



# Governing Body

344th Session, Geneva, March 2022

Institutional Section

INS

**Date:** 25 February 2022

**Original:** English

Twelfth item on the agenda

## Follow-up to the resolutions concerning Myanmar adopted by the International Labour Conference at its 102nd (2013) and 109th (2021) Sessions: Report of the Director-General on developments in Myanmar, including information on potential follow-up action by the 110th Session of the International Labour Conference

### ▶ Introduction

1. At its 343rd Session (November 2021), having considered the developments in Myanmar outlined in document GB.343/INS/8 and the update report provided by the Office, and recalling the resolution for a return to democracy and respect for fundamental rights in Myanmar adopted by the International Labour Conference at its 109th Session (2021),<sup>1</sup> the Governing Body:

<sup>1</sup> ILO, [Resolution for a return to democracy and respect for fundamental rights in Myanmar](#), International Labour Conference, 109th Session, 2021.

- (a) expressed profound concern that no progress has been made to respect the will of the people, democratic institutions and processes, and restore the democratically elected government. It called on Myanmar to restore democratic and civilian rule in the country;
- (b) expressed profound concern that the military authorities have continued with the large-scale use of lethal violence and with the harassment, ongoing intimidation, arrests and detentions of trade unionists and others, including the Rohingya, in the exercise of their human rights, and repeated its call to the military authorities to cease immediately such activities, and to release from detention and drop any charges against trade unionists and others who have peacefully participated in protest activities;
- (c) expressed grave concern that the military authorities – despite the withdrawal of the notice of termination of the Memorandum of Understanding on the Decent Work Country Programme 2018–2022 – continue to interfere in the operations of ILO Yangon, including through the continued imposition of banking restrictions, the denial of visa extensions for ILO officials and of tax exemptions. It urged the military authorities to desist immediately from such interference and to respect the status of the Office in keeping with the provisions of the Convention on the Privileges and Immunities of the Specialized Agencies of 21 November 1947;
- (d) repeated its call for Myanmar to uphold immediately its obligations under the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and to ensure that workers' and employers' organizations are able to exercise their rights in a climate of freedom and security, free from violence, arbitrary arrest and detention, and called for the immediate release of the General Secretary of MICS-TUF and other trade unionists and activists who have been detained;
- (e) expressed serious concern over reports of the use of forced labour by the military and the relisting of Myanmar in the 2021 annual report of the Secretary-General of the United Nations on children and armed conflict, and urged Myanmar to end immediately the use of forced labour and to uphold its obligations under the Forced Labour Convention, 1930 (No. 29);
- (f) repeated its call for the Civil Services Personnel Law, the Settlement of Labour Disputes Law and the Labour Organization Law to be amended without delay, in line with Convention No. 87, once the country returns to democracy; and
- (g) requested the Director-General to report to the Governing Body at its 344th Session (March 2022) on developments in Myanmar, and to include information on potential follow-up action by the 110th Session of the International Labour Conference.

## ▶ General developments

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2. This document provides an overview of developments in Myanmar since the Office last reported to the Governing Body about the situation in the country in November 2021. The Office will provide further information orally to the Governing Body.
3. One year since the military takeover on 1 February 2021, President Win Myint and State Counsellor Aung San Suu Kyi remain in prison, and Myanmar is in the grip of an unprecedented human rights, economic and humanitarian crisis, while the state of emergency continues to be in place. According to the Office of the United Nations High Commissioner for Human Rights, as of 31 January 2022, more than 1,500 people had been killed for voicing their opposition to

the military, either in peaceful protests or through their online activities;<sup>2</sup> however, this does not include thousands more deaths from armed conflict and violence. In addition, at least 11,787 people had been arbitrarily detained. Of those detained, 8,792 remain in custody and at least 290 people have died while in detention. There are credible reports that many deaths in detention are the result of torture.

