Committee on the Application of Standards C.App./PV.22
Commission de l'application des normes 6.06.18
Comisión de Aplicación de Normas

107th Session, Geneva, May–June 2018 107e session, Genève, mai-juin 2018 107.ª reunión, Ginebra, mayo-junio de 2018

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15th sitting, 5 June 2018 *(cont.)*, 8.05 p.m.
15e séance, 5 juin 2018 *(suite)*, 20 h 05
15.ª sesión, 5 de junio de 2018 *(cont.)*, 20.05 horas

Chairperson: Mr Rorix Núñez Morales
Président: Mr Rorix Núñez Morales
Presidente: Sr. Rorix Núñez Morales

Discussion of individual cases *(cont.)*
Discussion sur les cas individuels *(suite)*
Discusión sobre los casos individuales *(cont.)*

Myanmar *(ratification: 1955)*

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)
Convention (nº 87) sur la liberté syndicale et la protection du droit syndical, 1948
Convenio sobre la libertad sindical y la protección del derecho de sindicación, 1948 (núm. 87)

A Government representative (Mr LYNN) indicated that the Government had set the following priorities for the country and the people: rule of law, the improvement of the socio-economic life of the people, national reconciliation and peace, and amending the Constitution for building a democratic federal republic. Undoubtedly, the tasks were not easy in the face of various internal and external challenges. In dealing with such challenges,

the Government had adopted a path consistent with the needs and situation of the country, while respecting the views and opinions of the international community and bearing in mind Myanmar's international responsibility. Improving the socio-economic life of the people, including workers, had always been high on the agenda. Labour law reform was well under way, and a culture of tripartite dialogue had been successfully introduced and developed. Progress made included upgrading skills, the establishment of the National Skills Standard Authority, opening of migrant resource centres, and, for the first time in history, setting the minimum wage. In close cooperation with the ILO, considerable progress had been made in eliminating the practice of forced labour. A new chapter had opened for the workers with respect to their right to associate and organize. Since the adoption of the Labour Organization Law of 2011, many workers' and employers' organizations as well as three federations and one confederation were in place and functioning.

In response to the request for information made by the Committee of Experts concerning the chapter on Rules and the corresponding chapter on Offences and Penalties, the speaker indicated that the Law on the Right to Peaceful Assembly and Peaceful Procession of 2016 allowed for a wider democratic space for all Myanmar citizens, including workers, in their exercise of freedom of association. It also allowed for them to assemble and process without prior permission by providing a 48-hour notice to the relevant authority. Penalties for offences had also been reduced substantially, for instance for procession without notifying. Directives, rules and regulations were being developed to implement the Law on the Right to Peaceful Assembly and Peaceful Procession in its letter and spirit. In the meantime, its section 26 provided that rules, notifications, orders, directives and procedures issued under the previous version of the law might continue to apply in so far as they were not contrary to the 2016 version. The Labour Organization Law and the Settlement of Labour Disputes Law of 2012 were currently reviewed and their amendment was under consideration in close consultation and cooperation with all stakeholders including workers, employers, members of Parliament, and ILO experts. In fact, the ILO had been involved in

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developing the draft text since the beginning of process, and the Government would continue informing the Committee on the progress made in the labour law reform. With regard to the Labour Organization Law, the Government had constantly sought the outcomes of discussions among the social partners, as well as comments, views and suggestions by labour federations, employer organizations, the Union of Myanmar Federation of Chamber of Commerce and Industry, and the ILO, and had taken them into consideration in the review process. The question of the 10 per cent membership requirement and the impact of the pyramidal structure formed part of the Government's considerations under the labour law reform process. The requirements for the eligibility to trade union office set out in the Rules to the Labour Organization Law sought to preserve local ownership, and to capture adequate and genuine representation of workers to the body which would be entrusted to promote and protect the interest of workers.

Disputes in the special economic zones (SEZs) were settled by respective Management Committees in accordance with Chapter 16 "Matters relating to Labour" of the Special Economic Zone Law of 2014 (SEZ Law). A labour officer from the Ministry of Labour, Immigration and Population (MOLIP) was attached to such committees, and provided advice and guidelines in the dispute settlement process. If no settlement was reached within the Management Committee, such dispute would be settled pursuant to the Settlement of Labour Disputes Law, although the SEZ Law currently referred to the repealed Trade Disputes Act.

The right to freedom of association in Myanmar continued to be strengthened. With the political will of the Government, close tripartite cooperation, technical assistance of the ILO and the support of the international partners, the speaker was confident that workers and employers would be able to enjoy their fundamental rights increasingly, and that such progress would eventually lead to decent work and sustainable development.

The Worker members recalled the circumstances under which the case of Myanmar had last been discussed in the Committee in 2011 and considered that much had changed since then: the Labour Organization Law and the implementation regulations had been

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enacted; independent unions had been allowed to form and carry out activities for the first time in decades; the Federation of Trade Unions of Burma (FTUB) had returned home from exile, had begun to organize thousands of workers and had obtained registration as the Confederation of Trade Unions of Myanmar (CTUM); and trade unionists had been released from prison and had continued their union activities. However, despite such important steps, the situation for unionists was deteriorating and many serious issues remained. Although unions had welcomed the Government's decision to amend the Labour Organization Law and the Settlement of Labour Disputes Law, a draft of the Labour Organization Law prepared by the MOLIP failed to address most of the concerns raised by the Committee of Experts and the International Trade Union Confederation (ITUC) and was worse in several respects. Furthermore, completed applications for union registration had been denied for arbitrary reasons or on the basis of unpublished Government directives. In some cases, the police had violated workers' civil liberties, including through physical harassment or arrest, in response to the exercise of trade union rights, including strikes. Workers attempting to organize were routinely fired with near impunity due to a broken dispute resolution system, and blacklisting was a common practice in the industrial zones.

