee's agenda pursuant to paragraph 1(a) of the resolution adopted by the Conference at its 88th Session, under article 33 of the ILO Constitution, with a view to the adoption of measures to ensure compliance with the recommendations of the Commission of Inquiry established for that purpose. The resolution of the Conference stated 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".

For the examination of this case, the Committee had before it the following documents: (1) the observation of the Committee of Experts on the Observance of Convention No. 29 by Myanmar (reproduced below under B); and (2) document C. App./D.6(Corr.), on "Other developments concerning the question of observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29)" which contains the report of the interim Liaison Officer (reproduced below under C); and document C.App./D.7, containing Governing Body documents GB.282/4 (Report of the High-Level Team), GB.282/PV (Minutes of the discussion in the Governing Body at its 282nd Session), GB.283/5/2 (Report of the ILO technical cooperation mission to Myanmar) and GB.283/5/3 (Further developments following the return of the ILO technical cooperation mission) (all reproduced below under D to G).

A Government representative of Myanmar stated that Myanmar was going through a process of political, economic and social changes, with very encouraging political developments recently which have been welcomed by the international community. The speaker stated that the Government had several measures to report, which had been taken between the 89th Session of the International Labour Conference last year and the present ILC in June 2002, and which had been significant and sustained.

The speaker stated that one important development after the 89th Session of the ILC was the visit of the ILO High-Level Team to Myanmar from 17 September to 6 October 2001. The High-Level Team acknowledged in its report a certain decrease in the incidents of forced labour. It also reported that in contrast to the situation reported in 1998 by the Commission of Inquiry, the High-Level Team found no indications of the current use of forced labour on civil infrastructure projects. The High-Level Team also made some recommendations on ways to resolve the issue.

Another significant development mentioned by the speaker was the appointment of the interim ILO Liaison Officer in Myanmar, pursuant to a Memorandum of Understanding signed between the Government of Myanmar and the ILO in March 2002. The speaker stated that the Government of Myanmar had done its part to implement this Understanding. As the Director-General was still looking for a suitable candidate for the post of an ILO Liaison Officer he proposed to appoint an interim ILO Liaison Officer, to which the Government agreed. Consequently, Mr. Leon de Riedmatten, Director of the Centre for Humanitarian Dialogue, was appointed as the interim Liaison Officer with effect from 6 May 2002. Since then, Mr. Leon de Riedmatten had been able to hold a series of meetings with the authorities and a broad range of people. He had held a total of 24 meetings, including meetings with the Lt.-Gen. Khin Nyunt, Secretary of the State Peace and Development Council; the Minister of Labour; the Minister of Home Affairs; a representative of the Prime Minister's Office; the Deputy Minister for Foreign Affairs; as well as high officials from various other ministries and departments, politicians and representatives of national races, the diplomatic community, the United Nations agencies and NGOs in Myanmar. Furthermore, the interim ILO Liaison Officer was able to hold substantive discussions on crucial issues relating to the observance of Convention No. 29 with the Implementation Committee, led by the Deputy Minister for Home Affairs. Field observation teams led by the members of the Implementation Committee had made numerous trips to various parts of the country. The objective of these trips was to ascertain the observance of orders prohibiting forced labour and the actual functioning in the field of the comprehensive framework of the legislative, administrative and executive measures put in place by the Government.

The speaker emphasized that his list of significant steps taken by the Myanmar Government was not exhaustive, and that all of the developments and significant progress made by the Government of

Myanmar and the ILO in this respect have been fully reported by Mr. Leon de Riedmatten in document No. C. App./D.6 (Corr.). The speaker considered that, on the whole, Mr. Leon de Riedmatten's report was positive, factual and fairly balanced. The significant developments and positive measures taken by the Government of Myanmar outlined in this report clearly demonstrated the consistent political will and the firm commitment of the Myanmar authorities to continue their efforts for the elimination of forced labour in the country. To this end, the Myanmar Government was doing its utmost by taking effective measures systematically and step by step. The speaker stressed that there are certain things to be accomplished by Myanmar and also certain things which need to be accomplished by the international community. The second aspect has been rightly highlighted by the High-Level Team in section 6 of its report. The High-Level Team underscored the importance of economic modernization, consistent political will of the authorities and the engagement of the international community. It also stressed that the international community should be of assistance in the process. As the earnest endeavours of the Government of Myanmar had made further progress, the international community should respond positively to these significant steps. The speaker hoped that these steps will pave the way for a review of the question of removing all the measures taken against Myanmar under article 33 of the ILO Constitution. The Government of Myanmar attached great importance to the process of dialogue and cooperation with the ILO. This process was working well, and has produced tangible results. The speaker hoped to sustain and carry it forward in order to resolve the issue and achieve the aforementioned objective.

The Worker members took note of the statement of the Government representative according to which the situation had improved. They urged the Government to understand that the initiatives and changes which had been mentioned should be appraised by the ILO and that the Organization should be in a position to evaluate the application of Convention No. 29, especially to assess in an objective and impartial way the implementation of the adopted measures and their real impact on forced labour in Myanmar. The elements available for the time being did not lead to the conclusion that the situation was improving. Forced labour ravaged the country for many years and the search for a solution was very difficult in the ILO as in other international organizations. This special session was part of the global approach adopted by the ILO in the face of the situation.

The Worker members recalled that independently of documents D.6(Corr.) and D.7, the Conference Committee on the Application of Standards relied in the first place on the report of the Committee of Experts, without necessarily excluding all the new information.

The Worker members wished that this case would continue to be examined as long as the situation of forced labour in Myanmar did not improve. The seriousness, persistence and systematic character of the violations of Convention No. 29 in Myanmar were no longer contested, but the problem was complex, due to its nature, its diverse forms and its extent. It weighed on the whole population and its consequences were dreadful. It was harmful to employment, since the massive requisitions of labour by the authorities prevented "normal" work, and this was detrimental to the economy of the country as a whole.

Based on the observation that the violations of Convention No. 29 were widespread, systematic and existed in law as well as in practice, the Worker members called on the Government to finally implement the recommendations of the Commission of Inquiry and the Governing Body, namely: (1) that the legislation be brought into conformity with Convention No. 29 and, hence, that all legislation rendering forced labour possible be abrogated; (2) that in actual practice, recourse to forced labour be put to an end in the whole country and especially the remote areas; (3) that the penalties foreseen against persons found guilty of having exacted forced labour be effectively imposed.

No doubt, following the initiatives of the Office, changes had been observed. But these changes concerned mainly, if not exclusively, the procedure. Following the appeals of this Committee, the ILO had sent in 2001 a High-Level Team to Myanmar and in the border regions in order to assess the situation on the spot. On the basis of the report of this mission, the Governing Body had adopted conclusions aiming in particular that the Director-General "pursue the dialogue with the authorities in order to define the modalities and parameters of continued and effective ILO representation in Myanmar, which should be put in place as soon as possible".

A technical cooperation mission had followed in February 2002 in order to reach agreement on the possible conditions and modali-

ties for an effective ILO representation in this country. Further to an Understanding between the ILO and the Government of Myanmar, Mr. de Riedmatten had been appointed interim Liaison Officer on 6 May for a period of two months.

But all these events concerned only the procedures. The concrete situation had not changed, in any case not significantly. The Government should do what was needed to bring about a fundamental change of the situation in the three abovementioned areas, since today there was no improvement as pointed out by the Committee of Experts in paragraph 29 of its observation, where it noted that “none of the three recommendations formulated by the Commission of Inquiry and accepted by the Government have so far been met”.

As long as there was no irrefutable and, most importantly, convincing proof that the situation in Myanmar had improved, the Worker members would not even consider changing their position concerning the measures decided on the basis of article 33 of the ILO Constitution.

Finally, the Worker members noted that, in the course of the discussion, each aspect of this particularly complex case would be addressed in the name of the Workers’ group, by other speakers: the evidence of the persistence of forced labour in Myanmar would be addressed by the Worker member of Pakistan; aspects concerning infrastructure by the Worker member of France; the aspects concerning ethnic diversity by the Worker member of Indonesia; social and labour relations by the Worker member of Sweden; the attitude of the army and the infringements of human rights by the Worker member of the Republic of Korea; the attitude of the Japanese Government and foreign development assistance by the Worker member of Japan; the involvement of multinationals by the Worker member of the Netherlands; trans-frontier migration by the Worker member of Thailand; and the information collected by the International Confederation of Free Trade Unions in the country by Mr. Maung-Maung, General Secretary of the Federation of Trade Unions of Burma.

The Worker member of the United States, on behalf of the Worker members, said that much had happened since last year’s special session concerning this very difficult case. Despite the latest developments, the basis of discussion in this Committee was the Committee of Experts’ report. Thus, his intervention would concentrate on what the experts had to say regarding Burma’s continuing non-compliance with its treaty obligations under the Forced Labour Convention, 1930 (No. 29). However, he also planned to comment on the information contained in documents D.6(Corr.) and D.7. The comments of the experts were divided in three sections concerning: changes in the law, actual practice and the enforcement of penalties for the exaction of forced labour.

Much had been said both in this Committee and the Governing Body about the administrative orders issued by the regime that instructed the authorities to ignore the provisions of the Village Act and Towns Act which provided the legal basis for the exaction of forced labour. The experts emphasized this year in paragraph 5 of their observation that further measures were necessary as outlined in the report of the Commission of Inquiry in paragraph 539(b). These changes had already been discussed in the past in this Committee and in the Governing Body. It should be emphasized, as noted by the experts in paragraph 4 of the observation, that, according to the High-Level Team, legislative powers had been exercised by the Government at least on two occasions, in June 2000 and February 2001; when it adopted the “Judiciary Law, 2000” and the “Attorney-General Law, 2001”. The arguments presented by the Government in the past for its refusal to amend the Village Act and Towns Act did not seem to hold up, therefore, and the Worker members wondered why the Government remained so obstinate in refusing to comply with the request of the Commission of Inquiry and the Committee of Experts to amend the law. After all, from the point of view of the victims, a mere withdrawal of the administrative orders, perhaps by a single signature of a top military leader, would once again create the “legal” justification for exacting their labour by force. Furthermore, very important questions remained regarding the seriousness of the efforts made by the Government to communicate the orders to its people and to those most responsible for exacting forced labour, the regional and local military leaders. As emphasized in paragraph 9 of the report of the Committee of Experts, clear instructions were 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 was prohibited, and the manner in which the same tasks were henceforth to be performed.

Regarding the dissemination of the orders to the populace via the mass media, the interim Liaison Officer had informed this Committee in paragraph 25 of document D.6(Corr.) that town criers had been used to scream out verbal explanations. Somehow, this did not seem to be enough. The Worker members wondered about the extent to which any effort was made to disseminate the orders in va-

rious ethnic languages and why the radio media did not seem to be used at all. The information contained in the report of the Committee of Experts described a continuing sluggishness on the part of the Government to commit to a real campaign to let the people know that forced labour would not be tolerated and that those held responsible for exacting forced labour would be punished. Recent interviews of victims who had crossed the border into Thailand supported this description. Very few had any knowledge whatsoever that forced labour was now against the law in Burma.

Regarding the actual continuation of forced labour practices in Burma, he wished to emphasize the report issued recently by the Federation of Trade Unions of Burma and by a reputable international NGO, EarthRights International, that documented forced labour in three ethnic States and in two Divisions based on interviews of 77 victims. Of particular note was the fact that the use of forced labour continued to be closely associated with other severe human rights abuses. Many of the victims interviewed by EarthRights had been beaten, stabbed, and/or tortured. There had been numerous reports of executions and incidents resulting in multiple deaths. And there had been six cases of rape, several of which had resulted in the death of the victims. This information was a reminder of what this case was really about. Regarding enforcement, the experts had found no indication that any person responsible for the exaction of forced labour and the concomitant crimes had been sentenced or even prosecuted under the Penal Code and in conformity with Article 25 of [Convention No. 29](#). The report of the interim Liaison Officer in paragraph 25 of document D.6(Corr.) confirmed that up to that point there had been no instances of prosecutions under section 374 of the Penal Code. This point seemed to be confirmed by the Government in its intervention. So in sum, the experts concluded once again as they had for a number of years, that none of the three recommendations formulated by the Commission of Inquiry and accepted by the Government had so far been met.

Turning to the information contained in documents D.6(Corr.) and D.7, while recognizing that the establishment of an interim liaison office was an indication of some movement, the Worker members saw this as only a first step in a long journey rather than an historic breakthrough as the Government had characterized it. Several conditions had to be met for the liaison office to be credible and to contribute in a significant manner to the elimination of forced labour. The Worker members anticipated that a permanent Liaison Officer would be appointed soon, and repeated what the Governing Body had said in March that such an appointment was only an initial step toward establishing a full and effective, permanent representative office. In the interim, the liaison office should be quickly and sufficiently staffed and as had been emphasized in the Governing Body discussions, must have complete freedom to carry out its work throughout the country. The Worker members wondered if monitoring progress, or the lack thereof, toward the elimination of forced labour would be one of the responsibilities of the permanent liaison office. This would be an exceedingly difficult task given the dimensions of the problem throughout Burma and would require a staff of sufficient size and competence. They felt it was extremely important therefore, as a start, that a deputy Liaison Officer be retained without delay. They also believed that if the liaison office was to work effectively, continuity between its work and that of the Commission of Inquiry, the High-Level Team and other past missions was essential. The need for continuity should factor into the appointments of the Liaison Officer, the deputy and other additional staff. The Worker members had some serious concern about the language contained in paragraph 24 of document D.6(Corr.) regarding the importance of confidentiality in facilitating the work of the liaison office. They presumed that the Liaison Officer would be required to report to the Governing Body on all aspects of its work including any progress made or the lack thereof toward the elimination of forced labour. If the need for confidentiality compromised this aspect of the Liaison Officer’s work, then the Government must agree to another mechanism such as regular missions to monitor progress or lack thereof. This required the full consent and cooperation of the Government. The need for such ongoing and credible information was extremely important in order to avoid any mistaken impression caused by the liaison office’s confidentiality requirements that the problem had diminished when it fact it might not have.

There were of course other, more effective ways to monitor the extent to which forced labour continued to be exacted as well as to collectively empower potential victims to resist it. As the High-Level Team indicated in paragraph 68 of document [GB.282/4](#), if there existed genuine civil society organizations, in particular strong and independent workers’ organizations as required by the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), ratified by Burma, these could have provided individuals affected by forced labour with a framework and collective support which would have helped them to make the best possible use of whatever remedies that were available to de-

find their recognized rights. Unfortunately, there was absolutely no freedom of association in Burma. Independent trade unions did not exist and any attempt to organize one was dealt with in the harshest terms. The Worker members called on the Government once again, as this Committee had been doing over many years, to fulfil its commitments under [Convention No. 87](#). As indicated by the High-Level Team, this must be a necessary component of any sincere and effective effort on the part of the Government to eliminate forced labour.

Regarding the establishment of an ombudsperson to whom complaints regarding forced labour could be submitted and who would have a mandate and the necessary means to conduct direct investigations, the Worker members were extremely disappointed at the continued resistance by the Government expressed in paragraph 21 of document D.6(Corr.) toward the establishment of such an ombudsperson. In the absence of an independent judiciary, there was an urgent need for such an institution as the only potentially effective legal channel available to victims to end the practice of forced labour and seek legal redress. The failure to implement this important aspect of the High-Level Team's recommendations suggested to them that the Government was not really serious about enforcing the legal changes it claimed to have made. They saw only small steps and continued resistance rather than real commitment to end the practice of forced labour. Regarding the murders in Shan State, they were extremely disappointed once again in the Labour Minister's comments contained in paragraph 21 of document D.6(Corr.) regarding the alleged murder by members of the military of seven members of the Shan Community for complaining to authorities about being forced to labour. The continued resistance by the Government to an independent investigation gave them the growing impression that the allegations must be true. If the Government truly believed that the allegations had no basis, then the Government representative should explain why his Government continued to refuse an independent investigation, especially one led by Sir Ninian Stephen, the highly respected Chairperson of the High-Level Team, as proposed at the last meeting of the Governing Body. The establishment of the facts of this case by an independent investigation followed by the prosecution of those held responsible for the murders would demonstrate in very concrete terms the Government's sincerity in cooperating with the ILO. Conversely, the continued failure to do so would only further erode the Government's credibility that it was willing and able to punish those responsible for forced labour, including members of the armed forces.

Because of the seriousness of the case over so many years, the Worker members were growing increasingly tired of these small steps. They needed to see real progress toward the elimination of forced labour, not for their sake, but for the sake of the victims, both past and future. The Government had been unable once again to provide any new evidence that would dispute the experts' view that none of the three recommendations formulated by the Commission of Inquiry had so far been met. They would hope and expect, therefore, that the conclusion of this Committee would reflect the actual reality of forced labour in Burma and this Committee's urgent expectation that the Government must move much more quickly and resolutely in ending forced labour both in law and in practice. The Government representative of Burma had begun his comment by noting the political progress made in the country. When in the past the Worker members had referred to the political situation in Burma, it had been argued that the political question was beyond the scope of the case, which concerned forced labour only. The speaker agreed with the stance of the Government representative that political developments impact on the elimination of forced labour. He emphasized that, as had been noted by the Commission of Inquiry in the past, the situation in Burma would be effectively addressed only when political normalization and civilian, democratic rule returned to the country.

The Employer members considered that this unusual case concerned serious and longstanding violations of the Forced Labour Convention, 1930 ([No. 29](#)). The population of Myanmar had been suffering for a long time as forced labour had been exacted of them by the military for building roads, railways, and other infrastructure. For over ten years now, the case had been the subject of observations by the Committee of Experts. However, the immediate abolition of forced labour had been called for by the ILO and promised by the Government more than 30 years ago and this Committee had examined this case repeatedly noting the violation of the rights enshrined in [Convention No. 29](#) in special paragraphs.

[Convention No. 29](#), which had the highest number of ratifications, was rightly considered as a core Convention of the ILO since it touched upon a basic human freedom. Although the Government had at first denied all allegations about the existence of forced labour in the country, this had been described exhaustively in the 1998 report of the Commission of Inquiry. The practice of forced labour had been supported by two laws, namely the Village Act and the Towns Act. The Committee of Experts had asked for an amend-

ment of these laws, a change in the actual practice and the enforcement of penalties. All these calls had been strongly supported by the Governing Body and the Conference Committee. Since no sufficient progress has been observed over the years, the Conference had adopted at its 88th Session in May-June 2000 a resolution in which it was clearly stated that the Conference Committee on the Application of Standards would continue to examine the case every year until final satisfactory improvement had been made. In May 2001, the "Understanding on an ILO Objective Assessment" was concluded between the ILO Director-General's representative and the Government of Myanmar in order to enable the carrying out of an objective assessment in the country with respect to the practical implementation and actual impact of the legislative, executive and administrative measures which the Government had adopted. In autumn 2001 a High-Level Team visited the country and its report was submitted to the Governing Body at the session in November 2001. A further mission had taken place in February 2002. The fact seemed to be that there was still in Myanmar legal justification for exacting forced labour. The two Acts, which were the basis for the exactation of forced labour, had not been revoked and the practice remained unchanged. However, the Government had issued Order No. 1/99 and its supplementing Order in 1999 in order to provide a statutory correction to the existing legislation with a view to the practical implementation of the Convention. Although this represented an important step, the existing legislation should be amended and this had not been accomplished yet.

Overall, the evolution of this case seemed to have two aspects. The first concerned the process of discussion between the ILO and Myanmar. After an early denial on behalf of the Government, gradual steps had led to increased cooperation with the ILO, a High-Level Team had visited the country and other technical cooperation missions had taken place. Since May 2002, an interim Liaison Officer had been appointed. During the various missions carried out by the ILO, the Government had stuck to its promises and cooperated with the ILO. The reports emphasized this point expressly. However, in order to arrive at this situation, continuous pressure had to be exercised on the Government. Although willingness to cooperate seemed to be growing on the part of the Government, this willingness could have been demonstrated more rapidly. Overall, these points together lent a positive outlook to the case.

However, when it came to the core of the case, i.e. matters of substance concerning the final abolition of forced labour, the Employer members emphasized that the only way to achieve substantive progress would be to abolish in law and practice forced labour, which had prevailed in Myanmar and continued to prevail to a certain extent. Although the two Orders might provide a basis for ensuring compliance with the Convention in practice, the most important problem was the publication of these texts. Knowledge of their content was indispensable in order to ensure their application. The Government had emphasized on various occasions obstacles to the dissemination of information due to the size of the territory and the remoteness of certain areas. It was important to ensure that the dissemination of information concerning these Orders was stepped up through all communication tools available, including the mass media. However, the dissemination of new laws by the local authorities and the military did not seem to be a safe method as these were the principal actors exacting forced labour. Moreover, in view of the many languages spoken in the country, the provisions of the Orders needed to be translated and published in all languages. These Orders were totally unknown in some regions of the country. No progress had been made in this respect. Furthermore, given the enormity of projects carried out with forced labour, the abolition of such labour would have had budgetary implications and would have been reflected in the budget. But no information in this respect was available and this was an indicator that forced labour was not completely abolished. The same applied in the area of penalties as instructions prohibiting the requisition of forced labour seemed to be rarely applied. In this respect, a reversal of the burden of proof was required. The Government had to prove that the requisition of forced labour was not carried out any more. As to the Government's assertion that forced labour represented a tradition in the country, the existence of a "grey area" between what constituted forced and voluntary labour was problematic. However, the facts provided certain indicators. The army, one of the main authorities exacting forced labour, had been increased. No complaints concerning the use of forced labour had been made since in most cases, those who lodged complaints were punished. The Government denied access to independent observers while, as indicated in document D.6(Corr.), the interim Liaison Officer had heard misgivings about the creation of an ombudsperson. Moreover, there was no inquiry into the allegation of the exactation of forced labour which caused the deaths of seven people and the enforcement of a ban against forced labour depended on local authorities especially the military commanders.

