



Governing Body

320th Session, Geneva, 13–27 March 2014

GB.320/INS/6(Rev.)

Institutional Section

INS

Date: 20 February 2014

Original: English

SIXTH ITEM ON THE AGENDA

Report on ILO activities in Myanmar

Purpose of the document

The document provides an update on ILO activities in Myanmar as required by the resolution adopted by the 102nd Session of the International Labour Conference (June 2013).

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

Policy implications: None.

Legal implications: None.

Financial implications: None.

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

Author unit: ILO Liaison Office in Myanmar.

Related documents: Resolution concerning remaining measures on the subject of Myanmar adopted under article 33 of the ILO Constitution; GB.320/POL/INF/2.

1. This report is submitted in accordance with the provisions of the resolution adopted by the 102nd Session of the International Labour Conference (June 2013), which removed the previously imposed mandate restrictions on ILO activities in the country and among other things, invited:

... the Governing Body to review the situation in Myanmar on issues relating to ILO activities, including freedom of association, and the impact of foreign investment on decent working conditions in the country, and in this regard, request the Director-General to submit a report at the March Governing Body sessions until the elimination of forced labour.¹

General overview

2. Myanmar, under the direction of the Government of President Thein Sein, who took office in March 2011, following elections held in November 2010, is pursuing a programme of political, economic and social reform. The transition from an extended period of reclusive, authoritarian military rule to a more open, inclusive, yet disciplined, democracy essentially involves the review of every element of policy, restructuring and, where necessary, building new governance institutions, opening the economy and social change in the recognition and involvement of civil society in the transition process.
3. Government policy priorities are founded on three broad objectives: the establishment of sustainable peace with ethnic groups, rural development and the reduction of poverty.
4. While all parties recognize that there is still a long way to go, considerable progress has been made. Following the adoption of the Nay Pyi Taw Accord for Effective Development Cooperation in January 2013, an aid coordination infrastructure has been put in place. This is centred around 16 sector working groups tasked with the development of strategies addressing all major areas of the transition, with the involvement of the Government, development partners and civil society. Thirteen ceasefire agreements have been concluded, with a resultant reduction in armed conflict. Discussion towards a nationwide ceasefire agreement as the next step towards a full peace accord has commenced with agreement in principle that such talks would encompass political, economic and social considerations. It is expected that the national ceasefire agreement will also encompass the Kachin Independence Army (KIA), being the only substantive group that has not yet reached an interim ceasefire.
5. There are three major areas of potential risk for the ongoing reform process. The first relates to the stability of the domestic political situation with elections expected at the end of 2015. All political parties, including the Government, are already in election mode seeking to achieve “quick wins”, which may not always be a sound basis for sustainable ongoing solutions. A major parliamentary debate is currently taking place on the possible amendment of the Constitution before the elections which would, among other things, permit Aung San Suu Kyi, the leader of the opposition National League for Democracy party, to become President if her party were to win a majority in Parliament. This debate is very emotive with both groups staging large demonstrations (for and against).
6. The second area of risk relates to the achievement of sustainable peace (referred to above) – the failure of the peace talks and a return to armed conflict in the ethnic regions would have serious implications for the ongoing reform process.

¹ Resolution concerning remaining measures on the subject of Myanmar adopted under article 33 of the ILO Constitution, *Provisional Record* No. 2-4, International Labour Conference, 102nd Session, Geneva, 2013, paragraph (d).

7. The third area of major risk relates to the emergence of an extreme nationalist movement, alongside a serious increase in overt intolerance towards any sort of difference. While the widely publicized violence in Rakhine State has its own very complex roots and is variously described as an ethnic and/or religious conflict, it is a reflection of the larger problem of intolerance and the tendency, after years of repression, to resort to extreme and violent behaviour. This conflict has resulted in the death or injury of many and the massive displacement of population groups. United Nations agencies and some international non-governmental organizations with operations in Rakhine State have become the target of public demonstrations calling for their eviction owing to their alleged lack of neutrality.
8. From the above it can be seen that, while the overall situation is positive and the reform efforts are deserving of continuing support, all activities must necessarily work in parallel to mitigate the identified risks.

The ILO programme

9. With the removal of the mandate restrictions, a full ILO programme has been introduced in response to identified government priorities, while placing emphasis on developing sound foundations based on fundamental principles and rights at work. A detailed description of the new ILO programme was submitted to the Governing Body at its 319th Session (October 2013).²
10. The programme continues to evolve with projects in place encompassing forced labour; child labour; human trafficking; child soldiers; freedom of association and social dialogue, migration; social protection floors and social security; the development of micro, small and medium-sized enterprises (MSMEs); responsible investment; policy, legislative and regulatory support; institutional capacity building and research including through a full labour force survey. A rights-based approach is applied to all activities, with community empowerment through awareness raising for conceptual understanding and confidence building being a key component.
11. To accommodate this growth in activity, the office has moved into new premises. As at 13 February 2014 the Office had 42 staff (eight international and 34 national), with 14 vacancies (four international and ten national) in the process of being filled. Further growth is expected over the coming months as additional projects come on stream.

