



Governing Body

325th Session, Geneva, 29 October–12 November 2015

GB.325/INS/7(Add.)

Institutional Section

INS

Date: 3 November 2015

Original: English

SEVENTH ITEM ON THE AGENDA

Follow-up to the resolution concerning remaining measures on the subject of Myanmar adopted by the Conference at its 102nd Session (2013)

Addendum

Report submitted to the 325th Session of the ILO Governing Body in accordance with paragraph (b) of the decision of the 323rd Session of the ILO Governing Body on the “Follow-up to the resolution concerning remaining measures on the subject of Myanmar adopted by the Conference at its 102nd Session (2013)”

Introduction

1. In accordance with the State Constitution of Myanmar, legislative, executive and judicial powers are separated and shared among the Union, regions, states and self-administered areas of the country observing the principles of democracy, and check and balance in Myanmar. Since the democratic Government led by President U Thein Sein took office, Myanmar has been undertaking step-by-step reform processes towards a democratic State. The State Constitution clearly prohibits forced labour. In his message to the May Day occasions of 2012 and 2013, the President of Myanmar vividly called for the elimination of all forms of forced labour.
2. Due to such democratic reforms and the commitment of Myanmar, the international community recognized and commended the positive implementation by the Government of Myanmar, and that led to lifting or relaxation of the economic sanctions imposed by some countries on Myanmar. Moreover, the 102nd Session of the International Labour

Conference held in 2013 lifted all remaining ILO restrictions on Myanmar. As a result, the Worker representative from Myanmar has become a member of the Governing Body of the ILO. The cooperation between Myanmar and the ILO is also increasing with momentum. In particular, to realize the commitment of the Government of Myanmar for the elimination of forced labour at the end of 2015, the workplans have been developed and successfully implemented step by step.

3. As a member of the ILO since 18 May 1948, Myanmar ratified 20 ILO Conventions, including the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Forced Labour Convention, 1930 (No. 29), and the Worst Forms of Child Labour Convention, 1999 (No. 182). Myanmar respects and actively implements provisions of all these Conventions. As a State party to Convention No. 29, one of the ILO's fundamental Conventions, the present Government of Myanmar continues with momentum the works of elimination of forced labour which were implemented by the previous Government.

Legal framework of elimination of forced labour

4. Myanmar laid down the firm laws and policies to implement the provisions of the Convention since its ratification of Convention No. 29.
5. Section 359 of the State Constitution clearly stipulates that the “Union prohibits forced labor except hard labor as a punishment for crime duly convicted and duties assigned by the Union in accord with the law in the interest of the public”.
6. Section 374 of the Penal Code stipulates that “whoever unlawfully compels any person to labour against the will of that person shall be punished with imprisonment, of either description for a term which may extend to one year, or with fine, or with both”.
7. The Commission of Inquiry, established by the ILO Governing Body in March 1997, recommended to repeal the Towns Act and the Village Act. The Towns Act and the Village Act were repealed and the Ward and Village Tract Administration Law was promulgated on 24 February 2012. The Law Amending the Ward and Village Tract Administration Law was promulgated on 28 March 2012. Article 27(A) of the amended law stipulates that “whoever forces labour or service from any person not offering his own volition by threatening that his interest will be affected or that he will be punished, shall be punished with imprisonment for a term not exceeding one year or with fine not exceeding one hundred thousand Kyats or with both by the relevant court”.
8. The Defence Services Act, 1959, and the Law Amending the Defence Services Act, 1959 (The State Peace and Development Council Law No. 25/2010), were enacted for the military service personnel to avoid having recourse to forced labour. The Government of Myanmar pays high attention to the fight against human trafficking, and the Anti-Trafficking in Persons Law was promulgated in 2005. Similarly, the Labour Organization Law (2011) was promulgated and the labour organizations and employer organizations are working hand in hand for elimination of forced labour.
9. Myanmar ratified the Convention on the Rights of the Child on 15 July 1991 which is related to ILO Convention No. 29. Moreover, Myanmar ratified the Optional Protocol to the Convention on the Rights of the Child on the Sale of the Children, Child Prostitution and Child Pornography on 16 January 2012 and signed the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict on 29 September 2015. Myanmar ratified the international Conventions and Protocols concerning children's rights and has been implementing their provisions. Myanmar

acceded to the United Nations Convention against Transnational Organized Crime and its two Protocols on 30 March 2004 including the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.

