

Report

Stakeholders Forum on Labour Law Reform and Institutional Capacity Building

Sedona Hotel Yangon, 29-30 September 2016

Executive Summary

The second Stakeholders Forum on Labour Law Reform and Institutional Capacity Building was held on 29-30 September in Yangon. The Stakeholders Forum was attended by around 200 participants from the Government of Myanmar, other Governments, private sector, labour organizations, workers representatives, civil society, international investors and buyers, research institutions and international organizations.

The objectives of the Stakeholders Forum were to : 1) share with the business and labour community the Government's plans for reform, in particular on labour law reform; 2) inform progress made in labour law reform and institutional capacity building; 3) receive inputs and feedback on the labour law reform process; 4) gain insights on how to address particular labour challenges based on international experiences; 5) enhance consultation and transparency among the tripartite constituents and broader partners; and 6) foster constructive relationships among domestic and international stakeholders.

The Stakeholders Forum is part of the *Initiative to Improve Labour Standards and Practices in Myanmar* formally launched by Myanmar, Denmark, Japan, the United States and the International Labour Organization (ILO) in November, 2014. The European Union joined the Initiative in May 2015.

The Stakeholders Forum was opened on behalf of the Initiative Partners by His Excellency Mr. Jorn Neergaard Larsen, Danish Minister for Employment, and with a key note message by His Excellency U Thein Swe, Union Minister, Ministry of Labour, Immigration and Population. The Deputy-Director General of the ILO, Mr. Greg Vines, and the European Union Ambassador to Myanmar, His Excellency Mr. Roland Kobia also gave opening remarks.

In the first session on Labour Law Reform, the Permanent Secretary of MOLIP updated on the Government's legislative priorities, in particular the review and amendment of the Labour Organisations Law, Settlement of Labour Disputes Law and Employment and Skills Development Law. A Senior Legal Officer of ILO Yangon contextualized this within the broader three-phased approach agreed the previous year by the tri-partite partners to progress towards a unified, comprehensive labour code. The Chairperson of the Parliamentary Committee on Local and Overseas Employment highlighted the roles of the Committee and stressed the importance of engaging Parliament early in the reform process. The discussion focused on gaps in the sectoral coverage of the current laws, including the informal sector, concerns related to dismissals and the enforcement of penalties.

In the second session, employers and workers representatives – both national and international – shared their priorities for labour law reform as well as capacity gaps and

challenges in current institutional arrangements. The discussion stressed the importance of tripartite consultation in the drafting and amendment of laws and encouragement of social dialogue and collective bargaining.

The Forum then moved into three parallel breakout sessions which provided an opportunity for stakeholders to discuss key issues in greater depth. The overarching theme of the breakout sessions was “Myanmar labour market in transition: moving from Government intervention in the labour market to negotiation and dialogue between social partners to determine their terms and conditions of employment.”

The breakout session on labour disputes discussed the factors that have contributed to or exacerbated disputes, including the mandatory employment contract, dismissals in particular anti-union cases, and the strengths and weaknesses of the current dispute settlement mechanisms. The discussion focussed on a number of areas, including strengthening the WCCs and conciliation and arbitration bodies, capacity building for dispute settlement and social dialogue, and the need for dissuasive penalties to improve enforcement and compliance.

The breakout session on employment contracts (EC) discussed the difficulties and challenges of implementing the mandatory EC in practice. Comparative international experience and practice was also shared. The employers’ representatives presented a possible streamlined template as a contribution to further tripartite consultation.

The breakout session on occupational safety and health (OSH) allowed for an in-depth discussion of the roles and responsibilities of different parties under the new OSH law which will soon be presented to parliament. The discussion stressed the urgency of early adoption of the law and the roles the tripartite partners could play both in prevention and compliance. ILO briefed participants on proposed new activities on OSH under the Vision Zero and Safe and Healthy Youth initiatives.

On the second day of the Forum, following a welcome by the US Ambassador, participants heard presentations on recent labour-related research and other initiatives, including the Government’s Labour Force Survey and study on child labour and school-to-work transition, research on the application and impact of the minimum wage by the Centre for Economic and Social Development, and new capacity building initiatives on industrial relations by the Solidarity Centre. The moderators of the breakout sessions also reported back on their respective discussions.

In conclusion, the Forum was presented with a roadmap of proposed actions going forward. The Government had confirmed its labour law reform priorities, which are Labour Organization Law, Settlement of Labour Disputes Law and Employment and Skills Development Law. This should be seen as first stage of the phased approach towards a unified labour code that has been agreed upon by the Myanmar tripartite partners. The broad issues had been identified and it was now important to move to the next stage of technical legal drafting.

A first round of technical tripartite discussion on labour laws had been held in February 2016, followed by bipartite discussions in July and August 2016. This culminated in the National Tripartite Dialogue Forum (NTDF) reviewing initial positions on 28 September 2016. The NTDF had agreed that employers and workers should finalise written submissions by December 2016. These would then be the subject of further rounds of technical discussion before the next National Tripartite Dialogue Forum which would consider one or more laws in January 2017. The NTDF would be further institutionalised through more regular meetings and technical level discussion, and also encourage proactive engagement with Parliament, Attorney General's Office and other ministries.

Noting the value of the Stakeholders initiative as a complement to the NTDF, it was proposed to increase the regularity of information sharing with stakeholders on the labour law reform process through periodic updates and briefings, for instance after NTDF meetings. The Initiative partners would also continue their close coordination.

The meeting was closed by representatives of the employers and workers, the European Union on behalf of the Initiative Partners, the ILO Regional Director for Asia and Pacific and the Union Minister for Labour, Immigration and Population.

1. Background

The *Initiative to Improve Labour Standards and Practices in Myanmar* (the Initiative) was formally launched by Myanmar, Denmark, Japan, the United States and the International Labour Organization (ILO) in November, 2014. The European Union joined the Initiative in May 2015.

The Initiative is designed to support the Government of Myanmar (GoM), social partners and wider stakeholders in promoting compliance with international labour standards and responsible business practices, helping to make Myanmar an attractive sourcing and investment destination, protecting Myanmar's workers and supporting its businesses, and advancing Myanmar's overall sustainable growth and development.

The Initiative has two main pillars: 1) supporting the development of a multi-year labour reform plan, and 2) building meaningful stakeholder engagement in the labour reform process and strengthening labour relations. The first pillar seeks to build on the GoM's ongoing work on labour law reform by providing assistance to the GoM to formulate and draft a unified labour code, which will address gaps and inconsistencies in existing labour laws relative to international standards; and to identify capacity building needs that will enable the GoM to implement and enforce these legal changes going forward. The second pillar seeks to augment the labour law reform efforts and strengthen labour relations by providing a forum for both domestic and international stakeholder engagement and input.

The second Stakeholders Forum on Labour Law Reform and Institutional Capacity Building was held on 29-30 September in Yangon. The Stakeholders Forum was attended by around 200 participants from the Government of Myanmar, other Governments, private sector,

labour organizations, workers representatives, civil society, international investors and buyers, research institutions and international organizations.

The objectives of the Stakeholders Forum were to : 1) share with the business and labour community the Government's plan for reform, in particular on labour law reform; 2) inform progress made in labour law reform and institutional capacity building; 3) receive inputs and feedback on the labour law reform process; 4) gain insights on how to address particular labour challenges based on international experiences; 5) enhance consultation and transparency among the tripartite constituents and broader partners; and 6) foster constructive relationships among domestic and international stakeholders.