Forced labour

12. A full programme of activities continues in support of the joint Government–ILO agreed objective for the elimination of all forms of forced labour by 2015, if not before. The inter-ministerial strategic working group for the elimination of forced labour, chaired by the Minister of Labour with the joint secretaries being the Deputy Minister of Labour, the Deputy Minister of Defence and the ILO Liaison Officer, continues to be responsible for the application of the agreed action plans targeting all aspects of the problem. A technical group of senior military, police and labour ministry personnel convened by the Deputy ILO Liaison Officer coordinates the day-to-day management of complaints received under the Supplementary Understanding forced labour complaints mechanism, which has been extended for a further year from 26 February 2014.
13. The strategy comprises four main components:

² GB.320/POL/INF/2.

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- (a) Awareness raising among all stakeholders as to rights and responsibilities under the law.
 - (b) Institutional capacity building for the enforcement of the law.
 - (c) Operation of the complaints mechanism to achieve justice for complainants and ensure that perpetrators are held accountable.
 - (d) Interventions demonstrating the economic and social benefit of using paid, freely chosen work rather than forced labour.
- 14.** Appendix I provides statistical data on activities undertaken under the action plan. It is noted that the number of complaints received both in total and in all categories of forced labour (except human trafficking) has fallen compared to the same period the previous year. Increases in the number of complaints received since 2010 have previously been cited against reports of a reduction in the actual incidence of forced labour, leading to the tentative conclusion that the increase was due to increased awareness of the law and increased confidence to complain. While it is too early to draw a definitive conclusion, the decrease over the past year could indicate that the use of forced labour has peaked and that we are seeing the beginnings of substantive improvement.
- 15.** This does not however suggest that the problem is resolved – the volume of current complaints would indicate that there continues to be a need for concerted efforts with parallel emphasis on awareness raising and understanding of rights and responsibilities under the law and insistence on accountability.
- 16.** The overall objective of all activities is to change behavioural patterns developed over many years of autocratic military rule, resulting in the elimination of the systematic use of forced labour. Traditionally the main perpetrator in Myanmar has been the “civil” Government in respect of public works, infrastructure maintenance and construction, and the military in respect of portering, guard or sentry duties, camp maintenance or construction and under-age recruitment. Changes in governance structures, the introduction of clear legislation and military orders making the use of forced labour a criminal offence, the adoption of new procedures and increased accountability have worked to change behavioural patterns. However, this cannot be expected to resolve the issue overnight and new patterns reflecting the need for continued vigilance are being seen.
- 17.** The new Government, under its economic and social policy framework, has placed emphasis on community involvement and ownership of development activity and is introducing an income guarantee scheme for the most vulnerable sectors of society as part of its rural development and poverty reduction policy priorities. In themselves, these are of course positive initiatives which are deserving of support; it is however important that the agreed advocacy and training activities of local government personnel are strengthened to ensure that positive benefits are not lost through poor application, which could turn them into new forms of forced labour. Some initial complaints to this effect have already been received.
- 18.** With the opening of the economy, land has become an extremely valuable commodity and the number of forced labour complaints associated with land loss or confiscation, involving a large number of complainants, indicates that this is still very much a problem.
- 19.** The law against forced labour applies to all sectors of the economy and there is a growing incidence of complaints concerning the private sector, both in respect of land-related forced labour and in relation to working conditions. In this regard, the ILO forced labour and freedom of association projects are working together with the introduction of a forced

labour component in capacity-building activities with employers, workers and their representative organizations.

20. In respect to the military, cooperation and responsiveness at a senior level remain positive. Information received through the ILO network of voluntary facilitators indicates that in conflict-free areas the use of forced labour for military support activity has decreased considerably. However, there are still serious concerns in respect of the reported use of forced labour by the military in areas of continuing armed conflict and in Rakhine State (see paragraph 7).
21. There has also been a good response to continuing activities on under-age recruitment, including on awareness raising among military personnel and the release and discharge of under-age recruits. However, complaints of under-age recruitment continue to be received. In the context of the Joint Action Plan, established under the United Nations Security Council Resolution 1612 (2005) on the protection of children affected by armed conflict, a public media campaign has been initiated and recruitment centres, training camps and operational battalions are regularly monitored. Technical assistance in the further refinement of recruitment procedures continues, as do consultations on necessary procedures to verify age on recruitment prior to the arrest and prosecution of alleged deserters.³
22. Since 2007, 258 government personnel (248 military and ten civilian) have been punished in response to complaints dealt with by the complaints mechanism, 18 of whom (16 military and two civilian) received prison sentences of various durations. Concerns remain at the absence of accountability in respect of civilians, including commercial brokers, aiding and abetting under-age recruitment.

