

# **Forced Labour in Burma: A Summary of the International Labour Organisation Report & Subsequent Developments**

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## **Introduction**

On 20<sup>th</sup> June 1996, twenty workers' delegates of the International Labour Conference of the International Labour Organization (ILO) laid a letter of complaint under articles 26-29 and 31-34 of the ILO Constitution alleging non observance by Myanmar/Burma of the *Forced Labour Convention* 1930 (No 29).

An ILO Commission of Inquiry was established in March 1997 and three Commissioners were appointed. The Rt. Hon. Sir William Douglas, PC, KCMB<sup>1</sup>, chaired the inquiry and the other members were Justice Bhagwati<sup>2</sup> and Robyn Layton QC.

The establishment of a Commission of Inquiry is the strongest mechanism available in the ILO. This was only the tenth time in the seventy year history of the ILO that it has been resorted to and the fourth time that a Commission of Inquiry has been appointed to investigate the use of forced labour.

This paper will canvass the processes, findings and recommendations made by the Commission of Inquiry and the subsequent follow-up and action by the ILO based on the Report of the Commission.

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## **Procedure**

After its establishment, the Commission of Inquiry conducted its investigation in three stages: first, it took submissions by way of documentary information from governments, inter-governmental and non-governmental organisations as well as the foreign companies named in the complaint. Second, hearings of witnesses were held in a formal setting which included the examination and cross-examination of witnesses. Third, a visit to the region was made by the Commissioners to gather information and take first hand evidence from witnesses of the situation in Myanmar.

Prior to the hearings conducted by the Commission, both the union complainants which were represented by the International Confederation of Free Trade Unions (ICFTU) and the Government of Myanmar were invited to provide any information or a statement as to witnesses and evidence to be called at the hearing dates nominated. The Commission also requested the Government of Myanmar to give an assurance that it would not obstruct the attendance before the Commission of the witnesses to be called by the parties and that no sanction or prejudice to the witnesses or their families would be incurred as a consequence of their participation in the work of the Commission.

In a letter of 10<sup>th</sup> November 1997 the Government of Myanmar informed the Commission that it had established a High Level Co-ordination Committee comprising representatives of several ministries and governmental bodies to examine the substance of the communications which it had received from the Commission. The Myanmar Department of Labour would serve as its secretariat. It further indicated that in view of the extensive nature of the evidence it would not be ready to provide witnesses. The Government did not appoint a representative to act for it before the Commission, it did not attend at the hearing dates indicated, nor did it provide the assurance requested by the Commission relating to the protection of witnesses. It chose not to be represented at any of the hearings at all and provided no evidence by way of witnesses in response.

The Commission considered some 274 documents amounting to some 10,000 pages of material. A particularly interesting aspect of the procedure of the Commission was its work in relation to gathering evidence from witnesses in the region. The Commission had requested a visit to Myanmar but the

Government had indicated that it could not authorise such a visit on the grounds that, in its opinion, such a visit would not contribute to resolving the matter and would be an interference in its internal affairs.<sup>3</sup>

The Commission therefore took evidence from refugees who had fled Myanmar. They were interviewed by the Commission on location in three countries, namely India, Bangladesh and Thailand in areas close to the border with Myanmar. Many of the refugees interviewed were recent arrivals, some had been living away from their country for a few years but had managed to return occasionally to communicate with relatives still living there. Many towns, encampments and refugee camps were visited by the Commission, and approximately 250 people from all parts of Myanmar were questioned. Interviews were conducted in houses, camps, warehouses, sheds and in a factory - wherever people were prepared to talk. The witnesses' ages varied and included some children. A synopsis of their evidence is incorporated in the Report of the Commission in July 1998<sup>4</sup>.

### **Findings of the Commission of Inquiry**

Convention No 29 on forced labour was adopted by the International Labour Conference of the ILO in 1930 and ratification by the Government of the Union of Burma (as it then known) was registered on 4<sup>th</sup> March 1955.