With regard to legislation, they stated that since the Government had ignored much of the technical advice of the ILO, the Labour Organization Law restricted the fundamental rights of workers' and employers' organizations, as had been repeatedly confirmed by the Committee of Experts. The following concerns were raised: the minimum membership requirement of 30 workers to form a basic labour organization combined with the additional support of 10 per cent of the workplace was too high, particularly in large workplaces; a requirement for labour organizations at all levels to be formed only of workers of the same trade or activity had limited the ability of unions to determine their own membership, and a narrow interpretation of the terms "trade" and "activity" had led to narrowly defined unions; union structure was strictly organized and mirrored the administrative structures of the Government leading to workers being unable to form unions that corresponded to their

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needs; burdensome requirements for the formation of higher-level organizations; restrictions on the eligibility of executive committee members who must be Myanmar citizens or foreigners legally residing in the country for at least five years, 21 years of age, and workers in the relevant trade or activity for at least six months; a prohibition on strikes without first proceeding through the steps of the dispute resolution mechanisms thus limiting strikes to industrial disputes and prohibiting sympathy strikes and strikes over economic and social policy; and a list of workplaces in the law where a 500-yard perimeter must be respected, which could render ineffective the strike by locating it far from the employer.

While the Government had initiated a process to reform the Labour Organization Law and the Settlement of Labour Disputes Law, the numerous tripartite meetings over the past year and a half had been superficial, had not led to meaningful progress, and it was clear from the Government's statements and its draft proposals that it had no intention of addressing workers' concerns or complying with the Convention. Although a later draft of the Labour Organization Law withdrew the minimum membership number to form a union, it failed to address many other concerns and created several new problems. In particular, the draft: excluded informal economy workers, which would lead to the dissolution of the majority of unions in the country (unions of self-employed agricultural workers); provided that there could be no more than three basic unions in a trade; kept the rigid trade union structure, and established overly high minimum numbers to form higher level unions; provided for "acknowledgment" of trade unions instead of registration, which would only last two years and would have to be renewed; created new and illegitimate reasons for the chief registrar to deregister unions; and included a new and expansive provision on interfering with or obstructing workers from coming to work which could be easily used to frustrate strikes. The Government must therefore engage in a meaningful process of consultations with workers and employers and should request the ILO to provide detailed comments on the drafts to assist it in developing amendments that would bring the laws into compliance with the Convention.

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As regards registration, it was stated that despite clear rules about registration requirements, registrar officials had denied complete applications for arbitrary reasons, referring in some cases to "directives" from the Ministry containing additional registration requirements, without however providing them to the unions and claiming that they were not public. According to unionists, the directives required, for instance: all executive committee members to submit their curriculum vitae; all union members to submit photocopies of identification cards (many workers were unable to obtain government-issued identification cards); and the union to obtain a letter from the employer acknowledging that it had informed the management of its intent to register, thus giving employers the ability to veto the union's registration by withholding the letter. More recently, unions had reported a supposed requirement to obtain signatures and photocopies of identification cards from at least 10 per cent of the workforce who were not union members so as to show their support for union formation, thus distorting section 4 of the Labour Organization Law (itself in violation of the Convention) and giving non-union members a veto. Such new and secret requirements clearly frustrated what should be a simple, administrative process. The Government must prohibit registrars from requesting anything beyond the Labour Organization Law and its regulations, and if the mentioned directives did in fact exist, they should be withdrawn immediately.

Turning to the issue of strikes, the speaker noted that in addition to the obvious flaws in the legal framework governing strikes, workers had been unable to exercise their right to strike freely, and had often faced dismissal, harassment and lawsuits for raising workplace concerns. For example, a strike had been staged by union members at a sock factory in Industrial Zone 3 in January 2018 after the employer's refusal to reach a collective agreement which had responded to the union's demands. Even though the arbitration body to which the dispute had been submitted had ordered the employer to sign the agreement and negotiate over the remaining issues, the employer had dismissed the 48 workers involved in the strike, had filed a lawsuit against 13 of the strike leaders and subsequently dismissed

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another 25 workers. In other cases, workers had been arrested or threatened with legal proceedings for their role in strikes or had reported threats by the police, security guards or employer-hired thugs, sometimes leading to serious injuries. In most cases, law enforcement took no action in response to such attacks, complaints submitted to the police were often not accepted and such approach had become a normalized way of dealing with unions.

Concerning deregistration, the speaker had been informed that labour officials in some areas had ordered union leaders to report to their offices every Sunday, as failure to do so could result in the union's de-registration. Such a requirement constituted serious interference in trade union activity and would infringe upon workers' ability to conduct union activities, and deregistration in those circumstances would constitute an extremely serious violation of freedom of association.

