



## Governing Body

316th Session, Geneva, 1–16 November 2012

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Institutional Section

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FIFTH ITEM ON THE AGENDA

### Matters arising out of the work of the 101st Session (2012) of the International Labour Conference

#### Follow-up to the discussion on Myanmar: Implementation of the joint strategy for the elimination of forced labour, operation of the new labour legislation including freedom of association, impact of foreign investment on decent working conditions

##### Purpose of the document

The Governing Body is invited to endorse the proposed interim programme framework for technical cooperation activities in Myanmar; request the Office to report on progress in its implementation at the 319th Session (November 2013); and call upon member States to provide voluntary contributions to the ILO programme in Myanmar (see the draft decision in paragraph 67).

**Relevant strategic objective:** Promote and realize standards and fundamental principles and rights at work.

**Policy implications:** Follow-up to the resolution adopted by the Conference with further guidance to be provided by the Governing Body.

**Legal implications:** None.

**Financial implications:** Depending on the Governing Body's decision, the Office would call upon member States to provide voluntary contributions.

**Follow-up action required:** Depending on the Governing Body's decision, the Office would implement the proposed interim programme framework and report on progress in November 2013.

**Author unit:** Office of the Liaison Officer in Myanmar.

**Related documents:** Resolution concerning the measures on the subject of Myanmar adopted under article 33 of the ILO Constitution, adopted by the International Labour Conference at its 101st Session (2012); GB.316/INS/7.



## I. Introduction

1. At its 101st Session in June 2012, the International Labour Conference (ILC) adopted a resolution on ILO action regarding Myanmar. This followed up on the conclusions of the 313th Session of the Governing Body in March 2012;<sup>1</sup> the Report and, in particular, the recommendations of a Mission to Myanmar undertaken by the Governing Body Officers in May 2012;<sup>2</sup> and the conclusions of the Committee on the Application of Standards at its special sitting on the application of the Forced Labour Convention 1930, (No. 29), by Myanmar.<sup>3</sup>
2. This resolution, which can be found in Appendix I, effectively removed the restrictions on ILO cooperation with the Government of Myanmar that had been set by the Conference resolution of June 1999. It also suspended for 12 months the recommendation contained in paragraph 1(b) of the resolution adopted by the Conference under article 33 of the Constitution in June 2000.
3. The June 2012 resolution of the Conference calls on the Governing Body to examine in November 2012 a report prepared by the Office on ILO technical cooperation priorities for Myanmar, including:
  - (a) progress made in the implementation of the Joint Strategy for the elimination of forced labour in Myanmar;
  - (b) the operation of the new labour legislation, including freedom of association; and
  - (c) the impact of foreign direct investment on decent working conditions in Myanmar.
4. Technical cooperation priorities in Myanmar were to be identified in close consultation with the Government and the social partners in the country.
5. This report provides an overview of the current situation in Myanmar and addresses each of the above issues.

## II. Overview of the political developments in Myanmar

6. The Myanmar Government, which took office in March 2011, continues under the leadership of President U Thein Sein to carry out a complex political, economic and social reform and transition to democracy following decades of military rule. The upper and lower houses of Parliament continue to carry out an extensive legislative programme which addresses evolving governance, budgetary and institutional framework issues. Although the parliamentary opposition is still a relatively small minority, its influence has been considerably strengthened.

<sup>1</sup> GB.313/INS/6.

<sup>2</sup> ILO: *Provisional Records* Nos 2-2 and 2-2(Add.), ILC, 101st Session, Geneva, 2012.

<sup>3</sup> ILO: *Provisional Record* No. 2-4, ILC, 101st Session, Geneva, 2012.

7. Two major policy areas – the eradication of poverty and rural development – have been defined by the President as the core objectives of all policy initiatives. The Government has recognized that to this end comprehensive reform across all policy areas is required, together with an emphasis on the rule of law, thus empowering people and their communities, and promoting the development of a more inclusive society.
8. These extensive transition measures are complicated by the need to achieve peace between the ethnic communities of Myanmar. Since assuming office the Government has negotiated 11 ceasefire agreements with non-state armed groups. At the time of writing, these ceasefire agreements, although still fragile, were being respected. However, armed conflicts continue in the north of the country between government forces and the Kachin KIA/KIO. This has a destabilizing effect both on the ceasefire agreements elsewhere in the country and on the movement towards sustainable peace agreements offering political, economic and social solutions to long-standing differences.
9. A further destabilizing factor is the serious civil unrest between the Rakhine and Rohingya populations of Arakan State, which erupted in June 2012. The Government has declared its intention to ensure that the rule of law applies and that the rights of all parties will be recognized within the framework of the law. A commission of inquiry has been established to investigate the causes of the civil unrest and to recommend a way forward.
10. At the international level, major steps have been taken towards the removal of sanctions against Myanmar. The relations between the Government and the international community are moving to new levels of cooperation.
11. The Government remains strongly committed to reform, but the situation remains fragile, and many complex issues need to be addressed. As is to be expected in such circumstances, contradictions persist at the levels of both the development and the implementation of change and will take time to resolve. The country is addressing many issues from a low starting point, as the capacity of both those in authority and the general public to effectively deal with reform is limited. The need for long-term international support at all levels is considerable.

### **III. Progress in the elimination of forced labour**

12. The Ward or Village Tract Administration Law passed by Parliament in May 2012 makes the use of forced labour by any person a criminal offence punishable under the Penal Code. The legislation contains a definition of forced labour which is in conformity with the Forced Labour Convention, 1930 (No. 29).
13. On 1 May 2012, in his message to the first May Day celebration with tripartite representation, the President committed his Government publicly to the full elimination of all forms of forced labour and to the successful implementation of freedom of association. His statement was widely distributed through all media outlets.
14. On 5 July 2012, the Cabinet formally approved the action plan for the elimination of all forms of forced labour by 2015, which had been presented to the ILC in draft form in June 2012.<sup>4</sup>

<sup>4</sup> See document C. App./D.5(Add.1), ILC, 101st Session, Geneva, 2012.

