



Governing Body

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Progress report on the follow-up to the resolution concerning remaining measures on the subject of Myanmar adopted by the Conference at its 102nd Session (2013)

Addendum

► General background

1. This document supplements document GB.341/INS/17 and provides an overview on developments in Myanmar over the period 1 February 2021 to 8 March 2021. The Office will provide further information orally to the Governing Body on subsequent developments.
2. On 1 February 2021, the military declared a state of emergency in Myanmar for one year on the grounds of alleged electoral fraud. All legislative, judicial and executive powers were transferred to the Commander in Chief (CIC). President Win Myint and State Counsellor Aung San Suu Kyi were both detained and subsequently charged with a number of offences. Other senior officials from the National League for Democracy (NLD), the party certified as winning the November 2020 election, were also detained

and Ministers and Members of Parliament were placed under house arrest. The military takeover took place on the day the Parliament was due to convene for the first time following the November 2020 election.

3. Despite the military takeover, a Committee Representing Pyidaungsu Hluttaw (CRPH) was established, representing elected members of Parliament, and has made some appointments to Ministerial positions, on the basis of the democratic mandate conferred by the November 2020 election. On 5 March, the CRPH released a statement outlining its four strategic objectives: the end of military rule; the freeing of political detainees including the President and State Counsellor; the return to democracy and to rescind the 2008 Constitution and establish a new Constitution based on the federal system.
4. Since 1 February, hundreds of thousands of people have demonstrated peacefully throughout the country condemning strongly the military takeover, and calling for the restoration of democracy and the immediate release of the President, State Counsellor and other detainees. The use of force against peaceful demonstrators is now widespread, including the use of live ammunition, tear gas, water cannons and stun grenades. It has been reported that more than 50 demonstrators have been killed as the use of force has escalated, with the death of 38 people, including children, on 3 March alone. There have also been reports of police and military firing weapons at houses and apartment buildings in Yangon, properties being set on fire, as well as house-to-house searches by the police and military at night for people participating in protest action and the Civil Disobedience Movement (CDM).
5. As of 3 March approximately 1,600 people have been arrested, including politicians, NLD officials, government officials, trade unionists, journalists, students, civil society activists, and people leading or supporting protest action or expressing opposition to the military takeover.
6. On 10 February the Director-General issued a public statement and *Note Verbale* to the Myanmar Permanent Mission to the United Nations Office in Geneva reiterating the United Nations Secretary-General's call for the military leadership to respect the will of the people of Myanmar and to adhere to democratic norms, and urged military leaders not to interfere with the rights of workers, including civil servants, and employers, to participate in peaceful protests. The Director-General also called for the restoration of democratic order and civilian rule and reiterated the obligations arising from Myanmar's membership of the International Labour Organization and its ratification of the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87). On 23 February the ILO Director-General issued a further statement concerning reports that the police and military were conducting door to door searches for trade unionists in a township in Yangon and called on the military to cease all acts of harassment and intimidation against these workers.
7. On 21 February the de facto Ministry of Foreign Affairs issued a press release including the following statement: "The Ministry views that some statements and remarks made by some embassies in Yangon and foreign countries are tantamount to flagrant interference in internal affairs of Myanmar. In this regard, the diplomatic missions in Myanmar should strictly adhere to the well-established principles and norms stipulated in the Vienna Convention and the Charter of the United Nations."

▶ Civil Disobedience Movement (CDM)

