



Governing Body

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ELEVENTH ITEM ON THE AGENDA

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

Purpose of the document

This document provides an update on the implementation of the Supplementary Understanding and progress made in renewing the Memorandum of Understanding with an updated further phase of the Action Plan for the Elimination of Forced Labour (see the draft decision in paragraph 35).

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

Main relevant outcome/cross-cutting policy driver: Outcome 8: Protection of workers from unacceptable forms of work/Cross-cutting policy driver: International labour standards.

Policy implications: None.

Legal implications: None.

Financial implications: None.

Follow-up action required: Ongoing application of the ILO programme of work.

Author unit: ILO Liaison Officer for Myanmar.

Related documents: Resolution concerning remaining measures on the subject of Myanmar adopted by the Conference at its 102nd Session (2013) under article 33 of the ILO Constitution.

1. At its 328th Session (November 2016), having considered the report submitted by the Director-General, the Governing Body:
 - (a) welcomed the renewed commitment made by the Government of Myanmar to the elimination of forced labour through the extension of the Supplementary Understanding until December 2017 and urged the Government to implement the Supplementary Understanding and renew the Memorandum of Understanding with an updated further phase of the Action Plan, including increased efforts at the state and regional level;
 - (b) welcomed the commitments made by the Government to reform labour laws, promote freedom of association and institutionalize social dialogue;
 - (c) endorsed the proposed Framework for ILO Engagement in Myanmar 2016–17 developed in consultation with the Government and social partners;
 - (d) requested the Director-General to pursue discussions on the establishment of an ILO Country Office in Myanmar and the development of a Decent Work Country Programme (DWCP);
 - (e) requested the Director-General to report to the 331st Session (November 2017) of the Governing Body on the progress made in implementing the Framework of Engagement;
 - (f) requested the Director-General to report to the 329th Session (March 2017) of the Governing Body on the implementation of the Supplementary Understanding and progress made in renewing the Memorandum of Understanding with an updated further phase of the Action Plan.
2. At its 329th Session (March 2017), having considered the report submitted by the Director-General, the Governing Body:
 - (a) urged the continued cooperation between the Government of Myanmar and the ILO to implement the Supplementary Understanding;
 - (b) requested the Government to agree, as a matter of urgency, to a renewed Memorandum of Understanding and Action Plan to enable the ILO to continue providing the full range of its technical support, training and awareness-raising activities in support of the Government's commitment to the elimination of forced labour, including increased efforts at the state and union levels and in disadvantaged and conflict-affected regions;
 - (c) requested the Director-General to pursue discussions on the development of a DWCP in which the elimination of forced labour was included as a core component;
 - (d) requested the Director-General to provide a comprehensive update on further progress to the 331st Session of the Governing Body in November 2017.

Progress made in implementing the Framework for ILO Engagement in Myanmar

3. Progress made under the four pillars of the Framework for ILO Engagement in Myanmar, endorsed by the Governing Body in November 2016, is as follows.