The Employer members recalled that the fundamental Convention had been ratified by Myanmar in 1955, and that its application had been the subject of 18 hearings in the Conference Committee and 26 observations by the Committee of Experts. Myanmar was in the process of re-establishing a democratic system of government after many years of military rule. As part of the process, legislation had been adopted on a range of issues within the purview of the Convention, for instance the Law on the Right to Peaceful Assembly and Peaceful Procession. Since the advances were relatively new, there had been limited ability to assess their effectiveness and compliance with the Convention, as also reflected in the report of the Committee of Experts.

Nonetheless, the Employer members noted that the Committee of Experts had raised the following issues bearing the potential for breaches to occur: (i) possibility that the chapter on Rules and the corresponding chapter on Offences and Penalties of the Law on the Right to Peaceful Assembly and Peaceful Procession could allow for serious restrictions on the right of organizations to carry out their activities without interference, as contemplated by Article 3 of the Convention; (ii) lack of information on the labour law reform process seeking to address potentially onerous and non-compliant requirements for the establishment of trade

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unions, restrictive eligibility criteria for union officials and a residency threshold for foreign workers to be able to join a union; and (iii) a lack of guaranteed coverage of the Convention for workers in SEZs.

In this regard, the Employer members observed that the Government had assured the Committee of Experts that its new Law on the Right to Peaceful Assembly and Peaceful Procession was in full conformity with the Convention, requiring only 24-hour advance notification and repealing sanction provisions. However, they noted that the Committee of Experts continued to express the concern that the law might still permit serious restrictions on the right of organisations to conduct their activities without interference. With respect to the labour law reform process, a draft law to amend the Settlement of Labour Disputes Law had been discussed with tripartite partners at the Labour Law Reform Technical Working Group in July 2017. While noting the Government's indication that it was reviewing the penalties in the draft law and drafting amendments, the Employer members also noted the concerns of the social partners over the lack of information from the Government about the process and over instances of resistance to making amendments, leading to fears that the result might be worse than the current situation, in particular in view of the Government's reluctance to grant informal workers the right to organize, despite the fact that thousands had already formed unions under the Labour Organization Law.

Furthermore, the Committee of Experts had expressed concern over threshold requirements for unions to have 30 members as well as 10 per cent affiliation in the same trade or activity before being able to establish a basic labour organization, the eligibility requirement for union officials to have been working in the same trade or activity for six months and the requirement for foreign workers to be resident in the country for five years to be able to join a union. Subject to the caveat that certain threshold criteria were appropriate, for instance the basic criteria to establish any incorporated body, the Employer members endorsed the latest request formulated by the Committee of Experts in this regard, since dual or overly restrictive criteria could have the effect of inhibiting the freedom to form

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and join organizations and to elect representatives as provided in Article 3 of the Convention. Emphasizing also that the Convention applied equally to workers' and employers' organizations, they suggested that unions should not be treated differently to employers' organizations with respect to the freedom to establish organizations. The Employer members further recalled the 2015 governments' statement, which recognized that the right to strike was a matter for national regulation.

With respect to SEZs, concerns had been expressed around the fact that dispute procedures for workers in SEZs were more cumbersome than for other workers, and that labour inspector powers had been delegated to SEZ management bodies. In response, the Government had indicated that the labour inspectorate was permitted to coordinate and cooperate with SEZ management to have jurisdiction, and that the Labour Organization Law could be enforced in SEZs. The Employer members echoed the request of the Committee of Experts that the Government take the necessary steps to ensure that SEZ workers were treated consistently with other workers as well as provide information about the actual practice of dispute settlement and the results of labour inspectorate activities in SEZs.

The Employer members believed that the current situation in Myanmar could be described as one of concern that things might go wrong rather than of certainty that things had gone wrong. In many ways, Myanmar was standing at a new beginning, which rendered the task of establishing labour laws in conformity with international standards all the larger. It was time to consider carefully and thoughtfully how the future should look with respect to labour relations, using a careful and highly consultative approach involving all the social partners and involving independent expert advice from the ILO when appropriate. They noted that, in February 2018, the ILO had briefed Parliament and tripartite constituents on the application of international labour standards in Myanmar, with a view to gathering support for the development of a strategic approach to the promotion of international labour standards for the upcoming Decent Work Country Programme. The subsequently developed proposals were now under consideration.

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In conclusion, in the Employer members' view, nothing was too late at this juncture. It was the right moment for the Government to take heed of the concerns expressed by the Committee of Experts and the Conference Committee, and to collaborate with the social partners in the development of a sound platform for the conduct of labour relations. The Employer members therefore urged the Government: (i) to continue to avail itself of the expertise and technical assistance of the ILO with a view to completing the development and introduction of labour laws in line with the explicit standards and guarantees set out in the Convention; (ii) to consult with the social partners with the aim of ensuring that workers were able to elect their officers freely as envisaged by Article 3 of the Convention; (iii) to apply the Convention without distinction between workers' and employers' organizations; and (iv) to provide information, as soon as available, on the steps taken to ensure that SEZ workers were treated consistently with other workers as well as on the actual practice of dispute settlement and the results of labour inspectorate activities in SEZs.

The Worker member of Myanmar (Ms AUNG) expressed the hope that with the significant recent changes, including the enactment of the Labour Organization Law, Myanmar would enter a new era, where workers would enjoy their trade union rights in full freedom and would be included in the economic and social development of the country. Workers were still struggling for the development of an independent and strong labour movement, and organizing in the country remained severely hindered by major shortcomings in the legislation and the lack of an enabling environment. The Labour Organization Law contained numerous provisions that hindered union formation and registration by setting excessive requirements and thresholds. It also interfered with the right of workers' organizations to elect their officers freely and to formulate their programmes and activities.