15. The Commander-in-Chief of the defence services has issued orders to all military personnel advising that any breach of the law against the use of forced labour, including under-age or forced recruitment, will be considered a criminal offence prosecuted under the Penal Code.
16. The newly expanded Committee for the elimination of forced labour is chaired by the Minister of Labour and has the Deputy Minister of Labour, the Deputy Minister of Defence and the ILO Liaison Officer as co-secretaries. It has met on six occasions since the signing of the Memorandum of Understanding on action against forced labour in March 2012. Nine ministries and departments, notably including the military, have primary responsibility for the implementation of the action plan and the monitoring of progress.
17. A technical Committee of the Working Group has been established to ensure that the commitments of the Action Plan for the elimination of forced labour are addressed in a timely manner with appropriate coordination and inter-ministry cooperation. The Committee includes the ILO programme officer in Yangon.
18. Recognizing the direct link between armed conflict and the use of forced labour, the ILO is working as part of the Myanmar Peace Support Initiative (MPSI). This is a mechanism supported by the Myanmar Government and the ethnic nationality groups, which provides basic humanitarian and community rights services, through small pilot projects in areas that previously could not be accessed, to support the ceasefire and encourage the move from ceasefire agreements to comprehensive and sustainable peace agreements. The ILO's role will include rights-based training for non-state armed group liaison office personnel; the provision of technical support for small community-led labour-intensive infrastructure works with associated skills transfer; community empowerment through micro- and small business activity; and the provision of governance and coordination services to community-based organizations undertaking the various elements of pilot project activities. The ILO will play a similar role in the United Nations Country Team peace dividend programme currently under development. In this regard, two ILO/MPSI assessment missions for community consultation, needs analysis and engineering feasibility on proposed intensive labour programming were undertaken in East Bago during September 2012.
19. Work on the implementation of both the ILO Action Plan on under-age military recruitment and the Joint Action Plan on children in armed conflict under Security Council Resolution 1612 (signed on 27 June 2012) has begun. Procedures for the systematic identification, verification, release and discharge of under-age recruits have been agreed and the first group of 42 under-age recruits identified under this mechanism have been discharged. The ILO has accepted to support the UNICEF-led monitoring of the identification, verification and discharge process, and to take the lead responsibility with respect to under-age recruits classified as deserters and the associated accountability process, as well as for the economic reintegration element of the rehabilitation of discharged persons back into society.
20. Following attendance of a programme on investigation and prosecution of forced labour complaints at the International Training Centre of the ILO in Turin (Turin Centre), a focal group has been established as the day-to-day liaison mechanism for the management of forced labour complaints. This group consists of the Deputy ILO Liaison Officer, the Deputy Advocate General of the military, a senior police officer from the international crime/trafficking division and a staff officer from the Minister of Labour's Office. A senior representative of the Ministry of Fisheries, who has attended a further Turin Centre course on forced labour in the fishing sector, will also become a member of this group.

**21.** In conformity with the Action Plan the following activities have been undertaken since 1 June 2012:

- (a) Military orders have been issued instructing that civilians are not to be used for any military support activity, including portering, sentry/guard duty and camp construction/maintenance in conflict zones. Further orders have been issued instructing that any such civilian support to military operations in non-conflict zones should be freely entered into and provided in the framework of paid employment or service contracts. Practical guidelines for military personnel to support these orders are currently being drafted. Two ILO presentations have been made to military in-service training programmes.
- (b) Twenty-two ILO forced labour awareness-raising seminars for members of Parliament, representatives of community-based organizations and members of the public have been undertaken in Yangon with a total of 2,570 participants.
- (c) Joint Ministry of Labour/ILO awareness-raising seminars were held in Shwe Pan Taw Village Tract in Aunglan Township with 219 villagers in attendance, and in Aunglan Township with 81 representatives of civilian and military Government authorities. This location has been identified as a forced labour “hot spot” on the basis of the complaints in the database. A second targeted activity of this kind to be held in Bilin Township, Mon State in December 2012, is at the planning stage.
- (d) A Joint Ministry of Labour/ILO awareness-raising seminar was held in Dewai Township, Tarintharyi Region, with 85 members of the Regional Parliament and representatives of the Regional Government and military authorities, led by the Chief Minister of the Regional Parliament. The next seminar of this kind proposed for Kayah State is planned for December 2012.
- (e) Five presentations have been made at in-service training sessions of members of the police force, and it has been agreed that such presentations will be made on an ongoing basis.
- (f) An initial presentation has been made to senior fire service personnel and it has been agreed that similar presentations will be made at in-service training sessions on an ongoing basis.
- (g) An initial presentation has been made to the General Administration Department Township administrators at their in-service training session and it has been agreed that similar presentations will be made on an ongoing basis.
- (h) A further presentation has been made to in-service training sessions of judges under the Supreme Court structure.
- (i) A joint Ministry of Labour/ILO awareness-raising seminar has been held for representatives of national coverage non-governmental organizations (NGOs).
- (j) Three seminars for the field staff of the United Nations High Commissioner for Refugees (UNHCR) have been held in Tarintharyi Region and Mon and Kayah States.
- (k) Separate seminars for journalists and legal practitioners are scheduled for November 2012.

