

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

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## Part A. Report of the Director-General

### I. Brief summary of developments since June 2004

1. In the conclusions it adopted last year at the close of the special sitting concerning the application by Myanmar of the Forced Labour Convention, 1930 (No. 29), the Committee on the Application of Standards, *inter alia*, noted that the measures taken by the Government had not brought about significant progress in actual practice and forced labour continued to be exacted in many parts of the country. It further noted its grave concern at the convictions of three persons for high treason, including on grounds of contacts with the ILO, and agreed with the Governing Body that this situation clearly was not one in which the Plan of Action could be credibly implemented. The Committee also noted with appreciation the continued cooperation extended to the Liaison Officer by the Government and the freedom of movement that he enjoyed. As regards the increasing numbers of individual complaints of forced labour being received by the Liaison Officer, this demonstrated the usefulness of the ILO presence. The Committee had to note with concern, however, that the response so far was inadequate and this cast serious doubt on the willingness of the authorities to take the concrete steps necessary to ensure the elimination of forced labour in practice. The following brief overview of the main developments since its last session should be of interest to the Committee.
2. At its 291st Session (November 2004), the Governing Body had before it two reports from the Liaison Officer *a.i.*, on his activities and a report from the Director-General.<sup>1</sup> The Governing Body was gravely concerned by developments in the situation and the continued impunity of those who exact forced labour. While the recent judgement of the Supreme Court in the high treason case did answer the fundamental question of the legality of contacts with the ILO, the Governing Body regretted the continued detention of the persons concerned when their guilt had not been established, and called for their immediate release. While a broad majority were of the opinion that the reactivation of the measures to be taken under article 33 and in accordance with the Conference resolution of 2000 would be fully justified, it was nevertheless felt that the sudden replacement of the previous interlocutors of the Organization following changes among the Myanmar leadership justified an evaluation of the current attitude of the authorities and their determination to effectively address the continuing practice of forced labour. The Director-General was therefore requested to field a “very high-level team” to make such a determination, and report the results to the next session of the Governing Body so that it would then be able to determine the necessary consequences on the basis of full knowledge either as regards further action by the Organization under article 33, or for the implementation of the joint Plan of Action. In addition, the Office was requested to provide further information for the next session on the actions taken on the basis of the 2000 resolution.
3. Accordingly, the Director-General constituted a very High-Level Team (vHLT) comprising Sir Ninian Stephen (former Governor-General of Australia); Ms. Ruth Dreifuss (former President of the Swiss Confederation); and Mr. Eui-yong Chung (former Chairperson of the Governing Body, Member of the National Assembly of the Republic of Korea, and Chairperson of the Foreign Relations Committee of the Uri Party). The vHLT arrived in Myanmar on 21 February. On 23 February, having failed to secure the necessary meetings at the highest level in order to complete its mandate, and having had discussions and making its views known to the Minister for Labour and the Prime Minister, the vHLT

<sup>1</sup> Docs. GB.291/5/1, GB.291/5/1(Add.) and GB.291/5/2.

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decided to depart the country. It handed over to the Minister for Foreign Affairs a statement to this effect, attached to which was an informal aide-mémoire setting out the main concrete steps on which it believed progress should be made. It insisted that despite its early departure, the door was still open for further developments.

4. The 292nd Session (March 2005) of the Governing Body had before it three reports: (i) a report on further action taken pursuant to the 2000 resolution of the International Labour Conference; (ii) a report from the Liaison Officer a.i., on his activities together with an addendum setting out the latest developments; and (iii) the report of the very High-Level Team.<sup>2</sup> In its consensus conclusions, the Governing Body noted that the most largely shared sentiment was one of condemnation over the failure of the highest authorities to take advantage of the unique opportunity that the visit of the vHLT represented to resume a credible dialogue on the issues of concern, and also the feelings of grave concern over the general situation that this revealed. Although there were indications from the Prime Minister and comments from the Myanmar Ambassador alleging that the necessary political will existed, the credibility of this message and the usefulness of the ILO's present approach was cast into grave doubt by other indications, including the attitude towards the vHLT. Although some concrete developments appeared to go in the right direction, in particular the prosecutions and punishment of authorities responsible for having recourse to forced labour as well as the establishment of a focal point in the army, in the circumstances the overall assessment fell far short of the Governing Body's expectations. The Governing Body noted the growing feeling that the "wait-and-see" attitude that prevailed among members since 2001 appeared to have lost its *raison d'être* and could not continue. It therefore unanimously agreed to transmit its conclusions to all those to whom the 2000 resolution was addressed – including relevant agencies – with a view to them taking the appropriate action. At the same time, it noted that the ILO was not closing the door to a resumption of positive dialogue with the Myanmar authorities and that any concrete developments should be taken objectively into account by members when deciding on the action they would take. Progress with regard to the strengthening of the ILO presence as well as the other items covered by the vHLT's aide-mémoire, including the immediate release of U Shwe Mahn, should be a concrete test in this regard.