All this showed that there was still a long way to go to achieve the abolition of forced labour. This Committee should urge the

Government to accelerate the process for the eradication of forced labour in the country. Steps had been made in the right direction, but should go further and faster. Progress should not be only on paper – it was about people and their basic rights. The objective of this Committee should be to make the rights enshrined in Convention No. 29 a social reality for the sake of the population of Myanmar. The Employer members were realists and would continue to look upon developments attentively, critically, with a rational spirit, and with an eye towards the rights of the people of Myanmar.

The Government member of Spain spoke on behalf of the **Government members of the European Union. The Government members of Bulgaria, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia and Slovenia** – Central and Eastern Europe States associated with the European Union – **the Government members of Cyprus, Malta and Turkey** – associated countries – and **the Government members of Switzerland, Norway and Iceland** had also endorsed the statement. The speaker stated that the European Union continued to encourage the restoration of democracy, the pursuit of national reconciliation, the protection of human rights and the elimination of forced labour in Burma/Myanmar. The European Union also took note of the last report of the ILO and, in this respect, welcomed with satisfaction the progress achieved in setting up a liaison office in Rangoon as a first step towards the objective of an effective ILO representation in Burma/Myanmar. The European Union called on the authorities of Burma/Myanmar to facilitate requests from the secretariat to ensure that the office had both sufficient staff and technical back up to be able to perform its duties and the freedom of movement and level of cooperation required for it to discharge these duties in practice.

The European Union once again urged the authorities of Myanmar to appoint a permanent ombudsperson, since it believed that its role could be of importance in achieving major progress towards eliminating forced labour. It hoped therefore, that consultations on such an appointment would be held between the Office and the authorities of Myanmar. The European Union also urged the authorities to follow up on the proposal made in the March 2002 session of the Governing Body that the enquiries into the allegations concerning the seven murders in Shan State should be confirmed by an external independent authority accepted by all parties. The European Union expressed its concern that, despite some cooperation with the International Labour Office, no significant progress had been achieved towards eradicating forced labour. The European Union also wished to express its concern that information received on Myanmar pointed to an increase in the incidence of forced labour and forced contributions of labour in certain areas. Furthermore, the European Union called on the authorities of Myanmar to pursue urgent and sustained action for the adoption of immediate steps for the total elimination of forced labour throughout the country. In the light of the foregoing, and of the still very modest progress made in the fight against forced labour in Myanmar by the authorities, the European Union believed that possible consideration of removing the measures imposed under article 33 of the ILO Constitution remained some way off. The European Union would continue to monitor the situation closely in the months leading up to the Governing Body meeting in November 2002.

The Government member of Indonesia, speaking on behalf of the ASEAN States Members of the ILO, gave thanks to the Director-General for his efforts in cooperating with the Government of Myanmar. He welcomed the signing on 19 March 2002 of the understanding between the Government of Myanmar and the ILO on the appointment of an ILO Liaison Officer in Myanmar not later than June 2002. He added that the selection of the Liaison Officer was extremely important and needed to be made with the utmost care after consultations with the parties concerned. He welcomed the fact that agreement had been reached on the appointment at this early stage of Mr. Leon de Riedmatten as the ILO Liaison Officer on an interim basis as of 6 May 2002, pending the appointment of a full-time Liaison Officer. He concluded that, with the appointment of an interim Liaison Officer, cooperation between the ILO and the Government was progressing well and emphasized the importance of the discussions in the Committee on this issue being conducted in a constructive and forward-looking manner. He called upon the Government and the ILO to continue cooperation until the issue was completely resolved.

The Government member of Australia, also speaking on behalf of the **Government member of New Zealand**, expressed a deep, ongoing interest in this matter and noted the modest progress which had been made since the previous year, and particularly the visit and report of the High-Level Team, and most recently the appointment of the interim Liaison Officer. While supporting the continuing cooperation between the ILO and the Government of Myanmar, and recognizing that Myanmar had made and continued to make efforts to eliminate the practice of forced labour, he emphasized that the various visits which had taken place and the ILO pre-

sence in Myanmar were only a means to an end. There should be no confusion between progress in terms of the process and progress on the substantive issue itself, namely the elimination of forced labour. The High-Level Team had found towards the end of 2001 that, while there had been a very moderately positive evolution, the practice of forced labour in Myanmar was still widespread. While welcoming the modest improvements that had taken place since 1998 he therefore warned that there was still a very long way to go. He therefore encouraged the Government to redouble its efforts to eliminate the practice of forced labour.

The speaker expressed support for the ILO's ongoing role in the country and encouraged the Government and the ILO to continue to cooperate on the early appointment of a full-time permanent Liaison Officer, with freedom of movement and access, as a step towards a more substantive ILO presence. In addition, a fully-fledged ILO Office with adequate staff and resources should be established as soon as possible. He also urged the Government to implement the recommendations of the High-Level Team, in particular the appointment of an ombudsperson who would, by mandate and function, have a greater ability to make real progress in investigating and combating forced labour. He also urged the authorities to conduct further inquiries, or to allow an external, independent authority acceptable to all parties to investigate the allegations of the killings of seven villagers in Shan State. He looked forward to a report to the Conference in 2003 which he hoped would record significant substantive progress in the elimination of forced labour in the country.

The Government member of Canada stated that her Government welcomed several recent positive developments in Myanmar, including the liberation of Daw Aung San Suu Kyi with a view to national reconciliation and the appointment of an interim ILO Liaison Officer (Mr. de Riedmatten). She called upon the ILO and the Government of Myanmar to agree to the permanent appointment of a Liaison Officer at Yangon so that the latter could fully discharge his or her duties by the end of this month, as agreed at the last session of the Governing Body. While these developments augured well for future cooperation between the ILO and the Government of Myanmar, the primary objective was the eradication of forced labour in the country. In this respect, the appointment of an ILO Liaison Officer was only a first step pending the establishment of a permanent ILO presence in Myanmar. As emphasized during the 283rd Session of the Governing Body, the Liaison Officer would only be able to carry out his or her task if granted full freedom of movement and access, including to the National League for Democracy, ethnic populations and the military authorities.

The Liaison Officer could play an important role in disseminating the Orders amending the Towns Act and the Villages Act and she was encouraged by the efforts deployed by the Government in this respect. She nevertheless urged the Government to investigate allegations of forced labour and to prosecute and punish those found guilty under section 374 of the Penal Code. Canada continued to believe that the appointment of an ombudsperson would be a useful recourse for victims of forced labour. It continued to request that an independent investigation be opened into the killings of seven villagers in Shan State reported to have been murdered after complaining to the military authorities that they had been constrained to perform forced labour. Canada hoped that the ILO and the Government would continue to cooperate to establish an ILO presence to assist the Government in the implementation of the recommendations of the Commission of Inquiry and the recommendations and conclusions of the Governing Body for the definitive eradication of forced labour in Myanmar.

The representative of the International Confederation of Free Trade Unions, Secretary-General of the Federation of Trade Unions of Burma, welcomed the release of the national leader Daw Aung San Suu Kyi, following 19 months of house arrest. However, he noted that, although the international media had reported the news of her release, the military-controlled media in Myanmar had not mentioned one word about it. Nor had the state media reported the order of General Khin Nyunt to forbid forced labour, although he had informed the ILO that an order had been issued after the ILO adopted the resolution on forced labour in the country. This showed that, even though there was public denial, the regime was scared of international pressure and would quietly manoeuvre to ease it.

He recalled that forced labour still continued in the country, even though it had ratified [Convention No. 29](#) in 1955. Farmers, teachers, health workers, regardless of their age, ethnicity or religion, were forced by the military to work without pay for weeks and months, sometimes for up to six months. These people were not allowed to go back and inform their families, or get leave when sick. Forced labour meant a farmer was taken by the military and not allowed to harvest his crop, a fisherman was taken by the military and made to ferry the troops and not fish for his daily income. It meant that whole villages had to work for six months clearing the

forest and levelling the ground for the offshore gas pipeline that is run by multinational enterprises. Even following the ILO's action, people were still being forced to work against their will and without compensation. He referred, for example, to the documented case of a 13-year-old girl who had been forced to clear the undergrowth and plant trees for the military in May 2002. He described how, since 1962, the military regime had so mismanaged the country that, from being one of the richest countries in the south-east Asian region, it had become a least developed country (LDC) in 1987. In this respect, he emphasized that it had become an LDC before there had been any mention of sanctions. It was not therefore the sanctions by the international community following the 1990 election, but the self-imposed isolation and mismanagement by successive military juntas that was consuming the country's resources, creating humanitarian hardship and forcing the people to leave the country. These were the real reasons why Thailand had over 1 million, Malaysia had over 30,000 and Bangladesh and India had over 50,000 illegal migrants from Myanmar.

In explaining why sanctions worked, he gave the following two examples of how, after loudly refusing to cooperate in the course of normal diplomatic discussions, the regime quietly reacted to direct action. First, for over 40 years, the ILO had requested successive regimes to stop using forced labour. The regimes had always denied the violations and replied that they were in the process of rewriting the legislation, while continuing to use forced labour. Only after the ILO took concrete action in 2000 did the regime, in order to ease international pressure, reduce forced labour and then only in areas that could be accessed easily by the international community. Second, the regime used to make seafarers sign a paper declaring that, should they contact the International Transport Workers' Federation (ITF) for any reason, their passports and seagoing certificates would be revoked. Only when the ITF campaigned through trade action to stop this unfair practice did the regime stop forcing the seafarers to sign the papers.

In conclusion, the speaker recalled that the struggle for democracy in Myanmar had made a lot of progress. Direct action had shown results and it was now time for more direct action to be taken to push the regime towards a transparent democratic system.

The Worker member of Japan, on behalf of the Worker members, welcomed the release of Daw Aung San Suu Kyi, which constituted a first step towards the democratization of the country. He called for the recommendations in the High-Level Team's report to be implemented as soon as possible. However, he deeply regretted that, even after the release of Daw Aung San Suu Kyi, there remained very many prisoners who had been in detention for many years for their political activities and peaceful engagement in trade union movements. He referred, in particular to the case of Dr. Salai Tun Than, who had been arrested for conducting a peaceful protest in November 2001 distributing copies of a petition calling for a general election. His arrest was clearly contrary to democratic principles, including the right to freedom of association. He emphasized that the elimination of forced labour was very closely linked to the process of democratization, and therefore to recognition of freedom of association. He therefore urged the Government to guarantee freedom of association for the whole population of the country and to release rapidly the following political prisoners: Dr. Zaw Myint Maung, Jimmy, Soe Myint, Ba Myo Thein, Dr. Myint Maung, The Min Aung, U Tin Win, Phyo Min Thein, Htay Win Aung, Zaw Min, Zaw Tun, Nyunt Zaw, Myat Tun, Soe Htet Khine, Tun Win, Win Thein, Sein Hlaing, Kyi Pe Kyaw, Aung Myo Tint, Ko Ko Oo, Aung Kyaw Oo, Hla Than and Yin Htwe. The restoration of their political rights would contribute to the development of democracy in the country.

He indicated that the Government of Japan bore special responsibility for the democratization of Myanmar as its biggest foreign donor. He therefore called upon the Government of Japan to put pressure on the Government of Myanmar not to use forced labour in Japanese overseas development aid projects, which should be strictly limited to humanitarian purposes. The Government of Japan should ensure that such projects did not benefit the military regime and he indicated that the international trade union movement continued to pay attention to the use of forced labour in the Baluchaung Hydropower Station project funded by Japan. The Japanese trade unions also supported those who had been forced to leave the country and come to Japan as a result of their participation in the democratization of their country. Nevertheless, the Government of Japan continued to detain seven asylum-seekers in a detention centre, namely: Aye Thant Kyu, Win Kyaw, Soe Lwin, Maw Thin, Maung-Maung, Win Myint Oo and Khin Maung Lat. He added that the Myanmar Embassy continued to impose a tax on its nationals who were in Japan, amounting to 10 per cent of their monthly salary, or a minimum of 12,000 Japanese yen. If they refused to pay the tax, their passports were not renewed. He called for an end to this practice, which was clearly contrary to international law.

The Worker member of Sweden, also speaking on behalf of the Worker members, expressed the serious concern of the Swedish and Nordic trade union movement over the grave violations of human rights in Myanmar. His delegation had been one of those which had initiated ILO action on this matter as an expression of the view that a member State could not be allowed to continue violating fundamental human rights standards, particularly where, as in this case, the violation had been continuing for over 40 years. In recent years, the Government had either refused to cooperate with the ILO, or taken action at the last minute to avoid the Governing Body taking decisions against it. The fact that ILO missions had been allowed to visit the country recently did not change the overall impression that the military regime only acted when it faced real pressure. The difficulties faced in establishing an ILO presence in the country illustrated this problem. No real genuine will had yet been shown by the country to cooperate with the ILO and to follow its recommendations. Indeed, the Committee of Experts had concluded that by permitting exploiters of forced labour to be perceived as representing the State authority, the Government was confirming the finding of the Commission of Inquiry that the impunity with which government officials, in particular the military, treated the civilian population as an unlimited pool of unpaid forced labourers and servants at their disposal was part of a political system built on the use of force and intimidation to deny the people democracy and the rule of law. He thoroughly agreed with the principle expressed by Professor Amartya Sen in his address to the 87th Session of the Conference in June 1999 that decent work constituted not merely the requirement of labour legislation and practice, but also the need for an open society and the promotion of social dialogue. Professor Sen had added that the lives of working people were, of course, directly affected by the rules and conventions that governed their employment and work. But they were also influenced, ultimately, by their freedoms as citizens with a voice that could influence policies, as well as institutional choices.

The speaker emphasized that in Myanmar there were no free trade unions and that any attempts to establish them were brutally repressed. The total non-existence of trade unions distinguished Myanmar from other one-party States. Indeed, there was no genuine possibility of tripartite dialogue in a country where trade unions were not allowed to exist. Democracy and freedom of association were indispensable elements for real social dialogue and the elimination of the practices of forced labour in the country. Finally, he noted that the democratically elected representatives of the country, gathered together in Bommersvik in his country earlier in the year, had expressed appreciation to the trade unions, employers and governments for their role at the ILC and urged them to implement the recommendations of the Governing Body until forced labour practices were ended in their country. He therefore called upon all the members of the Committee to take responsibility for implementing the action required to achieve this objective.

The Worker member of Spain stated that forced labour constituted a major crime against individual freedom and represented a return to the Middle Ages with the right of the landowner over his serfs.

The speaker noted that the observation of the Committee of Experts had concluded that, as a consequence of pressure from the ILO, the Government had issued Order No. 1/99 which prohibited forced labour in public works. Nonetheless, the military continued to use forced labour, indicating the lack of will on the part of the Government to end forced labour. The ILO must continue dealing with this issue for three reasons: (1) the gravity of the case which implied the denial of free work and thus prevented the integration of the person in society; (2) the attitude of the Government of Myanmar, which threw out small changes to avoid condemnation but without having the will to solve this very grave problem; and (3) in the context of globalization it was unacceptable that certain countries continued to resort to forced labour. The speaker stated that the Conference Committee should give a clear example in this case of its effectiveness.

The Worker member of The Netherlands, on behalf of the Worker members, endorsing the statements of previous speakers, emphasized the role of the OECD Guidelines for Multinational Enterprises in the implementation of the ILO resolution of June 2000. Although the Guidelines had been adopted in 1976, they had been revised in 2000 and now included guidance on forced labour, which recommended companies to endeavour to contribute to its elimination. Moreover, as part of the revision, the implementation system, which had been very weak in the past, had been somewhat reinforced. In addition to the guidance on forced labour, further elements in the Guidelines were of relevance. The first was the general policy guidance that companies should respect the relevant policies of the governments of the countries in which they operated and take into account the views of other relevant stakeholders. The second was a reference to the responsibilities of companies in the supply chain. It was therefore clear that companies which were

based in OECD countries, but which operated in Third World countries, were expected to comply with the OECD Guidelines in those countries. Moreover, it was also very clear that the Guidelines did not recommend companies to comply with the policies of governments which ran counter to their international obligations.

Taking the example of his own country, he explained how the OECD Guidelines could be of use to ILO constituents for the implementation of the resolution. In 2001, when the Government of the Netherlands had reported to the Director-General on its implementation of the resolution, it had stated that it had neither encouraged nor discouraged economic activities by Dutch businesses in or with Myanmar. A few months later, following dialogue with the trade unions, the policy had changed and the Government decided to discourage economic transactions with the country. Furthermore, the Government of the Netherlands had recommended trade unions to address the activities of multinationals and other companies doing business in Myanmar. In the National Contact Point for the OECD Guidelines, the trade unions had lodged a complaint against a major Dutch investor in Myanmar on the grounds that it had not complied with the ILO resolution, which formed part of the Dutch Government's policy. The trade unions had also charged the company with not taking into account the views of a major stakeholder in the country and of doing nothing to implement the OECD Guidelines as they related to forced labour. Following this procedure, the trade unions were currently engaged in bilateral dialogue with the company on the manner in which it could comply with the OECD Guidelines. Moreover, the action taken had resulted in parallel measures concerning a business partner of the company in the United Kingdom. The Dutch trade unions, in cooperation with the Burma Centre of the Netherlands, were taking similar action with regard to a number of travel agencies. Based on this action in his own country, he called upon governments to ensure that enterprises trading with Myanmar were more aware of the OECD Guidelines, and on the Member States of the European Union to actively promote the OECD Guidelines as a means of implementing the ILO resolution. Employers' federations should make their members more aware of their support for the ILO resolution and the OECD guidelines. Finally, in their efforts for the implementation of the ILO resolution, trade unions in OECD countries could make better use of the OECD Guidelines as a channel for addressing the activities of multinational enterprises which were based or operated in their country. They could also urge their representatives in European works committees to take similar action.

The Worker member of Senegal recalled that the regularity with which this case came back before the Committee was undoubtedly due to the persistent attitude of the authorities of Myanmar. As recalled by an ICFTU report, recourse to forced labour in the country was a general practice, particularly in conflict areas, and the controversy surrounding the murder of villagers in Shan State was sufficient illustration of the level of subjection to which the population was reduced by the authorities and the fate which awaited individuals who dared to claim their rights. This was the real situation, despite the statements to the contrary by the Government. The latter's lack of sincerity was also amply illustrated by the very limited nature of public information on the illegal nature of forced labour. Taken together, this meant that in future the Government's credibility could not be based only on a few gestures of good will at the procedural level, but needed to be supported by real efforts verified by impartial bodies.

The Worker member of Thailand, speaking on behalf of the Worker members, said that his country had seen a major increase in the number of illegal immigrants from Myanmar. Estimates of their numbers had risen from 500,000 in 1991 to nearly 2 million in 2000. The Government of Thailand had permitted the registration of these illegal migrants, of which 500,000 had now registered, thereby helping to prevent their exploitation by employers. He called upon the Government of Myanmar to change its system of governance and its economic policies which, combined with forced labour and forced relocations, were the reasons behind the exodus. If such changes were not made very rapidly, the numbers of migrants would increase still further. He added that the Government and people of Thailand had supported the membership of Myanmar in ASEAN in the hope that, by becoming a partner, Myanmar would witness changes made to improve the conditions of the people. Nevertheless, the violations were continuing. He therefore called for the maintenance of the ILO resolution and much stronger monitoring to prevent continued violations of workers' rights.

The Worker member of France, speaking on behalf of the Worker members, referred to the observation in the report of the Committee of Experts which noted that widespread forced labour still prevailed in the absence of clarity in Order No. 1/99 and its Supplementing Order No. 1/99, which did not distinguish clearly between obligatory and voluntary service. The legislation of Myanmar does not yet clearly prohibit recourse to forced labour, and its use continues in practice. The population is not generally informed

of its rights and cannot escape from the military's exactions of labour, provisions, food and money. No indications of a budget or concrete indications from the Government of Myanmar exist to corroborate its assertions of a decrease, let alone the elimination of forced labour. All testimony collected by the High-Level Team showed, to the contrary, that the military continued with its practices at the local level; the size of the army had more than doubled over the last ten years, which implied an ever increasing recourse to the practices of extorting labour and confiscating property from villagers. The military was in charge of developing infrastructure, such as railroads, roads and bridges, and resorted to forced labour to build them under the threat of weapons. The decrees and orders adopted by the junta would have real value only in a democratic state governed by the rule of law; but such a state had been abolished by those who now governed the country.

The speaker emphasized that unpaid work, or work where the wages are confiscated by the state or in the private interests of the military is forced labour. Wages, even where they are paid by foreign companies, are frequently subject to confiscation; workers are rounded up in the villages and their gains are extorted by the local military. The exaction of wages of a worker paid by a foreign company or the exaction of labour for public work result finally in forcing workers to work without equitable compensation in violation of [Convention No. 29](#). The same applies to forced labour in prisons, where exploitation is so great that detainees die of exhaustion.

Concerning so-called free and voluntary labour in infrastructure projects, witnesses abounded to the widespread practice and the accompanying barbaric acts. The speaker referred to testimonies given by victims called up in 2002 for the construction of civilian road infrastructures, one of which was for the benefit of an international oil company whose representatives had inspected the beginning of the work. Such practices constituted not only a violation of [Convention No. 29](#), but also of all of the fundamental principles, as well as all civic, economic and social freedoms. Human rights are interdependent; the violation of a fundamental right such as the right to freely chosen work and equitable remuneration cannot but come with other grave violations of all fundamental Conventions and UN Covenants. The country will never witness sustainable development on these foundations of oppression and exaction.