In practice, trade union density remained extremely low, and workers were deprived of their fundamental right to organize and defend their interests. In the absence of protection against anti-union discrimination, many workers who had formed or joined labour unions had subsequently been dismissed or subjected to other forms of reprisal by their employers.

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Furthermore, workers and unions were prohibited from taking industrial action. The Labour Organization Law required that a majority of workers voted for strike action to be undertaken, a threshold that excessively restricted the exercise of industrial action. In addition, permission from the relevant federation to go on strike was required, which was a severe infringement of unions' right to organize their activities freely. Even when a strike action was staged, its impact was severely hampered by the 500-yard picketing restriction, as demonstrations were prohibited within 500 yards from hospitals, schools, religious buildings, airports, railways, bus terminals, ports or diplomatic missions and military or police installations.

The 2018 series of amendments to the Law on the Right to Peaceful Assembly and Peaceful Procession, as passed by the Upper House, had been denounced by labour and human rights organizations. Among the many contentious provisions, a new section provided that anyone who supported a protest either financially, materially or through other means would be deemed in breach of national security, the rule of law, public order, or public moral, and could face up to three-year imprisonment and a fine. Such a vague formulation could be used by the authorities to curb industrial action and suppress unions. The previous law had already been used to arrest and jail students, farmers, journalists and other activists.

The Committee of Experts had repeatedly emphasized the need to bring the national legislation into full conformity with the principles and rights enshrined in the Convention; but the Government had failed to take into account the concerns raised. In fact, the amendments proposed by the Government to the Labour Organization Law and the Settlement of Labour Disputes Law would further restrict freedom of association and trade union rights. The last draft proposal maintained a strict control over the formation of unions, which would only be "acknowledged" and not registered, and also increased the powers of the chief registrar to deregister unions.

Myanmar had been undergoing major political transformation, while opening the country to investments which fostered economic development. It was crucial to ensure that

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workers were included from the start in the process of structuring the economic change in the country, and a solid labour movement led by independent and strong unions was therefore necessary. Such changes could only be achieved in an environment conducive to the exercise of the right to freedom of association. The current legislative framework highly restricted trade union rights, and it appeared that the draft amendments proposed by the Government would not improve the situation.

To implement the decision of the Governing Body urging the Government to further engage in the process of the labour law reform to promote freedom of association through tripartite dialogue, it was important that ILO renew the related project and provide support to all the tripartite partners.

In conclusion, the speaker urged the Government to engage in a meaningful and constructive process of consultations with workers and employers, and to amend the current labour laws in a way that would guarantee to all workers the right to freedom of association and the right to organize freely.

The Employer member of Myanmar (Ms KHINE KHINE) highlighted the significant growth of the private sector over the last five years. The private sector of Myanmar was a major contributor to the gross domestic product (GDP) of the country. Over the past years, the country had experienced a steady GDP growth pattern (5.9 per cent in 2016; 6.4 per cent in 2017; and a 6.8 per cent forecast for 2018). The growth constituted evidence of employment creation, productivity output and harmonized co-operation between employers and workers. In recent years, hundreds of thousands of new jobs had been created by the private sector. In the labour-intensive manufacturing sector alone, the jobs created had doubled from 2013 (approximately 200,000) to date (over 400,000). Moreover, according to the 2017 Annual Labour Force Survey, child labour participation in the workforce had decreased significantly, thanks to the tripartite partners. Recently, the Government had developed the Myanmar Sustainable Development Plan, in line with the national economic policy as well as the Sustainable Development Goals (SDGs), which

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aimed at ensuring inclusive and sustained growth of the country and its people. In that context, the private sector had been identified as a prominent contributor to the development of the country.

The speaker considered that the Labour Organization Law, which provided for the establishment of labour organizations as well as their rights and responsibilities, was in line with the Convention. In her view, the country knew best the needs of the society based on the culture and customs of the country, and the Conference Committee should not be micro-managing national legislation. After all, Article 8 of the Convention clearly stated that, in exercising the rights provided for in the Convention, workers and employers and their respective organizations, like other persons or organized collectivities, should respect the law of the land. The speaker indicated that, employers, workers and Government had been meeting for the tenth time since 2015 during the National Tripartite Dialogue Forum, openly dialoguing the needed reforms of the laws, based on reality and practice. The Government's proposed revision to the Labour Organization Law included a new chapter on the formation of employers' organizations, which represented a positive step. To date, there was only one township-level employers' organization and one employer federation in the whole country.

Regarding the Committee of Experts' observations on penalties, the speaker noted that the issue should not be limited to penalty levels and penalties against employers. The lack of significant penalties to deter illegal activities of unions had a significant, negative impact on industrial peace in Myanmar. While noting the right of workers under national law to engage in legal industrial action, she stated that union members had repeatedly carried out strikes using illegal tactics, such as fully blocking the entrance to factories, in violation of national law and international best practice. Such actions inevitably had resulted in physical confrontation, including instances where unionists had assaulted factory management and other, non-union workers. Violations of the Labour Organization Law and regulations on strikes were also observed. The speaker called on the Government to devise, through tripartite dialogue, ways and solutions to deter such actions, or else industrial relations and

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rule of law would be undermined. The anarchy currently characterizing industrial action was not in accordance with national law and not conducive to positive labour relations. Illegal industrial action was detrimental to current and potential foreign investment and could negatively affect job creation. Moreover, the speaker denounced the repeated calls by national trade unions during labour law reform meetings for prison sentences against employers for minor, administrative labour law infractions, contrary to the recommendations of the ILO. A punitive system of labour relations would be unhelpful to the promotion of harmonious labour relations.

