



International  
Labour  
Organization

# **Myanmar: Legal review of national laws and regulations related to child labour in light of international standards 2020**

International  
Programme  
on the Elimination  
of Child Labour  
(IPEC)

Fundamental Principles and Rights at Work Branch (FUNDAMENTALS)



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# ABBREVIATIONS & ACRONYMS

<b>CEACR</b>	Committee of Experts on the Application of Conventions and Recommendations
<b>Convention No. 29</b>	ILO Forced Labour Convention, 1930 (No. 29)
<b>Convention No. 138</b>	ILO Minimum Age Convention, 1973 (No. 138)
<b>Convention No. 182</b>	ILO Worst Forms of Child Labour Convention, 1999 (No. 182)
<b>CRC</b>	UN Convention on the Rights of the Child, 1990
<b>GoRUM</b>	Government of the Republic of the Union of Myanmar
<b>ILC</b>	International Labour Conference
<b>ILO</b>	International Labour Organization
<b>ILS</b>	International Labour Standards
<b>LFS</b>	Labour Force Survey
<b>MNCLEC</b>	Myanmar National Child Labour Eradication Committee
<b>MOLES</b>	Ministry of Labour, Employment and Social Security
<b>MOLIP</b>	Ministry of Labour, Immigration and Population
<b>My-PEC</b>	Myanmar Programme on the Elimination of Child Labour
<b>NAP</b>	National Action Plan
<b>TWG-CL</b>	Technical Working Group on Child Labour
<b>NGO</b>	Non-Governmental Organization
<b>UAGO</b>	Myanmar Union Attorney-General's Office
<b>UN</b>	United Nations
<b>UNICEF</b>	United Nations Children's Fund
<b>UNCTFMR</b>	United Nations Country Task Force on Monitoring and Reporting
<b>WFCL</b>	Worst Forms of Child Labour



# FOREWORD

[To be inserted by ILO-MyPEC with a reference to the removal of the civilian Government by the military on 1 February 2021]



# INTRODUCTION

## Overview of relevant international standards

The right of children to protection from economic exploitation has long been recognized as a fundamental and universal human right. Indeed, since its inception,<sup>1</sup> the ILO has adopted a number of relevant international labour standards, among which two fundamental Conventions relating to the elimination of child labour, in particular in its worst forms, namely: the Minimum Age Convention, 1973 (No. 138) and the Worst Forms of Child Labour Convention, 1999 (No. 182). These two Conventions constitute “the most authoritative international normative framework for the elimination of child labour”, and the emphasis placed by both Conventions on the abolition of child labour reflects the “conviction of the ILO’s constituents that childhood is a period of life which should not be devoted to work, but to the full physical and mental development of children.”<sup>2</sup>

The United Nations also adopted a number of relevant instruments in this area which complement ILO’s international labour standards.<sup>3</sup> The most comprehensive of the UN instruments is the Convention on the Rights of the Child, 1990 (CRC) which provides that the child has the right to be protected from economic exploitation and from any hazardous work or work that interferes with the child’s education (article 32(1)). Several other UN instruments also contain relevant provisions on child labour or protection of children from exploitation<sup>4</sup>.

Myanmar has ratified a number of international instruments on child labour (for further information in that regard please refer to table 1, below). To date, Myanmar has ratified 25 out of 190 ILO Conventions and 4 out of the 8 fundamental Conventions,<sup>5</sup> including the Forced Labour Convention, 1930 (No. 29) in 1955, and the Worst Forms of Child Labour Convention, 1999 (No. 182) in 2013, thereby making a clear commitment to undertake immediate action for the prohibition and elimination of the worst forms of child labour. Most recently, Myanmar ratified the UN Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, 2000, as well as ILO Convention No. 138, which entered into force for Myanmar on 8 June 2021<sup>6</sup>. On that occasion the ILO stated that:

*“This ratification represents another positive development in the country’s continued efforts towards the full respect of fundamental rights at work. With the*

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<sup>1</sup> As soon as the ILO was created in 1919, it adopted two relevant international labour standards, namely: the Minimum Age (Industry) Convention, 1919 (No. 5) and the Night Work of Young Persons (Industry) Convention, 1919 (No. 6).

<sup>2</sup> ILO. 2012. “General Survey on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization, 2008”, Report of the Committee of Experts on the Application of Conventions and Recommendations (articles 19, 22 and 35 of the Constitution), Report III (Part 1B) (Geneva, ILO), para. 330.

<sup>3</sup> ILO-IPEC. 2002. Eliminating the worst forms of child labour: a practical guide to ILO Convention No. 182 - Handbook for parliamentarians No 3, p. 35 (Geneva, ILO).

<sup>4</sup> For further information in this regard, please refer to table 1 below.

<sup>5</sup> Myanmar has *not* ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98); the Equal Remuneration Convention, 1951 (No. 100); the Abolition of Forced Labour Convention, 1957 (No. 105); and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111). For further information in this regard, please refer to Myanmar’s NORMLEX Country Profile.

<sup>6</sup> The first report from Myanmar on the application of ILO Convention No. 138 is due in 2022.

*ratification of ILO Convention No. 138, Myanmar, which has already ratified ILO Convention No.182 on the Worst Forms of Child Labour Convention in 2013, reaffirms its commitment towards the fight against the scourge of child labour and to protecting children from work for which they are too young and from work that jeopardizes their health, morals or psychological wellbeing as well as their access to education. Moreover, by ratifying the Convention, Myanmar is moving ahead towards the achievement of decent work and the delivering at the country-level of the 2030 UN Sustainable Development Goals, in particular SDG target 8.7, which aims at the complete eradication of child labour by 2025 and calls for immediate action to prohibit and eliminate its worst forms.’<sup>7</sup>*

On 21 September 2018, the Government, the workers’ and employers’ organizations of Myanmar and the ILO signed a Memorandum of Understanding on Decent Work Country Programme (DWCP) which provides as significant implementation outputs strengthened protection against unacceptable forms of work, in particular forced labour and child labour.

**Table 1: Myanmar’s international commitments on child labour <sup>8</sup>**

Instrument	Signature	Ratification/Ascension
ILO Forced Labour Convention, 1930 (No. 29)	04-Mar-1955	04-Mar-1955
ILO Worst Forms of Child Labour Convention, 1999 (No. 182)	18-Dec-2013	18-Dec-2013
ILO Minimum Age Convention, 1973 (No. 138)	08-Jun-2020	08-Jun-2020
ILO Night Work of Young Persons (Industry) Convention, 1919 (No. 6)	14-Jul-1921	14-Jul-1921
Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others	21-Mar-1950	
UN Slavery Convention	29-Apr-1957	
Protocol amending the Slavery Convention	14-Mar-1956	29-Apr-1957
UN Convention Against Organized Transnational Crime		30-Mar-2004
Protocol Against the Smuggling of Migrants by Land, Sea and Air		30-Mar-2004
Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children		30-Mar-2005
Geneva Conventions (I-IV)		25-Aug-1992

<sup>7</sup> ILO Website, “[Myanmar ratifies the Minimum Age Convention](#)”.

<sup>8</sup> Myanmar has ratified a total 25 ILO Conventions, some of which are not reproduced in Table 1 which refers to the most important international standards in this area. For further information, please refer to [Myanmar’s NORMLEX Country Profile](#).

Instrument	Signature	Ratification/Ascension
UN Convention on the Rights of the Child (CRC)		15-Jul-1991
Optional Protocol to the Convention on the Rights of the Child on the sale of children child prostitution and child pornography		16-Jan-2012
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict	28-Sep-2015	27-Sep-2019
UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)		22-Jul-1997
UN Convention on the Rights of People with Disabilities (CRPD)		7-Dec-2011
Optional Protocol the CRPD		12-Jan-2012

When a country ratifies an international standard, it thus assumes an international obligation to implement the instrument, both in law and in practice. Many international standards have established special and independent mechanisms to monitor and ensure that countries effectively implement the instruments they ratify. Currently, there are 10 UN human rights treaty bodies, which are committees of independent experts. The Committee on the Rights of the Child, for instance, is a body of 18 independent experts from around the world that monitors the implementation of the CRC by the ratifying countries. The Committee also monitors the implementation of the two Optional Protocols to the Convention, on involvement of children in armed conflict and on sale of children, child prostitution and child pornography.

The monitoring is conducted primarily through countries submitting reports at regular intervals about their implementation status and efforts, and the treaty bodies in turn review those country reports and issue conclusions and recommendations for improvements. In addition, the human rights treaty bodies also accept complaints: from individuals whose rights have been violated; state-to-state complaints; or some Committees, including the Committee on the Rights of the Child, may initiate inquiries on their own initiatives “if they have received reliable information containing well-founded indications of serious or systematic violations of the conventions in a State party.”<sup>9</sup> Furthermore, on 19 December 2011, the UN General Assembly approved a third Optional Protocol to the CRC on a communications procedure, which will allow individual children to submit complaints regarding specific violations of their rights under the Convention and its first two optional protocols.<sup>10</sup> The Protocol entered into force in April 2014. At the time of the publication of this paper, no action has been taken by Myanmar with respect to this third Protocol.

ILO Conventions and Recommendations are also backed by a supervisory system that helps to ensure that countries implement the Conventions they ratified. At regular intervals, the ILO examines the application of international labour standards and points out areas where they could be better applied. If there are any problems in the application of standards, the ILO seeks to assist

<sup>9</sup> OHCHR website, “Human Rights Bodies - “Complaints Procedures”, available at: <https://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/HRTBPetitions.aspx#inquiries>.

<sup>10</sup> United Nations Office of the High Commissioner for Human Rights (OHCHR) website on Committee on the Rights of the Child, available at: <https://www.ohchr.org/en/hrbodies/crc/pages/crcindex.aspx>.

countries through social dialogue and technical assistance. There are two kinds of supervisory mechanisms in the ILO:<sup>11</sup>

- *A regular system of supervision* through the Committee of Experts on the Application of Conventions and Recommendations (CEACR), which is an independent body composed of 20 eminent jurists from around the world; and the International Labour Conference's Tripartite Committee on the Application of Standards (CCAS), which is made up of Governments', employers' and workers' representatives<sup>12</sup>. ***In June 2019, the CCAS examines the application of ILO Convention No. 29 by Myanmar.***<sup>13</sup>
- *Special procedures*, namely:
  - *Representations* (article 24 of ILO Constitution): an industrial association of employers or of workers has the right to present to the ILO Governing Body a representation against any member State which, in its view, "has failed to secure in any respect the effective observance within its jurisdiction of any Convention to which it is a party". To date, no representation alleging non-observance of ILO Conventions Nos. 138 or 182 by Myanmar has been made. ***However, one representation alleging non-observance of ILO Convention No. 29 by Myanmar was made in 1994.***<sup>14</sup> ***This procedure is now closed.***
  - *Complaints* (art. 26 of ILO Constitution): a complaint may be filed against a member State for not complying with a ratified Convention by another member State which has ratified the same Convention, a delegate to the International Labour Conference or the Governing Body of its own motion. Upon receipt of a complaint, the Governing Body may establish a Commission of Inquiry, consisting of three independent members, which is responsible for carrying out a full investigation of the complaint, ascertaining all the facts of the case and making recommendations on measures to be taken to address the problems raised by the complaint. A Commission of Inquiry is the ILO's highest-level investigative procedure. To date, no Commission of Inquiry has been established in relation to Conventions Nos. 138 or 182. ***However, a Commission of Inquiry was established in March 1997 under ILO Convention No. 29 to address forced labour situation in Myanmar.***<sup>15</sup> ***This procedure is now closed.***

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<sup>11</sup> For further information, please visit the ILO website on the Supervisory Mechanism at: <https://www.ilo.org/global/about-the-ilo/how-the-ilo-works/ilo-supervisory-system-mechanism/lang--en/index.htm>.

<sup>12</sup> The reports of these supervisory bodies are published online and can be searched by country or by Convention at: <https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:20010:0::NO::>

<sup>13</sup> The discussion that took place within the CCAS and the conclusions adopted by the CCAS in June 2019 on the application of ILO Convention No. 29 by Myanmar are available at: [https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID:4000332](https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:4000332)

<sup>14</sup> The report of the Tripartite Committee set up to consider the representation made by the International Confederation of Free Trade Unions alleging non-observance by Myanmar of the Forced Labour Convention, 1930 (No. 29) concludes that the exaction of labour and services, in particular portage services, under the Village and the Towns Act is contrary to the Forced Labour Convention, 1930 (No. 29). For further information, please see: [https://www.ilo.org/dyn/normlex/en/f?p=1000:50012:0::NO:50012:P50012\\_COMPLAINT\\_PROCEDURE\\_ID:P50012\\_LANG\\_CODE:2507157.en:NO](https://www.ilo.org/dyn/normlex/en/f?p=1000:50012:0::NO:50012:P50012_COMPLAINT_PROCEDURE_ID:P50012_LANG_CODE:2507157.en:NO)

<sup>15</sup> For further information, please see the [Report of the Commission of Inquiry](#) appointed under article 26 of the Constitution of the International Labour Organization to examine the observance by Myanmar of the Forced Labour Convention, 1930 (No. 29).

- *Freedom of association cases*: the ILO set up the Committee on Freedom of Association (CFA) for the purpose of examining complaints of violations of freedom of association, whether or not the country concerned had ratified the relevant ILO Conventions. Complaints may be brought against a member State by an employers' or workers' organization. Numerous cases have been brought to the CFA, some of which concerned young workers.<sup>16</sup> *To date, the CFA has examined thirteen cases concerning Myanmar, of which only one remains active.*<sup>17</sup>

## Objectives

This review is aimed at determining the extent to which national laws, regulations, policies and other measures, as well as the existing practices in Myanmar are implementing the requirements of the international standards on child labour, such as in particular the UN Convention on the Rights of the Child; the ILO Minimum Age Convention, 1973 (No. 138) and the ILO Worst Forms of Child Labour Convention, 1999 (No. 182). The review is articulated around three specific objectives, namely to (i) identify the relevant provisions of national laws, regulations, policies, etc. which aim at implementing those relevant international standards; (ii) determine whether and how these international standards are reflected by such national provisions in Myanmar; and (iii) recommend the necessary changes that need to be made to law and practice to ensure compliance with those ratified international standards and effectively eliminate child labour and protect young workers.

The first edition of this review was published in 2015. However, taking into consideration the major developments that occurred in the past five years, such as the adoption of the Child Rights Law in 2019 and the ratification of relevant international standards by Myanmar, such as the ILO Minimum Age Convention, 1973 (No. 138), in 2020, and the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, in 2019, it appeared necessary to update the legal review, in order to provide a better understanding about the main developments as well as the remaining challenges. This review, which was commissioned by the “Myanmar Programme on the Elimination of Child Labour (My-PEC)” Project (ILO-MyPEC), covers the period up to December 2020.

## Methodology

This review was undertaken in and covers the legal framework and developments up to December 2020. This edition is based on a comprehensive desk review of both international and national legal frameworks and relevant publications; interviews with key stakeholders; and feedback which was provided by these key stakeholders during the validation process.

- *Desk review*: The study reviews and analyses the existing national laws and regulations relevant to child labour, including the 2008 Constitution; the Child Rights Law, 2019; the

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<sup>16</sup> All CFA cases can be searched (by country or by key word, etc) in ILO database NORMLEX at: <https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:70001:0::NO>. Compilation of cases is also available in PDF.

<sup>17</sup> No information is available on that case as it has not been examined by the CFA yet. Please see case No. 3405 - complaint made on 5 March 2021 by the International Trade Union Confederation.

Basic Education Law, 2019; labour laws; as well as other relevant laws such as the Anti-Trafficking Law, the Social Security Law and the new Occupational Safety and Health Law, 2019 (not yet in force). The relevant international instruments and materials were also reviewed, including the UN Convention on the Rights of the Child and relevant ILO Conventions and Recommendations, as well as the comments made by the UN supervisory bodies on the application by Myanmar of ratified international instruments. Other relevant reference materials include publications by the ILO and other international and national organizations.<sup>18</sup>

- *Key informant interviews*: The review also collected data through key informant interviews which took place in 2020 with representatives from the Government, Legislature and Judiciary; employers' and workers' organizations; and other relevant stakeholders. The list of key informants approached by My-PEC in this context is provided in Appendix II. Data were collected from 16 stakeholders (Government: 6; Workers' organizations: 3; Employers' organization: 1; Law Academic: 1; UN agency: 1; and NGOs: 4). Data were not collected from other stakeholders either due to time constraint or unavailability of the stakeholders. The interview questionnaires are reproduced in Appendix III.
- *Validation*: The first edition of the review was validated through a national workshop with key stakeholders including Government's agencies, employers' and workers' organizations, UN agencies and NGOs. This edition was circulated among these stakeholders individually for comments, and was revised and finalized based on stakeholders' feedback.

## Structure

The review is divided into three main Chapters. Chapter I aims at presenting the current context concerning child labour in Myanmar as well as the regulatory framework in the broader context of Myanmar's international commitments. In that regard, the review identifies relevant laws and regulations on child labour and working conditions of young workers. This chapter also provides basic information about the country's legal system and legislative process.

Chapter II provides a detailed analysis of the existing national laws and regulations for the elimination of child labour and protection of young workers in light of relevant international standards that have been ratified by Myanmar. Conclusions and specific recommendations are made on each key aspect that is being analyzed.

Chapter III focuses on monitoring and enforcement of the provisions of the national legislation, while examining applicable penalties and assistance provided to victims of child labour, including in its worst forms.

The Conclusions part offers a summary of the main developments and achievements that occurred until the end of 2020, and identifies the remaining challenges for Myanmar in eliminating child labour and protecting young workers. It also offers a way forward, which is primarily guided

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<sup>18</sup> For further information, please refer to the *References* listed at the end of the review.

by the stakeholders' interview results. An overview of the recommendations contained in this report is also available.

Finally, a list of all the relevant documents examined in the context of the legal review is provided in the References part and three Appendixes provide further background information.

# CHAPTER I - Child labour in Myanmar: Current context & regulatory framework

The ILO-My-PEC project, funded by the United States Department of Labour, was launched in 2014 to establish a comprehensive, inclusive and efficient multi-stakeholder response to reducing child labour in Myanmar by increasing awareness and knowledge about child labour, improving legislation and strengthening national and local capacity to address child labour in compliance with international standards.

## 1. Current situation of child labour in Myanmar

While there had not been official data or statistics for a long time, in 2015, the Ministry of Labour, Immigration and Population (MOLIP) (formerly known as MOLES) published its first-ever Labour Force Survey (LFS), entitled the “Labour Force, Child Labour and School to Work Transition Survey”, with technical assistance from the ILO, shedding light on the state of child labour and working children in the country. Some of the key findings of the LFS 2015 include:<sup>19</sup>

- More than 1.1 million children aged between 5 and 17 years were engaged in child labour;
- More than half of them (i.e. 616,815) were engaged in hazardous work;<sup>20</sup>
- Both boys and girls worked, but much greater disparity was found when it came to age groups: i.e. whereas only 1.7% of the 5-11 year-olds were working, 22.7% of the 12-14 year-olds were working and a “staggering” 75.6% of those between the ages of 15-17 years were working. The age break-down for working children correlated with the education statistics in the survey: i.e. school attendance decreased significantly for both girls and boys with age: while 88.9% of the 5-11 year-olds attended school, only 47.7% of children aged 15-17 years attended school;
- Children aged between 12 and 17 years worked very long hours: around 60 hours per week;
- Overall, 60.7% of children worked in agriculture forestry and fisheries, followed by manufacturing, and then wholesale and retail; together, these three sectors accounted for over 80% of working children. A very small number of children were found working in mining and quarrying and in electricity, gas and water supply, while it was more common for children to work in construction, accommodation and food services, transportation, administrative and support services, domestic services and in other services.<sup>21</sup> *It must be noted that a number of these sectors where children were found to be working are associated with hazardous work.*

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<sup>19</sup> ILO. 2018. “Background Report for the National Action Plan on child labour in Myanmar: An overview of issues to be considered in the development of the NAP” (Myanmar, ILO), pp. 8-13.

<sup>20</sup> MOLIP. 2015. “Myanmar labour force, child labour and school to work transition survey 2015: executive summary report”.

<sup>21</sup> *Ibid.*



The LFS has since been published regularly and, according to the most recent published data of 2018 (1<sup>st</sup> Quarter, February - April 2018), a certain reduction in child labour can be observed:<sup>22</sup> i.e. the proportion of child labour in total child population has dropped from 9.3 percent in 2015 to 3.4 percent in 2018; and the proportion of children engaged in hazardous work also dropped from 5.1 percent in 2015 to 3.2 percent in 2018. However, child labour is still reported to be widespread across Myanmar.

**Table 2: Comparison of key figures from LFSs 2015-2018 (ILO Yangon)**

Annual Labour Force Survey	2015	2017		2018
		Q1	Q2	Q1
Period	Jan-Mar 2015	Jan-Mar 2017	Sep-Nov 2017	Feb-Apr 2018
Enumeration Areas	1500	772	780	775
Households	24000	13896	14040	13950
Working-Age Population (million)	33.93	36.39	36.39	36.56
Labour Force (million)	21.96	22.39	22.25	22.68
Employment (million)	21.79	21.91	22.02	22.45
Labour Force Participation Rate (%)	64.7	61.5	61.1	62
Employment-to-Population Ratio (%)	64.2	60.2	60.5	61.4
Unemployment Rate (%)	0.8	2.1	1	1
Composite rate of Labour Underutilization (%)	6.9	7.7	6.8	6.9
Youth Unemployment Rate, aged 15-24 (%)	1.6	5	3	1.9
Total children population aged 5-17 years (million)	12.14	12.41	12.41	12.4
Working children in total child population (%)	10.5	6.5	3.9	4.9
Child Labour in total child population (%)	9.3	5	2.8	3.4
Hazardous Child Labour in total child population (%)	5.1	4.9	2.6	3.2

<sup>22</sup> Note that the number of households targeted for the survey varied from 24,000 in 2015 (1<sup>st</sup> Quarter) to 13,950 in 2018 (1<sup>st</sup> Quarter). It is therefore more appropriate to compare the proportion of child labour in total child population than the absolute numbers.

Child Labour by age-group	2015 LFS	2017 LFS Q1	2017 LFS Q3	2018 LFS Q1
5-11 (%)	1.9	0.1	0	0.1
12-14 (%)	25.2	3	2.2	3
15-17 (%)	72.9	19	9.9	11.8

As regards, the *root causes of child labour*, information is also increasingly becoming available through research and studies. According to the research supported by ILO-MyPEC in 2015, including stakeholder consultations, among the root causes identified were: <sup>23</sup>

- *Poverty*, which is the first and most commonly cited root cause of child labour in Myanmar. Families without sufficient income resort to child labour, and this is often the case with very large families with many children;
- *Vulnerability to economic shocks*, such as natural disaster especially typhoons and flooding;
- *Labour shortages caused by rural out-migration*, wherein the local communities resort to child labour to, for instance, bring in the harvest;
- *Migration from rural areas to urban areas* is considered a viable option by young people who drop out of school, but with limited education, they often end in poorly paid and hazardous work not commensurate with their age;
- *Cultural tradition and beliefs*: both children and their parents see it as a child’s obligation to support their parents, meaning that children are expected to leave school in favour of work if the family is under pressure financially, in order to be considered a “good son/daughter”. Another cultural tradition and belief is that some employers consider the employment of children from poor families a “good deed”;
- *Limited awareness and information on the risks that child labour poses to the individual child and to the nation*, in terms of the future impact on national development by poor health and education among a substantial number of grown-up child labourers. This leads to families choosing short-term economic gains over long-term investments in education;
- *Deficiencies in the education system*: lack of access to and poor quality education is more often than not perceived as irrelevant by children and parents.

<sup>23</sup> ILO. 2018. “Background Report for the National Action Plan on child labour in Myanmar: An overview of issues to be considered in the development of the NAP” (Myanmar, ILO), pp. 10-13.

## 2. National regulatory framework on child labour

In order to prohibit and eliminate child labour, Myanmar has adopted and implemented along the years a number of laws, regulations, policies and programmes. The following paragraphs provide an overview of Myanmar's legal system and regulatory framework on child labour up to the end of 2020.

### 2.1. Legal system and legislative process in Myanmar

#### 2.1.1. Legal system

Myanmar's legal system is composed of a series of old laws from the colonial Indo-British legal system although, between 2011 and 2020, the Government had been making efforts to modernize it: a number of old laws have been either repealed or amended to be in line with the international standards and many new laws have been enacted. This resulted, in particular, in the adoption of a landmark Child Rights Law in 2019 (which repealed the Child Law of 1993), the adoption of the Shops and Establishments Law, 2016 (which repealed the Shops and Establishments Act, 1951), and the amendment of the Factories Act in 2016.

With respect to labour law, which is crucial to integrate provisions to eliminate child labour and protecting young workers, currently there is no central piece of labour law providing the overall basis for employment relationship. The existing labour laws are fragmented, in the sense that they are sector-oriented (e.g. factory, shops and establishments, mines, etc.) or focused on a specific theme (e.g. payment of wages, leave and holidays, etc.).

This piece meal approach has serious practical implications, in particular from an international labour standards perspective. Indeed, the first and most worrying implication is that such fragmentation creates legal gaps and inconsistencies regarding the protection for certain categories of workers, including children, who are either completely excluded from any legal protection (for instance, self-employed and homeworkers<sup>24</sup> do not appear to be covered by any of the existing labour laws) or only benefit from a partial protection (for instance, domestic workers are specifically covered under the Labour Organization Law, Payment of Wages Law, Minimum Wage Law and the Law on Settlement of Labour Disputes, while they are not covered by other labour laws, either explicitly or implicitly, including the Employment and Skills Development Law, Leave and Holidays Act, etc.). The same applies to certain categories of agricultural workers (such as farmers employed on farms or plantations), construction workers, seafarers, fishermen, etc. Furthermore, existing labour laws also allow various exclusions from their scope of application.<sup>25</sup>

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<sup>24</sup> The ILO Home Work Convention, 1996 (No. 177) provides that the term *home work* means work carried out by a person, to be referred to as a homemaker, (i) in his or her home or in other premises of his or her choice, other than the workplace of the employer; (ii) for remuneration; (iii) which results in a product or service as specified by the employer, irrespective of who provides the equipment, materials or other inputs used, unless this person has the degree of autonomy and of economic independence necessary to be considered an independent worker under national laws, regulations or court decisions (Article 1(a) of the Convention).

<sup>25</sup> Indeed, for instance, section 2(m) of the Factories Act, as amended in 2016, does not apply to workers employed in factories employing less than five workers if a manufacturing process is being carried on with the aid of power, and less than ten workers if there is no aid of power.

The second implication is that right-holders would have difficulty in understanding their rights and law enforcement bodies would have difficulties in ensuring their effective implementation. This lack of legal clarity and predictability can create unnecessary labour disputes, as well as undermine the development of the labour market as a result of investors' and trading partners' lack of confidence.

In its 2018 Decent Work Diagnostic Report, the ILO highlighted that, in Myanmar, legislative reform and ensuring that laws align with international human rights and labour standards and with economic and policy changes is a lengthy and difficult process, which is made more complex by the current pluralistic legal framework which encompasses statutory laws, the common law system that dates back to the colonial era, customary law and multiple religious laws. The ILO also highlighted that while labour law reform has been intensive, there are still many gaps in ensuring that laws are aligned with international labour standards. Furthermore, as highlighted in the ILO Diagnostic Report, the informal economy, which is not covered by the labour law, is a significant problem in Myanmar, as for example, the Labour Force Survey revealed that the percentage of employed persons by their type of industry sector was 75.6 per cent in the informal sector.<sup>26</sup>

### *2.1.2. Legislative process*

At the time of preparing this report in 2020, in Myanmar, the Union Attorney-General's Office (UAGO) was responsible for tendering legal advice to Union-level Government Departments/Ministries. As part of this role, it was required to:<sup>27</sup>

- Provide legal advice to the President's office regarding whether Myanmar should/can sign international conventions.
- Vet draft laws and policies based on existing laws, the Constitution and international standards.

