



## Governing Body

329th Session, Geneva, 9–24 March 2017

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Institutional Section

INS

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### ELEVENTH ITEM ON THE AGENDA

## 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 the implementation of the Supplementary Understanding and progress made in renewing the Memorandum of Understanding with an updated further phase of the Action Plan, as required by the decision of the Governing Body at its 328th Session (November 2016). See the draft decision in paragraph 19.

**Relevant strategic objective:** Promote and realize standards and fundamental principles and rights at work.

**Main relevant outcome/cross-cutting policy driver:** Outcome 8: Protection of workers from unacceptable forms of work; and “Cross-cutting policy driver: International labour standards”.

**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.

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



1. At its 328th Session (November 2016), the Governing Body, inter alia, “welcomed the renewed commitment made by the Government of Myanmar to the elimination of forced labour through the extension of the Supplementary Understanding until December 2017 and urged the Government to implement the Supplementary Understanding and renew the Memorandum of Understanding with an updated further phase of the Action Plan, including increased efforts at the state and regional level”. It “requested the Director-General to report to the 329th Session (March 2017) of the Governing Body on the implementation of the Supplementary Understanding and progress made in renewing the Memorandum of Understanding with an updated further phase of the Action Plan”. This report is submitted pursuant to that decision.

## Implementation of the Supplementary Understanding

2. Following the extension of the Supplementary Understanding in November 2016, the Government of Myanmar established a new High-Level Working Group (HLWG) on 27 December 2016. The HLWG is chaired by the Minister of Labour, Immigration and Population and comprises 22 representatives from ten ministries. The HLWG held internal meetings on 12 January and 3 February 2017 and its first meeting with the ILO on 9 February 2017.
3. The Government also proposes to convene a Technical Working Group (TWG) to handle forced labour complaints comprising representatives of the Ministry of Labour, Immigration and Population (MOLIP), the Tatmadaw, the General Administration Division, the anti-trafficking in persons division of the Myanmar police, the Ministry of Agriculture, Livestock and Irrigation and the ILO. It is hoped the reinstatement of the TWG will expedite the investigation and resolution of both new and pending complaints received under the Supplementary Understanding.
4. From 1 April 2016, when the new Government took office, until 15 February 2017, the ILO received 455 complaints, of which 306 were within the mandate of the Supplementary Understanding. Of these 306 complaints, 281 related to underage recruitment, four to forced recruitment of adults, ten to large scale traditional forced labour, one to prison labour, and ten to trafficking for forced labour. Three of the cases involved land confiscation. As of 15 February 2017, 61 complaints had been submitted to the Government. There have been no reported cases of prosecution or other disciplinary actions for forced labour during the same period.
5. The ILO is also a member of the Country Task Force on Monitoring and Reporting (CTFMR), and has continued to refer through this mechanism cases of underage recruitment that fall within the criteria of the separate Joint Action Plan agreed with the Government in 2012. There have been no new releases of underage recruits under the Joint Action Plan since the last report to the Governing Body in November 2016.
6. As reported to the Governing Body in November 2016, the ILO has continued to observe a decrease in the number of children newly recruited by the military, with only four new cases reported since 1 April 2016. However, the ILO has continued to receive a high level of complaints from persons who were under age at the time of their recruitment and either remain in service against their will or have run away from the military and are considered absent without leave (AWOL). Between 1 April 2016 and 15 February 2017, 281 such cases were received of which 98 were recruited by and served in the Navy.
7. Forty of these complaints are of recruitment into Navy services and the ILO referred these cases to the CTFMR mechanism. The Tatmadaw has argued, however, that these cases did

not fall within the mandate of the CTFMR, as they are in Navy service and not “Tatmadaw Kyi” (Army) services as listed under Security Council Resolution 1612, although there have been Navy cases released through the CTFMR mechanism in the past. In any event, the ILO considers that these cases fall within the mandate of the Supplementary Understanding, as the persons concerned were recruited underage and the ILO has accordingly sought impartial unimpeded access to the persons concerned to determine if they would still want to continue in the service. The Government and the ILO are continuing to discuss this category of cases.

