

Myanmar (ratification: 1955)

Articles 1(1), 2(1) and 25 of the Convention. Elimination of all forms of forced labour 1. *Engagement of the ILO regarding the elimination of forced labour. (a) Historical background.* In March 1997, a Commission of Inquiry was established under article 26 of the ILO Constitution to address the forced labour situation in Myanmar. As reported to the ILO Governing Body, forced labour had taken various forms in the country over the years, including forced labour in conflict zones, as well as for public and private undertakings. In its recommendations, the Commission of Inquiry urged the Government to take the necessary steps to ensure that: (i) the relevant legislative texts, in particular the Village Act and the Towns Act, be brought into line with the Convention; (ii) in practice, no more forced or compulsory labour be imposed by the authorities, in particular the military; and (iii) the penalties which may be imposed under section 374 of the Penal Code for the exaction of forced or compulsory labour be strictly enforced.

Since then, the issue has been the focus of cooperation between the Government and the ILO for more than a decade. In 2002, an Understanding was agreed between the Government and the ILO, which permitted the appointment of an ILO Liaison Officer. Later in 2007, the Supplementary Understanding (SU) was signed to, in particular, set out a complaints mechanism with the objective “to formally offer the possibility to victims of forced labour to channel their complaints through the services of the Liaison Officer to the competent authorities with a view to seeking remedies available under the relevant legislation and in accordance with the Convention”. In addition, in 2012, the ILO concluded a Memorandum of Understanding (MoU) on a Joint Strategy for the Elimination of Forced Labour by 2015, which provided a basis for seven inter-related action plans. The ILO also participated in the Country Task Force on Monitoring and Reporting on underage recruitment issues.

(b) *Recent developments.* On 22 January 2018, the Government and the ILO signed another MoU, which agreed on a new Action Plan for the elimination of all forms of forced labour for the year of 2018. The Action Plan focuses on four priorities, including: (i) continued operation of the complaints mechanism; (ii) training and awareness raising on forced labour including for Government officials; (iii) capacity building to end forced labour at regional and state levels; and (iv) mobilization of tripartite partners for the prevention of forced labour in the private sector. In particular, the extension of the SU to 31 December 2018 will allow the complaints mechanism and further cooperation on forced labour to continue during the transition to the Decent Work Country Programme (DWCP), which was endorsed by the National Tripartite Dialogue Forum on 16 January 2018. During its most recent discussion on this case in March 2018, the Governing Body concluded that the extension of the SU and agreement on an updated further phase of the Action Plan for the Elimination of Forced Labour, together with the tripartite endorsement of the first DWCP for Myanmar, are very welcome and represent significant progress in pursuing ILO constituent priorities (GB.332/INS/8, paragraph 17). In September 2018, the first DWCP for Myanmar was agreed by the

Union Government, the employers' and workers' organizations and the ILO, which is considered by all parties as a major step forward for the country, signalling a process towards normalizing its engagement with the ILO and the International Community after decades of authoritarian rule and related problems of forced labour.

2. *Application of the Convention in law and in practice.* In its previous comments, the Committee noted with satisfaction the adoption of the Ward or Village Tract Administration Act of 2012, which repealed the Village Act and the Towns Act of 1907 (section 37) and makes the use of forced labour by any person a criminal offence punishable with imprisonment and fines (section 27A). However, the Committee noted that no action had been taken to amend article 359 of the Constitution (Chapter VIII – Citizenship, fundamental rights and duties of citizens), which exempts from the prohibition of forced labour “duties assigned by the Union in accordance with the law in the interest of the public” and could be interpreted in such a way as to allow a generalized exaction of forced labour from the population. The Government stated that the 2008 Constitution would be amended as required. Regarding the practical application of the Convention, the Committee welcomed the various measures undertaken by the Government in collaboration with the ILO, aimed at the eradication of forced labour in practice. These measures included the undertaking of an extensive range of awareness-raising activities across the country, support for the continued use of the SU complaints mechanism to enable victims of forced labour to seek redress, as well as holding to account a substantial number of military personnel for their continued use of forced labour. While taking due note of the progress made towards the elimination of all forms of forced labour, the Committee observed that the use of forced labour continued in Myanmar.

The Committee notes the Government's information in its report that, from March 2007 to June 2018, the complaints mechanism received a total number of 754 cases, of which 739 are related to underage recruitment, 13 to forced labour and 2 to other issues. 377 military personnel, including 64 officers and 313 soldiers of other ranks, were punished by military disciplinary action for underage recruitment and forced labour. Moreover, within the framework of the Action Plan for Prevention of Underage Recruitment, 448 military personnel were punished by military disciplinary action. Only one person was punished under section 374 of the Penal Code. The Committee also notes the Government indication that implementing directives for the Ward or Village Tract Administration Law of 2012 were issued for ward and village tract administrators and general administrative departments at all levels. Moreover, 18,191 awareness-raising workshops on forced labour were held, with 1,280, 307 participants from related townships of all states and regions. Training was also provided to military personnel for the prevention of underage recruitment. The Government further indicates that a special budget was allocated to the ward and village tract administration offices to prevent the use of forced or unpaid labour. Furthermore, measures were undertaken to ensure the enforcement of labour laws, particularly in the private sector. The labour law reform is also on-going with the technical assistance provided by the ILO. However, the

Committee notes that the Government's report does not contain any information on the progress made regarding the amendment to article 359 of Chapter VIII of the Constitution.

