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FOR INFORMATION

Update on the operation of the complaint mechanism in Myanmar

Summary: Report of the ILO Liaison Officer in Myanmar on the number, type and outcome of complaints received and treated under the forced labour complaints mechanism.

Author unit: The Liaison Office in Myanmar.

Related documents: None.

1. On 26 February 2007, the Government of Myanmar and the ILO entered into a Supplementary Understanding (SU) which provided the modalities for the operation of a nationwide forced labour complaints mechanism. The trial period of the SU has been extended on an annual basis.
2. Article 6 of the SU requires that the Liaison Officer reports, through the ILO Director-General, to the Governing Body at each of its sessions on the number, type and outcome of complaints received and treated under the mechanism.
3. Since 26 February 2007, the ILO has received and registered 2,921 complaints under the SU. Of these, 1,425 have been accepted as falling within the definition of forced labour and the scope of the complaints mechanism, while 366 remain open at various stages of process.
4. Complaints submitted fall into the following categories:
 - Under-age recruitment (962).
 - Forced adult recruitment (124).
 - Other forced labour (military) (73).
 - Forced labour (civilian authorities) (147).
 - Forced labour (private sector) (62).
 - Trafficking for forced labour (internal) (25).
 - Trafficking for forced labour (external) (32).
5. In the period 1 May 2013 to 6 September 2013, 117 complaints were received under the mechanism, which compares with 158 during the same period in 2012 and 148 during the same period in 2011. Of these complaints, 63 were individual cases of under-age recruitment (108 in 2012), with the balance encompassing 38 forced labour complaints with multiple complainants (25 in 2012), eight allegations of human trafficking (ten in 2012) and eight complaints of forced adult recruitment (15 in 2012).
6. It is noted that an increasing number of complaints concern forced labour in association with land confiscation. In the new political-economic environment, land is an increasingly valuable commodity, and there are widespread allegations of confiscation/wrongful acquisition by the military, local government and business interests resulting in very vulnerable rural landholders either losing their livelihoods completely or being required to become workers on land which they have traditionally occupied. Both the Government and the Parliament are conscious of this situation and the matter is currently the subject of a commission of inquiry; however, the practice does not appear to be abating.
7. Since 2007, in response to SU complaints, 363 under-age recruits have been released and discharged from the military into the care of their parents; 23 such cases have occurred so far in 2013. In parallel, 176 under-age recruits have been released and discharged since mid-2012, under the joint plan of action developed under United Nations Security Council Resolution 1612 between the Government of Myanmar and the Country Task Force on Monitoring and Reporting, of which the ILO is a member.
8. The continued practice of arrest, prosecution and imprisonment of runaway under-age recruits on charges of desertion remains an issue. In most cases, the victim is eventually released and discharged, and the ILO Liaison Office has opened discussions with both the

military and the police on pre-detention verification procedures to overcome this problem. In one case (still unresolved) in which the ILO is actively intervening, an under-age recruit, who at the time of his arrest was in possession of an ILO protection letter describing his situation and advising that no action should be taken against him, has been convicted of desertion and currently remains imprisoned following the imposition of a two-year prison sentence.

- 9.** The continued high number of complaints received indicates that forced labour remains a problem. Though there are consistent reports of a reduction in the use of forced labour (particularly by the military in the context of ethnic areas under cease-fire agreements), it is noted that most non-military complaints received during 2013 relate to incidents which occurred in 2013. This may partly reflect the general public's increased awareness of the law and its growing confidence to make complaints; however, it also indicates the importance of maintaining public servants' awareness-raising activities aimed at changing behavioural patterns. In this regard, the cooperation of the Strategic Working Group for the Elimination of Forced Labour remains sound, with requests being regularly received for ILO input into in-service training sessions for general administration (local government) personnel as well as for the personnel of the judiciary, the police, the fire service and the military.
- 10.** Equally important as awareness raising and training is the issue of accountability. It has been clearly shown that the application of the law and public reporting are major incentives to behavioural change. Though the Government at high level has declared the rule of law a reform priority, the belief held by many in positions of local power that they enjoy impunity from the application of the law means that accountability continues to be an issue.
- 11.** The military is responding positively to complaints under the SU, particularly to those concerning under-age recruitment. In a very high proportion of these cases, a perpetrator has been identified and disciplinary action taken. Such action is usually taken under military regulation but it is understood that some cases have been pursued under the forced labour and trafficking provisions of the Penal Code (as yet no detail of such cases has been made available to the ILO). On 2 April 2013, an order was issued by the Adjutant General's Office reconfirming that under-age and forced recruitment is forced labour and therefore is to be considered a criminal offence under the Penal Code. To date most persons disciplined have been non-commissioned officers and other ranks. The ILO has raised with the Judge Advocate-General's Office the need to apply similarly consistent discipline up the chain of command. It is further noteworthy that the military has responded relatively positively to complaints of forced labour with associated loss or confiscation of land with, in some cases, both the return of land to the victims and the disciplining of those responsible.
- 12.** In contrast, there have been very few reported cases of non-military perpetrators of forced labour being held accountable under the law for their actions. In the few cases where civil authority personnel are disciplined, it is predominantly by way of administrative penalty.
- 13.** Trafficking perpetrators, when apprehended, are routinely prosecuted under the Penal Code; however, brokers facilitating the recruitment of under-age recruits into the military appear to enjoy relative impunity.
- 14.** In response to ILO complaints, 241 perpetrators (237 military and four civilian authority personnel) have received either judicial or administrative punishment. Of these, 15 have received prison sentences (13 military and two civilian), three of which were handed down in 2013.

- 15.** To date the number of reported cases of forced labour in the private sector is relatively small. This does not necessarily reflect the actual situation as there appears to be a general belief that forced labour is in some way an offence committed only by the Government. Many people still do not understand that the law also applies to abusive private-sector employment relationships. A report of a recent Parliamentary Commission on the Rights of Employers and Employees noted that some employment practices in the private sector, particularly in respect of compulsory overtime, appeared to be in breach of Convention No. 29.
- 16.** At operational level, the cooperation between the military, the police and the Ministry of Labour through the Technical Working Group convened by the ILO Deputy Liaison Officer is very positive.
- 17.** The Strategic Working Group for the Elimination of Forced Labour continues to operate effectively in pursuit of the elimination of the systematic use of forced labour by 2015. The Working Group, chaired by the Minister of Labour, oversees the action plans adopted by the Myanmar Government and the ILO Governing Body in March 2012.

Geneva, 20 September 2013