The speaker added that villagers belonging to ethnic minorities along the State's frontier are often victims of ethnic discrimination. Agricultural and plantation workers do not enjoy freedom of association even though Myanmar has ratified the Right of Association (Agriculture) Convention, 1921 ([No. 11](#)), and the Freedom of Association and Protection of the Right to Organise Convention, 1948 ([No. 87](#)).

All international action should be aimed at aiding the people of Myanmar, oppressed in a country where democracy had been taken away, by a regime under which forced labour constituted a general practice of the military State. Since no real and sustained progress was yet evident on the part of the military rulers of the country, the ILO must continue its action.

The Worker member of Pakistan, on behalf of the Worker members, welcomed all the statements condemning the crime of forced labour. At the beginning of the twenty-first century, which was supposed to be an age of knowledge, reason and humanitarian values, and when everyone believed that they stood for democratic values, it was a cause of shame that crimes against humanity and basic human values and dignity continued to be committed. Although the Government representative had indicated that the appointment of the Liaison Officer was one of the measures that were being taken as part of a step-by-step process for the abolition of forced labour, all the members of the Conference Committee recognized that forced labour was a clear violation of human rights and of [Convention No. 29](#). Would it not be possible for the Government to punish severely those who had perpetrated this crime so as to prevent future violations? However, there was no evidence of any judicial action or punishments in response to the recommendations of the High-Level Team. Indeed, in practice, as noted by the Committee of Experts, the progress that was being made appeared to be inconsistent in the various areas, with higher levels of forced labour occurring in remote areas. There were particular problems in preventing the use of forced labour by the military, especially in the border areas. The problem was aggravated because of the reprisals against those who denounced forced labour practices and the lack of trust in the police and the judicial system. In conclusion, persistent violations of this basic human right continued in the country, and persons who endeavoured to make use of their trade union rights were imprisoned. The exaction of forced labour by the military was particularly common. He therefore called upon the Government to take all the necessary measures to abolish the practice of forced labour and to provide full protection to all those who were subjected to forced labour. All those who exacted forced labour should be brought to the courts and those found guilty should be

punished. All these special measures needed to be taken as rapidly as possible, and not as part of an extremely slow step-by-step process.

The Worker member of the Republic of Korea, on behalf of the Worker members, citing findings of the High-Level Team, a communication of the ICFTU respecting the Myanmar case as well as the conclusions of the Committee of Experts, noted several human rights violations by the Myanmar military. He stated that some of the most serious human rights abuses had occurred in the context of forced portering, wherein civilians, including children and ranging in age from 15 to 60, had reportedly been abducted and pressed into service for the military. He noted that while porters usually carried supplies for soldiers on patrols, they had also been placed at the head of columns to detonate mines and spring ambushes, and were also used as "human shields" in combat. He pointed out that porters were also subject to constant physical abuse and that many of them had witnessed other porters being killed by the troops they served.

The speaker referred to observations by NGOs indicating that a total of four days per family, per month measure was less a ceiling than a floor and that during the dry season the Rohingyas were forced to work on average about one week a month, sometimes ten days or two weeks. With respect to development projects involving forced labour, he noted that beatings, torture and summary executions were commonplace abuses of human rights, citing in particular reports of women being raped by soldiers and of a woman killed for having stopped work to feed her baby. Additionally, he cited the 2001 ICFTU Annual Survey on Violations of Trade Union Rights which indicated that labour and human rights abuses continued unabated.

In conclusion, he stated that the Government of Myanmar must provide genuine credible evidence of progress on the forced labour issue as an absolute precondition to consideration of a shift in ILO measures under article 33 of the ILO Constitution, and expressed his continued support of the NLD.

The Worker member of India expressed indignation and anguish with regard to the continued violation of [Convention No. 29](#) by the military government of Myanmar. He noted that the Village Act and Towns Act of 1907, which empower the authorities to requisition labour without wages, were a part of Myanmar's colonial legacy, and expressed regret that it had chosen to maintain these laws – to the detriment of its people and their human rights. He noted that the problem of forced labour persists to this day, in spite of amendments to the Village Act and Towns Act, and urged the ILO to pursue further discussion with the Government to see an end to the matter. On this point, however, he emphasized that the promotion of international labour standards should not be linked to the question of maintaining trade and commerce with Myanmar, as doing so would prove counter-productive and act against the interests of that nation's workers. He concluded by stating that any actions taken with respect to this matter should be free of interference from the International Monetary Fund, the World Bank and the World Trade Organization.

The Worker member of Indonesia, on behalf of the Worker members, stated that, based on reports from the Federation of Trade Unions of Burma (FTUB), NGO EarthRights International, and other documents, he regretted to say that the Government of Myanmar had not made any significant progress in abolishing forced labour in Myanmar.

He drew attention to the issue of ethnic nationality in forced labour which mostly happened on the Myanmar border in states such as Karen, Mon, Chin, and the Indian border Tavoy township. The military often forced people to work as unpaid porters or work for military purposes. He gave the example of an ethnic Karen civilian who was forced to labour several times for the military – carrying very heavy military equipment for an extended period with little rest and no provisions for food or water. He also described the disruption and trauma to the villagers as a whole caused by the need for males to flee to avoid being forced to labour. Villagers in Karen State had received the news about General Khin Nyunt's order prohibiting forced labour, but they thought that the prohibition did not concern their region because the army still practised forced labour as usual. The speaker recalled that, although the Governing Body at its 282nd Session in November 2001, requested that the Order supplementing Order No. 1/99 be disseminated through major ethnic languages to enable people to understand the ongoing efforts which had been made, the High-Level Team noted that the orders had not been disseminated via the mass media, and had been distributed only in English and Burmese, but not in any of the other major ethnic languages spoken in the country, causing misunderstanding.

The speaker concluded by stating that there was no indication that the Government of Myanmar had taken specific and serious action on this matter. Therefore, he insisted that the Government of Myanmar give a reasonable explanation of action taken so far in

realizing the recommendations formulated by the Commission of Inquiry, which it had accepted. He also called on the ILO constituents to continue to take concrete action to eliminate trade and assistance which may contribute to the practice of forced labour discrimination against ethnic minorities.

The Government member of Japan expressed his appreciation to the Director-General for his efforts to strengthen dialogue and cooperation with the Government of Myanmar and welcomed the agreement between the ILO and the Government of Myanmar on the establishment of an ILO Liaison Officer. He also welcomed the appointment of Mr. Leon de Riedmatten of the Centre for Humanitarian Dialogue as an interim Liaison Officer, and expressed satisfaction with his report.

The speaker considered that it was of the utmost importance for the Government of Myanmar to take appropriate measures in response to the recommendations of the Commission of Inquiry, so as to meet the expectations of ILO Members which have been cultivated over the last two years. He expected that the first step of the Government of Myanmar would be a cornerstone for working on the establishment of continued and effective ILO representation in Myanmar. He encouraged the authority in its efforts to ensure the prompt and effective elimination of forced labour, and referred to the lifting of restrictions on the movement of Daw Aung San Suu Kyi on 6 May 2002, which could create a favourable environment for facilitating democratization and national reconciliation and contribute to the elimination of forced labour. The speaker hoped that it would be possible for the Government of Myanmar and the ILO to work together resolutely, and he strongly hoped that a formal Liaison Officer would be appointed and fielded soon and would fulfil his or her duty of continued cooperation to eradicate forced labour.

The speaker also stated that the relationship between Japan and Myanmar did not and would not contain any element that induced, directly or indirectly, forced labour, nor did any assistance projects undertaken by Japan, which were concentrated in the area of basic human needs. This included the rehabilitation of the Baluchaung No. 2 hydroelectric power plant which produced 24 per cent of the total electricity in the country and was in need of repair. The speaker recalled that the Special Representative of the United Nations Secretary General had acknowledged the need for further humanitarian assistance to Myanmar, especially in the areas of health, education, electric power and food aid. Lastly, the speaker stated that, should it be the case that the democratization process was further accelerated, the Government of Japan would support the efforts towards nation-building in a more active manner.

In reply to comments of the Worker member of Japan, he stated that the Government of Japan strictly observed its obligations under applicable international instruments and Japan's laws and regulations in the treatment of foreign nationals in Japan.

The Government member of the United States stated that the situation of forced labour in Myanmar was a long-standing concern of her Government. She welcomed the positive steps taken by the Myanmar authorities since this Committee's special sitting last year, and particularly in the weeks since the March 2002 Governing Body. There had been numerous indications of good faith intentions, and a number of important procedural measures had been initiated. Nonetheless, the fact remained that, at the end of the day, the very specific, substantive recommendations of the Commission of Inquiry had still not been fully implemented: the Village Act and the Towns Act still needed to be brought into conformity with [Convention No. 29](#), as the orders promulgated thus far were not sufficient; clear, detailed and adequately publicized instructions were still required to ensure that forced labour was not imposed in practice, especially by the military; and penalties for the exaction of forced labour still needed to be strictly enforced by means of thorough investigation, prosecution and appropriate punishment of those found guilty.

The Committee of Experts, the High-Level Team, and most recently, the Liaison Officer ad interim had made detailed suggestions as to how the Commission of Inquiry's recommendations would be effectively implemented. The Myanmar authorities should act upon these suggestions without delay. In particular, it was critical to proceed immediately with the establishment of full and effective permanent ILO representation in Myanmar. In addition, the establishment of a fully independent and impartial ombudsperson to investigate allegations of forced labour was a necessary complement to the other monitoring and enforcement machinery currently in place. The controversy over the deaths of seven villagers in the Shan State demonstrated the need for this type of independent, external investigation.

Lastly, the speaker stressed that the objective of the ILO was not to punish Myanmar, but rather to help Myanmar, in a constructive way, to eradicate a practice that was an offence to human dignity and that all ILO Members agreed must not be tolerated. Until such time as all three recommendations of the Commission of Inquiry

had been fully implemented, it was the obligation of the International Labour Organization to maintain the measures adopted by the 88th Session of the Conference in accordance with article 33 of the ILO Constitution.

The Government member of India stated that he had carefully examined the agenda documents and the information available before the Committee. He welcomed the appointment of Mr. Leon de Riedmatten as the interim ILO Liaison Officer pending the appointment of a full-time ILO Liaison Officer, pursuant to the agreement reached between the Government of Myanmar and the ILO. He noted with satisfaction the activities carried out by him to date as well as the full cooperation extended by the Government of Myanmar. India, as a matter of principle, had all along supported adoption of a promotional approach by the ILO in regard to matters falling within its mandate and had consequently been opposed to a punitive approach to further the ILO's aims. It was convinced that the ILO's objectives could best be promoted through dialogue, cooperation and technical assistance. The speaker concluded by noting the full cooperation extended by the Government of Myanmar which he hoped would continue, as well as the agreement reached between the ILO and Myanmar. He encouraged both sides to continue their dialogue to resolve outstanding issues with a view to the removal of the measures taken against Myanmar.

The Employer member of Japan reiterated that the employers are optimists but realists and expressed his sincere hope that forced labour in Myanmar would come to an end as soon as possible. He expressed his appreciation for the efforts made by the Director-General and his staff in this issue. He quoted from document C. App./D.6(Corr.), paragraph 28, which gave general indications of various actions the Liaison Officer could implement, and stated that the ILO was competent to take on such tasks. Lastly, he emphasized the importance of broad tripartite involvement and technical cooperation to bring forced labour to an end in Myanmar.

The Employer members noted the serious and comprehensive debate, which was necessary because of the issues involved. The speaker noted signs of progress, such as procedures established for cooperation between the Government of Myanmar and the ILO, and various administrative measures taken. It was very important to have technical cooperation to make progress. However, as to the substance of the case, small steps had been taken but larger ones were needed. Many obstacles still existed, such as the size of the country, its closed nature, the involvement of the authorities at many levels, and the fact that forced labour was a long-standing practice that would take time to eliminate.

An ILO permanent presence in Myanmar was crucial until the problem was solved. The measures cited in the Liaison Officer's report also needed to be taken, such as employment promotion. The Government had to see that forced labour harmed not only the victims, but also the country as a whole, through lost opportunities and a poor image in the international community. In general, the case should be viewed with some rays of light, but a great deal of darkness still remained. The conclusions of the Conference Committee had to reflect both the progress already achieved and the big problems remaining in the complete abolition of forced labour, in order to stimulate further dialogue with the Government of Myanmar towards a resolution of the problem.

The Government member of Myanmar stated that he had listened with great interest to the discussion, and appreciated the statements of speakers, in particular those from the ASEAN States, who had welcomed the changes undertaken.

Regarding calls for an ombudsperson, the speaker stated that Myanmar already had a system to deal with complaints – the Miscellaneous Legal Issues Division of the Attorney-General. This body was charged by law with bringing complaints to the attention of the relevant authorities to protect the interests of the people. Officials were obliged to examine complaints in conformity with the Attorney-General's guidelines. The speaker also noted that there were 28 new sub-townships with assistant township officers empowered to deal with grievances, including complaints of forced labour. Such a system would be more effective than an ombudsperson due to the remoteness of many areas of the country. Furthermore, the interim Liaison Officer had held wide discussions on the issues.

The speaker stated that the case of the seven villagers who were murdered had been investigated and that the perpetrators had been found to be terrorists; furthermore, the case was not related to forced labour. Discussions with Mr. de Riedmatten had addressed this issue.

The speaker objected to Mr. Maung-Maung of the Federation of Trade Unions of Burma having been allowed to take the floor. The speaker alleged that Mr. Maung-Maung was a terrorist and criminal, and therefore letting him take the floor was an abuse of this ILO forum.

The speaker expressed his desire to continue dialogue and cooperation between Myanmar and the ILO, which had proven to be fruitful. He stressed that the ILO should encourage the Govern-

ment to do its utmost, but it would not be helpful if efforts were not recognized. He expected that the Conference Committee would reciprocate and respond positively to the Government's show of good will.

The Worker members said that the very high level of interest in this case by the members of the three groups of the Committee was sufficient illustration that the situation in Myanmar would need to be kept under examination for a long time to come and, in any event, until real progress had been noted at the three levels referred to by the Commission of Inquiry and the High-Level Team. Until the legislation in Myanmar was brought into conformity with Convention No. 29, the practice of forced labour had disappeared and, finally, effective action was taken against those found guilty of exacting forced labour, the pressure on the country would have to be maintained. The Worker members believed that if there existed in Myanmar real organizations of civil society, and particularly strong and independent workers' organizations, as provided for in Convention No. 87, which had been ratified by Myanmar, such organizations could provide the victims of forced labour with the support that they needed to be able to avail themselves of the recourse available to them to defend their recognized rights.

Finally, in view of the comments made by the Government member of Myanmar addressed to a Worker member of the Committee, Mr. Maung-Maung, the Worker members recalled that, in accordance with Convention No. 87, which had been ratified by Myanmar, trade union organizations were free to designate their representatives; they drew the attention of the Conference Committee to threats to the physical safety of the designated union representative.

After noting the information provided by the Government representative, the Committee noted with deep concern the observation of the Committee of Experts evaluating the effect given to the three recommendations of the Commission of Inquiry, taking into account the information contained in the report of the High-Level Team. With regard in the first place to the Village Act and the Towns Act, which had not yet been amended, the Committee of Experts had noted that Order No. 1/99, as supplemented, had been given considerable publicity and may momentarily have affected certain civil infrastructure projects, but had not brought an end to the exaction of forced labour, particularly by the military. The specific and practical instructions and the budgetary provisions that were lacking had not yet been adopted, or even prepared, with a view to replacing in practice recourse to forced labour by the offer of decent wages and conditions of employment to make it possible to attract the necessary labour freely. Finally, no sanction had been imposed under section 374 of the Penal Code or any other provision, in accordance with Article 25 of the Convention, on those responsible for the exaction of forced labour, while the means of recourse available to complainants were not effective.

The Committee also noted the information on the High Level Team and its follow-up contained in the supplementary report submitted to the Committee. It noted that as a result of the cooperation of the authorities, it was possible for the first time to have available, through this report, an evaluation conducted freely in the country and on the other side of the border on the impact of the new regulations on the real situation of forced labour throughout the country. It also welcomed the fact that one of the recommendations of the High-Level Team intended to ensure the presence of the ILO in Myanmar had been followed up and that the ILO's presence had already been ensured in practice through the appointment of the interim Liaison Officer and the report that he had already been able to produce. However, it emphasized that this presence was only a means and would have no significance unless the future Liaison Officer rapidly had the capacity and administrative support, as well as the facilities, to conduct the various activities that could contribute to the effective implementation of the prohibition of forced labour. These facilities needed to include freedom of movement and access and required the cooperation of all the authorities, including the military. The Committee further regretted that no practical effect had yet been given to the other important proposals made by the High-Level Team with regard, on the one hand, to the murder of victims of forced labour in Shan State and, on the other hand, the establishment of an independent and credible form of mediation to offer a new means of recourse in which future victims could have confidence. Such an institution was particularly necessary in the absence of freedom of association, the significance of which for the situation of forced labour had been emphasized by the High-Level Team. The Committee also regretted that the provisions prohibiting forced labour had not been disseminated more broadly through all channels and in all appropriate languages, as called for by the High-Level Team. In general terms, the Committee emphasized the need for real, rapid and verifiable progress, not only at the procedural level, but also and in particular at the level of the persistent reality of forced labour and the widespread impunity of those responsible, and particularly the military. It encouraged the Office and the Director-General to pursue their efforts resolutely

on all these issues, as well as their dialogue with the Government and all the parties concerned, and to report to the Governing Body, which would be responsible for examining, as appropriate, the conclusions to be drawn from the progress or lack of progress at its session in November 2002.

In this respect, the Committee noted that the Government representative, at the end of the discussions, had expressed the will of

his Government to discharge its international obligations and to pursue the dialogue with the ILO.

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

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

Myanmar (ratification: 1955)

1. The Committee has noted the Government's reports on the application of the Convention. In examining compliance with 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 furthermore taken note of the following information:

- the information submitted to, and the discussions held at, the International Labour Conference at its 89th Session, (June 2001) (*Provisional Record* No. 19, [Part Three](#));
- the information submitted to, and the discussions held in, the Governing Body of the ILO at its 280th Session in March 2001 (reproduced in *Provisional Record* No. 19, [Part Three](#), of the 89th Session of the International Labour Conference);
- the information submitted to the Governing Body of the ILO at its 282nd Session in November 2001, including in particular the report of the High-Level Team (HLT) on “Developments concerning the question of the observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29)” ([GB.282/4](#) and [Appendices](#)), the presentation by the representative of the Government, and the conclusions by the Governing Body ([GB.282/4/2](#));
- the resolution adopted by the United Nations Commission on Human Rights at its 57th Session (March-April 2001) on the situation of human rights in Myanmar (UN document E/CN.4/RES/2001/15);
- the interim report prepared by Paulo Sergio Pinheiro, Special Rapporteur of the Commission on Human Rights on the situation of human rights in Myanmar, dated 20 August 2001 (UN document A/56/312) and his statement made on 9 November 2001 to the 56th Session of the General Assembly;
- a briefing on the ILO Governing Body meeting of November 2001 given on 19 November 2001 by the Myanmar Ministry of Foreign Affairs and reported the following day in “The New Light of Myanmar” and by “Reuters”;
- a communication dated 29 November 2001 with which the International Confederation of Free Trade Unions (ICFTU) submitted to the ILO fresh documentation referring to the continuing massive recourse to forced labour by military authorities in Myanmar, a copy of which was transmitted to the Government for such comments as it may wish to present on the matters raised therein.

2. Information available on the observance of the Convention by the Government of Myanmar will again 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; and (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. The Committee observes that by the end of November 2001, 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 had not yet been made, nor had any draft law proposed or under consideration for that purpose been brought to the knowledge of the Committee. The Committee notes from paragraph 47 of the report of the HLT that legislative powers were exercised by the Government in June 2000 and February 2001 when it adopted the “Judiciary Law, 2000” and the “Attorney-General Law, 2001”. The Committee again expresses the hope that the Village Act and the Towns Act will at last be brought into conformity with the Convention.

5. In its previous observation, the Committee noted that although the Village Act and Towns Act still needed to be amended, an “Order Directing Not to Exercise Powers Under Certain Provisions of the Town Act, 1907, and the Village Act, 1907” (No. 1/99), as modified by an “Order supplementing Order No. 1/99” dated 27 October 2000, could provide a statutory basis for ensuring compliance with the Convention in practice, if given bona fide effect not only by the local authorities empowered to requisition labour under the Village and Towns Acts, but also by civilian and military officers entitled to call on the assistance of local authorities

under the Acts. This, in the view of the Committee, called 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

6. 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

7. *Absence of specific and concrete instructions.* In its previous observation, the Committee noted that in the absence of specific and concrete instructions to the civilian and military authorities containing a description of the various forms and manners of exaction of forced labour, the application of the provisions adopted so far turns upon the interpretation in practice of the notion of "forced labour". This cannot be taken for granted, as shown by the various Burmese terms used sometimes when labour was exacted from the population – including "loh ah pay", "voluntary" or "donated" labour. The need for clarity on the point was 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".

8. In its report on the application of the Convention, the Government only refers to a directive issued on 1 November 2000 by the State Peace and Development Council (SPDC) "instructing all concerned authorities to strictly abide by the Orders issued by the Ministry of Home Affairs", i.e. Order No. 1/99 and its

supplementary order, mentioned in paragraph 5 above. The Committee notes from the report of the HLT that it:

... requested on a number of occasions to be provided with authoritative translations of any additional instructions addressed to any authority, including the military. At the time of drafting its report, [in October 2001] the HLT had only received three instructions in Burmese issued by various military commanders to units under their command. Official translations of these orders have been requested but not yet received. On the basis of unofficial translations, the HLT understood that two of these orders simply reproduced the text of the order issued by Secretary-1 dated 1 November 2000. They did not contain any specifications either of the kinds of tasks for which the requisition of labour was prohibited nor the manner in which the same tasks were henceforth to be performed. The third instruction issued by the NaSaKa and dated 22 July 2001 re-stated the general prohibition on requisitioning of forced labour contained in the Orders but added that if recourse to forced labour was necessary, payment should be made accordingly.

