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TWELFTH 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 issues relating to ILO activities, including elimination of forced labour and freedom of association, and the impact of foreign investment on decent working conditions in the country (see the draft decision in paragraph 30).

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 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).

1. At its 332nd Session (March 2018), having considered the report submitted by the Director-General, the Governing Body:
 - (a) noted the significant progress made on some of the issues referred to in the decision taken at its 331st Session (October–November 2017);
 - (b) urged the Government to engage in the process of labour law reform to promote freedom of association through genuine and effective tripartite dialogue and in line with international labour standards;
 - (c) welcomed the tripartite negotiation and endorsement of a Decent Work Country Programme in which the elimination of forced labour is included as a core component, and encouraged member States to support its implementation;
 - (d) welcomed the extension of the Supplementary Understanding and agreement to the Memorandum of Understanding and associated Action Plan on the Elimination of Forced Labour until 31 December 2018; and
 - (e) decided that the reporting to each Governing Body session on cases of forced labour, as referred to in its November 2017 decision, would no longer be required.

2. This report is submitted pursuant to the resolution concerning Myanmar adopted by the International Labour Conference at its 102nd Session in June 2013 that, *inter alia*:

...

- (c) requested the Office and the Government to continue their commitment to the application of the 2007 Supplementary Understanding, the March 2012 MOU and associated action plans for the elimination of all forms of forced labour by 2015, in coordination with the social partners in Myanmar;
- (d) invited the Governing Body to review the situation in Myanmar on issues relating to ILO activities, including freedom of association, and the impact of foreign investment on decent working conditions in the country, and in this regard, request the Director-General to submit a report at the March Governing Body sessions until the elimination of forced labour.

Issues relating to ILO activities

3. The first ever Decent Work Country Programme (DWCP) for Myanmar was signed between the Government of Myanmar, representatives of employers' and workers' organizations and the ILO in Nay Pyi Taw on 21 September 2018. The DWCP was developed on a tripartite basis and is fully aligned with the ILO Decent Work Agenda and the United Nations Sustainable Development Goals (SDGs). It provides a comprehensive framework for ILO support to the Government and social partners from 2018–21. A tripartite technical working group to oversee the monitoring and evaluation of the DWCP held its first meeting on 22 January 2019. The ILO programme in Myanmar currently comprises 19 development cooperation projects valued at US\$30 million.

4. In August 2018, the Government of Myanmar also finalized the Myanmar Sustainable Development Plan (MSDP) in pursuit of the UN 2030 Agenda for Sustainable Development. The draft MSDP was discussed by the social partners at the National Tripartite Dialogue Forum (NTDF) in May 2018, and various inputs were received. As a result, the MSDP incorporates many key elements of the Decent Work Agenda, such as to: “support the emergence of inclusive business and trade associations, representative employers’ organizations and trade unions”. It includes specific actions to “introduce and enforce regulations and protections related to workplace safety, inclusivity and non-discrimination in all forms, and the practice of equal pay for work of equal value”; “protect labour rights and promote safe and secure working environments for all workers, including migrant

workers”; “introduce measures to prevent school dropout and combat the use of child labour”; and “extend social protection services throughout the life cycle”.

Elimination of forced labour

5. The Supplementary Understanding (SU) between the Government and the ILO, which provided a complaints mechanism for cases of forced labour, expired on 31 December 2018. In 2018, the ILO received a further 240 complaints under the SU, 140 of which were within the SU mandate. These included 116 cases of underage recruitment, five cases of forced recruitment of adults, 13 cases of traditional forms of forced labour, five cases of trafficking for forced labour and one case of people smuggling. Sixty-three cases were submitted to the High-Level Working Group and 49 through the Country Task Force for Monitoring and Reporting (CTFMR). New instances of underage recruitment still remain low, with four cases of alleged recruitment in 2018 reported to the ILO, involving recruits as young as 15 years of age. In 2018, the ILO also closed 438 cases from previous years. On 31 August 2018, 75 underage recruits were discharged by Tatmadaw, including 42 cases submitted by the ILO.
6. The Independent International Fact-Finding Mission on Myanmar, established by the Human Rights Council, reported in September 2018 that the use of forced labour by the Tatmadaw persists, particularly in Kachin and Shan States, as well as among the ethnic Rakhine and Rohingya.¹ The Government of Myanmar rejected the report of the Fact-Finding Mission and appointed a national commission of inquiry with two international members. In December 2018, the Government transferred the General Administration Department, which is responsible for many issues relating to forced labour, from the military-designated Ministry of Home Affairs to the civilian Ministry of the Office of the Union Government.
7. The Action Plan for the Elimination of Forced Labour also expired on 31 December 2018. Progress was made in most areas of the Action Plan, although some tasks are at an early stage of implementation. A Good Practice Guideline for the Prevention of Forced Labour was finalized and approved by the High-Level Working Group in October 2018. On 14 and 15 January 2019, a training of trainers session was held for 25 officials from government ministries, the Tatmadaw and the police. The next step will be to develop a training calendar and multiplier programme in the respective ministries and institutions. The ILO conducted 34 workshops, and trade union partners conducted ten other training and awareness-raising sessions on forced labour in different parts of the country. In 2018, 18 billboards on forced labour were restored or repaired, with three new billboards being developed. More than 2,000 vinyl copies were also distributed for display in teashops and other locations.
8. In 2018, the Anti-Trafficking Police recorded a total of 206 cases of human trafficking. Of these, 152 cases involved forced marriages, one case involved forced prostitution, one case involved illegal adoption, four cases involved illegal surrogacy and six cases involved job exploitation. Of the 317 victims, 25 were children.
9. Under the DWCP, the Government has committed to institutionalizing national complaints mechanisms for handling forced labour complaints in the future. On 17 and 18 January 2019, the ILO organized a workshop in Nay Pyi Taw to share the experiences of national complaints mechanisms in Brazil, Qatar, the United Kingdom and Uzbekistan. This was followed by a discussion with government officials about how an appropriate mechanism