- (l) The forced labour brochure has been prepared in seven languages with 1,209,277 additional copies distributed since June 2012 through the military, the General Administration Department, the Ministry of Labour, and the Ministry of Information and at various seminars and workshops.
  - (m) The brochure has been reproduced in full in Myanmar language newspapers and journals, and the Ministry of Information is currently working to have it printed in ethnic language publications.
  - (n) Nationwide radio and television broadcasts have included the full brochure content, explaining what forced labour is and how citizens can exercise their rights through the ILO complaints mechanism if they are subjected to forced labour. This began in October 2012 with multiple exposures daily.
  - (o) The Director of the International Programme on the Elimination of Child Labour (IPEC) undertook a mission to Myanmar from 8 to 15 October 2012 to discuss with the Government the potential ratification of the Worst Forms of Child Labour Convention, 1999 (No. 182), and to explore the potential for an in-country child labour project. An IPEC mission in September 2012 undertook initial scoping of economic reintegration needs and started to map vocational training availability.
  - (p) Allegations, as documented in the comments of the ILO supervisory bodies, have been identified, and their joint investigation is about to start. The objective is to achieve appropriate remedy to those allegations, if verified.
  - (q) The Ministry of Labour has started the appointment of labour officers with responsibility for major industrial and energy projects. The first awareness-raising seminar for project management, contractors and subcontractors together with associated civilian and military Government personnel is expected to be held late December 2012 or early January 2013.
  - (r) At the request of the President's Office, comprehensive documentation on "dos and don'ts" is in preparation for distribution to all Government personnel.
  - (s) A procedure for the coordinated internal management of complaints relating to trafficking for forced labour between the ILO and the responsible Myanmar Government/police personnel is in place, with linkages to ILO projects in receiving countries to support investigations.
  - (t) A meeting with Ministry of Defence, Ministry of Agriculture and Land Records Department personnel will be held in late November or early December 2012 on the issue of land acquisition and land confiscation.
  - (u) Consultations between the ILO and the Myanmar Human Rights Commission have been held for the purpose of supporting the Commission in developing its working mechanisms and cooperation in the management of complaints.
- 22.** These developments testify that there is a significant degree of commitment by all parties to the implementation of the Action Plan for the elimination of forced labour. However, this is only the beginning of a process to develop the foundations for ongoing concerted work to realize the stated objective. Although there are continuing indications that the practice of using forced labour is being reduced, complaints continue to be received under the mechanism set up by the 2007 Supplementary Understanding. Reports continue to be received of the requisitioning of porters and other uses of forced labour in association with both armed conflict and civil unrest. This again reflects the transitory nature of the situation in the country. Despite the introduction of sound policies and the issuance of

orders, one can expect that contradictory behaviour will continue to exist on the ground. Every complaint received is raised with the authorities for appropriate action. In addition to the educational effect, the maintenance of a firm, principled approach is necessary, with an emphasis on the rule of law, justice for complainants and accountability for perpetrators.

- 23.** Two lawyers, U Robert Sann Aung and U Aye Myint have had their legal licences reinstated. One lawyer, U Pyo Phu, whose licence was revoked following his involvement in a case that was taken up through the ILO complaints mechanism, still awaits the reinstatement of his professional rights.
- 24.** Since the 2012 session of the International Labour Conference, nine of the 11 imprisoned labour activists, whose names have been on the ILO list, have been verifiably released. This leaves two persons, Naw Bey Bey and Nyo Win, as still unaccounted for.
- 25.** Between 1 June and 11 October 2012, 158 complaints have been received under the complaints mechanism. This compares with 148 received over the same period in 2011. Of the complaints received, 108 were individual cases of under-age recruitment, with the balance encompassing 25 forced labour complaints with multiple complainants, ten allegations of human trafficking and 15 forced adult recruitment complaints.
- 26.** The feedback from communities nationwide indicates that the actual incidence of the use of forced labour continues to diminish. Furthermore, a growing number of forced labour incidents are apparently resolved at community level without the need to have recourse to the ILO complaints mechanism. Community members are increasingly comfortable with raising incidents directly with the responsible authority.
- 27.** The authorities continue to respond positively to complaints submitted. Some 217 cases are in process following their submission to Government and 391 cases are currently under assessment or require further information before a final assessment can be made prior to their possible submission. Additional staff has been engaged locally to address this backlog of cases.
- 28.** During the current year, 46 under-age recruits have been discharged which brings the total of under-age recruits released/discharged from the military under the ILO complaints mechanism to date to 261. This figure includes 32 under-age recruits convicted of desertion who have been released from prison and discharged.
- 29.** Looking at the complaints of under-age recruitment received in 2012, compared with previous years, less of them relate to recruitments that actually took place in 2012. This trend will be closely monitored as it could indicate that the Defence Service's strengthening of recruitment procedures is actually stemming the flow of new under-age recruits.
- 30.** A potential partnership between the ILO and the World Bank is being discussed under which the ILO would lend its support to the National Community Driven Development Project of the Bank, which aims at improving access to, and the use of, basic rural infrastructure. This support would include forced labour monitoring through the use of existing complaints mechanism procedures and the associated facilitators network.



## IV. Developments regarding freedom of association

31. The ILO technical cooperation activities to promote freedom of association officially began with the arrival of the Chief Technical Adviser (CTA) for the project, Ross Wilson, in Yangon on 18 June 2012. Prior to that the ILO, including the Liaison Office in Yangon, had been dealing with issues relating to the new legislation and its implementation for several months. The CTA was assisted by an intern during July and August, and a project assistant was appointed from 23 July 2012. General administrative support is provided from within the Liaison Office in Yangon.
32. The relevant new laws are the Labour Organization Law, 2011, and the Settlement of Labour Disputes Law, 2012. Both of these came into force in April 2012 together with their accompanying regulations.
33. Objectives for the ILO's freedom of association project were formulated at an early stage as follows:
- (1) To support the development of strong and representative organizations of workers and employers to achieve sustainable labour market relationships, institutions and practices, and an efficiently and fairly functioning industrial relations system, by ensuring:
    - that workers and employers of Myanmar are aware of the rights of freedom of association guaranteed by the ILO Constitution and by the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87);
    - that all workers and employers who exercise their freedom of association rights, are able to do so in full compliance with the requirements of Convention No. 87; and
    - that the Myanmar Government laws and processes support freedom of association in law and in practice.
  - (2) To coordinate work with other organizations and, if possible, to develop a joint strategic plan to ensure coordinated objectives and delivery.
34. The project has been funded out of the ILO's regular budget and steps have been pursued to secure donor funding. During the first three months, the project has focused on the aspects described below.

### A. Establishing relationships

35. Very good working relationships have been established with the labour activists and emerging leaders of the new unions; the main business organization, the Republic of the Union of Myanmar Federation of Chambers of Commerce and Industry (RUMFCCI); the ministers and officials of the Ministry of Labour; and other relevant organizations working in this area, such as the Myanmar Development Resource Institute (MDRI). The local media has also shown a keen interest, and it has provided extensive coverage of the project workshops.