4. According to estimates of the Office of the United Nations High Commissioner for Refugees, the intensification of clashes between the military and opposition forces as well as of attacks by the military on villages has resulted in the displacement of 440,000 people since the military takeover, adding to the 370,000 people who were already internally displaced.<sup>3</sup> The most significant displacements are in Kayin, Kayah, Chin, Kachin and southern Shan States as well as the Sagaing and Magway regions.
5. Among a growing number of violent attacks on the civilian population, in Kayah State at least 35 people, two of whom were staff members of Save the Children, were killed and their bodies torched, allegedly by the military, on Christmas Eve 2021. The UN Security Council issued a statement calling for the immediate cessation of all violence and emphasized the importance of respect for human rights and of ensuring safety of civilians. In another attack in Kyimyindaing Township in Yangon on 5 December 2021, security forces used a truck to ram into unarmed protesters and then fired upon the group, reportedly killing and injuring a number of people as well as detaining some protesters. The United Nations Children's Fund also reported that three children were allegedly abducted from their homes by the military in Kayah State. The bodies of four children were later found in a toilet pit of a camp for internally displaced persons, and three of the four were identified as the three abducted children.
6. The military authorities continue to impose the death sentence on an increasing number of people. In January 2022, Kyaw Min Yu (also known as "Ko Jimmy"), a democracy campaigner and safe migration advocate, and Phyo Zayar Thaw, a former Member of Parliament of the National League for Democracy, received death sentences. Both were accused of plotting guerrilla operations against the military.
7. According to the United Nations Office for the Coordination of Humanitarian Affairs,<sup>4</sup> the crisis has deepened pre-existing needs among already vulnerable groups, including stateless Rohingya people and people living in protracted displacement, predominantly in the country's southwest and northeast. The crisis is projected to drive almost half of the population into poverty in 2022, while 14.4 million people need aid in some form.
8. In January 2022, the National Unity Consultative Council convened the first meeting of the People's Assembly, representing labour unions (including the Confederation of Trade Unions Myanmar), civil society organizations, ethnic armed organizations and others. Among other outcomes, the Council called on the international community, including the United Nations (UN), to implement internationally guaranteed safe zones for the protection of civilians from military airstrikes and from ground attacks with excessive use of force, and called on the international community to recognize the National Unity Government.
9. Laws and orders implemented by the military authorities since 1 February 2021 that suppress and criminalize dissent remain in place. In January 2022, the military authorities also revived

<sup>2</sup> OHCHR, "Myanmar: One year into the coup, Bachelet urges governments and businesses to heed voices of the people, intensify pressure on the military", 28 January 2022.

<sup>3</sup> UNHCR, "UNHCR steps up aid for displaced in Myanmar as conflict intensifies", 11 February 2022.

<sup>4</sup> OCHA, *Humanitarian Needs Overview: Myanmar*, December 2021.

proposals to introduce a Cyber Security Law, revising an earlier draft that was under consideration in February 2021. The draft law would ban the use of virtual private networks (VPNs), with non-compliance attracting a prison sentence of up to three years. There are widespread concerns about the proposal among the public and the business community, including international business associations and chambers of commerce.