## II. Latest developments since March 2005

5. In accordance with the conclusions of the Governing Body in March 2005, the Director-General wrote on 21 April to the governments of member States of the ILO, to international organizations, and to the United Nations Economic and Social Council (ECOSOC), drawing their attention to these conclusions. These letters are reproduced in Appendix I. At the same time, the Director-General wrote to the Minister for Labour of Myanmar. This letter, and the reply from the Minister, are reproduced in Appendices II and III, respectively.
6. In parallel with the discussions between the Liaison Officer a.i., and the authorities in Yangon (reported in detail in Part B below), relevant discussions also took place between the Office and the Permanent Representative of Myanmar in Geneva. Certain developments and comments made in Yangon, in particular by the Director-General of the Department of Labour in his meeting with the Liaison Officer a.i., on 26 April,<sup>3</sup> touched on matters which were fundamental to the effectiveness of the ILO presence and gave rise

<sup>2</sup> Docs. GB.292/7/1, GB.292/7/2, GB.292/7/2(Add.) and GB.292/7/3, respectively.

<sup>3</sup> See para. 12 of the report of the Liaison Officer a.i.

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to serious concerns on the part of the Office. These concerns were made known to the Myanmar authorities, and the Office highlighted the need, in view of the nature of the issues involved, for clarification at the earliest occasion and at the appropriate level. The vHLT office made it clear in this regard that, as suggested on the occasion of the vHLT's visit, it was ready to carry out a joint in-depth review of the Plan of Action, including in particular the facilitator mechanism, in the light of recent experiences, and that it would be important for the authorities to indicate their readiness to conduct such a review at the earliest opportunity and at the appropriate level. It underlined the fact that, pending such a review, it was inherent to the very *raison d'être* of the ILO presence, and to its status, that it was able to have any contacts for any purpose consistent with its mandate, including with alleged victims of forced labour or their representatives, and that no action should be taken against those concerned. It also underlined that the International Labour Conference should receive appropriate assurances on this vital point. At the same time, relevant instructions were given to the Liaison Officer a.i., in particular as regards the implications for continued processing of specific allegations of forced labour pending the necessary assurances.

7. A subsequent reply from the Minister for Labour to the Director-General's letter of 21 April, as well as a meeting between the Minister for Labour and the Liaison Officer a.i., while still containing a number of concerning elements, appears at the same time to indicate a willingness to have the necessary discussions at the required level in order to address these matters.

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## Appendix I

### (a) Letter dated 21 April from the Director-General to the member States of the ILO

Dear Sir,

I have the honour to draw your attention to the agreed conclusions reached by the Governing Body of the ILO at its 292nd Session (March 2005) concerning the question of the observance by Myanmar of the Forced Labour Convention, 1930 (No. 29), which are attached.

These conclusions have to be considered in the framework of the resolution concerning this question adopted by the International Labour Conference at its 88th Session (June 2000), and to the letter addressed to your Government in this regard on 8 December 2000. I have attached both herewith for ease of reference.

Under operative paragraph 1(b) of this resolution, the Organization's constituents are called upon to undertake a review of their relations with Myanmar and to report back at appropriate intervals to the ILO Governing Body. The Governing Body's abovementioned conclusions convey the growing feeling that the "wait-and-see" attitude which has prevailed among most Members since 2001 "appears to have lost its *raison d'être* and cannot continue".