## **B. Developing resources and an administrative system and database**

**36.** The following resources have been developed and translated into the Myanmar language:

- Fact sheets on:
  - forming basic labour organizations under the Labour Organization Law;
  - the rights and responsibilities of Executive Committee members under the Labour Organization Law;
  - the right to strike and lockout under the Labour Organization Law;
  - the dispute resolution process under the Settlement of Labour Disputes Law.
- A basic leaflet on the Labour Organization Law, which will be translated into the Myanmar language and ethnic languages (initially Kayin-Sakaw and Palan-Shan, and Mon). A further leaflet is also being prepared on the Settlement of Labour Disputes Law.
- A “How to form a labour organization” kit, with a model labour organization constitution.

**37.** Early work is also under way for the preparation of a promotional DVD and radio adverts. The Deputy Minister of Labour has confirmed his support for this, along with television advertising if this is possible.

**38.** A database of registered employer and labour organizations has also been developed.

## **C. Trial use of training materials and formats**

**39.** The following workshops/seminars have been held:

- a problem-solving workshop with Ministry of Labour registrars and township officials (50 attendees), in Yangon;
- a training seminar for newly appointed members of the tripartite regional arbitration bodies and the National Arbitration Council (50 attendees), in Yangon;
- a seminar for employers and members of the RUMFCCI on the Labour Organization Law and the development of a new industrial relations system (60 attendees), in Yangon;
- a conference/workshop for Labour Organization Executive Committee members and labour activists (280 attendees), in Yangon;
- a tripartite workshop on the new industrial relations system “Partnerships for Development” (90 attendees), in Yangon;
- a tripartite workshop on the new industrial relations system “Partnerships for Development” (90 attendees), in Mandalay;
- a labour activists’ and organizers’ workshop (50 attendees), in Yangon;

- a women's tripartite workshop (50 attendees), in Yangon;
- a tripartite workshop on the new industrial relations system "Partnerships for Development" (80 attendees), in Bago.

#### **D. Advisory activities**

40. Advice has been provided to workers and activists, and representations on behalf of workers have been made. There is a steady stream of cases, both by mail and in person (usually groups), on which advice and assistance are sought by workers and their representatives (lawyers and activists). Advice is provided and representations are made where appropriate.

#### **E. Funding**

41. Funding has initially been secured from the United States Department of State for a core training programme for the next year. Discussions are ongoing with several other potential donors.

#### **F. Advice to the Ministry of Labour**

42. Opinions are regularly sought by the Director-General of the Ministry of Labour, usually on how to interpret and apply the new laws. In addition, an analysis of the Ministry's training needs has been undertaken, particularly of staff involved in the implementation and enforcement of the new laws, including the functioning of the new conciliation and arbitration institutions.

43. The 2012–13 programme plan incorporates and envisages the following:

- (a) The core training project funded by the US Department of State began on 1 October 2012. The project will fund a programme of more than 86 training days for participants from the Government and employers' and workers' organizations, and will include tripartite activities.
- (b) Funding from the Italian Government has enabled the Turin Centre to provide a further 12 days of training, expected to be delivered in early 2013.
- (c) In addition to this core programme, the intention is to develop the following additional projects, subject to available funding:
  - An enterprise-level training and relationship-building programme for employers and leaders of labour organizations, which will provide more "hands on" assistance as a follow-up to the core training programme. As part of a proposed broader ILO best practice modelling project, this project would also have a sector-specific dimension, which will be piloted in the garment sector where there is an opportunity to improve standards as the sector grows with access to US and EU markets.
  - A training and capacity-building project for the relevant staff of the Ministry of Labour and the new labour institutions, particularly the conciliation and arbitration bodies and the Arbitration Council. A training needs assessment has been completed and donor funding is being sought to provide the training and mentoring needed, which will be a substantial programme over several years.

44. There has been good overall cooperation between the key organizations. The Minister and Deputy Minister of Labour, and the Directors-General of Labour have provided active and consistent support for the ILO project, as has the Ministry of Labour staff around the country. The RUMFCCI has ensured employer participation in ILO workshops. The labour activists and emerging leaders of the new labour organizations have demonstrated enthusiasm for the knowledge and skills that the ILO programme aims to provide.
45. The registration process appears to be operating reasonably well. The Ministry of Labour has sought advice, both through workshops organized with the Town Registrars, and by turning directly to the ILO with requests for opinions in writing on “unusual cases” that have arisen. These usually concern how to understand and apply the new law and to provide guidance to the Ministry using the Digest of decisions of the ILO Committee on Freedom of Association. There have been few complaints regarding the registration process.
46. As of 24 September, there were 264 labour organizations (workers’ unions) registered plus the Myanmar Seafarers’ Federation. Altogether 13 employers’ organizations have been registered. A substantial proportion of the labour organizations are made up of young workers (many of whom are women) on the industrial estates around Yangon. There are few registrations so far beyond the Yangon, Bago and Mandalay regions. However, concern has been expressed about reports of dismissals of some labour organization leaders by some employers.
47. A significant development has been the return to Myanmar in September of U Maung Maung and U Than Lwin, respectively the General Secretary and Vice-President of the Federation of Trade Unions – Burma (FTUB). They have returned to Myanmar as individuals but with assurances that they will be able to undertake union work in accordance with Myanmar laws.
48. The low number of registered employers’ organizations is of concern to the main business organization, the RUMFCCI, which has participated actively in ILO workshops and other activities to date. Both its President, U Win Aung, and the Joint General Secretary, Daw Khine Khine Nwe, have been very supportive of ILO work and this may ensure that the number of employers’ organizations registered increases. However, there has been a negative response from some employers, which seems to come mainly from foreign-owned companies on the industrial estates. A second ILO ACT/EMP mission to Myanmar is scheduled for 22–26 October 2012 for discussions with the RUMFCCI in respect of potential capacity-building support.
49. As is probably inevitable with new legislation and institutions, there have been implementation issues. The following is a summary of those encountered so far:
- (a) The level of knowledge and understanding of the concepts underlying the new law is low, which is not surprising in a country where freedom of association had not been permitted for 50 years. Education and training programmes have to be pitched at a very basic level. The scale of the training needed to develop a modern industrial relations system is extensive and long term. It is expected that there will be education and training provided by organizations other than the ILO, and it is desirable that there should be coordination with these organizations.
  - (b) The lack of any education or training programme in advance of the new laws coming into force has resulted in a variety of spontaneous actions and reactions. There was quite a spate of initial strike action as workers exercised their new rights (but usually falling outside the law as the details of its provisions were not available to them), and there have been some negative reactions from certain employers who have refused to

recognize the intention of the new law or the labour organizations that have been set up in their workplaces. In a number of cases this has resulted in discrimination against the union leaders as well as dismissals. The ILO education and training programme aims at changing these attitudes among a number of employers, but some may be more entrenched.