10. According to a World Bank survey,<sup>5</sup> wider business conditions remain unfavourable, with reductions in sales, cash flow shortages and disruptions in the supply of inputs and raw materials remaining a major challenge. In January 2022, TotalEnergies and Woodside Petroleum expressed their intention to withdraw from Myanmar, joining at least ten other multinational companies who have ceased operations or cancelled planned investment in Myanmar or are considering doing so.
11. New ILO estimates published in January 2022 show that at least 1.6 million jobs were lost in 2021, with the military takeover compounding the impact of the COVID-19 pandemic. Working hours are estimated to have decreased by 18 per cent in 2021 as compared to 2020, equivalent to the working time of at least 3.1 million full-time workers. These working-hour losses are driven by employment losses as well as increased underemployment. Construction, garments, and tourism and hospitality were also among the hardest-hit industries in 2021, with year-on-year employment losses reaching an estimated 31, 27 and 30 per cent, respectively. As for less productive sectors such as agriculture, workers have managed to continue working but have shifted into poor-quality, lower-paid jobs.
12. On 25 January 2022, EuroCham Myanmar published a factsheet on the situation of workers in the garment sector. It emphasized that it is more essential than ever that all those who source from Myanmar focus on ensuring decent work, including safety, a living wage and freedom of association for all workers – including women, who represent the vast majority of workers in the sector. According to EuroCham, due to its structure, the garment sector is not a significant source of tax revenue for the military, but it is a very significant source of formal employment, particularly for women, estimated at around 10 per cent of Myanmar's female workforce.
13. Economic livelihoods have been hit hard by rising prices of commodities, including food and fuel, exacerbated by cash shortages and the declining value of the Myanmar currency. In January 2022, due to the cost of fertilizer doubling since the military takeover, farmers reported that they were unable repay the loans they received twice a year from the Agriculture Development Bank. The military authorities issued a warning to farmers to repay the loans, otherwise their land would be confiscated.
14. Following the adoption of the Five-Point Consensus by leaders of the Association of Southeast Asian Nations (ASEAN) meeting in Jakarta on 24 April 2021, a Special Envoy of the Chair of ASEAN was appointed as a step towards implementing one of the five points of consensus. In a briefing to the UN Security Council on 28 January 2022, the Special Envoy referred to upcoming preparations to visit Myanmar and his priority of implementing the Five-Point Consensus to be discussed during the ASEAN Foreign Ministers Retreat scheduled for 16-17 February 2022. In a statement on 2 February 2022, the UN Security Council reiterated its full support for ASEAN's role in facilitating a peaceful solution in the interest of the people of Myanmar and their livelihoods. The UN Security Council reiterated its calls for the release of all those who remain arbitrarily detained, including State Counsellor Aung San Suu Kyi and

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<sup>5</sup>World Bank, [Results from Myanmar Firm Monitoring: Round 9 Results](#) (English) (Washington, D.C., 2022).

President Win Myint, as well as for the swift and full implementation of ASEAN's Five-Point Consensus.

15. The UN Secretary-General's recently appointed UN Special Envoy also emphasized the importance of ASEAN engagement in finding a solution and urged immediate action based on strengthened cooperation between the UN and ASEAN to prevent a further deterioration of the situation in Myanmar. In December 2021, the military authorities announced that they would no longer host the office of the UN Special Envoy on Myanmar in Nay Pyi Taw, which also coincided with the end of the previous Special Envoy's tenure.
16. On 6 December 2021, the UN General Assembly adopted by consensus a resolution to delay a decision on who will represent Myanmar until its 76th session, in 2022. Subsequently, the ILO Credentials Committee, in its fourth report of 7 December 2021,<sup>6</sup> considered developments in Myanmar since the adoption of its second report of 4 June 2021.<sup>7</sup> It noted that, since September 2021, several entities had deferred consideration of the question of Myanmar's credentials and had kept its seat vacant pending a decision of the UN General Assembly. It decided that, in the light of that information, and also taking into account the UN General Assembly's resolution 396 (V) of 14 December 1950, no delegates representing Myanmar would be accredited at the 109th Session of the Conference.

## ► Impact on ILO social partners

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17. The Office continues to engage bilaterally and provide technical support to social partners, including the Confederation of Trade Unions Myanmar (CTUM), the Agriculture and Farmer Federation of Myanmar – International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (AFFM-IUF), the Myanmar Industry, Crafts and Services Trade Union Federation (MICS-TUF) and the Union of Myanmar Federation of Chambers of Commerce and Industry (UMFCCI).
18. There are continued reports of labour rights violations following widespread dismissals of workers participating in the civil disobedience movement in 2021. During that year, thousands of civil servants and education workers were either suspended or dismissed from their jobs, along with hundreds of railway workers, many of whom were also evicted from railway housing. A large number of workers in these and other sectors, including the healthcare sector, were arrested and charged under section 505A of the Penal Code for participating in the civil disobedience movement. In 2021, more than 60 trade unionists and labour activists were reportedly detained, and as of 31 January 2022, more than 30 trade unionists remain in prison. Further, as previously reported, in 2021 there were raids on trade union offices, as well as the cancellation of passports and warrants issued for the arrest of a number of CTUM Executive Committee leaders.
19. The ILO Committee on Freedom of Association considered a complaint concerning violations by the Myanmar military of the right to freedom of association, the right to opinion and the right to peaceful assembly and protest submitted by the International Trade Union Confederation (ITUC) and Education International. The Committee's interim report is contained

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<sup>6</sup> ILC.109/Record No. 3E.