The Committee notes from the DWCP Diagnosis Report (published in September 2018) that the ILO has been working with both the Government and the Ethnic Armed Groups to secure commitment to ending forced labour, resulting in at least two non-State armed groups committing to eliminate the practice. Developments within the peace process are also likely to garner positive outcomes in terms of the elimination of forced labour, since the National Ceasefire Agreement of 2015 includes commitments to prevent forced labour of civilians and recruitment of children. The issue of forced labour was also highlighted at the first Union Peace Conference in August 2016. Consequently, there has been a significant decrease in the numbers of reported cases of forced recruitment for military purposes by both the security forces and armed groups. Similarly, forced recruitment for public works appears to be on the decline, as a result of increased awareness on the part of local authorities. However, the training of government personnel on the effective application of the law and public awareness campaigns needs to be further intensified. The Government has also indicated a desire to adopt a more decentralized approach with greater responsibility being placed with regional and state governments in the implementation of action plans and ensuring compliance with the law for the elimination of forced labour. Both the labour inspectorate and social partners also need to be capacitated to address the issue of forced labour in the private sector.

However, the Committee notes from the Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar of 17 September 2018 (A/HRC/39/CRP.2) that the use of forced labour by the *Tatmadaw* (the armed forces of Myanmar) persists, particularly in Kachin and Shan States, as well as among the ethnic Rakhine and Rohingya. In many instances, the *Tatmadaw* arrived in a village and took villagers directly from their homes or from the areas surrounding their village while they were fishing, farming, running errands or travelling. In some cases, this was done in an organized way, such as house by house, on the basis of a quota for each family, through a list, or with the cooperation of village leaders. The duration of forced labour varied from a few days to months. Persons subjected to force labour were required to perform a variety of tasks. Many of them were required to act as porters, carrying heavy packages including food, clothes and in some cases weapons. Other common types of work included digging trenches, cleaning, cooking, collecting firewood, cutting trees, and constructing roads or buildings in military compounds. Victims were also sometimes required to fight or participate in hostilities. Often, victims were given insufficient food of poor quality or were not able to eat at all. They did not have access to water and were kept in inadequate accommodation, including in the open air without bedding and without adequate sanitary facilities. Victims were subjected to violence if they resisted, worked slowly or rested. Particularly, female victims also faced sexual violence (paragraphs 258–273, 412–424 and 614–615).

The Committee takes note of the measures undertaken and the progress made by the Government regarding the elimination of forced labour. However, the Committee must note with *deep concern* the persistence of forced labour imposed by the *Tatmadaw* in Kachin and Shan States, as well as among the ethnic Rakhine and Rohingya. Moreover, the Committee observes that almost all the military personnel found involved in forced labour received only disciplinary sanctions, except for one person who was punished under section 374 of the Penal Code. The Committee reminds the Government that, by virtue of *Article 25* of the Convention, the exaction of forced or compulsory labour shall be punishable as a *penal* offence, and the penalties imposed by law shall be really adequate and are strictly enforced. *The Committee therefore urges the Government to strengthen its efforts to ensure the elimination of forced labour in all its forms, in both law and practice, particularly the forced labour imposed by the Tatmadaw. It requests the Government to take the necessary measures to ensure the strict application of the national legislation, particularly the provisions of the Ward or Village Tract Amendment Act of 2012 and the Penal Code, so that sufficiently dissuasive penalties of imprisonment are imposed and enforced against perpetrators in all cases. In this regard, the Committee requests the Government to continue providing information on the application in practice of the abovementioned legislation to ensure accountability, including the statistical data on cases of forced labour detected and the specific penalties imposed on perpetrators. It also requests the Government to continue providing detailed information on the measures taken to ensure that, in practice, forced labour is no longer imposed by the military or civilian authorities, as well as the private sector, such as awareness-raising and capacity building activities for local administrators, military personnel, other stakeholders and the public. Finally, the Committee requests the Government to provide information on any progress made regarding the amendment to article 359 of the Constitution. The Committee reiterates the firm hope that all the necessary measures will be taken without delay to achieve full compliance with the Convention so as to ensure that all use of forced or compulsory labour in Myanmar is completely eliminated.*

The Committee is raising other matters in a request addressed directly to the Government.

[The Government is asked to supply full particulars to the Conference at its 108th Session and to reply in full to the present comments in 2019.]