- (c) There has been a similar lack of training for the members of the new institutions, the conciliation bodies, the arbitrations bodies and the Arbitration Council, all of which are tripartite. Following the training needs assessment recently undertaken for the Ministry of Labour, the intention is to develop training and mentoring programmes for the members of these bodies.
- (d) Dismissals and other discriminatory actions have been undertaken by some employers against workers who become involved in organizing labour organizations. Reports from new labour organization leaders indicate that these dismissals are widespread and are having a deterrent effect on workers who would otherwise form or join labour organizations. In addition, the legal protection applicable to labour organizations against discrimination and dismissal is weak and in any event does not appear to apply prior to registration. Few cases have been taken to the arbitration bodies, and the cost of legal representation makes this practically impossible for many workers. Training of lawyers is being undertaken by the ILO, and steps are being taken by the International Trade Union Confederation (ITUC) to establish a legal advocacy service, but amendments of the new laws to strengthen the legal protection of workers will probably need to be considered. The CTA has discussed the possibility of an amendment with the Director-General of the Ministry of Labour, and he has advised that there may be an opportunity to strengthen the legal protection under a new law providing for standard provisions in the employment contract between an employer and employees which is currently being developed.
- (e) Doubts have been raised about the enforceability of decisions of the arbitration bodies and the Arbitration Council, and of agreements reached through the conciliation body. However, a recent discussion between the CTA and the Director-General clarified the legal processes of enforcement. At the present time the emphasis of the Ministry of Labour has been on education and persuasion to achieve voluntary compliance. However, while education and training are important, and emphasizing them is appropriate in the implementation phase of the new laws, in the end the rights and protections provided by the new laws have to be enforced by legal processes.

## V. The Government's broader labour market policy priorities

50. On 9 October 2012, the Ministry of Labour held its first tripartite consultations on its policy and programme priorities. Some 14 government ministries and departments, 12 employer representatives and 18 worker representatives were in attendance, supported by ILO technical staff. A high-level delegation of the ITUC, led by General Secretary Sharan Burrow, was able to briefly join the consultations and took the opportunity to meet Worker representatives present. The consultation was framed around the Ministry's responsibility to support national policy objectives and was therefore held under the heading of "Decent work as a tool for poverty alleviation and economic development". The Ministry's discussion paper on which the consultation discussion was based is attached as Appendix II.

51. The Minister of Labour opened the meeting. In particular the following quote from his speech set the scene for constructive discussion with active participation from all groups:

You might be aware that the objective of organizing this workshop is to present the policy priorities of the Ministry of Labour to Government, employers and workers, to identify areas concerned from their own perspectives, priorities and areas of convergence with potentiality of cooperation or partnership activity for creating decent work as a tool for poverty alleviation and economic development. In doing so, we hope to contribute to the current implementation of the National Poverty Alleviation and Economic Development Plan.

52. The key priorities as outlined in the discussion paper prepared by the Ministry were endorsed by all parties, who reaffirmed that the elimination of forced labour and the effective implementation of freedom of association must remain as fundamental priorities. All three groups also stressed the critical importance of basic education, vocational training and skills development; employment policy; the legislative and regulatory framework, including minimum standards of employment; SME development; a balanced approach to both agricultural and industrial development; and the critical need for accurate data from which to work.

## **VI. The impact of foreign direct investment**

53. The Foreign Direct Investment Law currently remains in Parliament, and it has been the subject of considerable debate, even though the full content of the draft law is not yet readily available. There is considerable interest in Myanmar from potential investors across all sectors. It can be expected that there will be considerable inflows of investment over the coming months across the board, with a significant emphasis on the extractive, construction, tourism and garment sectors. However, at this stage relatively few foreign investors have actually decided to enter the market in the absence of the investment law.
54. A number of conferences on corporate social responsibility (CSR) have been run and a number of CSR initiatives have started. Notably, there is a major initiative on the part of the RUMFCCI. The UN Global Compact has been launched in Myanmar with over 100 local companies signing up.
55. Some understandable concerns have been expressed on the impact of an influx of foreign investment on local businesses and the employment situation, particularly in respect of the potential loss of skilled staff, the potential of major wages competition and possible job losses if local businesses fail to remain competitive. A range of initiatives, including the potential establishment of investor forums, the facilitation of voluntary monitoring mechanisms and full best practice modelling in a selected industry or industries are currently under discussion between the ILO, the Government of Myanmar, foreign investors and interested member States.
56. A more comprehensive report on developments, expectations and responses regarding the impact of foreign direct investment on decent working conditions will be made available for the March 2013 Governing Body meeting.

## **VII. ILO programme framework for Myanmar**

57. In light of these developments, activities and discussions in the few months following the 2012 session of the ILC, and in response to the resolution adopted by the Conference, the ILO (the Liaison Office in Yangon, supported by both headquarters and Regional Office

specialists) has developed a comprehensive programme of work to support the identified priorities over the next 18 months with the following three main objectives:

- (a) Implementation of the Action Plan for the eradication of forced labour in Myanmar by the end of 2015, with the stated aim of the Government being to achieve this target in the course of 2014.
- (b) By the end of 2013, respect for the rule of law will have advanced significantly in Myanmar, with an immediate and specific focus on achieving and strengthening freedom of association.
- (c) By the end of 2014, a Decent Work Country Programme (DWCP) for Myanmar will become operational, underpinned by tripartite consensus and aimed at tackling the decent work and employment challenges facing the country.