At the same time, the conclusions make it clear that Members, in carrying out the review they are called upon to make, and reaching their conclusions, are expected to take objectively into account any development that may take place in Myanmar from now on as regards the four points raised by the very High-Level Team's aide-mémoire (GB.292/7/3, Appendix III(b), also attached).

The Office for its part is to report on any developments to the Committee on the Application of Standards of the International Labour Conference in June. A full report on action taken by the Organization's constituents will be prepared for the November session of the Governing Body. These reports will include any relevant information you may wish to provide.

May I also request that you bring the contents of this letter to the attention of the employers' and workers' organizations of your country so that they may take any appropriate action and inform me either directly or through you.

Yours faithfully,

(Signed) Juan Somavia

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**(b) Letter dated 21 April from the Director-General  
to international organizations <sup>4</sup>**

Dear Sir,

You will recall that in my letter dated 8 December 2000 I transmitted to you for appropriate action the resolution adopted by the International Labour Conference at its 88th Session (June 2000) concerning the question of the observance by Myanmar of the Forced Labour Convention, 1930 (No. 29). A copy of this resolution is attached for easy reference.

In the framework of that resolution, the Governing Body of the ILO reviewed the situation at its 292nd Session (March 2005) and agreed conclusions, which are attached.

The Office for its part is to report on any developments to the Committee on the Application of Standards of the International Labour Conference in June. A full report on action taken by the Organization's constituents will be prepared for the November session of the Governing Body. These reports will include any relevant information you may wish to provide.

Yours sincerely,

*(Signed)* Juan Somavia

<sup>4</sup> Sent to all international organizations to which the 2000 resolution was addressed, and also sent to ECOSOC, *mutatis mutandis*.

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## Appendix II

### Letter dated 21 April from the Director-General to the Myanmar Minister for Labour

Dear Minister,

As you are aware, the Governing Body at its March session agreed conclusions concerning the observance by your country of the Forced Labour Convention, 1930 (No. 29), which are attached herewith.

As provided for in these conclusions, I have now apprised the Organization's constituents and relevant international organizations of these conclusions. Copies of sample letters are attached. In this framework, it is of the greatest importance that the Myanmar authorities provide a clear indication of their willingness to give positive consideration to the outstanding issues. These include the strengthening of the ILO's presence as well as the other items covered by the vHLT's aide-mémoire, as well as the immediate release of Shwe Mahn – which could then be reported to the International Labour Conference in June.

It is therefore urgent that you could pursue the necessary consultations in Yangon with the Liaison Officer a.i., it being understood that parallel consultations can take place in Geneva as appropriate.

Yours sincerely,

*(Signed)* Juan Somavia

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## Appendix III

### Letter dated 21 May from the Myanmar Minister for Labour to the Director-General

Excellency,

I am pleased to inform you that the Government of the Union of Myanmar gives due consideration to the items covered by aide-mémoire of vHLT. The developments on these issues have already been mentioned in the “Memorandum on Myanmar’s Compliance of ILO Convention 29 and Her cooperation with ILO” issued by the Ministry of Labour. I would like to inform you on further developments.

In recent days, discussions and exchange of views on matters concerning the elimination of forced labour in Myanmar took place in parallel both in Yangon and Geneva.

Upon the request of the ILO Liaison Officer a.i., I myself met with the ILO Liaison Officer a.i. on May 9, 2005 at the Minister’s Office. The Government’s position on elimination of forced labour and other related matters were made known to the ILO Liaison Officer a.i. and discussions were conducted in a very frank manner.

Myanmar Government took into serious consideration on the persistent requests by the Governing Body to release Shwe Mann, who committed a crime of high treason. He has already been released from the prison on 18 May 2005.

The Army Focal Team Leader Colonel Khin Soe and two members of his team met with the ILO Liaison Officer a.i. on May 12, 2005 at the Department of Labour. The meeting was in compliance to a request by the ILO Liaison Officer a.i.

Concerning the freedom of movement of the ILO Liaison Officer a.i., it has been clearly stated in the terms of Understanding for the appointment of an ILO Liaison Officer that the freedom of movement accorded to diplomats and UN personnel with the established procedures will be extended to the ILO Liaison Officer. Recently, the Myanmar authorities allowed the ILO Liaison Officer a.i. to travel to Kayin State at an extremely short notice.