10. The fundamental rights of citizens in line with international human rights standards are guaranteed by Chapter 8 of the Constitution. Section 377 of the Constitution, which allows citizens to apply to the Supreme Court of the Union for loss of fundamental rights, includes forced labour, in line with the Law on the Application for Writs, 2014. In accordance with sections 296 and 378 of the Constitution, section 16 of the Union Judiciary Law, and section 3 of the Law on the Application for Writs, the Supreme Court of the Union has the power to issue the Writ of *Habeas Corpus*, the Writ of *Mandamus*, the Writ of Prohibition, the Writ of *Quo Warranto*, and the Writ of *Certiorari*.
11. The Myanmar National Human Rights Commission Law (2014) was promulgated to establish the Myanmar National Human Rights Commission in compliance with the Paris Principles. Accordingly, the Myanmar National Human Rights Commission was formed with 11 members in accordance with the Myanmar National Human Rights Commission Law. It is now carrying out its mandates independently and effectively for the promotion and protection of human rights. It is vested with powers to verify and conduct inquiries in respect of complaints and allegations of human rights violation including forced labour.

Judiciary reforms

12. In order to guarantee the independence of the judiciary and ensure the separation of the powers, sections 300, 301, 309 and 310 of the Constitution require the Chief Justice of the Union, Judges of the Supreme Court of the Union, the Chief Justice and the Judges of the High Court of the Region or State to be free from party politics, and exclude members of political parties, members of parliament and civil servants from the judiciary.
13. Practicing judicial independence is clearly stated in section 19 of the Constitution and section 7 of the Union Judiciary Law, and Bangalore Principles of Judicial Conduct is applied as a model. The Supreme Court of the Union issued directives to all courts to practice fair, efficient and effective judicial functions and to ensure the independent judiciary without external interference. Workshops were also held to promote the system, and best practice and experience on international norms and standards were exchanged.
14. Moreover, the Supreme Court of the Union adopted the Judiciary Strategic Plan (2015–17) for the better performance of the judiciary. It has been implemented by the Supreme Court as well as the cooperation with the international organizations. The core aims of the Judiciary Strategic Plan are to maintain peace and rule of law, to enhance a credible and reliable judicial system, to ensure access to due legal process, to pass judgments without delay, and to promote legitimacy of courts. Achieving these aims will upgrade Myanmar's judiciary system and foster independency of judiciary.

Myanmar's efforts for elimination of forced labour

15. In 2002, the Government of Myanmar and the ILO signed the agreement to support Myanmar's implementation of ILO Convention No. 29. With this agreement, a Liaison Officer of the ILO was appointed and his office opened in Yangon, Myanmar. Since then, Myanmar has been cooperating with the Liaison Officer for the elimination of forced labour as well as promotion and protection of labour rights.

- 16.** Since 2007, a Supplementary Understanding (SU) was signed between the Government of Myanmar and the ILO for a one-year trial and a complaint mechanism was put in place for examining the complaints. The SU is extended yearly and it will expire in February 2016. Under the complaint mechanism, there were 707 complaints, related to underage recruitments and forced labour involving Tatmadaw personnel, received from 25 March 2007 to 30 June 2015. Out of 707 complaints, 304 cases were settled, 311 cases are still pending to be closed and 93 cases are under examination. Out of 311 pending cases, 268 cases have been jointly examined by Myanmar and the ILO, and the ILO was informed to close these cases.
- 17.** With the cooperation of the ILO, necessary disciplined actions were taken against any perpetrators of underage recruitment and forced labour. From June 2012 to August 2015, punitive actions were taken against 50 officers and 277 other ranks, 327 military personnel who falsely recruited the underage children. The punitive action varied from formal reprimands, demotions, reduction of services period and imprisonment in accordance with the military regulations.
- 18.** To effectively prevent underage recruitment to the military forces, a Memorandum of Understanding (MoU) was signed between the Government of Myanmar and the United Nations Country Task Force on Monitoring and Reporting on 27 June 2012. The Committee for the Prevention of Military Recruitment of Under-age Children has been working closely with the relevant departments. As a result, from 2012 to 2015, 645 underage children were discharged from the military and handed over to their respective parents. Reintegration and rehabilitation of the discharged are conducted by respective ministries in cooperation with civil society organizations. Representatives of the Country Task Force on Monitoring and Reporting (CTFMR), together with a senior military liaison officer, conducted monitoring visits to the 130 military units including 14 battalions, 61 infantries, 55 supporting regiments from 2012 to 2015. Education billboards on the elimination of underage recruitment are being set up throughout the country by the Tatmadaw. Some 66 billboards were put up in 2013 and 220 billboards in 2014.
- 19.** Moreover, the MoU on Joint Strategy for the Elimination of Forced Labour by 2015 was signed between the Government of Myanmar and the International Labour Organization on 16 March 2012. To that end, the Working Committee of Joint Strategy for the Elimination of Forced Labour was formed and chaired by the Union Minister for Labour, Employment and Social Security of Myanmar. It comprises representatives from the Ministry of Home Affairs, the Ministry of Defence, the Ministry of Foreign Affairs, the Ministry of Agriculture and Irrigation, the Supreme Court of the Union, the Union Attorney-General's Office and the ILO Liaison Officer. The elimination of forced labour has been placed as a priority task of the Government, and the Joint Strategy is being effectively implemented toward the elimination of forced labour by its target date, the end of 2015.
- 20.** The following seven action plans contained in the Joint Strategy for the Elimination of Forced Labour are as follows:

 - (a) Action plan 1: Awareness raising.
 - (b) Action plan 2: Continued activities under the Supplementary Understanding.
 - (c) Action plan 3: Undertake investigation and take necessary remedial action in respect of unanswered allegations as documented in the comments of ILO supervisory bodies.

- (d) Action plan 4: Specific activities in policy areas and categories of work identified as actual or potential causes of the use of forced labour.
- (e) Action plan 5: Forced labour by way of underage (under 18) recruitment into the defence services and militia including support for the final agreement and implementation of a joint action plan in respect of children in armed conflict (Security Council Resolution 1612).
- (f) Action plan 6: Support for the justice system (civilian and military) and other institutions such as parliamentary commissions/committees and the National Human Rights Commission in the evolution of their roles particularly in the context of the continued development and enforcement of legislation and policy against the use of forced labour.
- (g) Action plan 7: Providing assistance in poverty reduction and employment creation in the border areas where peace agreements have been achieved through good employment practice modelling.
- 21.** After the signing of the SU between the Ministry of Labour, Employment and Social Security and the ILO in 2007, 13 awareness-raising discussions were held. In accordance with the Joint Strategy for the Elimination of Forced Labour, 43 awareness-raising workshops were held across the country from July 2013 to October 2015. In total 56 awareness-raising seminars were conducted.
- 22.** Two million copies of pamphlets containing information on forced labour in different local languages such as Bamar, Kayin, Kayah, Kachin, Chin, Mon, Rakhine and Shan languages were distributed to the public even at ward and tract level in the Union territories, states and regions by the General Administration Department and the Department of Labour. In addition, the information contained in the pamphlets is also broadcast on radio and television and published in local newspapers and news media to reach out to the public. At the offices of the township level of the General Administration Department, monthly meetings have been held with ward/tract level administrators and the administrators are instructed to disseminate the information on awareness of forced labour to the public.
- 23.** After enter into force of the Ward and Village Tract Administration Law and the Law Amending the Ward and Village Tract Administration Law, instructions and guidelines were issued on 24 July 2014 to the General Administrative Offices at district and township levels to strictly abide by section 27(a) of the Law. Awareness of forced labour is included in the lectures of short courses on administration organized by the General Administration Department for administrators as well as in the management courses at the Administrative Development Training School (Mingalardone).
- 24.** Similarly, at the meetings of village and ward administrators held every month, matters pertaining to the basic principles and definition of forced labour, relevant laws and guidelines, public works, forms of threat, works or services during the time of emergency and underage recruitment are discussed with an aim to raise awareness on forced labour. Awareness-raising discussions (13,178) and lectures (1,336) were conducted in the Union territories, states and regions from March 2012 to September 2015.
- 25.** In accordance with the action plan, specific instructions and guidelines on funding, rules of procedure, appointments of workers to projects, were issued on 29 January 2013. Moreover, the authorities concerned in the respective wards and townships were instructed to refrain strictly from the use of forced labour in the regional development projects. Workers hired for the development projects are paid based on determined daily wages of the respective regions. Workers from the respective city development councils are

deployed for works related to urban development, maintenance and landscaping. In the case of hiring outside workers due to the workload, they are paid based on the respective daily wages. On 25 July 2012, an instruction was issued to respective state and regional General Administrative Offices to submit the complaints directly to the ILO Strategic Working Group for the Elimination of Forced Labour (SWGFL) and carbon copy to the General Administration Department when they are received.