Furthermore, the speaker highlighted the lack of employer confidence in the arbitration system. Albeit created for collective disputes and even though the law stated clearly that individual cases were for the competent courts, the Government insisted on sending individual cases to the arbitration system (currently over 80 per cent of the total number of cases). Tripartite dialogue on establishing a proper dispute resolution system had taken place but results remained uncertain. Arbitrators were not required to have legal background and, at the conciliation and first arbitration phase, members of unions and employers' organizations could act as conciliator or arbitrator themselves. The lack of knowledge and conflicts of interest often yielded verdicts that were clearly against the law and undermined employer confidence in the arbitration system. Lastly, the speaker indicated that, under the Factories Act, only two types of businesses were regulated: continuous work where the law allowed for 48 working hours in a week (eight industries) and non-continuous work with 44 hours per week (all other industries). Such rigid working hours were not in tune with the flexibility needs of the newly developed industries (such as security service, oil and gas, garment, and food processing industry) and rendered them uncompetitive.

In conclusion, the speaker emphasized that, for a young democracy like Myanmar, the journey was long, and it would undoubtedly take time to get where all stakeholders wanted to be. The social partners needed to work together constructively.

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The Government member of Bulgaria (Ms PARAPUNOVA), speaking on behalf of the European Union (EU), as well as Albania, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, Montenegro, Norway and Serbia, attached great importance to the respect, protection and fulfilment of human rights, including freedom of association of workers and employers and the right to organize, and recognized the important role played by the ILO in developing, promoting and supervising international labour standards. The EU and its Member States were engaged in the promotion of the universal ratification and implementation of the eight fundamental Conventions. The speaker welcomed the positive steps made by the Government to improve labour rights in a number of areas. The ILO's involvement was also welcomed, particularly with respect to the recent development of a Decent Work Country Programme outline which included freedom of association as a priority. It should be implemented swiftly. Together with the Governments of Denmark, Japan and the United States, as well as with the ILO, the EU had actively provided support for the Myanmar Labour Rights Initiative to Promote Fundamental Labour Rights and Practices, notably through funding the last Stakeholders' Forum which had taken place in Nay Pyi Taw on 17 January 2018 to discuss progress and challenges in labour market reforms including labour law reform. In view of the constructive dialogue on the way forward during the event, the speaker reiterated the need for the Government to continue its efforts to bring national law in line with international labour standards, to foster tripartite dialogue, and to ensure freedom of association. Noting with interest that tripartite dialogue was being strengthened through the National Tripartite Dialogue Forum, she encouraged the Government to finalize the Labour Organization Law in consultation with the social partners. Observing that the first draft amendment to the Settlement of Labour Disputes Law had been discussed on the basis of tripartite consultations in July 2017, the speaker encouraged the Government to move forward with the reform process in close consultation with the social partners. With reference to the concerns raised with respect to some provisions in the Rules to the Labour Organization Law containing restrictions for eligibility to trade union office, and a requirement for the affiliation of 10 per cent of the workers in

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order to establish a basic labour organization, she requested the Government to take measures to amend the Rules to ensure that workers were able to elect their officers freely, and to form and join organizations of their own choosing. Lastly, the Government was requested to ensure that the rights under the Convention were also guaranteed in SEZs, where specific laws might apply. The EU would remain committed to close and constructive engagement and partnership with the Government.

The Government member of Thailand (Mr PLANGPRAYOON), speaking on behalf of the Association of Southeast Asian Nations (ASEAN), recognized the positive developments in the country, including the demographic reform process, and noted with appreciation the information provided by the Government. The ILO had provided technical assistance on the promotion and protection of labour rights, and tangible results had been achieved in that regard. Moreover, the Decent Work Country Programme outline endorsed by the national tripartite body would be implemented. The speaker called upon the ILO to recognize the abovementioned positive developments.

An observer representing the IndustriALL Global Union (Ms. MILLER) emphasized that the Labour Organization Law deprived workers of their right to establish and join organizations of their own choosing. Section 4 of the Labour Organization Law imposed restrictions on the structure of trade unions, required that workers worked in the same trade or activity to form a union, and set strict requirements to form higher-level organizations.

With respect to the restrictions related to the structure of trade unions, section 4 of the Labour Organization Law required unions to strictly follow the administrative structure of the country. Specifically, unions could only be formed as: (i) basic level unions that covered a single workplace; (ii) township level unions which brought together unions in the same township; (iii) regional or state-level unions, comprised of township unions; (iv) federations formed of state-level unions; and (v) confederations. Under that scheme, it was impossible for example to create an enterprise-based union, if the employer was in more than one

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township. Instead, each workplace of that employer would have a separate union. It was also impossible to form an industry or occupational union at a national level, without having created intermediate structures such as township and state-level unions. This pyramidal structure did not serve the interests of workers or employers.