**58.** Within the context of these objectives, the ILO will implement a number of interrelated initiatives and projects under one overall programming framework. This will build on the existing activities in Myanmar, funded by the regular budget as well as voluntary funding provided by donors. The framework will provide for a comprehensive overall workplan, common monitoring and evaluation and shared management costs.

**59.** Building on the engagement with Myanmar over the past decade and taking into account the recent developments and the ILC decisions, the programme framework covers the period from November 2012 to April 2014. The immediate focus remains on the fundamental principles and rights at work, notably through: (i) a scaled-up freedom of association programme; and (ii) the continued implementation of the Memorandum of Understanding with the Government on forced labour. Preparatory work will start in other areas, leading to a future DWCP.

**60.** The programme is structured around three objectives, with a total of ten interlinked components, managed by the ILO representative in Yangon with support from across the ILO. Detailed resource requirements are being worked out and will be the basis for resource mobilization efforts with the ILO's donors. The sequencing and scope of interventions will be tailored to the resources available.

## Forced labour

**61.** The Memorandum of Understanding on forced labour is organized around action plans that are monitored by the Joint Working Group. Four programme components will support these different action plans:

- (a) **Continued operation of the Forced Labour Complaints Mechanism**, including its extension to ethnic areas previously inaccessible, in particular the Karen, Rakhine, Shan, Mon, Kachin, Chin and Kayah regions. The awareness-raising effort will continue, with a media and communication campaign and the establishment of a hotline.
- (b) **Trafficking, domestic workers and labour migration:** One of the reasons forced labour occurs is for human trafficking and/or use as domestic workers. Building on existing ILO anti-trafficking work in the Association of South-East Asian Nations (ASEAN) region, a Myanmar-specific component will replicate the approaches that work successfully in neighbouring countries.

- (c) **Child labour, including the reintegration of underage recruits from the army and militias:** Building on joint UN work targeting underage recruits, the ILO will address those who deserted from the army and will provide support for the socio-economic reintegration of released child soldiers into their communities. Initial work will also be undertaken on broader child labour interventions in support of the possible ratification of Convention No. 182.
- (d) **Forced labour and the peace process:** By investigating unresolved allegations of forced labour in previous conflict zones, the ILO will contribute to restorative justice and community-level reconciliation, important elements for the consolidation of the peace process. The ILO will further be involved, on a pilot basis, in employment-intensive schemes at community level as part of wider efforts to consolidate the peace process through concrete benefits reaching the people.

## Freedom of association

62. The newly formed organizations require capacity development support and training to evolve into strong democratic organizations that can engage in bipartite and tripartite negotiations in enterprises, sectors and nationally. At the same time, continued challenges with the effective implementation of the legislation, leading to conflicts between workers and management, need to be addressed to strengthen social dialogue and democratic labour market institutions. The ILO's work must be scaled up and have expanded coverage. Using a training of trainers' modality, the programme will reach more organizations and people as well as lay the groundwork for sustainable training capacities within the organizations. A specific focus will be on strengthening trade union coordination at sectoral, regional and national levels as well as on specific interventions to foster young trade union leaders. Under this component the ILO will also ensure coordination with a number of training initiatives from other development partners targeting the social partners in Myanmar.

## The inception phase for DWCP

63. Following the tripartite workshop in October 2012, the social partners and the Ministry of Labour reached provisional agreement on an agenda called "Decent Work – a tool for Economic Development and Poverty Reduction", identifying six key policy areas. Two of these are taken forward under objective 1 (forced labour) and objective 2 (freedom of association and social dialogue) above. For the other four, the ILO will focus on preliminary assessments, capacity development and support to policy development as a basis for larger programmes.
- (a) **Enhanced employment opportunities, especially for youth:** The ILO will assist with the Labour Force Survey, a key point of departure for employment policy development. In addition a "School to work transition" study is planned to identify the issues for young people coming out of education and entering the labour market. Building on this, programmes in the area of skills development and job placement/career guidance can be undertaken.
  - (b) **Labour legislation and labour market governance:** Beyond the work on freedom of association, support has been requested to build the capacity of the Ministry of Labour on labour administration and labour inspection, guided by tripartite consultations. In conjunction with this, progress will also be made on labour law reforms, including on wages, skills, occupational safety and health and gender equality.



- (c) **Socially responsible enterprise development:** Building on existing ILO tools and experience, dedicated entrepreneurship programmes will be proposed, targeting especially vulnerable groups while assessing the feasibility of broader enterprise development initiatives.
- (d) **Labour migration:** Building on anti-trafficking work, the ILO will assist the Government in developing migration policy, including the legislative framework, the licensing of recruitment agencies, pre-departure training and engagement with receiving countries.
- (e) **Employment dimension of trade and investment:** As foreign direct investment and increased international trade expands, it will be important to ensure that this leads to positive outcomes for the citizens of Myanmar, in terms of jobs but also in contributing to overall development. The ILO will work with the Government and industry to address employment and decent work challenges in specific sectors, possibly targeting the garment industry, the fishery sector (aquaculture) and also tourism.
64. Across the programme, a database of planned and conducted training courses will be set up, covering planned and actual participants, overviews of curricula, evaluations, etc. This will inform each of the components in seeking synergies in planning and implementing training activities. It will also provide a foundation for a broader capacity assessment of constituents as a basis for future programme development.
65. Existing ILO guidelines on gender mainstreaming will be used across the programme, including full sex disaggregation of all data and indicators. A participatory gender audit of the programme will allow the identification of areas where further progress on gender mainstreaming is required.
66. In addition to this programme of work, and in view of the relationships developed over the years between the ILO, the Government, non-state armed groups and ethnic nationality organizations, the ILO has been requested to accept, on an interim basis, responsibility as being the liaison between the United Nations Country Team, the UN Peace Building Fund and the Myanmar Peace Centre. The aim is for the UN to support the establishment and setting up of this Centre. This transitional responsibility, which also extends to liaison coordination with the non-state armed groups, coincides well with and builds upon the overall efforts the ILO is undertaking on the eradication of forced labour. Eventually a UN peace specialist will take up his/her appointment in the UN Resident Coordinator's Office to take forward this engagement.

