



## Governing Body

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Institutional Section

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### TENTH ITEM ON THE AGENDA

## Progress report on the follow-up to the resolution concerning remaining measures on the subject of Myanmar adopted by the Conference at its 102nd Session (2013)

#### Purpose of the document

This document provides an update on progress made on issues relating to ILO activities, including elimination of forced labour and freedom of association, establishment of an effective complaints mechanism and reform of labour legislation (see the draft decision in paragraph 33).

**Relevant strategic objective:** Fundamental principles and rights at work.

**Main relevant outcome:** Outcome 7: Adequate and effective protection at work for all.

**Policy implications:** None.

**Legal implications:** None.

**Financial implications:** None.

**Follow-up action required:** Ongoing application of the ILO programme of work.

**Author unit:** ILO Liaison Officer for Myanmar (ILO-Yangon).

**Related documents:** Resolution concerning remaining measures on the subject of Myanmar adopted under article 33 of the ILO Constitution by the Conference at its 102nd Session (2013).



## Introduction

1. At its 337th Session in October–November 2019, having considered the report submitted by the Director-General on the follow-up to the resolution concerning remaining measures on the subject of Myanmar adopted by the Conference at its 102nd Session (2013), the Governing Body:
  - (a) acknowledged the progress made by the Government, in particular the new action plan on forced labour, the passing of the Child Rights Law and proposals to ratify the Minimum Age Convention, 1973 (No. 138), and encouraged the Government to continue its efforts to cooperate with the ILO and social partners to fully implement the Decent Work Country Programme (DWCP);
  - (b) urged the Government to consult with social partners, through the National Tripartite Dialogue Forum (NTDF), to put in place a credible and effective national complaints mechanism that includes victim protection measures, to address and eliminate forced labour;
  - (c) urged the Government to continue to apply procedures that enable the ILO to receive complaints and to intensify its cooperation with the ILO to implement an effective forced labour complaints process until such time as a suitable national complaints mechanism is in place;
  - (d) requested the Director-General to include in his future reports to the Governing Body progress made in the establishment of a complaints mechanism as agreed under the DWCP;
  - (e) noted the ongoing work to reform labour legislation and called for further efforts to ensure that genuine tripartite social dialogue takes place during the labour law reform process and that the views of representative organizations of employers and workers are fully taken into account;
  - (f) expressed concern at the charges laid against eight trade unionists under the Peaceful Assembly and Peaceful Procession Law and the use of this Law by the authorities as a means of denying trade unions the right to peacefully exercise their right to freedom of association;
  - (g) expressed the expectation that the Government can report in March 2020 concrete results in addressing key concerns raised in the Governing Body discussion, particularly with respect to freedom of association, the elimination of forced labour, and the putting in place of an effective national complaints mechanism.

## Implementation of the DWCP

2. The DWCP was signed by the Government, workers' and employers' organizations and the ILO on 21 September 2018. Notable progress has been made in a range of areas by the tripartite partners, supported by the ILO, on the DWCP's three priorities, as follows:
  - (a) Priority 1: Employment, decent work and sustainable entrepreneurship opportunities are available and accessible to all, including for vulnerable populations affected by conflict and disasters.

