



International  
Labour  
Organization

## **Towards Freedom and Dignity in Myanmar**

Report of the Commission of Inquiry established in accordance with article 26 of the ILO Constitution concerning the non-observance by Myanmar of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Forced Labour Convention, 1930 (No. 29)

4 August 2023

## Abbreviations

AAPP	Assistance Association for Political Prisoners
AFFM	Agriculture and Farmers Federation of Myanmar
ASEAN	Association of Southeast Asian Nations
BEWU	Basic Education Workers' Union
BGP	Border Guard Police
BWFM	Building and Wood Workers Federation of Myanmar
CAS	Conference Committee on the Application of Standards
CDM	Civil Disobedience Movement
CEACR	Committee of Experts on the Application of Conventions and Recommendations
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CFA	Committee on Freedom of Association
CSPL	Civil Service Personnel Law
CSPR	Civil Service Personnel Rules
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
CRPH	Committee Representing Pyidaungsu Hluttaw
CTUM	Confederation of Trade Unions of Myanmar
DWCP	Decent Work Country Programme
FGWM	Federation of General Workers of Myanmar
FWFM	Food Workers' Federation of Myanmar
GCPEA	Global Coalition to Protect Education from Attack
GCR2P	Global Centre for the Responsibility to Protect
HLT	High-Level Team
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Commission of Jurists
IIFMM	Independent International Fact-Finding Mission on Myanmar
ILC	International Labour Conference
ILO	International Labour Organization
IOE	International Organisation of Employers
ITUC	International Trade Union Confederation

IUF	International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations
IWFM	Industrial Workers' Federation of Myanmar
IWVO	Industrial Women Workers Organization
LGBTIQ	lesbian, gay, bisexual, transexual, intersexual, queer
LOL	Labour Organization Law
LOR	Labour Organization Rules
MLA	Myanmar Labour Alliance
MOGE	Myanmar Oil and Gas Enterprise
MOL	Ministry of Labour
MOLIP	Ministry of Labour, Immigration and Population
MWFM	Mining Workers' Federation of Myanmar
NCM	National Complaints Mechanism
NDSC	National Defence and Security Council
NHRC	National Human Rights Commission
NLD	National League for Democracy
NUCC	National Unity Consultative Council
NUG	National Unity Government
OCHA	Office for the Coordination of Humanitarian Affairs
OHCHR	Office of the High Commissioner for Human Rights
PDF	People's Defence Forces
PSI	Public Services International
SAC	State Administration Council
SLORC	State Law and Order Restoration Council
SME	small and medium-sized enterprises
SPDC	State Peace and Development Council
STUM	Solidarity Trade Union of Myanmar
UEC	Union Election Commission
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
WCC	Workplace coordination committee
MRG	Minority Rights Group International
SLDL	Settlement of Labour Disputes Law
UDHR	Universal Declaration of Human Rights

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## Executive summary

### Establishment of the Commission of Inquiry

Following the military takeover in Myanmar on 1 February 2021, the Governing Body and the International Labour Conference (ILC) raised concerns with regard to reported violations of freedom of association and forced labour in the country. In June 2021, the ILC adopted the [Resolution for a return to democracy and respect for fundamental rights in Myanmar](#). The Governing Body subsequently [decided](#) in March 2022 to establish a Commission of Inquiry in accordance with article 26 of the ILO Constitution in respect of non-observance by Myanmar of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Forced Labour Convention, 1930 (No. 29). Myanmar ratified these two Conventions in 1955.

### Composition and mandate of the Commission

The Governing Body appointed the following persons to serve on the Commission of Inquiry: Judge Raul Cano Pangalangan (Philippines) as Chairperson; and Judge Dhayanithie Pillay (South Africa) and Dr Faustina Pereira (Bangladesh) as members. In accordance with Article 28 of the ILO Constitution, the mandate of the Commission was to prepare a report containing findings and recommendations concerning Myanmar's compliance with Conventions Nos 87 and 29.

### The Commission's procedure

The Commission held its first session in Geneva from 25 to 27 August 2022 during which it adopted its rules of procedures. It subsequently invited a wide array of entities to submit relevant information, including the Myanmar military authorities, governments of ILO Member States, workers' and employers' organizations, the United Nations and other inter-governmental and non-governmental organizations. It also invited the National Unity Government, which was formed by Myanmar democratic forces opposing the 2021 military takeover, to provide information. The Commission's second session took place from 6 to 18 February 2023 in Bangkok, New Delhi and Geneva. The Commission held its third session in Geneva from 10 to 14 July 2023.

The Commission's work primarily focused on developments relating to the situation of freedom of association and forced labour in Myanmar after 1 February 2021. The inquiry process involved reviewing written submissions, documentary material and testimonies from 107 witnesses. Despite the Commission's efforts to seek cooperation from the Myanmar military authorities through communications on 7 September 2022, 12 January 2023 and 23 May 2023, such cooperation was not forthcoming. However, on 7 July 2023, the military authorities submitted a Note Verbale to the ILO containing information on some of the issues raised by the Commission which has been noted in the report. The Commission was not allowed to conduct an onsite visit to Myanmar.

### Overview of the report

Chapters 1 and 2 of the Commission's report present the developments leading up to its establishment and an overview of the Commission's proceedings. Chapter 3 sets out, as background, the findings of an earlier ILO Commission of Inquiry that had examined the question of forced labour in Myanmar in 1997-1998; provides a synopsis of assessments made by other ILO supervisory bodies concerning the application of Conventions Nos 87 and 29 by Myanmar; and refers to the work of United Nations bodies and mechanisms related to freedom of association and forced labour in Myanmar. Chapter 4 presents the matters placed before the Commission and addresses several preliminary questions. In Chapters 5 and 6, the Commission



reviews the current country context and the rights and freedoms protected under Conventions Nos 87 and 29. The Commission then presents its findings of facts based on the information and evidence before it (Chapter 7) and its conclusions concerning Myanmar's compliance with the Conventions (Chapter 8). Finally, the Commission sets out its recommendations and provides concluding observations (Chapter 9).

## Findings and conclusions

### Convention No. 87

The Commission concluded that the measures imposed by the military authorities following the military coup, both legislative promulgations and the action taken in practice by the military, the police and the administrative authorities under their control, have had a disastrous impact on the exercise of basic civil liberties which are essential to the enjoyment of the freedom of association rights protected by Convention No. 87. Trade union members and leaders have been killed, arbitrarily arrested, subjected to sham trials, convicted, detained, abused and tortured, threatened, intimidated, subjected to surveillance, forced into exile, deprived of their basic civil liberties and oppressed at the workplace due to their trade union membership and activities. Women trade union leaders have been exposed to particularly violent treatment on the part of the security apparatus, including sexual violence.

The Commission concluded that this persistent oppression of trade unionists – specifically targeting the leaders of the country's only trade union confederation and the main federations – has resulted in their incapacity to continue to engage in trade union activities and protect the interests of their members. Trade union leaders are unable to organize workers, register their unions, communicate between each other, represent workers in labour disputes, conduct training activities or meaningfully engage in any other union activities. The lack of access to rapid and independent remedies has further contributed to curtailing trade union activities.

In these circumstances, due to the serious and far-reaching restrictions on the basic civil liberties that are a *sine qua non* for the exercise of freedom of association, and the lack of available remedies, the rights set out in Convention No. 87 cannot be freely exercised in Myanmar. Accordingly, the Commission concluded that the measures threatening and curtailing the enjoyment of such basic civil liberties taken or ordered by the military authorities following their takeover in February 2021 are in violation of Myanmar's obligations under the Convention.

The Commission further concluded that there have been serious practical obstacles to the establishment and functioning of trade unions in post-coup Myanmar. In particular, union registration has been stalled and unions are being asked to return their registration certificates and to re-elect their leadership. They are also unable to collect union dues, face union-busting and have to compete with yellow unions and employer-supported workplace coordination committees. Workplace strikes are dispersed by the police or the military, strike participants are threatened and arrested and there are no independent and impartial remedies for labour rights violations. The Commission concluded that the various measures imposed by the military authorities, including the labour authorities under their control, in combination with the climate of complete insecurity and constant threats to trade union leaders and members, have resulted in far-reaching restrictions on the specific trade union rights set out in Convention No. 87. These include restrictions on the right to establish workers' organizations without previous authorization (Article 2), the right to elect union representatives in full freedom, the right to freely organize their administration and activities and to formulate their programmes (Article 3) and the right not to be suspended or dissolved by administrative authority (Article 4). The Commission thus concluded that the above actions by the military authorities violate Myanmar's obligations

under Convention No. 87 and impede the Convention's full and effective application in law and practice.

### Convention No. 29

The Commission concluded that there has been continuing systematic and widespread use of residents by the Myanmar military to perform a range of different types of forced labour in the context of military activities, including as porters, guides and human shields, as well as for cultivation, construction and maintenance of military camps or installations, and the provision of transport, accommodation, food and domestic work. In addition, the military authorities have required businesses to perform their services during days of "silent strikes" in the context of the Civil Disobedience Movement, which amounts to forced or compulsory labour within the meaning of the Convention. The Commission concluded that the above practices are in violation of Myanmar's obligations under the Convention. It further found that, in the current context, the exaction of prison labour from persons convicted through proceedings manifestly lacking independence, impartiality and due process of law is not covered by the exception contained in Article 2(2)(c) of the Convention. Accordingly, it concluded that exacting prison labour in such cases is not in conformity with the Convention.

The Commission further found that the information and evidence before it *prima facie* pointed to the existence of situations in which overtime work performed in the private sector may, in certain cases, have amounted to forced or compulsory labour within the meaning of the Convention. The military authorities have failed to provide satisfactory information on enforcement action for the prohibition of forced labour in any sector of the economy. While a National Forced Labour Complaints Mechanism was set up in 2019, the Commission observed from the information provided by the military authorities in July 2023 that the Mechanism has not received any complaints since the beginning of 2021.

Furthermore, the Commission considered that Article 359 of the 2008 Constitution of Myanmar, which allows for the exaction of forced labour in the context of "duties assigned thereupon by the Union in accord with the law in the interests of the people", allows for the exaction of compulsory labour in contravention to the Convention. A case in point is the Peoples' Military Service Law (2010) which allows the use of military conscripts for work that is not of a purely military nature, which is not compatible with Myanmar's obligations under Convention No. 29. The Commission further considered that the sanctions to be imposed on persons found guilty of the exaction of forced or compulsory labour provided for in the Penal Code and the Ward or Village Tract Administration Law, which also allow for punishment only by a fine, cannot be dissuasive and really adequate as required by the Convention.

In these circumstances, the Commission concluded that the failure of Myanmar to take the necessary measures, both in law and in practice, to ensure that no forced labour is imposed by members of the armed forces, including through the strict enforcement of the penalties established by law, and the lack of adequate enforcement of the prohibition of forced or compulsory labour in respect of third parties, is in violation of Myanmar's obligations under Articles 1 and 25 of Convention No. 29.

### The Commission's recommendations

While the United Nations General Assembly and the International Labour Conference have not recognized the military authorities as representing the Government of Myanmar, the Commission concluded that the military, as an agent of the state, remains answerable for its actions that raise concerns regarding Myanmar's compliance with its obligations under Conventions Nos 87 and 29 (see paragraphs 176 to 186 of the report). The Commission therefore

first and foremost addresses its recommendations to the military authorities for immediate action, so as to stop ongoing egregious violations of the two Conventions and prevent future abuses (see paragraphs 641 to 644 of the report).

In particular, concerning Convention No. 87, the Commission urges the military authorities to immediately cease all forms of violence, torture and other inhumane treatment against trade union leaders and members and other persons in relation to the exercise of legitimate workers' or employers' activities. It also urges the military authorities to unconditionally release all trade unionists arrested, sentenced and detained in relation to the exercise of their civil liberties and legitimate trade union activities, including with regard to critical expressions of opinion and participation in peaceful demonstrations. It further urges the military authorities to withdraw all criminal charges pending against trade unionists and others peacefully exercising their civil liberties in relation to legitimate trade union activities; to immediately stop all forms of intimidation, threats, stigmatization, harassment and surveillance of trade unionists and their families, as well as attacks against and destruction of trade union premises and property; and to revoke the withdrawal of citizenship and return travel documents to the trade union leaders and members concerned. The recommendations further urge to cease all disproportionate or arbitrary punitive measures against those peacefully exercising their civil liberties in calling for the return to democratic rule in which their freedom of association rights could be fully exercised; revoke any military orders or other measures adopted since February 2021 identified as restricting freedom of association and the basic civil liberties of trade unionists; and fully restore the protection of the basic civil liberties necessary for the exercise of freedom of association that have been suspended or restricted. Finally, the Commission urges the military authorities to stop any form of interference in the establishment, administration and functioning of trade unions at all levels, and to refrain from taking any measures or issuing statements that condone, facilitate or encourage union-busting, interference and other abuses of trade union rights by private and public employers.

Concerning Convention No. 29, the Commission urges the military authorities to immediately act to end the exaction of all forms of forced or compulsory labour, as defined by the Convention, by the army and its associated armed forces and groups and to end any forced recruitment into the military, including the forced recruitment of children. It also urges them to cease any action interfering with the freedom of businesses to open and close their establishments and to cease with immediate effect the exaction of prison labour as a consequence of criminal convictions imposed since 1 February 2021 through proceedings manifestly lacking independence, impartiality and due process guarantees.

In addition to the above recommendations, the Commission issued a set of further recommendations addressed to Myanmar to be implemented when the country returns to a situation characterized by governance through democratic institutions and processes (see paragraphs 645-650 of the report).

In particular, the Commission recommends that Myanmar ensures that its Constitution and laws respect freedom of association and freedom from forced labour, as guaranteed by Conventions Nos 87 and 29. Myanmar should, once conditions allow for it, resume and reinvigorate the labour law reform process halted by the military takeover to review the legislation affecting the application of Conventions Nos 87 and 29 with a view to ensuring its full conformity with the Conventions, in consultation with workers' and employers' organizations. The Commission also recommends that Myanmar builds an effective labour inspectorate and labour dispute settlement mechanisms, including courts competent to hear matters concerning freedom of association and the prohibition of forced labour, as part of the overall efforts to establish democratic institutions, which are needed for the protection of fundamental rights and freedoms.

Concerning Convention No. 87, the Commission further recommends that Myanmar rapidly investigates, through an independent and impartial mechanism, serious violations of the basic civil liberties of trade unionists affected by the measures imposed by the military authorities since 1 February 2021. It also recommends that Myanmar takes all the necessary measures to create and maintain an environment in which workers' and employers' organizations can freely exercise the rights granted under Convention No. 87 without threat of intimidation or harm and to ensure that the labour authorities have the capacity and resources to carry out the functions assigned to them by the legislation regarding freedom of association and ensure its proper application in practice.

In relation to Convention No. 29, the Commission recommends that Myanmar assesses the functioning of the national authorities and mechanisms responsible for the suppression of forced or compulsory labour and the enforcement of the relevant legislation, with the participation of workers' and employers' organizations; strengthens their capacity and cooperation; and ensures that workers' and employers' organizations have access to such authorities to report any practices contrary to the Convention. It also recommends that specific measures be taken by Myanmar to end the exaction of forced labour from Rohingya women and men and other ethnic or religious minorities, including by identifying and addressing discrimination against them and its root causes, with the participation of the concerned communities. Myanmar should further ensure that any future system for compulsory military service or any other national service obligation and any restrictions on civil servants, including military personnel, to resign from their positions are designed and implemented in accordance with the requirements of the Convention. Finally, the Commission recommends that Myanmar revises its legislation prohibiting forced or compulsory labour to ensure that it provides for penalties that are really adequate and dissuasive; and ensures the strict enforcement of the legislation, including through the development of ways and means of monitoring and assessing enforcement on a regular basis.

In its final observations, the Commission emphasizes the importance of legal frameworks being in line with international standards and the existence of strong institutions for the effective promotion and protection of basic civil liberties and fundamental freedoms and rights. It considers that respect for all the ILO fundamental principles and rights at work, including the principle of equality and non-discrimination, is needed for an inclusive and prosperous future for Myanmar. Due to the urgency of the situation, the Commission considers that all relevant parties should strive to achieve a peaceful transition to fully democratic institutions and processes and that the international community should provide the necessary support and engagement, including for people fleeing Myanmar due to the risk of persecution. Finally, the Commission pays tribute to the Myanmar people who testified before it, many at great risk to themselves and their families, and who shared their stories and experiences attesting to the difficulties and hardship they are facing and their struggle for freedom.

## Chapter 1. Establishment of the Commission of Inquiry

1. At its 344th Session (March 2022), the Governing Body of the International Labour Office (“Governing Body”) unanimously decided in accordance with article 26(4) of the Constitution of the International Labour Organization (ILO) to “establish a Commission of Inquiry in respect of the non-observance by Myanmar of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Forced Labour Convention, 1930 (No. 29)”.<sup>1</sup> Myanmar ratified both Conventions on 4 March 1955 and both are in force in the country.
2. In order to have a full understanding of the context giving rise to the decision of the Governing Body, it is important to recall the historical context of supervision by the ILO of these fundamental rights in Myanmar. To this end, the present introductory Chapter recalls the earlier article 26 proceedings in respect to Myanmar’s observance of Convention No. 29 that had been initiated in 1997 and the developments leading to the establishment of the present Commission.

### A. Earlier article 26 proceedings in respect of Myanmar

3. At its 268th Session (March 1997), the Governing Body decided to set up a Commission of Inquiry to examine a complaint concerning observance by Myanmar of Convention No. 29 presented under article 26 of the Constitution of the ILO by 25 Workers’ delegates to the 83rd Session (June 1996) of the International Labour Conference (ILC).<sup>2</sup> That Commission of Inquiry issued its report on 2 July 1998.<sup>3</sup> With a view to securing compliance by Myanmar with the recommendations issued by the Commission of Inquiry, on 14 June 2000, the ILC adopted a resolution concerning the measures recommended by the Governing Body under article 33 of the ILO Constitution on the subject of Myanmar.<sup>4</sup>
4. During the 99th Session (June 2010) of the ILC, several Workers’ delegates submitted a new complaint under article 26 of the ILO Constitution concerning the non-observance by Myanmar of Convention No. 87.<sup>5</sup> In November 2012, the Governing Body decided, however, that considering certain positive developments in the country, including the enactment of the 2011 Labour Organization Law and the Government’s readiness to cooperate with the ILO and to receive technical assistance relating to freedom of association, it would take no further action regarding this complaint.<sup>6</sup>
5. Subsequently, the ILC adopted resolutions in 2012 and 2013, respectively, authorizing ILO technical assistance for Myanmar related to forced labour and freedom of

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<sup>1</sup> ILO, *Minutes of the 344th Session of the Governing Body of the International Labour Office* (March 2022), GB.344/ PV, para. 394(j).

<sup>2</sup> ILO, *Minutes of the 268th Session*, GB.268/PV (Rev), IV/5.

<sup>3</sup> ILO, “*Forced labour in Myanmar (Burma)*”, 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), *Official Bulletin*, Vol. LXXXI, 1998, Series B, “Report of the 1998 Commission of Inquiry”.

<sup>4</sup> ILO, *Resolution concerning the measures recommended by the Governing Body under article 33 of the ILO Constitution on the subject of Myanmar*, ILC, 88th Session, 2000.

<sup>5</sup> ILO, *Complaint concerning the non-observance by Myanmar of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), made by delegates to the 99th Session (2010) of the International Labour Conference under article 26 of the ILO Constitution*, Governing Body, 309th Session (November 2010), GB.309/7.

<sup>6</sup> ILO, *Minutes of the 316th Session of the Governing Body of the International Labour Office* (November 2013), GB.316/PV(&Corr.), para. 212.

association and discontinuing the measures under article 33 of the ILO Constitution which it had put in place in 2000.<sup>7</sup> The 2013 ILC resolution invited the Governing Body to continue to review the situation in Myanmar on issues relating to ILO activities, including freedom of association, and, in this regard, requested the Director-General to regularly submit reports to the Governing Body until the elimination of forced labour. Accordingly, the Governing Body has been reviewing the situation in Myanmar on a regular basis.<sup>8</sup>

## B. Developments leading to the establishment of the present Commission

6. On 1 February 2021, the day Myanmar's Parliament was due to meet for the first time following the November 2020 elections, the military staged a coup d'état, ousting the civilian government. President Win Myint and State Counsellor Aung Sang Suu Kyi, as well as other leading officials of the National League for Democracy (NLD), which had been certified as the winner of the 2020 elections, were detained. The military declared a state of emergency and all legislative, executive and judicial powers were transferred to the Commander-in-Chief of the army.<sup>9</sup>
7. On 10 February 2021, the Director-General of the International Labour Office ("the Director-General") issued a public statement reiterating the calls by the United Nations Secretary-General for the military leadership to respect the will of the people of Myanmar and to adhere to democratic norms. He urged military leaders not to interfere with the rights of workers, including civil servants, and employers to participate in peaceful protests.<sup>10</sup> The Director-General also reiterated the obligations arising from Myanmar's membership of the ILO and its ratification of Convention No. 87. On 23 February, the Director-General issued a further statement, addressing allegations that the police and military were conducting door-to-door searches for trade unionists in an industrial township in Yangon and urging the military to cease all acts of harassment and intimidation against these workers.<sup>11</sup>
8. The Director-General presented a report on the situation in Myanmar to the 341st Session (March 2021) of the Governing Body. The report noted that, since 1 February 2021, hundreds of thousands of people had demonstrated peacefully throughout the country condemning the military takeover. The report further noted widespread use of force against peaceful demonstrators, including the use of live ammunition, tear gas, water cannons and stun grenades, resulting in the killing of more than 50 demonstrators. It also referred to the police and the military firing weapons at houses

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<sup>7</sup> ILO, [Resolution concerning the measures on the subject of Myanmar adopted under article 33 of the ILO Constitution](#), ILC, 101st Session, 2012; [Resolution concerning remaining measures on the subject of Myanmar adopted under article 33 of the ILO Constitution](#), ILC, 102nd Session, 2013.

<sup>8</sup> The Office's reports to the Governing Body for its regular review of the situation in Myanmar and related ILO activities, as a follow-up to the 2013 ILC resolution, are contained in documents: GB.320/INS/6(Rev) (March 2014); GB.323/INS/4 (March 2015); GB.325/INS/7(Rev.) and GB.325/INS/7(Add.) (Oct.–Nov. 2015); GB.326/INS/10 (March 2016); GB.328/INS/9 (Oct.–Nov. 2016); GB.329/INS/11 (March 2017); GB.331/INS/11 (Oct.–Nov. 2017); GB.332/INS/8 (March 2018); GB.335/INS/12 (March 2019); GB.337/INS/9 (Oct.–Nov. 2019); GB.338/INS/10 (March 2020); GB.340/INS/12 (Oct.–Nov. 2020); and GB.341/INS/17 (March 2021).

<sup>9</sup> ILO, [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 \(2013\): Addendum](#), Governing Body, 341st Session (March 2021) GB.341/INS/17(Add.1), para. 2.

<sup>10</sup> ILO, ["ILO calls on Myanmar to respect freedom of association and restore democratic order"](#), press release, 10 February 2021.

<sup>11</sup> ILO, ["ILO statement on Myanmar"](#), 23 February 2021.

and apartment buildings in Yangon and properties being set on fire. Additionally, house-to-house searches were being carried out by the police and the military at night, looking for people participating in protest action and in what came to be known as the Civil Disobedience Movement (CDM). According to the Director-General's report, by 3 March 2021, approximately 1,600 people had been arrested, including politicians, NLD officials, government officials, trade unionists, journalists, students, civil society activists and people leading or supporting peaceful protest action or expressing opposition to the military takeover.<sup>12</sup>

9. The Governing Body expressed its grave concern at the arrest, intimidation, threats and acts of violence against trade unionists, as well as the declaration of 16 labour organizations as illegal. It called on the military authorities to immediately cease such activities and release from detention and drop any charges against trade unionists who had peacefully participated in protest activities. The Governing Body further expressed its grave concern at newly issued measures or orders curtailing freedom of expression and opinion and freedom of peaceful assembly, recalling that these freedoms are essential for the exercise of freedom of association. It also called for the immediate repeal of such measures or orders and for guarantees of the freedom of the social partners to undertake their functions without threat of intimidation or harm. Finally, the Governing Body urged Myanmar to uphold its obligations under Convention No. 87 and ensure that workers and employers were able to exercise their freedom of association rights in a climate of freedom and security, free from violence, arbitrary arrest and detention.<sup>13</sup>
10. During the 342nd Session (June 2021) of the Governing Body, the Committee on Freedom of Association (CFA) examined a complaint against Myanmar (Case No. 3405) submitted by the International Trade Union Confederation (ITUC) and Education International. The complaint raised a series of grave allegations concerning actions taken by the military authorities against trade unionists, workers and civil servants who were calling for a return to civilian rule following the coup d'état. On the basis of these allegations, as well as the reply received, the CFA adopted an interim report containing a number of recommendations and drawing the Governing Body's attention to the serious and urgent nature of the case (see below, Chapter 3, section B).<sup>14</sup>
11. Also in June 2021, at its 109th Session, the ILC adopted, by consensus, a resolution for a return to democracy and respect for fundamental rights in Myanmar.<sup>15</sup> The resolution, inter alia, calls on Myanmar to respect Convention No. 87 and ensure that workers and employers are able to exercise their freedom of association rights. It requests the Governing Body to follow-up on its implementation. During the same session, the Conference Credentials Committee was called upon to consider competing sets of credentials for the delegation representing Myanmar – namely credentials submitted by the Permanent Mission of the Republic of the Union of Myanmar to the United Nations Office and other international organizations in Geneva ("Permanent Mission") and those submitted by the National Unity Government of the Republic of the Union of Myanmar. In light of the decision of the United Nations General Assembly to defer its decision on

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<sup>12</sup> GB.341/INS/17(Add.1), paras 4 and 5.

<sup>13</sup> ILO, *Minutes of the 341th Session of the Governing Body of the International Labour Office* (March 2021), GB.341/PV, para. 561(c), (d) and (e).

<sup>14</sup> ILO, *395th Report of the Committee on Freedom of Association*, June 2021, paras 284–358.

<sup>15</sup> ILO, *Resolution for a return to democracy and respect for fundamental rights in Myanmar*, ILC, 109th Session, 2021.

the credentials of Myanmar,<sup>16</sup> the Conference Credentials Committee decided that no delegates from Myanmar would be accredited to the 109th Session of the ILC.<sup>17</sup>

12. Subsequently, the agenda of the 343rd Session (November 2021) of the Governing Body included an item entitled “Follow-up to the resolutions concerning Myanmar adopted by the International Labour Conference at its 102nd (2013) and 109th (2021) Sessions”. Having considered a report on the matter submitted to it by the Director-General, the Governing Body expressed profound concern that the military authorities had continued the large-scale use of lethal violence and the harassment, intimidation, arrest and detention of trade unionists and others, including the Rohingya, and reiterated its call for Myanmar to uphold immediately its obligations under Convention No. 87. It also expressed serious concern at reports of the use of forced labour by the military and urged Myanmar to end immediately the use of forced labour and to uphold its obligations under Convention No. 29.<sup>18</sup>
13. At its November-December 2021 Session, the Committee of Experts on the Application of Conventions and Recommendations (CEACR) examined the application by Myanmar of Convention No. 87 in law and practice. The CEACR noted that the allegations it had received relating to numerous deaths, massive detentions and arrest of trade unionists, as well as a momentous attack on basic civil liberties, gave rise to the deepest concern and asked Myanmar to supply full particulars to the 110th Session (June 2022) of the ILC.<sup>19</sup> The CFA, having received new allegations from the ITUC in relation to Case No. 3405 (Myanmar), again examined the matter and adopted another interim report in March 2022 (see below, Chapter 3, section B).<sup>20</sup>

### C. Establishment of the Commission of Inquiry and appointment of its members

14. At its 344th Session (March 2022), the Governing Body discussed the follow-up to the 2013 and 2021 ILC resolutions, in keeping with the related Conference decisions. For this purpose, it had before it a further report of the Director-General on developments in Myanmar.<sup>21</sup> Having considered the matter, the Governing Body decided to avail itself of the authority bestowed upon it under article 26(4) of the ILO Constitution to establish a Commission of Inquiry of its own motion. The provisions of Conventions Nos 29 and 87 are set out in Appendix II to this report.
15. During the Governing Body’s discussion, the Worker spokesperson queried how “a Commission [of Inquiry] would coordinate with the military, which was not recognized as a legitimate government”,<sup>22</sup> referring to the fact that no delegation from Myanmar had been accredited to the 109th Session (June 2021) of the ILC. In response, the ILO Legal Adviser clarified that there was no impediment to establishing a Commission of Inquiry for a country whose government was not recognized by the ILO and to maintain

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<sup>16</sup> United Nations General Assembly, “Credentials of representatives, to the seventy-sixth session of the General Assembly”, A/RES/76/15, 2021.

<sup>17</sup> ILO, *Fourth report of the Credentials Committee*, Record of Proceedings No. 3E, ILC, 109th Session, 2021, para. 13.

<sup>18</sup> GB.343/PV, para. 266(b), (d) and (e).

<sup>19</sup> CEACR – Myanmar, C.87, *observation*, 2021.

<sup>20</sup> ILO, *397th Report of the Committee on Freedom of Association*, paras 503–584.

<sup>21</sup> ILO, *Follow-up to the resolutions concerning Myanmar adopted by the International Labour Conference at its 102nd (2013) and 109th (2021) Sessions: Report of the Director-General on developments in Myanmar, including information on potential follow-up action by the 110th Session of the International Labour Conference*, Governing Body, 344th Session (March 2022), GB.344/INS/12.

<sup>22</sup> GB.344/ PV, para. 370.



an institutional dialogue for the strict purposes of standards supervision. Keeping communication channels open with the military authorities currently in power did not imply explicit or implicit recognition of them as the legitimate government.<sup>23</sup>

16. At its 345th Session (June 2022), the Governing Body appointed the following persons to serve on the Commission of Inquiry: Judge Raul Cano Pangalangan (Philippines) as Chairperson; and Judge Dhayanithie Pillay (South Africa) and Dr Faustina Pereira (Bangladesh) as members.<sup>24</sup> Biographical information on the members of the Commission is included in Appendix I to this report.
17. On the same occasion, the Governing Body “called upon Myanmar to fully cooperate with the Commission of Inquiry and facilitate its work, including as regards a possible country visit”.<sup>25</sup> Similarly, the Conference Committee on the Application of Standards (CAS), which discussed the application by Myanmar of Convention No. 87 at its 110th Session in June 2022, urged “the military authorities to [...] ensure that the ILO Commission of Inquiry established by the Governing Body in March 2022 is allowed to enter the country and carry out its mandate freely without interference” (see below, Chapter 3, section B).<sup>26</sup>

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<sup>23</sup> GB.344/PV, para. 382.

<sup>24</sup> ILO, *Minutes of the 345th Session of the Governing Body of the International Labour Office* (June 2022), GB.345/PV, para. 141.

<sup>25</sup> GB.345/PV, para. 140(i).

<sup>26</sup> ILO, *Report of the Committee on the Application of Standards, Part Two: Discussion on the General Survey, on the report of the Joint ILO-UNESCO Committee of Experts and on the situation concerning particular countries*, (“2022 Report of the CAS”), Record of Proceedings No.4B/P.II, ILC, 110th Session, 2022, pp. 444–445.

## Chapter 2. Procedure followed by the Commission of Inquiry

### A. First session of the Commission

18. The Commission held its first session in Geneva from 25 to 27 August 2022. During the session, the members of the Commission were sworn in and the Commission adopted its Rules of Procedure. It considered the extent and implications of its engagement with the Myanmar military authorities and adopted a number of decisions and measures with a view to its subsequent work, including a list of entities to be invited to submit written information, the programme and modalities of its work and risk prevention measures to guarantee the safety of people and organizations engaging with the Commission.

### Solemn declaration by the members of the Commission

19. At the beginning of the first session, the members of the Commission made a solemn declaration in the presence of the Director-General, Mr Guy Ryder. When inviting the members to make this declaration, the Director-General recalled the particularities of the situation in Myanmar and the inherent challenges for the work of the Commission. He emphasized the importance of the Commission of Inquiry and its role in shaping the future of the country. The Director-General noted that it was the second time that Myanmar had been the subject of a Commission of Inquiry in respect of Convention No. 29. It was also the first time that an ILO Member State was subject to such proceedings in respect of the same Convention twice.
20. The members of the Commission then made the following solemn declaration:

I solemnly declare that I will honourably, faithfully, impartially and conscientiously perform my duties and exercise my powers as [the Chairperson] [a member] of the Commission of Inquiry appointed by the Governing Body of the International Labour Office at its 344th Session in March 2022, in pursuance of article 26 of the Constitution of the ILO, in respect of the non-observance by Myanmar of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Forced Labour Convention, 1930 (No. 29).

### Applicable legal provisions and adoption of the Rules of Procedure

21. Articles 26 to 29 and 31 to 34 of the ILO Constitution set out the procedure under which a Commission of Inquiry may be appointed and establish its mandate and functions. These provisions are reproduced in Appendix III. Under the ILO Constitution, a Commission of Inquiry is required to fully consider the matter referred to it and to prepare a report embodying its findings and recommendations.
22. The ILO Constitution does not, however, lay down specific rules of procedure to be followed by a Commission of Inquiry appointed under article 26 and, in line with the Organization's established practice, it is for the Commission of Inquiry to draw up its own rules. In determining its Rules of Procedure, the present Commission recalled certain elements that characterize the nature of its work. As emphasized by previous commissions of inquiry, the procedure provided for in articles 26 to 29 and 31 to 34 of the ILO Constitution is of a judicial nature. Therefore, the Rules of Procedure must safeguard the right to a fair and transparent process as recognized by international law and the purpose of the Commission, namely to examine, as completely and objectively as possible, the information that it considers necessary to ascertain the matters submitted to it for investigation by the Governing Body, and to express its view thereon.

23. The Commission also considered the institutional context in which it was established, which differed from that of most previous commissions of inquiry. Indeed, while the present Commission was established by the ILO Governing Body of its own motion, most other commissions of inquiry had been created following a complaint filed by delegates to the ILC.<sup>27</sup> Furthermore, the Commission of Inquiry was mandated to examine alleged non-observance of ILO Conventions by a Member in circumstances in which government affairs have been taken over by the country's military authorities, which have not been recognized by the ILO<sup>28</sup> or the United Nations<sup>29</sup> as representing the legitimate government of Myanmar.
24. With these considerations in mind, the Commission adopted its Rules of Procedure which, shortly after adoption, were brought to the attention of the Myanmar military authorities. The Commission also communicated the Rules of Procedure to the ITUC and the International Organisation of Employers (IOE), as representatives of the Workers' and Employers' groups of the Governing Body. The Rules of Procedure are set out in Appendix IV.

### Purpose and terms of the Commission's interactions with the military authorities

25. The Commission noted that while the ILO has not recognized the Myanmar military authorities as the legitimate Government of Myanmar for the purpose of representation at the ILC and other official meetings of the Organization, the Governing Body did not consider this as impeding the establishment of the Commission of Inquiry. The Commission was also of the view that, in compliance with the Rules of Procedure, its interaction with the military authorities for the purpose of the present inquiry must include examination of the action of the military authorities, as such action has an impact on the application of the ILO Conventions ratified by Myanmar and the enjoyment of the rights guaranteed thereunder.
26. Accordingly, the Rules of Procedure provide that "to enable it to carry out its functions effectively, the Commission shall seek relevant information from the military authorities and shall request these authorities to designate a representative or representatives to act on their behalf in relation to the Commission for the purpose of the inquiry. The possible refusal of the military authorities to designate a representative, or more generally, to cooperate with the Commission shall not affect the completion of the inquiry".<sup>30</sup>
27. In this context, and in line with the Rules of Procedure, any engagement by the Commission with the military authorities would be solely to allow it to exercise its

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<sup>27</sup> Of the 14 commissions of inquiry set up so far, four have been established by the Governing Body of its own motion: one concerning Chile in 1975; one concerning the Federal Republic of Germany in 1985; another concerning Nigeria in 1998; and the present Commission of Inquiry on Myanmar. Eight commissions of inquiry were based on a complaint from ILC delegates and two commissions of inquiry were established based on a complaint from an ILO Member: one concerning Portugal in 1962 and one concerning Liberia in 1963.

<sup>28</sup> ILO, Fourth report of the Credentials Committee, Record of Proceedings No. 3E, ILC, 109th Session, 2021, para. 13; First report of the Credentials Committee, Record of Proceedings No. 2A, ILC, 110th Session, 2022, para. 28; First report of the Credentials Committee, Record of Proceedings No. 2A(Rev.1), 111th Session, 2023, para. 28.

<sup>29</sup> United Nations General Assembly, *Credentials of representatives to the seventy-sixth session of the General Assembly*, Report of the Credentials Committee, A/76/550, para. 9; "Credentials of representatives to the seventy-sixth session of the General Assembly", A/RES/76/15, 2021; *Credentials of representatives to the seventy-seventh session of the General Assembly*, Report of the Credentials Committee, A/77/600, para. 11; "Credentials of representatives to the seventy-seventh session of the General Assembly", A/RES/77/239, 2022.

<sup>30</sup> Rules of Procedure, para. 4.

mandate meaningfully and should not be construed as explicitly or implicitly recognizing these authorities as the legitimate Government of Myanmar.

### **Measures to prevent risks to the safety and security of persons and organizations interacting with the Commission**

- 28.** From the outset of its work, the Commission received allegations pointing to a climate of fear and repression in the country, potentially dissuading people and organizations from engaging with the Commission for fear of reprisals.
- 29.** For this reason, the Commission undertook an assessment of the risks that persons could be exposed to as a result of interacting with the Commission and its secretariat. This assessment aimed to ensure that the Commission's work did not prejudice the safety of persons appearing before it or being in contact with it, or their families and organizations.
- 30.** In its Rules of Procedure, which were shared with the military authorities in a communication dated 7 September 2022, the Commission required the authorities to assure that no witnesses were prevented from appearing before the Commission or from communicating with it and that no retaliation, sanction or prejudice of any sort to any person, or their families and organizations, would occur as a consequence of their appearing before or being in contact with the Commission. In the same communication to the military authorities, the Commission requested that all steps be taken to obtain assurances in this regard at the highest level.
- 31.** Specific measures to ensure the safety and security of persons were also put in place following the first session of the Commission, in particular when communicating with witnesses or their representatives, as well as in the conduct of hearings, so that the procedure could be carried out with full guarantees. This aspect is further discussed in section C of this Chapter.

### **Invitations to submit written information**

- 32.** In accordance with its Rules of Procedure, the Commission decided to request the Myanmar military authorities to present their position on the matters raised before the Commission.
- 33.** In addition, the Commission decided to address communications to a range of entities inviting them to submit relevant information so as to enable the Commission to ascertain the matters submitted to it by the Governing Body for investigation as completely and objectively as possible.
- 34.** With due regard to article 27 of the ILO Constitution, which requires Members to cooperate with commissions of inquiry by placing at their disposal all the information in their possession which bears upon the subject matter before the Commission, and as the decision to establish the Commission of Inquiry was taken by the Governing Body of its own motion, the Commission decided to invite all 28 Government members of the Governing Body to submit any relevant information. Additionally, as was done by the earlier Commission of Inquiry concerning Myanmar, the Commission also invited governments of countries located in the South-East Asian region and neighbouring Myanmar or having economic relations with Myanmar to submit to it any information in their possession relevant to the Commission's mandate.
- 35.** Workers' and employers' organizations with general consultative status with the ILO, other international workers' organizations, as well as national employers' and workers'

organizations, were also invited to submit written information relevant to the Commission's mandate.

36. The Commission further decided to reach out to a number of United Nations bodies and agencies, other intergovernmental organizations and non-governmental organizations operating in Myanmar or elsewhere, with a focus on human and labour rights, as well as other entities which could be in a position to provide relevant information, including the National Unity Government (NUG) which was formed following the military takeover by democratic forces opposing it.

### Decisions with a view to the subsequent work of the Commission

37. Towards the end of its first session, the Commission took a series of additional decisions on the procedural arrangements for its subsequent work.
38. The Commission decided to conduct country visits and hold a part of its second session in Asia in February 2023, so as to benefit from geographical proximity with witnesses and other interlocutors, thus facilitating the Commission's interaction with the relevant actors. Another part of the second session would take place in Geneva. The Commission also decided to keep the question of a visit to Myanmar under consideration, taking into account any responses received from the military authorities.
39. The Commission further decided to hold its third session in Geneva in July 2023 to finalize its report.
40. Finally, the Commission authorized the Chairperson to deal on its behalf with any questions of procedure that might arise between sessions, with the possibility of consulting the other members whenever he considered it necessary.

### B. Communications received by the Commission following its first session

41. In accordance with the decisions taken at its first session, the Commission addressed communications inviting the submission of written information to the military authorities and the entities it had identified for this purpose. In its communications, the Commission made it clear that it would accept only information, documents and statements of relevance to the matters concerning alleged non-compliance by Myanmar with Conventions Nos 29 and 87.
42. No response was received from the Myanmar military authorities to the communication transmitted to them on 7 September 2022, in which the Commission afforded the authorities the opportunity to present their position with regard to the matters before the Commission and invited them to provide any information they deemed pertinent in this regard.
43. However, the Commission is privy to a Note Verbale dated 31 October 2022 from the Permanent Mission of the Republic of the Union of Myanmar to the United Nations Office and other international organizations in Geneva addressed to the International Labour Office by which the Permanent Mission transmitted "Further Observations on the Report of the Director-General on the Developments in the situation in Myanmar to the 344th Session of the ILO Governing Body".<sup>31</sup> In this communication, the Permanent

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<sup>31</sup> Permanent Mission of the Republic of the Union of Myanmar to the United Nations Office and other International Organizations in Geneva ("Permanent Mission"), "Myanmar's Response on the Decisions of 345th Session of the ILO Governing Body", Note Verbale, 31 October 2022 (subsequently "Note Verbale, 31 October 2022").

Mission reiterated the authorities' rejection of the Commission of Inquiry,<sup>32</sup> which had first been communicated to the Office on 29 June 2022<sup>33</sup> and announced in a national newspaper on 5 April<sup>34</sup> and 2 July 2022.<sup>35</sup> The Permanent Mission also indicated that providing such further observations did not imply a change in the authorities' position in this regard.<sup>36</sup> A further Note Verbale from the Permanent Mission dated 4 November 2022 addressed to the Office reiterated these statements.<sup>37</sup> The Commission is also privy to a Note Verbale from the Permanent Mission dated 17 March 2023 addressed to the Office transmitting "Observations of Myanmar on the document GB.347/INS/12 and other relevant information".<sup>38</sup> Although this communication, as the previous ones, was not addressed to the Commission, it did contain information related to issues within the Commission's mandate. In particular, the above communications expressed strong objections to the allegations of arrest and detention of labour activists for having exercised their rights peacefully and elaborated on the application of Conventions Nos 29 and 87 in the country, indicating that measures taken against some workers and employers who violated provisions of the law did not affect the entire community of workers, who continued to peacefully exercise their fundamental rights in Myanmar. The information provided by the military authorities is considered in detail in Chapter 7.

44. The Commission received written communications from several Governments, international and national workers' organizations, intergovernmental organizations, non-governmental organizations and others. It also received a number of unsolicited submissions from actors engaged in the field of human and labour rights.
45. Communications were received from the following Governments: Australia, Bangladesh, Cambodia, France, Germany, Malaysia, New Zealand, Sweden, Thailand, United Kingdom of Great Britain and Northern Ireland and United States of America. Many of these communications noted the deteriorating human and labour rights situation in Myanmar since the coup d'état,<sup>39</sup> welcomed the establishment of the Commission of Inquiry<sup>40</sup> and expressed support for efforts to pursue justice, accountability, democracy, peace and development in Myanmar, as a step towards ensuring freedom of association and the eradication of forced labour.<sup>41</sup> Some provided extensive information on the situation of freedom of association in the country,<sup>42</sup> while

<sup>32</sup> Permanent Mission, Note Verbale of 31 October 2022, preliminary paras 2 and 3 and conclusion para. 2.

<sup>33</sup> Ministry of Labour, "Objection to the establishment of the ILO Commission of Inquiry-COI", 29 June 2022.

<sup>34</sup> Infosheet, "Myanmar strongly objects to Sweeping and Unfounded Accusations Mentioned in the Report of the ILO Director-General and Unilateral Decision of the ILO Governing Body", press statement, 5 April 2022.

<sup>35</sup> Global New Light of Myanmar, "Myanmar strongly rejects unilateral decisions and conclusions adopted during the 110th Session of the International Labour Conference", press statement, 2 July 2022.

<sup>36</sup> Permanent Mission, Note Verbale of 31 October 2022, preliminary para. 3.

<sup>37</sup> Permanent Mission, "Myanmar's Response on the Decisions of 345th Session of the ILO Governing Body", Note Verbale, 4 November 2022, para. 7 (subsequently "Note Verbale, 4 November 2022").

<sup>38</sup> Permanent Mission, "Observations of Myanmar on the document GB.347/INS/12 and other relevant information", Note Verbale, 17 March 2023 (subsequently "Note Verbale, 17 March 2023").

<sup>39</sup> Australia, France, Germany, New Zealand, the United Kingdom of Great Britain and Northern Ireland, and the United States of America.

<sup>40</sup> Australia, Sweden and the United States.

<sup>41</sup> Bangladesh, Malaysia, New Zealand and Thailand.

<sup>42</sup> France, Germany, the United Kingdom and the United States.

others indicated that they did not have any relevant information bearing upon the subject covered by the Commission.<sup>43</sup>

46. A communication received from the European Union underlined its support for the decision to establish the Commission of Inquiry and expressed appreciation for its important work as a response to the continuously and gravely deteriorating situation of freedom of association and forced labour in Myanmar.
47. The Office of the United Nations High Commissioner for Human Rights (OHCHR) submitted a detailed communication, pointing to serious and systematic violations of basic civil liberties and freedom of association in both law and practice, and highlighting in particular the use of violence against individuals participating in peaceful protests and strikes, as well as the use by the military of legislative provisions to silence any criticism of the regime. The OHCHR also referred to specific incidents of forced labour by the military authorities and non-State armed groups.
48. International workers' organizations submitted extensive communications, submitting information and views on the situation of forced labour and freedom of association in the country. The Commission received joint communications from the ITUC and the Confederation of Trade Unions – Myanmar (CTUM), as well as communications from the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) and Public Services International (PSI). These submissions welcomed the establishment of the Commission and provided detailed accounts of a heightened climate of violence and fear created by the military authorities, violent repression of peaceful protests, including the use of lethal violence, criminalization of the exercise of labour rights and civil liberties and targeted trade union repression, as well as legislative amendments withdrawing protection of fundamental human and labour rights, attacking the rule of law and the independence of the judiciary and allowing the suppression of pro-democratic protests. The submissions further referred to an increase in forced labour since the coup d'état, in particular by the military authorities, as well as exploitative employment practices and harassment at the workplace, allegedly resulting in forced labour.
49. The Federation of General Workers of Myanmar (FGWM) submitted documentation outlining detailed allegations of violations of the civil liberties of unionists and workers, union-busting practices by employers, workplace harassment and employer cooperation with the security forces, as well as numerous instances of alleged forced and unpaid overtime in the private sector. The submission of another national trade union federation emphasized the need for reform of the labour law to ensure effective protection of workers' rights and made allegations of a high-level of child labour and trafficking.
50. The following non-governmental organizations provided written communications to the Commission: Assistance Association for Political Prisoners (AAPP), the Ethical Trading Initiative, the Global Centre for the Responsibility to Protect (GCR2P), the International Commission of Jurists, Minority Rights Group International (MRG), Myanmar Witness (Project of the Centre for Information Resilience) and the Arakan Project. These submissions further denounced a culture of terror, abuse, excessive force and the breakdown of the rule of law and provided concrete and detailed data on alleged violations of basic civil liberties, including the right to a fair trial and the labour rights of trade unionists, in both law and practice, as well as the alleged dismantling of trade

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<sup>43</sup> Australia, Cambodia, Sweden and Thailand.

unions, significant constraints on union activities and employer union busting. Concerns were also expressed relating to the use of forced labour by the military, non-state armed entities and in the private sector.

51. The NUG sent a written communication in which it expressed its willingness to cooperate with the Commission's procedure. It alleged the wholesale violation of civil liberties, brutality, deliberate targeting of trade unionists by the military, unfair labour practices in the private sector, as well as engagement by the military in forced labour practices.

## C. Second session of the Commission

### Prior communications with the relevant countries

52. In view of its decision to hold a part of its second session in Asia, the Commission addressed written communications dated 8 December 2022 to the Governments of Bangladesh, India and Thailand. It indicated that, in seeking to establish the facts, the Commission deemed it useful to undertake a visit to the region and, in this context, to hold meetings during the course of February 2023 at the ILO Regional Office for Asia and the Pacific in Bangkok, Thailand, in Cox's Bazar, Bangladesh and in New Delhi, India. The Commission considered that a visit to countries with the presence of a population from Myanmar would enable it to hear from those who may have been directly impacted by the current situation in the country in relation to Conventions Nos 29 and 87 and would thus be knowledgeable about the subject. The letters also recalled that the procedure was strictly confidential and that the Commission intended to maintain such confidentiality throughout its country visits. Accordingly, the Commission requested the cooperation and assistance of the Governments in any related matters, particularly with regard to facilitating the timely granting of the required visas for the members of the Commission and its secretariat.
53. Following written and oral exchanges between the secretariat of the Commission and the permanent missions of the three countries, the Governments of India and Thailand approved the proposed visits and granted the necessary entry visas for the members of the Commission and the secretariat. In a letter dated 23 January 2023, the Permanent Mission of Bangladesh, however, indicated that, as a neighbouring country, it was advisable for Bangladesh to keep a distance from the initiative and considered that the Commission should focus on obtaining information and evidence within the territory of Myanmar.
54. On 12 January 2023, the Commission addressed a letter to the military authorities in Myanmar, drawing to their attention that the Commission was bound to exercise its mandate and undertake its work in accordance with the ILO Constitution and the procedure it had adopted. It indicated that it had received information regarding the alleged treatment by the authorities of numerous individuals which could involve violations of the rights protected under Conventions Nos 29 and 87. In this regard, the Commission expressed its concern about the situation of persons who may have been arbitrarily arrested or charged, held without charges or convicted without due process guarantees and expressed serious concern for the safety and physical and mental integrity of persons detained or imprisoned as a result of legitimately exercising their rights.
55. In light of the above, the Commission requested the authorities' cooperation to enable it to carry out its fact-finding mandate and to ascertain that it had the fullest information at its disposal for this purpose. As the Commission was contemplating travelling to



Myanmar to gather information directly, it recalled that its Rules of Procedure, in respect of country visits, provided that “the Commission shall determine its schedule and meet freely with any bodies or persons it deems relevant so as to ensure that it is fully and objectively informed on all aspects of the case”. It also stressed the importance of ensuring that no one engaging with the Commission would be subjected to any kind of retaliation. Finally, the Commission requested to receive such assurances in this regard so as to determine how it wished to proceed. The Commission has not received any reply to this communication.

### Second session and country visits

56. The Commission held its second session in Bangkok from 6 to 10 February 2023, in New Delhi from 13 to 14 February 2023 and in Geneva from 16 to 18 February 2023. Additional meetings were held virtually on 15 and 16 March 2023, 24 April 2023 and 14 May 2023.
57. The second session was primarily devoted to hearing witnesses and obtaining valuable contextual information. The visit to the region was particularly important as it enabled the members of the Commission to obtain a first-hand impression of the situation from persons with direct knowledge of the issues before it, and accordingly, to complement the information received in written submissions. In addition, geographical proximity facilitated interaction with witnesses. Being in the same time zone and sitting together facilitated and expedited the work of the Commission.

### Hearings of witnesses

58. Witnesses were given the opportunity to testify before the Commission by providing oral testimony, a written statement or both. The Commission considered it important to hear from a diverse range of persons. Witnesses thus ranged in age from 21 to 71 years old. They were further diversified in terms of gender, nationality, ethnicity, language, religion, geographical origin, family status, education and occupation, and included persons with disabilities. They were located both in Myanmar and in other countries.
59. Mindful of the security risks faced by individuals engaging with the Commission, and by their families and organizations, and in line with the Commission’s Rules of Procedure, arrangements were made, through the use of modern technologies, to allow for both in-person hearings and remote hearings through video link. Prior to the hearings, the technical aspects of the platforms to be used were discussed, relying on the advice of ILO IT specialists, and tested. Particular attention was given to data protection, including the security of communication channels, electronic document depositories and voice recordings. The Commission used various means and technological measures to increase the safety of communications, especially with persons located in Myanmar and neighbouring countries. Ahead of the hearings, the witnesses were provided with instructions and guidance to facilitate their participation in the hearings.
60. All hearings were held in full bench and were private and confidential to the participants. As a general rule, the Commission interviewed witnesses on an individual basis. However, several exceptions were made as a number of witnesses expressed a preference to testify in pairs or small groups.
61. At the beginning of each hearing, the Commission informed the witnesses of the conditions under which they would be giving their testimony (the private nature of the meetings, questions of interpretation, individual or group interviews, and so on) and recalled that the Commission was mandated to examine Myanmar’s compliance with

Conventions Nos 29 and 87 and would therefore focus on statements relevant to the issues referred to it. The Commission also recalled that all information presented to it would be treated confidentially by all persons permitted to be present by the Commission. It further asked witnesses to confirm that they were appearing before the Commission voluntarily, without any form of threat or intimidation. The Commission also requested the witnesses to provide personal information (name, age, gender, and so on) allowing it to ascertain their identity. Each witness made the following solemn declaration: "I solemnly declare upon my honour and conscience that I will speak the truth, the whole truth and nothing but the truth".

62. While some witnesses had first-hand information and provided testimony about events affecting them directly or affecting their close connections (family, friends, colleagues), others had, through their work, research, investigations and professional expertise, acquired extensive knowledge of the situation in Myanmar and were in a position to provide a broader overview of relevant events and their implications for people and society (expert witnesses).
63. In total, the Commission obtained personal testimonies from 107 witnesses. Many witnesses provided written testimony in addition to their oral testimony. Others provided written statements only. Numerous witnesses also submitted other forms of documentary evidence, including photographs, police reports, arrest warrants, court orders and other types of documents. When conducting hearings, it became clear that witnesses feared reprisals from the military authorities. The Commission has therefore considered it prudent not to include the records of the hearings in this report. These records will remain confidential even after the adoption of the report so as to ensure the safety and security of the persons who engaged with the Commission.
64. The information obtained in the hearings was not divulged in any manner other than for the purposes of the Commission's work in line with its mandate. All persons participating in the hearings were bound by the rules of confidentiality. Any personal information obtained from witnesses remains confidential and any such information, if used in the Commission's report, has been anonymized so as not to reveal the identity of witnesses and to protect their physical security and that of their families and organizations. Where the report refers to named individuals, their explicit consent has been obtained for doing so. The information received by the Commission during the hearings is analyzed in Chapter 7 of this report.
65. In addition to hearing witnesses, the Commission also held consultations with representatives of two United Nations agencies in Thailand and India, who provided essential contextual information and updates. Finally, the Commission met representatives of the ITUC and IOE, as secretariats of the Workers' and Employers' groups of the ILO Governing Body, who provided insights into their organizations' positions on the situation of forced labour and freedom of association in Myanmar.
66. In light of the failure of the Myanmar military authorities to respond to the Commission's communications, the Commission was not in a position to conduct personal interviews with those authorities.

#### **D. Third session of the Commission**

67. Ahead of its third session that took place in Geneva from 10 to 14 July 2023, the Commission sent a further communication to the military authorities on 23 May 2023 inviting them to respond to a set of specific allegations raised before the Commission and to provide information on a number of issues falling within the scope of

Conventions Nos 87 and 29. The communication also invited the authorities to appear before the Commission. While the Commission itself received no response from the military authorities to this communication, it is privy to a Note Verbale dated 20 June 2023 from the Permanent Mission of the Republic of the Union of Myanmar to the United Nations Office and other international organizations in Geneva addressed to the International Labour Office, indicating that consideration might be given to cooperating with the Commission if “Myanmar’s participation at ILO meetings including the International Labour Conference is granted”.<sup>44</sup>

68. The Commission notes that the Permanent Mission subsequently sent another Note Verbale to the International Labour Office on 7 July 2023, transmitting a document containing information related to the issues and allegations sent to the military authorities in the Commission’s letter on 23 May 2023. The Commission considers the information provided by the military authorities in Chapter 7.
69. During its third session, the Commission finalized its report which was subsequently adopted and presented to the ILO Director-General, Mr Gilbert F. Hounqbo.

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<sup>44</sup> Permanent Mission, Note Verbale, 20 June 2023.

## Chapter 3. Background

### A. The 1998 Commission of Inquiry and subsequent developments

70. The Commission deems it indispensable, as background to its own considerations, to recall the context of the establishment in 1997 of the Commission of Inquiry on Myanmar relating to Convention No. 29, the findings and recommendations set out in the Commission's report issued in 1998, as well as certain subsequent developments that occurred in the context of the ILO's institutional follow-up to the report, including the progress made in the implementation of the recommendations of the 1998 Commission.

#### Context of the 1998 Commission

71. When the Commission was established in 1997, Myanmar had experienced decades of the absence of political freedom, economic stagnation and internal armed conflict. Except for a short democratic period following its independence in 1948, Myanmar had been almost constantly under military rule. A nationwide mass movement in 1988, expressing discontent with the situation and calling for democratic reforms, had been violently suppressed by the military, which had then suspended the 1974 Constitution, abolished existing state organs and created a State Law and Order Restoration Council (SLORC) composed of military officers to replace the institutions that had been abolished.<sup>45</sup> The military eventually allowed the holding of elections in 1990, but did not recognize the results of the elections and continued its rule-by-decree.
72. The national legislation in place at the time provided for a trade union monopoly. The ILO supervisory bodies had for many years been calling on the authorities to lift the legislative restrictions on freedom of association and to ensure that workers could establish first-level unions, federations and confederations of their own choosing and select appropriate structures without prior authorization, in conformity with Convention No. 87, which had been ratified by Myanmar in 1955. In view of the lack of progress made by the Government in addressing these matters, the Committee on the Application of Standards of the ILC discussed the application of Convention No. 87 by Myanmar in 1989 and then every year from 1991 to 1997.
73. Concerns regarding the application of Convention No. 29 by Myanmar in law and practice had been raised by the ILO supervisory mechanisms since 1962. These concerns related primarily to national legislation – the Village Act and the Towns Act of 1907 – which allowed the army, the police and the public service more generally to requisition labour, and the army's practice of forcibly recruiting porters.<sup>46</sup> The existence of forced labour in Myanmar had been increasingly highlighted internationally outside the institutional context of the ILO, including by the United Nations Special Rapporteur on

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<sup>45</sup> In November 1997, the military dissolved the SLORC and set up the State Peace and Development Council (SPDC), which was also composed of military officers. The military dissolved the SPDC in 2011, when the state organs provided for under the 2008 Constitution assumed their functions.

<sup>46</sup> Report of the 1998 Commission of Inquiry, paras 121–153, providing a summary of the reports and statements of the Government of Myanmar in the context of the ILO's supervision of Convention No. 29, related comments from industrial organizations, as well as the observations, findings and requests by the supervisory bodies, including the report of the tripartite committee of the Governing Body set up to examine a representation made by the International Confederation of Free Trade Unions in 1993 under article 24 of the ILO Constitution.

the situation of human rights in Myanmar, a mandate created in 1992 under the then Commission on Human Rights.<sup>47</sup>

- 74.** In this context, a group of 25 Workers' delegates to the 83rd Session (June 1996) of the ILC presented a complaint under article 26 of the ILO Constitution, which led to the Governing Body setting up a Commission of Inquiry in 1997 to examine the observance by Myanmar of Convention No. 29.<sup>48</sup>

### Findings and recommendations of the 1998 Commission

- 75.** The complaint giving rise to the 1998 Commission alleged that, in addition to forced portering, large numbers of forced labourers were working on railway, road, construction and other infrastructure projects, contrary to Myanmar's obligations under Convention No. 29.<sup>49</sup> In its report, the Commission found that the Village Act and the Towns Act provided for the exaction of forced or compulsory labour within the meaning of the definition of Article 2(1) of Convention No. 29 and that failure to comply with call-ups for labour made under the two Acts was punishable with penal sanctions. The Commission considered that the work and services that could be exacted under the Acts were not so limited that they could be considered as coming under any of the exceptions listed in Article 2(2) of the Convention.<sup>50</sup>
- 76.** Based on the information and evidence gathered, the 1998 Commission found a pattern in the methods used by the authorities across the country to requisition labour.<sup>51</sup> Written and sometimes oral orders from higher administrative authorities or the military were received by the village head or by ward administration officials. The orders specified the number of persons to be provided or the work to be completed. It was for the village head or ward administration officials concerned to instruct households to provide the required labour. Persons were also directly rounded up by troops, without recourse to local administrators. The Commission found that those required to perform work had not offered to do so voluntarily. Failure to comply with a call-up for labour was not only punishable under the Village Act and the Towns Act, but, in practice, exactions of forced labour also often gave rise to extortion of money for a temporary alleviation of the burden, to threats to life and security and to extrajudicial punishment of those unwilling, slow or unable to comply with a demand for forced labour.<sup>52</sup>
- 77.** The 1998 Commission found that in practice requisitions were made for: portering; military camp work and other work in support of the military; work in agriculture, logging and other production projects undertaken by the authorities; construction and maintenance of roads, railways and bridges; other infrastructure work; and general urban work, such as cleaning and beautifying public areas. It considered none of the exceptions listed in Article 2(2) of Convention No. 29 to be applicable to the various types of work or services exacted from residents.<sup>53</sup>

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<sup>47</sup> Report of the 1998 Commission of Inquiry, paras 172–194.

<sup>48</sup> GB.268/PV (Rev), IV/5.

<sup>49</sup> Report of the 1998 Commission of Inquiry, paras 101–103.

<sup>50</sup> Paras 470–471.

<sup>51</sup> Para. 480.

<sup>52</sup> Para. 530. Such punishment or reprisals included demands for money, physical abuse, beatings, torture, rape and murder.

<sup>53</sup> Paras 484–502.

78. In light of the evidence before it, the 1998 Commission concluded that “the obligation under Article 1, paragraph 1, of [Convention No. 29] to suppress the use of forced or compulsory labour is violated in Myanmar in national law, in particular by the Village Act and the Towns Act, as well as in actual practice in a widespread and systematic manner [...]”.<sup>54</sup> Forced labour was found to be performed by both women and men, but also by children and elderly persons, as well as persons otherwise unfit for work.<sup>55</sup> The Commission further noted that the burden of forced labour appeared to be particularly great for non-Burman ethnic groups, especially in areas where there was a strong military presence, and for the Muslim minority, including the Rohingyas.<sup>56</sup> The Commission also concluded that Myanmar was not in compliance with its obligations under Article 25 of Convention No. 29, which requires the Government to ensure that the penalties imposed by law for the illegal exaction of forced or compulsory labour are both adequate and strictly enforced.<sup>57</sup>
79. Having arrived at these conclusions, in its recommendations, the Commission urged the authorities to take the necessary steps to ensure that the relevant legislative texts, in particular the Village Act and the Towns Act, were brought into line with Convention No. 29. The Commission also called for action to ensure that, in actual practice, no more forced or compulsory labour was imposed by the authorities, in particular the military. The Commission considered this even more important as the powers to impose compulsory labour appeared to be taken for granted, without any reference to the Village Act or the Towns Act. Furthermore, the Commission urged the authorities to take the necessary steps to ensure that the penalties which could be imposed under section 374 of the Penal Code for the exaction of forced or compulsory labour were strictly enforced, in conformity with Article 25 of the Convention, and called for thorough investigation, prosecution and adequate punishment of those found guilty.<sup>58</sup>

### Developments following the 1998 Commission’s report

80. In response to the recommendations of the 1998 Commission, the Government issued Order No. 1/1999 of 14 May 1999 temporarily suspending the power to requisition labour under the Village Act and the Towns Act.<sup>59</sup> Both the CEACR and the CAS considered that this was insufficient and had no impact on the practice of forced labour.<sup>60</sup> In view of the failure to implement the Commission’s recommendations, the ILC adopted resolutions concerning Myanmar in 1999 and 2000, the latter under article 33 of the ILO Constitution, to put in place measures to secure compliance by Myanmar with the recommendations of the 1998 Commission.<sup>61</sup>

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<sup>54</sup> Para. 536.