2. Highlights of the Forum

Day 1 – 29 September 2016

Opening Session

The Stakeholders Forum was opened on behalf of the Initiative Partners by **His Excellency Mr. Jorn Neergaard Larsen, Danish Minister for Employment**. The Minister welcomed the participants and acknowledged the remarkable change which has taken place in Myanmar since the first Stakeholders Forum in May 2015, most notably the transfer of power following successful elections in November last year. In this positive context, he noted, there continues to be a need for labour market reform in the broadest possible sense, in order to create inclusive and sustainable economic growth for all, and in order to turn Myanmar into an attractive destination for sourcing and investment. The Stakeholders Forum was a clear testament to the continued strong commitment and high level of ambition of the Myanmar Government and social partners, as well as national and international stakeholders, to improving labour standards and creating an enabling business environment in Myanmar.

The Minister introduced to the participants the “Danish model” in which a strong co-operative spirit exists between the Government, the trade unions and the employers’ organizations. He was pleased to announce that Denmark was supporting the Myanmar constituents with capacity building on both social dialogue and occupational safety and health. He thanked the participants for their contribution to the Forum, the ILO for organizing, and the European Union for funding the event. *(Full speech is attached)*.

His Excellency U Thein Swe, Union Minister, Ministry of Labour, Immigration and Population (MOLIP) gave a keynote message. He welcomed the partnership between the Government of Myanmar and the other *Initiative* partners, as well as with other stakeholders who were participating in the Forum. The discussions that will take place will focus on important issues related to the implementation of the labour laws. The new Government has been implementing political, economic, social and administrative policies and measures for the integrated development of the country, and the Government, employers and workers have to work together cooperatively based on social justice for the development of Myanmar. Both workers and employers have roles to play, and it is only through good industrial relations that the workplace will be peaceful and productivity will increase. In particular, making employment contracts, providing for the formation of the organizations of employers and

workers, and reducing labour disputes would help to create a peaceful workplace and improve productivity. With respect to the labour law reform process, he acknowledged the discussions that took place and consensus reached at the National Tripartite Dialogue Forum the day before. He also noted that the Government has consulted and received advice from various international and national experts including the ILO, so as to comply with the international and regional labour standards.

The Minister informed the Forum about other developments taking place under his Ministry, including the drafting of the Occupational Safety and Health Bill and the Foreign Workers Bill; the implementation of the policies and measures in relation to sending Myanmar workers overseas; skills development and certification especially within the ASEAN context; social protection; the development of the National Plan of Action to eliminate child labour with the support of the ILO MyPEC project; actions to eliminate forced labour including the extension of the Supplementary Understanding and forced labour complaints mechanism and the development of a new framework of engagement with the ILO. The Minister concluded his remarks by requesting not only workers and employers but also labour activists, organizations and international organizations to discuss openly and constructively on labour issues, as the discussions and suggestions to be proposed by this Forum would be very important in taking forward labour law reform. *(Full speech is attached).*

The **Deputy-Director General of the ILO, Mr. Greg Vines**, made a statement on behalf of the ILO. He recalled the day before he had attended the fifth National Tripartite Dialogue Forum (NTDF), and observed first-hand how the new culture of tripartite social dialogue and sound industrial relations is progressing in this country. Mr. Vines then acknowledged some important progress which has taken place since the first Stakeholders Forum in May last year:

- The minimum age for employment has been raised from 13 years to 14 years old, in line with the International Labour Standards;
- A list of hazardous work not to be performed by children under 18 years has been initially validated by the Technical Working group on Child Labour, with ILO support. Wider consultation will now take place across sectors. Recent cases of abuse and exploitation have highlighted again the need to extend these protections where there are gaps in the law, for example to child labour in domestic work.
- A new Bill on Occupational Safety and Health was drafted by the Government, with ILO support. One of the significant features of the new law is that it will cover all sectors, including those sectors such as construction and agriculture where there is a high prevalence of accidents and injuries but which currently do not fall under the existing labour inspection system;
- The minimum wage was introduced in Myanmar last year for the very first time, with ILO support, following rounds of tripartite and wider stakeholder consultations. The second round of negotiation will start soon, and the ILO stands ready to support the tripartite partners in this process.

The second Stakeholders Forum was an opportunity to take stock of progress, and to hear from Myanmar's tripartite partners and other stakeholders about the current challenges and future prospects for labour reform. Recalling the NTDF discussion, Mr. Vines observed there was a lot of consensus and agreement between the Government and the social partners on the critical areas where the labour laws need to be improved. What is needed now is to move

beyond this dialogue stage to the much more technical work of drafting, so that amendments can be put to Parliament backed by tripartite consensus and support. He reiterated that a well-developed labour law supports everyone: it supports the Government to maintain industrial peace and reinforce the rule of law; it supports employers to maintain competitiveness and provide a level playing field; it supports investors and buyers in managing risk in their supply chains; and it supports workers by protecting their fundamental rights and well-being. Finally, Mr. Vines thanked the Initiative Partners for their close collaboration in supporting Myanmar. He was pleased to announce that the European Union has committed funds to support the next phase of this Initiative through ILO, and he invited further donor support.

The European Union Ambassador to Myanmar, His Excellency Mr. Roland Kobia, gave opening remarks. He welcomed the participants, and he commended the close collaboration among the Initiative partners in their support to the labour law reform in Myanmar. He praised Myanmar for its unprecedented progress in terms of democracy, but at the same time acknowledged that many important reforms remain in process, including labour reform. The European Union is encouraged to see that Myanmar's new administration has taken a number of new initiatives in various sectors, including human rights, governance and peace. As a partner in the transition, the European Union is increasing its engagements in Myanmar: this year, they hope to finalise a new Investment Protection Agreement, which will open the door for more European companies to come to Myanmar. In this regard, responsible trade and sustainable investment will be cornerstones in Myanmar's economic development, and many European businesses are leading actors as regards corporate social responsibility. The European system is based on mutually respectful cooperation between trade unions and employers organisations. Mr. Kobia emphasized the importance of ownership of the labour law reform process by the Myanmar tripartite partners, and stressed that the European Union and the other development partners will be there to support the Myanmar partners.

Session 1: Labour Law Reform

The objectives of session 1 were to:

- (1) update on MOLIP's current legislative efforts and immediate priorities on labour law legislation drafting and amendments and efforts to ratify additional international labour standards;
- (2) to revisit the conceptual framework (3 phases) to reconfirm commitment on the way forward in labour law reform towards the adoption of a comprehensive, coherent and modern Labour Code;
- (3) to confirm the legislative priorities of the Parliament and to identify any technical or capacity needs: and
- (4) to highlight perspectives and priorities of other stakeholders.

Technical presentations were provided by the MOLIP's Permanent Secretary, U Myo Aung, of MOLIP, Ms. Natsu Nogami, Senior Legal Officer at ILO Yangon Office, and U Kyaw Htwe,

Chairperson of the Parliamentary Committee on Local and Overseas Employment, Amyotha Hluttaw (Upper House). Mr. Koichi Harada, Labour Administration and Policy Advisor of JICA, moderated the session.