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- (i) The ILO has provided special training packages through its project on entrepreneurship and small and medium-sized enterprises (SMEs). The project impact assessment study, conducted in June 2019, highlighted that the project has trained 36,000 entrepreneurs and trainers, created 16,000 jobs via 2,000 business start-ups and supported more than 5,500 SMEs. Of the total number of participants in the project, 50 per cent were women, 30 per cent were from rural areas and 20 per cent were from conflict-affected areas.
  - (ii) Through the ILO's community-based infrastructure work, an additional 8,000 fair wage workdays (43 per cent for young people and 35 per cent for women) were created in conflict-affected communities in Mon State.
  - (iii) The second five-year national plan of action on the management of international labour migration was launched in May 2019. Training on financial literacy was provided to labour exchange staff from ILO-supported migrant resource centres in six cities. A further 73 members of the Myanmar Overseas Employment Agencies Federation signed a code of conduct that was developed with ILO technical input, bringing the total number of signatories to 272 of the 300 members of the Federation.
  - (iv) An ILO skills development project in Rakhine State obtained approval from the national skill standards authority for the establishment of a skills assessment centre in Sittwe, in partnership with the private sector, to help improve skills assessment capacities in conflict-affected areas.
- (b) Priority 2: The application of fundamental principles and rights at work is strengthened through improved labour market governance.
- (i) The Government adopted the Child Rights Law on 23 July 2019 and on 3 December 2019 the Myanmar Parliament approved the ratification of Convention No. 138. The ILO is planning to hold workshops with key stakeholders on implementation of the Convention and its reporting requirements.
  - (ii) The NTDF was successfully convened in March, May, July and October 2019 and its next meeting is scheduled for 25 February 2020. The Government has involved the social partners in the discussion of the national complaints mechanism and labour law reforms via the NTDF.
  - (iii) The Myanmar Garment Manufacturers Association adopted a self-assessment checklist to measure members' compliance with national labour laws and international standards and an "onboarding" toolkit that aims to raise members' awareness of national labour laws. The ILO has contributed to strengthening the capacity of trade unions to provide social dialogue training services to their affiliates. With the support of the International Training Centre of the ILO, the ILO has provided training on social dialogue to representatives of the Government, workers' and employers' organizations. In addition, the ILO has provided assistance to a number of factories in the garment industry and one sectoral trade union federation with a view to adopting guidelines on freedom of association and sound industrial relations.
  - (iv) In December 2019, in collaboration with the Department of Labour, the ILO organized a forum on youth employment through decent work in Myanmar, with the participation of Cambodia, Indonesia, the Philippines and Viet Nam.
  - (v) In 2019, child labour in pilot target communities was significantly reduced: 323 children from Yangon, Ayeyarwaddy and Mon State received the ILO's

non-formal education interventions and life skills training, while 167 households received support to improve their livelihoods, such as skills training, “start and improve your business” training and microfinance.

- (c) Priority 3: Social protection coverage is extended for all, especially for vulnerable workers and populations.
  - (i) The Occupational Safety and Health Law was passed by the Myanmar Parliament in March 2019, a critical milestone in the development of Myanmar’s national occupational safety and health (OSH) system. The new OSH Law establishes an overarching national framework, addressing several elements of the current legal fragmentation and promoting bipartite OSH management at the workplace, in alignment with the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187), on establishing a promotional framework for OSH. Importantly, the OSH Law mandates for the establishment of a tripartite and inter-ministerial national OSH council, as well as of bipartite OSH committees and OSH safety officers at workplaces. The OSH Law also covers sectors previously excluded from earlier legislation, such as agriculture, construction, mining, oil and gas.
  - (ii) The first tripartite national OSH training centre was launched in August 2019 and its business plan was developed with ILO technical support.
  - (iii) With ILO technical support, the Social Security Board developed a plan for the implementation of a new comprehensive social protection management information system and standard operation procedures to improve the efficiency of employment injury insurance schemes; in addition, seven additional private medical centres were contracted to provide outpatient care to insured workers in 2019. The system received an award in 2019 from the Association of Southeast Asian Nations Social Security Association for its ICT innovation efforts. The Board piloted an enhanced version of the employment injury insurance scheme in June–November 2019, benefiting 198,000 workers in two townships, and there are plans to expand the scheme.
  - (iv) In 2019, the ILO provided technical assistance to the Government on ongoing national pension reform and a draft central provident fund law, as well as on the development of a national health financing strategy to achieve universal health coverage in Myanmar. The ILO provided many training and awareness-raising events for domestic workers and employers on working and living conditions and organized OSH awareness-raising campaigns in industrial zones.

## **Establishment of the national complaints mechanism**

- 3. As reported to the Governing Body in March 2019, the supplementary understanding, which provided a complaints mechanism for cases of forced labour, expired on 31 December 2018, with forced labour elimination now a core component of the DWCP. The DWCP specifies continued engagement between the ILO and Myanmar to ensure the elimination of forced labour and to develop national and local mechanisms for addressing forced labour.
- 4. On 25 May 2019, the Government presented its proposals for a national complaints mechanism on forced labour elimination to the NTDF. Pending its formal establishment, the Government established an interim mechanism and announced that complaints should be submitted directly to that mechanism.