<sup>55</sup> Para. 531.

<sup>56</sup> Para. 534.

<sup>57</sup> Para. 537.

<sup>58</sup> Paras 511 and 539.

<sup>59</sup> *Myanmar*, Order Directing Not to Exercise Powers Under Certain Provisions of the Towns Act, 1907 and the Village Act, 1907 (Order No. 1/99 of the Ministry of Home Affairs of 14 May 1999). An English version of the Order is reproduced in Union of Myanmar, *Myanmar Laws 2000*, Office of the Attorney General, pp. 102-103.

<sup>60</sup> See ILO, *Report of the Committee on the Application of Standards*, Provisional Record No. 23, Part One, General Report, ILC, 87th Session, 1999, para. 195; and CEACR – *Myanmar*, C.29, observation, 1999.

<sup>61</sup> ILO, *Resolution on the widespread use of forced labour in Myanmar*, ILC, 87th Session; *Resolution concerning the measures recommended by the Governing Body under article 33 of the ILO Constitution on the subject of Myanmar*, ILC, 88th Session, 2000.

- 81.** In parallel, the Office carried out technical cooperation missions to Myanmar in May and October 2000 to assist the authorities with the implementation of the recommendations of the 1998 Commission. On 27 October 1999, the authorities adopted an Order supplementing Order No. 1/1999 which, for the first time, prohibited forced labour by all authorities, including the army, and issued several related instructions addressed to the relevant authorities.<sup>62</sup>
- 82.** In September and October 2001, a High-Level Team (HLT) appointed by the ILO visited Myanmar to assess the situation of forced labour there. One of the findings of the HLT was that the legislative provisions prohibiting forced labour “seem to have little if any impact on the realities of the situation”.<sup>63</sup> No criminal prosecutions under section 374 of the Penal Code had been initiated since the new Orders had been issued.<sup>64</sup> In addition, prosecutions could only go forward following a complaint to the police or the court by the person who had been compelled to work.<sup>65</sup> However, the HLT found that members of the general population were hesitant to file such complaints due, to a large extent, to fear of reprisals and lack of trust in the police and the judicial system.<sup>66</sup> As a means of overcoming these difficulties, the HLT proposed the possibility of appointing “a person or body of persons with the required independence and national and international credibility as well as being of unquestioned integrity [...] to whom complaints regarding forced labour could be submitted and who would have a mandate and the necessary means to conduct direct investigations without fear or favour with the required confidence of all parties concerned”.<sup>67</sup> The HLT also pointed out that “[i]f there existed [...] strong and independent workers’ organizations, as required by Convention No. 87 ratified by Myanmar, these could provide individuals affected by forced labour with a framework and collective support which would help them to make the best possible use of whatever remedies are available to defend their recognized rights”.<sup>68</sup>
- 83.** During the examination of the HLT’s report by the Governing Body in November 2001, profound concern was expressed regarding the limited impact of the newly adopted Orders, as reported by the HLT, and particularly at “the persistent immunity with regard to criminal prosecution of persons who have committed violations, despite the provisions of this legislation”.<sup>69</sup> The Governing Body therefore requested the Director-General to engage with the Myanmar authorities with a view to establishing an ILO presence in the country and assisting in the establishment of a mechanism, as suggested by the HLT, that would allow victims of forced labour to come forward without fear and ensure that those found guilty were held accountable and sanctioned.<sup>70</sup>

<sup>62</sup> Order Supplementing Order No. 1/1999 of 2000, reproduced in Union of Myanmar, “Myanmar Laws 2000”, Office of the Attorney General, pp. 99-101. See also CEACR – Myanmar, C.29, observation, 2000.

<sup>63</sup> ILO, *Developments concerning the question of the observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29): Report of the High-Level Team*, Governing Body, 282nd Session (November 2001), GB.282/4, para. 68.

<sup>64</sup> GB.282/4, para. 50.

<sup>65</sup> GB.282/4, footnote 22.

<sup>66</sup> GB.282/4, para. 68.

<sup>67</sup> GB.282/4, para. 80.

<sup>68</sup> GB.282/4, para. 68.

<sup>69</sup> ILO, *Conclusions concerning the question of the observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29): Adopted after examination of the report of the High-Level Team*, Governing Body, 282nd Session (November 2001), GB.282/4/2, para. 4.

<sup>70</sup> GB.282/4/2, paras 6 and 7.

- 84.** The Office and the Myanmar authorities subsequently reached an understanding for the appointment of an ILO Liaison Officer based in Myanmar in May 2002.<sup>71</sup> Although a joint plan of action for the elimination of forced labour was developed, its implementation was challenged by certain developments in the country, including a court case in which three persons who had been in contact with the ILO were convicted of high treason in 2003 and sentenced to death. In 2004, the Government informed the CAS that the sentences had been commuted on appeal.<sup>72</sup> Eventually, in 2006, the ILC called on the authorities to immediately enter into discussions with the ILO with a view to agreeing on the establishment of a credible mechanism for dealing with complaints of forced labour.<sup>73</sup> Those discussions resulted in the Office and the Myanmar authorities signing an agreement in February 2007 (the “Supplementary Understanding”),<sup>74</sup> under which the ILO Liaison Officer and a Working Group for the Elimination of Forced Labour to be established by the authorities (“the Government Working Group”) were entrusted with the responsibility to implement a forced labour complaints mechanism.<sup>75</sup>
- 85.** That mechanism was set up in 2007 and enabled any person or their representatives residing in Myanmar to submit to the ILO Liaison Officer allegations that the person had been subject to forced labour. The Liaison Officer had a mandate to examine such complaints objectively and confidentially and to make a preliminary assessment as to whether the complaint involved a situation of forced labour. The Liaison Officer then communicated to the Government Working Group complaints which were considered to involve a situation of forced labour, together with a reasoned opinion, so that the cases could be expeditiously investigated by the most competent civilian or military authority. The Liaison Officer was guaranteed, during and after the treatment of the case, free and confidential access to the complainants, their representatives and any other relevant persons to ascertain that no retaliatory action had been taken.
- 86.** Initially, the number of complaints received and assessed by the ILO Liaison Officer was relatively low but rose over time as public awareness increased of the new legislation prohibiting forced labour and the Government’s commitment to its eradication. A climate in which victims were more confident to bring complaints started to develop in Myanmar.
- 87.** In an important legislative development, the Constitution that came into force in Myanmar in 2008 included provisions concerning freedom of association and freedom from forced labour.<sup>76</sup> However, the ILO supervisory bodies pointed out that the provisions could allow those rights to be restricted in a manner incompatible with Myanmar’s obligations under Conventions Nos 29 and 87.<sup>77</sup> In particular, Article 354 of

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<sup>71</sup> ILO, *Understanding between the Government of the Union of Myanmar and the International Labour Office concerning the Appointment of an ILO Liaison Officer in Myanmar*, 19 March 2002.

<sup>72</sup> See CEACR – *Myanmar*, C.87, observation, 2004.

<sup>73</sup> ILO, *Reports of the Selection Committee: Second report, Record of Proceedings* No. 3-2\_ILC, 95th Session, 2006, Appendix, p. 3-2/12.

<sup>74</sup> ILO, *Developments concerning the question of the observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29)*, Governing Body, 298th Session (March 2007), GB.298/5/1 (the text of the Supplementary Understanding signed on 15 February 2007 is reproduced in the Appendix).

<sup>75</sup> The Working Group consisted of high-level representatives of the Ministries of Labour, Foreign Affairs and Home Affairs, the Office of the Attorney General and the Supreme Court. See ILO, *Developments concerning the question of the observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29)*, Governing Body, 301st Session (March 2008), GB.301/6/2, para. 7.

<sup>76</sup> *Constitution of the Republic of the Union of Myanmar*, September 2008 (subsequently the “Constitution”).

<sup>77</sup> CEACR – *Myanmar*, C.87, observation, 2008; and C. 29, observation, 2008.



the Constitution subjects the exercise of the right to freedom of association “to the laws enacted for State security, prevalence of law and order, community peace and tranquillity or public order and morality”, while Article 359 provides that “[t]he Union prohibits any form of forced labor except hard labor as a punishment for crime duly convicted and duties assigned by the Union in accord with the law in the interest of the public”.

- 88.** While the supervisory bodies closely monitored progress in the implementation of the recommendations of the 1998 Commission in the framework of Convention No. 29, workers’ organizations continued to denounce violations of trade union rights in Myanmar to the CEACR, the CAS and the CFA. The issues addressed by the supervisory bodies included legislative restrictions on forming workers’ organizations, as well as cases of arrest, torture, killing and disappearance of trade unionists, and their criminal prosecution and conviction for engaging in trade union activities.<sup>78</sup> These persistent concerns gave rise to a complaint in 2010 under article 26 of the ILO Constitution.<sup>79</sup> The complaint, however, was closed in November 2012 in light of certain positive developments in the country, particularly the adoption of the 2011 Labour Organization Law (LOL) and the Government’s willingness to cooperate with the ILO on freedom of association matters.<sup>80</sup> Developed with ILO technical assistance, the Law removed earlier legislative restrictions on freedom of association, as had been called for by the ILO supervisory bodies for many years. Independent workers’ organizations started to emerge and register in the country. Benefiting from ILO training on forced labour and international labour standards more generally, workers’ organizations started to play an important role in assisting victims of forced labour to bring forward complaints.
- 89.** In February 2012, the Parliament of Myanmar adopted the Ward or Village Tract Administration Law, which repealed the Village Act and the Towns Act of 1907. The new legislation no longer contained provisions allowing the requisitioning of labour. Shortly thereafter, in March 2012, the Parliament amended the Law to add a prohibition of forced labour and make its imposition punishable with imprisonment and fines.<sup>81</sup>
- 90.** During the ILC in June 2012, the Government representative of Myanmar informed the CAS that “[s]ince the establishment of the complaints mechanism, military disciplinary measures had been taken against 166 military personnel [...] for committing offences of forced labour and under-age recruitment”. Moreover, “action had been taken under section 374 of the Penal Code against 28 officers and 142 other officials supervising the

<sup>78</sup> Between 1998 and the military takeover on 1 February 2021, the CFA examined the following cases concerning Myanmar: Case No. 2268 (Report No. 333, March 2004, paras 642–770, Report No. 337, June 2005, paras 1058–1112, Report No. 340, March 2006, paras 1064–1112, and Report No. 351, November 2008, paras 1016–1050); Case No. 2591 (Report No. 349, March 2008, paras 1062–1093); Case No. 3171 (Report No. 378, June 2016, paras 467–493); and Case No. 3343 (Report No. 392, October 2020, paras 789–821). The CEACR’s comments concerning the application of Convention No. 87 by Myanmar in the 1990s focused mainly on legislative restrictions on freedom of association, while in its comments from 2003 onwards it increasingly addressed allegations of action by the authorities against trade unions and their members and leaders. See, for example, CEACR – *Myanmar*, C.87, observations adopted in 2006, 2007, 2008 and 2009. The CAS discussed the case of the application of Convention No. 87 by Myanmar every year from 1991 to 2011.

<sup>79</sup> GB.309/7.

<sup>80</sup> GB.316/PV(&Corr), para. 212.

<sup>81</sup> Law Amending the Ward or Village Tract Administration Law (Pyidaugsu Hluttaw Law No 7/2012), introducing a new section 27A. An unofficial English translation provided by the Ministry of Labour of Myanmar is reproduced in ILO, *Developments concerning the question of the observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29)*, Governing Body, 313th Session (March 2012), GB.313/INS/6(Add.2).

recruitment process”.<sup>82</sup> The Government representative added that five military personnel had been prosecuted under the Penal Code in accordance with new Orders issued by the Commander-in-Chief of the Defence Services in April 2012, which required the Ward or Village Tract Administration Law to also be applied to prosecute military personnel accused of forced labour under section 374 of the Penal Code.<sup>83</sup>

91. In addition to receiving and treating forced labour complaints, the Liaison Officer provided continuous support to the authorities for the dissemination of relevant legislative texts, as well as awareness-raising and capacity-building on the elimination of forced labour. This work was undertaken from 2012 within the framework of the ILO-Myanmar Joint Strategy and Action Plan for the elimination of forced labour.
92. The repeal of the Village Act and the Towns Act of 1907, the adoption of legislative provisions prohibiting forced labour, the action taken by the authorities to enhance their enforcement and, more generally, the commitment of Myanmar to undertake sustained efforts for the elimination of forced labour were important factors underpinning the decisions taken by the ILC in 2012 and 2013 to discontinue the measures under article 33 of the ILO Constitution that it had imposed in 2000.<sup>84</sup> The decisions were taken on the understanding that the Governing Body would continuously review the situation in Myanmar until forced labour was eliminated.<sup>85</sup> Accordingly, the Governing Body maintained the situation in Myanmar on its agenda, regularly reviewing progress in the elimination of forced labour, the improvement of freedom of association, labour law reform and other matters.<sup>86</sup>
93. From 2011, the ILO continued to provide support to the Government and employers’ and workers’ organizations through awareness-raising on the new legal framework for labour relations, including the Settlement of Labour Disputes Law adopted in 2012, as well as the strengthening of institutional capacities and the promotion of social dialogue and tripartite consultation. In September 2018, the Government, representatives of workers’ and employers’ organizations and the ILO signed the country’s first Decent Work Country Programme (DWCP), which provided a comprehensive framework for ILO support to the Government and the social partners from 2018 to 2021.<sup>87</sup>
94. While the 2007 Supplementary Understanding, under which the forced labour complaints mechanism had been set up, expired on 31 December 2018, the elimination of forced labour was established as a core component of the DWCP, which envisaged the development of national and local mechanisms to address forced labour. A National Forced Labour Complaints Mechanism Committee, composed of representatives of a

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<sup>82</sup> ILO, *Report of the Committee on the Application of Standards: Observations and information concerning particular countries*, Provisional Record No. 19, Part Three, ILC, 101st Session, 2012, p. III/4.

<sup>83</sup> Report of the CAS, 101st Session, pp. III/2 and 4.

<sup>84</sup> 2012 ILC resolution concerning the measures on the subject of Myanmar adopted under article 33 of the ILO Constitution, and 2013 ILC resolution concerning remaining measures on the subject of Myanmar adopted under article 33 of the ILO Constitution.

<sup>85</sup> 2013 ILC resolution, para. (d).

<sup>86</sup> The Office reports submitted to the Governing Body for the purpose of the follow-up to the 2013 ILC resolution are listed in Chapter 1, footnote 8.

<sup>87</sup> See ILO, *Myanmar Decent Work Country Programme 2018-2021: A Tool to Advance Decent Work and Sustainable Development*, 2018, and the related *Memorandum of Understanding* signed by the ILO and the tripartite constituents on 21 September 2021.

wide range of government ministries and agencies, was established in 2019 and met for the first time in July 2020.<sup>88</sup>

## B. Synopsis of the comments of the ILO supervisory bodies concerning Conventions Nos 29 and 87

- 95.** Prior to the establishment of the present Commission of Inquiry, and in addition to the 1998 Commission, other ILO supervisory mechanisms have for many years examined the application by Myanmar of Conventions Nos 29 and 87. This section provides an overview of recent examinations of the application of these Conventions by the CEACR and the CAS, as well as the examination of freedom of association issues by the CFA. This overview covers the issues raised before these supervisory bodies, the responses by the Myanmar authorities, as well as the comments and recommendations made by the supervisory bodies.
- 96.** It should be noted that, at its November-December 2022 session, in accordance with the usual practice of suspending the operation of the other supervisory mechanisms during the mandate of a commission of inquiry, the CEACR indicated that it would resume its examination of the application of Conventions Nos 29 and 87 by Myanmar once the Commission of Inquiry had completed its mandate.<sup>89</sup>

### Convention No. 29

- 97.** In parallel to the monitoring by the Governing Body of progress in the elimination of forced labour in Myanmar, as noted above,<sup>90</sup> the CEACR and the CAS have continuously assessed compliance by Myanmar with Convention No. 29. Most recently, the CAS discussed the application of Convention No. 29 by Myanmar in 2019,<sup>91</sup> issuing related conclusions. The CEACR subsequently adopted comments on the application of the Convention in 2019<sup>92</sup> and 2020.<sup>93</sup> Neither of these two bodies has examined compliance by Myanmar with Convention No. 29 since 1 February 2021, the date of the military takeover.

### Conference Committee on the Application of Standards, June 2019

- 98.** During the discussion at the CAS in June 2019 of the application by Myanmar of Convention No. 29, the Government representative of Myanmar expressed the Government's strong commitment and unwavering determination for the elimination of forced labour. The Government representative added that efforts towards democratic reforms played a role in the promotion and protection of human rights, including labour rights. He considered that one of the root causes of forced labour in Myanmar was the decades-long internal conflict since the country's independence in 1948. The Government was therefore making efforts to put an end to the armed conflicts and the country was undergoing rapid social, economic and political transformation. In

<sup>88</sup> ILO, *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)*, Governing Body, 340th Session (October–November 2020), GB.340/INS/12, paras 6–7, 9.

<sup>89</sup> CEACR – Myanmar, C.87, *observation*, 2022.

<sup>90</sup> For more details, see Chapter 3, Section A.

<sup>91</sup> ILO, *Report of the Committee on the Application of Standards: Information and reports on the application of Conventions and Recommendations*, Record of Proceedings No. 5B, Part Two, ILC, 108th Session, 2019, pp. II/213–226.

<sup>92</sup> CEACR – Myanmar, C.29, *observation*, 2019; and *direct request*, 2019.

<sup>93</sup> CEACR – Myanmar, C.29, *observation*, 2020; and *direct request*, 2020.

particular, he praised the remarkable contribution of the ILO to the elimination of forced labour in the country and highlighted the Government's steadfast efforts, including awareness-raising, workshops, seminars and training, which had led to a significant decrease in forced labour complaints and a fall in underage recruitment. The Government representative elaborated on a time-bound action plan focusing on four priority areas: the institutionalization of a national forced labour complaints mechanism; training and awareness-raising on forced labour; capacity-building to end forced labour; and the mobilization of the tripartite partners to prevent forced labour in the private sector. According to the Government representative, it was undeniable that the culture of tripartite dialogue had grown at the national level and was playing a significant role in the efforts to eliminate forced labour. The Government took all allegations of violations of forced labour seriously, was willing and able to address such issues and was fully committed to taking legal action against perpetrators if there was credible evidence of any human rights violations, including forced labour.<sup>94</sup>

- 99.** Noting the information provided by the Government representative and the discussion that followed, the CAS welcomed the Government's efforts to eliminate forced labour and urged it to continue them. However, it expressed concern at the persistent use of forced labour and urged the Government to take all necessary measures to ensure that, in practice, forced labour was no longer imposed by the military or civilian authorities and that victims of forced labour had access to effective remedies and comprehensive victim support without fear of retaliation. It further urged the Government to strictly enforce the Ward or Village Tract Administration Law of 2012 and the Penal Code to assure that those responsible for perpetrating forced labour were effectively investigated and prosecuted and received and served sentences commensurate with the crime in all cases. The Government was also urged to refrain from imposing any punishment against those who spoke out against or reported incidents of forced labour and to increase the visibility of awareness-raising and capacity-building activities for the general public and administrative authorities to deter the use of forced labour. Finally, the CAS urged the Government to intensify its cooperation with the ILO through the development of a time-bound action plan for the establishment of, and transition to, an effective complaints-handling procedure.<sup>95</sup>

#### Committee of Experts on the Application of Conventions and Recommendations, November-December 2020

- 100.** Following-up the June 2019 conclusions of the CAS, the CEACR recognized certain progress, both in terms of legislative improvements and the measures taken to address forced labour in practice but continued to express concern over a range of issues related to the application of the Convention both in law and in practice.
- 101.** In particular, the CEACR noted recent developments regarding the elimination of forced labour, especially the aim to institutionalize national forced labour complaints mechanisms and to strengthen protection against unacceptable forms of work, particularly forced and child labour by 2021, as set out in the Memorandum of Understanding on the DWCP (2018–21). The CEACR recalled that, in October–November 2019, the Governing Body had noted that the number of complaints of forced labour received had continued to decrease, suggesting progress towards the elimination of

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<sup>94</sup> *Record of Proceedings* No. 5B, 2019, pp. II/213–214, 224–225 and 226.

<sup>95</sup> *Record of Proceedings* No. 5B, 2019.

underage recruitment, which generally constituted the highest portion of the complaints received. The CEACR further recalled that the Ward or Village Tract Administration Law of 2012, which had repealed the Village Act and the Towns Act of 1907, made the use of forced labour by any person a criminal offence punishable with imprisonment and fines (section 27A).

- 102.** However, it also noted the observations by the ITUC alleging that forced labour was exacted in a systematic and continuous manner, including in the private sector, and especially in the agricultural sector (fisheries, sugar cane, beans) and in the jade industry. The ITUC had further highlighted the plight of the Rohingya population, of whom nearly 700,000 had been expelled from Rakhine State and were at increased risk of falling victims to forced labour by both state and non-state actors.
- 103.** The CEACR noted the information provided by the Government to the CAS in 2019 on interim procedures for receiving complaints, as well as the information on training and awareness-raising workshops conducted between January 2018 and August 2019 for a wide range of participants in the public and private sectors, including within the framework of the DWCP. The CEACR further noted the Government's indication concerning the establishment in February 2020 and the functioning of the National Complaints Mechanism (NCM). The Government also stated that a national committee had been set up for the effective implementation of the NCM, which was composed of representatives of 16 ministries, the Myanmar Human Rights Commission and the social partners, and that the NCM had resolved 20 of the 38 cases it had received in 2020. The CEACR further noted the Government's indication that no one had been punished under the Ward or Village Tract Administration Law and the Penal Code between July 2018 and July 2019, but that 18 military officers and military personnel had been punished between April 2019 and July 2020 for irregular underage recruitment, although no indication had been provided on the specific penalties imposed.<sup>96</sup>
- 104.** While noting the Government's efforts for the elimination of forced labour, the CEACR continued to express concerns relating to the effective enforcement of the Ward or Village Tract Administration Law of 2012 and the Penal Code. It therefore strongly urged the Government to take the necessary measures to ensure the strict application of the national legislation, particularly the provisions of those two laws, so that sufficiently dissuasive penalties of imprisonment were imposed and enforced against perpetrators in all cases. The Government was also requested to continue providing information on the application of those provisions in practice and on other measures taken to ensure that, in practice, forced labour was no longer imposed by the military or civilian authorities, as well as in the private sector. The CEACR specifically requested the Government to provide statistical data on cases of forced labour detected, legal proceedings initiated, convictions handed down and the nature of the penalties imposed on convicted persons, as well as the number of complaints of forced labour received and resolved by the NCM.<sup>97</sup>
- 105.** In relation to Article 359 of the Constitution, the CEACR recalled that this provision exempted from the prohibition of forced labour "duties assigned by the Union in accordance with the law in the interest of the public" and could be interpreted as allowing the generalized exaction of forced labour from the population. While acknowledging the efforts made by the Government in respect to proceedings to amend

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<sup>96</sup> CEACR – *Myanmar*, C.29, observation, 2020.

<sup>97</sup> CEACR – *Myanmar*, C.29, observation, 2020.

Article 359 of the Constitution, the CEACR noted with regret that, although the majority of the representatives in the Assembly had voted for the amendment, the provision had not been amended as it had not received the required vote of more than 75 per cent of all the representatives of the Assembly. The CEACR expressed the firm hope that Article 359 of the Constitution would be amended to bring it into conformity with the Convention.<sup>98</sup>

- 106.** Finally, the CEACR noted the information provided by the Government on the activities undertaken by the Anti-Trafficking in Persons Division under the Central Body for Suppression of Trafficking in Persons and on the specific measures taken in the framework of a five-year National Plan of Action to Combat Human Trafficking 2017–21. The Government had also provided information on the various activities undertaken in cooperation with other countries to combat trafficking in persons and the various forms of protection and assistance provided to victims of trafficking. The CEACR encouraged the Government to continue its efforts to combat trafficking in persons and strongly encouraged it to continue taking effective measures to ensure that victims of trafficking were provided with appropriate protection and services.<sup>99</sup>

### Convention No. 87

- 107.** As noted above, the situation of freedom of association in Myanmar has been under review by ILO supervisory mechanisms for decades, including by the CEACR, the CAS and the CFA, as well as through a complaint under article 26 of the ILO Constitution.<sup>100</sup> This subsection summarizes chronologically the recent comments of the supervisory mechanisms in this respect, including comments issued subsequently to the coup d'état.

### Conference Committee on the Application of Standards, June 2018

- 108.** While the adoption of the LOL in 2011 provided a legislative framework for the establishment of labour organizations and employers' organizations in the country, the situation of freedom of association remained challenging, resulting in the CAS examining the application of Convention No. 87 by Myanmar in 2018, the first time since the adoption of the LOL and since its previous examination of the application of the Convention in 2011.
- 109.** During the discussion of the case, a Government representative indicated that labour law reform was well under way and that a culture of tripartite dialogue had been successfully introduced and developed. The LOL and the Settlement of Labour Disputes Law of 2012 were being reviewed in close consultation and cooperation with all stakeholders, including workers and employers. A new chapter had opened for workers relating to the right to associate and organize, with many workers' and employers' organizations in place and functioning since the adoption of the LOL. Furthermore, the Law on the Right to Peaceful Assembly and Peaceful Procession of 2016 allowed a wider democratic space for all citizens of Myanmar, including workers, in the exercise of freedom of association. The Government representative emphasized that, with the political will of the Government, close tripartite cooperation, ILO technical assistance and the support of international partners, workers and employers would increasingly be able to enjoy their fundamental rights and such progress would eventually lead to

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<sup>98</sup> CEACR – *Myanmar*, C.29, observation, 2020.

<sup>99</sup> CEACR – *Myanmar*, C.29, direct request, 2020.

<sup>100</sup> GB.309/7. *The complaint was closed in November 2012. See GB.316/PV(&Corr)*, para. 212.

decent work and sustainable development. According to the Government representative, much had been done compared to the labour law situation in the past but more was needed to ensure gradual progress towards compliance with the Convention.<sup>101</sup>

- 110.** The Worker members, while acknowledging the important steps taken by the Government, considered that the situation was deteriorating for trade unionists and raised numerous serious issues, including arbitrary denial of union registration, the violation of workers' civil liberties by the police, the lack of a functioning dispute resolution mechanism, restrictions on the right to strike, as well as several legislative lacunae.<sup>102</sup> They called on the Government to engage in a meaningful process of consultation with workers and employers and to request ILO assistance to bring the law into compliance with the Convention. The Employers' group recalled that Myanmar had been in the process of re-establishing a democratic system of government following many years of military rule and that, although legislation had been adopted on a range of issues within the purview of the Convention, potential issues of non-compliance remained. They considered that it was the right moment to develop a sound platform for the conduct of labour relations, based on a careful and highly consultative approach involving all the social partners and involving independent expert advice from the ILO, when appropriate.<sup>103</sup>
- 111.** Having noted the information provided by the Government and the discussion that followed, the CAS regretted the absence of progress with respect to the long-awaited legal framework under which workers and employers could freely exercise their rights under the Convention. It therefore urged the Government to ensure that the LOL and the Settlement of Labour Disputes Law were brought into full compliance with Convention No. 87 and that workers were able to carry out their trade union activities without threat of violence or other violations of their civil liberties by the police or private security. It further urged the Government to address the outstanding issues in respect of compliance with the Convention, in particular the registration of workers' and employers' organizations and freedom of association in special economic zones. Finally, it urged the Government to accept an ILO direct contacts mission to assist it with the implementation of these recommendations.

#### Committee of Experts on the Application of Conventions and Recommendations, November-December 2018

- 112.** Following the CAS discussion, the CEACR noted that the direct contacts mission requested by the CAS had taken place in October 2018 and welcomed the constructive engagement and collaboration by the Government and workers' and employers' organizations with the mission. It noted with interest that all parties had shown an important degree of commitment to building a climate of full respect of freedom of association in the short time that had elapsed since the entry into force of the freedom of association framework legislation. The CEACR therefore encouraged the continued development of a conducive environment for the full application of the Convention.<sup>104</sup>

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<sup>101</sup> ILO, *Report of the Committee on the Application of Standards, Record of Proceedings* No.9B, Part Two, ILC, 107th Session, 2018 ("2018 Report of the CAS"), pp. 244–245.

<sup>102</sup> 2018 Report of the CAS, pp. 245–246.

<sup>103</sup> 2018 Report of the CAS, pp. 246–247.

<sup>104</sup> CEACR – Myanmar, C.87, *observation*, 2018.

- 113.** The CEACR also examined a number of pending issues regarding the labour law reform process and issued recommendations, including on obstacles to the formation and registration of workers' and employers' organizations, restrictions on eligibility for trade union office, the right to strike, civil liberties in the exercise of the right to protest (the Settlement of Labour Disputes Law and the Law on the Right to Peaceful Assembly and Peaceful Procession) and trade union rights in special economic zones.<sup>105</sup>

#### Committee of Experts on the Application of Conventions and Recommendations, November-December 2021

- 114.** In its latest examination of the application of Convention No. 87,<sup>106</sup> the CEACR noted with the deepest concern the observations of the ITUC referring to the systemic violence against workers and the harsh suppression of civil liberties carried out by the military junta after it had seized power in February 2021, relentlessly cracking down on the crowds of protesters calling for the return of democracy. While the reply from the authorities to the ITUC's observations contended that the peaceful protests had evolved into riots and ultimately reached a stage of insurrection and terrorism, the CEACR deplored the allegations that, since the junta's seizure of power, daily demonstrations had been met with increasing brutality, with hundreds killed, many more wounded and over 2,700 arrested and charged, with some already sentenced.<sup>107</sup>
- 115.** The CEACR deeply regretted to note the information provided by the ITUC that trade unionists were being specifically targeted, with numerous cases of arrests and killings of trade union leaders and unionists, and the wholesale violation of their civil liberties. It noted the killing of three trade unionists in Monywa, South Dagon Industrial Zone and Shwepyithar Township. It also noted the reply from the military authorities indicating that any deaths due to the acts of the security forces were in limited response to terrorist acts and that, of the 361 civilians killed during the reporting period, only 193 had been due to members of the security forces while Riot Control Agents were clearing barricades and defending themselves against terrorist acts. According to the military authorities, the other 168 had died from other causes, such as being assassinated by others with arms, falling from buildings and disease. In this regard, the CEACR recalled that the mobilization of the Civil Disobedience Movement had been due in the first instance to the seizure of power by the military and the destitution of the civilian government. It further recalled that freedom of association could only be exercised in conditions in which fundamental human rights were fully respected and guaranteed, and in particular rights relating to human life and personal safety, due process and the protection of premises and property belonging to workers' and employers' organizations. It therefore called for a full and independent investigation into the circumstances of the killings reported by the ITUC.<sup>108</sup>
- 116.** The CEACR further noted serious allegations of arrests, detention and attacks against numerous trade unionists for exercising their right to peaceful industrial action and for participating in the CDM, as well as the cancellation of the passports of 28 members of the Confederation of Trade Unions of Myanmar (CTUM). In reply, the authorities reported that tens of thousands of prisoners had been pardoned in April 2021 and that

<sup>105</sup> CEACR – *Myanmar*, C.87, observation, 2018.

<sup>106</sup> CEACR – *Myanmar*, C.87, [observation](#), 2021.

<sup>107</sup> CEACR – *Myanmar*, C.87, observation, 2021.

<sup>108</sup> CEACR – *Myanmar*, C.87, observation, 2021.



CTUM members had spread false news to discredit the State Administration Council and the military, giving rise to charges under the Penal Code. As they were fleeing the arrest warrants that were to be issued, their passports had been cancelled. In this respect, the CEACR called for all measures to be taken to ensure full respect for the basic civil liberties necessary for the exercise of freedom of association, including freedom of opinion and expression, freedom of assembly, freedom of movement, freedom from arbitrary arrest and detention, and the right to a fair trial by an independent and impartial tribunal, so that workers' and employers' organizations could carry out their activities and functions without threat of intimidation or harm and in a climate of complete security. The CEACR called for the immediate release of trade unionists detained or imprisoned for having exercised the trade union rights protected by the Convention, including their engagement in the CDM.<sup>109</sup>

- 117.** With regard to the allegations relating to far-reaching legislative amendments adopted following the coup d'état, the CEACR noted that section 505-A of the Penal Code, under which some of the arrested unionists had been charged, sets forth a broad and vague definition of the term "treason" and that section 124 of the Penal Code had been amended by the military authorities using similarly broad wording. It observed with deep concern that new elements of section 38(c) of the Electronic Transaction Act, relating to the spreading of false news in cyberspace, were vaguely worded and were likely to undermine freedom of expression and other basic civil liberties under the threat of heavy penalties, including imprisonment. The CEACR therefore called for the repeal of section 505-A, and the amendment of section 124-A of the Penal Code, as well as the revision of section 38(c) of the Electronic Transaction Act with a view to ensuring full respect for the basic civil liberties necessary for the exercise of freedom of association. It also called for all steps to be taken to ensure that workers and employers are able to carry out and support their activities without threat of imprisonment, violence or other violations of their civil liberties by the police or private security and for the Law on the Right to Peaceful Assembly and Peaceful Procession not to be used in any way to restrict these rights.<sup>110</sup>
- 118.** Finally, while calling for priority to be given to the restoration of democratic and civilian rule, the CEACR recalled its previous comments on the labour law reform process to ensure fully the rights of workers and employers under the Convention (including the issues of the denial of registration, restrictions on eligibility for trade union office and trade union rights in special economic zones).<sup>111</sup>
- 119.** In conclusion, the CEACR indicated that the allegations and issues raised relating to numerous deaths, massive detentions and the arrest of trade unionists, and a momentous attack on basic civil liberties, gave rise to its deepest concern. The CEACR expressed deep regret that no steps had been taken to address these grave concerns or to rectify the serious infringements of fundamental rights introduced in the post-coup legislative amendments and the ongoing concerns with respect to the pre-coup legislation. In these circumstances, and given the urgency of addressing the matters affecting the fundamental rights of workers and employers, their physical integrity and

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<sup>109</sup> CEACR – *Myanmar*, C.87, observation, 2021.

<sup>110</sup> CEACR – *Myanmar*, C.87, observation, 2021.

<sup>111</sup> CEACR – *Myanmar*, C.87, observation, 2021.

freedom, and the likelihood of irreversible harm, the CEACR considered that the case met the criteria it had developed to be asked to come before the ILC.<sup>112</sup>

### Conference Committee on the Application of Standards, June 2022

- 120.** Following the request by the CEACR to Myanmar to supply full particulars to the ILC in relation to its application of Convention No. 87, the case of Myanmar was discussed by the CAS at its session in June 2022.<sup>113</sup>
- 121.** In reviewing the case, the CAS decided that the absence of an accredited delegation from Myanmar should not impede the functioning of the ILO supervisory system and, in particular, the supervision of ratified fundamental Conventions. Therefore, the examination of the case of Myanmar should take place, even though Myanmar would not provide information orally as no delegate from Myanmar was accredited to participate in the ILC.<sup>114</sup> However, the Secretariat made available to the CAS written observations submitted by the military authorities providing summary information on some specific incidents mentioned by the CEACR in its comment and on labour law reform and other legislative matters.<sup>115</sup>
- 122.** In particular, the military authorities indicated, in relation to two protests in Monywa and Shwepyithar Township in March 2021, referred to by the CEACR, that the protests had turned violent, with rioters attacking members of the security forces with deadly weapons and destroying an administration office. This led to the security forces using riot control procedures. One person died of his injuries and a case had been filed with the police. In connection with the 28 individuals facing criminal charges under sections 124-A and 505-A of the Penal Code, the military authorities indicated that the charges were based on their unlawful activities, in particular incitement of the population by disseminating fabricated news. In relation to incidents concerning certain other individuals and organizations, they indicated that Myanmar was not in a position to identify the concerned individuals or provide more details.<sup>116</sup>
- 123.** The military authorities further elaborated on the labour law reform, indicating that the LOL was being amended taking into account the desires and requirements of the workers and employers to be in line with the real situation in the country. Information was also provided on the registration procedure, the ongoing amendments to the Settlement of Labour Disputes Law and dispute resolution in special economic zones.<sup>117</sup>
- 124.** The written observations of the military authorities concluded that nobody had been targeted for being a trade unionist and that members of trade unions who had faced charges had been prosecuted on account of their unlawful activities, not because of exercising labour rights peacefully. The military authorities indicated that the CEACR comment relied on one-sided information from opposition media, without duly considering the information provided by the military authorities. They encouraged

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<sup>112</sup> CEACR – *Myanmar*, C.87, observation, 2021.

<sup>113</sup> 2022 Report of the CAS, pp. 428–445.

<sup>114</sup> 2022 Report of the CAS, p. 430.

<sup>115</sup> The written information was published with a disclaimer indicating that “The information below is submitted by the military authorities. Its publication does not imply explicit or implicit recognition of these authorities as the legitimate Government of Myanmar.” 2022 Report of the CAS, p. 428.

<sup>116</sup> 2022 Report of the CAS, pp. 428–429.

<sup>117</sup> 2022 Report of the CAS, pp. 429–430.

consideration to be given to the information provided by them to reflect the actual conditions of workers and people in Myanmar so as to contribute to their betterment.<sup>118</sup>

- 125.** Following its discussion of the case, the CAS adopted conclusions deploring the removal of the civilian Government by the military coup, the subsequent declaration of a state of emergency depriving citizens of their civil liberties and the total disregard for human rights, civil liberties and the rule of law in Myanmar. It also expressed its grave concern at the lack of progress in restoring civilian rule and at the failure of the military authorities to fully implement the resolution for a return to democracy and respect for fundamental rights in Myanmar adopted by the ILC in June 2021 and the Governing Body decision adopted in March 2022.<sup>119</sup>
- 126.** The CAS therefore urged the military authorities to refrain from the arrest, detention or engagement in violence, intimidation or harassment of workers and trade unionists exercising their rights to freedom of expression, association and peaceful assembly. It urged the military authorities to immediately and effectively undertake independent investigations into those crimes with a view to establishing the facts, determining culpability and punishing the perpetrators, including members of the police and the armed forces, and to pay reparations to the victims and their families. The CAS further urged the military authorities to release unconditionally all workers and trade unionists who had been arrested and detained for having exercised their rights to freedom of expression, association and peaceful assembly, and to cancel any outstanding warrants for the same; immediately return passports and reinstate the citizenship to those trade unionists who had had them revoked; immediately reinstate the registration of trade unions of which the registration had been revoked since the military coup; ensure that workers were able to carry out their trade union activities without interference and without threats of violence or other violations of their civil liberties; and revoke all decrees and laws introduced by the military authorities following the coup d'état of 1 February 2021. Finally, the CAS urged the military authorities to ensure that the Commission of Inquiry established by the Governing Body in March 2022 was allowed to enter the country and carry out its mandate freely without interference. The CAS decided to include its conclusions in a special paragraph of its report.<sup>120</sup>

#### Committee on Freedom of Association, Case No. 3405, June 2021 and March 2022

- 127.** Shortly after the coup d'état in February 2021, the CFA received a complaint from the ITUC and Education International alleging serious violations of freedom of association in Myanmar (Case No. 3405). The initial complaint from March 2021 was supplemented by further allegations in May and October 2021, reporting the rapidly deteriorating human and labour rights situation of the workers and trade union leaders in Myanmar. The Ministry of Labour, Immigration and Population (MOLIP) and the Permanent Mission of the Republic of the Union of Myanmar to the United Nations Office and other international organizations in Geneva submitted written observations in April, May,

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<sup>118</sup> 2022 Report of the CAS, p. 430.

<sup>119</sup> 2022 Report of the CAS, p. 444; ILO, Resolution for a return to democracy and respect for fundamental rights in Myanmar, ILC, 109th Session 2021; and GB.344/ PV, para. 574.

<sup>120</sup> ILO, 2022 Report of the CAS, pp. 444–445.

June, September and December 2021.<sup>121</sup> The CFA examined the complaint on two occasions in June 2021 and March 2022.<sup>122</sup>

- 128.** The complainants alleged numerous attacks by the military authorities against trade unionists, workers and civil servants calling for the return to civilian rule following the coup d'état, including through the violent suppression of protests, military raids on villages, the use of live ammunition, tear gas, water cannons and stun grenades. They reported targeted killings, torture and other acts of brutality against trade unionists and workers who had participated in the CDM, as well as mass arrests, door-to-door searches, raids on houses and offices, criminal charges, imprisonment and the detention of workers and trade unionists for their participation in peaceful protests.<sup>123</sup> As of October 2021, the complainants referred to 1,139 civilians and protesters killed, including two education workers and 26 unionists. They also pointed to 6,891 people having been arrested, including 60 instances of arrests and raids targeting trade unions and involving 116 unionists. Of the 6,891 persons arrested, 1,989 had been charged and 293 sentenced.<sup>124</sup>
- 129.** The complainants also denounced acts of intimidation, threats, coercive measures and retaliation by the security forces and military authorities against protesting workers and civil servants to ensure their return to work and renounce their participation in the CDM. Retaliation included mass dismissals and suspensions of civil servants, the use of replacements for strikers, the withdrawal of benefits, the revocation of professional licences, attacks on medical facilities and eviction from housing.<sup>125</sup> According to the complainants, by October 2021, at least 6,500 civil servants and workers in state-owned enterprises had been dismissed or suspended, about 20,000 teachers removed from their posts, 150,000 teachers suspended, 1,293 railway workers suspended and 1,600 railway workers evicted from government housing.<sup>126</sup>
- 130.** With regard to the private sector, the complainants alleged that attacks and intimidation of trade unionists were such that, by July 2021, grassroots unions were not able to operate in the garment sector.<sup>127</sup> Workplace was no longer safe for trade unionists, with the military using local administrators and factory management as informants.<sup>128</sup>
- 131.** The complainants also reported several legislative amendments adopted following the coup d'état which further withdrew protections of basic civil liberties. These allegations referred in particular to amendments to the Law for Protection of Personal Privacy and Security of Citizens, the Ward or Village Tract Administration Law, the Cyber Law and the Penal Code, which the complainants indicated were aimed at extending the powers of the military to further restrict the fundamental rights and civil liberties of the people of Myanmar and deny space for trade unions and workers to exercise their basic rights to

<sup>121</sup> On 1 August 2021, the State Administration Council, which had been set up by the military after the coup in February 2021, issued Order No. 150/2021 by which MOLIP was reconstituted as: 1) Ministry of Labour and 2) Ministry of Immigration and Population. Throughout this subsection of the report, reference is made to the Ministry of Labour, Immigration and Population (MOLIP) to which the CFA referred in its reports.

<sup>122</sup> CFA, 395th Report, June 2021, Case No. 3405 (Myanmar), paras 284–358; 397th Report, March 2022, Case No. 3405 (Myanmar), paras 503–584.

<sup>123</sup> CFA, 395th Report, paras 287–292, 307 and 310–314; and 397th Report, paras 508, 514–516, 518 and 523–527.

<sup>124</sup> CFA, 397th Report, para. 523.

<sup>125</sup> CFA, 395th Report, paras 298–306 and 315–317; 397th Report, paras 509–514, 517 and 528–532.

<sup>126</sup> CFA, 397th Report, paras 528–531 and 572.

<sup>127</sup> CFA, 397th Report, paras 519–522, 524 and 533.

<sup>128</sup> CFA, 397th Report, para. 524.

freedom of association, expression and peaceful assembly. Furthermore, 16 labour organizations had been declared illegal by the military authorities.<sup>129</sup>

- 132.** Finally, the complainants called for urgent attention and redress for the violations against workers, especially trade unionists and trade union members, as well as the attacks on trade union representation of their members. They expressed deep concern at the continued violation of workers' rights by businesses under the heightened environment of military violence against ordinary people and workers.<sup>130</sup>
- 133.** The reply from the MOLIP and the Permanent Mission in Geneva recalled the legislative framework providing for freedom of association, the conduct expected of civil servants and the criminal legislation applicable to violent acts and disturbance of the peace and order.<sup>131</sup> It reported that the initially peaceful atmosphere of protest groups had transformed into riots and anarchy, and ultimately insurrection with terrorist acts. In particular, the MOLIP indicated that, through strikes under the democratic system, some people had misused their rights, resulting in riots and violence using deadly handmade weapons, thus obliging the security forces to act. The reply provided examples of allegedly violent acts by protesters, including the destruction of police stations, ward administrator offices, bridges, banks, schools and other government buildings, as well as factories, resulting in 1,496 casualties among the police and 1,551 among civilians. Some information was also provided on the specific allegations of deaths of participants in the CDM. The reply affirmed that the security forces had acted in accordance with the law and regulations on crowd control.<sup>132</sup>
- 134.** The MOLIP further asserted that there was misleading information about persons killed by the security forces, the aim of which was to destroy the administration. In particular, the death of over 700 people, including trade unionists, could not be confirmed, with police records showing that, of the 361 deaths recorded, 193 had been shot by members of the security forces while clearing barricades and defending themselves against terrorist acts. The other deaths were not related to the security forces; 95 had been assassinated by others, 13 had been killed by grenade and mine attacks, five had died while receiving medical attention, ten had died of disease, two "had dropped dead" and nine had died of wounds. The MOLIP therefore suggested that international organizations should not rely on fake news and biased accusations in the media but should cooperate with the authorities to obtain reliable information.<sup>133</sup>
- 135.** The MOLIP added that persons who committed a crime or violated the law were charged and any measures adopted against protesting workers were taken within the legal framework. If unionists, workers and leaders of organizations committed violent acts, action could be taken against them at local police stations. It indicated that, up to December 2021, 1,481 persons had been charged with having committed crimes, but no workers or union leaders had been prosecuted under the labour laws. Furthermore, those involved in the uprising, but not the terrorist acts and who had not supported the

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<sup>129</sup> CFA, 395th Report, paras 293–297 and 308.

<sup>130</sup> CFA, 397th Report, para. 535.

<sup>131</sup> CFA, 395th Report, para. 319.

<sup>132</sup> CFA, 395th Report, para. 333; 397th Report, paras 542 and 544–545.

<sup>133</sup> CFA, 397th Report, paras 537, 543 and 545.

CDM by any means, had been released in accordance with the law. Tens of thousands of prisoners had received pardons and thousands of other cases had been closed.<sup>134</sup>

- 136.** Regarding the allegations of intimidation, coercion and retaliation against civil servants, the reply from the MOLIP referred to the legislative provisions setting out the obligations of civil servants and establishing disciplinary procedures for violations of the applicable rules. It indicated that none of the directives issued contained threats to return to work or threats of dismissal, removal or prosecution for having joined the CDM but only constituted “reminders” to return to work. The MOLIP had not, as of June 2021, instructed any staff to leave their housing, had not revoked any professional certificates and had not indicated that it would hand the names of people participating in the CDM to the military for arrest. It added that the necessary action would be taken to drop charges against healthcare personnel who expressed their willingness to voluntarily return to the workplace. The MOLIP claimed that any action taken (warning letters, replacement, punishment, suspension, dismissal) against civil servants had been done in accordance with the applicable regulations, individually, based on the respective infringements of the law and disciplinary offences, such as absence from work without reason. The reply provided details on some of the measures taken against public servants from various ministries, teachers, healthcare workers and railway workers. Similarly, it indicated that any suspensions or terminations in the private sector were in line with the law and that workers received cash benefits, including their wages and damages.<sup>135</sup>
- 137.** Concerning the post-coup legislative amendments, the MOLIP indicated that they were aimed at maintaining the stability and peace of the State and the social security of citizens during the period when the military was temporarily holding and retaining the power of the State. The legislative amendments did not include any restrictions limiting the right to peaceful assembly and association, but only to maintain national security, public safety and public order. In this regard, some social media pages, illegal news media websites and websites inciting acts of terrorism and sabotage were still banned for reasons of national security and public interest. However, according to the MOLIP, Myanmar citizens, including workers, could exercise their rights to peaceful procession, assembly and association in accordance with the provisions of the relevant laws. The declaration of 16 organizations as illegal was because they had not been registered in line with the provisions of the LOL, despite having acted in labour affairs. However, organizations such as the CTUM and the Myanmar Industry Craft Service-Trade Unions Federations (MICS-TUsF), even though they had suspended their participation in all tripartite bodies, had not been dissolved and the Ministry continued to cooperate with them. The MOLIP indicated that, as Myanmar was a State party to Convention No. 87, it remained committed to domestic laws, by-laws and procedures which had been developed in line with the Convention.<sup>136</sup>
- 138.** At the outset of its examination of the case, the CFA recalled that, while it was not competent to consider purely political allegations, it could consider measures of a political character taken by governments insofar as they might affect the exercise of trade union rights. It recalled that, on many occasions, it had emphasized the importance of the principle affirmed by the ILC in 1970 in its resolution concerning trade

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<sup>134</sup> CFA, 395th Report, paras 319–320; 397th Report, paras 539, 546 and 551.

<sup>135</sup> CFA, 395th Report, paras 324–330; 397th Report, paras 538, 548–550 and 552–555.

<sup>136</sup> CFA, 395th Report, paras 322–323 and 331; 397th Report, para. 547.

union rights and their relation to civil liberties, which recognized that “the rights conferred upon workers’ and employers’ organizations must be based on respect for those civil liberties, which have been enunciated in particular in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights, and that the absence of these civil liberties removes all meaning from the concept of trade union rights”.<sup>137</sup> The CFA further recalled that, insofar as trade unions and employers’ organizations might consider that they did not have the basic freedom to fulfil their mission directly, they would be justified in demanding that these freedoms and the right to exercise them be recognized and that these demands be considered as coming within the scope of legitimate trade union activities.<sup>138</sup>

- 139.** The CFA regretted the serious deterioration of freedom of association and other relevant human rights occurring in the country. While taking due note of the contradictory information provided by the MOLIP and the complainants regarding the circumstances of the deaths and the numbers of those killed, the CFA recalled that the rights of workers’ and employers’ organizations could only be exercised in a climate free from violence, pressure or threats of any kind against the leaders and members of those organizations. It therefore firmly urged the responsible military authorities to cease immediately the ongoing use of violence against peaceful protesters and to carry out independent investigations into the deaths of all the named workers and trade unionists killed in relation to protest actions and the exercise of their basic civil liberties, including fundamental freedom of association rights.<sup>139</sup>
- 140.** Further expressing its deep concern at the staggering number of trade unionists, workers, civil servants and others who had been arrested since the coup d’état, the CFA observed with regret that the MOLIP’s reply, beyond some specific information, only provided global figures and an indication that the charges and prosecutions were all related to crimes under the Penal Code or the Telecommunications Law and that no one had been prosecuted under the labour laws. The CFA recalled that, while the principles of freedom of association did not protect abuses consisting of criminal acts while exercising protest action, the authorities should not resort to arrests and imprisonment in connection with the organization of or participation in a peaceful strike; such measures entailed serious risks of abuse and were a grave threat to freedom of association. The CFA expressed its expectation that all the cases of trade unionists and workers arrested or detained for action in relation to the restoration of their trade union rights and democracy in the country would be investigated and that steps would be taken without delay to ensure their immediate release.<sup>140</sup>
- 141.** Regarding allegations of intimidation, harassment and retaliatory action against trade unionists, civil servants and workers participating in the CDM, the CFA recalled that it had always recognized the right to strike by workers and their organizations as a legitimate means of defending their economic and social interests. While noting the sometimes-contradictory information concerning the peaceful nature of the exercise of freedom of assembly, the CFA deplored the evident chaos resulting from the coup d’état and the massive allegations of intimidation and harassment, including through dismissals, suspensions and other disciplinary measures against trade unionists and

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<sup>137</sup> ILO, [Resolution concerning trade union rights and their relation to civil liberties](#), ILC, 54th Session, 1970.

<sup>138</sup> CFA, 395th Report, para. 336.

<sup>139</sup> CFA, 395th Report, para. 337; 397th Report, paras 560–564 and 584(a).

<sup>140</sup> CFA, 395th Report, paras 349–351; 397th Report, paras 565–571 and 584(c).

workers exercising their civil liberties calling for the return to civilian rule and democratic order. The CFA recalled that, for the contribution of trade unions and employers' organizations to be properly useful and credible, they must be able to carry out their activities in a climate of freedom and security. It also noted that, while the MOLIP asserted the legitimacy of the disciplinary action taken against participants in the CDM, it did not contest the extensive nature of the dismissals, suspensions and disciplinary measures. The CFA therefore called on the responsible authorities to reinstate any civil servants, healthcare workers or teachers dismissed or suspended for participation in the CDM and to restore any benefits that may have been withdrawn. It further expressed its expectation that appropriate steps would be taken to ensure that trade unionists and workers in the private sector were not penalized for having engaged in the CDM to call for the restoration of their trade union rights.<sup>141</sup>

- 142.** With respect to the allegations that the legislative amendments adopted following the coup further violated the basic civil liberties of all citizens of Myanmar, including trade unionists, the CFA noted that the information provided by the MOLIP was limited to stating that all the measures taken were necessary to ensure public safety and public order. The Committee expressed deep concern in relation to those laws, in particular sections 124 and 505-A of the Penal Code, section 38(c) of the Electronic Transaction Act and the restoration of surveillance powers of the wards and villages under the amended Ward or Village Tract Administration Law. Further noting the allegations of abusive recourse to those provisions, the CFA firmly urged their repeal and amendment, and urged the responsible military authorities to restore the protections that had been assured by the Law for Protection of Personal Privacy and Security of Citizens (protection against illegal search and seizure, indefinite detention and a wide range of privacy rights). It also firmly urged the withdrawal of the declaration of 16 labour organizations as unlawful. Such actions were necessary to ensure full respect for the basic civil liberties necessary for the exercise of freedom of association, including freedom of opinion and expression, freedom of assembly, freedom from arbitrary arrest and detention and the right to a fair trial by an independent and impartial tribunal so that workers' and employers' organizations could carry out their activities and functions without threat of intimidation or harm and in a climate of complete security.<sup>142</sup>
- 143.** Having noted the information at its disposal, the CFA expressed its profound concern at the serious deterioration of freedom of association and deeply regretted the numerous steps taken since 1 February 2021 which had led to a further decline in the protection of the civil liberties necessary for workers and employers to be able to carry out their trade union activities in a climate of complete freedom and security. The CFA urged the military authorities to recognize the critical importance of ensuring those rights and freedoms to the workers and employers of the country as a prerequisite for the exercise of trade union activities.<sup>143</sup>
- 144.** Finally, observing the magnitude of the task of reviewing all the cases brought before it, and bearing in mind the MOLIP's indication that in order to properly understand the real situation in Myanmar and to restore stability, peace and democracy, international organizations should not rely on fake news and biased accusations in the media, but should cooperate with the authorities to obtain true information, the CFA considered

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<sup>141</sup> CFA, 395th Report, paras 342–348; 397th Report, paras 572–577, 583 and 584(d) and (e).

<sup>142</sup> CFA, 395th Report, paras 338–341; 397th Report, paras 571 and 584(b).

<sup>143</sup> CFA, 395th Report, para. 356; 397th Report, paras 582 and 584(g).



that the institution of an independent investigative authority would be a necessary measure to bring justice to those who had peacefully exercised their rights of freedom of assembly, expression and association.<sup>144</sup>

### C. Examination by the United Nations of the situation in Myanmar with respect to freedom of association and forced labour

**145.** The examination of the situation of human rights in Myanmar by the United Nations (UN) has expanded over recent years, including with regard to freedom of association and forced labour. Considering that the relevant resolutions, reports and assessments of UN bodies and the mandates concerned provide valuable background and constitute an important source of information for its own work, the Commission deems it necessary to review these UN materials.

#### Human Rights Council, General Assembly and Security Council

**146.** The situation of human rights in Myanmar has been on the agenda of the Human Rights Council since its establishment in 2006. More recently, on 24 March 2017, the Human Rights Council decided to “dispatch urgently an independent international fact-finding mission [...] to establish the facts and circumstances of the alleged recent human rights violations by military and security forces, and abuses, in Myanmar, in particular in Rakhine State”.<sup>145</sup> The report of the Independent International Fact-Finding Mission on Myanmar submitted to the Human Rights Council in 2019 included findings of forced or compulsory labour exacted from members of the Rohingya Muslim minority and others, and noted that these practices specifically affected women and girls.<sup>146</sup>

**147.** At a special session convened to discuss the human rights implications of the crisis unfolding in Myanmar following the military takeover on 1 February 2021, the Human Rights Council called on “the Myanmar military and other security forces and authorities to take steps immediately to protect the rights to freedom of opinion and expression, religion or belief, association and peaceful assembly [...]”.<sup>147</sup> Subsequently, in March 2021, the Human Rights Council expressed deep concern at “the violent acts, including killings, committed against peaceful demonstrators exercising their right to freedom of expression, association and peaceful assembly” and emphasized the urgent need to end restrictions on these rights and freedoms.<sup>148</sup> On the same occasion, the Council called for “the elimination of child and forced labour and for amendments to the draft labour organization law, and further amendments to the Settlement of Labour Disputes Law to promote freedom of association in accordance with international labour standards”.<sup>149</sup>

**148.** The General Assembly also addressed the unfolding crisis in Myanmar. On 18 June 2021, it adopted a resolution on the situation in Myanmar calling upon “the Myanmar armed forces to immediately stop all violence against peaceful demonstrators [...] and to end

<sup>144</sup> CFA, 397th Report, paras 583 and 584(f) and (h).

<sup>145</sup> United Nations Human Rights Council, “Situation of human rights in Myanmar”, A/HRC/RES/34/22, 2017, para. 11.

<sup>146</sup> United Nations Human Rights Council, *Report of the independent international fact-finding mission on Myanmar*, A/HRC/39/64, 2018; *Report of the detailed findings of the Independent International Fact-Finding Mission on Myanmar*, A/HRC/39/CRP.2, 2018.

<sup>147</sup> United Nations Human Rights Council, “Human rights implications of the crisis in Myanmar”, A/HRC/RES/S-29/1, 2021, para. 4.

<sup>148</sup> United Nations Human Rights Council, “Situation of human rights in Myanmar”, A/HRC/RES/46/21, 2021, preambular para. 8 and para. 31.

<sup>149</sup> A/HRC/RES/46/21, para. 39.

restrictions on medical personnel, civil society, labour union members, journalists and media workers [...]”. It also called for the immediate release of all those who had been arbitrarily detained.<sup>150</sup> In July 2021, another Human Rights Council resolution expressed grave concern at continuing reports of serious human rights violations and abuses in Myanmar, in particular against Rohingya Muslims and other minorities, including forced labour, and called on Myanmar to ensure the protection of all children in armed conflict, and to end the illegal recruitment and use of children in forced labour.<sup>151</sup> In December 2021, the General Assembly urgently called on Myanmar to “fulfil its human rights obligations and commitments to protect the right to freedom of expression, including online, and the rights to freedom of association and peaceful assembly, to create and maintain a safe and enabling environment for civil society and independent media”.<sup>152</sup>

- 149.** Throughout 2022 and 2023, the General Assembly and the Human Rights Council continued to express concerns at persistent reports of serious human rights violations and abuses by the military and security forces in Myanmar, including forced labour and violations of freedom of association and other civil liberties, and urged those responsible to take action to end such abuses.<sup>153</sup>
- 150.** The Security Council adopted a resolution concerning Myanmar in December 2022 in which it expressed “deep concern at restrictions on medical personnel, civil society, labour union members, journalists and media workers”. The Security Council demanded an immediate end to all forms of violence throughout the country and urged the Myanmar military to immediately release all arbitrarily detained prisoners, while also emphasizing the need for the protection of minority groups.<sup>154</sup>

### Special Rapporteur on the situation of human rights in Myanmar

- 151.** As noted in section A above, the mandate of the UN Special Rapporteur on the situation of human rights in Myanmar was first established in 1992 by the Commission on Human Rights and then extended annually, including since 2006 by the Human Rights Council, which replaced the Commission.<sup>155</sup>
- 152.** Following the February 2021 military takeover, the reports prepared by the Special Rapporteur for consideration by the Human Rights Council and the General Assembly have on various occasions included information relevant to the Commission of Inquiry’s mandate. In particular, the Special Rapporteur has repeatedly pointed to restrictions and violations of fundamental freedoms, including freedom of expression and association, a collapse of the rule of law and forced labour.<sup>156</sup> In a 2022 report focusing

<sup>150</sup> United Nations General Assembly, “The Situation in Myanmar”, A/RES/75/287, 2021, paras 2 and 4.

<sup>151</sup> United Nations Human Rights Council, “Situation of human rights of Rohingya Muslims and other minorities in Myanmar”, A/HRC/RES/47/1, 2021, paras 1 and 12.

<sup>152</sup> United Nations General Assembly, “Situation of human rights of Rohingya Muslims and other minorities in Myanmar”, A/RES/76/180, 2021, para. 9(g).

<sup>153</sup> United Nations Human Rights Council, “Situation of human rights in Myanmar”, A/HRC/RES/49/23, 2022, paras 3, 7, 8, 25 and 29; “Situation of human rights of Rohingya Muslims and other minorities in Myanmar”, A/HRC/RES/50/3, 2022, paras 1 and 13; “Situation of Human Rights in Myanmar”, A/HRC/RES/52/31, 2023, paras 5, 8, 11, 35 and 39; United Nations General Assembly, “Situation of human rights of Rohingya Muslims and other minorities in Myanmar”, A/RES/77/227, 2022, paras 1 and 14(g).

<sup>154</sup> United Nations Security Council, S/RES/2669, 2022, preambular para. 5 and paras 1 and 2.

<sup>155</sup> United Nations Commission on Human Rights, “Situation of human rights in Myanmar”, E/CN.4/RES/1992/58, 1992.

<sup>156</sup> United Nations General Assembly, *Report of the Special Rapporteur on the situation of human rights in Myanmar, Thomas H. Andrews*, A/77/494, 2022, paras 47–55 and 56–62; United Nations Human Rights Council, *Report of the Special Rapporteur on the situation of human rights in Myanmar, Thomas H. Andrews*, A/HRC/49/76, 2022, paras 32–34,

on children, the Special Rapporteur addressed the issue of forced labour exacted from children by both the Myanmar military and by armed groups opposing the military.<sup>157</sup> The Special Rapporteur also highlighted the vulnerability of the Rohingya, particularly women and girls, to human trafficking, debt bondage, forced labour and other forms of exploitation and abuse.<sup>158</sup>

### UN treaty bodies

- 153.** Myanmar is a State party to several UN human rights treaties. It acceded to the Convention on the Rights of the Child (CRC) in 1991, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1997, the Convention on the Rights of Persons with Disabilities (CRPD) in 2011, the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography in 2012, the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 2017 and the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict in 2019. Several UN treaty bodies have issued comments relevant to the Commission of Inquiry's mandate, even though they predate the February 2021 military takeover.
- 154.** The Committee on the Elimination of Discrimination against Women, which is responsible for monitoring the implementation of the CEDAW, issued concluding observations concerning Myanmar in 2019 under its exceptional reporting procedure.<sup>159</sup> The Committee regretted the systematic and widespread gender-based violence, including sexual slavery, committed by the armed forces of Myanmar, with the involvement of border police and militias, specifically targeting Rohingya women and girls during the 2017 military security "clearance operations", which had led to the mass displacement of the Rohingya population. The Committee identified forced labour as one of the forms of violence to which Rohingya women and girls had been subjected for decades due to their ethnicity and religion. It expressed deep concern at the lack of meaningful, independent and impartial investigations into such acts committed by the Myanmar security forces in northern Rakhine State in recent years, and particularly since 2017.<sup>160</sup>
- 155.** The Committee on the Rights of Persons with Disabilities, which monitors the CRPD, drew attention to the heightened risks faced by persons with disabilities, especially women and girls and those belonging to ethnic and religious minorities, in areas of Myanmar affected by conflict and humanitarian emergencies.<sup>161</sup>
- 156.** More recent assessments by UN treaty bodies, including first assessments of the implementation of the ICESCR and the Optional Protocols to the CRC, are not available

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58–59 and 74–84; *Report of the Special Rapporteur on the situation of human rights in Myanmar*, Thomas H. Andrews, A/HRC/46/56, 2021, paras 61–87.