The basic obligation undertaken by a State which ratifies the Forced Labour Convention, is to "suppress the use of forced or compulsory labour in all its forms within the shortest possible period". The obligation to suppress the use of forced or compulsory labour includes an obligation by the State to abstain and an obligation to act. The State must neither exact forced or compulsory labour nor tolerate its exaction. It must repeal any laws and statutory or administrative instruments that provide or allow for the exaction of forced or compulsory labour and such exaction must be subject to adequate penalties and enforcement. The Convention defines "forced or compulsory labour" as "all work or service which is exacted from any person under the menace of any penalty and for

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<sup>3</sup> International Labour Organization, "Forced Labour in Myanmar (Burma)", Report of the Commission of Inquiry appointed under article 26 of the Constitution of the ILO to examine the observance by Myanmar of the Forced Labour Convention, 1930 (No. 29), ILO, 1998 para 519.

<sup>4</sup> Note 3 pages 220 to 366.

which the said person has not offered himself voluntarily” (Article 2 para. 1 of the Convention)<sup>5</sup>.

The Commission found that there was widespread and systematic use of forced labour across all divisions and states of Myanmar, but particularly pervasive in outlying states where there was a strong military presence. In particular, non-Burman ethnic groups such as the Muslim population in Rakhine state and other parts of the country bore the brunt of the practice. The Commission also found that forced labour was imposed upon the general population in Myanmar, preventing farmers (among others) from tending to the needs of their holdings and children from attending school; the worst affected were the landless labourers and the poorer sections of the population.<sup>6</sup>

### **The Legislation**

The legislation which in part was used to exact forced labour consisted of two Acts namely:

- The *Towns Act* (1907)
- The *Village Act* (1908)

This legislation was a relic of colonial rule, and was specifically enacted to enable the Government to call up the labouring class for portage duties under the supervision of the military and police.

The Commission was provided with the provisions in the Acts. The combination of Section 8(1)(g), (n) and (o), and Sections 9, 9A and 11, essentially required a headman of a village to perform the public duties of collecting and furnishing guides, messengers and porters for troops and police “from the labouring class accustomed to do that work”. Those “nominated” were required to execute their duties and if a villager did not comply then he could be liable to be convicted and fined by a Magistrate.

An important section of that Act was s.9A which provided:

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<sup>5</sup> General discussion of these provisions is set out at note 3 paras 198 to 207.

<sup>6</sup> Note 3 paragraphs 296, 297, 434 and 533

If any person refuses or neglects to perform any of the public duties imposed by the Act, he shall *in the absence of reasonable excuse*, the burden which shall lie upon him, be liable .....<sup>7</sup>

The *Village Act* contained generally similar provisions and also similar wording to s.9A of the *Towns Act*.

The Commission also had available to it a transcript of the address of Daw Aung San Suu Kyi's address to the EUGSP hearings in which she indicated that historically the words "reasonable excuse" enabled persons who were required to plant and gather a harvest or needed to work in the field in order to earn their living, to be excused from having to perform such work. Further she asserted in her address that the Burmese version of the Act (translated from the English in which it was originally promulgated) omitted the words "in the absence of reasonable excuse"<sup>8</sup>. The Commission was unable to obtain a copy of the Burmese text in the course of its inquiry to check the accuracy of Daw Aung San Suu Kyi's statement.

In 1924 there were various amendments which included deletion of s.8(1)(h) of the *Village Act* which had provided that labourers could also be requisitioned for "making or repairing roads, embankments or other public works". This was repealed on the basis that the particular requirement had been used and had caused misery and suffering to the local population which had been requisitioned to carry out such acts. This fact is mentioned because the Government of Myanmar later asserted the difficulty of amending and repealing existing legislation, yet the 1924 amendments illustrate that, within its own history, legislation has previously been amended based on the fact that it had adversely affected the community<sup>9</sup>.

The Commission received information that in 1995 there was an order and directive issued by the Chairman of the State Law and Order Restoration Council (SLORC) on 2<sup>nd</sup> June 1995 addressed to the Ministry of Agriculture, Chairman of Yangon Division, LORC and Commander of the Light Infantry Division. This specifically prohibited unpaid labour

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<sup>7</sup> Note 3 paragraphs 237 to 248 (emphasis added)

<sup>8</sup> Note 3 paragraph 241

<sup>9</sup> Note 3 paragraph 242 - Note that the *Village Act* of 1908 and the 1924 amendments to the Act were promulgated during the British colonial rule.

contributions in national development projects, and stated that “unpaid labour was uncalled for...”. However, this document did not refer to the requisitioning of people, but only to the issue of them being unpaid. It directed that the practice of obtaining labour without compensation from local people on irrigation projects cease. It was also marked “Secret” and therefore the extent of promulgation and awareness of the existence of the document could be considered limited. The Government of Myanmar informed the Commission that the legislation on compulsory labour had become “obsolete”<sup>10</sup>.