In 2020, the process was as follows:<sup>28</sup>

- Ministry/President requests advice from Union Attorney-General's Office (UAGO) regarding possible signature to international convention.
- UAGO provides advice to Ministry/President regarding current status of laws/constitution.
- Ministry drafts law.
- UAGO provides comments on draft law.
- Draft law submitted to Pyidaungsu Hluttaw – who assigns to either Pyithu Hluttaw or Amyotha Hluttaw. Law is debated in Hluttaw, UAGO is invited to attend. Upon majority across both chambers, the legislation is enacted as Law.

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<sup>26</sup> See ILO, [Decent Work Diagnostic Report, Myanmar's progress and challenges, 2018](#).

<sup>27</sup> ILO My-PEC. 2014. "Mapping of Policies, Programmes and Institutions Related to Child Labour in Myanmar", November 2014, p.11.

<sup>28</sup> *Ibid.*

## 2.2. National laws and regulations related to child labour

In the context of the legal review undertaken in 2020, several national laws and regulations have been identified as related to the elimination of child labour and the protection of young workers.

Table No. 3 below provides an overview of this regulatory framework. As far as possible, the state of these laws in 2020 and the on-going and future revisions which were planned at that time are indicated into brackets.

**Table 3: National laws and regulations related to child labour and young workers**

National laws and regulations by sector or by category of workers	National laws and regulations by theme
<p><b>Constitution</b> The Constitution of the Republic of the Union of Myanmar, 2008</p> <p><b>Burma Code</b></p> <p><b>Factory</b> The Factories Act, 1951, amended in 2016, with ILO technical assistance</p> <p><b>Shops and establishments</b> The Shops and Establishments Law, 2016</p> <p><b>Dock workers</b> The Dock Labourers Act, 1934 [To be repealed] and The Dock Workers (Regulation of Employment) Act, 1948 [To be repealed]</p> <p><b>Oilfield</b> Oilfield (Labour and Welfare) Act, 1951 [To be amended]</p> <p><b>Seafarers</b> The Myanmar Merchant Shipping Act, 1954 and the Law Amending the Myanmar Merchant Shipping Act, 1999</p> <p><b>Fishermen</b> Myanmar Marine Fisheries Law 1990</p> <p><b>Mines</b> The Myanmar Mines Law, 1994</p> <p><b>Child and youth</b> The Child Rights Law ,2019.</p> <p><b>Education</b> National Education Law, 2014 (Pyidaungsu Hluttaw Law No. 41/2014) Basic Education Law of the Republic of the Union of Myanmar 2019 Technical and Vocational Education Bill</p> <p><b>Migrant and foreign workers</b> The Burma Immigration (Emergency Provisions) Act, 1947. Registration of Foreigners Act, 1940 (No. 7/40) and Rules 1948. The Law relating to Overseas Employment 1999. [Amendment being drafted with ILO technical assistance]</p>	<p><b>Industrial relations</b> Labour Organization Law 2011[Amendment is being drafted with ILO technical assistance] Second Amendment Law of the Settlement of Labour Dispute Law 2019 Law relating to Forming of Organizations (SLORC Law No. 6/88 of Sept. 30, 1988).</p> <p><b>Wages</b> The Payment of Wages Law, 2016 The Minimum Wage Law, 2013</p> <p><b>Leave and holidays</b> The Leave and Holidays Act, 2006, amending The Leave and Holidays Act, 1951.</p> <p><b>Employment and skill development</b> Employment and Skill Development Law, 2012. [Amendment is being drafted with ILO technical assistance]</p> <p><b>Social security</b> Social Security Law, 2012</p> <p><b>Occupational Safety and Health</b> Occupational Safety and Health Law 2019 [not yet in force] The Workmen Compensation Act, 1923 and the Law Amending the Workmen's Compensation Act, 2005</p> <p><b>Others</b> Employment Statistics Act, 1948 [To be amended] Employment Restriction Act, 1959 [To be newly drafted &amp; repealed]</p>

National laws and regulations by sector or by category of workers	National laws and regulations by theme
<p>The Anti-Trafficking in Persons Law, 2005 [Currently being amended]</p> <p>Aliens Workers Bill [A draft Bill has been submitted to Parliament]</p> <p><b>Farmers</b></p> <p>Protecting Rights and Enhancing Economic Welfare of Farmers Law (approved by Parliament in October 2013)</p> <p><b>Foreign investment</b></p> <p>Myanmar Investment Law 2016</p> <p><b>Special economic zones</b></p> <p>Special Economic Zones Law, 2014</p> <p><b>Small and medium enterprises</b></p> <p>SME Development Law, 2013</p>	

As regards the effectiveness of the current regulatory framework in eliminating child labour, in particular the worst forms of child labour (WFCL), key stakeholders which were interviewed in 2020, in the context of the legal review, are mostly divided.

Below is a brief summary of the interview results (see table No. 4).

**Table 4: Interview results (2020) on stakeholders' perceptions about the effectiveness of the regulatory framework in eliminating child labour, in particular WFCL**

	Number and composition of respondents	Interview results
Effective	Government: 3	<p>The existing laws may reduce WFCL and all the relevant Ministries are trying to reduce child labour, particularly the WFCL, but the total elimination is depending on the country's financial situation. Under the National Plan of Action on Child Labour, there is a sub-committee of Removal and Remedy for the Children who were engaged in WFCL, and one of its tasks is to collect data on working children and whether their work is a WFCL or not.</p> <p>As a labour inspectorate, I have dealt with the cases of child labour. But after most of the labour laws have been amended and fines and punishments have been increased, I rarely saw child labour in the formal sector.</p> <p>Yes, the existing Myanmar labour laws including the Factories Act, 1951, and the Shops and Establishments Law, 2016, are sufficient to address child labour, and the newly enacted Child Rights Law also particularly mentions WFCL in the law.</p> <p>Yes, the Child Rights Law, 2019 and other labour laws protect the child workers regarding the working hours and wages as such. National Education Law also guarantees the right to education guaranteed by the Constitution. Ministry of Education implements free and compulsory education.</p>
NOT effective	Government: 3	<p>It is difficult to eliminate child labour in particular WFCL.</p> <p>There is weakness in implementation process. There should be a well-established monitoring mechanism and detailed inspection procedures.</p>
	Workers' organizations: 3	<p>Lack of law enforcement, such as labour inspection not well regulated.</p> <p>Weakness of law itself. For instance, minimum wage should be calculated based on the whole family expenses, not individual worker's expenses so that the minimum wage can cover the whole family; then no child would need to work.</p>
	UN: 1	<p>Each law has its weaknesses and loopholes. For instance, the Factories Act cannot cover other sectors of work. However, it does have provisions relating to the working hours, safety measures as such. As regards the Constitution, Section-358 mentioned WFCL and also forced labour in Section-359. Constitution did not prohibit expressly the recruitment of children in armed conflict. Child Rights Law mostly cover WFCL, but even this law has weakness, and no rules and regulations have been passed yet. It also does not definite responsible persons for the implementation.</p>
	NGOs: 4	<p>Penal Code, Labour Laws and Child Rights Law 2019 need to be amended to include civil and human rights principle to protect/eliminate child labour. In addition to this, lack of precise regulations to implement the laws need to be addressed, and there should also be responsibility and accountability of relevant departments and ministries as well.</p> <p>There is no definite monitoring and evaluation process, and relevant departments/ organizations have limited resources to enforce the law.</p> <p>Lack of effective enforcement due to corruption and undue influence.</p> <p>The definition of WFCL in Child Rights Law is sufficient, but there are no obvious supporting mechanisms for child labour.</p>

	Number and composition of respondents	Interview results
Unanswered	Employers' Organization: 1	No information provided
	Law academic: 1	No information provided

**Note:** Total number of respondents: 16 (Government: 6; Workers' organizations: 3; Employers' organization: 1; Law academic: 1; UN: 1 and NGOs: 4).

### 2.3. National policies and programmes

At the time of preparing this report in 2020, Myanmar was implementing a number of national policies and programmes for children. New important action plans were recently adopted and being implemented, such as the National Education Strategic Plan (2016-2021) and the Myanmar third five-year National Plan of Action to combat human trafficking (2017-2021).

Furthermore, in 2014, a Technical Working Group on Child Labour (TWG-CL) was established, with the technical assistance of the ILO, with a view to ensuring a comprehensive and collaborative response against child labour. The TWG-CL has overseen the development of the List of hazardous work to be prohibited for children under 18 years in 2018 (yet to be adopted) and the National Action Plan on Child Labour (NAP on CL). The NAP on CL was adopted in January 2019. Its expected duration is 15 years from 2019 to 2033, divided into three separate phases. The first five-year plan (current NAP) covers the first phase from 2019 to 2023.



# CHAPTER II - Review of the national legislation in light of the international standards on child labour

The following paragraphs examine the different aspects of the elimination of child labour and protection of young workers in the context of relevant international standards ratified by Myanmar. In each paragraph, the analysis is divided in four subparagraphs, namely: (i) the relevant provisions of international standards under examination; (ii) the analysis of the relevant provisions of the national laws and regulations, as well as of the information available on the implementation of these provisions in practice; (iii) the conclusion which succinctly provides information on the extent in which the provisions under examination are being implemented at national level; and (iv) the recommendations made in that regard.

In order to provide a better clarity in the grading of the recommendations suggested in this report, specific wording has been used. Indeed, the recommendations refers to actions that the Government «should» implement when major issues have been identified vis-à-vis the implementation of a provision of the Convention, or that the Government «could» implement when concrete measures are identified to strengthen or improve the existing system or regulations.

All provisions of national laws and regulations which are quoted below are from unofficial translations.

## 1. Definition of a child

### *International standards*

Article 1 of the CRC and Article 2 of ILO Convention No. 182 define a child as all persons under the age of 18, thus meaning that all measures implementing these instruments at national level, particularly legislation, shall cover all boys and girls under the age of 18 years. It is not important what type of word is used to describe these persons, who may be referred to as children, minors, juveniles, underage or young persons.<sup>29</sup>

### *National laws and regulations*

In Myanmar, a child is defined differently in different laws as illustrated in the table below (see table 5). However, the Child Rights Law adopted in 2019 now defines a child as a person who has not attained the age of 18 years (section 3(b)).

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<sup>29</sup> IPEC. 2006. *Practical Guide to Child Labour Reporting*, under Article 2 of C182. (Geneva, ILO and Turin, ITC). Available at: [http://www.ilo.org/ipec/Informationresources/WCMS\\_IPEC\\_PUB\\_1839/lang--en/index.htm](http://www.ilo.org/ipec/Informationresources/WCMS_IPEC_PUB_1839/lang--en/index.htm).

**Table 5: Definitions of a child and minimum age for admission to work as given in the current national laws (illustrative, not exhaustive)**

	Definitions of a child	Minimum age for admission to employment or work
The Children (pledging of labour) Act, 1933	Section 2 defines a “child” as a person under the age of 15 years.	An agreement to pledge the labour of a child shall be void (Section 3).
The Child Rights Law, 2019	Section 2 (b) “child” means a person who has not attained the age of 18 years.	Section 48(a). No child shall be forced to work or employed in the worst forms of labour. b. A child considered employable shall not be younger than 14 years of age. If the free compulsory education system envisaged by the State requires children to be in school until after they have attained the age of 14 years, children in schools younger than that age shall not be considered employable.
The Factories Act, 1951, amended in 2016	Section 2 (a) “child” means a person who has completed his fourteenth year, the age permissible to do work [as certified] by a medical practitioner, but has not completed his sixteenth year; (b) “adolescent” means a person who has completed his sixteenth year but has not completed his eighteenth year; (c) “young person” means a person who is either a child or an adolescent.	Section 76 A child who has completed his fourteenth year or an adolescent shall not be required or allowed to work in any factory unless: (a) a certificate of fitness granted under section 77 is kept in the custody of the manager of the factory; and (b) such child or adolescent carries while he/she is at work a token referring to such certificate
The 2016 Shops and Establishments Law	No definition	Section 14 (a) No person under the age of 14 shall be required or permitted to be employed in a shop or establishment. (b) No person who has not attained the age of 16 shall be required to work overtime exceeding the working hours in any shop or commercial establishment or establishment for public entertainment.
The Anti-Trafficking in Persons Act, 2005	Section 3 (j) “child” means a person who has not attained the age of 16 years (k) “youth” means a person who has not attained the age of 16 years but has not attained the age of 18 years.	None

### Conclusions

The national legislation appears to be consistent with international standards.

### Recommendations

✿ None.

## 2. Minimum age for admission to work

### *International standards*

Article 32(2)(a) of the CRC requires ratifying States to provide for a minimum age or minimum ages for admission to employment.

ILO Convention No. 138 sets a general minimum age for admission to work, subject to limited exclusions regarding categories of employment or work or economic sectors (Articles 4 and 5) or exceptions (Articles 6 and 8), and provides for the possibility of setting a lower minimum age for light work (Article 7). ILO Conventions also provide that a higher minimum age shall be set for hazardous work (Article 3(1) of Convention No. 138 and Article 3(d) of Convention No. 182).

### *National laws and regulations*

At the time of the ratification of ILO Convention No. 138, the Government of Myanmar made a declaration, pursuant to Article 5(1) of the Convention, that the scope of application of the Convention would initially be limited to the sectors enumerated, at a minimum, in article 5(3)<sup>30</sup> plus factories, shops and establishments as defined by the existing labour laws, but excluding family and small scale holdings, as well as orchard, plantation and other farming and livestock production for local consumption, not for commercial purposes and not regularly employing hired workers.<sup>31</sup>

As regards the exclusion from the application of ILO Convention No. 138 of limited categories of employment or work in respect of which special and substantial problems of application arise, Article 4(2) of ILO Convention No. 138 provides that this list may be elaborated after consultation with the organizations of employers and workers concerned, and sent with the Government's first report. However, pursuant to Article 4(3), hazardous work that is likely to jeopardize the health, safety or morals of young persons, shall not be excluded from the application of ILO Convention No.138.<sup>32</sup> This list has not been elaborated so far by Myanmar whose first report on the application of ILO Convention No. 138 is due in 2022.

### *Conclusions*

Economic sectors excluded by the Government from the scope of application of ILO Convention No. 138, at the time of the ratification of the Convention, seem to be in line with the provisions of the Convention.

No list of categories of employment or work to be excluded from the scope of application of ILO Convention No. 138 has been elaborated yet, under the terms of Article 4 of the Convention.

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<sup>30</sup> Ratifying States must, at a minimum, apply ILO Convention No. 138 to: mining and quarrying; manufacturing; construction; electricity, gas and water; sanitary services; transport, storage and communication; and plantations and other agricultural undertakings mainly producing for commercial purposes, but excluding family and small-scale holdings producing for local consumption and not regularly employing hired workers.

<sup>31</sup> GORUM-MOLIP, "Instrument of ratification: Minimum Age Convention, 1973 (No.138), dated 6 March 2020.

<sup>32</sup> Hazardous work being considered as a worst form of child labour, this provision is coherent with ILO Convention No. 182 which does not allow any exclusion from its scope of application.

## Recommendations

- ✦ *The Government could examine, after consultation with the organizations of employers and workers concerned, the possibility of excluding from the scope of application of ILO Convention No. 138 limited categories of employment or work in respect of which special and substantial problems of application arise, in line with Article 4 of the Convention, in order to be able to send such a list with its first report due in 2022.*
  
- ✦ *In doing so, the Government:*
  - 1. should give the reasons for possible exclusions to the list (above) and state in subsequent reports the position of its law and practice in respect of the categories excluded and the extent to which effect has been given or is proposed to be given to the Convention in respect of such categories; and*
  
  - 2. Hazardous work that is likely to jeopardize the health, safety or morals of young persons, should not be excluded from the application of ILO Convention No. 138 (Article 4(3) of the Convention).*

## 2.1. General minimum age for admission to work

### International standards

While Article 32(2)(a) of the CRC requires ratifying States to provide for a minimum age or minimum ages for admission to employment, no specific age is set to this end in the instrument. The CRC however provides that State Parties recognize the right of the child to be protected from performing any work that is likely to interfere with the child's education (Article 32(1)) and shall, in particular, make primary education compulsory and available free to all (Article 28(a)).

ILO Convention No. 138 provides that the general minimum age for admission to work shall not be less than the age of completion of compulsory schooling and, in any case, shall not be less than **15 years** (Article 2(3)) or, for a Member State whose economy and educational facilities are insufficiently developed, such as Myanmar, **14 years** (Article 2(4)).

### National laws and regulations

Section 48 (b) of the Child Rights Law sets 14 years as the general minimum age for admission to employment. Furthermore, a child of 14 years of age has the right to voluntary employment in accordance with existing labour and employment laws, provided that he or she is in good health and capable of fulfilling the tasks concerned (section 48(b) and (c) of the Law). Both the Factories Act, as amended in 2016 (section 75), and the new Shops and Establishments Law adopted in 2016 (section 13(a)) raised the legal minimum age for employment from 13 to 14 years. Both laws also provide that children between 14 years and 18 years may be employed if a responsible registered doctor provides a fitness certificate (section 76 of the Factories Act and section 14 of the Shops and Establishments Law). While the Child Rights Law applies to all sectors, unlike the above-referred laws, it remains to

be seen how it will be implemented in practice, in particular in sectors which are not covered by labour laws.

As regards the harmonization of the minimum age for admission to work with the age of completion of compulsory schooling (Article 2(3) of ILO Convention No. 138) in order to avoid any period during which children would be more vulnerable to child labour - i.e. children who have completed compulsory school education but have not attained the legal minimum age for admission to employment, section 48 (b) of the Child Rights Law provides that «if the free compulsory education system envisaged by the State requires children to be in school until after they have attained the age of 14 years, children in schools younger than that age shall not be considered employable». Furthermore, the Law provides that all children shall have the right to free education at the schools established by the State under the National Education Law (section 46(b)) and the Ministry of Education shall allocate the necessary support and resources to ensure that children's right to education is fulfilled; take the necessary measures to ensure school enrolment, regular attendance of children, and reduce drop-out rates to provide children with full opportunities for education; and implement non-formal education programmes including out-of-school education and other practical occupational training for children who cannot attend schools established by the State for various reasons and for children who cannot pursue education for their right and access to education (section 47). The National Education Strategic Plan for 2016-2021 also aims at strengthening the functioning of the education system, including by increasing school enrolment, attendance and completion rates and by reducing school drop-out rates.

Currently in Myanmar, compulsory education is up to 10 years old. This leaves children aged from 10 until 14 years old vulnerable to child labour, since they are not required to attend school but are not legally permitted to work, because the minimum age for work is 14. The Government has been undertaking education reform, including at the legislation level: the National Education Law (NEL) was adopted in 2014;<sup>33</sup> the new Basic Education Law was adopted in 2019; and the Technical and Vocational Education Law was being drafted in 2020.<sup>34</sup> In that regard, it shall be noted that the NEL “targets” to extend free and compulsory education to middle school (grades 6 to 9, which corresponds to 10 to 14 years old) (Chapter 5 of the NEL).

However, in the context of the 2020 Universal Periodic Review (UPR), the UN country team noted that despite the steady increase in the Government’s budget allocation for education, many children still remained out of school. Economic hardship, and poor quality and relevance of education, were among the reasons for dropping out of school, which had been compounded by rural-urban disparities, and State and region disparities. In the same context, the OHCHR further observed that in ethnic minority areas, especially conflict-affected areas, many schools were either not operational or inaccessible. Ethnic minority states, representing the geographical areas of seven main ethnic groups, had historically received the smallest budget allocations for education in the country, and literacy rates in those areas were all below the national average. The independent international fact-finding mission on Myanmar also documented cases where the *Tatmadaw* (the regular armed forces of Myanmar) had taken over schools and monasteries to use them as bases for their military operations.<sup>35</sup>

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<sup>33</sup> In 2020, this law was being amended.

<sup>34</sup> In 2020, it was not clear whether the TVEL Law would remain a sector law or would be part of the rules and regulations under the NEL.

<sup>35</sup> See [A/HRC/WG.6/37/MMR/2](#), 12 November 2020, paras. 42 and 43.

## Conclusions

In Myanmar, the national legislation sets 14 years as the general minimum age for admission to work, which is in line with ILO Convention No. 138. However, it remains to be seen how the Child Rights Law will be implemented in practice, in particular in sectors which are not covered by labour laws.

Currently, the compulsory education is up to 10 years old, thus exposing children between 10 and 14 years to higher risks of child labour and exploitation. However, the National Education Law (2014) targets to extend free and compulsory education for children up to 14 years old. Specific concerns were expressed regarding the effective implementation of compulsory education as a result of low school enrolment and high dropout rates, as well as regional disparities.

## Recommendations

- ❖ ***The Government should take the necessary measures to ensure the effective implementation of the general minimum age for admission to work set in the Child Rights Law, i.e. 14 years, in particular in sectors which are not covered by labour laws.***
- ❖ ***The Government should also take the necessary measures to ensure the effective implementation of compulsory education, as one of the most effective means of combating child labour, by increasing the school enrolment and attendance rates and by reducing school dropouts and regional disparities.***
- ❖ ***The Government should effectively extend the compulsory education from 10 to 14 years old, in order to ensure harmonization of the minimum age for admission to work with the age of completion of compulsory schooling, as requested by Article 2(3) of ILO Convention No. 138, and thus avoid any «gap period».***
- ❖ ***In the meantime, the Government could consider establishing a minimum age for light work, as it would provide greater protection for children between 12 and 14 years against child labour and exploitation (for further information, please refer to section 2.2 below).***

### 2.1.1. Exception for apprenticeship and vocational training

## International standards

Article 6 of ILO Convention No. 138 recognizes, however, that children may engage in apprenticeship and vocational training, which is useful in providing them with skills and experience that could improve their future employment opportunities. Therefore, the Convention does not apply to work done by children and young persons in schools for general, vocational or technical education or in other training institutions, or to work done by persons at least 14 years of age in undertakings for apprenticeship, where such work is carried out in accordance with the conditions prescribed by

the competent authority, after consultation with the organizations of employers and workers concerned, and is an integral part of: (a) a course of education or training for which a school or training institution is primarily responsible; (b) a programme of training mainly or entirely in an undertaking, which programme has been approved by the competent authority; or (c) a programme of guidance or orientation designed to facilitate the choice of an occupation or of a line of training.

### *National laws and regulations*

In Myanmar, there is currently no comprehensive law regulating apprenticeship and vocational training of children and young persons. Some specific laws contain incomplete provisions, such as the Employment and Skill Development Law of 2013, which provides for admission to apprenticeship and vocational training at 16 years of age (section 15(b) but does not specify any working conditions. However, in 2020, the Government was in the process of drafting the Technical and Vocational Education Law which seems, among others, to aim at extending vocational training to children who dropped out from basic education. This draft Law seemed to be part of Government's efforts to reform the technical and vocational education system which so far has been seen as ineffective as a result, inter alia of, few enrolments into the Technical, Vocational Education and Training (TVET) programmes; mismatch of the skills offered at TVET programmes and the skills needed in the labour market; outdated skills standards offered at TVET programmes; and unavailability of TVET programmes in certain sectors.<sup>36</sup>

### *Conclusions*

Currently, there does not exist comprehensive law regulating apprenticeship and vocational training of children and young persons. Some specific laws contain incomplete provisions in that regard. However, in 2020, the Government was in the process of drafting the Technical and Vocational Education Law (TVEL) which seemed to aim at extending vocational training to children who dropped out from basic education.

### *Recommendations*

- ✦ ***The Government should ensure that all national laws and regulations explicitly set the age of entry to apprenticeship and vocational training at 14 years, in accordance with the terms of ILO Convention No. 138, while providing for the conditions in which such apprenticeship shall take place, as specified by the competent authority, after consultation with the organizations of employers and workers concerned.***

#### *2.1.2. Exception for artistic performances*

### *International standards*

Article 8 of ILO Convention No. 138 provides that under specific conditions and limited numbers of hours, a child who did not reach the minimum age for admission to work (i.e. 15 years or

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<sup>36</sup> See: Myanmar Comprehensive Education Sector Review (CESR): Technical, Vocational Educational Training, National Education Sector Plan Chapter (Draft), April 2015, p. 12-13.

14 years for developing countries such as Myanmar) may be granted an individual authorization to participate in artistic performances.

### *National laws and regulations*

Section 19 (h) of the Child Rights Law provides that every child shall have the right to participate in «cultural and artistic activities». However, it seems that Myanmar has not enacted any provision to regulate the participation of children in «artistic performances».

### *Conclusions*

The national legislation provides for the right of children to participate in «artistic activities» but does not regulate their participation in «artistic performances».

### *Recommendations*

- ✦ ***The Government should ensure that, in practice, children under 14 years of age do not participate in artistic performances and, if so, to envisage the regulation of these types of activities, as requested by ILO Convention No. 138.***

## **2.2. Specific minimum age for admission to light work**

### *International standards*

Article 7(1) of ILO Convention No. 138 provides that light work, which is not likely to be harmful to the health or development of children and would not prejudice their attendance at school, their participation in vocational orientation or training programmes or their capacity to benefit from the instruction received, can be permitted from children aged as from 13 years or 12 years for developing countries which set a general minimum age of 14 years for admission to work (as is the case for Myanmar). According to Article 7(3) of the Convention, a list determining the activities that could be considered as light work, as well as prescribing the number of hours during which and the conditions in which such employment or work may be undertaken, shall be established at national level.

### *National laws and regulations*

To date, in Myanmar, the regulatory framework does not provide for a lower minimum age for admission to light work. Therefore, no list has been established in that regard.

However, as highlighted in section 2.1 above: (i) currently, the national legislation provides for compulsory education until 10 years old, thus exposing children between 10 and 14 years to higher risks of child labour and exploitation; and (ii) in practice, a high number of children from 10 to 14 years old are still involved in child labour.

The table No. 6 below provides an overview of the results of the interviews made in 2020 with respect to light work.



## Conclusions

This exception has not been used by Myanmar until now. However, regulating light work for children between the ages of 12 and 14 may provide them with greater protection against child labour and exploitation.

## Recommendations

- ✿ ***The Government could consider regulating light work for children between the ages of 12 and 14, as it would provide them with greater protection against child labour and exploitation.***

**Table 6: Interview results (2020) regarding «light work»**

Questions asked	Responders	Responses
What types of “light work” should be permitted to children aged 12 and 13 years old under C138?	Government	<p>Helper in home shops and tailoring</p> <p>Book binder in printing houses</p> <p>Waiters/Waitress in secured restaurants</p> <p>Computerized works (computer typing, data entry, computerized designing and paintings)</p> <p>Gardening works</p> <p>After hazardous work list is passed, the light work should be a focus of discussions.</p>
	Employers’ organization	There are no statements/provisions in any existing laws regarding the light work and the employment of children aged 12 or 13 years old.
	Workers’ organizations	<p>Shop helper and some service providing works (receptionist in hotels) for 4 hours are fine for child workers. Besides, they have the right to school and those works should not be pressured upon them.</p> <p>To define “light work”, conditions of each kind of work should be analyzed, and there should be no harm to children mentally, morally or physically.</p>
	Law Academic	It is difficult to specify “light work” definitely. It depends on the gender and their physical conditions. However, “work” should not be

Questions asked	Responders	Responses
		harmful to the children.
	UN agency	We proposed “light work” to be included in the Child Rights Law, but it is not included
	NGOs	<p>“Light work” depends on the working children’s ages and health conditions. “Babysitting” can be the example for this.</p> <p>Helping in house works</p> <p>It depends on the country’s strategy.</p> <p>The works which are NOT harmful to the mental or physical development should be included in the list of “light work”. It is difficult to specify the “light work” definitely. Even for a light work, children need to attend/receive training related with their work. Light work is doing household chore, packing snack/vegetable, select seeds (in agriculture field), handy craft, etc.</p>

**Note:** Total number of respondents: 16 (Government: 6; Workers’ organizations: 3; Employers’ organization; 1; Law academic: 1; UN agency: 1; and NGOs: 4).