<sup>157</sup> United Nations Human Rights Council, "Losing a generation: How the military junta is attacking Myanmar's children and stealing their future", conference room paper of the Special Rapporteur on the situation of human rights in Myanmar, A/HRC/50/CRP.1, 2022, paras 33, 61, 63, 64 and 66.

<sup>158</sup> United Nations Human Rights Council, *Situation of human rights in Myanmar: Report of the Special Rapporteur on the situation of human rights in Myanmar*, Thomas H. Andrews, A/HRC/52/66, 2023, para. 56.

<sup>159</sup> United Nations Committee on the Elimination of Discrimination against Women, *Concluding observations on the report of Myanmar submitted under the exceptional reporting procedure*, CEDAW/C/MMR/CO/EP/1, 2019.

<sup>160</sup> CEDAW/C/MMR/CO/EP/1, paras 5–7 and 25.

<sup>161</sup> United Nations Committee on the Rights of Persons with Disabilities, *Concluding observations on the initial report of Myanmar*, CRPD/C/MMR/CO/1, 2019, para. 21.

due to the non-compliance of Myanmar with its reporting obligations in relation to the UN human rights treaties to which it is a Party.<sup>162</sup>

### Office of the High Commissioner for Human Rights

**157.** The Office of the High Commissioner for Human Rights (OHCHR), in the context of its regular reporting to the Human Rights Council, has been providing detailed accounts of the evolution of peaceful anti-coup protests in Myanmar and the responses by the security forces, including the disproportionate use of force and restrictions on the freedoms of expression, assembly and association and other civil liberties.<sup>163</sup> The OHCHR has also raised concerns regarding the military's interventions to take control of the judiciary which, in its view, have led to a complete lack of independence and impartiality.<sup>164</sup>

**158.** With respect to forced labour, the OHCHR has drawn attention to at least 85 reported incidents of the Myanmar military imposing forced labour between 1 February 2021 and early 2022.<sup>165</sup> It has also raised concerns at reports of forced labour practices by armed groups opposing the military, including forced recruitment into such organizations.<sup>166</sup> Furthermore, the OHCHR has reported on the military's actions affecting the Rohingya in Rakhine State since the takeover.<sup>167</sup>

### International Court of Justice

**159.** The Commission notes that the International Court of Justice currently has before it a case concerning the application of the Convention on the Prevention and Punishment of Genocide brought by The Gambia against Myanmar.<sup>168</sup> In its application to the Court, The Gambia referred to forced labour as one manifestation of the persecution suffered by the Rohingya in Myanmar.<sup>169</sup>

<sup>162</sup> Information on the status of reporting by Myanmar under UN human rights treaties is available in the OHCHR [UN Treaty Body Database](#). A first review is yet to be made of the implementation by Myanmar of the ICESCR and the two Optional Protocols. The Committee on the Rights of the Child undertook its last review in 2012, prior to the entry into force of the Optional Protocols for Myanmar. See United Nations Committee on the Rights of the Child, *Consideration of reports submitted by States parties under article 44 of the Convention: Concluding observations: Myanmar*, CRC/C/MMR/CO/3-4, 2012.

<sup>163</sup> United Nations Human Rights Council, *Supplementary information to the report of the United Nations High Commissioner for Human Rights on the situation of human rights in Myanmar since 1 February 2021*, A/HRC/48/CRP.2, 2021, paras 4–38; *Situation of human rights in Myanmar since 1 February 2022: Report of the United Nations High Commissioner for Human Rights*, A/HRC/52/21, 2023, paras 49–57.

<sup>164</sup> A/HRC/52/21, paras 44–47.

<sup>165</sup> United Nations Human Rights Council, *Situation of human rights in Myanmar since 1 February 2021: Report of the United Nations High Commissioner for Human Rights*, A/HRC/49/72, 2022, para. 46.

<sup>166</sup> United Nations Human Rights Council, *Situation of human rights in Myanmar: Report of the United Nations High Commissioner for Human Rights*, A/HRC/48/67, paras 59 and 60.

<sup>167</sup> A/HRC/49/72, paras 55–60; A/HRC/52/21, paras 39–43.

<sup>168</sup> International Court of Justice, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Order of 23 January 2020, *ICJ Reports* 2020, pp. 3–5; and Judgment of 22 July 2022, Preliminary Objections.

<sup>169</sup> International Court of Justice, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Application instituting proceedings and request for provisional measures, filed in the registry of the Court on 11 November 2019, para. 29.

## Chapter 4. The case before the Commission

### A. The matters referred to the Commission and focus areas of the inquiry

- 160.** The present Commission of Inquiry was established in March 2022 by the Governing Body of its own motion, in accordance with article 26(4) of the ILO Constitution “in respect of the non-observance by Myanmar of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Forced Labour Convention, 1930 (No. 29)”.<sup>170</sup> The Governing Body took this decision in light of “the developments outlined in document GB.344/INS/12 and recalling the resolution for a return to democracy and respect for fundamental rights in Myanmar adopted by the International Labour Conference at its 109th Session (2021)” (“the 2021 ILC resolution”).<sup>171</sup> The Governing Body’s decision to establish the present Commission was also informed by the reports of the CFA when examining Case No. 3405 in respect of Myanmar in June 2021 and March 2022.<sup>172</sup>
- 161.** It follows from the above that the matters referred to the Commission do not arise from a complaint by an ILO Member or a delegate to the ILC, but from the March 2022 Governing Body decision and the documents and reports that informed this decision, all of which draw attention to a deteriorating human and labour rights situation, in line with the assessment made by the ILO supervisory mechanisms, as detailed in Chapter 3, section B, of this report. These documents and reports constitute the basis for the Commission’s examination of the situation of freedom of association and forced labour in Myanmar. However, the Commission considers that its mandate does not preclude it from assessing other aspects related to Myanmar’s compliance with the Conventions in question, should this be necessary considering the information brought to its attention.
- 162.** Accordingly, the Commission sets out below the matters that the Governing Body placed before it for examination, as well as related issues and allegations brought to its attention in written submissions received at the outset of its proceedings. A review of these matters, issues and allegations has allowed the Commission to establish focus areas for its fact-finding, in line with its mandate. The assessments of the situation of freedom of association and forced labour in Myanmar made by the ILO supervisory mechanisms, which cover topics pertinent to the Commission’s mandate and contribute to its understanding of the situation, also inform this fact-finding.

### Convention No. 29

- 163.** Following the adoption of the recommendations of the 1998 Commission of Inquiry on Convention No. 29, Myanmar made some improvements regarding the application of the Convention, including after 2011, when social dialogue and tripartite cooperation between the Government and employers’ and workers’ organizations began to develop. Notwithstanding these developments, the ILO and its supervisory bodies continued to point out that further measures were needed to ensure the full and effective application of the Convention in both law and practice. Following the February 2021 coup d’état, during the period leading to the establishment of the present Commission, ILO

<sup>170</sup> ILO, *Minutes of the 344th Session of the Governing Body of the International Labour Office* (March 2022), [GB.344/PV](#), para. 394(j).

<sup>171</sup> GB.344/PV, para. 394.

<sup>172</sup> CFA, 395th Report, June 2021, Case No. 3405 (Myanmar), paras 284-358; CFA, 397th Report, March 2022, Case No. 3405 (Myanmar), paras 503-584.

documents and reports relating to Myanmar all raised concerns as to a resurgence of forced labour and its impact on the local population and on efforts for the elimination of forced labour.

- 164.** In particular, the 2021 ILC resolution noted “with deep concern the military’s use of forced labour, including in areas of ongoing conflict and against ethnic minorities, such as the Rohingya, particularly as conflict increases across the country”.<sup>173</sup> The March 2022 Office report indicated that the transition from the forced labour complaints mechanism created in 2007 through an agreement between the Office and the authorities to the new National Complaints Mechanism set up in 2019 had been disrupted by the military takeover. Since then, there had been a rise in instances of forced labour reported by organizations monitoring forced labour.<sup>174</sup> Such reports referred to various practices of forced labour in the context of armed conflict, predominantly by the Myanmar military and associated armed groups, including the use of civilians as porters, guides, human shields or for mine clearance operations, as well as the forced recruitment of adults and young persons into armed forces or groups.<sup>175</sup>
- 165.** When the Governing Body included Convention No. 29 in the mandate of the present Commission, it expressed “profound concern over reports of increased use of forced labour by the military authorities and the fact that progress towards the elimination of forced labour has reversed since the military takeover [...]”.<sup>176</sup> Information available to the Governing Body at that time also pointed to reports indicating that certain armed groups, in opposition to the military, were allegedly engaging in forced recruitment into their ranks. The information available raised concerns with respect to the particular vulnerability and exposure to forced labour of women and men of the Rohingya Muslim minority.<sup>177</sup>
- 166.** The Commission received written submissions which also suggest that forced labour practices by the Myanmar armed or security forces and by some armed groups opposing them have been on the rise since 1 February 2021. In addition, the Commission’s attention has also been drawn to forced labour practices reportedly occurring in certain sectors of the economy, such as the garment sector, and to a lack of enforcement of the applicable legal provisions.
- 167.** Taking the above into account, the Commission decided to focus its examination of Myanmar’s observance of Convention No. 29 on developments since 1 February 2021 and, in particular, on: (a) the forced labour allegedly exacted, in various contexts, by the Myanmar military and security forces, as well as by armed groups opposing them; (b) allegations of forced labour in certain sectors of the economy; and (c) the obligation to eliminate forced labour, including through the enforcement of the relevant legislation, and compliance with this obligation in the current context.

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<sup>173</sup> ILO, [Resolution for a return to democracy and respect for fundamental rights in Myanmar](#), ILC, 109th Session, 2021, preambular para. 8.

<sup>174</sup> ILO, *Follow-up to the resolutions concerning Myanmar adopted by the International Labour Conference at its 102nd (2013) and 109th (2021) Sessions: Report of the Director-General on developments in Myanmar, including information on potential follow-up action by the 110th Session of the International Labour Conference*, Governing Body, 344th Session (March 2022), GB.344/INS/12, para. 38.

<sup>175</sup> GB.344/INS/12, para. 39.

<sup>176</sup> GB.344/PV, para. 394(g).

<sup>177</sup> See above, Chapter 3, para. 146.

**Convention No. 87**

- 168.** Since 2011, certain progress had been made in Myanmar concerning freedom of association, including on issues that the ILO supervisory bodies have raised since Myanmar's ratification of Convention No. 87. However, according to ILO reports leading to the establishment of the present Commission, the crisis brought about by the coup d'état represents a considerable setback for trade union rights in the country. Indeed, the 2021 ILC resolution, the March 2022 Office report and the March 2022 Governing Body decision, as well as the examination by the CFA of Case No. 3405 concerning Myanmar and the written submissions received by the Commission, reveal concerns about the excessive use of force and violence against opponents of the regime, including trade unionists, resulting in a climate of fear and insecurity, economic hardship and a wide range of human and labour rights violations.
- 169.** In particular, the 2021 ILC resolution expressed profound concern at the removal of the civilian Government by the military coup, the declaration of the state of emergency and other developments since 1 February 2021, including arbitrary arrests, detention, intimidation, threats and acts of violence against trade unionists and others peacefully exercising their right to freedom of expression, association and peaceful assembly. The resolution deplored the death of over 800 people, including trade unionists exercising their right to freedom of peaceful assembly. It expressed grave concern at police and military raids against trade union offices and homes, harassment of trade unionists and their families, and their detention and placing on a wanted list in retaliation for their participation in strikes and peaceful demonstrations demanding the restoration of democratic order.<sup>178</sup>
- 170.** The Office report in March 2022 provided updates concerning the situation of workers, trade unionists and labour activists who had participated in the Civil Disobedience Movement (CDM), who had reportedly been suspended, dismissed, arrested and detained, with some being charged under the Penal Code. The report also referred to the cancellation of passports of trade union leaders, the ransacking of trade union offices and reports of trade unions being under pressure to re-register their executive committees under the Labour Organization Law (LOL). Information had also been received concerning persistent fears for the security and safety of union executive committee members, forcing many into hiding, as well as specific incidents of torture, killing and the unknown whereabouts of trade unionists following their arrest. The Office report further referred to reports of workplace intimidation and harassment of workers and trade unionists, as well as retaliatory action against striking workers, including threats of dismissal and the use of the military to end labour strikes. It also raised concerns about laws and orders implemented by the military authorities since the coup that suppressed and criminalized dissent.
- 171.** Based on the information contained in the Office report, the March 2022 Governing Body decision noted with profound concern the arrest and torture of Aung Ko Latt, a member of the Mahlwagone Railway Union; it deplored the continued harassment, intimidation and arbitrary arrests and detentions of labour activists, trade unionists and others, including the Rohingya, in the exercise of their human rights; and deplored the

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<sup>178</sup> ILO, Resolution for a return to democracy and respect for fundamental rights in Myanmar, ILC, 109th Session 2021, preambular paras 3 to 5.

termination of the citizenship of prominent democracy activists, including trade unionists, in violation of international law.<sup>179</sup>

- 172.** In Case No. 3405, the CFA addressed similar allegations concerning the use of excessive military and police force against peaceful demonstrators, targeted attacks against trade unionists, workers and their organizations, retaliatory action against workers participating in the CDM, as well as allegations respecting the legislative amendments considered to be in violation of basic civil liberties, as set out in detail in Chapter 3, Section B, of this report.
- 173.** The written submissions received by the Commission supplement these allegations and also point to a prevalent context of violence, and in particular the harsh suppression of the basic civil liberties of pro-democracy protesters, including workers and trade union members and leaders, mainly occurring in the context of the violent suppression of strikes, protests and demonstrations, as well as in situations of individual house-to-house searches, house raids and in detention facilities. It has also been alleged that, as a result of targeted attacks against the trade union movement, military intervention in union activities and workplace intimidation, trade unions have been unable to function and engage in legitimate union activities without serious concerns for the safety and security of their members and leaders. The Commission's attention has also been drawn to post-coup legislative amendments allegedly imposing severe restrictions on basic civil liberties, criminalizing pro-democracy behaviour and curtailing trade union activities.
- 174.** On the basis of the above, the Commission decided to focus its fact-finding with respect to Convention No. 87 on the following thematic areas: (a) allegations of the excessive use of force by the military and the police against peaceful strikes and protests, resulting in killings and serious injuries to workers and trade unionists; (b) allegations of targeted attacks against trade unionists through arrests, detention, criminal prosecution, retaliation, intimidation and other acts undermining the trade union movement; (c) the alleged intervention by the military authorities in the establishment, functioning and activities of trade unions; (d) the alleged workplace intimidation of trade unionists in the private sector; and (e) the legislative amendments introduced since February 2021, reportedly imposing restrictions on basic civil liberties that curtail trade union rights.

## B. Preliminary questions

- 175.** Before entering into the examination of the case before it, the Commission deems it necessary to address preliminary questions that arise out of the specific circumstances of the case. Firstly, the Commission considers below the question of attribution, as a threshold issue. In this regard, it will discuss the responsibility of Myanmar military authorities for their acts or omissions in the context of the application of Conventions Nos 87 and 29 in Myanmar, keeping in mind that these authorities have not been recognized by the ILO as representing the Government of Myanmar (see above, paragraphs 11, 15, 23 and 25). Secondly, the Commission will review procedural and substantive objections raised by the military authorities to the establishment of the Commission in their communications to the ILO, and the authorities' subsequent failure to cooperate with the Commission, other than a communication received by the Office on 7 July 2023.

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<sup>179</sup> GB.344/PV, para. 394(b), (c) and (d).



### Attribution of acts and omissions of the military authorities in the context of the application of ILO Conventions Nos 87 and 29

- 176.** The Commission recalls that the Myanmar armed forces, the *Tatmadaw*, have been exercising some governmental authority ever since the country's independence in 1948, notwithstanding certain areas of the territory being controlled by armed groups in opposition to the military and the power-sharing arrangements put in place under the 2008 Constitution. While the 2008 Constitution provided for a civilian government, it maintained an overall controlling position for the military in the governance system that it created. Indeed, the 2008 Constitution allows the military to directly appoint one quarter of the members of Parliament from among military officers,<sup>180</sup> appoint one of the Vice-Presidents<sup>181</sup> and control key government ministries, including those responsible for defence, home affairs and border affairs.<sup>182</sup> On 1 February 2021, when the military declared a state of emergency, it transferred all legislative, executive and judicial powers to the Commander-in-Chief of the army, who established the so-called State Administration Council (SAC), over which he presides. Since the military takeover, all state institutions have functioned under the authority and control of the military, including the courts and ministries with key roles for the application of Conventions Nos 87 and 29.
- 177.** Irrespective of the extent and nature of the powers exercised by the Myanmar military and the authorities under its control, their acts and omissions engage the responsibility of Myanmar under international law,<sup>183</sup> including Conventions Nos 87 and 29, both before and after the military coup. Under Article 4(1) of the Articles on Responsibility of States for Internationally Wrongful Acts prepared by the International Law Commission, “[t]he conduct of any State organ shall be considered an act of that State under international law, whether the organ exercises legislative, executive, judicial or any other functions, whatever position it holds in the organization of the State [...]”; Article 4(2) defines the term “organ” as including “any person or entity which has that status in accordance with the internal law of the State”.
- 178.** As noted by the International Law Commission in its commentary on Article 4 of the Articles on Responsibility of States for Internationally Wrongful Acts, “[c]onduct engaged in by organs of the State in excess of their competence may also be attributed to the State under international law, whatever the position may be under internal law.”<sup>184</sup> Similarly, the Inter-American Court of Human Rights, in *Velásquez Rodríguez v. Honduras*, held that a breach by a state organ of the American Convention on Human Rights was “independent of whether the organ [...] has contravened provisions of internal law or overstepped the limits of [its] authority.”<sup>185</sup> The Commission considers that the same applies in the present case in relation to Conventions Nos 87 and 29. Accordingly, from

<sup>180</sup> Constitution of 2008, Article 109(b).

<sup>181</sup> Constitution of 2008, Article 60.

<sup>182</sup> Constitution of 2008, Article 232(b).

<sup>183</sup> International Law Commission, Responsibility of States for Internationally Wrongful Acts, 2001. The International Law Commission's articles on the responsibility of States for internationally wrongful acts are annexed to United Nations General Assembly, “Responsibility of States for internationally wrongful acts”, A/RES/56/83, 2001, and corrected by document A/56/49(Vol. I)/Corr.4.

<sup>184</sup> United Nations, *Yearbook of the International Law Commission, 2001*, Vol. II (Part Two), A/CN.4/SER.A/2001/Add.1 (Part 2), commentary 6 to Article. 4, p. 39.

<sup>185</sup> Inter-American Court of Human Rights, *Velásquez Rodríguez v. Honduras*, Judgment (Merits) of 29 July 1988, para. 170.

the point of view of international law, the reportedly extra-constitutional nature of the military takeover, when the military assumed power by disposing of the elected civilian government,<sup>186</sup> does not affect the qualification of the military as an entity whose wrongful acts engage the responsibility of the State.

- 179.** This is the first time in the history of the ILO that a Commission of Inquiry has been established under article 26 of the ILO Constitution concerning a Member of the Organization at a time when the authorities in place in the country are not recognized by the ILC as representing the Government of the Member in the ILO. Indeed, following the February 2021 military takeover in Myanmar, the ILC received competing credentials nominating delegates to the 109th Session of the ILC (2021) submitted by the military authorities through the Permanent Mission of the Republic of the Union of Myanmar to the United Nations Office and other international organizations in Geneva, and by the National Unity Government (NUG).<sup>187</sup> As in previous cases involving conflicting sets of credentials, the ILC Credentials Committee considered that “the question of recognition of governments and their representation in the Organization is considered a political matter in relation to which the Organization should be guided by any position adopted by the UN General Assembly”.<sup>188</sup>
- 180.** In this regard, the Commission observes that the Credentials Committee of the UN General Assembly, which was similarly called upon to examine conflicting credentials for Myanmar in 2021, decided to defer its decision on these credentials,<sup>189</sup> which was subsequently approved by the General Assembly.<sup>190</sup> Taking note of the General Assembly’s position, the ILC Credentials Committee decided not to accredit any delegation to represent Myanmar at the 109th Session of the ILC (2021).<sup>191</sup> The situation concerning Myanmar’s representation at the ILC remained unchanged in 2022 and 2023.<sup>192</sup> However, in 2023, the Credentials Committee also “note[d] with concern that the continued ambiguity on the question of representation of Myanmar affects not only the representation of the Government of Myanmar at the International Labour Conference but also precludes the participation of the employers and workers of Myanmar in the Conference and other tripartite meetings” and “believe[d] that, in the continued absence of guidance from the United Nations General Assembly, it may in due course consider making a determination which would enable the tripartite constituents of Myanmar to resume active participation in the work of the Organization”.<sup>193</sup> At the time of the adoption of this report, no authorities are recognized as representing the Government.

<sup>186</sup> See below, Chapter 5, Section B.

<sup>187</sup> ILO, *Report on credentials: Second report of the Credentials Committee*, *Record of Proceedings* No. 3B, ILC, 109th Session, 2021, paras 2 and 4. The UN General Assembly recommended in 1950 that whenever more than one authority claims to be the government entitled to represent a Member State, the attitude adopted by the General Assembly concerning any such question should be taken into account in other organs of the UN and in the specialized agencies. See United Nations General Assembly, “Recognition by the United Nations of the representation of a Member State”, resolution 396(V), 1950, paras 1 and 3.

<sup>188</sup> ILO, *Record of Proceedings* No. 3B, ILC, 109th Session, 2021, para. 16.

<sup>189</sup> United Nations General Assembly, *Report of the Credentials Committee*, A/76/550, 2021, paras 7 and 9.

<sup>190</sup> United Nations General Assembly, “Credentials of representatives to the seventy-sixth session of the General Assembly”, A/RES/76/15, 2021.

<sup>191</sup> ILO, *Record of Proceedings* No. 3E, ILC, 109th Session, 2021, para. 13.

<sup>192</sup> ILO, *Record of Proceedings* No. 2A, ILC, 110th Session, 2022, para. 28; ILO, *Record of Proceedings* No. 2A(Rev.1), ILC, 111th Session, 2023, para. 28.

<sup>193</sup> ILO, *Record of Proceedings* No. 2A(Rev.1), ILC, 111th Session, 2023, para. 29.

- 181.** In this context, the Commission emphasizes that the fact that the question of the representation of Myanmar in the ILO remains presently unresolved does not affect in any manner the obligations of Myanmar under ILO Conventions that have been ratified and are in force, including Conventions Nos 87 and 29, which are the subject of the current proceedings,<sup>194</sup> or more generally its obligations arising from membership in the Organization; nor is it an obstacle to the establishment of this Commission.
- 182.** In this respect, the Commission notes that the Governing Body decision to initiate the present article 26 proceedings illustrates an ILO practice according to which authorities that have not been recognized as representing the Government of the Member concerned are nevertheless considered answerable to the Organization with regard to the application of ratified international labour standards and the rights protected by them. This practice is demonstrated by the fact that, during the 2021 ILC, the Conference Committee on the Application of Standards examined the application of Convention No. 87 by Myanmar even in the absence of an accredited Government representative from the country, but considered written information supplied by the military authorities. The Governing Body CFA has also received and considered submissions from the military authorities in Case No. 3045 and has issued recommendations to these authorities. Furthermore, the Office has continued to request Myanmar to submit the reports due on the application of ratified Conventions under article 22 of the Constitution, with such requests being addressed to the military authorities. The CEACR has examined reports received from the military authorities on the basis of which it has formulated specific requests addressed to them.<sup>195</sup>
- 183.** Myanmar is not the only country for which the ILO supervisory mechanisms have continued to examine the application of ratified Conventions in circumstances where the authorities in place in the country are not accredited to the ILC. For instance, in Afghanistan in August 2021, the Taliban took control and ousted the Government that was in place.<sup>196</sup> Although the Taliban authorities did not submit credentials for the 2022 session of the ILC, representatives of the ousted government did so and were accredited to that session of the ILC. The CEACR has continued to address comments to Afghanistan,<sup>197</sup> including a 2022 observation concerning the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), in which it requested Afghanistan to supply full particulars to the ILC in 2023, when the case was examined by the CAS. As in 2022, the Taliban authorities did not seek accreditation at the ILC in 2023; a representative of the ousted government was accredited and took part in the CAS discussion on Convention No. 111.<sup>198</sup>

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<sup>194</sup> This also follows a fortiori from article 1(5) of the ILO Constitution, which provides for a continuity of obligations arising under ratified ILO Conventions for States that have withdrawn from ILO membership.

<sup>195</sup> CEACR – *Myanmar*, C.17, direct request, 2022; C.19, direct request, 2022; C.42, direct request, 2022.

<sup>196</sup> In 2021 and 2022, as in the case of Myanmar, the Credentials Committee of the UN General Assembly decided to defer its decision concerning credentials for Afghanistan, as it had received conflicting credentials from the Taliban authorities, as well as from the government ousted by the Taliban. For 2021, see United Nations General Assembly, *Report of the Credentials Committee, A/76/550*, 2021, para. 7; United Nations General Assembly, “Credentials of representatives to the seventy-sixth session of the General Assembly”, A/RES/76/15, 2021. For 2022, see United Nations General Assembly, *Report of the Credentials Committee, A/77/600*, 2022, para. 11, and United Nations General Assembly, “Credentials of representatives to the seventy-seventh session of the General Assembly”, A/RES/77/239, 2022.

<sup>197</sup> See, for example, CEACR – *Afghanistan*, C.111, observation, 2021; C.100, observation, 2021; C.138, observation, 2022; C.182, observation, 2021.

<sup>198</sup> ILO, Committee on the Application of Standards, CAN/PV.5/Afghanistan-C.111, CIT, 111th Session, 8 June 2023.

- 184.** In an earlier case in 1998, the ILC Credentials Committee did not take any action on the credentials submitted by the authorities of Cambodia, noting that the UN, which had received competing credentials for Cambodia, had decided to defer a decision on the credentials.<sup>199</sup> Nevertheless, later that year, the CFA received and examined information submitted by Cambodia in the context of Case No. 1934,<sup>200</sup> and the CEACR issued several comments after having examined reports supplied by Cambodia under article 22 of the ILO Constitution.<sup>201</sup> Earlier, at the 1965 ILC session, having received credentials from two different entities claiming to represent the Government of the Dominican Republic, the ILC Credentials Committee refrained from accrediting any delegation,<sup>202</sup> while the CEACR continued to issue comments addressed to the country.<sup>203</sup>
- 185.** As emphasized above in Chapter 2, holding the Myanmar military authorities responsible in the framework of the supervision of international labour standards does not imply and cannot be construed as implicitly or explicitly recognizing or conferring legitimacy on such authorities. That is neither the role nor the mandate of the ILO supervisory bodies, including the present Commission of Inquiry.
- 186.** In line with the above and the principles of State responsibility in international law and ILO practice in this respect, the Commission finds that the Myanmar military authorities, irrespective of the country's representation in the Organization, are accountable for any of their acts or omissions that have an impact on the application of Conventions Nos 87 and 29 ratified by Myanmar. Additionally, to the extent that the allegations under investigation are levelled at the incumbent military authorities, they are answerable for their acts and omissions. Finally, the Commission emphasizes that whereas currently no entity is admitted to participate in ILO bodies and meetings to represent the Government of Myanmar, this cannot be allowed to lead to a situation in which acts and omissions of the military authorities that allegedly undermine the guarantees enshrined in ratified Conventions go uninvestigated. In this respect, the Commission recalls that it addressed several letters to the military authorities, requesting their cooperation with the procedure (see below, paragraph 196).

### **The objections of the military authorities to the establishment of, and their non-cooperation with, the Commission of Inquiry**

- 187.** The military authorities raised objections against the establishment of the Commission. These were not directly communicated to the Commission, but were expressed within the ILO institutional context and were responded to within that framework. While some objections touch upon the substance of the present inquiry, others concern procedural aspects of the establishment of a commission of inquiry under article 26 of the ILO Constitution. To ensure the transparency and fairness of its proceedings, the Commission will nevertheless briefly address these objections and the military authorities' subsequent non-cooperation with the Commission.

<sup>199</sup> ILO, *Record of Proceedings*, ILC, 86th Session, 1998, Vol. 1, "First report of the Credentials Committee", 5/36. For the UN position, see United Nations General Assembly, *Report of the Credentials Committee*, A/52/719, 1997, para. 5; and "Credentials of representatives to the fifty-second session of the General Assembly", A/RES/52/178, 1998.

<sup>200</sup> CFA, *311th Report*, November 1988, Case No. 1934 (Cambodia), paras 111-132.

<sup>201</sup> See, for example, CEACR – *Cambodia*, C.29, observation 1998; C.122, direct request, 1998.

<sup>202</sup> ILO, *Record of Proceedings*, ILC, 49th Session, 1965, "Fourth Report of the Credential Committee", p. 495.

<sup>203</sup> ILO, *Report of the Committee of Experts on the Application of Conventions and Recommendations*, ILC, 50th Session, Report III (IV), 1966.

## Objections to the establishment of the Commission

- 188.** From the very beginning, the Myanmar military authorities strongly opposed the establishment of the present Commission of Inquiry.<sup>204</sup> They expressed their opposition through press statements published in national newspapers, communications addressed to the ILO Director-General and observations submitted for the consideration of the Governing Body.
- 189.** The Commission notes that the Ministry of Labour (MOL), operating under the control of the SAC, submitted that the decision to establish the Commission of Inquiry, as well as the conclusions of the Governing Body and the ILC in March and June 2022, respectively, were largely politicized.<sup>205</sup> According to the MOL, these decisions were based on the March 2022 Office report and the 2022 CEACR report, which contained excessive politically motivated elements and were not credible; they relied heavily on sweeping and unfounded accusations, distorted information and fabricated news.<sup>206</sup> The MOL considered that the accusations had been “deliberately disseminated by so-called labour activists”, in particular the leadership of the Confederation of Trade Unions Myanmar (CTUM), who were being prosecuted for violating existing laws, in collaboration with the Committee Representing Pyidaungsu Hluttaw (CRPH)<sup>207</sup> and the NUG, which had been declared “terrorist groups” by the military authorities.<sup>208</sup> Furthermore, the MOL argued, the March 2022 Office report and the decisions of the Governing Body did not contain any factual evidence to support the claims against Myanmar concerning non-observance of Conventions Nos 87 and 29; the establishment of a Commission of Inquiry had been rushed through, even though the Governing Body had never meaningfully communicated or engaged in seeking responses from the country concerned.<sup>209</sup>
- 190.** The military authorities also argued that the Governing Body decision to establish the Commission was made without Myanmar’s participation in the sessions of the Governing Body and the ILC.<sup>210</sup> According to the MOL, the ILO had ignored the tripartite

<sup>204</sup> Ministry of Labour (subsequently “MOL”), “Myanmar strongly objects to Sweeping and Unfounded Accusations Mentioned in the Report of the ILO Director-General and Unilateral Decision of the ILO Governing Body”, press statement, 5 April 2022 (subsequently “MOL press statement, April 2022”); MOL, “Proposal of appointing of the members of the Commission of Inquiry”, 14 June 2022 (subsequently “MOL letter, 14 June 2022”); MOL, “Objection to the establishment of the ILO Commission of Inquiry-COI”, 29 June 2022 (subsequently “MOL letter, 29 June 2022”); MOL, “Myanmar strongly rejects unilateral decisions and conclusions adopted during the 110th Session of the International Labour Conference”, *Global New Light of Myanmar*, 2 July 2022 (subsequently “MOL press statement, July 2022”); Permanent Mission Note Verbale, 31 October 2022 ; Note Verbale, 4 November 2022.

<sup>205</sup> MOL press statement, April 2022, para. 1; MOL letter, 29 June 2022, para. 4; MOL press statement, July 2022, para. 2; Permanent Mission Note Verbale, 31 October 2022, para. 1 and conclusion para. 2; and Note Verbale, 17 March 2023, paras 2 and 12, conclusion paras 2 and 3.

<sup>206</sup> MOL press statement, April 2022, para. 1; MOL letter, 29 June 2022, paras 2 and 4; MOL press statement, July 2022, para. 2; Permanent Mission, Note Verbale, 31 October 2022, paras 1 and 2 and conclusion para. 2; and Note Verbale, 17 March 2023, paras 2 and 12, conclusion paras 2-4.

<sup>207</sup> Pyidaungsu Hluttaw refers to the Myanmar legislature established under the 2008 Constitution. After the February 2021 coup d’état, the parliamentarians elected in November 2020 created [the Committee Representing Pyidaungsu Hluttaw \(CRPH\)](#) to perform the functions of the parliament.

<sup>208</sup> MOL letter, 29 June 2022, para. 2; MOL press statement, July 2022, para. 2; Permanent Mission Note Verbale, 31 October 2022, para. 1.

<sup>209</sup> Permanent Mission Note Verbale, 31 October 2022, conclusions paras 1 and 2; Note Verbale, 4 November 2022, para. 7; and Note Verbale, 17 March 2023, para. 12 and conclusion para. 3.

<sup>210</sup> MOL press statement, April 2022, para. 6; MOL letter, 29 June 2022, para. 2; MOL press statement, July 2022, para. 1; Permanent Mission, Note Verbale, 31 October 2022, conclusion para. 1; Note Verbale, 4 November 2022, para. 7; and Note Verbale, 17 March 2023, conclusion para. 3.

delegation from Myanmar and had denied it the right to attend the Governing Body and the ILC; consequently Myanmar had lost the opportunity to vote and to clarify what had really happened on the ground.<sup>211</sup> It considered that this was contrary to article 3 and article 26(5) of the ILO Constitution, under which Myanmar should have the right to send its representatives to proceedings discussing country issues and to respond to the complaints made.<sup>212</sup>

- 191.** The MOL further claimed that the decision to establish a Commission of Inquiry went against the principle of non-intervention in domestic affairs contained in the UN Charter and considered it disappointing for ILO Members to establish such a Commission, “ignoring the action taken in line with the law” and barring Myanmar’s right to vote.<sup>213</sup> According to the MOL, since the Commission had been established contrary to the UN Charter, it had to be assumed that it constituted political oppression and bullying by the ILO.<sup>214</sup>
- 192.** For these reasons, the military authorities strongly objected to the decision by the ILO Governing Body to establish a Commission of Inquiry against Myanmar, “categorically rejected” the Commission and indicated that the Commission “will never be welcomed”.<sup>215</sup>
- 193.** Regarding the objection concerning the establishment of the Commission without the participation of Myanmar at the 344th Session of the Governing Body in March 2022 and other ILO meetings, the Commission recalls that decisions on the recognition of governments and representation in the ILO, on the one hand, and the supervision of ratified Conventions, on the other, are two clearly distinct matters. Decisions on representation are taken by the ILC Credentials Committee, in line with the applicable rules and established institutional practice, as elaborated above. It is not the Commission’s role to assess Myanmar’s post-coup representation in ILO meetings, even though the decisions made in such meetings led to the establishment of the Commission, or to assess those decisions as such.
- 194.** With regard to the alleged interference in domestic affairs, the Commission notes that, in a letter addressed to the MOL, the ILO Director-General clarified that the principle of non-intervention in domestic affairs only applied to the extent that a Member State had not consented to certain limitations of its jurisdiction. By becoming a Member of the ILO and ratifying Conventions Nos 87 and 29, Myanmar had freely accepted being subject to the supervisory procedures provided for in the ILO Constitution with respect to the application of those Conventions.<sup>216</sup> The Commission also recalls that the 1998 Commission, when faced with similar arguments, considered that the matters dealt with

<sup>211</sup> MOL press statement, April 2022, para. 6; MOL letter, 29 June 2022, para. 2; Permanent Mission, Note Verbale, 31 October 2022, conclusion para. 1; and Note Verbale, 4 November 2022, para. 7.

<sup>212</sup> MOL press statement, April 2022, para. 6; MOL letter, 14 June 2022, para. 3; MOL press statement, July 2022, para. 1; MOL letter, 14 June 2022, paras 3 and 6; Permanent Mission, Note Verbale, 31 October 2022, conclusion para. 1; and Note Verbale, 4 November 2022, para. 7.

<sup>213</sup> MOL press statement, April 2022, para. 1; MOL letter, 29 June 2022, para. 3; Permanent Mission, Note Verbale, 4 November 2022, para. 1; and Note Verbale, 17 March 2023, conclusion para. 2.

<sup>214</sup> MOL letter, 29 June 2022, para. 4.

<sup>215</sup> MOL letter, 29 June 2022, para. 4. The military authorities made similar statements in the following communications: MOL press statement, April 2022, para. 7; MOL letter, 14 June 2022, paras 2 and 3; Press statement, July 2022, para. 6; Permanent Mission, Note Verbale, 31 October 2022, preliminary paras 2 and 3 and conclusion para. 2; and Note Verbale, 4 November 2022, para. 7.

<sup>216</sup> Letter from the ILO Director-General, Guy Ryder, to the Deputy Minister of Labour, Win Shein, 6 July 2022.

by the ILO no longer fell within the exclusive sphere of competence of States and that the institution of a Commission of Inquiry could not be considered to be undue interference in internal affairs, since it fell precisely within the terms of reference that the ILO had received from its Members with a view to attaining the aims assigned to it.<sup>217</sup> The Commission shares this view. It also observes that Myanmar has raised the argument of interference in domestic affairs only with respect to the present Commission and not in relation to other ILO supervisory mechanisms, even though the subject matter of these supervisory proceedings also cover the application of Conventions Nos 87 and 29 in the country. For the above reasons, the Commission finds that its fact-finding mandate under article 26 of the ILO Constitution in relation to Conventions Nos 87 and 29 does not contravene the principle of non-intervention in domestic affairs, as contained in the UN Charter and understood in international law.

- 195.** Concerning the argument that the Governing Body decision was based on unfounded allegations divulged by entities declared to be terrorist organizations by the military authorities, the Commission finds that this argument touches upon the substance of the present inquiry and will be considered when examining the concrete allegations made and assessing the material evidence obtained by the Commission throughout its mandate.

### Non-cooperation with the Commission

- 196.** With a view to ensuring fairness in its proceedings, the Commission has addressed three letters to the authorities dated 7 September 2022, 12 January 2023 and 23 May 2023. In these communications, the Commission afforded the military authorities the opportunity to nominate a representative for the purpose of the inquiry, to present their position with regard to the matters before the Commission and to respond to specific allegations and issues related to the application of the Convention. The Commission also requested the cooperation of the military authorities to enable it to carry out its fact-finding mandate and to obtain the fullest information for this purpose, including through a possible country visit and appearance of representatives of the military authorities before the Commission.
- 197.** In this regard, the Commission recalls that article 27 of the ILO Constitution sets out an obligation for all Member States to “place at the disposal of the Commission all the information in their possession which bears upon the subject-matter of the complaint”.<sup>218</sup> It also recalls that the 1998 Commission of Inquiry considered that article 27 clearly showed that Member States, and a fortiori the State which was the subject of the complaint, were under an obligation to cooperate with the procedure and could not, by a refusal to cooperate, prevent the functioning of the procedure.<sup>219</sup> To this end, the Commission informed the military authorities that it was bound to exercise its mandate and undertake its work in accordance with the ILO Constitution and the procedure it had adopted.
- 198.** The Commission has received no response from the military authorities to its letters dated 7 September 2022 and 12 January 2023. On 7 July 2023, the International Labour

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<sup>217</sup> ILO, “Forced labour in Myanmar (Burma): 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)”, Official Bulletin, Vol. LXXXI, 1998, Series B, para. 520 (subsequently “Report of the 1998 Commission of Inquiry”).

<sup>218</sup> ILO Constitution, article 27.

<sup>219</sup> Report of the 1998 Commission of Inquiry, para. 521.

Office received a Note Verbale from the Permanent Mission of Myanmar in Geneva transmitting information in response to certain allegations and issues raised by the Commission in its letter dated 23 May 2023. The information provided by the military authorities on most issues merely repeats statements made earlier by the authorities to the ILO supervisory bodies or the International Labour Office. Other information provided was unspecific and the Commission was not able to probe it. In response to several concrete issues raised by the Commission, the authorities did not provide any response at all, claiming instead that those issues were not related to “labour matters”.

- 199.** The Commission regrets the lack of cooperation by the military authorities, especially considering their prior insistence on the need for the ILO and its supervisory mechanisms to cooperate with the authorities to “properly understand the real situation in Myanmar” and “to get the true information”.<sup>220</sup> In the absence of cooperation from the military authorities, the Commission took into account, as carefully as possible, the communications and observations submitted by the Myanmar military authorities to the CEACR, the CAS, the CFA and the International Labour Office, as well as the information received on 7 July 2023, to the extent that these communications provided the views of the military authorities on the matters before the Commission. The information provided by the military authorities is considered in Chapter 7.

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<sup>220</sup> CFA, 397th Report, March 2022, Case No. 3405 (Myanmar), para. 545; ILO, *Record of Proceedings* No. 4B/P.II, ILC, 110th Session, 2022, p. 430; Permanent Mission, Note Verbale, 31 October 2022, para. 3, pp. 1-2; and Note Verbale, 17 March 2023, conclusion para. 6, p. 6.



## Chapter 5. The context

**200.** The present Chapter will provide contextual information necessary for a holistic understanding on the case before the Commission. It will present a general overview of the country, including the political, security, economic and social situation in Myanmar. It will then present Myanmar laws and regulations in force before 1 February 2021, which are relevant to the inquiry.

### A. Country overview

- 201.** Myanmar has a population of 55.7 million, of whom 52.2 per cent are women and 47.8 men.<sup>221</sup> Some 30 per cent of the total population live in urban areas.<sup>222</sup> The largest population centre is Yangon Region with a population of over 8.3 million, of whom some 76 per cent live in urban settings.<sup>223</sup> Based on 2014 census data, an estimated 87.9 per cent of the population belongs to the Buddhist religion, while an estimated 6.2 per cent are Christians and 4.3 per cent are Muslims.<sup>224</sup> Most recent available data suggests that 4.6 per cent of the population has a disability, with a higher prevalence among women.<sup>225</sup>
- 202.** Ethnic minorities in Myanmar are estimated to represent around one third of the population, alongside the two thirds Bamar majority.<sup>226</sup> Myanmar law and policy recognizes eight main ethnic groups, with over a hundred sub-groups, which are considered to be “national races” (*taingyintha*).<sup>227</sup> The 1982 Citizenship Act links citizenship to belonging to one of the “national races”, that is one of the main ethnic groups or a group that has permanently settled in any territory within the State since before 1823, when British annexation commenced.<sup>228</sup> The concept of “national races” also features in the 2008 Constitution and is reflected in the Law Safeguarding the Rights of Ethnic Groups (2015).
- 203.** The linking of citizenship and ethnicity has been primarily the basis for excluding the Rohingya, who are not considered as being among the “national races” and most of whom are Muslim, from Myanmar citizenship. This situation has been considered by the UN and legal experts as discriminatory and contrary to international human rights law.<sup>229</sup> The estimated number of Rohingya prior to their massive displacement into

<sup>221</sup> United Nations Statistics Division, “Myanmar - Population by sex and urban/rural residence”, 2022 (percentages calculated by the authors).

<sup>222</sup> United Nations Statistics Division, “Myanmar - Population by sex and urban/rural residence”, 2022 (percentages calculated by the authors).

<sup>223</sup> Myanmar Central Statistical Organization, *Myanmar Statistical Yearbook 2021*, Table 1.26 (Population Proportion).

<sup>224</sup> *Myanmar Statistical Yearbook 2021*, Table 1.16. Smaller percentages of the population follow Animism and Hinduism.

<sup>225</sup> Myanmar, Ministry of Labour, Immigration and Population (MOLIP), *The 2014 Myanmar Population and Housing Census: Thematic report on disability*, August 2017, pp. xiv and xv.

<sup>226</sup> International Institute for Democracy and Electoral Assistance (IDEA), *Deciphering Myanmar’s ethnic landscape: A Brief Historical and Ethnic Description of Myanmar’s Administrative Units*, 2022, p. 18 (Table 2.1).

<sup>227</sup> Nick Cheesman, “How in Myanmar ‘National races’ Came to Surpass Citizenship and Exclude Rohingya”, *Journal of Contemporary Asia* 47 (2017): 461-483; IDEA, *Deciphering Myanmar’s ethnic landscape*, 2022, p. 11.

<sup>228</sup> Section 3 of the Citizenship Act provides as follows: “Nationals such as the Kachin, Kayah, Karen, Chin, Burman, Mon, Rakhine or Shan and ethnic groups [that] have settled in any of the territories included within the State as their permanent home from a period anterior to 1185 BE, 1823 AD are Burma citizens.” (unofficial translation).

<sup>229</sup> United Nations General Assembly, “Situation of human rights of Rohingya Muslims and other minorities in Myanmar”, A/RES/77/227, 2022; International Commission of Jurists, “Citizenship and Human Rights in Myanmar:

Bangladesh in 2016-2017 was 1.3 million and the Office of the United Nations High Commissioner for Refugees (UNHCR) estimates that 630,000 Rohingya currently remain in Rakhine State.<sup>230</sup>

- 204.** Myanmar covers a geographical area of 676,552 km<sup>2</sup>,<sup>231</sup> divided into seven states (Chin, Kachin, Kayah, Kayin, Mon and Rakhine), seven regions (Ayeyarwady, Bago, Magway, Mandalay, Sagaing, Tanintharyi and Yangon) and the Union Territory of Nay Phi Taw, which is the capital. The administrative units below the level of states, regions and the Union Territory are districts, which are divided into townships, which are in turn composed of wards and village tracts. Village tracts consist of several villages or municipalities.

## B. Political, security, economic and social situation in Myanmar

- 205.** This section explores the political and institutional situation in Myanmar, the long-standing internal armed conflict, the socio-economic context and the role of the social partners. The section thus describes the overall situation in the country against which the Commission is called upon to carry out its examination of the application of Conventions Nos 87 and 29.

### Political and institutional context

#### From independence to the 2021 military coup

- 206.** Since the independence of Myanmar in 1948, the military has constantly been present in the political process and has ruled the country for over 60 years, taking or reaffirming power through military coups in 1958, 1962 and 1988, and attaining virtually absolute control through the State Law and Order Restoration Council (SLORC) by 1992.<sup>232</sup> In 1993, a National Convention was appointed by the SLORC to formulate a new Constitution allowing the military to control the reorganized state, but this task was not completed until early 2008, following the so-called “Saffron Revolution” in 2007.<sup>233</sup> The 2008 Constitution<sup>234</sup> contains provisions to ensure the military’s dominance and control by providing for a leading role of the military in future governments of Myanmar, including through: the appointment of one fourth of the members of each legislative chamber at all levels, allowing it in practice to prevent constitutional amendments; control over three critical ministries (Defence, Home Affairs and Border Affairs); the appointment of at least one Vice-President from the military; and the majority military presence on the National Defence and Security Council (NDSC).
- 207.** Elections for the national Parliament and local assemblies were held in November 2010 and the new legislature was convened in January 2011, when the 2008 Constitution entered into force. A period of military-dominated civilian government ensued, with new

Why Law Reform is Urgent and Possible: A Legal Briefing”, 2019; Md. Mahbubul Haque, “Rohingya Ethnic Muslim Minority and the 1982 Citizenship Law in Burma”, *Journal of Muslim Minority Affairs* 37 (2017): 454-469.

<sup>230</sup> UNHCR, “Myanmar Situation”, 12 May 2023; IDEA, *Deciphering Myanmar’s ethnic landscape*, 2022, p. 17.

<sup>231</sup> *Myanmar Statistical Yearbook 2021*, p.6.

<sup>232</sup> David I. Steinberg, “The Military in Burma/Myanmar: On the Longevity of Tatmadaw Rule and Influence”, *Trends in Southeast Asia*, 6/2021, pp. 6, 13, 14-15 and 20; Lindsay Maizland, “Myanmar’s Troubled History: Coups, Military Rule, and Ethnic Conflict”, Council on Foreign Relations, 31 January 2022.

<sup>233</sup> Maizland, 2022; Steinberg, 2021, pp. 16 and 27.

<sup>234</sup> The 2008 Constitution is the country’s third Constitution since independence, following the 1947 and 1974 Constitutions.

parliamentary elections being held in November 2015. In March 2020, there were attempts to amend the 2008 Constitution to progressively reduce the military presence in the legislature and limit its broad emergency powers, but these amendments were not adopted.<sup>235</sup>

**208.** In November 2020, further parliamentary elections were held, in which the National League for Democracy (NLD) obtained a majority of seats in both legislative chambers and in the 14 assemblies of States and Regions.<sup>236</sup> The military and the military-aligned Union Solidarity and Development Party rejected the results, alleging massive electoral fraud and irregularities, and requested a special parliamentary session to address these claims.<sup>237</sup> The Speaker of the Parliament refused to hold this session. The Union Election Commission (UEC), the only institution that has the authority to decide on electoral disputes, rejected claims of electoral fraud due to lack of evidence in support of the claim.<sup>238</sup>

### February 2021 military coup and the declaration of a state of emergency

**209.** On 1 February 2021, the day that the Parliament was to meet for the first time, the military seized power, arguing that electoral fraud, which they considered to be a threat to the sovereignty of the country, had not been addressed by the institutions.<sup>239</sup> The military placed the President, the State Counsellor and other prominent NLD members in detention and declared the military-nominated Vice-President Myint Swe as acting President.<sup>240</sup> He convened a meeting of the NDSC, attended by military and military-nominated members only, and invoked Articles 417 and 418 of the Constitution to declare a one-year state of emergency, transferring the executive, legislative and judicial powers to the Commander-in-Chief of the armed forces.<sup>241</sup> A promise was made to hold general elections after the end of the state of emergency if certain conditions were in place and to hand over power to the winner of the elections.<sup>242</sup> The state of emergency

<sup>235</sup> *Cyclopaedia Britannica*, "Myanmar", 23 July 2023.

<sup>236</sup> Thibaut Noel, "Unconstitutionality of the 2021 military coup in Myanmar", IDEA Constitution Briefs, 2022, p. 2. The NLD won 258 out of 440 seats in the People's Assembly and 138 out of 224 seats in the House of Nationalities, as well as 501 out of 880 eligible seats in state and regional assemblies.

<sup>237</sup> United Nations Human Rights Council, *Report of the Special Rapporteur on the situation of Human Rights in Myanmar, Thomas H. Andrews*, A/HRC/46/56, 2021, paras 7-8; United Nations Human Rights Council, "Illegal and Illegitimate: Examining the claim by the Myanmar military to be the Government of Myanmar, and the international response thereto", conference room paper of the Special Rapporteur on the situation of human rights in Myanmar, A/HRC/52/CRP.2, 2023, paras 62-66; Tin Maung Htwe, "Paving the peaceful way of solidarity: The role of nonviolent labourers in Myanmar's Spring Revolution", Australian National University Working Paper, 2022, p. 8.

<sup>238</sup> Union Election Commission, "Announcement to Voters", *Global New Light of Myanmar* 28 January 2021; A/HRC/46/56, paras 6-10; Sujit Choudhry and Asanga Welikala, "Myanmar's Military Coup d'Etat Is Unconstitutional: How should the international community respond?", *Verfassungsblog on Matters Constitutional*, 15 February 2021. See also the Constitution, Article 399(g).

<sup>239</sup> A/HRC/46/56, paras 4 and 11-15.

<sup>240</sup> A/HRC/46/56, paras 4 and 11-15.

<sup>241</sup> A/HRC/46/56, para. 12; Myanmar Office of the President, Order No. 1/2021, 1 February 2021.

<sup>242</sup> Office of the Commander-in-Chief of Defence Services, Notification No. 1/2021, 1 February 2021. The Notification as published in the *Global New Light of Myanmar* on 2 February 2021 provides: "1. The Union Election Commission failed to address a large difference over the voting list used in the multiparty general election held on 8 November 2020. Although the request was made to call for the special session of the Second Pyidaungsu Hluttaw, it was failed to do so. The President refused the submission for two times to hold the National Defence and Security Council meeting. 2. The Union Election Commission will be reconstituted to continuously take appropriate measures, including checking the voting lists in accord with the law. 3. Prevention of the current outbreak of COVID-19 pandemic will be effectively carried out with momentum. 4. Efforts will be made to recover the businesses caused by COVID-19 pandemic as quickly as possible. 5. Emphasis will be placed as much as possible on restoring eternal peace all over

was extended in February 2022, August 2022, February 2023 and again in August 2023.<sup>243</sup>

- 210.** In this respect, the Commission notes that the Constitution provides that if there is sufficient reason for a state of emergency to arise that may cause the disintegration of the Union or national solidarity, or that may cause the loss of sovereignty, due to acts or attempts to take over the sovereignty of the Union by insurgency, violence or wrongful forcible means, the President may, after coordinating with the NDSC, declare a state of emergency and shall declare the transfer of legislative, executive and judicial powers to the Commander-in-Chief to enable him to carry out the necessary measures to speedily restore the original situation, suspending the legislative functions of the Parliament.<sup>244</sup> The Commander-in-Chief may, for the duration of the declaration of a state of emergency, restrict or suspend, as required, one or more fundamental rights of the citizens in the required area.<sup>245</sup>
- 211.** Observers of the situation have concluded that the declaration of a state of emergency in Myanmar was not made in line with the requirements of the Constitution, as it followed neither the constitutional grounds (alleged election fraud did not constitute a threat to the sovereignty of the State which would justify recourse to a state of emergency) nor the procedural requirements (the state of emergency was not declared by the President, but the Vice-President after the President's removal from office by the military authorities; the Vice-President consulted only military or military-appointed members of the NDSC instead of all its members; and the ordinance declaring a state of emergency was not transferred to the Parliament).<sup>246</sup>

### State Administration Council and entities under its control

- 212.** On 2 February 2021, the Commander-in-Chief, Senior General Min Aung Hlaing, citing Article 419 of the Constitution, issued Order No. 9/2021 forming the State Administration Council (SAC) and appointing 16 of its members and himself as Chairman.<sup>247</sup> On 3 February 2021, the SAC appointed its additional members and the next day it changed the name of the "Office of the President" to the "Office of the State Administration Council".<sup>248</sup> The SAC further appointed the "Provisional Government of the Republic of Myanmar" to perform state duties in accordance with the military regime's road map, headed by the Commander-in-Chief and composed of 27 ministers,

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the country in accord with the Nationwide Ceasefire Agreement. 6. When these tasks have been completed in accord with the provisions of the State of Emergency, a free and fair multiparty general election will be held, and then, the assigned duty of the State will be handed over to the winning party meeting norms and standards of democracy."

<sup>243</sup> National Defence and Security Council, Announcement No. 1/2022, 31 January 2022; National Defence and Security Council, Announcement No. 2/2022, 31 July 2022; National Defence and Security Council, Notification 1/2023, 1 February 2023; National Defence and Security Council, Announcement 2/2023, 31 July 2023.

<sup>244</sup> Constitution, Articles 40(c), 417 and 418. See also Articles 414(a), 419, 421, 426 and 429.

<sup>245</sup> Constitution, Article 420.

<sup>246</sup> A/HRC/46/56, paras 13-15; Noel, 2022, pp. 3-6; International Commission of Jurists, "Myanmar: Military Coup d'état violates principles of rule of law, international law and Myanmar's Constitution", 8 February 2021; Choudhry and Welikala, 2021; A/HRC/52/CRP.2, p. 3, paras 6, 59-61 and 72-95.

<sup>247</sup> Myanmar Commander-in-Chief of Defence Services, Order No. 9/2021, Appointment of the State Administration Council, 2 February 2021.

<sup>248</sup> State Administration Council (subsequently "SAC"), Order No. 14/2021, Appointment of Additional Members of State Administration Council, 3 February 2021; SAC, Order No. 21/2021, Changing names of the President's Office and Union Government Office, 4 February 2021.

the Attorney General and a permanent secretary.<sup>249</sup> The SAC then proceeded to the establishment of new governing bodies at the state, regional, district and township levels and appointed new ministers and other government officials, including judges, UEC members, the Auditor General, the Attorney General, officials of the Union Civil Service Board and the Governor of the Central Bank, as well as some positions in the National Human Rights Commission and the Anti-Corruption Commission.<sup>250</sup> On 8 May 2021, the State-owned television announced that the SAC had declared the National Unity Government (NUG), the Committee Representing Pyidaungsu Hluttaw (CRPH)<sup>251</sup> and the People's Defence Forces (PDFs) (examined below), as well as all their subordinates, to be terrorist organizations under the Counter-Terrorism Law.<sup>252</sup> In July 2021, the newly appointed UEC invalidated the results of the 2020 elections.<sup>253</sup>

### Mass protests and their suppression

**213.** On 2 February 2021, “people throughout the country banged pots and pans – a traditional practice to ward off evil spirits – in unison at 8 p.m. to protest the military takeover”.<sup>254</sup> Mass protests ensued and by 6 February a well-organized movement that became known as the Civil Disobedience Movement (CDM) had taken hold.<sup>255</sup> Public sector workers and labour organizations took a leading role in the early periods of the movement, organizing strikes that spread from the healthcare service to other public sector workers, including the railways, customs, commerce, electricity and energy, transport and communications, agriculture, livestock and irrigation, education and banks, to later also include private sector workers, students and others.<sup>256</sup> This nationwide movement involved a wide cross-section of society, with people of different religions, ethnicities, ages, origins and occupations coming together to protest against the military coup and demand democracy and human rights.<sup>257</sup> On 19 February 2021,

<sup>249</sup> SAC, Order No. 152/2021, Formation of Provisional Government of the Republic of the Union of Myanmar, 1 August 2021.

<sup>250</sup> SAC, Order No. 10/2021, Appointment and Assignment of Chairmen of State/Region Administration Councils, 2 February 2021; SAC, Order No. 153/2021, Reconstitution of State or Region Governments, 1 August 2021; SAC, Order No. 16/2021, Formation of Subnational Administration Council, 3 February 2021; SAC, Order No. 7/2021, Appointment and Assignment of Chairman of [the Union Electoral Commission] UEC and members, 2 February 2021; SAC, Order No. 2/2021, Appointment and Assignment of Union Attorney General, 2 February 2021; SAC, Order No. 8/2021, Appointment and Assignment of Governor of the Central Bank, 2 February 2021; SAC, Order No. 1/2021, Appointment and Assignment of Union Attorney General, 2 February 2021; SAC, Order No. 24/2021, Duty Termination from Justices of Supreme Court of the Union, 4 February 2021; SAC, Order No. 23/2021, Appointment and Duty Assignment of Justices for Supreme Court of the Union, 4 February 2021, and SAC, Order No. 38/2021, Appointment and Assignment of Chairman and Members of Constitutional Tribunal of the Union (9 members), 8 February 2021; Office of the Commander-in-Chief of Defence Services, Order No. 2/2021, Appointment and Duty Assignment of Chief Justices and Judges of Region/State High Court, 1 February 2021; Office of the Commander-in-Chief of Defence Services, Order No. 3/2021, Appointment and Duty Assignment of Members of Anti-Corruption Commission, 1 February 2021, and Office of the Commander-in-Chief of Defence Services, Order No. 4/2021, Appointment and Duty Assignment of Chairman, Vice-Chairman and members of Myanmar National Human Rights Commission, 1 February 2021. See also A/HRC/46/56, para. 12; and Noel, 2022, p. 7.

<sup>251</sup> Pyidaungsu Hluttaw refers to the Myanmar legislature established under the 2008 Constitution.

<sup>252</sup> Sebastian Strangio, “Myanmar Junta Labels Shadow Government ‘Terrorists’”, *The Diplomat*, 10 May 2021; “Myanmar’s junta brands rival government a terrorist group”, Reuters, 8 May 2021.

<sup>253</sup> A/HRC/46/56, para. 12; A/HRC/52/CRP.2, para. 84; Noel, 2022, p. 8.

<sup>254</sup> A/HRC/46/56, para. 17.

<sup>255</sup> A/HRC/46/56, para. 17.

<sup>256</sup> ILO, *Update on the situation in Myanmar and on additional measures to promote the restoration of workers’ rights*, Governing Body, 342nd Session (June 2021) GB.342/INS/5, para. 15; A/HRC/46/56, para. 18.

<sup>257</sup> GB.342/INS/5, para. 15; A/HRC/46/56, para. 16; Maizland, 2022; Tin Maung Htwe, 2022, pp. 8 and 10.

the Anti-Military Dictatorship General Strike Committee was formed to support participants in the CDM, sustain and coordinate the CDM and create regional strike committees.<sup>258</sup> By January 2023, millions of people were demonstrating in nationwide protests in at least 223 of the 330 townships throughout the country.<sup>259</sup>

- 214.** In response, the SAC security forces repressed the protests, using limited force at first, but increasing the use of lethal force as the mass demonstrations continued, culminating in numerous violent crackdowns on protesters, combined with mass arrests, detentions and other forms of violence, including gender-based violence.<sup>260</sup> In parallel, raids were conducted on private houses and the offices of organizations, and the military attacked civilian infrastructure, including health facilities and schools, at times destroying entire villages thought to be supporting the opposition, which has had an immense impact on basic human rights, including children's rights.<sup>261</sup> The military adopted legislative and regulatory measures to introduce restrictions on the right to privacy, as well as on freedom of assembly and association, information, opinion, expression and the press, with severe sanctions for the expression of dissent.<sup>262</sup> Between March 2021 and February 2022, the SAC extended martial law to 48 townships across the country.

### The emergence of an organized opposition

- 215.** The members of the ousted Parliament, together with other pro-democracy forces, formed an institutional opposition to the military regime.
- 216.** On 5 February 2021, the parliamentarians elected in November 2020 held an emergency session of Parliament and around 80 per cent of them approved and created the CRPH to perform the functions of the elected Parliament, namely legislative, oversight and representation functions and reaching out to and strengthening relationships with international parliamentary bodies.<sup>263</sup> The CRPH is composed of 20 members, including a Chairperson and the Secretary Board (three secretaries), and is supported by its secretariat.<sup>264</sup> The work is conducted by 12 committees.<sup>265</sup> Between February 2021 and February 2023, five plenary sessions of the Pyidaungsu Hluttaw were held.<sup>266</sup>

<sup>258</sup> Anti-Military Dictatorship General Strike Committee, "Statement No. 1/2021", 19 February 2021; A/HRC/46/56, para. 19.

<sup>259</sup> A/HRC/46/56, paras 4, 16 and 19; A/HRC/52/CRP.2, para. 128.

<sup>260</sup> A/HRC/46/56, paras 4 and 28-60; United Nations Human Rights Council, *Report of the Special Rapporteur on the situation of human rights in Myanmar, Thomas H. Andrews*, A/HRC/49/76, 2022, paras 4, 27-31 and 48-66; United Nations Human Rights Council, *Situation of human rights in Myanmar since 1 February 2022: Report of the United Nations High Commissioner for Human Rights*, A/HRC/52/21, 2023, paras 5-7, 24-30 and 33-38; United Nations Human Rights Council, *Situation of human rights in Myanmar*, A/HRC/RES/49/23, 2022, paras 3, 8 and 10; Steinberg, 2021, p. 32; Noel, 2022, p. 8. Examples of several major crackdowns and attacks on civilians include shootings at protesters on 3, 14 and 27 March and 9 April 2021; airstrikes on schools and other civilian infrastructure in September and October 2021; and an attack on medical and relief personnel in Kaya State on 24 December 2021.

<sup>261</sup> A/HRC/46/56, paras 44, 55-56, 89 and 98; A/HRC/49/76, paras 1, 4, 9-19, 23-26 and 67-73; A/HRC/52/21, paras 5-6, 11-23 and 63; A/HRC/RES/49/23, paras 3, 8 and 10.

