



FOURTH ITEM ON THE AGENDA

**Developments concerning the question
of the observance by the Government
of Myanmar of the Forced Labour
Convention, 1930 (No. 29)****Report of the High-Level Team****Contents**

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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 B 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

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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.