<sup>7</sup> ILC.109/Record No. 3B.

in its 395th Report, approved by the Governing Body in June 2021.<sup>8</sup> The complaint is still before the Committee.

20. In workplaces, there are increasing reports of: intimidation and harassment; trade union members being dismissed; some employers unilaterally cutting wages and reducing benefits; an increased use of precarious contracting arrangements; dissolution of collective contracts; and factories denying workers the salaries they are owed upon closure or suspension of operations. In addition, there are reported cases of factory owners calling in the military when workers have protested about workplace conditions or taken strike action, and of demanding an end to labour strikes otherwise workers would be dismissed.
21. In December 2021, trade unions reported that they were under pressure from the military authorities to re-register their executive committees under the Labour Organization Law 2011 and to provide a list of such members to the Ministry of Labour. While the law provides that executive committees are appointed for two years, such action is a concern for unions, which consider it a tool to undermine freedom of association by threatening unions' ongoing recognition. There are also fears for the security and safety of executive committee members, who are required to disclose their address and other personal information. The CTUM has advised that it will not participate in this process.
22. Since its previous report, the Office has received information that Aung Ko Latt, a member of the Mahlwagone Railway Union, was arrested on 4 January 2022 and tortured to death. His family was advised to collect his body on 6 January. Reports also indicate that two other railway workers who were members of CTUM affiliates were also arrested on 3 and 4 January 2022 respectively and that their whereabouts have since remained unknown. By a note verbale to the Permanent Mission of Myanmar in Geneva dated 11 January 2022, the Office noted with profound concern that violence and persecution against workers' representatives were continuing, in clear defiance of the resolution adopted by the International Labour Conference in June 2021 calling upon Myanmar to respect Convention No. 87 and ensure that workers and employers are able to exercise their freedom of association rights in a climate of freedom and security, free from violence, arbitrary arrest and detention.
23. A large number of leaders of the CTUM, MICS-TUF and other trade unions remain in hiding and fear for their safety in Myanmar. The Office is also seriously concerned about the welfare of three MICS-TUF members who have been arrested – including the General Secretary, who has had no access to a lawyer or family members since his arrest in June 2021. No reply has been received from the military authorities following repeated inquiries from the ILO about his status.
24. The CTUM has informed the Office that on 10 February 2022 its headquarters office was ransacked and all office equipment, information technology facilities, documents and furniture were removed.
25. The AFFM-IUF continues to deliver ongoing services to members who have been hit hard by the military takeover as well as the impact of COVID-19 on the agricultural sector, and has noted a rise in child labour in families who have lost livelihoods. The federation is also seriously concerned about the continued detention of other trade unionists connected to the activities of the AFFM-IUF.
26. The Myanmar Garment Manufacturers Association (MGMA), which is affiliated to the UMFCFI, reports that almost three quarters of factories saw a decrease in orders between January and

<sup>8</sup> GB.342/INS/7, paras 284–358.

September 2021. Export values in 2021 decreased by almost a third compared to 2020, which is attributable to both the current political situation and COVID-19. Around 200 factories have closed since 2020 and more than 150,000 workers, mostly women, have lost their jobs, which has affected the livelihoods of their families. The MGMA reports that a strain on the banking sector is also a key challenge, which is causing difficulties in accessing cash for salary payments. Amid challenges, the MGMA has been supporting its members, with the ILO's assistance, in conducting a Voluntary Labour Compliance Assessment from December 2021 to protect workers' rights in the workplace.

27. The UMFCCI continues to assist its members in the areas of labour advisory services, business continuity and COVID-19 response. With ILO support, tools and programmes have been developed and deployed on labour rights, COVID-19-related occupational safety and health guidance, and business continuity. The UMFCCI is also working to promote bipartite dialogues with workers at the workplace level to address the challenges and issues regarding employment, working conditions and COVID-19-related occupational safety and health measures.
28. The Myanmar Labour Alliance – including the CTUM and its affiliate, the Industrial Workers Federation of Myanmar (IWF), with support from IndustriALL, the ITUC and global union federations – has repeated calls for comprehensive economic sanctions against Myanmar and for recognition of the National Unity Government by other governments and the UN General Assembly. The campaign calls for disinvestment from the country, and for all companies operating in Myanmar to cease operations and to place no new orders. In addition, the Action, Collaboration, Transformation (ACT) Initiative, a global agreement between trade unions and brands to achieve living wages, withdrew from Myanmar in December 2021, as a result of its trade union partner, the IWF, stating that it could not operate freely in Myanmar under the current circumstances.