<sup>262</sup> GB.342/INS/5, para. 13; A/HRC/46/56, paras 4 and 61-87; A/HRC/49/76, paras 43 and 74-84; A/HRC/52/21, paras 44-57; Tin Maung Htwe, 2022, p. 10.

<sup>263</sup> A/HRC/46/56, para. 23; A/HRC/52/CRP.2, para. 141; Steinberg, 2021, p. 32; Noel, 2022, p. 9; <https://crphmyanmar.org/history-and-formation-of-crph/>.

<sup>264</sup> <https://crphmyanmar.org/structure/>.

<sup>265</sup> <https://crphmyanmar.org/structure/>.

<sup>266</sup> <https://crphmyanmar.org/the-first-session-of-union-parliament/>.

- 217.** On 7 February 2021, the CRPH condemned the military coup and formally dismissed the SAC and its cabinet on the ground that it was illegal and illegitimate, in violation of the Constitution and section 6 of the Penal Code.<sup>267</sup> In March 2021, it declared the SAC to be a terrorist group and revoked the 2008 Constitution, claiming it had been drafted and institutionalized by the military.<sup>268</sup>
- 218.** In March 2021, the National Unity Consultative Council (NUCC) was formed to contest the military dictatorship and build a federal democratic union.<sup>269</sup> The NUCC is a platform including representatives of 28 political institutions, including the CRPH, ethnic armed organizations, consultative councils, administrative mechanisms, anti-coup political parties, civil society organizations, women's organizations, labour unions, general strike committees and others.<sup>270</sup> Its main responsibilities are to: (i) form a government meaningfully representing the people who are against the military dictatorship and which can build a federal democracy by means of collective leadership; (ii) implement policies and strategies endorsed by the People's Assembly in accordance with the Federal Democracy Charter; and (iii) guide policy coordination between People's Assemblies throughout the anti-coup period.<sup>271</sup> In March 2021, the NUCC approved a political road map and the Federal Democracy Charter, which is considered to be an interim constitutional framework to replace the 2008 Constitution.<sup>272</sup>
- 219.** In April 2021, the CRPH, in consultation with the newly created NUCC, announced the formation of the National Unity Government (NUG) as the executive or administrative entity of Myanmar's interim democratic institutions, headed by the ousted President and State Counsellor, even though she was detained, and composed of a wide range of ministries.<sup>273</sup> In June 2021, the NUG declared the Tatmadaw and its affiliated organizations to be terrorist organizations under the Counter-Terrorism Law.<sup>274</sup>

## Escalating armed conflict and violence

### Multidimensional armed conflict

- 220.** Armed conflict between the Myanmar military and ethnic armed organizations (EAOs) striving for more autonomy has been a constant reality since the country's independence in 1948. While the military sought bilateral ceasefire agreements with EAOs for decades, peace efforts gained some momentum from 2010 onwards and a nationwide ceasefire agreement was concluded by eight ethnic armed organizations in 2015.<sup>275</sup> A White Paper on defence matters published in 2016 further prioritized ending conflicts with domestic armed groups, but also affirmed a "state building" role for the Tatmadaw.<sup>276</sup> However, efforts to end the civil war were overshadowed by the "clearance

<sup>267</sup> <https://crphmyanmar.org/history-and-formation-of-crph/>.

<sup>268</sup> A/HRC/46/56, para. 24; A/HRC/52/CRP.2, paras 143 and 145; <https://crphmyanmar.org/functions/>.

<sup>269</sup> National Unity Consultative Council (subsequently "NUCC"), "Announcement of the National Unity Consultative Council", 16 November 2021 (subsequently the "NUCC announcement, 2021"), para. 1.

<sup>270</sup> A/HRC/52/CRP.2, para. 142; NUCC announcement, 2021, para. 2; <https://nucc-federal.org/council/>.

<sup>271</sup> NUCC announcement, 2021, para. 3.

<sup>272</sup> A/HRC/52/CRP.2, para. 145; NUCC announcement, 2021, para. 4; <https://crphmyanmar.org/functions/>.

<sup>273</sup> A/HRC/52/CRP.2, para. 147; NUCC announcement, 2021, para. 4.

<sup>274</sup> NUG, "Announcement on Counter Terrorism and Designation of Terrorist Organizations", 7 June 2021, para. 2.

<sup>275</sup> Transnational Institute, *The Nationwide Ceasefire Agreement in Myanmar: Promoting Ethnic Peace or Strengthening State Control?*, Amsterdam, 2023.

<sup>276</sup> The International Institute for Strategic Studies, *The Military Balance 2023*, 2023, p. 275.

operations” of the military in Rakhine State in 2017, which led to atrocities against the Rohingya and their massive displacement.

- 221.** The military takeover on 1 February 2021 renewed a cycle of conflict and instability, with the SAC and the NUG both claiming governmental authority.<sup>277</sup> Existing ceasefires with EAOs were breaking down and fighting between the military and an increasing number of the 21 active EAOs escalated.<sup>278</sup> Across the country, new armed groups opposing the military regime emerged locally, and came to be known as the People’s Defence Forces (PDFs). Some of them are larger armed units operating under or in coordination with the NUG or EAOs, including in areas so far spared from armed hostilities. According to the UN, armed clashes between February 2021 and January 2023 occurred in 255 of 330 townships.<sup>279</sup> In addition to its own ranks, the military has been relying on militias, such as the so-called *Pyusawhti*, to fight anti-coup forces and political opponents.<sup>280</sup>

### Humanitarian consequences

- 222.** The intensified armed conflict since the military takeover has had dramatic consequences for the population. According to figures released by the UN Office for the Coordination of Humanitarian Affairs (OCHA) in May 2023, 1.5 million people have been internally displaced by clashes and insecurity, with the largest numbers of displaced persons in Sagaing and Magway Regions, as well as in Kayin State.<sup>281</sup> In addition, an estimated 96,500 refugees have fled across the borders into neighbouring countries since February 2021.<sup>282</sup> Over 60,000 properties are estimated to have been burnt or destroyed since February 2021.<sup>283</sup> Reports indicate that the military is using airstrikes and artillery to attack populated areas and civilian infrastructure, including schools and medical facilities,<sup>284</sup> as well as the systematic and widespread burning of villages, leading the UN to express serious concerns.<sup>285</sup>
- 223.** The UN Office of the High Commissioner for Human Rights (OHCHR) reports that between 1 February 2021 and 31 January 2023 at least 2,940 people were killed by the security forces or their affiliates, while the SAC has arrested 17,572 people, including 3,610 women and 381 children, on politically motivated grounds.<sup>286</sup> The World Bank puts the number of people estimated to have died in Myanmar due to the conflict at 30,000.<sup>287</sup> There are also reports of killings perpetrated by anti-military armed groups in urban areas, targeting people perceived as being associated with the military or its militias.<sup>288</sup>

<sup>277</sup> Transnational Institute, *The Nationwide Ceasefire Agreement in Myanmar*, pp. 119-127.

<sup>278</sup> International Crisis Group, “Myanmar’s Coup Shakes up its Ethnic Conflicts”, 2022.

<sup>279</sup> OHCHR, “Factsheet Situation of human rights in Myanmar”, March 2023.

<sup>280</sup> International Crisis Group, “Resisting the Resistance: Myanmar’s Pro-Military Pyusawhti Militias”, Asia Briefing No. 171, 2022.

<sup>281</sup> OCHA, “Myanmar Humanitarian Update No. 29”, 6 May 2023; World Bank, *Myanmar Economic Monitor*, January 2023, p.6.

<sup>282</sup> UNHCR, *Myanmar Situation*, 12 May 2023.

<sup>283</sup> OCHA, “Myanmar Humanitarian Update No. 29”.

<sup>284</sup> See, e.g., Global Coalition to Protect Education from Attack (GCPEA), *The Impacts of Attacks on Education and Military Use in Myanmar*, September 2022.

<sup>285</sup> United Nations Human Rights Council, *Situation of human rights in Myanmar since 1 February 2022: Report of the United Nations High Commissioner for Human Rights*, A/HRC/52/21 (2023), para. 21.

<sup>286</sup> A/HRC/52/21, para. 49.

<sup>287</sup> World Bank, *Myanmar Economic Monitor*, January 2023, p.6.

<sup>288</sup> A/HRC/52/21, paras 31-32.



## The economy, employment, education and health

- 224.** At the time of the military takeover in February 2021, the economy and labour market in Myanmar had already been affected by the COVID-19 pandemic. The conflict and instability that followed the coup d'état have not only impeded economic recovery from the pandemic, but have further disrupted the economy, with a severe impact on businesses, people and livelihoods.<sup>289</sup> By 2022, poverty had doubled in comparison with March 2020, with about 40 per cent of the population living below the national poverty line, meaning that a decade of progress on poverty reduction has been undone.<sup>290</sup>
- 225.** ILO and World Bank research and analysis confirm that the country has been deeply affected by the loss of jobs and income and growing decent work deficits.<sup>291</sup> High food and commodity price inflation due to the depreciation of the Kyat, the disruption of transport routes by conflict and global economic conditions have added further pressure to households and enterprises.<sup>292</sup> Employment rates have been declining, particularly in townships with a high incidence of conflict. Labour productivity is decreasing along with deteriorating working conditions, including low pay, informality and the increased use of casual or daily labour and reliance on self-employment.<sup>293</sup> The ILO has pointed to an overall growing gender gap in the employment-to-population ratio and labour force participation rate as one of the negative consequences of the circumstances of the country. Rising security concerns and mobility restrictions in the aftermath of the military takeover have been affecting women's access to work and employment to a greater extent than men.<sup>294</sup>
- 226.** Real wages in Myanmar in 2022 were 15 per cent lower than in 2017.<sup>295</sup> Consequently, over 70 per cent of households in all the states and regions of the country have had to resort to selling assets, depleting savings or borrowing due to the universal fall in wages and deep income losses, according to a 2022 survey undertaken by the World Bank.<sup>296</sup> Introduced first in 2015, the minimum wage in Myanmar was intended to promote adequate labour protection and sustainable development.<sup>297</sup> However, in the aftermath of the military takeover, the minimum wage has remained stagnant, without any adjustments being made since its last revision in 2018, when it was set at 600 Kyat an hour and 4,800 Kyat a day. As a result, the purchasing power of the minimum wage has decreased by nearly one third, due to soaring double-digit inflation.<sup>298</sup> This situation has had a detrimental impact on workers and their families across the country.

<sup>289</sup> World Bank, *Myanmar Economic Monitor*, January 2023, p.1.

<sup>290</sup> World Bank, *Myanmar Economic Monitor*, July 2022, p. 43.

<sup>291</sup> ILO, "Myanmar: Labour market up-date", ILO Brief, July 2023; World Bank, *A growing crisis: Work, workers and the wellbeing of Myanmar*, May 2023; ILO, "Employment in Myanmar in the first half of 2022: A rapid Assessment", ILO Brief, August 2022.

<sup>292</sup> World Bank, *Myanmar Economic Monitor*, January 2023, p.19.

<sup>293</sup> ILO, "Employment in Myanmar in the first half of 2022".

<sup>294</sup> ILO, "Myanmar: Labour market up-date", p 5.

<sup>295</sup> World Bank, *A growing crisis*, p. 19. The 2022 estimates are based on a survey undertaken by the World Bank in 2022, while the figure for 2017 is based on the results of the 2017 Myanmar Living Conditions Survey undertaken by the Government at the time.

<sup>296</sup> World Bank, *A growing crisis*, p. 26.

<sup>297</sup> ILO, "Minimum wage a step forward for democracy and sustainable development", Op-ed by Rory Mungoven, 25 May 2018.

<sup>298</sup> ILO, *Minimum wage response to COVID-19 and inflation crises. An Asia-Pacific overview*, forthcoming 2023.

- 227.** Employment shifts have been observed to sectors such as mining, agriculture and services, which are characterized by poor working conditions and high levels of informality. Manufacturing, which had been an important source of formal employment in Myanmar, contracted in 2022 due to weaker demand, rising costs, power outages and logistical constraints. In the garment sector, which is an important source of employment, particularly for women, exports increased in the third quarter of 2022 to above pre-coup levels, but demand fell later in the year, with garment factories temporarily closing or reducing operating hours.<sup>299</sup>
- 228.** At least 3.7 million children are estimated not to be attending schools run by the military regime.<sup>300</sup> Teachers participating in the CDM have been dismissed and detained, or have left their jobs for their security (see also below, paragraphs 379 and 384-385). Parents often choose not to send their children to schools run by the military, either as a protest or for security reasons, as attacks have been reported on school facilities.<sup>301</sup> Teachers dispensing education in coordination with the NUG are at particular risk of being arrested and punished by the military.<sup>302</sup> Similarly, the health system has been severely affected by the military takeover, with the SAC dismissing, arresting and detaining doctors and other health workers associated with the CDM (see below, paragraphs 382-383).<sup>303</sup>

### Labour movement and employers' organizations

- 229.** After the military coup in 1988, trade unions were outlawed in the country, forcing many union leaders and organizers abroad. It was only after the adoption of the Labour Organization Law (2011) (LOL) that they became legal again and union leaders were allowed to return to Myanmar.<sup>304</sup> By virtue of a wide-ranging political and economic liberalization process that provided space for the formal establishment of labour organizations, Myanmar saw an increase in the number of workers' organizations formed and registered, with 264 basic labour organizations and one labour federation registered under the LOL in 2012.<sup>305</sup> During that period, major increases in donor funding and capacity-building support from the international community contributed to these developments, with labour organizations playing a critical role in the protection of human and labour rights.<sup>306</sup>
- 230.** The most prominent organizations which have played an essential role in the labour movement and the protection of workers' rights include the Confederation of Trade Unions Myanmar (CTUM), the Agriculture and Farmers Federation of Myanmar – International Union of Food Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations and the Myanmar Industry Crafts and Services Trade Union

<sup>299</sup> World Bank, *Myanmar Economic Monitor*, January 2023, pp. 24-25.

<sup>300</sup> A/HRC/52/21, para. 63.

<sup>301</sup> GCPEA, *The Impacts of Attacks on Education and Military Use in Myanmar*, September 2022.

<sup>302</sup> *The Irrawaddy*, "Myanmar Junta Arrests 15 NUG-Linked teachers", 6 April 2023.

<sup>303</sup> Physicians for Human Rights, *Our Health Workers Are Working in Fear*, January 2022; Insecurity Insight, "Attacks on Health Care in Myanmar (28 December 2022 – 10 January 2023)", January 2023.

<sup>304</sup> Tin Maung Htwe, 2022, p. 7.

<sup>305</sup> ILO, "Riding out the storm: Organizational resilience of trade unions and civil society organizations following the military takeover in Myanmar", ILO Brief, August 2021, p. 4; CEACR - *Myanmar*, C.87, observation, 2012.

<sup>306</sup> ILO, "Riding out the storm", p. 9.

Federation, as well as their affiliates. In 2019, the CTUM and 16 other organizations<sup>307</sup> jointly created the Myanmar Labour Alliance (MLA), a coalition of trade unions which represents the entire labour movement in the country. According to the information provided by the military authorities to the CEACR in 2021, since the entry into force of the LOL, 2,887 basic labour organizations, 161 township labour organizations, 25 regional or state labour organizations, nine labour federations and one labour confederation had been registered under the Law.<sup>308</sup>

- 231.** Following the February 2021 coup d'état, tensions between the authorities and labour organizations resurfaced, seemingly because the labour movement no longer had a civilian counterpart with which to engage in social dialogue and because of the significant role played by workers' organizations in mobilizing pro-democracy protests, to which the military authorities responded with antagonism.<sup>309</sup> The Ministry of Labour, Immigration and Population (MOLIP) declared 16 trade unions and civil society organizations as not being registered in accordance with the law. Since then, leaders and members of these organizations and other unionists have been detained, subjected to arrest warrants, violence and intimidation, and union offices have been raided and subjected to surveillance, resulting in serious restrictions on the capacity of labour organizations to function (see below, Chapter 7). Additional practical obstacles, such as security risks, banking restrictions and electricity cuts, have also dramatically affected the work of labour and employers' organizations.<sup>310</sup>
- 232.** The adoption of the LOL in 2011 also allowed for increased activity by employers' organizations, which contribute to private sector development, the growth of decent work and improvements in industrial relations, and thus play a vital role in the economy and society.<sup>311</sup> In 2012, there were 12 basic employers' organizations registered under the LOL, and this number increased to 27 basic employers' organizations, one township employers' organization and one employers' federation in 2021.<sup>312</sup> The country's leading business organization is currently the Union of Myanmar Federation of Chambers of Commerce and Industry, comprising 16 regional and national Chambers of Commerce and Industry, nine border-area chambers and 75 affiliated associations.<sup>313</sup> Its members include the country's most significant regional and sectoral business associations, namely the Mandalay Regional Chamber of Commerce and Industry and the Myanmar Garment Manufacturers Association.<sup>314</sup> The February 2021 coup d'état and its aftermath, including its harsh effects on the national economy, as described above, have affected

<sup>307</sup> Industrial Workers' Federation of Myanmar; Agriculture and Farmers Federation of Myanmar; Solidarity Trade Union of Myanmar; All Burma Federation of Trade Unions; Action Labour Rights; All Myanmar Trade Unions Network; Federation of General Workers Myanmar; Future Light Centre; Building and Wood Workers Federation of Myanmar; Energy Unions Federation of Myanmar; Food Workers' Federation of Myanmar; Lets Help Each Other; Myanmar Railway Workers Union Federation; Myanmar Railways Traffic Union; Myanmar Transport Federation; and Mining Workers Federation of Myanmar.

<sup>308</sup> CEACR – *Myanmar*, C.87, [observation](#), 2021.

<sup>309</sup> A/HRC/46/56, para. 87; ILO, "Riding out the storm", p. 4; Tin Maung Htwe, 2022, pp. 5 and 9.

<sup>310</sup> ILO, "Riding out the storm", p. 6.

<sup>311</sup> ILO, "[Employers' organizations in Myanmar](#)".

<sup>312</sup> CEACR – *Myanmar*, C.87, [observation](#), 2021; Danish Trade Union Development Agency, "Labour Market Profile Myanmar – 2021/2022" (subsequently "Labour Market Profile"), p. 10.

<sup>313</sup> Labour Market Profile, p. 11.

<sup>314</sup> Labour Market Profile, p. 11.

not only the labour movement, but also the capacity of businesses and their organizations to perform their functions adequately.<sup>315</sup>

### C. Myanmar laws and regulations relevant to the inquiry

**233.** This section reviews the laws and regulations in place in Myanmar before the military coup on 1 February 2021 and which the Commission considers to be relevant to the matters before it. Without claiming to make an exhaustive presentation of these laws and regulations, this section focuses on freedom of association rights and related civil liberties, the prohibition of forced labour, working time and wages, labour dispute settlement, as well as certain provisions concerning the civil service. Texts issued by the military authorities since 1 February 2021 seeking to change the laws of Myanmar are examined in Chapter 7, section B below.

#### Freedom of association rights

**234.** The Constitution grants every citizen, “if not contrary to the laws enacted for Union security, prevalence of law and order, community peace and tranquillity or public order and morality”, the right to form associations and organizations.<sup>316</sup> The Labour Organization Law (2011) (LOL), which elaborates on this right, broadly applies to all workers, including daily wage earners, temporary workers, agricultural workers, domestic workers, apprentices, as well as government employees,<sup>317</sup> understood as including civil servants appointed under the Civil Service Personnel Law (2013). The LOL explicitly excludes from its scope of application Defence Services personnel, members of the Myanmar Police Force and members of armed organizations under the control of the Defence Services.<sup>318</sup>

**235.** In accordance with the LOL, every worker has the right to join a labour organization that operates within their workplace, referred to in the legislation as “trade or activity”, and to freely resign from such organization.<sup>319</sup> The expression “trade or activity” is defined in the LOL as:

[T]he State-owned or private-owned factory, workshop, establishment and their production business, construction business, renovation business, industry, transportation business, service business or any other vocational works in the Republic of the Union of Myanmar. This expression also includes Government departments and organizations.<sup>320</sup>

<sup>315</sup> GB.342/INS/5, para. 25; ILO, *Follow-up to the resolutions concerning Myanmar adopted by the International Labour Conference at its 102nd (2013) and 109th (2021) Sessions*, Governing Body, 343rd Session (November 2021), GB.343/INS/8, para. 22; ILO, *Follow-up to the resolutions concerning Myanmar adopted by the International Labour Conference at its 102nd (2013) and 109th (2021) Sessions: Report of the Director-General on developments in Myanmar, including information on potential follow-up action by the 110th Session of the International Labour Conference*, Governing Body, 344th Session (March 2022), GB.344/INS/12, paras 26-27; Miemie Byrd, “Myanmar Economy in Tailspin, 2 Years after the Military Coup”, Daniel K. Inouye Asia-Pacific Center for Security Studies, 1 February 2023.

<sup>316</sup> Constitution, Article 354.

<sup>317</sup> LOL, section 2(a).

<sup>318</sup> LOL, section 2(a).

<sup>319</sup> LOL, section 3; Labour Organizations Rules (2012) (LOR), section 3.

<sup>320</sup> LOL, section 2(c).

- 236.** No one may coerce, threaten or use undue influence or seduce by illegal means any worker to participate or not to participate in a labour organization, although this does not include lawful efforts to convince workers as part of an organizing campaign.<sup>321</sup>
- 237.** Basic labour organizations can be formed by a minimum of 30 workers in a workplace. If there are fewer than 30 members, workers can form an organization together with workers from another workplace in the sector and region. In such a case, 10 per cent of all the workers in workplaces seeking to form an organization must vote in favour of its establishment.<sup>322</sup> The law also provides the minimum membership requirements for township, regional and state labour organizations, as well as for labour federations and confederations.<sup>323</sup>
- 238.** Applications for registration have to be submitted to the Township Registrar or the Chief Registrar, depending on the level at which the organization is organized.<sup>324</sup> An application for registration of a basic level organization should include information on the trade or activity of the organization, the number of workers in the trade or activity of the organization and the names of workers who support the formation of the organization.<sup>325</sup> If the organization is established at the township, region or state levels, the application for registration should include its name, the number of relevant labour organizations which support its establishment and the recommendation of the supporting labour organization.<sup>326</sup> Similar requirements apply to the registration of labour federations and confederations.<sup>327</sup> In all cases, applications must be accompanied by the constitution or the rules of the organization.<sup>328</sup>
- 239.** Labour organizations should be registered within 30 days (60 days for federations and confederations) of the receipt of the application or provided with reasons for the refusal of registration.<sup>329</sup> Once registered, labour organizations obtain a registration certificate ("form 7") and a register of labour organizations is kept at the office of the Registrar.<sup>330</sup> Rejected registrations or decisions on de-registration can be appealed by any person to the Supreme Court.<sup>331</sup>
- 240.** According to the LOL, labour organizations have the right to carry out their activities free from interference by the public authority or employers, and particularly to freely draw up their constitutions and rules, elect representatives, organize their administration and activities and formulate their programmes, including affiliation to international organizations.<sup>332</sup>
- 241.** The LOL provides details that are to be included in the constitution or rules of labour organizations, including the name and purpose of the organization, and rules on

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<sup>321</sup> LOL, section 49.

<sup>322</sup> LOL, section 4(a); LOR, section 4(a).

<sup>323</sup> LOL, section 4(b)-(e); LOR, section 4(b)-(g).

<sup>324</sup> LOL, sections 11 and 12; LOR, sections 10-11.

<sup>325</sup> LOL, section 11; LOR, section 10.

<sup>326</sup> LOL, section 11; LOR, section 10.

<sup>327</sup> LOL, section 12; LOR, section 11.

<sup>328</sup> LOL, section 11; LOR, section 10.

<sup>329</sup> LOR, sections 12-16.

<sup>330</sup> LOR, sections 15 and 40.

<sup>331</sup> LOL, sections 34-35; LOR, sections 17 and 21.

<sup>332</sup> LOL, sections 6 and 17.

membership, the election of leaders, meetings, funds and auditing.<sup>333</sup> It also sets out the powers and duties of Township Registrars and the Chief Registrar, including matters of audit and de-registration.<sup>334</sup> Several provisions detail the composition and duties of executive committees,<sup>335</sup> membership dues and the use of union funds.<sup>336</sup> The LOL also contains provisions regulating the right to strike and lock-out,<sup>337</sup> which are to be read in light of the provisions regulating the same issues in the Settlement of Labour Disputes Law (2012), as amended up to 2019.<sup>338</sup>

- 242.** An employer can dismiss a worker in cases where a worker is found, under workplace disciplinary procedures, to have violated the workplace regulations known to him or her (a three warnings process). However, section 44 of the LOL prohibits termination of employment for membership of a labour organization, the exercise of organizational activities or participating in a strike in accordance with the law.<sup>339</sup> Organizational activities are defined in sections 16 to 28 and include the functions and duties of the executive committee and the rights and responsibilities of labour organizations, as well as establishing and expending funds.<sup>340</sup> In case of unlawful termination or dismissal, the case is resolved in accordance with the dispute settlement procedures.
- 243.** The LOL also provides a basis for the establishment of employers' organizations by stating that "[t]he employers may organize in parallel structures under this Law".<sup>341</sup> Accordingly, employers can form, register and join organizations, which are covered by the LOL and the Labour Organization Rules (2012) (LOR).<sup>342</sup>
- 244.** It should be noted that the Unlawful Associations Act (1908), as amended in 1954, defines an unlawful association as any combination or body of persons, whether it is known by any distinctive name or not, which encourages or aids persons to commit acts of violence or intimidation or of which the members habitually commit such acts, or which has been declared to be unlawful by the President of the Union under the powers conferred.<sup>343</sup> An association can be declared unlawful if the President is of the opinion that the association interferes with or has as its object to interfere with the administration of the law or with the maintenance of law and order, or that it constitutes a danger to public peace.<sup>344</sup>
- 245.** A person who is a member of an unlawful association, or takes part in meetings of such an association, or contributes, receives or solicits any contribution for the purpose of any such association or in any way assists the operations of any such association, shall be punished with imprisonment for a term which may extend to six months, or with a

<sup>333</sup> LOL, section 10; LOR, sections 8-9, 22-28, 32-37 and 39.

<sup>334</sup> LOL, sections 32-33 and 36; LOR, sections 19-20.

<sup>335</sup> LOL, sections 13-16; LOR, sections 5-6, 29 and 38.

<sup>336</sup> LOL, sections 24-28 and 48.

<sup>337</sup> LOL, sections 37-47 and 50; LOR, sections 41-42; Settlement of Labour Disputes Law, sections 42 and 52.

<sup>338</sup> SLDL, sections 2(i), 28, 40-42 and 54.

<sup>339</sup> LOL, section 44.

<sup>340</sup> LOL, sections 16-28.

<sup>341</sup> LOL, section 8.

<sup>342</sup> LOR, sections 30-31.

<sup>343</sup> Unlawful Associations Act, section 15. For the 1954 amendments, which only concerned section 17, see the [Unlawful Associations \(Amendment\) Act, 1954](#).

<sup>344</sup> Unlawful Associations Act, section 16.

fine, or with both.<sup>345</sup> A person who manages or assists in the management of an unlawful association, or promotes or assists in promoting a meeting of any such association, or of any members thereof, shall be punished with imprisonment for a term which may extend to three years, or with a fine, or with both.<sup>346</sup>

- 246.** The Unlawful Associations Act also allows the President to notify any place which is used for the purposes of an unlawful association and the District Magistrate may take possession of the place and evict any person found therein.<sup>347</sup> The District Magistrate can also take possession of all moveable property and declare property which may be used for the purposes of the unlawful association to be forfeited to the State, as well as monies, securities or credits which are used or intended to be used for the purposes of an unlawful association.<sup>348</sup> An association shall not be deemed to have ceased to exist by reason only of a formal act of dissolution or change of title, but shall be deemed to be continuing so long as any actual combination for the purposes of such association continues between any members thereof.<sup>349</sup>

## Civil liberties

### Right to life, liberty and security of the person

- 247.** The Constitution provides that nothing, except in accordance with existing laws, shall be detrimental to the life and personal freedom of any person.<sup>350</sup> It further provides that every citizen shall enjoy the right of liberty and that no citizen shall be placed in custody for more than 24 hours without the permission of a court.<sup>351</sup> It adds that no person shall, except for matters of precautionary measures taken for the security of the Union or prevalence of law and order, peace and tranquillity in accordance with the law in the interests of the public, or matters permitted according to an existing law, be held in custody for more than 24 hours without the remand of a competent magistrate.<sup>352</sup> The Law for Protection of Personal Privacy and Personal Security of Citizens (2017) also prohibits detention in custody without the permission of a court for more than 24 hours, unless permitted under any existing laws.<sup>353</sup> The Code of Criminal Procedure (1989) provides that no police officer shall detain in custody a person arrested without a warrant for a longer period than under all the circumstances of the case is reasonable and such period shall not exceed 24 hours, except where a judge, under section 167, extends the custody period to 15 days for offences punishable for a term of less than seven years or 30 days in case of offences punishable by more than seven years' imprisonment.<sup>354</sup>

<sup>345</sup> Unlawful Associations Act, section 17(1), as amended in 1954.

<sup>346</sup> Unlawful Associations Act, section 17(2), as amended in 1954.

<sup>347</sup> Unlawful Associations Act, section 17(A).

<sup>348</sup> Unlawful Associations Act, sections 17(B) and 17(E).

<sup>349</sup> Unlawful Associations Act, section 18.

<sup>350</sup> Constitution, Article 353.

<sup>351</sup> Constitution, Article 21(a) and (b).

<sup>352</sup> Constitution, Article 376.

<sup>353</sup> [Law for Protection of Personal Privacy and Security of Citizens](#), as amended by [Law Amending the Law for Protection of Personal Privacy and Personal Security of Citizens \(2020\)](#), section 7. (subsequently 'Law on Personal Privacy and Security'). Regarding amendments made to this Law by the military authorities in 2021, see below in Chapter 7.

<sup>354</sup> [Code of Criminal Procedure](#), sections 61 and 167.

- 248.** The Penal Code (1861), as amended up to 2019, provides a definition of wrongful restraint<sup>355</sup> and wrongful confinement,<sup>356</sup> and establishes sanctions for these violations, including imprisonment ranging from one month to three years and a fine.<sup>357</sup>
- 249.** The Public Property Protection Act (1947) allows the arrest without warrant of any person suspected of having committed or of committing the offence of unauthorized possession of any public property, or theft, misappropriation or mischief in respect of any public property, or any prejudicial act, or if it is necessary to arrest the person with a view to preventing that person from committing any of the offences mentioned or an offence of criminal breach of trust or any prejudicial act.<sup>358</sup> No person may be detained in custody without an order of the President for a period exceeding 15 days and may not be detained in custody under these provisions for more than six months.<sup>359</sup>

### Right to protection of personal privacy and security

- 250.** The Constitution provides that the Union shall protect the privacy and security of home, property, correspondence and other communications of citizens under the law subject to the provisions of the Constitution.<sup>360</sup> The Law for Protection of Personal Privacy and Personal Security of Citizens provides that every citizen has the right to enjoy fully personal privacy and personal security of citizens as set forth in the Constitution,<sup>361</sup> and that the relevant ministry, government departments and responsible authorities shall ensure that the personal privacy and personal security of citizens are protected.<sup>362</sup>
- 251.** If the ministry concerned wishes to enter a person's "residence and a room used as a residence, a building, compound or buildings in a compound" to search and seize something, or to search and arrest any person therein under any existing laws, it must carry out such action with at least two witnesses including a person who is an administrator, village headmen, hundred-household head or ten-household head of the respective ward or village tract.<sup>363</sup>
- 252.** Section 8 of the Law for Protection of Personal Privacy and Security of Citizens provides a set of guarantees relating to personal privacy and security:

No one, without any permit, permission or warrant in accordance with existing laws or without any permission of the President or the Union Government, shall:

- (a) enter a residence, a room used as a residence, a building or compound and a building within a compound of a citizen to search and seize something or arrest any person therein;

<sup>355</sup> Penal Code, in section 339, provides as follows: "Whoever voluntarily obstructs any person, so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person."

<sup>356</sup> Penal Code, in section 340, provides as follows: "Whoever wrongfully restrains any person in such a manner as to prevent that person from proceeding beyond certain circumscribing limits is said 'wrongfully to confine' that person". See also section 342.

<sup>357</sup> Penal Code, sections 341-342 and 345-348.

<sup>358</sup> Public Property Protection Act, 1947, sections 6(1), 7(1), (2) and (2A).

<sup>359</sup> Public Property Protection Act, 1947, section 7(3).

<sup>360</sup> Constitution, Article 357.

<sup>361</sup> Law on Personal Privacy and Security, section 3.

<sup>362</sup> Law on Personal Privacy and Security, section 4.

<sup>363</sup> Law on Personal Privacy and Security, section 5(b).



- (b) keep surveillance on, spy on and investigate about citizens which may invade personal privacy and threaten personal security or affect human dignity;
- (c) intercept the communication of people by any telecommunications devices or disturb in any way;
- (d) demand and pass any personal information on telephone and electronic communications data from telecommunication operator;
- (e) open, search, seize, destroy or damage any correspondence, envelope, package or parcel which are delivered for other's private purpose;
- (f) forcibly interfere in personal and family matters of a citizen or act in any way to slander or affect dignity and reputation of a person;
- (g) forcibly seize the lawfully-owned moveable property or immoveable property of a citizen or intentionally destroy or damage it either directly or indirectly.

### Right to a fair trial

**253.** The Constitution establishes the following “judicial principles”: the independent administration of justice according to law; the dispensing of justice in open court unless prohibited by law; and the guarantee, in all cases, of the right of defence and the right of appeal under law.<sup>364</sup> It also provides that every citizen shall enjoy the right of equality and the right of justice, as prescribed in the Constitution,<sup>365</sup> and that the Union shall guarantee any person to enjoy equal rights before the law and shall equally provide legal protection.<sup>366</sup> No citizen shall be denied redress by due process of law for grievances entitled under law, except in times of foreign invasion, insurrection or emergency.<sup>367</sup>

### Freedom of assembly

- 254.** The Constitution provides for the liberty to assemble peacefully without arms and to hold procession, if not contrary to the laws enacted for Union security, prevalence of law and order, community peace and tranquillity or public order and morality.<sup>368</sup> The Constitution and the Peaceful Assembly and Peaceful Procession Law (2016) both provide that every citizen is responsible for national security, public peace and tranquillity, public morality and prevalence of law and order.<sup>369</sup>
- 255.** The Peaceful Assembly and Peaceful Procession Law allows citizens and entities to utilize peaceful assembly and peaceful procession rights, and aims to provide legal protection for the exercise of these rights and to protect the public from harassment, danger, harm and obstruction from those who are exercising their right to peaceful assembly and peaceful procession.<sup>370</sup> Under this Law, peaceful assembly means a peaceful gathering of more than one person, unarmed and following the rules and giving speeches in permitted public places according to the law for the purpose of expressing their wishes and convictions.<sup>371</sup> Peaceful procession is defined as a peaceful and orderly procession

<sup>364</sup> Constitution, Article 19. The right of defence of the accused in accord with the law is also recognized in Article 375.

<sup>365</sup> Constitution, Article 21(a).

<sup>366</sup> Constitution, Article 347.

<sup>367</sup> Constitution, Article 381.

<sup>368</sup> Constitution, Article 354(b).

<sup>369</sup> Constitution, Article 21(c); [Peaceful Assembly and Peaceful Procession Law](#), section 3(a).

<sup>370</sup> [Peaceful Assembly and Peaceful Procession Law](#), section 3(b)-(c).

<sup>371</sup> [Peaceful Assembly and Peaceful Procession Law](#), section 2(c) and (e).

and chanting in a public road without arms by a citizen or an entity with the intention of expressing their sentiments and opinions, including activities of individual citizens.<sup>372</sup>

- 256.** Citizens or entities who wish to exercise the rights to peaceful assembly and procession must inform in writing the competent township police force at least 48 hours before the intended day and provide specific information, including the purpose, venue, date, time, content of speech, agenda and estimated number of participants.<sup>373</sup> The police must provide the necessary protection to those attending a peaceful assembly or procession so that there is no harassment, destruction or obstruction.<sup>374</sup>
- 257.** The Law further lays down specific rules to be observed by participants in a peaceful assembly and procession. According to section 10, the persons who hold a peaceful assembly or procession shall not:
- (a) speak or [engage in] conduct that may cause disturbance, obstruction, nuisance, danger, injury or forced persuasion to the public;
  - (b) [engage in] conduct that may cause environmental pollution at the place of assembly or along the route of procession;
  - (c) obstruct with intent to disturb vehicles, pedestrians and the public;
  - (d) speak or [engage in] conduct which may affect the State and Union, race or religion or human dignity and morality;
  - (e) give a talk providing false information or false data;
  - (f) hold or show other flags, posters and signboards other than the notified flags, posters and signboards in holding peaceful assembly and peaceful procession;
  - (g) use other loud speakers other than loud hailer or chant and shout other slogans other than the notified slogans in holding peaceful assembly;
  - (h) [engage in] conduct or speak intended to discriminate and degrade treatment and denigrate due to distinction among human beings;
  - (i) induce any person by giving money or something to hold peaceful assembly and peaceful procession dishonestly;
  - (j) act of threat to, force to, coercion, undue influence on any person in holding peaceful assembly and peaceful procession;
  - (k) breach conditions in this Law and violate agreements in respect of conditions predetermined by authorized persons or organizations according to the local requirement.<sup>375</sup>
- 258.** It is further prohibited for people who participate in a peaceful assembly or procession to carry any arms, to endanger anyone, assault violently or behave in a way that could damage state, public or private properties.<sup>376</sup> If a competent person or entity forbids the assembly or procession due to a violation of the law or predefined regulations, the assembly or procession should be stopped and dispersed.<sup>377</sup> Police officers must provide a warning to the leader of the assembly or procession about any violation of the rules and regulations.<sup>378</sup> If the warning is not heeded, the Administrator of the Township

<sup>372</sup> Peaceful Assembly and Peaceful Procession Law, section 2(f).

<sup>373</sup> Peaceful Assembly and Peaceful Procession Law, section 4.

<sup>374</sup> Peaceful Assembly and Peaceful Procession Law, section 13.

<sup>375</sup> Peaceful Assembly and Peaceful Procession Law, section 10.

<sup>376</sup> Peaceful Assembly and Peaceful Procession Law, section 11.

<sup>377</sup> Peaceful Assembly and Peaceful Procession Law, section 12.

<sup>378</sup> Peaceful Assembly and Peaceful Procession Law, section 14(a).

General Administrative Department can issue a warning to stop the peaceful assembly or procession.<sup>379</sup> If the violation of the rules continues despite a warning to stop, the Chief of the Township Police Force must take action in accordance with the existing laws, by-laws, policies and procedures and must not use excessive force.<sup>380</sup> Similar action must be taken if an individual or organization conducts an assembly or procession without providing notification in accordance with the law.<sup>381</sup> Sections 18 to 21 of the Peaceful Assembly and Peaceful Procession Law establish the penalties for violations of the above provisions, which include imprisonment (between one month and one year), a fine (from 10,000 to 100,000 Kyat) or both.<sup>382</sup>

- 259.** Several provisions of the Penal Code cover offences against public tranquillity, including unlawful assembly.<sup>383</sup> They indicate that an assembly which was not unlawful when it assembled may subsequently become an unlawful assembly and establish penalties for being a member of, joining or continuing in an unlawful assembly, which include imprisonment (from six months to two years), a fine or both.<sup>384</sup> Whenever force or violence is used by an unlawful assembly, or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting, which is punishable by imprisonment for up to two years, a fine or both.<sup>385</sup> In case of rioting with a deadly weapon or with anything which, used as a weapon of offence, is likely to cause death, the penalty may be extended to imprisonment for up to three years, a fine or both.<sup>386</sup>

### Freedom of opinion and expression

- 260.** The Constitution grants every citizen, if not contrary to the laws enacted for Union security, prevalence of law and order, community peace and tranquillity or public order and morality, the right to express and publish freely their convictions and opinions.<sup>387</sup> The Telecommunications Law (2013), as amended in 2017, the Electronic Transaction Act (2004) and the Penal Code establish restrictions on this right and the applicable penalties in case of violation.
- 261.** The Telecommunications Law allows the Ministry of Communications and Information Technology, in an emergency, to operate for public interest, direct the licensee to suspend a telecommunications service, to intercept, not to operate any specific form of communication, to obtain necessary information and communications and to temporarily control the Telecommunications Service and Telecommunications Equipment.<sup>388</sup>
- 262.** The Telecommunications Law provides that whoever commits extortion, defamation, disturbance or threat to any person by using a telecommunications network will be liable, on conviction, to imprisonment for a term not exceeding two years or to a fine of

<sup>379</sup> Peaceful Assembly and Peaceful Procession Law, sections 14 and 15.

<sup>380</sup> Peaceful Assembly and Peaceful Procession Law, section 16.

<sup>381</sup> Peaceful Assembly and Peaceful Procession Law, section 17.

<sup>382</sup> Peaceful Assembly and Peaceful Procession Law, section 20.

<sup>383</sup> Penal Code, sections 141-151.

<sup>384</sup> Penal Code, sections 142-145, 151.

<sup>385</sup> Penal Code, sections 146-147.

<sup>386</sup> Penal Code, section 148.

<sup>387</sup> Constitution, Article 354.

<sup>388</sup> Telecommunications Law, section 77.

not more than one million Kyat or both.<sup>389</sup> The Penal Code also establishes the offence of defamation, and provides that whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person, intending to harm, or knowing or having reason to believe that such imputation will harm the reputation of such person, is said to defame that person, except in the cases exempted.<sup>390</sup> The Electronic Transaction Act provides for a term of a maximum five years, a fine or both for whoever creates, modifies or alters information or distributes information created, modified or altered by electronic technology to be detrimental to the interest of or to lower the dignity of any organization or any person.<sup>391</sup>

**263.** The Electronic Transaction Act further provides for imprisonment for a term which may extend from a minimum of seven years to a maximum of 15 years and a fine for whoever, using electronic transactions technology, is convicted of any act detrimental to the security of the State or prevalence of law and order, community peace and tranquillity, national solidarity, national economy or national culture; and for whoever receives, sends and distributes any information relating to secrets of the security of the State, prevalence of law and order, community peace and tranquillity or national solidarity, economy or culture.<sup>392</sup> Under the Telecommunications Law, communications, reception, transmission, distribution or conveyance of incorrect information with dishonesty or participation, is punishable with imprisonment of not more than one year or a fine, or both.<sup>393</sup>

**264.** Sections 124A and 124B of the Penal Code establish the following offences against State institutions through the use of verbal, written and other forms of expression:

124A. Whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards the Government established by law for the Union or for the constituent units thereof, shall be punished with imprisonment for a term of twenty years, to which fine may be added, or with imprisonment which may extend to seven years, to which fine may be added, or with fine [*sic*].

Explanation 1. The expression “disaffection” includes disloyalty and all feelings of enmity.

Explanation 2. Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

Explanation 3. Comments expressing disapprobation of the administrative or other action of the Government, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.<sup>394</sup>

124B. Whoever-

(a) knowingly or wilfully advocates, advises, or teaches the duty, necessity, desirability, or propriety of overthrowing or destroying the organs of the Union or of its constituent units by force or violence or by the assassination of any officer of any such organ, or

<sup>389</sup> Telecommunications Law, section 66(d). See Amendment of Telecommunications Law, 2017.

<sup>390</sup> Penal Code, section 499.

<sup>391</sup> Electronic Transaction Act, section 34.

<sup>392</sup> Electronic Transaction Act, section 33(a)-(b).

<sup>393</sup> Telecommunications Law, section 68.

<sup>394</sup> Penal Code, section 124A.

(b) knowingly or wilfully prints, publishes, edits, issues, circulates, sells, distributes, or publicly displays any written or printed matter which advocates, advises, or teaches the duty, necessity, desirability or propriety of overthrowing or destroying any such organ by force or violence, or

(c) organizes or helps to organize any society, group or assembly of persons who teach, advocate or encourage the overthrow or destruction of any such organ by force or violence, or

(d) becomes a member of, or affiliates with any such society, group or assembly of persons, knowing the purpose thereof,

shall be punished with imprisonment of either description for a term which may extend to not less than three years and not more than ten years, and shall also be liable to fine.

Explanation. For the purposes of this section, the term “the organs of the Union or of its constituent units” means the organs of the Union or of its constituent units established by the Constitution of the Union of Burma.<sup>395</sup>

**265.** Section 505 of the Penal Code establishes the following offence:

Whoever makes, publishes or circulates any statement, rumour or report,

(a) with intent to cause, or which is likely to cause, a member of the Defence Services to mutiny or otherwise disregard or fail in his duty as such; or

(b) with intent to cause, or which is likely to cause, fear or alarm to the public or to any section of the public whereby any person may be induced to commit an offence against the State or against the public tranquillity; or

(c) with intent to incite, or which is likely to incite, any class or community of persons to commit any offence against any other class or community,

shall be punished with imprisonment which may extend to two years, or with fine, or with both.

Exception. It does not amount to an offence, within the meaning of this section, when the person making, publishing or circulating any such statement, rumour or report has reasonable grounds for believing that such statement, rumour or report is true and makes, publishes or circulates it without any such intent as aforesaid.

### Forced or compulsory labour

**266.** As indicated above, Convention No. 29 explicitly requires ratifying Member States to take legislative action to prohibit forced or compulsory labour.<sup>396</sup> In Myanmar, section 374 of the Penal Code sets out the prohibition of “unlawful compulsory labour” as follows:

Whoever unlawfully compels any person to labour against the will of that person shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

**267.** This provision was already in place when Myanmar, then Burma, ratified Convention No. 29 in 1955.<sup>397</sup> The then Village Act (1907) and the Towns Act (1907) enabled and regulated the exaction of forced labour, which was therefore considered to be a lawful imposition

<sup>395</sup> Penal Code, section 124B.

<sup>396</sup> Convention No. 29, Article 25.

<sup>397</sup> Myanmar’s Penal Code, though changes have been made, remains largely identical with the Indian Penal Code 1860 which it inherited in 1889 together with the Code of Criminal Procedure 1861.

of labour. In 1999, the authorities issued two orders suspending the power to impose forced labour under the two Acts and prohibiting it.<sup>398</sup>

**268.** The Constitution of Myanmar prohibits enslavement, trafficking in persons and forced labour:

358. The Union prohibits the enslaving and trafficking in persons.

359. The Union prohibits any form of forced labour except hard labor as a punishment for crime duly convicted and duties assigned thereupon by the Union in accord with the law in the interests of the people.

**269.** The Anti Trafficking in Persons Law (2005) aims to prevent and suppress trafficking in persons, with particular attention to women, children and youth, while seeking to safeguard the rights of victims. The Law requires the Government to set up and operate a “Central Body for Suppression of Trafficking in Persons” composed of relevant ministers and high government officials responsible for setting policies, overseeing implementation and reporting thereon.<sup>399</sup> The definition of trafficking in persons” established in section 3 of the Law, is as follows:

a) Trafficking in Persons means 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 form 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.

Explanation (1) Exploitation includes receipt or agreement for receipt of money or benefit for the prostitution of one person by another, other forms of sexual exploitation, forced labour, forced service, slavery, servitude, debt bondage or the removal and sale of organs from the body.

Explanation (2) Prostitution means any act, use, consummation or scheme involving the use of a person by another, for sexual intercourse or lascivious conduct in exchange for money, benefit or any other consideration.

Explanation (3) Debt bondage means the pledging by the debtor of his/her personal labour or services or those of a person under his/her control as payment or security for a debt, when the length and nature of service is not clearly defined or when the values of the services as reasonably assessed is not applied toward the liquidation of the debt.

**270.** The Anti Trafficking in Persons Law provides that persons found guilty of trafficking shall be punished with imprisonment for a minimum of five and a maximum of ten years, and from 10 years to imprisonment for life in the case of the trafficking of women, children or youths.<sup>400</sup> Perpetrators are also liable to be fined. Several other trafficking-related offences are established, including aiding and abetting, and increased penalties are

<sup>398</sup> See above, Chapter 3, paras 80 and 81.

<sup>399</sup> Anti Trafficking in Persons Law, Chapter III. See English [translation](http://www.mlis.gov.mm) of the Law at online at [www.mlis.gov.mm](http://www.mlis.gov.mm).

<sup>400</sup> Anti Trafficking in Persons Law, sections 24 and 25.

established for trafficking by an organized criminal group.<sup>401</sup> Section 37 provides that: “In prosecuting any offence under this Law, prior sanction of the Central Body or any Body assigned by the Central Body shall be obtained”.

- 271.** The Ward or Village Tract Administration Law (2012) repealed the Village Act and the Towns Act. The Law was amended in March 2012 to include a new section 27A:

Anyone who exacts work or service from any person under the menace of any penalty and for which the said person has not offered himself voluntarily shall be punished with imprisonment for a term not exceeding one year or with fine not more than 100,000 Kyats or with both by the relevant court.<sup>402</sup>

- 272.** The Child Rights Law (2019), which aims to promote and protect the rights of the child, includes provisions providing protection from forced or compulsory labour, as well as the worst forms of child labour and discrimination. Section 21(a) provides that “[a]ll children born within the country shall have the right to birth registration at free of charge without any discrimination”, while section 22 states that “[e]very child registered for birth shall have the right to citizenship in accordance with the provisions under the existing law.”<sup>403</sup> The Law defines discrimination as “discrimination based on citizenship, ethnicity, nationality, caste, origin, colour, man or woman, language, religion, occupation, social status, culture, economic situation, disability, political beliefs or sexual orientation.”<sup>404</sup>

- 273.** Under Section 48(a) of the Child Rights Law “[n]o child shall be forced to work or [be] employed in the worst forms of labour.” As defined by the Law, the “worst forms of child labour” include “[s]ale of the child, slavery, servitude, trafficking, debt bondage, forced or mandatory recruitment to be used in armed conflict or forced or mandatory labour”.<sup>405</sup>

- 274.** A chapter of the Child Rights Law in children and armed conflict includes the following provisions:

60. In order to respect, protect and fulfil the rights of children affected by armed conflict, respective governmental departments, governmental organizations, armed forces and armed groups shall:

[...]

c. take all possible measures against the recruitment and use of those in the armed conflict who have not attained the age of 18 years within the territory of the State and for discharge of such recruits;

d. ensure the prosecution of those responsible for violations against children in connection with armed conflict. If the violators are military personnel of Tatmadaw, the cases 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.

<sup>401</sup> Anti Trafficking in Persons Law, sections 26 to 33.

<sup>402</sup> Law Amending the Ward or Village Tract Administration Law (2012), introducing a new section 27A. An unofficial English translation provided by the Ministry of Labour of Myanmar is reproduced in ILO, *Developments concerning the question of the observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29)*, Governing Body, 313th Session (March 2012), GB.313/INS/6(Add.2).

<sup>403</sup> This and the following citations of provisions of the Child rights Law are quoted from the unofficial ILO [translation](#) of the Law available on the ILO’s NATLEX database.

<sup>404</sup> Child Rights Law, section 3(u).

<sup>405</sup> Child Rights Law, section 3(t)(i).

61. Anyone who commits any of the following violations against children during armed conflict constitutes an offence:

- a. Recruitment and use of children in armed conflict;
- b. Coercing or summoning children by force to transport food, weapons and supplies;

[...]

62. Children shall have the following rights during armed conflict:

[...].

- b. The right to protection of children from coercion, torture or other forms of cruel, inhuman, degrading treatment or recruitment as punishment for non-compliance, or forced involvement in armed conflict.

[...].

**275.** Furthermore, section 66 of the Child Rights Law prohibits the sexual exploitation of children, child prostitution and child pornography:

66. Whoever commits any of the following acts against children with or without the consent of the child shall be considered as criminal offender:

- a. subjecting children to sexual exploitation, transferring body organs of a child for benefits, or subjecting children to forced labour or selling, offering, transferring or receiving a child for such practices.

- b. prostitution, offering, acquiring, purchase or support for such purpose.

- c. production of child pornography or offering, selling, possession, importing or exporting pornographic contents related to children.

**276.** Chapter XXVII of the Child Rights Law establishes offences and penalties in relation to prohibited acts including “forced labour or forced servitude”, which carries a sanction of a minimum of eight months to a maximum of five years of imprisonment and may also be punished by a fine of a minimum of 800,000 to a maximum of 1,600,000 Kyat.<sup>406</sup>

**277.** The People’s Military Service Law (2010) provides that every citizen should undergo military training and serve in the armed forces. Male citizens between 18 and 35 years and female citizens between 18 and 27 years can be called upon to perform military service for a duration of not more than 24 months.<sup>407</sup> The Law also provides for the conscription of “Tatmadaw technicians” and “experts” to serve for periods up to 36 months.<sup>408</sup> Male citizens between 18 and 45 years of age and female citizens between 18 and 35 years of age are eligible to be conscripted for service as experts.<sup>409</sup> Furthermore, the Law provides a legal basis for military mobilization in the following terms:

21(a) When there arises or there is sufficient reason to arise a state of emergency endangering defense and security of state in a region, or in the whole state, the government shall issue order to mobilize all eligible citizens or some citizens or, all citizens [who] finish[ed] military service, or some of them, and summon them for military service, in appropriate region.

**278.** The Law entered into force on 4 November 2010, the day of its enactment. It repealed the Public Military Service Act (1959) and provides that “the Defence Ministry shall enact

<sup>406</sup> Child Rights Law, section 103(a)(4).

<sup>407</sup> People’s Military Service Law, sections 2 (b) and 3(a) (unofficial translation).

<sup>408</sup> People’s Military Service Law, Section 3(b) and (c).

<sup>409</sup> People’s Military Service Law, Section 2(b).



required regulations, by-laws, procedures, announcements, order and directives” for its implementation.<sup>410</sup>

### Working time and wages

**279.** Working time and wages are central dimensions of labour protection and are essential to understanding the context of the present inquiry. Provisions concerning working time are contained in several statutes and rules, including the Factories Act (1951), as amended in 2016,<sup>411</sup> the Shops and Establishments Law (2016) and the Shops and Establishment Rules (2018), the Leave and Holidays Act (1951) and the Leave and Holidays Rules (2018). With regard to wages, the main legislation is the Minimum Wage Law (2013) and the Payment of Wages Law (2016). The following review of these laws and regulations is intended to identify the principal rules and entitlements regarding hours of work, weekly rest, wages and overtime established by these instruments.<sup>412</sup>

### Hours of work

**280.** Under the Factories Act, no worker shall be required or allowed to work in a factory for more than 44 hours in a week. Where the work in a factory, for technical reasons, must be continuous, weekly hours may extend to 48 hours.<sup>413</sup> The Act further sets a limit of eight working hours a day, with a break at least every five hours, and provides that breaks and working hours taken together cannot span more than ten hours in any day.<sup>414</sup> The Shops and Establishments Law provides that a worker shall not be required to work for more than eight hours a day and 48 hours a week.<sup>415</sup> Workers shall not work longer than four hours without having a break of at least 30 minutes, and periods of work and rest in a given day may not exceed 11 hours in total.<sup>416</sup>

### Weekly rest

**281.** The Leave and Holidays Act has broad coverage, which includes workers within the scope of the Factories Act and the Shops and Establishments Law.<sup>417</sup> The Leave and Holidays Rules specify that workers covered by the Act are entitled to one paid weekly day of rest.<sup>418</sup> Under the Factories Act, Sunday is designated as the weekly rest day.<sup>419</sup> The employer must seek a workers’ consent and approval from the labour inspection authorities before requiring work to be done on a weekly rest day.<sup>420</sup> In such cases, a

<sup>410</sup> People’s Military Service Law, sections 1(b), 32 and 33.

<sup>411</sup> [Law Amending the Factories Act, 1951](#) (2016).

<sup>412</sup> Of the ILO Conventions on working time and wages, the following instruments are in force for Myanmar: the Hours of Work (Industry) Convention, 1919 (No. 1), the Weekly Rest (Industry) Convention, 1921 (No. 14), the Minimum Wage-Fixing Machinery Convention, 1928 (No. 26), and the Holidays with Pay Convention, 1936 (No. 52). The most recent comments by the CEACR concerning these Conventions are: CEACR – *Myanmar*, C.1 direct request, 2023; C.14, direct request, 2023; C.26, direct request, 2021; and C.52, observation, 2023.

<sup>413</sup> [Factories Act](#), section 59.

<sup>414</sup> Factories Act, sections 62-64.

<sup>415</sup> [Shop and Establishments Law](#), section 11(a).

<sup>416</sup> Shop and Establishments Law, section 12(a).

<sup>417</sup> [Leave and Holidays Act](#), section 2(4) and the Act’s Schedule.

<sup>418</sup> [Leave and Holiday Rules](#), para. 3.

<sup>419</sup> Factories Act, section 60.

<sup>420</sup> Leave and Holidays Rules, para. 9, reads as follows: “If circumstance demands/causes work on the weekly day off, one must receive the worker’s prior consent first. Also, this must be reported to the Department before that day and ask for [Department] permission. You have to instruct solely upon the Department’s approval” (unofficial translation);

compensatory rest day must be granted.<sup>421</sup> The same applies to exceptional work on a public holiday.<sup>422</sup>

## Overtime

- 282.** While setting daily and weekly working hours limits, as described in paragraph 279 above, the legislation in Myanmar allows work to be performed above these limits. The legislation sets overtime limits and rules for the remuneration of overtime. For workers covered by the Shops and Establishments Law, overtime working hours shall not exceed 12 hours in a week.<sup>423</sup> However, if necessary due to special circumstances, up to 16 hours overtime are permitted a week, provided that they do not extend beyond midnight.<sup>424</sup> A limit on overtime work in factories has been set through an administrative directive at 20 hours a week, with a three hours maximum a day from Monday to Friday and five hours on Saturday.<sup>425</sup>
- 283.** In line with the Employment and Skills Development Law, overtime is to be addressed in the employment contract.<sup>426</sup> The official standard employment contract issued by the MOLIP includes a clause providing that “the employer and employee may mutually agree on the employee working overtime in accordance with the applicable labour laws”.<sup>427</sup> Under the applicable rules pertaining to weekly rest days referred to above in paragraph 281, overtime worked on a public holiday or Sunday, or an alternative designated weekly rest day, is subject to the workers’ consent and approval by the labour inspection authorities.

## Wages

- 284.** Wages are to be agreed between employers and workers, in line with the relevant laws and collective agreements, and included in the employment contract.<sup>428</sup> The wage cannot be below the minimum wage rate set under the Minimum Wage Law, that is, since 2018, a rate of 600 Kyat an hour and 4,800 Kyat a day.<sup>429</sup> The minimum wage in Myanmar, which today amounts to approximately US\$2.8 a day, has remained unchanged since then.
- 285.** Overtime must be remunerated at double the basic wage. The Factories Act and the Payment of Wages Rules establish the method for calculating the hourly overtime rate

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Factories Act, section 60 (1)(b)(ii), as amended by section 27 of the [Law Amending the Factories Act, 1951](#) (2016), which reads as follows: “the employer or manager, if required for work to perform duty on weekly holiday, with the consent of the workers, may apply permission at least 3 days in advance to the Factories and General Labour Laws Inspection Department or to an inspector assigned by the Department, and shall allow the workers to perform duty only after receiving such permission”.

<sup>421</sup> Leave and Holiday Rules, para. 7.

<sup>422</sup> Leave and Holiday Rules, para. 17.

<sup>423</sup> Shops and Establishments Law, section 12(b).

<sup>424</sup> Shops and Establishments Law, section 12(b).

<sup>425</sup> Employment and Social Security/Factories and General Labour Laws Inspection Department, Directive No 615/2/a la ya- law 2/12 (1584) of 11 December 2012.

<sup>426</sup> Employment and Skills Development Law, section 5(b).

<sup>427</sup> MOLIP, [Notification No. 140/2017](#), 28 August 2017 and employment contract template, clause 8 ([unofficial translation](#)).

<sup>428</sup> Employment and Skills Development Law, section 5(b)(3).

<sup>429</sup> National Committee for Minimum Wage, [Notification No. 2/2018](#), 14 May 2018 ([unofficial translation](#)).

for workers paid a monthly salary, a daily wage or on a piece-rate basis.<sup>430</sup> Overtime pay is not only due for hours worked above the applicable weekly hours limit, but also if work is performed above a daily hours limit.

- 286.** The Minimum Wage Act excludes from its scope of application workers in the civil service, seafarers and the employer's close family who depend on and live with the employer.<sup>431</sup> The minimum wage otherwise applies uniformly to workers in Myanmar, irrespective of their location or type of business, although it does not apply to small businesses with fewer than ten workers or family-owned subsistence businesses.<sup>432</sup>
- 287.** Wage deductions are only permitted as explicitly authorized in the Payment of Wages Law and Rules.<sup>433</sup> Workers, individually or through a labour organization or Conciliation Committee under the Settlement of Labour Disputes Law, can raise a claim of non-payment of wages, including unjustified deductions. If the matter is not resolved, workers can submit it to the labour inspection officer or bring the case to court.<sup>434</sup>

### Labour dispute settlement

- 288.** The Settlement of Labour Disputes Law (2012) (SLDL), as amended up to 2019, applies to most workers, but excludes from its scope of application civil servants, Defence Services personnel, members of the Myanmar Police Force and members of the armed organizations under the control of the Defence Services.<sup>435</sup>
- 289.** The SLDL provides for the establishment of workplace coordination committees (WCC) in workplaces with more than 30 workers to promote good relations between employers and workers or labour organizations, the negotiation and coordination of conditions of employment, terms and conditions and occupational safety, health, welfare and productivity, including the negotiation and conclusion of collective agreements.<sup>436</sup> If a labour organization exists at the workplace, the WCC is composed of three representatives of workers appointed by each existing labour organization and an equivalent number of representatives of the employer; where there is no labour organization, the WCC is composed of three worker representatives selected by the workers and three employer representatives.<sup>437</sup> In an undertaking with both labour organization representatives and elected representatives, elected representatives should not be used by the employer to undermine the position of labour organizations and their representatives.<sup>438</sup>
- 290.** The SLDL provides that the first step in resolving disputes is at the workplace level, in particular, through the WCC, where it exists.<sup>439</sup> If a dispute is resolved, the parties may conclude a collective agreement or make a record of settlement.<sup>440</sup> For unsettled

<sup>430</sup> Factories Act, section 73; Payment of Wages Rules, Chapter V.

<sup>431</sup> Minimum Wage Law, section 2(a).

<sup>432</sup> National Committee for Minimum Wage, Notification No. 2/2018, 14 May 2018, paras 3 and 4.

<sup>433</sup> Payment of Wages Law, sections 7-13; Payment of Wages Rules, sections 7-10.

<sup>434</sup> Payment of Wages Rules, sections 11 and 19.

<sup>435</sup> Settlement of Labour Disputes Law (subsequently "SLDL"), section 2(a).

<sup>436</sup> SLDL, section 3-5.

<sup>437</sup> SLDL, section 3.

<sup>438</sup> SLDL, section 8.

<sup>439</sup> SLDL, section 6.