8. A Civil Disobedience Movement (CDM) commenced across the country shortly after the military takeover of 1 February. The CDM has engaged in various forms of protest including the withdrawal of labour and large scale public demonstrations involving the public and private sectors, as well as civil society. This has extended across many sectors with widespread strike action in the civil service, commercial banking, telecommunications, electricity services, hospitals and other medical services including COVID-19 testing and quarantine facilities, educational institutions, shops, transportation (including road transport, air traffic control and train services), factories, mines and other activities. As of 3 March it is estimated that almost 24,500 civil servants were participating in the CDM in 310 townships.
9. Between 1 February and 5 March, ILO Yangon received 97 complaints from workers and civil servants participating in the CDM and a further 175 items of correspondence referring to the military takeover, wider human rights violations, requests for support and sharing of general information. A public statement released on 2 March by 959 staff of the Ministry of Labour, Immigration and Population (MOLIP) recognized the legitimacy of the CRPH and stated that they will follow the directions and guidelines of Dr Zaw Wai Soe, the Acting Union Minister appointed by Committee Representing Pyidaungsu Hluttaw (CRPH).
10. Complaints have been received from workers who have been threatened and intimidated due to their absence from work and participation in the CDM. The complainants have included civil servants who were subject to threats and intimidation, ordered or forced to return to work and threatened with dismissal. Some civil servants who did not return to work were subsequently suspended or dismissed. The ILO received reports that some civil servants were informed they had no rights to take leave. Others were required to sign a document with a specific provision that they agreed to work and will not take any leave, or take part in the CDM. In one instance, it was reported that a group of workers were forced to sign a one-year bond preventing them from resigning and requiring them not to participate in the CDM. Some claim they were later forced to resume work under threat of being charged under section 505(b) of the Penal Code. Section 505(b) refers to an offence for making, publishing or circulating any statement, rumour or report with intent to cause, fear or alarm to the public or to any section of the public whereby any person may be induced to commit an offence against the State or against the public tranquillity.
11. The ILO has also received complaints relating to the arrest of workers participating in the CDM. They concern nine workplaces and more than 30 persons. During the week of 22 February, the ILO received reports of an escalation of intimidation, threats and harassment against workers. This included reports that the police and military conducted door to door searches for trade unionists at their dormitories and hostels in Hlaing Tharyar industrial township, Yangon. On 24 February the Confederation of Trade Unions of Myanmar (CTUM) reported that warrants had been issued for the arrest of six trade unionists under section 505 of the Penal Code.
12. On 26 February, an announcement in the name of MOLIP published in the state-owned newspaper declared 16 labour-related organizations illegal on the basis that they were not registered under the existing Labour Organization Law and said that legal action would be taken against them if they continued any activities. Although none of these

organizations is formally affiliated to the three registered trade union confederations in Myanmar, they have been engaged in promoting labour rights for some time.

13. The CTUM further reported that on 7 March, the military went to the residences of two officials of the Industrial Workers' Federation of Myanmar and of another 20 trade union activists.
14. On 7 March, the CTUM issued a statement calling for comprehensive sanctions against the Military, and expressed its support for the leadership of the CRPH.

▶ Impacts

ILO constituents

15. Immediately following the military takeover the CTUM issued a statement denouncing the takeover and withdrew from all tripartite bodies and mechanisms. A second confederation, the Myanmar Industry Crafts and Services (MICS) also announced its withdrawal from all tripartite mechanisms effective from 3 February. Prior to this the CTUM and MICS along with Agriculture and Farmer Federation of Myanmar-International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (AFFM-IUF) participated in the National Tripartite Dialogue Forum (NTDF), Technical Working Group on Labour Law Reform, the National Complaints Mechanism on Forced Labour as well as several steering committees under ILO development cooperation projects.
16. On 9 February, the military authorities called for a tripartite meeting with members of the NTDF. The CTUM and MICS did not participate. However, the AFFM-IUF did attend and expressed their condemnation of the military takeover. The Republic of the Union of Myanmar Federation of Chambers of Commerce and Industry (UMFCCI) also attended the meeting.
17. The CTUM, MICS and AFFM-IUF have participated actively in peaceful demonstrations and the CDM. However, several trade unions leaders and members are in hiding in fear of arrest. They have also been active in seeking international trade union support, and engagement with international brands with a significant presence in Myanmar.
18. The CTUM has reported that factory managers are being harassed by police to identify union leaders and police and military were searching for unionists at night in homes and hostels. Workers' organizations have also reported an increase of threats to and arrests of workers, especially those that have joined the demonstrations and the CDM. These reports include instances of workers being arrested for their participation in the CDM, military raids on residential houses at night, and some workers participating in the CDM being attacked by the military. They include striking shipyard workers at Mandalay where two people were killed and 20 injured.
19. Due to the worsening situation, trade unions have not been able to discharge their usual functions and union operations been halted. Instead, the focus of trade union leaders and members is to continue participating in demonstrations and the CDM despite the risks and threats from the military and police.
20. Unions have also demanded attention to the repatriation of Burmese seafarers affected by the ongoing crisis in Myanmar. Since March 2020, only some 9,000, out of 25,693 Myanmar seafarers, have been repatriated. Urgent measures are being sought to

ensure that seafarers can continue to be safely repatriated in accordance with the provisions of the Maritime Labour Convention, 2006, as amended, which has been ratified by Myanmar.