A. Strong commitment to the elimination of forced labour in support of peace and development

4. The Supplementary Understanding was extended until 31 December 2017, however it is of serious concern that the Government and the ILO have still not been able to finalize agreement on the renewal of the Memorandum of Understanding and the Action Plan for the Elimination of Forced Labour. It is almost two years since the expiry of the last Action Plan in December 2015, with the Governing Body requesting its renewal at three separate sessions – in March 2016, November 2016 and “as a matter of urgency” in March 2017.
5. Although the Ministry of Labour, Immigration and Population has endeavoured to resolve the outstanding issues, the Ministry of Defence has said it will only cooperate with the ILO on cases of under-age recruitment occurring after 26 February 2007, when the Supplementary Understanding was first signed. This cut-off date would seriously limit the ILO’s capacity to address the many long-standing cases already received as well as those which continue to be reported from before that time. There are 325 cases of under-age recruitment from before 2007 that have already been received and in the past five years the ILO has continued to receive on average 40 cases per year of under-age recruitment from before 2007. These include a mixture of: persons recruited under age who have run away from the military and are now living under the protection of the Supplementary Understanding; persons recruited under age who are still serving in the military but who have not fulfilled their contract years and want to leave; and persons recruited under age who are still serving in the military and have fulfilled their contract years but have been refused discharge.
6. The Office has indicated it would consider only accepting new complaints of under-age recruitment of persons who were under 18 years of age at the time the Supplementary Understanding was first signed on 26 February 2007, but this must not have a retroactive negative effect on the cases already received under the Supplementary Understanding. If the Government does agree to extend the Supplementary Understanding, Memorandum of Understanding and Action Plan on this basis until the end of 2018, the Office would support the Technical Working Group in a comprehensive review that would help to expedite the finalization of the outstanding complaints in coordination with the Ministry of Defence.
7. The ILO continues to receive significant numbers of complaints of forced labour. Between 16 February 2017, the time of the last report to the Governing Body, and 30 August 2017, the ILO received 214 complaints, of which 147 were within the Supplementary Understanding mandate. Of these 147 complaints, 131 related to under-age recruitment, eight to forced recruitment of adults, six to traditional forms of forced labour, one to trafficking for forced labour (56 persons) and one to forced labour in the fishing industry. Of the eight cases of forced recruitment of adults, one related to the recruitment of some 100 persons by Khong Khar militia in Northern Shan State and one related to the recruitment of some 100 persons by other ethnic armed groups in Northern Shan State.
8. During the same period, 51 cases were submitted to the High-Level Working Group and 76 cases from previous years were successfully closed.
9. The ILO continues to collaborate with the Country Task Force on Monitoring and Reporting (CTFMR) on under-age recruitment cases. New instances of under-age recruitment remain very low, with only three complaints received during this reporting period. On 23 June 2017, a discharge ceremony took place for 67 under-age recruits under the CTFMR Joint Action Plan, of which 24 were cases submitted by the ILO. However, there has been no report of prosecution or disciplinary actions against perpetrators during this period, and the ILO continues to pursue accountability in these cases. In August 2017, Aung Ko Htway (aka Aung Ko Htwe), a former child soldier recruited at the age of 14 years 10 months in

2005, was arrested and charged under section 505B of the Penal Code for speaking publicly about his experience to international media. Aung Ko Htway had recently been released from jail after serving a prison sentence (commuted from death) in relation to a murder case. As the Government had previously cooperated in this long-standing case under the Supplementary Understanding complaints mechanism, the ILO has raised concerns about this apparent breach of the protections offered to complainants under the Supplementary Understanding. The charges against Aung Ko Htway also run counter to the Government's commitment to raise awareness and public debate about under-age recruitment.

10. Awareness-raising activities continued, with 118 workshops implemented throughout the country in collaboration with social partners and civil society organizations. With the cooperation of the Government at state and union level, 150 billboards with public messages on forced labour have been erected in 14 states and regions countrywide.
11. The ILO has continued to work in ethnic areas to encourage job creation and local reconciliation in support of the Government's peace-building agenda. In Mon and Shan States, for example, the ILO has been able to demonstrate the potential for generating decent work through small-scale labour-intensive infrastructure initiatives that create work opportunities as an alternative to forced labour, encourage community consultation and dialogue, and help to build resilience. The ILO plans to build on such approaches in line with the global flagship programme on Jobs for Peace and Resilience.
12. The Supplementary Understanding continues to be a mechanism that the public rely on to seek redress in forced labour cases. However, the elimination of forced labour will require the implementation of the additional activities proposed under the draft Action Plan, which emphasizes capacity building for government authorities and communities to be able to resolve complaints by themselves at the local level without the need for referral of complaints through the Supplementary Understanding mechanism. This will be key to achieving sustainability in the longer term.

