



Targeted Surveys on application of core labour standards Myanmar

**Written by Ergon Associates
August 2018 (Revised)**

Ergon



EUROPEAN COMMISSION

Directorate-General for Employment, Social Affairs and Inclusion
Directorate D — Labour Mobility
Unit D.3 — International Issues

E-mail: empl-d3-unit@ec.europa.eu

European Commission
B-1049 Brussels

Targeted Surveys on application of core labour standards Myanmar

Directorate-General for Employment, Social Affairs and Inclusion
EU Programme for Employment and Social Innovation

2018

EU [Number] EN

***Europe Direct is a service to help you find answers
to your questions about the European Union.***

Freephone number (*):

00 800 6 7 8 9 10 11

(*) The information given is free, as are most calls (though some operators, phone boxes or hotels may charge you).

LEGAL NOTICE

The information and views set out in this survey report are those of the author(s) and do not necessarily reflect the official opinion of the Commission. The Commission does not guarantee the accuracy of the data included in this study. Neither the Commission nor any person acting on the Commission's behalf may be held responsible for the use which may be made of the information contained therein.

More information on the European Union is available on the Internet (<http://www.europa.eu>).

Targeted Surveys on application of core labour standards, Myanmar

This report has been developed to provide a picture of the application of core labour standards in Myanmar. The report is based on a combination of desk research and stakeholder interviews. The assessments of the issues covered in the report are based on the views of credible international organisations, national governments, employer organisations, trade unions, experts and other stakeholders.

Progress

- Ongoing labour law reform includes recent / proposed improvements relevant to the application of core labour standards
- Ongoing efforts to build capacity of social partners with international support
- Declining incidence of forced and child labour, although both issues remain serious concerns

Challenges

- Ongoing internal conflict is an overarching constraint on effective application of core labour standards, with particular concerns about forced / child labour
- Underdeveloped legal framework pertaining to core labour standards
- Nascent social partners lack capacity
- Enforcement shortcomings, including a weak labour inspection system
- Restrictions on scope of collective bargaining
- Alleged use of forced labour, including forced child labour, by military

Key context

Myanmar is currently undergoing profound economic, social and political transformation with significant implications for the application of core labour standards (CLS). Since the return to civilian rule in 2011, the government has initiated wide-ranging reform process, including an overhaul of labour legislation. At the same time, Myanmar has become more open to international integration and cooperation and was readmitted to the ILO in 2013, embarking on a series of projects relevant to CLS, notably relating to forced labour, child labour and freedom of association.

Nevertheless, Myanmar remains one of the poorest countries in Southeast Asia and approximately 26% of the population live in poverty. Employment in Myanmar remains heavily concentrated in low-productivity, informal jobs, including a significant share in the agricultural sector. The quality of jobs is often poor, with approximately 63% of the labour force engaged in 'vulnerable employment' characterised by inadequate earnings and difficult work conditions.

Ongoing conflicts – particularly in the states of Rakhine, Kachin, and Shan – represent a significant overall constraint on the application of core labour standards. Myanmar's armed forces (the Tatmadaw), along with non-state armed groups, continue to be implicated in the use of forced labour and forced child labour in conflict-affected regions. More generally, the large-scale displacement of the civilian population has heightened

vulnerabilities to labour exploitation and contributed to a general situation of lawlessness in affected areas.

Myanmar's labour legislation remains underdeveloped and ineffective for regulating current labour market conditions. The current legal framework does not comply with international standards in several key areas. Overall, national labour law is characterised by fragmented legislation that covers labour issues by sector (e.g. factories, shops, mines) or by theme (e.g. wages, leave and holidays). This leads to significant gaps in coverage, particularly for workers in sectors such as agriculture, construction, and fisheries that are not covered by sector-specific laws. However, these shortcomings are widely acknowledged, and there is an ambitious reform agenda to update labour legislation and to bring such legislation into line with international standards.

Freedom of association and collective bargaining

From the establishment of military rule in 1962 until the enactment of the new Labour Organisation Law in 2011, trade unions were banned in Myanmar and workers were prohibited from forming organisations, having their representatives recognised, negotiating collectively with employers, or carrying out strikes and other collective activities. Consequently, although trade unions and employers' organisations have proliferated since 2011, they remain at a nascent stage of development.

Myanmar has not ratified ILO C98. National law establishes the right to organise and bargain collectively, and to take industrial action. However, there remain numerous areas in which national law deviates from internationally recognised norms and principles concerning freedom of association and collective bargaining, including: restrictions on workers joining unions outside their specific trade or activity; excessive membership requirements for union registration; the lack of express protections against anti-union discrimination; restrictive rules on trade union structure and governance; a limited scope for collective bargaining; and several restrictions on legal strike activity. In practice, there are specific concerns about the difficulties faced by trade unions in obtaining official registration, retaliation – including dismissal – from employers for legitimate union activity, and the limited occurrence and scope of collective bargaining.

Forced labour

Myanmar has not ratified C105. Myanmar's Constitution prohibits forced labour, trafficking, or enslavement, but it permits forced labour in the case of punishment for a crime. In recent years, the government and the ILO have adopted a series of initiatives aimed at addressing forced labour in Myanmar – including a Joint Action Plan and a Supplementary Understanding that established a forced labour complaint mechanism. These initiatives have achieved some progress in reducing the incidence of forced labour.