The third instruction thus provides another example of the blurring of the borderline between compulsory and voluntary labour, referred to in paragraph 7 above, and of action which in the last resort is limited to the issue of wage payment, contrary to the specific indications in paragraph 539(b) of the report of the Commission of Inquiry, quoted in paragraph 6 above.

9. 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 they will inter alia cover each of the following:

- portering for the military (or other military/paramilitary groups, for military campaigns or regular patrols);
- construction or repair of military camp/facilities;
- other support for camps (guides, messengers, cooks, cleaners, etc.);
- income generation by individuals or groups (including work in army-owned agricultural and industrial projects);
- national or local infrastructure projects (including roads, railways, dams, etc.);
- cleaning/beautification of rural or urban areas;
- the supply of materials or provisions of any kind. The prohibition of requisition also must apply to demands of money (except where due to the State or to a

municipal or town committee under relevant legislation) since in practice, demands by the military for money or services are often interchangeable.

10. *Publicity given to orders.* While the specific and concrete instructions called for by the Commission of Inquiry appear not yet to have been adopted, the Government indicates in its report that Order No. 1/99 and its supplementing order and the Directive of the SPDC of 1 November 2000 (see paragraphs 5 and 8 above) have been circulated to all state organs and ministries including the Ministry of Defence, and to all local administrative authorities down to the Ward and Village Tract Peace and Development Councils, and that the Orders have also been publicly circulated in the monthly Myanmar Gazette to inform the entire population in a formal manner, which is the normal procedure in Myanmar for all laws, byelaws, orders etc. issued by the Government.

11. It appears from the report of the HLT that Order No. 1/99 and its supplementary order, referred to in part 5 above, were in general given considerable publicity in the period preceding the visit of the HLT, including their posting in English and Burmese on the noticeboards of Village Peace and Development Council (VPDC) offices and other public offices, and through large numbers of meetings arranged by various authorities to inform both the general population and administrative officials of the content of the Orders. Copies of the Orders have also been distributed to members of the military, the NaSaKa and the police force. The HLT however noted that there was considerable geographic variation in the dissemination of the Orders as well as in the time frame in which this dissemination occurred. In many cases persons met by the HLT said that they had been informed of the Orders by foreign radio stations rather than by the authorities. The HLT also noted that the Orders had not been disseminated at all via the mass media, nor distributed in languages other than English and Burmese, and that in particular the Orders had not been translated into any of the other major ethnic languages spoken in the country. The HLT was informed by people in different parts of the country that they could not understand the Orders that were posted in their areas because they did not read or understand Burmese well enough. The HLT further noted that the Orders had not always been disseminated together, although they need to be read in conjunction.

12. The Committee also notes the allegation made by the ICFTU in its communication dated 29 November 2001 that:

Indeed, many reports included herewith confirm that, in certain parts of the country at least, Order 1/99, its Supplementary Order and other relevant legal texts had been widely publicised. Reports abound in the ICFTU's evidence of meetings organised in villages by the authorities to this effect, ahead of the ILO's visit. As often as not, they had been run by senior SPDC officials dispatched from regional commands or even Rangoon.

In actual fact, villagers frequently – if not always – had to pay the costs of these “information gatherings”, such as gasoline or food and drink for visiting SPDC officials. As for the “Orders” themselves, they were publicised, quite

cynically, through what can only be described as “forced distribution”, whereby the so-called “Green Book” issued by the authorities on the subject had to be bought at 1,000 kyats or more per copy, with typically 1 to 8 copies forcibly sold to each village; the villagers were also forced to purchase foam boards on which the “Orders” had to be posted.

The Government may wish to comment on this allegation.

13. *Budgeting of adequate means.* The Committee notes that the issue of allocating adequate budgetary resources to recruit voluntary wage labour for public activities which have been based on forced and unpaid labour was taken up by the HLT with the Myanmar authorities. On a number of occasions during its field trips and in Yangon, the HLT requested details on alternative means of obtaining required labour or services now that forced labour was prohibited. The HLT also inquired about any changes in budgetary arrangements. It appears from paragraphs 63 to 66 of the report of the HLT that at the time the report was finalized (29 October 2001), the HLT had not received information allowing it to conclude that the authorities had indeed provided for any real substitute for the cost-free forced labour imposed to support the military or for public works projects. The Committee again expresses the hope 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”.

14. *Monitoring machinery.* In its report, the Government refers to the creation of a Ministerial Level Committee and a National Level Implementation Committee which are not only to monitor the adherence to law by local authorities, members of the armed forces and other public service personnel, but also to ensure that the local authorities and the people at the grass-root level are fully aware of the aforementioned orders nationwide. Also, Field Observation Teams (FOT) respectively led by Heads of the Departments under the Ministry of Labour and comprising of responsible personnel from the General Administration Department, Myanmar Police Force and the Department of Labour, have been dispatched to various areas to investigate the situations relating to the practice of forced labour and to observe the public awareness of these Orders. These FOTs will make frequent visits to all areas within the country. These are instances of the Government’s endeavours to abolish the practice of forced labour throughout the country. The Committee notes these indications, which need, however, to be placed in the context, already considered above, of the absence of specific and concrete instructions as well as budgetary allocations for the replacement of forced and unpaid labour. Information available on actual practice will be considered in paragraphs 15 to 22 hereafter and the punishment of offenders in paragraphs 23 et seq. below.

B. Information available on actual practice

15. *The Government's view.* In its report on the application of the Convention transmitted on 30 September 2001, the Government refers to its “endeavours to abolish the practice of forced labour throughout the country”, but gives no indications as to the results so far achieved. At a briefing of heads of Foreign missions in Yangon on the ILO Governing Body meeting of November 2001, given on 19 November 2001 by the Myanmar Ministry of Foreign Affairs, as reported on 20 November by “The New Light of Myanmar” and “Reuters”, Deputy Minister for Foreign Affairs, Khin Maung Win, is stated to have said that “following the transmission by the High-Level Team of some complaints regarding forced labour, the authorities concerned launched thorough investigations; and these investigations showed that the allegations were baseless and false and the authorities had replied to the ILO to this effect ...”.

16. *HLT findings.* “Findings as regards the impact on the realities of forced labour of the steps taken to implement the Orders” are set out in paragraphs 54 to 58 of the report of the HLT as follows.

54. As the Chairperson of the HLT explained to the Chairman of the SPDC Senior General Than Shwe on 5 October 2001, the HLT members were from the outset very sceptical about the optimistic conclusions which were officially drawn from the absence of reported violations and of any criminal prosecution for such violations. Indeed, the HLT's field trips, and its interviews conducted across the border, amply justified this scepticism.

55. The tentative conclusion that the HLT had reached after completing its three weeks of interviews and visits in Myanmar was of a very moderately positive evolution in the situation. Beyond the obvious although uneven effort at disseminating the Orders, the two groups of the HLT shared the view that a certain decrease in the imposition of forced labour had taken place, even though it was difficult to judge precisely to what extent. The HLT did, however, have doubts about the sustainability of the process over time, and was concerned about the geographical inconsistencies in the progress made, given that in some areas a considerable amount of forced labour appeared to persist. This was particularly associated with the presence of the military, especially in more remote areas.

56. The picture which emerged from discussions and interviews conducted across the border, which concentrated on the case of ethnic groups was even more disturbing. In fact, it was not very different from the situation presented in the report of the Commission of Inquiry. Forced labour in most of the forms previously identified seemed still to prevail, particularly in villages which were close to a military camp. All too often it was accompanied by acts of cruelty.

57. ... A balanced assessment of the trend in forced labour practice needs to reflect general patterns, as well as to distinguish between different types of situation. The following two general patterns seem to emerge:

- (a) In contrast to the situation reported in 1998 by the Commission of Inquiry, the HLT found no indications of the current use of forced labour on civil infrastructure projects.
- (b) In all areas for which the HLT had information it was apparent that there was a strong correlation between the presence of military camps and the practice of forced labour whether or not these troops were engaged in military activities (see paragraphs 61 and 62 below).

However, it is important to make the following distinctions:

- (c) In many areas, despite continued forced labour as a result of a military presence, there were indications that the situation had improved. The sustainability of this improvement is not clear, since it depends on the willingness of local military commanders to continue to rely less on forced labour.
- (d) In certain other areas, particularly southern Shan State and the eastern parts of Kayin State near the Thai border, the situation appeared to be particularly serious. This might be partly explained by the greater military presence in these areas, and by their remoteness, but there also appears to be an element of greater repression against these populations as a result of the ongoing insurgencies in these areas. Contrary to claims made by the authorities in Yangon, there is no indication that portering in these areas has diminished in any noticeable way as a result of any greater use of mules or because of any improvement in the road network.
- (e) The situation is also particularly serious in northern Rakhine State, which is also a remote area with a large military presence. The Muslim population in this area is disproportionately affected by forced labour; it reflects an element of discrimination against this population, which also takes the form, inter alia, of restrictions on movement.

58. There were some indications that the military had recourse to other methods of obtaining labour or services, such as requisitioning vehicles and their drivers. The HLT also met across the border in Thailand with three escaped porters. One claimed to have been arrested on an administrative matter (failure to pay full rice tax) and the other two claimed to have been arbitrarily detained. All were handed over by the police to the military and used as porters, without ever being formally charged or appearing before a judge. Their clothes were taken away by the military and they were made to wear blue convict uniforms.

17. *HLT analysis.* In identifying obstacles to the more effective eradication of forced labour, the HLT referred in particular to the “self-reliance” policy of the army, the uncertainty as regards substitute financial/practical arrangements (see paragraph 13 above) and institutional obstacles. In paragraphs 59 to 62 of its

report, the HLT describes the “self-reliance” policy of the army and its bearing on the practice of forced labour in the following terms.

59. There seems to be little doubt whatever that non-application of the Orders by the army can hardly be attributed to ignorance. As previously noted, the Orders seem to have indeed been the object of wide – if uneven – dissemination at all levels of the military hierarchy. The disturbing evidence seems to be that these Orders are not observed by the military at the local level and that there seems to be no accountability in the case of breaches. ...

60. Rather than individual indiscipline, this attitude seems to have a lot to do with a policy of self-reliance in the context of combating insurgent ethnic movements which have, according to some, deep roots in the military history of the country. But it also has obvious practical and logistical reasons. The army does not have modern mechanical means and equipment and sometimes not even sufficient resources to feed all its soldiers. ...

61. However, this policy of self-reliance has another quite different dimension which is also relevant to the issue. The army has greatly expanded over the last decade (from 120,000 to over 350,000 soldiers according to military intelligence officers). Ten years ago, it was already supposed to participate in railway construction. However, the size of the army has not decreased in proportion with the much advertised progress of pacification. Because of continued budgetary constraints, a policy has developed whereby soldiers who are not fighting continue to receive their pay but have to engage in farming or other productive activities on lands assigned to them. Any surplus above what is needed for their subsistence is supposed to be sold on the market at below normal prices to fight against inflation. ...

62. It may be suspected indeed that this form of reconversion of soldiers into economic activities for which they are not necessarily well qualified or prepared is not only doubtful in terms of productive efficiency, but also produces a permanent incentive for soldiers who do not have an inclination for agricultural work to continue to abuse villagers. This does not mean, however, that the Orders are not capable of making a difference to the situation of forced labour. It seems on the contrary clear from various testimonies that villagers were less and less prepared to accept the existing situation. Thus, in one specific case they were concretely considering petitioning the authorities on the basis of the Orders.

18. *The ICFTU communication.* In its communication dated 29 November 2001, the ICFTU states that:

In spite of their denials, alleged efforts to suppress the practice, professed good will and spirit of co-operation with the ILO, the military authorities of Burma have continued to resort to forced labour on a massive scale. Senior, middle and low-ranking army officers and rank-and-file soldiers, as well as civilian authorities, have continued to exact forced labour in all areas of activity

previously identified by the ILO. In support of its claims, the ICFTU encloses nearly 30 reports and other documents, totalling over one hundred pages. They provide detailed evidence, from the same sources and of the same quality as the hundreds of reports examined over the last 5 years by the ILO and found to be credible and authentic.

Appendices to this letter provide ample and recent evidence of forced labour, including forced portering for the army, often in combat, with frequent deaths of porters from exhaustion, disease, deprivation of food, water, rest and medical care or by sheer murder. They also describe forced road clearing and building, construction and maintenance of army installations, confiscation of land and forced agricultural work on this land for the army's benefit or profit, compulsory supplies of construction materials, food (including rice, meat, fish, vegetables and fruit) and alcohol, forced labour in army-owned brick kilns and forced supply of firewood for them, random and arbitrary tax collection of every kind and many more.

The Committee notes that the documents appended to the ICFTU communication cover the period January to November 2001. While concurring with the HLT findings on the strong correlation between the presence of military camps and the practice of forced labour, they also point to the current use of forced labour on civil infrastructure projects, both before and after the HLT visit, and often include precise indications of time and place, any military battalions or companies involved and the names of the commanders.

19. Allegations of forced labour on civil infrastructure projects included in the ICFTU documentation refer to the supply and transport of road metal and wooden sleepers to the Ye-Tavoy railroad in Natkyizin, Yebyu Township, in September 2001, and the following two examples, as summarized by the ICFTU:

- forced labour on a railroad in southern Shan State, last October (hundreds of civilians conscripted to work on a new rail line being built from the state capital Taung-gyi to the township administrative centre of Namzang; 240 people from Namzang township alone, forced to clear area for the railroad, under the supervision of Captain Than Naing Oo, Infantry Battalion No. 66, assisted by personnel of the national railway company);
- forced road repairs in Kyaikmayaw Township (Mon State), in early October, in order to improve a local road ahead of a visit by Brigadier General Myint Swe (Commander-in-Chief, Southeast Military Command) to Tarana village; villagers were forced to repair the motor road for nine days (6-14 October); Brig.-Gen. Myint Swe visit (i.e. the reason which prompted the forced labour in question) took place shortly after he had met the ILO High-Level Team, in Mawlamyine, on 25 and 27 September 2001 (see ILO doc. [No. GB.282/4/Appendix VI](#), page 4); according to local villagers, forced labour in the area was interrupted during the presence of the ILO HLT in the country, and resumed afterwards.

20. Further allegations of forced labour by villagers concern infrastructure projects of a less civil character, such as the building of a road connecting villages to military bases on Kalargote island, from mid-October until the first week of November; the forced clearing of a road infested with landmines, between Mawchi (in Kayah State) and Taungoo (in Bago Division), last September; road clearance along railway and motor roads in Ye township, in October 2001; and clearance of all roads out of Lai-kha town up to a distance of about 30 km, in June 2001.

21. The greatest number of indications of forced labour communicated by the ICFTU concern service to the military, such as the conscription of 250 civilian porters, including 108 women and children, some as young as eight, on 13 June 2001 on the outskirts of Murng-Kerng town by a patrol of troops from LIB 514 led by a (named) captain under the orders of the (named) battalion commander. It is stated that these villagers were released on 28 June 2001 after 16 days of service without pay, during which the women porters above 15 years were raped by the soldiers, and about five to six days later the same troops ordered the village headmen in the area to provide ten to 15 civilian porters from each village. There are similarly precise allegations for the period June to October 2001 concerning the forced cutting of bamboo and making of fences and bamboo walls for barracks; repair of barracks; clearing of drainage channels in the bases and trenches and bunkers around them, and clearing of bushes; the forced digging of ditches, with the killing of a slow worker and charging his village 3,000 kyats for the repatriation of his body; serving as messengers, cutting and carrying firewood, cooking, carrying water and doing errands; growing rice on fields confiscated from the forced labourers; and the ordering, on 18 September 2001, of villagers by the (named) new commander of LIB No. 65, to supply 4,000 sheets of thatching material for a new amphetamine factory under construction 14 miles from Mong Ton on the Mong Ton-Mong Hsat road (Shan State).

22. The Committee hopes that the Government will examine the indications given by the ICFTU and supply detailed information on any action taken thereupon, as well as upon the report of the HLT, to prosecute all persons found responsible of ordering forced labour and of any concomitant crimes. More fundamentally, the Committee hopes that the required specific and concrete instructions and budgetary provisions for the effective eradication of forced labour, as indicated by the Commission of Inquiry in paragraph 539(b) of its report and referred to again in paragraphs 9 and 13 above, will at last be adopted, and that the Government will supply full information on the action taken.

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

guilty.

24. In its previous observation, the Committee noted that point 4 of the directive dated 1 November 2000 from the State Peace and Development Council to All State and Divisional Peace and Development Councils (referred to in paragraph 8 above) provides for the prosecution of “responsible persons” under section 374 of the Penal Code, and that a similar clause is included in point 3 of an instruction dated 27 October 2000, addressed by the Director-General of the Police Force to all units of the police force. Moreover, under points 4 to 6 of the instruction dated 27 October 2000:

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.

25. With regard to point 4 of the instruction dated 27 October 2000 the Committee expressed the hope that prosecutions under section 374 of the Penal Code would 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 hoped that in commenting on indications that the imposition of forced labour has continued beyond October 2000, the Government would also report on concrete action taken under section 374 of the Penal Code.

26. None of these concerns have so far been met. In its report, the Government repeats:

... that necessary mechanisms have also been put in place to take action to the local authorities who fail to abide by the Orders under Section 374 of the Penal Code or any other existing law. And anyone wishing to make a complaint for being subjected to forced exaction of labour can do so in respective Township Court, Police Station or Township or Ward and Village Tract Peace and Development Council. Therefore, there are proper means to accommodate such complaints already in place.

No action under section 374 of the penal Code has been brought to the knowledge of the Committee.

27. In paragraphs 52 and 53 of its report, the HLT describes “the realities of enforcement” as follows:

52. The HLT was also given a document prepared by the Ministry of Home Affairs entitled “Action Taken on Cases For Not Abiding Order 1/99 and Its Supplementary Order Issued by the Ministry of Home Affairs”. Thirty-eight instances where action had been taken were mentioned. A meeting was specifically organized on the HLT’s last day in the country in order to obtain further details concerning the cases referred to in this document. It appeared that all actions taken were of an administrative nature. They ranged from a simple warning to dismissal or discharge of the person concerned. None referred to section 374 of the Penal Code as provided for in the Orders. The HLT was informed that “inquiry committees” had authority to decide on the measures that should be imposed in case of violations of the Orders. To date, these inquiry committees had deemed it more appropriate to deal with alleged breaches of the Orders from an administrative standpoint rather than by having recourse to criminal prosecution. Out of the 38 cases, 10 occurred prior to May 1999 and therefore were not covered by the Orders. All cases involved TPDC or VPDC officers. ... It was apparent to the HLT that this document was a totally inadequate response to any inquiry as to what action had been taken to give effect to the Orders; yet no other response was made, nor, it seems, could be.

53. Most members of the general population with whom the HLT met during its visit to the country stated that they would not use the complaint procedure as envisaged in the Orders (through the courts or the police). They would more likely complain to the VPDC or TPDC. Many were scared that reprisals could be taken against them. In that respect, the HLT was given several accounts of people being beaten, detained or otherwise punished for earlier complaints on this or other issues. ...

The HLT also notes, in paragraph 68 of its report:

... that the reluctance to use the procedures specifically provided for by law is due to a large extent to the lack of trust in the police and the judicial system, in the absence of a constitutional guarantee of the separation of powers and the independence of the judiciary.

28. The ICFTU in its communication dated 29 November 2001 stresses:

... that in many cases, both military and civilian authorities have blatantly brushed aside villagers’ and headmen’s objections to performing forced labour under the rights purportedly granted to them under Order 1/99 and the Supplementary Order. This extends from a village headman being punished twice when his villagers, invoking Lt. Gen. Khin Nyunt’s “Orders”, refused to perform forced labour (last September in Kawkareik, Karen State), to Tadmaw officers openly disregarding them or even threatening to shoot anyone refusing to comply, as is described below.

In August 2001, villagers from Kyar Inn Seikkyi township (Karen State) complained to local army officials against demands for forced labour. They had been publicly informed by SPDC officials from Rangoon about the “Order”, and forced to buy copies of the “Green Book” at prices going from 500 to 3,000 kyats. In reply, Lt. Col. Win Myint, Battalion Commander, Infantry Battalion (IB) 232, Taung Tee Camp, said that the “order” had been issued from Rangoon and it would be effective in Rangoon. In this area, “he” was the area commander sent by Rangoon and they had to follow his instructions. If they wanted Order No. 1/99 to be applied in their area, they would have to “relocate to Rangoon and stay with Khin Nyunt” ...

The documentation transmitted by the ICFTU:

... also includes a detailed account of forced portering for an army platoon of 8 soldiers, led by one 2nd-Lt. Tin Myo Win, Infantry Battalion (IB) 266, based in Hakha (Chin State, on the India-Burma border). The army column itself was based at Sa-Baung-Tha army camp. A group of 54 villagers had to porter for the army for a period of 8 days. As they were not given any compensation for the work, various chairmen of the VPDC (village authorities), quoting General Khin Nyunt’s “Order” asked 2nd-Lt. Tin Myo Win for the corresponding wages. According to [the] report, “*Lt. Tin Myo Win replied that anyone who should dare to ask for compensation next time would be shot and killed at once. They were so terrified that no one dared to ask for compensation anymore*” ...