In a spirit of cooperation with the ILO, Myanmar is ready to consider a new approach for the elimination of forced labour to be discussed at an appropriate time and level to be determined between the two sides.

I would like to assure you that Myanmar looks forward to constructive cooperation with the International Labour Organization based on mutual trust and interest.

Yours sincerely,

*(Signed)* U Thaung

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## Part B. Report of the Liaison Officer a.i.

### I. Activities of the Liaison Officer a.i. since March 2005

1. The Liaison Officer a.i., had a number of meetings with the authorities. On 9 May he met with the Minister for Labour. He met with the Director-General of the Department of Labour on 8 and 26 April, and 12 and 17 May. He also had meetings with officials from the Department of General Administration (Ministry of Home Affairs) and the Ministry of Foreign Affairs. On 12 May he met for the first time with Col. Khin Soe (the Vice-Adjutant General) who was designated on 1 March as the army focal point with the ILO.
2. In addition to these meetings with the authorities, the Liaison Officer a.i., also met in Yangon and in Bangkok with members of the diplomatic community, representatives of United Nations agencies, and representatives of non-governmental organizations.
3. From 18 to 20 May, the Liaison Officer a.i., visited parts of Mon State and southern Kayin State.<sup>1</sup> This trip was conducted independently of the authorities. In line with the previously established practice, he informed the authorities shortly before his departure of his plans. Some of the places that he visited were restricted areas, but where there were no significant security concerns. He was able to freely visit all areas that he wished to.<sup>2</sup>

### II. Developments on the concrete steps identified by the very High-Level Team (vHLT) and the Governing Body

4. *The release of U Shwe Mahn.* U Shwe Mahn, one of three persons originally convicted of high treason including on grounds of contact with the ILO, was released from prison on 29 April.<sup>3</sup> The Liaison Officer a.i., has been able to confirm that U Shwe Mahn is well and has returned home to his family. The Minister for Labour indicated to the Liaison Officer a.i., in their meeting on 9 May that although U Shwe Mahn was a convicted terrorist against whom there was conclusive evidence, the authorities had nevertheless set him free on the request of the ILO. This was a positive gesture to demonstrate the commitment of the Myanmar side to continuing its cooperation with the ILO.
5. *The strengthening of the ILO presence.* As indicated to the Governing Body in March,<sup>4</sup> it was decided that in the first instance this step would take the form of the secondment of an ILO official to Yangon to assist the interim Liaison Officer. The necessary approvals from the authorities have been pending since 24 January. In the meeting on 9 May, the Minister for Labour indicated that this matter was still under review by the higher authorities. If the

<sup>1</sup> He travelled by road from Yangon to Mawlamyine (Moulmein), the capital of Mon State, and from there to Kyain-seikgyi town in southern Kayin State.

<sup>2</sup> He was informed, however, that this arrangement was to be seen as an exception, and it was underlined that in general he would be expected, like all diplomats and UN officials, to apply for permission for travel 14 days in advance. See para. 6 below.

<sup>3</sup> The other two persons had been released on 4 January. See GB.292/7/2, para. 7.

<sup>4</sup> Doc. GB.292/7/2, para. 3.

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ILO presence was found to be of mutual benefit, a positive response could be given on this point. If not, the viability of the ILO presence could be called into question.