Freedom of association

23. The Office has continued to implement a significant programme of technical cooperation on freedom of association and social dialogue. A project which had been supported by the United States Department of State concluded in December 2013, while a new two-year project supported by the Government of Norway began in October 2013. These projects have delivered a wide range of capacity-building training and awareness-raising activities on Myanmar's new legal framework for labour relations.
24. In the period between October 2012 and January 2014, the project organized 60 separate activities involving 2,381 participants (1,713 male and 668 female).
25. There has been a steady and continual growth in the number of registered workers' and employers' organizations. As at 14 January 2014, there were 911 registered basic workers' organizations and 23 township workers' organizations (compared to just 40 basic workers' organizations in June 2012). Approximately half the registered workers' organizations are farmers' and agricultural organizations. There are also 21 basic employers' organizations and one township employers' organization.⁴
26. Despite the rapid growth in the number of labour organizations, there are currently no registered national federations other than in the maritime sector, which has a special registration status under the law. Labour organizations have expressed concern that the

³ See statistics in Appendix I.

⁴ See Appendix II.

procedures in the Labour Organization Law make it difficult to establish higher level structures at the region or state level and at national level. In response to these concerns, in January 2014 the ILO facilitated a meeting for an exchange of views between the Ministry of Labour and labour organizations, including leaders of the Federation of Trade Unions Myanmar (FTUM). The discussion highlighted the concerns of labour organizations and, in particular, their concern regarding current procedures for the registration of higher level organizations. Both the labour organizations and the Ministry indicated that they found the exchange of views useful and constructive, and both indicated a wish for future discussions under a similar format.

27. The 2012 Settlement of Labour Dispute Law provides a framework for dispute resolution involving discussion at the workplace level, and where disputes cannot be resolved at that level, a conciliation and arbitration process. The available information indicates that conciliation bodies dealt with 1,490 cases between July 2012 and November 2013. Some 124 of these cases were subsequently referred to arbitration bodies. In December 2013 the ILO, together with the Ministry of Labour, organized a workshop for members of conciliation and arbitration panels to review the work, challenges and training needs of such bodies.
28. It appears that only a minority of workplaces have established joint labour–management workplace coordinating committees or collective bargaining agreements, both of which are called for in the Settlement of Labour Dispute Law. One result of this is that issues are often being referred directly to conciliation bodies prior to any significant effort being made to resolve issues at the workplace. There is a continuing need to train workers and employers on dispute prevention and settlement at the workplace level.
29. Despite the important progress that is being made, many challenges remain. In 2013 the report of a parliamentary commission drew attention to:
 - lack of awareness of basic employment rights (contracts, hours, holidays, etc.);
 - resistance by some employers to the creation of labour organizations and punitive actions taken against workers who seek to form labour organizations;
 - failure to establish effective workplace coordinating committees, as required by the Labour Dispute Settlement Law;
 - failure to comply with decisions taken in the Arbitration Council.
30. Through its continuing activities and as part of the broader ILO programme in Myanmar, the freedom of association project will be seeking to continue building the capacity of the constituents to engage in dialogue on these and other issues.

The impact of foreign investment on decent working conditions

31. With the opening of the economy, the Government has moved to establish both a legislative and institutional framework for foreign investment.
32. It is reported that as at December 2013, total foreign investment in Myanmar stood at US\$44.2 billion. These investments were largely in energy, oil and natural gas, manufacturing and industry, mining, the hotel and tourism sector, real estate, transport, communications, agriculture, and construction. Most foreign investment is in the energy sector, which reportedly accounts for 42.5 per cent of all foreign investment.