In practice, the most significant concerns still relate to the use of forced labour by Myanmar's armed forces (the Tatmadaw). Other than child recruitment (see Section 6), there are significant concerns that the Tatmadaw's 'self-reliance' policy, whereby troops are required to procure their own food and supplies from local communities, is a significant underlying cause of forced labour, particularly within ethnic minority communities in conflict zones. A recent UN Fact-Finding Mission (FFM) on Myanmar identified a pattern of continuing systematic use by the Tatmadaw of forced labour, including for portering, digging trenches, guiding, and cooking (UN HRC, 2018).

Forced labour also occurs in the private sector, although awareness of the issue remains low. Fifteen products from Myanmar are included on USDOL's most recent List of Goods Produced by Forced Labour: Bamboo, Beans, Bricks, Garments, Jade, Palm Thatch, Physic Nuts / Castor Beans, Rice, Rubber, Rubies, Sesame, Shrimp, Sugarcane, Sunflower and Teak.

Child labour

The legal framework on child labour does not yet meet international standards. Legislation relating to child labour is contained in several sectoral laws, but none include a specific definition or prohibition of child labour. In addition, there is no clear prohibition of worst forms of child labour.

In practice, child labour is extremely prevalent in Myanmar. Myanmar's first and most recent child labour survey was conducted in 2015 and found that 1.2 million children, or approximately 9.3% of the total child population, were engaged in child labour.

Notwithstanding significant progress since 2012, the use of child soldiers by government armed forces (Tatmadaw), remains a serious concern. Since 2012, the UN FFM to Myanmar has received 1,374 complaints regarding the recruitment of children by the Tatmadaw, of which 856 were verified (UN HRC, 2018). The recruitment and use of children by non-state armed groups is also a key issue, although severe access restrictions mean that there are relatively few verified cases. Child labour also occurs in the private sector, although it is a more recently recognised phenomenon that has not yet been comprehensively addressed (MCRB, 2017a). Ten products from Myanmar are included on USDOL's most recent List of Goods Produced by Child Labour: Bamboo, Beans, Bricks, Garments, Jade, Rice, Rubber, Rubies, Sugarcane and Teak.

Discrimination

Myanmar has not ratified C100 or C111. The national legal framework on non-discrimination is generally considered inadequate. Although the Constitution contains some prohibitions on discrimination and a guarantee that citizens shall enjoy equal opportunity in employment, the application of these rights is limited to citizens of Myanmar, thereby excluding significant portions of the population. At the same time, these constitutional provisions are not sufficiently reflected in national law, and secondary legislation contains few explicit prohibitions on discrimination in employment.

Discrimination is not well acknowledged or widely recognised by national stakeholders. However, international observers report that discrimination against ethnic, religious and linguistic minorities is a significant issue, while gender-based discrimination is widely apparent across the labour market. All official identity documents are required to state the religion and ethnicity of the individual, and it is reported that employers use this information to discriminate against non-Bamars during recruitment processes. Women's overall labour force participation rate is low (52% compared to 82% for men), while women are also overrepresented in vulnerable employment and perform the majority of unpaid care and household work. Women are also typically concentrated in sectors and occupations that, according to prevalent sociocultural gender norms, are deemed appropriate for women. Finally, work-related discrimination based on sexual orientation and gender identity is reportedly common.

Status of ratification and reporting

Myanmar has ratified just three ILO fundamental (core) labour conventions (C87, C29 and C182), and no ILO governance (priority) conventions. Myanmar is up-to-date with all its reporting obligations to the monitoring bodies of the ILO in relation to ratified conventions.

		Key application issues - latest ILO CEACR observations and direct requests on core conventions
Freedom of association & collective bargaining	C87	(2018): Requests the government review provisions in the Labour Organisation Law, including the minimum membership requirement for forming a labour union of 30 workers and eligibility restrictions for trade union officers. Also notes that the 2016 Peaceful Assembly and Peaceful Procession Law contains provisions that may give rise to restrictions on freedom of association and trade union activity. Finally, notes how provisions in the Special Export Zones (SEZs) Law appears to restrict the application of general labour laws, especially concerning dispute settlement.
	C98	<i>Convention not ratified</i>
Forced Labour	C29	(2016): Notes that no action has been taken to amend the Constitution, which exempts from a prohibition of forced labour 'duties assigned by the Union in accordance with the law in the interest of the public'.
	C105	<i>Convention not ratified</i>
Child labour	C138	<i>Convention not ratified</i>
	C182	(2016): Notes inconsistencies between national law and C182, including several pieces of national legislation which define a 'child' as being under 16 years of age (rather than 18 as required by C182), for example in relation to prohibitions of using children in illicit activities or in hazardous work. Similarly, notes the absence of a standardised list determining types of hazardous work for children under 18 years. Expressed concern that a number of children who fled the army after being recruited into its ranks were charged with desertion and treated as criminals under Myanmar law, rather than victims.
Discrimination	C100	<i>Convention not ratified</i>
	C111	<i>Convention not ratified</i>

References

ILO CEACR, [Observations and Direct Requests for Myanmar](#)