### 2.3. Specific minimum age for admission to hazardous work

#### *International standards*

Article 32(1) of the CRC provides that States Parties recognize the right of the child to be protected from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

Both ILO Conventions Nos. 138 and 182 provide that hazardous work, which is defined as work which, by its nature or the circumstances in which it is carried out, is likely to harm/jeopardize the health, safety or morals of children, should be prohibited for all children under 18 years, as a worst form of child labour<sup>37</sup> (Article 3(1) of ILO Convention No. 138 and Articles 2 and 3(d) of ILO Convention No. 182). ILO instruments however provide, as an exception, that national laws or regulations or the competent authority may, after consultation with the organizations of employers

<sup>37</sup> For further information, please refer to section 3 below.

and workers concerned, where such exist, authorize employment or work as from the age of 16 years on condition that: (i) the health, safety and morals of the young persons concerned are fully protected and that (ii) the young persons have received adequate specific instruction or vocational training in the relevant branch of activity (Article 3(3) of ILO Convention No. 138; Article 4(1) of ILO Convention No. 182 and Paragraph 4 of ILO Worst Forms of Child Labour Recommendation, 1999 (No. 190)).

ILO instruments further provide that a list of the types of work to be considered as hazardous work shall be determined at national level, as well as periodically examined and revised as necessary, in consultation with the organizations of employers and workers concerned (Article 3(2) of ILO Convention No. 138 and Article 4(1) and (2) of ILO Convention No. 182). Paragraph 3 of ILO Recommendation No. 190 offers examples of types of work that should be examined to that end.<sup>38</sup>

### *National laws and regulations*

The Child Rights Law defines and prohibits hazardous work for all children under 18 years, as a worst form of child labour (sections 3(t) and 48(a)). No exception is provided for under the Child Rights Law regarding the minimum age for admission to hazardous work. However, while the Child Rights Law applies to all sectors, thus filling the gaps left by the fragmented approach of the labour laws, it remains to be seen how it will be articulated, in practice, with the other provisions contained in the labour laws which are sometimes inconsistent with the Child Rights Law.

Indeed, section 75(a) of the Factories Act, as amended in 2016, provides as a general rule, that no child under 16 years<sup>39</sup> shall be required to work in the worst form like in hazardous situation, a situation harmful to his or her health, a situation deterring his or her education and in a workplace wherein he or she would be exploited. While section 36(1) prohibits the employment of children under 18 years in any factory to lift, carry or move any load so heavy as to be likely to cause injury, other sections of the Factories Act provide for the possibility for children from the age of 16 to be employed in hazardous work:

- Section 25 prohibits the employment of children under 18 years<sup>40</sup> on dangerous machinery but provides for an exception as from the age of 16 years in condition that young persons have been fully instructed as to the dangers and have received sufficient training or are working under the supervision of a person who as a thorough knowledge and experience of the machine;
- Section 29 prohibits the employment of children under 16 years<sup>41</sup> in factories where a cotton opener is at work, except in specific circumstances.

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<sup>38</sup> Paragraph 3 of ILO Recommendation No. 190 provides that: «In determining the types of work referred to under Article 3(d) of the Convention, and in identifying where they exist, consideration should be given, inter alia, to: (a) work which exposes children to physical, psychological or sexual abuse; (b) work underground, under water, at dangerous heights or in confined spaces; (c) work with dangerous machinery, equipment and tools, or which involves the manual handling or transport of heavy loads; (d) work in an unhealthy environment which may, for example, expose children to hazardous substances, agents or processes, or to temperatures, noise levels, or vibrations damaging to their health; (e) work under particularly difficult conditions such as work for long hours or during the night or work where the child is unreasonably confined to the premises of the employer.»

<sup>39</sup> According to the definition of a «child» contained in section 2(a) of the Factories Act, as amended in 2016.

<sup>40</sup> Section 25 refers to « young persons » which can mean a person who is either a child (between 14 years and 16 years- section 2 (a)) or an adolescent (between 16 years and 18 years- section 2(b)).

<sup>41</sup> According to the definition of a «child» contained in section 2(a) of the Factories Act, as amended in 2016.

Therefore, unlike the Child Rights Law, the Factories Act, as amended in 2016, provides for the possibility of work as from the age of 16 years in hazardous work. However, it seems that the necessary safeguards requested by ILO instruments in such case are not always provided for in the Factories Act.

As regards the Shops and Establishments Law, 2016, it provides that a person who is under 18 years of age shall not be employed or allowed to employ at a prescribed dangerous business or dangerous workplace (section 14(d)). However, a person who is under 18 years of age but is over 16 years of age may be employed if he or she passed vocational training school for the concerned work or if he or she understands and follows the instructions on safety and health at work or he or she is fit, may be allowed to work in a workplace which cannot damage growth and morale if he or she gets fit certificate from a responsible registered doctor (section 14(e)). This provision seems more in line with ILO standards while it remains to be seen how it is implemented in practice.

Regarding the list of hazardous work, such a list has been developed and validated by the Technical Working Group on Child Labour (TW-GCL) after tripartite and intensive stakeholders consultation, but has not been enacted yet. Further information is provided in that regard under section 3.4 below.

### *Conclusions*

The Child Rights Law defines hazardous work as one of the worst forms of child labour and prohibits it for all children under 18 years. However, other labour laws contain provisions that are not consistent with the Child Rights Law, as they provide for the possibility for children from the age of 16 to be employed in hazardous work. The necessary safeguards requested by ILO instruments for authorizing employment or work as from the age of 16 years in hazardous work are not always guaranteed in law and/or practice.

A list of hazardous work has been elaborated and validated by the Technical Working Group on Child Labour but has not been enacted yet.

### *Recommendations*

- ❖ ***The Government should harmonize its national laws and regulations in order to ensure, in a consistent manner, that hazardous work is prohibited for children under 18 years of age, or exceptionally authorized, under the strict conditions provided in ILO instruments, for children from the age of 16.***
- ❖ ***The Government should enact, as soon as possible, the list of the types of hazardous work.***

### 3. Worst forms of child labour

#### *International standards*

Article 32(1) of the CRC provides that States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to be harmful to the child's health or physical, mental, spiritual, moral or social development. ILO Convention No. 182 requires Member States to take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency (Article 1). Article 3 of ILO Convention No. 182 defines the worst forms of child labour as comprising:

- (a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
- (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
- (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
- (d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

It shall be noted that unlike Convention No. 138, which contains several flexibility clauses, Convention No. 182 does not permit any exceptions or exclusions. Some other UN instruments ratified by Myanmar also deal more specifically with some aspects of the worst forms of child labour, such as the CRC and its two accompanying Optional Protocols (see box 1 below).

#### **Box 1: Other UN instruments which deal with some of the worst forms of child labour in specific ways**

- CRC (articles 28, 33-36, 39) and its two Optional Protocols: The Involvement of Children in Armed Conflict; and The Sale of Children, Child Prostitution and Child Pornography
- The International Covenant on Economic, Social and Cultural Rights (CESCR), 1966
- The International Covenant on Civil and Political Rights (CCPR), 1966
- The Supplementary Convention on the Abolition of Slavery, the Slave Trade and Practices similar to Slavery (CAS), 1956
- The Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (CSTP), 1949

## *National laws and regulations*

Since 2016, when the Factories Act was amended in order to prohibit for the first time employment of children in «the worst form like in a hazardous situation, a situation harmful to [their] health,[...] and in a workplace wherein [they] would be exploited» (section 75(a)), Myanmar has made substantive progress in that regard.

Indeed, section 3(t) of the Child Rights Law of 2019 now provides for a comprehensive definition of the worst forms of child labour as follows:

- (1) Sale of the child, slavery, servitude, trafficking, debt bondage, forced or mandatory recruitment to be used in armed conflict or forced or mandatory labour;
- (2) Persuasion, purchasing, utilizing or proposing a child for prostitution, child pornography or acting in a pornographic shoot;
- (3) Persuasion, purchasing, utilizing or proposing a child for illegal drug operations including production and smuggling of drugs;
- (4) Labour which by nature could be detrimental to the health, safety or ethical behaviour of the child.

Furthermore, section 48 (a) of the Child Rights Law provides that no child shall be employed in the worst forms of child labour.

Each subparagraph of Article 3 of ILO Convention No. 182 are examined and analyzed separately below.

### **3.1. Slavery or practices similar to slavery**

Article 3(a) of ILO Convention No. 182 explicitly identifies specific practices as slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom, and forced and compulsory labour, including forced or compulsory recruitment of children for use in armed conflict. The CRC further provides that States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form (Article 35), as well as shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare (Article 36). The Optional Protocol to the CRC on the sale of children, child prostitution and child pornography, ratified by Myanmar, further strengthened these provisions providing that State Parties shall prohibit the sale of children , including for sexual exploitation or forced labour purposes (Articles 1 to 3).

#### *3.1.1. Sale and trafficking of children*

Myanmar ratified the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (2000), supplementing the UN Convention Against Transnational

Organized Crime (The Palermo Protocol) in 2005. Since November 2015, Myanmar is also a member of the ASEAN Convention Against Trafficking in Persons, Especially Women and Children (ACTIP).

Article 358 of the 2008 Constitution prohibits “enslaving and trafficking in persons”.

In Myanmar, the Penal Code prohibits the *sale of children* (Section 372) but it is limited to the purpose of sexual exploitation or for any unlawful and immoral purpose. The Child Rights Law now goes further and prohibits and criminalizes the sale of children regardless of its purposes (sections 3(p) and (t), 48(a), and 106(a)).

Regarding *trafficking of children*, the Child Rights Law prohibits child trafficking by including it as one of the worst forms of child labour (section 3(t)), in line with ILO Convention No. 182. Furthermore, section 3(a) of the Anti-Trafficking in Persons Law, which pays particular attention to women, children and youth, defines trafficking in persons as “recruitment, transportation, transfer, sale, purchase, lending, hiring, harbouring or receipt of persons after committing any of the following acts for the purpose of exploitation of a person with or without his or her consent: (1) threat, use of force or other forms of coercion; (2) abduction; (3) fraud; (4) deception; (5) abuse of power or of position taking advantage of the vulnerability of a person; (6) giving or receiving of money or benefit to obtain the consent of the person having control over another person.”

In the context of the UPR, which took place in 2020, Myanmar indicated that it was drafting a new law to replace the existing Anti-Trafficking in Persons Law and was implementing the Third Five-Year Plan of Action (2017-2021) for cooperation, prevention, prosecution and protection.<sup>42</sup> Bilateral cooperation on cross-boarder trafficking was concluded with Thailand and China.

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<sup>42</sup> See [A/HRC/WG.6/37/MMR/1](#), 2 November 2020, para. 111.

## Box 2: Child trafficking – The ILO response through IPEC

### Defining (child) trafficking

The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (2000) defines trafficking as "...the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation." In the case of children (i.e. under 18 years of age) the Protocol further specifies, "the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in the definition".

In addition, ILO emphasises the "labour" exploitation dimension of trafficking. In the context of its Convention No. 182 on Worst Forms of Child Labour, ILO considers child trafficking as one of the worst forms of child labour (WFCL) and understands it as a crime involving the recruitment and movement of children for purposes of labour, sexual and other forms of exploitation.

### Child trafficking – elements defined for the purpose of IPEC operations:

A child - a person under the age of 18 years;

"Acts" of recruitment, transportation, transfer, harbouring or receipt, whether by force or not, by a third person or group;

The third person or group organizes the recruitment and/or these other acts for exploitative purposes;

Movement may not be a constituent element for trafficking in so far as law enforcement and prosecution is concerned. However, an element of movement within a country or across borders is needed - even if minimal - in order to distinguish trafficking from other forms of slavery and slave-like practices enumerated in Article 3 (a) of ILO Convention No. 182, and ensure that trafficking victims away from their families do get needed assistance.

Exploitation includes:

- a) all forms of slavery or practices similar to slavery, debt-bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict (ILO Convention No. 182, Article 3(a));
- b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances (C182, Article 3(b));
- c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties (C182, Article 3(c));
- d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children (C182, Article 3(d) and C138, Article 3);
- e) work done by children below the minimum age for admission to employment (C138, Articles 2 & 7).

Threat or use of force or other forms of coercion, abduction, fraud or deception, or the abuse of power or a position of vulnerability at any point of the recruitment and movement do not need to be present in case of children (other than with adults), but are nevertheless strong indications of child trafficking.

According to the United Nations Action for Cooperation against Trafficking in Persons, young girls are often trafficked for sexual exploitation by working initially in the entertainment industry such as in karaoke lounges or massage parlours.<sup>43</sup> Internal trafficking of women and girls occurs primarily from villages in the central dry zone areas and Delta (Ayeyarwaddy Division) to urban centers with other transportation and economic hubs such as truck stops, fishing villages, border towns and mining areas.<sup>44</sup> Furthermore, in its 2016 concluding observations, the UN Committee on the Elimination of Discrimination against Women (CEDAW) expressed concern that Myanmar remained a source country for trafficking in persons, and that women and girls continued to be trafficked to neighboring and other countries for sexual and labour exploitation<sup>45</sup>. According to a

<sup>43</sup> United Nations Action for Cooperation against Trafficking in Persons (UN-ACT) website, "Myanmar". Available at: <http://un-act.org/myanmar/>.

<sup>44</sup> *Ibid.*

<sup>45</sup> See CEDAW/C/MMR/CO/4-5, 25 July 2016, para. 28.



report of the United Nations Office on Drugs and Crime, entitled *Trafficking in persons from Cambodia, Lao PDR and Myanmar to Thailand, 2017*, minors are among the many trafficking victims from Myanmar to Thailand for sexual and labour exploitation. Girls as young as 12 years are trafficked for sexual exploitation and children (girls and boys) aged 11 years and older are trafficked for labour exploitation.<sup>46</sup> The Government of Myanmar reported to the ILO Committee of Experts that from 2012 to June 2018, 179 cases of trafficking of children were reported.<sup>47</sup> However, given that the vast majority of trafficking cases go unreported,<sup>48</sup> the actual number of trafficking children could be assumed to be much higher. On April 2021, in the context of the UPR, the UN Human Rights Council recommended the Government to protect children from exploitation and enforce measures to combat human trafficking.<sup>49</sup>

### 3.1.2. Debt bondage and serfdom

The Anti-Trafficking in Persons Law defines “debt bondage” employing language substantially similar to the definition laid down in international law.<sup>50</sup>

*Debt bondage* is explicitly referred to by section 3(t) of the Child Rights Law as a worst form of child labour. However, no reference is made to *serfdom*. Although land-related forced labour is a long-established practice in Myanmar, it does not apply directly to children but rather applies to their parents and family units or to specific situations linked to trafficking. However, when family units including children are in a situation of land-related forced labour, it is also an issue of a worst form of child labour.

### 3.13. Forced labour

Myanmar has ratified the ILO Forced Labour Convention, 1930 (No. 29) in 1955. However, Myanmar has *not* ratified the Protocol of 2014 to the Forced Labour Convention, 1930 and ILO Abolition of Forced Labour Convention, 1957 (No. 105).

Article 359 of the 2008 Constitution prohibits forced labour except “duties assigned by the Union in accordance with the law in the interest of the public.” The CEACR has been repeatedly requesting the Government to amend this provision which could be interpreted in such a way as to allow a generalized exaction of forced labour from the population. However, in its 2020 observation on the application of ILO Convention No. 29 by Myanmar, the CEACR noted with regret that, despite a proposal made before the *Pyidaungsu Hluttaw* (Assembly of the Union) on 19 March 2020 to amend

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<sup>46</sup> United Nations Office on Drug and Crime (UNODC). 2017. *Trafficking in persons from Cambodia, Lao PDR and Myanmar to Thailand* (Bangkok, UNODC), p.60 for instance. Available at: [https://www.unodc.org/documents/southeastasiaandpacific/Publications/2017/Trafficking in persons to Thailand report.pdf](https://www.unodc.org/documents/southeastasiaandpacific/Publications/2017/Trafficking_in_persons_to_Thailand_report.pdf).

<sup>47</sup> CEACR. Observation, adopted in 2018 and published at the 108th ILC session in 2019, concerning the application of the ILO Convention No.182 by Myanmar.

<sup>48</sup> *Ibid.*

<sup>49</sup> See [A/HRC/47/13](#), 12 April 2021, para. 32.

<sup>50</sup> The *UN Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices similar to Slavery* (1956), defines debt bondage as “the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined”.

this provision and 409 out of 654 votes in favor of it, the article could not be amended as the required vote of more than 75 per cent of all the representatives of the Assembly was not received.<sup>51</sup> In that regard, the CEACR firmly hoped that the Government would continue to take the necessary measures to ensure that article 359 of the Constitution is amended so as to bring it into conformity with the Convention.

The Child Rights Law explicitly prohibits forced labour against children by recognizing it as a form of “exploitation” (section 3(s)) and also as a “worst form of child labour” (section 3(t)). Furthermore, section 48(a) of the Law provides that «no child shall be forced to work or employed in the worst forms of child labour» and section 48(c) provides that a child who has attained the age for admission to work has the right to «voluntary employment». Nonetheless, the fact that the Child Rights Law does not define what exactly constitutes forced labour may make it difficult to properly identify all forms of forced labour and effectively prohibit them in practice.

In its 2019 concluding observations, the UN Committee on the Elimination of Discrimination against Women highlighted that, in recent decades, Rohingya women and girls have been victims of at least four incidences of mass violence, including forced labour and sexual slavery.<sup>52</sup> The Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar of 17 September 2018 also highlighted that the use of forced labour by the *Tatmadaw* (the regular armed forces of Myanmar) persisted, particularly in Kachin and Shan States, as well as among the ethnic *Rakhine* and *Rohingya*. Persons subjected to forced labour were required to perform a variety of tasks and the duration varied from a few days to months.<sup>53</sup>

#### 3.1.4. *Compulsory recruitment of children for use in armed conflicts*

The use and involvement of children in armed conflict is condemned in a number of international instruments (see Box 3).

##### **Box 3: International Laws and Standards related to recruitment or involvement of children for use in armed conflict**

- Convention on the Rights of the Child, adopted in 1989 and entered into force in 1990 [ratified by Myanmar]
- Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (OPAC), adopted in 2000 and entered into force in 2002 [ratified by Myanmar]
- ILO Convention No. 29 on Forced Labour, adopted and entered into force in 1930 [ratified by Myanmar]
- ILO Convention No. 182 on Worst Forms of Child Labour, adopted in 1999 and entered into force in 2000 [ratified by Myanmar]
- Rome Statute of the International Criminal Court, circulated in 1998 and entered into force in 2002 [NOT ratified by Myanmar]
- Additional Protocols (I and II) to the four Geneva Conventions of 1949 (1977) [NOT ratified by Myanmar]
- Customary International Humanitarian Law

<sup>51</sup> See Observation (CEACR) adopted in 2020, published 109th ILC session (2021) on the application of the Forced Labour Convention, 1930 (No. 29).

<sup>52</sup> See CEDAW/C/MMR/CO/EP/1, 18 March 2019, paras. 5 and 6.

<sup>53</sup> See A/HRC/39/CRP.2, 17 September 2018, para. 64.

Article 2 of the Optional Protocol to the CRC on the involvement of children in armed conflict (OPAC), ratified by Myanmar in 2019, provides that States Parties shall ensure that persons who have not attained the age of 18 years are not compulsory recruited into their armed forces. The OPAC also provides that armed groups that are distinct from the armed forces of a State, should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years; States Parties shall take all feasible measures to prevent such recruitment and use, including the adoption of legal measures necessary to prohibit and criminalize such practices (article 4).

ILO Convention No. 182 defines forced or compulsory recruitment of children under 18 years for use in armed conflict as one of the worst forms of child labour and requires member States to take immediate action to abolish and prohibit it.

The 1959 Defence Services Act (amended in 1974) and the War Office Council Directive 13/73 of 1974 prohibit persons under the age of 18 from joining the armed forces. Furthermore, the Child Rights Law includes a chapter on “Children and Armed Conflict” (Chapter XVII) which explicitly prohibits “forced or mandatory recruitment of children to be used in armed conflict” by State army or non-state armed groups as a worst form of child labour (sections 3(t), 48(a), 60(c), 63 and 64).

However, the involvement of children in armed conflict is a longstanding serious problem in Myanmar. During the decades of armed conflict between the Government and the ethnic armed groups, children have been reported to be forcibly recruited, including by both the regular armed forces (the *Tatmadaw*) and the non-state armed groups. Children have been deployed at the front line as combatants and in support roles; and were also used as porters and scouts.<sup>54</sup> The ILO has long been monitoring and dealing with the underage recruitment through its forced labour complaint mechanism which was established in February 2007 under the Forced Labour Convention, 1930 (No. 29). Since then, the ILO has received a total of 5,626 cases, of which 3,016 were within the scope of forced labour, and among these 3,016 cases, 296 cases concerned underage recruitment.<sup>55</sup> In 2019, the ILO received 53 complaints concerning underage recruitment, and this was a reduction compared with previous years (336 cases were received in 2016, 196 cases in 2017 and 116 cases in 2018).<sup>56</sup> Nonetheless, according to the ILO Liaison Office in Myanmar, the actual number of underage recruiting may be higher, as there are people who do not know how to submit complaints and it is also difficult to submit complaints during the conflict.

The ILO’s forced labour complaints mechanism was not renewed beyond the end of December 2018, but the Government established its own National Complaints Mechanism (NCM) ad interim in 2019, which became operational in February 2020. However, the ILO has expressed concern with the insufficient elements in the mechanism to ensure credibility, impartiality, and

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<sup>54</sup> See Observation (CEACR) - adopted 2018, published 108th ILC session (2019) on the application of the Worst Forms of Child Labour Convention, 1999 (No. 182) by Myanmar.

<sup>55</sup> See ILO Governing Body, “Progress report on the follow-up to the resolution concerning remaining measures on the subject of Myanmar adopted by the Conference at its 102nd Session (2013)“, adopted at its 338th Session in February 2020.

<sup>56</sup> *Ibid.*

accountability and the ILO Governing Body made several recommendations in that regard.<sup>57</sup> In its March 2021 report on the situation of human rights in Myanmar in 2020, the UN Special Rapporteur on the situation of Myanmar also called for a credible national mechanism in line with the comments made by ILO supervisory bodies.<sup>58</sup> On 11 June 2019, the Office of the Commander in Chief (Army) issued an instruction to all national and regional military and operation commands on the prohibition of recruiting and using of children under 18 years of age in any military workplaces. In the beginning of 2020, the *Tatmadaw* was delisted from the UN Security Council from the list of parties who use and recruit children. The Country Task Force for Monitoring and Reporting Mechanism on children in armed conflicts are required to continue to monitor the use and recruitment of children for another 12 months. In November 2020, the government formed the National Committee on Implementation of the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict.<sup>59</sup>

However, several UN reports have highlighted the continued formal recruitment and informal and temporary use of children, some as young as 13 years, by the *Tatmadaw*, non-state armed groups and Border Guard Police. In its March 2021 report on the situation of human rights in Myanmar in 2020, the UN Special Rapporteur on the situation of Myanmar indicated that forced labour and the recruitment of children continued to be reported during the reporting period. A significant rise was reported in both adults and children being forced to act as porters, guides, and human shields. Despite the commitment of the Myanmar military to engage with the Country Task Force on Monitoring and Reporting (CTFMR), the death of two boys in Buthidaung Township on 5 October 2020 demonstrated continued use of children. The Myanmar military denied any responsibility for the incident.<sup>60</sup> On April 2021, in the context of the UPR, the UN Human Rights Council also recommended the Government to take all possible measures to ensure that children do not take a direct part in hostilities.<sup>61</sup>

### *Conclusions*

The provisions of the national legislation are in line with international standards, while it remains to be seen how the Child Rights Law will be implemented in practice.

However, several UN bodies have repeatedly expressed concern about the persistence and prevalence of child trafficking, forced labour of children and compulsory recruitment of children for use in armed conflicts including by the regular armed forces (the *Tatmadaw*).

### *Recommendations*

- ✦ ***The Government should amend article 359 of the Constitution as requested by the CEACR.***

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<sup>57</sup> See ILO Governing Body, “[Progress report on the follow-up to the resolution concerning remaining measures on the subject of Myanmar adopted by the Conference at its 102nd Session \(2013\)](#)”, adopted at its 338th Session in February 2020.

<sup>58</sup> See [A/HRC/46/56](#), 4 March 2021, Annex I, para. 81.

<sup>59</sup> See [2021 US Trafficking in Persons report](#).

<sup>60</sup> See [A/HRC/46/56](#), 4 March 2021, Annex I, para. 79.

<sup>61</sup> See [A/HRC/47/13](#), 12 April 2021, para. 32.

- ✦ *For clarity purposes, the Government could consider introducing a definition of «forced labour» when elaborating the implementing regulations of the Child Rights Law.*
- ✦ *For clarity purposes, the Government could consider including «serfdom» in the legislative prohibition concerning the worst forms of child labour.*
- ✦ *The Government should ensure the effective implementation of the national legislation to effectively prohibit in practice all forms of slavery or practices similar to slavery, as a worst form of child labour.*

## **3.2. Prostitution, pornography or pornographic performances**

### *International standards*

Article 34 of the CRC requires ratifying States to protect children from all forms of sexual exploitation and abuse, and to take all appropriate national, bilateral and multilateral measures to prevent: (a) The inducement or coercion of a child to engage in any unlawful sexual activity; (b) The exploitative use of children in prostitution or other unlawful sexual practices; (c) The exploitative use of children in pornographic performances and materials. The Optional Protocol to the CRC on the sale of children, child prostitution and child pornography, ratified by Myanmar, further strengthened these provisions providing that State Parties shall prohibit child prostitution and child pornography (Articles 1 and 2). Furthermore Article 3 (b) of ILO Convention No. 182 provides that the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances shall be prohibited as a worst form of child labour to be eliminated.

### *National laws and regulations*

The Child Rights Law defines and prohibits the persuasion, purchasing, utilizing or proposing a child for prostitution, child pornography or acting in a pornographic performance (sections 3 (q), (r) and (t)(2) and 48(a)). The Law also defines and prohibits «sexual violence» explicitly referring to sexual abuse or exploitation for monetary gains, and to production and distribution of child pornography on web pages and social networks using electronic technologies (sections 3(x) and 56).

However, as already mentioned above under section 3.1., commercial sexual exploitation of children is a reality in Myanmar, and is often the purpose or result of human trafficking.

### *Conclusions*

The provisions of the national legislation are in line with international standards, while it remains to be seen how the Child Rights Law will be implemented in practice.

### *Recommendations*

- ✦ None.

### 3.3. Illicit activities, in particular production and trafficking of drugs

#### *International standards*

Article 33 of the CRC provides that States Parties shall take all appropriate measures to prevent the use of children in the illicit production and trafficking of [narcotic drugs and psychotropic substances]. Article 3(d) of ILO Convention No. 182 prohibits the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties, as a worst form of child labour.

#### *National laws and regulations*

The Child Rights Law defines and prohibits the persuasion, purchasing, use, or proposing of a child for illegal drug operations including the production and smuggling of drugs, as a worst form of child labour (sections 3 (t) and 48(a)). It can however be observed that this provision is narrower than Article 3(d) of ILO Convention No. 182, as it only refers to «illegal drug operations» which is more restrictive than «illicit activities» referred to by ILO Convention No. 182.

Indeed, Paragraph 12(c) of Recommendation No. 190 refers to another example of illicit activities other than the production and trafficking of drugs, namely “activities which involve the unlawful carrying or use of firearms or other weapons”.

However, while the Child Rights Law only considers the involvement of children in illegal drug operations as a worst form of child labour, other provisions of the Law expressly prohibit and punish the use of children under 18 years<sup>62</sup> for gambling (section 100(b)) or begging (section 102), which are considered as “illicit activities” in the meaning of ILO Convention No. 182. The fact that such illicit activities are not considered as worst forms of child labour under the Child Rights Law,<sup>63</sup> may however lead to some confusion in practice as well as discrepancies in the protection and assistance afforded to children who have been victim of child labour in “illicit activities”.

#### *Conclusions*

The national legislation only defines as a worst form of child labour the use, procuring or offering of a child for «illegal drug operations», thus being narrower than the definition provided for in Article 3(c) of the ILO Convention No. 182 which refers to «illicit activities». However, using or inducing a child to gamble or to beg, which are considered as «illicit activities» under ILO Convention No. 182, are prohibited and punished under the national legislation.

#### *Recommendations*

- ✦ ***For clarity purposes, the Government should ensure that the use, procuring and offering of a child in all types of «illicit activities», including the production and trafficking of drugs, is defined in its national legislation as a worst form of child labour and effectively prohibited and eliminated in practice for all persons under the age of 18.***

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<sup>62</sup> According to the definition of a «child» pursuant to section 3(b) of the Child Rights Law.