<sup>440</sup> SLDL, sections 6(b) and 9(a).

disputes, if the parties wish to continue to conciliate, either of them may submit a complaint to a conciliation body in townships within a region, state or in the Union Territory, composed of a chairperson, three employer and worker representatives each, one government representative and a secretary.<sup>441</sup> More than one conciliation body can be formed in townships with numerous labour disputes.<sup>442</sup> Complaints are categorized as rights disputes or interest disputes. For rights disputes, the concerned employers and workers shall be informed that they may submit their case to the concerned departments or competent courts.<sup>443</sup> Conciliation bodies are required to conciliate complaints or disputes within seven days from accepting the case, to prepare a contract of mutual agreement if a dispute is settled and to sue a party that violates a contract of mutual agreement.<sup>444</sup>

- 291.** If an interest dispute is not resolved, it is referred to the relevant arbitration body, which must make a decision within seven days of receiving the case.<sup>445</sup> Arbitration bodies are formed in regions, states or nationally and are composed of a chairperson, five representatives of workers' and employers' organizations each, three government representatives and one secretary.<sup>446</sup> If both parties agree with the decision or do not refer the dispute to the Arbitration Council within the proscribed period, the decision is binding.<sup>447</sup> If either party is not satisfied with the decision of an arbitration body, the employer can lock out workers, workers can go on strike or either party may appeal the decision to the Arbitration Council.<sup>448</sup> With respect to essential services, any party may apply to the Arbitration Council, but may not engage in a lock-out or strike.<sup>449</sup>
- 292.** The Arbitration Council is composed of 15 legal experts (five from the Ministry of Labour (MOL), five selected collectively by employers' federations or organizations and five by the Confederation of Trade Unions of Myanmar or workers' federations and organizations, according to the level at which the Council is established).<sup>450</sup> When a dispute is referred to the Arbitration Council, an Arbitration Tribunal is formed of three persons, each representing their respective organizations.<sup>451</sup> An Arbitration Tribunal must render a decision within 14 days (seven days for a dispute in essential services) and all persons involved in the dispute must comply with the ruling.<sup>452</sup> The decision of the Tribunal is deemed to be a decision of the Arbitration Council and comes into force on the day of the decision.<sup>453</sup> A decision which is in force in line with the law is binding on all persons relevant to the dispute, the legal successor of the employer involved in the dispute and all workers working in the trade at the time of the dispute or thereafter.<sup>454</sup> Although the decision of the Arbitration Council is conclusive and final for

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<sup>441</sup> SLDL, sections 9(b) and 10.

<sup>442</sup> SLDL, section 10(b).

<sup>443</sup> SLDL, section 12(b).

<sup>444</sup> SLDL, sections 12 and 24.

<sup>445</sup> SLDL, sections 25-27.

<sup>446</sup> SLDL, section 16.

<sup>447</sup> SLSL, section 34.

<sup>448</sup> SLSL, section 28.

<sup>449</sup> SLSL, section 29.

<sup>450</sup> SLDL, section 19.

<sup>451</sup> SLDL, sections 21, 29 and 30.

<sup>452</sup> SLDL, sections 30-32.

<sup>453</sup> SLDL, section 35.

<sup>454</sup> SLDL, sections 37, 43 and 43A.

the parties, a final court appeal can be made by the unsatisfied party by filing a writ with the Supreme Court, even though this may be suspended during a time of emergency.<sup>455</sup>

- 293.** The SLDL also regulates the rights of workers and employers to engage in strikes or lock-outs,<sup>456</sup> and the relevant provisions have to be read with those of the LOL on the same subject. In particular, the SLDL provides that, while an arbitration body or tribunal is investigating a dispute, an employer may not engage in a lock-out without sufficient cause and workers may not cause a reduction in production or engage in activities that damage the interests of other workers.<sup>457</sup> No one can commence a lock-out or strike without accepting negotiation, conciliation and arbitration.<sup>458</sup> It is not permitted under the SLDL to prohibit the right to work of workers who do not wish to participate in a strike or impede the right of a worker to strike.<sup>459</sup>
- 294.** The SLDL also establishes penalties for violations of its provisions.<sup>460</sup>
- 295.** The Myanmar Special Economic Zones Law (2014) provides for the establishment and regulation of special economic zones, and also contains provisions regulating labour matters.<sup>461</sup> It provides, in particular, that the relevant management committee shall negotiate and mediate in disputes arising between the employer and workers, and that if no settlement is reached, the parties shall accept the decision under the Settlement of Labour Disputes Law.<sup>462</sup>

### Civil service personnel

- 296.** The Civil Service Personnel Law (2013) defines civil service personnel as a civil servant appointed to any position in the structure of any civil service organization. Members of the armed forces and the police are civil servants, but are not regulated by the Law.<sup>463</sup>
- 297.** The Civil Service Personnel Law enumerates the responsibilities of civil service personnel, which include being loyal to the State, complying with the provisions of the Constitution and existing laws, obeying rules, regulations, by-laws, orders and directives, as well as workplace rules, orders and directives specifically issued by separate civil organizations, and being free from party politics.<sup>464</sup>
- 298.** Civil service personnel are entitled to certain fundamental rights, including the right to: stability and security of their job; enjoy leave; participate in associations free from party politics; and submission, justification and petitions related to employee benefits and grievances.<sup>465</sup> The Civil Service Personnel Law establishes the types of leave that civil service personnel can take and sets rules on leave requests and approval.<sup>466</sup> If it is

<sup>455</sup> Constitution, Articles 378(a) and 296(b); see also Laura Ediger and Chris Fletcher, *Labor Disputes in Myanmar: From the Workplace to the Arbitration Council*, 2017, p. 13.

<sup>456</sup> SLDL, sections 2(i), 28, 40-42 and 54.

<sup>457</sup> SLDL, sections 39 and 39(a).

<sup>458</sup> SLDL, section 40.

<sup>459</sup> SLDL, section 42.

<sup>460</sup> SLDL, sections 46, 46A, 47, 48, 48A, 51 and 51A.

<sup>461</sup> Myanmar Special Economic Zones Law, 2014 (subsequently "SEZ Law"), Chapter 16.

<sup>462</sup> SEZ Law, section 76.

<sup>463</sup> Civil Service Personnel Law (subsequently "CSPL"), section 2E.

<sup>464</sup> CSPL, section 10.

<sup>465</sup> CSPL, section 11.

<sup>466</sup> CSPL, sections 15-22; Civil Service Personnel Rules (subsequently 'CSPR'), sections 70-119.

necessary, in the public interest, a leave request may be refused or revoked and civil service personnel, if recalled from leave, do not have the right to refuse and must return compulsorily.<sup>467</sup> Civil service personnel who remain absent after the expiry of the term of leave are not entitled to leave with pay for the period of such absence and, if there is no valid reason for such absence, they may be subject to disciplinary action.<sup>468</sup>

- 299.** Civil service personnel, in addition to adhering to the rules and regulations set out in the Civil Service Personnel Law, must uphold and follow the code of conduct and workplace disciplines specified according to the nature of the work and category of personnel by civil service organizations.<sup>469</sup> In case of failure to observe these rules, departmental action<sup>470</sup> may be taken against a person for a number of disciplinary offences relating to working hours,<sup>471</sup> the performance of duties and proficiency<sup>472</sup> and behavioural discipline in the workplace.<sup>473</sup> Departmental action can be taken without an investigation where there is clear evidence that the person is guilty, or following a preliminary and departmental inquiry.<sup>474</sup> Civil service personnel may be temporarily suspended from duty service while an inquiry is ongoing.<sup>475</sup> If departmental disciplinary action is taken, it can include: a written warning; withholding the annual increment; withholding promotion; a reduction of pay within the pay scale; demotion; reimbursement wholly or partially of the lost value caused by negligence or breach of orders and directives; not receiving full pay for the period of temporary suspension from duty or not designating that period as a duty period; dismissal from the position; and dismissal as civil service personnel.<sup>476</sup> An appeal can be made against a penalty imposed by departmental action, which is heard by an appellate board, the decisions of which are final and conclusive.<sup>477</sup>

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<sup>467</sup> CSPL, section 18; CSPR, sections 70 and 76.

<sup>468</sup> CSPL, section 21; CSPR, section 79.

<sup>469</sup> CSPL, section 37.

<sup>470</sup> CSPL, section 38. See also CSPR, section 160.

<sup>471</sup> CSPR, section 161.

<sup>472</sup> CSPR, section 162.

<sup>473</sup> CSPR, section 163.

<sup>474</sup> CSPL, sections 41 and 43-52; CSPR, sections 182-208.

<sup>475</sup> CSPL, section 42; CSPR, section 170.

<sup>476</sup> CSPL, section 53; CSPR, sections 209-210.

<sup>477</sup> CSPL, section 55; CSPR, sections 218-238.

## Chapter 6. Rights and freedoms protected under Conventions Nos 87 and 29

**300.** The present Chapter reviews the rights and freedoms protected under the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Forced Labour Convention, 1930 (No. 29) , situating these Conventions in the broader context of international law and human rights instruments. It also points to the measures that both ratifying and non-ratifying States are required to take with respect to these Conventions. Finally, the Chapter highlights the linkages between these two fundamental Conventions and the rights and protections contained therein.

### A. Convention No. 87

#### Freedom of association at the ILO and in international law

- 301.** Freedom of association underpins the very foundation of the ILO. Already in 1919, the Preamble to the ILO Constitution considered it to be one of the means of improving conditions of workers and ensuring peace.<sup>478</sup> It is essential to the ILO's governance structures, which are dependent on truly representative voices for its tripartite decision-making. This significant role was later reaffirmed by the 1944 Declaration of Philadelphia, which now forms an integral part of the ILO Constitution and which affirms that freedom of expression and of association are two of the fundamental principles on which the Organization is based and are essential to sustained progress.<sup>479</sup>
- 302.** In 1998, the ILC adopted the ILO Declaration on Fundamental Principles and Rights at Work, which declares that all ILO Members have an obligation arising from the very fact of membership in the Organization, and irrespective of the ratification of the relevant Conventions, to respect, to promote and to realize, in good faith and in accordance with the Constitution, certain principles concerning fundamental rights, including freedom of association.<sup>480</sup> In 2008, when adopting the ILO Declaration on Social Justice for a Fair Globalization, the ILC once again reaffirmed the particular significance of freedom of association in the discharge of the Organization's mandate, noting that it is particularly important to enable the attainment of the ILO's four strategic objectives.<sup>481</sup>
- 303.** It follows from the above that freedom of association plays a preponderant role in the context of the ILO. It is considered to be a basic human right with universal scope which enables the enjoyment of other rights, and is essential for the pursuit of social justice in the process of globalization. Freedom of association is closely interlinked with all other

<sup>478</sup> ILO Constitution, 1919, preambular para. 2.

<sup>479</sup> ILO Constitution, Annex, [Declaration concerning the aims and purposes of the International Labour Organisation \(Declaration of Philadelphia\)](#), 1944, section I(b).

<sup>480</sup> [ILO Declaration on Fundamental Principles and Rights at Work \(1998\), as amended in 2022](#), para. 2(a). Other fundamental principles include: the effective recognition of the right to collective bargaining, the effective abolition of child labour, the elimination of discrimination in respect of employment and occupation and a safe and healthy working environment.

<sup>481</sup> [ILO Declaration on Social Justice for a Fair Globalization \(2008\), as amended in 2022](#), Preamble and section I. A. (iv). The ILO's four strategic objectives are: (i) create greater opportunities for women and men to secure decent employment and income; (ii) enhance the coverage and effectiveness of social protection for all; (iii) strengthen tripartism and social dialogue; and (iv) promote and realize standards and fundamental principles and rights at work. See ILO, [Giving globalization a human face](#), General Survey on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization, 2008, ILC, 101st Session, Report III (Part 1B), 2012 (subsequently "ILO, [Giving globalization a human face](#)"), footnote 57.

ILO fundamental rights and is at the heart of democracy from the grassroots to the higher echelons of power.<sup>482</sup>

- 304.** Beyond the ILO, freedom of association, as a universal human right, including the right to form and join trade unions, is also set out in a number of international and regional treaties and declarations, namely the Universal Declaration of Human Rights (1948) (UDHR),<sup>483</sup> the International Covenant on Civil and Political Rights (1966) (ICCPR),<sup>484</sup> the International Covenant on Economic, Social and Cultural Rights (1966) (ICESCR),<sup>485</sup> the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)<sup>486</sup> and the Convention on the Rights of Persons with Disabilities (2007).<sup>487</sup> The ICCPR and the ICESCR underline that they do not authorize any ILO Member who is a party to Convention No. 87 to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.<sup>488</sup>
- 305.** At the regional level, freedom of association is present in the constituent instruments of two organizations. Both the Charter of the Organization of American States (1948)<sup>489</sup> and the European Charter of Fundamental Rights (2012),<sup>490</sup> which forms part of the Treaty on European Union, provide for the right to freedom of association. Additional legal instruments adopted within the framework of regional organizations also contain provisions guaranteeing freedom of association, including the right to form and join trade unions for the protection of members' interests, in particular the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) (ECHR),<sup>491</sup> the American Convention on Human Rights (1969) (ACHR),<sup>492</sup> the African Charter on Human and Peoples' Rights (1982) (ACHPR),<sup>493</sup> the Commonwealth of Independent States Convention on Human Rights and Fundamental Freedoms (1995),<sup>494</sup> the Arab Charter on Human Rights (1994) (ArabCHR)<sup>495</sup> and the Association of Southeast Asian Nations (ASEAN) Human Rights Declaration (2012) (ASEAN-HRD).<sup>496</sup> In addition to these instruments, most national constitutions also establish the right to freedom of association and many of them refer specifically to the right to freely form, to join or not to join trade unions.<sup>497</sup>

<sup>482</sup> ILO, *Giving globalization a human face*, 2012, para. 49.

<sup>483</sup> [Universal Declaration of Human Rights](#), Articles 20 and 23(4).

<sup>484</sup> [ICCPR](#), Article 22(1).

<sup>485</sup> [ICESCR](#), Article 8.

<sup>486</sup> [International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families](#), Article 26(1)(b).

<sup>487</sup> [Convention on the Rights of Persons with Disabilities](#), Article 27(1)(c).

<sup>488</sup> [ICCPR](#), Article 22(3); [ICESCR](#), Article 8(3).

<sup>489</sup> [Charter of the Organization of American States](#), Article 45(c).

<sup>490</sup> [Charter of Fundamental Rights of the European Union](#), Article 12.

<sup>491</sup> [ECHR](#), Article 11.

<sup>492</sup> [ACHR](#), Article 16.

<sup>493</sup> [ACHPR](#), Article 10.

<sup>494</sup> [Commonwealth of Independent States Convention on Human Rights and Fundamental Freedoms](#), Article 12.

<sup>495</sup> [ArabCHR](#), Article 24(5).

<sup>496</sup> [ASEAN-HRD](#), Article 27(2).

<sup>497</sup> ILO, *Giving globalization a human face*, 2012, para. 8.



**Substantive provisions of Convention No. 87**

- 306.** Convention No. 87 was adopted by the ILC in 1948. It has been ratified by, and is in force for, 157 of the 187 ILO Member States, including Myanmar, which ratified it in 1955.
- 307.** The principal objective of Convention No. 87 is to protect the autonomy and independence of workers' and employers' organizations in relation to the public authorities, both in their establishment and in their functioning and dissolution.<sup>498</sup> The term "organisation" is defined in Article 10 as any organization of workers or of employers for furthering and defending the interests of workers or of employers. It should be noted in this respect that workers' and employers' organizations are major tools for labour market governance and for the development of industrial relations systems that are vectors of stability, progress and economic and social prosperity. Freedom of association and collective bargaining are of vital importance for the social partners, as they enable them to establish rules in the field of working conditions, to pursue more general claims and to reconcile their respective interests with a view to ensuring lasting economic and social development.<sup>499</sup>
- 308.** Article 2 of the Convention sets out the right of workers and employers, without distinction whatsoever, to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without previous authorization. This provision contains three essential aspects of the right to organize. Firstly, the term "without distinction whatsoever" means that the right to organize should be guaranteed as a general principle, without any distinction or discrimination, for all workers and employers, whether in the public or private sectors, the formal or informal economies, irrespective of the economic sector, type and length of contract, age, nationality, residence, political opinion, etc.<sup>500</sup> As set forth in Article 9(1) of the Convention, the only authorized exceptions from the scope of application of the Convention concern members of the police and the armed forces, for whom national laws and regulations may determine the extent to which the guarantees provided for in the Convention are applicable to them.
- 309.** The wording "without previous authorisation" contains the idea that the establishment and registration of workers' and employers' organizations should be a simple formality without any discretionary power of the competent authorities to accept or refuse such establishment, and that such formalities should not amount to an obstacle to freedom of association. Importantly, workers' and employers' organizations should have the right to appeal to impartial and independent courts against any administrative decision relating to their establishment and registration.<sup>501</sup>
- 310.** The references to "organisations of their own choosing" and "subject only to the rules of the organisation concerned" demonstrate the importance attached by the Convention to the freedom of workers and employers to determine the structure, membership and internal functioning of their organizations, and allow for trade union diversity.<sup>502</sup>
- 311.** In accordance with Article 3 of the Convention, workers' and employers' organizations shall have the right to draw up their constitutions and rules, to elect their

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<sup>498</sup> ILO, *Giving globalization a human face*, para. 55.

<sup>499</sup> ILO, *Giving globalization a human face*, para. 51.

<sup>500</sup> ILO, *Giving globalization a human face*, paras 63-81.

<sup>501</sup> ILO, *Giving globalization a human face*, paras 82-88.

<sup>502</sup> ILO, *Giving globalization a human face*, paras 89-99.

representatives in full freedom, to organize their administration and activities and to formulate their programmes. Public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof. This provision is therefore intended to ensure the autonomy and independence of workers' and employers' organizations vis-à-vis the public authorities and to provide protection against undue interference by the State in the internal affairs of workers' and employers' organizations, whether in relation to the adoption of an organization's constitution and internal rules, the conditions of eligibility of its representatives, its financial management, internal administration, the inviolability of its premises and its activities and programmes.<sup>503</sup>

- 312.** In Article 4, the Convention further provides that workers' and employers' organizations shall not be liable to be dissolved or suspended by administrative authority, as dissolution and suspension constitute extreme forms of interference by the authorities in the activities of organizations. Any such dissolution should be accompanied by all the necessary guarantees, which can only be ensured through a normal judicial procedure.<sup>504</sup>
- 313.** Article 5 provides that workers' and employers' organizations shall have the right to establish and join federations and confederations and that any such organization, federation or confederation shall have the right to affiliate with international organizations of workers and employers. This ensures that workers' and employers' organizations can defend the interests of their members more effectively.<sup>505</sup> By virtue of Article 6, the provisions of the Convention applicable to workers' and employers' organizations are also applicable to federations and confederations. Furthermore, Article 7 provides that the acquisition of legal personality by workers' and employers' organizations, federations and confederations shall not be made subject to conditions of such a character as to restrict the application of the above provisions.
- 314.** Importantly, Article 8 lays down that, in exercising the rights provided for in the Convention, workers and employers and their respective organizations, like other persons or organized collectivities, shall respect the law of the land. In parallel, the law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in the Convention.
- 315.** Furthermore, Articles 1 and 11 place an obligation on each Member of the ILO for which the Convention is in force to give effect to the provisions of the Convention and to take all necessary and appropriate measures to ensure that workers and employers may exercise freely the right to organize. The Convention does not, however, specify the methods of application, which it leaves to the discretion of States.
- 316.** Finally, the Commission wishes to address the interdependence of freedom of association rights with basic civil liberties. While the text of the Convention does not elaborate on the subject of civil liberties, the ILO has for decades considered that civil liberties are prerequisites for the proper functioning of workers' and employers' organizations.<sup>506</sup> The essential link between civil liberties and trade union rights is set out in the 1970 ILC Resolution concerning Trade Union Rights and Their Relation to Civil

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<sup>503</sup> ILO, *Giving globalization a human face*, paras 100-161.

<sup>504</sup> ILO, *Giving globalization a human face*, para. 162.

<sup>505</sup> ILO, *Giving globalization a human face*, para. 163.

<sup>506</sup> ILO, *Giving globalization a human face*, para. 59.

Liberties (“1970 Resolution”).<sup>507</sup> The Resolution recognizes that the rights conferred upon workers’ and employers’ organizations must be based on respect for those civil liberties enunciated in the UDHR and the ICCPR, as the absence of those civil liberties removes all meaning from the concept of trade union rights.<sup>508</sup> The Resolution places special emphasis on certain civil liberties considered to be essential for the normal exercise of trade union rights, including the right to freedom and security of person and freedom from arbitrary arrest and detention; freedom of opinion and expression and in particular freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers; freedom of assembly; the right to a fair trial by an independent and impartial tribunal; and the right to protection of the property of trade union organizations.<sup>509</sup> The Commission observes that, since the adoption of the 1970 Resolution, the ILO supervisory mechanisms have unceasingly reaffirmed the interdependence between civil liberties and trade union rights, emphasizing that a truly free and independent trade union movement can only develop in a climate free from violence, pressure and threats of any kind against the leaders and members of such organizations.<sup>510</sup> The CEACR has considered that, in the absence of a democratic system in which fundamental rights and civil liberties are respected, freedom of association cannot be fully developed.<sup>511</sup> Accordingly, even though not explicitly set out in the text of the Convention, the ILO and its supervisory mechanisms consider that issues of civil liberties affecting workers and employers fall squarely within the scope of Convention No. 87, as can be observed from the vast body of decisions and recommendations issued over the years by the CEACR, the Conference Committee on the Application of Standards and the CFA.

## B. Convention No. 29

### Prohibition of forced or compulsory labour by the ILO and in international law

- 317.** Of the ILO’s fundamental Conventions, Convention No. 29 was the first to be adopted by the ILC. Indeed, as noted by the CEACR, freedom from forced or compulsory labour is “one of the most important of the human rights coming within the sphere of competence of the [ILO]”.<sup>512</sup>
- 318.** Convention No. 29, due to the historical context of its adoption, took into account the specific forced labour problems that existed in colonial and post-colonial settings. However, the Convention is of general application and remains of the utmost relevance today, as forced labour practices continue to exist on a global scale. According to ILO estimates released in 2022, there are 27.6 million people in situations of forced labour on any given day, with the dramatic consequences that this entails for them, their

<sup>507</sup> ILO, [Resolution concerning Trade Union Rights and Their Relation to Civil Liberties](#), ILC, 54th Session, 1970.

<sup>508</sup> ILO, *Giving globalization a human face*, 2012; ILO, [Resolution concerning Trade Union Rights and Their Relation to Civil Liberties](#), ILC, 54th Session, 1970, para. 1.

<sup>509</sup> ILO, [Resolution concerning Trade Union Rights and Their Relation to Civil Liberties](#), ILC, 54th Session, 1970, para. 2.

<sup>510</sup> ILO, *Giving globalization a human face*, 2012, para. 59; ILO, [Compilation of decisions of the Committee on Freedom of Association](#), sixth edition, 2018, paras 67-311.

<sup>511</sup> ILO, *Giving globalization a human face*, 2012, para. 59.

<sup>512</sup> ILO, [Eradication of forced labour](#), General Survey concerning the Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105), ILC, 96th Session, Report III (Part 1B), 2007, para. 1.

families, communities and society as a whole.<sup>513</sup> In many contexts, it is predominantly women and girls who find themselves in conditions of vulnerability and at risk of falling prey to forced labour practices.

- 319.** With 181 of the ILO's 187 Member States having ratified Convention No. 29, including Myanmar, which ratified it in 1955, the instrument has almost attained universal ratification. The Convention is a central element of the broader body of international law related to slavery, forced labour and human trafficking, along with the UDHR,<sup>514</sup> the ICCPR,<sup>515</sup> the ICESCR,<sup>516</sup> the Convention on the Rights of the Child (1989),<sup>517</sup> the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (2000), the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (2000)(OPAC),<sup>518</sup> the Slavery Convention (1926), the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956), the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (2000), supplementing the UN Convention against Transnational Organized Crime (2000), and the Rome Statute of the International Criminal Court (1998).<sup>519</sup>
- 320.** Freedom from forced labour, slavery and servitude is also addressed in regional human rights instruments, including the ECHR,<sup>520</sup> the ACHR,<sup>521</sup> the ACHPR,<sup>522</sup> the Commonwealth of Independent States Convention on Human Rights and Fundamental Freedoms,<sup>523</sup> the ArabCHR,<sup>524</sup> as well as the ASEAN-HRD.<sup>525</sup>
- 321.** Although Convention No. 29 has stood the test of time, the ILO has more recently adopted the Protocol of 2014 to the Forced Labour Convention, 1930, which sets forth additional international standards with a view to closing gaps in the implementation of the Convention. While Myanmar has not ratified the Protocol, it should be noted that the Protocol provides that certain provisions contained in Convention No. 29, which had allowed for the continued use of forced labour, under certain circumstances, for transitional periods, are no longer applicable and shall be deleted from the Convention.<sup>526</sup> Importantly, the Protocol reaffirms that the definition of forced or

<sup>513</sup> ILO, Walk Free and International Organization for Migration (IOM), *Global Estimates of Modern Slavery: Forced Labour and Forced Marriage*, 2022, Figure 2, p. 21.

<sup>514</sup> UDHR, Article 4.

<sup>515</sup> ICCPR, Article 8.

<sup>516</sup> ICESCR, Article 6.

<sup>517</sup> CRC, Article 35.

<sup>518</sup> OPAC, Article 3.

<sup>519</sup> The definition of crimes against humanity in the *Rome Statute* includes "enslavement" (Article 7(1)(c)), sexual slavery and enforced prostitution (Article 7(1)(g)).

<sup>520</sup> ECHR, Article 4.

<sup>521</sup> ACHR, Article 6.

<sup>522</sup> ACHPR, Article 5.

<sup>523</sup> The Commonwealth of Independent States Convention on Human Rights and Fundamental Freedoms, Article 4.

<sup>524</sup> ArabCHR, Article 10.

<sup>525</sup> ASEAN-HRD, para. 13.

<sup>526</sup> *Protocol of 2014*, preambular para. 7 and Article 7, which provides that: "The transitional provisions of Article 1, paragraphs 2 and 3, and Articles 3 to 24 of the Convention shall be deleted." Prior to the adoption of the Protocol of 2014, the CEACR and the 1998 Commission of Inquiry had expressed the view that these transitional provisions could no longer be invoked to justify the continued use of forced labour. See the *Report of the CEACR*, 1998, p. 99, and the *report of the 1998 Commission*, para 218. In March 2010, the 307th Session of the Governing Body approved a revised report form under article 22 of the Constitution concerning Convention No. 29, which notes that information will no

compulsory labour contained in Convention No. 29 includes trafficking in persons for the purposes of forced or compulsory labour.<sup>527</sup> More generally, the Protocol calls for additional measures to be taken for the prevention and elimination of forced labour, the provision of protection and remedies to victims, and the sanctioning of perpetrators.<sup>528</sup>

**322.** As a result of the fundamental nature of freedom from forced labour, in a similar manner to freedom of association, all ILO Members, irrespective of whether they have ratified the relevant Conventions, have an obligation to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights contained in those Conventions, including the elimination of all forms of forced or compulsory labour.<sup>529</sup> The Commission also recalls that the Commission of Inquiry set up by the Governing Body in 1997 to examine the compliance by Myanmar with Convention No. 29 (the “1998 Commission”) concluded that the prohibition of forced labour is a peremptory norm of international law.<sup>530</sup>

### Substantive provisions of Convention No. 29

**323.** As provided in Article 1(1), the basic obligation of a State which ratifies the Convention is “to suppress the use of forced or compulsory labour in all its forms within the shortest possible period”. This obligation includes both an obligation to abstain and an obligation to act.<sup>531</sup> In other words, the Convention requires the State to abstain from exacting forced or compulsory labour and, at the same time, to adopt measures to ensure that no form of forced or compulsory labour is tolerated on its territory.<sup>532</sup> This means that States must repeal any laws or regulations that allow the exaction of forced or compulsory labour and ensure that forced or compulsory labour, irrespective of whether it is exacted by public bodies or private individuals, is rendered illegal under national law.<sup>533</sup> In addition to legislative measures, the State must take other appropriate measures to ensure that forced or compulsory labour is suppressed in practice. Article 25 of the Convention provides that the “illegal exaction of forced or compulsory labour shall be punishable as a penal offence, and it shall be an obligation on any Member ratifying this Convention to ensure that the penalties imposed by law are really adequate and are strictly enforced”. For a sanction to be “really adequate”, as required by Article 25 of the Convention, it should be sufficiently dissuasive to put an end to forced labour practices.<sup>534</sup>

**324.** Convention No. 29 defines “forced or compulsory labour” as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily”.<sup>535</sup> This definition contains three elements: work or service, the menace of any penalty and voluntary offer.

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longer be requested under the transitional provisions as they are no longer applicable, reflecting the Governing Body’s view that the transitional period no longer applies.

<sup>527</sup> Protocol of 2014, Article 1(3).

<sup>528</sup> Protocol of 2014, Article 1(1).

<sup>529</sup> ILO Declaration on Fundamental Principles and Rights at Work (1998), as amended in 2022, para. 2(b).

<sup>530</sup> Report of the 1998 Commission of Inquiry, para. 203.

<sup>531</sup> Report of the 1998 Commission of Inquiry, para. 205.

<sup>532</sup> ILO, *Giving globalization a human face*, 2012, para. 317.

<sup>533</sup> ILO, *Eradication of forced labour*, 2007, para. 9.

<sup>534</sup> ILO, *Eradication of forced labour*, 2007, para. 73; ILO, *Giving globalization a human face*, 2012, para. 319.

<sup>535</sup> Convention No. 29, Article 2(1).

- 325.** It follows from the words “all work or service” that the Convention applies to all types of work, service and employment, regardless of the industry or sector within which it is performed, including both the public and private sectors.<sup>536</sup> Work or services within the meaning of Convention No. 29 are not limited to work or services performed within an employment relationship and include those performed in the informal economy and by self-employed workers. Furthermore, work or services may fall within the scope of the Convention irrespective of whether they are paid or unpaid.<sup>537</sup> As noted by the 1998 Commission, “[p]ayment does not change the character of labour exacted compulsorily or by force; it merely becomes paid compulsory or forced labour”.<sup>538</sup>
- 326.** The concept of “penalty” in Article 2(1) of the Convention should be understood in a broad sense as covering a wide range of penalties, including not only penal sanctions, but any form of sanction and punishment and any form of loss of right, advantage or privilege.<sup>539</sup> This may include a promotion, transfer or access to new employment. The expression “menace of penalty” includes various forms of direct or indirect coercion, such as physical violence, psychological coercion, retention of identity documents, deceit, workers being forced to remain at the employers’ disposal, non-payment of wages, etc.<sup>540</sup> It also includes gender-based violence.
- 327.** Regarding “voluntary offer”, the CEACR has pointed out that where consent to work or service was already given under “the menace of a penalty”, the elements of “voluntary offer” and “menace of a penalty” overlap, noting that “there is no ‘voluntary offer’ under threat”.<sup>541</sup> An external constraint or indirect coercion interfering with workers’ freedom to offer themselves voluntarily may result from statutory instruments adopted by the authorities, but also from an employer’s practices.<sup>542</sup> However, “the employer or the State are not accountable for all external constraints or indirect coercion existing in practice: for example, the need to work in order to earn one’s living could become relevant only in conjunction with other factors for which they are answerable”.<sup>543</sup> The notion of voluntary offer in the definition of forced or compulsory labour in Convention No. 29 also implies that workers should enjoy the freedom to leave their employment. As such, unreasonably long notice periods for workers to terminate their employment, including for military personnel, are incompatible with the Convention.<sup>544</sup>
- 328.** The Commission also recalls that the CEACR has addressed the question of overtime obligations under the menace of a penalty on various occasions. In 1998, the CEACR considered that the imposition of overtime does not affect the application of the Convention so long as it is within the limits permitted by national legislation or collective agreements. Above those limits, the CEACR has considered it appropriate to examine

<sup>536</sup> ILO, *Giving globalization a human face*, 2012, para. 262.

<sup>537</sup> CEACR – *Haiti*, C.29, *observation*, 1983.

<sup>538</sup> *Report of the 1998 Commission of Inquiry*, para. 473.

<sup>539</sup> ILO, *Record of Proceedings*, ILC, 14th Session, 1930, p. 691; ILO, *Sixth Supplementary report: Report of the committee set up to examine the representation alleging non-observance by Chile of the Forced Labour Convention, 1930 (No. 29), submitted under article 24 of the ILO Constitution by the Colegio de Abogados de Chile, AG*, Governing Body, 303rd Session (November 2008), *GB.303/19/6*, para. 31.

<sup>540</sup> ILO, *Giving globalization a human face*, 2012, para. 270; ILO, *Eradication of forced labour*, 2007, para. 39.

<sup>541</sup> ILO, *Eradication of forced labour*, 2007, para. 38; ILO, *Strengthening action to end forced labour*, Report IV(1), ILC, 103rd Session, 2014, para. 20.

<sup>542</sup> ILO, *Eradication of forced labour*, 2007, para. 39.

<sup>543</sup> ILO, *Eradication of forced labour*, 2007, para. 39.

<sup>544</sup> ILO, *Giving globalization a human face*, 2012, para. 290.

the circumstances in which a link arises between an obligation to perform overtime work and the protection provided by the Convention.<sup>545</sup>

**329.** Subsequently, in 2007 and 2012, the CEACR further observed that

although workers may in theory be able to refuse to work beyond normal working hours, their vulnerability means that in practice they may have no choice and are obliged to do so in order to earn the minimum wage or keep their jobs, or both. [...] the Committee has considered that, in cases in which work or service is imposed by exploiting the worker's vulnerability, under the menace of a penalty, dismissal or payment of wages below the minimum level, such exploitation ceases to be merely a matter of poor conditions of employment and becomes one of imposing work under the menace of a penalty, which calls for protection by the Convention.<sup>546</sup>

**330.** Finally, the Commission recalls that Convention No. 29 includes in Article 2(2) a list of certain types of work or services that do not fall within the definition of "forced or compulsory labour":

(a) any work or service exacted in virtue of compulsory military service laws for work of a purely military character;

(b) any work or service which forms part of the normal civic obligations of the citizens of a fully self-governing country;

(c) any work or service exacted from any person as a consequence of a conviction in a court of law, provided that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies or associations;

(d) any work or service exacted in cases of emergency, that is to say, in the event of war or of a calamity or threatened calamity, such as fire, flood, famine, earthquake, violent epidemic or epizootic diseases, invasion by animal, insect or vegetable pests, and in general any circumstance that would endanger the existence or the well-being of the whole or part of the population;

(e) minor communal services of a kind which, being performed by the members of the community in the direct interest of the said community, can therefore be considered as normal civic obligations incumbent upon the members of the community, provided that the members of the community or their direct representatives shall have the right to be consulted in regard to the need for such services.

**331.** With regard to Article 2(2)(c) of Convention No. 29, the Commission notes that one of the conditions for prison labour not to be considered to be forced or compulsory labour is that the labour is exacted from a "person as a consequence of a conviction in a court of law". This implies, firstly, that the work is exacted from a person who has been found guilty, which excludes the exaction of labour from persons detained while awaiting trial or from persons detained without trial altogether.<sup>547</sup> Secondly, the decision to impose prison labour has to be made by a "court of law". Compulsory labour exacted as a consequence of a decision by non-judicial authorities is not permissible under the Convention.<sup>548</sup>

**332.** The CEACR has emphasized that, by providing that persons forced to perform work should have been convicted by a "court of law", the Convention implicitly demands that

<sup>545</sup> ILO, *Report of the Committee of Experts on the Application of Conventions and Recommendations: General report and observations concerning particular countries*, ILC, 86th Session, 1998, Report III (Part 1A), para. 107.

<sup>546</sup> ILO, *Eradication of forced labour*, para. 134; ILO, *Giving globalization a human face*, 2012, para. 292.

<sup>547</sup> ILO, *Eradication of forced labour*, 2007, para. 51.

<sup>548</sup> ILO, *Eradication of forced labour*, 2007, para. 52.

all the guarantees prescribed by the general principles of law recognized by civilized nations be granted: presumption of innocence, equality before the law; regularity and impartiality of proceedings; independence and impartiality of courts; guarantees necessary for defence; clear definition of the offence and non-retroactivity of penal law.<sup>549</sup> It has similarly considered that the requirement that prison labour is imposed by a court of law, as set out in Article 2(2)(c), is aimed at ensuring that prison labour is not imposed unless the guarantees laid down in these general principles of law are observed.<sup>550</sup> On yet another occasion, it concluded, in relation to Article 2(2)(c), that no compulsory labour may be imposed unless the person concerned has been found guilty of an offence “as a result of the due process of law”.<sup>551</sup> When addressing this issue, the CEACR has consistently invoked Articles 7 to 11 of the UDHR and Articles 14 and 15 of the ICCPR with reference to the general principles of law concerning due process guarantees.

- 333.** In this regard, the Commission recalls that the 1998 Commission of Inquiry discussed the exceptions set out in Article 2(2) of the Convention and examined their applicability in the context of forced labour in Myanmar.<sup>552</sup> The Commission returns to these exception clauses set out in Article 2(2) of Convention No. 29, as needed, in its own findings in Chapter 7 below.

### C. Relationship between Conventions Nos 87 and 29

- 334.** During its examination of the application of Convention No. 87 by Myanmar in 2005 and 2009, the Conference Committee on the Application of Standards recalled that the persistence of forced labour could not be disassociated from the prevailing situation of a complete absence of freedom of association and the systematic persecution of those who tried to organize.<sup>553</sup> In its 2012 General Survey, the CEACR recognizes the interdependence and complementarity between the ILO fundamental Conventions and their universal applicability, while bearing in mind the specificities covered by each Convention.<sup>554</sup> The Commission acknowledges these strong linkages and, in particular, the linkage between Conventions Nos 87 and 29, which fall within the scope of its mandate.
- 335.** As noted above, freedom of association and the right to collective bargaining are enabling rights for the enjoyment of other rights. Freedom of association is indispensable for the existence of independent workers’ and employers’ organizations, and thus for giving workers and employers a voice and allowing their effective participation in economic and social policy-making. Lying, as it does, at the heart of democracy and the rule of law, freedom of association is a prerequisite for social dialogue, collective bargaining and tripartite cooperation, all of which are necessary for

<sup>549</sup> ILO, Report of the Committee of Experts on the Application of Conventions and Recommendations, Part Three, *Forced Labour, General conclusions on reports relating to the International Labour Conventions and Recommendations dealing with forced labour and compulsion to labour*, ILC, 46th Session, 1962, para. 48.

<sup>550</sup> ILO, *Abolition of Forced Labour*, General Survey by the Committee of Experts on the Application of Conventions and Recommendations, ILC, 65th Session, 1979, Report III (Part 4B), para. 94.

<sup>551</sup> ILO, *Eradication of forced Labour*, 2007, para. 52.

<sup>552</sup> Report of the 1998 Commission of Inquiry, paras 206-207, 471, 473, 477 and 484-502.

<sup>553</sup> ILO, *Report of the Committee on the Application of Standards: Observations and information concerning particular countries*, *Record of Proceedings No. 16/Part Two*, ILC, 98th Session, 2009, p. II/53; ILO, *Report of the Committee on the Application of Standards: Observations and information concerning particular countries*, *Provisional Record No. 22/Part Two*, ILC, 93rd Session, 2005, p. II/37.

<sup>554</sup> ILO, *Giving globalization a human face*, para. 3.



progress to be made in the achievement of fundamental principles and rights at work, including freedom from forced labour.<sup>555</sup>

- 336.** Freedom of association opens the door to essential action for the elimination of forced labour.<sup>556</sup> In this regard, the Commission wishes to emphasize that, only where freedom of association and the right to collective bargaining are respected and promoted can workers' and employers' organizations fully contribute to ensuring the effective application of labour legislation by supporting their members and denouncing violations of the law, wherever necessary.<sup>557</sup> Social dialogue and tripartite cooperation are needed to continuously strive to enhance the national laws, policies and institutions necessary to ensure access to decent work and freely chosen employment for all, thus reducing vulnerability to, and addressing the root causes of forced labour. In turn, successfully tackling forced labour contributes to the realization of freedom of association, as victims of forced labour are often deprived of this right. Freedom of association and the elimination of forced labour in conjunction advance the protection of workers from discrimination and exploitation, especially those in groups that are particularly vulnerable to such practices.
- 337.** The Commission has taken these considerations into account when examining the matters before it.

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<sup>555</sup> ILO, *Giving globalization a human face*, paras 49 and 51; <https://www.ilo.org/global/topics/dw4sd/themes/freedom-of-association/lang--en/index.htm>.

<sup>556</sup> ILO, *Giving globalization a human face*, para. 49.

<sup>557</sup> ILO, *Giving globalization a human face*, para. 51.

## Chapter 7. The Commission's findings of facts

**338.** In this Chapter, the Commission presents the methodology it has adopted in assessing the information and evidence received, before providing its findings of facts in relation to Conventions Nos 87 and 29.

### A. Evidence and documentary materials: A note on methodology

**339.** The proceedings under article 26 of the ILO Constitution are not criminal proceedings. Their objective is not to sanction individuals who are guilty of prohibited conduct or violations, but to assess Myanmar's observance of the Conventions in question with the aim of ensuring their full and effective application, including by actions to end violations of the rights protected by them and providing remedies to victims.<sup>558</sup>

**340.** The Commission has faced certain challenges in gathering and assessing information and evidence. Unlike other ILO commissions of inquiry, due to the circumstances of the present case, this Commission has not been able to access the country concerned to gather first-hand information, nor has it been possible to cross-examine witnesses. Conscious of these limitations, the Commission administered an oath to the witnesses and corroborated evidence received with other sources. It has attached appropriate weight to the evidence and information received, depending on its source, amount and quality. Thus, evidence obtained under oath and corroborated evidence has been attributed greater weight than information that could not be verified. Accordingly, the Commission, as previous commissions of inquiry have done, has received both written and oral forms of evidence. As indicated in Chapter 2 above, the Commission invited a range of parties, including the military authorities, to submit written information to it. The submissions received included information that the Commission has assessed as constituting relevant documentary evidence.

**341.** The Commission further held hearings to take oral evidence from witnesses in person and decided to also admit written statements by witnesses who, for various reasons, including risks to their safety and security, or that of their families, could not appear before the Commission in person. An important number of witnesses presented facts that they themselves observed or experienced. Others presented the experiences of family members and other close relations, or presented evidence based on their recognized expertise on the issues in question. The Commission considered testimonial evidence from witnesses to be of high probative value. The witnesses appeared before the Commission voluntarily and many did so at great risk to themselves and their families.

**342.** Many witnesses and organizations making written submissions provided documentary materials, including police reports, arrest warrants, court judgments, dismissal or suspension letters, orders revoking professional licenses, videos, voice recordings or photographs. Having assessed such materials as authentic, the Commission also considered them to be of high probative and often corroboratory value.

**343.** Similarly, measures issued by the military authorities following their takeover on 1 February 2021, published in official newspapers or websites, were considered by the Commission to be important evidence. For some of them, official English versions have

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<sup>558</sup> Inter-American Court of Human Rights, *Velásquez Rodríguez v. Honduras*, Judgment (Merits) of 29 July 1988, para. 134.

been published online by the authorities, while for others the Commission has relied on available unofficial translations.

- 344.** In addition, the Commission has relied on publicly available reports and information from non-governmental organizations, provided that such information was found to be based on a sound and credible methodology, including the gathering of first-hand information on the ground. Reports by the media, including local media, have been considered by the Commission to the extent that they are coherent, and point to specific issues or facts in a consistent and credible manner. Finally, the Commission refers, in some instances, in the section below, to the findings of other UN fact-finding bodies to corroborate and complement information brought to its attention. It also emphasizes that, without access to the country, the Commission was not able to collect all the information and evidence available first hand. In such circumstances, the Commission has occasionally had to rely on secondary evidence.
- 345.** Although the military authorities have chosen not to recognize the Commission and have refused to cooperate fully with the present inquiry, they have nevertheless provided replies to certain of the Commission's queries in a communication addressed to the International Labour Office. In addition, the Commission has also taken into account prior statements made by the military authorities in their submissions to other ILO supervisory bodies or in communications sent to the Director-General.
- 346.** As laid down in paragraph 6 of its Rules of Procedures, the Commission must take care to ensure that its work does not prejudice the safety of persons appearing before it or being in contact with it, or their families and organizations. Therefore, when referring to evidence and documentary materials in the sections below, the Commission at times refrains from disclosing the names of witnesses or organizations that have provided the information, or any other indications that could reveal the identities of witnesses or organizations, such as the precise date or location of incidents.

## **B. Findings of facts in relation to Convention No. 87**

- 347.** The Commission has gathered substantial evidence in relation to factual circumstances which speak to the post-coup situation of freedom of association in the country in both law and practice. In this section of its report, the Commission sets out its findings concerning the consequences of the legislative amendments affecting the exercise of freedom of association decreed by the military authorities since the coup. The Commission then assesses the broader circumstances of nationwide pro-democracy protests to the extent that they affect the exercise of trade union rights, the specific situation of trade union members and their organizations, as well as the responses of the population in a situation of conflict and violence. The review of these interrelated aspects allows for a holistic assessment of the current situation of freedom of association in Myanmar.

### **Post-coup legislative amendments restricting the rights guaranteed by Convention No. 87 and related civil liberties**

- 348.** Upon declaring the state of emergency on 1 February 2021, the military authorities made numerous amendments to the legislation in place before that date. This includes legislation that has a bearing on the enjoyment of the right to freedom of association and related civil liberties. Leaving aside the question of the legality of such legislative measures adopted by the military authorities, the Commission will examine them insofar as they have an impact on the enjoyment of the rights guaranteed by Convention

No. 87. It thus considers in this subsection, in a thematic manner, the suspension of fundamental rights under the 2008 Constitution, changes to criminal law and procedure, amendments restricting freedom of movement, expression and association, as well as the declaration of martial law in certain townships.

- 349.** The Commission notes that the Chapter on fundamental rights and freedoms of the 2008 Constitution already contains broad clauses allowing the restriction of these rights and freedoms. In addition, Article 420 of the Constitution provides that: “The Commander-in-Chief of the Defence Services may, during a state of emergency, restrict or suspend as required, one or more fundamental rights of the citizens in the required area”. The Commander-in-Chief explicitly relied on Article 420 when issuing certain legislative amendments following the declaration of the state of emergency on 1 February 2021, such as in the announcement by the State Administration Council (SAC) of amendments to the Law for Protection of Personal Privacy and Security of Citizens (see below).<sup>559</sup>
- 350.** The Commission notes that, according to the Ministry of Labour (MOL), the legislative amendments made were aimed at maintaining the stability and peace of the State, national and social security, public safety and public order during the period when the military is temporarily holding the power of the State, or to protect the rights and freedoms of others, but do not include any restrictions to limit the right to peaceful assembly and association.<sup>560</sup> The MOL argues that workers can exercise their rights to peaceful procession, assembly and association in accordance with the provisions of relevant laws.<sup>561</sup>

### Criminal law and procedure

- 351.** On 14 February 2021, the military authorities announced several changes to the provisions of the Penal Code, amending the crimes of high treason and sedition, as well as crimes against the defence forces, law enforcement agencies and Government employees.<sup>562</sup>
- 352.** Section 121 of the Penal Code, establishing the crime of high treason, was amended by inserting the phrase highlighted below:

121. Whoever wages war against the Union of Burma or any constituent unit thereof, or assists any State or person or incites or conspires with any person within or without the Union to wage war against the Union or any constituent unit thereof, or attempts or ***prepares to alter by unconstitutional means or any other means*** or otherwise prepares by force of arms or other violent means to overthrow the organs of the Union or of its constituent units established by the Constitution, or takes part or is concerned in or incites or conspires with any person within or without the Union to make or to take part or be concerned in any such attempt shall be guilty of the offence of High Treason.

<sup>559</sup> SAC announcement, “State Administration Council Law No. 4/2021, Amendment of Law Protecting the Privacy and Security of Citizens”, 13 February 2021.

<sup>560</sup> CFA, 395th Report, Case No. 3405 (*Myanmar*), June 2021, para. 323.

<sup>561</sup> CFA, 395th Report, June 2021, para. 323.

<sup>562</sup> SAC announcement, “State Administration Council Law No. 5/2021, Law Amending the Penal Code”, 14 February 2021.

- 353.** Section 124-A of the Penal Code, which penalizes certain conduct directed at the Government, was expanded to include the military and its personnel and, as amended, reads as follows, with the additions highlighted:

124-A. Whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards the Government established by law for the Union or for the constituent units **or the Defence Services or Defence Services Personnel** shall be punished with imprisonment which may extend to twenty years with fine or with imprisonment which may extend to seven years with fine or fine.

- 354.** After section 124-B, which establishes the crime of overthrowing the organs of the Union or its constituents by force, new sections 124-C (sabotage or hindrance of performance of the Defence Services or law enforcement agencies) and 124-D (disruption or hindrance of Defence Services and Government employees) were added as follows:

124-C. Whoever intends or causes to sabotage or to hinder the success of performance of the Defence Services and law enforcement organizations who are engaged in preserving the stability of the State, shall be punished with imprisonment for a term of twenty years, to which fine may be added, or with imprisonment which may extend to twenty years with fine or with imprisonment which may extend to ten years with fine or fine.

124-D. Whoever causes or hinders the Defence Services personnel and Government employees towards the Government, disrupts or hinders by any means, those who are carrying out their duties, such a person shall be punished with imprisonment which may extend to seven years or with fine or with both.

- 355.** A new subsection (a) was added to section 505 of the Penal Code, dealing with statements conducive to public mischief:

505. Whoever makes, publishes or circulates any statement, rumour or report,

(a) whoever with intent to cause, or which is likely to cause, a member of the Defence Services or government employees to deprive, affect, hinder, disturb, damage the motivation, discipline, health, conduct upon Government or the Defence Services and the duty of government employees or members of defence services to being into the hatred, disobedience, disloyalty; [*sic*]

[(b)-(d)]

shall be punished with imprisonment which may extend to two years, or with fine, or with both.

Exception. - It does not amount to an offence, within the meaning of this section, when the person making, publishing or circulating any such statement, rumour or report has reasonable grounds for believing that such statement, rumour or report is true and makes, publishes or circulates it without any such intent as aforesaid.

- 356.** A new section 505-A was introduced establishing the crime of causing fear, spreading false news or agitating a criminal offence against a Government employee, as follows:

505-A. Whoever:

(a) causes or intends to cause fear to a group of citizens or to the public;

(b) causes or intends to spread false news, knowing or believing that it is untrue;

(c) causes or intends to commit or to agitate directly or indirectly criminal offence against a Government employee, any kind of Government employees or Government employees;

Such a person shall be punished with imprisonment which may extend to three years or with fine or with both.

**357.** Along with the above amendments to the Penal Code, on 14 February 2021, the military authorities also announced changes to Schedule 2 of the Code of Criminal Procedure. The Schedule contains a “tabular statement of offences” to which the relevant information for the newly introduced offences was added, as follows:<sup>563</sup>

Section (1)	Offence (2)	Whether the police may arrest without warrant or not (3)	Whether a warrant or a summons shall ordinary issue in the first instance (4)	Whether bailable or not (5)	Whether compoundable or not (6)	Punishment under the Penal Code (7)
124-C	Sabotage or hinder the performance of the Defence Services of the Union or Law Enforcement Agencies.	Shall not arrest without warrant.	Warrant	Not bailable	Not compoundable	Imprisonment for a term of twenty years, to which fine may be added, or with imprisonment which may extend to ten years, to which fine may be added, or with fine.
124-D	Disrupts or hinders Defence Services personnel and Government employees.	Shall not arrest without warrant.	Warrant	Not bailable	Not compoundable	Imprisonment which may extend to seven years, to which fine may be added, or with fine.
505-A	Cause fear, spread false news, agitate directly or indirectly criminal offence against a Government employee.	May arrest without warrant.	-	-	-	Imprisonment which may extend to three years, to which a fine may be added, or with fine.

**358.** The Committee notes from the above that the new offences introduced in sections 124-C, 124-D and 505-A are not bailable or compoundable and that section 505-A allows for arrest of the suspect without a warrant.<sup>564</sup>

**359.** On 13 February 2021, the Law for Protection of Personal Privacy and Security of Citizens was amended, suspending sections 5, 7 and 8 (see section C of this Chapter),<sup>565</sup> thereby removing numerous protections granted by the law and allowing the military authorities to conduct searches, enter into homes and private properties without a warrant, seize property and conduct arrests, extend detention periods without judicial oversight and carry out broad surveillance.<sup>566</sup> The SAC announced that these amendments were based on Article 420 of the Constitution, which allows the restriction or suspension of certain

<sup>563</sup> SAC announcement, “State Administration Council Law No. 6/2021, Law Amending the Code of Criminal Procedure”, 14 February 2021.

<sup>564</sup> Witness 34.

<sup>565</sup> SAC announcement, “State Administration Council Law No. 4/2021, Amendment of Law Protecting the Privacy and Security of Citizens”, 13 February 2021.

<sup>566</sup> Witnesses 34 and 36.

fundamental rights during a state of emergency.<sup>567</sup> According to witnesses, these amendments have been used to justify door-to-door searches in workplaces, hostels and homes and to arrest trade unionists and labour rights activists and others associated with them, including their family members.<sup>568</sup>

**360.** The Commission notes that, under Article 296(b) of the 2008 Constitution (suspension of the applications to issue various writs during a state of emergency) the declaration of a state of emergency on 1 February 2021 resulted in the suspension of access to *habeas corpus*, which is crucial for persons in pre-trial detention.<sup>569</sup> Furthermore, significant amendments to the Legal Aid Law (2016) decreed by the SAC on 29 April 2021 have weakened access to legal aid.<sup>570</sup> The amendments, inter alia, removed: (1) stateless persons, asylum seekers, foreigners, migrants, migrant workers and refugees from the list of persons entitled to request legal aid in section 2(b) of the Law; (2) effective legal assistance based on international standards as a specific objective of the Law in section 3(b); and section 3(e), which provides that one of the objectives of the Law is to reduce the period of unnecessary arrest in custody and to nullify unlawful arrest during investigation and inquiry.<sup>571</sup>

### Freedom of movement

**361.** On 13 February 2021, the military amended the Ward or Village Tract Administration Law to require all residences in Myanmar to report any overnight stay by non-locals, guests and visitors to the military authorities and granting the authorities the prerogative to search private property for any guests who have not been registered in advance.<sup>572</sup> In particular, the following amendments have been made to sections 13(g), 17 and 27 of the Law:

13. The ward or village tract administrator shall carry out the following functions and duties in accord with the relevant laws, rules and procedures;

[(a)-(f)]

(g) receiving and granting the information of guest list for overnight guests from other wards or village-tracts, inspecting the guest list and taking action if failed to inform the guest list;

[(h)-(ff)].

17. The person residing in the ward or village-tract shall inform the relevant Ward or Village-Tract Administrator if any of the following cases arises:

(a) coming and putting up as the overnight guest who is not listed in his family unit and is residing in other ward or village-tract;

<sup>567</sup> SAC announcement, "State Administration Council Law No. 4/2021, Amendment of Law Protecting the Privacy and Security of Citizens", 13 February 2021.

<sup>568</sup> Witnesses 35 and 36.

<sup>569</sup> Witness 34. International Commission of Jurists (ICJ), [Handbook on Habeas Corpus in Myanmar](#), 2016, p. 21. The Supreme Court issued an announcement on 15 February 2021 suspending the writ of habeas corpus under Article 296(b) of the 2008 Constitution during the state of emergency; Lexology, "[State of Emergency in Myanmar – Six Months On](#)", 31 August 2021.

<sup>570</sup> ICJ, "[Myanmar: amendments restrict legal aid for thousands of detainees](#)", 21 May 2021.

<sup>571</sup> Law amending the Legal Aid Law 2016 (2021), available in Burmese: [Myanmar Law information System \(mlis.gov.mm\)](#); Legal Aid Law (2016), as amended in 2017 and 2021, available in Burmese: [Myanmar Law information System \(mlis.gov.mm\)](#).

<sup>572</sup> Witnesses 34, 36 and 48; SAC announcement, "[State Administration Council Law No. 3/2021, Fourth Amendment of the Ward or Village-Tract Administration Law](#)", 13 February 2021.

(b) departure of the guest who comes and puts up.

27. Whoever fails to carry out duty contained in sections 17, 18 and 19 shall be punished with fine not exceeding ten thousand kyats. If default to pay the fine, he shall be punished with imprisonment not exceeding seven days by the relevant court.

## Freedom of expression

**362.** On 15 February 2021, the military authorities amended the Electronic Transactions Law (2004). Additional protections for personal data were added, but in a new section 27A(3) the Law now also permits “inquiry, investigation, data collection and information sharing and coordination carried out under the administrative authority if the cyber security and cybercrime issues concern the sovereignty of the State, peace and stability, national security”.<sup>573</sup> Furthermore, new section 38C creates a criminal offence of misinformation in the following terms:

38.C Any person who is convicted of creating misinformation and disinformation with the intent of causing public panic, loss of trust or social division on cyberspace, shall be punished with imprisonment for a term of one to three years or a fine not exceeding 50 lakhs or both.

**363.** In August 2021, the Counter-Terrorism Law<sup>574</sup> was amended to include in section 52(a), which establishes penalties of between three and seven years of imprisonment, additional offences contained in section 3(b)(xv). These sections read as follows:

3. The expressions contained in this Law shall have the meanings given hereunder:

(b) Act of terrorism means an act or omission to act any of the following offences with the intent to commit an act of terrorism:

[(i)-(xiv)]

(xv) acts of exhortation, persuasion, propaganda, recruitment of any person to participate in any terrorist group or activities of terrorism;

(xvi) acts to organize a terrorist group, to participate in any terrorist group knowingly and to operate by assigning;

(xvii) acts of concealing or harbouring knowingly or granting to hide or granting to stay temporarily or hiding not be taken action or to be escaped a terrorist or member of any terrorist group;

(xviii) acts of giving permission to use, to assemble in, to hold meeting in any building and place, to train on an act of terrorism or to arrange transportation to a terrorist or member of any terrorist group.

52. Whoever commits any of the following acts shall, on conviction, be punished with imprisonment for a term from a minimum of 3 years to a maximum of 7 years and shall also be liable to fine:

(a) an act contained in clauses (xv) to (xviii) of subs-section (b) of section 3;

[(b)-(c)].

**364.** In November 2021, the SAC adopted amendments to the Television and Radio Broadcasting Law<sup>575</sup> expanding the definition of broadcasting in section 2. It now

<sup>573</sup> SAC announcement, “State Administration Council Law No. 7/2021, Law amending the Electronic Transactions Law”, 15 February 2021 ([unofficial translation](#)).

<sup>574</sup> SAC announcement, “State Administration Council Law No. 21/2021, Law amendment of the Counter-Terrorism Law”, 1 August 2021.

<sup>575</sup> SAC announcement, “State Administration Council Law No. 63/2021, Second Amendment Law to the Television and Radio Broadcasting Law”, 1 November 2021.



potentially includes social media and digital news agencies, which are the means of communication of civil society and opponents of the military regime. The amendments also significantly increase penalties for violations of numerous provisions from pecuniary fines to imprisonment ranging from six months to five years and fines, including in sections 96, 97, 98 and 99. A new section 105(a) grants the police the authority to arrest suspected offenders under the law without a judicial warrant.

**365.** Section 2(a) of the original text reads as follows:

2. The following terms contained in this Law shall have the meanings given hereunder:

(a) Broadcasting means transmission of radio and/or television programmes in encoded and unencoded form by means of terrestrial transmitters, cables and satellites intended the direct reception by the general public. In this definition, internet-based broadcasting shall not be included.

**366.** Section 2(a), following the 2021 amendments, reads as follows:

2. The following terms contained in this Law shall have the meanings given hereunder:

(a) Television and Radio Broadcasting means the broadcasting via ground-based TV and radio transmission stations, underground and above ground cable links and satellite or any other technology for the people to directly catch the television and radio programmes.

**367.** Section 105-a provides:

105-a. Offences in this law shall be identified as cognizable offences.

## Freedom of association

**368.** In October 2022, the military adopted the Registration of Associations Law, which requires the registration of all associations within 60 days of the entry into force of the law or upon the expiry of current registrations and specifies that operating without registration is prohibited.<sup>576</sup> The Commission notes that registration requirements for international non-governmental organizations are more onerous than before. Many approvals are required from relevant ministries and administrations.<sup>577</sup> The Law contains many broadly drafted provisions regulating and potentially limiting the activities of civil society organizations under the threat of severe penalties.

**369.** In particular, it is prohibited under the Law to interfere in the internal affairs or politics of the State. It is an offence to directly or indirectly harm the sovereignty, law and order, security and ethnic unity of the State, or to directly or indirectly contact or support organizations or individuals who have taken up arms against the State, or who are designated by the State as committing acts of terrorism and unlawful associations and their members.<sup>578</sup> This Law significantly restricts the ability of civil society organizations and gives the authorities a new tool to target human rights, giving unfettered discretion to local and national registration boards to monitor and control the activity of professional associations and civil society organizations.<sup>579</sup>

<sup>576</sup> Registration of Associations Law, sections 14(c), 33, 34, 55 and 56 (unofficial translation).

<sup>577</sup> Registration of Associations Law, sections 17-25.

<sup>578</sup> Registration of Associations Law, sections 28(q), 38 and 39; Witness 34.

<sup>579</sup> Witnesses 34 and 49; ICJ submission, March 2023; OHCHR submission, October 2022.

## Declaration of martial law

- 370.** The Commission further notes that, by “martial law orders” issued on 14 and 15 March 2021, the SAC has transferred executive and judicial powers to the Commander of Yangon Command to exercise martial law under Article 419 of the Constitution in seven<sup>580</sup> townships of Yangon region and, on 13 May 2021, in one township in Chin state.<sup>581</sup> On 2 February 2023, the SAC declared martial law in 37 additional townships in Sagaing, Magway, Bago and Tanintharyi regions and in Chin, Kayin, Mon and Kayah states,<sup>582</sup> and in three additional townships in Sagaing region on 22 February 2021.<sup>583</sup>
- 371.** In the townships covered by martial law orders, 23 crimes listed in the applicable orders are to be heard by military courts. The crimes listed include high treason and offences under sections 124-A, 124-C, 124-D, 505 and 505-A of the Penal Code, as well as cases presented under the Unlawful Associations Act, the Public Property Protection Act, the Electronic Communications Law, the Ward or Village-Tract Administration Law, the Anti-Terrorism Law and other instruments.<sup>584</sup> The total number of townships under martial law is 48. The effects of the declaration of martial law on the guarantees of a fair trial are examined below (see below, paragraph 420).

## The Civil Disobedience Movement and the suppression of pro-democracy protests

- 372.** At the outset, the Commission recalls that its examination of compliance by Myanmar with Convention No. 87 has been undertaken in a context of prolonged nationwide pro-democracy protests and demonstrations calling on the military regime to step down and allow the transition to a democratic society. The exercise of the rights set out in Convention No. 87 must therefore be assessed against the backdrop of the broader pro-democracy protests. To do otherwise would mean ignoring an essential facet of the current national situation. Accordingly, in this subsection, the Commission presents the evidence gathered on the formation of the Civil Disobedience Movement (CDM) and the role of trade unions and workers in that movement, as well as on the action taken against workers who have participated in the CDM and the military suppression of pro-democracy protests. The Commission then turns in greater detail to the oppression faced by trade unionists, restrictions on the exercise of trade union rights and the general climate of fear and violence that has emerged and continues to prevail in the country as a result of the ousting by the military of a democratically elected government.

## Formation of the Civil Disobedience Movement and the role of trade unions

- 373.** The military coup d'état sparked public protests and demonstrations calling for a return to democracy, which rapidly turned into a nationwide movement that came to be known as the CDM. The role of trade unions in creating and sustaining this movement has been

<sup>580</sup> Martial Law Order No. 1/2021 declares martial law for Hlaingthayar township which split into Hlaingthayar East and Hlaingthayar West. Reference is therefore made here to seven instead of the six townships listed.

<sup>581</sup> SAC, Martial Law Order No. 1/2021, 14 March 2021; Martial Law Order No. 2/2021, 15 March 2021 (Yangon Region); Martial Law Order No. 4/2021, 13 May 2021 (Chin State).

<sup>582</sup> SAC, Martial Law Order No. 1/2023, 2 February 2023 (Sagaing Region and Chin State); Martial Law Order No. 2/2023, 2 February 2023 (Magway Region); Martial Law Order No. 3/2023, 2 February 2023 (Bago Region); Martial Law Order No. 4/2023, 2 February 2023 (Mon State and Kayin State); Martial Law Order No. 5/2023, 2 February 2023 (Tanintharyi Region); Martial Law Order No. 6/2023, 2 February 2023 (Kayah State).

<sup>583</sup> SAC, Martial Law Order No. 8/2023, 22 February 2023.

