



Governing Body

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Institutional Section

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EIGHTH 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 progress made in renewing the Supplementary Understanding and agreeing to a Memorandum of Understanding, with an updated further phase of the Action Plan for the Elimination of Forced Labour, and other developments in the tripartite process (see the draft decision in paragraph 18).

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; and 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 under article 33 of the ILO Constitution by the Conference at its 102nd Session (2013).

1. At its 331st Session (October–November 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 for the elimination of forced labour through the extension of the Supplementary Understanding beyond 31 December 2017;
 - (b) expressed serious concern about the Government's failure to renew the Memorandum of Understanding and associated Action Plan for the Elimination of Forced Labour, and requested the Government to finalize these immediately;
 - (c) urged the Government to engage in the process of labour law reform to promote freedom of association through genuine and effective tripartite dialogue and in line with international labour standards;
 - (d) noted the progress made under the current Framework for ILO Engagement in Myanmar and in the development of a Decent Work Country Programme (DWCP) in which the elimination of forced labour is included as a core component;
 - (e) requested the Director-General to report on forced labour cases received by the ILO at each future Governing Body session and to provide a comprehensive update on further progress to the 332nd Session of the Governing Body in March 2018;
 - (f) delayed the implementation of the DWCP until such time as the Memorandum of Understanding and associated Action Plan for the Elimination of Forced Labour and the Supplementary Understanding are renewed.

Progress since the 331st Session of the Governing Body (October–November 2017)

Status of the Supplementary Understanding and the Action Plan for the Elimination of Forced Labour

2. The extension of the Supplementary Understanding and a Memorandum of Understanding and associated Action Plan for the Elimination of Forced Labour were finally signed between the Government of Myanmar and the ILO on 22 January 2018, effective until 31 December 2018. This development will allow the complaints mechanism and further cooperation on forced labour to continue during the transition to the DWCP.
3. The final negotiations on the Action Plan focused on the handling of new cases of underage recruitment that occurred before the Supplementary Understanding was first signed on 26 February 2007. The Supplementary Understanding contains no such time limitation and therefore the Government agreed to an Office proposal that any new cases from before this date will be reviewed by a High-Level Working Group. Following consultation by the ILO with the national workers' and employers' representatives, it was considered that due to the relatively small number of pre-2007 cases likely to arise it was acceptable to agree to the extension on this basis.

Status of the Decent Work Country Programme

4. The draft DWCP has been further refined by the tripartite Technical Working Group with the definition of indicators and targets and the addition of baseline data. Gender issues have

been fully mainstreamed into the programme and a stronger and more gender-responsive results matrix, with sex-disaggregated baselines and targets, has been developed. Further consultations were also held with Parliament, local civil society organizations and development cooperation partners.

5. The final version of the DWCP was endorsed by the National Tripartite Dialogue Forum (NTDF) on 16 January 2018 and is now ready for signature by the tripartite constituents and an official launch. As presented to the Governing Body in November, the DWCP focuses on three priority areas:
 - (a) job creation, with a focus on vulnerable populations affected by conflict and natural disasters, sustainable entrepreneurship, safe migration and skills development;
 - (b) fundamental principles and rights at work, with a focus on freedom of association, strengthened industrial relations, and continued action on forced labour and child labour;
 - (c) social protection and occupational safety and health, with a focus on both the formal and informal sectors.

Labour law reform and social dialogue

6. Further progress has been made in tripartite discussions of labour law reform under the auspices of the NTDF. A Technical Working Group on Labour Law Reform (TWG-LLR) met in November and December 2017 to continue discussions on the amendment of the Labour Organization Law and the Settlement of Labour Dispute Law (SLDL). On 16 January 2018, the NTDF reviewed proposals for the amendment of the two laws that will now be reported to Parliament and agreed a roadmap of labour law reform priorities for 2018.
7. With respect to the amendment of the SLDL, Parliament published an amendment bill on the SLDL in early November and set a two-month period for public comments; the tripartite parties, however, did not receive advance notice from Parliament of this development. Subsequently, the relevant parliamentary committees were invited to participate in the NTDF and TWG-LLR meetings and were briefed on the tripartite exchanges. Parliament has since begun a series of discussions with the social partners on the draft SLDL and has invited technical comments from the ILO on the basis of international labour standards.
8. Key points of discussion at the tripartite meetings have included: the determination of appropriate procedures for the resolution of different types of dispute (for example, in respect of rights or interests, or on an individual or collective basis); the voluntary or compulsory nature of dispute settlement procedures, in particular arbitration; the jurisdiction, mandate and qualifications of the conciliators and arbitrators; workplace dialogue, including collective bargaining; and enforcement and sanctions.
9. Regarding collective bargaining, Parliament's amendment bill currently opens the door for collective bargaining to be conducted between an employer and any group of workers. Apparently, Parliament is concerned about the protection of non-unionized workers, who still considerably outnumber unionized workers. The ILO has advised Parliament that collective bargaining should be safeguarded principally as the right of unions and that the proposed approach could undermine the growth of unions that are still in an early stage of development in Myanmar. The ILO will provide technical assistance to Parliament for the finalization of the amendment of the SLDL.