<sup>63</sup> According to the definition of the «worst forms of child labour » pursuant to section 3(t) of the Child Rights Law.

### 3.4. Hazardous work

#### *International standards*

ILO Convention No. 182 defines “hazardous work” as one of the worst forms of child labour which should be eliminated as a matter of urgency (Articles 1 and 3(d)). ILO instruments further provide that, to this end, a list of the types of hazardous work shall be determined, taking into consideration relevant international standards, by the competent authority, after consultation with the organizations of employers and workers concerned, as well as periodically examined and revised as necessary (Article 3(2) of ILO Convention No. 138 and Article 4(1) and (2) of ILO Convention No. 182). Paragraph 3 of ILO Recommendation No. 190 offers examples of types of work that should be examined to that end.<sup>64</sup>

#### *National laws and regulations*

As indicated above under section 2.3, while the Child Rights Law defines and prohibits hazardous work for all children under 18 years as a worst form of child labour (sections 3(t) and 48(a)), other labour laws<sup>65</sup> provide for the possibility for children from the age of 16 to be employed in hazardous work without providing the necessary safeguards requested by ILO instruments<sup>66</sup>. Therefore, it remains to be seen how the Child Rights Law will be articulated, in practice, with the provisions contained in the labour laws.

Furthermore, in 2018, while noting some of the measures taken by the Government, the CEACR expressed its concern at the large number of children involved in hazardous work in Myanmar.<sup>67</sup>

As regards the *types of hazardous work*, section 52(b) of the Factories Act, as amended in 2016, provides that where the President is of the opinion that any operation carried on in a factory is likely to expose any person employed therein to risk of bodily injury, poisoning or disease he may make rules applicable to any factory or class of factories in which the operation is carried on,

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<sup>64</sup> Paragraph 3 of ILO Recommendation No. 190 provides that: «In determining the types of work referred to under Article 3(d) of the Convention, and in identifying where they exist, consideration should be given, inter alia, to: (a) work which exposes children to physical, psychological or sexual abuse; (b) work underground, under water, at dangerous heights or in confined spaces; (c) work with dangerous machinery, equipment and tools, or which involves the manual handling or transport of heavy loads; (d) work in an unhealthy environment which may, for example, expose children to hazardous substances, agents or processes, or to temperatures, noise levels, or vibrations damaging to their health; (e) work under particularly difficult conditions such as work for long hours or during the night or work where the child is unreasonably confined to the premises of the employer.»

<sup>65</sup> See for example, sections 25, 29 and 75(a) of the Factories Act, as amended in 2016, and section 14(e) of the Shops and Establishments Law, 2016.

<sup>66</sup> Indeed, ILO instruments provide that national laws or regulations or the competent authority may, as an exception, after consultation with the organizations of employers and workers concerned, where such exist, authorize employment or work as from the age of 16 years on condition that: (i) the health, safety and morals of the young persons concerned are fully protected and that (ii) the young persons have received adequate specific instruction or vocational training in the relevant branch of activity (Article 3(3) of ILO Convention No. 138; Article 4(1) of ILO Convention No. 182 and Paragraph 4 of ILO Worst Forms of Child Labour Recommendation, 1999 (No. 190). For further information, please refer to section 2.3 above.

<sup>67</sup> See Observation (CEACR) - adopted 2018, published 108th ILC session (2019) on the application of the Worst Forms of Child Labour Convention, 1999 (No. 182) by Myanmar.

prohibiting or restricting the employment of women, adolescent or children in the operation. However, it does not seem that regulations have been adopted to that end yet.

More generally, as regards the elaboration of a general *list of types of hazardous work*, section 49(a) of the Child Rights Law provides that the Ministry of Labour, Immigration and Population shall establish the hazardous types of employment and sites in consultation with the relevant employers’ and workers’ organizations. A list of types of hazardous work prohibited for children under 18 years has been developed and validated by the Technical Working Group on Child Labour (TW-GCL), in consultation with employers’ and workers’ representatives, with the technical assistance of the ILO, but has not been enacted yet. The last version of this list provides for:

- some sector-specific hazards, such as in agriculture, construction, fishing, manufacturing, food-processing, petroleum and oil, etc.; and at the same time
- allows for the identification of hazardous works in any other sectors or occupations where children may be working.

The table below provides an overview of the results of the interviews made in 2020 with respect to hazardous work (Table No. 7)

In its March 2021 report on the situation of human rights in Myanmar in 2020, the UN Special Rapporteur on the situation of Myanmar echoed the need to adopt the ILO recommended hazardous work list along with enabling regulations, to prevent the worst forms of child labour.

**Table 7: Interview results (2020) regarding «hazardous work»**

Questions asked	Responders	Responses
What types of work should be defined as hazardous work that should be prohibited for children?	Employers’ organizations	No information
	Workers’ organizations	Agriculture – Risks of fertilizers and pesticides Fisheries – Weather conditions Not paying the minimum wage Restaurants – Sometimes owners mistreat child workers. Constructions sites
	UN	To define the “hazardous work”, the situation of work should be mentioned, it will be easier to monitor the compliance. Domestic child workers should be included in the hazardous work list based on the working hours and conditions of work.



Questions asked	Responders	Responses
	NGOs	<p>Construction sites</p> <p>Domestic work</p> <p>Even waiting at cafes are sometimes hazardous</p> <p>Making charcoal, working in paddy field for spray disinfects etc.</p>
<p>If the Hazardous List is enacted, what kind of enforcement procedures should be necessary?</p>	<p>Government</p>	<p>Coordination of relevant departments/ministries is necessary to enforce the laws, rules, procedures, and the hazardous list.</p> <p>Awareness programmes should be carried out for sufficient period. Effective enforcement should be taken after awareness period.</p> <p>Reporting to the authorities if children are involved in the hazardous work.</p> <p>Hazardous work list is internally discussed and now submitting the UAGO for legal advice. We are trying to integrate the notification into the Child Rights Rules under Child Rights Law which is being drafted by Department of Social Welfare so that the enforcement will be more effective.</p>
	<p>Employers' organization</p>	<p>The enforcement procedures should be taken from the Factories Act 1951, where the law mentions about Child Employment Register, Workplace Prohibition, Excessive Weights and Working hours for the identification of safe workplace environment for children.</p>
	<p>Workers' organizations</p>	<p>Coordination of employers' organizations, trade unions and relevant authorities is necessary to enforce the list. The enforcement procedures to be provided by the consultation of all stakeholders.</p> <p>We do not accept WFCL at all. The Government must take effective enforcement if someone violates the regulations. The Government should specify the regulations on working environment for children. In addition to this, the Government must support educational and health care for children.</p> <p>It will be difficult to successfully enforce the laws and regulations. It is necessary to establish better social protection.</p>

Questions asked	Responders	Responses
	Law Academic	Awareness programmes on the spirit of the law and objectives and outcomes of the law should be delivered to all relevant stakeholders (Focal ministry/ relevant departments or ministries/ employers' organizations/trade unions/ other external stakeholders).

**Note:** Total number of respondents: 16 (Government: 6; Workers' organizations: 3; Employers' organization: 1; Law academic: 1; UN agency: 1; and NGOs: 4).

In the context of hazardous work, *child domestic work* requires specific attention. Indeed, as highlighted in 2018 by the CEACR<sup>68</sup>, child domestic workers are particularly vulnerable to the worst forms of child labour, including hazardous work. In the case of Myanmar, the available sources of information do indicate that children are working as domestic workers<sup>69</sup> and that there are risks and incidences of abuse and exploitation.<sup>70</sup> Most recently, the ILO commissioned a qualitative rapid assessment on child domestic work, the first of its kind, in May - October 2018,<sup>71</sup> which found that child domestic work is prevalent in Yangon and the majority of child domestic workers, some as young as nine years old, are girls from poor rural areas or from ethnic minorities in conflict-affected areas. This report also indicates that child domestic workers often work from 4 a.m. until nightfall, work in seclusion and in debt bondage, and are subject to physical and verbal abuse as well as sexual exploitation.

Causes of child domestic work are multifaceted, ranging from, or combination of, poverty, lack of educational opportunities, lack of age-appropriate job pathways for children and youth in rural and ethnic minority areas.<sup>72</sup> The assessment concluded that many instances of child domestic work in Myanmar meet the criteria contemplated by ILO Convention No. 182, and therefore can be considered as a “worst form of child labour”, children being trapped in work that is physically, mentally or morally harmful to them.<sup>73</sup> The assessment also identified a clear and strong link between child domestic work and migration, both internal and international, and raised the possibility of trafficking in children.

The rapid assessment considered that child domestic work is «enabled by a legal and institutional framework that does not recognize child domestic work as «proper» work.<sup>74</sup> Indeed child domestic work is often seen not as a job but as a favour granted by the employer to help poor children and their families and national decision makers and local government officials, including labour inspectors, often do not consider child domestic labour as a “labour issue”.<sup>75</sup> In that regard, the rapid assessment highlighted that “labour inspectors contacted for interviews did not want to

<sup>68</sup> See Direct request (CEACR) - adopted 2018, published 108th ILC session (2019) on the application of the Worst Forms of Child Labour Convention, 1999 (No. 182) by Myanmar.

<sup>69</sup> For instance, UNICEF, 2012. Situation Analysis of Children in Myanmar (Nay Pyi Taw), p.116.

<sup>70</sup> Accounts of NGO representatives at the validation workshop, as well as some media reports.

<sup>71</sup> See ILO, “Rapid Assessment on Child Domestic Work (CDW) in Myanmar”, May - October 2018, p.6.

<sup>72</sup> *Ibid.*, p.7.

<sup>73</sup> *Ibid.*, p.11.

<sup>74</sup> *Ibid.*, p. 10.

<sup>75</sup> ILO, 2007, “Hazardous child domestic work: A briefing sheet”, (Geneva), p.10.

participate in the study as they did not think that child domestic work even child labour in domestic work was of their concern.”<sup>76</sup>

At the time of the publication of this report, in Myanmar, child domestic work is allowed for children over 14 years, pursuant to the general age for admission to work set in the Child Rights Law<sup>77</sup>. Indeed, child domestic work has not been included until now in the draft list of types of hazardous work, as validated by the Technical Working Group on Child Labour (TW-GCL), as the relevant stakeholders were not able to reach a consensus on that point<sup>78</sup>. The working conditions of domestic workers are only partially regulated under some labour laws, such as the Payment of Wages Law, the Minimum Wage Law, the Labour Organization Law and the Settlement of Labour Disputes Law, but not by other labour laws, either explicitly or implicitly, including the Employment and Skills Development Law and the Leave and Holidays Act. The new Occupational Safety and Health Law of 2019 (*not yet in force*) lists places of work covered by the law but unfortunately private households are not included in the list. As the law gives the Ministry of Labour power to add workplaces to the list, in consultation with relevant stakeholders, the ILO has been advocating for the inclusion of private households in the list.<sup>79</sup> With respect to social security for child domestic workers, according to the 2012 Social Security Law, domestic workers can contribute to social security voluntarily but their employers are not obliged to pay into the system.<sup>80</sup> Many child domestic workers are working without the security of access to medical care, sickness, employment injury<sup>81</sup>, etc.

Therefore, the recommended next steps will be to regulate the working and living conditions of child domestic workers over 14 years, and to identify hazardous types of child domestic work that should be prohibit for all children under 18 years, as required by international labour standards.<sup>82</sup>

In that regard, ILO Domestic Workers Convention, 2011 (No. 189) and its accompanying Recommendation No. 201 can provide useful guidance. Indeed, Article 4(1) of ILO Convention No. 189 provides that each Member «shall set a minimum age for domestic workers consistent with the provisions of the Minimum Age Convention, 1973 (No. 138), and the Worst Forms of Child Labour Convention, 1999 (No. 182), and not lower than that established by national laws and regulations for workers generally». Furthermore Paragraph 5 of ILO Recommendation No. 201 provides that :

(1) Taking into account ILO Convention No. 182 Members should identify types of domestic work that, by their nature or the circumstances in which they are carried out, are likely to harm the health, safety or morals of children, and should also prohibit and eliminate such child labour.

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<sup>76</sup> See ILO, “Rapid Assessment on Child Domestic Work (CDW) in Myanmar”, May - October 2018, p. 20.

<sup>77</sup> Section 48(b) of the Child Rights Law. For further information, please refer to section 2.1 above.

<sup>78</sup> While several stakeholders suggested during the consultative process to include «child domestic work» in the list of types of hazardous work, the Government seemed to demonstrate some reluctance in that regard.

<sup>79</sup> The Working Group on Legal Protection of Domestic Workers. 2019. “The Legal Gap Analysis of Myanmar National Laws and International Standards for Domestic Work”, p.9.

<sup>80</sup> *Ibid*, p.7.

<sup>81</sup> The Workmen’s Compensation Act applies to workers who are not covered under the Social Security Law. But it is not clear if domestic workers are covered under this Act, thereby possibly leaving child domestic workers without access to employment injury compensation.

<sup>82</sup> Worldwide, the identified common hazards include: “long working hours, which create fatigue; lack of public scrutiny, which can provide opportunities for sexual exploitation; and isolation, inhibiting normal social and intellectual development. In addition, domestic service often involves carrying heavy loads (laundry, water, children), being exposed to fires and hot stoves, handling household chemicals and using sharp knives, as well as deprivation of education...injuries, accidents and illness....and various types of abuse”. IPEC. 2011. *Children in hazardous work: What we know, what we need to do*, pp. 27-30. (Geneva, ILO).

(2) When regulating the working and living conditions of domestic workers, Members should give special attention to the needs of domestic workers who are under the age of 18 and above the minimum age of employment as defined by national laws and regulations, and take measures to protect them, including by:

- (a) strictly limiting their hours of work to ensure adequate time for rest, education and training, leisure activities and family contacts;
- (b) prohibiting night work;
- (c) placing restrictions on work that is excessively demanding, whether physically or psychologically; and
- (d) establishing or strengthening mechanisms to monitor their working and living conditions.

### *Conclusions*

The Child Rights Law defines hazardous work as one of the worst forms of child labour and prohibits it for all children under 18 years. However, other labour laws still contain provisions that are not consistent with the Child Rights Law, as they provide for the possibility for children from the age of 16 to be employed in hazardous work. The necessary safeguards requested by ILO instruments for authorizing employment or work as from the age of 16 years in hazardous work are not always guaranteed in law and/or practice.

A list of hazardous work has been elaborated and validated by the Technical Working Group on Child Labour but has not been enacted yet. Child domestic work has not been included in that list for now, as the relevant stakeholders were not able to reach a consensus on that point.

### *Recommendations*

- ❖ ***The Government should harmonize its national laws and regulations in order to ensure, in a consistent manner, that hazardous work is prohibited for children under 18 years of age, or exceptionally authorized, under the strict conditions provided in ILO instruments, for children from the age of 16.***
- ❖ ***The Government should enact, as soon as possible, the list of the types of hazardous work.***
- ❖ ***In doing so, the Government should consider identifying hazardous types of child domestic work that should be included in that list and prohibited for all children under 18 years, as required by international labour standards.***
- ❖ ***The Government could consider regulating the working and living conditions of child domestic workers over 14 years.***

- ✦ *The Government should ensure the effective implementation of the national legislation to effectively prohibit in practice the involvement of children in hazardous work, as a worst form of child labour.*

## 4. Decent working conditions for young workers

International instruments also contain a number of other provisions concerning working conditions that shall apply to children above the legal minimum age for employment in order to ensure decent work for all. The CRC provides that States parties recognize the right of the child to be protected from economic exploitation and that, having regard to the relevant provisions of other international instruments, States parties shall in particular provide for appropriate regulation of their hours and conditions of employment (Article 32(1) and (2)(b)). More particularly Paragraph 12(1) of ILO Minimum Age Recommendation, 1973 (No. 146) provides that «measures should be taken to ensure that the conditions in which children and young persons under the age of 18 years are employed or work reach and are maintained at a satisfactory standard. These conditions should be supervised closely». Myanmar has ratified 25 out of 190 ILO Conventions, most of which were adopted before 1960 and are not the most up-to-date ILO standards in the area.<sup>83</sup>

### 4.1. Fundamental Principles and Rights at Work

As provided in the CRC (Articles 2 and 15) and the ILO Declaration on Fundamental Principles and Rights at Work,<sup>84</sup> children shall also benefit from the right to equality and non-discrimination, as well as from the right to freedom of association and collective bargaining.

#### 4.1.1. Freedom of association and Collective bargaining

##### 4.1.1.1. Freedom of association

#### *International standards*

Article 15 (1) of the CRC provides that: “[S]tates Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.”

The ILO Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), which is a fundamental Convention, has been ratified by Myanmar in 1955.

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<sup>83</sup> For further information in this regard, please refer to the Introduction as well as to Myanmar’s NORMLEX Country Profile.

<sup>84</sup> Adopted in 1998, the ILO Declaration on Fundamental Principles and Rights at Work commits Member States to respect and promote principles and rights in four categories, whether or not they have ratified the relevant Conventions. These categories are: freedom of association and the effective recognition of the right to collective bargaining, the elimination of forced or compulsory labour, the abolition of child labour and the elimination of discrimination in respect of employment and occupation. As the elimination of forced or compulsory labour as well as the abolition of child labour have been examined in the above sections, reference is only been made here to the other ILO Fundamental Principles and Rights at Work.

### *National laws and regulations*

The 2008 Constitution guarantees that every citizen shall be at liberty in the exercise of assembling peacefully and forming associations and organizations while providing that exercise of these rights must “not be contrary to the laws enacted for national security, prevalence of law and order, community peace and tranquility, or public order and morality” (Article 354 (b) and (c)).

The Labour Organization Law (LOL), 2011, was enacted “to protect the rights of the workers [...] and to enable to form and carry out the labour organizations<sup>85</sup> systematically and independently” (Preamble). However, the CEACR has repeatedly requested the Government to take steps to review the 10 per cent membership requirement with the social partners concerned, with a view to amending section 4 of the LOL so that workers may form and join organizations of their own choosing without hindrance.<sup>86</sup> In June 2018, the ILO Conference Committee on the Application of Standards regretted the absence of progress with respect to the long-awaited legal framework in which workers and employers may freely exercise their rights under the Convention and urged the Government to: (i) ensure that the Labour Organization Law is brought into full compliance with the Convention by availing itself of ILO technical assistance during the legislative reform process; (ii) ensure that workers are able to carry out their trade union activities without threat of violence or other violations of their civil liberties by police or private security; (iii) ensure that the registration of workers’ and employers’ organizations is not subject to unreasonable requirements to guarantee that the right to join or establish organizations of their own choosing is not hindered in practice; (iv) ensure that applications for union registration are acted upon expeditiously and are not denied unless they fail to meet clear and objective criteria set forth in the law; and (v) bring the labour legislation in Special Economic Zones (SEZs) into conformity with the Convention, with full consultation of the social partners.<sup>87</sup> The CEACR expressed further concern regarding the Law on the Right to Peaceful Assembly and Peaceful Procession which was adopted on 4 October 2016 and observed that the Chapter on Rules and the corresponding Chapter on Offences and Penalties could give rise to serious restrictions of the right of organizations to carry out their activities without interference.<sup>88</sup>

Regarding more particularly the Child Rights Law, section 19 provides that every child shall have the right to express his or her opinions freely (section 19(e)) and to be a member of «organizations relating to children, or social or religious organizations» (section 19 (g)). However, no reference is made to the right to establish or form organizations of their own choosing, and no explicit reference is made to trade unions or labour organizations.

In its last concluding observations, the UN Committee on the Rights of the Child expressed concern that the rights to freedom of expression and association, which also affect children, are severely limited in practice and that little space has been created for children to assemble or form

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<sup>85</sup> The English translation of the Myanmar Labour Organization Law uses the term “labour organization” but it is synonymous with the term “trade union”, which is more commonly used.

<sup>86</sup> See Observation (CEACR), adopted in 2018 and published in 2019, on the application of Convention No. 87 by Myanmar.

<sup>87</sup> See Individual Case (CAS) - Discussion: 2018, Publication 107th ILC session (2018) on the application of Convention No. 87 by Myanmar.

<sup>88</sup> See Observation (CEACR), adopted in 2018 and published in 2019, on the application of Convention No. 87 by Myanmar.

associations outside the framework of Government-controlled NGOs.<sup>89</sup> Furthermore, as highlighted by the Special Rapporteur on the situation of Myanmar in March 2021, after the removal of the civilian Government by the military on 1 February 2021, the junta further restricted freedom of assembly and association by banning most trade unions. On 26 February, the junta announced it had banned (albeit without proper authority) at least sixteen trade unions for not being properly registered under the Labour Organization Law and threatened legal action against them if they did not follow the ban. The Special Rapporteur indicated that he had received numerous reports that trade union leaders are in hiding, with police and military conducting door-to-door searches at their homes and residencies.<sup>90</sup>

### *Conclusions*

The national legislation provides for the right of workers to freely form and join organization but such right is unduly limited in practice. The Child Rights Law only refers to the right of children to be a member of «organizations relating to children, or social or religious organizations» without expressly referring to trade unions nor to the right for children to establish or form organizations of their own choosing.

### *Recommendations*

- ✦ ***The Government should ensure that young workers are explicitly guaranteed the right to join or establish trade unions or labour organizations of their own choosing, both in law and practice.***

#### ***4.1.1.2 Collective bargaining***

##### *International standards*

The ILO Right to Organise and Collective Bargaining Convention, 1949 (No. 98), which is a fundamental Convention, has *not* been ratified by Myanmar.

##### *National laws and regulations*

Collective bargaining is defined in the Settlement of Labour Dispute Law, 2012, as «the process carried out to enable negotiation and conclusion of collective agreement by employer or employer organizations and labour organizations for the determination on conditions of employment and the terms and conditions, their labour relations or the measures for the prevention and settlement of disputes» (section 2(k)). However, no further provision aims at promoting or guaranteeing the right to collective bargaining. In reality, collective bargaining is a relatively new practice in Myanmar. The ILO has been providing technical assistance to the Government, employers and workers, in promoting collective bargaining both in law and practice. In its 2017 observation on the application of

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<sup>89</sup> See [CRC/C/MMR/CO/3-4](#), 14 March 2012, para. 47.

<sup>90</sup> See [A/HRC/46/56](#), 4 March 2021, para. 87.

Convention No. 87 by Myanmar, the CEACR noted the observations made by the International Trade Union Confederation (ITUC) on Convention No. 98 (not ratified by Myanmar).<sup>91</sup>

The Child Rights Law does not contain any reference to the right of collective bargaining for young workers.

### *Conclusions*

Currently, the national legislation does not promote nor guarantee the right to collective bargaining.

### *Recommendations*

- ✦ ***The Government could pursue its efforts, in collaboration with employers and workers as well as their representative organizations, to promote collective bargaining, both in law and practice.***

#### *4.1.2. Equality and non-discrimination*

### *International standards*

Article 2 of the CRC provides that:

1. States Parties shall respect and ensure the rights set forth in the CRC to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Paragraph 13 (1)(a) of ILO Recommendation No. 146 provides that in order to ensure satisfactory conditions of employment for children under the age of 18, special attention should be given to the provision of fair remuneration and its protection, bearing in mind the principle of equal pay for equal work. The ILO has adopted two fundamental Conventions on equality and non-discrimination. However, Myanmar has ratified nor the Equal Remuneration Convention, 1951 (No. 100), neither the Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

### *National laws and regulations*

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<sup>91</sup> See Observation (CEACR), adopted in 2017 and published in 2018, on the application of Convention No. 87 by Myanmar.



As regards the *principle of equal remuneration between men and women for work of equal value*<sup>92</sup>, provided for in ILO Convention No. 100, Article 350 of the 2008 Constitution provides that women shall be entitled to the same rights and salaries as that received by men in respect of similar work. However, it seems that labour laws do not provide for such principle. Furthermore, the Child Rights Law does not contain any provision ensuring equal remuneration between boys and girls for work of equal value. In practice, in Myanmar, girls are most often paid lower wages than boys. Indeed, the context of the 2020 UPR, the ILO reported on the significant gender wage gap in Myanmar.<sup>93</sup> In the 2019 gender inequality index, Myanmar was ranked as 147 of 189 countries.<sup>94</sup>

As regards *discrimination in employment and occupation*, ILO Convention No. 111 prohibits any direct and indirect distinction, exclusion or preference made on the basis of, at a minimum, race, colour, sex, religion, political opinion, national extraction or social origin in access to vocational training, access to employment and to particular occupation, and terms and conditions of employment (Article 1 of the Convention). Article 349 of the 2008 Constitution provides that citizens shall enjoy equal opportunity in occupation and Article 352 provides that «the Union shall, in appointing and assigning duties to civil service personnel, not discriminate for or against any citizen based on race, birth, religion and sex. However nothing in this section shall prevent appointment of men to the positions that are suitable for men only». Focusing more particularly on the Child Rights Law, section 3(u) interestingly expands the prohibited grounds for discrimination against children by including «citizenship, ethnicity, nationality, caste, origin, colour, man or woman<sup>95</sup>, language, religion, occupation, social status, culture, economic situation, disability, political beliefs or sexual orientation». The Child Rights Law explicitly provides that the Law shall ensure that there is no discrimination against children (section 4(f)) and that every child shall not be discriminated for any given reason (section 19(d)). More particularly, the law provides that all children shall have the right to educational opportunities without discrimination (section 46(a)). However, the Child Rights Law does not refer to the other aspects covered by «employment and occupation», under the terms of ILO Convention No. 111, which are access to employment and to particular occupations, and terms and conditions of employment (Article 1(3) of ILO Convention No. 111).

As regards *children with disabilities*, it should be noted that the ground of «disability» is expressly referred to in section 3(u) of the Child Rights Law, which also provides that children with disabilities shall have the right to protection from abuse, exploitation and discrimination and have the right to free education at schools established near their community or region in the same way as other persons (sections 50 and 51). Myanmar ratified the UN Convention on the Rights of Persons with Disabilities on 7 December 2011. However, in its 2019 concluding observations, the UN Committee on the Rights of Persons with Disabilities expressed concern about the prevalent stigma, discrimination and harmful stereotypes against children with disabilities, and the barriers that hinder their access to education.<sup>96</sup>

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<sup>92</sup> It should be noted that the principle of “equal remuneration for men and women for work of equal value” is not the same as “equal pay for equal work”. Not only should men and women get equal pay for doing the same or a similar job, but also when they do work that is completely different but which, based on objective criteria, is of equal value. For further information, please see: ILO (2013). Equal Pay: An Introductory Guide. Available at: [https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms\\_216695.pdf](https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_216695.pdf)

<sup>93</sup> See [A/HRC/WG.6/37/MMR/2](https://www.undp.org/publications/a/hrc/wg.6/37/MMR/2), 12 November 2020, para. 30.

<sup>94</sup> See UNDP, Human Development Reports, Gender Inequality Index, 2019 : <http://hdr.undp.org/en/indicators/68606>

<sup>95</sup> This should be read as the ground of «sex».

<sup>96</sup> See [CRPD/C/MMR/CO/1](https://www.undp.org/publications/crpd/c/mmr/co/1), 22 October 2019, para. 15.

As regards more particularly *sexual harassment*, which is considered as a serious form of sex discrimination, the CEACR has defined sexual harassment as covering not only (1) *quid pro quo*, which is any physical, verbal or non-verbal conduct of a sexual nature and other conduct based on sex affecting the dignity of women and men, which is unwelcome, unreasonable, and offensive to the recipient; and a person's rejection of, or submission to, such conduct is used explicitly or implicitly as a basis for a decision which affects that person's job; but also (2) hostile work environment, which is a conduct that creates an intimidating, hostile or humiliating working environment for the recipient.<sup>97</sup> In Myanmar, the current labour laws do not define nor prohibit sexual harassment, while in practice sexual harassment seems to occur.<sup>98</sup> However, it seems that steps have been taken toward the adoption of a draft law for the prevention of violence against women, while several UN treaty bodies expressed concern about delays in the adoption of this new legislation<sup>99</sup>. In the context of the UPR, the UN Human Rights Council in April 2021, also recommended the Government to continue its efforts in the adoption of the draft law on the protection of, and prevent of violence against women.<sup>100</sup>

Section 56 of the Child Rights Law provides that no one shall commit physical violence, psychological violence or sexual violence that will inflict either losses or injury in any way upon the child. While this provision refers to psychological violence<sup>101</sup>, sexual violence is defined by only referring to physical forms of sexual violence (section 3(x))<sup>102</sup>, therefore being more restrictive than the definition adopted by the CEACR, which may lead to some confusion in practice regarding the types of conducts that could be considered as sexual harassment against children at national level.