The ICFTU puts this case “in the context of the dramatic incident reported by the HLT to Lt. Gen. Khin Nyunt” and referred to in paragraphs 28 and 53 and Appendix XI of its report, as well as the alleged detention of a witness who spoke to the HLT during its visit in Arakan State, and whose very existence was subsequently denied by the authorities. The ICFTU also notes “that other reports of harassment exist, including detention, against witnesses who spoke to the HLT”, and refers to two such incidents said to have occurred in Pa-an district in October 2001. The Government may wish to comment on these matters, indicating in particular how any investigations into the allegations were conducted, by the military themselves or by the judiciary, and any measures taken to protect from reprisals both witnesses having testified, and victims of forced labour seeking redress.

* * *

29. In short, the Committee notes that none of the three recommendations formulated by the Commission of Inquiry and accepted by the Government have so far been met. Despite longstanding promises, as well as the Government’s assured good will, the Village Act and Towns Act have not yet been amended. While Order No. 1/99, as supplemented, has been widely publicized and may for the time being have affected certain civil infrastructure projects, by itself the order has not stopped the exaction of forced labour, in particular by the military. There is no indication that the necessary specific and concrete instructions and budgetary provisions have been adopted or even prepared with a view to effectively replacing forced labour by

offering decent wages and employment conditions to freely attract any workers needed. Finally, there is no indication that any person responsible for the exaction of forced labour and often concomitant crimes was sentenced or even prosecuted under section 374 of the Penal Code or any other provision, in conformity with Article 25 of the Convention.

30. People met by the HLT “indicated that there was no point in complaining to the authorities since it was the authorities themselves who were imposing forced labour” (paragraph 53 of the report). Whilst the Government permits the exploiters of forced labour to be perceived as representing the state authority, it thereby extends the validity of the Commission of Inquiry’s concluding observation:

... that the impunity with which government officials, in particular the military, treat the civilian population as an unlimited pool of unpaid forced labourers and servants at their disposal is part of a political system built on the use of force and intimidation to deny the people of Myanmar democracy and the rule of law.

[The Government is asked to supply full particulars to the Conference at its 90th Session.]

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

I. Brief summary of developments since June 2001

1. In the conclusions it adopted last year at the close of the special sitting concerning the application by Myanmar of the Forced Labour Convention, 1930 (No. 29),¹ the Committee on the Application of Standards commented inter alia on the establishment of a High-Level Team (HLT) to conduct an objective assessment of the situation of forced labour following the measures announced by the Government of Myanmar in the fall of 2000.² The conclusions expressed in particular the Committee's views about the way the HLT should be composed and how it should discharge its mandate. In the light of these comments, the following brief overview of the main developments which took place following the establishment of the HLT should be of interest to the Committee.

¹ This special sitting was held within the framework of paragraph 1(a) of the resolution adopted by the ILC at its 88th Session (June 2000).

² The conclusions also referred to the fact that the United Nations Economic and Social Council (ECOSOC) had been asked to discuss the situation at its July 2001 session. It is to be noted in this connection that on 25 July 2001 ECOSOC adopted by consensus the following resolution:

The Economic and Social Council,

Taking note of the resolution adopted by the International Labour Conference at its 88th Session, held in June 2000, on action to secure compliance with the recommendations of the Commission of Inquiry established by the International Labour Organization to examine the observance by Myanmar of its obligations in respect to the Forced Labour Convention, 1930 (No. 29), in which the Conference recommended the inclusion of the item on the agenda of the Economic and Social Council,

Further noting the conclusions adopted by consensus by the International Labour Conference at its 89th Session held in June 2001,

1. *Takes note* of the outcome of the discussion of the Committee on the Application of Standards during the 89th Session of the International Labour Conference held in June 2001;

2. *Takes note* of the understanding concluded between the International Labour Office and the authorities of Myanmar regarding an objective assessment to be carried out by an International Labour Organization High-Level Mission with respect to the practical implementation and actual impact of the framework of legislative, executive and administrative measures reported by Myanmar within the overall objective of the complete elimination of forced labour in law and practice;

3. *Takes note* of the fact that the Governing Body of the International Labour Organization will examine the report of this mission at its 282nd Session to be held in November 2001;

4. *Requests* the Secretary-General to keep the Council informed of further developments in this matter.

2. The composition of the HLT was finalized and announced by the Director-General on 20 August 2001. The HLT, under the chairpersonship of Sir Ninian Stephen,³ visited the country for three weeks from 17 September and decided to spend an additional week from 7 October to complement its assessment of the situation through interviews conducted across the border in Thailand.
3. On the basis of its findings, and in the light of its analysis of the reasons for the lack of success in enforcement of the Orders concerning forced labour issued by the authorities,⁴ the HLT made a number of suggestions in its report, directed to the Myanmar authorities and to the ILO, on steps to be taken to ensure the complete elimination of forced labour in the country.
4. In paragraphs 80-81 of its report, the HLT supported the idea of a form of permanent presence of the ILO in Myanmar. This idea had been under discussion for some time, following comments made by the technical cooperation mission that visited Myanmar in May 2000.⁵ The HLT considered that this was now more than ever critical in establishing the real commitment of the authorities.
5. In paragraph 80 of its report, in the light of its concerns about a lack of credibility associated with the complaint procedure envisaged in the Orders, the HLT suggested the creation by the authorities of an Ombudsperson or similar institution to whom complaints regarding forced labour could be submitted and who would have a mandate and the necessary means to conduct direct investigations with the confidence of all parties concerned.
6. The HLT made a number of other suggestions in its report. These included the need to distribute the Orders concerning forced labour in the major ethnic languages of the country and the need to disseminate this information via the mass media.
7. These suggestions were endorsed by the Governing Body, which considered the report of the HLT at its 282nd Session (November 2001).⁶ As part of its conclusions, the Governing Body: (1) requested the Director-General to “pursue the dialogue with the authorities in order to define the modalities and parameters of continued and effective ILO representation in Myanmar, which should be put in place as soon as possible”; (2) indicated that the Director-General should “continue to provide assistance to the authorities with a view to giving effect to the other concrete suggestions put forward in the report, including with regard to establishing a form of ombudsperson”; and (3) invited the Director-General to report to its next session on the different points under consideration, “including criminal proceedings concerning the allegations mentioned in paragraph 28 of the report [of the High-Level Team] if they are founded”.

³ The composition of the High-Level Team was as follows: Sir Ninian Stephen, Ms. Nieves Roldan-Confesor, Mr. Kulatilaka A.P. Ranasinghe and Mr. Jerzy Makarczyk. Its report ([GB.282/4](#) and [GB.282/4/Appendices](#)) is reproduced in full in Annex A in document C.App/D.7.

⁴ That is, Order 1/99 of the Ministry of Home Affairs (dated 14 May 1999) and its Supplementing Order (dated 27 Oct. 2000).

⁵ See ILC, 88th Session, Geneva, 2000, [Provisional Record No. 8](#), p. 8/5.

⁶ The provisional minutes of the discussion of this item in the Governing Body are reproduced in Annex B in document C.App/D.7.

8. On this basis, an ILO technical cooperation mission visited Myanmar in February in order to have further discussions on these various issues.⁷ While the question of the Ombudsperson and the allegations were also dealt with, the discussions concentrated on the possible terms and modalities for an effective ILO representation. At the end of the visit, the conditions under which the authorities said they were ready to accept an ILO representation did not appear to the mission to meet the objective of an effective representation set out by the Governing Body, and it thus did not prove possible to reach an understanding at that stage.
9. Following the return of this mission, a Myanmar delegation visited Geneva in March 2002 to hold further discussions. These discussions resulted in an understanding being reached between the Government of Myanmar and the International Labour Office concerning the appointment of an ILO Liaison Officer in Myanmar. The report of these discussions (GB.283/5/3), including the text of the understanding, is reproduced in Annex D in document C.App/D.7.
10. This understanding provided for the appointment by the Director-General of an ILO Liaison Officer in Myanmar not later than June 2002, pending the establishment of an ILO presence capable of contributing effectively in assisting the Government of Myanmar in its efforts to ensure the prompt and effective elimination of forced labour in the country. The functions of the Liaison Officer covered all activities relevant to the objective of the prompt and effective elimination of forced labour. The facilities and support extended to the Liaison Officer shall enable him/her to effectively assist in carrying out all these activities.
11. In its conclusions adopted following consideration of the item at its 283rd Session (March 2002), the Governing Body endorsed this understanding, subject to a number of comments and clarifications made during its debate of the question, and on the understanding that this first step must develop into a full and effective ILO representation. Regarding the mandate of the Liaison Officer, it was made clear that this extended to all activities relevant to the elimination of forced labour, including assistance to the authorities, information and advice to all those concerned in the general population, and initial steps to identify needs and possibilities of technical cooperation projects as well as their possible design and financing. Regarding facilities and support, it was made clear that these should cover freedom of movement and contacts as had been granted to the HLT, as well as the appointment of a deputy or an ILO official to assist the Liaison Officer if it was felt necessary. It was also expected that the Liaison Officer would keep the Governing Body informed, through the Director-General, on progress made in all aspects of the elimination of forced labour.
12. The Governing Body conclusions also dealt with the other issues (the alleged killings in Shan State and the establishment of an Ombudsperson institution). The conclusions covering all these issues, as orally presented by the Chairperson and unanimously endorsed by the Governing Body, were as follows:

The Governing Body has examined the various documents before it within the framework of the follow-up to the conclusions it adopted by consensus at its last session.

As regards the question of an ILO representative in Myanmar, it welcomes the understanding between the Office and the Government for the appointment by June 2002 of a Liaison Officer in Myanmar. The terms of this understanding appear to be acceptable,

⁷ The report of this mission (GB.283/5/2) is reproduced in Annex C in document C.App/D.7.

subject to the comments and clarifications made during the debate, and it is of course understood that this first step must develop into a full and effective ILO representation in order to achieve the objective stated in the understanding.

As regards the Ombudsperson institution, the Governing Body has taken note of the positions expressed by its members. It considers that the potential this formula has to achieve the objective referred to above deserves further examination; it requests the Office to pursue the dialogue and provide to the authorities all information or assistance that they might need in this regard.

As concerns the allegations concerning the seven victims in Shan State, the Governing Body acknowledges the efforts made by the authorities to shed light on this particularly disturbing case. It notes, however, that these efforts have not definitively closed the debate. It hopes that, in order to dispel all doubts or questions that might remain, the authorities will of their own volition wish to follow up on the proposal formulated during the discussion, whereby the inquiries would be confirmed by an external, independent authority acceptable to all parties.

The Governing Body also had before it a proposal from the ASEAN member States recommending that an item concerning Myanmar be placed on the agenda of the International Labour Conference to review the situation with a view to removing any measures adopted under article 33 of the Constitution of the ILO. However, the unanimity required by article 10(i) of the Standing Orders of the Governing Body was not achieved. It nevertheless noted that this was the first discussion by the Governing Body of this issue and that it could return to this question at its November session and decide thereon under normal conditions.

II. Appointment of an interim Liaison Officer

- 13.** Following various consultations the Director-General advised the Minister for Labour of the Government of Myanmar in a letter dated 18 April 2002⁸ of his intention to entrust the functions of a Liaison Officer, on an interim basis, to Mr. Léon de Riedmatten. In order to assist him in carrying out these functions the Director-General indicated that he would be providing Mr. de Riedmatten with the necessary immediate support in the form of a junior ILO official.⁹ The Director-General indicated his firm intention, following this first stage, to proceed with the appointment of the full-time permanent Liaison Officer, if not during, at least as soon as possible after, the Conference.
- 14.** The Director-General accordingly appointed Mr. de Riedmatten as interim Liaison Officer on 6 May 2002, for a period of two months. Mr. de Riedmatten was the head of ICRC delegation in Myanmar until July 2000. He is now the representative of the Centre for Humanitarian Dialogue and in that capacity has been closely involved in the national reconciliation process in Myanmar. He has also acted as “facilitator” for the ILO High-Level Team and several ILO technical cooperation missions to Myanmar.

⁸ This letter is reproduced in the [appendix](#) to this report.

⁹ Mr. Richard Horsey arrived in Yangon on 13 May in this capacity. He departed Yangon on 28 May in order to return to Geneva in time for the International Labour Conference.

III. Activities carried out by the interim Liaison Officer to date

15. Mr. de Riedmatten's mandate as interim Liaison Officer, on top of his functions with the Centre for Humanitarian Dialogue, is set out in the Director-General's letter dated 18 April to the Minister for Labour, which states that

... in this capacity he would not be called upon to discharge the full range of activities expected from the Liaison Officer as discussed by the ILO Governing Body last March. He would concentrate on settling all logistical issues in relation to the physical establishment of the Liaison Officer (premises, communication facilities, selection of local support staff), as well as establishing preliminary contacts with all institutions and persons with whom a Liaison Officer will have to deal.

The letter goes on to state that Mr. de Riedmatten had been asked to contribute to the preparation of the present report, and to that end could, in particular, organize consultations as appropriate between the competent ministries and ILO representatives to review developments as regards the substantive issues dealt with by the Governing Body with a view to reporting these to the Conference.

16. Consultations between the competent ministries and ILO representatives through an ILO mission to Yangon to review developments were considered impractical given the very limited time remaining before the Conference. However, these substantive issues were reviewed in meetings with the relevant authorities, including the Minister for Labour and the Implementation Committee, although it could be for a future ILO mission to pursue these matters further.
17. With regard to logistical issues, the first priority was to locate suitable premises for the future Liaison Officer and his staff. A number of options were considered on the basis that they should be accessible to all those persons with whom the Liaison Officer will wish to have contact, as well as allowing for expansion should this become necessary in the future. A suitable option has been identified, and a 12-month lease agreement is being negotiated with the owner. Arrangements are being made to procure all the necessary equipment so that the office can be fully functioning by July. No difficulties have been encountered in this regard, and the necessary support and assistance is being provided by the Ministry of Labour and the Ministry of Foreign Affairs.
18. As regards local support staff, it was felt that the future Liaison Officer might wish to be involved in recruiting his staff and therefore no permanent recruitment has been made at this stage. In order that the Liaison Officer have the necessary support and administrative assistance upon his appointment, however, arrangements have been made to recruit a receptionist/secretary and an administrative officer on a short-term basis.
19. As regards the establishment of preliminary contacts, the Liaison Officer ad interim, Mr. de Riedmatten (hereinafter "the L.O. ad interim"), accompanied by his assistant, has had meetings with a broad range of people with whom the Liaison Officer will have to deal.¹⁰

¹⁰ At the time this report was finalized, he had held a total of 24 meetings including with the ministers for Home Affairs and Labour, Minister at the Prime Minister's Office, senior officials from the Ministry of Foreign Affairs, the Prison Department and the Department of Labour, as well as with the [Convention No. 29](#) Implementation Committee, chaired by the Deputy Ministers for Home Affairs and Labour. Meetings were also held with senior members of the National League for

20. In a meeting on 10 May with the Minister for Home Affairs, Col. Tin Hlaing, the L.O. ad interim noted that the actions taken by the authorities to date, including the Orders concerning forced labour, had centred on the Government's administration. It was also important to address the problems that existed concerning the army, and for this reason he felt that it was of great importance for the Liaison Officer to have an interlocutor from the army. The Minister replied that the issue of forced labour was being given due emphasis by the authorities and was being discussed at the highest level. On large infrastructure projects, such as the railway construction project in southern Shan State, army personnel were being used instead of civilians.
21. In a meeting on 20 May with the Minister for Labour, U Tin Winn, the L.O. ad interim indicated that his first priority was to establish an office for the Liaison Officer and his staff. He was also developing initial contacts with those people with whom the Liaison Officer would have to deal. In this regard, he emphasized again that it was important to have contact with the army. Because such contacts were often difficult, he suggested that one possibility would be to include a representative from the army in the Implementation Committee, which currently had representatives only of the Government's administration. It was also pointed out that at the International Labour Conference that would be taking place shortly in Geneva, it was likely that the question of the Ombudsperson and the alleged incident in Shan State would again be raised. Concerning the incident, there had been a detailed response from the group which reported the original allegations. One possible way to resolve this matter would be to have independent confirmation of the results of the investigation which had been conducted by the authorities. The Minister replied that concerning the question of the Ombudsperson the authorities had certain reservations which had already been made clear. The usefulness of such an institution would in any case be limited on practical grounds, because many parts of the country were extremely remote and the people would not have any way to contact the Ombudsperson. It was therefore more practical to have a mechanism that utilized existing administrative structures; even in extremely remote areas, the administration had assistant township officers vested with administrative and judicial power. As regards the allegations, the Minister felt that there was no reason to question the reply given by Secretary-1 particularly on the basis of a counter allegation by a group that should not be accorded equivalent status by the ILO. It would therefore not be acceptable to the Government to have any kind of external verification. Lastly, regarding discussions with the army, the Minister noted that military personnel were subject to both military and civilian law. Although the military did not distribute their orders publicly, if the ILO wished, it might be possible to obtain copies of such orders relating to forced labour.
22. A meeting on 27 May with Minister at the Prime Minister's Office, Brig.-Gen. David Abel provided a further opportunity to discuss these various issues. Regarding the interlocutor with the army, the Minister indicated that within the military there was an Inspector General's department which consisted, in addition to the Inspector General, of a Judge Advocate General and a Military Secretary. These three appointments were made by the Cabinet, and they reported directly to the Commander-in-Chief (Senior General Than Shwe). All military investigations were carried out by this department and this would

Democracy (NLD), including two with its General-Secretary Daw Aung San Suu Kyi, as well as with a number of ethnic representatives from the Chin, Kachin, Kayah, Kayin, Rakhine and Shan states. Meetings were also held with 16 members of the diplomatic community in Yangon (Australia, France, Italy, United Kingdom, United States, Japan, Russian Federation, Brunei, Cambodia, Indonesia, Laos, Malaysia, Philippines, Singapore, Thailand, Viet Nam), the United Nations Resident Coordinator, and representatives of the UNHCR, the ICRC and a number of international NGOs working in Myanmar. In addition, meetings were held with representatives of the international business community and with local religious representatives.

be the most suitable interlocutor for the Liaison Officer. With regard to the question of the allegations, it would be a different matter if the complaint had come through appropriate channels such as the Liaison Officer. But, given that neither the source of these allegations nor the organization through which they had been transmitted could be regarded as credible, the Government would not be in a position to accept an external inquiry into the matter.

23. Two meetings were held with the General Secretary of the NLD, Daw Aung San Suu Kyi, on 14 and 23 May. The second of these meetings included Central Committee members of the NLD. The L.O. ad interim indicated that one of his priorities was to establish contacts with the army. He also noted that Daw Aung San Suu Kyi had mentioned on a number of occasions that one of the NLD's priorities should be improving the living conditions of the people, and he wondered to what extent the problem of forced labour could be relevant in this regard. Daw Aung San Suu Kyi indicated that once substantive issues were being discussed with the authorities, such questions as forced labour could certainly not be ignored, since they were all part of the issue of development. In the NLD's view, forced labour was not an isolated problem. One reason for the use of portering was that, in the early days of the army during the struggle for independence, civilians had willingly provided their help, in part because they were paid for their services. But this use of civilians had now become a habit and they were no longer paid and had to be coerced. The problem had improved somewhat since the early 1990s and the ILO had definitely played a role in this. She agreed that it was important for the Liaison Officer to have contacts with the army. The point needed to be made to the army that forced labour was not necessary, provided the required resources were provided to replace it, and that other countries as poor as Myanmar did not use this practice. In addition to dealing with forced labour, Daw Aung San Suu Kyi indicated that she was very keen for the ILO to become involved in the situation of factory workers, as the NLD had heard many complaints of poor conditions. She also stressed the importance of looking at the question of prison labour, in particular the poor conditions in labour camps.
24. In a meeting on 22 May with the International Committee of the Red Cross (ICRC), the head of delegation, Mr. Michel Ducraux, explained that the ICRC mandate extended to the question of forced labour; for example, it could be viewed as deprivation of freedom. Portering was particularly central to the ICRC mandate, since it was often in conflict situations that such practices occurred. Mr. Ducraux also noted that the question of portering by villagers was now included in the ICRC's confidential reports to the authorities. He stressed the importance in his view of confidentiality in facilitating the work of the ICRC, and noted that without such guarantees of confidentiality the work of the ILO Liaison Officer would be much more difficult.
25. The L.O. ad interim requested a meeting with the Implementation Committee in order to review developments since the HLT visit and report these as appropriate to the Conference.¹¹ Chairing the Committee, the Deputy Minister for Labour indicated that the

¹¹ The ILO technical cooperation mission that visited Myanmar in February had not had an opportunity to meet the [Convention No. 29](#) Implementation Committee, and so had submitted a reminder of the outstanding questions raised in the HLT's report. These questions related to: (1) new or additional cases of violations of the Orders concerning forced labour; (2) prosecutions of offenders, in particular under section 374 of the Penal Code; (3) evidence of budgetary provision for payment of labour on public works projects; (4) further publicity given to the Orders, including dissemination via the mass media (newspapers, radio, television) and dissemination in all appropriate languages, including major ethnic languages; and (5) any additional texts of instructions issued to the military or other authorities containing specifications of the kinds of tasks for which

27. It is important also to note some of the constraints on the activities to be carried out by the Liaison Officer, in particular the resolution adopted by the Conference at its 87th Session (June 1999). While this resolution remains in place, for example, the question of factory conditions, raised by Daw Aung San Suu Kyi, cannot be addressed except to the extent that violations of the forced labour Convention are alleged to be involved. As regards the question of conditions in labour camps, raised by Daw Aung San Suu Kyi, it would appear that the matter falls more directly within the mandate of the ICRC, with whom the Liaison Officer might wish to cooperate on this issue. On the question of prisoners being used as porters, the L.O. ad interim stressed that this should not be seen as an acceptable alternative to the use of civilians.
28. Although it would be premature at this stage to make any concrete proposals concerning the kinds of projects that the Liaison Officer could implement, it is nevertheless possible to give certain general indications based on the various discussions held to date. One important role for the Liaison Officer could be in developing training programmes. For example, training to all sectors, including the administration, military, and the general population could both increase awareness of the Orders and increase the capacity to implement them, and thus represent a useful complement to the institutional measures recommended by the HLT. Such training could address the problem of the recurrent blurring of the borderline between compulsory and voluntary labour which was evident most recently in the comments and questions raised by the Implementation Committee. It was also mentioned by a number of observers that the armed forces of certain countries in the region had developed various solutions to the problem of transporting supplies across similarly difficult terrain to that found in Myanmar, without the use of civilian porters. Increased mechanization possibly combined with a reduction in the size of the armed forces was perhaps the long-term solution, but in the interim, regional experience suggested other possibilities.¹² It might be fruitful to investigate these possibilities further.