### **Findings of Fact by the Commission**

The Commission found that there were four major areas in which forced labour was employed. The first related to portering, that is the carrying of goods; the second comprised the use of forced labour on road building and general construction work; the third was ancillary work required for the military in relation to military camps; and the fourth was personal requisition of labour by individual military officers for their own benefit.

The call up of forced labour was provided for in very wide terms under the *Village Act* and the *Towns Act*. The Acts were usually not resorted to in the requisition of labour, but it was generally understood that the Acts enabled such recruitment. The procedures that were used in practice appeared to follow a general pattern. In essence, these relied on the Village Head or Ward authorities to requisition labour for any military or government officer giving an order for supply. The Village Heads were often given written orders by the military, sometimes in confusing and conflicting language, indicating the number of persons and when and where they were required. Sometimes these orders were accompanied by red chillies or a bullet to indicate what would happen if there was non-compliance (commonly understood to mean the burning down of houses or being shot).

The Commission was provided with a large number of these actual orders. Some headmen and villages were the subject of harassment and sometimes villagers nominated a woman as head to try and minimise possible repercussions.

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<sup>10</sup> Note 3 paragraphs 245 to 248.

Another method commonly used to call up labour for portering duties was to round up young men in the street or market places. In such circumstances they were often taken to distant parts of the country for months at a time without advising their families.

### **Portering**

Porters were forced to carry set loads of 30-40 kg for men, and 20-30 kg for women although reports of porters having to carry up to 50 kg were not uncommon.<sup>11</sup> Children were also required to porter. Porterage might vary from a few hours to periods of days, weeks or even months. It was not uncommon particularly during military offensives, for porters to be required to carry loads continuously for 24 or 36 hours with no sleep. They were generally given minimal rations amounting to between half and one tin of rice per day sometimes accompanied by a little salt, some chillies or some watery yellow pea curry. They were frequently chained together during times of rest or sleep. Female porters were sometimes raped or otherwise sexually abused by soldiers. Porters who walked too slowly were regularly beaten with sticks, punched, kicked, hit with rifle butts or prodded with bayonets. Those who were too sick to continue were often severely beaten, shot, thrown over the sides of mountains or thrown into the rivers with their hands tied behind their backs.<sup>12</sup> In some instances porters were exposed to dangerous combat situations which would include being forced to walk ahead as human shields in a conflict zone to ascertain the whereabouts of mines, booby traps or ambushes. There were also cases of soldiers forcing porters to exchange clothes in order to draw enemy fire. Large numbers of porters died through disease, malnutrition and abuse. The incidence of employing forced labour for portering purposes was common over the whole of the country.<sup>13</sup>

### **Construction Work**

Large scale use of forced labour across the whole population on roads, railways and bridges in construction and maintenance was also common. Forced labour was used on construction or improvement of major roads linking towns as

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<sup>11</sup> Note 3 paragraph 314

<sup>12</sup> Note 3 paragraphs 314-317

<sup>13</sup> Note 3 paragraph 323

well as the construction of extensive networks of roads between towns and villages. Many of the roads had to be rebuilt because they were constructed in inappropriate places such as across paddy fields and were washed away during the wet seasons. Further, many of the roads did not benefit the local population because they were permitted to be used only by motor vehicles which the vast majority of villagers did not own, most possessing only bullock carts.

There were also examples of forced labour being used for infrastructure construction including the building and repair of dams, the construction of airports and the building of a Buddhist museum, including by non Buddhists.