B. Strengthened freedom of association and improved labour market governance in support of democratization and the rule of law

13. The National Tripartite Dialogue Forum (NTDF), which is the principal national mechanism for social dialogue, has continued to meet quarterly, most recently on 23 September 2017. The NTDF has a Technical Working Group on Labour Law Reform to discuss technical issues related to labour laws and their reform. This working group has met intensively in recent months to discuss the amendment of three priority laws: the Labour Organization Law, the Settlement of Labour Disputes Law and the Employment and Skills Development Law. A first result of the process has been agreement on a revised version of the standard employment contract issued under the Employment and Skills Development Law. The Government issued a notification with the new employment contract template on 28 August 2017.
14. Employers and workers have received substantial technical assistance from the ILO in the development of their amendment proposals, and the Office has also held briefings on the labour law reform process for relevant parliamentary committees and the Legal Affairs and Special Cases Assessment Commission.
15. Employers and workers have reached consensus on a number of important issues, in particular that all workers – formal or informal, employed or unemployed – should have the right to organize, and that employers' and workers' organizations should have autonomy to determine their own governance and structures. But important areas of difference remain, in

particular on collective bargaining and penalties and sanctions for labour law violations, and discussions will continue. While the current laws make provision for collective bargaining, the rights and responsibilities of employers and trade unions are poorly defined, and awareness raising and capacity building will be needed before collective bargaining can be implemented systematically.

16. The Government has so far not been willing to fully accept the employers' and workers' proposals on the Labour Organization Law, including some which would address concerns raised by the ILO Committee of Experts. The Government and social partners agreed at the NTDF on 23 September 2017 to intensify discussions on the Settlement of Labour Disputes Law as a first priority, with a view to agreeing amendment proposals by December 2017. The ILO has urged the Government to respect the results of the bipartite and tripartite discussions and has offered to provide technical support in ensuring the amendments to the law comply with international labour standards. It is hoped that a first package of amendments will be submitted to Parliament before the end of 2017.
17. Labour law reform is supported by a multi-year initiative agreed in 2014 among the Governments of Myanmar, Denmark, Japan, the United States, the European Union and the ILO. The initiative partners plan to hold a third Stakeholder Forum on Labour Law Reform and Institutional Capacity Building in Nay Pyi Taw in late 2017, with a view to engaging a wider range of stakeholders beyond the traditional tripartite partners in the ongoing reform efforts, particularly the Parliament and other line ministries, and to underscore its importance to national economic development.
18. The Government and social partners have also embarked on a tripartite process for review of the minimum wage, which was fixed for the first time in 2015. The ILO has provided training to Government, Employer and Worker representatives on the national minimum wage committee leading this process. The review is expected to be completed by the end of 2017.
19. Freedom of association continues to face restrictions both in law and in practice. The number of new trade unions being registered has slowed in the past year. As of September 2017, there were 2,424 basic labour organizations, 13 township labour organizations, 20 state/regional organizations, eight labour federations and one confederation. By contrast, there were still only 27 basic employers' organizations, one township employers' organization and one employers' federation (maritime) registered under the law. Since early 2017, trade unions have complained that some local labour offices have imposed unnecessary bureaucratic requirements that are neither required under the current law nor consistent with international labour standards. Trade unions have also reported cases in which criminal charges have been brought against trade union members for exercising their right to strike or demonstrate in a peaceful manner.

C. Enhanced decent employment opportunities through a comprehensive set of initiatives in support of the Government's economic and social priorities and the Sustainable Development Goals

20. In July 2017, the Government established a Sector Coordination Group on Job Creation that will be chaired by the Ministry of Commerce and will bring together relevant line ministries, cooperation partners and the private sector to discuss national employment strategies. The ILO and Germany have offered support to the Ministry of Commerce as co-facilitators for the group.