¹² Ideas that had been suggested included the use of mules; the provision of salaries to porters which could, if combined with significant improvements in conditions, result in people who were fit and able to do the job volunteering for this work; and the use of soldiers not directly involved in combat for portering.

Appendix

Communication dated 18 April 2002 from the Director-General to the Minister for Labour of Myanmar

Dear Minister,

Following informal consultations with the Myanmar authorities through Ambassador Mya Than in Geneva and Mr. Léon de Riedmatten in Yangon, I would now like to formally present to you my intentions with regard to the appointment of the ILO Liaison Officer in Myanmar in accordance with the understanding concluded on 19 March 2002.

In keeping with the step-by-step approach favoured by the Myanmar authorities, it seems extremely important that, after the auspicious conclusions of the understanding and its endorsement by the Governing Body of the ILO, the discussion which is due to take place at the Applications Committee of the International Labour Conference could represent an important and positive new stage in the implementation of [Convention No. 29](#).

As you are certainly aware, the Applications Committee will have before it the Committee of Experts' report which does not indicate any significant breakthrough in this regard. The prospect of renewed and more efficient efforts with the assistance of the ILO would certainly contribute to a more positive picture. However, this prospect can only gain credibility before the Conference if the appointment of a Liaison Officer is no longer a statement of intention but a fact, and the Liaison Officer is already operational. At the same time, however, the selection of the future Liaison Officer in Myanmar is an extremely important decision which must be made with all the care, reflection and consultations that it deserves.

It is in this context that I have come to the conclusion that the best way to reconcile these different considerations at this early stage is to entrust the functions of a Liaison Officer, on an interim basis, to Mr. Léon de Riedmatten, the Director of HD in Yangon who has acted, to our mutual satisfaction, as our Facilitator.

In this capacity he would not be called upon to discharge the full range of activities expected from the Liaison Officer as discussed by the ILO Governing Body last March. He would concentrate on settling all logistical issues in relation to the physical establishment of the Liaison Officer (premises, communication facilities, selection of local support staff), as well as establishing preliminary contacts with all institutions and persons with whom a Liaison Officer will have to deal.

In addition, I have asked Mr. de Riedmatten to contribute to the preparation of the report which will be submitted to the Applications Committee for its consideration, along with the report from the Committee of Experts. To that end he could, in particular, organize consultations as appropriate between the competent ministries and ILO representatives to review, as appropriate, developments as regards the substantive issues dealt with by the Governing Body with a view to reporting these to the Conference.

In discharging these tasks, and for the purpose of being fully covered by the Understanding, Mr. de Riedmatten would be considered as an ILO official.

While necessarily limited in their scope, the tasks which would be assigned to him represent a very broad agenda which, as Léon de Riedmatten has pointed out, he cannot reasonably be expected to accomplish alone and on top of his very important and demanding responsibilities for HD. I have therefore agreed to provide Mr. de Riedmatten with the necessary immediate support to make this interim phase a success in the form of a junior ILO official who should possess recognized qualifications and be reliable and familiar with relevant ILO procedures and practices. This junior official would have to carry out all the tasks that Mr. de Riedmatten requests, under his strict guidance and authority. He would have to be available in Yangon as soon as possible after

Mr. de Riedmatten initiates his mandate on behalf of the ILO, but he should return to Geneva in June to attend the International Labour Conference. He would therefore be in Yangon in May on mission status.

Following this first stage it is my firm intention to proceed with the appointment of the full-time permanent Liaison Officer, if not during, at least as soon as possible, after the Conference.

In concluding, let me stress that it is my firm conviction that both sides have an evident interest in establishing conditions that will ensure the full success of this critical interim step. I need hardly stress the significance of such success, in particular as regards the final paragraphs of the conclusions which the Governing Body adopted last March.

As far as the ILO is concerned, this new step could, subject to some further consultations with HD, begin as early as the first week of May with the formal appointment of Léon de Riedmatten as the interim Liaison Officer for a duration of two months.

I am looking forward to your early confirmation that the authorities share this agenda as well as the general approach indicated above and thank you very much in advance for your understanding and cooperation.

Yours sincerely,

(Signed) Juan Somavia.



D. Report of the High-Level Team

I. Establishment of the High-Level Team

1. According to the “Understanding on an ILO Objective Assessment” reached by the Director-General’s representatives and the Government of Myanmar on 19 May 2001,¹ the Government of Myanmar (“the Government”) agreed to receive a High-Level Team (“HLT”) to carry out an objective assessment with respect to the practical implementation and actual impact of the framework of legislative, executive and administrative measures which the Government had adopted at the end of October and the beginning of November 2000 following a previous ILO Technical Cooperation Mission. This Understanding has to be read in the light of a previous exchange of letters between the Director-General and the competent authorities. This correspondence makes it clear that, despite its earlier decision to cease cooperation with the ILO, the Government accepted this objective assessment since, as pointed by the Director-General in his letter of 1 March,² they could not expect to receive credit for their stated aim of implementing measures designed to eradicate forced labour in the absence of an objective assessment which the ILO alone was in a position to provide. This development was acknowledged by the Committee of Experts on the Application of Conventions and Recommendations of the International Labour Conference at its last session in June 2001,³ and the objective assessment was tentatively scheduled to take place during the second half of September and the beginning of October 2001.
2. Contacts were initiated in July by the Director-General with a view to establishing the HLT. The International Labour Office also had a number of consultations during the summer with organizations of the UN system and international NGOs operating in Myanmar with a view to identifying places which the HLT might consider visiting and, as far as possible and appropriate, seeking their logistical assistance and support on the spot.
3. After informing the Officers of the Governing Body, the Director-General announced the composition of the HLT on 20 August 2001. It was as follows: The Right Honourable Sir Ninian Stephen, Ms. Nieves Roldan-Confesor, Mr. Kulatilaka A.P. Ranasinghe, Mr. Jerzy Makarczyk. (Biographical information of the members of the HLT is provided in [Appendix II](#).)
4. During a briefing session in Geneva on 30 and 31 August 2001, the HLT had a first tentative discussion of its programme and methods of work. Taking into account the weather conditions prevailing in the country it was decided that the HLT would arrive in Yangon on Monday 17 September and complete its visit on the evening of Saturday 6 October, after three full weeks in the country. The Myanmar authorities were agreeable to this schedule. At the close of this briefing session, the HLT decided to seek confirmation of a solemn commitment on the part of the authorities of Myanmar which would be made, “*through [the HLT] to the international community that no action of any kind will be taken against persons or their families or organizations who may directly or indirectly contribute information to the HLT or to the discharge of its mandate, nor indeed seek to identify such persons*”.⁴ This confirmation was received on 7 September from the

¹ ILC: *Provisional Record*, 89th Session, Geneva 2001, [No 19, Part Three](#), Appendix 5. The Understanding is reproduced in [Appendix I](#) to the present report.

² *ibid.*

³ ILC: *Provisional Record*, 89th Session, Geneva 2001, [No. 19, Part Three](#), p. 3/11.

⁴ The text of the letter sent in this regard is reproduced in [Appendix III](#).

Permanent Representative of Myanmar to the United Nations, Ambassador U Mya Than, acting on behalf of the Minister for Foreign Affairs.⁵

5. Notwithstanding this commitment, the HLT gave particular attention to the precautionary measures that it should take as regards persons that it might wish to meet. First, it was decided that the HLT should wherever possible have recourse to international and independent interpreters. Second, the HLT also discussed the methods to be used in gathering information and decided, inter alia, that all data that could identify persons met would be kept confidential. The persons met should be informed of this and of the solemn commitment undertaken by the Government. When appropriate, the HLT could insist on the importance of telling the truth.
6. The members of the HLT and the ILO staff assigned to support them⁶ arrived in Bangkok on Saturday, 15 September, and had a full day preparatory meeting on 16 September to review the arrangements made for the visit, establish their programme for the first week in Yangon, and make tentative plans for the visits of the HLT to the field during the two following weeks. It benefited in particular in that respect from the valuable assistance of the “facilitator” agreed upon by the authorities and the Director-General in accordance with paragraph 4 of the abovementioned Understanding, Mr. Leon de Riedmatten.

II. Mandate of the HLT

7. As indicated above, the mandate of the HLT was to carry out an objective assessment of the practical implementation and actual impact of the framework of legislative, executive and administrative measures taken by the authorities, taking into account the relevant observation made by the Committee of Experts at its last meeting (see [paragraphs 32 and 33](#) below and [Appendix V](#)).
8. The HLT considered that its task extended beyond the analysis of the formal steps taken by the Government to implement the orders concerning forced labour, that is, Order 1/99 of 14 May 1999 and Order Supplementing Order 1/99 of 27 October 2000 (hereinafter referred to collectively as “the Orders”). The reference in the Understanding to the “impact” of the Orders made it clear that it was also to assess to what extent the new Orders had made, or were capable of making, a difference to the realities of forced labour described in the report of the Commission of Inquiry. This in turn implied that the HLT should, as appropriate, try to identify the obstacles to the full eradication of forced labour, and investigate any possible ways in which they could be overcome. On the occasion of its meeting on 21 September with Secretary-1 of the State Peace and Development Council (SPDC), Lt.-Gen. Khin Nyunt, the HLT indeed made a proposal along these lines in response to his suggestion that the HLT should inform him of any violations it might come across.
9. It is on this basis that the members of the HLT accepted the task entrusted to them.

⁵ The text of this letter is reproduced in [Appendix IV](#).

⁶ Chief of the ILO secretariat, Mr. Francis Maupain, accompanied by Mr. Muneto Ozaki, Mr. Rueben Dudley, Ms. Anne-Marie La Rosa, Mr. Richard Horsey, Ms. Marie-Anne Plantard and Ms. Tracy Murphy.

III. Programme and method of assessment and its limitations

10. The framework provided by the Understanding ensured that the HLT would have “complete discretion” to establish and implement its programme of work, meetings and visits. The Government fully honoured its obligations under the Understanding not to interfere with the work of the HLT, which expresses its appreciation of the excellent arrangements which had been made by the Government to assist it in the discharge of its mandate.

III.1. Programme

11. The first week of the HLT’s visit to the country (17-22 September 2001) was spent in Yangon,⁷ in an intensive programme of meetings with a view to: (i) obtaining general background information; (ii) assessing the steps taken by the authorities in Yangon to implement the Orders; and (iii) seeking further information and advice before finalizing its programme for the two following weeks of field visits designed to assess the real impact of the measures taken. In this context, the HLT had a lengthy meeting with the Implementation Committee, made up of representatives from all ministries involved in the implementation of the Orders. It also had other meetings with a number of ministers, deputy ministers and senior officials (including the Ministers for Home Affairs, Foreign Affairs, Labour, Social Welfare, a Minister at the Prime Minister’s Office, the Deputy Minister for Foreign Affairs, the Chief Justice, and the Attorney-General). As indicated above, it also had an important meeting with Secretary-1 of the SPDC, Lt.-Gen. Khin Nyunt. Substantial discussions were also held with the leadership of the National League for Democracy (NLD). The HLT was received privately by Daw Aung San Suu Kyi, with whom it had already established contact during its initial session in Geneva. It also met with the members of the diplomatic community, the United Nations Country Team, the international and national business communities, local and international NGOs, the ICRC, ceasefire groups, ethnic nationalities representatives of the Committee Representing People’s Parliament, as well as religious leaders.⁸
12. The two following weeks were devoted to field trips to various parts of the country. On the occasion of its briefing in Geneva, the HLT had agreed that in order to make the best possible use of the limited time available it would travel by chartered plane (hired in Bangkok) to reach areas not necessarily covered by regular commercial flights, and to then proceed by road with four-wheel-drive vehicles, or by boat where necessary. It had also decided to split into two groups to cover as many areas as possible. Each group was accompanied by two independent, international interpreters. The two groups met again in Yangon in the middle of these field trips (on 28 and 29 September) to compare their

⁷ Before departing Bangkok for Yangon, the HLT issued a press release stating that it was beginning its visit to Myanmar and referring to the solemn commitment made by the authorities (see para. 4 above) and to certain precautionary measures taken by the HLT as regards persons it might wish to meet. The HLT declined to have any further dealings with the media until its report had been finalized.

⁸ A detailed programme of the first week can be found in [Appendix VI](#), s. (b).

respective findings and experiences. A full itinerary of the HLT's field trips is appended,⁹ as well as a map of the country.¹⁰

13. These field trips made possible meetings with authorities at the state/division, district, township and village-tract¹¹ levels. The two groups made a point of always visiting regional and local military commanders whose role, as will be seen below, is fundamental in the implementation of the Orders. They also had many informative meetings with religious leaders of different faiths and denominations, as well as UN, NGO and ICRC representatives.
14. A special and unique value of these field trips was that they enabled the members of the HLT to conduct many random interviews in the absence of representatives of the Government with individuals in the streets of towns and villages, in people's houses, in teashops and in other public places, as the opportunities presented themselves.
15. After completion of the field trips, the HLT returned to Yangon and on Friday, 5 October, met again with the Implementation Committee to seek clarification on some of the issues which it had identified during its visit. It was also received by the Chairman of the SPDC, Senior General Than Shwe, accompanied by his deputy, General Maung Aye, and Secretary-1 of the SPDC, Lt.-Gen. Khin Nyunt. A summary of the introduction by Senior General Than Shwe and the reply by Sir Ninian Stephen on behalf of the HLT appears as Appendix IX. The HLT then met for a second time with Daw Aung San Suu Kyi. Before leaving Yangon, it had a final meeting with the members of the diplomatic community, the United Nations Country Team, and the business community.¹²
16. The HLT considered that the information collected during these three weeks in Myanmar would usefully be complemented by some meetings and interviews across the border in Thailand with persons who claimed to have been recently subject to forced labour, to be organized with the assistance of NGOs working in this area. Consistent with its concern to ensure complete transparency of its programme and methods of work, the HLT had, at its meeting on 5 October with the Chairman of the SPDC, Senior General Than Shwe, informed him of its intention to do this and of its determination to assess such additional information as it might receive with the same critical judgement as it had exercised during its visit to Myanmar.¹³
17. The HLT had to forgo the possibility of also conducting meetings and interviews across the border in Bangladesh. It did, however, receive some very recent information covering the period from mid-July to 2 October 2001 from two researchers stationed in Bangladesh who met the HLT in Bangkok on Sunday, 7 October. This information provided some useful complementary impressions to those the HLT had obtained in Rakhine State, as well as some interesting feedback concerning its visit.

⁹ See [Appendix VI](#), s. (c).

¹⁰ See [Appendix VII](#).

¹¹ "Village tract" is an administrative structure consisting of a group of villages. An explanation of Myanmar terms and acronyms used in this report, as well as a list of alternative spellings of Myanmar place names, can be found in [Appendix VIII](#).

¹² A detailed programme of the wrap up and debriefing can be found in [Appendix VI](#), s. (d).

¹³ A detailed programme of the HLT's visit across the border in Thailand can be found in [Appendix VI](#), s. (d).

III.2. Method of assessment and its limitations

18. The HLT was able to collect an impressive mass of information and documentation (see [Appendix X](#)) as well as conducting many interviews (see [Appendix VI](#)). As regards interviews, care was taken to ensure the greatest possible consistency in the work of the two groups and the comparability of their findings. To that end, the HLT had established a standard checklist of questions, adjusted to the different types of interviews (that is, inter alia, with the military, the authorities and villagers in general).
19. Despite the exceptional abundance and diversity of the information received, the limitations of the exercise must however be recognized, limitations relating to geographical coverage as well as to the spontaneity and reliability of the information provided in interviews and the extent to which people felt safe to be frank in those interviews.
20. The geographical limitations were dictated by the time and resources available to the HLT. Taking into consideration information received from a number of sources, including international NGOs and diplomats, the HLT had made a selection of places it wished to visit. It did not select only those places where, on the basis of allegations received, the situation appeared to be most serious, but attempted to gain a more balanced overview by selecting a range of different areas – some ceasefire areas, some non-ceasefire areas, areas with and without significant international presence, and towns and cities as well as more remote areas. Because most allegations that the HLT received related to areas distant from the central part of Myanmar, it tended to concentrate on those areas, although the Implementation Committee had suggested that the HLT also visit certain specific projects in central parts of the country. On the occasion of the second visit that the HLT paid to Daw Aung San Suu Kyi, she expressed some regret that the HLT had not visited this central part of the country. She and the NLD in fact provided the HLT with two documents containing a number of allegations of forced labour occurring in these central areas.
21. As previously noted, the HLT enjoyed full freedom to visit the places that it wished in Myanmar, and none of their requests was turned down on the security grounds referred to in the Understanding. On a couple of occasions, however, when ambushes had recently taken place (for instance near Dawei or on the road between Loikaw and Taunggyi) the authorities insisted on the presence of a military escort for its protection. In addition, logistical assistance in the form of a generally discreet escort was available to each group as it proceeded with its visit, the escort not however accompanying the HLT into particular towns or villages where it conducted interviews, but waiting at the outskirts.¹⁴
22. The conditions in which the programme was established made it difficult for the authorities to anticipate the HLT's itinerary and the specific places it would decide to visit. However, for the purpose of organizing internal flights and landing with a chartered plane, 48 hours' notice had to be given.
23. It was obvious that the visit had nevertheless been the object of a very intensive preparation by the authorities for the purpose of giving as favourable an impression as possible of the forced labour situation. Preparatory work apparently started as early as the beginning of the summer (soon after the conclusion of the Understanding at the end of May 2001). But it seems to have been reactivated on a more targeted basis as the itinerary of each of the two groups was made known or became evident. Thus, on several occasions

¹⁴ In two cases, however, the HLT witnessed attempts by the local escort to ask villagers what they had been telling the HLT. Representations were immediately made.

copies of the Orders displayed were fresh and occasionally villagers said that they had been posted a couple of days before. It must, at the same time, be stated that despite numerous reports received from a number of sources, according to which there had been an orchestrated campaign to collect signatures to document that forced labour no longer existed, the HLT was never confronted with such obviously fabricated evidence.

24. As regards individual interviews, the HLT on occasions felt that despite the assurances it provided about the commitment given by the authorities and the confidentiality of the interviews, the persons being interviewed did not feel completely free to speak and sometimes even explicitly said so. Advice received, in particular from the NLD and religious leaders, however, was that despite this limitation the effort to obtain first hand information from the people directly through interviews was worthwhile because “there existed courageous people” in Myanmar. On balance, the HLT was impressed by the readiness of individuals to provide it with information.
25. The limitations resulting from psychological or other types of pressure to which persons might have been subjected in Myanmar obviously do not apply to the information collected outside its borders.¹⁵ But this information suffers from other limitations. Interviews by persons other than the HLT itself need to be assessed differently from those which the HLT undertook directly. Because interviewees were selected by the interviewers, whose methods were not under the direct control or supervision of the HLT, the information that the HLT obtained from persons that it met across the border also needs to be distinguished from the “random” information received within Myanmar. First, the HLT was only able to meet outside Myanmar with those persons approached by the various NGO organizations concerned through their networks, and who were willing and able to travel to the locations visited by the HLT. Second, they reflect the realities of some parts of the country nearer to the border where in many cases there are accounts of ongoing insurgency.
26. Whether collected inside or outside the country, this information obviously does not necessarily constitute “evidence” in the legal sense of the word. The opportunities available to verify the authenticity and genuineness of the information were limited. For obvious reasons relating to the protection of the anonymity of those concerned and consistent with the specific commitment made to them and to the NGOs, the transcripts have to remain confidential unless those concerned agreed to them being made public. While the strict provisions of the law relating to the reception of evidence are not applicable, the HLT was guided by standards of what is just, fair and reasonable.
27. However, the task of the HLT was not to pass judgement or to establish judicial truth but rather to try to establish objectively a trend in the evolution of the practice of forced labour, as compared with previously established facts. For that purpose all the information and documentation received was of great help to the HLT in assessing the situation.
28. In one case, however, the HLT considered that it was both safe and necessary to investigate more thoroughly the reliability of a statement reported in an email from an NGO, the Shan Human Rights Foundation. This information reached the HLT shortly before it left Yangon (see [Appendix XI](#)). It was then subsequently referred to during an interview across the Shan State border in Thailand, by a person claiming to have personal knowledge of the event. The HLT considered first that the information was already in the

¹⁵ The information received by the HLT during the last week could be divided into the following categories: (i) direct interviews with individuals claiming to have experienced or observed forced labour; (ii) written statements of persons who obtained statements from others claiming to have experienced or observed forced labour; (iii) documents containing relevant background information; (iv) originals of orders from military or paramilitary units to villages.

public domain, and if it was true, the unfortunate deceased victims did not have anything more to fear. Second, the tragic outcome was allegedly the direct result of a complaint lodged by villagers against a Regional Commander following a public announcement specifically made in that region by Secretary-1, Lt.-Gen. Khin Nyunt, about the illegality of forced labour. The day after receiving this testimony the HLT thus decided to send a letter to Senior General Than Shwe to try to obtain clarification of this case before the finalization of the report (this letter together with the reply signed by Secretary-1 which was received by the HLT at the time of signing this report is reproduced in [Appendix XI](#)).

