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International Labour Conference – 109th Session, 2021

Date: 7 June 2021

Reports on credentials

Second report of the Credentials Committee

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Representation of Myanmar

Background

1. On 12 February and 30 April 2021, the Director-General of the International Labour Office (ILO) sent letters to the Permanent Mission of Myanmar in Geneva and to the email addresses of the Ministry of Labour, Immigration and Population, inviting that Member State to participate in the 109th Session of the International Labour Conference.
2. On 14 May 2021, a form signed by Mr Myint Kyaing, “Union Minister for Labour, Immigration and Population”, was submitted through the online accreditation system containing the credentials of the delegation of Myanmar. The delegation included Government delegates and advisers from the Ministry of Labour, Immigration and Population, the Ministry of Foreign Affairs and the Permanent Mission in Geneva, including the Chargé d’affaires ad interim, as well as an Employers’ delegate from the Union of Myanmar Federation of Chambers of Commerce and Industry (UMFCCI) and a Workers’ delegate from the Myanmar Seafarers Federation (MSF).
3. On 19 May 2021, the ILO received a note verbale from the Permanent Mission of Myanmar in Geneva requesting it to prevent the representatives of the “Committee representing Pyidaungsu Hluttaw” (CRPH) and the “National Unity Government” (NUG) and their affiliated groups of persons from participating in the Conference.
4. Also on 19 May 2021, the ILO received by electronic mail a document entitled “credentials”, signed by Mr Nai Thuwunna, “Union Minister for Labour of the National Unity Government”, notifying the appointment of a delegation representing the “National Unity Government of the Republic of the Union of Myanmar”. The delegation included as Government representatives the Minister of Labour, the Deputy Minister of Labour, and the Permanent Representative of Myanmar to the United Nations (UN) in New York, as well as four persons listed as diplomats of the Permanent Mission of Myanmar in Geneva, but who, according to the official listing of Permanent Missions of the United Nations Office at Geneva (“Blue Book” No. 119, updated 25 May 2021), no longer serve at the Permanent Mission. The delegation also comprised an Employers’ delegate and adviser from the Myanmar Overseas Employment Agencies Federation (MOEAF) and a Workers’ delegate and adviser from the Confederation of Trade Unions Myanmar (CTUM).
5. On 20 May 2021, the ILO received a letter from Mr Win Shein, “Deputy Minister”, informing the Director-General that the CTUM, which had been regularly participating in previous sessions of the Conference, had announced that it suspended its participation in the country’s tripartite mechanism and that it had affiliated itself with the CRPH and the NUG. The State Administration Council (SAC) had declared those entities and their affiliated groups unlawful associations and considered that they constituted a danger to the rule of law and to peace and stability.
6. On 20 May 2021, the Provisional List of Delegations was published and did not include any delegation for Myanmar. On the same day, the ILO Legal Adviser sent letters to the Permanent Mission and to the “NUG Union Minister for Labour” to inform them that two sets of credentials for Myanmar had been received. As the Office had no authority to determine which credentials should be accepted, it informed the recipients that the matter would be referred to the Credentials Committee. Pending a decision of the Committee, neither delegation would be able to participate in the Conference.

7. On 21 and 22 May 2021, the ILO received several communications from Mr Myint Kyaing, “Union Minister”, and the Permanent Mission requesting clarifications and expressing concern at the non-registration of the delegation of Myanmar and insisting that the delegation listed in the form of 14 May 2021 be allowed to participate in the Conference. In a letter of 22 May 2021, the “Union Minister” asked for the reasons why the NUG had been invited to the Conference and provided the form for submitting credentials. On 25 May 2021, the ILO Legal Adviser replied to that communication and clarified that the NUG had received neither an invitation to the Conference nor a credentials form. It was also indicated that pending examination of the competing credentials by the Credentials Committee, no person mentioned in either set of credentials would be recorded as accredited to the Conference, and exactly the same approach was taken in other UN organizations such as the World Health Organization. The Committee also received separate communications from the UMFCCI, which indicated that it was the main employers’ organization and as such had always been accredited to the Conference since Myanmar began attending the Conference, as well as from the MSF. Both organizations called upon the Committee to accept the credentials of their delegates and allow them to participate in the current session of the Conference.
8. On 26 May 2021, the Credentials Committee received an unsolicited communication from Mr Nai Thuwunna, “Union Minister for Labour” of the NUG, requesting the Committee to support its claim to represent the people of Myanmar at the present session of the Conference. It stated that the SAC had been formed after the military leadership had seized power through an illegal coup, arrested and imprisoned the country’s civilian political leadership and prevented the elected Government from taking office. The NUG had been established following extensive consultations with civil society and ethnic leaders nationwide by the elected members of Parliament that had not yet been detained by the military. The author considered that the NUG represented the people of Myanmar, as its formation reflected the will of the people as expressed through the November 2020 elections. In view of the SAC’s actions against the population of Myanmar following the coup, the NUG had declared the SAC a terrorist organization. The letter provided a detailed timeline of events in Myanmar from February to May 2021.
9. The NUG “Union Minister” drew the Credentials Committee’s attention to the terms of the UN General Assembly resolution 396(V) of 1950 on the recognition by the UN of the representation of a Member State, and to the precedents of Haiti (1991) and Sierra Leone (1996), in which the General Assembly had not accepted the credentials of military governments that had seized power through a coup. He noted that the UN Security Council had repeatedly expressed its deep concern at developments in Myanmar since 1 February 2021. It was further noted that the NUG had already formed 13 ministries, including the Ministry of Labour, which upheld the UN Charter and the principles of the ILO, and that for several years the CTUM had been the most representative workers’ organization.
10. Also on 26 May 2021, the ILO Liaison Officer at Yangon received a letter from Mr Win Shein, “Deputy Minister”, informing that due to the suspension of the accreditation process, Myanmar needed to review the current cooperation with the ILO for the implementation of the Decent Work Country Programme (2018–21).
11. In considering this case, the Committee recalls that at its 341st Session (March 2021), the Governing Body discussed the developments in Myanmar after 1 February 2021, and among others, expressed profound concern and called on the military authorities to respect the will of the people, respect democratic institutions and processes, and restore

