

Myanmar (ratification: 1955)

The Committee notes the observations made by the International Trade Union Confederation (ITUC) in a communication received on 1 September 2018.

Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 107th Session, May–June 2018)

The Committee notes the discussion that took place in the Conference Committee on the Application of Standards in June 2018 concerning the application of the Convention. The Committee observes that the Conference Committee regretted the absence of progress with respect to the long-awaited legal framework in which workers and employers may freely exercise their rights under the Convention and urged the Government to: (i) ensure that the Labour Organization Law (LOL) and the Settlement of Labour Disputes Law are brought into full compliance with the Convention by availing itself of ILO technical assistance during the legislative reform process; (ii) ensure that workers are able to carry out their trade union activities without threat of violence or other violations of their civil liberties by police or private security; (iii) ensure that the registration of workers' and employers' organizations is not subject to unreasonable requirements to guarantee that the right to join or establish organizations of their own choosing is not hindered in practice; (iv) ensure that applications for union registration are acted upon expeditiously and are not denied unless they fail to meet clear and objective criteria set forth in the law; and (v) bring the labour legislation in Special Economic Zones (SEZs) into conformity with the Convention, with full consultation of the social partners. The Conference Committee further requested the Government to accept a direct contacts mission and to report on progress made on its recommendations to the Committee of Experts for its meeting in November 2018.

The Committee notes that the direct contacts mission took place from 1 to 4 October 2018 and welcomes the manner in which the Government and the Myanmar workers' and employers' organizations constructively engaged and collaborated with the mission. In particular, the Committee notes with interest from the mission report conclusions that all parties had shown an important degree of commitment to building a climate for full respect of freedom of association in the short time that had elapsed since the entry into force of the freedom of association framework legislation. ***The Committee encourages the continued development of a conducive environment for the full application of the Convention.***

Labour law reform process. The Committee recalls that in its previous comments it had requested the Government to provide information on the progress made in labour law reform.

Article 2 of the Convention. As regards the LOL, the Committee notes the Government's indication that it has initiated the labour law reform process within the framework of the National Tripartite Dialogue Forum (NTDF) which has met on numerous occasions with the technical assistance of the Office. While the draft

amendment law is still being reviewed internally, the Government refers to a number of proposed changes, including the elimination of the additional 10 per cent requirement to form a basic labour organization, as previously requested by the Committee. The Committee further notes the Government's indication that, since the law's entry into force, it has registered 2,761 basic labour organizations, 146 township labour organizations, 22 region or state labour organizations, eight labour federations and one labour confederation. The Government also refers to 26 basic employer organizations, one township employer organization and one employer federation formed under the law. The Committee notes that in order to gain a greater understanding of the obstacles encountered by workers wishing to form organizations, officials from the Ministry for Labour, Immigration and Population held nationwide consultations with a number of basic and township level organizations. The Committee recognizes, as the Government itself does, that a great deal of the country's population is spread out in townships and districts far away from the centralized authority, where the awareness of the national law and ratified international Conventions is likely to be quite limited. ***The Committee encourages the Government to pursue these consultations throughout its territory so as to ensure that all workers and employers, without distinction whatsoever, are able, not only in law but also in practice, to fully exercise their rights under the Convention, bearing in mind key difficulties faced by parts of the population, such as those in remote areas.***

The Committee further recalls its request for information on the outcome of any review of the impact of the pyramidal structure for organizing set out in section 4 of the law. ***Noting from the direct contacts mission report that this imposed structure poses a problem for the formation of both workers' and employers' organizations, the Committee requests the Government to take the necessary measures to ensure that workers and employers may form and join organizations of their own choosing in law and in practice, including at sectoral level, and to provide a copy of the proposed amendments once they have been submitted to Parliament.***

The Committee also notes the allegations in the ITUC observation that unions are often denied registration for arbitrary reasons, including requests that executive committee members submit resumes, that all union members submit photocopies of national identity cards, and that a letter from the factory be produced showing that it has been informed of the attempt to register a union. The Committee notes with ***interest*** from the mission report that the Ministry has followed up at township level following nationwide consultations on the obstacles encountered and has published a Directive instructing labour officers to cease requesting such documents that are not required by law, while facilitating identity cards for founding members. ***The Committee requests the Government to provide information on any denials of registration, including reasons for such decisions and procedures for review and appeal of such denials.***