- 33.** It is still very early days to attempt to measure the impact of foreign investment, particularly given the absence of data for comparative purposes. To this end, as part of its programme activities the ILO is, in its own right and in cooperation with other organizations, initiating baseline studies in the garment, tourism and aquaculture and fishing sectors on which measurement can be based.
- 34.** There are a number of important initiatives that are directly or indirectly related to the opening of the economy to global competition and foreign investment. These include:
- the establishment by the Republic of the Union of Myanmar Federation of Chambers of Commerce and Industry (RUMFCCI), in association with a number of other domestic business organizations, of a corporate social responsibility organization;
 - the opening of the Myanmar Centre for Responsible Business (MCRB) promoting the United Nations Guiding Principles on Business and Human Rights;
 - the launch of the Global Compact, which more than 70 Myanmar businesses have signed to date.
- 35.** The ILO Liaison Office is in discussion with the MCRB and a number of new foreign investor companies for the potential establishment of a multinational corporation forum as an informal round table to share approaches to the challenges of investing in Myanmar and to identify best practice and advocacy opportunities and messages.
- 36.** The Bureau for Employers' Activities (ACT/EMP) of the ILO has, in agreement with the RUMFCCI and the Garment Manufacturers Association, initiated an employers' labour market policy and membership services capacity-building project.
- 37.** As part of its economic reform activities and in support of its poverty reduction and development objectives, the Government is undertaking a major review of the labour market regulatory and institutional framework. This includes budgetary considerations to significantly strengthen the factory and occupational health and safety inspectorates, and for a full legislative review programme.
- 38.** The ILO Liaison Office, supported by regional and headquarters specialist staff, is currently providing technical assistance for the entry into force of the recently adopted Minimum Wage Law, the Employment and Skills Development Law and the Social Security Law. Technical assistance is being provided in the drafting of a new Occupational Safety and Health Law, the revision of the Factories Act and the Shops and Enterprises Act. The Ministry of Labour has indicated that further assistance will be sought in the near future in respect of other laws including on payment of wages and holidays.
- 39.** On 23 December 2013 the Government submitted its letter of ratification of the Worst Forms of Child Labour Convention, 1999 (No. 182). The establishment of a tripartite technical working group is envisaged to support the necessary regulatory, policy and Convention compliance requirements including the review of the Minimum Age for Work Law and the development of a list of hazardous work.
- 40.** Provision has been made in all ILO project activities for capacity-building support for departments within the Ministry of Labour, Employment and Social Security in respect of both policy development and application.
- 41.** In association with specialist support from the ILO Regional Office and the Bangkok-based Decent Work Team, technical assistance is being provided in a number of areas

associated with the integration programme of the Association of Southeast Asian Nations (ASEAN), including with respect to migration policy and skills standards and recognition.

- 42.** In the context of the forced labour action plan, agreement has been reached for the appointment of a Ministry of Labour focal point in each of the special economic zones (SEZs), the establishment of local community liaison and consultation groups in proximity to SEZs to monitor investment impacts and maximize benefits to the local community, and for the establishment of a tripartite consultative committee in each SEZ.

Draft decision

- 43.** *The Governing Body takes note of the report on ILO activities in Myanmar.*

Appendix I

Forced labour complaints mechanism statistics

Number of cases registered from 28 February 2007 to 31 January 2014: **3,236**

Number of this total within our mandate: **1,547**

Number of cases currently under examination (open): **409**

Breakdown of cases by category and year (1 February–31 January)

Category	2013–14	2012–13	2011–12
Under-age recruitment	204	277	243
Forced recruitment	28	49	36
Internal trafficking	10	8	10
External trafficking	13	11	3
Forced labour	58	80	38
Forced labour associated land confiscation	9	20	4
Total	322	445	334

Accountability statistics

Category	No.
Commissioned officers	39
Other ranks	209
Non-military personnel	10
Total number of punishments	258
Penal sentences	18

Under-age recruit discharge statistics

Total number of under-age recruits discharged: **386 + 10 released before fully recruited**

Total number discharged following arrest and/or imprisonment: **83**

Appendix II

Labour organizations as at 14 January 2014

I. Federation level

Type	Sector	No.
Employer	Seamen's Federation	1
Workers	Seamen's Federation	2
Total		3

II. Township level

Type	Sector	No.
Employer	Garment	1
Workers	Commodities	4
	Freight handling	2
	Transport	1
	Agriculture	16
Total		24

III. Basic level

Type	Sector	No.
Employer	Garment	9
	Construction materials	3
	Foundry	2
	Services	4
	Agriculture	3
Workers	Garment	76
	Commodities	61
	Freight handling	69
	Agriculture	563
	Food processing	25
	Construction materials	22
	Printing	2
	Cold storage	4
	Foundry	3
	Mining	7
	Transport	27
	Arts	4
	Services	6
	Construction	9

Type	Sector	No.
	Education service	6
	Fisheries	20
	Minerals	4
	Chemical	2
	General	1
Total		932

Total

Workers (Basic 911 + Township 23 + Federation 2) = **936**

Employers (Basic 21 + Township 1 + Federation 1) = **23**

Grand total = **959**