the democratically elected Government. The Governing Body expressed also its grave concern about the arrest, intimidation, threats, and acts of violence against trade unionists as well as measures or orders issued curtailing freedom of expression and freedom of peaceful assembly. Moreover, the Governing Body reaffirmed that Myanmar had an obligation to comply fully with the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and to ensure that workers and employers were able to exercise their freedom of association rights in a climate of freedom and security, free from violence, arbitrary arrest, and detention.

- 12.** The Committee also recalls that, at previous sessions between 1999 and 2011, when seized with objections concerning the credentials of the Workers' delegation of Myanmar (see, for instance, the 87th Session of the International Labour Conference, 1999, Provisional Record 26, paragraph 6 and the 98th Session of the International Labour Conference, 2009, Provisional Record 4C, paragraph 31), the Credentials Committee regularly stressed the link that existed between freedom of association and the nomination of a representative tripartite delegation and that such a link was in keeping with the spirit of the ILO Constitution and the fundamental principle of tripartism. The Committee has thus customarily considered that the capacity and willingness of authorities to nominate representative tripartite delegations were directly linked to their compliance with principles and obligations arising from the very fact of membership in the Organization.
- 13.** In addition, the Committee takes note of the resolution of the UN Human Rights Council on the situation of human rights in Myanmar (A/HRC/RES/46/21 of 24 March 2021), which condemned the deposition of the elected civilian Government as an unacceptable attempt to forcibly overturn the results of the general elections of 8 November 2020 and a major step back in the democratic transition of Myanmar. The Council reiterated its full support for the civilian and democratic transition of Myanmar and called upon the Myanmar armed forces to end the state of emergency and to restore the elected civilian Government.

Decision

- 14.** While taking due note of this background, the Committee recalls that, according to resolution 396(V), adopted on 14 December 1950 by the UN General Assembly, whenever more than one authority claims to be the government entitled to represent a State, the attitude adopted by the General Assembly concerning any such question should be taken into account in other organs of the UN and in the specialized agencies.
- 15.** The Committee also recalls the decision of the Governing Body of the International Labour Office of 10 March 1951 to draw the attention of the International Labour Conference to that resolution in order that the Conference take into account the position adopted by the UN.
- 16.** As a consistent line of precedent has it (for example Dominican Republic (1965), Cambodia (1998), Libyan Arab Jamahiriya (2011)), the question of recognition of governments and their representation in the Organization is considered a political matter in relation to which the Organization should be guided by any position adopted by the UN General Assembly. The decision to accept either set of credentials effectively requires that the Credentials Committee determine which entity is internationally recognized as representing the Government of the Member State in the Organization. In such case, accreditation is no longer a procedural formality and becomes a substantive question with significant political implications.

- 17.** According to information provided by the Office of Legal Affairs of the United Nations in response to the Office's request for advice on the question of representation of Myanmar at UN meetings and bodies after the events of 1 February 2021, the UN Secretariat has also received conflicting communications regarding the representation of Myanmar at the General Assembly. Those communications have been referred to the Credentials Committee of the 75th session of the General Assembly.
- 18.** The Committee further takes note that the World Health Assembly of the World Health Organization, upon recommendation of its Committee on Credentials, decided on 27 May 2021 to defer a decision on the question of the representation of Myanmar, pending guidance from the UN General Assembly, on the understanding that no one would represent Myanmar at its 74th session (Geneva, 24 May–1 June 2021).
- 19.** While recalling the decision of the Governing Body this past March regarding the situation in Myanmar, the Credentials Committee, in view of the line of precedent that this is a matter for the General Assembly, considers that it cannot presently proceed to accredit delegates for Myanmar. However, the Committee remains seized of this matter and may reconvene, in particular in the event that the Credentials Committee of the General Assembly makes a determination on this matter before the close of the current session of the Conference (11 December 2021).
- 20.** The Credentials Committee submits the present report to the Conference so that it may take note of its content.

4 June 2021

(Signed) Mr Juan Pablo Schaeffer, Chairperson

Mr Fernando Yllanes Martínez

Ms Amanda Brown