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**FOR INFORMATION**

## Report on progress in the implementation of the Memorandum of Understanding and associated action plans for the elimination of forced labour in Myanmar

**Summary:** Report of the ILO Liaison Officer in Myanmar on the activities, outcomes, challenges and actions required in the implementation of the Memorandum of Understanding and associated action plans for the elimination of forced labour in Myanmar.

**Author unit:** ILO Liaison Office in Myanmar.

**Related documents:** None.



1. This report is submitted in accordance with the request at the 320th Session of the Governing Body for further information on the elimination of forced labour in Myanmar. It summarizes the activities, outcomes, challenges and actions required in the implementation of the Memorandum of Understanding and associated action plans for the elimination of forced labour in Myanmar as at 31 March 2014.
2. The agreed objective under the Memorandum of Understanding is to eliminate all forms of forced labour by 2015. To this end, action plans have been developed to focus activities in seven major areas with a rights-based approach applied to all activities.

## I. Awareness raising

3. This action plan aims to ensure that all residents of Myanmar are aware of what constitutes forced labour, have access to information on their rights and responsibilities under the law and have the ability to exercise those rights. The following progress has been achieved to date:
  - A labour brochure has been produced in Burmese and six other local languages, with the distribution of 1,685,800 copies to government authorities, including the military and the police, and also through the ILO voluntary facilitators' network (VFN), community organizations, labour organizations and urban and rural communities.
  - Some 30,300 copies of a booklet entitled "ILO indicators of forced labour" and 6,600 cotton shoulder bags screen-printed with the contact details of ILO focal points and instructions for the substantiation and submission of complaints have been produced and distributed.
  - The brochures are periodically reproduced in Burmese-language newspapers and scrolled on national television with voice-over commentary; commentaries on the content of the brochures are also periodically broadcast on national and regional radio stations.
  - A set of short documentaries are in production on the various forms of forced labour. These will be broadcast on television and will also be distributed through the VFN for screening in village teashops and video parlours. Feature stories and articles are also periodically printed in Burmese-language newspapers.
  - Regular presentations have been made during training programmes for serving and newly recruited local government officials, police and judges. Similar arrangements will be made for new intakes to the Military Academy and for serving military officers, both commissioned and non-commissioned.
  - Meetings have been held with representatives of the Parliamentary Committee on Citizens Rights, Governance and Human Rights and with the chief ministers and/or members of State and regional parliaments and presentations have been organized for these officials.
  - Seminars to raise awareness of the problem of forced labour have been held in identified forced labour hot spots and with registered non-governmental organizations, including the Myanmar Red Cross Society, the Myanmar Women's Affairs Federation and the Myanmar Maternal and Child Welfare Association.

- A training-of-trainers course has been run for United Nations Development Programme (UNDP) staff and seminars held in field locations for staff of the Office of the United Nations High Commissioner for Refugees (UNHCR) and of its partner organizations. Two half-day seminars for journalists have been held and periodic press conferences organized on various elements of forced labour.
  - Over the 12 months up to 31 March 2014, ten monitoring missions have been made to field military battalions to verify the level awareness of field military personnel and to undertake on-the-spot awareness raising for operational commissioned and non-commissioned officers.
  - Over the same period, 43 seminars have been held in 11 states and regions across the country, involving a total of 3,547 participants (2,496 male and 1,051 female).
  - The ILO took stands at the Federation of Trade Unions of Myanmar (FTUM) May Day celebrations, and also at recent job fairs and overseas employment fairs in Yangon. The recently introduced employers' activities project, mounted in cooperation with the Union of Myanmar Federation of Chambers of Commerce and Industry (UMFCCI), will create additional opportunities for awareness raising within the employers' community.
4. The above activities have helped significantly improve awareness by government authorities, civil society and the general public of what constitutes forced labour, its criminalization, the rights and responsibilities in respect of forced labour and the procedures available for redress. This is evidenced by the drop in the number of complaints relating to certain traditional uses of forced labour; the fact that complaints received come from all parts of the country, notably the more inaccessible areas; and the small but perceptible increase in the number of forced labour incidents being reported and resolved at the local level without recourse to ILO intervention. A recent survey indicated, for example, that the ILO telephone number was one of the best known in Shan State.
  5. There is, however, a clear need for awareness-raising activities to continue both of a general nature and targeted at specific groups. It is important to put in place training-of-trainers programmes for the military and to promote teacher training so as to ensure that the progress achieved to date in military behavioural patterns is strengthened and to ensure that new generations of children leave education with an enhanced understanding of their rights and responsibilities in respect of forced labour.
  6. Across the country, many people continue to lack understanding of certain concepts of freedom in a democratic society. Misunderstandings of the meaning of and the procedure for organizing such activities as voluntary community work and the distortion of procedures intended to support the elimination of poverty or to foster local ownership in development activity mean that these activities sometimes take the form of forced labour.
  7. Complaints are now being received about the use of forced labour associated with land confiscation, domestic work and bonded labour in the private sector. This highlights not only the need for enhanced general public awareness but also the importance of strengthening the working arrangements and the training of trainers with trade unions and labour organizations in all sectors.