26. Special awareness-raising seminars are being organized in the special economic zones, and oil and natural gas pipeline projects such as Thilawa Special Economic Zone, Kyauk Phyu Special Economic Zone, Dawei Special Economic Zone, as well as at Yadana, Yetagon and Shwe gas projects. Moreover, responsible officials from the respective townships, where projects are located, were instructed in August 2012 to organize awareness-raising workshops and seminars in collaboration with management and supervisory staff of the respective projects to prevent use of forced labour.
27. In October and November 2012, similar directives were also issued to respective administrators to work with project officials of the public works and major infrastructure construction projects for prevention of forced labour.
28. Myanmar acceded to the Worst Forms of Child Labour Convention, 1999 (No. 182), on 18 December 2014. The Myanmar Programme on the Elimination of Child Labour (My-PEC) is being implemented in collaboration with the ILO. Government agencies, employers, workers, non-governmental organizations, international non-governmental organizations and civil society organizations are involved in the process. Myanmar transmitted its implementation report of Convention No. 182 to the ILO on 30 August 2015. Additionally, the Myanmar Child Law (1993) is being reviewed to be in line with the Convention No. 182.
29. Setting up of education billboards on elimination of forced labour as part of the action plan was discussed at the meeting between the Committee on Elimination of Forced Labour of Myanmar and the ILO, held on 8 August 2015. As an outcome, education billboards will be put up in Ayeyarwaddy region, Magway region and Yangon region, where forced labour-associated cases are mainly concentrated, as well as in 149 townships of other states and regions.
30. Within the framework of the action plan and Freedom of Association Project, the Government is providing necessary assistance to ILO representatives to enable them to organize special awareness-raising seminars and capacity-building training sessions for employers' and workers' organizations. Moreover, Myanmar is also rendering support to the staff members of the ILO Office and ILO Regional Office in discharging their duties in the country to implement the respective projects and carry out technical support missions.
31. As Myanmar, with the cooperation of the ILO, is consistently putting its efforts for promoting awareness raising of forced labour, many people have increased their understanding on acts of forced labour as well as underage recruitments. As a result, the number of complaints has decreased noticeably.

Efforts to address issues related to land acquisition

32. The Central Committee for Land Resources Management led by a vice-president was formed to address the issues related to land acquisition while protecting the public interest. Central (Nay Pyi Taw), regions, states, districts, townships, wards and village tracts land use management committees are formed to produce tangible results on land issues and to

support the works of the Central Committee. Moreover, an “Investigation Commission for the protection of interests of people as a result of farmland and other land acquisition” was formed in Pyidaungsu Hluttaw. The subcommittee of the Central Committee is taking follow-up measures on the report of the Investigation Commission.

Renouncement of acquired lands and handover to rightful owners

33. The Land Use Management Sub-committee has scrutinized the land issues mentioned in the report sent by Pyidaungsu Hluttaw (Union Parliament). Excess and unused lands after the completion of national projects are to be returned to their rightful owners.
34. Furthermore, the Union Government is further verifying the land issues which are not mentioned in the Pyidaungsu Hluttaw report and returning lands to the rightful owners. The lands acquired by governmental departments and Tatmadaw during the successive governments for the national projects were reviewed and verified by the Union Government. If the acquired land is excessive, unused or not contributing to regional development and job opportunity, the lands will be returned to their rightful owners in accordance with the existing laws and rules of procedure.

Progress in land use management

35. The Land Use Scrutinizing Committee composed of 25 members led by the Union Minister for Environmental Conservation and Forestry was formed to effectively execute the Land Use Policy in rural areas. The Committee was tasked to execute the land use policies in rural–urban development plans and investment plans.