The requirement that workers be in the "same trade or activity" to form a union, created silos from bottom to top. As a result, unions could not be formed among workers in similar or even unrelated "trades or activities". Moreover, registrars had narrowly interpreted the law and regulations. For example, workers in the "transport" sector had been forced to form separate unions for truck drivers, train drivers, inland waterways, taxis, etc. It had led to the creation of basic township unions of workers from the same township performing the same task.

Turning to higher-level organizations, township unions could only form a state-level union of workers performing the same task. Similarly, federations were formed of state-level unions of workers performing the same activities. There could be no structure representing workers of different trades or activities. The Committee on Freedom of Association had held that any restriction, either direct or indirect, on the right of unions to establish and join associations of unions belonging to the same or different trades, on a regional basis, would not be in conformity with the principles of freedom of association. Finally, the speaker urged the Government to rethink the system, together with the unions, so as to ensure respect for the workers' right to association.

Le membre gouvernemental de la Suisse (M. BLESS) a soutenu la déclaration faite par l'Union européenne. En ce qui concerne la loi sur le droit de réunion et de manifestation pacifiques, il a souhaité encourager le gouvernement à poursuivre des amendements qui réduisent les restrictions au droit de réunion, et a salué les consultations avec les partenaires sociaux menées par le gouvernement quant au processus de réforme de la loi sur le règlement des conflits du travail. Des relations de travail basées sur le bon fonctionnement du partenariat social et la confiance dans le cadre du dialogue social constituent des facteurs

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clés pour le développement durable d'une économie. La liberté syndicale et la protection du droit syndical et du droit d'organisation et de négociation collective font partie des fondements d'une démocratie et constituent la base des négociations entre partenaires sociaux dans d'autres domaines. Pour cette raison, l'orateur appelle le gouvernement à envisager la ratification d'autres conventions fondamentales. Il l'encourage à prendre les mesures nécessaires afin de garantir que la nouvelle loi sur le droit de réunion et de manifestation pacifiques corresponde pleinement aux dispositions de la convention, ainsi que les mesures nécessaires pour que le processus de réforme de la législation du travail se fasse en concertation avec les partenaires sociaux et soit en conformité avec les normes internationales. Mettant à disposition l'expertise de son gouvernement en matière d'implication des partenaires sociaux dans les réformes importantes, l'orateur soutient les projets de coopération de l'OIT au Myanmar visant une amélioration du dialogue social en entreprise.

The Worker member of Japan (Ms GONO) drew attention to the increasing discrimination against union leaders in Myanmar, which made it difficult for unions to organize or conduct activities and went against the core ILO principles of freedom of association and the right to organize. She reminded the Government of the Decision on the follow-up to the resolution concerning remaining measures on the subject of Myanmar taken by the ILO Governing Body in March 2018, which had 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. The reality of the trade union situation was bleak. Although the formation of unions had been progressing rapidly since the Labour Organization Law's enactment, so had cases of union-busting and discrimination against trade union leaders, in clear violation of the Convention. Since 2017, the CTUM had reported 29 cases of unfair dismissal as a result of trade union organizing that had led to the termination of 3,424 union leaders and members. In many cases, the Arbitration Council had ordered their reinstatement; but to no avail. Moreover,

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multiple problems surrounded the dispute process: the arbitration process was time-consuming; fines provided by the Labour Organization Law for non-compliance with Arbitration Council decisions were so low (amounting to US$750) that employers often opted to disregard them; employers' failures to enforce agreements concluded with unions went unpunished, and as a result, many unfair dismissal cases reached the court as individual cases. In an environment where legal enforcement was weak and collective bargaining non-existent, workers could be subjected to criminal punishment for industrial actions. The speaker requested the Government to take concrete measures to guarantee freedom of association, including the amendment of the Labour Organization Law and the Settlement of Labour Disputes Law, in order to protect trade union activists from employers' discriminatory treatment and dismissals.

El miembro gubernamental de la República Bolivariana de Venezuela (Sr. FLORES) valoró que, pese a los cambios políticos y económicos, el Gobierno afirmara su compromiso de continuar garantizando los derechos laborales. Con base en la Ley sobre Organizaciones Sindicales, se han constituido sindicatos y federaciones, y la tendencia es un aumento de esos registros. En virtud del compromiso del Gobierno, este aumento debería mantenerse. También se está llevando a cabo un proceso de reforma de la legislación laboral, sobre la base de consultas tripartitas. A este respecto, el orador alentó al Gobierno a fortalecer sus relaciones con los interlocutores sociales. Por lo tanto, la Comisión debería tomar nota de todos los aspectos positivos que se desprenden de las explicaciones suministradas así como de la buena disposición del Gobierno, y adoptar conclusiones objetivas y equilibradas, lo que dará lugar a que el Gobierno pueda considerar y valorar las conclusiones en el marco del cumplimiento del Convenio.

An observer representing Building and Wood Workers International (BWI) (Mr TOLENTINO), speaking on behalf of the Building and Wood Workers Federation of Myanmar (BWFM), stressed that the unions in the construction sector were discriminated against and referred to the specific situation of two unions. First, a union created in a Special

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Economic Zone had been denied its registration application on the ground that a special MOLIP order had been issued to deny registrations from unions in the construction sector. MOLIP officers had argued that the country was not ready for the registration of unions in the informal economy. The second case concerned the denial of a union's registration on the ground that the applicants had not been employed by the company for more than six months. The requirement was impossible to meet in the construction sector where work was intermittent and informal. In conclusion, the speaker urged the Government to end discrimination against unions in the construction sector, and to stop using arguments such as informality and intermittence of the work to deny registrations. In particular, the legal requirement of the six months of service had to be lifted.