## II. Continued activities under the Supplementary Understanding

8. This action plan is designed to support the overall strategy for the elimination of forced labour through the effective operation and use of the complaints mechanism. The forced labour complaints mechanism established in February 2007 under the Supplementary Understanding remains a valuable tool in the campaign against forced labour. In support of the operation of the complaints mechanism four principal structures have been established.
- (a) The Government/ILO Strategic Working Group for the Elimination of Forced Labour is chaired by the Minister of Labour and the Deputy Minister of Labour. The Deputy Minister of Defence and the ILO Liaison Officer serve both as members of the Strategic Working Group and as its joint secretaries, with senior representatives of government, legal and military authorities as members. The Group meets as required to review progress on the action plans and to ensure coordination between all stakeholders.
  - (b) The Technical Working Group is responsible for the day-to-day management of cases. Its members are senior representatives of the Ministry of Labour, the Judge Advocate General's Office of the Military and the anti-human-trafficking unit of the Police, while the Deputy ILO Liaison Officer serves both as a member and the Convener and Secretary of the Group.
  - (c) The ILO Liaison Office complaints management team is responsible for the receipt of complaints, the maintenance of the complaints database, the assessment of complaints and the submission of complaints through the Strategic Working Group secretariat. The Yangon team is supported by four staff focal points based in field locations.
  - (d) The ILO voluntary facilitators' network was established in 2007 from a small group of private citizens committed to the promotion of social development through the elimination of forced labour. Voluntary facilitators, trained by the ILO, form a link between the ILO and the people at community level, working to raise awareness in their local communities and to facilitate the transmission of forced labour complaints to the ILO. The VFN currently numbers some 2,000 persons.
9. Between February 2007 and 31 March 2014, a total of 1,579 complaints were assessed as being within the forced labour mandate. As at 31 March 2014, 417 submitted complaints remain open.
10. Of the complaints received over the 12 months up to 31 March 2014:
- 220 related to under-age recruitment;
  - 28 related to forced recruitment as an adult;
  - 12 related to internal trafficking for forced labour;
  - 16 related to external trafficking for forced labour;
  - eight related to forced labour in the private sector;
  - 34 related to forced labour by civilian authorities, five of these being land related;
  - 12 related to forced labour by the military, four of these being land related.

Table 1. Complaints received from 2007 to 2014

Period	Total complaints within mandate	Under-age recruitment	Forced labour
27 Feb 2007–31 March 2008	57	19	38
1 April 2008–31 March 2009	49	29	20
1 April 2009–31 March 2010	141	113	28
1 April 2010–31 March 2011	264	191	73
1 April 2011–31 March 2012	361	253	103
1 April 2012–31 March 2013	417	275	142
1 April 2013–31 March 2014	330	220	110