Further guidance on this subject can be found in the newly adopted ILO Violence and Harassment Convention, 2019 (No. 190) and its accompanying Recommendation (No. 206), as highlighted in Box 4 below.

#### **Box 4: The Violence and Harassment Convention, 2019 (No. 190) and Recommendation (No. 206)**

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<sup>97</sup> See ILO, General Observation (CEACR) adopted in 2002, published 91st ILC session (2003) on the Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

<sup>98</sup> An interview with the Women's Committee of FTUM on 9 May 2014 in Yangon confirmed that there are cases of sexual harassment in the workplace.

<sup>99</sup> See for example, CRPD/C/MMR/CO/1, 22 October 2019, para 29(a).

<sup>100</sup> See A/HRC/47/13, 12 April 2021, para. 32.

<sup>101</sup> Psychological violence is defined in section 3(w) of the Child Rights Law as «frequent abuse, humiliation or exploitation, causing mental trauma or neglect which can result in psychological harm to a child».

<sup>102</sup> Section 3(x) of the Child Rights Law provides that: «sexual violence means seduction, urge by force, threat or coercion done by an adult or a child to a child to get sexual favours or encouraging to provide such favours. This clause contains any of the following sexual acts toward a child: (1) Touching, groping, rape and sexual abuse in physical manner by force; (2) Sexual abuse or exploitation for monetary gains; (3) Production and distribution of child pornography on web pages and social networks using electronic technologies; (4) Forced marriage or getting a child married».

In 2019, the ILO established new global standards aimed at ending violence and harassment in the world of work, through the adoption of the Violence and Harassment Convention (C.190) and Recommendation (R.206), 2019 at its 108<sup>th</sup> Session of the International Labour Conference in Geneva, Switzerland.

*“We welcome the commitment made by these governments to ratify ILO Convention No. 190,” said Manuela Tomei, Director of ILO’s Conditions of Work and Equality Department. “The Convention provides the possibility of forging a future of work based on dignity and respect, free from violence and harassment. We urge all governments to ratify it.”*

*The Convention defines violence and harassment as “a range of unacceptable behaviours and practices” that “aim at, result in, or are likely to result in physical, psychological, sexual or economic harm”. It covers everyone who works, including interns or apprentices and persons who exercise the duties or authority of an employer, and applies to the public and private sectors, the formal and informal economy, as well as urban and rural areas.*

*The Convention will enter into force 12 months after two member States have ratified it. The Recommendation, which is not legally binding, provides guidance on how the Convention should be applied.*

### *Conclusions*

The principle of equal remuneration between men/boys and women/girls is not reflected in Myanmar’s legislation. While discrimination against children is explicitly prohibited in the Child Rights Law, the law only provides for the right to educational opportunities without discrimination and no reference is made in that regard to protection against discrimination in access to employment or in the terms and conditions of employment. Furthermore, while the Child Rights Law protects children against sexual violence, it is mainly defined by referring to physical forms of sexual violence which may lead to an interpretation and a protection more restrictive than what is provided under ILO Convention No.111. It also remains to be seen how the Child Rights Law will be implemented in practice and how protection against discrimination will be effectively ensured for all children, including children with disabilities.

### *Recommendations*

- ❖ *The Government should ensure the effective implementation of the Child Rights Law in particular as regards protection of children against discrimination and sexual violence.*
- ❖ *The Government should take steps in order to ensure that equality and non-discrimination principles, as defined by ILO Conventions Nos. 100 and 111, are effectively guaranteed to boys and girls, both in law and in practice.*

## **4.2. Wages**

### *International standards*

Myanmar has ratified the Minimum Wage-Fixing Machinery Convention, 1928 (No. 26).

### *National laws and regulations*

Myanmar has adopted the Minimum Wage Law in 2013, which provides for minimum wage fixing machinery covering the commercial, production, service, agricultural and livestock breeding sectors, and the Payment of Wages Law in 2016. A minimum wage was established in 2015, irrespective of the regions and categories of industry<sup>103</sup>. However, as highlighted by the ILO in its 2018 Decent Work Diagnostic Report, as with other laws there are issues of compliance and enforcement that hamper effective implementation.<sup>104</sup>

The Child Rights Law does not contain any reference to the fixing or payment of wages for young workers.

In its last concluding observations the Committee on the Rights of the Child expressed concern over the persistence of economic exploitation of children, including low wages.<sup>105</sup>

### *Conclusions*

While the national legislation contains a number of provisions on wages, including on a minimum salary, serious issues persist that hamper their effective implementation. The national legislation does not contain specific provisions concerning the fixation or payment of wages for young workers, while in practice UN treaty bodies expressed concern at the persistence of economic exploitation and low wages of children.

### *Recommendations*

- ✦ ***The Government should take the necessary measures to ensure a fair remuneration to young workers, both in law and practice.***

## **4.3. Hours of work and night work**

### *4.3.1 Hours of work*

#### *International standards*

Article 32(2)(b) of the CRC provides that States Parties shall provide for appropriate regulations of the hours and conditions of employment.

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<sup>103</sup> See Direct request (CEACR) - adopted 2019, published 109th ILC session (2021) on the application of the Minimum Wage-Fixing Machinery Convention, 1928 (No. 26) by Myanmar.

<sup>104</sup> See ILO, Decent Work Diagnostic Report, Myanmar's progress and challenges, 2018.

<sup>105</sup> See CRC/C/MMR/CO/3-4, 14 March 2012, paragraph 85.

The ILO has adopted a number of instruments regulating hours of work in different sectors. Myanmar has ratified the Hours of Work (Industry) Convention, 1919 (No. 1) but has not ratified the other instruments<sup>106</sup>.

### *National laws and regulations*

The Child Rights Law does not contain any provision regarding the hours of work of young workers.

Section 79 of the Factories Act, amended in 2016, provides that:

- (1) children (between 14 and 16 years) shall not be employed or permitted to work in any factory for more than 4 hours a day and between 6 p.m. and 6 a.m.;
- (2) shift work should be limited to two shifts not overlapping and both of shift not exceeding 5 hours inclusive of intervals, if any;
- (3) no work on Sunday;
- (4) no child shall be required or allowed to work in any factory or any day on which he or she has already been worked in another factory.

With respect to the hours of work for children between 16 and 18 years old, those who have been granted a certificate to work as adults can work the same working hours as adults (section 78(1)); otherwise, section 79 which provides for the working hours for children aged between 14 and 16 years will also apply to them.

Similarly, the Shops and Establishments Law, 2016, provides that a worker who is under 16 years of age shall not be employed or allowed to work more than four hours a day and between 6 pm and 6 am or if he or she has been employed at a shop or establishment within the same day (section 14 (a), (b) and (c)). It further provides that overtime is not allowed for such workers (section 13(b)).

In that regard, it could be noted that, in practice, it may be difficult for employers or competent authorities to determine whether or not a child has worked in another factory, shop or establishment on the same day.

Young workers who are not covered by the Factories Act or the Shops and Establishments Law do not seem to benefit from appropriate regulations of their hours of work.

### *Conclusions*

While some labour laws contain specific regulations concerning the hours of work of young workers, no provision has been included in the Child Rights Law in that respect. Young workers who are not covered by such labour laws do not benefit from any protection regarding their hours of work.

### *Recommendations*

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<sup>106</sup> For further information, please refer to: <https://www.ilo.org/dyn/normlex/en/f?p=1000:12000:::NO::>

- ✦ *The Government should take steps to ensure that young workers working in all types of sectors and economic activity benefit from appropriate regulations of their hours of work, both in law and practice.*
- ✦ *The Government could take steps, in collaboration with relevant stakeholders, to identify relevant ways to determine whether or not a child worked in another factory, shop or establishment on the same day, in order ensure the effective implementation of the Factories Act and the Shops and Establishments Law.*

### 4.3.2. Night work

#### *International standards*

International labour standards prohibit night work for children under the age of 18 years as a matter of principle. In that regard, it shall be reminded that Paragraph 3 (e) of ILO Recommendation No. 190 provides that in determining the list of types of hazardous work, referred to under Article 3(d) of ILO Convention No. 182, to be prohibited for children under 18 years consideration should be given, inter alia, to work under particularly difficult conditions such as work for long hours or during the night (for further information, please refer to the sections 2.3 and 3.4 on hazardous work).

Certain limited exceptions may be permitted, as follows:

- Children over the age of 16 years in a limited list of industrial undertaking on work which, by reason of the nature of the process, is required to be carried on continuously day and night<sup>107</sup> (Article 2, Paragraph 2 of the ILO on Night Work of Young Persons (Industry) Convention, 1919 (No. 6));
- Work which is not deemed to be harmful, prejudicial or dangerous, in family enterprises in which only parents and their children or wards are employed (Article 1, Paragraph 4 (b) of ILO Night Work of Young Persons (Non-Industrial Occupations) Convention, 1946 (No. 79));
- Young persons between 16 and 18 years for apprenticeship or vocational training in specified industries or occupations which are required to be carried out on continuously (Article 3(2) of the ILO Night Work of Young Persons (Industry) (Revised) Convention, 1948 (No. 90)).

Myanmar has ratified ILO Convention No. 6 but has not ratified ILO Conventions Nos. 79 and 90.

#### *National laws and regulations*

The Child Rights Law does not contain any specific provisions regarding night work for children.

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<sup>107</sup> This limitative list includes: manufacture of iron and steel; glass works; manufacture of paper; manufacture of raw sugar and gold mining reduction work.

As indicated above, both the Factories Act, as amended in 2016 (section 79 (1)), and the Shops and Establishments Law, 2016 (section 14(b)), prohibit work between 6 p.m. and 6 a.m. for children under the age of 16 years.

In its 2017 observation on the application of ILO Convention No. 6, the CEACR however expressed concern about section 78(1) and (3) of the Factories Act, as amended, which provides that young persons between the ages of 16 and 18 may be declared by a registered medical doctor to be fit for employment to work as an adult and thus allowed to work between the hours of 6 p.m. and 6 a.m. The CEACR recalled that that Article 2(1) of ILO Convention No.6 prohibits the employment of all young persons *under the age of 18* during the night in any public or private industrial undertaking, or in any branch thereof, other than an undertaking in which only members of the same family are employed. The CEACR requested the Government to amend the Factories Act accordingly.<sup>108</sup>

Young workers who are not covered by the Factories Act or the Shops and Establishments Law do not seem to benefit from an appropriate protection regarding prohibition of night work.

### *Conclusions*

While the national legislation contains some provisions regarding the prohibition of night work for young workers, such prohibition does not apply to children in all sectors and allows for exception which are not in line with international standards.

### *Recommendations*

- ❖ *The Government should take steps to amend its labour laws in order to ensure that night work is prohibited for children under 18 years, in line with international standards.*
- ❖ *The Government should take steps to ensure that young workers working in all types of sectors and economic activity benefit from the prohibition of night work.*
- ❖ *The Government should consider including night work in the list of the types of hazardous work to be prohibited to children under 18 years, pursuant to ILO Convention No. 138 and 182.*

## **4.4. Occupational Safety and Health**

### *International standards*

Various risk factors are specific to young workers and could increase the risk of occupational accidents and diseases to which they are exposed, including: stage of physical, psychological and emotional development; level of education; job skills; and work experience. In addition to these individual factors, there also exists other factors, such as the workplace culture which hinders their ability or readiness to speak about occupational safety and health (OSH) issues; their lack of awareness of their rights and responsibilities regarding OSH; or their lack of bargaining power that more experienced workers may have. Furthermore, large numbers of young people work in the

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<sup>108</sup> See Observation (CEACR) - adopted in 2017, published 107th ILC session (2018) on the application of the Night Work of Young Persons (Industry) Convention, 1919 (No. 6).

informal economy, where they are more vulnerable to occupational accidents and diseases because informal economy jobs tend to give workers significant exposure to work hazards and provide them with limited social protection coverage.<sup>109</sup>

As a result, the ILO has developed a comprehensive set of international labour standards on occupational safety and health (more than 40 standards and more than 40 Codes of Practice) since its inception. While ILO OSH conventions provide for the protection of all workers from occupational accidents and diseases, some set out specific measures for the protection of young workers as follows:<sup>110</sup>

- *The Safety and Health in Agriculture Convention, 2001 (No. 184)*<sup>111</sup> has a section on young workers and hazardous work, and states in Article 16 that the minimum age for assignment to work in agriculture which by its nature or the circumstances in which it is carried out is likely to harm the safety and health of young persons shall not be less than 18 years (exception may be permissible as from 16 years under strict conditions). The accompanying Recommendation (No. 192) provides for the adoption of health surveillance measures for young workers (paragraph 4(3)).
- *The Construction Recommendation, 1988 (No. 175)* requires a minimum age (as prescribed by national laws or regulations) for drivers and operators of lifting appliances (paragraph 29).
- *The Asbestos Recommendation, 1986 (No. 172)* requires to devote special attention to the employment of young persons of less than 18 years of age in activities involving a risk of occupational exposure to asbestos (paragraph 1(3)).
- *The Conditions of Employment of Young Persons (Underground Work) Recommendation, 1965 (No. 125)* calls for the adoption of measures designed to safeguard the life and health of young persons employed or working in underground mines.
- *The Medical Examination of Young Persons (Industry) Convention, 1946 (No. 77), the Medical Examination of Young Persons (Non-Industrial Occupations) Convention, 1946 (No. 78) and the Medical Examination of Young Persons (Underground Work) Convention, 1965 (No. 124)*<sup>112</sup> require that there be pre-employment medical examinations for children and young persons under the age of 18 years, in order to check their fitness for the work in question, and they require that there be medical supervision until workers reach the age of 18. These requirements are extended to the age of 21 for occupations that involve high health risks. Furthermore, *the Medical Examination of Young Persons Recommendation, 1946 (No. 79)* recognizes that protection is still needed beyond the age of 18, as in most cases the adolescent stage of development does not end at 18 years of age (paragraph 7).

Other ILO Conventions provide for the protection of the safety, health and wellbeing of young persons. These provisions are to be found in instruments on labour inspection, hours of work, weekly

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<sup>109</sup> ILO (2018). *Improving the Safety and Health of Young Workers*, p.11.

<sup>110</sup> *Ibid.*, p. 22.

<sup>111</sup> This Convention has *not* been ratified by Myanmar.

<sup>112</sup> None of these Conventions has been ratified by Myanmar.



rest, paid leave and night work. There are further provisions specific to young workers in ILO Conventions on the protection of young seafarers well as on fishing and dock work.

### *National laws and regulations*

The Child Rights Law recognizes the importance of ensuring safety and health for working children and provides that the Ministry of Labour would be responsible for coordinating with relevant Union Ministries to ensure “full enjoyment of rights and protection for working children with provision of occupational safety including free from physical and verbal harassment as well as infringement of health rights” (sections 44 and 49(b)). However, the Child Rights Law does not contain further details in this regard. The Factories Act, as amended in 2016, also contains a number of specific provisions dealing with occupational safety and health (Chapters 3 and 4). Similarly the Shops and Establishments Law, 2016, contains a specific chapter on occupational safety and health (Chapter 7). Furthermore both laws provide that a child below 16 years may be employed only if a responsible registered doctor gives a certificate of fitness (section 76 of the Factories Act, as amended in 2016, and section 14(a) of the Shops and Establishments Law, 2016). However, as already mentioned, both labour laws are limited and only applicable to specific sectors.

In 2019, the Parliament adopted its first, stand-alone Occupational Safety and Health Law (*not yet in force, pending notification by the President*) which made progress in modernizing OSH standards. Some important features of this new law from the perspective of protecting young workers are analyzed below (please note that this is not a comprehensive analysis):

- *Scope of application (Chapter III):* this law applies to a wide range of industries and businesses for which previously no or little OSH standards had existed: most notably, construction, mining and agriculture, where the risks and incidents of occupational accidents and diseases were reported to be high. This is one of the most significant features of the OSH Law, because as far as safety and health standards are concerned, many industries/businesses or the employers and workers engaged therein which had previously been categorized as “informal” due to the lack of regulatory coverage, are now formally regulated by the legislation. This should reduce the vulnerability of young workers who are working in the industries/businesses that are not covered by the Factories Act and Shops and Establishments Law. Domestic work, unfortunately, is excluded, but the law provides that from time to time the Ministry of Labour can identify other industries and businesses to be covered.
- *Emphasis on “prevention” of occupational accidents and diseases (Chapter VIII Responsibilities of Employers and Workers):* the OSH Law places emphasis on “prevention” of workplace accidents and diseases, in particular through: assessment and removal of risks and hazards; medical check-up of workers; protective equipment for workers; precautionary plans and plans for emergency; OSH trainings for managers and workers; immediate reporting of negative conditions or events; protection of workers against dismissal or demotion for exercising their safety and health rights, etc.
- *Appointment of OSH officer and formation of OSH Committees in the workplaces (Chapter VI):* the Law requires the employer to appoint a person in charge of OSH to closely supervise workers’ safety and health in accordance with the industry type, and

to form a OSH Committee tasked with duties such as regularly checking any conditions that can impair OSH; advising the employer about the precautionary and educational plans; improving the coordination between the employer and workers, and to provide training; assessing and reviewing the relevant risk assessment of OSH management plan, etc. Employers should ensure that risk factors specific to young workers are recognized and addressed by such workplace management system. The Law specifically requires that, in forming OSH Committees, the “occupational safety and health of female workers” shall be taken into consideration (section 12(b)). While no specific mention is made to young workers in this provision, the implementing regulations of the OSH Law can mandate that the trainings to be provided to OSH officers and committee members expressly include protection of safety and health of young workers (section 26(h)). Finally, where there are young workers in the undertaking, they could also be specifically included in the workplace OSH mechanisms.

- *OSH Inspection (Chapter VII):* The Ministry of Labour is authorized to appoint inspection officers to implement the provisions of the OSH Law. Such inspection officers benefit from a range of powers, such as conducting on-site inspection; power to temporarily close a whole or part of the workplace if it is believed that there is a likelihood of occupational accident, disease or hazardous event, and instruct the employer to take the necessary measures; and power to prosecute the offenders who violate the provisions of the Law.

In its 2018 Decent Work Diagnostic Report, the ILO highlighted that gaps in the laws and weak compliance leaves many workers including women and children working in dangerous and hazardous conditions. Data on workplaces injuries is scarce since the keeping of occupational safety plans and reports of accidents by township labour offices is still very weak. The workers who are hired on a daily basis or are in the informal economy are not covered by any social protection laws and thus very vulnerable.<sup>113</sup>

### *Conclusions*

The national legislation contains a number of relevant provisions to ensure occupational safety and health to young workers. However, it remains to be seen how such provisions will be implemented in practice. The first stand-alone Occupational Safety and Health Law was adopted in 2019 but is not yet in force.

### *Recommendations*

- ✦ ***The Government should take the necessary steps for the effective coordination of the Ministry of Labour with relevant Union Ministries to ensure full enjoyment of rights and protection for working children with provision of occupational safety and health, as requested by section 49(b) of the Child Rights Law.***
- ✦ ***Myanmar should enact the 2019 OSH Law.***

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<sup>113</sup> See ILO, Decent Work Diagnostic Report, Myanmar’s progress and challenges, 2018.

## 4.5. Social security

### *International standards*

Adequate systems of social security are a powerful instrument to prevent child labour, by alleviating poverty and shocks (e.g. economic or health-related shocks) resulting in a loss family income for the households which may otherwise have to resort to child labour.<sup>114</sup> The right to social security is recognized in a range of international human rights instruments, starting with the Universal Declaration of Human Rights of 1948 (Article 22).

ILO instruments on social security are “unique”, as they set out minimum standards for protection to guide the development of benefit schemes and national social security systems, based on good practices from all regions of the world. They are therefore based on the principle that there is no single model for social security, and offer a range of options and flexibility clauses so that each country can progressively achieve the objective of the universal coverage of the population. Among the relevant ILO instruments on social security are the Social Security (Minimum Standards) Convention, 1952 (No. 102) (*not ratified by Myanmar*) and the Social Protection Floors Recommendation, 2012 (No. 202), which can be both considered as framework instruments.

- *Convention No. 102* sets out minimum standard for the level of social security benefits and the conditions under which they are granted. It covers the 9 principal branches of social security: i.e. medical care, sickness, unemployment, old age, employment injury, family, maternity, invalidity and survivors' benefits.
- *Recommendation No. 202* provides guidance on introducing or maintaining social protection floors and on implementing social protection floors as part of strategies to extend higher levels of social security to as many people as possible.

### *National laws and regulations*

Myanmar has ratified several ILO instruments on workmen's compensation,<sup>115</sup> all of which had been identified by the ILO Governing Body as «outdated instruments» thus encouraging Member States to ratify most up-to-date instruments in this subject area, such as the Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121) and the Social Security (Minimum Standards) Convention, 1952 (No. 102), accepting the obligations in its Part VI. To date, Myanmar has ratified neither Convention No. 102, neither Convention No. 121 but, in 2020, the Ministry of Labour was considering the ratification of Convention No. 102 and had been receiving technical assistance from the ILO in this regard.

The Social Security Law was enacted in August 2012, with the technical assistance of the ILO. This law covers the nine contingencies established by ILO Convention No. 102 and aims at

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<sup>114</sup> ILO website, “Child Labour and Social Protection”.

<sup>115</sup> Namely the Workmen's Compensation (Accidents) Convention, 1925 (No. 17); the Workmen's Compensation (Occupational Diseases) Convention, 1925 (No. 18); and the Workmen's Compensation (Occupational Diseases) Convention (revised), 1934 (No. 42).

providing some improvements to the social security protection of workers in Myanmar. It also opens the way for the protection of workers in smaller enterprises and outside formal employment (agriculture, informal sector, family businesses), through the establishment of a voluntary scheme. The Social Security Law was developed based on a careful study of ILO social security up-to-date conventions and recommendations, as well as other countries' legal frameworks. However, some aspects of the law differ from the core provisions of ILO Convention No. 102, such as those related with coverage of dependents, and adequacy and periodicity of benefits, which may have implications for the potential of the Social Security Law to serve as an instrument to prevent child labour.

Indeed, under the Social Security Law, all workers employed in covered establishments<sup>116</sup> are compulsorily insured irrespective of the type and nature of their employment, the duration of their contract and the level or form of their remuneration. For workers who do not fall under the mandatory registration, the new law created an option for their voluntary registration but the fact that voluntary registration implies that workers pay both their contributions and the employer's contributions may not allow for the rapid coverage of the workers in the informal economy and their families. Secondly, in extending the social security to all workers, it is important to ensure that young workers are entitled to social security just as equally as adult workers. In any instances, considering the structure of the labour market in Myanmar, the introduction of some universal social protection schemes (such as universal access to health care or universal cash transfers for families with children) seem necessary in order to effectively ensure that families do not need to resort to child labour as a result of a financial shock or because they live in poverty.” The Government of Myanmar formulated a national social protection strategic plan (NSPSP) which includes provisions for universal child benefits and benefits for children living with disabilities.

The Child Rights Law and other labour laws do not contain specific provisions regarding access of young workers to social security benefits.

### *Conclusions*

The national legislation provides for the mandatory registration of workers employed in determined establishments, as well as for a voluntary scheme of registration for workers in smaller enterprises and outside formal employment, where a large number of young workers may be found. However, the effectiveness of the voluntary scheme has been limited so far in particular as a result of the financial burden it places on workers. The national legislation does not contain specific provisions regarding the access of young workers to social security benefits.

### *Recommendations*

- ✦ ***The Government could consider introducing some universal social protection schemes or enlarging the list of workers that fall under mandatory social security registration, pursuant to the national legislation, to overcome shortcomings identified in the voluntary scheme that may affect particularly young workers.***

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<sup>116</sup> The list of establishments includes: (i) industrial establishments in which at least 5 persons are employed; (ii) establishments covered under the shops and Establishments Act (1951); (iii) railways under the Myanmar Railways Enterprises; (iv) public industrial and transport establishments under the Union Government or a local authority; (v) ports, mines, oilfields, and docks; (vi) the Ministry of Labour; and (vii) any other establishments as may be notified by the competent authority from time to time.

## 4.6. Migration of young workers

### *International standards*

Several ILO instruments set conditions and standards for the migration of young workers above the minimum age for admission to employment. While the risks of exploitation and abuse of young workers, including trafficking in persons, could be higher than their adult counterparts because of their young age or inexperience, when young workers migrate “in conditions of freedom, dignity, equity and security, they can boost economic and social development both of countries of origin and destination.”<sup>117</sup> In fact, if prohibited, young workers may have to resort to unlawful or irregular ways to migrate, which in turn would put them at greater risk of abuse and exploitation without access to protection mechanisms.<sup>118</sup>

Several ILO instruments focus on migrant workers, while a large number of other ILO instruments contain relevant provisions for this specific category of workers. For example, the ILO Private Employment Agencies Convention, 1997 (No.181) requires Member States to take measures to ensure that child labour is not used or supplied by private employment agencies (Article 9).<sup>119</sup> Furthermore, the UN International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families and Convention on the Elimination Against Discrimination Against Women (CEDAW) offer relevant guidance in that respect. Box No. 5 below provides an overview of the international standards particularly relevant in this area.

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<sup>117</sup> ILO website, “Youth and migration”.

<sup>118</sup> For instance, Myanmar put a ban on migration for domestic work abroad. But because it is harder to recruit under the ban and because there is still a high demand for domestic work abroad, interviewed women reported that recruiters are not allowing them to return home upon complaints of exploitation. The ban is also reported to have potentially “enhanced and entrenched systems of production of fake documents in countries of origin” to send underage children abroad for domestic work. ILO and UN Women (2017). “Protected or Put in Harm’s Way?: Bans and restrictions on women’s labour migration in ASEAN countries”, p.40.

<sup>119</sup> This Convention has *not* been ratified by Myanmar.

## Box 5: Table on relevant international standards on migrant workers<sup>120</sup>

### Specific instruments on migrant workers:

- UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990 (CMW)
- ILO Migration for Employment Convention (Revised), 1949 (No. 97)
- ILO Migration for Employment Recommendation (Revised), 1949 (No. 86)
- ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)
- ILO Migrant Workers Recommendation, 1975 (No. 151)

### Selected instruments containing relevant provisions on migrant workers:

- UN International Convention on the Elimination Against Discrimination Against Women, 1979 (CEDAW)
- ILO Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19)
- ILO Employment Service Convention, 1948 (No. 88)
- ILO Social Security (Minimum Standards) Convention, 1952 (No. 102)
- ILO Protection of Migrant Workers (Underdeveloped Countries) Recommendation,

### *National laws and regulations*

The Child Rights Law and labour laws do not contain any specific provision regarding regular migration of young workers.

The Law Relating to Overseas Employment, 1999 does not specify the ages of the workers who are permitted to seek and obtain employment overseas. This means that migration of young workers between 14 and 18 years is not specifically prohibited by law; that is to say, other than in its worst forms of child labour such as in particular trafficking<sup>121</sup>. However, in 2016, the employment agencies of Myanmar adopted the Code of Conduct for the Members of Myanmar Overseas Employment Agencies Federation, which was elaborated with the technical assistance of the ILO. The members to this Code agree to uphold “ethical business standards” with regards to “legal compliance”, “recruitment”, “training”, etc, and in practice these agencies do not engage in recruitment of underage children.<sup>122</sup>

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<sup>120</sup> Except CEDAW and ILO Convention No. 19, none of the international standards referred to into Box No. 5 has been ratified by Myanmar.

<sup>121</sup> For further information, please refer to section 3 above.

<sup>122</sup> There are situations in which underage children may migrate together with their parents, and when they reach legally employable age they may start to work in the host countries.