The Government member of the United States (Mr QUINTANA) indicated that although union density remained low, since the 2011 enactment of the Labour Organization Law, more than 2,400 basic labor organizations had been registered at various levels specified in the law. Still, according to the ILO Liaison Officer, restrictions on freedom of association continued in both law and practice. The Government and the social partners had committed to reform the Labour Organization Law and the Settlement of Labour Disputes Law of 2012, and a Technical Working Group on Labour Law Reform had been established and convened to hold tripartite consultations on potential amendments. However, the amendments circulated by the Government in September 2017, while lifting some restrictions on the formation of workers' and employers' organizations, would not address the issue of lowering the minimum membership requirements for basic labour organizations and removing the eligibility requirements for executive committee members.

Furthermore, the following issues were also raised: the slowing down of the registration rate of trade unions; imposition of registration requirements not set out in the law by some local labor offices, thus frustrating trade union registration; reprisals against workers during and after union formation, as well as lack of penalties against violating employers; low number of registered employers' organizations (27 basic employers' organizations, one

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township organization and one employers' federation); and low organizational density amongst employers, partly caused by structural restrictions in the law, that inhibited the growth of strong industrial relations in the country.

The Government was therefore urged to take full advantage of the tripartite consultative process on labor law reform to bring the laws into compliance with the Convention, in full consultation with the social partners, and in particular to: reduce the minimum membership threshold; remove eligibility requirements for executive committee membership; protect workers from unfair labor practices during trade union formation, including by prohibiting all forms of retaliation; revise the tiered structural requirements so that both workers' and employers' organizations could form and federate more freely; and ensure that penalties for non-compliance with the law were sufficiently dissuasive, including by explicitly prohibiting non-compliance with Arbitration Council decisions. To conclude, the speaker urged the Government to enact legal reforms through tripartite consultations and encouraged the tripartite partners to avail themselves of ILO technical assistance in that regard.

The Worker member of the Republic of Korea (Ms RYU), speaking also on behalf of the Australian Council of Trade Unions and the Canadian Labour Congress, clarified that procedures for dispute settlement within the SEZs were more cumbersome because, although required by the SEZ Law, no procedure had been established for parties in a dispute to notify the Management Committee so that it could mediate. SEZs aimed to attract foreign investment, and the law offered incentives for export-oriented businesses. Many Korean companies were operating in the SEZs, and although no concrete information was available about working conditions, due to denial of access for trade union organizers, the numerous cases of violations by Korean companies of labour law and of freedom of association indicated that SEZs must be given special attention. For instance, in November 2017, unionized workers in a Yangon sock factory had gone on a 21-day strike to obtain the employer's respect for labour law; the employer had not only disregarded the regional arbitration body's award, but had also dismissed 73 workers and filed a lawsuit against 13

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union leaders for leading the strike. In another instance at a wig factory, the arbitration body had ordered the reinstatement of the union president and a central committee member who had been dismissed; instead the employer had dismissed 60 union members and threatened to sue the workers for defamation and unlawful strike. The Government of the Republic of Korea had recently announced that, under its New Southern Policy, it would tighten economic ties with ASEAN countries, including Myanmar. She expressed concern that increased Korean investment would prove very harmful for Myanmar's workers and would undermine fundamental labour rights. The ILO principles were clear: all workers should enjoy fundamental labour rights, including those working in SEZs. She urged the Government to take all necessary measures to fully guarantee rights enshrined in the Convention to workers in SEZs, and to ensure that the SEZ Law did not interfere with the application of other laws.

The Worker member of Turkey (Mr BEDÜK) stated that in March 2018, the Upper House had approved amendments to the Law on the Right to Peaceful Assembly and Peaceful Procession which would include: a potential three-year jail term for anybody deemed to have supported, financially or otherwise, a protest that had the intention to "break national security, rule of law, public order or public morals"; and a new obligation for those seeking permission to hold a rally to inform the relevant local authorities of how much money would be used to fund the gathering and who would fund it. Thousands of people had protested against the proposed changes, and some parliamentarians had considered that they would diminish protection for the rights of workers, farmers, ethnic groups, as well as the rights of citizens to protest against corruption. If adopted, the amendments would stifle freedom of expression and peaceful assembly and would mark a significant shrinking of democratic space in the country. The Government must therefore repeal or amend the Law.

The right to free assembly and the right to strike were inalienable rights for workers and their families, including those that had been displaced. However, in practice, the Labour Organization Law had weakened the trade union movement, and support was therefore

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expressed for the call by the Worker members and the CTUM to amend the Labour Organization Law to ensure its compliance with the Convention on the right to strike. The speaker also expressed solidarity with the Worker member of Myanmar regarding the strive to ensure that the right to organize was fully protected.