- 11.** As may be seen from table 1, the actual number of complaints peaked in the 2012–13 period, with a gradual rise in the number of complaints since 2007. This probably reflects an increased awareness of law and a growing confidence to submit complaints under the ILO complaints mechanism. The reductions over the past 12 months in both forced labour and under-age recruitment are positive indicators; it is however important that activities continue to ensure that this trend is maintained.
- 12.** The operation of the complaints mechanism has contributed significantly to the positive evolution of laws, policies and practices in Myanmar relating to forced labour. While the use of forced labour has by no means been eliminated, its use in the forms traditional in Myanmar has declined considerably. The problem now consists largely in the lack of a conceptual understanding of basic freedoms by many members of society (public, private and civil society alike).
- 13.** A new element of the issue which renders particularly acute the need for accountability is the association between forced labour and land confiscation or loss. The complaints mechanism is sufficiently flexible to respond to these new phenomena and, while intervention in response to such complaints has proved effective, the objective of all parties is to see a continued decline in the number of complaints passing through this mechanism.
- 14.** An eventual consideration of the continuing need for the complaints mechanism would need to be based on not only the level of complaints received and the official response to them, but also on the ability of normal rule-of-law processes to replace the mechanism. In recent consultations with the ILO, Daw Aung San Suu Kyi firmly upheld her view that, while some progress had been made, the judiciary's lack of independence called for the continued operation of the ILO complaints mechanism. This would not only facilitate access to justice for complainants but also, through firm insistence on accountability against perpetrators, would also help strengthen the overall rule of law.
- 15.** The forced labour complaints mechanism, together with its associated awareness-raising activities and capacity-building support, clearly remains a valuable and effective tool for the Government, the social partners and civil society in the pursuit of their respective objectives.

### **III. Investigation and remedial action in respect of unanswered allegations**

16. This action plan envisages the undertaking of investigation and necessary remedial action in respect of the unanswered allegations submitted to the ILO supervisory bodies.
17. These complaints, which have been submitted to the ILO Committee of Experts from the mid-1980s, primarily refer to forced labour imposed by government authorities and the military on communities in the ethnic areas affected by armed conflicts.
18. A database of complaints has been developed, permitting a mapping exercise to be undertaken to identify both priority locations and key stakeholders. A framework investigation process has been developed under which it is planned to employ a community consultation and listening process at village level. Consultations have commenced on the identification of an appropriate location for a pilot activity. A funding agreement has been negotiated, with the expectation that the project documentation will be signed with the donor by the end of May 2014.
19. Issues – whether directly or indirectly related to the negotiation of sustainable peace – must be approached with considerable sensitivity. There has been substantial progress in the Myanmar peace negotiations with ceasefire agreements being signed with all but two of the non-state armed groups. Inclusive talks with all protagonists are progressing towards the conclusion of a nationwide ceasefire agreement.
20. The activity under this action plan can play a useful role in the peace process not only in addressing the issue of forced labour but also in building trust between the parties and providing some initial peace dividends to the conflict-affected communities.
21. While preparatory work, including close communication with all affected parties will continue, the commencement of on-the-ground activities will be contingent on the agreement of all parties to the peace process.

### **IV. Addressing specific forms of forced labour**

22. This action plan has some 11 components directed at specific forms of forced labour, as identified from the complaints mechanism database.

#### **(a) Forced labour associated with public works and major construction**

23. Three special economic zones are currently under construction. Ministry of Labour focal points have already been appointed in Dawei and Thilawa and an appointment is expected in Kyaukpyu. Only one complaint has been received alleging the use of forced labour in the vicinity of the Kaladan inland waterway project in Rakhine and Chin States, an area with a heightened military and security presence. Community consultations are currently being undertaken as part of the assessment process.
24. Awareness-raising activities on the issues of both forced labour and freedom of association have been conducted with workers and labour organizations and at the community level in both Dawei and Kyaukpyu and similar measures are planned for Thilawa. Plans are in

place to develop and support tripartite consultation committees. Local community liaison and consultancy groups are also being developed to monitor investment impact and maximize the benefits to local communities.

25. The absence of forced labour complaints associated with the construction of special economic zones or major energy and construction projects is thought to reflect the Government's policy changes and the increased awareness by communities of their rights under the law. It is still too early, however, to speculate on prospects for implementation of the action plans as the projects move to the operational phase.

**(b) Forced labour resulting from the absence of local-level funding**

26. Budgeting directives have been reissued by the Ministry of National Planning and Economic Development and the Ministry of Finance, requiring budgets to make specific provision for the full cost of labour in all public work projects.
27. The Ward or Village Tract Administration Law of 2012 makes specific provision for the payment of wages for local-level public works and sets out the procedure by which local administrators may seek supplementary allocations to meet that requirement.
28. Presentations have been made by the ILO on forced labour and the payment of wages in all local authority in-service training activities.
29. Since 2011, a marked improvement has been observed in most parts of the country in the traditional use of forced labour for local public works. At the same time, however, new forms of forced labour are being reported in the context of small-scale infrastructure activities undertaken as part of the Government's poverty reduction and rural development programming. Guidance on these issues has been included in local authority in-service training materials and previously submitted guidelines setting out the dos and don'ts of forced labour will be supplemented with specific guidance on these issues.