Myanmar has concluded a Memorandum of Understanding (MoU) on labour migration with Thailand,<sup>123</sup> which is the major destination country for Myanmar migrant workers whose number was reported to be over 2.2 millions (officially registered migrants, as of September 2018)<sup>124</sup>. Under the MoU, both parties shall “work towards the encouragement of technical cooperation between the two countries in the field of labour”, including concerning the “exchange of information for prevention of illegal recruiting of manpower and human trafficking for employment” (article 2); “cooperate on skill development in order to upgrade skill of manpower, and enhance labour productivity” (article 3); and “make efforts to enhance transparency and efficiency of the sending and receiving process for the workers from one country who intend to work legally in another country” (article 5).<sup>125</sup> In Thailand, the legal minimum age for employment is 15 years. So in theory, young workers from Myanmar who are over 15 years could also migrate for employment under the MoU. However, in reality, migration of young workers is not promoted or governed through official channels.<sup>126</sup> While it is still possible that young workers migrate lawfully in accordance with both the legislation of Myanmar and Thailand and the MoU, simply very little information or data is available, for instance in which sectors or businesses in Thailand are Myanmar young workers working lawfully, under what conditions (employment contracts, wages, working hours, etc). Rather, more information is available on exploitation and abuse such as trafficking.

While there is limited data, some studies indicate that in some cases, if not many, young workers find themselves in unlawful or irregular situations, therefore enjoying little or no protection in their workplaces in foreign countries.

### *Conclusions*

The national legislation does not contain specific provisions regulating the conditions for regular migration of young workers abroad which may give rise to migration through irregular channels. While Myanmar has concluded a Memorandum of Understanding with Thailand, no specific clause refers to the migration of young workers and very limited data is available on the proportion and working conditions of young workers there.

### *Recommendations*

- ✦ ***The Government could consider including in its national legislation, as well as in any Memorandum of Understanding, provisions aimed at ensuring appropriate protection and services for young workers who are entitled to migrate through regular channels.***
- ✦ ***Such provisions could, for example, expressly:***

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<sup>123</sup> “Memorandum of Understanding Between The Government of the Kingdom of Thailand and The Government of the Republic of the Union of Myanmar on Labour Cooperation”, signed in Bangkok on 24 June, 2016 by HE Sirichai Distakul, Minister of Labour, Thailand and HE Thein Swe, Union Minister for Labour, Immigration and Population, Myanmar.

<sup>124</sup> See Irrawaddy News, “The Struggle Continues for Myanmar Migrants in Thailand”, dated 2 May 2019.

<sup>125</sup> According to the ILO TRIANGLE in ASEAN Project funded by Australian Aid, since 2002, Thailand has concluded MoUs on labour migration with the Governments of Cambodia, Lao PDR and Myanmar, but only a small proportion of migrants have entered Thailand through the MoU process “due to the complicated, lengthy, and expensive procedures involved”. Thailand then revised the MoUs in 2015 and 2016 to broaden cooperation on labour issues, and further developed a more comprehensive legal framework to manage labour migration in parallel with the implementation of the MoU processes. Overall, an increased number of migrant workers have been recruited through these formal channels. For further information, see ILO, “TRIANGLE in ASEAN Quarterly Briefing Note: Thailand (July - September 2019)”.

<sup>126</sup> Interview with the ILO Yangon Office.

- a) prohibit overseas recruitment of children who are younger than Myanmar's legal minimum age for admission to work;*
- b) prohibit unlawful recruitment practices while providing for effective and sufficiently dissuasive sanctions as well as remedial measures for the workers;*
- c) provide for the use of official channels to send young workers only to countries whose national laws are in compliance with the international standards on the elimination of child labour and protection of young workers (such as through bilateral or multilateral memorandum of understanding); and*
- d) assist young migrant workers at all stages of the migration process.*



# CHAPTER III - Monitoring and enforcement

## 1. Monitoring

### *National laws and regulations*

The Child Rights Law provides for the establishment of a National Committee for the Rights of the Child in order to implement the provisions of the law effectively, together with Region or State Committees on the Rights of the Child (sections 5 and 8). Section 49(b) further provides that the Ministry of Labour, Immigration and Population shall coordinate with relevant Union Ministries to ensure compliance with this Law in the employment of children. With respect to children in armed conflict, the Child Rights Law provides that respective governmental departments, governmental organizations, armed forces and armed groups shall take possible measures to prevent and provide protection against physical, psychological and sexual violence against children and against the recruitment and use in the armed conflict who have not attained the age of 18 years (section 60). Furthermore, section 120 of the Child Rights Law provides that in implementing the provisions of this Law: (a) the Ministry may issue the Rules, Regulations and Provisions with the approval of the Union Government; (b) the National Committee, the Union Supreme Court, respective Union Ministries, and governmental departments and governmental organizations concerned may issue the Notifications, Orders, Directives and Procedures; and (c) The Department concerned may issue the Notifications, Orders, Directives and Procedures.

Section 10 of the Factories Act, as amended in 2016, provides that Union Minister, the Ministry of Labour, Employment and Social Security can appoint inspectors to inspect factories. Section 80 of the Factories Act, as amended in 2016, provides that every factory in which children who have completed 14 years<sup>127</sup> are employed shall maintain a register of child workers to be available to the inspectors at all times during working hours. The Shops and Establishments Law, 2016, also provides that the Ministry may appoint inspectors for fulfilling the objectives of this Law, which are to fix working hours for workers; enjoy appropriate wages and safety at workplaces, as well as protect the right of health for workers (Sections 3 and 4). Furthermore, any worker can launch a report on violation of any provision of the law (section 32(a)) and an inspector with the approval of the chief inspector may prosecute an employer or a manager in case of non-compliance with the provisions of the Shops and Establishments Law (section 33).

The UN Committee on the Rights of the Child however expressed concern at the absence of systematic labour inspections and recommended that the Government “improve labour inspections to ensure that these comprehensively monitor all aspects of the work environment, including the use of child labour”.<sup>128</sup> Similarly, in 2018, the CEACR urged the Government to “intensify its efforts to eliminate hazardous child labour, including through strengthening the capacity and expanding the reach of labour inspectors to detect hazardous child labour, particularly in the informal economy.”<sup>129</sup> In 2018-2019, the ILO provided awareness programmes on child labour to some selected labour inspectors. According to the 2020 US Country Report on human rights practices in Myanmar, trained

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<sup>127</sup> As defined by section 2(a) of the Factories Act, as amended in 2016.

<sup>128</sup> See CRC/C/MMR/CO/3-4, 14 March 2012, paragraph 85 (e).

<sup>129</sup> See Observation (CEACR) - adopted 2018, published 108th ILC session (2019) concerning the application of the Worst Forms of Child Labour Convention, 1999 (No. 182) by Myanmar.

inspectors from the Factories and General Labour Laws Inspection Department monitored the application of these regulations, but their legal authority only extends to factories. In addition, inspectors were hindered by a general lack of resources. Workers' organizations alleged government inspections were rare and often announced with several days' notice that allowed factory owners to bring facilities—often temporarily—into compliance. Corruption and bribery of inspectors reportedly occurred, according to UNICEF, unions, and the labour NGO Solidarity Center.<sup>130</sup>

Following the adoption of the National Action Plan on Child Labour in 2019, Myanmar was considering in 2020 establishing a Child Labour Monitoring System (CLMS). One of the purposes and roles of a CLMS is to identify children trapped in child labour and remove them from labour exploitation, as well as to protect young children from hazardous work. The ILO and UNICEF have been working together to mainstream the CLMS into the Child Protection Case Management System. As of late 2020, the Standard Operating Procedures were being reviewed by all the development partners, UN agencies, international NGOs and civil society organizations in line with the Child Rights Law.

### *Conclusions*

While the national legislation provide for monitoring mechanisms, such mechanisms are still to be elaborated or implemented, or when they do exist often lack efficiency and face resources constraints in practice. A Child Labour Monitoring System was under consideration in 2020 but not operational.

### *Recommendations*

- ❖ *The Government should establish the National, Regional and States Committees for the Rights of the Child, as provided for under the Child Rights Law.*
- ❖ *The Government should operationalize a Child Labour Monitoring System.*
- ❖ *The Government should strengthen the system of labour inspection, by providing adequate human and financial resources, and take any necessary steps to ensure systematic labour inspections in all sectors of activity.*
- ❖ *The Government should enhance inter-ministerial cooperation, in particular the cooperation between the Ministry of Labour, Immigration and Population and the Ministry of Social Welfare, Relief and Re-settlement, the Ministry of Education, and the Ministry of Health.*

## **2. Enforcement**

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<sup>130</sup> See US Department, 2020 Country Reports on Human Rights Practices: Burma, 30 March 2021.

## 2.1. Penalties

### *International standards*

Sufficient dissuasive penalties are necessary to act as deterrent and contribute to the effective elimination of child labour. International instruments request ratifying States to ensure appropriate penalties and other sanctions in case of child labour, including penal sanctions for child labour in its worst forms (Article 25 of Convention No. 29; Article 9(1) of Convention No. 138; Article 7(1) of Convention No.182; and Article 32(2)(c) of the CRC). Paragraph 12 of ILO Recommendation No. 190 further requires that Members States should provide criminal offenses for the following worst forms of child labour: (a) all forms of slavery or practices similar to slavery; (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances; and (c) the use, procuring or offering of a child for illicit activities. Penalties, including criminal penalties, or where appropriate, other sanctions, shall be applied in case of engagement of children in hazardous work.

The Optional Protocol to the CRC on the sale of children, child prostitution and child pornography, ratified by Myanmar, also provides that State Parties shall ensure that, as a minimum, (a) offering, delivering or accepting, by whatever means, a child for the purpose of sexual exploitation or engagement of the child in forced labour; (b) offering, obtaining, procuring or providing a child for child prostitution; and (c) producing, distributing, disseminating, importing, exporting, offering, selling or possessing for the purpose of child pornography are fully covered under its criminal or penal law and child pornography (article 3)

### *National laws and regulations*

The Child Rights Law provides for specific penalties of imprisonment and/or a fine for three out of the four worst forms of child labour, however in case of the involvement of children in illegal drug operations, the law only refers to penalties provided for under «one of the relevant existing legislation» (section 108). Similarly, the Child Rights Law does not establish specific penalties for the employment of children under the general minimum age for admission to work.

For clarity purposes, the following paragraphs will examine the penalties provided in the national legislation for each offenses regarding child labour, including in its worst forms.

#### *Employment of children below the legal minimum age for admission to work*

As indicated above, the Child Rights Law does not provide for specific penalties in case of employment of children below the legal minimum age for admission to work, thus generally providing that «committing any of the offences or prohibitions stipulated in this law including exploitation which was not specified for separate punishment by this law shall be punished by one of the relevant existing legislation» (section 108). In practice, this provision can lead to major implementation problem because the existing labour laws only apply to limited sectors, such as factories and shops and establishments, and therefore there can be no penalties for the employment of underage children in any other sectors or businesses that are not covered by the existing legislation.

As regards penalties provided in the labour laws, breaches of the Factories Act are liable to imprisonment for a term which may extend to three months or/and a fine, and in case of repetition of the infringement penalties can be doubled (sections 85 and 86). Section 27 of the Shops and Establishments Law, 2016, provides that employment of children below the legal minimum age for admission to work shall be punished by imprisonment for a term not exceeding six months or a fine.

### ***Sale and trafficking of children***

The Penal Code prohibits the sale of children but it appears to be limited for the purpose of sexual exploitation or for “any unlawful and immoral purpose (Article 372).<sup>131</sup> The Child Rights Law now goes further and prohibits and criminalizes the sale of children regardless of its purposes (sections 3(p) and (t), 48(a), and 106(a)), and provides for penalties of imprisonment for a term of minimum 10 years to maximum 20 years and a fine (section 106(a)).

As regards trafficking of children, the Child Rights Law does not provide for specific penalties, thus referring to «relevant existing legislation» (section 108). Section 24 of the Anti-Trafficking in Persons Law of 2005 provides that trafficking of children (persons under 16 years, section 3 of the Law) and youth (persons between 16 and 18 years) shall be punished with imprisonment for a period from ten years to life imprisonment and a fine.

### ***Forced labour***

The Ward or Village Tract Administration Act of 2012 makes the use of forced labour by any person a criminal offence punishable with imprisonment and a fine (section 27A).

Section 103(a)(4) of the Child Rights Law provides that forced labour or forced servitude is punished by imprisonment for a term of minimum 8 months to maximum 5 years and a fine.

### ***Recruitment of children for use in armed conflicts***

Section 104 of the Child Rights Laws provide any individual who, knowingly or through “failure to inspect,” engage in child soldier recruitment or use<sup>132</sup> is punished by imprisonment for a term not exceeding between 2 or 10 years.

Furthermore, section 103(b)(1) provides that use of children during armed conflicts in logistical works such as transporting food, weapons or supplies, use as a guide or use by any other means shall be punished with imprisonment for a term of minimum 1 year to maximum 6 years and a fine.

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<sup>131</sup> It provides as follows: “Whoever sells, lets to hire, or otherwise disposes of any person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

<sup>132</sup> As defined in sections 63 and 64 of the Child Rights Law.

### ***Prostitution/child pornography***

The Child Rights Law provides that employing or permitting a child to work for purposes of prostitution at such an establishment as a hotel, motel, guest house, inn, beauty parlor or restaurant (section 105(a)(3)); as well as the production of child pornography or offering selling, possession, importing or exporting pornographic contents related to children (section 105(a)(4)) are punished by imprisonment for a term of minimum 1 year to maximum 7 years and a fine.

Furthermore, employing a child as a prostitute or using or offering the child for sexual abuse or exploitation is punished by imprisonment for a term of minimum 2 years to maximum 10 years and a fine (section 105(b) of the Child Rights Law).

The Penal Code also punishes with imprisonment and a fine whoever “sells, lets for hire, or otherwise disposes” or “buys, hires or otherwise obtain possession” of “any person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be employed or used for any such purpose” (Sections 372 and 373).

Furthermore, section 27 of the Anti-Trafficking Law provides that making use of a victim of trafficking for the purpose of pornography shall be punished with imprisonment for a period of five to ten years and a fine.

### ***Illicit activities***

The Child Rights Law provides that urging, inducing or abetting a child to gamble shall be punished by imprisonment for a term of minimum 2 months to maximum 9 months and a fine (section 100(b)). Furthermore, failure to prevent a child under his or her guardianship from begging, employing a child to beg or making use of the child under his or her livelihood for begging is punished by imprisonment for a term of minimum 6 months to maximum 3 years and a fine (section 102).

However, as already mentioned above, the Child Rights Law does not provide for specific penalties for the use, procuring or offering of a child for the production and trafficking of drugs, section 108 thus referring to penalties under «relevant existing legislations. »

Section 22(c) of the Narcotic Drugs and Psychotropic Substances Law of 1993 provides that making use of children who have not completed the age of 16 years in the commission of the offenses provided in acts related to the production, distribution, transportation, importation and exportation of a narcotic drug or psychotropic substance shall be punished by maximum punishment which means between 10 years of imprisonment to an unlimited period of imprisonment or death sentence.

However, no specific penalties are provided for children involved in the production or trafficking of drugs who are between 16 years and 18 years; nor for the procuring or offering of a child for the production and trafficking of drugs.

### ***Hazardous work***

Section 103(a)(3) of the Child Rights Law provides that employing or permitting a child to perform work which is hazardous or harmful to his or her health shall be punished by imprisonment for a term of minimum 8 months to maximum 5 years and a fine.

\* \* \*

The Child Rights also provides that anyone who has been found guilty of attempting or conspiring to commit any of the offenses specified in this law or of aiding and abetting any such commission shall be sentenced to the same penalties as the commission of the offence as provided for in this law (section 107), and that relevant court may also order the offender to pay appropriate compensation to the child victim for the suffering that has been experienced (section 109).

### *Conclusions*

The penalties provided by the national legislation in case of child labour, including in its worst forms, seem sufficiently severe and dissuasive in the meaning of ILO instruments. However, penalties applicable in case of (i) employment of children below the legal minimum age for admission to work in sectors not regulated by labour laws; and (ii) in case of procuring or offering a child for the production and trafficking of drugs, as well as for the use of a child aged between 16 and 18 years to this end, do not appear clearly in the national legislation which may lead to some confusion in practice.

### *Recommendations*

- ◆ ***For legal certainty purposes, the Government should set explicit and dissuasive penalties in case of involvement of children in the production and trafficking of drugs, as well as in case of employment of children under the legal minimum age for admission to work, in particular in the regulations to be adopted under the Child Rights Law.***
- ◆ ***The Government could consider completing the penal sanctions provided for under the national legislation with legally mandated and appropriate administrative sanctions administered through labour inspectors, for greater efficiency in applying legal sanctions.***<sup>133</sup>

## **2.2. Enforcement**

As regularly reaffirmed by the CEACR, effective legislation requires adequate penalties that are enforced in practice.

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<sup>133</sup> For further information, please refer to the section below on enforcement.

Section 20 of the Child Rights Law provides that in case of a child getting any of his or her right infringed, the victim child or his or her parent or guardian on behalf of the child or any relevant person has the right to report the case to regional committee or respective governmental department or governmental organization or court.

Regarding, more particularly, recruitment of children for use in armed conflict, the Child Rights Law provides that respective governmental departments, governmental organizations, armed forces and armed groups shall ensure the prosecution of those responsible for violations against children in connection with armed conflict. If the violators are military personnel of the *Tatmataw* (the regular armed forces of Myanmar), the case shall be proceeded by transferring to military jurisdiction. After having this transfer, a copy of the ruling from the military tribunal shall be requested and sent to the family of the violated child (section 60(d)). The Law further provide that it shall be ensured that all charges against children involved in armed conflict, except serious offences possible to be punished with death penalty, life imprisonment, indefinite imprisonment or 20 years imprisonment, shall be dropped immediately, and that the children be handed over to the Department of Social Welfare for reformation and care at a Training School, Shelter or Temporary Care Station (section 60(e)). However, the Government still needs to develop the rules and procedures for the implementation of the Child Rights Law.

The UN Committee on the Rights of the Child expressed concern about the lack of enforcement of the labour laws<sup>134</sup> and therefore recommended the Government to strengthen it, in particular to prosecute those who make use of forced labour of children<sup>135</sup> and to take the appropriate measures to systematize and institutionalize disciplinary processes and/or action against the military officers and civilians responsible for recruiting and using child labour.<sup>136</sup>

In its 2020 observation on the application of ILO Convention No. 29, the CEACR noted that from April 2019 to July 2020, ten military officers and eight military personnel were punished for the irregular recruitment of children. Moreover, 23 underage children who were irregularly recruited were released. The CEACR, however, noted the lack of information on the concrete penalties applied to the ten military officers and eight military personnel for the irregular recruitment of children. The CEACR further noted that no one was punished under the Ward or Village Tract Administration Act and the Penal Code from July 2018 to July 2019 for the involvement of children in forced labour. The CEACR therefore strongly urged the Government to take the necessary measures to ensure the strict application of the national legislation, so that sufficiently dissuasive penalties of imprisonment are imposed and enforced against perpetrators in all cases.<sup>137</sup> According to the 2021 US Trafficking in Persons report, the Government's national forced labour complaints mechanism, which went into effect in February 2020, received 58 complaints of suspected forced labor crimes; however, the Government did not report if any of these complaints resulted in the identification of victims or criminal investigations.

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<sup>134</sup> See CRC/C/MMR/CO/3-4, 14 March 2012, paragraph 85 (d).

<sup>135</sup> See CRC/C/MMR/CO/3-4, 14 March 2012, paragraph 86(d).

<sup>136</sup> See CRC/C/MMR/CO/3-4, 14 March 2012, paragraph 86 (e).

<sup>137</sup> See Observation (CEACR) - adopted 2020, published 109th ILC session (2021) on the application of the Forced Labour Convention, 1930 (No. 29) by Myanmar.

While a Central Body for Suppression of Trafficking in Persons (CBTIP) was established with three working groups functioning under it and an Anti-trafficking in Persons Division, in its 2020 direct request on the application of ILO Convention No. 29, the CEACR requested the Government to provide information on the measures taken to strengthen the capacities of the law enforcement officials as well as to provide information on the activities undertaken by the Anti-Trafficking in Persons Division under the CBTIP to combat trafficking in persons.<sup>138</sup>

On November 2020, in the context of the UPR, the OHCHR stated that the weakness and lack of independence of the judiciary remained detrimental to the rule of law. Influence of the military over civilian court proceedings, widespread corruption, violations of basic fair trial rights, and the reluctance of the prosecution to accept petitions from victims of gross human rights violations to initiate criminal proceedings, affected both minorities and the majority population. Legal representation and access to judicial remedies were further compromised by the difficult economic situation of most victims. The barriers routinely faced in the justice system by minorities, particularly women, and the general mistrust of the State, meant that the majority of people did not utilize formal justice mechanisms. Lawyers, and victims or their families, were often subjected to intimidation, reprisals and disciplinary actions. Furthermore, the Special Rapporteur on Myanmar recommended that all actors in the justice sector genuinely engage in further reforms to improve the independence of the judiciary and respect for fair trial rights.<sup>139</sup>

Several international supervisory bodies highlighted that law enforcement on child labour violations is very weak and remains an important challenge in Myanmar, due to a number of reasons, including:

- the prevalence of work in the informal economy;
- the general lack of awareness of labour laws and the Child Rights law not only amongst Government's officials but also township administrations, the police, law enforcement authorities, employers, workers and communities; and
- the low level of prosecution under labour laws and the Child rights Law, in particular as a result of the limited knowledge of both employers and employees about what actually constitutes child labour.<sup>140</sup>

Key stakeholders also highlighted a number of concerns about weak law enforcement during interviews that took place in 2020 (for further information in this regard, please refer to table 8 below).

One of the specific practical difficulties which has been identified in enforcing the prohibition of employment of underage children in Myanmar is linked to **age verification**. In Myanmar, children often do not have any official identification documents at all or that those documents (such as birth certificate, national identity card, etc) are inaccurate.<sup>141</sup> In the context of the 2020 UPR, the UN

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<sup>138</sup> See Direct request (CEACR) - adopted 2020, published 109th ILC session (2021) on the application of the Forced Labour Convention, 1930 (No. 29) by Myanmar .

<sup>139</sup> See A/HRC/WG.6/37/MMR/2, 12 November 2020, para. 18.

<sup>140</sup> ILO My-PEC. 2014. "Mapping of Policies, Programmes and Institutions Related to Child Labour in Myanmar", November 2014, p. 11.

<sup>141</sup> For instance, acknowledging this problem, the Fair Wear Foundation, an NGO, published "Guidance: Age Verification at Garment Factories in Myanmar". The Guide recommends the factories to collect the following documents from all the new recruits: 3 recent photos; Myanmar National ID Card; Labour Registration Card; and Household Registration List (p. 5).



country team noted that more than a million children under the age of 5 had not been registered at birth. In Kachin and Shan, almost 70 per cent of children lacked birth certificates. In Rakhine, the situation of Rohingya had been exacerbated by continued restrictions on movement, difficulties in accessing medical services, and the recording of the ethnicity of the child’s parents on the birth certificate as “Bengali”.<sup>142</sup>

The Factories Act addresses this problem by providing a reverse onus on the employer to establish that a child is not under the legal minimum age for admission to work (section 96 (1)).<sup>143</sup> While section 21 of the Child Rights Law provides that all children born within the country shall have the right to birth registration free of charge and without any discrimination, it does not contain similar provisions regarding the onus as to age.

**Table 8: Interview results (2020) on the stakeholders’ views about weak law enforcement**

	Reasons for weak law enforcement	Suggestions for improvement
<b>Government</b>	<ul style="list-style-type: none"> <li>Limited HR resources (Police Officer, Labour Inspectors)</li> <li>Lack of efficient punishment and long-time court procedures</li> <li>No specific related law</li> <li>The compliance and participation of public in law enforcement is important.</li> </ul>	<ul style="list-style-type: none"> <li>Coordination of stakeholders to enforce the law</li> <li>Promotion of Public Awareness</li> <li>The relevant Ministry should set up a separate monitoring unit to investigate child labour issues.</li> <li>To make law enforcement effective, public awareness is essential and also the punishment for the violation of laws should be deterrent and efficient.</li> </ul>
<b>Employers’ organization</b>	<ul style="list-style-type: none"> <li>No information</li> </ul>	<p>If the reason of weak law enforcement is the lack of knowledge, we need to consider awareness programmes which are the very important first step in enforcing new laws .</p>
<b>Workers’ organizations</b>	<ul style="list-style-type: none"> <li>Lack of law efficiency</li> <li>Lack of public awareness</li> <li>Due to each family financial demand</li> <li>Main root cause is poverty</li> </ul>	<ul style="list-style-type: none"> <li>Awareness programmes</li> <li>The Government should take into consideration the minimum wage to cover for the whole expenses including cost of children and any other dependents</li> </ul>
<b>Law Academic</b>		<ul style="list-style-type: none"> <li>The relevant Ministry should set up a separate inspection unit to investigate and monitor child labour issues. The unit should be sustainable: if the officials are rotated, the unit office must keep and record the data in a sustainable manner.</li> </ul>
<b>UN</b>	<ul style="list-style-type: none"> <li>Weakness of responsibility and accountability of the Government’s officials.</li> <li>Lack of logical/reasonable thinking by the officials.</li> <li>Lack of technical knowledge and strong commitment of the senior officials including Director Generals.</li> </ul>	<ul style="list-style-type: none"> <li>Coordination of Ministries and development partners is a must.</li> <li>Monitoring/Referral mechanisms should also be established for the enforcement of law.</li> </ul>

<sup>142</sup> See [A/HRC/WG.6/37/MMR/2](#), 12 November 2020, para. 50.

<sup>143</sup> Section 96(2) provides that a certifying surgeon who has personally examined the worker and believes this worker to be underage may declare so in writing, and it shall be admissible as evidence of the age of that worker.

	Reasons for weak law enforcement	Suggestions for improvement
NGOs	<ul style="list-style-type: none"> <li>• Corruption</li> <li>• Limited knowledge, financial and network regarding the court procedures</li> <li>• Poor knowledge on Human Rights</li> <li>• The legislature or Government's officials who are initiating drafting the Child Rights Law or other relevant officials should have strong knowledge of the best interests of the child and child development.</li> </ul>	<ul style="list-style-type: none"> <li>• Law enforcement agencies should take their responsibility in full capacity</li> <li>• Capacity building trainings for the officials and awareness programmes for the community</li> <li>• Constitution and existing laws to be amended</li> <li>• There must be laws to comply signed/ ratified international conventions and treaties.</li> <li>• To provide a training on child rights, child protection and child development for the persons who will work for children.</li> </ul>

**Note:** Total number of respondents: 16 (Government: 6; Workers' organizations: 3; Employers' organization: 1; Law academic: 1; UN agency: 1; and NGOs: 4)

### Conclusions

While the national legislation provide for sufficiently dissuasive penalties, such penalties are not effectively enforced in practice. Furthermore, regarding more particularly child labour, one specific difficulty faced in practice is linked to age verification.

### Recommendations

- ❖ ***In order to strengthen the practical enforcement of the national legislation to prohibit child labour and protect young workers, the Government should consider:***
  - ***Ensure a better access to justice, including by enhancing prosecutorial authority by inter alia, establishing prosecutorial services within the Ministry of Labour;***
  - ***Adapt the authority and methods of the police to enhance the enforcement of child labour legislation;***
  - ***Systematize the use of registers with names, ages or dates of birth duly certified by a provision to be included in all the labour laws, as required by ILO Convention No. 138. In this regard, amending section 81 of the Factories Act and to ensure that the register of child workers is required for all children under 18 years;<sup>144</sup>***
- ❖ ***The Government should develop the rules and procedures for the implementation of the Child Rights Law.***
- ❖ ***For clarity purposes, the Government should harmonize labour laws with a view to extending the scope of labour protection to all employment relationships rather than only having sector-specific labour laws (such as the Factories Act and the Shops and Establishments Law). This would also enable a better understanding of what constitutes or not child labour***

<sup>144</sup> Currently, section 81 of the Factories Act only refers to "child" who is defined by this Act as a person between 14 and 16 years (section 2(a)).

