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FOR INFORMATION

Update on the operation of the complaint mechanism in Myanmar

Summary: Report of the ILO Liaison Officer for Myanmar on the number, type and outcome of complaints received and treated under the forced labour complaints mechanism.

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Related documents: None.

1. On 26 February 2007, the Government of Myanmar and the ILO entered into a Supplementary Understanding (SU) which provided the modalities for the operation of a nationwide forced labour complaints mechanism. The trial period of the SU has been extended on an annual basis.
2. Article 6 of the SU requires that the Liaison Officer reports through the Director-General to the Governing Body at each of its sessions on the number, type and outcome of complaints received and treated under the mechanism. This information report is submitted in accordance with that requirement. A full update report on the ILO forced labour programme activities in Myanmar as required under the resolution adopted at the 102nd Session of the International Labour Conference (2013) will be submitted for discussion at the March 2015 Governing Body session.
3. The Myanmar forced labour programme, beyond the application of the forced labour complaints mechanism set out in the SU, is governed by a Memorandum of Understanding dated 16 March 2012 and associated action plans which have an agreed objective of eliminating all forms of forced labour by 2015. The report which will be submitted to the 323rd Session of the Governing Body (March 2015) will provide a full analysis of progress made related to those action plans and towards achieving that objective.
4. In the period from 26 February 2007 to 19 September 2014, the ILO received and registered 3,639 complaints under the SU. Of these, 1,744 have been accepted as falling within both the definition of forced labour and the scope of the complaints mechanism, with 472 remaining open at various stages of process.
5. Complaints accepted as being within the mandate fall into the following categories:
 - under-age recruitment (1,191);
 - forced adult recruitment (169);
 - other forced labour military (81);
 - forced labour civilian authorities (158);
 - forced labour private sector (39);
 - forced labour mixed (military, civilian authorities and/or private sector) (28);
 - trafficking for forced labour internal (35);
 - trafficking for forced labour external (43).
6. In the period from 7 September 2013 to 19 September 2014, 338 complaints accepted as being within the mandate were received, which compares with 414 during the same period in 2012–13 and 364 during the same period in 2011–12. Of these complaints, there were: 232 individual cases of under-age recruitment (269 in 2012–13); 42 forced labour complaints with multiple complainants (74 in 2012–13); 22 allegations of human trafficking (27 in 2012–13); and 42 complaints of forced adult recruitment (44 in 2012–13).
7. Complaints alleging forced labour in association with land confiscation continue to be received. The complainants either lose their traditional land usage rights, are required to pay high rents to remain on their traditional land or are obliged to become wage workers on the land they had traditionally occupied. In the new political and economic environment, land – which for many is the sole basis for livelihood – is an increasingly valuable

commodity. Both Parliament and the Government are addressing legislative and land use management shortcomings, with an official complaints mechanism having been established. However, trust issues remain and allegations of confiscation and wrongful acquisition of land by the military, local government and business interests persist.