10. With respect to the amendment of the Labour Organization Law, the Government issued a draft amendment in September and invited comments from the social partners and the ILO. The ILO welcomes the fact that the draft amendment introduces a new chapter on the formation of employers' organizations, which is addressed inadequately in the current law. The ILO also welcomes the lifting of certain restrictions on the formation of workers' organizations and employers' organizations. However, a number of sectoral and geographical restrictions, as well as minimum membership requirements, will still apply, despite strong recommendations from the social partners and the ILO against such restrictions. The draft amendment also maintains excessive regulation of the internal administration of unions and employers' organizations, for example, by setting a 2 per cent cap on union dues, a minimum and a maximum number of executive committee members, and rigid eligibility requirements for executive committee members.
11. The labour law reforms are supported by a multi-year initiative agreed in 2014 between the Governments of Myanmar, Denmark, Japan and the United States, and the European Union and the ILO. The Myanmar tripartite partners and the initiative partners held the third Stakeholder Forum in Nay Pyi Taw on 17–18 January 2018. The Forum was attended by more than 200 participants, from the key economic ministries, Parliament and the social partners, as well as from foreign governments, international business and labour communities, international agencies and civil society. It provided an opportunity to raise the profile and priority of the labour law reform process in the national development agenda with a broader range of ministries and members of Parliament, and to present the NTFDF's roadmap and milestones for the reform process over the next 12 months.
12. The first review of the minimum wage was also completed at the end of 2017. Based on the recommendations of the Region/State Minimum Wage Committees, the National Minimum Wage Committee deliberated and recommended that the Government increase the minimum wage from 3,600 kyats to 4,800 kyats (approximately US\$3.60) per day. The new rate will be the subject of public consultation before being implemented in March 2018. Throughout the process the ILO has provided technical assistance and training to the National Minimum Wage Committee, as well as to employers and workers. Now the review is complete, the next important step will be to monitor the impact of the minimum wage more systematically. The ILO will assist the Ministry of Labour and the Minimum Wage Committees in the development of this monitoring mechanism, aimed at providing sustainability to the wage-fixing institutions in Myanmar.

Forced labour cases received by the ILO

13. Since 1 September 2017, when the previous report was submitted to the Governing Body, the ILO has received a further 106 complaints under the Supplementary Understanding, of which 78 were within the mandate of the Supplementary Understanding. Of these 78 complaints, 67 related to underage recruitment, eight to the forced recruitment of adults, and three to traditional forms of forced labour. The complaints will be processed through the Technical Working Group and Country Task Force on Monitoring and Reporting, as appropriate. The Government said that, during the same period, underage recruits had been discharged in 34 cases. This brings the total number of complaints received under the Supplementary Understanding during the calendar year 2017 to 328, of which 220 were within the mandate of the Supplementary Understanding. A total of 42 cases were submitted to the Government, 20 through the Technical Working Group and 22 through the Country Task Force on Monitoring and Reporting. A total of 34 cases were successfully closed in 2017, some from previous years.

14. The ILO has continued to collaborate with the Country Task Force on Monitoring and Reporting on underage recruitment cases. New instances of underage recruitment continue to remain low, with nine alleged cases received in 2017.
15. The ILO remains deeply concerned about two cases of apparent reprisal against complainants in forced labour cases. On 12 October 2017, Khaing Myo Htun, a human rights defender who had reported on forced labour cases in Rakhine State, was convicted of defamation and incitement under section 505 of the Penal Code and sentenced to 18 months in jail. Khaing Myo Htun had already spent eight months in detention during his trial.
16. In September 2017 Aung Ko Htwe, a former underage recruit charged under section 505B of the Penal Code for speaking publicly about his experience to international media, was also denied bail and his trial continues. On 9 October 2017, the Government responded to the ILO in relation to this case, indicating that it had previously taken necessary actions for the closure of Aung Ko Htwe's case. However, the ILO remains concerned about the subsequent detention of Aung Ko Htwe, who enjoys continued protection under the Supplementary Understanding, and appeals for the charges against him to be dropped. In the past several years, other underage recruits have spoken publicly about their experience without facing such reprisals, and this has helped to reinforce the Government's policy to end underage recruitment and forced labour.

Conclusions

17. The extension of the Supplementary Understanding 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. The Government and the social partners have also continued to make positive progress through tripartite dialogue to advance labour law reform and review the minimum wage. The Stakeholder Forum held in Nay Pyi Taw in January 2018 highlighted the growing confidence and engagement of the tripartite partners. With the forced labour instruments now in place, the ILO can proceed with the finalization and implementation of the DWCP.

Draft decision

18. *Having considered the report submitted by the Director-General, the Governing Body:*
 - (a) *notes the significant progress made on the issues referred to in the decision taken at its 331st Session (October–November 2017);*
 - (b) *encourages the Government to continue the process of labour law reform to promote freedom of association through genuine and effective tripartite dialogue and in line with international labour standards;*
 - (c) *welcomes the tripartite negotiation and endorsement of a Decent Work Country Programme in which the elimination of forced labour is included as a core component, and encourages member States to support its implementation;*

- (d) welcomes the extension of the Supplementary Understanding and agreement to the Memorandum of Understanding and associated Action Plan on the Elimination of Forced Labour until 31 December 2018; and*
- (e) decides that the reporting to each Governing Body session on cases of forced labour, as referred to in its November 2017 decision, will no longer be required.*