- ❖ *The Government could involve other relevant partners such as employers and workers and their organizations, NGOs and community groups for monitoring and reporting cases of violations.*

## 2.3. Assistance to victims

### *International standards*

Article 39 of the CRC provides that States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

Article 7(2)(b) of ILO Convention No. 182 further provides that Member States shall take effective and time-bound measures to provide the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration. The Protocol of 2014 to the Forced Labour Convention, 1930, (*not ratified by Myanmar*) further requires Member States to “take effective measures for the identification, release, protection, recovery and rehabilitation of all victims of forced or compulsory labour” (Article 3).<sup>145</sup>

### *National laws and regulations*

The Child Rights Law offers protection and care to children who have been or are victims of violence (Chapter XVI - sections 56 to 59). Section 57 of the Law defines children victims of violence who shall be considered as in need of care and protection, including in particular children working under the worst forms of child labour; street children; children sexually exploited; children victims of trafficking; beggar children; and children used in production sale and transport of narcotic drugs and psychotropic substances. Such children shall benefit from medical assistance (section 59) and anyone who believes that a child requires protection and care may inform a relevant Social Welfare Officer, who will then investigate and decide on the next steps, ranging from instructing the child to be entrusted to parent/guardian, training school, shelter or temporary care station, to reporting to the police in case an offence was been committed against the child (section 58). Medical treatment will be provided in case of need (section 59). Section 13 of the Law further provides that the Department of Social Welfare shall establish Training Schools for children in need of care and protection. However, no provision in the Child Rights Law refer to rehabilitation and social reintegration of these children.

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<sup>145</sup> In that regard, Paragraph 9 of the ILO Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203) provides examples of “immediate assistance and long-term recovery and rehabilitation” measures, such as: (a) reasonable efforts to protect the safety of victims of forced or compulsory labour as well as of family members and witnesses, as appropriate, including protection from intimidation and retaliation for exercising their rights under relevant national laws or for cooperation with legal proceedings; (b) adequate and appropriate accommodation; (c) health care, including both medical and psychological assistance, as well as provision of special rehabilitative measures for victims of forced or compulsory labour, including those who have also been subjected to sexual violence; (d) material assistance; (e) protection of privacy and identity; and (f) social and economic assistance, including access to educational and training opportunities and access to decent work.

Regarding more particularly children in armed conflict, section 60(h) of the Child Rights Law provides that respective governmental departments, governmental organizations, armed forces and armed groups shall take measures and provide appropriate assistance for the treatment and rehabilitation of children recruited or used or child victims of armed conflict for their education and reintegration into society in order to restore their physical and psychological well-being. It further provides that, during armed conflicts, children shall have the right to immediate and appropriate assistance to facilitate the physical and psychological rehabilitation of child victims and survivors whose rights have been violated and subjected to physical, psychological and sexual violence and their reintegration into society; as well as to receive support for damages and losses, rehabilitation and assistance from legal aid body in prosecuting violators (section 62).

However, it remains to be seen how the provisions of the Child Rights Law will be implemented in practice.

Regarding more particularly children victims of trafficking, the Anti-Trafficking in Persons Law provides special protection to “safeguard the rights of trafficked victims”, in particular women and children (Chapter V) but these provisions limit their scope to safeguarding the dignity and rights of the trafficked victims during the court proceedings. According to the 2021 US Trafficking in Persons report, the CBTIP formally adopted national Standard Operationalized Procedures for the return, reintegration and rehabilitation of trafficking victims and circulates them to all relevant ministries. During 2020, the police identified 118 trafficking victims, compared with 335 victims identified during the previous reporting period. The Government continued to operate various services for trafficking victims through the CBTIP Central Fund for Trafficking Victim Support during the reporting period. Services in Government’s facilities remained rudimentary, but authorities continued to allocate funding for trafficking victim protection services, psychosocial support, travel allowances, support for obtaining official documents, and assistance in returning to home communities. NGOs and foreign donors funded and facilitated delivery of most services available to trafficking victims. The Government also maintained labour attachés in Malaysia, South Korea, Thailand, and elsewhere whose responsibilities included assisting trafficking victims abroad.

### *Conclusions*

The Child Rights Law provides for the care and protection of children victims of the worst forms of child labour, but no reference is made to their rehabilitation and social reintegration. However, the Law provides for the assistance, as well as for the physical and psychological rehabilitation and reintegration into society of children recruited or used in armed conflicts. It remains to be seen how these provisions will be implemented in practice.

### *Recommendations*

- ✦ ***The Government should take all appropriate measures to ensure that, in practice, appropriate assistance is provided for the direct removal of children from the worst forms of child labour. To that end, the Government should develop the rules and procedures for the implementation of the Child Rights Law.***

- ✿ *The Government should take all appropriate measures to ensure that, both in law and practice, children victims of the worst forms of child labour, benefit from measures for their rehabilitation and social reintegration.*

# CONCLUSIONS AND RECOMMENDATIONS

## 1. Conclusions

In Myanmar, the legal framework for the protection of children against child labour has long been deficient but at the time of this report in 2020, important progress has been made. In 2013, a Technical Working Group on Child Labour (TWG-CL) was established, with the technical assistance of the ILO, with a view to establishing a comprehensive and collaborative response against child labour. The TWG-CL has overseen three important milestones so far: (i) advocacy role for the ratification of ILO Convention No. 138; (ii) the development of the draft *Hazardous List of Work to be prohibited for children under 18 years* in 2018 (*yet to be adopted*); and (iii) the development of the National Action Plan on Child Labour which was adopted in January 2019.

As regards national laws and regulations, a number of substantial steps have been taken in the last years, including the amendment of the Factories Act and the adoption of the Shops and Establishments Law in 2016, as well as the adoption of the landmark Child Rights Law, in 2019, which extends its protection to all children, including those who are not protected, fully or partially, by the fragmented and sector-specific labour laws. Myanmar also adopted a number of important policies and action plans such as the National Action Plan on Child Labour (2019-2023), the National Education Strategic Plan (2016-2021) and the Myanmar third five-year National Plan of Action to combat human trafficking (2017-2021). In 2020, several other key instruments were awaiting their adoption or entry into force, among others the Occupational Safety and Health Law of 2019 and the List of hazardous work to be prohibited for children under 18 years.

However, substantial and urgent measures are still needed to ensure in practice the effective prohibition and elimination of child labour, in particular in its worst forms, as well as proper working conditions for young workers, who have reached the legal minimum age for admission to work, in particular regarding wages, working hours, occupational safety and health and social security.

In 2020 at the time of this review, enforcement remains weak and limited prosecutions have taken place so far. Further efforts are also needed to ensure the effective access to justice and imposition of dissuasive sanctions in practice in order to eliminate child labour, including in its worst forms. Relevant stakeholders interviewed in Myanmar in 2020, in the context of this legal review, all highlighted the importance of undertaking awareness-raising activities on child labour, in particular regarding the newly adopted legislation. They further highlighted the need for coordination among the relevant authorities, as well as coordination among the authorities, employers' organizations and workers' organizations in improving law enforcement.

However, recent developments with the COVID-19 pandemic has highlighted the vulnerability of children to child labour including in its worst forms. Sustained attention is required to prevent a long term negative impact of the pandemic on children as well as political and conflict driven crises.

## 2. Recommendations

Several recommendations have been arising from this legal review conducted in 2020. All the recommendations formulated in this report are reproduced below.

For clarity purposes, these recommendations have been separated into two categories:

- **the recommendations for priority consideration** when the national regulatory framework is not in line with the provisions of the relevant international standards; and
- **subsidiary recommendations** where the Government is invited to take some steps in order to fully implement specific issues regulated under the relevant international standards.

The order of the below recommendations follows the provisions of the relevant instruments, as examined in the present document, and does not reflect any order of priority. It must be clarified, again, that the analysis and recommendations offered herein are made without prejudice to any comments that may be made by the UN and ILO supervisory bodies in relation to the application of international instruments by Myanmar.

### *Priority recommendations*

- The Government should take the necessary measures to ensure the effective implementation of the general minimum age for admission to work set in the Child Rights Law, i.e. 14 years, in particular in sectors which are not covered by labour laws.
- The Government should take the necessary measures to ensure the effective implementation of compulsory education, as one of the most effective means of combating child labour, by increasing the school enrolment and attendance rates and by reducing school dropouts and regional disparities.
- The Government should effectively extend the compulsory education from 10 to 14 years old, in order to ensure harmonization of the minimum age for admission to work with the age of completion of compulsory schooling, as requested by Article 2(3) of ILO Convention No. 138, and thus avoid any « gap period ».
- The Government should ensure that all national laws and regulations explicitly set the age of entry to apprenticeship and vocational training at 14 years, in accordance with the terms of ILO Convention No. 138, while providing for the conditions in which such apprenticeship shall take place, as specified by the competent authority, after consultation with the organizations of employers and workers concerned.
- The Government should ensure that, in practice, children under 14 years of age do not participate in artistic performances and, if so, to envisage the regulation of these types of activities, as requested by ILO Convention No. 138.
- The Government should harmonize its national laws and regulations in order to ensure, in a consistent manner, that hazardous work is prohibited for children under 18 years of age, or

exceptionally authorized, under the strict conditions provided in ILO instruments, for children from the age of 16.

- The Government should amend article 359 of the Constitution as long requested by the CEACR.
- The Government should ensure the effective implementation of the national legislation to effectively prohibit in practice all forms of slavery or practices similar to slavery, as a worst form of child labour.
- For clarity purposes, the Government should ensure that the use, procuring and offering of a child in all types of «illicit activities», including the production and trafficking of drugs, is defined in its national legislation as a worst form of child labour and effectively prohibited and eliminated in practice for all persons under the age of 18.
- The Government should ensure the effective implementation of the national legislation to effectively prohibit in practice the involvement of children in hazardous work, as a worst form of child labour.
- The Government should enact, as soon as possible, the list of the types of hazardous work.
- In doing so, the Government should consider identifying hazardous types of child domestic work that should be included in that list and prohibited for all children under 18 years, as required by international labour standards.
- The Government should ensure that young workers are explicitly guaranteed the right to join or establish trade unions or labour organizations of their own choosing, both in law and practice.
- The Government should ensure the effective implementation of the Child Rights Law in particular as regards protection of children against discrimination and sexual violence.
- The Government should take steps in order to ensure that equality and non-discrimination principles, as defined by ILO Conventions Nos. 100 and 111, are effectively guaranteed to boys and girls, both in law and in practice.
- The Government should take the necessary measures to ensure a fair remuneration to young workers, both in law and practice.
- The Government should take steps to ensure that young workers working in all types of sectors and economic activity benefit from appropriate regulations of their hours of work, both in law and practice.
- The Government should take steps to amend its labour laws in order to ensure that night work is prohibited for children under 18 years, in all types of sectors and economic activity.



- The Government should consider including night work in the list of the types of hazardous work to be prohibited to children under 18 years, pursuant to ILO Convention No. 138 and 182.
- The Government should take the necessary steps for the effective coordination of the Ministry of Labour with relevant Union Ministries to ensure full enjoyment of rights and protection for working children with provision of occupational safety and health, as requested by section 49(b) of the Child Rights Law.
- Myanmar should enact the 2019 OSH Law.
- The Government should establish the National, Regional and States Committees for the Rights of the Child, as provided for under the Child Rights Law.
- The Government should operationalize a Child Labour Monitoring System.
- The Government should strengthen the system of labour inspection, by providing adequate human and financial resources, and take any necessary steps to ensure systematic labour inspections in all sectors of activity.
- The Government should enhance inter-ministerial cooperation, in particular the cooperation between the Ministry of Labour, Immigration and Population and the Ministry of Social Welfare, Relief and Re-settlement, the Ministry of Education, and the Ministry of Health
- For legal certainty purposes, the Government should set explicit and dissuasive penalties in case of involvement of children in the production and trafficking of drugs, as well as in case of employment of children under the legal minimum age for admission to work, in particular in the regulations to be adopted under the Child Rights Law.
- In order to strengthen the practical enforcement of the national legislation to prohibit child labour and protect young workers, the Government should consider:
  1. Ensure a better access to justice, including by enhancing prosecutorial authority by inter alia, establishing prosecutorial services within the Ministry of Labour;
  2. Adapt the authority and methods of the police to enhance the enforcement of child labour legislation;
  3. Systematize the use of registers with names, ages or dates of birth duly certified by a provision to be included in all the labour laws, as required by ILO Convention No. 138. In this regard, it is recommended to amend section 81 of the Factories Act and to ensure that the register of child workers is required for all children under 18 years;
- The Government should develop the rules and procedures for the implementation of the Child Rights Law.
- For clarity purposes, the Government should harmonize labour laws with a view to extending the scope of protection of labour protection to all employment relationships rather than only having

sector-specific labour laws (such as the Factories Act and the Shops and Establishments Law). This would also enable a better understanding of what constitutes or not child labour.

- The Government should take all appropriate measures to ensure that, in practice, appropriate direct assistance is provided for the direct removal of children from the worst forms of child labour.
- The Government should take all appropriate measures to ensure that, both in law and practice, children victims of the worst forms of child labour, benefit from measures for their rehabilitation and social reintegration.

### *Subsidiary recommendations*

- The Government could examine, after consultation with the organizations of employers and workers concerned, the possibility of excluding from the scope of application of ILO Convention No. 138 limited categories of employment or work in respect of which special and substantial problems of application arise, in line with Article 4 of the Convention, in order to be able to send such a list with its first report due in 2022. In doing so, the Government:

1. should give the reasons for possible exclusions to the list (above) and state in subsequent reports the position and state in subsequent reports the position of its law and practice in respect of the categories excluded and the extent to which effect has been given or is proposed to be given to the Convention in respect of such categories; and

2. Hazardous work that is likely to jeopardize the health, safety or morals of young persons, should not be excluded from the application of ILO Convention No. 138 (Article 4(3) of the Convention).

- The Government could consider establishing a minimum age for light work, as it would provide greater protection for children between 12 and 14 years against child labour and exploitation.
- In doing so, the Government could consider regulating light work for children between the ages of 12 and 14.
- For clarity purposes, the Government could consider introducing a definition of «forced labour» when elaborating the implementing regulations of the Child Rights Law.
- For clarity purposes, the Government could consider including «serfdom» in the legislative prohibition concerning the worst forms of child labour.
- The Government could consider regulating the working and living conditions of child domestic workers over 14 years.
- The Government could pursue its efforts, in collaboration with employers and workers as well as their representative organizations, to promote collective bargaining, both in law and practice.

- The Government could take steps, in collaboration with relevant stakeholders, to identify relevant ways to determine whether or not a child worked in another factory, shop or establishment on the same day, in order ensure the effective implementation of the Factories Act and the Shops and Establishments Law.
- The Government could consider introducing some universal social protection schemes or enlarging the list of workers that fall under mandatory social security registration, pursuant to the national legislation, to overcome shortcomings identified in the voluntary scheme that may affect particularly young workers.
- The Government could consider including in its national legislation, as well as in any Memorandum of Understanding, provisions aimed at ensuring appropriate protection and services for young workers who are entitled to migrate through regular channels.
- Such provisions could, for example, expressly:
  - a) prohibit overseas recruitment of children who are younger than Myanmar's legal minimum age for admission to work;
  - b) prohibit unlawful recruitment practices while providing for effective and sufficiently dissuasive sanctions as well as remedial measures for the workers;
  - c) provide for the use of official channels to send young workers only to countries whose national laws are in compliance with the international standards on the elimination of child labour and protection of young workers (such as through bilateral or multilateral memorandum of understanding); and
  - d) assist young migrant workers at all stages of the migration process.
- The Government could consider completing the penal sanctions provided for under the national legislation with legally mandated and appropriate administrative sanctions administered through labour inspectors, for greater efficiency in applying legal sanctions.
- The Government could involve other relevant partners such as employers and workers and their organizations, NGOs and community groups for monitoring and reporting cases of violations.

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# APPENDIXES

## Appendix I : Overview of national laws and regulations

This part mainly provides a summary of the issues and gaps that have been identified and the recommendations for amendment that have been provided in Chapter II by each national statute, so as to facilitate the revision process. As this is the summary version, please go back to the corresponding sections in Chapter II for detailed analysis.

### 1. Constitution of the Republic of the Union of Myanmar, 2008

The Constitution of the Republic of the Union of Myanmar was adopted in 2008. From the perspectives of the ILO, the following principles and rights related to labour, at minimum, should be upheld in the Constitution and effectively implemented through national statutes:

- Prohibition of child labour, i.e. the admission of children to employment or work below the minimum ages specified in the legislation;
- The child's right to protection from economic exploitation and hazardous work;
- Freedom of association (both the freedom to form and join an association) and the right to organize;
- Prohibition of discrimination on the basis of sex, colour, race, national extraction, social origin, religion and political opinion, in particular in access to education and vocational training, access to employment, and terms and conditions of employment;
- Prohibition of forced labour (with no exception).

Myanmar has ratified ILO Convention No. 29 in 1955. The Committee of Experts has been urging Myanmar over the years to amend section 359 of the Constitution (Chapter VIII – Citizenship, Fundamental Rights and Duties of Citizens), which exempts from a prohibition of forced labour “duties assigned by the Union in accordance with the law in the interest of the public”. The Committee has observed that the exception encompasses permissible forms of forced labour that exceed the scope of the specifically defined exceptions in *Article 2(2)* of the Convention and could be interpreted in such a way as to allow a generalized exaction of forced labour from the population. In its last observation adopted in 2020, the Committee noted with regret that the proposal to amend article 359 of the Constitution, which was brought before the Assembly of the Union on 19 March 2020, was rejected as the required vote of more than 75 per cent of all the representatives of the Assembly was not received. *In that regard, while acknowledging the efforts made by the Government in respect to the proceedings to amend article 359 of the Constitution, the Committee firmly hoped that the Government would continue to take the necessary measures to ensure that article 359 of the Constitution is amended so as to bring it into conformity with the Convention and to provide information on any progress made in this regard.*

### 2. Child Rights Law, 2019

The Child Rights Law, 2019, incorporates a number of important principles and standards enshrined in the UN Convention on the Rights of the Child, 1990, as well as in the ILO Minimum Age Convention (No.138), 1973 and the Worst Forms of Child Labour Convention (No.182), 1999. In fact, a substantial number of the recommendations made in the first edition of this legal review, in 2015, have been addressed in the new legislation. Most notably, the Law sets the minimum age for employment at 14 years, in accordance with ILO Convention No. 138. This is an important development, because the existing labour laws provide a fragmented approach and the minimum age provisions only apply to factories and shops and establishments, leaving many other working children, such as in fishing and domestic work, outside the scope of the labour law protection. With the new Child Rights Law, employment of children under 14 years is prohibited in any industries, sectors and businesses. The Law also defines the worst forms of child labour, including hazardous work, and prohibit them for all children under 18 years. Below is a summary of the key recommendations made in this regard:

- To ensure the prohibition of the minimum age for employment (section 48(b)), it will be useful to introduce provisions concerning “age verification”. For instance, by introducing the principle of “onus as to age” as in the Factories Act which places the burden on the employer to prove that the child in question is not underage. This will prevent prospective employers from casually employing underage children without paying due diligence on their part;
- The Law does not set specific penalties for the violation of the minimum age provisions. According to section 108, it appears that the violation of this provision shall be punished by “one of the relevant existing legislation”. However, this presents a major implementation problem because the existing labour laws only apply to limited sectors and therefore there can be potentially no penalty for the employment of underage children in other sectors or businesses that are not covered by the existing legislation;
- Establish definitions of “forced or compulsory labour” in order to effectively identify and prohibit it in all its forms. In doing so, the Government shall follow the definitions established in ILO Convention (No. 29), which Myanmar has ratified;
- Ensure children’s right to “freedom of association and the right to organize” in addition to the right “to be a member of organizations” (section 19(g)). This means, first, that children should have the right to “establish/form organizations of their own choosing”, in particular outside the framework of the Government-controlled NGOs, as previously requested by the Committee on the Rights of the Child. Second, the Law must also guarantee the right of a child “to organize their own activities without the interference by the public authorities.” Finally, the Law should also make sure that “organizations relating to children” effectively encompass trade unions/labour organizations;
- Develop the rules and procedures for the implementation of the Child Rights Law;<sup>146</sup>

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<sup>146</sup> This was also emphasized, on April 2021, in the context of the UPR, by the UN Human Rights Council. See [A/HRC/47/13](#), 12 April 2021, para. 32.

- Within the rules and procedures for the implementation of the Child Rights Law, include provisions on delegation of responsibility from the Chairman of the Township Child Rights Committees to the Secretary or other member.<sup>147</sup>
- Ensure that the rules and procedures for the implementation of the Child Rights Law make specific reference to child labour including on how Governmental child protection structures will address it and, if possible, outlining budget allocations and reporting/co-ordination mechanisms.<sup>148</sup>

### 3. Factories Act, 1951, as amended in 2016

The Factories Act was enacted in 1951 to “consolidate and amend the law regulating labour in factories” (Preamble). The Act provides provisions on labour inspection, health, safety and welfare of workers, working hours of adults, employment of young persons, punishments and procedure. The Factories Act contains some provisions referring to children and young persons (Chapter VIII). Below is a summary of the issues, gaps and recommendations identified.

- **Scope of application/exemption:** Section 2(m) of the Factories Act, as amended in 2016, exempts factories employing less than five workers if a manufacturing process is being carried on with the aid of power, and less than ten workers if there is no aid of power, from the application of the Act.
- **Definition of a child:** the Act defines a “child” as a person aged between 14 and 16 years, and an “adolescent” as a person aged between 16 and 18 years. For the purpose of this Act this is no problem but when it may be amended again in the future, attention should be paid to other relevant laws, in particular the new Child Rights Law which defines children as any person below 18 years of age, to ensure that there would not be any protection gap due to different categorization of children.
- **Apprenticeship and vocational training:** the 2016 amendment has raised the minimum age for admission into apprenticeship and vocational training to 14 years. Additionally, provision must be made in relation to the working conditions and standards for their protection, after consultation with organizations of workers and employers concerned.
- **Working hours:** With respect to the working hours for adolescents aged between 16 and 18 years, those who have been granted a certificate to work as adults can work the same working hours than adults (section 78(1)); otherwise, those adolescents who have not been granted a certificate are governed by section 79 which provides for the working hours for children aged between 14 and 16 years. With respect to sub-section (4), it might be necessary to establish

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<sup>147</sup> My-PEC Mapping Report has identified in its key informant interviews that the existing TCRCs are not all functioning adequately. In part, this is due to the fact that the Chairman of the TCRC is nominally the Township Administrator reporting under the General Administration Department of the Ministry of Home Affairs who already has a high workload and cannot dedicate enough time to child protection issues. My-PEC Mapping Report.

<sup>148</sup> *Ibid.*

the ways for the employers and authorities to determine whether or not a child has worked in another factory on the same day. One possible option would be to impose the burden of proof on the employers.

- **Night work:** The 2016 amendment prohibits night work for children aged between 14 and 16 years as well as adolescents aged between 16 and 18 years who have not been granted a certificate of fitness by a medical practitioner to work as adults (section 78 (3)). However, adolescent who have been granted such certificate can work at night. It is recommended that night work should be prohibited for all persons under 18 years.
- **Determination and prohibition of “hazardous work”:** the 2016 amendment prohibits employment of young persons aged between 14 and 18 years to work with dangerous machinery (section. 25); and prohibits the employment of “children” in any part of a factory in which a cotton opener is at work (section 29) and the work in the “worst forms of labour including in hazardous conditions, conditions harmful to his/her health, conditions deterring his/her education and in such a way his/her moral and dignity would be affected” (section 75(a)). While these types of work should be prohibited as they are, “hazardous work” in which children should be prohibited to engage in are not limited to these above-mentioned types of work as provided in ILO Conventions No. 138 and 182. The new hazardous list which has been developed and validated (but not enacted yet) must be made enforceable in the factories.
- **Keeping of registers:** The Act provides for the keeping of registers (section 81), but only applies to “children” who are defined as persons aged between 14 and 16 years (section 2(a)). This provision should be amended in order to include all children under the age of 18 years.
- **Sanction:** criminal sanctions are recommended to be applied in the case of the violation of the prohibition of employment of children in hazardous work.

#### 4. Shops and Establishments Law, 2016

The Shops and Establishments Law, 2016, applies to persons working in “shops and establishments.”

The Law does not contain adequate regulations regarding the prohibition of child labour and thus further amendments are required. Below is a summary of the issues, gaps and recommendations identified.

- **Scope of application:** The Law excludes certain types of workplaces from the scope of its application, such as “roadside stalls”, “refreshment stalls and other shops in any public exhibition” or “funfairs, refreshment stalls and other shops in shows or entertainments held for a short duration” (section 34). This means that children working in these workplaces do not receive the protection that they are supposed to receive under this Law. One solution to could be to provide that the provisions of the labour laws relating to the minimum ages for work should cover young persons’ work even though they are outside of workplaces or sectors to which these laws apply; or to adopt separate regulations or other measures that would address the situation of children in other types of work.

- **Apprenticeship and vocational training:** provision must be made to prescribe working conditions and standards for the protection and development of children involved in apprenticeship or vocational training, after consultation with organizations of workers and employers concerned.
- **Working hours:** children between 14 and 16 years certified by the registered medical practitioner may be employed to work for not more than 4 hours a day (section 14(a)). For young workers beyond 16 years, the same working hours for adults apply. However, the Law allows overtime and night work for young workers over 16 years, and therefore should be amended in that regard.
- **Determination and prohibition of “hazardous work”:** the Law prohibits young workers under 18 years from performing prescribed dangerous work or work in dangerous workplace (section 14(d)). The list of hazardous work which has been validated recently (but not enacted yet) shall be made enforceable in the shops and establishments.
- **Keeping of registers:** the Law must be amended to prescribe that registers or other documents shall be kept and made available by the employer, while containing the names and ages or dates of birth, duly certified, wherever possible, of persons whom he/she employs or who work for him/her.
- **Enforcement:** it is recommended that criminal sanctions apply to the violations of the provisions for the prohibition and elimination of hazardous work.

## 5. National Education Law, 2014 [*To be amended*]

The National Education Law (NEL) aims, among others, to “value, maintain and raise the languages, literatures, cultures, arts and traditional customs”; “train the required human resources for education based socio-economy development”; and to “increase the qualification of teaching, learning, research and administration by creating the international education environment and applying the ICT effectively” (section 3 (b) to (e)).

The NEL establishes a “target” of extending free and compulsory education to children up to 14 years old (Chapter 5). Ultimately, the Committee on the Rights of the Child indeed requested to extend it until 16 years.

## 6. Basic Education Law, 2019

The Basic Education Law (BEL) provides that middle school is from 6<sup>th</sup> to 9<sup>th</sup> grade (which corresponds to 10-14 years), which is in line with the National Education Law which aims to extend free and compulsory education up to middle school (14 years).

## 7. Technical and Vocational Education Bill

[This could be part of the rules and regulations of the NEL]

The Technical and Vocational Education Law (TVEL), which was being drafted in 2020, aims, among others, at “training practical skilled technician workers to “raise individual’s income and employment of citizens” (section 3 (a) and (e), respectively). The following provisions at a minimum need to be provided in the TVEL:

- In the case where the students can be sent to enterprises for apprenticeship, adopt a specific provision linking the TVEL to the labour laws with respect to minimum ages for admission as well as working conditions and treatment of children;
- Adopt a provision in Chapter VII on curriculum to ensure that the curriculum for children under 18 years old is developed in line with the conditions and treatment provided in the labour laws;
- The Technical and Vocational Education Council, which is to be established under Chapter IV of the draft TVEL, shall have the duties and powers to monitor the working conditions and treatment of children in accordance with the labour laws;
- Adopt provisions which request schools to keep registers of children and to make them available for labour inspection;
- Give labour inspectors the power to inspect the schools where children are registered.

## 8. Dock Labourers Act, 1934 *[To be newly drafted & repealed]* and Dock Workers (Regulation of Employment) Act, 1948 *[To be amended]*

There are no provisions related to children and young workers. It is therefore recommended that the necessary provisions be established in these Acts.