The Government representative indicated that he had carefully listened to all concerns, views and suggestions raised during the discussion, which would be brought back to the capital for due consideration with a view to ensuring better compliance with the Convention. The Convention had been ratified in 1955, but the Labour Organization Law had been adopted in 2011. Since then, more than 20,000 employers' and workers' organization had been established. More organizations would mean more collective bargaining. As Myanmar continued to improve the Law on the Right to Peaceful Assembly and Peaceful Procession, it was heartening to note that tripartite spirit, which was the hallmark of the Committee, was taking root and developing in Myanmar. That should be viewed as progress. Based on a tripartite spirit, three Technical Working Groups relating to a Decent Work Country Programme, labour law reform and communication had been established. All suggestions received in the Committee would be discussed by the Labour Law Reform Technical Working Group. Three Stakeholder Forums on Labour Law Reform had also been held in 2015, 2016 and 2018, thanks to the Governments of Denmark, Japan and the United States, as well as the ILO. Local and international partners had participated to exchange views and experiences, and the forums had produced the intended outputs. The Labour Law Reform Technical Working Group and tripartite participants were constantly interacting. The achievements so far could be seen as a glass half empty or half full. A lot had been done compared to the labour law situation in the past, but more needed to be done for gradual progress towards compliance with the Convention. For this purpose, assistance from international partners and technical cooperation from the ILO would be necessary with a view to achieving compliance with the Convention.

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The Employer members indicated that fixing a threshold per se did not amount to a violation regarding the right to establish organizations. Many countries fixed thresholds for establishing organizations, and some even aligned the thresholds with those for forming societies. Many interventions had underlined, however, the cumbersome nature of the process of establishing organizations in Myanmar, due to additional and unnecessary thresholds. In that context, the Employer members also drew attention to the need to ensure equality between workers' organizations and employers' organizations as far as conditions for establishment of organizations were concerned. On the other hand, the right of workers to establish organizations of their own choosing also involved the risk of the creation of a multitude of scattered unions, which would give rise to serious problems and would entail the need for a better organization of the trade union movement. In that regard, the Government must be mindful of lessons that could be learned from others.

Furthermore, the Employer members stated that many interventions had referred to repressive activities concerning strikes, although the gatherings rather amounted to public protests. They wished to emphasize that the Law on the Right to Peaceful Assembly and Peaceful Procession constituted a general civil law applicable to all and not only to trade unions, whereas the Labour Organization Law and the Settlement of Labour Disputes Law were of a distinct nature and genuinely belonged to the area of labour legislation. The Employer members urged the Government to take heed of all requests related to labour legislation and the SEZs.

In their view, Myanmar was still at the beginning of the implementation process. There were concerns, but as yet, nothing was broken to the extent that it could not be fixed. Social dialogue was the way forward, and Myanmar had the platform to succeed in this regard.

The Worker members stated, in reply to some of the comments made, that the question of trade union plurality was a challenge for workers in many countries, as there were different models and different solutions, but it was for the workers to decide on their own form of organization. The issue of the Law on the Right to Peaceful Assembly and

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Peaceful Procession was a question for democracy, democratic space and social movement, and organized labour unions formed part of it.

The speaker further indicated that starting in 2012, interest in investment in Myanmar had considerably grown, largely because the country had been (and continued to be) the world's next low-cost manufacturing hub, with wages among the lowest in Asia. At the time, workers had warned that, in the absence of a demonstrated commitment to the rule of law and coherence in economic and social policy, there had been no guarantee that the generated employment would constitute decent work. Indeed, interest in foreign investment had waned, which was partly due to the poor legal environment for social dialogue and the absence of coherent labour relations policies and of the rule of law, particularly for workers. Since both employers and workers had agreed that the dispute settlement system was broken, more tripartite social dialogue was needed as the law was being reformulated. In March 2018, trade associations representing the major United States apparel and footwear brands had sent an urgent letter to the State Counsellor explaining that the potential to initiate, maintain, and expand business relationships in Myanmar would be greatly enhanced by the ability to engage with workers that enjoyed freedom of association and collective bargaining, and the ability to address any grievances through predictable, transparent channels, enforced by the Government, that had the confidence of all stakeholders. The brands had noted, however, that the existing labour laws were not fit for that purpose and that the Government had so far failed to enforce even those flawed laws. They had further found that factory managers had routinely intimidated workers, had urged them not to form unions and had called the police during work stoppages as an intimidation tactic to break strikes.

Rather than following a high road development strategy, it would appear that Myanmar was racing to the bottom. The Worker members had expected much more from the Government. However, if it pursued truly authentic social dialogue that could be seen in results, put in place the proper laws and invested in developing a mature industrial relations strategy, Myanmar could still distinguish itself and attract more and more responsible

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businesses. Consequently, the Government was requested to: engage in meaningful dialogue with Worker and Employer representatives to ensure that the Labour Organization Law and the Settlement of Labour Disputes Law complied with the Convention; ensure that workers' and employers' organizations were able to register through a simple, administrative process – any directives containing additional requirements to those contained in the Labour Organization Law and its Rules should be withdrawn immediately, and all registrar officials should be instructed not to request any such additional documentation; ensure that workers were able to carry out their trade union activities without threat of violence or other violations of their civil liberties by police or private security; address the shortcomings in law and practice regarding labour rights in the SEZs; accept a technical mission as soon as possible to develop an industrial relations system based on freedom of association and collective bargaining, including to review all drafts of the Labour Organization Law and Settlement of Labour Disputes Law and recommend amendments consistent with the Convention; and inform the Committee of Experts at its next session on the progress made in the implementation of the Convention in law and practice.

The sitting closed at 21.40 p.m.
La séance est levée à 21 h 40.
Se levantó la sesión a las 21.40 horas.

(…)

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