The numbers of people involved in these constructions has been vast. Approximately 800,000 people (in round figures) worked on the construction of the Aung Ban Loikaw Railway connecting Shan and Kayah States; 922,000 people were involved in building the Pakokku to Monywa section of the railway in Magway and Sagaing Divisions; and over 44,000 people contributed labour on a single day on three sections of the Ye to Tavoy railway between Mon State and Tanintharyi Division<sup>14</sup>. Hundreds of persons died doing such work due to sickness, work accident, ill treatment by beating, kicking, torture, and lack of timely medical care. The Ye to Tavoy railway was known as "Death Railway".<sup>15</sup>

### **Military Camp Work**

Forced labour was also exacted from civilians for the construction, maintenance, repair and cleaning of military camps as well as for cooking, collecting water or firewood, washing clothes and acting as messengers or standing guard. This imposition was placed on men, women and children of all ages. A new military camp would often be established by confiscating land from local villagers with no compensation. The work in relation to military camps was sometimes arduous and required the digging of trenches and the cutting of large quantities of thick bamboo with inadequate tools. Physical and other abuse of such persons was common.<sup>16</sup>

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<sup>14</sup> Note 3 paragraph 408.

<sup>15</sup> Note 3 paragraphs 408-467, 493-501

<sup>16</sup> Note 3 paragraphs 351-388 and 487-488

### **Agriculture and Other Projects for Military Gain**

The Commission also received information that civilians were required to work on a variety of projects such as the cultivation of rice and other food crops, cash crops such as rubber and shrimp farms, kilns for producing bricks, and logging. The produce might be used by the military, or alternatively money might be paid to the Commanders outside a military unit for the provision of this forced labour. In some cases harvested crops were simply seized by the military as were poultry, livestock and other items at will.<sup>17</sup>

### **Conclusions and Recommendations**

As a result of these findings of fact, the Commission concluded that there was abundant evidence of the pervasive use of forced labour imposed on the civilian population throughout Myanmar by the authorities and the military.

Apart from being contrary to the obligation under the Convention in extracting the forced labour there occurred killings, violence and mistreatment, and many of those who were forced to contribute labour died because of neglect and injury. The Commission found that there were breaches of Articles 1 and 25 of the Convention<sup>18</sup> and potentially the Myanmar government could be in breach of International Criminal Law.<sup>19</sup> In the view of the Commission, forced labour on such a large scale could constitute a crime against humanity.<sup>20</sup>

The recommendations of the Commission in summary were<sup>21</sup>:

- 1 That the *Village Act* and *Towns Act* be brought into line with the Convention by 1<sup>st</sup> May 1999 at the very latest, either by amendment or repeal.
- 2 That concrete action be taken immediately to stop the present practices, and that such action be more substantial than by secret directives which are both ineffective and contrary to the rule of law.

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<sup>17</sup> Note 3 paragraphs 394-397 and 492

<sup>18</sup> para 537

<sup>19</sup> para 538

<sup>20</sup> para 538

<sup>21</sup> Note 3 paragraphs 539-540.

- 3 That the practice of forced labour be recognised as more than merely non-payment of wages, and that the requirement to ensure that nobody is required to work against his or her will, whether paid or unpaid, is honoured.
- 4 That the penalties which may be imposed under s.374 of the Penal Code of Myanmar for forced labour be strictly enforced.

The Commission in its concluding remarks stated:

This report reveals a saga of untold misery and suffering, oppression and exploitation of large sections of the population inhabiting Myanmar by the Government, military and other public officers. It is a story of gross denial of human rights to which the people of Myanmar have been subjected particularly since 1988 and from which they find no escape except fleeing from the country. History shows that where human rights are denied or violated in any part of the world, it is bound to have a chain effect on other parts of the world and it is therefore of vital interest to the international community that such denial and violation of human rights must be effaced from wherever it occurs... The Commission hopes and trusts that in the near future the old order will change, yielding place to the new ... This can happen only if there is restoration of democracy where people as a whole can wield power for their common good.<sup>22</sup>

### **Summary of Actions Following the Publication of the Commission's Report in July 1998<sup>23</sup>**

- 27 July 1998 A copy of the report was sent to the Government of Myanmar and also to the Governing Body of the ILO.
- February 1999 The Government of Myanmar indicated by letter that, with regard to the *Town Act* and

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<sup>22</sup> Note 3 paragraph 543.