### **Draft decision**

#### **67. The Governing Body:**

- (a) *endorses the proposed interim programme framework for technical cooperation activities in Myanmar;*
- (b) *requests the Office to report on progress in its implementation at the 319th Session (November 2013); and*
- (c) *calls upon member States to provide voluntary contributions to the ILO programme in Myanmar.*



## Appendix I

### Resolution concerning the measures on the subject of Myanmar adopted under article 33 of the ILO Constitution

The General Conference of the International Labour Organization, meeting in Geneva at its 101st Session, 2012,

Taking note of the measures previously adopted by the Conference with a view to securing compliance by Myanmar with the recommendations of the Commission of Inquiry that had been established to examine the observance by Myanmar of its obligation in respect of the Forced Labour Convention, 1930 (No. 29), namely the resolution on the widespread use of forced labour in Myanmar, adopted by the International Labour Conference at its 87th Session (June 1999) (the “1999 resolution”), and the resolution concerning the measures recommended by the Governing Body under article 33 of the ILO Constitution on the subject of Myanmar, adopted by the International Labour Conference at its 88th Session (May–June 2000) (the “2000 resolution”),

Having been informed by the Officers of the Governing Body, the International Labour Office, member States and other international organizations of the progress made by Myanmar towards complying with the recommendations of the Commission of Inquiry,

Taking note of the conclusions adopted on 4 June 2012 by the Committee on the Application of Standards resulting from the discussion at its special sitting on Myanmar at this session of the Conference,

Considering that maintaining the existing measures would no longer help in attaining the desired result of compliance with the recommendations of the Commission of Inquiry;

1. *Decides* that the limitation of ILO technical cooperation or assistance to the Government of Myanmar, enunciated in paragraph 3(b) of the 1999 resolution is lifted with immediate effect to enable the ILO to assist the Government, employers and workers on a variety of issues coming within the ILO’s mandate;

2. *Decides* that the measure enunciated in paragraph 3(c) of the 1999 resolution is also lifted to allow the Government of Myanmar to participate in ILO meetings, symposia and seminars in the same way as any other Member, with social partners from Myanmar receiving the same treatment;

3. *Determines* that the remainder of the 1999 resolution ceases to apply with immediate effect;

4. *Suspends* for one year the recommendation contained in paragraph 1(b) of the 2000 resolution with immediate effect. The International Labour Conference will review the recommendation again in 2013 in the light of information available to it in respect of the elimination of forced labour in Myanmar. The Governing Body is requested to include this item on the agenda of the 102nd Session of the Conference (2013);

5. *Requests* the Director-General to prepare for the November 2012 session of the Governing Body a report on ILO technical cooperation priorities for Myanmar, including the resources required. The report is to include progress made in the implementation of the Joint Strategy for the elimination of forced labour in Myanmar, the operation of new labour legislation, including freedom of association, and on the impact of foreign investment on decent working conditions in the country;

6. *Invites* the Governing Body to organize at its March 2013 session a discussion, with a view to making any recommendations it deems appropriate, on arrangements for consideration of all relevant issues concerning Myanmar at the 102nd Session of the Conference (2013);

7. *Requests* the International Labour Office to give urgent attention to the identification of technical cooperation priorities in Myanmar in close consultation with the Government and social partners in the country. This should be in addition to the established priorities of effective and full realization of freedom of association and the elimination of forced labour, particularly through the effective implementation of the Joint Strategy. It is noted that the Government has acknowledged the need for immediate action on the Joint Strategy, with a view to its full implementation before the declared target date;

8. *Calls upon* Members and international organizations to make available to the ILO the financial resources necessary for it to provide the technical assistance that Myanmar requires to meet the opportunities and challenges of its rapidly changing circumstances;

9. *Invites* the Governing Body and International Labour Office to make adequate budget provisions to support the ILO Office in Myanmar on a reasonable and stable basis;

10. *Requests* Members and international organizations to continue following closely the situation and share with the ILO Liaison Officer any information on the occurrence of forced labour in Myanmar;

11. *Requests* that the ILO coordinate its work with UN system and other international organizations to seek their support for ILO priorities in Myanmar;

12. *Requests* the Government of Myanmar to facilitate the enlarged scope of the activities of the International Labour Office in Myanmar through appropriate arrangements;

13. *Notes* that the provisions of paragraph 1(c), (d) and (e) of the 2000 resolution have ceased to apply;

14. *Invites* the Director-General to communicate to relevant international organizations referred to in article 12, paragraph 1, of the Constitution, the text of this resolution.

## Appendix II

### **Decent work – A tool for economic development and poverty reduction. A discussion paper jointly initiated by the Ministry of Labour (MOL) and the International Labour Organization (ILO), for consultation with wider stakeholders**

The Government, through the Ministry of Labour, has expressed the wish to put in place an agreed “Decent Work Country Programme” (DWCP), as it is seen as a durable mechanism to combat poverty and support economic development. It is understood that some considerable preparatory work is required to achieve this desirable development objective and that the process will take some time. In the interim a flexible, inclusive planning process is proposed to identify the fundamental priorities necessary for the eventual establishment of a DWCP. The first tripartite consultation meeting to begin this process is planned for to take place on 9 October 2012.

In that forum it is expected that stakeholder representatives will debate those priorities, express views on their relative importance and provide suggestions for the development of the plan of action required to take the first concrete steps toward the formulation of a DWCP.

The following principles are recognized in this regard:

- (1) The plan of action must fit the Government’s overall macro-policy objectives – supporting and adding value to the continuing formulation and application of national plans.
- (2) The plan of action, whilst identifying and addressing current priorities, must be a living document with the flexibility for adaption to inevitable ongoing change.
- (3) The plan of action whilst complying with the National Constitution and Myanmar Law will meet the principles of the core international labour standards and other Conventions and international standards as ratified by the Government of Myanmar.
- (4) Procedures for consultation with the social partners, other relevant Government Ministries and civil society will be established for both the development and application of the plan of action. (Note: given the infancy of both employers’ and workers’ labour organizations/unions and the absence, as yet, of any representation selection structures special efforts to gain as much, and as wide as possible, input from all stakeholders will need to be developed.)