8. The ILO has also continued to receive complaints and reports concerning the use by the Tatmadaw of civilians for portering and sentry duties and confiscation of crops in conflict areas in Kachin, Northern Shan and Rakhine States and the Sagaing Region. The Government has requested further details in order to take action on such cases given the military orders that prohibit such practices. There have been no reports on the use of forced labour for military maintenance/construction activities during this reporting period.
9. The ILO received a complaint concerning the practice of forced labour in various prison labour camps, where prisoners are allegedly made to work in quarries and plantations run by the correction authorities for private commercial purposes, or else are allegedly put to work at private plantations nearby the correction centres for the private gain of the authorities, without being paid. The Government has agreed to examine such cases and the ILO is ready to support prison reform efforts.
10. The ILO continues to receive reports of land confiscation which is used as a threat to exact labour from farmers. Whereas the law allows land acquisition for purposes of public interest such as infrastructure projects, the ILO has received reports of land confiscation by the Government for military as well as commercial purposes. The confiscation of land from small farmers with little or no compensation may represent an indirect form of forced labour. The Government has agreed to examine such cases under the new Action Plan, including through referral to the responsible bodies for resolving land title issues.
11. In January 2017, the Ministry of Home Affairs released annual statistics on trafficking which included 131 cases comprising 307 victims, of whom 213 were women, 94 were men and 41 were children under 16. The ILO continues to support the Government’s Anti-Trafficking in Persons Division (ATPD) and civil society organizations in the development of a new Action Plan. This planning is being informed by the hotspots of trafficking for forced labour identified in the ILO–ATPD’s Internal Labour Migration Survey Report completed last year. The ILO through its migration, child labour and forced labour projects will continue to conduct training and awareness-raising sessions for government authorities, trade union members and employers on the risk and indicators of forced labour in private sector settings.

## **Progress in renewing the Memorandum of Understanding and Action Plan**

12. As reported to the Governing Body in November 2016, the Government agreed in principle in September 2016 to the extension of the Memorandum of Understanding and implementation of a new and updated phase of the Action Plan on the elimination of forced labour. The aim of the new Action Plan would be to address gaps and outstanding areas of work, strengthen accountability and ensure sustainability. The Myanmar representative to the Governing Body stated that, in order to address forced labour effectively, the Government would deploy modalities to resolve issues at local level, decentralize authority and responsibility to state and regional governments and increase social partner involvement.
13. In December 2016, at the Government’s request, the ILO provided a draft outline of an updated version of the Action Plan. The proposals were discussed at a meeting with the new

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HLWG on 9 February 2017 and at the National Tripartite Dialogue Forum on 10 February 2017.

14. A revised draft Action Plan, as discussed by the HLWG, is attached for the Governing Body's information and will now be subject to further consultation within the Government. The Government proposes the new Action Plan should extend to 31 December 2017 to align with the Supplementary Understanding, but is open to possible further renewal. The Memorandum of Understanding and new Action Plan were not finalized at the time of drafting this paper but it is expected they will be prior to the Governing Body's discussion in March 2017.
15. The draft Action Plan envisages activities in four priority areas:
  - (a) **Continued operation of complaints mechanism:** A Technical Working Group will be established to follow up complaints; expedite the identification and discharge of underage recruits who remain in military service or AWOL; recommend accountability for perpetrators as well as restitution to the victims, including by referring land title issues to the responsible bodies; and maintaining a database on cases resolved and accountability measures taken.
  - (b) **Training and awareness raising on forced labour:** This would involve training-of-trainer sessions on forced labour for dedicated government personnel from Tatmadaw, the police and General Administration Department (GAD) to be certified as master trainers, who would then implement multiplier trainings with technical support from the ILO. Following agreement by the Government to the installation of billboards in many locations, the ILO proposes to increase the number of billboards to more locations particularly in local and remote areas across the country.
  - (c) **Capacity building to end forced labour at the state and regional levels:** The Government has emphasized the importance of engaging regional- and state-level governments in the context of decentralization. The ILO therefore proposes commitments be secured from state- and regional-level governments to cooperate in the implementation of the Action Plan. The ILO would convene awareness-raising activities on forced labour at the local level for local authorities, community-based and civil society organizations, and where possible, ethnic armed organizations. To demonstrate that forced labour practices can be replaced by proper schemes of employment, the ILO would support surveys on livelihoods and potential economic opportunity/rehabilitation to identify possible programmes to support, particularly in disadvantaged, poor and conflict-affected areas.
  - (d) **Mobilization of tripartite partners for prevention of forced labour in the private sector:** The ILO proposes to conduct training and awareness-raising sessions on forced labour for workers' and employers' organizations at all levels; continue advocacy and awareness raising with multinational enterprises (MNEs) on forced labour risks in supply chains; and provide technical advice to management and other stakeholders in the private sector, including around special economic zones (SEZs) and large energy and infrastructure developments on the fundamental principles and rights at work including forced labour elimination and prevention.
16. The ILO believes that efforts to end forced labour under the Action Plan should also be focused in areas that have been affected by armed conflict, given the many outstanding complaints to the ILO supervisory mechanisms from these areas and the commitments made to end forced labour contained in the Nationwide Ceasefire Agreement. The Government has indicated this is not the right time to include this element in the Action Plan given the delicate and sensitive issues involved in the peace process and this point remains under discussion.