5. In June 2019, at its 108th Session, the International Labour Conference adopted a number of conclusions in respect of the application by Myanmar of the Forced Labour Convention, 1930 (No. 29) , in which the Committee of Experts urged the Government to:
  - (a) take all necessary measures to ensure that, in practice, forced labour is no longer imposed by the military or civilian authorities;
  - (b) strictly enforce the Ward or Village Tract Administration Law of 2012 and the Penal Code to assure that those responsible for perpetrating forced labour be effectively investigated and prosecuted and receive and serve sentences that are commensurate with the crime in all cases;
  - (c) ensure that the victims of forced labour have access to effective remedies and comprehensive victim support without fear of retaliation;
  - (d) refrain from imposing any punishment on those who have spoken out against or reported incidents of forced labour.
6. In July 2019, the Government began to publicly advertise the establishment of the national complaints mechanism and while there was no reference to complainants being able to continue to submit complaints to the ILO, the Government confirmed at the October 2019 meeting of the NTDF that complaints could continue to be submitted through the ILO. Subsequently, on 8 November 2019, the Government announced via local media that during the interim period complaints could be sent to both the High-Level Working Group and the ILO.
7. On 7 August 2019, the ILO was informed of the President's approval of the establishment of the national complaints mechanism. The Government provided the proposed framework for the national complaints mechanism, together with an action plan encompassing transition arrangements.
8. In August 2019, the ILO received a request from the Government for technical assistance for the establishment of the national complaints mechanism under the auspices of the DWCP. The Office has expressed its readiness to mobilize financial and human resources to provide assistance with (a) structuring a grievance mechanism, including the prevention of forced labour, focusing on awareness-raising, protection of victims with access to remedies and justice and the prosecution of perpetrators; (b) capacity-building measures, including countrywide training activities for first responders, law enforcement authorities and other key partners; (c) IT support for complaints management; and (d) staff training for complaints management, including the design of a reporting mechanism for increased transparency and credibility.
9. The new action plan for the elimination of forced labour was discussed by the NTDF in October 2019. The plan proposed a National Complaints Mechanism Committee, to be chaired by the Ministry of Labour with the Ministries of Home Affairs and Defence as Vice-chairs and a membership of 21 ministries and agencies, including the Myanmar Human Rights Commission. The ILO has not been included as a member of the Committee but has been requested to provide technical assistance, training of trainers and general awareness-raising activities. The action plan also indicates the intention of the Government to keep the ILO informed of the outcomes of complaints submitted by the ILO, but provides no further details on the nature of proposed investigation procedures or the protection of complainants. Social partners suggested that they should be represented in the Committee and proposed that it be monitored by a parliamentary oversight committee.

- 10.** In line with the recommendations of the ILO supervisory bodies, the ILO has stressed the following elements necessary for a credible and effective complaints mechanism:
- (a) it must address all forms of forced labour, including forced labour imposed by the military, civilian authorities or the private sector;
  - (b) impartiality in the assessment of forced labour, based on a consistent interpretation of what constitutes forced labour, in line with international standards;
  - (c) impartiality in the investigation of complaints;
  - (d) reasonable efforts to protect the safety of victims of forced or compulsory labour and of family members and witnesses, including protection from intimidation and retaliation, directly or indirectly;
  - (e) credible accountability, backed up by statistical data of complaints received, investigations carried out, prosecutions undertaken and convictions secured;
  - (f) credible and transparent accountability for the fair conduct of grievance processes;
  - (g) decentralization of responsibility to eliminate forced labour;
  - (h) awareness-raising programmes, in particular for those who live in remote and conflict-affected areas.
- 11.** While the Government has made efforts to develop interim procedures and a framework for dealing with complaints under the DWCP, the victim protection measures remain unclear and the decentralization of responsibility to state and regional governments to eliminate forced labour still need to be addressed. The Government is encouraged to consult with social partners through the NTDF to review its proposed structures, processes and protections in order to ensure that the national complaints mechanism is credible and effective and to continue to work with the ILO as a full partner in the elimination of forced labour in Myanmar.
- 12.** The ILO will continue to receive new complaints and support the Government in processing complaints to ensure the effectiveness of the complaints mechanism. The Government has been encouraged to keep the ILO informed of the outcomes of complaints submitted by the Office after verification and to ensure fair, impartial and credible investigation procedures and the protection of complaints.
- 13.** As a follow-up to the November 2019 Governing Body decision, the Government requested the ILO to provide forced labour orientation training for the Government Working Group members and it has since been agreed that the session will be conducted in February or March 2020. The Government also requested ILO support to develop a mobile phone application that would facilitate complaints submission, as well as training to support government staff to maintain a database on forced labour and manage complaints on a day-to-day basis.
- 14.** Since the October–November Governing Body meeting, the Office has convened three separate meetings with the Government and social partners to discuss the implementation of the Governing Body decision, highlighting the importance of three key elements for a credible and effective national complaints mechanism: the full involvement of the social partners and the ILO; the establishment of a parliamentary oversight committee; and assurances for victims' protection. The Government informed the ILO on 2 January 2020 that the President's Office has approved the inclusion of social partner representatives as members in the national committee of the national complaints mechanism.