8. Since 2007, in response to SU complaints, 444 under-age recruits have been discharged from the military into the care of their parents with an additional 15 being released on intervention before their recruitment was formalized; 62 of those discharges occurred between 7 September 2013 and 19 September 2014. In parallel, 472 under-age recruits (including 112 ILO cases) have been released and discharged since mid-2012 under the joint plan of action developed under United Nations Security Council Resolution 1612 between the Government of Myanmar and the Country Task Force on Monitoring and Reporting (CTFMR), of which the ILO is a member.
9. Progress has been made in respect of the practice of arrest, prosecution and imprisonment of runaway under-age military recruits. In most cases, where the victim is the subject of an ILO complaint, he is eventually released and discharged (99 releases to date). A recent order instructing that any person producing evidence that their case is the subject of a Government/ILO Strategic Working Group for the Elimination of Forced Labour (SWGFL) investigation should not be arrested or detained is positive, however it does not assist those under-age recruits who have not been able to complain or do not know of their right to file a complaint. The ILO Liaison Officer will continue discussions with both the military and the police on pre-detention verification procedures and the issue is being further pursued through the CTFMR.
10. It has been noted that the patterns in the use of forced labour have changed since the new Government took office in 2011. Although they have not been completely eliminated, fewer complaints have been received concerning the use of forced labour by local authorities on local infrastructure construction and repair sites. However, a significant number of complaints have been received overall due to the continued receipt of complaints related to forced military recruitment, land related forced labour and forced labour in the private sector, including some related to trafficking for forced labour.
11. There are continuing reports that the incidence of forced labour by the military has improved, particularly in the ethnic areas under ceasefire agreements. Multiple directives have been issued advising that the use of forced labour by military personnel will be considered a criminal offence under the Penal Code as well as a breach of military regulations. However, information received suggests that the military use of civilians for portering and camp maintenance and construction, and demands for provision of construction materials (thatch and bamboo) and food continue in conflict areas.
12. The fact that complaint levels have been maintained may also partly reflect the general public's increased awareness of the law and its growing confidence that it can file complaints. This shows the importance of continuing public servants' awareness-raising activities. In a recently received complaint concerning the alleged use of forced labour of approximately 96 villagers on road repair works, it is alleged that the work proceeded even though the village chairman advised the senior local authority representative that such a demand was a breach of the law. The fact that the village chairman was allegedly discharged from his duties following this incident and the likelihood that the senior local authority representative concerned had participated in a Government/ILO forced labour awareness-raising and training session highlight the need for continued awareness-raising activities with strong parallel accountability measures and enforcement of the law.
13. The SWGFL continues to be an important forum for discussion of all these issues. The most recent meeting was held on 29 September 2014 at which working plans were

reviewed to identify priority areas and follow-up action was agreed on for particularly serious cases.

14. The ILO continues to be invited to present at regular in-service training sessions for general administration (local government) personnel as well as for the personnel of the judiciary, the police and the fire service. The opportunity to undertake such activities on a regular basis in conjunction with military in-service training remains outstanding.
15. These targeted training activities are in addition to the ongoing awareness-raising seminars taking place throughout the country in which local authorities, local military personnel, employer and worker representatives, civil society and community-based organizations and the general public are participating.
16. As previously indicated, it has been clearly shown that the application of the law and public reporting are major incentives for behavioural change. As reported to the 319th Session of the Governing Body (October 2013), despite the Government's declaration at high level that rule of law is a reform priority, some people in positions of local power continue to behave as if the law does not apply to them.
17. The military is responding positively to complaints under the SU, particularly to those concerning under-age recruitment. However, in a high proportion of these cases, disciplinary action is taken under military regulations against a single perpetrator, normally of relatively junior rank. This is often the case even in cases where multiple perpetrators or senior officers are identified in the complaint.
18. It is understood that a number of prosecutions under the Penal Code have been taken against alleged human trafficking perpetrators however the ILO has received no formal notification of any prosecution being taken against any person, military or civilian, under the forced labour provisions of the 2012 Ward or Village Tract Administration Act. This is of particular concern in cases of private sector forced labour, local authority use of forced labour and the actions of employment brokers who either take under-age boys to multiple recruitment centres until they find one that will accept them and/or who falsify proof of age documentation so as to achieve the placement of an under-age recruit.
19. In response to ILO complaints, 272 perpetrators (262 military and ten civilian authority personnel) have received either judicial or administrative punishment. Of these, 25 have received prison sentences (23 military and two civilian), with six military personnel receiving penal punishment during the reporting period.
20. The number of reported cases of forced labour in the private sector remains relatively small. This, as previously reported, does not necessarily reflect the actual situation as there appears to be a general belief that forced labour is an offence committed only by the Government. Many people still do not understand that the law also applies to private-sector employment relationships. To help remedy this situation, forced labour educational film clips for DVD and TV will be released shortly, and awareness-raising activities undertaken in cooperation with the emerging employers' and workers' organizations are being expanded.
21. In summary, positive progress continues to be made. High-level policy is in place, however further work through continued and expanded awareness-raising and training activities and the committed application of accountability measures are required.

Yangon, 20 September 2014