<sup>584</sup> SAC, Martial Law Order No. 3/2021, 15 March 2021; Martial Law Order No. 4/2021, 13 May 2021; Martial Law Order No. 7/2023, 2 February 2023; Martial Law Order No. 9/2023, 22 February 2023.

significant. Indeed, the Confederation of Trade Unions Myanmar (CTUM), the country's only trade union confederation, and the Myanmar Labour Alliance (MLA), have played a leadership and organizing role, including through the support and mobilization of public sector workers to go on peaceful strike, which later led to a nationwide general strike on 21 February 2021 and, together with the participation of other workers and civil society organizations, developed into the CDM.<sup>585</sup>

- 374.** Public sector workers formed the backbone of the CDM. In the early days following the coup, around 60,000 medical practitioners took to the streets to oppose the military regime.<sup>586</sup> Similarly, the Myanmar Teachers' Federation and teachers' unions organized peaceful demonstrations as a means of calling for the restoration of democracy.<sup>587</sup> According to a witness, some 400 out of 2,000 staff members of the Myanmar Radio and Television also left their jobs.<sup>588</sup> Other public sector workers, including railway and transport workers, government employees, bank workers and civil and public services workers, joined the demonstrations and work stoppages in a series of strike actions throughout February 2021.<sup>589</sup> Students and their unions, as well as civil society, also participated in the demonstrations.<sup>590</sup>
- 375.** According to the information provided by the ITUC and its national affiliates, by October 2022, 90 per cent of railway workers, 25 per cent of teachers at all levels, 50 per cent of workers at the military-owned Myanmar Oil and Gas Enterprise (MOGE), as well as tens of thousands of workers in the civil and public service, 6,000 bank workers and others in the private sector have joined the CDM.<sup>591</sup> The military-controlled MOL indicated that 68 per cent of civil servants in the Ministry of Health (doctors, nurses and cleaning staff) had joined the CDM.<sup>592</sup>
- 376.** Witnesses heard by the Commission emphasized that most civil servants were not political activists and had not joined the pro-democracy protests for political reasons, but because their labour rights were being severely undermined under the military regime.<sup>593</sup> A leader of a railway union told the Commission that, in the years before the coup, despite continuing difficulties in setting up public sector unions, they had been able to draw attention to the extremely difficult working conditions in the sector, advocate improvements and engage with decision-makers, but that this is no longer possible following the coup.<sup>594</sup> Having lived under military rule before, this witness and others considered that it was their role, as government employees and trade unionists, to reject a military system; participation in the CDM offered a peaceful way of doing so.<sup>595</sup>
- 377.** In March 2021, CTUM and MLA representatives, together with civil society organizations, founded the General Strike Coordination Body to coordinate peaceful protests,

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<sup>585</sup> Witnesses 23 and 24; ITUC and CTUM submission, October 2022; GCR2P submission, October 2022.

<sup>586</sup> Witness 3; ITUC and CTUM submission, October 2022.

<sup>587</sup> Witnesses 7, 9, 45 and 54.

<sup>588</sup> Witness 89 (former Myanmar Radio and Television employee).

<sup>589</sup> ITUC and CTUM submission, October 2022.

<sup>590</sup> Witnesses 1 and 2.

<sup>591</sup> ITUC and CTUM submission, October 2022.

<sup>592</sup> CFA, 397th Report, Case No. 3405 (*Myanmar*), March 2022, para. 552.

<sup>593</sup> Witnesses 4, 6, 7, 8, 9, 10, 11, 12, 14, 16, 22, 25, 27, 33, 36, 39, 40, 43, 44, 48, 49, 51, 55, 57, 58, 59, 60, 66, 97 and 98.

<sup>594</sup> Witness 12.

<sup>595</sup> Witnesses 4, 9, 11, 12, 41, 42, 45, 51, 52, 53, 66, 88 and 91.

workplace strikes and campaigns throughout the country at the central, local and sectoral levels for the restoration of democracy in Myanmar.<sup>596</sup> Despite the repression of protests by the security forces (see below), the participation of public sector workers has bolstered the CDM, as the majority of civil and public service workers nationwide, including doctors, nurses and teachers, withdrew their labour in protest against the coup.<sup>597</sup>

### Action by the military authorities against workers participating in the CDM

- 378.** Information gathered by the Commission suggests that, in response to the formation of the CDM and thousands of public sector workers leaving their workplace, a range of measures were taken by the military authorities against CDM participants. Large numbers of government employees received communications from the military-controlled government authorities pressuring or constraining them not to leave their workplace, or requesting them to return to work under threat of a sanction. The military issued statements indicating that there would be consequences for refusing to return to work, such as the prosecution and penalization of such acts.<sup>598</sup>
- 379.** A witness indicated that civil servants at the MOL were pressured by superiors to continue working and not take part in public demonstrations. They were constrained to remain in their office building until they signed a written statement undertaking not to take part in future demonstrations.<sup>599</sup> A number of witnesses described how they were pressured by their superiors to come back to work.<sup>600</sup> It was further reported that the MOL issued an internal directive to demand the enforcement of Article 26(a) of the Constitution and section 10(g) of the Civil Service Personnel Rules on the political neutrality of civil and public servants in order to ban the participation of civil and public servants in public protests, under penalty of disciplinary procedures and legal liability.<sup>601</sup> Similar directives were issued by other ministries, public institutions and enterprises. Subsequent directives reportedly also ordered the replacement of protesting workers.<sup>602</sup>
- 380.** In this respect, the military authorities confirmed that they have been issuing announcements in newspapers and other media encouraging civil service personnel to return to their respective jobs and indicated that no action was taken against those who voluntarily returned.<sup>603</sup> In the information that it provided to the CFA, the MOL maintained that the directives it issued did not contain threats to return to work, to be dismissed, or removed, or to prosecute CDM personnel, but only constituted reminders not to become involved in political instigation and to return to work.<sup>604</sup> According to the MOL, as of June 2021, it had not directed or instructed any staff to leave their government housing, nor had it indicated that it would hand the names of people who had participated in the CDM to the military for arrest, and had not done so.<sup>605</sup> The

<sup>596</sup> ITUC and CTUM submission, October 2022.

<sup>597</sup> Witnesses 7 and 24.

<sup>598</sup> Witnesses 11, 42, 51, 71 and 72.

<sup>599</sup> Witness 42.

<sup>600</sup> Witness 75.

<sup>601</sup> ITUC and CTUM submission, October 2022; MOL, Letter 42/Ah La/Sub (1) 2021 (1556).

<sup>602</sup> ITUC and CTUM submission, October 2022; Union Solidarity and Development Party, Letter 2021(325).

<sup>603</sup> Permanent Mission, Note Verbale, 7 July 2023.

<sup>604</sup> CFA, 395th Report, June 2021, para. 327; CFA, 397th Report, March 2022, para. 538.

<sup>605</sup> CFA, 395th Report, June 2021, paras 327 and 330.

military authorities later reiterated that there have been no cases of suspension from positions, dismissal, confiscation of licences or removal from housing of civil service personnel due to participation in protests and demonstrations.<sup>606</sup> However, the MOL pointed to the relevant provisions of the Civil Service Law on the obligations of civil servants and disciplinary punishments and asserted that suspensions, dismissals or removal from the position of a civil servant can be imposed in line with the law in case of unjustified absence from work or other violations of the law or staff principles.<sup>607</sup> In particular, the MOL indicated that personnel from the Ministry of Finance and Planning and public servants from the Ministry of Electricity and Energy who had been absent without reason and did not return to the workplace had their contracts terminated or were suspended for breaches of the Civil Service Personnel Law.<sup>608</sup>

**381.** In addition to these administrative directives, consistent information from various sources available to the Commission points to serious action being taken against thousands of civil servants and other workers who participated in the CDM, as well as against the people supporting them, who were monitored, searched, beaten, arbitrarily arrested and detained or removed from their housing. Workers who participated in the CDM could not easily find other jobs, were dependent on family members and faced repercussions if they returned to work, including demotion, transfer to a new workplace, withdrawal of benefits or non-payment of wages.<sup>609</sup> These practices were reported by the Ministry of Electricity and Energy, state-owned mining, oil, gas and energy companies, fertilizer companies owned by the MOGE, civil servants and state-owned enterprise workers from the Ministry of Agriculture, Livestock and Irrigation, the State-owned Myanmar Economic Bank, the Union Offices of the Ministry of Education, education and healthcare workers, railway workers, locomotive enterprise workers and others.<sup>610</sup> A man working in a bank was beaten after joining the CDM and was forced to go back to work.<sup>611</sup> The Commission received evidence that one CDM organizer was beaten by the police in April 2022 and taken away without a warrant, interrogated and charged for spreading false news, sharing anti-military writings and promoting the CDM among civil servants.<sup>612</sup> The Commission also heard of the eviction from their homes of many workers who participated in the CDM, including trade unionists. For example, several witnesses referred to a brick factory owned by a municipality, where 124 union members were evicted from their homes for organizing a union and union leaders were declared wanted and were on the run or went into hiding.<sup>613</sup>

**382.** Most of the direct evidence heard by the Commission in this respect concerned healthcare workers, education workers and railway workers. In the case of healthcare workers, witnesses referred to various forms of pressure and measures taken by the authorities against participants in the CDM, ranging from pressure to return to work, dismissals, revocation of medical licenses, public shaming, house searches, the issuance of arrest warrants often under section 505-A of the Penal Code, arrests, interrogation

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<sup>606</sup> Permanent Mission, Note Verbale, 7 July 2023.

<sup>607</sup> CFA, 395th Report, June 2021, paras 324-326; Permanent Mission, Note Verbale, 7 July 2023.

<sup>608</sup> CFA, 397th Report, March 2022, paras 548 and 550.

<sup>609</sup> Witnesses 11, 27, 41, 52, 53, 56, 59, 66, 68, 69, 75, 79, 80, 88, 101 and 102; ITUC and CTUM submission, October 2022.

<sup>610</sup> ITUC and CTUM submission, October 2022.

<sup>611</sup> Witness 85.

<sup>612</sup> PSI submission, October 2022; township police report, April 2022.

<sup>613</sup> Witnesses 16, 17 and 34.

and torture.<sup>614</sup> The Commission has on file official communications from the authorities dismissing hundreds of doctors and suspending or revoking their medical licenses, as well as ordering doctors in post-graduate education to pay compensation for the non-completion of courses.<sup>615</sup> Medical practitioners who were suspended, dismissed or resigned during the period of mass protests continued to provide medical assistance in make-shift clinics or on the streets.<sup>616</sup> Many used social media as a means of providing medical services and advice.

- 383.** Arrest warrants were issued for large numbers of healthcare workers and many of them were arrested. According to national and international trade unions, by October 2022, at least 864 healthcare workers had been charged under section 505-A of the Penal Code.<sup>617</sup> A witness claimed that amnesties generally did not cover medical practitioners.<sup>618</sup> In one incident on 27 February 2021, the security forces entered premises where around 40 medical practitioners from a public hospital were gathered to take collective action. They managed to flee, but were forced to return to work. Some were asked to vacate their government-provided housing, while others were dismissed and could not find employment in public hospitals or private clinics.<sup>619</sup> In this respect, the Commission heard that the military authorities are not only barring health workers associated with the CDM from government employment, but have also taken measures to prevent private hospitals from employing these workers.<sup>620</sup> According to the MOL, by December 2021, around 419 hospital staff were under departmental inquiry for absence from work, but criminal charges were dropped against healthcare personnel who voluntarily returned to the workplace.<sup>621</sup> The military authorities further indicated that some of those who were absent from their duties and who had abandoned patients had their licences revoked in line with the laws enacted by the Myanmar Medical Council, the Myanmar Dental Council and the Myanmar Nurse and Midwife Council.<sup>622</sup>
- 384.** With regard to workers in the education sector, the Commission received testimony confirming that teachers who participated in the CDM also faced a variety of measures and action, ranging from being ordered to return to work by the education authorities, to being threatened and chased by the military or the police, with many being arrested. Since teachers were over-represented in the CDM compared to other professions, they were also over-represented in detention,<sup>623</sup> where some were subjected to abuse, inhumane treatment and torture, and several teachers were sentenced to death.<sup>624</sup> Witnesses with whom the Commission spoke confirmed that teachers were branded as terrorists, subjected to unfair arbitrary charges, had to hide for protection and were thus unable to communicate with others or to organize.<sup>625</sup> The Commission received

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<sup>614</sup> Witnesses 3, 4, 11, 52 and 53; GCR2P submission, October 2022.

<sup>615</sup> Various official communications on file.

<sup>616</sup> Witnesses 4, 41, 44, 53 and 68.

<sup>617</sup> ITUC and CTUM submission, October 2022.

<sup>618</sup> Witness 4.

<sup>619</sup> PSI submission, October 2022.

<sup>620</sup> Witnesses 101 and 102. *Narinjara News*, "Military Council Revoked Licenses of 3 Mandalay Private Hospitals for utilizing CDM medics", 22 May 2023.

<sup>621</sup> CFA, 397th Report, March 2022, paras 552-553.

<sup>622</sup> Permanent Mission, Note Verbale, 7 July 2023.

<sup>623</sup> Witness 33.

<sup>624</sup> Witnesses 7, 9 and 44.

<sup>625</sup> Witness 9.

information concerning several specific cases of education sector workers who have been convicted to two or three years imprisonment under section 505-A of the Penal Code and section 25 of the Natural Disaster Management Law.<sup>626</sup> In the same way as healthcare workers, education workers have been prevented from being employed in private establishments. Workers from a private school testified to the Commission that the military came to the establishment and instructed the head teacher not to hire any teachers who were associated with the CDM.<sup>627</sup> Like healthcare workers, dismissed teachers resorted to internet-based technologies and social media to carry out their teaching responsibilities.

- 385.** Due to the COVID-19 pandemic, schools were closed from June 2020 to May 2021.<sup>628</sup> Ahead of the announced reopening of schools in June 2021, the military authorities intensified efforts to call on teachers to return to work. In this context, in May 2021, they proceeded with a mass dismissal of teachers who were unwilling to return to schools under the authority of the SAC.<sup>629</sup> A directive from the Ministry of Education dated 10 May 2021, which the Commission has obtained, refers to the dismissal of 121,455 staff in basic education, both teachers and administrative staff, and instructs Region/State Chief Education Officers to take the necessary action.<sup>630</sup> The mass dismissal of teachers was also referred to in a testimony heard by the Commission and reported by trade unions and local media.<sup>631</sup> The MOL indicated that disciplinary action had been taken individually against 132 civil servants from the education sector due to failure to comply with their respective workplace rules in accordance with the Civil Service Personnel Rules.<sup>632</sup>
- 386.** According to information at the Commission's disposal, railway workers who participated in the CDM were also subjected to targeted intimidation and punitive measures, including the non-payment of salaries, the non-payment of overtime, transfer to new workplaces, demotion, suspension, dismissal, house raids, eviction from government housing or its destruction by the military forces, arrest and detention.<sup>633</sup> The Commission has received samples of official communications ordering the suspension and dismissal of railway workers, requiring the payment of outstanding government loans or requiring them to leave government-provided housing.<sup>634</sup> Some of the specific examples of evictions reported to the Commission were in Aung Nang ward in Kachin state on 14 January 2022, Pyin Oo Lwin town in Mandalay on 26 January 2022 and Ywadaung township in Sagaing region on 10 March 2022.<sup>635</sup> It was also reported that on 24 March 2021, over 200 fully armed soldiers stormed a railway service maintenance centre on the outskirts of Yangon, forced workers from their housing and

<sup>626</sup> Witnesses 7, 9, 45, 54, 72, 77, 85, 91, 92 and 94; ITUC and CTUM submission, October 2022.

<sup>627</sup> Witness 101.

<sup>628</sup> World Bank, "Progress threatened; Resilience tested", [Myanmar Economic Monitor](#), July 2021, p. 9.

<sup>629</sup> ILO, "Who pays the price of unemployment? Job losses and income security in Myanmar" (forthcoming).

<sup>630</sup> Ministry of Education/Department of Basic Education, Letter No. Division/1-B/13999/Directive (2021), 10 May 2021 (on file).

<sup>631</sup> Witness 9; Mondiaal FNV, "[Myanmar Workers Rights Violation](#)", January 2023; Post Primary Teachers' Association, "[Myanmar teachers strike for six months plus](#)", 19 November 2021; *Peoples dispatch*, "[125,900 teachers dismissed for opposing military coup in Myanmar](#)", 26 May 2021.

<sup>632</sup> CFA, 397th Report, March 2022, para. 548.

<sup>633</sup> Witnesses 11, 12, 51, 66 and 68; dismissal letter and eviction letter on file.

<sup>634</sup> Documentary evidence on file.

<sup>635</sup> ITUC and CTUM submission, October 2022.

bulldozed make-shift shelters in the compound. In a similar incident in March 2022, every single house in the railway residence in Myitinge in Mandalay was destroyed following military intervention.<sup>636</sup> According to the information provided by the MOL, by December 2021, 1,293 railway workers and locomotive enterprise workers were suspended for violation of the Civil Service Personnel Law and Rules but, following appeals, all those who had appealed were allowed to return to their respective workplaces.<sup>637</sup>

- 387.** In addition to these categories of public sector workers, the Commission notes, from the information received and from publicly available data, that the military has also engaged in a crackdown on other categories of workers, including journalists and media workers, who have faced intimidation, arbitrary detention, torture and killings.<sup>638</sup> One journalist from the Myanmar Radio and Television who testified to the Commission stated that the military compelled journalists to announce false news and to submit content for prior approval. When journalists resigned, the military pursued them. When she decided to leave her job a few weeks after the coup, the military shot at the house in which she and her mother were living. Many of her former colleagues were arrested.<sup>639</sup>
- 388.** A submission received by the Commission highlighted that CDM participants from ethnic or religious minorities, some of whom were CDM leaders and organizers, were targeted for arrest. Non-Buddhists reportedly received harsher treatment from the security forces<sup>640</sup> and LGBTIQ detainees were reportedly subjected to abuse and torture during interrogation.<sup>641</sup>

### Violent crackdown of pro-democracy protests

- 389.** Testimony and information received by the Commission indicates that, in addition to administrative and other measures to discourage and sanction participation in the CDM, as described above, there have been numerous instances of the military or security forces resorting to the excessive use of force when seeking to break up pro-democracy protests. The security forces used rubber bullets, teargas and water cannons to disperse protesters. Later, when the protests intensified, the violence escalated, with the use of lethal force. They employed military tactics and combat-grade weaponry, including semi-automatic rifles, snipers and live ammunition.<sup>642</sup> On 26 and 27 March 2021, announcements were made in regime-controlled newspapers and on the television warning protesters that they were in danger of being shot in the head and back.<sup>643</sup> According to the Office of the UN High Commissioner for Human Rights (OHCHR), the

<sup>636</sup> Witnesses 11 and 12.

<sup>637</sup> CFA, 397th Report, March 2022, para. 549.

<sup>638</sup> GCR2P submission, October 2022; International Press Institute, [“In Myanmar, journalists raise media voices against the bloody coup”](#), 15 February 2023.

<sup>639</sup> Witness 89.

<sup>640</sup> MRG submission, October 2022.

<sup>641</sup> Amnesty International, [“15 days felt like 15 years: Torture in detention since the Myanmar coup”](#), August 2022; AAPP, [“Political Prisoners Experience in Interrogation, Judiciary and Incarceration Since Burma’s Illegitimate Military Coup”](#), 23 March 2022.

<sup>642</sup> Witnesses 2, 3, 24, 39, 52, 53, 85, 96 and 97; ITUC and CTUM submission, October 2022; OHCHR submission, October 2022; GCR2P submission, October 2022; Myanmar Witness (Project of the Centre for Information Resilience) submission, January 2023 (subsequently “Myanmar Witness Project submission”).

<sup>643</sup> OHCHR submission, October 2022.



use of force against protesters led to a dramatic increase in the arbitrary killing and wounding of protesters, including children, in March and April 2021. Most sources claim that the demonstrators had no means of defence. They had to adapt their strategies to avoid violence by the security forces, often organizing short flash mobs, with some using sandbags for protection or making rudimentary weapons (slingshots, catapults, firecrackers or Molotov cocktails).<sup>644</sup>

- 390.** The Commission heard of numerous instances of violent crackdown of protests. On 3 March 2021, the military escalated the use of lethal force, deliberately aiming at peaceful protesters in North Okkalapa Township in Yangon, many of whom sustained wounds to their heads and torsos.<sup>645</sup> On 8 March 2021, more than 200 soldiers attacked protesters, killing at least 48 protesters in Hlaingtharyar industrial zone and seven in Shwepyitar industrial zone, while four factories were on fire.<sup>646</sup> On 14 March 2021, workers were shot at in the industrial zones in Yangon and around 100 were killed and many injured.<sup>647</sup> On 27 March 2021, Armed Forces Day, widespread attacks took place against protesters in 12 of 15 states, regions and the Union Territory, resulting in a death toll of 130. According to reports, soldiers and riot police opened fire on the demonstrators without warning.<sup>648</sup>
- 391.** Also in March 2021, in a doctor's strike with 6,000 protesters, 32 were killed and 233 suffered physical violence, bruises and broken bones.<sup>649</sup> Some of these incidents also led to the killing of trade union members (see below). Teachers' demonstrations were also brutally repressed, including in the Bago area, and teacher unionists were killed and arrested.<sup>650</sup> On 9 April 2021, in Bago, the security forces surrounded roadblocks erected by the demonstrators for protection and launched attacks using grenade launchers and artillery, reportedly killing at least 82 people.<sup>651</sup>
- 392.** One organization submitting information to the Commission provided detailed documentary evidence of three instances of mass detention of peaceful protesters (at least 100 people in each incident) in Yankin township on 28 February 2021 (mostly doctors, nurses and students), in Tamwe township on 3 March 2021 (mostly student union members) and North Okkalapa township on 10 March 2021 (youth movement). Some of these incidents also included beatings of detainees, as well as plain-clothed snatch squads picking out individuals from protests and detaining them.<sup>652</sup>
- 393.** In this regard, the MOL claimed that the initially peaceful atmosphere of protest groups transformed into riots by the third week of February, evolved into anarchy and ultimately insurrection with terrorist acts (creating obstacles along public roads, threatening factory workers, killing civil servants not participating in the CDM, burning

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<sup>644</sup> OHCHR submission, October 2022.

<sup>645</sup> OHCHR submission, October 2022.

<sup>646</sup> ITUC and CTUM submission, October 2022.

<sup>647</sup> Witnesses 5 and 23; ITUC and CTUM submission, October 2022; OHCHR submission, October 2022; NUG submission, October 2022; AAPP submission, June 2023; [Solidarity Centre, "Labour rights violations by the military in Myanmar"](#), Factsheet.

<sup>648</sup> OHCHR submission, October 2022.

<sup>649</sup> Witness 4.

<sup>650</sup> Witnesses 7, 9, 45 and 54.

<sup>651</sup> OHCHR submission, October 2022.

<sup>652</sup> Myanmar Witness Project submission, January 2023.

factories). This obliged the security forces to take action in accordance with the law.<sup>653</sup> It argued that the security forces removed road blockages and arrested rioters to ensure State peace, stability and the rule of law and to control terrorist groups, who continued to raid police stations and attack members of the security forces with deadly handmade weapons.<sup>654</sup> The MOL provided information on the destruction it claimed was caused between 1 February and 15 April 2021 by radical members of the National League for Democracy (NLD) and its supporters, pointing to the burning and destruction of 63 police stations, 62 ward administrator offices, 52 offices and departments, 16 bridges, 13 banks, 105 education offices, schools and other government buildings, as well as 13 factories situated in Hlaingtharyar and Shwepyithar industrial zones and Insein township in Yangon region.<sup>655</sup> According to the MOL, the security forces did not use excessive force, acted in accordance with the 1956 Burma Riot Manual, the 2015 Handbook on Crowd and Riot Control and sections 127-132 of the Code of Criminal Procedure when dealing with public protests.<sup>656</sup>

- 394.** The Commission notes that the MOL stated in December 2021 that street riots resulted in 80 casualties among military personnel, with another 117 injured, as well as 1,496 police casualties and 1,551 civilians.<sup>657</sup> According to police records from the same period, information submitted at the time by the Assistance Association for Political Prisoners (AAPP) referring to 700 deaths of people exercising their right to protest was incorrect, and instead 361 people died, of whom 193 were shot by members of the security forces while clearing barricades and defending themselves against terrorist acts, and the remaining deaths were not related to the security forces; 95 were assassinated by others, 13 were killed by grenade and mine attacks, five died while receiving medical attention, ten died of diseases, two dropped dead and nine died of wounds; and the perpetrators were prosecuted and appropriate sentences issued, including the death penalty.<sup>658</sup> In its July 2023 Note Verbale, the military authorities claimed that terrorist acts by the National Unity Government (NUG), the Committee Representing the Pyidaungsu Hluttaw (CRPH) and the People's Defence Forces (PDFs) claimed the lives of 6,091 civilians, including 202 young children, 80 teachers, 74 members of the Sangha, 825 village and ward administrators and 251 other public service personnel, 17 medical personnel and members of opposition parties.<sup>659</sup>

### **Action undermining the civil liberties of trade union leaders and members and eroding the labour movement**

- 395.** Based on abundant evidence received by the Commission, the military takeover on 1 February 2021 and the ensuing action by the regime have undoubtedly been catastrophic for the nascent labour movement in the country, and have particularly affected the right to freedom of association and the enjoyment of the related civil liberties. Labour unions and union leaders in Myanmar have been subjected to severe oppression by the military regime, both formal and informal, direct and indirect, largely

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<sup>653</sup> Permanent Mission, Note Verbale, 7 July 2023; CFA, 395th Report, June 2021, para. 333; CFA, 397th Report, March 2022, para. 542.

<sup>654</sup> CFA, 397th Report, March 2022, para. 542.

<sup>655</sup> CFA, 397th Report, March 2022, para. 544.

<sup>656</sup> Permanent Mission, Note Verbale, 7 July 2023; CFA, 397th Report, March 2022, para. 542.

<sup>657</sup> CFA, 397th Report, March 2022, para. 542.

<sup>658</sup> CFA, 397th Report, March 2022, para. 543.

<sup>659</sup> Permanent Mission, Note Verbale, 7 July 2023.

removing their ability to organize and act for the protection of workers' rights in a meaningful way.<sup>660</sup> Union leaders and members have been threatened, hunted down and killed. Many have been forced to flee and change location repeatedly and remain in hiding to ensure their safety. They have faced criminal charges, arbitrary arrest with or without arrest warrants pending against them, and have been tried and sentenced in proceedings lacking due process. They have been subject to surveillance, intimidation and house-to-house searches, and have been searched for in both urban and rural areas, and their passports and sometimes citizenship have been revoked, among other measures, to restrict their freedom of movement.<sup>661</sup>

- 396.** Witnesses considered that union members and leaders exercising their right to freedom of association have been specifically targeted by the military authorities because of their capacity to organize and mobilize workers and their related involvement in the broader pro-democracy movement and protests, as any entity that organized people independently of the regime would be a threat to the regime.<sup>662</sup> In this subsection, the Commission records facts concerning measures and action taken by the military authorities specifically threatening the civil liberties of trade unionists and other workers who have taken part in protests and strikes.

### Killings and deaths

- 397.** Hundreds of trade unions members and other workers have lost their lives following the military takeover in Myanmar on 1 February 2021. The ITUC and the CTUM submitted a list of over 100 trade union members and workers who had died as of 19 December 2022, including 22 men and six women who were killed by the military, many of them during demonstrations. Others on the list died from COVID-19 while in hiding and without access to treatment or during detention. According to data compiled by the AAPP, 484 of those killed by the military authorities – a large majority of whom were men – were union members or leaders, labour activists, strike leaders or strike participants.<sup>663</sup>
- 398.** The trade union leaders and members killed include: Zaw Htwe, a 21 year old garment sector worker and member of the Solidarity Trade Union of Myanmar (STUM), who was shot in the head and killed on 14 March 2021; Chan Muae Kyaw, a 29-year old truck driver at a copper mine in Monywa and member of the Mining Workers' Federation of Myanmar (MWF) and of the CTUM Youth Committee, who was shot dead on 27 March 2021 in Ywatha village when protesting together with other workers and local people; U Chit Thein Zaw and U Kyaw Nyein, mineworkers and members of the Yangsi Copper Mine Union affiliated to the MWF and to the CTUM, who were arrested and shot dead on 27 May 2021 in Done Taw village, Sagaing region; Win Ko Oo, train driver and leader of the Mandalay CDM railway workers, who was beaten in the street on 9 September 2021 and died from his injuries on 19 September; May Hnin Aye, a teacher strike leader who was killed on 24 October 2021 in Homalin, Sagaing Region, during a military raid on her home in search of her brother-in-law, also a strike leader; and U San Ko, U Win Kaw, U Zin Min Tun and U Hein Thu, mining workers and members of the MWF

<sup>660</sup> Witnesses 48 and 98; IUF submission, October 2022; ICJ submission, March 2023.

<sup>661</sup> Witnesses 5, 6, 8, 10, 12, 14, 16, 17, 18, 23, 24, 25, 27, 34, 36, 39, 40, 42, 43, 44, 45, 48, 50, 54, 55, 56, 57, 58, 59, 95 and 98; ITUC and CTUM submission, October 2022; GCR2P submission, October 2022.

<sup>662</sup> Witnesses 6, 12, 31, 33, 39, 41 and 43.

<sup>663</sup> AAPP submission, June 2023.

affiliated to the CTUM, who were burnt to death during military raids and the torching of Sarlingyi village in December 2021 in Sagaing region.<sup>664</sup>

- 399.** The military authorities have provided some information on several union members to the ILO supervisory mechanisms. The MOL indicated, in relation to the death of Chan Myae Kyaw, that no casualties were found after the protest at the copper mine, that there was no organization registered under the name of the MWFM and that the name Chan Myae Kyaw was not included in the list of members of basic labour organizations.<sup>665</sup> Concerning the death of Zaw Htwe, the MOL stated that, on 14 March 2021, the General Administration Office in Shwe Pyi Thar township was attacked and destroyed by about 200 rioters with clubs, swords, slingshots and Molotov cocktails. In response, the security forces applied riot control procedures and Zaw Htwe died of his injuries in the crowd. An inquest was filed at the Shwepyithar township police station.<sup>666</sup>

### Arrest and criminal prosecution

- 400.** Large numbers of trade union leaders and members, as well as other workers participating in trade union activities, have been subject to arrest warrants, arrests and detention, and many of them charged and convicted for offences newly introduced by the military authorities (see above). Arrests have taken place during or after demonstrations or strikes, in the context of house searches, union office raids or at workplaces. The evidence suggests that trade unionists are vulnerable to local authorities and employers arbitrarily reporting union activities as acts of incitement against, or criticism of, the SAC, the military or military personnel. Under the revised penal legislation, these are criminal offences, thus allowing for their arrest and criminal prosecution.<sup>667</sup> Witnesses heard by the Commission and written submissions received provided numerous examples of criminal prosecution of trade unionists. Arrest and criminal prosecution measures have specifically targeted the leadership of the main trade union federations, as well as basic-level union leadership.
- 401.** The CTUM made a public statement on 4 March 2021 in support of the CRPH, which was established on 2 March 2021. On 14 May 2021, the police filed charges with East Dagon Court against 29 CTUM leaders, including the CTUM President, under section 124-A of the Penal Code. The police report refers to the CTUM's involvement in the CDM, including a call for a work stoppage, its support for the NUG and the CRPH, and its calls for international unions to take action against the military regime.<sup>668</sup> The report adds that the related statements issued by the CTUM amounted to incitement to cause hatred, disrespect and dislike towards the legitimately existing government and the military.<sup>669</sup> The MOL indicated that, on 22 April 2022, CTUM executive committee members were also charged under section 505-A of the Penal Code with inciting the

<sup>664</sup> ITUC and CTUM submission, October 2022; OHCHR submission, October 2022; IndustriALL, "Myanmar miner Chan Myae Kyaw sacrifices his life for democracy", 6 April 2021; *The Irrawaddy*, "Myanmar Regime Kills 23 More Protesters as It Marks Armed Forces Day", 27 March 2021.

<sup>665</sup> CEACR – *Myanmar, observation*, C.87, 2021; ILO, *Record of Proceedings* No. 4B/P.II, ILC, 110th Session, 2022, pp. 428-445.

<sup>666</sup> CEACR – *Myanmar, observation*, C.87, 2021; ILO, *Record of Proceedings* No. 4B/P.II, ILC, 110th Session, 2022, p. 429.

<sup>667</sup> IUF submission, October 2022.

<sup>668</sup> Police report to the court, 14 May 2021.

<sup>669</sup> Police report to the court, 14 May 2021.

heavily populated Hlaing township through the dissemination of false news.<sup>670</sup> According to a report published in national newspapers, the MOL stated in March 2023 that legal action had been taken against the CTUM leadership as they had been communicating with illegal organizations, such as the NUG and the CRPH, were connecting with the ILO and were destroying the interests of the country.<sup>671</sup> Arrest warrants were issued for the union leaders charged, who include representatives of the Agriculture and Farmers Federation of Myanmar (AFFM), the Food Workers' Federation of Myanmar (FWFM), the Building and Wood Workers Federation of Myanmar (BWFM), the Industrial Workers Federation of Myanmar (IWFM), the MWFM and the Myanmar Transport Federation, which are all affiliated to the CTUM and are members of its executive committee.<sup>672</sup>

- 402.** The majority of IWFM leaders (20 unionists) also had arrest warrants pending against them, also under sections 124-A or 505-A of the Penal Code.<sup>673</sup> Furthermore, leaders and members of the Myanmar Teachers' Federation were issued arrest warrants and some had been arrested.<sup>674</sup>
- 403.** Many unionists were afraid of being arrested and moved from one place to another to ensure their security.<sup>675</sup> A trade union leader testifying to the Commission changed his place of residence 13 times in Myanmar between 1 February 2021 and 3 June 2022, when he left the country for his own and his family's safety.<sup>676</sup> Several witnesses confirmed that union leaders charged on 14 May 2021 had to go into hiding due to surveillance by the police and the military, with some seeking protection by leaving the country, and described the serious impact that this has had on the CTUM, its activities and its capacity to organize its member federations.<sup>677</sup> Criminal charges were brought against leaders and members of the Myanmar Industry Craft Service – Trade Union Federation (MICS-TUsF), who were forced to flee due to fear and concern after their offices were raided in July 2021.<sup>678</sup> Some leaders and members of the Myanmar Teachers' Federation left to hide in liberated areas.<sup>679</sup> Between May and November 2021, the military placed IWFM officers under surveillance and the ward administrator had to report their whereabouts to the military authorities.<sup>680</sup>
- 404.** The Commission received from the ITUC and the CTUM a list of 402 trade union leaders, members and workers that they were aware had been arrested between 1 February 2021 and 15 October 2022, of whom 77 were reported to have been subsequently released. The AAPP compiled information on 81 union members and leaders, strike

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<sup>670</sup> ILO, Record of Proceedings No. 4B/P.II, pp. 428-445.

<sup>671</sup> *Myanmar Alin*, "Strengthening labour organizations which are representing workers towards national development", 13 March 2023 (unofficial translation).

<sup>672</sup> Police report to the court, 14 May 2021; photo of arrest warrant against one of the union leaders.

<sup>673</sup> Witnesses 8, 23 and 58.

<sup>674</sup> Witness 54.

<sup>675</sup> Witnesses 18, 20, 21, 24 and 25.

<sup>676</sup> Witness 21.

<sup>677</sup> Witnesses 11, 17, 18, 21, 22, 24 and 25; IUF submission, October 2022.

<sup>678</sup> Witness 48.

<sup>679</sup> Witness 54.

<sup>680</sup> ITUC and CTUM submission, December 2022.

leaders and strike participants arrested between 1 February 2021 and 16 June 2023.<sup>681</sup> The Commission elaborates on some of these cases below.

- 405.** In February 2021, three MICS-TUsF leaders and 11 activists were arrested in Shwe Pyi Tar township and a union president at the township level, affiliated to the MICS-TUsF, was arrested in Hmawbi and detained in Insein prison.<sup>682</sup> In March 2021, a union leader from the University Teachers' Association at Yangon University was arrested and later sentenced by a military tribunal to three years imprisonment under section 505-A of the Penal Code.<sup>683</sup> In April 2021, two CTUM members were arrested for defamation of the SAC and for mobilizing people against the SAC under section 124-A of the Penal Code and were interrogated by the military authorities; one was sentenced to two years in prison and a fine.<sup>684</sup> Since then, every night the military have searched for CTUM leaders, engaging in random security checks in the streets, as well as house visits. Witnesses indicated that they could not easily stay at friends' houses and could not even go out to get food supplies due to security risks.<sup>685</sup> Also in April 2021, a senior organizer from the BWMF was arrested in Hmawbi in Yangon and charged under section 505-A of the Penal Code.<sup>686</sup>
- 406.** Several leaders and members of 16 trade unions and civil society organizations which the military authorities have declared as not being legally registered in February 2021 (see below, paragraph 434) faced arrest warrants, arrest and conviction. One of the trade union leaders concerned was arrested by 40 soldiers on 14 April 2021 during a raid on the union offices and claimed that the reason for her arrest was her participation in a protest with factory workers in March 2021 and the fact that she had encouraged civil servants in her township to participate in the CDM.<sup>687</sup> An arrest warrant was issued for her by a military court, she was charged and convicted under section 505-A of the Penal Code and was released a few months later in the context of an amnesty. She cannot currently move around freely due to safety fears. Other members of the same union were arrested in March, June and October 2021, and nine others had arrest warrants pending against them.<sup>688</sup> The leader of one of the civil society organizations working on labour issues had an arrest warrant issued against her in February 2021 after she had joined a strike and was charged under section 19 of the 2011 Peaceful Assembly and Peaceful Procession Law (failure to inform before assembly and gathering of people to protest against the military), section 25 of the Natural Disaster Management Law (spreading COVID-19) and section 505(b) of the Penal Code (destroying the image of the country).<sup>689</sup> Another unionist was reportedly arrested in May 2022 and sentenced in December 2022 to seven years in prison under section 51(c) of the Counter-Terrorism Law.<sup>690</sup>

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<sup>681</sup> AAPP submission, June 2023.

<sup>682</sup> ITUC and CTUM submission, October 2022; Myanmar Witness Project submission, December 2022.

<sup>683</sup> ITUC and CTUM submission, October 2022.

<sup>684</sup> Witness 65.

<sup>685</sup> Witnesses 18, 20 and 22.

<sup>686</sup> ITUC and CTUM submission, October 2022.

<sup>687</sup> Witness 5; ITUC and CTUM submission, October 2022; Myanmar Witness Project submission, December 2022.

<sup>688</sup> Witness 5; ITUC and CTUM submission, October 2022.

<sup>689</sup> Witness 6.

<sup>690</sup> Witness 6.

- 407.** In May 2021, one of the 29 CTUM leaders charged on 14 May 2021 was arrested, which was reported in the military-controlled media with an image of him wearing handcuffs appearing in a television broadcast.<sup>691</sup> Persons in plain clothes came to his house and asked him to come to the police station, where he was arrested. He was subsequently transferred to Yangon on 1 June, where charges were filed against him. In December 2022 he was sentenced to two years in prison and a fine of one million Kyats.<sup>692</sup> The Commission received information that 118 BWFM leaders have also been arrested, of whom 30 are women.<sup>693</sup>
- 408.** In June 2021, the Executive General-Secretary of the MICS-TUsF was arrested, followed by five more leaders and 25 union members, most of whom were later convicted and sentenced to imprisonment for between two and 32 years, sometimes with hard labour, under section 6(1) of the Public Property Protection Act (charges of destruction of public properties), section 505-A of the Penal Code (incitement to defame the State, defamation charges), section 17(1) of the Unlawful Associations Act (alleged connection with an unlawful association) and sections 50(j), 51(c), 52(a), 52(b) and 52(d) of the Counter-Terrorism Law (terrorism charges).<sup>694</sup> A member of the Central Executive Committee of the All Burma Federation of Trade Unions and the General Secretary of the Federation of Trade Unions were also arrested in June 2021 in Yaynanchaung in Mandalay and in Yangon.<sup>695</sup>
- 409.** After his arrest, the General-Secretary of the MICS-TUsF was detained at Shwe Pyi Thar interrogation centre for weeks, transferred to Insein prison on 30 July 2021 and, despite his deteriorating health condition, placed in solitary confinement in December 2021.<sup>696</sup> He was charged under section 17(1) of the Unlawful Associations Act and section 505-A of the Penal Code.<sup>697</sup> The MOL indicated that he was arrested for leading bomb attacks, recruiting youth for PDFs and sending them to training for bomb-making, and for associating with unlawful and terrorist organizations, and was therefore sentenced to two years in prison with hard labour and a fine of 20,000 Kyat.<sup>698</sup> The General-Secretary of the MICS-TUsF was released from prison on 26 June 2023, but was re-arrested shortly thereafter. At the time of the adoption of the present report, his whereabouts are unknown.<sup>699</sup>
- 410.** In August 2021, agents in plain clothes arrested eight protesters, including four CTUM members, in Kyi Myint Tai in Yangon. Two of those arrested were later sentenced to three years in prison under section 505-A of the Penal Code.<sup>700</sup> Around 20 members of the Basic Education Workers' Union (BEWU) were also detained and two labour activists from a construction company in Yangon were arrested and sentenced to life

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<sup>691</sup> Witness 95; ITUC and CTUM submission, October 2022; IUF submission, October 2022; TV screenshot on file.

<sup>692</sup> Witnesses 65 and 95; defence statement and judgment on file.

<sup>693</sup> Witness 40.

<sup>694</sup> Witnesses 48 and 65; ITUC and CTUM submission, October 2022.

<sup>695</sup> ITUC and CTUM submission, October 2022; Myanmar Witness Project submission, December 2022.

<sup>696</sup> ITUC and CTUM submission, October 2022.

<sup>697</sup> ITUC and CTUM submission, October 2022.

<sup>698</sup> Permanent Mission, Note Verbale, 31 October 2022; Note Verbale, 4 November 2022; and Note Verbale, 17 March 2023.

<sup>699</sup> ILO, "ILO urges the Myanmar military authorities to immediately release Thet Hnin Aung, General Secretary of MICS-TUsF", 12 July 2023.

<sup>700</sup> Witness 39; ITUC and CTUM submission, October 2022.

imprisonment by a military court for alleged terrorism and association with the PDFs.<sup>701</sup> In September 2021, one garment factory union leader and several members of the Federation of General Workers Myanmar (FGWM) were arrested and later sentenced to three years imprisonment under section 505-A of the Penal Code.<sup>702</sup>

- 411.** In January 2022, a union member in the railway sector in Yangon was arrested and his whereabouts remain unknown.<sup>703</sup> In April 2022, two female unionists were arrested after a peaceful protest against the military regime and were subsequently brutally beaten.<sup>704</sup> In May 2022, another CTUM central executive committee member was arrested during intensified night searches for unionists covered by arrest warrants.<sup>705</sup> In one factory, which is a joint venture between the private and public sectors, the management gave the names of the unionists to the military, which came with 300 soldiers and arrested all the union members.<sup>706</sup> In a public sector brick factory in Yangon region, ten workers were charged under section 505(a) of the Penal Code with having conducted “CDM activities”, disrupting the normal operation of the country’s administration and the stability of the country, and encouraging other workers to be involved in CDM activities. They had to go into hiding and one was arrested.<sup>707</sup> In March 2023, five CTUM members were sentenced at a trial at Insein prison to three years in prison with hard labour. They had been arrested in Kyimyindaing township in Yangon in September 2022 during a protest and charged under section 144 of the Penal Code for illegal assembly.<sup>708</sup>
- 412.** The Commission also received information that several trade unionists who were presumed to have been arrested were missing, including a member of the FWFM arrested in June 2022 and an executive committee member of the Agriculture Federation of Myanmar from Magway region.<sup>709</sup>
- 413.** While student unions do not fall within the scope of Convention No. 87, as their members are not workers, the Commission also received evidence of abuses perpetrated against such organizations and their members. It finds it appropriate to provide its findings of facts in this respect, as these unions are constituted by persons who are Myanmar’s future workers. According to the evidence received, students and their unions have also been targeted by the regime, and some have been arrested and sentenced to death, their offices raided and equipment destroyed.<sup>710</sup> One student union leader described how the military came to her house looking for her, fired guns in the air and killed a neighbour, raided the house and later captured her and tried to sexually harass her before she managed to escape.<sup>711</sup> A report from one organization indicates that tear gas was fired against students at a union protest on 13 March 2021, raids were conducted on the homes of members of the Basic Education Students’ Union in February

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<sup>701</sup> Witness 7; ITUC and CTUM submission, October 2022.

<sup>702</sup> ITUC and CTUM submission, October 2022.

<sup>703</sup> ITUC and CTUM submission, October 2022.

<sup>704</sup> Witnesses 13, 63 and 64.

<sup>705</sup> Witness 24.

<sup>706</sup> Witness 43.

<sup>707</sup> Witnesses 17 and 40; police report dated 25 April 2021 on file.

<sup>708</sup> Witnesses 24 and 39.

<sup>709</sup> IUF submission, October 2022.

<sup>710</sup> Witnesses 1 and 2; Myanmar Witness Project submission, December 2022.

<sup>711</sup> Witness 1.



2022, leading to the arrest of eight union members and the killing of the former Chairman.<sup>712</sup> A student accused of being associated with the union was arrested, together with his cousin, in September 2021, and died of excessive bleeding from injuries consistent with torture.<sup>713</sup> Six students from the Dagon University were arrested in September 2021 and the former Secretary of the Dagon University Students' Union was sentenced to 10 years in prison by a military court.<sup>714</sup>

- 414.** In relation to the arrest and criminal prosecution of trade union leaders and members, the MOL has claimed, on several occasions, that no one and no trade union leader or member, labour activist or their families have been arrested, detained or mistreated for exercising their rights peacefully or representing trade unions, and that the MOL has not prosecuted any workers or trade union leaders under the labour laws.<sup>715</sup> It did, however, clarify that, if some trade unionists violated civil laws by committing acts which could be regarded as violent (burning factories, threatening and beating workers who did not engage in the CDM, blocking roads impeding the fire brigade and ambulances from carrying out their work in an emergency situation and blocking factories), local police could take action and file a suit.<sup>716</sup> It further asserted that any action taken was solely against those individuals who violated existing laws, burnt factories essential for investment in the country or committed terrorist acts, rather than peaceful demonstrations, and that any such measures were taken without discrimination.<sup>717</sup> According to the statistics provided by the MOL to the CFA, up to December 2021, 1,481 persons had been sentenced to punishment following proof that they had committed a crime or violated the law.<sup>718</sup> The MOL indicated that those who were involved in the uprising, but not in the terrorist acts and who did not support the CDM movement by financial or any other means and did not join the movement, had been released in accordance with the law.<sup>719</sup> Concerning legal advice for prisoners, the military authorities added that judges from the Supreme Court and district and township courts visited prisons and detention centres monthly to consult prisoners about jurisdictional matters. Between 2021 and May 2023, they visited 35 prisons, four remand prisons and nine detention centres.<sup>720</sup> They also stated that, during visits by the National Human Rights Commission (NHRC), it was found that no detainee had been detained specifically for being a trade union leader or member, and that no prisoner claimed to be such a leader or member.<sup>721</sup> In reply to the Commission's question concerning the number of persons arrested, detained, charged and sentenced in connection with their participation in pro-democracy protests and demonstrations, the military authorities indicated that this did not concern labour issues and was politicized, as no one had been arrested for participation in peaceful protests.<sup>722</sup>

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<sup>712</sup> Myanmar Witness Project submission, December 2022.

<sup>713</sup> Myanmar Witness Project submission, December 2022.

<sup>714</sup> Myanmar Witness Project submission, December 2022.

<sup>715</sup> Permanent Mission, Note Verbale, 31 October 2022; Note Verbale, 17 March 2023; and Note Verbale, 7 July 2023.

<sup>716</sup> CFA, 395th Report, June 2021, para. 320; Permanent Mission, Note Verbale, 7 July 2023.

<sup>717</sup> Permanent Mission, Note Verbale, 31 October 2022; Note Verbale, 4 November 2022; and Note Verbale, 7 July 2023.

<sup>718</sup> CFA, 397th Report, March 2022, para. 546.

<sup>719</sup> CFA, 397th Report, March 2022, para. 546.

<sup>720</sup> Permanent Mission, Note Verbale, 7 July 2023.

<sup>721</sup> Permanent Mission, Note Verbale, 7 July 2023.

<sup>722</sup> Permanent Mission, Note Verbale, 7 July 2023.

## Lack of guarantees of a fair trial

- 415.** Numerous trade union leaders and members have undergone trials and have been sentenced to fines and imprisonment, including with hard labour. According to the evidence received by the Commission, unionists have generally been convicted under legal provisions that the military authorities have amended or introduced since 1 February 2021, and particularly under sections 124-A and 505-A of the Penal Code. In addition to concerns about the expanded reach of these post-coup provisions and offences, evidence obtained by the Commission attests to the fact that these trials take place in courts completely lacking independence and of which the proceedings fail to meet due process standards.<sup>723</sup>
- 416.** The Commission heard several witnesses say that, following the coup d'état and the ensuing measures taken by the military, the rule of law has ceased to meaningfully exist in Myanmar. They explained that, while the country's judiciary had been generally weak and lacked independence, the military authorities took measures following the coup which effectively removed the judiciary as an institution that is able to respond to violations of any human rights, including labour rights, in an independent and impartial manner.<sup>724</sup>
- 417.** Within days of the military takeover, the military authorities started to remove and replace justices on the Supreme Court and the high courts at the region and state levels, ostensibly as a means of imposing control over the court system.<sup>725</sup> By March 2022, eight new Supreme Court Justices had been appointed out of a total of 11, so that only three Justices remained on the Supreme Court from prior to the military takeover.<sup>726</sup> The Chief Justices of the high courts of regions and states such as Mon, Kayin, Bago, Magway, Sagaing, Mandalay and Yangon have been replaced,<sup>727</sup> along with a considerable number of judges on high courts across the country.<sup>728</sup> Special lower courts have been established in prisons in major population centres, significantly denying lawyers and family members from overseeing judicial processes and excluding public proceedings altogether.<sup>729</sup>
- 418.** With the declaration of the state of emergency, the military has also suspended access to *habeas corpus*, as a result of which thousands of people are being held in pre-trial detention without proper oversight.<sup>730</sup> In many cases, defence attorneys are not permitted to meet clients, and where they are allowed to be engaged, they do not have the right to see all the evidence and must pay to receive client case files.<sup>731</sup> Cases perceived to be political in nature are reportedly investigated by the military instead of

<sup>723</sup> United Nations Human Rights Council, *Situation of human rights in Myanmar: Report of the United Nations High Commissioner for Human Rights*, A/HRC/48/67, 2021, paras 11, 12 and 33.

<sup>724</sup> Witnesses 33, 34, 35, 36, 56 and 67; ICJ submission, March 2023.

<sup>725</sup> Witnesses 34 and 35.

<sup>726</sup> SAC, Order No. 24/2021, 4 February 2021; Order No. 23/2021, 4 February 2021; Order No. 32/2021, 7 February 2021; [Union Supreme Court – Announcements](#).

<sup>727</sup> SAC, Order No. 33/2021, 7 February 2021; Order No. 95/2021, 1 March 2021; Order No. 135/2021, 10 June 2021; Order No. 24/2022, 23 March 2022; Order No. 36/2023, 16 June 2023.

<sup>728</sup> SAC, Order No. 34/2021, 7 February 2021; Order No. 96/2021, 1 March 2021; Order No. 115/2021, 20 April 2021; Order No. 136/2021, 10 June 2021; Order No. 25/2022, 23 March 2022.

<sup>729</sup> Witness 34; ICJ submission, March 2023.

<sup>730</sup> Constitution, Article 296(b); Witness 34.

<sup>731</sup> Witness 34.

the police.<sup>732</sup> The military authorities have been found to pre-determine the outcomes of trials, with the judiciary merely executing their decisions.<sup>733</sup> According to the OHCHR, the ITUC and the International Commission of Jurists (ICJ), practically everyone arrested and charged under section 505-A, including trade union members and leaders, has been convicted.<sup>734</sup>

- 419.** A trade union leader said that her interrogation, without being allowed the assistance of a lawyer, affected her defence in court.<sup>735</sup> The two female unionists arrested in April 2022, who were later sentenced to three years imprisonment with hard labour under section 505-A of the Penal Code for defamation of the State, testified to the Commission that their trial did not seem fair to them. Although they had a lawyer who represented them, their witnesses could not speak, and only the prosecution witnesses participated in the trial.<sup>736</sup> Another witness, speaking on behalf of her husband, who was convicted under section 124-A of the Penal Code, told the Commission that his trial took place inside a prison with more than 15 hearings over a seven-month period.<sup>737</sup> The same witness said that, because she was able to pay a fine of one million Kyats, thanks to the financial assistance of family and friends, they were able to reduce the imprisonment from three to two years. While this witness confirmed that three witnesses proposed by the defence were able to speak at the trial, the Commission, having examined the sentence in this case, notes that the testimony of these witnesses was not taken into account. Manifestly, the unionist was found guilty based on the mere fact of trade union membership, rather than any acts committed by him.
- 420.** In the townships under martial law, 23 offences under the Penal Code listed in the relevant martial law orders are tried by military courts, even if they are committed by civilians.<sup>738</sup> Trials in military courts involve closed-door and summary hearings, suggesting an absolute lack of basic guarantees of due process, such as the right to a public trial, a defence attorney, to be present at one's own trial and the right to appeal.<sup>739</sup> The penalties applied have been increased to include unlimited imprisonment with hard labour and the death penalty.<sup>740</sup>
- 421.** Furthermore, members of the Union Legal Aid Board and the Independent Lawyers' Association of Myanmar have been arrested, while others have gone into hiding, which has rendered each institution dysfunctional. Members of the Office of the Attorney General have been replaced as well.<sup>741</sup> Lawyers and paralegals have been subjected to harassment, threats and arrests, especially those representing political prisoners, which has further complicated trial proceedings. Lawyers defending protesters put their lives and freedom at risk.<sup>742</sup> According to the ICJ, at least 42 lawyers are in detention and

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<sup>732</sup> Witness 34.

<sup>733</sup> Witness 34; United Nations Human Rights Council, *Situation of human rights in Myanmar since 1 February 2021: Report of the United Nations High Commissioner for Human Rights*, A/HRC/49/72, 2022, para. 39.

<sup>734</sup> Witness 34; ITUC and CTUM submission; ICJ submission, March 2023; OHCHR submission, October 2022.

<sup>735</sup> Witness 6.

<sup>736</sup> Witnesses 13, 63 and 64.

<sup>737</sup> Witness 95.

<sup>738</sup> Witnesses 34, 40 and 96; ICJ submission, March 2023.

<sup>739</sup> Witnesses 34 and 48; ICJ submission, March 2023.

<sup>740</sup> Witness 34.

<sup>741</sup> ICJ submission, March 2023.

<sup>742</sup> Witness 34; ICJ submission, March 2023.

others face arrest warrants for charges similar to those of their clients, including interference with the military and terrorism.<sup>743</sup>

- 422.** In contrast, the military authorities indicate that trials are carried out publicly, with the exception of some specific cases, and that any person accused of a crime has a right to defence in accordance with the law and the right to appeal.<sup>744</sup> They add that the judicial power in the country is shared between courts at different levels.<sup>745</sup> Since February 2021, these have been entrusted with the mandate under Article 419 of the 2008 Constitution and are performing their functions in accordance with existing laws and procedures.<sup>746</sup>

### Treatment in detention

- 423.** The Commission has received evidence suggesting that persons arrested by the military authorities or the police have been sent to interrogation centres, where there is systematic torture to extract information, especially on networks of people.<sup>747</sup> Violence is also used against people, including CDM participants and strikers, who have not been involved in violent resistance.<sup>748</sup> Trade union members and their families have been subjected to acts that amount to torture, cruel, inhumane and degrading treatment, including in some cases sexual and gender-based violence, during interrogation by both the military authorities and the police.<sup>749</sup> Witnesses reported practices such as being handcuffed and blindfolded, kneeling down or holding heavy objects for prolonged periods of time, sitting in a humiliating position, being kicked, slapped by hands or different items, beatings, sexual violence, the use of an electric taser, peeling off the skin, verbal threats, intimidation and other acts.<sup>750</sup> This is confirmed by publicly available information, including reports by NGOs active in the protection of human rights of detained persons.<sup>751</sup> The Commission also received reports of a lack of access to medicine and of requests for medical attention being refused by judges.<sup>752</sup> Generally, the conditions in military interrogation centres are worse than in prisons. However, torture and violence is also reported in prisons.<sup>753</sup> According to the ICJ, no investigations, arrests or prosecutions have been observed in relation to these serious incidents.<sup>754</sup>
- 424.** The Commission heard of several specific incidents in which trade unionists were mistreated during interrogation or in detention. One female unionist from the STUM, who was arrested in April 2021, described being handcuffed, taken to the police station, not given any food, water or medicine for her pre-existing condition, and being forced

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<sup>743</sup> ICJ submission, March 2023.

<sup>744</sup> Permanent Mission, Note Verbale, 7 July 2023.

<sup>745</sup> Permanent Mission, Note Verbale, 7 July 2023.

<sup>746</sup> Permanent Mission, Note Verbale, 7 July 2023.

<sup>747</sup> Witnesses 8, 14 and 50; Amnesty International, "15 Days Felt Like 15 Years: Torture in Detention since the Myanmar Coup", August 2022; AAPP, "Political Prisoners Experience in Interrogation, Judiciary and Incarceration Since Burma's Illegitimate Coup", 23 March 2022.

<sup>748</sup> Witnesses 7 and 50.

<sup>749</sup> Witnesses 5, 9, 13, 17, 24, 34, 40, 63 and 64; ICJ submission, March 2023.

<sup>750</sup> Witnesses 5, 9, 13, 14, 17, 24, 63, 64 and 96.

<sup>751</sup> Amnesty International, "15 Days Felt Like 15 Years: Torture in Detention since the Myanmar Coup", August 2022; AAPP, "Political Prisoners Experience in Interrogation, Judiciary and Incarceration Since Burma's Illegitimate Coup", 23 March 2022.

<sup>752</sup> ICJ submission, March 2023.

<sup>753</sup> Witness 33.

<sup>754</sup> ICJ submission, March 2023.

to give testimony without a lawyer. She later needed hospital treatment, before being sent to Insein prison.<sup>755</sup> She stated that the prison was overcrowded and she had to drink water from the toilet. There was censorship of letters, political prisoners were often beaten and the witness was put in solitary confinement for 45 days.<sup>756</sup> On 24 May 2021, one CTUM and BWMF organizer, who was taken by the military from his house, was heavily beaten and tortured during interrogation until his hand was broken in an attempt to obtain information about the whereabouts of the CTUM leadership.<sup>757</sup> The prison to which he was then moved, according to the testimony, was overcrowded and lacked sanitary facilities, and there was also a lack of food and medicine. A medical report established in October 2021 upon his release stated that the person had had a hand injury for five months, that there was bone deformity, coughing and a history of abuse inside the prison.<sup>758</sup>

- 425.** Two female unionists arrested on 20 April 2022 described how the military forced them to lie on the ground, kicked them and threatened them before taking them to a police station. There they were handcuffed, blindfolded and asked to kneel and lift bricks.<sup>759</sup> They recounted being hit on the arms and hands, kicked with boots and beaten with a police baton on the feet, hips and waist, before being sent to an interrogation centre.<sup>760</sup> They were blindfolded again, tortured, slapped, kicked, sexually abused, told they could be killed and a knife was held to their necks and a gun to their heads, before they were moved to prison.<sup>761</sup> One of them could barely walk by then and required a lot of medical attention.<sup>762</sup> A CTUM officer, who was arrested on 19 April 2022 while organizing a protest in South Okkalapa Township in Yangon Region, was tortured while being questioned about the location of other CTUM leaders.<sup>763</sup> In Chin state, of the 1,400 persons arrested, 89 of those who were later released reported that they had been tortured.<sup>764</sup> Some witnesses and written submissions reported that a number of detained persons, including trade unionists, died in detention.<sup>765</sup>
- 426.** In July 2023, the military authorities indicated that those detained are treated in accordance with existing acts, manuals, orders and instructions; they are protected from being bullied or treated unfairly and are provided with three meals a day; the health conditions of prisoners are regularly inspected by superintendents and directors of the State or Region concerned and sick prisoners are treated and transferred to public hospitals, if necessary; and detainees may receive letters and parcels to stay in touch with their families.<sup>766</sup> According to the military authorities, between 2021 and May 2023, the NHRC visited and inspected 30 detention centres and 41 prisons to assess whether the treatment provided was in accordance with the UN Standard Minimum Rules for the

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<sup>755</sup> Witness 5.

<sup>756</sup> Witness 5.

<sup>757</sup> Witnesses 14 and 25; ITUC and CTUM submission, October 2022.

<sup>758</sup> Witness 14; medical report established upon the witness' release on file.

<sup>759</sup> Witnesses 13, 39, 63 and 64.

<sup>760</sup> Witnesses 13 and 64.

<sup>761</sup> Witnesses 13, 63 and 64.

<sup>762</sup> Witnesses 13, 63 and 64.

<sup>763</sup> Witness 25.

<sup>764</sup> Witness 62.

<sup>765</sup> Witnesses 33 and 44; ITUC and CTUM submission, October 2022; AAPP, "Political Prisoners Experience in Interrogation, Judiciary and Incarceration Since Burma's Illegitimate Coup", 23 March 2022.

<sup>766</sup> Permanent Mission, Note Verbale, 7 July 2023.

Treatment of Prisoners and international human rights law; it interviewed 306 male and 76 female prisoners in a free and confidential manner and sent recommendations to the relevant ministries and organizations; and it found that no one had been mistreated or alleged serious physical or mental abuse, including sexual and gender-based abuse, and that all prisoners were treated equally and had access to food, medical care and lawyers.<sup>767</sup>

### Cancellation of passports and citizenship

- 427.** In June 2021, the military authorities declared null and void the passports of all CTUM central committee members. An official communication dated 3 June 2021 from the military authorities announcing the revocation of passports and containing a list of names and corresponding passport numbers has been received by the Commission.<sup>768</sup> In March 2022, the military authorities started to terminate the citizenship of opposition personalities.<sup>769</sup> On 7 March 2022, the Myanmar citizenship of the CTUM President was terminated. Numerous witnesses considered that the cancelling of passports and termination of citizenship of trade union leaders was intended to undermine the trade union movement, as unionists were prevented from travelling abroad and reporting to the ILO or attending ILO meetings, including the ILC, and to prevent them from seeking safety elsewhere.<sup>770</sup>
- 428.** The Commission notes in this regard that, according to the military authorities, legal action has been taken against those who committed and supported terrorist activities, incited civil servants to join the CDM, issued statements calling for riots in support of the CRPH and the NUG, which the authorities consider to be terrorist groups.<sup>771</sup> They indicated that the 29 CTUM leaders have been facing charges for their unlawful acts and, as 27 of them were on the run, their passports were declared null and void.<sup>772</sup> Furthermore, as the CTUM leader was found guilty of violating existing laws, his citizenship was cancelled on 7 March 2022, in accordance with the provisions of the Myanmar Citizenship Law (1982).<sup>773</sup> The MOL asserted that taking legal action against a handful of workers or employers who violated provisions of existing laws did not affect the whole community of workers, who were peacefully enjoying their basic labour rights and fundamental rights.<sup>774</sup>

### Curtailing legitimate trade union activities

- 429.** Trade unions in post-coup Myanmar have been severely affected by the treatment of their members and leaders, as described above. Since the majority of trade unionists have been detained or are in hiding, they could not be easily contacted, workers were scared of contacting them and unions could not protect the rights and interests of their

<sup>767</sup> Permanent Mission, Note Verbale, 7 July 2023.

<sup>768</sup> NUG submission, annex 6.