6. *A renewed commitment to the freedom of movement of the Liaison Officer a.i.* As reported above, the Liaison Officer a.i., was able to freely undertake travel in line with the previously established practice. At the same time, however, the Minister for Labour indicated to the Liaison Officer in their meeting that the ILO could not be excepted from the general requirement that all diplomats and UN international staff apply for travel authorization by submitting a detailed itinerary to the Protocol Department 14 days in advance. In his meeting with the Liaison Officer a.i., on 17 May, the Director-General of the Department of Labour reaffirmed that the authorities regarded this trip as an exception and that it should not be seen as establishing a precedent.
7. *Credible solutions to the forced labour cases in Toungup and Hinthada.* No further developments have taken place in this regard, and the authorities have declined to discuss this matter further.
8. *The appointment of a high-level focal point in the army.* As reported to the Governing Body in March,<sup>5</sup> this important step was taken on 1 March, with the appointment of a team of eight senior military officers, headed by the Vice-Adjutant General. The Liaison Officer a.i., had a meeting with the Vice-Adjutant General on 12 May, and was able to brief him on his work and hear about the mandate and activities of the focal point. Following these discussions, the Liaison Officer a.i., requested a further meeting before the International Labour Conference during which some specific issues could be raised. A meeting was scheduled to take place on 26 May, but the Liaison Officer a.i., was subsequently informed that the Vice-Adjutant General had been called away from Yangon to deal with an urgent matter.
9. *The issuance of a public order to army units not to requisition labour.* The authorities indicated that, as stated in their “Memorandum” of March 2005,<sup>6</sup> a number of (secret) orders were issued by the Ministry of Defence and the army at various levels instructing all members of the armed forces to abide by the orders prohibiting forced labour. The Liaison Officer a.i., has suggested to the authorities that if this is the case, then a relatively straightforward first step could be to declassify these orders.
10. *Reconfirmation of the commitment of the authorities to the joint Plan of Action.* The Liaison Officer a.i., has raised this matter in various discussions with the authorities. The authorities pointed out that it was the ILO that had decided to suspend the implementation of the joint Plan of Action. However, there were indications, including from the Minister for Labour, that it could be possible to have detailed discussions on this matter at the appropriate level.

### **III. Developments on specific allegations**

11. Since the finalization of his report to the March session of the Governing Body, on 18 February, the Liaison Officer a.i., has made interventions on a further five cases reported to him:

<sup>5</sup> Doc. GB.292/7/2(Add.), para. 3.

<sup>6</sup> *ibid.*

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- *Intervention dated 2 March.* According to the allegation, labour was requisitioned by the authorities in Aunglan township (Magway Division) in November and December 2004 for the construction of a local road, and one villager was killed in an accident while being forced to quarry rocks as part of this project. This allegation was made to the ILO by a close relative of the individual who was killed, with the support of an additional 15 villagers who indicated that they were also forced to contribute labour for the project. In total, one person from each of the 280 households in the village was ordered by the local authorities to do the work. Any family who failed to contribute labour was fined. The family of the worker killed did not receive any support or compensation from the authorities. (Further details on the follow-up to this case are provided below.)
  - *Intervention dated 10 March.* According to the allegation, hundreds of local people were requisitioned by the authorities in Katha township (Sagaing Division) in 2004 and again in 2005 for the construction of a local road. This allegation was made to the ILO by an individual from the area who had to participate in this project. Those who were forced to participate received no payment, and had to supply their own tools and rations. Compulsory cash contributions were also collected to cover the cost of materials for the construction of bridges. Any household that could not contribute a worker had to pay a fine.
  - *Intervention dated 11 March.* This intervention concerned the alleged forced recruitment of a minor into the army. According to the information received, in November 2004 a meeting was held between an army officer and village leaders in Thongwa township (Yangon Division) at which a 17-year-old boy was selected by the elders (along with several other boys) and ordered to accompany the officer to a recruitment centre, where he was recruited against his will.
  - *Interventions dated 21 April.* These interventions, addressed to the newly-appointed army focal point, concerned two cases of forced recruitment into the army. In both cases, documentary evidence of the date of birth was provided, indicating that the boys were aged 14 and 16 at the time of recruitment.

**12.** In a development of sufficient seriousness to be immediately brought to the attention of headquarters, the Liaison Officer a.i., was informed during his meeting with the Director-General of the Department of Labour on 26 April that false complaints of forced labour were placing a great drain on Government resources and undermined the dignity of the State, and that it was therefore necessary to “take measures as a deterrent against false complaints being lodged”. It was indicated that legal action would now be taken, under certain specified sections of the Penal Code,<sup>7</sup> against complainants or their representatives who lodged “false complaints”. Preparations were under way to do so in certain recent cases. In the light of this, the Liaison Officer a.i., was instructed by ILO headquarters to temporarily suspend dealing with new allegations of forced labour, while clarifications were sought from the Myanmar authorities. In his meeting with the Minister for Labour on 9 May, the Liaison Officer a.i., was informed that the authorities had evidence that false complaints of forced labour were being systematically made to the ILO by politically-motivated individuals. The Minister had referred such cases to the competent authorities for legal action to be taken, although he could not say whether such action would be taken or not. He gave assurances that the authorities had no intention to punish complainants.