<sup>23</sup> The information under this section can be gleaned from the two reports of the Director-General to the members of the Governing Body dated 21 May 1999 <<http://www-ilo-mirror.who.or.jp/public/english/20gb/docs/gb274/dg-myanm.htm>> and 25 February 2000 <<http://www.ilo.org/public/english/standards/reln/gb/docs/gb277/myan2000.htm>>.

the *Village Act*, “a working group at the senior official level and a ministerial committee are now actively engaged in a review process”. The communication also indicated:

It is a long-standing practice in Myanmar that any law that is enacted in the country is widely published for the information of the general public. Once this process has been completed and when the law is promulgated it will accordingly be widely published to make it known to the public at large.

March 1999      The Commission’s Report and also the communication between the ILO and the Government came up for consideration before the Governing Body at its 274<sup>th</sup> Session. The Governing Body requested the Director General to submit a report on or before 21<sup>st</sup> May 1999 as to the measures which the Government of Myanmar may have taken to comply with the recommendations of the Commission of Inquiry, together with details of any technical assistance requested or provided.

1 April 1999      The Director General by a letter requested that the Government of Myanmar inform him, in detail, by 3<sup>rd</sup> May 1999 of measures taken on each of the recommendations.

12 and  
18 May 1999      The Government sent two letters. The first indicated:

I wish to inform you (that) preliminary, but practical measures envisaged to be taken on the recommendations have been submitted to the Government of Myanmar for decision and they are already in the process of being actively considered by the high authorities.

The second letter indicated:

The Ministry of Home Affairs of the Government .... has issued an order dated 14<sup>th</sup> May 1999, in which the

relevant authorities were directed not to exercise the powers conferred by them under the (named sections) of the Towns Act and Village Act.

The second letter further stated that the order stipulated that any person who fails to abide by the order shall have action taken against him under the existing law. It also indicated that the order had been made public and circulated to all State bodies, government ministries and local administrative bodies, and published in the Gazette.

The text of Order No 1/99 of the 14 May 1999 was annexed and the relevant sections are set out in the footnote herein.<sup>24</sup>

14 May 1999 Lieutenant General Khin Nyunt in his opening address to the 13<sup>th</sup> ASEAN Labour Ministers Conference said:

There have been allegations of the use of forced labour in Myanmar. If one is to

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<sup>24</sup> "4. In order to make the *Towns Act*, 1907 and the *Village Act*, 1907 conform to the changing situation such as security, administrative, economic and social conditions within the internal domain of the State, the Minister of Home Affairs has been scrutinising and reviewing as to how the said Acts should be amended, inserted and deleted, in coordination with the relevant ministries, Government departments and organisations.

5. As such, this Order is hereby issued directing the Chairmen of the Ward and Village Tract Peace and Development Councils and the responsible persons of the Department of General Administration and the Myanmar Police Force not to exercise powers under these provisions relating to requisition for personal service prescribed in the above-mentioned *Towns Act*, 1907 and the *Village Act*, 1907, until and unless any further directive is issued, except for the following circumstances:

(a) requisition for personal service in work or service exacted in cases of emergency on the occurrence of disasters such as fire, flood, storm, earthquake, epidemic diseases that would endanger the existence or the well-being of the population;

(b) requisition for personal service in work or service which is of important direct interest for the community and general public and is of present or imminent necessity, and for which it has been impossible to obtain voluntary labour by offer of usual rates of wages and which will not lay too heavy a burden upon the present population.

6. Any person who fails to abide by this Order shall have action taken against him under the existing law."

believe some of the allegations found in the Western media, the picture is indeed rather bleak. We felt very strongly that these allegations were largely due to misconception and misunderstanding of the situation and the mentality of our people.

Since a sound infrastructure is essential for economic development, our Government has placed special emphasis on this sector. Hence, a sustained effort to improve the infrastructure of our economy by building roads, bridges, rail network, dams and reservoirs has been undertaken. Realising the benefits to the communities from these projects, people have voluntarily contributed labour so that they can be completed sooner. Moreover, in Myanmar thinking, the contribution of labour not only brings immediate material benefit in the present life, but also merit for future cycles.