U Myo Aung, Permanent Secretary of Ministry of Labour, Population and Immigration, provided an introduction of the Government's current legislative efforts and medium-term strategy. MOLIP has so far drafted 16 laws, and currently some laws are still being reviewed or have been submitted to the Attorney General's Office. Some laws are very old, passed before independence, but some of them are still valid. With the support from international experts, MOLIP is also drafting new laws. He highlighted the problems and challenges of the key labour laws – the Labour Organisation Law, the Settlement of Labour Disputes Law, and the Employment and Skills Development Law - some of which were discussed at the National Tripartite Dialogue Forum held a day prior to the forum. For instance:

- Under the Labour Organization Law 2011, 2,259 labour organizations have been registered so far; but there are only 30 employer organizations registered and there should be more;
- Some workers try to register as unions without having permanent space for office;
- Regarding dismissals, it is a challenge in reality to decide what provisions of the law support workers or which support employers;
- Employers complain that some union members who have retired or been dismissed still remain with the same basic union (although ILO clarified that this was not precluded under international labour standards);
- Handling strikes and demonstrations is a challenge for the Ministry of Labour. Workers should not block the factory. Labour organizations should carry out their activities under the LOL and not under the Peaceful Assembly and Peaceful Procession Law;
- MOLIP faces shortage of human and financial resources: currently there are only 78 offices across the country, and in the areas where there are no labour offices, it is difficult to go and speak to the workers who want to form unions (i.e. field visit is a requirement for the registration of unions under the LOL);
- Regarding employment contract (EC), enterprises employing more than five workers must sign EC with the workers. However, the Government understands the difficulties faced by the employers and workers and will review and amend the EC. So far, UMFCCI and CTUM have submitted a draft EC to MOLIP. Once bipartite negotiations are completed, a tripartite discussion will be held;
- Regarding dispute settlement, the rules and regulations for the formation of arbitration bodies could not easily be translated into practice. In some regions or states, no arbitration bodies have been formed.

U Myo Aung concluded his presentation by stating that employers and workers, together with the MOLIP, have agreed to reform the labour law, in line with the International Labour Standards. The NTDF should be held quarterly to foster more tripartite discussions. *(PowerPoint presentation attached).*

Ms. Natsu Nogami, Senior Legal Officer of ILO Yangon, presented ILO's strategy for support to labour law reform under the Initiative. She first provided a brief overview on the current

labour market situations in Myanmar: recent strong economic performance has not necessarily been accompanied by social development and the country suffers from decent work deficits, in particular characterized by the high incidence of the informal economy and the prevalence of more than 1 million child labourers between the age of 5 and 17 years old. Investment climate suffers from disputes which are mostly attributed to absence of professional dispute settlement services; weak and incoherent legal framework; lack of awareness and understanding of labour law; and weak enforcement and compliance. Labour law reform, therefore, is overdue and considerable.

Against this background, the ILO developed a strategy for support, which is founded upon three main pillars. Pillar 1 aims at developing cohesive and responsive labour laws that are based on social dialogue and in line with the International Labour Standards. Pillar 2 aims at developing the capacity of labour market institutions, and Pillar 3 aims at developing the capacity of the social partners. Regarding Pillar 1, Ms Nogami revisited the conceptual framework of a three-phased approach on labour law reform which has been agreed upon by the Myanmar tripartite constituents since the first Stakeholders Forum in May 2015. We are currently at the first phase, where individual laws are being amended according to the priorities identified by the MOLIP and the social partners: i.e. Employment and Skills Development Law; Labour Organization Law; and the Settlement of Labour Disputes Law. The second phase (in 2-3 years from now) will see the establishment of a Labour Standards Act, and the third phase (in 4-5 years from now) will culminate into the adoption of a consolidated Labour Code. The Myanmar tripartite constituents will soon start discussions on what topics should be covered by the Labour Standards Act.

Regarding the Pillar 2, capacity building will be provided to labour inspectors, labour dispute settlement system, wage-fixing institutions and the Parliament. Regarding the Pillar 3, capacity building will be provided to the social partners in developing their positions on labour law reform, as well as in effectively representing their members in industrial relations in particular collective bargaining and dispute settlement. Ms. Nogami concluded her presentation by briefly talking about the role of the tripartite consultation mechanism (i.e. NTDF) as well as broader stakeholder consultation in the support of the legislative process. *(PowerPoint presentation attached).*

U Kyaw Htway, Chairperson of the Parliamentary Committee on Local and Overseas Employment, A Myo Tha Hluttaw (Upper House), presented on the duties and mandates of his committee, as well as its legislative priorities and needs. The primary duties of this Committee include: supporting the establishment of laws that encourage peaceful workplaces; the development of workers' skills in the workplace; workers' rights and benefits under the law; occupational safety and health; social security; international and regional labour affairs; protection of overseas migrant workers; supporting the amendment of the Myanmar labour laws to be in line with the International Labour Standards. Based on its findings on labour matters, the Committee may submit proposals to the Parliament. U Kyaw Htwe also explained the mandate of his Committee also includes hearing from the responsible persons in the local or overseas labour affairs offices and also providing support to labour organizations, and when they have difficulties or needs. The Committee will submit proposals to the Parliament for improvement.

U Kyaw Htwe reminded the participants that, under the Myanmar Constitution, the legislative power lies with the Parliament, and that only the Parliament can enact applicable labour laws that protect the rights of the workers on the one hand, and to improve the interests of the foreign and local investors on the other. Therefore, he requested that the Parliament is kept informed of any developments or outcomes on labour affairs so that they can perform their duties. U Kyaw Htwe observed that, in the light of the current labour market situation, there is a clear need to amend most of the labour laws. In doing so, the objectives of the Committee are: 1) ensuring that the labour legislation can improve the reputation of Myanmar and cooperate with other countries in the world; and 2) providing good social and economic environment for both employers and workers. (*Presentation attached*).

Key points during open discussion

- There are many workers who are not covered by the labour law, such as construction or maritime sectors. Many laws only target garment sector because there are many problems in that sector. However, the labour law should cover all sectors and all workers who are in an employment relationship. The informal economy is largely created by legislation itself if its coverage does not reach certain employers and workers;
- International labour standards are important, but the ILO should also study the Myanmar traditions as some of them have conflict with the ILS;
- Many workers get dismissed because they belong to the union. Employers find other excuses to dismiss them, but in reality they are anti-union dismissals. From employers' side, there are dismissals that are legitimate, and workers also should follow the rules and regulations. Anti-union discrimination is a serious threat to freedom of association and the legislation must be strengthened to prohibit it, and offer effective remedies and dissuasive penalties. At the same time, however, labour law should also acknowledge legitimate dismissals and be balanced.

Session 2: Social Partners' Priorities for the labour law reform process

The objectives of this session were to:

- (1) share the current views of Myanmar social partners on the labour law reform process;
- (2) provide the opportunity for Myanmar social partners to share experiences in their participation in the labour law reform process, gaps and good practices to be replicated;
- (3) provide other participants with the opportunity to share priorities, concerns, gaps and good lessons to learn from in the Myanmar context; and
- (4) gain information on the current needs of tripartite partners and labour market institutions in terms of capacity building and strengthening industrial relations and social dialogue.