21. The UMFCCI met with the military authorities to convey business continuity needs and protecting the short- and long-term interests of its diverse membership who provide many jobs and livelihoods to workers. Its priority is to minimize the economic impact of the disruption and to ensure business and employment continuity to the greatest extent possible.
22. On 15 February, the UMFCCI issued a statement opposing measures to restrict telecommunications and internet access, warning that the provisions would have a negative impact on the digital economy and undermine foreign investment and innovation.
23. On February 19 2021, a group of 12 multinational businesses, collectively employing 100,000 workers in Myanmar issued a statement stressing their primary concern for the safety and well-being of their employees and committing to continue providing essential services and respecting employees' right to freedom of expression. They reiterated their approach to business in Myanmar, underlining that their presence in the country, advocacy efforts for a level playing field for all businesses, and commitment to upholding international human rights standards contributes in a significant manner to openness and democracy in Myanmar. They called for the "swift resolution of the current situation based on dialogue and reconciliation in accordance with the will and interests of the Myanmar people". The statement emphasized that "The rule of law, respect for human rights and the unrestricted flow of information all contribute to a stable business environment". As of 5 March, 43 multinational and 111 Myanmar-based businesses have co-signed the statement.
24. On March 4 2021, a number of international business chambers ¹ issued a joint statement ² declining the invitation of the military authorities to a meeting.

ILO work

25. The ILO Office in Myanmar is now closed with staff working from home. All staff are reported to be physically safe, but under serious mental and emotional stress. The ILO Yangon has 68 staff (including ten international staff) and works closely with a range of development partners, including as a member of the United Nations Country Team (UNCT). To support the Decent Work Country Programme (DWCP), the Office is implementing 21 projects in Myanmar, with a focus on fundamental principles and rights at work, promotion of decent work and job creation, labour migration, social protection, labour standards and small and medium enterprise development. The total volume of this portfolio of projects and programmes for the year 2021 represents some US\$8.7 million, funded by a range of development partners.
26. Since 1 February, all ILO operations and project activities have been disrupted or put on hold. In line with the UNCT position, the ILO has temporarily suspended capacity-building activities, technical assistance, and policy advice to the de facto authorities.

¹ American Chamber of Commerce, European Chamber of Commerce, Italy Myanmar Business Association. French and British Chambers of Commerce in Myanmar endorsed the statement.

² See <https://www.amchammyanmar.com/web/content/14690>.

27. On 24 February, the Office became aware that its bank accounts had been frozen by the Central Bank of Myanmar and has been unable to discharge financial obligations under its project activities. Through its own emergency funds, the Office has been able to pay staff, and is investigating mechanisms for future salary payments. Through a *Note Verbale* to the Myanmar Permanent Mission to the United Nations Office in Geneva, the office has called on Myanmar to respect and protect the status of the ILO in its operations without undue interference, consistent with the Convention on the Privileges and Immunities of the Specialized Agencies of 21 November 1947.
28. ILO work in Myanmar will now be guided by the UNCT guidance “Myanmar UNCT Engagement in Current Context”. Under this guidance which has been endorsed by UN headquarters, UN agencies, funds and programmes will pause, until further notice, all programmes and activities aimed at strengthening the de facto government institutions and all policy advice. No engagement related to programming should take place with the de facto authorities at national and sub-national level. Logistical or operational engagement may exceptionally be considered by UN Heads of Agency on a case-by-case basis as required.
29. Under the UN guidance, programming can continue if a clear case can be made that it meets any or a combination of the following criteria and complies with specific risk criteria:
 - (a) the benefits of programming accrue primarily and directly to the people or local communities without discrimination;
 - (b) programming supports the strengthening of the rule of law;
 - (c) programming supports the protection and promotion of human rights;
 - (d) programming contributes to preserving, to the extent possible, the democratic space.
30. The Office continues to monitor and comprehensively review all projects and interventions in Myanmar for compatibility with the UN engagement principles and work plans are being adjusted and activities reprogrammed accordingly.
31. The Office has contacted development partners to share the Director-General's statements and the UN principles for engagement. These partners have indicated that they are also in the process of assessing their own policies on engagement with Myanmar. For each of the Office's ongoing projects and on a case-by-case basis, the Office is consulting with development partners on appropriate steps for revised work plans or the suspension of activities having regard to the UN engagement guidance.

▶ Legal issues

32. Under the Labour Organization Law 2011, “Government employees” have the right to form labour organizations provided they meet strict requirements relating to the establishment of such organizations. Further, the right to strike is protected provided prescribed conditions are met. While civil servants are covered by the Labour Organization Law, they are nevertheless excluded from the Settlement of Labour Disputes Law 2012 and consequently have no access to conciliation and arbitration as a means of resolving disputes.

