

Governing Body

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Institutional Section

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NINTH 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 27).

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 Office 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 335th Session in March 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) welcomed the signing of the Decent Work Country Programme (DWCP) for Myanmar in September 2018, and encouraged Myanmar to fully engage with its implementation and other member States to support these efforts;
 - (b) expressed serious concern over the persistence of forced labour, noting the CEACR observations pertaining to the Forced Labour Convention, 1930 (No. 29), and urged the Government to intensify its close cooperation with the ILO for the elimination of forced labour including under the auspices of the DWCP, and through the development of a time-bound action plan for the establishment of, and transition to, an effective complaints handling procedure;
 - (c) expressed concern over the important shortcomings in the draft legislation and urged the Government to ensure that labour law reform to promote freedom of association reflected genuine and effective tripartite dialogue and was in line with international labour standards;
 - (d) called on the Government to implement the recommendations of ILO supervisory bodies to ensure there were no restrictions or intimidations of workers and employers in the exercise of their fundamental rights at work, and raised concerns regarding recent charges laid against trade unionists engaging in peaceful protest action;
 - (e) 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; and
 - (f) requested the Office to report on progress made to the Governing Body at its 337th Session (October–November 2019).

Progress in the elimination of the use of forced labour

2. As reported to the Governing Body in March 2019, the Supplementary Understanding (SU), which provided a complaints mechanism for cases of forced labour, expired on 31 December 2018. The intention is to replace it with a national complaints mechanism (NCM) as agreed to in the DWCP adopted in September 2018. During the Government Body discussion in March 2019, a Government representative confirmed that until such time as the national mechanism was in place and operationalized, complaints received by the ILO would be submitted to the High-Level Working Group (HLWG) for necessary actions.
3. The ILO has received a further 108 forced labour complaints in 2019, 48 of which have been assessed as being within the definition of forced labour. These included 39 cases of underage recruitment, two cases of forced recruitment of adults, five cases of traditional forms of forced labour and two cases of trafficking for forced labour. New instances of underage recruitment remain low compared to earlier years, with only two of the 39 underage recruitment cases taking place in 2019.

4. The number of complaints received has continued to decrease since 2016, suggesting progress towards the elimination of underage recruitment, which generally accounts for the highest proportion of complaints received. Since the expiration of the SU, government agencies and other organizations now also accept complaints, which could also partly explain the reduction in cases received by the ILO.
5. Of the 48 forced labour cases, two were closed after the victims were released. Eleven cases of underage recruitment were referred to the Country Task Force for Monitoring and Reporting (CTFMR) and the remaining 35 cases will be submitted to the HLWG by September 2019.
6. Some 277 cases received before the expiry of the SU were submitted to the HLWG in 2019. The remaining cases currently under the ILO's assessment, will be submitted to the HLWG as early as possible. However, due to limited resources, the ILO Liaison Officer experiences difficulties in clearing these cases as they require assessment, submission and follow-up. Continued efforts will be made to mobilize resources to ensure that the ILO is able to carry out this critical work.
7. Since March 2019, the ILO has received no further complaints of forced labour, related to the involuntary use of civilians as guides and porters from conflict areas. Several such cases reported to the ILO before 2019 remain unresolved, in large part due to restricted access to these areas. The Government has indicated that such restrictions are necessary for safety and security reasons, however this does limit the Office capacity to assess and follow-up complaints.
8. It is also noted that very few reports of forced labour in the private sector have been received since March 2019, however this should not be taken to suggest that such forced labour is not occurring.
9. In 2019, 20 forced labour cases from previous years have been closed, and in March 2019, the Tatmadaw discharged 69 underage recruits via the CTFMR, of which 22 were facilitated by the ILO. In two other cases, the parents/guardians were supported by the ILO to directly secure discharge. The Government reported that an instruction was issued by the Office of the Commander in Chief (Army) on 11 July 2019 to all regional command and subregional command relating to the prohibition of recruiting and using of children under 18 years of age in any military work places. The ILO has requested a copy of such instruction, but has not yet received it.
10. The restrictions on travel within the country are having a significant impact on the work of the ILO and other organizations. Advance approval is required and any departure from the approved travel date can result in the approval being withdrawn. Other UN agencies and development partners are facing similar difficulties. The immediate impact on ILO staff is a restriction on their ability to travel independently to assess and verify information submitted by complainants, particularly in rural areas.
11. The Independent International Fact-Finding Mission on Myanmar, established by the Human Rights Council in 2018, has continued to report on the use of forced labour by the Tatmadaw in ethnic areas. The Government has rejected the Fact-Finding Mission's reports and denied it access to the country. The ILO has also been unable to independently assess the situation to ascertain if those reported incidents warrant further action, due to the restrictions on travel beyond township level and a requirement to seek access approval two weeks in advance.
12. Since the General Administration Department (GAD), which is responsible for all local government administration, was moved from the Tatmadaw-controlled Ministry of Home

Affairs to the Office of the Minister for Union Government (the Cabinet Office) in late 2018, it is encouraging to report that the GAD has played a positive role in assisting with the age verification of victims for a large number of underage recruitment cases and it is hoped that it will play a wider role in the elimination of forced labour.