Without understanding these factors, some people have made all sorts of allegations. On our part, to dispel these wrong impressions, the government has issued instructions that only remunerated labour must be used in infrastructure projects. At the same time, with the return of peace, we are now mainly using our military personnel to undertake these public works. Therefore, the allegations of forced labour are groundless.<sup>25</sup>

21 May 1999 Report of the Director-General to the Governing Body outlined the continued exaction of forced or compulsory labour referring to detailed reports from the ICFTU, the United Nations High Commissioner for

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<sup>25</sup> Full text of address published by BBC Monitoring Asia Pacific on 17 May 1999.

Refugees as well as the Government of the United States.<sup>26</sup>

- June 1999      Committee on the Application of Standards adopted a resolution of a special Selection Committee stating it “deeply deploras” that the Government has failed to take the necessary steps recommended by the Commission of Inquiry and decided that this case should be included as a “special paragraph” in its report for consideration by the Governing Body in November 1999.
- 7 June 1999      Government of Myanmar sent a memorandum to ILO stating that Order No 1/99 of 14<sup>th</sup> May 1999 “specifically orders ... that any and all unpaid or compulsory labour be terminated henceforth”.
- 17 June 1999      87<sup>th</sup> Session of the International Labour Conference passed a resolution by an overwhelming majority of 333 delegates in favour, 27 voting against and 47 abstaining, which included a statement that Myanmar’s State Peace and Development Council continues “to inflict the practice of forced labour, (which is) nothing but a contemporary form of slavery, on the people of Myanmar”. The resolution continued that “the attitude and behaviour of the government of Myanmar are grossly incompatible with the conditions and principles governing membership of the organisation”. The conference resolved that “the Government of Myanmar should cease to benefit from any technical cooperation or assistance from the ILO, except for the purpose of direct assistance to implement immediately the recommendations of the Commission of Inquiry”.
- 17 June 1999      The Government of Myanmar issued a press release published in “*The New Light of*
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<sup>26</sup> Report of Director-General to Governing Body 21 May 1999 see footnote 21.

*Myanmar*” newspaper of 18<sup>th</sup> June 1999, which refuted the International Labour Conference resolutions accusing “a number of western nations” of having “pushed through a resolution” which was “unfair and biased”.<sup>27</sup>

November 1999 276<sup>th</sup> Session of the Governing Body requested the Director-General to provide an up-date of a previous written report to the Governing Body at its 277<sup>th</sup> Session regarding the measures which the Government of Myanmar had taken to comply with the recommendations of the Commission of Inquiry.

25 November 1999 to 10 December 1999 The Committee of Experts on the Application of Conventions and Recommendations reported on the general situation and in particular noted that Order No 1/99 did not comply with the Commission of Inquiry recommendations. The order did not refer to “any and all unpaid or compulsory labour”, but only to the exercise of powers under the Village Act and Towns Act. This still left at large the national practice exacted compulsory labour without any reference to either of the Acts. The Committee concluded “there is no evidence that actual practise has changed since the Commission of Inquiry presented its report; on the contrary the exaction of forced or compulsory labour by the authorities has continued and is well-documented”.

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<sup>27</sup> The press release also stated “in view of the unfairness of the exercise, its lack of balance and objectivity as well as the underlying political motives, Myanmar finds it impossible to accept such deplorable and unscrupulous action on the part of those nations who want to interfere and meddle in the internal affairs of Myanmar. Myanmar has therefore disassociated herself from - this unfair and biased resolution and henceforth will cease participation in activities connected with Convention 29 and Convention 87 until such time that Myanmar receives fair and equitable treatment that must necessarily be accorded to all members of the ILO. However, as a responsible member of the international community, Myanmar will continue to comply with the Conventions to which she is a party.”