**(c) Forced recruitment into the defence services and militia**

30. Instructions have been issued to all military units reconfirming the minimum legal age for recruitment as 18 years and confirming that the forced recruitment of any person, including those aged 18 years and older, is a criminal offence and will result in prosecution.
31. A procedure for the signing of a declaration as to the voluntary nature of all recruitments has been put in place and instructions have been issued making unit commanders responsible for the verification of this process.
32. Complaints continue to be received, however, of forced recruitment into the military. In the longer term this problem will be addressed by the further development of a military career in a modern professional military. In the meantime, continued emphasis must be placed on raising awareness among the general public of the voluntary nature of recruitment into the military and of people's right to contest forced recruitment, and also on strengthening the commitment of the military command to holding perpetrators accountable for their actions.

**(d) Human trafficking for forced labour**

33. The ILO has full membership status on the country's anti-human trafficking task force. The issues of forced labour and under-age recruitment have been fully integrated into the national anti-human trafficking action plan. A senior officer from the police anti-human trafficking unit has undergone training in the ILO International Training Centre in Turin, Italy, in the investigation and prosecution of forced labour complaints. In cooperation with the police, the ILO is currently undertaking a survey of trafficking, with a view to improving the mapping of trafficking flows.
34. ILO investigations stemming from complaints received under the forced labour mechanism have resulted in both the locating and return of victims of human trafficking and the successful prosecution in Myanmar and overseas of perpetrators.
35. The need for an anti-trafficking project at the regional level which will continue beyond the life of the forced labour complaints mechanism remains likely. In the meantime, full use must be made of the complaints mechanism with continued efforts to raise awareness of human trafficking and to strengthen the capacity of the authorities to investigate and prosecute complaints.

**(e) Forced and bonded child labour**

36. The Government of Myanmar ratified the Worst Forms of Child Labour Convention, 1999 (No. 182), on 18 December 2013. As from 1 January 2014, a full project under the International Programme on the Elimination of Child Labour (IPEC) has been launched in Myanmar. A child labour technical working group has been established, chaired by the Ministry of Labour and with membership encompassing senior representation from all relevant government ministries and other international organizations. It is expected that the membership of social partners will be confirmed at the meeting scheduled for June 2014. The ILO-funded labour force survey to be undertaken in 2014 has a full child labour component and will also include a school-to-work transition analysis. Priority activities for 2014 include a review of legislation, checking for conformity with the requirements of Convention No. 182, and the development of a listing of hazardous occupations. Coordination structures have been established between the child labour project and other ILO projects, to ensure maximum added value.

**(f) Forced labour in the private sector, including domestic work**

37. To date, little progress has been made under this component of the action plan because of the limited capacities of both the ILO and the Government. Planned activities include conduct of the anti-human trafficking survey covering child domestic workers in 2014 and the preparation of awareness raising DVD clips to address both forced and bonded domestic work and private sector forced labour.
38. The recently introduced ILO employers' activities project, mounted in cooperation with the UMFCCI, aims to raise awareness among employers of forced labour. A further opportunity to highlight the problem is presented by the recent establishment of a corporate social responsibility body within the UMFCCI and the introduction, through cooperation between the UMFCCI and UNDP, of the global compact.

39. Initial awareness-raising seminars on forced labour have been held with a number of the emerging trade union organizations. Plans are currently being made for the further development of a series of such seminars, addressing such substantive labour market issues as forced labour but also including safe migration, child labour, the social protection floor, the legislative framework and other topics.
40. Traditionally in Myanmar emphasis has been placed on state-sponsored forced labour. Only in recent times have people started to make a link between the private sector and the problem of forced labour. A 2012 report of a special parliamentary investigation into working conditions with emphasis on the garment sector suggests that some private sector employment practices could be deemed to represent a form of forced labour.
41. Continuing emphasis will be placed on building the capacity of social partners through seminars and other measures and the training of trainers to undertake monitoring and enforcement activities.