## ► ILO Decent Work Country Programme and cooperation activities in Myanmar

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29. The Memorandum of Understanding on the Myanmar Decent Work Country Programme (DWCP) continues to be in effect until 20 September 2022, as was confirmed by the Ministry of Labour in its letter of 19 October 2021. Its implementation is guided by the UN principles of engagement to focus on support to the ILO social partners and civil society organizations.
30. Although the freezing of the ILO bank account has been lifted with respect to staff salaries, the Office continues to face serious obstacles in conducting transactions to pay implementing partners under the DWCP. In November 2021, the Office sought approval from the Yangon Regional Government to transfer payments to partner organizations in accordance with a directive from the Central Bank of Myanmar. However, the regional government contacted the Ministry of Labour for advice and declined the Office's request by a letter dated 22 November 2021, stating that it would only issue approval "after the Credential Committee decides, on 11/12/21, the participation of representatives from Department of Labour (HQs) in the tripartite delegates to the ILC".
31. Myanmar overcame a third wave of COVID-19 in the second half of 2021. Critical ILO staff are currently present in the office and other staff are continuing to telework, in the light of the risk of widespread transmission of the Omicron variant and the prevailing security situation. Myanmar was declared a non-family duty station by the UN from 1 July 2021.

32. The Office reported to the Governing Body in November 2021 that two international staff members and the Liaison Officer had had their visa extension denied by the military authorities, who had suggested that such extension would be approved only following the decision of the UN General Assembly on Myanmar's credentials and a subsequent decision of the International Labour Conference. By a letter dated 21 December 2021, the Ministry of Labour advised the Office that it was facilitating entry visas and stay permits for ILO staff members, including the Liaison Officer. So far, three entry visas, including that of the Liaison Officer, have been approved and three entry visas are pending. However, the Office also needs to apply for entry permits from the military authorities.
33. Following the military takeover, the Office suspended all work that had previously provided support to the Government. Following a detailed programme assessment, all ILO projects were reprogrammed and scaled back to deliver benefits directly to the social partners and civil society organizations, consistent with the UN guidance on engagement. The Office continues to implement remaining activities to deliver support for the social partners and civil society organizations in challenging circumstances, as summarized below. Some social partners have significantly less capacity to deliver projects as implementing partners, mainly owing to safety and security concerns.
- (a) Projects focusing on child labour continued to deliver awareness-raising activities in communities and capacity-building of case managers in collaboration with other UN agencies, and also continued to provide direct services in two pilot areas, which have reached more than 1,200 children and adults to date.<sup>9</sup>
  - (b) A project on improving domestic workers' labour rights and strengthening services to migrant workers in response to COVID-19 and the current political crisis facilitated the delivery of online training, paralegal advice and cash assistance programmes targeting domestic workers and migrants facing severe financial hardship.
  - (c) Migrant worker protection projects, with support from partners, delivered counselling services and psychosocial support to migrant workers and families, reaching 351 people, and delivered awareness-raising training materials to more than 3,200 migrant workers and their families. The TRIANGLE in ASEAN programme has reached more than 13,000 people through partners to deliver psychosocial counselling, migration information and career development advice, personal protective equipment and emergency assistance to potential and returned migrant workers, most of whom are women. The programme has also delivered vocational skills training, raw materials for small business start-ups to generate income, capacity-building training and cash assistance.
  - (d) A project to provide support for livelihoods in remittance-dependent communities as part of the COVID-19 response has completed construction or improvements to 15 rural infrastructure sites, including buildings, roads, health clinics and water supplies. Since October 2021, the project has generated over 12,500 workdays, of which 43 per cent for women, benefiting 1,950 remittance-affected households.
  - (e) With respect to occupational safety and health, the ILO delivered awareness-raising and information sessions, and training on COVID-19 prevention, including providing personal

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<sup>9</sup> These projects are: the Asia Regional Child Labour Programme; Achieving reduction of child labour in support of education: Programme to reduce the worst forms of child labour in agriculture; and the Myanmar Programme on the Elimination of Child Labour (My-PEC).



protective equipment, which reached 500 migrant workers and over 1,500 people in workplace peripheries. With support from partners, mental health awareness and destigmatization and suicide prevention training is being rolled out to improve knowledge of mental health among workers and employers.