Presentations were provided by Daw Khaing Zar Aung of Confederation of Trade Unions of Myanmar (CTUM) and U Naw Aung of Myanmar Industries Craft & Services Trade Unions Federation (MICS-TUsF) representing the workers; and by U Tun Tun of Myanmar Federation of Chamber of Commerce and Industry (UMFCCI)/Myanmar Garment Manufacturers

Association (MGMA) representing the employers. The discussants were Ms. Makbule Sahan, International Trade Union Confederation (ITUC) Brussels and Ms. Ronnie Goldberg, International Organization of Employers (IOE) New York. The session was moderated by Mr. Eric Biel, Associate Deputy Undersecretary, US Department of Labour.

Daw Khaing Zar Aung of CTUM presented perspectives on how the culture of social dialogue has developed in Myanmar since the 1960s. First she looked back on the period between 1962 and 2010, noting that during the period of military government people did not have the opportunity to engage in social dialogue. Then she described the challenges following the establishment of the new labour organization laws in 2011 and 2012. Workers' representatives could not take part in the drafting process of the labour organization law, therefore, there were many weak points in the labour laws passed during this period which caused further challenges to workers' ability to organize and exercise their rights.

During the process of other labour-related law amendments since 2012, workers' representatives were not invited until the Government developed its first draft Bills, and when they were invited to discuss the first draft Bills, they were not given enough time to study and prepare their positions. As a result, the Bills that were submitted to the Parliament did not reflect the outcome of social dialogue. The social partners are used to presenting specific challenges they face and are not prepared to listen and consider views from other parties. Their capacities and understanding of the issues and procedures are limited as a result of the past governance system and lack of international exposure and understanding on international practice due to sanctions imposed by other countries.

Daw Khaing Zar Aung proposed some areas for improvement. First of all, the social partners should be able to participate in the entire process of labour law reform so that draft bills submitted to the Parliament are the result of a tripartite process. Second, trainings should be provided to the social partners to develop their capacities to conduct social dialogue. Third, there should be a functional and operational National Tripartite Committee on labour law reform. And finally, commitment, accountability and responsibility from all parties are necessary to move things forward.

U Naw Aung of MICS-TUsF spoke about the ASEAN Economic Community (ASEAN EC). There are many skilled workers but they are not given any certificates to recognize their skills. Without the proper certificates, Myanmar workers will not be able to compete in the ASEAN EC.

U Tun Tun of UMFCCI/MGMA stated that employers regard employees as business partners and important and valuable assets. Everyone has capacity, so we need to develop it. With respect to the labour law reform, all stakeholders at all levels need to understand it thoroughly. All social partners need to help create proper working conditions together. Employers first need to understand what is needed, then they will hold dialogue and come up with the solutions together. If employers could not come up with the solutions, it is only then that they will seek external assistance. Although Myanmar has opened up to the international market, they will not be able to sell their products unless they meet the international standards. Many problems occur because both employers and workers don't

understand the labour laws and regulations. They wish to have many more similar events like Stakeholders Forum with the aim that one day Myanmar will become a developed country.

Ms. Ronnie Goldberg of IOE gave a brief introduction of the IOE: representing diverse 100,000 enterprises from all over the world, it uses its network to provide services such as sharing of information, the exchange of best practices and building of the capacities of its members. Ms. Goldberg stated that a well-developed labour law that is fit for purpose and flexible enough to help all businesses to work efficiently and productively. In terms of how to achieve these objectives, she observed that social dialogue such as that taking place in this Forum was essential. Strikes and lawsuits are common features of any labour markets, but they should be the last resort and Myanmar employers need to develop culture and institutions for social dialogue.

Ms. Sahan Makbule of ITUC gave a brief introduction of the ITUC: it represents 180 million workers in 162 countries, and in Myanmar their affiliate is the CTUM. ITUC has been advocating for changes to the provisions related to freedom of association and collective bargaining. In doing so, ILO Convention 98 on the Right to Organize and Collective Bargaining should be the basis for amendment. In particular, she emphasized the need to develop clear legislative provisions on collective bargaining, as the current law only regulates it generically. Ms. Makbule also stressed the need for government commitment to tripartite dialogue. She observed that considerable challenges remain: in particular, she highlighted that employers and workers are not allowed enough time to participate in the consultation process; lack of enforcement of the decisions of the Arbitration Council; inadequate labour inspection and grievance mechanisms.

Key points during open discussion

The stakeholders agreed that ILO's core Conventions need to be the benchmark for labour law reform in Myanmar. Currently, there isn't enough awareness on freedom of association and collective bargaining.

The stakeholders exchanged their views on what should be done in the case of non-compliance with the laws and regulations. While workers proposed harsher punishment including imprisonment, employers opposed such measures as, in their view such harsh penalties will not be effective, and in any case the current laws are not fair to them and need further reform.

Parallel Breakout Sessions

The parallel breakout sessions provided an opportunity for stakeholders to discuss key issues in greater depth. The overarching theme of the breakout sessions was "Myanmar labour market in transition: moving from Government intervention in the labour market to negotiation and dialogue between social partners to determine their terms and conditions of employment." Each breakout session had a moderator, a panel of speakers and a rapporteur. The Government representative/moderator made a final response to the issues raised in each session, and reported back to the plenary on the following day.

Breakout Session A: Labour Disputes

This session discussed the factors that have contributed to or exacerbated disputes, including the mandatory employment contract, dismissals in particular anti-union cases, the recent strikes, the strengths and weaknesses of the current dispute settlement mechanism, and the interventions that could improve the current industrial relations system.

The session A was moderated by U Aung Htay Win, Deputy Director-General of Department of Labour, MOLIP, and panel members were from the Arbitration Council (U Aung Than) representatives of workers (Daw Khaing Zaw Aung of CTUM; U Aung Thu of MICS-TUsF) and representatives of employers (Daw Me Me Aung of UMFCCL; and Ms. Danyel Thomson, representing the American Chamber of Commerce Myanmar). *(Some presentations attached).*

The panellists discussed some of the main causes of disputes, weaknesses and loopholes of the current Settlement of Labour Disputes Law (SLDL) and the main challenges of implementing it, and also made some recommendations for amendment.

Last year, there were 170 disputes submitted to the township conciliation council; this year, 160 cases so far. Main causes of disputes are:

- Workers not receiving proper benefits;
- Non-payment of minimum wage;
- Employers asking workers to do overtime beyond legal limit;
- Non-payment for overtime;
- Violation of employment contract;
- No social security benefits;
- Delayed wage payment;
- Non-payment of severance;
- Dismissals;
- Serious infringement of the law;
- Agreements reached at the township conciliation council were not adhered to;
- Miscommunication between labour and management.