## Progress in the elimination of the use of forced labour

15. Since the ILO database on forced labour complaints was established in February 2007, the Office has received a total of 5,626 cases, of which 3,016 were within the scope of forced labour; 2,574 were related to other issues, such as wage disputes, compensation and crimes; and 36 were duplicate complaints.
16. Among the 3,016 cases within the forced labour scope, 1,028 have been closed, 623 are pending with the Government for investigation and 296 concerned underage recruitment and submitted to the United Nations country task force on monitoring and reporting. The remaining 1,069 cases are still being reviewed by the ILO and will be submitted to the Government as early as possible. Continued efforts will be made to mobilize resources to ensure that the ILO Office is able to carry out this critical work.
17. The ILO received a total of 146 new complaints alleging forced labour in 2019, a reduction over previous years (559 cases were received in 2016, 337 in 2017 and 240 in 2018). A total of 65 complaints were assessed as being within the definition of forced labour, including 53 cases of underage recruitment, 2 cases of forced recruitment of adults, 6 cases of traditional forms of forced labour and 4 cases of trafficking for forced labour.
18. In the category of underage recruitment by the military, 53 complaints were received, in a similar reduction over previous years (336 cases were received in 2016, 196 in 2017 and 116 in 2018). New instances of underage recruitment remain low compared to earlier years, with only 10 of the 53 underage recruitment cases received in 2019 reported to have occurred in 2019, suggesting a trend towards the elimination of underage recruitment.
19. In 2019, the ILO submitted 308 forced labour cases to the Government and closed 174 cases successfully. The ILO also submitted 84 cases to the Task Force and 22 cases were discharged through this mechanism.
20. The ILO has received the instruction issued by the Office of the Commander in Chief (Army) on 11 June 2019 to all national and regional military and operation commands on the prohibition of recruiting and using of children under 18 years of age in any military workplaces. However, the ILO remains concerned that the Government has not responded to the issue of underage recruits who run away being declared as absent without leave or charged with imprisonment. This practice still continues and no instruction has been issued requiring the checking of age at recruitment prior to arrest.
21. Throughout 2019, the ILO received reports from its network in conflict areas (Kachin, Shan, Rakhine), related to the involuntary use of civilians as guides and porters by the military and armed groups. Several such cases reported to the ILO before 2019 remain unresolved due to restricted access to these areas. The restrictions on travel within the country continue to have a significant impact on the ability of ILO Office staff to travel independently to assess and verify information submitted by complainants, especially in rural and conflict-affected areas.
22. The Government reported to the ILO Committee of Experts in 2019 that the Ministry of Labour, Immigration and Population had submitted a proposal to the Joint Parliamentary Committee established to amend the Constitution to consider the amendment of its article 359, which, under chapter VIII, “Citizenship, fundamental rights and duties of citizens”, permits the imposition of “duties assigned by the Union in accordance with the law in the interest of the public”. The ILO supervisory bodies have noted that this provision exceeds the scope of the specifically defined exceptions in Article 2(2) of Convention No. 29 and could be interpreted in such a way as to allow a generalized exaction of forced labour. In December 2019, the Committee of Experts urged the Government to ensure that the

procedure for amending article 359 of the Constitution will be carried out in the very near future.