- (f) Since September 2021, the Vision Zero Fund has delivered COVID-19 train-the-trainer and refresher training modules in the garment, agriculture and construction sectors, reaching 537 workers, including 372 women. Between September and December 2021, refresher training also reached 2,606 participants (of whom 1,521 were women) from ginger and coffee cooperatives (farmers and processors), the private sector and other farmers. Training on the fundamentals of occupational safety and health has also been delivered to four labour organizations.
- (g) The Forced Labour Project, working with the social partners and the Country Task Force on Monitoring and Reporting, has delivered 11 training sessions and workshops to stakeholders since October 2021, reaching 479 people, more than half of whom were women. A mobile application is being developed, which will enable the reporting of cases by different stakeholders and raise public awareness about forced labour.
- (h) Work to promote small and medium-sized businesses initiated the design and delivery of the Improve Your Food Processing Business training in the food processing sector in 2021, including training of master trainers, who then delivered training to more than 260 entrepreneurs by the end of 2021.
- (i) Through a range of projects, the Office has continued to develop publications, training modules and research on labour protections across a range of areas, including a rapid assessment of employment in Myanmar, a legal review of child labour in Myanmar, an overview of labour laws and COVID-19, and publications on occupational safety and health.

## ► Monitoring the situation concerning the use of forced labour

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- 34. Since the ILO database on complaints concerning forced labour was established in February 2007, as at 31 December 2021 the Office had received a total of 5,710 cases, of which 3,059 were determined to be within the definition of forced labour.
- 35. Among those 3,059 cases, 1,284 cases have been successfully resolved and were recorded as closed and requiring no further ILO action. This includes 260 cases that were referred to the Country Task Force on Monitoring and Reporting, which were successfully resolved in cooperation with that mechanism, two other cases handled by the National Complaints Mechanism established in 2019, and 1,022 cases that were successfully resolved by its precursor, the Forced Labour Complaints Mechanism under the Supplementary Understanding.
- 36. Of the 3,059 cases, a further 288 cases have been temporarily closed due to insufficient information. A further 399 cases remain open pending assessment by the ILO; once completed, they will be submitted to the National Complaints Mechanism. Another 320 cases referred to the Country Task Force on Monitoring and Reporting are awaiting outcomes from the authorities. The ILO has also submitted 768 further cases to the National Complaints Mechanism and is now awaiting the outcome of its investigations.

37. In 2021, the Office received 18 complaints. Of these, eight complaints were assessed as being within the definition of forced labour: four complaints of underage recruitment (dating back to 2007, 2009 and 2011); one case of forced portering (with multiple victims); one case of forced contribution of labour to public works (multiple victims); one case of forced labour in a private factory; and one case alleging that a person was denied the right to resign from military service. As at 31 January, no forced labour complaints had been received in 2022.
38. The number of complaints received by the ILO declined in 2021 to 18, compared to 30 in 2020 and 52 in 2019. The transition from the Forced Labour Complaints Mechanism under the Supplementary Understanding to the National Complaints Mechanism was disrupted by the military takeover in early 2021. There has been a rise in reported instances of forced labour since the military takeover. These reports are from trade unions, civil society organizations and UN agencies. Most of these organizations received training on monitoring and reporting on forced labour by the ILO in previous years.
39. There are increasing reports from monitoring organizations concerning the use of forced labour, predominantly by the Myanmar military and associated armed groups, including:
- (a) an increased prevalence of the forced recruitment of young persons and adults – particularly in ethnic areas, including the Putao area – by armed groups aligned with the Myanmar military in Northern Shan and Kachin States;
  - (b) the forced recruitment of people to join village guard forces in Magway region;
  - (c) the use of human shields in the Sagaing region;
  - (d) the use of convicted prisoners in armed operations at the front line for mine clearances and their deployment to conflict zones; and
  - (e) forced portering and the use of civilians as guides with a view to identifying the location of resistance groups in Karen and Kayah States.