<sup>7</sup> The sections of the Penal Code were identified as: 182b (giving false information with intent to cause a public servant to use his lawful power to the injury or annoyance of any person), 420 (cheating and dishonesty), 468 (forgery for the purpose of cheating) and 499 (defamation).

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**13.** In letters dated 15 March, 18 April, 4 May, 9 May and 18 May, the Convention 29 Implementation Committee responded to a number of the forced labour cases raised by the Liaison Officer a.i.:

- As regards the allegation of forced labour for road construction in Ramree township (Rakhine State),<sup>8</sup> it was indicated that funds allocated to the project had been systematically disbursed to workers, and that no forced labour was used. However, the township Chairman and the Deputy Superintendent of Police were reprimanded for “shortcomings in complying with Order Supplementing Order 1/99”.
- As regards the allegation of forced labour cultivating land previously confiscated by an army battalion in Putao township (Kachin State),<sup>9</sup> it was found that the allegation was untrue, and furthermore that any rice purchased by the battalion from farmers was paid for at more than reasonable rates.
- As regards the allegation of forced labour imposed by the army for road construction in Thandaung township (Kayin State), during which a 15-year-old boy stepped on a landmine and lost his leg, it was found that the incident had taken place, but that the villagers were contributing their labour of their own free will when the boy stepped on an insurgent-laid mine.
- As regards the allegation of forced labour for the construction of a road in Katha township (Sagaing Division),<sup>10</sup> it was found that no forced labour or compulsory contributions were demanded, and that the road in question was constructed voluntarily by the local people on their own arrangement.
- As regards three allegations of forced recruitment of children into the armed forces,<sup>11</sup> in two cases it was found that the individuals were over the age of 18 and had been voluntarily recruited. The findings as regards age were inconsistent with documentary evidence of date of birth, copies of which were provided to the authorities in each case. In the third case, it was indicated that the individual had gone absent without leave and been declared a deserter. No response was given concerning the evidence presented that he was only 14 at the time of recruitment.

<sup>8</sup> See doc. GB.291/5/1, para. 14.

<sup>9</sup> See doc. GB.292/7/2, para. 14.

<sup>10</sup> See para. 11 above.

<sup>11</sup> See para. 11 above (intervention dated 11 Mar.); doc. GB.292/7/2, para. 13 (intervention dated 15 Feb.); and doc. GB.291/5/1, para. 14 (intervention dated 13 Sep.).

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14. *The allegation of forced labour in Aunglan township.* As regards the allegation of forced labour for the construction of a road in Aunglan township (Magway Division), during which one villager was killed, the authorities indicated that investigations had found the allegation to be false as no forced labour had been used and the individual had been killed while willingly contributing his labour.<sup>12</sup> Legal action would be taken against “unscrupulous third parties” who had persuaded the family to make this false complaint. The Liaison Officer a.i., then received a letter from the brother of the deceased, withdrawing the complaint.<sup>13</sup> The Liaison Officer a.i., also received other information according to which pressure was put on the local people to deny that there had been forced labour, and that the family of the deceased was intimidated by the field observation team and signed the letter withdrawing the complaint under duress.

<sup>12</sup> See para. 11 above. The initial response was provided in a letter dated 18 April from the Convention 29 Implementation Committee. In the letter, it was indicated that a field observation team had been dispatched to investigate, and it had been found that no forced labour, compulsory contributions or fines were imposed, and that the individual who had died had been contributing labour willingly at the time. Further clarification was provided by the Director-General of the Department of Labour in his meeting with the Liaison Officer a.i., on 26 April. It was indicated that because of the seriousness of the allegation a second field observation team had been dispatched to the area from 5 to 7 April. This investigation had confirmed that no forced labour had occurred, although 7 family members of the deceased had continued to insist that there had been forced labour. Once these persons had been investigated further, however, it had been found that they had made a false complaint because of their grief, because of a certain grudge against the local authorities, and because some “unscrupulous third parties” had taken advantage of the situation.

<sup>13</sup> This letter was dated 7 April, the same day that the second field observation team completed its investigation.