The panelists also identified some main challenges of implementing the SLDL as follows:

- Employers not aware of provision for Workplace Coordination Committee (WCC);
- Conciliators do not use their full power to solve problems;
- Workers do not get any compensation, even though they have served 10 years or more in the same factory;

- Workers who go on strike should not be dismissed, as their rights are guaranteed under the law, but in reality there are such dismissals. There are also strikes that do not follow legal procedures;
- Even though AC is a new institution, the decisions are getting better than the previous years. AC members may not always agree with each other, but they try their best to make one decision without representing any parties. However, employers and workers both claim that the decisions are sometimes in favour of one party. In particular, AC tends to agree with workers on dismissal cases;
- There are no provisions on the selection of members of the AC;
- The term of AC members is only 2 years. Only when they are beginning to become experts they have to finish their term;
- AC's mandate is to settle collective disputes only, but in reality it also has to settle individual disputes;
- Some employers do not comply with the decisions of the AC. In cases where the decision of the AC was not followed by the employer and the workers went on strike in protest;
- Dispute settlement process takes too long, sometimes 1-2 years;
- Workers have problems bringing their cases to the court because it takes too long to settle the case and it is also not effective;
- After the implementation of the minimum wage, a number of companies downsized, and it has led to disputes. Employers tried to resolve issues first at the township level and finally at the arbitration council level. Employers insisted that workers are not skilled enough, not competent enough, but the AC decided to reappoint those workers. Companies had to re-employ the dismissed workers, but those workers did not want to sign employment contracts, and they also started to break the workplace rules, in some cases. The employers feel that the current law is unfair to employers, because they cannot dismiss workers who are not competent or who break the rules;
- Another cause of disputes is the mandatory employment contract. Recently, Government issued notification obliging all workers to sign the employment contract; some workers are reluctant or refuse to sign. From the Government side, employment contract is supposed to reduce disputes. However, there are many different industries and the standard EC is not a means to resolve the disputes. The employers suggested that not only the compulsory EC but also voluntary EC should be made.

Finally, the panelists proposed some recommendations for the amendment of SLDL as follows:

- Interest disputes should be settled through voluntary negotiation between employers and workers as much as possible;
- Dispute resolution should be achieved through effective collaboration and mutual respect between employers and workers, and through the right intervention by the Government;
- Employers and workers need to be trained on dispute resolution;

- Short amendment to the Law was made in 2014, but it was not effective from a technical standpoint. The law should be amended as a whole;
- A comparative analysis on other countries in the region for instance Cambodia, Lao PDR or Thailand may be useful;
- The Government should shortlist members of AC;
- AC should be independent from the Ministry of Labour.

Key points during the open discussion

It was agreed that the amendment should be made to the entire law, and not partially.

Workers from the floor suggested imprisonment should be applied as a punishment for violations of the law, in particular non-compliance with the decisions of the Arbitration Council. Employers did not agree for two main reasons. Firstly, it is not an effective punishment. Secondly, some provisions of the current law are unfair to the employers. Employers cited for instance, unlawful strikes: sometimes workers go on strike without approval, and employers complain to the officials. Workers on strike may not get wages during the period of strike, but the employers have to bear the loss incurred during the strike. Employers fully agree with the principle of freedom of expression but it has to equally apply to employers, and not only to workers. Another example is dismissal: prior to dismissing the workers, employers would give warnings according to the law. However, the Arbitration Council sometimes decides in favour of the workers and orders reinstatement with an expectation of an immediate effect. In such cases, employers cannot follow the decisions of the AC. Therefore it will be unfair to the employers to apply imprisonment.

Workers from the floor as well as on the panel agreed the law needs to be fair to both sides. They clarified that the most important thing is not imprisonment itself but to ensure that the penalties are effective, and they agreed that imprisonment won't be fair and appropriate for responsible employers. They highlighted the importance of social dialogue and that cases can be solved if employers and workers sit together and have a face-to-face conversation. On workers' side, there are some workers who do not understand or follow the law, and workers' organizations will have to educate them further. The participants all agreed that the awareness raising and capacity building on labour law and practice is needed for all parties concerned.

Breakout Session B: Employment Contract

This session discussed proposed revisions to the mandatory employment contract (EC) which has been introduced by the Government. Prior to the Stakeholders Forum there have been a series of bipartite consultations and discussions on this issue, mostly on the difficulty and challenge of implementing the EC in practice. This session allowed the social partners and stakeholders to express their views on the EC, its value, its enforcement nature, and the practicality of the EC when applied to different sectors.

The breakout session B was moderated by U Myo Aung, Permanent Secretary of the Ministry of Labour, Immigration and Population (MOLIP). From the employers' side, U Myint Soe of the

Myanmar Garment Manufacturers Association and Mr Alexander Bohusch of the British Chamber of Commerce and the workers' side Daw Phyo Sandar Soe of Confederation of Trade Unions in Myanmar (CTUM) and U Thet Hnin Aung of Myanmar Industries, Craft and Services Trade Unions Federation (MICS-TUsF) and Mr Colin Fenwick, Chief, Labour Law Unit, ILO Geneva participated in the panel.

The panellists identified a number of problems and challenges with the current mandatory EC. On the workers' side:

- Current law governing EC is not in compliance with the international standards;
- EC needs to be negotiated between employee and employer;
- EC should include pay, working hours, social protection, leaves, additional benefits (i.e. meals, uniforms), resignation notice, grounds for termination;
- EC must not provide end date of contract otherwise those who are active with labour organization may not be renewed by employer;
- Government should provide venue for mediation;
- In reality a lot of termination occurs because of no EC;
- For the reform of EC, we need more consultations at the industrial, sectoral and regional levels.

The employers presented a revised contract during the breakout session. The proposed contract is a two-page template with an open format that allows employers and workers to insert relevant details of the employment relationship. The employer contract proposal is designed to be used only for businesses that come under the Factories Act. The employers did not present a contract format specifically for other sectors. While the employers generally do not want a generic EC, the proposed contract could be used until such a time as the law is changed to allow employers and workers to design their own contracts.

The employers also propose that the legal information be provided in a separate document, which employers can be legally required to give to workers upon signing the contract. A sample of this four-page document was also presented in the meeting. The purpose of this document is to help inform workers about their basic rights and responsibilities under the law. The employers' proposal would be that the document become an official government publication. Other employer comments include:

- EC should comply with existing labour laws;
- EC must be applicable for both formal and informal sector;
- EC should reduce labour disputes;
- According to current law, employers should provide contract from actual start of the work;
- Even if benefits are not included in EC, this shouldn't be an issue if they are already included in the law;
- EC should also prevent gender discrimination in the workplace;
- Generic EC is not acceptable, rather a generic template should be adaptable to different sectors;
- Contents of contract should come from laws;

- Current EC is based on the Factories Act 1951, with provisions suitable for factory workers, but EC is mandatory for all employers and employees, including enterprises not subject to the Factories Act 1951;
- Current EC includes numerous provisions that are not stipulated in mandatory law; any amendments must be provided in an Annex and are subject to approval of the Labour Department. However, approval by MOLIP is not easy and could also be a cause for corruption;
- This results in a lack of flexibility to address employers' and employees' specific needs, in particular with regard to managerial and executive employees, enterprises in the service sector, and international employers and employees;
- While EC is meant to protect employee rights, such protection is already guaranteed under existing law;
- Employers who are most challenged by the current mandatory EC are:
 - International government and non-governmental organizations who are subject to international laws or funding conditions;
 - International investors who have to comply with international requirements - e.g. With regards to confidentiality, data protection, IP protection, anti-corruption, compliance;
 - Employers of foreign employees and international assignees who are often bound by overseas employment contracts;
 - Non-factory employers who have to address the specific needs of their business sectors (e.g. F&B sector, legal services);
 - Employers of managerial and executive staff with access to confidential and secret information, authority to act for the employer, etc.
- Proposed solutions:
 - Provide a template or mandatory EC only for specific employees, e.g. Factory workers earning up to a stipulated salary;
 - Similar approach taken by other countries such as Singapore where most provisions of the Employment Act are only applicable to non-managerial/ non-executive employees earning up to a stipulated monthly salary.
- Recommended approach:
 - No mandatory EC for employees in non-factory enterprises;
 - No mandatory EC for employers with 15 or less employees;
 - No mandatory EC for employees earning more than a stipulated salary;
 - No mandatory EC for managerial and executive employees;
 - No mandatory EC for foreign employees.