29. As reflected in the summary in [Appendix VI](#), section (a), the HLT was able to conduct seven meetings with various NGOs and other groups and 96 interviews with individuals during its additional week of investigation, across the border in Thailand. In the course of individual interviews, orders to heads of villages emanating from various military or paramilitary groups and requisitioning various forms of forced labour were handed to the HLT. Translations of these documents have been carried out as far as possible, but it was obviously impossible to systematically establish their authenticity, although many of them appeared to be originals, bearing the stamps of the military groups concerned.
30. The question arises as to what should be done with the transcripts of the interviews and written documents and other material received during these interviews. In view of the commitment made to those concerned, the HLT recommends that these extremely valuable materials, duly expurgated of identifying information, should be kept in the archives of the ILO and that in due course the Governing Body should consider if, and under what conditions, this exceptional source of information could be opened to the public and academic researchers.

IV. Findings

IV.1. Findings as regards formal steps taken pursuant to the Orders

31. Taking as a starting point the observation of the Committee of Experts in its 2001 report, the HLT has examined the steps taken with regard to the issuance of additional instructions, including to the military, the measures taken in order to disseminate the Orders to those concerned, including the general population, and, finally, any action relating to the enforcement of the Orders.

A. ***Background guidance provided by the Committee of Experts in its 2001 report as regards steps still required***

32. In its 2001 report, the Committee of Experts observed that the amendment of the Village and Towns Acts had not yet been made and expressed the hope that these Acts would at last be brought into conformity with [Convention No. 29](#) (for the full text of the observation, see [Appendix V](#); for the texts of relevant legislation and orders, see [Appendix XIII](#)). However, the Committee of Experts examined the combined effect of Order No. 1/99 and the Supplementing Order. The Committee of Experts concluded that these Orders “*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*”.

33. The Committee of Experts also examined several instructions dated 27 and 28 October and 1 November 2000. It observed, inter alia, that the instruction dated 1 November 2000 “Prohibiting Requisition of Forced Labour” was signed at the highest level, by Secretary-1 of the SPDC, and addressed to the chairmen of all state and divisional peace and development councils and prohibited them from requisitioning forced labour. The Committee of Experts considered 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”*. The Committee further noted that the instruction dated 1 November 2000 directed that the state and divisional peace and development councils should issue necessary instructions to the relevant district and township peace and development councils to strictly abide by the prohibition contained in the Orders concerning forced labour. That would include cases where members of the armed forces order local authorities to supply labour. After careful examination, the Committee of Experts concluded that *“...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”*.¹⁶ The Committee added that such prohibition should also apply *“to the requisition of materials or provisions of any kind to demands of money 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”*. Finally, as regards the enforcement procedure, the Committee of Experts, noting that there had been no case of enforcement under section 374 of the Penal Code, expressed the hope that prosecutions could 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”*.

B. Steps taken with regard to the issuance of additional instructions, including to the military

34. The HLT requested on a number of occasions to be provided with authoritative translations of any additional instructions addressed to any authority, including the military. At the time of drafting its report, the HLT had only received three instructions in Burmese issued by various military commanders to units under their command. Official translations of these orders have been requested but not yet received. On the basis of unofficial translations, the HLT understood that two of these orders simply reproduced the text of the order issued by Secretary-1 dated 1 November 2000. They did not contain any specifications either of the kinds of tasks for which the requisition of labour was prohibited

¹⁶ The suggested prohibition should include but not be limited to the requisition of the following labour or services, regardless of whether or not payment is made for the said labour or services:

- portering for the military (or other military/paramilitary groups, for military campaigns or regular patrols);
- construction or repair of military camp/facilities;
- other support for camps (such as guides, messengers, cooks, cleaners, etc.);
- income generation by individuals or groups (including work in army-owned agricultural and industrial projects);
- national or local infrastructure projects (including roads, railways, dams, etc.);
- cleaning/beautification of rural or urban areas.

nor the manner in which the same tasks were henceforth to be performed. The third instruction issued by the NaSaKa¹⁷ and dated 22 July 2001 re-stated the general prohibition on requisitioning of forced labour contained in the Orders but added that if recourse to forced labour was necessary, payment should be made accordingly. It would thus appear, on the basis of the information so far provided, that the authorities have not given due attention to this aspect.

C. Dissemination of information to those concerned, including the general population

35. During its visit to the country, the HLT noted that, in general, considerable publicity had been given to the Orders, including their posting in English and Burmese on the notice-boards of VPDC¹⁸ offices and other public offices, and through large numbers of meetings arranged by various authorities to inform both the general population and administrative officials of the content of the Orders. In Rakhine State, for instance, one TPDC¹⁹ official stated that he had organized 101 such meetings in 1999 and the same number in 2000 covering all village tracts in his area and authorities under his competence. In several places around the country that it visited, the HLT was presented with extensive documentary evidence that such meetings had been held. Copies of the Orders have also been distributed to members of the military, the NaSaKa and the police force.
36. The HLT noted that there was considerable geographic variation in the dissemination of the Orders as well as in the time frame in which this dissemination occurred. In many cases persons met by the HLT said that they had been informed of the Orders by foreign radio stations rather than by the authorities.
37. In the areas around Dawei (Tanintharyi Division), Mawlamyine (Mon State) and Hpa-an (Kayin State) visited by the HLT, there was clear evidence of dissemination of the Orders. Some members of the general population in these areas, however, did not have any knowledge of the Orders.
38. In Lashio (northern Shan State), the HLT noted that the Orders had been fairly widely distributed in the areas it visited, including posting on boards prominently displayed by the side of the road, and on village notice-boards. Members of the local authorities also indicated that they had convened meetings with the local population in many areas and explained the content of the Orders to them. In many cases, the prominently-displayed Orders appeared new, and information from the local population indicated that in most of these cases the Orders had been put up the day before the HLT arrived. Many of the local people indicated that they had not previously been aware of the existence of such Orders.
39. In Rakhine State, the Orders appeared to have been widely disseminated in those areas that the HLT visited, in the two months prior to its visit. This included public posting of the Orders in English and Burmese, and the holding of numerous public information meetings on the subject. Members of the authorities, the military, and the vast majority of village heads and VPDC members were aware of the Orders, and most stated that they had learned about the Orders soon after they were issued. Some village heads and VPDC members

¹⁷ A border security force under the authority of the responsible regional commander.

¹⁸ Village-tract Peace and Development Council.

¹⁹ Township Peace and Development Council.

indicated, however, that they had only become aware of the Orders in July 2001. More than half of the general population interviewed by the HLT was also aware of these Orders. Many of them had been recently informed (in August and September 2001).

40. In the area around Loikaw and Demawso in Kayah State there appeared to have been considerable dissemination of the Orders. Most people who were asked about the Orders had been informed about them, often via distribution of copies to village heads. In some cases this did not occur until July or August 2001. In contrast, along the road between Loikaw and Taunggyi (Shan State) and around Taunggyi town there appeared to have been no dissemination of the Orders at all, and no person met by the HLT had heard about them.
41. On the basis of information gathered by the HLT across the border in Thailand there appeared to be little knowledge of, or dissemination of, the Orders in southern Shan State and eastern parts of Kayin State. Less than half of the persons interviewed had heard about the Orders, and a number of these had heard from non-official sources or just by rumours. Few of them had seen copies. There was no evidence of any dissemination of the Orders in the Kayin or Shan languages even though most of the people interviewed did not speak or understand Burmese well or at all.
42. Despite signs of considerable efforts being made to disseminate the Orders as described above, the HLT noted that they had not been disseminated at all via the mass media, including radio, television or print media. Despite the objections (as to the risk of confusion arising from the fact that new legislation is not normally dealt with through such media) made during discussions with the Implementation Committee, the HLT believes that further consideration should be given to this question, taking into account the exceptional character of the problem. The HLT also noted that the Orders had not been distributed in languages other than English and Burmese, and that in particular the Orders had not been translated into any of the other major ethnic languages spoken in the country. The HLT was informed by people in different parts of the country that they could not understand the Orders that were posted in their areas because they did not read or understand Burmese well enough. The HLT further noted that the Orders had not always been disseminated together. It is important that this be done, since the Supplementing Order needs to be read in conjunction with Order 1/99. This would ensure a better understanding among non-experts of the rather technical content of the Orders.

D. Action with regard to the enforcement of the Orders

43. Before examining the effectiveness of the Orders in terms of bringing to trial those who have recourse to forced labour, the HLT wishes to briefly summarise the legislative and institutional background in the country, as it understood it from the meetings that it had and the texts that were provided to it, focussing on the interaction between the Orders, section 374 of the Penal Code, and the organization of the judiciary.
 - (i) Legislative and institutional background
 44. Section 6 of Order No. 1/99 provides that “[a]ny person who fails to abide by this Order shall have action taken against him under the existing law”. Section 5 of the Supplementing Order specifies that the expression “any person” includes “local authorities, members of the armed forces, members of the police force and other public service personnel”. Furthermore, section 5 of this Order, as well as several instructions issued on 27 and 28 October and 1 November 2000, provide for the prosecution of responsible persons under section 374 of the Penal Code.

45. For its part, section 374 of the Penal Code makes forced labour a criminal offence in the following terms: *Whoever unlawfully compels any person to labour against the will of that person shall [be] punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.*²⁰
46. The HLT had extensive discussions in order to understand how section 374 applied in the general context of the judicial organization of the country, and to clarify certain details of the criminal procedure and the respective jurisdictions of civil and military courts.
47. The present judicial system has existed in Myanmar since 1988. In addition, the HLT was informed that the SPDC had promulgated two laws, in June 2000 and February 2001 respectively, governing the organization of the judiciary in the country and specifying the duties and powers of the Attorney-General. These texts were provided to the HLT and are called “The Judiciary Law, 2000” and “The Attorney-General Law, 2001”.
48. Four levels of courts exist in Myanmar, at the township, district, and state/divisional levels, and the Supreme Court.²¹ The Supreme Court, which is the highest court of appeal, is entrusted a nationwide jurisdiction. All decisions rendered by township, district or state/divisional courts on forced labour charges are appealable.
49. The Chief Justice further stated that the SPDC appointed the members of the Supreme Court, which presently comprises 11 members. It sits in the cities of Yangon and Mandalay. There is no predetermined term of office and no security of tenure; judges could be removed by the SPDC at any time for good reason. However, no change in the Supreme Court’s composition has occurred since the promulgation of The Judiciary Law in 2000. The Supreme Court, in turn, forms state/divisional, district and township courts. There is no predetermined term of office for the judges comprising these courts either.
50. According to Myanmar legal authorities, there is a sophisticated procedure provided for concerning the prosecution of cases of forced labour. However, it seems pointless to describe this procedure in detail since, on the highest authority, that of the Chief Justice and the Attorney-General, not a single criminal prosecution has been initiated since the Orders were enacted, and this is, in the view of the HLT, by no means because no instances of forced labour have occurred. On the contrary, there have been widespread instances of forced labour of all kinds, but no prosecutions.²² At the most there has been

²⁰ The text quoted is taken directly from the Penal Code of Myanmar.

²¹ A diagram showing the court structure of Myanmar is appended in [Appendix XII](#).

²² According to explanations and relevant texts provided to the HLT, a complaint, presented either to the police or to the courts, by the person who was compelled to work or a close family member, is necessary for a case to be opened in respect of forced labour. Forced labour being a non-cognizable offence in Myanmar, no investigation can be initiated by the police without an order issued by a Magistrate (see Code of Criminal Procedure, ss. 4(n) and 155). The instruction dated 27 October 2000 addressed by the Director-General of the Police Force to all units of the police force follows similar lines by ordering police stations to which “*any affected person files a verbal or written complaint ... of having been forced to contribute labour*” to record the complaint “*in Forms A and B*” (which were provided to the HLT) and “*send the accused for prosecution under section 374 of the Penal Code*”. Afterwards, any court in Myanmar can take cognizance of offences related to forced labour. If the complaint concerns a police officer, the case should normally be tried by a criminal court (The People’s Police Force Maintenance of Discipline Law, s. 26). If it is against a member of the army, the case would normally be examined by a court-martial. However, criminal courts having also jurisdiction in cases of forced labour, they can request that the proceedings be instituted before themselves (The Defence Services Act, ss. 71, 128, 129(1)). In

occasional administrative action taken against members of the authorities and the armed forces involving a very few cases of violations of the Orders.

51. When it comes to punishment for forced labour offences, the Penal Code of Myanmar provides for a maximum term of imprisonment of one year or payment of a fine, or both. It does not give any indication as regards the criteria that should be applied when determining the appropriate amount for such a fine, but judges questioned in this regard by the HLT said that they were vested with full discretion. The punishment of members of the military is determined by The Defence Services Act which states that they are liable “to suffer any punishment, other than whipping, assigned for the offence by the law in force in the Union of Burma, or imprisonment for a term which may extend to seven years, or such less punishment as is in this Act mentioned” (The Defence Services Act, section 71). The lesser punishment mentioned in The Defence Services Act includes, inter alia, cashiering, dismissal from the service, reduction to the ranks, forfeiture of seniority, service or pay and allowances, reprimand or stoppage of pay and allowances (ibid., section 73).

(ii) The realities of enforcement

52. The HLT was also given a document prepared by the Ministry of Home Affairs entitled “Action Taken on Cases For Not Abiding Order 1/99 and Its Supplementary Order Issued by the Ministry of Home Affairs”. Thirty-eight instances where action had been taken were mentioned. A meeting was specifically organized on the HLT’s last day in the country in order to obtain further details concerning the cases referred to in this document. It appeared that all actions taken were of an administrative nature. They ranged from a simple warning to dismissal or discharge of the person concerned. None referred to section 374 of the Penal Code as provided for in the Orders. The HLT was informed that “inquiry committees” had authority to decide on the measures that should be imposed in case of violations of the Orders. To date, these inquiry committees had deemed it more appropriate to deal with alleged breaches of the Orders from an administrative standpoint rather than by having recourse to criminal prosecution. Out of the 38 cases, 10 occurred prior to May 1999 and therefore were not covered by the Orders. All cases involved TPDC or VPDC officers. A number of them dealt with allegations related to forced contribution of labour, including for road construction (five cases) and portering (one case), as well as contribution of money and compulsory provision of produce, such as rice and beans. Others raised wrongdoings, such as misuse of public funds and goods, which did not appear to fall within the purview of [Convention No. 29](#). It was apparent to the HLT that this document was a totally inadequate response to any inquiry as to what action had been taken to give effect to the Orders; yet no other response was made, nor, it seems, could be.

53. Most members of the general population with whom the HLT met during its visit to the country stated that they would not use the complaint procedure as envisaged in the Orders (through the courts or the police).²³ They would more likely complain to the VPDC or TPDC. Many were scared that reprisals could be taken against them. In that respect, the HLT was given several accounts of people being beaten, detained or otherwise punished for earlier complaints on this or other issues. For example, in Shan State, accounts were

cases of a dispute in jurisdiction, it will be for the President of the Union of Myanmar to determine before what court – court-martial or criminal court – the proceedings can be initiated (ibid., s. 129(2)).

²³ During the meeting with the Regional Commander in Dawei, one of the officials accompanying the HLT also read a short prepared statement which explained that local people were reluctant to complain to courts because it was expensive and time-consuming. People preferred to make petitions directly to influential people, and he gave as an example the case of a group of teachers who had complained to Secretary-1 because one of them had been requisitioned for forced labour.

made to the HLT of serious reprisals being taken by the military against those who complained about forced labour. One villager was arrested for seven days by the military, and the villagers had to pay a 30,000 Kyat ransom for his release. Other villagers were allegedly beaten by the military for complaining. But the most disturbing case is the one previously referred to and on which the HLT decided to obtain comments from the authorities (see [paragraph 28](#) above). Other people met indicated that there was no point in complaining to the authorities, since it was the authorities themselves who were imposing forced labour. Many added that, in any case, it would be impossible to complain, because of language difficulties, cost, or distance, including the problems of restriction on movement that some of them had to face.

IV.2. Findings as regards the impact on the realities of forced labour of the steps taken to implement the Orders

- 54.** As the Chairperson of the HLT explained to the Chairman of the SPDC Senior General Than Shwe on 5 October 2001, the HLT members were from the outset very sceptical about the optimistic conclusions which were officially drawn from the absence of reported violations and of any criminal prosecution for such violations. Indeed, the HLT's field trips, and its interviews conducted across the border, amply justified this scepticism.
- 55.** The tentative conclusion that the HLT had reached after completing its three weeks of interviews and visits in Myanmar was of a very moderately positive evolution in the situation. Beyond the obvious although uneven effort at disseminating the Orders, the two groups of the HLT shared the view that a certain decrease in the imposition of forced labour had taken place, even though it was difficult to judge precisely to what extent. The HLT did, however, have doubts about the sustainability of the process over time, and was concerned about the geographical inconsistencies in the progress made, given that in some areas a considerable amount of forced labour appeared to persist. This was particularly associated with the presence of the military, especially in more remote areas.
- 56.** The picture which emerged from discussions and interviews conducted across the border, which concentrated on the case of ethnic groups was even more disturbing. In fact, it was not very different from the situation presented in the report of the Commission of Inquiry. Forced labour in most of the forms previously identified seemed still to prevail, particularly in villages which were close to a military camp. All too often it was accompanied by acts of cruelty.
- 57.** It may seem facile to conclude that an accurate impression of the general situation in the country lies somewhere between these two pictures, but that is perhaps the case. One has to bear in mind that the circumstances under which persons came to meet the HLT across the border, and the fact that they came from remote and highly militarized areas where insurgencies may be ongoing, means that these interviews show one extreme of the problem, which cannot be extrapolated to the rest of the country. A balanced assessment of the trend in forced labour practice needs to reflect general patterns, as well as to distinguish between different types of situation. The following two general patterns seem to emerge:
 - (a) In contrast to the situation reported in 1998 by the Commission of Inquiry, the HLT found no indications of the current use of forced labour on civil infrastructure projects.
 - (b) In all areas for which the HLT had information it was apparent that there was a strong correlation between the presence of military camps and the practice of forced labour

whether or not these troops were engaged in military activities (see paragraphs 61 and 62 below).

However, it is important to make the following distinctions:

- (c) In many areas, despite continued forced labour as a result of a military presence, there were indications that the situation had improved. The sustainability of this improvement is not clear, since it depends on the willingness of local military commanders to continue to rely less on forced labour.
- (d) In certain other areas, particularly southern Shan State and the eastern parts of Kayin State near the Thai border, the situation appeared to be particularly serious. This might be partly explained by the greater military presence in these areas, and by their remoteness, but there also appears to be an element of greater repression against these populations as a result of the ongoing insurgencies in these areas. Contrary to claims made by the authorities in Yangon, there is no indication that portering in these areas has diminished in any noticeable way as a result of any greater use of mules or because of any improvement in the road network.
- (e) The situation is also particularly serious in northern Rakhine State, which is also a remote area with a large military presence. The Muslim population in this area is disproportionately affected by forced labour; it reflects an element of discrimination against this population, which also takes the form, *inter alia*, of restrictions on movement.

58. There were some indications that the military had recourse to other methods of obtaining labour or services, such as requisitioning vehicles and their drivers. The HLT also met across the border in Thailand with three escaped porters. One claimed to have been arrested on an administrative matter (failure to pay full rice tax) and the other two claimed to have been arbitrarily detained. All were handed over by the police to the military and used as porters, without ever being formally charged or appearing before a judge. Their clothes were taken away by the military and they were made to wear blue convict uniforms.

V. Identification of obstacles to the more effective eradication of forced labour

V.1. The “self-reliance” policy of the army

59. There seems to be little doubt whatever that non-application of the Orders by the army can hardly be attributed to ignorance. As previously noted, the Orders seem to have indeed been the object of wide – if uneven – dissemination at all levels of the military hierarchy. The disturbing evidence seems to be that these Orders are not observed by the military at the local level and that there seems to be no accountability in the case of breaches. A number of persons met provided relevant information on the state of mind of those responsible at the regional or local level *vis-à-vis* the new Orders. Thus, when a village head came to complain to the local battalion commander, the answer he received was that the Order came from Secretary-1, Lt.-Gen. Khin Nyunt, that Khin Nyunt did not have responsibility for fighting and that therefore this order did not concern them and that if they wanted to complain they could go to him. Others provided similar accounts.