¹ [A/HRC/39/CRP.2](#).

for Myanmar might be designed. The Government also expressed interest in learning from other experiences in the Asia region.

10. Establishing a credible national complaints mechanism in Myanmar will take time. A future national mechanism in Myanmar will therefore need to be carefully designed to address the full range of forced labour cases, perpetrated by both state and non-state actors, in conflict and non-conflict settings. Any new mechanism will need to be given the necessary legal basis and political authority, especially to ensure cooperation by the Tatmadaw. It must ensure protection for victims and complainants who may be vulnerable to reprisals, and facilitate access to justice and other forms of remedy. It should be transparent and continue to publicly report case-related data and mobilize the social partners, private sector and civil society in support. Above all, any new mechanism must win the trust and confidence that has been placed in the SU complaints mechanism until now.
11. As a next step, the Government has committed to agree with the ILO an updated version of the Action Plan, for the elimination of forced labour under the auspices of the DWCP. An update on the Action Plan and complaints handling procedure will be presented to the Governing Body before the March session.

Freedom of association

12. Further progress has been made in strengthening freedom of association and a culture of tripartite social dialogue at the national level, although many challenges remain both in law and practice. At the end of 2018, there were 2,761 basic labour organizations, 146 township labour organizations, 22 state/regional organizations, eight labour federations and one confederation. The unionization level is currently estimated at less than 2 per cent, with a predominance of unionized factories in the garment industry. In 2018, there were still only 26 basic employers' organizations, one township employers' organization and one employers' federation (maritime) registered, due in part to the constraints of the current law. In May 2018, the Government and social partners successfully completed the first tripartite review of the minimum wage, raising the rate from 3,600 to 4,800 Myanmar Kyats per day.
13. Trade unions continue to complain that some local labour offices imposed unnecessary bureaucratic requirements that are not included in the current law. The Ministry of Labour, Immigration and Population reported in December 2018 that it had held consultations at the region and state level and circulated new directives to all township labour registrars and trade unions to clarify the registration requirements.
14. Workers are alarmed by a growing spate of anti-union dismissals at the factory level, particularly during the process of registering basic labour organizations. These cases are currently being treated by the Government and conciliation and arbitration bodies as individual rather than collective disputes, requiring lengthy and costly court proceedings. Anger at the dismissal of union leaders has triggered a number of protracted disputes, some marked by violence, and threatens an escalation of sympathy strikes. The Government has acknowledged that a more proactive approach is needed to prevent anti-union dismissals, particularly during the early stages of union registration.