17. During this period, the Government and the ILO have continued to implement some activities planned under the previous Action Plan, in particular the installation of billboards with public messages on the prohibition of forced labour and underage recruitment in locations across the country. To date, 12 of a planned 112 billboards have been erected in four different districts. The erection of the billboards has been approved by the Government at the union level, with most of the regions and states making the necessary logistic arrangements. This work was made possible with the cooperation of the Ministry of Labour, Immigration and Population and funding from the Netherlands.

## Conclusion

18. Although the incidence of forced labour reported through the Supplementary Understanding complaints mechanism has remained at a low level, persistent issues with underage recruitment, the use of civilians for portering and sentry duty, land and crops confiscation, and prison labour, highlight the importance of continuing the cooperation between the Government and the ILO under the Supplementary Understanding and a renewed Memorandum of Understanding and Action Plan to consolidate and institutionalize the progress that has been made.

## Draft decision

### 19. *The Governing Body:*

- (a) *welcomes the continued cooperation between the Government of Myanmar and the ILO to implement the Supplementary Understanding;*
- (b) *requests the Government to agree to a renewed Memorandum of Understanding and Action Plan to enable the ILO to continue providing the full range of its technical support, training and awareness-raising activities in support of the Government's commitment to the elimination of forced labour, including increased efforts at the state and union levels and in disadvantaged and conflict-affected regions;*
- (c) *requests the Director-General to pursue discussions on the development of a Decent Work Country Programme (DWCP) in which the elimination of forced labour is included as a core component; and*
- (d) *requests the Director-General to provide a comprehensive update on further progress to the 331st Session of the Governing Body in November 2017.*

## Appendix

### Draft Action Plan for the Elimination of Forced Labour 2017

The Draft Action Plan is attached for the Governing Body's information and will be subject to further consultation within the Government and has not yet been adopted.

#### Priority one: Continued operation of Supplementary Understanding on complaints mechanism

To demonstrate the Government's strong commitment toward ending forced labour.

To ensure that the forced labour complaints mechanism is functioning effectively and complaints resolved as quickly as possible.

Action	Timeline	Responsibility
1.1. Re-establish the High-Level Government Working Group on forced labour (HLWG)	February 2017	Ministry of Labour, Immigration and Population (MOLIP)
1.2. Re-establish the Technical Working Group (TWG) comprised of: (a) Representative from MOLIP. (b) Representative from Tatmadaw. (c) Representative from the General Administration Department (GAD). (d) Representative from Anti-trafficking in Persons Division (ATPD). (e) Representative from the ILO. (f) Representative from the Ministry of Agriculture, Livestock and Irrigation.	March 2017	MOLIP
1.3. Convene the HLWG meeting quarterly and the TWG meeting every two months or as required.	HLWG every three months TWG every two months or as required	MOLIP
1.4. Support early conclusion of Security Council Resolution 1612 Joint Action Plan (JAP).	Ongoing	CTFMR
1.5. Complaints made to the ILO regarding underage recruits whose circumstances of recruitment fall within the mandate of the CTFMR will be referred through that body. Complaints of those who remain in military service or ex-military personnel, who are serving prison sentences or declared AWOL or whose circumstances of recruitment are outside of CTFMR mandate will be processed through the Supplementary Understanding mechanism.	Ongoing	ILO
1.6. Special review meeting between the ILO and Tatmadaw to examine, reconcile and resolve outstanding cases with a view to fast track discharge.	May 2017	ILO/Tatmadaw
1.7. Resolution of a number of cases where forced labour practice was stopped with intervention from the previous government but require complete restitution or justice, including referral of land issue to responsible body.	By November 2017	HLWG

1.8. TWG to undertake to investigate the alleged incident of forced labour and make recommendations to the HLWG.	Ongoing	TWG
Recommendations could include as appropriate but not be limited to:		
(a) Holding perpetrators involved in forced labour accountable and undertaking restitution to the victims to remove their vulnerability.		
(b) Referring the family of victims to available employment in cases where victims participate in armed forces while being underage because of their poverty.		
1.9. Database maintained and updated information shared with the HLWG on cases resolved, accountability measures taken, and in cases where resolution appeared not possible, record the reason thereof.	By June 2017	ILO

### Priority two: Training and awareness raising on forced labour

To increase awareness of the law and prevent cases of forced labour, as well as build longer-term sustainable national capacity to handle complaints. Priority should also be given to training and awareness raising at the state and regional levels, both in civilian and military structures (see also Priority three).