Article 3. The Committee recalls its previous comments concerning certain restrictions for eligibility to trade union office set out in the Rules to the LOL, including the obligation to have been working in the same trade or activity for at

least six months (no initial time period should be required) and the obligation for foreign workers to have met a residency requirement of five years (this period should be reduced to a reasonable level such as three years). The Committee further notes the concerns expressed by the ITUC at the requirement that trade union officers must be 21 years of age. *The Committee once again expresses its expectation that these requirements will be reviewed within the framework of the legislative reform process in consultation with the social partners so as to ensure the right of workers to elect their officers freely, and requests the Government to indicate the measures taken to amend Rule 5.*

Furthermore, recalling its previous comments concerning the requirement to obtain permission from the relevant labour federation under section 40(b) of the LOL in order to go on strike, the Committee requests the Government to inform of the progress made in amending this provision within the framework of the labour law review.

As regards the Settlement of Labour Disputes Law, the Committee notes the Government's indication that a draft amended law was being discussed in Parliament and was addressing the need to extend the tenure of dispute settlement bodies and to amend the sanctions set out in the law to be suitable to the national context. *Trusting that the text once adopted will have eliminated any sanctions of imprisonment, while ensuring effective protection of the right to organize, the Committee requests the Government to transmit a copy of the amended law.*

Civil liberties. In its previous comments, the Committee took note of the new Law on the Right to Peaceful Assembly and Peaceful Procession which was adopted on 4 October 2016. Observing that the Chapter on Rules and the corresponding Chapter on Offences and Penalties could still give rise to serious restrictions of the right of organizations to carry out their activities without interference, the Committee requested the Government to provide information on the manner in which this law was applied and any sanctions issued. The Committee notes the Government's indication that the Myanmar police force does not restrict rights or take any action beyond the law but that violations of the law must be punished. The Government further indicates that every citizen is responsible for public peace and prevalence of law and order.

The Committee also notes the concerns expressed by the ITUC that the Upper House of Parliament passed amendments to this law on 7 March 2018 which provided in section 18 that anyone who supports a protest either financially, materially or through other means would be deemed in breach of national security, the rule of law, public order or public moral and could face up to three years in prison and a fine. The Committee understands from the mission report that this provision has not been finally adopted by the Union Parliament. *It requests the Government to ensure that workers and employers are able to carry out and support their activities without threat of imprisonment, violence or other violations of their civil liberties by police or private security and to inform of any further development in relation to the proposed amendment, as well as any*

sanctions imposed on workers' or employers' organizations under the Law on the Right to Peaceful Assembly and Peaceful Procession.

Special economic zones (SEZs). In its previous comments, the Committee requested the Government to take any necessary measures to guarantee fully the rights under the Convention to workers in SEZs, including by ensuring that the SEZ Law does not contradict the application of the LOL and the Settlement of Labour Disputes Law in the SEZs. It further requested the Government to provide detailed practical information on the manner in which disputes in the SEZs are settled, and to provide relevant statistics concerning labour inspection in the SEZs, including the number of SEZ inspections carried out by labour inspectors, any violations detected, and the nature and number of sanctions.

The Committee notes the Government's indication that the Ministry of Labour, Immigration and Population collaborates with the Management Committee in the Thilawa Special Economic Zone in respect of labour matters, including settlement of disputes. The one-stop service centre (OSSC) labour section has collected monthly reports from every company and conducts inspection and supervision to ensure factories are implementing their commitments. The OSSC labour section serves as a negotiator or mediator to resolve disputes, having solved 24 cases in 2017 and 16 cases up to August 2018. The section also holds information sharing discussions on labour laws. Additionally, officers from the Factories and General Labour Laws Inspections Department make monthly visits to the factories to explain the social welfare laws. The ILO was also invited in 2016 to convene a seminar in the Thilawa Special Economic Zone on the right to organize, while the chairperson of the management committee has requested ILO assistance in drafting labour guidelines for employers and employees. The Government affirms that the SEZ Management Committee will not create any obstacles to activity organized by workers and employers relating to forming of associations, drawing their constitutions, electing their representatives and expressions in line with existing Myanmar laws.

The Committee also notes however the concerns raised by the ITUC that the SEZ Law imposes dispute settlement awards without the consultation of the social partners and that the SEZ Management Committees are composed without workers' representatives. ***The Committee requests the Government to reply to these concerns. Noting from the direct contacts mission report the Government's renewed request to the ILO to carry out awareness-raising activities in the zones on the rights under the Convention and the requests for the development of labour guidelines, the Committee trusts that this assistance will be provided in the near future and requests the Government to inform of the progress made in this regard.***