15. Myanmar's compliance with the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), was discussed by the Committee on the Application of Standards at the 107th Session of the International Labour Conference in June 2018. The Committee requested Myanmar to invite a direct contacts mission to discuss its recommendations and to report any progress made to the Committee of Experts on the Application of Conventions and Recommendations. The mission, led by Professor Yozo Yokota of Japan, visited Myanmar from 1 to 4 October 2018 and met with the Government, Parliament and social partners. The mission concluded that all parties had shown an important degree of commitment to building a climate for full respect of the freedom of association framework legislation.²
16. The direct contacts mission made a number of specific recommendations for the amendment of key labour laws, future capacity-building and the development of the dispute settlement mechanisms. The Government and social partners have incorporated the recommendations into an updated road map that will guide the work of the NTDF in 2019.
17. Various amendments to the Settlement of Labour Disputes Law have been adopted by the two houses of Parliament and are now being reconciled by a joint bills committee. It remains to be seen whether the final law will incorporate the recommendations made by the social partners and direct contacts mission, or comply fully with international labour standards. Criminal penalties have been removed for violations of the law, but not necessarily with effective alternative measures to ensure compliance. Concerns also remain over provisions regarding the handling of rights disputes, particularly in relation to dismissals, and the extension of collective bargaining rights to non-unionized workers and their representatives.
18. With respect to the Labour Organisation Law (to be renamed the "Workers and Employers Organisation Law"), the current draft amendments indicate that the Parliament is reluctant to fully adopt the recommendations of the tripartite process or comply with international standards. While the draft law removes the additional 10 per cent requirement to establish a basic labour organization, concerns remain about the pyramidal structure for organizing set out in the law, which limits the establishment of both employers' and workers' organizations, including at the sectoral level. The draft law would place restrictions on the constitution, structure and executive committee membership of employers' and workers' organizations. It would also put in place a process for re-registration every two years, which would be problematic for many trade unions and might lead to their arbitrary deregistration. Lastly, the amended law would further restrict the right to strike, requiring permission to strike from the relevant federation and confederation, limiting the type of disputes that can lead to strikes and restricting the use of union funds. The ILO has commented that, if passed in this form, the amended law could be worse than the existing law on freedom of association and would undermine the confidence of the social partners in the tripartite process.
19. These ongoing challenges highlight the importance of training and capacity-building activities for ILO constituents and selected members of the Parliament on key ILO standards and practices related to freedom of association. The new road map adopted by the NTDF in January 2019 prioritizes training for local labour officials and conciliators and arbitrators at the township and regional level, as recommended by the direct contacts mission. This will reinforce the current capacity and help to build a pool of professionals in the area of prevention and resolution of labour disputes.

² ILO: *Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part A)*, International Labour Conference, 108th Session, Geneva, 2019, p. 107.

20. In collaboration with the International Training Centre of the ILO (ITC–ILO), the ILO has undertaken a feasibility assessment for the establishment of a sustainable industrial relations training mechanism for Myanmar. The ILO, in collaboration with the ITC–ILO, has also developed and is implementing a five-module training programme on industrial relations, primarily targeting garment sector leaders. Moreover, the ILO is developing a standardized factory-level training programme on social dialogue, which will be piloted in the garment sector in 2019.

Impact of foreign direct investment on decent working conditions

21. Following economic reforms in 2011, foreign direct investment (FDI) in Myanmar grew, peaking at over \$9 billion in 2015–16, but has tapered off over the past two years to just under \$6 billion in 2017–18.³ The slowdown reflects the continued challenges of doing business in Myanmar and the impact of the crisis in the Rakhine State, including potential sanctions or withdrawal of trade preferences. The most important source countries of FDI have been Singapore, China, other members of the Association of Southeast Asian Nations (ASEAN) and the European Union (EU).
22. The Government has taken a number of important steps to improve the investment environment and attract FDI. A new Myanmar Investment Law was enacted in 2016 to facilitate setting up investments in Myanmar and to provide equal treatment of local and foreign investors. The Myanmar Investment Law includes a commitment to promote responsible investment, as its first objective is “to develop responsible investments which do not cause harm to the natural environment and the social environment for the interest of the Union and its citizens”.⁴ It requires investors to abide by the labour laws and rules so as to maintain labour standards and manage labour disputes between workers and employers.⁵ The Myanmar Investment Commission (MIC), comprising representatives from relevant Ministries, governmental and non-governmental bodies, is responsible for assessing and approving investment proposals. MIC requires investors to demonstrate that their application meets five responsible investment criteria, including labour-related issues such as job creation and social welfare, although the quality of the screening process could still be improved. Projects with MIC permits are required to submit annual sustainability reports, although this requirement is not consistently enforced, and the information available on labour issues is limited.
23. In November 2018, as part of an effort to boost FDI, the Government created a new Ministry of Investment and Foreign Economic Relations. Changes in the banking sector have allowed foreign banks to lend to local businesses, and the trading sector has been opened up to 100 per cent foreign ownership or joint ventures. The MSDP also places strong emphasis on investment promotion and includes a project bank of potential public–private partnerships. With declining investment flows from Western Europe and North America, the Government has embarked on a “Look East” campaign to attract new investment from Japan; the Republic of Korea; China; and South-East Asia. Myanmar will undertake a second investment policy review with the support of the Organisation for Economic Co-operation and Development (OECD) in 2019.

³ Directorate of Investment and Company Administration, 2018.