- 21 January 2000 The Government of Myanmar responded to a letter from the Director-General requesting the government for information. The Government response did not refer to actual practice and abstained from commenting on observations made by the ICFTU.<sup>28</sup>
- 25 February 2000 The Director-General provided a second report on measures taken by the government of Myanmar to the 277<sup>th</sup> Session of the Governing Body. This report cited the history and contains additional information from the ICFTU of 31 January 2000 regarding the continuation of forced labour and examples of orders given for the provision of forced labour. The World Bank provided a report of the 1<sup>st</sup> September 1999, the United Nations High Commissioner for Refugees provided information on the situation in the Northern Rakhine State. The government of the United States supplied a report on “conditions in Burma and US policy toward Burma for the period 28<sup>th</sup> March 1999 – 28<sup>th</sup> September 1999. The conclusion was that the recommendations of the Commission of Inquiry had not been complied with.
- 31 March 2000 277<sup>th</sup> Session of the Governing Body of the ILO recommended that the International Labour Conference at its meeting in June 2000 “take such action as it may deem wise and expedient to secure compliance” by Myanmar utilising Article 33 of the ILO Constitution.<sup>29</sup>

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<sup>28</sup> Second report of Director-General to Governing Body Session 277 footnote 24.

<sup>29</sup> Article 33 provides “in the event of any Member failing to carry out within the time specified in the recommendations, if any, contained in the report of the Commission of Inquiry, or in the decision of the International Court of Justice, as the case may be, the Governing Body may recommend to the Conference such action as it may deem wise and expedient to secure compliance therewith”.

- 23 to 27  
May 2000            The ILO sent a technical cooperation mission to Myanmar, “the sole purpose” of which was “to establish with the Government a credible plan of action to ensure the full implementation of the Commission’s recommendations”.<sup>30</sup>
- 27 May 2000        The Minister of Labour of Myanmar delivered a letter to the members of the technical cooperation mission informing the Director-General of the ILO that “we have taken and are taking the necessary measures to ensure that these are no instances of forced labour in Myanmar” and that the Government “would take into consideration appropriate measures, including administrative, executive and legislative measures, to ensure the prevention of such occurrences in the future”.<sup>31</sup>
- June 2000            88<sup>th</sup> Session of the International Labour Conference adopted the resolution of the Selection Committee by an overwhelming majority of 257 in favour, 41 against and 31 abstentions under Article 33 of the ILO Constitution. Under the terms of the resolution, a series of measures will take effect on 30<sup>th</sup> November 2000 unless before that date the Governing Body is satisfied that the intentions expressed by the Minister of Labour of Myanmar in his letter of 27<sup>th</sup> May 2000 have been translated into a framework

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<sup>30</sup> Provisional Record No. 8 of the 88<sup>th</sup> Session of the International Labour Conference.

<sup>31</sup> Annexure to Provisional Record No. 8 of the 88<sup>th</sup> Session of the International Labour Conference.

of legislative executive and administrative measures that are “sufficiently concrete and detailed to demonstrate that the recommendations of the Commission of Inquiry have been satisfied”. The full text of the measures are contained in the footnote.<sup>32</sup>

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<sup>32</sup> The International Labour Conference....

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

(a) to decide that the question of the implementation of the Commission of Inquiry's recommendations and of the application of Convention No. 29 by Myanmar should be discussed at future sessions of the International Labour Conference, at a sitting of the Committee on the Application of Standards specially set aside for the purpose, so long as this Member has not been shown to have fulfilled its obligations;

(b) to recommend to the Organization's constituents as a whole - governments, employers and workers - that they: (i) review, in the light of the conclusions of the Commission of Inquiry, the relations that they may have with the member State concerned and take appropriate measures to ensure that the said Member cannot take advantage of such relations to perpetuate or extend the system of forced or compulsory labour referred to by the Commission of Inquiry, and to contribute as far as possible to the implementation of its recommendations; and (ii) report back in due course and at appropriate intervals to the Governing Body;

(c) as regards international organizations, to invite the Director-General: (i) to inform the international organizations referred to in article 12, paragraph 1, of the Constitution of the Member's failure to comply; (ii) to call on the relevant bodies of these organizations to reconsider, within their terms of reference and in the light of the conclusions of the Commission of Inquiry, any cooperation they may be engaged in with the Member concerned and, if appropriate, to cease as soon as possible any activity that could have the effect of directly or indirectly abetting the practice of forced or compulsory labour;