## **Labour law reform and freedom of association**

23. With technical support from the ILO, the Government convened a meeting of the Tripartite Technical Working Group on Labour Law Reform in October 2019 to discuss a revised July 2019 draft of the Labour and Employer Organization Law. At the meeting, tripartite constituents agreed to a clause-by-clause discussion of the draft provisions, which continued at a two-day technical meeting held on 27 and 28 January 2020. The Technical Working Group will report on progress at the next NTDF meeting on 25 February 2020.
24. The draft Labour and Employer Organization Law contains prescriptive structural requirements for labour organizations and employer organizations, several of which have given rise to concerns on the part of representative organizations of both workers and employers. In line with the previous comments of ILO supervisory bodies, the ILO has recommended that the structural requirements be revised to be made consistent with the freedom of association principles contained in Convention No. 87, while the amendments to the draft Labour and Employer Organization Law should take into account the views of employers and workers, as well as the ILO. Revisions to the draft law are an opportunity for the Government to also revise the existing registration requirements which have been reported by trade unions to be excessively onerous.
25. As reported in November, amendments to the Settlement of Labour Dispute Law (SLDL) were adopted by Parliament in June 2019 to make modest changes to the composition of dispute settlement bodies. In addition, consistent with the recommendations of the Direct Contacts Mission of October 2019, sanctions of imprisonment for breaches of the law were not included in the final text. However, it is noted that the definition of “worker” was narrowed to exclude workers in the public sector and in state-owned enterprises. The Direct Contacts Mission also recommended that the promotion of collective bargaining should not include non-unionized workers as negotiating actors where trade unions exist at the enterprise and sectoral level; however, this recommendation was not included in the final text of the law.
26. Following the adoption of the SLDL amendments, the Government has been consulting with social partners on the development of accompanying subsidiary legislation – the SLDL rules. Three tripartite workshops were convened in August, September and November 2019 to discuss the draft rules, with technical support from the ILO, seeking feedback from representatives of employers’ and workers’ organizations on the content of the draft and to reach a consensus on areas where there were different views. The draft rules have yet to be finalized.
27. The Government presented the final draft of the Hazardous Child Labour List to the NTDF in October 2019 and sought feedback from the social partners and the ILO. It will have the effect of a regulation and was developed by the Government with the assistance of the ILO, in consultation with a tripartite-plus technical working group on child labour.
28. The Office is currently revising and finalizing the *ILO Guide to Myanmar Labour Law*.

## **Other matters**

29. As reported to previous Governing Body meetings, in February 2019, eight trade union leaders from the Confederation of Trade Unions of Myanmar and the Myanmar Industries,

Craft and Services Trade Union Federation were charged under the Mandalay Regional Disciplines for Peaceful Assembly and Peaceful Procession Law for participating in a protest in Mandalay. Hearings were conducted in November and December 2019 and are expected to be completed within the next four months. The Government is requested to consider repealing the Mandalay Regional Disciplines law and to specify the principles of freedom of association and freedom of assembly in the new draft Labour and Employer Organization Law.

30. The national action plan on the elimination of child labour was approved by the Myanmar National Child Labour Eradication Committee in January 2019. The ILO has been requested to publish the plan and support its launch.
31. With respect to responsible investment under the DWCP framework, consideration is being given to including Myanmar in the global Better Work programme and to the strengthening of the labour inspection system to more effectively enforce labour laws. Progress in these areas and in the general implementation of the DWCP will continue to depend on increased development cooperation support and resource mobilization from member States.
32. The Government of Myanmar has made significant progress in implementing the DWCP since March 2019, in particular the development of action plans, the adoption of the Child Rights Law and the parliamentary decision on the ratification of Convention No. 138. The Government is continuing its efforts to cooperate with the ILO Liaison Office and social partners in order to fully implement the DWCP.

## Draft decision

### 33. *The Governing Body:*

- (a) *acknowledged the progress made by the Government and social partners since March 2019 in implementing the Decent Work Country Programme (DWCP), and encouraged the Government to continue its efforts to cooperate with the ILO and social partners to establish a credible and effective national complaints mechanism;*
- (b) *called for further efforts to ensure that the views of social partners are fully taken into account in the process of labour law reform and that any amendments to laws are consistent with the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87);*
- (c) *urged the Government to continue its efforts to amend article 359 of its Constitution in order to bring it into conformity with the Forced Labour Convention, 1930 (No. 29);*
- (d) *expressed concern at the charges made against eight trade unionists under the Peaceful Assembly and Peaceful Procession Law and the use of the Law by the authorities as a means of denying trade unions the right to peacefully exercise their right to freedom of association; and requested the Government to repeal the Mandalay Regional Disciplines for Peaceful Assembly and Peaceful Procession Law and to stress the principles of freedom of association and freedom of assembly in the draft Labour and Employer Organization Law;*

- (e) *called on member States to support resource mobilization efforts to enable the effective implementation of the DWCP in Myanmar, in particular the elimination of forced labour and the worst forms of child labour, the establishment of a credible national complaints mechanism, the strengthening of the labour inspection system to ensure the effective enforcement of labour laws and, potentially, the implementation of the Better Work programme should it be decided to introduce this initiative in Myanmar.*