⁴ Myanmar Investment Law (2016), Chapter II, Objective, (a).

⁵ Myanmar Investment Law (2016), Chapter XIII, article 51(e) and (f).

24. As early FDI was concentrated in the oil and gas sector, which is less employment intensive, the largest percentage of FDI in 2017–18 flowed into the manufacturing sector, followed by real estate and other services. This trend towards investment in the non-extractive sectors promises to generate greater employment opportunities. According to MIC, 70 per cent of manufacturing exports are produced by MIC permitted enterprises, opening up export value chains for job creation and skills development. But while median wages are higher in export-oriented sectors like garments, studies suggest that foreign-owned enterprises do not necessarily pay higher wages.
25. Special Economic Zones (SEZs) are also an important element of the Government’s investment strategy. So far, three SEZs have been designated under the Myanmar Special Economic Zone Law: Dawei (in southern Myanmar), Kyaukphyu (in western Rakhine) and Thilawa (near Yangon), although at present only the Thilawa SEZ is operational. Employers and workers in SEZs are governed by the general labour laws, but some labour matters and disputes are handled by a One Stop Service Centre of the Department of Labour in collaboration with zone management committees. In addition, the Myanmar Special Economic Zone Law requires firms to meet recruitment targets for local workers, reaching 75 per cent by years four to six. The types of businesses operating in the Thilawa SEZ include manufacturing, service, trading, logistics, hotel and real estate, hence are therefore more labour intensive and export oriented. According to the International Growth Centre, as of February 2018, 5,000 jobs had been created in the Thilawa SEZ.
26. Increased FDI and integration into global supply chains, particularly from OECD countries, has generally stimulated responsible business conduct and a culture of compliance with international standards or industry codes. In the garment sector, for example, local and foreign-owned companies selling to western brands and retailers have a higher incentive to comply with labour standards concerning, inter alia, occupational safety and health and child labour. Industrial relations have also developed more quickly in these sectors, with higher rates of unionization, but also of labour disputes. The requirements of international investment and trade arrangements and buyers agreements have helped to drive labour law reforms and have been leveraged by both workers’ and employers’ organizations. The prospect of losing trade preferences, such as the EU Generalised Scheme of Preference (GSP) tariff preference, in response to the Rakhine crisis, has therefore caused considerable anxiety among both investors and social partners.
27. FDI is seen as a vehicle for skills development, and several multi-national enterprises (MNEs) have developed good practice initiatives for training their staff and for supply and distribution chains. However, this is not a systematic part of business models, and local and foreign firms compete in the scarcity of skilled labour. The FDI also affects the local small and medium-sized enterprise (SME) environment, presenting opportunities for the development of local value chains, but may also lead smaller scale SMEs to become overwhelmed, particularly in an environment with many business and credit constraints.
28. In addition to its work with Myanmar employers’ organizations, the ILO is actively engaged with a wide range of MNEs invested or sourcing from Myanmar. A new joint project with the OECD, funded by the European Union, entitled “Responsible Supply Chains in Asia” is promoting the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration) and other business and human rights standards. Together with the Myanmar Centre for Responsible Business, the ILO convenes a quarterly round table of OECD-based MNEs on due diligence issues. The ILO has engaged with foreign chambers and manufacturers’ associations, particularly in the garment sector, and translated its Guide to Myanmar Labour Law into Chinese, Japanese and Korean.

Conclusions

29. Myanmar has made positive progress on the Decent Work Agenda over the past year, notably with the signature of the new DWCP, but these gains need effective implementation. The culture of tripartite social dialogue has grown stronger at the national level, but cannot be taken for granted if its outcomes are not respected, and trust and cooperation are not achieved on the ground. The forthcoming labour law amendments, particularly to the Labour Organisation Law, will be a critical test for whether freedom of association is to move forwards or backwards. Similarly, forced labour, while reduced, remains a persistent problem, and with the expiry of the SU complaints mechanism, the Government has committed to cooperate with the ILO in an updated Action Plan for the Elimination of Forced Labour and in addressing forced labour complaints.

Draft decision

30. *Having considered the report submitted by the Director-General, the Governing Body:*
- (a) welcomed the signature of the Decent Work Country Programme (DWCP) for Myanmar in September 2018, and encouraged member States to support its implementation;*
 - (b) requested the Government to continue cooperation with the ILO for the elimination of forced labour under the auspices of the DWCP, including through an effective complaints handling procedure;*
 - (c) urged the Government to ensure that labour law reform to promote freedom of association reflects genuine and effective tripartite dialogue and is in line with international labour standards; and*
 - (d) encouraged the Government to promote decent work through responsible investment policies in line with the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy.*