21. The ILO has also continued to support the Government's priority for small and medium-sized enterprise development as an engine for job growth. The ILO has developed an extensive network of entrepreneurship and business development trainers that has increased the capacities of 9,500 entrepreneurs, nearly 60 per cent of whom are women, including 775 potential entrepreneurs in the rural sector. To date, entrepreneurs attending ILO programmes have established 1,234 new businesses, leading to the creation of 7,387 jobs, more than 40 per cent of which are for women.
22. The ILO has also supported the Government and social partners in developing new opportunities for economic diversification and exports through value chain assessments in the tourism, agriculture and fisheries sectors. Technical support has been provided to the National Skills Standards Authority to develop new competency standards for tourist guides. Further, vocational training activities were implemented in the conflict-affected areas of Mon and Shan States, mainly in the small infrastructure sector. The ILO will also be implementing a skills development project in Rakhine State in support of the recommendations of the Advisory Commission on Rakhine State.
23. The ILO has a growing portfolio of work on occupational safety and health, targeting the agriculture, garment and construction sectors, and with a particular focus on young workers. A comprehensive occupational safety and health law incorporating technical comments from the ILO and the social partners was submitted to Parliament in February 2017. This law would extend occupational safety and health inspection beyond the manufacturing sector to include agriculture, construction and other sectors.
24. The ILO has also been playing a key role in supporting Myanmar's technical capacity on social protection, in follow-up to the policy recommendations made for a comprehensive social protection floor in the Myanmar National Social Protection Strategic Plan. In February 2017, the Government announced maternal and child cash transfer programmes in Chin State, Rakhine State and the Naga Self-Administered Zone. The Government is also implementing a monthly social pension of 10,000 kyats (MMK) for persons 90 years old and over. The Department of Social Welfare also rolled out the case management system in an additional 60 townships and deployed trained social workers in an additional 33 townships.

D. Targeted interventions to address workplace discrimination and realize decent work for specific groups

25. The Government, with technical assistance from the ILO, has continued to develop a National Action Plan on Child Labour, in line with its commitments under the ILO's Worst Forms of Child Labour Convention, 1999 (No. 182). A series of multi-stakeholder consultations involving social partners have been held and the plan is expected to be finalized this year. A draft Child Law has been submitted to Parliament that includes provisions on child labour consistent with the Minimum Age Convention, 1973 (No. 138), and Convention No. 182. Lists to define hazardous and light work for children remain to be finalized.
26. The ILO has also provided technical assistance to the Government on the Law Relating to Overseas Employment with reference to international standards. The revised draft law is expected to be submitted to the Attorney General's Office before the end of the year. The ILO has supported the setting up of six Migrant Resource Centres, five housed in the Government Labour Exchange Offices and one housed in a civil society organization, providing information and services to potential and returned migrants and their families.

27. Myanmar adopted the Rights of Persons with Disabilities Law in 2015 and the Government is currently preparing by-laws which, inter alia, will make provision for workplace quotas, accessibility, and technical and vocational education and training opportunities for disabled persons. The ILO has offered its technical assistance in this process. Myanmar also adopted a new Ethnic Rights Protection Law in 2015 and the ILO participated in the first national forum on indigenous peoples to promote the Indigenous and Tribal Peoples Convention, 1989 (No. 169).