<sup>769</sup> Witnesses 8, 21, 22, 25 and 36; ITUC and CTUM submission, October 2022; IUF submission, October 2022.

<sup>770</sup> Witnesses 19, 25 and 36.

<sup>771</sup> Permanent Mission, Note Verbale, 31 October 2022; Note Verbale, 4 November 2022; Note Verbale, 17 March 2023; and Note Verbale, 7 July 2023.

<sup>772</sup> Permanent Mission, Note Verbale, 31 October 2022; and Note Verbale, 7 July 2023.

<sup>773</sup> Permanent Mission, Note Verbale, 31 October 2022; Note Verbale, 4 November 2022; and Note Verbale, 7 July 2023.

<sup>774</sup> Permanent Mission, Note Verbale, 17 March 2023; and Note Verbale, 7 July 2023.

members.<sup>775</sup> The political uncertainty regarding how trade union activities will be perceived by the military authorities, questioning by local authorities and lack of access to remedies have further curtailed trade union activities.<sup>776</sup> In addition, the Commission received overwhelming evidence concerning a number of specific measures and actions taken by the authorities which have considerably restricted both the formation of trade unions and their legitimate activities.

### Obstacles to registration and de-registration of trade unions

- 430.** It has been reported that, since the coup, the registration process has been stalled, with the authorities delaying the process and a number of workers' organizations waiting to obtain registration. While there are no verbal or written restrictions on registration, there appear to be considerable challenges to obtaining it in practice.<sup>777</sup> The Commission heard from witnesses that, in addition to the prolonged registration process, trade unions are under pressure from the MOL to surrender their registration certificates, through the return of "form 7", which are then cancelled or revoked, and that they are then asked to re-register and sometimes have to bribe labour officers to obtain registration.<sup>778</sup> In this regard, one witness indicated that the chairperson of a union was asked to return "form 7", which he did despite criticism from union members, indicating that in case of refusal his security would be at stake.<sup>779</sup> On 3 March 2023, the office of a CTUM-affiliated basic level union in an oil and gas company in Ayeyarwady region, whose executive committee members were in hiding to avoid arrest, was visited by five MOL staff, who told the union members present that the registration certificate of the union should be handed back if the union no longer existed.<sup>780</sup>
- 431.** A witness, who had been working with a non-governmental organization promoting labour rights, considered that registering as a labour organization has become more difficult following the military takeover.<sup>781</sup> For this reason, labour organizations often decide not to register, to remain unregistered or consider registering under the 2022 Registration of Associations Law (see above) rather than the Labour Organization Law (LOL).<sup>782</sup> Half of the labour organizations with which this witness had worked had been dissolved following the coup or were keeping a low profile.<sup>783</sup> Another local non-governmental organization with expertise in the labour field reported to the Commission that of the ten labour organizations it worked with that have been established since the coup, only four have obtained a registration certificate ("form 7").<sup>784</sup> According to the same organization, challenges to obtaining registration include long delays in processing applications for registration, bribes by employers to prevent registration and labour officers who discourage trade union formation and registration.<sup>785</sup> It should be noted that the activities of organizations that are not

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<sup>775</sup> Witnesses 5, 10, 12, 20, 24, 27, 39, 40, 57, 60 and 98.

<sup>776</sup> IUF submission, October 2022.

<sup>777</sup> Witnesses 6, 14, 19, 32, 49 and 77.

<sup>778</sup> Witnesses 10, 16, 17, 18, 23 and 49; IUF submission, October 2022.

<sup>779</sup> Witness 10.

<sup>780</sup> Witness 24; document on file.

<sup>781</sup> Witness 32.

<sup>782</sup> Witness 32.

<sup>783</sup> Witness 32.

<sup>784</sup> NGO report on file, 1 March 2023.

<sup>785</sup> NGO report on file, 1 March 2023.

registered can be banned at any time and the organizations lose the possibility of access to and interaction with labour offices.<sup>786</sup>

- 432.** With respect to the registration of labour organizations, the Commission notes that in 2021 the military authorities informed the CEACR that since the entry into force of the LOL, 2,887 basic labour organizations, 161 township labour organizations, 25 region or state labour organizations, nine labour federations and one labour confederation had been registered.<sup>787</sup> In June 2022, the military authorities reported similar figures to the CAS: a total of 2,886 basic labour organizations, 162 township labour organizations, 26 region or state labour organizations, nine labour federations and one labour confederation had been registered since the entry into force of the LOL.<sup>788</sup> In a statement dated 2 September 2022 published online, the military provided the following numbers: 2,876 basic labour organizations, 160 township labour organizations, 25 region or state labour organizations, nine labour federations and one confederation.<sup>789</sup> In a communication to the ILO dated 17 March 2023, the MOL indicated that an additional 30 basic labour organizations, one township labour organization and two organizations at the state or regional level had been registered between 1 February 2021 and 31 January 2023, and that the total number of labour organizations registered under the LOL since its entry into force was as follows: 2,833 basic labour organizations, 156 township labour organizations, 25 state or regional level labour unions, nine labour federations and one labour confederation.<sup>790</sup> In its communication to the CFA, the MOL clarified that, despite the call by the CTUM and the MICS-TUsF for a national strike, these organizations have not been dissolved and that the MOL is continuing to cooperate with them in accordance with existing laws, by-laws and practices.<sup>791</sup> In their July 2023 communication, the military authorities indicated that there are 2,824 basic labour organizations, 156 township labour organizations, 25 state or regional level labour organizations, nine labour federations and one labour confederation, all of which cover more than 190,000 workers.<sup>792</sup> In addition, 34 basic labour organizations, one township and two state or regional level organizations were newly formed between February 2021 and May 2023.<sup>793</sup> The military authorities further claimed that no registration is refused if the entity has submitted a complete set of information and that the MOL has not requested any organization to return its "form 7".<sup>794</sup>
- 433.** In this respect, the Commission records that it has not been in a position to verify the numbers of registered labour organizations advanced by the military authorities. It notes that, according to the military authorities, 34 additional basic unions were registered between 1 February 2021 and 31 May 2023. Despite this, the Commission observes that, according to the information provided, the total number of basic labour

<sup>786</sup> NGO report on file, 1 March 2023.

<sup>787</sup> CEACR – Myanmar, *observation*, C.87, 2021.

<sup>788</sup> ILO, *Information on the application of ratified Conventions supplied by governments on the list of individual cases*, ILC, 110th Session, 2022, [CAN/D/Myanmar-C.87](#), p. 2.

<sup>789</sup> MOL, "*Ministry of Labour objects to declaration of 16 trade unions as illegal labour organizations, no more unionizing of workers for lack of legal way to register as trade union mentioned in ILO Brief "Riding out the storm: Organizational resilience of trade unions"*", 3 September 2022.

<sup>790</sup> Permanent Mission, Note Verbale, 17 March 2023.

<sup>791</sup> CFA, 395th Report, June 2021, para. 322.

<sup>792</sup> Permanent Mission, Note Verbale, 7 July 2023.

<sup>793</sup> Permanent Mission, Note Verbale, 7 July 2023.

<sup>794</sup> Permanent Mission, Note Verbale, 7 July 2023.



organizations registered dropped from 2,887 in 2021 to 2,824 in 2023. This suggests that, despite the reported increase in registrations, the number of registered basic unions has actually decreased during the two-year period following the coup between 2021 and May 2023.

- 434.** On 26 February 2021, the regime declared 16 unregistered trade unions and civil society organizations to be illegal.<sup>795</sup> On 2 March 2021, several media channels announced this measure and a written notice signed by the MOL entitled “Announcement of illegal organizations” appeared in the *Global New Light of Myanmar* newspaper listing the 16 organizations.<sup>796</sup> The statement indicated that the 16 organizations were not registered in line with the LOL, were identified as illegal and their activities were not in conformity with the law.<sup>797</sup> In a statement published online by the military-controlled Ministry of Information on 3 September 2022, the MOL denied that it had declared these organizations to be “illegal organizations”, and instead stated that they were “operating labour affairs without registering as trade unions at the Ministry of Labour according to the 2011 Labour Organization Law” and they had thus been declared as being “not registered legally according to the Labour Organization Law”.<sup>798</sup> In its communication to the CFA, the MOL asserted that the 16 organizations had been acting in labour affairs, but had not been registered in line with the law and had therefore been announced as “illegal organizations as they were not registered under the existing Law”.<sup>799</sup>

#### Interference in the freedom to elect trade union leadership

- 435.** Further evidence received by the Commission suggests that trade unions are under pressure from the MOL to provide the names of their members and leaders.<sup>800</sup> Prior to the coup, the practice was for unions to submit a membership list every two years and to notify any changes in the composition of executive committees when they arose. However, since the coup, confederations, federations at the different levels and basic level unions have received repeated requests from the labour authorities to submit lists of their members and the names and contact details of executive committee members despite their ongoing mandates, under the threat of cancellation of their registration.<sup>801</sup> By way of illustration, the Commission received evidence that the CTUM, the MICS-TUsF and the AFFM have been repeatedly requested to provide the names, home addresses

<sup>795</sup> Witnesses 5, 6, 16, 23, 36, 48 and 49; ITUC and CTUM submission, October 2022; video of a TV announcement on file.

<sup>796</sup> Announcement on file, available [online](#).

<sup>797</sup> Announcement on file, available [online](#). The announcement refers to these organizations: (a) All Burma Federation of Trade Union; (b) Let's Help Each Other; (c) Future Light Centre; (d) Action Labour Right; (e) All Myanmar Trade Union's Network; (f) Agriculture Freedom of Myanmar; (g) Association for Labour Development (ALD); (h) Federation of Garment Workers Myanmar; (i) Freedom and Labour Action Group; (j) Labour Power Group; (k) We Generation Network; (l) Yang Chi Oo Workers Association; (m) Solidarity Trade Union of Myanmar (STUM); (n) Cooperation Committee of Trade Unions (CCTU); (o) All Myanmar Oil Workers' Union; and (p) Industrial Women Workers Organization (IWWO).

<sup>798</sup> MOL, “*Ministry of Labour objects to declaration of 16 trade unions as illegal labour organizations, no more unionizing of workers for lack of legal way to register as trade union mentioned in ILO Brief “Riding out the storm: Organizational resilience of trade unions”*”, 3 September 2022.

<sup>799</sup> CFA, 395th Report, June 2021, para. 331.

<sup>800</sup> Witnesses 23, 48 and 107; IUF submission, October 2022.

<sup>801</sup> ITUC and CTUM submission, October 2022; IUF submission, October 2022; PSI submission, October 2022; NUG submission, annexes 7 and 8; MOL circular, 3 January 2022.

and contact details of their executive committee members.<sup>802</sup> Eleven confederations and federations received such requests from the MOL on 24 February 2022, and similar requests were made to township level unions, with one union being asked to submit a list of members every two weeks.<sup>803</sup> In June 2022, the factory of one witness was visited by labour officers from the MOL, who requested members of the union executive committee to return “form 7” after the union had refrained from submitting the names of union leaders to the MOL.<sup>804</sup> Following this incident, the management organized elections of worker representatives to set up a workplace coordination committee.<sup>805</sup> In 2022, the Yay Kyi Ai interrogation centre of the military authorities started collecting information on MICS-TUSF activities, the list of its members, their whereabouts and the union structure.<sup>806</sup>

- 436.** On 24 February 2023, officials from the MOL convened two tripartite meetings with employers and representatives of labour organizations from Yangon, Bago and Ayeyarwady Regions in the Hlaing Tharyar and Swe Lin Pan industrial zones, respectively. According to the MOL, the objective of the meetings was to coordinate and cooperate with the relevant Ministries to be able to settle the difficulties of labour organizations, to facilitate the re-election of the members of executive committees which had exceeded their terms in accordance with the Law and their constitutions, the use of funds and the preparation and keeping of monthly and annual accounts.<sup>807</sup> According to a report published in national newspapers controlled by the military authorities, the MOL stated at these meetings that, even though the CTUM's organizational functions, activities and duties could not be carried out at present, it still existed as a labour organization and its executive committee therefore needed to be re-elected.<sup>808</sup> The CTUM issued a statement on 16 March 2023 strongly rejecting the meetings as intervention in CTUM internal affairs and an attempt to divide the trade union movement.

### Raids on trade union premises and property

- 437.** The Commission heard evidence of attacks on trade union offices and the houses of trade unionists, including searches, raids and the closure of offices, as well as confiscation of trade union property.<sup>809</sup> For instance, on 6 and 7 March 2021, the military broke into a house to arrest seven union leaders from the garment industry who had been hiding there.<sup>810</sup> On 21 March 2021, three trucks of soldiers trying to locate the offices of labour organizations in Htee Hlaing Shin Housing exerted pressure on the landlord to provide information. On the same day, armed soldiers were deployed in

<sup>802</sup> ITUC and CTUM submission, October 2022; NUG submission, annexes 7 and 8; IUF submission, October 2022; MOL circular, 3 January 2022.

<sup>803</sup> ITUC and CTUM submission, October 2022; IUF submission, October 2022.

<sup>804</sup> Witness 96.

<sup>805</sup> Witness 96.

<sup>806</sup> Witness 48.

<sup>807</sup> Permanent Mission, Note Verbale, 17 March 2023; and Note Verbale, 7 July 2023.

<sup>808</sup> *Myanmar Alin*, “Strengthening labour organizations which are representing workers towards national development”, 13 March 2023 (unofficial translation).

<sup>809</sup> Witnesses 5, 27, 39, 43, 45, 48 and 98.

<sup>810</sup> ITUC and CTUM submission, October 2022.

front of the office of a union federation and interrogated the residents of the area.<sup>811</sup> On 15 April 2021, the STUM office was raided.<sup>812</sup>

- 438.** The MICS-TUsF offices in Myint Nge, Amarapura, South Dagon, Yangon and its headquarters in Yangon were raided on 14 and 15 June 2021, with the military confiscating documents, computers and office assets, seizing the key and closing the office without giving a valid reason.<sup>813</sup> At the same time, it also raided the residence of the MICS-TUsF General-Secretary, forcing him and his family to flee.<sup>814</sup>
- 439.** On 10 February 2022, the headquarters of the CTUM was ransacked and all office equipment, information technology facilities, documents and furniture were removed.<sup>815</sup> Witnesses further reported house searches of teacher union members, their union offices being shut down, raided and sealed and union property being confiscated or destroyed, as in the case of the BEWU.<sup>816</sup> The military also raided and shut down two railway union offices in Insein township and in upper Myanmar.<sup>817</sup> Between November and December 2022, the military burnt down villages in Sar Lin Gyi township, Yinmabin district, Sagaing region, destroying hundreds of homes, including 39 homes of IWFm members, and killing members of the local population.<sup>818</sup>
- 440.** According to the information provided by the military authorities, there have been no activities or targeted acts to undermine the trade union movement, including raids on union offices, the sealing of offices or the confiscation of trade union property.<sup>819</sup>

### Restrictions on freedom of movement and assembly

- 441.** It was widely reported to the Commission that, a few days after the military coup, the military authorities imposed restrictions on freedom of movement and freedom of assembly. In particular, on 8 February 2021, the military authorities, invoking section 144 of the Code of Criminal Procedure, banned any assembly of more than five persons in public areas and imposed a curfew from 8:00 pm to 4:00 a.m. in 144 townships across the country and publicly announced criminal sanctions for non-compliance.<sup>820</sup> Numerous witnesses described the impact of these restrictions on freedom of association on a daily basis, as trade unions could not mobilize workers, organize awareness-raising sessions and training or function freely and independently. Witnesses considered this to be a major challenge for carrying out trade union work and supporting their members.<sup>821</sup>

<sup>811</sup> ITUC and CTUM submission, October 2022.

<sup>812</sup> ITUC and CTUM submission, October 2022.

<sup>813</sup> Witness 48; ITUC and CTUM submission, October 2022.

<sup>814</sup> Witness 48.

<sup>815</sup> ITUC and CTUM submission, October 2022.

<sup>816</sup> Witnesses 7, 45, 53 and 54.

<sup>817</sup> Witness 12.

<sup>818</sup> ITUC and CTUM submission, December 2022.

<sup>819</sup> Permanent Mission, Note Verbale, 7 July 2023.

<sup>820</sup> United Nations Human Rights Council, *Written updates of the Office of the United Nations High Commissioner for Human Rights on the Situation of human rights in Myanmar*, A/HRC/48/67, 2021, para. 9; see also *Global New Light of Myanmar*, “Section 144 Of Criminal Procedure Imposed In Some Townships”, 9 February 2021, and “Announcement To Take Action In Accord With The Law Against Those Who Broke Section 144 Of Criminal Procedure”, 26 February, 2021; section 144 order, Kalaw Township General Administration Department, Order 78/2001 of 14 November 2021.

<sup>821</sup> Witnesses 14, 16, 17, 20, 22, 23, 24, 39, 40 and 57.

**442.** The military authorities indicated that, in some areas, these measures are necessary for security and law enforcement.<sup>822</sup> They stated that the MOL has not issued any regulations aimed at prohibiting workers from gathering in groups of more than five people or which would cause a distraction to trade union meetings and activities.<sup>823</sup>

### Crackdown on public sector trade unions

**443.** Witnesses reported that the crackdown on unions and their members described above has resulted in a total breakdown of trade unions in the public sector, and that basic level trade unions have collapsed, including in the energy, transport and education sectors.<sup>824</sup> Currently, there are no workers' or teachers' unions that are fully functioning.<sup>825</sup> A witness referred to 154 basic unions under the BWFM which have all been dismantled as a result of the restrictions imposed on freedom of association.<sup>826</sup> It was further reported that, in the public sector, including in schools, the authorities have formed yellow unions working in parallel with genuine trade unions, and only the yellow unions are allowed to participate in consultative activities.<sup>827</sup> The Committee notes that certain witnesses suggested that some local organizations have been able to continue working on labour rights because they are perceived as not being involved in politics, but are nevertheless monitored by the military.<sup>828</sup>

### Practices impeding workplace-level trade union activities in the private sector

**444.** Evidence gathered by the Commission shows what appears to be a pattern of practices hindering trade union activities in private sector workplaces. At the same time, there is an evident lack of accountability for, protection from, and remedies against such acts due to the inaction of the military-controlled labour authorities. Furthermore, certain acts by these authorities contribute to non-compliance by employers with freedom of association standards.

### Obstacles to the formation and functioning of trade unions

**445.** Based on numerous testimonies from workers directly involved in basic-level trade union activities and other information received, the Commission observes that, following the military takeover, there has been a trend for union busting to become more widespread, with more serious consequences for the unions and workers concerned.<sup>829</sup> Enterprises, whether owned and managed by locals or foreign nationals, have been taking advantage of the situation to undermine union activities, while workers are in desperate need of their jobs. Production targets are being increased and overtime imposed, with underage workers being employed and paid at lower rates. Discrimination, harassment and violence, including physical and verbal abuse and intimidation, have also been reported. At the same time, the space for trade union activities has been reduced, particularly by military or police interventions at the

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<sup>822</sup> Permanent Mission, Note Verbale, 7 July 2023.

<sup>823</sup> Permanent Mission, Note Verbale, 7 July 2023.

<sup>824</sup> Witnesses 10, 11, 12, 36 and 42.

<sup>825</sup> Witness 54.

<sup>826</sup> Witness 17.

<sup>827</sup> Witness 44.

<sup>828</sup> Witnesses 31 and 32.

<sup>829</sup> Witnesses 31, 39, 43, 58, 60, 67 and 97; ITUC and CTUM submission, October 2022; ITUC and CTUM submission, December 2022.

workplace, or threats of such interventions, and non-functioning labour relations. The balance of power has tipped further towards employers, allowing for abuse of workers.<sup>830</sup>

- 446.** In particular, according to witnesses, in many cases unions are no longer able to organize at the factory level because the remaining trade union leaders have been pressured by managers, are at risk of being denounced to the authorities, have been dismissed or discriminated against and monitored.<sup>831</sup> In one garment factory, six workers suspected of providing information to journalists were taken hostage to a rural warehouse and held there for one day and one night, before being released with an apology.<sup>832</sup> In another factory, a dismissed union president received death threats from the manager.<sup>833</sup> Some witnesses stated that the military works with factory owners, resulting in unions being unable to function in the factories concerned. The regime puts employers under pressure to provide information on union members and leaders, which several witnesses described as a widespread practice.<sup>834</sup> One witness claimed that all factory level trade unions in Hmawbi have been dissolved since the coup.<sup>835</sup> Another indicated that some employers request unions to stop their activities because they do not want the military to come to their factories.<sup>836</sup>
- 447.** Certain witnesses reported the dismissal of union leaders and members, including for trying to form a labour organization, with some unions losing all their members as a result.<sup>837</sup> Reinstatement has become more and more difficult, unless international brands put pressure on their suppliers.<sup>838</sup> The Commission heard a number of examples of such practices, mainly in the garment industry. It was reported that in one factory the union was dismantled by the employer and only two executive members have subsequently been reinstated.<sup>839</sup> In another garment factory, 290 union members were dismissed for participation in public demonstrations, although only some of them had actually done so.<sup>840</sup> Another case involved a factory where 11 union organizers and leaders were dismissed between May 2021 and December 2022, in an apparent attempt to dismantle the factory union.<sup>841</sup> In another garment factory, workers trying to establish a trade union were dismissed.<sup>842</sup> In Aryartharyar township in Yangon, 135 union members out of 490 factory workers were dismissed due to a three-day absence when participating in the CMD.<sup>843</sup> Another example was the withdrawal of recognition of a

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<sup>830</sup> Witnesses 14 and 50.

<sup>831</sup> Witnesses 6, 18, 23, 39, 40, 67 and 97.

<sup>832</sup> Witness 58.

<sup>833</sup> Witness 23; document on file.

<sup>834</sup> Witnesses 6, 14, 18, 23, 40, 58, 59 and 67.

<sup>835</sup> Witness 40.

<sup>836</sup> Witness 18.

<sup>837</sup> Witnesses 17, 18, 21, 31, 59 and 60.

<sup>838</sup> Witnesses 31 and 59.

<sup>839</sup> ITUC and CTUM submission, December 2022.

<sup>840</sup> Witness 59.

<sup>841</sup> Witness 67.

<sup>842</sup> ITUC and CTUM submission, December 2022.

<sup>843</sup> ITUC and CTUM submission, October 2022; ITUC and CTUM submission, December 2022.

union by the employer and the dismissal of its leaders.<sup>844</sup> In a pharmaceutical factory, 85 workers who had joined the CDM received a collective dismissal letter.<sup>845</sup>

- 448.** Evidence gathered by the Commission also refers to difficulties in collecting union dues or employers' restrictions on doing so, resulting in the inability to function of basic level workers' organizations.<sup>846</sup> For example, unions collecting dues have been accused of raising funds for the People's Defence Forces (PDFs).<sup>847</sup> Employers have reportedly set up yellow unions to convince foreign companies still investing in Myanmar that the human rights and labour rights of workers are being respected.<sup>848</sup> Workers have often been forced to join such unions, as they cannot go against their supervisors when asked to join and pay union dues.<sup>849</sup> It is reported that creating yellow unions is a tactic widely deployed by employers in Myanmar to prevent the emergence of genuine worker representation.<sup>850</sup> In this respect, the military authorities simply referred to the relevant provisions of the LOL prohibiting threats and coercion at the workplace, as well as employer interference in trade union affairs, but have not provided any information on the measures taken by the labour authorities to address such practices.<sup>851</sup>
- 449.** Written submissions received by the Commission and several witnesses reported that there are factories in which the management does not recognize or deal with the leaders of existing trade unions or dismantled unions, but has instead organized elections for workers' representatives to join workplace coordination committees (WCCs).<sup>852</sup> In a case brought to the Commission's attention, the employer dismissed the workers' representatives on the WCC and formed a new committee without consulting the workers.<sup>853</sup> More generally, witnesses emphasized that worker members on WCCs often do not genuinely represent workers' interests, are too close to the management and at times are even selected by the management.<sup>854</sup> In one case reported to the Commission, the management of a factory set up a WCC without a proper process for doing so shortly before a SAC-appointed Minister visited the factory.<sup>855</sup> On the issue of the non-recognition of trade unions by employers, the military authorities assert that the MOL has been regularly coordinating with employers to recognize labour organizations in their enterprises and to provide all possible assistance requested by them.<sup>856</sup>

### Lack of accountability, protection and remedies

- 450.** The Commission finds that formal dispute settlement mechanisms continue to exist. However, under the current circumstances, there are serious obstacles for workers and

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<sup>844</sup> ITUC and CTUM submission, December 2022.

<sup>845</sup> Witness 55.

<sup>846</sup> Witnesses 17, 18, 19, 21, 57 and 60.

<sup>847</sup> Witnesses 17 and 19.

<sup>848</sup> Witness 36.

<sup>849</sup> Witnesses 6 and 36.

<sup>850</sup> Witnesses 36 and 94.

<sup>851</sup> Permanent Mission, Note Verbale, 7 July 2023.

<sup>852</sup> Witness 103; ITUC and CTUM submission, October 2022.

<sup>853</sup> Witness 59.

<sup>854</sup> Witness 18, 58, 59 and 107.

<sup>855</sup> Witness 96.

<sup>856</sup> Permanent Mission, Note Verbale, 7 July 2023.

unions relying on such mechanisms to address their grievances, unlike in the past, when such mechanisms were used for dispute resolution.

- 451.** As mentioned above, in many cases, WCCs do not function in a manner that allows grievances to be raised and addressed effectively. One reason is that workers' representatives are close to the management and do not genuinely represent the workers. Furthermore, the evidence received suggests that raising issues with employers through WCCs places trade unionists at risk, irrespective of whether or not they were involved in the CDM. Workers are afraid that when they raise labour issues they will be accused of being against the regime or that the employer will call in the military or the police.<sup>857</sup> Leaders and members of unions or civil society organizations that have been declared illegal or which are not registered face a heightened risk or may not be able to engage at all with the SAC-controlled labour authorities for the purpose of dispute resolution.<sup>858</sup>
- 452.** Workers have been facing threats when making complaints about labour rights violations, as well as when participating in collective action.<sup>859</sup> When factory-level strikes were called to voice workers' grievances, managers have kept lists of strike participants, warned workers not to share information with outsiders and threatened to call in the military. In several cases brought to the Commission's attention, the police or the military intervened to block or crack down on strikes and arrested strike participants.<sup>860</sup> Workers are therefore afraid to join strikes, resulting in fewer collective actions.<sup>861</sup>
- 453.** Among the many cases of intervention by the military authorities in collective labour relations, the Commission heard of one illustrative and recent case concerning a garment factory located in Shwepyithar township, where the trade union was seeking to negotiate better working conditions. While the management announced a wage increase, seven union leaders and activists were dismissed. When the workers assembled to demand the unionists' reinstatement, the security forces were called in and requested the striking workers to leave the factory. Subsequently, criminal charges were brought against five union leaders from the factory under section 505(a) of the Penal Code and they were arrested. In addition, the leader and members of a civil society organization which had been declared as not being legally registered in February 2021, who had been supporting the unionists were also issued arrest warrants and some arrested. An article that appeared in a military-controlled newspaper on 29 June 2023 confirms that these arrests were made between 14 and 17 June and indicates that the unionists and activists engaged in propaganda and incited protests in factories.
- 454.** In this context, it is important to recall that, as a protest against the military authorities, the CTUM and the MICS-TUSF have withdrawn from all tripartite bodies, including conciliation bodies under the Settlement of Labour Disputes Law at the township, region, state and Union levels. The military authorities have replaced workers' representatives on those entities with persons selected by them.<sup>862</sup> Similarly, while the Labour Arbitration Council has continued to function with five representatives of labour, employers and the authorities, witnesses considered that the Council no longer reflects

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<sup>857</sup> Witnesses 7, 17, 18, 19, 39, 40, 56, 57, 58, 60 and 103; Myanmar Witness Project submission, December 2022.

<sup>858</sup> This was the case for Witnesses 5 and 49.

<sup>859</sup> Witnesses 18, 23 and 67.

<sup>860</sup> Witnesses 5, 23, 48, 58 and 67.

<sup>861</sup> Witness 5.

<sup>862</sup> ITUC and CTUM submission, October 2022; ITUC and CTUM submission, December 2022.

tripartism as the workers' representatives are not genuine and union leaders have been replaced by representatives who side with employers.<sup>863</sup> Traditional and local judicial systems exist to some extent, often in ethnic army-controlled areas.<sup>864</sup>

- 455.** The Commission has not received any evidence pointing to unannounced and independent labour inspection or inspections following complaints from trade unions of violations of freedom of association standards. It has been suggested that labour inspection is not functioning properly due to corruption and the replacement of staff by military personnel.<sup>865</sup> Moreover, no evidence has been presented on any preventive or remedial action taken by the labour authorities against employers accused of union-busting practices or other violations of trade union rights.
- 456.** On the contrary, the Commission observes that trade unions consider that they do not have any means of raising these issues with the labour authorities. Instead, when workers have made complaints to labour offices about violations of their rights, they have faced intrusion and pressure from the military and labour authorities, including pressure to compromise with factory owners or to settle labour disputes without trade union assistance under the threat of dismissal, cutting communication with unions, dismissals for raising complaints or threats of being arrested if they organize protests. These incidents were described in a number of workplaces.<sup>866</sup>
- 457.** Most witnesses therefore consider that, in practice, dispute settlement mechanisms are not working and that the Ministry of Labour no longer has any capacity to resolve labour disputes.<sup>867</sup> Some witnesses did, however, refer to attempts to address certain labour disputes through mediation and arbitration.<sup>868</sup>
- 458.** Contrary to what was heard from the witnesses, the MOL indicated that labour and union grievances could be discussed in workplace coordinating conciliation bodies, that interest disputes are negotiated and conciliated in line with the dispute settlement mechanism and that rights' disputes are covered by the relevant departments. Aggrieved workers therefore need to submit the dispute for settlement to the dispute mechanism or the relevant department.<sup>869</sup> According to the information provided by the MOL to the ILO Governing Body, between February 2021 and January 2023, 101 disputes between workers and employers were settled in accordance with the Settlement of Labour Disputes Law, resulting in cash benefits for 1,797 workers; 39 cases concerning 198 workers were settled by the Heads of regions or states and relevant departments under the MOL; and five cases concerning six workers were settled in the same time period by Township Workmen's Compensation Scrutiny Committees.<sup>870</sup> With regard to union-busting, the MOL considered that there have been some misunderstandings and divisions among grassroots-level workers and their unions since some organizations

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<sup>863</sup> Witness 56.

<sup>864</sup> Witness 35.

<sup>865</sup> Witness 56.

<sup>866</sup> Witness 48. These factories include: a garment factory in Mingalardon Township, Yangon Region; a factory in Ywar Thar Gyi Industrial Zone, South Dagon Township in May 2022; a garment factory in Zaykabar Industrial Zone Compound, Mingalardon Township, Yangon Region in July 2022; a factory in Kyouk Mee village, Pathein Gyi Township, Mandalay Region; a garment factory at Ywar Thar Gyi Industrial Zone, South Dagon Township, Yangon Region.

<sup>867</sup> Witnesses 6 and 23.

<sup>868</sup> Witness 67.

<sup>869</sup> CFA, 397th Report, March 2022, para. 557.

<sup>870</sup> Permanent Mission, Note Verbale, 17 March 2023.



have issued press releases and announcements without consulting grassroots, township or regional labour organizations.<sup>871</sup>

### Resilience in a prolonged climate of fear, violence and conflict

**459.** Numerous witnesses told the Commission that the violent response of the military against groups and individuals opposing their takeover has been more brutal and sustained than in the past, including following the 1988 coup. According to the AAPP, as of April 2023, the death penalty has been imposed on 155 individuals since the military takeover in February 2021.<sup>872</sup> Four pro-democracy activists were executed in July 2022, representing Myanmar's first executions since the late 1980s.<sup>873</sup> Beyond the violent suppression of large-scale protests during the weeks following the February 2021 takeover, the military continues to target workers participating in the CDM and anyone suspected of opposing them.

### Gender, intergenerational and intersectional dimensions of violence

**460.** In assessing the information and evidence before it, the Commission has paid particular attention to gender dimensions of violence and gender issues more generally. The Commission heard of numerous instances of gender-based violence by the police or the military, including sexual harassment, violence and abuse during interrogation and in detention but also during attacks against individuals, as reprisals, during raids on houses and offices or at checkpoints.<sup>874</sup> The Commission found that women trade union leaders appear to be exposed to particularly violent treatment on the part of the male-dominated security apparatus, including being subjected to sexual violence. While violence is levelled against political opponents women among them are affected by it in a compounded manner. Similarly, the Commission learned that violence is affecting people of all ages and that specific groups, such as LGBTIQ people, have been targeted.<sup>875</sup> Several witnesses informed the Commission about incidents of gender-based violence and harassment at workplace and the inability of trade unions, in the current context, to assist workers and to engage in social dialogue to enhance protection against such treatment.<sup>876</sup>

**461.** Violence against trade unionists and others is affecting society in an intergenerational manner. The military has not only been targeting trade unionists and workers participating in the CDM, but also their families, including their children and parents. Family members may face reprisals, such as arrest, violence, abuse and torture in interrogation centres, and some have been killed.<sup>877</sup> The evidence before the Commission suggests that it is a common practice for the military authorities to arrest family members or close associates of targeted individuals, including in the case of trade unionists.<sup>878</sup> For example, the siblings of a CTUM executive committee member who had an arrest warrant pending against her had to flee to a rural area as they were living in

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<sup>871</sup> CFA, 395th Report, June 2021, para. 332.

<sup>872</sup> [AAPP website](#), visited on 18 July 2023.

<sup>873</sup> OHCHR, "Myanmar, Bachelet condemns executions, calls for release of political prisoners", press release, 25 July 2022.

<sup>874</sup> Witnesses 1, 13, 34, 50, 63, 64 and 96.

<sup>875</sup> Witness 1.

<sup>876</sup> Witnesses 18, 58 and 97.

<sup>877</sup> Witnesses 7, 34, 36, 44, 54, 59, 68 and 77.

<sup>878</sup> Witnesses 7, 8, 34, 40, 42, 44, 53 and 54.

constant fear of house raids and arrests, and changed location several times before escaping to a neighbouring country.<sup>879</sup> Families of IWFM central committee members were visited by the military.<sup>880</sup> Even where family members of trade unionists or other activists were not targeted directly, their arrest and detention or the fact that they had to go into hiding has had serious consequences for their families' livelihoods, education and well-being.

- 462.** The Commission heard testimony about the case of a woman activist who was stopped by four men in civilian clothes who pointed a gun at her and told her to get out of the car. She tried to escape, but was shot at and, once captured, was taken to an unknown place with her head covered by a black bag.<sup>881</sup> She was beaten and tortured, after which she was taken to the preschool attended by her child, who was detained in a separate room. The activist was beaten until she was bleeding heavily, tazered with an electric gun until she lost consciousness and was forced to confess when a bomb was strapped to her child, with the threat to press the detonator, and a gun was pointed at the child's cheek. After about a month of being separated from her child, they were brought together and, after four months detention in an interrogation centre, they were both taken to the township police station. The child was given into the care of a lawyer defending the woman, who was sentenced to 10 years of imprisonment and labour.

#### Intensified surveillance and intimidation

- 463.** Other testimonies point to intensified surveillance and intimidation of workers, and the population more generally. The military authorities have set up checkpoints in the streets to verify people's identities or confiscate property, often requesting bribes to allow workers to pass, and sometimes resorting to violence.<sup>882</sup> One witness explained how the operation of the re-established requirement to file guest reports under the Ward or Village Tract Administration Law (see above, paragraph 361) as a means of controlling the population affects workers moving from one region to another for work.<sup>883</sup> Since March 2022, all private hospitals and clinics in Mandalay have been ordered to submit lists of patients to the military every day.<sup>884</sup> The military authorities also continue to limit access to internet and seek to monitor social media and mobile telephone use.<sup>885</sup>
- 464.** Following the violent suppression of and prohibition of public protests and demonstrations, the military also attempted to stop the so-called "silent strikes" threatening and arresting the organizers.<sup>886</sup> Organized by the CDM, such silent strikes consist of people staying indoors on a designated day and not engaging in any outside activities. The resulting absence of people in public spaces is intended to be an expression of protest against the military takeover. In some instances, private

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<sup>879</sup> Witness 8.

<sup>880</sup> ITUC and CTUM submission, December 2022.

<sup>881</sup> Witness 65.

<sup>882</sup> Witnesses 1, 41, 48, 51 and 66; ITUC and CTUM submission, October 2022.

<sup>883</sup> Witness 48.

<sup>884</sup> PSI submission, October 2022.

<sup>885</sup> United Nations Human Rights Council, *Situation of human rights in Myanmar since 1 February 2022: Report of the United Nations High Commissioner for Human Rights, A/HRC/52/21*, 2023, para. 55; Abel Pires Da Silva, "Myanmar military's efforts to build a surveillance state must be rejected at every turn", ASEAN Parliamentarians for Human Rights, 22 September 2021.

<sup>886</sup> A/HRC/52/21, para. 57.

belongings, such as mobile telephones or bikes, were confiscated, with their owners later being asked to pay for them and to come and fetch them during “silent strikes”.<sup>887</sup>

### Local businesses’ resilience in a hostile environment

- 465.** The Commission received documentation on the situation in Myanmar from a number of local employers. It learned about employers in small and medium-sized enterprises (SMEs) contributing to the promotion of democratic values in the internal work environment (implementing non-discrimination policies, contributing to social inclusion and providing learning and job opportunities), and also playing a role in supporting democracy beyond the enterprise (providing support for peace and democratic development by promoting open dialogue with employees and with the community, building relationships of trust between them and the community, and providing financial resources for pro-democracy parties).<sup>888</sup>
- 466.** An academic study provided to the Commission indicates that many SME owners have been jailed or deported, or had their documents suspended, been placed under house arrest or visited by the authorities. Even though SMEs represent 90 per cent of job opportunities in the country, since the military coup it has been difficult to create SMEs or employment in them. Many business owners are not only afraid for the future and how to sustain their businesses and investment, but are really struggling to survive.<sup>889</sup>
- 467.** The Commission heard testimonies from business owners in advertising, public relations, IT, private education, agriculture and other sectors. Several business owners indicated that they are trying to look after their employees as best as they can and are interacting with the MOL, as needed. Others referred to the challenge of operating within rules and regulations and maintaining financial stability. One witness stated that, as a business owner, she had to sign a statement that she would not be involved in politics and that she understood that the military did not want her to employ any CDM participants, even though there were no formal instructions in this regard. Questions about the employment of CDM participants in her company were put to her staff when they visited public offices to request visas for expatriates.<sup>890</sup> The same witness said that some of her employees did participate in the protests, were arrested or had to run away, and that one was killed.
- 468.** Another employer elaborated on the difficulties of CDM participants in obtaining employment and indicated that he offered them jobs, but asked them not to make any reference to their CDM participation.<sup>891</sup> He also expressed concern about the pressure on business owners to follow military instructions and pointed to an example of an employer who announced that his company would participate in a silent strike, who was arrested the next day, together with the staff.

### Relentless armed conflict affecting workers and employers and their respective organizations

- 469.** Finally, the Commission is bound to report that many of the witnesses appearing before it have been personally or professionally affected by the widespread violence and

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<sup>887</sup> Witnesses 72, 73 and 77.

<sup>888</sup> Witnesses 99 and 100.

<sup>889</sup> Witness 99.

<sup>890</sup> Witness 101.

<sup>891</sup> Witness 102.

ongoing armed conflict. Some were talking to the Commission when the areas from which they were speaking came under attack by the military or associated armed groups. The Commission received information about ground and air attacks on villages, involving the deployment of heavy artillery, tanks, helicopters, jet fighters and surveillance drones; the burning of villages; attacks on civilian infrastructure, including schools, hospitals and religious buildings; raids on civilian infrastructure; random assaults, torture, murder of citizens and the removal of organs; sexual violence and physical injuries to civilians, including children and the elderly; arrests; robbery; and forcing civilians to flee.<sup>892</sup> In January 2022, Physicians for Human Rights considered Myanmar to be one of the most dangerous places in the world to be a healthcare worker, with more documented attacks against healthcare workers in 2021 than in any other country.<sup>893</sup> The website Insecurity Insight reports that, between 1 February 2021 and May 2023, there have been 896 reported incidents of violent conflict affecting healthcare, with 115 health facilities damaged, 77 health workers killed, 111 injured and 16 kidnapped. The overwhelming majority of these incidents are reportedly attributed to the military forces.<sup>894</sup> The Commission is alarmed to observe that the ongoing armed conflict is continuing to affect workers and employers and their organizations in the most serious ways.

### C. Findings of facts in relation to Convention No. 29

- 470.** In the present section of the report, the Commission presents its findings of facts related to the application of Convention No. 29, while also referring to certain findings and information reported by relevant UN bodies on related matters. The Commission's findings of facts primarily concern the application of the Convention in practice, rather than in law. Indeed, the information at the Commission's disposal does not point to changes by the military authorities to the main provisions of the legislation concerning forced or compulsory labour (see above).
- 471.** The Commission notes at the outset that it has received information on many specific incidents of the Myanmar military requiring residents to provide work or services in the context of armed conflict. The reported incidents are consistent across various sources, the broader factual circumstances in the county, as well as the evidence shared with the Commission by direct witnesses. The present section is based primarily on the testimony of direct witnesses and a select number of reported cases for which a degree of corroboration has been possible.

#### Forced labour practices by the Myanmar military prior to 1 February 2021

- 472.** With a view to understanding forced labour practices in the context of armed conflict and military activities in Myanmar today, it is useful to recall at the outset that "work or service exacted in virtue of compulsory military service laws for work of a purely military character" is not prohibited by Convention No. 29 (Article 2(2)(a)). The 1998 Commission concluded that the Myanmar military had been exacting work or services that were not covered by the exceptions clause contained in Article 2(2)(a) of the Convention, or any of the other exceptions set out in Article 2(2). While progress had been made in

<sup>892</sup> Witnesses 1, 2, 3, 10, 16, 24, 38, 45, 50, 53, 55, 58, 62, 64, 69, 71, 76, 77, 87, 89, 92, 96 and 102; PSI submission, October 2022; GCR2P submission, October 2022; ITUC and CTUM submission, October 2022.

<sup>893</sup> GCR2P submission, October 2022; Physicians for Human Rights, "415 Attacks on Health Care in Myanmar During One Year of Crackdowns Following Military Coup: Report", 26 January 2022.

<sup>894</sup> <https://map.insecurityinsight.org/health>.

addressing forced labour in Myanmar (see above, Chapter 3), the nature of the use of forced labour by the Myanmar military remains entrenched. The complaints received through the Forced Labour Complaints Mechanism in the years before it ceased to exist on 31 December 2018 (see above, Chapter 3) in a majority of cases concerned the forced recruitment of children into the armed forces, while complaints concerning the army forcing residents to perform labour or services, such as portering, camp maintenance or construction work, also continued to be made. The ILO Director-General has continued to express concern at reports of the use of forced labour by the military in areas of persistent armed conflict, such as Kachin and Shan States, or where many troops had been deployed, particularly in Rakhine State.<sup>895</sup>

- 473.** Continuing forced labour practices by the Myanmar military have subsequently been documented in detail by the International Independent Fact-Finding Mission on Myanmar (IIFMM). In its 2018 report, the IIFMM found that the military was engaging in a pattern of systematic use of men, women and children for forced labour in Kachin, Shan and Rakhine States, including in areas of the States not subject to active conflict.<sup>896</sup> The IIFMM found that common types of work that local residents were forced to carry out included carrying heavy packages of food, clothes and weapons, acting as guides, digging trenches, cleaning, cooking, collecting fire wood, cutting trees and constructing roads or buildings in military compounds.<sup>897</sup> Porters have also been used as “human mine sweepers” by making them march ahead of soldiers. The IIFMM described in detail the inhumane conditions that victims of forced labour had to endure. Its findings also highlighted sexual violence, including rape, inflicted on women in the context of forced labour exacted by the military.<sup>898</sup> The IIFMM’s 2018 report also refers to credible information received indicating that the army forcibly recruited adults and children.<sup>899</sup> The IIFMM’s 2019 report presents detailed findings concerning forced labour exacted from Rohingya villagers in Rakhine State.<sup>900</sup>
- 474.** The UN Secretary-General, reporting to the Security Council on children in armed conflict in 2020, drew attention to the continuing recruitment of children by the Tatmadaw, including verified cases of boys being recruited into the armed forces, for example by offering false civilian jobs, falsifying age verification documents and

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<sup>895</sup> ILO, *Report of ILO activities in Myanmar*, Governing Body, 320th Session (March 2014), GB.320/INS/6(Rev.), para. 20; ILO, *Follow-up to the resolution concerning measures on the subject of Myanmar adopted by the Conference at its 102nd Session: Review of the situation in Myanmar on issues relating to ILO activities, including forced labour, freedom of association, and the impact of foreign investment on decent working conditions*, Governing Body, 323rd Session (March 2015), GB.323/INS/4, para. 13; ILO, *Follow-up to the resolution concerning remaining measures on the subject of Myanmar adopted by the Conference at its 102nd Session (2013)*, Governing Body, 325th Session (October–November 2015), GB.325/INS/7(Rev), para. 12; ILO, *Follow-up to the resolution concerning remaining measures on the subject of Myanmar adopted by the Conference at its 102nd Session (2013)*, Governing Body, 328th Session (October–November 2016), GB.328/INS/9, para. 13; ILO, *Follow-up to the resolution concerning remaining measures on the subject of Myanmar adopted by the Conference at its 102nd Session (2013)*, Governing Body, 329th Session (March 2017), GB.329/INS/11, para. 4.

<sup>896</sup> United Nations Human Rights Council, *Report of the detailed findings of the Independent Fact-Finding Mission on Myanmar*, A/HRC/39/CRP.2, 2018, paras 258 and 412.

<sup>897</sup> A/HRC/39/CRP.2, para. 264.

<sup>898</sup> United Nations Human Rights Council, *Sexual and gender-based violence in Myanmar and the gendered impact of its ethnic conflicts*, A/HRC/42/CRP.4, 2019, paras 131-143.

<sup>899</sup> A/HRC/39/CRP.2, para. 273.

<sup>900</sup> United Nations Human Rights Council, *Detailed findings of the Independent Fact-Finding Mission on Myanmar*, A/HRC/42/CRP.5, 2019, paras 181-190.

threatening families to withdraw demands for the discharge of their children.<sup>901</sup> On the same occasion, the Secretary-General reported that, during the period from 1 September 2018 to 30 June 2020, the UN had verified the use of 555 children (554 boys, 1 girl) by the Tatmadaw (551) and the Border Guard Police (4). Most verified incidents of the use of children were in Rakhine State, Buthidaung township, except for two boys used in Kachin and Shan States, respectively. Aged between 12 and 17, the children have been used for periods of up to two weeks alongside adults to work on military camp maintenance, digging trenches, building fences, carrying bricks and harvesting rice for the Tatmadaw.<sup>902</sup>

### Labour exacted by the Myanmar military in the context of armed conflict and military activities since 1 February 2021

**475.** The testimony and materials received by the Commission attest to the continuing widespread and systematic use of various types of forced labour by the army and associated armed forces in the context of military activities since the takeover on 1 February 2021, when armed conflict flared up across the country, including in areas where there had been no hostilities before. In the view of many of the Commission's interlocutors, the use of forced labour has been on the rise by the military in the conduct of military activities.<sup>903</sup> The Commission was able to hear from persons who had been subjected to forced labour themselves, as well as from persons with information they had received from others who had made direct observations on the ground. This evidence obtained from witnesses is consistent with the information submitted by entities that made written submissions to the Commission, as well as publicly available reports by non-governmental organizations and local media.

### Work or service as porters, guides, human shields and for camp construction

**476.** The Commission accepts as reliable evidence the testimonies that follow. Numerous witnesses provided information and evidence about troops on their way to the frontlines in areas with active conflict snatching people in their villages or in the fields.<sup>904</sup> In some cases, troops requested local administrators to gather people and make them available for work.<sup>905</sup> The villagers so taken are then forced to accompany the troops and carry packages of food, equipment, arms or ammunition, and/or guide the troops to their destination. Evidence shows that villagers are made to walk ahead of columns of soldiers, or inside columns with a soldier behind and in front of them. In this way, the villagers, who are often presumed by the troops to be supportive of an armed opposition group active in the area, are used as human shields with the aim of protecting the troops from attack.<sup>906</sup>

**477.** The OHCHR indicated that between February 2021 and March 2022 "at least 85 incidents were reported of the military forcing individuals to perform labour and act as human shields with the troops".<sup>907</sup> There are reports that in Shan and Kayah states between

<sup>901</sup> United Nations Security Council, *Children and armed conflict in Myanmar: Report of the Secretary-General*, S/2020/1243, 2020, para. 29.

<sup>902</sup> S/2020/1243, para. 30.

<sup>903</sup> Witnesses 34, 36 and 38; ICJ submission, March 2023; GCR2P submission, October 2022.

<sup>904</sup> Witnesses 38, 50, 62, 70, 71 and 72.

<sup>905</sup> Witness 90.

<sup>906</sup> Witnesses 38, 78 and 90.

<sup>907</sup> OHCHR submission, October 2022 citing A/HRC/49/72, para. 46.

November 2021 and February 2022, civilians, including at least 80 children from Chin Pone village in Sagaing, were detained by the Myanmar military for 36 hours as potential human shields during clashes with resistance groups.<sup>908</sup>

- 478.** The Commission heard evidence from a youth leader in Yangon involved in the protests against the coup, who had returned to his village in Chin State in June 2021.<sup>909</sup> In his village, the military ordered the village leader to assemble all the young men in one place and the witness was one of them. The military requested the young men to carry heavy green military bags. When the column left the village, the soldiers ordered a prisoner who had his hands tied to walk ahead of the column, with a soldier holding the rope tied to the prisoner's hands. They were followed by a group of civilian porters, then soldiers and then another group of civilian porters, with soldiers pointing their guns at the porters. They walked throughout the night, reaching the next village in the morning, where the soldiers took new porters and allowed the witness to return to his village. They were not paid any remuneration.
- 479.** Another witness, a 34-year-old man, was working with his uncle and cousin in a paddy field close to their village in Kalay township when the troops passed by and arrested him and his cousin to carry their luggage. The soldiers asked him about the whereabouts of the PDFs. They kicked him and one soldier hit him with his rifle on the forehead. The witness decided to take the risk of fleeing, dropped the bag he was carrying and ran into the bush. He hid in the bush for three days and then went back to his village. His cousin's body was found a few days later burnt in a field, with a gunshot wound.<sup>910</sup>
- 480.** Other incidents of work or services exacted by the military that were brought to the Commission's attention include the military forcing 400 villagers from Bilin Township, Mon State, to transport goods, including ammunition, through the jungle in September 2021.<sup>911</sup> When fighting broke out in 2021 in Thantlang, Chin State, villagers were forced to carry items and were used as human shields.<sup>912</sup> Witnesses also reported the use of forced labour in Mindat township in April 2021.<sup>913</sup> One witness, who was involved in local human rights monitoring in Karen State, reported that instances of forced portering services increased after the resumption of fighting.<sup>914</sup>
- 481.** According to a report by a non-governmental organization, the Myanmar army and Border Guard Police relied on villagers, particularly women, as guides despite knowing the way themselves, which showed that the reason for asking villagers to accompany the troops was to use them as human shields.<sup>915</sup> In March 2022 in Southern Shan State, over 100 villagers were required to work for two days to construct a new military outpost in the vicinity of a planned new coal mining operation in Namzarng township.<sup>916</sup> Almost

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<sup>908</sup> ITUC and CTUM submission, October 2022.

<sup>909</sup> Witness 90.

<sup>910</sup> Witness 93.

<sup>911</sup> OHCHR submission, October 2022 citing A/HRC/49/72, para. 46; MRG submission, October 2022.

<sup>912</sup> Witness 78.

<sup>913</sup> Witnesses 70 and 71.

<sup>914</sup> Witness 38.

<sup>915</sup> Karen Human Rights Group (KHRG), "Southeast Burma Field Report: Armed conflict, airstrikes, displacement, and increased human rights violations, including forced labour, the use of human shields and torture, July to December 2021", 29 March 2022.

<sup>916</sup> Shan Human Rights Foundation, "Local villagers forced by SAC troops to build outpost near planned coal mine in Namzarng, southern Shan State", 19 April 2022.

40 local people from villages in Kyainseikgyi township, Kayin, were arrested by the military in April 2022 to serve as porters, and were forced to deliver packages, weapons, ammunition and rice sacks to a police station.<sup>917</sup> In May 2022 in Mon state, Border Guard Police abducted 100 civilians to use as porters and human shields, moving from one township to another.<sup>918</sup> In September 2022, 30 villagers taken by the army in a village in Hmawbi township were forced to serve as porters. Moreover, the soldiers repeatedly ransacked the village after the village administrator refused to send a list of people selected to be porters.<sup>919</sup>

- 482.** Several witnesses indicated that the time during which a person is requested to perform such labour varies, but often exceeds the period indicated at the time of recruitment, and may vary between one day and one month.<sup>920</sup> There is a high likelihood of victims not returning and their bodies being found dead later.<sup>921</sup> When no men are available in a village, the soldiers force women, and in some cases children, to perform work for them.<sup>922</sup> Villagers who refuse to do portering are killed, while in other cases porters are killed after performing the service.<sup>923</sup>

### Provision of transport, food and accommodation

- 483.** Several witness accounts concern cases of the Myanmar military or associated armed forces requiring civilians to provide transport services for the armed forces using their own vehicles. A common technique is to stop civilian vehicles at a checkpoint and force the civilians to work for the military, for example by driving in front of a military convoy, a practice considered to be widespread in Chin, Sagaing and Magway.<sup>924</sup> When fighting the PDFs, the army stops private vehicles and relies on them to move around safely, as well as for transport.<sup>925</sup> In one incident in October 2022, a 27-year-old man was stopped at a check point and when he refused to perform a delivery service for the army, he was arrested and his body was found three days later, burnt and with a gunshot wound.<sup>926</sup> In another incident, the military stopped a private vehicle and forced the driver at gun point to transport military items. The driver lost control of the car on a mountain road and the car crashed into a hillside.<sup>927</sup> One man in Sagaing region was asked by the soldiers to provide transport services at a price considerably below the market level.<sup>928</sup>
- 484.** Witnesses further recounted soldiers taking up accommodation in private housing, removing private property and forcing villagers to cook for them and make tea without receiving remuneration or money to buy the food. One family told of having had to sell a car to be able to buy food for the soldiers.<sup>929</sup> Another witness said that the army

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<sup>917</sup> Information received from a local workers' organization.

<sup>918</sup> MRG submission, October 2022.

<sup>919</sup> ITUC and CTUM submission, December 2022, p. 19.

<sup>920</sup> Witnesses 38 and 62.

<sup>921</sup> Witness 62.

<sup>922</sup> Witness 62.

<sup>923</sup> Witnesses 16, 36 and 50.

<sup>924</sup> Witness 77.

<sup>925</sup> Witness 83.

<sup>926</sup> Witness 77.

<sup>927</sup> Witness 77.

<sup>928</sup> Witness 80.

<sup>929</sup> Witness 73.



requests cooking services in camps.<sup>930</sup> Children from a school in Hakha township, Chin state, were used to deliver food to military outposts.<sup>931</sup> In Kyainseikgyi township, Kayin, a 23-year-old man was arrested by soldiers in May 2022 as he was working on a rubber plantation and ordered to cook a meal for the troops. He was beaten and interrogated by the soldiers about the location of the local ethnic armed organization and the PDFs, and who in the village supported them.<sup>932</sup>

### Forced labour exacted from Rohingya villagers in Rakhine State

- 485.** The Commission heard a witness, an expert from a non-governmental organization with long-standing expertise in monitoring forced labour in Rakhine State, who indicated that the exaction of forced labour from the Rohingya in Rakhine State had continued after the ILO lifted its article 33 measures in 2012, with members of the Rohingya communities being recruited for the maintenance of military camps, cultivation work and guard duties. The witness submitted detailed evidence and information on the labour requested by the military from members of the Rohingya communities in Northern Rakhine State since 1 February 2021, as summarized below.<sup>933</sup>
- 486.** In 2021 and 2022, Myanmar army camps in Buthidaung township relied on the Rohingya for cultivation work in paddy fields occupied by the army, which they had confiscated from the Rohingya earlier. In the context of cultivation, labour is required for ploughing, planting and harvesting when machinery is not available, or cannot be used due to the weather conditions. In one case, the military requested every Rohingya family in the vicinity of a camp in South Buthidaung to pay 4,000 Kyat or, alternatively, to perform cultivation work, which most families had to do as they were unable to pay the required amount. In this way, during the 2021 monsoon, an estimated 300 Rohingya villagers were ordered to plough 150 acres of land and plant seedlings. Another estimated 250 villagers were called up to harvest the paddy in November 2021. In another case, in October 2022, the military recruited 65 Rohingya villagers from several villages to harvest manually rice plants that had been bent close to the ground by a cyclone, as they could not be harvested by machine. The villagers had to do harvest work for a day without receiving any pay.
- 487.** Villagers have also been used to collect forest resources for the army, or have been allowed to collect such resources for themselves in areas to which they ordinarily would not be given access, but have had to give half of the resources collected to the military.
- 488.** There have also been several instances of Rohingya villagers being ordered to supply building materials and to clear and repair army or Border Guard Police (BGP) camps before and after the monsoon. In June 2021, villagers were ordered by an army camp in South Buthidaung to supply wooden poles and to work for several days to replace fences and sentry posts. In September and early October 2022, the BGP ordered one person per family in a village tract in North Maungdaw to work for two days to clean and clear a BGP camp and its surroundings. In November 2022, over 200 Rohingya households were ordered by the BGP to supply wooden poles to their camp without delay.
- 489.** In December 2022 and January 2023, military units in Rakhine State consolidated fortifications, and for this purpose required Rohingya villagers to collect stones and

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<sup>930</sup> Witness 38.

<sup>931</sup> Information received from local residents.

<sup>932</sup> Information received from a local workers' organization.

<sup>933</sup> Witness 30; Arakan Project written submission, p. 4.

rocks and to transport them to the construction site, to carry cement sacks or dig trenches. The work was exacted from villagers cutting bamboo or collecting forest resources for their livelihoods in the area, and the performance of the services was a condition for being allowed to continue to collect such resources for themselves. The villagers were not paid for this work. In contrast, in one location where the army and the BGP reinforced outposts and repaired border fences, the labourers were paid.

- 490.** Members of the Rohingya community have also been forced to transport goods or people to military camps, sometimes with a small payment for the fuel, but not for the service rendered. The reason for requiring villagers to transport materials is that civilian transport reduces the vulnerability of the military to attacks by the Arakan Army. Nevertheless, in one incident, a Rohingya driver transporting dead and wounded soldiers in his vehicle was shot and killed by the Arakan Army.

### Recruitment into the military and participation in military training

- 491.** The Commission recalls that work or service exacted by virtue of compulsory military service for work of a purely military character does not amount to forced or compulsory labour under Convention No. 29. In this respect, the Commission has already noted above in paragraph 277 that the People's Military Service Law (2010) provides for compulsory military service. However, the Commission is not aware that any of the regulations, by-laws, procedures, announcements, orders or directives required for the implementation of the People's Military Service Law have been adopted. Furthermore, on 3 February 2022, the Myanmar state media cited the Commander-in-Chief of the Defence Services as having made the following statement:

“[Once] the country is in good political and economic trends, we have to turn to the defence system. For example, our country does not practise the military conscription law yet. Every citizen is responsible for military service. We don't practise that law because of happening the internal armed conflicts.”<sup>934</sup>

- 492.** An expert witness told the Commission that the military had the constitutional and legal ability to have a conscription system but had not yet activated it. The military was thus legally based on voluntary recruitment, even if some of the recruitment was not voluntary.<sup>935</sup> Information received by the Commission suggests that soldiers go from house to house, forcibly recruiting soldiers.<sup>936</sup> According to local media, young men frequently go into hiding to avoid forced recruitment into the military.<sup>937</sup>
- 493.** While information and direct evidence concerning possible forced recruitment into the Myanmar military is limited, the information received is consistent with the findings and reports of various UN bodies about incidents prior to 2021 and after the coup (see above, paragraphs 158 and 473-474). In addition, the Commission notes that the UN Secretary-General reported 280 verified cases of the recruitment and use of children attributed to the Tatmadaw in 2021, while stating that the UN monitoring and reporting mechanism had faced serious safety, security and access challenges since the military

<sup>934</sup> Myanmar Digital News, “Ministries need to save spending on foreign exchange except for compulsory measures: Senior General”, 3 February 2022.

<sup>935</sup> Witness 50.

<sup>936</sup> Witness 84.

<sup>937</sup> Frontier Myanmar, “Desperate junta recruitment drive leaves delta villagers fearful – and in debt”, 19 August 2022.

takeover.<sup>938</sup> The UN Special Rapporteur on the situation of human rights in Myanmar reported in 2022 that, at least in certain parts of the country, junta officials and junta-aligned armed groups have made demands on villages or households to produce a certain number of recruits, without safeguards to ensure that children are not enlisted.<sup>939</sup>

**494.** The Commission has also received information about the military introducing mandatory military training or local residents being forced to join local militias, rather than recruitment into the army as such. A witness told the Commission that he had been told by a man who had escaped from a military training centre that in September 2022 the army required all women and men above the age of 16 in a village to participate in military training for two to three months.<sup>940</sup> In October 2022, the army and a militia associated with it occupied a village in Kanbalu township, Sagaing, and asked around 50 men to join the militia and undergo military training. Those who refused to take part were beaten.<sup>941</sup> According to local news reports, the military also required local residents and university students to undergo military training.<sup>942</sup> Military training has reportedly also been made mandatory for the children, both male and female, and the spouses of military personnel.<sup>943</sup> The spouses of soldiers are reported to have been required to clean military camps or compounds or serve as housemaids for higher ranking officers, without being paid. In their July 2023 communication, the military authorities stated that family members of army officers voluntarily participated in “small arms skills training” for self-defence purposes; participation in cleaning and agricultural work was also voluntary.

#### Other forms of labour exacted by the military or associated armed or security forces

**495.** The Commission has also heard of various other forms of labour exacted by the armed or security forces since the coup. For instance, when demonstrations against the military takeover occurred in Yangon and other cities, protesters resorted to erecting make-shift barricades on the streets using, for example, sand-filled bags or bamboo screens. The security forces required residents from Yangon neighbourhoods to clear the barricades.<sup>944</sup> According to one witness, the military also used local people to clear barricades erected by protesters in Sagaing region.<sup>945</sup> In their July 2023 communication, the military authorities stated that when protesters had set up some barriers in Yangon and traffic jams occurred as a result, people from the affected neighbourhood voluntarily participated in the removal of such obstacles.

<sup>938</sup> United Nations General Assembly, *Children and armed conflict – Report of the Secretary-General*, A/76/871-S/2022/493, 2022, paras 131-132.

<sup>939</sup> United Nations Human Rights Council, *Losing a generation: how the military junta is devastating Myanmar's children and undermining Myanmar's future – Conference room paper of the Special Rapporteur on the situation of human rights in Myanmar*, A/HRC/50/CRP.1, 2022, para. 61.

<sup>940</sup> Witness 79.

<sup>941</sup> ITUC and CTUM submission, December 2022, p. 20.

<sup>942</sup> *Burma News International*, “Military council pressures every household to attend mandatory military training in Bokeypyin”, 11 March 2023; *The Chindwin*, “Myanmar junta regime starts giving compulsory military training to University students in Sagaing”, 4 October 2022.

<sup>943</sup> *The Irrawaddy*, “Myanmar Regime Makes Military Training Compulsory for Soldiers' Children”, 7 December 2021; and “Myanmar Regime Orders Mid-Ranking Officers' Wives to Undergo Military Training”, 11 January 2022.

<sup>944</sup> Cambodianess, “Myanmar military forces civilians to dismantle Yangon barricades”, 20 March 2021.

<sup>945</sup> Witness 80.