Comparative and international perspectives were presented:

- ILO standards do not have many provisions about EC because it should be a matter subjected to negotiation between employers and workers within the local legal context, but comparative practices of other countries may help:
 - For instance, in Ghana, EC is negotiated between employer and employee and covers date of contract, job title, pay, hours of work, holidays, sick pay, pension, grievance procedures, overtime, etc.
 - In Australia, contracts could be verbal or written, rights are derived from statutory standards;

- It is important to consider the objectives of the EC: Is it to inform people what their rights are or to inform them what their obligations are? These are two different things. Worker rights can come from different sources: EC, company policies, collective bargaining agreement, statute law;
- Contracts must not go below standards in statutes or in collective agreements. From a legal perspective, if stated in the law, it is not necessary to be re-stated in EC, or if it is stated in the EC it should not be in contradiction to the law, particularly if it would effect to lower the standard of practice as required by law. If the EC would in effect raise higher standards, it is to ensure that such provisions are derivative of agreement between workers and employers. If this is done, it can cause confusion rather than clarification;
- EC is useful if workers do not know their rights and EC is a means to inform them;
- Regulatory efficiency needs to be considered: approval of contracts by government could be a challenge and can slow down the process. However, government registration of contracts could be helpful;
- It is important to remember that universal protection and coverage is essential.

Key points during the open discussion

- If employer is a foreigner, it is difficult to resolve a dispute if the employer leaves the country;
- Employment contract is different from service contract;
- A contract that is against the law should be considered void;
- If EC provides conditions beyond the usual provisions in the law it starts to cross the line into collective bargaining. However, in principle, that which has higher provisions is followed (this is what is practiced in Myanmar).

Breakout Session C: Occupational Safety and Health

This session allowed discussion on the new legal framework on OSH which clarifies the new roles and responsibilities of the relevant parties in ensuring safety and health in the workforce.

The breakout session was moderated by U Win Shein, Director-General of the Factories and General Labour Laws Inspection Department (FGLLID) of the MOLIP. The panellists were U Aung Thein, Member of the Upper House, Mr. Ockert Dupper, Global Fund Manager of Vision Zero Fund, U Thet Naing Oo, Deputy CEO of the UMFCCL, U Min Min Lat, CTUM and U Naing Aung Thein, AFFM-IUF.

U Aung Thein of Upper House observed that Myanmar's economic development lags far behind other countries, and both small and large enterprises are facing the problem of human resources. He also observed that labour disputes have been increasing because employers do not fully realise workers' labour rights, and this not only severely strains the relations between

the workers and the employers but also brings about a decline in productivity. He believes that any laws must be fair to both parties.

OSH is very important. Factory Act 1951 is still relevant to this day. Every factory should be clean and the waste water should be properly managed. Good ventilation system should be installed. Adequate space, drinking water, toilets and refuse bins should be provided. If required, maintenance work should be done. Eyes should be protected. Emergency exits should be big enough and rooms should not be locked if someone is inside the factory/building. Rules and regulations to implement the law need to be developed. However, so far the compliance by the employers of these OSH regulations is still weak.

Mr. Ockert Dupper, Vision Zero Global Fund Manager first provided an overview of ILO's global action on occupational safety and health: i.e. it aims at reducing incidence and severity of work-related deaths, injuries and disease (i.e. OSH-GAP), as well as making social protection floors a national reality in countries that still have underdeveloped or fragmented social protection systems.. Under this global framework, the ILO assists Myanmar in promoting occupational safety and health through three major projects (i.e. ILO-Korean Project; Safe and Health Youth Project; and the Vision Zero Fund), the objectives of which are as follows:

- Developing laws, regulations, guidelines and procedures on OSH and employment injury insurance;
- Strengthening employment injury insurance scheme;
- Enhancing labour inspectors' skills;
- Sectoral and enterprise-level work (garment, agriculture, construction);
- Education and awareness of the stakeholders for the implementation of the Law;
- Improving data and policy on OSH; and
- Establishing the linkage between safety-health and social security.

(PowerPoint presentation attached)

U Thet Naing Oo, deputy CEO of UMFCCI first made it clear that the employers need to observe the existing laws and that they are fully responsible for ensuring safety and health. He then raised the following points:

- The Government should speed up the process of enacting the OSH Law;
- There is a need of education and awareness raising on safety and health for all parties: i.e. workers, managers and employers;
- The National Occupational Safety and Health Training Center should be established;
- Inspectors should be trained to be fully qualified;
- It is important to report the workplace accidents;
- Workers need to fully comply with the safety and health instructions.

U Min Min Lat of CTUM raised the following points:

- There is a need to form workplace safety and health committees in the factories;
- It is needed to provide protection and prevention to the workers because the workplace accidents impact them severely;
- The Government must speed up the process of enacting the OSH Law;
- Social security system be provided for the workers.

U Naing Thein Aung of AFFM-IUF pointed out that the agriculture sector contributes 37 percent of the nation's GDP and that 70 percent of Myanmar's workforce is agricultural workers. He then raised the following points:

- Special attention needs to be paid to the agricultural workers;
- There exists obligations under ILO Convention No.184;
- There are serious safety and health hazards of pesticides in agricultural sector;
- The occupational safety and health management system is very important.

Key points during open discussion

A participant asked whether there was any provision on sexual harassment in the OSH Bill. It was responded there are only provisions on protection of pregnant women workers and breast-feeding women workers in the OSH Bill; other laws such as Penal Code provide provisions on sexual harassment.

Another question concerned medical examinations for the workers who suffer from lead-poisoning. It was responded this will be dealt with by the Health Examination Rule which will be enacted under the new OSH Law; meanwhile, such matters can be referred to the Social Security Board.

Questions were also asked about the use of the social security fund for the housing and transportation. It was responded that the fund for the housing is not being implemented due to unaffordable land price, nor is the fund for the transportation as it requires responsible institutions. Although the Rules made under the Social Security Law allow for such loans, in reality it is not possible because the registered workers hold multiple insurance cards and that lead to confusion.

A worker representative recommended the ratification of the relevant ILO Conventions on OSH and the allocation of sufficient budget and adequate number of labour inspectors to ensure OSH compliance.

In conclusion, the participants agreed that it is urgently needed to enact the OSH Law, and the tripartite system can play an important role in promoting improvements and monitoring compliance.

Day 2 - 30 September 2016

The U.S. Ambassador to Myanmar His Excellency Mr. Scott Marciel welcomed the participants for the second day. He thanked the ILO for organizing the Forum and the European Union for financing it. He was pleased to learn about the rich contributions made by the Myanmar tripartite partners as well as other international and national stakeholders on the first day of the Forum. He appreciated this labour law reform Initiative to help improve working conditions and continue to build a sustainable, effective industrial relations system in this country. As Myanmar's economy continues to grow, there will be more employment opportunities. While that is important, it was also important to foster economic growth in

such a way that workers have dignity at work and their rights are respected and protected. Mr. Marciel applauded the Myanmar Government for its commitment to push important reforms forward and to listen and respond to the issues, suggestions and concerns that the stakeholders have raised.