E. Development of the Decent Work Country Programme

28. The NTFD established a tripartite Technical Working Group to spearhead the development process for the DWCP (DWCP–TWG), with technical support from the ILO. The Framework for ILO Engagement, endorsed by the Governing Body in November 2016, served as the starting point for the development of the DWCP. This will be the first DWCP for Myanmar and will cover a four-year period from 2018–21.
29. The DWCP–TWG has met regularly since December 2016, overseeing the preparation of a decent work country diagnostic and developing the results chain for the DWCP. Development of the DWCP has also been a capacity-building and learning process for the tripartite constituents. As part of the process, training activities on the Decent Work Agenda and Results-Based Management have been held with the members of the DWCP–TWG.
30. The DWCP process has been participatory, with strong engagement from the tripartite constituents. Wider consultations have also been held with other key stakeholders, such as government ministries, Parliament, civil society organizations and development partners, to get stronger buy-in to the DWCP and ensure its linkages to the national economic development agenda. The DWCP has been aligned as much as possible with the Sustainable Development Goals and based on the cross-cutting principles of gender equality, non-discrimination and conflict sensitivity.
31. Priority has been given to align the DWCP with the United Nations Development Assistance Framework (UNDAF), which is also under preparation for the first time in Myanmar. The draft UNDAF includes an explicit outcome on decent work and inclusive growth, which puts the ILO and the constituents in a strategic position to push forward the Decent Work Agenda in collaboration with the wider United Nations system.
32. The following priorities and outcomes have been agreed upon with the tripartite constituents as the basis for the DWCP:
- (a) **Priority 1:** Employment, decent work and sustainable entrepreneurship opportunities are available and accessible to all, including for vulnerable populations affected by conflict and disaster:
 - (i) *Outcome 1:* By 2021, more women and men of working age have decent jobs or are engaged in entrepreneurship, especially those in vulnerable employment conditions;
 - (ii) *Outcome 2:* By 2021, better functioning labour market information and safe migration systems are in place;
 - (iii) *Outcome 3:* By 2021, young women and men have improved core and technical competencies.

- (b) **Priority 2:** The application of fundamental principles and rights at work is strengthened through improved labour market governance:
- (i) *Outcome 1:* By 2021, freedom of association is strengthened through cohesive labour laws and enforcement capacities are improved;
 - (ii) *Outcome 2:* By 2021, protection against unacceptable forms of work is strengthened, in particular forced labour and child labour;
 - (iii) *Outcome 3:* By 2021, the industrial relations system is strengthened at national, sectoral and enterprise levels.
- (c) **Priority 3:** Social protection coverage is extended for all, especially for vulnerable workers and populations:
- (i) *Outcome 1:* By 2021, coverage of existing social protection schemes is extended for formal, informal and vulnerable workers, and their dependants;
 - (ii) *Outcome 2:* By 2021, an efficient social security information system is in place and operational;
 - (iii) *Outcome 3:* By 2021, an integrated and unified occupational safety and health system is in place and operational.
33. The DWCP priorities and outcomes received general endorsement by the NTF on 23 September 2017. The DWCP–TWG is now finalizing the results matrix, monitoring and evaluation plan, communications plan and implementation plan. The Memorandum of Understanding for the DWCP will then be signed before the end of 2017 with a view to a public launch in January 2018.

Conclusions

34. The Government, social partners and the ILO have made progress under all four pillars of the Framework for ILO Engagement; agreed in 2016. The NTF has become more institutionalized and tripartite dialogue is beginning to bear fruit, particularly in the area of labour law reform. The tripartite constituents have actively participated in the development of the DWCP, which includes the elimination of forced labour as a core component. However this progress, and the ILO's capacity to continue providing the full range of technical support, training and awareness-raising activities, will be compromised if the Memorandum of Understanding and the Action Plan for the Elimination of Forced Labour are not renewed. A failure to renew these instruments will also bring into question the Government's stated commitment to the elimination of forced labour.

Draft decision

35. *The Governing Body:*

- (a) ***urges the continued cooperation between the Government of Myanmar and the ILO for the elimination of forced labour through the extension of the Supplementary Understanding beyond 31 December 2017;***

- (b) expresses serious concern about the Government's failure to renew the Memorandum of Understanding and associated Action Plan for the Elimination of Forced Labour and requests the Government to finalize these immediately;*
- (c) encourages the Government to continue the process of labour law reform to promote freedom of association through tripartite dialogue and in line with international labour standards;*
- (d) notes the progress made under the current Framework for ILO Engagement in Myanmar and in the development of a Decent Work Country Programme in which the elimination of forced labour is included as a core component;*
- (e) requests the Director-General to provide a comprehensive update on further progress to the 334th Session of the Governing Body in November 2018.*