Action	Timeline	Responsibility
2.1. Training and awareness-raising sessions on forced labour for the HLWG and the TWG to be provided by the ILO.	By April 2017	ILO
2.2. Training-of-trainers (TOT) sessions on forced labour to be convened for dedicated Government personnel from Tatmadaw, the police, GAD, MOLIP and relevant ministries to be certified as master trainers. To submit the curriculums to the HLWG in advance. The trainers must be experienced and have internationally recognized certificates. In case of Tatmadaw, the ILO will mainstream its training curriculum with those of the CTFMR where possible with a view that some specific forced labour issues training has to be conducted separately from CTFMR sessions.	By May 2017	ILO
2.3. Schedules for multiplier training to be drawn up by the government master trainers to undertake to train further for their respective colleagues/institutions at union as well as regional/state levels. The ILO to provide technical support in multiplier courses.	By June 2017	HLWG
2.4. Quarterly follow up meeting of master trainers as part of technical support provision from the ILO.	By September 2017	HLWG
2.5. Cooperation with the Union Supreme Court for giving lectures on forced labour to regular training courses for judges at the USC Training Centre.	By September 2017	USC/ILO
2.6. Technical assistance and training provided to prisons administration on international standards for prison labour.	By September 2017	DG Prisons/ MOLIP/ILO
2.7. Targeted training for labour inspectors and anti-trafficking police forces on forms of forced labour as required.	By September 2017	ATPD/ILO
2.8. Do's and Don'ts practical guideline to be reviewed and approved by the HLWG and used as part of the training curriculum for TOT as well as other types of awareness raising.	By June 2017	ILO



2.9. Following agreement by the Government to the installation of billboards in many locations, increase the number of billboards to more locations particularly in local and remote areas across the country.	Ongoing	MOLIP/ILO
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**Priority three: Capacity building at state and regional levels to strengthen cooperation to end forced labour, including in disadvantaged and conflict-affected regions**

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To address forced labour effectively, the Government would deploy modalities to resolve issues at the local level, decentralize authority and responsibility to state and regional governments. Regional- and state-level governments will be invited to support and cooperate in the Action Plan and more training and awareness raising carried out at the state and regional levels, both in civilian and military structures. This would also include capacity building for local reconciliation and mediation approaches with support from CBOs and CSOs on the ground.

Action	Timeline	Responsibility
3.1. Commitments secured from state- and regional-level governments across Myanmar to cooperate with the Union Government and the ILO to end forced labour and participate in the Action Plan, as appropriate.	By November 2017	State and regional governments
3.2. Awareness raising and training to be convened by the ILO as well as the trained trainers for state and regional officials, local authorities, regional military commands, local communities, CBOs and CSOs. Awareness-raising activities would also be carried out with ethnic armed organizations where possible.	Ongoing	ILO
3.3. To demonstrate that forced labour practices can be replaced by proper schemes of employment, the ILO to support surveys on livelihoods and potential economic opportunity/rehabilitation and identify possible programmes to support employment, particularly in disadvantaged areas to support transition to peace.	Ongoing	ILO

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**Priority four: Mobilization of tripartite partners for prevention of forced labour in the private sector**

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With Myanmar's rapid economic transition, to increase awareness and strengthen measures to prevent forced labour practice in the private sector. During the last NTDF and the November 2016 Governing Body discussion, workers' and employers' organizations expressed interest and commitment to support the Action Plan.

Action	Timeline	Responsibility
4.1. The TWG of the NTDF held to mobilize collective efforts, including monitoring plans and other measures to be discussed and adopted by the NTDF, to tackle forced labour in the private sector across all sectors in all levels.	February 2017	NTDF
4.2. The ILO to conduct training and awareness-raising sessions on forced labour for workers' and employers' organizations at all levels, including on monitoring and the complaints mechanism. To submit the curriculums to the HLWG in advance. The trainers must have experience and internationally recognized certificates.	From April 2017	ILO
4.3. Technical assistance, advocacy and awareness raising with MNEs on forced labour risks in supply chains.	Ongoing	ILO
4.4. Advocacy and technical advice to management and other relevant stakeholders in the private sector including SEZs and large energy on the fundamental principles and rights at work including forced labour elimination/prevention.	Ongoing	ILO

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