## ▶ Potential follow-up action by the 110th Session of the International Labour Conference

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40. As regards possible follow-up action, there are a number of options available to the Governing Body and the International Labour Conference.
41. The measures adopted by the Conference at its 88th Session (2000) under article 33 of the Constitution cannot be reactivated, as they were solely intended to ensure compliance with the recommendations of the Commission of Inquiry established in 1996. In this connection, the 2012 and 2013 Conference resolutions concerning the measures on the subject of Myanmar considered that the measures adopted in 2000 had “cease[d] to apply”, were “discontinued” or would “no longer be necessary”. Accordingly, new measures under article 33 would require a new complaint procedure under article 26 of the Constitution, leading to the establishment of a new Commission of Inquiry.
42. Article 26(4) of the Constitution provides for the possibility for the Governing Body to appoint a Commission of Inquiry on its own motion.<sup>10</sup> The decision could be taken in the light of the

<sup>10</sup> To date, the Governing Body has initiated on its own motion the procedure under article 26 of the Constitution leading to the establishment of a Commission of Inquiry in three cases: in 1974, in the case of Chile for non-observance of the Hours of

recent comments of the supervisory bodies, in particular the Committee of Experts on the Application of Conventions and Recommendations and the Committee on Freedom of Association, on the application of Convention No. 87. It is noted, in this connection, that the Committee of Experts adopted in December 2021 an observation on the application of Convention No. 87, while the Committee on Freedom of Association examined complaints alleging violations of freedom of association and its interim report was approved by the Governing Body at its 342nd Session (June 2021).<sup>11</sup>

43. Another possibility would be for the Governing Body to recommend to the 110th Session of the Conference that it request the Committee on the Application of Standards to hold a special sitting on the subject of the application of Convention No. 87 by Myanmar. The Governing Body could also request the Director-General to submit a detailed report on the situation of freedom of association in the country in order to inform the discussions at the Committee on the Application of Standards, to supplement the comments of the Committee of Experts and the Committee on Freedom of Association.<sup>12</sup> It is noted, in this connection, that in the observation it adopted at its last session, the Committee of Experts requested the Government of Myanmar to present full particulars at the 110th Session of the Conference,<sup>13</sup> so there is a possibility that the application of Convention No. 87 by Myanmar may be selected as an individual case.
44. Upon the Governing Body's recommendation and the Conference's decision, the special sitting of the Committee on the Application of Standards could be followed as of the 111th Session of the Conference (2023) by a standing monitoring arrangement under which Myanmar would be requested to report annually on the measures it has taken to give effect to the provisions of Convention No. 87 for the consideration of the Committee of Experts, followed by a discussion by the Committee on the Application of Standards. In the context of this standing arrangement, the Director-General would be requested to monitor the situation in Myanmar and to submit every year for consideration by the Conference a special report supplementing the comments of the supervisory bodies. Different modalities could be considered for the preparation of this special report.
45. Moreover, it could also be envisaged that the scope of the proposed monitoring arrangements should also include the application of other ratified Conventions, in particular the Forced Labour Convention, 1930 (No. 29), and the situation in law and practice in respect of those fundamental Conventions not yet ratified by the country, as the Governing Body may deem appropriate.<sup>14</sup> In this last respect, the Governing Body could exercise its authority under

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Work (Industry) Convention, 1919 (No. 1), and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111); in 1985, in the case of the Federal Republic of Germany in respect of Convention No. 111; and in 1998, in the case of Nigeria in respect of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). In the case of Chile, the Governing Body acted in response to the Resolution concerning human and trade union rights in Chile, adopted by the Conference at its 59th Session (June 1974), which invited the Governing Body to establish a Commission of Inquiry. In the case of the Federal Republic of Germany, the Governing Body acted further to a representation filed under article 24 of the Constitution and decided to refer the matter to a Commission of Inquiry in accordance with article 10 of the Standing Orders for the examination of article 24 representations.