**(g) Use by the defence service  
of civilian porters**

42. Orders have been issued to all military units confirming that the use of civilians, whether under duress or otherwise, for portering services or for other military support activities in conflict zones is illegal. Similarly, orders have also been issued stipulating that all military support work requested of civilians in non-conflict areas must be freely engaged paid labour.
43. The ILO, together with other international organizations, has been consulted on the drafting of the revised Prisons Act. The revised bill has yet to be passed by Parliament.
44. No complaints alleging the use of convicts for military support activity have been received since 2012. Continued reports are received, however, of the forced portering of ammunition and supplies and the forced engagement of guides in the remaining areas of armed conflict and in Rakhine State.
45. Once the revised Prisons Act has been passed by Parliament, a review will be undertaken of its conformity with international standards, particularly in respect of forced labour.

**(h) Forced use by the defence services and civilian  
authorities of civilians on guard and sentry duty**

46. Military orders have been issued confirming that it is illegal to force civilians to serve on sentry or guard duty. Guidance on both the difference between voluntary community work and forced labour, and the voluntary contracting of civilians for military non-operational support activities in non-conflict areas, including for work as civilian security guards, has been included in the dos and don'ts guidance material.
47. No complaints have been received over the 12-month period up to 31 March 2014. Information received through the VFN indicates that such duties are now being undertaken by military personnel.

**(i) Forced labour through land acquisition and confiscation**

48. The differences between land acquisition under the law and land confiscation are covered in the guidelines produced for the Strategic Working Group for the Elimination of Forced Labour and in all ILO awareness-raising and training activities.
49. Land has become a highly – perhaps the most – contentious issue in the reform and transition process. In cases of acquisition under the law, compensation is normally paid but there are frequent complaints that the compensation is inadequate. There have also been major public concerns about the adequacy of the new land laws. Considerable protest action continues about both the acquisition and the confiscation of land.
50. The complaints mechanism has responded to complaints in circumstances where the acquisition or confiscation of land is associated with forced labour. This work must continue.

**(j) Forced labour associated with the Ministry of Defence self-sufficiency policy**

51. The Ministry of Defence has stated that there is no official self-sufficiency policy. Information received indicates that the practice of requiring villages to supply food to operational military personnel in conflict-affected areas has significantly declined, particularly in locations where ceasefire agreements are in existence.
52. Over the 12 months up to 31 March 2014, complaints have been received regarding the requirement for villages in the proximity of military camps to provide labour for the maintenance of paddy fields for regimental food supply and for the payment of land rental or lease payments in the form of a percentage of crop yields, sometimes in the context of land confiscation.
53. Given that this behaviour does not reflect a formal policy position, such cases are being dealt with under the normal operation of the complaints mechanism.

**(k) Forced labour associated with the construction and maintenance of military camps**

54. Orders have been issued making it illegal to use civilian labour for any activity in conflict zones, including camp maintenance and construction, as have orders stipulating that civilians may only be employed as freely engaged paid workers for any such work required in non-conflict locations.
55. Information from the VFN indicates that the practice of imposing military camp construction and maintenance duties and requiring villagers to provide materials, in particular roofing thatch, has declined considerably. Sporadic complaints of such practices continue to be received, however, particularly from areas affected by conflict.