60. Rather than individual indiscipline, this attitude seems to have a lot to do with a policy of self-reliance in the context of combating insurgent ethnic movements which have,

according to some, deep roots in the military history of the country. But it also has obvious practical and logistical reasons. The army does not have modern mechanical means and equipment and sometimes not even sufficient resources to feed all its soldiers. There are only five Animal Transport Battalions (ATBs) and they can hardly have access to all places of fighting or military presence, and indeed cannot be an effective substitute for human porters, for various reasons as explained by the military themselves.²⁴

61. However, this policy of self-reliance has another quite different dimension which is also relevant to the issue. The army has greatly expanded over the last decade (from 120,000 to over 350,000 soldiers according to military intelligence officers).²⁵ Ten years ago, it was already supposed to participate in railway construction. However, the size of the army has not decreased in proportion with the much advertised progress of pacification. Because of continued budgetary constraints, a policy has developed whereby soldiers who are not fighting continue to receive their pay but have to engage in farming or other productive activities on lands assigned to them. Any surplus above what is needed for their subsistence is supposed to be sold on the market at below normal prices to fight against inflation. The HLT had occasion to visit such plantations/farms. In one case it was given the explanation that because of the prohibition of forced labour, the soldiers were no longer able to exploit fully the area allocated to them as they did not have funds to hire villagers at the applicable rate. However, the HLT gathered elsewhere contrary information in this regard according to which soldiers were requiring the labour of villagers and did not pay for it.
62. It may be suspected indeed that this form of reconversion of soldiers into economic activities for which they are not necessarily well qualified or prepared is not only doubtful in terms of productive efficiency, but also produces a permanent incentive for soldiers who do not have an inclination for agricultural work to continue to abuse villagers.²⁶ This does not mean, however, that the Orders are not capable of making a difference to the situation of forced labour. It seems on the contrary clear from various testimonies that villagers were less and less prepared to accept the existing situation. Thus, in one specific case they were concretely considering petitioning the authorities on the basis of the Orders.

V.2. The uncertainty as regards substitute financial/practical arrangements

63. It will be recalled that the issue of allocating adequate budgetary resources to recruit voluntary wage labour for public activities which have been based on forced and unpaid

²⁴ Some of the reasons mentioned were that there were limits on the mobility of mules, particularly in the monsoon season, and that mules were noisy and could therefore not be used in front-line areas.

²⁵ The often-cited figure of 500,000 troops refers to the armed forces as a whole, including the other armed services.

²⁶ This system does not apply only to the army. In order to compensate for their low salaries, members of the police or other administrative bodies (and even judges) receive some land allocations which enable them to be more self-sufficient in terms of food. See also [para. 78](#) and its footnote.

labour was already raised in the recommendations of the Commission of Inquiry and more recently referred to in the observation of the Committee of Experts in its 2001 report.²⁷

64. On a number of occasions during its field trips and in Yangon, the HLT requested details on alternative means of obtaining required labour or services now that forced labour was prohibited. To the extent that any responses were received, they were either inadequate or unclear, and certainly insufficient for the HLT to establish any new developments. As regards portering, some regional commanders explained that since there was less fighting, there was a proportional decrease in the need for porters. In any case, they added that the army now had recourse to animal transport battalions. Furthermore, the authorities mentioned that bullock carts and tractors were now commonly used. In respect of public works, including road, railway and irrigation projects, the authorities specified that some were contracted out to private companies or that soldiers who were no longer involved in fighting were used for such undertakings. In addition, the involvement of certain NGOs and UN agencies was facilitating construction projects in certain areas, in particular on road building.
65. The HLT also inquired about any changes in budgetary arrangements. It believed that there would be no clearer evidence of a change in the forced labour situation than evidence of how this had been reflected in the government budget, for example, by significant increases in government budget allocations for labour on public works. During its field visits, the HLT was told that before the implementation of the Orders, the budget for public works did not include any allocation for unskilled manual labour: it provided only for materials and skilled labour. As a consequence, the local authorities had to call for labour contributions from people living along the road or the railway in question. It was explained also to the HLT that since August 1999, the practice had drastically changed and there was now a clear budget line for compensating both skilled and unskilled labour. Despite numerous requests by the HLT to the authorities on its return to Yangon at the end of its two weeks of field trips, it was unfortunately unable to obtain any confirmation of these explanations. During its last meeting with the Implementation Committee, the HLT was told that such labour costs were difficult to isolate in the budget allocated to construction projects. In any case, it was explained that the budget figures might not reveal the increase expected. First, the 1997 financial crisis had led the Government to adopt an austerity policy. Second, the fact that members of the military and civil servants were now being used did not imply a cost increase since they were already paid by the State.
66. At the time this report was finalized, the HLT had unfortunately not received information allowing it to conclude that the authorities had indeed provided for any real substitute for the cost-free forced labour required by the military or for public works projects.

V.3. Institutional obstacles

67. Article 25 of [Convention No. 29](#) imposes on States which have ratified this Convention an explicit obligation to ensure that illegal exactions of forced labour be punished as a penal offence and that the penalties imposed by law be really adequate and be strictly enforced; the Supplementing Order, read together with article 374 of the Penal Code, could satisfy this requirement on paper.
68. The problem is, however, that these provisions seem to have little if any impact on the realities of the situation. There may be some cultural reasons for this. As explained by

²⁷ See [Appendix V](#), para. 18.

many persons interviewed, the fact of going to the police or to the courts to complain is seen as a “breach in the harmony of the community”. This is why in the few reported instances where the victims had the courage to complain they opted for the “administrative route” (township, district or state/division peace and development levels, up to the point where the responsible military authorities could be approached). But it also seems clear that the reluctance to use the procedures specifically provided for by law is due to a large extent to the lack of trust in the police and the judicial system, in the absence of a constitutional guarantee of the separation of powers and the independence of the judiciary. From the point of view of trustworthy institutions, the existence of an impartial and independent judiciary, composed of members of integrity and independence, assumes great importance. Admittedly, this fundamental institutional aspect goes much beyond the mandate of the HLT and would rather seem to fall within the mandate of the Special Rapporteur of the UN Commission on Human Rights on the situation of human rights in Myanmar. One area, however, seems to deserve some attention from the viewpoint and mandate of the ILO. If there existed genuine civil society organizations, and in particular strong and independent workers’ organizations, as required by [Convention No. 87](#) ratified by Myanmar, these could provide individuals affected by forced labour with a framework and collective support which would help them to make the best possible use of whatever remedies are available to defend their recognized rights.

VI. The way forward: How to overcome the obstacles and ensure sustainable progress towards the elimination of forced labour in Myanmar

69. The diversity and magnitude of the obstacles which have been identified may at first sight appear discouraging. However, in the light of what has been done in the relatively short period of time since a substantive dialogue was re-established between the authorities and the ILO, the HLT is confident that much more can indeed be achieved. As it had the occasion to explain to Senior General Than Shwe, the HLT considered that its mandate included offering objective, frank and independent advice about what the ILO and the international community can do to assist the efforts of the authorities to eradicate the problem of forced labour, provided of course that the authorities have a real commitment to do so. It is in this positive spirit that the HLT has tentatively identified three factors which, it considers, have a key role to play: economic modernization, consistent political will of the authorities, and the engagement of the international community.

VI.1. Economic modernization

70. Myanmar is a potentially rich country by virtue of both its natural resources and its people. Its present economic situation has, however, reached a point where the UN agencies present in the country (UNDP, UNICEF, UNFPA, WFP, UNDCP, UNHCR, FAO, WHO and UNAIDS) have made a joint statement alerting the international community to what they consider to be a humanitarian crisis.²⁸ This stand has received the support of the Special Rapporteur of the UN Commission on Human Rights, Professor Pinheiro, who agrees that humanitarian aid is essential and appropriate now and that any delay may result in an escalation of problems (the spread of HIV/AIDS, the degeneration of human capital,

²⁸ In this context, they pointed out that the total annual ODA provided to Myanmar is US\$1 per capita compared with US\$35 for Cambodia and US\$68 for the Lao People’s Democratic Republic (1997 figures).

increasing illiteracy, depletion of natural resources and a widening of disparities between regions).²⁹

71. As regards more specifically the problem of forced labour, it was emphasized repeatedly by international NGOs during their meetings with the HLT that this problem could not be isolated from the economic situation and the presence of extreme poverty. The relation between these two concerns was also very much at the centre of discussions which the HLT held with the international and the local business communities, and others. It was generally held that economic progress and modernization would be key to the elimination of forced labour. The business community was, however, extremely worried that the situation was not improving, and on the contrary was deteriorating as a result of the measures which had been or could be taken by some countries against Myanmar as well as the fear of prospective investors concerning possible consumer reactions. It was explained to the HLT by the international business community that exports in certain industries like the garment industry had been severely affected. They indicated that because of these measures 20 per cent of the 400 garment factories in the country had closed down and a further 40 per cent were producing at below capacity. The tourism potential also remained largely unexploited. This had adversely affected a great number of workers and their families.
72. The HLT cannot but express its deep conviction that, even if it obviously cannot be made a pre-condition, the modernization of the economy could indeed be a decisive factor in bringing about a sustainable elimination of forced labour. It could in particular provide viable alternative employment to the surplus military personnel in really productive occupations (rather than in the current ad hoc agricultural or public works activities that they are supposedly currently performing). The HLT is at the same time well aware of the fact that this modernization cannot happen without the active involvement of the international community. The international community is confronted with a difficult dilemma. On the one hand, there is the additional unemployment and resulting hardship due to a reluctance to invest, or in some cases to decisions to disinvest, for fear of a tougher stand by the international community or consumer reactions. On the other hand, there is the risk that any relaxation of international pressure might remove or at least weaken the willingness of the SPDC to implement the fundamental changes required to ensure respect for the basic rights, freedom and dignity of all peoples and ethnic groups in the country.
73. As the HLT was told by some religious leaders, a solution to this dilemma may be based, at least partially, on moral considerations, but the strength of such considerations, which is also their limit, is that they have to be applied with consistency. In the realities of international politics they inevitably interact with other factors. Obviously, it is not for the HLT to pronounce on the validity of these broader considerations. It seems however legitimate to express at least a hope and a conviction. The hope is that the verdict of history will not come too late for the "lost generation" of young talented people the HLT had the occasion to meet during its visit. The conviction is that the solution to this vicious circle may be easier when one considers that the modernization of the economy presupposes a change in mentalities and attitudes as regards forced labour, and the understanding that beyond its intrinsic unacceptability it is economically inefficient. This change of attitude appears therefore inseparable from a clearer and more coherent political commitment which could in turn trigger a more open attitude from the international community.

²⁹ *Situation of human rights in Myanmar*: Interim report of Paulo Sergio Pinheiro, Special Rapporteur of the Commission on Human Rights on the situation of human rights in Myanmar, UNGA, Off. Doc. A/56/312 (20 August 2001), paras. 70-74.

VI.2. Consistent political will

74. The proclaimed political will to eradicate forced labour has been very explicitly stated at all levels including by the leadership of the SPDC. Various independent observers and religious leaders have expressed their belief in the sincerity of this commitment. The readiness of the authorities to accept a completely independent and free assessment and to honour their obligations as indicated in paragraph 10 above is in itself evidence of a change of attitude and could be seen as a concrete expression of the willingness and commitment of the authorities to progress towards eradicating the practice of forced labour. The problem is, however, that this proclaimed political will appears to be inhibited and sometimes contradicted by an even more fundamental consideration of consolidating the unity of the country and safeguarding its territorial integrity against “destructive elements”. The logic of this overriding concern may indeed lead to the use of forced labour in the absence of other available means to meet this objective, but possibly also as a tool of repression or discrimination against villagers suspected of being sympathetic to insurgent ethnic movements.
75. It is obviously not for the HLT to question the priority accorded by the authorities to safeguarding of the unity of the country, except to recall that the country has, in the very exercise of its sovereign powers, undertaken not to use certain means. However, the HLT is convinced that the exaction of forced labour in often cruel conditions may not only create irreversible damage to the goodwill between the majority and other ethnic communities, but may also serve to exacerbate the very situation that the authorities are trying to prevent. In short there is absolutely no contradiction between the ultimate objectives of the country and a firm policy of eliminating forced labour. In this light, all authorities, including the military, must be held accountable for their observance of the Orders, with any breach of them being promptly investigated, prosecuted and punished, thereby putting an end to the prevailing impunity. A sentence befitting the gravity of the offence has long been considered a deterrent to potential offenders, and is furthermore a strict requirement under Article 25 of the Convention.
76. Furthermore, the HLT is convinced that alternatives to forced labour can be found where the will exists. It is difficult to understand for instance why the army continues to use civilians for portering, camp construction, and other work, when many soldiers no longer needed for fighting are occupied in agricultural or other productive activities for which they are not necessarily prepared or qualified.
77. Finally, as indicated above, a more immediate and relatively easy step to express the commitment of the authorities could be the strengthening and intensification of the publicity given to the Orders, to the whole population and in particular to the military, including the use of all media and all relevant languages. This would help dispel the impression that the publicity given to the Orders may have been prompted by the prospect of the HLT’s visit and may not therefore be sustained. Even if the obstacles identified in the previous section may limit their impact, there is little doubt that general knowledge of the Orders could gradually induce a process of real change by helping victims, or their representatives, to become aware of their rights and to assert them. There is even evidence that some elements in the military are ready to implement the Orders.

VI.3. The engagement of the international community

78. The flow of foreign direct investment (FDI), which seems key to economic development, has been recently in decline.³⁰ But, for the reasons previously mentioned, it is clear that FDI will not resume unless the appropriate political, economic, financial and legal context is put in place. This context presupposes concerted action by relevant international and financial institutions in response to a clearer and more coherent commitment of the authorities to transform the country in all relevant respects. To take just one example, it would seem perfectly conceivable that the ILO together with other organizations could be called upon to assist the authorities in the training and reconversion of soldiers towards really productive activities rather than in subsistence activities or other public work activities, for which they are not necessarily qualified and which they have to accomplish in an inadequate organizational and management framework.
79. Leaving aside broader considerations relating to the ongoing dialogue between the authorities and Daw Aung San Suu Kyi, in which Ambassador Razali Ismail, the Special Envoy of the United Nations Secretary-General, has played a role, it again seems obvious that before engaging in such a concerted plan the international community may wish to have more convincing evidence than is offered in this report as regards the real determination of the authorities to eliminate forced labour. In the positive spirit indicated above, the HLT has given consideration to what further steps could be taken by the authorities to provide such guarantees.

³⁰ The HLT received the following information from various sources: Myanmar has a labour force of just under 20 million persons (1997-98 estimates), of which 19.3 million persons are estimated to have been in work (excluding unpaid family workers). Agriculture is by far the largest employer accounting for 63 per cent of the total. Due to the prominence of agriculture, most employment is in the private sector, with the public sector only accounting for about 8 per cent of total employment. Wages in the public sector have been in continuous decline, though payments in kind have helped mitigate the effects of inflation. In April 2000, there was a fivefold increase in the nominal wages of civil servants, taking them back in real terms to where they were in about 1990. While the agriculture sector has benefited from reform, its enormous potential has still not been fully exploited. Agriculture development is still affected by distortions in the land market, inadequate investment in irrigation, and so on. More generally, poor infrastructure holds back the development of most sectors of the economy and there is under-investment in key utilities. The public sector continues to run large deficits, in the region of 5 per cent or more of GDP. Tax revenue is extremely low at just over 2 per cent of GDP. State-owned enterprises are generally inefficient and continue to run at a loss. This acts as a drain on scarce public sector resources. Public expenditure on crucial health and education services is below 1 per cent of GDP. Largely as a consequence of public sector deficits, inflation has averaged close to 30 per cent per annum during the period from 1995-2000. Myanmar is in arrears on the servicing of its debt to the Asian Development Bank, to the World Bank and to a variety of bilateral creditors. Most official capital flows and other forms of international assistance to Myanmar were cut off in 1988. Although foreign direct equity investment, trade credits and other private transfers were comparatively buoyant through to 1997, they have since suffered both as a consequence of the Asian crisis and as a result of sanctions. There are growing foreign exchange shortages, and it is now estimated that Myanmar has sufficient international reserves to cover only about one month of imports.

- 80.** It seems clear from this report that one of the main handicaps in the enforcement of the Orders is the lack of credibility from which the system of redress provided suffers both vis-à-vis the victims and the international community. The key question, therefore, is whether and how it would be possible to correct this lack of credibility. Leaving aside radical and wholesale changes in the judicial institutions of the country, it is possible to conceive of various more immediate ways to bring about positive change. One could be the appointment of a person or body of persons with the required independence and national and international credibility as well as being of unquestioned integrity – an ombudsman – to whom complaints regarding forced labour could be submitted and who would have a mandate and the necessary means to conduct direct investigations without fear or favour with the required confidence of all parties concerned. This element could be combined with (or substituted by) a form of permanent presence of the ILO in the country. This idea, which is not new, may seem out of proportion with the magnitude of the problems identified above. However, the HLT takes note of the fact that this concrete step was welcomed in many quarters as an important element in progressive improvement in the forced labour situation. It was raised on the occasion of the meeting with Senior General Than Shwe, who indicated that such a development would call for a collegial decision from the SPDC leadership.
- 81.** An agreement on a long-term representation of the ILO in the country, in the light of developments and the findings of the HLT, would indeed now seem more than ever critical in establishing the real commitment of the authorities. First, it could assist them in more effective application of the Orders and strengthen the confidence of victims in seeking redress. Second, it could provide assistance to the authorities in the field of training on knowledge and understanding of the Orders and in their efforts to eliminate the confusion in the minds of many between forced and donated labour. Furthermore, it could help the authorities to respond to the international community regarding allegations, such as the one referred to in paragraph 28 above, which may be made against them, thus promoting objective information on forced labour issues. Naturally, the conditions for such a representation should be carefully defined if it is to serve a useful purpose. They should in any case include full freedom of movement and contacts. The experience of the HLT suggests that this is achievable. But if the idea finds favour it would obviously be for the Director-General to negotiate with the Government of Myanmar the specific modalities for this representation in such a way that they would be acceptable to the decision-making organs of the ILO.

Conclusions

- 82.** The assessment offered in this report certainly provides no grounds for complacency. However, the HLT believes that, notwithstanding the conditions under which it had to be carried out, the assessment is accurate, and it hopes that it will prove valuable to the country and the people it came across in carrying out its mandate.
- 83.** There has been an attempt in the past to minimize the scope of the problem in Myanmar by referring to the cultural and religious traditions of “donated” labour. Given the nature of the obstacles identified in this report and the explanations provided by one member of the

HLT as regards the meaning of Buddhist teachings³¹ it seems superfluous to elaborate on this aspect here, except to underline one relevant point.

- 84.** It seems that the practice of forced labour, rather than being a cultural phenomenon embedded in religious conceptions, is indeed an historical phenomenon which has plagued all societies at different periods of time, depending on their level of economic and administrative development and on the role assumed by the State to curb feudal-type trends. It was present not so long ago in many parts of Europe and the Americas, and it was extensively used elsewhere in the colonial period. But it may also take new and different forms in the modern world.³²
- 85.** The international community has progressively rejected the practice of forced and bonded labour, considering it to be an offence to human dignity wherever it takes place. It is certainly an impressive sign of the development of moral conscience that forced labour, which was not considered worth a specific reference in the 1919 ILO Constitution, is now recognized as a violation of fundamental workers' rights in the 1998 ILO Declaration on Fundamental Principles and Rights at Work, as well as of a peremptory norm in general international law.
- 86.** The elimination of forced labour thus represents not only the discharge of a moral and legal obligation for Myanmar, but also offers an historic opportunity for this country to accomplish its modernization, including commitment to the Rule of Law which Senior General Than Shwe expressly pledged.³³ Rising to this challenge implies dilemmas and difficult decisions. When confronted with these dilemmas the temptation is often to seek refuge in the idealization of the past or the assumption that the present could be extended indefinitely into the future. The HLT is confident that there are many in the leadership of the country who have fully grasped the historical dimension of the challenge and the need to respond to it. The basic conviction that the HLT expressed to the leadership of the country at the close of the three-week visit to the country remains unshaken: its faith in the capacity of the country and its people to occupy the place they deserve in the international community, and its hope that the international community, thanks in part to the patient and consistent efforts of the ILO, will be of assistance in the process.

³¹ As explained by this member of the HLT, there exists a clear and unmistakable distinction between the concepts of forced labour and "donated labour". "Donated labour" is, as is inherent in an act of donation, first and foremost an act done by a person of their own free will and out of the goodness of their heart without an expectation of any reward. It is untainted by any element of force or compulsion. The Buddhist perception of "giving" (Dhana) is that it is a wholesome act. It is the responsibility of the laity to supply the fourfold needs of the Sangha (food, clothing, shelter and medicine). It is also considered to operate towards the diminution and final eradication of greed, which is accepted as being one of the three root causes of unwholesome acts.

³² See in this regard: "Stopping Forced Labour", Global Report under the Follow-up to the 1998 ILO Declaration on Fundamental Principles and Rights at Work, 2001.

³³ See [Appendix IX](#), para. 3.

87. The report was discussed and finalized by the HLT in Geneva.

29 October 2001.

Sir Ninian Stephen, Chairperson

Ms. Nieves Roldan-Confesor, Vice-Chairperson

Mr. K. A. Parinda Ranasinghe

Mr. Jerzy Makarczyk

* * *

The HLT cannot end its report without expressing its deep gratitude to all those who helped in many different ways in fulfilling its difficult and important task as efficiently as possible, over a period of more than one month. It wishes to thank in particular its secretariat, Mr. Francis Maupain, Mr. Muneto Ozaki, Mr. Rueben Dudley, Ms. Anne-Marie La Rosa, Mr. Richard Horsey, Ms. Marie-Anne Plantard and Ms. Tracy Murphy, for their professionalism, dedication and support. It also wishes to express its gratitude to all the members of the ILO Mission Coordination Committee and to the facilitator Mr. Leon de Riedmatten of the Centre for Humanitarian Dialogue who helped in establishing the programme and made remarkable arrangements to fulfil it; to the United Nations Resident Coordinator, Mr. Coeur-Bizot; to Ms. Minako Nakatani and Mr. Khin Maung Wynn of the UNDP, as well as all other representatives of the United Nations Organizations and the ICRC in Yangon and in the field whose advice, interest and logistical support were of great assistance; and to the four interpreters who accompanied the team with great dedication over long and tiring journeys, meetings and interviews. The HLT also wishes to express its sincere thanks to all the NGOs and individuals which contributed to its programme of meetings and interviews across the Thai border during the week from 7 to 11 October.