President Obama signed a proclamation reinstating Myanmar's eligibility for United States Generalized System of Preferences - or GSP - during State Counsellor Daw Aung San Suu Kyi's recent visit to Washington. This was possible, Mr. Marciel noted, because of the important progress that Myanmar has taken with respect to workers' rights. While there is a lot more work to be done, the U.S. recognizes the commitments of the Government of Myanmar to continue implementing reforms that strengthen the ability of workers to organize and advocate for their rights, and to combat forced and child labour and employment discrimination. The U.S. has partnered with Myanmar to support many of these reforms in the past and will continue to do so going forward. The work all stakeholders are doing together under this Initiative will underpin inclusive economic growth and sustainable development in Myanmar, which is at the heart of the goals of the U.S.-Myanmar partnership. *(Speech attached)*

Plenary Session

This session was to showcase some of the interesting researches or initiatives on labour force issues. The session was moderated by **Ms. Sarah Fox, Special Representative for International Labour Affairs, US Department of State.**

U Aung Htay Win, Deputy Director, Department of Labour, MOLIP, made a presentation on the Labour Force Survey (LSF) which was published by MOLIP, with ILO assistance, in August 2016. The last LFS was back in 1990, so there had been a big need and demand for the accurate and up-to-date labour market information. The focus of this LFS was to collect data on general labour force trends, as well as child labour and school-to-work transition. The target population was all persons aged between 5 and 17 years. While not all types of work performed by children should be considered child labour, for the purpose of this survey, child labour was defined by its consequences and included work that:

- is mentally, physically, socially or morally dangerous and harmful to children; and
- interferes with their schooling: (i) by depriving them of the opportunity to attend school; (ii) by obliging them to leave school prematurely; or, (iii) by requiring them to attempt to combine school attendance with excessively long and heavy work.

The LFS found 1.1 million children engaged in child labour, and more than half of them engaged in hazardous work. The proportion of youth (aged between 15 and 29 years) who have completed transition from school to work and who have stable and satisfying jobs was 49.8% (Male 56.9%; Female 43.5%).

The LFS also collected data on some key indicators such as unemployment rate, labour force participant rate, aggregate measure of labour underutilization, etc. As a way forward, MOLIP plans to conduct labour force survey annually. *(PPT powerpoint presentation attached).*

U Zaw Oo, Executive Director, Center for Economic and Social Development (CESD), gave a presentation on the recent research conducted by the CESD on minimum wage. He first gave an overview of the recent labour market reforms since 2011, which included the adoption of key labour legislation such as minimum wage law, labour organization law, social security law, and most recently the 12-point economic policy by the new government in 2016. During this time, CESD has conducted a series of studies and surveys, including a living wage study in three urban centers; an employer's perception/enterprise survey and a post-minimum wage review study. U Zaw Oo then explained the close inter-relations between the minimum wage, employment contract and occupational safety and health and social security. With respect to industrial relations, he observed a shift from contestation towards cooperation and dialogue.

U Zaw Oo presented the findings of the enterprise/employer perception survey CESD conducted in 2015, which included that wage structures helped to control high turnovers and stabilize job hopping and boosted the use of skill bonus to increase productivity. A challenge was the lack of skilled workers: firms' expenditure on training is extremely low, which leaves a large room for public intervention in skills development. The survey also identified key constraints on industry-wide productivity, and proposed recommendations for improvement. Among others, sustaining cooperative industrial relations is a key to organizing a national dialogue process to establish national and sectoral strategies on productivity improvement. He highlighted the importance of integrated strategy to support female rural migrant workers for gainful employment, as they constitute majority of garment sector workers and they contribute to the alleviation of poverty through remittances. Finally, U Zaw Oo considered the year 2016 to be strategically important time for the CMP sectors in Myanmar, with the reinstatement of GSP by the European Union or the lifting of US sanctions. Democracy that delivers sustained and inclusive growth for poverty-reduction and equal opportunities is critical, and holding a dialogue to foster cooperative industrial relations can strengthen democratization.

Mr. Jamie Davis, Country Programme Director of Solidarity Center gave a presentation on the bilateral consultative dialogue initiative that his Center is launching in October 2016, with the support from the U.S. Department of State, Bureau of Human Rights, Democracy and Labour. The purpose of this Bilateral Dialogue Initiative is to seek consensus on ways to improve labour legislation and industrial relations system and to build greater trust between employers and workers at the national, sectoral and geographical levels. Myanmar stakeholders will determine the activities and topics through consensus, and the international experts will provide technical information and options for consideration. Activities could include technical discussions seeking ways to improve labour laws or industrial relations practices; joint training regarding technical aspects of labour law or industrial relations; or confidence-building meetings to address specific issues. In implementing the Bilateral Dialogue Initiative, the Solidarity Center will make efforts to coordinate with other programs that include relevant training or activities, and to link it to labour law reform process by facilitating the ability of bilateral stakeholders to submit consensus-based joint recommendations to policy-makers.

Report back from the parallel breakout sessions by the moderators

The session was moderated by **Mr. Colin Fenwick, Head of Labour Law Unit, ILO Geneva**.

Please see the notes on each of the three breakout session above.

Summary/Highlights of the Forum's discussion and on a Way Forward

This session was an opportunity to discuss the way forward on labour law reform and institutional capacity building. Particular emphasis was given to suggestions for institutionalising this dialogue going forward to continue to inform the labour law reform process and promote stakeholder cooperation among stakeholders, including between international and domestic stakeholders.

The ILO Liaison Officer Mr. Rory Mungoven gave a summary and highlights of the Forum. He first reviewed the progress made in relation to:

- minimum wage;
- minimum legal age for employment;
- definition of hazardous work not to be performed by children under 18 years;
- draft Occupational Safety and Health Bill;
- growth of labour organizations, less so employer organizations; and
- National Tripartite Dialogue Forum was conducted the day before the Forum.

A number of challenges remain, however: in particular,

- Legislative and practical constraints on the registration of organizations of workers and employers;
- implementation of the mandatory employment contract;
- lack of clarity and conflicting laws;
- low awareness of the law;
- organisation and capacity of workers and employers is still developing;
- institutional challenges including labour inspection, arbitration and legal remedies for the violation of the law;
- Workplace challenges including collective bargaining, anti-union dismissals.

He revisited the labour law reform priorities, which are Labour Organization Law, Settlement of Labour Disputes Law and Employment and Skills Development Law. A phased approach towards a unified labour code has been agreed upon by the Myanmar tripartite partners. Labour law reform also needs to be combined with the capacity building for labour market actors.

He also summarized the steps taken so far and the next steps to be taken in the immediate future. A first round of technical tripartite discussion on labour laws had been held in February 2016, followed by bipartite discussions in July and August 2016. This culminated in the National Tripartite Dialogue Forum reviewing initial positions on 28 September 2016. The NTDF had agreed that employers and workers should finalise written submissions by December 2016. These would then be the subject of further rounds of technical discussion before the next National Tripartite Dialogue Forum which would consider one or more laws in January 2017. The NTDF would be further institutionalised through more regular meetings and technical level discussion, and also encourage proactive engagement with Parliament, Attorney General's Office and other ministries.