- 13.** On 25 May 2019, the Government presented its proposals for a NCM to the National Tripartite Dialogue Forum (NTDF). The ILO has stressed the following elements necessary for a credible and effective complaints mechanism:

 - (a) impartiality in the assessment and investigation of complaints;
 - (b) guaranteed protection for victims;
 - (c) credible accountability;
 - (d) decentralization of responsibility to eliminate forced labour; and
 - (e) awareness-raising programmes, particularly for those who live in remote and conflict affected areas.
- 14.** In July 2019, the Government began to publicly advertise its intention to establish an NCM; however, no reference was made to complainants being able to continue to submit complaints to the ILO. This issue will be further pursued by the Office.
- 15.** By letter dated 7 August 2019, the ILO was informed of the President's approval of the establishment of an NCM. The Government provided the ILO Liaison Officer with the proposed framework for the NCM together with an action plan encompassing transition arrangements. The proposal provides for a high-level governance group representing a large number of Government ministries, with a lower-level working group managing the actual operation of the complaints mechanism. The ILO has not been included as a member of either body, but is shown as being available for the provision of technical advice, training of trainers and general awareness-raising activities. Unfortunately, no reference is made to any intention of the Government to keep the ILO informed of the outcomes of complaints submitted by the ILO, nor are there details on the nature of proposed investigation procedures or the protection of complainants.
- 16.** In August 2019, the Government confirmed the new action plan drawn up under the auspices of the DWCP. To date, the ILO has been invited to take part in a one-day training-of-trainers session for a variety of personnel from Government ministries, one awareness-raising session for the GAD and two training sessions for judges.
- 17.** While the Government has made efforts to develop interim procedures for dealing with complaints, a framework for the development of the NCM and an action plan for the elimination of forced labour 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 ILO will continue to urge the Government to consult with social partners through the NTDF and to review its proposed structures, processes and protections, both in the interim and for the final NCM to ensure it is credible and effective, and to accept the ILO as a full partner in the elimination of forced labour in Myanmar.

Labour law reform

18. The new Child Rights Law was passed in July 2019, which includes measures to regulate the minimum age for employment, hazardous work and the worst forms of child labour. The Government reports it is preparing to ratify the Minimum Age Convention, 1973 (No. 138). A first draft of the Labour Organization Law was provided to the ILO in late 2018, and following extensive consultations and technical advice a revised draft was received in July 2019. The Government has also engaged with representative organizations of employers and workers on a bipartite basis in the development of the latest draft. However, representative organizations of workers continue to raise concerns that their views have not been taken into account during the drafting process.
19. Amendments to the Settlement of Labour Disputes Law, which were approved by Parliament in 2019, 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 wording. However, it is notable that the definition of “worker” was narrowed. The Direct Contacts Mission also recommended that the promotion of collective bargaining should not include non-unionized workers where trade unions exist at the enterprise and sectoral level; however, this recommendation was not included in the final wording of the law.
20. While it is positive that the NTDF reconvened in May and that the Government is engaging on a bipartite basis with representative organizations of employers and workers, such engagement can be further strengthened with support from the ILO. The issues and concerns raised by social partners do not appear to have been fully taken into account in the review of the Labour Organization Law and the Settlement of Labour Disputes Law. The Office is, however, continuing to encourage the Government to make use of tripartite social dialogue processes to address the outstanding concerns related to social security, elimination of child labour, minimum wage setting, and occupational safety and health.

Charges against trade unionists

21. As reported to the Governing Body in March 2019, in February 2019 eight trade union leaders from the Confederation of Trade Unions of Myanmar and the Myanmar Infrastructure, Crafts and Services Trade Union Federation were charged under the Peaceful Assembly and Peaceful Procession Law for participating in a protest in Mandalay. The application to assemble was denied on the grounds that the applicants were not from Mandalay and the issues were not viewed as local issues. The matter is currently before the courts and a decision is expected in October 2019.

Decent work and responsible investment policies

22. With regard to the promotion of decent work through responsible investment policies in line with the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration), the Office is providing support for the implementation of a development cooperation project developed by the European Union, the Organisation for Economic Co-operation and Development (OECD) and the ILO on promoting responsible supply chains. This project is being implemented in line with the MNE Declaration and focuses on key sectors in Myanmar.

Conclusions

23. The Government of Myanmar's cooperation with the ILO within the framework of the DWCP since March 2019 is welcome, with progress being made over this period, particularly the development of action plans, the passing of the Child Rights Law, and proposals to ratify the Minimum Age Convention, 1973 (No. 138). The Government is encouraged to continue its efforts to cooperate with the ILO Liaison Officer and social partners to fully implement the DWCP.
24. The Government's intention to take ownership of the forced labour complaints mechanism as proposed under the DWCP is welcome. However, at this stage of transition, a closer partnership between the Government and the ILO in the application of a credible and effective NCM is required in order to develop the legal and practical capacity for all stakeholders concerned to operate a credible and effective NCM and ensure the necessary protection of complainants.
25. The ILO will continue to receive new complaints and support the Government in processing new complaints to ensure the effectiveness of the complaints mechanism. The Government is encouraged to keep the ILO informed of the outcomes of complaints submitted after verification, and ensure fair, impartial and equitable investigation procedures and the protection of complaints.
26. There continues to be a backlog of complaints pending with the ILO that need to be processed and resolved, and continuing reports received by the ILO on the use of forced labour need to be addressed.

Draft decision

27. *Having considered the Report submitted by the Director-General in document GB.337/INS/9, 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 to put in place a credible and effective national complaints mechanism (NCM) 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 NCM 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; and*
- (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.*