## 9. Oilfield (Labour and Welfare) Act, 1951 *[To be amended]*

The Oilfield Act has some provisions related to children and young workers: i.e. employment of children (minimum age and certificate of fitness); working hours; registration of children and young workers; and labour inspection. Below is a summary of the recommendations for amendment:

- **Minimum age:** the minimum age for admission to work in the oilfields should be raised from 13 years (section 52) to 14 years;
- **Certificate of fitness, working hours, night work and hazardous work:** the Act requires that the employers shall obtain a certificate issued by a doctor for a child over 13 years and that the child must keep it with him during the period he is working (section 53). In the case



of a child over 15 years, a doctor may issue a certificate certifying that the child is fit to work as an adult (section 54 (b)). First of all, children under 14 years should not be admitted to work in the oilfield regardless of a certificate except for light work. Second of all, for children over 15 years, there should be regulations for working hours and types of work which should be permitted or prohibited for children in the oilfield (i.e. “hazardous work”). Please refer to the recommendations made for the Factories Act on “working hours”, “night work” and “hazardous work” as the same would apply here.

- **Sanctions:** criminal sanctions are recommended to be applied in the case of the violation of the prohibition of employment of children into hazardous work.

## **10. Myanmar Merchant Shipping Act, 1954 and Law Amending the Myanmar Merchant Shipping Act, 1999**

At the time of writing this paper, only a copy of the Law Amending the Myanmar Merchant Shipping Act, 1954 was available in English. As such, the detailed analysis was not possible. One observation that can be made for sure is that seafarers are either directly or indirectly excluded from the existing labour laws; and therefore if the Merchant Shipping Act, including its amendment law, do not provide decent regulations and standards for the employment of seafarers, either this law needs to be amended as a matter of priority or the coverage of the existing labour laws must be extended to cover seafarers.

Note that Myanmar ratified the ILO Maritime Labour Convention, 2006 (MLC, 2006) on 25 May 2016. In its 2019 direct request on the application of the MLC by Myanmar, the CEACR made several recommendations, while noting that a draft Maritime Labour Act was in preparation.

## **11. Myanmar Marine Fisheries Law, 1990**

The Myanmar Marine Fisheries Law primarily sets out rules and regulations on the operation of fishing business: i.e. inshore or offshore fishery, normal fishery, collection of marine products, sport fishing. It makes very little reference to what can be considered as labour-related matters: section 31 (e) states that the Master of the Vessel “shall be responsible for the safety of the inspector, researchers, observers and trainees who are on board the vessel”. As fishermen are either directly or indirectly excluded from most of the existing labour laws, either this law must be amended as a matter of priority or the coverage of the existing labour laws should be extended to include persons employed in fishery business.

## **12. Myanmar Mines Law, 1994**

The Mines Act was enacted to implement the State’s policy on mineral resources, to meet the domestic and foreign demands or to develop local and foreign investments in mineral resources (section 3 (a) to (c)). Section 26 (b) provides that the Chief Inspector has the duties to inspect the

health, sanitation, safety, prevention of accident, welfare, disciplinary measures of the personnel and workers in the mine. Under this law, the employment of persons under 18 years old is prohibited.

### 13. Anti-Trafficking in Persons Law, 2005

The Anti-Trafficking in Persons Law, 2005, specifically aims at “prevent[ing] and suppress[ing] the trafficking in persons as it damages the pride and pedigree of Myanmar nationality that should be valued and safeguarded by Myanmar race” (section 4 (a)). The Law further pays a “particular attention to women, children and youth” (section 4 (b)) and provides special protection to the protection of women and children victims of human trafficking (Chapter V). It also imposes heavier sanctions for the offenders of woman and child trafficking (section 24). However, some improvements could be made in order to effectively eliminate child trafficking. Below is a summary of the issues, gaps and recommendations identified.

- **Definitions of trafficking:** The definitions provided under the Anti-Trafficking Law (section 3) specifically include forced labour, forced service, slavery, servitude, debt-bondage as a form of exploitation. Additionally, the Law protects both men and women from human trafficking, including trafficking for the purposes of sexual exploitation. To further improve these definitions, the Anti-Trafficking Law could stipulate that, at least for children, no mean of coercion is requested to establish the crime of trafficking.
- **Protection of trafficked victims** could also be improved. While the Anti-Trafficking Law establishes a specific Chapter to “safeguard the rights of trafficked victims” (Chapter V), these provisions need to cover not only the safeguarding the dignity and rights of the trafficked victims during the court proceedings as it does now, but could extend it to all steps and procedures from the identification of the victims to protection, and in the case of cross-border trafficking, to repatriation, reintegration and rehabilitation as well. The Child Rights Law of 2019 contains a chapter on protection of children from violence, which covers trafficked children (Chapter XVI). Anyone who believes that a trafficked child requires protection and care may inform a relevant Social Welfare Officer, who will then investigate and decide on the next steps, ranging from instructing the child to be entrusted to parent/guardian, training school, shelter or temporary care station, to reporting to the police in case an offence was been committed against the child (section 58). Medical treatment shall be provided if needed (section 59). A reference to rehabilitation and reintegration shall be added here. Useful rights-based guidelines developed by international organizations, such as the ILO and UNICEF, on the protection of victims of child trafficking can be referred to.
- **Enforcement:** Under the Law, the penalties that can be imposed in case of trafficking in persons appear to be sufficiently severe and dissuasive (Chapter IX). However, serious issues persist in practice regarding the enforcement of the penalties.

### 14. Labour Organization Law, 2011

The Labour Organization Law was enacted “to protect the rights of the workers, to have good relations among the workers or between the employer and the worker, and to enable to form and carry out labour organizations systematically and independently” (Preamble). The Law currently only provides to workers the right to “join as a member in a labour organization” (section 3(a)). Therefore it is recommended to ensure “freedom of association and the right to organize” for all workers, including for children and young workers.

## **15. Second Amendment Law of the Settlement of Labour Dispute Law, 2019**

The Settlement of Labour Disputes Law was enacted in 2012 “for safeguarding the right of workers of having good relationships between employer and workers and making peaceful workplace or obtaining the rights fairly, rightfully and quickly by settling the dispute of employer and worker justly” (Preamble). The Law has been amended in 2014 and 2019. It is recommended that the Law clearly guarantees the right to collective bargaining for all workers, including children and young workers.

## **16. Payment of Wages Law, 2016**

The Payment of Wages Law, 2016 was enacted to regulate the payment of wages to certain classes of persons employed in the industry: i.e. factory, railway administration and (the president may extend to) industrial establishments (Preamble and section 1(4)(5)). The Law contains rules and regulations for the employer’s responsibility regarding wage payment, the fixation of wage-periods, the period of payment of wages, the wages to be paid in legal tender, wage deductions, and sanctions and penalties. Currently, the Law provides the most elaborated rules and standards on wage protection among any other laws.<sup>149</sup> The Government intends to draft a new law on the payment of wages to repeal this Act.

## **17. Minimum Wage Law, 2013**

The Minimum Wage Law was adopted in 2013, repealing the Minimum Wage Law, 1949 and the Minimum Wage for Agricultural Labourers Law, 1948.<sup>150</sup> The implementing rules were also adopted in 2013. The Law and its implementing rules provide a legislative framework for the determination of the statutory minimum wage. However, as highlighted in the main part of the legal review, in practice children and young workers are often paid lower than the minimum wage.

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<sup>149</sup> The Factories Act and the Shops and Establishments Law only provide for the definition of wages and the payment of wages for overtime. The other laws only provide for the definitions of wages.

<sup>150</sup> Observation (CEACR) - adopted 2012, published 102nd ILC session (2013) concerning the application of the Minimum Wage-Fixing Machinery Convention, 1928 (No. 26), by Myanmar: “The Committee accordingly expresses the firm hope that in this climate of transition towards a more open and democratic society, the Government will seize the opportunity to introduce all necessary changes for the modernization of the minimum wage legislation and the establishment of a truly comprehensive system of minimum wages based on workers’ needs and periodically reviewed after consultation with employers’ and workers’ representatives.”

## **18. Leave and Holidays Act, 1951 and Law amending the Leave and Holidays Act, 2006**

The Leave and Holidays Act, 1951 was amended by the Law Amending the Leave and Holidays Act, 2006. GORUM asked the ILO to provide technical guidance for the revision of certain provisions, in view of the observation made by the CEACR in 2013 on the application of the ILO Holidays with Pay Convention, 1936 (No. 52), which was ratified by Myanmar in 1954.<sup>151</sup>

One overall problem with this Law is its limited scope of application: it applies to an “employee” employed either in or upon “any trade or industry or establishment specified in the Schedule to the Law, and employed either on wages or on basic pay” (section 2(4) as amended). The ILO recommends, among others, to extend the application of this Law to all employment relationships.

## **19. Employment and Skill Development Law, 2012**

This law primarily deals with employment placement and skills development, and requires the Government to provide opportunities for job seekers (section 3); to set up labour exchange offices (section 4); and to develop employment and skill development teams (Chapter 3); while requiring employers to carry out employee skill development programmes (Chapter 5) and to contribute to the employee skill development fund (Chapter 8).

It is recommended that the law either sets the minimum age for admission to apprenticeship in enterprises at 14 years, or adopts a provision linking it with the minimum age provisions in other labour laws, in accordance with ILO Convention No. 138.

## **20. Social Security Law, 2012**

The Social Security Board developed a Social Security Law which was enacted in August 2012. This law covers the nine contingencies established by ILO Social Security (Minimum Standards) Convention, 1952 (No. 102) – i.e. access to medical care, sickness, maternity, employment injury, temporary and permanent invalidity, old age, survivors’ benefits, loss of employment - as well as additional contingencies (paternity, housing) and aims at providing some improvements to the social security protection of workers in Myanmar. It also aims at covering formal sector workers in smaller business units and opens the door to the protection of workers in smaller enterprises and outside formal employment (agriculture, informal sector, family businesses), through the establishment of a voluntary scheme. However, some schemes remain inactive, such as the old age, family benefit, and housing benefits.

The law was developed based on a careful study of ILO social security up to date conventions and recommendations, as well as other countries’ legal frameworks. However some of the principles and design options entailed in the law and draft rules differ from the core provisions of the ILO

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<sup>151</sup> ILO: Steps to reflect the Observation by the Committee of Experts concerning the revision of the Leave and Holidays Act, 1951, 23 April 2014, a technical memo submitted to the Government of Myanmar.

Convention No. 102, such as those related with coverage of dependents, and adequacy and periodicity of benefits. These design and coverage shortcomings have implications for the potential of the Social Security Law to serve as a powerful instrument to prevent child labour.

Firstly, the voluntary contribution window has had little traction so far, undermining its effectiveness in the prevention of child labour. Social security is an important preventative measure against child labour, as “poverty and shocks play a key role in driving children to work”.<sup>152</sup>

Under the Social Security Law, in principle all workers employed in covered establishments<sup>153</sup> are compulsorily insured, irrespective of the type and nature of their employment, the duration of their contract and the level or form of their remuneration. Nonetheless, there is also “the foreseen difficulty to expand coverage to some categories of workers who will fall under a voluntary and fully contributory scheme.” As such, it is important to extend the coverage of social security, preferably on a compulsory manner, to all workers including those working in uncovered establishments and in the informal sector.

The importance of emphasizing compulsory access relates to the limited effectiveness of voluntary registration in Myanmar and in other countries with similar schemes: while the new law created an option for voluntary registration of workers who do not fall under the mandatory registration, the fact that voluntary registration implies that workers pay both their contributions and those of their employer may not allow for the rapid coverage of the workers in the informal economy and their families. In order to ensure effective coverage, a progressive tightening of current conditions for compulsory registration should be pursued: a) from establishments with five or more employees to eventually those with one or more; and b) by expanding it to sectors currently excluded such as agriculture and non-profit organizations.

Secondly, in extending the social security to all workers, it is important to ensure that young workers are entitled to social security just as equally as adult workers. In the case of unlawful employment of children (i.e. underage, working conditions, etc.), employers are liable to compensate for the child in cases of sickness or injury for breach of law”. In doing so, the following features of the law could be revised:

- 1) the medical care scheme could cover the family and not only the worker, as families with children often face an important burden in terms of the cost of care;
- 2) the family benefit level for workers with children in primary school could be better designed to ensure ease of access by decreasing the qualifying period to three months at most, dropping mean-testing which would exclude some contributing families, and clearly defining the term “children” in a way that captures the nature of the benefit as a support to families with school-

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<sup>152</sup> See ILO’s International Programme on the Elimination of Child Labour (IPEC) website, Child Labour and Social Protection”, available at: [http://www.ilo.org/ipec/Campaignandadvocacy/wdacl/2014/WCMS\\_245210/lang--en/index.htm](http://www.ilo.org/ipec/Campaignandadvocacy/wdacl/2014/WCMS_245210/lang--en/index.htm).

<sup>153</sup> The establishments which are covered are: industrial establishments in which at least 5 persons are employed; establishments covered under the Shops and Establishments Law; railways under the Myanmar Railways Enterprises; public industrial and transport establishments under the Union Government or a local authority; Ports / Mines / Oilfields/ Docks; the Ministry of Labour; and any other establishments as may be notified by the competent authority from time to time.

age children (e.g. “school-age dependents up to 21 years of age”); the adequacy of the benefit could also be informed by criteria concerning the costs of maintaining children at school;

In any instances, considering the structure of the labour market in Myanmar, the introduction of some universal social protection schemes (such as universal access to health care or universal cash transfers for families with children) are necessary in order to effectively ensure that families do not need to resort to child labour as a result of a financial shock or because they live in poverty. The Government of Myanmar recently formulated a National Social Protection Strategic Plan (NSPSP) which includes provision for universal child benefits and benefits for children living with disabilities. The Ministry of Social Welfare, Relief and Resettlement has recently started implementing cash transfers to pregnant women and mothers of children under two years of age as per the NSPSP in the Chin and Rakhine States.

## 21. Occupational Safety and Health Law, 2019 *[Not in force yet]*

The new OSH Law was developed with the technical assistance from the ILO. Below are the analysis of some important features of the new OSH Law from the perspective of protecting young workers (Please note that this is not a comprehensive analysis of the OSH Law):

- **Scope of application (Chapter III):** the Law applies to a wide range of industries and businesses to which previously no or little OSH standards had existed: most notably, construction, mining and agriculture, where the risks and incidents of occupational accidents and diseases were reported to be high. This is one of the most significant features of the OSH Law for Myanmar because, as far as safety and health standards are concerned, many industries/businesses or the employers and workers engaged therein which had previously been categorized as “informal” due to the lack of regulatory coverage, are now formally regulated by the OSH Law. This should reduce the vulnerability of young workers who are working in the industries/businesses that are not covered by the Factories Act or Shops and Establishments Law. Domestic work, unfortunately, is excluded, but at least the Ministry of Labour can determine from time to time other industries and businesses to be covered.
- **Emphasis on “prevention” of occupational accidents and diseases (Chapter VIII Responsibilities of Employers and Workers):** the Law places emphasis on “prevention” of workplace accidents and diseases from happening: through assessment, and removal, of risks and hazards to keep the workplace safe and healthy; providing medical check-up to the workers; providing protective equipment to the workers; making precautionary plans and plans for emergency; arranging OSH trainings for managers and workers; immediate reporting of negative conditions or events; protection of workers against dismissal or demotion for exercising their rights in safety and health, etc. With respect to the assessment of “risks and hazards” for young workers, firstly it is essential that the “Myanmar Hazardous List of Work to be prohibited for children below 18” be enacted and known to the employers for proper implementation. Secondly, there may exist other possible risks and hazards which may not be considered grave enough to prohibit the employment of young workers all together but should nonetheless

be removed for the protection of young workers. It is recommended that the implementing regulations for the OSH Law provide guidance on this.

- **Appointment of OSH officers and formation of OSH Committees in the workplaces (Chapter VI):** day-to-day OSH risk assessment and management activities by employers and workers are key for creating safe and healthy workplaces. In this regard, the Law requires the employer to appoint a person in charge of OSH to closely supervise workers' safety and health in accordance with the type of industry, and to form a OSH Committee tasked with duties such as regularly checking any conditions that can impair OSH<sup>154</sup>; advising the employer about the precautionary and educational plans; improving the coordination between the employer and workers, and to provide training; assessing and reviewing the relevant risk assessment of OSH management plan, etc. Employers should ensure that risk factors specific to young workers are recognized and addressed by such workplace management system. The Law specifically requires that, in forming OSH Committees, the "occupational safety and health of women workers" shall be taken into consideration (section 12(b)). Young workers are not included in this provisions, but may be covered in that regard by the implementing regulations (section 26(h)). Finally, where there are young workers in the undertaking, they could also be specifically included in the workplace OSH mechanisms.
- **OSH Inspection (Chapter VII):** The Ministry of Labour can appoint Inspection Officers to implement the provisions of the OSH Law. Such Inspection Officers are vested with a range of powers, such as conducting on-site inspections; power to temporarily close a workplace, in part or in whole, if it is believed that there is a likelihood of occupational accident, disease or hazardous event, and instruct the employer to take necessary measures; and the power to prosecute the offenders who violate the provisions of the Law.

## 22. Workmen Compensation Act, 1923 and Law Amending the Workmen's Compensation Act, 2005

The law does not contain specific provisions for young workers. The Workmen Compensation Act puts into place a mechanism by which workers who are victims of a work injury and are not already covered by the social security work injury scheme can claim compensation to their employer via a township workmen compensation committee, under the authority of the Department of Labour. However, it is important to note that the compensation level is extremely low (i.e. maximum 600 USD can be granted in case of death) and puts the injured or dead worker's family at risk to fall into poverty and / or resort to child labour.

A second revision of the Act was under review. In its 2013 observation on the application of the Workmen's Compensation (Accidents) Convention, 1925 (No. 17) by Myanmar, the CEACR hoped that the current revision of the Workmen's Compensation Act of 1923, will give full effect to Articles 5 (compensation in the form of periodical payments) and 10 (supply and renewal of such

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<sup>154</sup> Ideally, from the ILS perspective, the workers representatives should be elected by the workers.

artificial limbs and surgical appliances as are recognized to be necessary for injured workers) of the Convention.

Stakeholders approached	Data collected
<b>A. State agencies, Judiciary and Legislature</b>	
1. Ministry of Labour, Immigration and Population (MOLIP) <ul style="list-style-type: none"> <li>• Labour Relations Department (No)</li> <li>• General Department of Labour (No)</li> <li>• Factories and General Labour Laws Inspection Department (Yes)</li> <li>• Education and Training Department (No)</li> </ul>	YES
2. Law drafting Office	NO
3. Attorney General's Office	YES
4. Ministry of Health	NO
5. Ministry of Education	YES
6. Ministry of Social Welfare, Relief and Resettlement	YES
7. Ministry of Agriculture, Livestock and Irrigation	NO
8. Ministry of Home Affairs	NO
9. Ministry of Border Affairs	NO
10. Ministry of Science and Technology (Development of Vocational Training Department)	NO
11. Regional Government Office, Yangon Region Government	NO
12. Administration Department, Nay Pyi Taw City Development Committee	YES
13. Administration Department, Yangon City Development Committee	YES
14. Administration Department, Mandalay City Development Committee	NO
15. Judiciary	NO
16. Parliamentarians	NO
17. Police	NO
18. National Committee on the Rights of the Child	NO
19. Technical Working Group on Child Labour	YES
<b>B. Social Partners</b>	



1. Employers' organization • UMFCCI	YES
2. Workers' organizations • CTUM (Confederation of Trade Unions Myanmar) (NO) • AFFM (Agriculture and Farmer Federation of Myanmar)(YES) • MTUF (Myanmar Trade Union Federation)(YES)	YES
C. Other Stakeholders	
1. School inspectorate	NO
2. Academic scholars and researchers	YES
3. Labour lawyers for employers' organizations	NO
4. Labour lawyers for workers' organizations	NO
5. UN Agencies • UNICEF • UNDP • UNACT • UNHCR • UNESCO	YES (UNICEF)
6. NGOs • International Development Law Organization (YES) • Myanmar's Lawyers' Network and Myanmar Legal Aid Network (YES) • Save the Children (YES) • Myanmar Red Cross (YES)	YES

## Appendix II: List of key informants

## Appendix III: Interview Questionnaires

ILO-MyPEC Legal Review of existing National Laws and Regulations related to child labour

### INTERVIEW QUESTIONNAIRES FOR KEY STAKEHOLDERS

#### *Government, Legislature and Judiciary*

1. As you are one of the members of Legal Working Committee on the Elimination of Child Labour, what is your individual role or the role of your Agency/Department regarding child labour? If it involves legislative work, please be as specific as possible (for instance, legal research, legal advisory services, law drafting, etc).
2. Among the laws and regulations that you/your body specifically have the mandate/interest on, or are familiar with, what laws and regulations are relevant to child labour issues, in particular the worst forms of child labour (WFCL) as described above?
3. In your view, are the national laws and regulations that you specified in question No.2 sufficient to eliminating child labour, in particular the WFCL? Yes/No
4. If you answered NO to question 3, what are the major shortcomings and how should they be improved? The answers can be general (for instance, lack of provisions, lack of understanding of the law among the stakeholders, difficulty of enforcement, etc) but if possible please try to be as specific as possible, focusing on each type of the WFCL (for instance, “this provision of that law is not sufficient to eliminating trafficking or child soldiering”, etc).
5. Please take a look at the list of existing national laws and regulations in the Annex document. Among the laws and regulations that you/your body specifically have the mandate/interest on, or are familiar with, can you share with us the latest information on the current status of these laws and regulation (i.e. being drafted, to be repealed, etc)?
6. Regarding the “*hazardous work that is harmful to the safety, health and morals of children*” which is identified as one of the WFCL in the ILO Convention, if the list comes out, what kind of enforcement procedures should be necessary?
7. As you may be aware, the Parliament has approved the ratification of ILO Convention No. 138 on Minimum Age. Myanmar has already and successfully established minimum age for employment at 14 years. That said, C.138 allows employment or work of children aged 12 and 13 years old on “**light work**” which is: (a) not likely to be harmful to their health or development; and (b) not such as to prejudice their attendance at school or their participation in vocational orientation or training programmes. In Myanmar, what types of “light work” should be permitted to children aged 12 and 13 years old?
8. We understand that the enforcement of the law, including prosecution of the violators, is a big challenge in general in Myanmar. In your view, what makes the law enforcement so difficult? Do you have any suggestions to improve it?

9. If you belong to the Judiciary or the Police, and if you have dealt with or are aware of the cases involving child labour, please provide information to the extent you are allowed to.
10. If you are a legal practitioner and have dealt with cases concerning child labour, please share with us the information to the extent possible.
11. Please mention other tasks of you or your organization as the members of the Legal Working Committee on the Elimination of Child Labour? For instance, awareness programmes to the inspectors or other relevant officials. If so, what kind of awareness programmes will tentatively be given to them?
12. Please feel free to provide any additional information you think is useful or important for this law review.

### ***Employers' organizations***

1. What is the industry/sector/type of your members' business?
2. Roughly, how many employees do your members have, including regular and non-regular employees?
3. Does any of your member employ children under the age of 18 years? Yes/No
4. If answered YES to question 3, please answer the following additional questions:
  - 4.1. How many children are employed?
  - 4.2. What are the ages of these children?
  - 4.3. What types of work do they perform?
  - 4.4. What are their working conditions (wage, hours of work and rest, occupational safety and health, social insurance, etc.)?
  - 4.5. What types of work are NOT allowed for these children?
  - 4.6. Do your members keep registers of these child workers?
5. Please take a look at the list of existing national laws and regulations in the Annex document. Among the laws and regulations that you are familiar with, do you think that the existing national laws and regulations are sufficient to eliminating child labour, in particular the WFCL? Yes/No
6. If you answered NO to question 5, what are the major shortcomings and how should they be improved? The answers can be general (for instance, lack of provisions, lack of understanding of the law among the stakeholders, not matching with the business needs, difficulty of enforcement, etc.) but if possible please try to be as specific as possible, focusing on each type of the WFCL (for instance, "this provision of that law is not sufficient to eliminating forced labour or hazardous work", etc).
7. Regarding the "***hazardous work that is harmful to the safety, health and morals of children***" which is identified as one of the WFCL in the ILO Convention, if the list comes out, what kind of enforcement procedures should be necessary?

8. As you may be aware, the Parliament has approved the ratification of ILO Convention No.138 on Minimum Age. Myanmar has already and successfully established minimum age for employment at 14 years. That said, C.138 allows employment or work of children aged 12 and 13 years old on “**light work**” which is: (a) not likely to be harmful to their health or development; and (b) not such as to prejudice their attendance at school or their participation in vocational orientation or training programmes. In Myanmar, what types of “light work” should be permitted to children aged 12 and 13 years old?
9. We understand that the enforcement of the law, including prosecution of the violators, is a big challenge in general in Myanmar. In your view, what makes the law enforcement so difficult? Do you have any suggestions to improve it?
10. Please feel free to provide any additional information you think is useful or important for this law review.

### *Workers' organizations*

1. What industry or sector do you represent?
2. Are children under the age of 18 years among your members?
3. Are you aware of any children under 18 years employed? Yes/No
4. If answered YES to question 3, please answer the following additional questions:
  1. How many children are employed?
  2. What are the ages of these children?
  3. What types of work do they perform?
  4. What are their working conditions (wage, hours of work and rest, occupational safety and health, social insurance, etc)?
  5. Are there any types of work that children are engaged that you think they should not?
  6. Have you ever had to take any specific actions concerning child workers? For instance, represent them in negotiating with their employers or settling disputes between them, or reporting the violations of child labour regulations to the authorities, etc.
5. Please take a look at the list of existing national laws and regulations in the Annex document. Among the laws and regulations that you are familiar with, do you think that the existing national laws and regulations are sufficient to eliminating child labour, in particular the WFCL? Yes/No
6. If you answered NO to question 5, what are the major shortcomings and how should they be improved? The answers can be general (for instance, lack of provisions, lack of understanding of the law among the stakeholders, not matching with the reality of working children, difficulty of enforcement, etc) but if possible please try to be as specific as possible, focusing on each type of the WFCL (for instance, “this provision of that law is not sufficient to eliminating forced labour or hazardous work”, etc).

7. Regarding the *“hazardous work that is harmful to the safety, health and morals of children”* which is identified as one of the WFCL in the ILO Convention, if the list comes out, what kind of enforcement procedures should be necessary?
8. As you may be aware, the Parliament has approved the ratification of ILO Convention No.138 on Minimum Age. Myanmar has already and successfully established minimum age for employment at 14 years. That said, C.138 allows employment or work of children aged 12 and 13 years old on **“light work”** which is: (a) not likely to be harmful to their health or development; and (b) not such as to prejudice their attendance at school or their participation in vocational orientation or training programmes. In Myanmar, what types of “light work” should be permitted to children aged 12 and 13 years old?
9. We understand that the enforcement of the law, including prosecution of the violators, is a big challenge in general in Myanmar. In your view, what makes the law enforcement so difficult? Do you have any suggestions to improve it?
10. Please feel free to provide any additional information you think is useful or important for this law review.

### **Other non-state actors**

1. What is your role in your current position? If it involves any legal work, please be as specific as possible (for instance, legal research, legal advisory services, adjudication, etc).
2. Please take a look at the list of existing national laws and regulations in the Annex document. Among the laws and regulations that you are familiar with, do you think that the existing national laws and regulations are sufficient to eliminating child labour, in particular the WFCL? Yes/No
3. If you answered NO to question 2, what are the major shortcomings and how should they be improved? The answers can be general (for instance, lack of provisions, lack of understanding of the law among the stakeholders, difficulty of enforcement, etc) but if possible please try to be as specific as possible, focusing on each type of the WFCL (for instance, “this provision of that law is not sufficient to eliminating forced labour or trafficking or child soldiering”, etc).
4. Regarding the *“hazardous work that is harmful to the safety, health and morals of children”* which is identified as one of the WFCL in the ILO Convention. In your view, what types of work should be defined as hazardous work that should be prohibited for children? You may give examples by specific types of work, sector, or characteristics of work.
5. As you may be aware, the Parliament has approved the ratification of ILO Convention No.138 on Minimum Age. Myanmar has already and successfully established minimum age for employment at 14 years. That said, C.138 allows employment or work of children aged 12 and 13 years old on **“light work”** which is: (a) not likely to be harmful to their health or development; and (b) not such as to prejudice their attendance at school or their participation

in vocational orientation or training programmes. In Myanmar, what types of “light work” should be permitted to children aged 12 and 13 years old?

6. We understand that the enforcement of the law, including prosecution of the violators, is a big challenge in general in Myanmar. In your view, what makes the law enforcement so difficult? Do you have any suggestions to improve it?
7. Please feel free to provide any additional information you think is useful or important for this law review.