## **V. Forced labour in the form of under-age recruitment into the military**

56. Under Security Council Resolution 1612, the Government is called on to work with a specially formed United Nations Country Task Force on Monitoring and Reporting (CTFMR) through an agreed joint action plan developed specifically to tackle under-age recruitment. The ILO is an active member of the CTFMR.
57. The joint plan agreed upon in June 2012 provides a procedure for the military to use in identifying under-age recruits, verifying their age and discharging them. The ILO has provided trained personnel to support CTFMR monitoring missions to recruitment and training facilities and operational military units and ten such missions have been undertaken over the past 12 months.
58. Consultations have been held with the military and the police to develop procedures for the verification of age at the time of recruitment and prior to the arrest of an alleged deserter. A training-of-trainers course, following the ILO Start and Improve Your Business (SIYB) methodology, has been held to support the economic reintegration of discharged under-age recruits and the first pilot training measure is scheduled to be undertaken in Yangon in June 2014.
59. Since 2007, 394 under-age recruits have been identified and discharged under the ILO complaints mechanism. Analysis of the data for the period 2007–14 indicates that 2009 was the highest year of under-age recruitment (207) and 2012 the highest for receipt of complaints (268). In 2009, of the 190 under-age recruitment cases received, 164 related to recruitment in that same year. By comparison, in 2013, of the 213 under-age recruitment cases received, only 31 related to recruitment in that same year. This could suggest that the inflow of new under-age recruits is abating and that the revised recruitment procedures are working.
60. Complaints of under-age recruitment continue to be received, however, with 55 lodged over the period January–April 2014. This confirms the continued need for the firm application of both the ILO complaints mechanism and the Joint Action Plan procedures and associated awareness-raising and training measures.
61. The arrest and detention of under-age recruits alleged as being deserters remains a serious issue. It has been accepted by the military authorities that a person illegally recruited under age cannot consequently be considered a deserter; yet complaints continue to be received. The issuance of an ILO protection letter, which states that victims are the subject of an investigation into their possible illegal under-age recruitment and calling for no action to be taken against them until that investigation is completed, has proved effective in preventing some arrests. Arrests and detentions following sentencing for periods of up to two years' imprisonment continue to occur, however.

## **VI. Support for the justice system and other institutions**

62. This action plan is designed to ensure that policy and legislation continue to comply with the Constitution, Convention No. 29 and other relevant international instruments and to support citizens' rights through the rule of law.
63. The Ministry of Labour has requested support from the ILO in the review and revision of labour legislation, with a particular focus on compliance with international standards. To

that end, an initial consultation with relevant government departments and social partners was undertaken in April 2014.

64. Where forced labour complaints involving the civilian authorities are concerned, action has only been taken against ten persons in five cases, all of which relate to 2007–08. In one of those cases the three alleged perpetrators were prosecuted in court; two were convicted and sentenced to six-month terms of imprisonment and the third was acquitted. In the four other cases, six of the alleged perpetrators were dismissed from their employment and the seventh perpetrator had a reprimand recorded on his personnel file. No reports have been received of action being taken against alleged civilian authority perpetrators in cases received since 2008. No forced labour prosecutions have been instituted under the Ward or Village Tract Administration Law since its entry into force in 2012, and to date there has been no prosecution of alleged private sector perpetrators.
65. In response to military labour force complaints, since 2007, 311 disciplinary actions have been taken against military perpetrators, all of which have been taken under military law. In all, 23 military personnel have received penal sentences ranging from one month to two years; two persons were discharged; 23 were demoted; 22 received reductions in their pensionable service; 50 received fines equivalent to between seven and 28 days' pay; and 77 had a serious reprimand placed on their file with an impact on promotional prospects.
66. Concern is caused by the absence of will to prosecute forced labour offenders under the penal code from either the civilian authorities or the private sector. It is also important that the practice of providing incentives to persons who bring new recruits should be stopped, as analysis shows that these persons are responsible for a large percentage of the under-age recruitment.
67. Further work is needed on the formalization of age verification procedures, both at the time of recruitment and in the event of potential arrest for alleged desertion.

## **VII. Poverty reduction and employment creation in support of the peace process**

68. This action plan is intended to ensure that the parties to ceasefire and peace agreements respect the laws prohibiting the use of forced labour and, through community-led labour-intensive infrastructure programming, support post-conflict rural community development.
69. The ILO has been requested by all parties to support the peace process. In 2013, a pilot project site was identified for the original inhabitants who had expressed the desire to return and to start rebuilding their lives. This site comprised five villages in the conflict-affected area of Mon State. With support from Norwegian People's Aid, a number of parallel activities were undertaken, covering community confidence building, awareness raising and training in project management and good employment practices. A small-scale community-managed labour-intensive infrastructure project was mounted to provide drinking water to the villages and irrigation to the identified growing areas.
70. Having witnessed the outcome of this project, the displaced members of a further ten neighbouring villages have sought, through their own ethnic organization, the conduct of similar measures to facilitate their return. Two further sites have been identified in other locations for similar project activities. A funding agreement has been negotiated and the project documentation in support of this activity is expected to be signed in the coming weeks.