<sup>11</sup> GB.342/INS/7, paras 284–358.

<sup>12</sup> For example, the Director-General could provide information on actions undertaken by other international organizations in relation to the observance of human rights by Myanmar.

<sup>13</sup> ILC.110/III(A), p. 264.

<sup>14</sup> Myanmar has ratified the Forced Labour Convention, 1930 (No. 29); the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); the Minimum Age Convention, 1973 (No. 138); and the Worst Forms of Child Labour Convention, 1999 (No. 182). It has not ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98); the

article 19(5)(e) of the Constitution by requesting Myanmar to report annually on the position of its law and practice in regard to the matters dealt with in these Conventions. Both the reports on the application of certain ratified Conventions and in relation to Conventions not ratified by the country could be submitted for examination by the Committee of Experts prior to the discussion at the Committee on the Application of Standards.

46. The Governing Body may wish to take account of the above legal and procedural elements in considering possible follow-up action.

## ► Draft decision

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47. **In the light of the developments in Myanmar outlined in document GB.344/INS/12 and recalling the resolution for a return to democracy and respect for fundamental rights in Myanmar adopted by the International Labour Conference at its 109th Session (2021), the Governing Body:**
- (a) **deplored the lack of progress towards respecting the will of the people, democratic institutions and processes, and the fact that the democratically elected government has not been restored;**
  - (b) **noted with profound concern the escalation of large-scale lethal violence against civilians, including children, and the arrest, torture and killing of Aung Ko Latt, a member of the Mahlwagone Railway Union, and called on the military to end such action immediately;**
  - (c) **deplored the continued harassment, intimidation and arbitrary arrests and detentions of labour activists, trade unionists and others, including the Rohingya, in the exercise of their human rights, and repeated its call to the military authorities to cease such action immediately;**
  - (d) **expressed grave concern that there has been no demonstrable progress towards removing banking restrictions imposed on the ILO Liaison Office and urged the military authorities to desist immediately from such interference and to respect the status of the Office, in accordance with the provisions of the Convention on the Privileges and Immunities of the Specialized Agencies of 21 November 1947;**
  - (e) **repeated its call for Myanmar to uphold immediately its obligations under the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and to ensure that workers' and employers' organizations are able to exercise their rights in a climate of freedom and security, free from violence, arbitrary arrest and detention, and again called for the immediate release of the General Secretary of MICS-TUF and other trade unionists and activists who have been detained;**
  - (f) **repeated its profound concern over reports of increased use of forced labour by the military authorities and the fact that progress towards the elimination of forced labour has reversed since the military takeover, and called for the military authorities to end forced labour practices immediately;**

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Equal Remuneration Convention, 1951 (No. 100); the Abolition of Forced Labour Convention, 1957 (No. 105); the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), or any of the four governance Conventions.

- (g) repeated its call for the Civil Services Personnel Law, the Settlement of Labour Disputes Law and the Labour Organization Law to be amended without delay, in line with Convention No. 87, once the country returns to democracy;
- (h) requested that the Director-General report to its 345th Session (June 2022) on developments in Myanmar;
- (i) decided in accordance with article 26(4) of the ILO Constitution to establish a Commission of Inquiry in respect of the non-observance of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Forced Labour Convention, 1930 (No. 29);

OR

- (i) recommended that, at its 110th Session (June 2022), the Conference request the Committee on the Application of Standards to hold a special sitting on the subject of the application of Convention No. 87 by Myanmar and, to this effect, requested the Director-General to submit a detailed report on the situation of freedom of association in the country in order to inform the Committee's discussions; and
- (j) further recommended that the Conference decide to establish, as of its 111th Session (June 2023), a standing monitoring arrangement under which Myanmar would be requested to report annually on the measures it has taken to give effect to the provisions of Conventions Nos 87 and 29 [*as well as on the situation in law and practice in respect of those fundamental Conventions not yet ratified*], and under which the Director-General would be requested to monitor the situation in Myanmar and to submit every year for consideration by the Conference a special report supplementing the comments of the supervisory bodies.