Measures to be taken in the future for elimination of forced labour

36. An MoU was signed between Myanmar and the ILO in 2002 in connection with ILO Convention No. 29. Pursuant to the MoU, an SU was signed in 2007 and extended yearly. In this regard, a complaint mechanism with the ILO Liaison Officer was set up to address the complaints of forced labour. Moreover, the Office of the Defence Services (army) in collaboration with the CTFMR are taking necessary measures to prevent recruitment of underage children. If underage children are wrongfully recruited, measures are taken immediately to discharge them from the military. Actions are taken against the perpetrators with either judicial or administrative punishment.
37. The Ministry of Labour, Employment and Social Security, in cooperation with other members of the Working Committee on the Implementation of the Joint Strategy for the Elimination of Forced Labour, namely, the Ministry of Home Affairs, the Ministry of Defence, the Ministry of Foreign Affairs, the Ministry of Agriculture and Irrigation, the Union Supreme Court and the Union Attorney-General’s Office, has been putting its utmost efforts to eliminate forced labour. In doing so, most of the seven action plans contained in the Joint Strategy have been implemented and the few remaining will be carried out with high momentum.
38. Township administrators from the General Administration Department of the Ministry of Home Affairs will continue conducting awareness raising for ward and village tract administrators on elimination and prevention of forced labour at the monthly coordinating meeting, held at the township level administrative offices. This awareness raising includes

basic principles and definition of forced labour, relevant rules and regulations, public works, forms of threatening, services provided during the time of emergency, and recruitment of underage children. In addition, the existing complaint mechanism for labour affairs including forced labour, opened at the Offices of the Ministry of Labour, Employment and Social Security in Nay Pyi Taw and Yangon, will continue to provide a 24-hour service to the public. A tripartite complaint mechanism composed of representatives from the Government, employers and workers will also be established to address any forced labour complaint after expiry of the existing SU in February 2016.

39. To promote and protect the rights of workers in line with international standards, Myanmar is reviewing provisions embodied in the existing labour laws with technical support from the international organizations including the ILO. To settle the labour disputes, to eliminate forced labour and to foster good industrial relations, coordination committees and arbitration boards were established at various levels. Moreover, arbitration boards and arbitration council composed of representatives from the Government, workers and employers were formed at state and regional levels. The existing system will continue and be further strengthened by increasing capacity building of the relevant stakeholders.
40. Tripartite seminars and dialogues are being held to review the labour legislation. In line with the ILO's Decent Work Agenda, to support the national plan of poverty reduction, the Government of Myanmar with close cooperation of the ILO has been taking various measures, inter alia, rural developments, elimination of forced labour, freedom of association, introduction of social dialogues, promotion and protection of migrant workers, fighting against human trafficking, social security and the social protection floor, workplace safety and health-care services. Tripartite coordination development strategic activities among the Government, employers and workers are also being carried out.
41. In this regard, a roadmap for the Decent Work Country Programme (DWCP) was developed. At the national tripartite dialogue forum held in March 2015, duties and responsibilities were also drawn up. A concept paper on the DWCP was drafted in April and May 2015, and tripartite representatives discussed the draft in July 2015. In December, priorities for the DWCP will be deliberated. In January and February 2016, the technical working group will discuss action plans. A draft DWCP will be introduced in May 2016. Preparation for signing of the MoU on the DWCP will take place in June and July 2016. All these steps will be taken in cooperation with the ILO.

Conclusion

42. Since the signing of the SU in 2007, Myanmar has been cooperating with the ILO for the elimination of forced labour throughout the country. With the development of the Joint Strategy for the Elimination of Forced Labour in 2012 aiming to eliminate forced labour by the end of 2015, its seven action plans is being implemented with momentum since then. The Ministry of Labour, Employment and Social Security is working actively in collaboration with the line ministries and almost all the works stipulated in the action plans have been carried out.
43. In response to the recommendation of the Commission of Inquiry of the ILO, the Law Amending the Ward and Village Tract Administration Law was promulgated in 2012. It criminalizes and penalizes forced labour. As an effort to prevent forced and underage recruitment, directives were issued to try any perpetrator under section 374 of the Penal Code, instead of article 65 of the Military Act.
44. Myanmar and the ILO have been engaging and cooperating not only in the area of elimination of forced labour but also in other wide-ranging sectors. Implementation of the

DWCP will cover comprehensive labour-related matters including the elimination of forced labour. At this juncture, the cooperation between Myanmar and the ILO should not be seen as only in the area of forced labour, and the cooperation be further broadened to other areas. As such, the SU, which will expire on 25 February 2016, should not be extended. Instead, it is advised that the Office of the Liaison Officer in Yangon be transformed to an ILO country office functioning under the ILO Regional Office.