(d) regarding the United Nations specifically, to invite the Director-General to request the Economic and Social Council (ECOSOC) to place an item on the agenda of its July 2001 session concerning the failure of Myanmar to implement the recommendations contained in the report of the Commission of Inquiry and seeking the adopting of recommendations directed by ECOSOC or by the General Assembly, or by both, to governments and to other specialized agencies and including requests similar to those proposed in paragraphs (b) and (c) above;

(e) to invite the Director-General to submit to the Governing Body, in the appropriate manner and at suitable intervals, a periodic report on the outcome of the measures set out in paragraphs (c) and (d) above, and to inform the international organizations concerned of any developments in the implementation by Myanmar of the recommendations of the Commission of Inquiry;

2 Decides that those measures will take effect on 30 November 2000 unless, before that date, the Governing Body is satisfied that the intentions expressed by the Minister of Labour of Myanmar in his letter dated 27 May

### **Effect of Directive of 14 May 1999**

Order No 1/99 of the Government of Myanmar is considered to be window dressing and does not comply with the Commission's recommendations because:

- Neither the *Village Act* nor *Towns Act* had been amended or repealed.
- No draft legislation has been proposed or is under consideration to the knowledge of the ILO.
- There is no expression of intention in the letter nor in the directive that the Government intends to repeal or amend the provision of the Acts.
- The directive and its exclusions would seem to allow for portage to continue arguably on the basis of need and economic circumstances.
- The Government does not refer to other practices which were found to be forced labour. Moreover, many of the directives given by authorities for forced labour have not specifically referred to the *Village Act* or the *Towns Act* but purported to be official orders<sup>33</sup>.
- There is no change to the imposition of penalties under the Penal Code. The problem is that penalties under the Penal Code are linked to the performing of forced or compulsory labour contrary to the law, that is, contrary to the *Village Act* and *Towns Act*. Therefore there is a need to amend the provisions of the *Village* and *Towns Acts* to conform with the Convention before the Penal Code can be effective to prevent forced labour contrary to the Convention. For the directive to say that if the directive is

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have been translated into a framework of legislative, executive and administrative measures that are sufficiently concrete and detailed to demonstrate that the recommendations of the Commission of Inquiry have been fulfilled and therefore render the implementation of one or more of these measures inappropriate;

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

<sup>33</sup> This omission was specifically referred to by The Committee of Experts on the Application of Conventions and Recommendations.

not obeyed, action will be “taken under existing law....” means nothing. The Penal Code only imposes sanctions if it is unlawful under the *Village Act* or the *Towns Act*. There can be no imposition of penalty for failing to abide with the direction if the actions would otherwise be legal under the *Village Act* or the *Towns Act*.

### **Conclusion**

Whilst the wheels and mechanisms of international law and practice move slowly, the continued pressure placed by the ILO on the Government through its various committees and cooperative missions, has produced some change, of late, in the official Government rhetoric. What began as vehement denials by the Government of breaches of the Convention has changed in the letter of 27<sup>th</sup> May 2000, to an oblique acknowledgment of past conduct by reference to the taking of measures “to ensure the *prevention of such occurrences* in the future”. However the International Labour Conference was not persuaded that the generalised statement by the Government that it “*would take into consideration* appropriate measures” constitutes sufficient indication of commitment to produce a real outcome.

The resolution gave a six month opportunity to Myanmar to take action and to implement the recommendations of the Commission of Inquiry with the technical cooperation of the ILO being made available for that purpose. The resolution acknowledged that the activities of other international members of the ILO may have the effect of endorsing, encouraging or maintaining forced labour in Myanmar and that there is a responsibility for each member to review its own actions in relation to Myanmar if the Government does not appropriately respond within the time.

A widespread and systemic culture of Government-driven forced labour cannot be changed instantly. The expulsion or suspension of Myanmar from the ILO, even if constitutionally possible (which seems not to be the case, since the ILO constitution does not contain such provisions), would probably be counterproductive. The greatest hope for change lies in continuing dialogue between the ILO and the Government and, if necessary, implementation of measures by international organisations, member States and NGOs which could include economic and trade sanctions.

At the present time the Government stands condemned by an overwhelming majority of the international community. Face-saving is important to the Government, and it has been given an opportunity to rectify its situation. The Government is under the greatest international pressure that it ever received, and one can only hope that this will bring about a positive response.