33. The Civil Services Personnel Law 2013 and 2014 Rules set out the duties and rights of civil servants as well as disciplinary procedures. The duties and rights of civil servants in section 10 of this Law (including the right to form associations for non-political purposes) are open to wide interpretation. The Rules, for example, provide for a range of offences that include “instigating or initiating or abetting any action that may cause the disruption of peace and unity at workplace” (Rule 163(d)). This clause could be used to infringe upon the rights to organize, raise workplace claims and strike, which are granted to civil servants under the Labour Organization Law.
34. Since 1 February, there are reports of workers and civil servants being arrested outside of the framework of the Labour Organization Law and the Civil Services Personnel Law, and instead, criminal laws have been invoked, including section 505(b) of the Penal Code.
35. Since 1 February, the military authorities have implemented measures or orders curtailing freedom of speech and of assembly, that give rise to concerns about the impact on the ability for employers and workers to exercise their freedom of association rights as guaranteed under the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). These include:
- i) restrictions on internet access including a prolonged nationwide blackout of the internet on 4 February; daily blackouts since 15 February from 1 a.m. to 9 a.m.; and blocking social media;
 - ii) restrictions on movement and freedom of assembly, including a curfew since 8 February from 8 p.m. to 4 a.m. each day;
 - iii) invoking a widespread prohibition on public gatherings of more than five people by an order under section 144 of the Code of Criminal Procedure. Previously, in 2012, the Committee of Experts on the Application of Conventions and Recommendations stated that it “notes with *interest* the statement in the Government’s report that Order No. 2/1988 concerning the prohibition of unlawful assembly and unlawful procession is contrary to article 354 of the Constitution and the recently promulgated Law No. 15 on the right to peaceful assembly and peaceful procession and therefore no longer has the force of law”. However, these limitations have now been reinstated using section 144;
 - iv) violation of the right to privacy and security of the person through the suspension of sections 5, 7 and 8 of the Law Protecting the Privacy and Security of Citizens 2017. This suspension: removes existing protections from detention for more than 24 hours without approval from a court (unless in accordance with existing law); enables entry of a residence for the purposes of search, seizure or arrest without a warrant or presence of a ward administrator; removes protections relating to state surveillance and interception of communications; and allows the seizure of movable or immovable property;
 - v) amendments to the Penal Code, including section 124A which makes it an offence to “excite or attempts to excite disaffection towards the Government...” In addition, an amendment to section 505 of the Penal Code extends its application beyond Defence Services to include any attempt to hinder, disturb, damage the motivation, discipline, health and conduct of the military personnel *and government employees* and cause their hatred, disobedience, or disloyalty toward the military and the government.
36. On 5 March 2021, the International Trade Union Confederation submitted a complaint to the ILO Committee on Freedom of Association concerning widespread violation of freedom of association and basic civil liberties by the Myanmar Military.

▶ Draft decision

37. In light of the above developments, the following draft decision is presented for the consideration of the Governing Body.
38. **The Governing Body:**
- (a) **endorsed the statements of the Director-General on 10 and 23 February 2021 calling for the restoration of democratic order and civilian rule in Myanmar, for workers, including civil servants, and employers to be able to peacefully exercise their right to protest, and for a halt to the intimidation of workers;**
 - (b) **expressed profound concern about developments since 1 February and called on the military authorities to respect the will of the people, respect democratic norms and restore the democratically elected Government;**
 - (c) **expressed its grave concern about the arrest, intimidation and threats against trade unionists, as well as the declaration that 16 labour organizations were illegal, and called on the military authorities to immediately cease such activities and drop any charges against trade unionists who have peacefully participated in protest activities;**
 - (d) **expressed its grave concern about measures or orders issued since 1 February 2021 curtailing freedom of speech and freedom of assembly, recalling that freedom of assembly and freedom of opinion and expression are essential for the exercise of freedom of association. It called for the immediate repeal of such measures or orders and for guarantees of the freedom of the social partners to undertake their functions without threat of intimidation or harm;**
 - (e) **reaffirmed that all Member States have an obligation to apply fully, in law and in practice, the Conventions that they have voluntarily ratified and that Myanmar therefore has an obligation to comply fully with the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). It urged Myanmar to uphold commitments under Convention No. 87 and to ensure that workers and employers are able to exercise their freedom of association rights in a climate of complete freedom and security, free from violence, arbitrary arrest and detention;**
 - (f) **called for the Civil Services Personnel Law, the Settlement of Labour Disputes Law and the Labour Organization Law to be amended without delay consistent with the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87);**
 - (g) **urged Myanmar to respect and protect the status of the ILO Liaison Office in Myanmar (ILO-Yangon) and all ILO staff in Myanmar and to refrain from undue interference in its operations consistent with the Convention on the Privileges and Immunities of the Specialized Agencies of 21 November 1947;**
 - (h) **requested the Director-General to report to the 342nd Session (June 2021) of the Governing Body on developments in Myanmar.**