Noting the value of the Stakeholders initiative as a complement to the NTFD, it was proposed to increase the regularity of information sharing with stakeholders on the labour law reform process through periodic updates and briefings, for instance after NTFD meetings. The Initiative partners would also continue their close coordination.

Mr. Mungoven concluded his presentation by touching upon some of the key issues that had been highlighted by stakeholders beyond the immediate labour law reform process: these included skills development and certification; technical and vocational education and training; small and medium enterprises development and gender issues including workplace discrimination and sexual harassment. (*PPT presentation attached*).

Questions and comments from the floor

- A parliamentarian raised some issues regarding employment contract. There are Chinese companies in Myanmar where disputes go to arbitration bodies in China. He argued Myanmar law must be enforced in such cases, not Chinese law;
- Another parliamentarian raised the issue of foreign company drivers who work excessive hours. Foreign contractors are violating the labour laws of Myanmar;
- A worker representative noted that trade union workers have 2 days to perform their duties with pay, but many work a lot on public issues such as child labour as part of their union activities;
- A Government official spoke about the very strained technical capacities within Government and the need for capacity building and support to the Ministry alongside social partners;
- A worker representative explained the position taken the previous day on prison sentences for non-compliance of the decisions of the Arbitration Council. The intention is to make people follow the decisions and ensure effective penalties. An employer representative responded to this issue. Employers would agree with the jail term for certain violations such as physical violence. But otherwise, it is not appropriate. Jail terms would not educate employers to behave better. Fines also damaged the reputation of companies;
- The employer representative also pointed out some of the misunderstandings arose from terminology in the laws. For instance, collective bargaining translates as 'demanding from workers' in Myanmar language;
- A representative from the Union Attorney General's (UAG) Office responded to the legal issues raised. MOLIP should send a revised employment contract to UAG office for review. If both workers and employers agree, the Government can accept. In the case of foreign companies, the place of arbitration can be included in the contract. The Arbitration Tribunal wants to better enforce its awards. Regarding the terminology issues, Myanmar language is the authoritative text.

Closing Session

At the closing session, representatives from the Initiative partners (represented by the European Union), employers (UMFCCI) and workers (CTUM) and the ILO shared their final observations.

U Maung Maung, President of CTUM, informed the participants about the result of the discussions that were held at the NTDF on 28th September, in particular the tripartite agreement on the ILO Framework of Engagement which consists of four pillars: elimination of forced labour; promotion of freedom of association; enhanced decent employment opportunities; and non-discrimination and decent work for specific groups including children, youth, women and migrant workers. U Maung Maung then laid out areas where CTUM will request donor support:

- Capacity building for the workers organizations, including on day-to-day monitoring of the workers issues, conducting analysis on their own, holding more consultations with the workers, training on research methodology, more frequent discussions on international labour standards, training on the use of modern communication equipment etc.;
- MOLIP should establish Server or Cloud to file all the cases of disputes and to manage them in a database, and the data should be accessible by the parties to the disputes or researchers or media. All the dispute settlement bodies, from township conciliation council to the national arbitration council also need to be equipped with modern communication devices so that they can carry out their duties in much more modern way. These will help raise the effectiveness of the dispute settlement bodies.

U Maung Maung then proposed a concrete timeframe to move forward with the labour law reform, building on all the discussions that took place in 2016. In particular, by December 2016, he proposed that there should be a Technical Working Group on labour law reform; and around early February 2017, there should be another tripartite consultation focusing on the priority laws that have been agreed upon. This way, the tripartite constituents will have the draft amendments ready for submission to the Parliament.

U Maung Maung urged multinationals to adhere to the laws of Myanmar when working in Myanmar. He concluded his remarks by proposing that labour provisions be included in the trade agreements, and in doing so, trade unions should be invited for discussion. (*Speech attached*)

Dr Maung Maung Lay, Vice-President of UMFCCI thanked and congratulated the Government and other stakeholders on this event, which was conducted in a friendly atmosphere. Cases were presented, and lessons were learnt. This is only the beginning of a dialogue and we will work together towards successfully creating harmonious workplaces. We suffered for decades under the military rule, and now we need to catch up with the rest of the world.

Ms. Madelaine Tuininga, Director-General Trade of the European Union, said that together with other international partners, the European Union has provided support to Myanmar to ensure that the economic growth goes hand in hand with the environmental protection and human rights protection. Consumers, businesses and investors are also encouraging labour law reform in order to achieve decent work and sustainable business. She had observed a very good basis for dialogue in this event, and a real commitment to push for labour law

reform. Looking ahead, there are big opportunities. The Government of Myanmar as well as social partners need to take the ownership of the process. The European Union will support this process through the ILO and had just signed a new cooperation agreement. In conclusion, the stakeholders are highly committed and this is a key time to invite more investment and business.

Ms. Tomoko Nishimoto, ILO Regional Director for Asia and Pacific, noted the ILO's commitment to support to the Myanmar people in writing a new chapter of this country's history. This Forum can be seen as on the one hand a milestone in measuring the progress made to date, and on the other hand, a signpost in terms of priorities and directions for the future. Above all, we have been able to exchange views in a spirit of social dialogue and cooperation that reflects very well on the new democratic culture and tripartite processes which is getting stronger day by day in this country.

As she heard the presentations and discussions, she was struck by the convergence of priorities among the Government, employers, workers and international community on a number of issues related to the labour market reform. Key priorities have been identified for enhancing the freedom of association, strengthening labour dispute settlement mechanisms, reforming employment contracts, and ensuring occupational safety and health. The challenge now is to move from broad discussion and dialogue to action. Then she highlighted three take-away messages:

- Start the technical drafting work: The ILO welcomes the proposed timeline for employers and workers to finalize their comments on the priority laws, so that by early next year, we can hold further tripartite discussion to go deeper on details;
- Further institutionalize and strengthen the national tripartite dialogue mechanisms: The ILO also welcomes the proposal to increase the interaction between the tripartite partners and the Parliament and with this wider stakeholder group;
- Coordinate donor and stakeholder support: The ILO recommits to mobilize its technical and financial resources and coordinate its efforts fully in support of the national priorities.

Looking ahead, Ms Nishimoto highlighted the importance of leadership in achieving the Sustainable Development Goals and that democracy delivers for all. The ILO looks forward to continued collaboration with the Myanmar Labour Initiative partners to further strengthen and improve labour laws and labour market governance in Myanmar. (*Speech attached*).

Union Minister for MOLIP, His Excellency U Thein Swe, observed that the Forum was very successful and he thanked and congratulated all participants. He was happy to see open discussions, which is a key to improving industrial relations, occupational safety or workers' rights. MOLIP takes very seriously its responsibility to create jobs and to achieve sustainable development. Labour law needs to be effective for the workers, employers and for our economy. We need high quality support from all these stakeholders. We also need to learn from other countries' experiences. Labour law cannot be changed overnight and it requires capacity building. In doing so, constructive engagement and dialogue is essential. In conclusion, the Government will develop a timeframe to implement the labour law reform effectively and with good outcomes.