The Plan of Action will be developed against the following political/economic/social background:

- (1) Myanmar, since the establishment of the current Government in March 2011, has, under the leadership of President U Thein Sein, commenced a programme of national reconstruction.
- (2) The Country is in the early stages of transition on multiple fronts:
  - (a) A political transition from military authoritarian regime to a more inclusive democratic society.
  - (b) An economic transition from a controlled, insular economy to a more open internationally competitive market economy.
  - (c) A social transition from an environment of central control maintained by strict discipline and largely devoid of individual rights to one which is decentralized,

with increased individual and collective freedoms and rights, governed by a legislative framework.

- (3) To support these transitions Government Policy has targeted amongst other things the following key objectives:
  - (a) Good governance and rule of law.
  - (b) National reconciliation through Peace process.
  - (c) Rural Development.
  - (d) Poverty reduction.
- (4) Major work therefore continues in such areas as:
  - (a) Institutional capacity building – political, economic and social.
  - (b) Legislative development.
  - (c) Negotiation of ceasefire agreements and their evolution to sustainable peace agreements encompassing political, economic and social imperatives.
  - (d) Eradication of corruption.
  - (e) The creation of an environment conducive to responsible investment – domestic and foreign.
  - (f) The empowerment of socially cohesive communities and community structures based on individual and collective rights and responsibilities so that people are better informed on the democratic process and more able to take part.
- (5) For its part the Ministry of Labour has identified the following key policy areas within its mandate which support the above and which it believes should form the basis of the plan of action.
  - (a) A continued strong commitment to Convention No. 29 and the March 2012 MOU for the elimination of all forms of forced labour by 2015 or earlier encompassing the following areas as provided for in the comprehensive action plan approved by Cabinet on 5 July 2012.
    - (1) Extensive awareness raising/educative activity amongst all sectors of society, Government Authorities (military and civilian) and the general public on the law against forced labour in all of its forms, their rights and responsibilities under that law and how to exercise same.
    - (2) The continued operation of the Government/ILO forced labour complaints mechanism as a tool for provision of both justice and accountability.
    - (3) Specific projects in targeted areas such as forced and bonded child- labour, underage recruitment into the military, trafficking for forced labour, forced labour in the private sector including domestic work and the varied forms of military orientated forced labour.
    - (4) Institutional development to support the rule of law including within the justice system, local government and the human rights commission.
    - (5) The finalization of as yet unanswered cases in the ILO supervisory system.
    - (6) Support of the peace process through community led intensive labour projects in ceasefire areas as best practice modelling against the use of forced labour.

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- (b) The successful implementation of freedom of association in compliance with Convention No. 87, including:
- (1) The continued formation of effective employer and worker Labour Organizations within all sectors – government and private – industrial, commercial, service and agricultural.
  - (2) Their evolution into effective collective representation structures.
  - (3) The further strengthening of Labour Market institutions established under the Labour Organizations Act 2011 and the Labour Disputes Settlement Act 2012.
  - (4) The establishment of case law and/or refinement of legislation to ensure the respect of, and ability to effectively exercise, individual and collective rights in respect of the right to organize, the right to collectively bargain and other rights provided under the law.
  - (5) The promotion of social dialogue at the enterprise, village/ward/township/district, regional/state and national levels.
- (c) Enhanced employment opportunities and job creation with particular emphasis on youth employment through, amongst other things:
- (1) Undertaking a labour force sample survey and employment dimensions research from which policy targets can be identified.
  - (2) Addressing identified gaps in the vocational education and skills training infrastructure.
  - (3) The development of an effective labour exchange/job matching mechanism.
- (d) The putting into place of a comprehensive set of socially acceptable and economically sustainable labour market standards including:
- (1) Minimum wage and minimum conditions of employment legislation.
  - (2) An enhanced and deliverable social security system.
  - (3) An occupational safety and health framework.
- (e) Encouraging responsible large scale investment whilst protecting and enhancing the opportunities for micro-, small and medium sized enterprise activity through:
- (1) A regulatory framework for large investors conducive to maintaining competitiveness whilst encouraging local employment, knowledge transfer, skills development and environmental and social responsibility.
  - (2) Comprehensive labour market best practice modelling in selected sectors for potential expansion into others.
  - (3) A regulatory framework supportive of small business development, minimizing compliance costs and providing the necessary security of land tenure and asset protection structures.
  - (4) Provision of technical support to micro-, small and medium enterprises and the self employed to support the sustainability and growth of their businesses and their capacity to create new jobs addressing such areas as market access, value added opportunities and co-operative activities.
  - (5) In SEZ's, large commercial developments and major energy/extraction projects the putting into place of both Management/Worker consultative structures and project/community consultative mechanisms supported by a strengthened labour inspection system.

- (f) The further development of policies, procedures and practices supportive of enhanced management of labour migration pre-departure, and improved employment conditions recognizing the basic rights of Myanmar migrant workers in receiving countries.
- (1) The Ministry of Labour recognizes the fact that many of the above labour market priorities call for the cooperative support and application of other Ministries as well as employers, workers and their respective organizations – in so saying it commits to work in such a manner seeing such cooperation as conducive to the achievement of Government’s higher level objectives.
  - (2) The ILO recognizes the comprehensive approach taken and commits to supporting the Ministry of Labour in developing a plan of action with achievable agreed priority outcomes and to facilitating within the limitations of its own resources and those of potential donors the necessary technical and capacity building support to so achieve.
  - (3) The Ministry of Labour through this paper seeks the inputs of the representatives of sister Ministries, of worker and employer representatives and of civil society representatives as to the approach adopted, any identified omissions and recommendations on the appropriate prioritization of issues.
  - (4) Those inputs will be duly considered before the paper, revised as necessary, is submitted to the ILO Governing Body and Government Cabinet for their respective inputs prior to moving forward into detailed plan of action development.