**496.** Another witness reported villagers being forced to vote in village administrator elections.<sup>946</sup> On 14 August 2022, a man in a village in Kalaymyo township was asked to take on the position of village administrator, but refused. The military came to his house and, as they could not find him, they took his two teenage children (a boy and a girl) hostage, who were later found dead.<sup>947</sup> The Commission also received a local media report of young female workers from a military-owned textile factory in Hlaing township in Yangon, who were forcibly sent to serve military officers of the SAC in Nay Pyi Taw, including ironing, housework, massage and sexual services, under the threat of dismissal.<sup>948</sup>

### Forced labour exacted by ethnic armed organizations or armed opposition groups

**497.** Documentary materials collected by the Commission and witness submissions point to certain armed groups that oppose the Myanmar military which also require local residents to perform work or render services. For example, the OHCHR has reported abductions by the Restoration Council of Shan State, the Shan State Army-North and the Ta'ang National Liberation Army, and the use of forced recruitment and forced labour by the two latter groups, as well as forced recruitment by the Kachin Independence Army, including the recruitment of children.<sup>949</sup> The UN Secretary-General reported 58 verified cases of the recruitment and use of children by various ethnic armed organizations in 2021.<sup>950</sup>

**498.** In 2021 and 2022, the Arakan Army required the Rohingya to serve as porters and guides, to work in camp maintenance, repairs and the construction of fences or the digging of trenches. Labour was also exacted by the Arakan Army from Rohingya forest resource collectors on a tourist site near a camp in Buthidaung in January 2023, who were required to collect garbage and clear bushes.<sup>951</sup> In two reported instances, the Arakan Army arrested Rohingya villagers for violations of a rule or order that it had established and imposed forced labour in their camp as punishment. In one incident, several Rakhine officials wanted to resign from the local administration, but the Arakan Army did not allow them to do so.<sup>952</sup>

### Work requirements imposed on business owners

**499.** In the context of the nationwide protests against the military regime, several witnesses referred to the holding of "silent strikes" (see above, paragraph 464) following the suppression and prohibition of demonstrations by the military.

**500.** These protests concerned not only workers, but also business owners, shopowners and vendors who participated in such silent strikes by interrupting their business activities, at risk of being punished by the authorities for doing so.<sup>953</sup> Ahead of the first anniversary of the military takeover on 1 February 2022, the military authorities warned that closing

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<sup>946</sup> Witness 72.

<sup>947</sup> Witness 77.

<sup>948</sup> CTUM submission, May 2023.

<sup>949</sup> OHCHR written submission citing A/HRC/48/67, paras 59-60.

<sup>950</sup> United Nations General Assembly, *Children and armed conflict – report of the Secretary-General, A/76/871-S/2022/493*, 2022, para. 132.

<sup>951</sup> Witness 30.

<sup>952</sup> Witness 30.

<sup>953</sup> Witness 72.

a business or shop for the day could carry punishment of up to life imprisonment under the Counter-Terrorism Law.<sup>954</sup> One witness reported a case of a shopowner who had announced his participation in a silent strike being arrested by the military.<sup>955</sup> Arrests of business persons for participating in silent strikes were also widely reported in the media.<sup>956</sup>

- 501.** Another witness, who owns three businesses in Myanmar, told the Commission that he respected the political views of his employees, but did not heed their demand to close the business due to the serious risks involved in doing so. However, he gave permission to employees to telework during a silent strike.<sup>957</sup> Another witness, a business owner running two companies in Myanmar, indicated that she encouraged staff to stay inside for their safety and to work from home.<sup>958</sup>

### Work in prisons

- 502.** The Commission notes that section 53 of the Penal Code provides that the punishment of imprisonment can take the form of “simple” imprisonment or “rigorous” imprisonment, that is with hard labour. The Commission also notes that, under the martial law orders issued by the military authorities since 1 February 2021, anyone found guilty of one of the crimes listed in the orders can be punished with a “prison sentence with hard labour for unlimited years”.<sup>959</sup>
- 503.** The Commission received evidence that persons, including trade union members and unionists, charged with certain offences under provisions of the Penal Code which have been amended or newly introduced by the military authorities, have received sentences of imprisonment with the obligation to perform hard labour.<sup>960</sup> One of them is Thet Hnin Aung, General-Secretary of the MICS-TUsF, who was sentenced to two years imprisonment with hard labour under section 17(1) of the Unlawful Associations Act by the Paung Township Court, after a decision was made to try his case in a civil court.<sup>961</sup> The Commission also heard testimony regarding two other unionists who were sentenced to three years imprisonment with hard labour in a court located inside the prison in which they were held under section 505-A of the Penal Code for defamation of the State.<sup>962</sup> Although they had a lawyer representing them, witnesses presented by the

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<sup>954</sup> *Financial Times*, “Myanmar businesses defy army nationalization threat and join strike”, 1 February 2022; *The Irrawaddy*, “Myanmar Junta Threatens Silent Strikers With Life in Prison”, 26 January 2022.

<sup>955</sup> Witness 94.

<sup>956</sup> *The Irrawaddy*, “Myanmar Regime Detains Over 100 People for Supporting Silent Strike Online”, 3 February 2022; *Mizzima Myanmar News and Insight*, “Some Myanmar shop owners arrested before upcoming ‘silent strike’”, 28 January 2022; *The Guardian*, “Myanmar protesters hold ‘silent strike’ against military junta”, 10 December 2021.

<sup>957</sup> Witness 102.

<sup>958</sup> Witness 101.

<sup>959</sup> Martial Law Order No. 3/2021, 15 March 2021; Martial Law Order No. 4/2021, 13 May 2021; Martial Law Order No. 7/2023, 2 February 2023; Martial Law Order No. 9/2023, 22 February 2023.

<sup>960</sup> Witnesses 13, 48, 63, 64 and 95.

<sup>961</sup> Witness 95; ILO, “ILO calls for the unconditional release of Thet Hnin Aung, General Secretary of the Myanmar Industries Craft and Services Trade Union Federation”, 8 December 2022.

<sup>962</sup> Witnesses 13, 39, 63 and 64.

defence were not admitted.<sup>963</sup> According to Reporters without Borders, several journalists have been sentenced to prison sentences with hard labour.<sup>964</sup>

- 504.** The Commission received some indications that prisoners are made to perform sewage work and manufacture items seemingly for commercial purposes. In their July 2023 communication, the military authorities stated that most prisoners had to do only regular cleaning work; no forced labour duties were assigned in prisons.

### Overtime work in the private sector

- 505.** Written submissions received and witnesses heard by the Commission described incidents, situations and practices related to overtime work which the Commission considers it necessary to record and assess in relation to its mandate concerning Convention No. 29. The information received refers to cases of unpaid overtime, overtime above the thresholds set in national legislation, workers not being allowed to take leave, including sick leave, wage deductions for taking leave and increasing reliance on daily workers.<sup>965</sup> While such practices existed prior to the military takeover,<sup>966</sup> it is reported that demands for overtime work have increased since the military takeover.<sup>967</sup> Witnesses consider that the prevailing context of economic hardship faced by workers and restrictions on trade union activities have made workers more vulnerable to exploitative work practices and forced labour.<sup>968</sup>
- 506.** Several workers and trade unionists appearing as witnesses before the Commission spoke more specifically about their experiences in the garment sector, which has a predominately female workforce. As noted earlier, during the COVID-19 pandemic and immediately after the military takeover, the workforce in this sector had significantly decreased, but in 2022 there was an increase in demand from foreign buyers.<sup>969</sup> Several witnesses affirmed that garment factories were increasing production targets and that such targets reached a level that could not be achieved reasonably during regular working hours.<sup>970</sup> One witness claimed that production targets could double.<sup>971</sup> Another witness referred to a case in which the target was raised from 45 to 60 pieces an hour.<sup>972</sup> A report from a factory union received by the Commission indicates that an hourly quota of 23 pieces was raised to 29 pieces an hour.<sup>973</sup> The factories are in industrial zones located in townships under martial law.
- 507.** It was reported to the Commission that production targets are set and announced by management unilaterally, often at short notice, while there have also been instances of collective agreements on working time and production targets no longer being

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<sup>963</sup> Witnesses 13, 63 and 64.

<sup>964</sup> Reporters without Borders, "[Myanmar court sentences woman journalist to three years with hard labour](#)", 28 September 2022.

<sup>965</sup> Witnesses 6, 27, 39, 48, 59, 60, 94 and 97; ITUC and CTUM submission, October 2022.

<sup>966</sup> Witness 16.

<sup>967</sup> Witness 18.

<sup>968</sup> Witness 34; ICJ submission, March 2023.

<sup>969</sup> See above, para. 227.

<sup>970</sup> Witnesses 103, 104 and 107.

<sup>971</sup> Witness 58.

<sup>972</sup> Witness 104.

<sup>973</sup> Document 11 submitted by Witness 23.

respected, or being cancelled.<sup>974</sup> Workers have been requested to start earlier, work during breaks and finish work after the scheduled end of the workday in order to achieve the targets,<sup>975</sup> with such unscheduled overtime not being paid.<sup>976</sup> Managers have resorted to verbal abuse and harassment or threatening workers with warnings, dismissal or reassignment to other positions if targets are not reached.<sup>977</sup> Reference was made to the refusal of leave requests by workers who have not met production targets.<sup>978</sup> In one case brought to the Commission's attention, workers were ordered to work kneeling down after having failed to reach production targets.<sup>979</sup>

**508.** The Commission also heard of the case of a factory with 3,700 workers, which unilaterally increased production targets after refusing to recognize union leaders to negotiate the targets. Instead, the factory organized elections for a workplace coordination committee. Another witness indicated that workplace coordination committees consent to overtime work, even when the workers disagree.<sup>980</sup>

**509.** It was also reported to the Commission that, as a result of excessive production targets, workers hired for an 8-hour workday at the minimum wage rate have to perform unscheduled overtime to receive the minimum wage.<sup>981</sup> The Commission recalls that the minimum wage rate in force in Myanmar is 600 Kyat an hour and 4,800 Kyat a day. According to information provided to the Commission, factories in the garment sector generally pay workers at the minimum wage level, although in some cases workers are paid slightly above the minimum wage rate, for example 5,500 Kyat a day.<sup>982</sup> The Commission also learned of a practice of paying workers bonuses for reaching production targets, or providing an "attendance bonus".<sup>983</sup>

**510.** Other witnesses referred to cases of overtime being scheduled and paid, but nevertheless considered to be compulsory. With regard to the compulsory nature of overtime, one witness indicated that "special permission" was needed not to work overtime.<sup>984</sup> Workers who asked to be relieved of overtime lost the so-called "attendance bonus". Where overtime work is performed to attain production targets that cannot be achieved during regular hours, non-participation in such overtime work also results in the loss of bonuses paid for the achievement of the targets.<sup>985</sup> In addition, managers have threatened that if a worker refuses to do overtime, no overtime work will be offered to them in the future. Workers have been threatened with dismissal, and daily workers have been discontinued.<sup>986</sup> Finally, it is difficult for workers and their families to survive on the remuneration received for regular hours, and they therefore depend on overtime

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<sup>974</sup> Witnesses 23 and 107.

<sup>975</sup> Witnesses 18, 48, 58, 103, 104, 109 and 111.

<sup>976</sup> Witnesses 18, 48, 58, 60, 104 and 109.

<sup>977</sup> Witnesses 103, 104, 105, 111 and 112.

<sup>978</sup> Witness 104.

<sup>979</sup> Witness 103.

<sup>980</sup> Witness 59.

<sup>981</sup> Witness 58.

<sup>982</sup> Witness 31; information received from a local workers' organization.

<sup>983</sup> Witness 111; Document 11 submitted by Witness 23.

<sup>984</sup> Witness 105.

<sup>985</sup> Document 1 submitted by Witness 31.

<sup>986</sup> Witnesses 105 and 109.

pay. Not being provided with overtime in the future, with the resulting loss of income, has serious consequences for them.<sup>987</sup>

- 511.** A witness said that two hours overtime a day are regularly worked in her factory, and four hours overtime on Saturday when needed.<sup>988</sup> Another referred to regular 10-hour days, instead of the 8-hour days provided for by law.<sup>989</sup> There also appears to be a practice in factories of requiring workers to work overtime on Sundays and public holidays.<sup>990</sup> Another witness described a case in which women workers living in employer-provided accommodation are not allowed to go out on Sunday, but are requested to work on urgent orders without pay.<sup>991</sup>
- 512.** The Commission also received information about workers who have been made to work two consecutive shifts, thus ending their workday very late at night, or even early in the morning. When workers commute back home during the night as a result of overtime work, they face increased risks to their health and security, including sexual violence.<sup>992</sup> In martial law areas, there is no transport to and from the workplace provided by the employer and workers have to procure safe transport at their own cost.<sup>993</sup>
- 513.** A report published by the Ethical Trading Initiative in September 2022 includes the results of a survey undertaken in April and May 2022 for which 3,120 workers were interviewed (89 per cent of them based in Yangon). According to the survey results, 15.4 per cent of workers had worked over 10 hours a day on average for the past three months; 20 per cent of workers had worked 13 days or more without a day off, including cases of up to 35 days; and 18.4 per cent of workers reported that average working hours had increased since 2021.<sup>994</sup>

### Freedom to resign from public employment

- 514.** The Commission has received some evidence concerning restrictions on public sector workers from resigning from their employment. In a case brought to the Commission's attention, a young man from Yebhu township, Tanintharyi, enlisted voluntarily in the Navy in 2001, when he was 17 years old. He submitted resignation letters on three occasions, first in 2017, second in 2019 and the third time in 2020, but he has not been allowed to resign.<sup>995</sup> According to one witness, some medical professionals are required to work in State hospitals with initial contracts of several years' duration without the possibility to resign.<sup>996</sup> A nurse, who was interviewed by a trade union that made a written submission to the Commission, was employed in a public hospital in 2017. To obtain employment, he had to sign a statement committing to work at least five years for the Ministry of Health and Social Welfare and, if he were to leave before the end of the five-year period, he would have to pay a fine.<sup>997</sup> A doctor who participated in the

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<sup>987</sup> Witness 111.

<sup>988</sup> Witness 105.

<sup>989</sup> Witness 107.

<sup>990</sup> Witnesses 23 and 109.

<sup>991</sup> Witness 109.

<sup>992</sup> Witnesses 23 and 58.

<sup>993</sup> Witness 23.

<sup>994</sup> Ethical Trading Initiative, *Myanmar enhanced due diligence sectoral assessment*, 12 September 2022, pp. 58 and 120.

<sup>995</sup> Information received from a family member of the military personnel concerned.

<sup>996</sup> Witness 50.

<sup>997</sup> PSI submission, October 2022.



CDM was detained when crossing the border to India to obtain medical treatment for her child and was forced to sign a document undertaking to work at least three years for the authorities, also with a penalty in the event of non-compliance.<sup>998</sup>

### Enforcement of the prohibition of forced or compulsory labour

- 515.** The Commission recalls that the effective enforcement of the legislation prohibiting forced or compulsory labour has been a long-standing difficulty in relation to the application of Convention No. 29. The 1998 Commission dedicated one of its three recommendations to the issue of enforcement, and this matter has also been central in the supervision of the application of the Convention by the CEACR and the CAS since then.<sup>999</sup> Both bodies have insisted that, in addition to providing channels for victims to make complaints and resolve forced labour cases, and capacity building for civil servants and military personnel, it is necessary for Myanmar to effectively enforce the legal prohibitions of forced or compulsory labour and to impose adequate penalties on perpetrators.<sup>1000</sup> The CEACR has taken the position that it is for Myanmar to provide information on the application in practice of the above-mentioned legislation to ensure accountability, including statistical data on the cases of forced labour detected, legal proceedings initiated, convictions handed down and the nature of the penalties imposed on convicted persons.<sup>1001</sup>
- 516.** The information obtained by the Commission in this regard clearly indicates that, since the military takeover on 1 February 2021, the overall context and conditions for the effective enforcement of the prohibition of forced or compulsory labour, as contained in the Penal Code, the Ward or Village Tract Administration Law and the Anti-Trafficking in Persons Law, have dramatically deteriorated, if not ceased to exist.
- 517.** Trade unions and non-governmental organizations that have been working to assist victims bring complaints now face serious risks when carrying out such activities due to the ongoing conflict and crisis. Staff members of such organizations face serious risks when travelling to areas where forced labour is being exacted, especially in areas affected by armed conflict. The military strategy pursued by the army makes no clear distinction between combatants and civilians, who are often accused of or presumed to be supporting the armed opposition forces. Being stopped by the military in a geographical location other than one's place of residence can be sufficient reason to be assumed to be a supporter of the opposition.<sup>1002</sup> More generally, it is evident that large parts of the population do not trust the military-controlled institutions in a context in which the rule of law has broken down, and would therefore not consider making a complaint to these authorities, including out of fear of facing reprisals for doing so.
- 518.** It has also been reported to the Commission that the military authorities concentrate on ongoing crises and armed conflict, relying on the police and the judiciary to pursue political opponents in the areas under their control, and leaving few or no enforcement agents available to address forced labour.<sup>1003</sup> This situation has led to what a witness

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<sup>998</sup> Witness 82.

<sup>999</sup> See above, Chapter 3, paras 98-104.

<sup>1000</sup> ILO, *Report of the Committee on the Application of Standards*, ILC, 108th Session, 2019, *Provisional Record* No. 5B (part two), pp. 213-226; CEACR – Myanmar, *observation*, C.29, 2021.

<sup>1001</sup> CEACR – Myanmar, *observation*, C.29, 2021.

<sup>1002</sup> Witness 38.

<sup>1003</sup> Witness 36; ICJ submission, March 2023.

called a “collapse of law enforcement efforts to tackle forced labour”.<sup>1004</sup> The personnel of public bodies and institutions, including labour inspectors, who had received capacity building and training on the elimination of forced labour, have been removed and some have been replaced by military personnel lacking this background. Various witnesses referred to corruption and the malfunctioning of the labour inspection services of the MOL. Factories are reportedly being informed of upcoming inspections and inspectors are reported to discourage workers from pursuing grievances.<sup>1005</sup> The military authorities, while stating that labour inspections continue to be carried out, have failed to make available any specific information on the results of inspection activities, including the violations detected and the remedies and sanctions imposed.<sup>1006</sup> In their July 2023 communication, the military authorities stated that from 2021 to May 2023, the MOL Factories and General Labour Laws Inspection Department received and settled 318 complaints through investigation, negotiation and consultation with workers and employers. The same communication indicates that the Anti-Trafficking in Persons Division investigated 23 cases of forced labour between January 2021 and June 2023 and that “the trafficked victims of the forced labour were rescued”, without providing any details of the results of the investigations, the charges brought and the sanctions imposed on the perpetrators.<sup>1007</sup> As noted above in paragraph 454, following the military takeover, the CTUM and the MICS-TUsF announced their withdrawal from national tripartite bodies, including the National Forced Labour Mechanism, which had been in existence since April 2020. On 1 April 2021, the military authorities restructured the National Committee to Implement the National Complaints Mechanims on Forced Labour.<sup>1008</sup> In their communications to the ILO since 1 February 2021, the military authorities have not provided any information on any specific action taken by the National Forced Labour Complaints Mechanism or any cases of forced labour detected, legal proceedings initiated, convictions handed down or the nature of the penalties imposed on convicted persons. In July 2023, the military authorities claimed that the National Complaints Mechanims had been operating continuously but without providing any details of the activities undertaken. However, they also acknowledged that the Mechanism had not received any forced labour complainants in 2021, 2022 or 2023.<sup>1009</sup>

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<sup>1004</sup> Witness 36.

<sup>1005</sup> Witnesses 18 and 39.

<sup>1006</sup> Permanent Mission, Note Verbale, 17 March 2023.

<sup>1007</sup> Permanent Mission, Note Verbale, 7 July 2023.

<sup>1008</sup> SAC, Notification No. 82/2021, Restructuring National Committee to Implement National Complaint Mechanism on Forced Labour, 1 April 2021.

<sup>1009</sup> Permanent Mission, Note Verbale, 17 March 2023.

## Chapter 8. The Commission's conclusions

**519.** Based on its findings of facts detailed in the previous Chapter, the Commission will now proceed to present its conclusions concerning the compliance by Myanmar with Conventions Nos 87 and 29. Its conclusions cover the military declaration of a state of emergency, civil liberties indispensable for the exercise of freedom of association, specific restrictions on the rights granted by Convention No. 87, the assessment of particular practices observed against the definition of forced labour in Convention No. 29 and Myanmar's obligation to suppress forced labour and ensure the enforcement of the applicable penalties.

### A. Conclusions concerning compliance with Convention No. 87

**520.** The Commission recalls that the principal objective of Convention No. 87 is to protect the autonomy and independence of workers' and employers' organizations in relation to the public authorities, in their establishment, functioning and dissolution. To assess Myanmar's compliance with the Convention based on the findings of facts detailed in Chapter 7, section B, above, the Commission addresses the civil liberties indispensable for the exercise of trade union rights, before assessing specific restrictions on the freedom of association rights established in the Convention. First, it however briefly elaborates on the link between State obligations under Convention No. 87 and the military-declared state of emergency in Myanmar.

**521.** The Commission clarifies that, while it has taken into account the broader situation of the country in assessing Myanmar's compliance with Convention No. 87 to offer a holistic understanding of the situation of freedom of association in the country, the Commission has refrained from pronouncing itself on purely political or societal matters that do not relate to the application of the Convention. Elements relating to the coup d'état and the current political, socio-economic and human rights situation that are not touched upon in this report should not be understood in any way as acceptance or condonation of such circumstances.

### Obligations under Convention No. 87 and the military-declared state of emergency

**522.** As previously indicated, the present proceedings concern a situation in which the military of a State subject to article 26 proceedings has declared a state of emergency. Therefore, in this section, the Commission recalls certain relevant principles that have been applied by the ILO supervisory bodies in relation to states of emergency.

**523.** Emphatically, Convention No. 87, unlike other international human rights instruments,<sup>1010</sup> does not contain any provisions allowing a ratifying State to derogate from its obligations under the Convention in times of public emergency. Nevertheless, the ILO supervisory bodies have accepted the adoption of certain measures affecting the application of the Convention during public emergencies on a strictly exceptional basis, and only in circumstances of extreme gravity and under the condition that they are limited in scope and duration to what is strictly necessary.<sup>1011</sup>

<sup>1010</sup> International Covenant on Civil and Political Rights, Article 4(1).

<sup>1011</sup> ILO, "Report of the Commission instituted under article 26 of the Constitution of the International Labour Organisation to examine the complaint on the observance by Poland of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), presented by delegates at the 68th Session of the International Labour Conference", *Official Bulletin*, Vol. LXVII, 1984, Series B, Special Supplement, para. 479.

- 524.** In this respect, the Commission underlines that a state of emergency declared by any authorities, irrespective of its constitutionality under national law, cannot constitute, as such, a justification for restrictions on the rights protected by the Convention. In accordance with accepted principles of international law, a State cannot rely on the terms of its national law or on the concept of national sovereignty to justify non-compliance with its international obligations.<sup>1012</sup> Instead, the established practice is for the ILO supervisory bodies to determine independently whether the circumstances invoked by a State justify a temporary exception from the application of freedom of association principles, when seized with such a plea, so that the State concerned is not allowed to be the sole judge of the issue.<sup>1013</sup> Since, in the present case, no Government of Myanmar has participated in the proceedings before the Commission and made such a plea, the Commission does not consider it necessary to further examine this question.
- 525.** Similarly, the Commission is not required to make a finding concerning the conformity of the state of emergency declared by the Myanmar military with the requirements of the 2008 Constitution. Therefore, it will not pronounce itself on this matter. However, it is fully within its mandate to examine the effects of the declared state of emergency on the application of Convention No. 87, which it will do throughout the present section of the report.

### Civil liberties indispensable for the exercise of freedom of association

- 526.** The Commission emphasizes that freedom of association rights granted under Convention No. 87 can only be exercised in a climate in which certain fundamental human rights and civil liberties are fully respected and protected. In this respect, the Commission has previously referred to the 1970 Resolution of the ILC concerning Trade Union Rights and Their Relation to Civil Liberties. The Resolution recognizes that the rights conferred upon workers' and employers' organizations must be based on respect for those civil liberties enunciated in the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) and stresses that the absence of those civil liberties removes all meaning from the concept of trade union rights.<sup>1014</sup> The Commission also recalls that the Resolution emphasizes the following civil liberties as essential for the normal exercise of trade union rights: (a) the right to freedom and security of person and freedom from arbitrary arrest and detention; (b) freedom of opinion and expression and in particular freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers; (c) freedom of assembly; (d) the right to a fair trial by an independent and impartial tribunal; and (e) the right to protection of the property of trade union organisations.<sup>1015</sup>

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<sup>1012</sup> ILO, "Report of the Commission appointed under article 26 of the Constitution of the International Labour Organisation to examine the complaints concerning the observance by Greece of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), made by a number of delegates to the 52nd Session of the International Labour Conference", *Official Bulletin*, Vol. LIV, 1971, No. 2, Special Supplement, para. 111 (subsequently "Report of the Commission of Inquiry (Greece)").

<sup>1013</sup> Report of the Commission of Inquiry (Greece), para. 108.

<sup>1014</sup> ILO, [Resolution concerning Trade Union Rights and Their Relation to Civil Liberties](#), ILC, 54th Session, 1970, para. 1.

<sup>1015</sup> ILO, [Resolution concerning Trade Union Rights and Their Relation to Civil Liberties](#), ILC, 54th Session, 1970, para. 2.

**527.** In light of the above, and as previous commissions of inquiry examining the observance of Convention No. 87 have done,<sup>1016</sup> the Commission assesses below the situation concerning civil liberties relevant to the exercise of freedom of association in the current national circumstances, both in terms of legislative amendments affecting their exercise and their application in practice.

#### Legislative amendments decreed by the military authorities considerably restrict the civil liberties necessary for the exercise of freedom of association

**528.** The evidence gathered by the Commission shows that many of the practices brought to the Commission's attention and assessed below have been directly enabled or facilitated by post-coup military promulgations made in respect of a number of key legislative provisions.

**529.** In particular, the Commission finds that the Penal Code (sections 121, 124-A, 124-C, 124-D, 505(a), 505-A) and the Code of Criminal Procedure have been amended to create, amend and expand provisions on high treason, sedition, public mischief, the spreading of false news and crimes against the defence services, which have resulted in the criminalization of a broad range of conduct directed at the defence services and have allowed, in some cases, arrests without a warrant. The Commission concludes that the above provisions, which are broadly worded, do not satisfy the test of legality and are subject to extensive interpretation and application. These provisions can and, as the Commission has repeatedly heard, have been used to criminalize freedom of expression and opinion, participation in public protests and legitimate trade union activities.

**530.** Amendments to the Law for Protection of Personal Privacy and Security of Citizens have suspended, for the duration of the state of emergency, the application of crucial sections of the Law that protected privacy and personal security, including protection against arbitrary searches and seizures of property, surveillance and interception of communications, as well as protection against detention in custody without the authorization of a court for more than 24 hours. The Commission considers, based on testimony to this effect, that the suspension of these protections has left the population, including trade unionists, extremely vulnerable to arbitrary abusive practices, including house searches, confiscation of property and arbitrary arrest. The attempt by the military authorities to justify such practices as "in line with the law" is untenable.

**531.** The Commission further finds that broadly worded amendments to the Penal Code, the Electronic Transactions Law, the Counter-Terrorism Law and the Television and Radio Broadcasting Law allow interference in communication channels, criminalize certain

<sup>1016</sup> ILO, "For national reconciliation and social justice in the Bolivarian Republic of Venezuela: Report of the Commission of Inquiry appointed under article 26 of the Constitution of the International Labour Organization to examine the observance by the Government of the Bolivarian Republic of Venezuela of the Minimum Wage Fixing Machinery Convention, 1928 (No. 26), the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Tripartite Consultation (International Labour Standards) Convention, 1976 (No.144)", 2014 (subsequently "Report of the Commission of Inquiry (*Bolivarian Republic of Venezuela*)"); ILO, "Truth, reconciliation and justice in Zimbabwe: Report of the Commission of Inquiry appointed under article 26 of the Constitution of the International Labour Organization to examine the observance by the Government of Zimbabwe of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98)", *Official Bulletin*, Vol. XCIII, 2010, Series B, Special Supplement; ILO, "Trade Union Rights in Belarus: Report of the Commission of Inquiry appointed under article 26 of the Constitution of the International Labour Organization to examine the Observance by the Government of the Republic of Belarus of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98)", *Official Bulletin*, Vol. LXXXVII, 2004, Series B, Special Supplement.

types of misinformation of the public and the spreading of false news and increase penalties for some pre-existing crimes. Cumulatively, these laws expand the grounds for State regulation of freedom of speech and have had a chilling effect on the population.

- 532.** The Ward or Village Tract Administration Law, with the newly introduced amendments, allows increased surveillance of population movements and house searches, while military orders prohibiting assemblies of more than five people in public areas practically prohibit any form of public assembly or demonstration.
- 533.** The newly adopted Registration of Associations Law prohibits a number of practices that could be interpreted as interference in the internal affairs of the State or as harming its sovereignty, law and order, security and ethnic unity, or supporting unlawful associations or persons and organizations designated as committing terrorist acts. While the Law should not be applicable to labour organizations, the above restrictions on the work of associations allow increased monitoring of their activities and can have a negative impact on their cooperation with trade unions and their members.
- 534.** The Commission also finds that the suspension of *habeas corpus* resulting from the declaration of a state of emergency, amendments to the Legal Aid Law, the application of martial law and the use of military courts in 48 townships, as well as radical changes of personnel in the Office of the Prosecutor and at various levels of the judiciary, including in the Supreme Court, have resulted in the removal of an independent judiciary and of due process of law, ultimately leading to a lack of protection against violations of labour rights and to an environment of fear. This is further elaborated below.
- 535.** With respect to the legislative amendments decreed since February 2021, the Commission observes that, according to the information provided by the military authorities to the ILO and its supervisory mechanisms, the amendments are aimed at maintaining the stability and peace of the State, national security, public safety and public order and at protecting the rights and freedoms of others during the period when the military is temporarily holding power but do not restrict the right to peaceful assembly and association. Nevertheless, on the basis of overwhelming evidence, the Commission is bound to conclude that the military promulgations made since February 2021 impose severe restrictions on a number of civil liberties crucial for the exercise of the rights set out in Convention No. 87. They enable and facilitate the abuse of rights, including the right to security and physical and moral integrity of the person, the right to be free from arbitrary arrest and detention, guarantees of due process of law, freedom of movement, the right of assembly and demonstration, freedom of opinion and expression and the protection of private property.

#### Right to life, security and the physical and moral integrity of the person

- 536.** The Commission has received detailed information and evidence of numerous instances of severe physical and verbal violence against trade union leaders and members, as well as their families, with observers attributing such acts mainly to the military authorities, the police or other actors under their direction or control.
- 537.** The Commission is particularly concerned at the reported instances of killings and deaths of trade union leaders and members. It observes that trade unionists have died in the context of violent suppression of public protests and demonstrations, while in hiding without access to medical treatment, in detention, during military raids or as a result of military attacks against the civilian population and infrastructure. The

Commission notes that the military authorities have previously provided information to the ILO on two of the deaths of unionists brought to the Commission's attention, indicating that one was not on the list of members of labour organizations and that the other died of injuries resulting from riot control measures. The Commission finds this uncorroborated information unconvincing. Equally worrisome is the fact that a number of unionists are reported to be missing following their arrest. Their whereabouts have been unknown for prolonged periods of time. The Commission emphasizes that killings and disappearances of trade union leaders and members, and the threat thereof, beyond the outright violation of the right to life and integrity of the concerned persons, can also completely paralyze the trade union movement as a whole and constitute a clear obstacle to the exercise of trade union rights.

- 538.** The Commission is deeply concerned at the abuse, torture and violent treatment to which many detained persons, including trade union leaders and members, have been subjected in interrogation centres and prisons. The Commission finds that the treatment has included heinous physical and mental violence, including violent beatings, electrocution and sexual violence, as well as the denial of basic necessities, such as food, clean drinking water, sufficient space and medicine. These conditions have led to the spread of COVID-19 and other diseases in prisons and sparked protests by detainees, including hunger strikes, against such horrific prison conditions. The Commission notes that the military authorities deny any form of mistreatment or abuse in detention and claim that detainees are treated in accordance with the law, are given medical treatment, food and water and are allowed to contact their families and lawyers. While the Commission takes this assertion into account, it considers that evidence collected does not support the military authorities' position and instead points to a widespread practice of abuse in detention. The Commission considers that such practices are the result of a lack of accountability of the concerned personnel. They have also been used as a systematic strategy to extract information from detained persons on networks of people and organizations that the military authorities consider to be their opposition, and have been used irrespective of whether or not the detained person has been involved in violent resistance. Trade unionists, teachers, doctors and human rights activists have been victims of these practices.
- 539.** Additional evidence presented to the Commission points to persistent intimidation, surveillance and harassment of trade union leaders and members, through arrest warrants, targeted house searches, tracking down, visits to family members, death threats and other threats made to them or their families. The Commission considers that such acts of intimidation and violence targeting trade unionists constitute a serious violation of freedom of association.
- 540.** In relation to the above, the Commission emphasizes, as repeatedly highlighted by the ILO supervisory mechanisms, that where killings and other forms of physical and verbal violence against trade union leaders and members occur, whether by persons belonging to the State apparatus or private persons, independent and timely investigations into such acts are imperative with a view to properly addressing such violations, establishing the facts, determining responsibilities and punishing the perpetrators and instigators, so as to avoid a climate of impunity and the occurrence of similar incidents in the future. Despite overwhelming evidence pointing to the occurrence of specific incidents of killings and physical and verbal abuse against trade unionists since February 2021, the Commission has not received any specific information on the investigations conducted into such incidents or on the sanctions imposed on the perpetrators. The summary information provided by the military

authorities to the ILO supervisory mechanisms does not contain details in this regard. In contrast, the information gathered by the Commission not only confirms that the military authorities themselves are the main perpetrators of these serious violations but also points to a lack of any genuine and meaningful investigation of the incidents, resulting in a prevailing climate of impunity, which contributes to the situation of extreme insecurity affecting trade unionists following the military coup.

- 541.** Based on the above, the Commission concludes that killings, disappearances and physical and verbal violence and abuse against trade unionists, due to the violent nature of such acts and in combination with apparent impunity for such violations, not only remove all possibility for the concerned trade union leaders and members to engage in legitimate trade union activities, but also create a general climate of fear and violence among trade unionists. Even those not directly targeted are terrified of the potential consequences of their union membership or activities on their life and security and that of their families. Such an environment constitutes a serious obstacle to the exercise of the freedom of association rights set out in Convention No. 87.

#### Arrest and detention of trade union leaders and members

- 542.** The Commission has gathered abundant and detailed evidence showing that, since the military coup, a large number of trade union leaders and members have been subjected to arrest warrants, arrests (with or without warrants) and detentions, while others are on the run and in hiding to ensure their safety. The Commission also notes the assertion of the military authorities that any measures taken against individuals violating the law was done without discrimination and that no detainee had been detained specifically for being a trade union leader or member.
- 543.** The Commission found, however, that in a number of cases, unionists have been arrested simply on the basis of their trade union membership or statements made by union leadership expressing support for the opposition. In other cases, they have been caught after having organized or participated in strikes or public protests, without any hint of violent acts on their part, or for voicing their opinions on social media. In some instances, unionists have been arrested during house or office raids or when raising labour rights issues with the management. Almost all reported arrests of trade union leaders and members have been made on the basis of criminal provisions amended by the military authorities since the coup. The Commission finds, on the basis of the information at its disposal, that none of the action taken by trade unionists went beyond legitimate trade union activities and should not therefore have given rise to arrests based on criminal charges. In this respect, the evidence points to a clear vulnerability of trade unionists to being considered as acting against the military or inciting criticism against the State Administration Council (SAC), which are newly established or amended criminal offences, when they are actually exercising legitimate trade union activities.
- 544.** Trade unionists who have not been arrested have been forced to flee and go into hiding due to the arrest warrants issued against them. Disturbingly, the Commission has found that arrests and detentions targeting trade union leaders and members have not been limited to them, but have also had disastrous effects on their families and, in particular, on their children. Family members of targeted individuals are at high risk of themselves being subject to abusive treatment, including arbitrary arrest and detention, as well as physical and verbal violence. Specific examples have been reported to the Commission indicating that family members, including children, have been arrested, taken hostage, tortured and killed. Beyond the threat to life and security, the children of unionists who



have had to flee have had to drop out of school for prolonged periods of time, with a serious impact on their education.

- 545.** The Commission considers that a situation in which trade union leaders and members are arbitrarily arrested and interrogated in connection with their union activities interferes directly with both their civil liberties and their trade union rights. In addition, it contributes to a climate of complete insecurity, affecting the whole trade union movement.
- 546.** Based on its findings of facts, and particularly the number of unionists arrested and detained, the circumstances of their arrest and their treatment in detention, the Commission concludes that there is currently in Myanmar a widespread practice of targeted arbitrary arrest of trade union leaders and members in relation to the exercise of legitimate trade union activities, mostly on the basis of criminal law provisions amended by the military authorities since the coup, the use of which serves to criminalize legitimate trade union activities. This practice is contrary to the right to freedom from arbitrary arrest and detention, acts as a deterrent to participation in future union activities and affects the whole trade union movement. In particular, it creates an environment in which any trade union activity, or even mere trade union membership, may be perceived by the military authorities as a threat to national peace and security, triggering the arrest, detention and criminal prosecution of trade unionists, and depriving them of their capacity to freely engage in union activities. The Commission therefore concludes that this environment amounts to severe and unjustifiable obstruction of the exercise of the rights set out in Convention No. 87.

#### Criminal prosecution of trade union leaders and members and guarantees of due process of law

- 547.** The Commission observes that most trade unionists who have been arrested have undergone criminal trials in civilian or military courts and have been sentenced to imprisonment and fines. Convictions appear to be predetermined before the trial, with the courts simply executing military orders. This is corroborated by testimonies indicating that all those charged under the amended section 505-A of the Penal Code have been convicted and raises concerns as to the independent and impartial nature of the courts and proceedings. In this respect, the evidence collected by the Commission points to an absence of the rule of law and a complete lack of an independent judiciary, with the military having placed the judiciary under its direct control. The military has replaced a large number of judges in high courts and the Supreme Court. Civilians, including trade unionists, have either been tried by civil courts, many of which have been moved inside prisons, or by military courts, especially in townships under martial law. The Commission observes that trials inside prisons, even if conducted by civilian courts, have a chilling effect on the accused, with only limited participation of family members. It has further observed a number of important irregularities in the conduct of trials, including prolonged proceedings, lack of access to counsel or limited communication with counsel, closed hearings or no right to produce witnesses. Lawyers and paralegals have also been intimidated, arrested and accused of committing similar crimes to the clients they represent, further impeding the conduct of fair trials. The Commission notes that, contrary to the information collected, the military authorities claim that trials are carried out publicly, with a few exceptions, and that the accused have a right to defence in accordance with the law and the right to appeal. They also put forward that judges visit prisons and detentions centres monthly to consult with prisoners about legal advice and jurisdiction matters.

- 548.** The Commission emphasizes in this respect that, where trade union leaders and members are arrested and subjected to criminal proceedings, it is imperative that they benefit from a rapid and fair trial by an independent and impartial tribunal which can guarantee due process of law, including access to a lawyer, free communication with counsel, the right to be present at the trial, the right to produce witnesses, etc. Importantly, they must be able to challenge the validity of the charges. These guarantees are especially crucial in cases where charges brought against trade unionists are for criminal or political offences, as they limit potential abuses in the proceedings.
- 549.** Based on the above, while noting the information provided by the military authorities, the Commission concludes that the judicial proceedings against trade union leaders and members on which information is available to the Commission did not present even the basic standards of a fair trial by an independent and impartial tribunal and lacked any guarantees of due process, contributing to an environment of complete insecurity. The Commission concludes that these shortcomings, taken together, unjustifiably undermine the exercise of freedom of association protected by Convention No. 87.

### Freedom of movement

- 550.** The Commission observes that the military authorities have proceeded to the cancellation of passports and citizenship of trade union leaders charged with newly introduced criminal offences for the exercise of their legitimate trade union activities. This has particularly been the case of members of the executive committee of the Confederation of Trade Unions Myanmar (CTUM), whose passports have been revoked, preventing them from leaving Myanmar, thus limiting free travel, including to international meetings and ILO events.
- 551.** Further to this direct restriction on the freedom of movement of trade union leaders and members, the Commission has also observed that, due to the climate of intimidation prevailing in the country and the targeting of unionists for arrest, large numbers of them are on the run and in hiding. They have been moving around the country in secret, without access to basic food and medical care. Many have been forced to leave the country without papers, in search of a safer place. They describe feeling oppressed and under surveillance. The military authorities have been following the movements of the population through security checkpoints in the streets and obligatory guest reports resulting from amendments to the Ward or Village Tract Administration Law.
- 552.** The Commission considers that trade unionists should be able to move freely in their country, leave it and return to it. Not being able to move around the country, or only doing so under the threat of arrest and criminal prosecution, in practice inhibits any meaningful participation in trade union activities. Restrictions on freedom of movement, especially in circumstances in which many unionists have been arrested or forced into exile, have serious repercussions on their ability to engage in trade union activities.
- 553.** The Commission concludes that the freedom of movement of trade unionists in post-coup Myanmar has been heavily restricted through both the cancellation of their passports and as a result of other measures put in place by the military authorities, seriously hampering their ability to engage in trade union activities and protect the interests of their members.

### Freedom of assembly and demonstration

- 554.** Public protests occurred on a large scale in response to the military takeover, with trade union leaders playing a crucial role in organizing workers to join workplace strikes and public demonstrations. These later turned into a nationwide movement with tens of thousands of participants. As freedom of assembly is a sine qua non for the exercise of freedom of association, the authorities should refrain from any interference which would restrict it or impede its lawful exercise. However, the evidence gathered by the Commission shows that, since February 2021, important restrictions on the freedom of assembly and demonstration have been put in place through a variety of measures taken by the military authorities.
- 555.** There is evidence of threats and intimidation of workers, including trade unionists, who wished to participate in public demonstrations, both by the labour authorities and by public sector employers. Witnesses have been pressured to continue to work and not to join the Civil Disobedience Movement (CDM), either through administrative directives or pressure from their superiors, sometimes under the threat of a sanction and, in some cases, they have not been allowed to leave offices until they signed a statement committing not to participate in demonstrations. The military authorities confirmed that they have been issuing public announcements encouraging civil servants to return to work and report that any directives issued simply constitute reminders of workplace discipline and not to get involved in political instigation. However, the Commission is of the opinion that the above measures have negatively affected the freedom of workers and unionists to choose whether or not they wish to participate in public demonstrations.
- 556.** Furthermore, the Commission has found that those who did participate in the CDM, the majority of whom are civil servants, have been subjected to punitive measures, including suspension, dismissal, monitoring, searches and house raids. They have had their professional licences revoked, have been publicly shamed, beaten, arrested, interrogated, detained and tortured. They have also been removed from housing, prevented from taking up new employment and, if they have returned to work, have faced repercussions, including demotion, transfer to new workplaces, withdrawal of benefits and non-payment of wages. The Commission will not pronounce on whether any disciplinary penalties imposed on workers and unionists for their participation in public demonstrations were, in specific cases, well-founded under national law. Nevertheless, the Commission considers that the massive scale and harshness of the above measures (public shaming, monitoring, arrests, interrogations, beatings, torture, house raids) go well beyond what can be accepted as lawful punitive measures for non-compliance with national law or workplace disciplinary rules. This leads the Commission to conclude that the treatment received by CDM participants, including trade unionists, constitutes a complex pattern of measures designed to dissuade workers from and sanction them for participating in public demonstrations, considerably hindering freedom of assembly and demonstration.
- 557.** The Commission further finds that, in addition to the above measures to dissuade or penalize workers for participating in the CDM, workers' protests in opposition to the military takeover have also been harshly suppressed, using tear gas, water cannons, live ammunition, military weapons and lethal violence against protesters. The Commission acknowledges that its mandate does not extend to a general assessment of possible broad human rights violations stemming from the harsh suppression of pro-democracy protests. Nevertheless, it is within its mandate to examine these facts to the extent that they have a bearing on the application of Convention No. 87 and, in particular, on the

lives and safety of trade unionists, as well as the ability of trade unions and their members to engage in trade union activities.

- 558.** The Commission observes in this respect that, according to the majority of sources, the initial strikes and demonstrations, as well as later widescale protests, were largely peaceful, with only some participants using home-made weapons against the police and the military. Contrary to these assertions, the military authorities claim in their communications to the ILO and its supervisory mechanisms that the initially peaceful protests turned into riots, anarchy and acts of terrorism, with considerable damage to public property, obliging the security forces to intervene. They maintain that the security forces acted in line with the law and did not use excessive force. While it lacks evidence to find that there was no violence by protesters, and emphasizing that participants in public demonstrations must strive to respect law and order, the Commission observes that, even though the vast majority of public gatherings brought to the Commission's attention were peaceful, they were nevertheless countered with the use of force, including lethal force, by the security forces. Of particular concern are the official announcements made on national television warning protesters that they could be shot in the head or back. In these circumstances, the Commission can only deplore all acts of violence occurring in the context of the nationwide pro-democracy protests and their suppression, and expresses its deepest concern that such violence has led to the death of thousands of people, including trade unionists, and to serious injuries of many others.
- 559.** In this respect, the Commission emphasizes that, while Convention No. 87 does not provide immunity to trade union leaders and members for acts contrary to national law and regulations, such as acts of violence against persons or property, it provides that the law should not impair or be so applied as to impair the guarantees provided for in the Convention.<sup>1017</sup> It is essential that security forces are only allowed to intervene in public protests and demonstrations when there exists a serious threat to law and order or to the life and security of the population. Any use of force must be strictly proportional to the danger faced. To avoid excessive use of force in controlling demonstrations, all relevant actors (the police, the military and other security forces) should receive regular and adequate instruction and training on the modalities of the use of force in such situations in accordance with international standards.
- 560.** Further to the suppression of protests and demonstrations and the sanctions imposed, the military authorities have adopted additional measures to limit assemblies in public spaces to five people and to penalize violations. Although the military authorities confirmed that such measures were, in some areas, necessary for security and law enforcement, they maintained that the MOL has not issued any regulations aimed at prohibiting workers from gathering in groups of more than five people or which would cause a distraction to trade union meetings and activities. However, the Commission found that, this limitation, together with heightened surveillance and random security checks in the streets, effectively prohibit public protests and discourage union participation in such events, even though the military authorities claim that workers can exercise their rights to peaceful procession, assembly and association. It has also had a direct effect on the activities of trade unions as they have no longer been able to organize workers, conduct awareness-raising sessions, training or engage in other trade union activities in public spaces.

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<sup>1017</sup> Convention No. 87, Article 8.

**561.** In light of the above, the Commission is bound to conclude that freedom of assembly and demonstration, as an enabling right for freedom of association allowing unions to defend the occupational interests of their members, has been severely restricted in post-coup Myanmar, both as a result of the violent suppression of public demonstrations and other measures taken by the military authorities against participants in such demonstrations.

### Freedom of opinion and expression

**562.** The evidence before the Commission shows that the current situation of freedom of opinion and expression in Myanmar is very delicate. There are a number of legislative amendments penalizing certain activities relating to the expression of views and opinions and imposing heavy penalties. In addition, the evidence shows heightened surveillance of social media accounts, internet shutdowns and censorship of publications. These restrictions directly affect trade union leaders and members. The Commission further finds that arrest warrants and criminal charges made against trade unionists are often based on public statements, whether oral or written, which are considered by the military authorities to be spreading false news, inciting hatred, as acts of terrorism or as acts aimed at hindering the work of the defence forces. In the specific case of the CTUM, the military authorities indicated that one of the reasons for the arrest warrants issued against its leadership was that the Confederation made public statements expressing support for the government elected in November 2020, the National Unity Government (NUG) and the Committee Representing Pyidaungsu Hluttaw (CRPH), opposing the military takeover of the country and calling on people to join the CDM.

**563.** The Commission emphasizes that freedom of opinion and expression are essential to the exercise of the rights guaranteed by Convention No. 87. Trade unions and their members should be free to voice their opinions on matters of interest to them, including issues of socio-economic policy, as long as such pronouncements are within the limits of non-violence and propriety. The authorities should refrain from restricting this right. This also entails the right not to be penalized for expressing one's views and opinions in the exercise of trade union rights, either in trade union publications, during union meetings or during the course of other trade union activities, including through social media. The accusations advanced by the military authorities against the CTUM statements are levelled against their political character. The Commission is bound to point out that, due to the overlap that may exist between political matters and issues of a strictly trade union character, it is inevitable for trade unions to express opinions on certain matters of a political character.

**564.** Based on the evidence presented to it, the Commission concludes that all of the above action taken by the military authorities has severely restricted the freedom of opinion and expression of trade unionists, unduly affecting their trade union activities.

### Protection of trade union premises and property

**565.** While the military authorities assert that there have been no raids on union offices, sealing of offices or confiscation of trade union property, the Commission observed, on the basis of the information available to it that, on several occasions, the military authorities have engaged in targeted attacks on trade union premises and property. These have included raids and the ransacking of trade union offices, the confiscation or destruction of union property, including phones, IT material, documents, books, furniture and other items, as well as the closure of offices and the confiscation of keys.

These attacks have targeted the CTUM and several trade union federations, but have also included basic level organizations.

- 566.** The Commission emphasizes in this respect that the inviolability of trade union property and premises is essential to the enjoyment of freedom of association and that such property and premises must be duly protected against arbitrary entry by the police or military forces, due to the negative impact that such interference may have on trade union activities. The Commission also considers that any such interference in trade union premises and property should be subject to an independent judicial review to prevent potential abuses.
- 567.** The Commission considers that the context and the manner in which the military authorities have entered and closed union offices and destroyed trade union property indicates that these acts are not only in breach of the principle of the inviolability of trade union premises and property, and constitute serious interference in trade union activities but also contribute to an environment of heightened insecurity and threats against trade unions and their members. In addition, the unions affected have not had effective access to independent justice and remedies against such actions.

#### Conclusions with respect to civil liberties indispensable for the exercise of freedom of association

- 568.** The interconnected nature of trade union rights and civil liberties is manifest. In light of the evidence, the Commission concludes that the measures imposed by the military authorities following the military coup, both legislative promulgations and the action taken in practice by the military, the police and the administrative authorities under their control, have had a disastrous impact on the exercise of basic civil liberties, which are essential to the enjoyment of the freedom of association rights protected by Convention No. 87, leading to a situation in which freedom of association in post-coup Myanmar is non-existent. The Commission concludes that trade union members and leaders are being killed, arbitrarily arrested, subjected to sham trials, convicted, detained, abused and tortured, threatened, intimidated, subjected to surveillance, forced into exile, deprived of their basic civil liberties and oppressed at the workplace due to their trade union membership and activities and that their families, including children, are subjected to similar treatment. They are unable to organize workers, register their unions, communicate between each other, represent workers in labour disputes, conduct training activities or meaningfully engage in any other union activities. This persistent oppression of trade unionists – specifically targeting the leaders of the country's only trade union confederation and the main federations – has resulted in their quasi-total incapacity to continue to engage in trade union activities and protect the interests of their members. The lack of access to rapid and independent remedies has further contributed to curtailing trade union activities.
- 569.** In light of the above, the Commission concludes that there are severe impediments to the right to life, security and the physical and moral integrity of the person; freedom from arbitrary arrest and detention; freedom from cruel and inhumane treatment; the right to a fair trial and due process of law; freedom of movement; freedom of assembly; freedom of opinion and expression; and the protection of the private property of trade union leaders and members.
- 570.** In the current circumstances, due to the serious and far-reaching restrictions on the basic civil liberties that are a sine qua non for the exercise of freedom of association, and the lack of available remedies, the Commission concludes that the rights set out in

Convention No. 87 cannot be freely exercised in Myanmar. Accordingly, the measures threatening and curtailing the enjoyment of such basic civil liberties taken or ordered by the military authorities following their takeover in February 2021 are in violation of Myanmar's obligations under the Convention.

### Specific restrictions on the rights set out in Convention No. 87

- 571.** The Commission now turns to assessing a range of measures taken by the military authorities in light of the Convention's requirements. In this respect, the Commission recalls the aspects of the Convention that are the most relevant to the present case. Article 2 of the Convention provides for the right of workers and employers, without distinction whatsoever, to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without previous authorization. Under Article 10 of the Convention, the term organization means any organization of workers or of employers for furthering and defending the interests of workers or of employers. Article 3 provides for the right of workers' and employers' organizations to draw up their constitutions and rules, to elect their representatives in full freedom, to organize their administration and activities and to formulate their programmes. It also prohibits any interference by the public authorities which could restrict or impede the lawful exercise of this right. Under Article 4, workers' and employers' organizations may not be dissolved or suspended by administrative authority.
- 572.** The Commission further notes that, in accordance with Article 1 of Convention No. 87, each Member of the ILO for which the Convention is in force undertakes to give effect to its provisions. Article 11 adds that Members of the ILO for which the Convention is in force must undertake to take all necessary and appropriate measures to ensure that workers and employers may exercise freely the right to organize.

### Article 2 of the Convention – Right of workers to establish organizations without previous authorization

- 573.** The Commission has received evidence indicating that measures are being taken, both by the labour authorities and by private and public sector employers, to put into question and challenge the establishment and functioning of labour organizations at all levels.
- 574.** In particular, the Commission has observed challenges with respect to the registration of trade unions. Evidence shows that the registration process has been stalled, with many organizations waiting to obtain registration and reports suggesting that this is a purposeful strategy by the military authorities to disable the functioning of trade unions. It has also been demonstrated that labour officers require bribes to provide union registration, ask trade unions to re-register and discourage the formation and registration of labour organizations, and that employers have offered bribes to prevent union registration. The Commission further observes that the labour authorities have exerted pressure on trade unions to return their "form 7", which acts as proof of registration, often under the threat of security risks to the union leadership. The military authorities refuted this allegation claiming that the MOL has not requested any organization to return its "form 7". Furthermore, the Commission observed that organizations which are not registered in accordance with the law can be banned at any time and cannot benefit from the services of labour offices. The situation is further compounded by the lack of any functioning independent appeal procedure to which trade unions could resort in order to contest restrictions on the registration process and challenges encountered in practice by workers who wish to organize.

- 575.** Restrictions on the formation and registration of trade unions have also been reported in the private sector, where trade unionists have been monitored and pressured by managers, threatened with denunciation to the authorities, dismissed or discriminated against, ultimately resulting in the inability of workers to organize and form trade unions, or to their unions being dismantled. Instances have also been reported of employers withdrawing trade union recognition.
- 576.** The Commission considers that registration is an essential aspect of trade union functioning as it may grant the concerned organizations specific rights and privileges under the legislation. However, the exercise of legitimate trade union activities should not be dependent upon registration and should, in any case, not be penalized. It also follows from Article 2 of the Convention that the procedures and formalities for the establishment of trade unions should not restrict or prevent the establishment of workers' organizations. Accordingly, an overly burdensome registration procedure or one with considerable delays constitutes a serious obstacle to the establishment of organizations without previous authorization. Importantly, all administrative decisions concerning registration should be open to an appeal procedure to impartial and independent courts.
- 577.** From the information at its disposal, the Commission concludes that there currently exist serious practical obstacles to the establishment of workers' organizations without previous authorization, including a lengthy registration procedure, the use of bribes to discourage registration or for registration, pressure from the labour authorities to return registration certificates, an environment of union-busting in the private sector and a lack of recourse to independent authorities to challenge restrictions on registration. The Commission accordingly concludes that the actions taken by the military authorities that limit the enjoyment of the right to establish organizations without previous authorization, as established in Article 2 of the Convention, are contrary to the obligations of Myanmar and impede the Convention's effective application.

### Article 3 – Right of organizations to elect their representatives in full freedom

- 578.** The Commission has found a widespread practice of repetitive requests to trade unions to submit the lists of their members and information on their leaders (names, contact details, home addresses) despite their ongoing mandates and under the threat of cancellation of registration. Unions at all levels have been required to do so, some every few weeks, and in some instances reported to the Commission, a union's registration certificate has been cancelled after its refusal to submit the names of union leaders. The Commission observes that the military authorities have openly and publicly talked about the need for the re-election of the executive committee members of organizations that exceeded their mandate, as well as the need to discuss the use of funds, with particular reference to the CTUM, and have urged the holding of an election of its leadership. The Commission finds that repetitive inquiries about union membership and leadership, as well as urging the election of union leaders, are interlinked matters that fall within the scope of Article 3, which protects the right to elect representatives in full freedom.
- 579.** With regard to queries by the authorities about trade union membership and leadership, the Commission considers that, while it is acceptable for some information on trade union leadership to be provided to the labour authorities at the time of union registration, the election of its leaders or other changes in the union's management, repetitive requests to trade unions to disclose the names and contact details of their members and leaders, including during their ongoing mandates, amounts to undue



monitoring of union leadership, contributes to an environment of insecurity and considerably restricts the freedom of unions to elect their leaders. Especially in circumstances where a number of unionists have been arrested and criminally prosecuted, the requirement for unions to disclose detailed personal information of their members and leaders could expose them to reprisals.

- 580.** With regard to public statements by the authorities urging the re-election of union leadership, the Commission points out that the authorities should refrain from any form of interference in the functioning of worker's organizations, including in relation to the election of union leadership. In particular, any encouragement or promotion of changes in union leadership could be interpreted as direct interference in the right of unions to elect their leaders freely. Taking this into account, the Commission considers that, while it may be legitimate and appropriate for national legislation to require the proper conduct of the election process for trade union leadership, and noting that since the military coup a number of mandates of trade union leaders have expired, thus requiring re-election, the Commission cannot accept the invocation of such provisions by the military authorities when their own actions actually impede union functioning and administration, including the holding of elections.
- 581.** In light of the above, the Commission concludes that, in the present circumstances, through a number of measures, the military authorities have interfered in the freedom of unions to elect their leadership, including in the particular case of the CTUM. These practices amount to interference contrary to Article 3 of the Convention.

### Article 3 – Right of organizations freely to organize their administration and activities and to formulate their programmes

- 582.** The Commission observes that the measures adopted against unions and their members have often been set in a politicized discourse, with the military authorities claiming that public statements or participation in public protests threaten national peace and security, cause disturbances of public order or support the opposition, which are considered by the military authorities to be terrorist organizations. In this connection, the Commission is bound to recall from the outset that, while the main role of workers' organizations is to promote the occupational interests of their members, it has generally been accepted that unions can engage in some political activities related to the defence of the occupational interests of their members, such as expressing publicly their opinion regarding the country's economic and social policy, taking a stand on questions having political aspects or expressing support for a political party considered more able to defend the interests of their members, without however engaging in political activities in an abusive manner or going beyond their true functions by promoting essentially political interests. The Commission also finds it important to emphasize that the trade union movement should not be used or misused by the authorities as an instrument for the pursuance of their own political aims, as this can constitute interference with trade union functions and activities.<sup>1018</sup>
- 583.** Taking this into account, the Commission considers that, in the current circumstances in the country, it is difficult to clearly distinguish what actions are of a purely political nature and what actions fall squarely within trade union activities. This is especially true as the general political situation and the measures taken by the military authorities in pursuance of the military takeover have direct implications not only on the lives and

<sup>1018</sup> ILO, [Resolution concerning the Independence of the Trade Union Movement](#), ILC, 35th Session, 1952, para. 6.

safety of trade unionists, but also on their ability to engage in trade union activities, thus making these matters of direct union interest. Accordingly, while emphasizing that the main objective of trade unions is to defend and advance the economic and social interests of their members, the Commission concludes that making public statements in support of the opposition, calling for the transition to a democratic society and criticizing measures taken by the military authorities, as well as expressing support for workers and their labour rights, fall within the scope of legitimate trade union activities protected by Convention No. 87, especially within the current context in Myanmar where, as a result of the measures taken by the military authorities since the February 2021 military coup, trade unions across the country and at all levels are unable to function.

- 584.** The Commission has further observed a number of obstacles to trade union activities in the private sector, as well as a lack of access to rapid and independent remedies in this regard. In particular, numerous witnesses have reported difficulties in collecting union dues, indicating that unions are often accused of collecting funds for the Peoples' Defence Forces (PDFs). The Commission has also observed a common practice of establishing yellow unions so as to show that factories support trade unions and to prevent the emergence of genuine worker representation. Workers are then obliged to join and pay union dues. Further issues noted by the Commission concern the preference of management to deal with workplace coordination committees instead of existing trade unions, as well as the formation of such committees without consulting the workers, or even appointing worker representatives, all of which result in a lack of genuine worker representation in workplace coordination committees and undermine the role of trade unions. The Commission finds it important to clarify that, while such employer interference in the internal affairs of trade unions is a matter covered by Convention No. 98, which has not been ratified by Myanmar and is outside the Commission's mandate, actions and omissions by the military authorities play a decisive role in this regard, for which reason the Commission is raising these issues under Convention No. 87. In particular, it considers that the measures taken by the military authorities since the coup have not only condoned, in the public eye, such behaviour by employers, but have also enabled restrictions on the right of trade unions to freely organize their administration, activities and programmes, thus weakening their already fragile situation in the country. Even though the military authorities claimed that workplace coordinating conciliation bodies were functioning, the Commission found that there was, in practice, a lack of access to effective remedies which could address and solve such workplace issues, and particularly independent and impartial courts, labour inspection and other dispute settlement mechanisms. This further highlights the practical obstacles to trade union activities.
- 585.** Furthermore, the Commission has observed limitations on the right to strike. In the first place, the military authorities have prohibited public assemblies of more than five people, thus imposing restrictions on demonstrations and workers' strikes in public areas. In private workplaces, including in the garment sector, workers have been discouraged from taking collective action to raise labour rights violations, as managers have kept lists of strike participants and threatened to call in the police or the military. In other instances, workers who have complained to the labour authorities about workplace violations have been threatened with being arrested if they organize protests. In several cases reported to the Commission, the military or the police have intervened to break up workplace strikes that posed no threat to the public order, and strike organizers and participants were beaten or arrested. In one recent incident brought to the Commission's attention, trade unionists and labour activists who

organized a strike in a garment factory were arrested and charged with incitement under section 505(a) of the Penal Code (a newly introduced provision on crimes against defence services or government employees), despite not having made any political demands and only attempting to negotiate higher wages. The Commission has also noted that much of the interference by the military authorities in strikes, labour disputes and trade union activities has occurred in industrial zones covered by martial law, where there is a complete lack of guarantees of due process. Such interference has also been enabled and facilitated by the declaration of a state of emergency and the introduction of new crimes allowing the arrest of workers without arrest warrants, as elaborated above. On the basis of the information provided, the Commission concludes that the threats and repercussions of engaging in workplace strikes and protests have, in practice, discouraged workers from taking collective action.

- 586.** In this respect, the Commission is bound to point out that any intervention by the security forces in situations of strikes by workers should be strictly limited to ensuring public order. The use of the security forces for other purposes, and in particular to disperse a peaceful workplace strike, constitutes interference in trade union affairs. Furthermore, it must be emphasized that in no case should penal sanctions be imposed simply for having organized or participated in a peaceful strike. Based on the evidence received, the Commission concludes that the right to strike, as an essential means for workers to defend their interests, has been severely limited since the coup, both as a result of military orders restricting assemblies of more than five persons in public spaces and because of the significant risks and repercussions faced by strike participants, contrary to Article 3 of Convention No. 87.
- 587.** Finally, the Commission considers that, in addition to the above issues, the right of workers' organizations to freely organize their administration, activities and programmes is further inhibited by the climate of violence and intimidation of trade union leaders and members, resulting from their persistent stigmatization and prosecution. It is evident that trade unions whose members and leaders are in hiding or in detention, who are threatened, intimidated, monitored and have access to only limited channels of communication, as well as those workers' organizations with offices that have been raided and sealed off, cannot freely engage in trade union activities in defence of their members' interests.

#### Article 4 – Dissolution and suspension of organizations

- 588.** The Commission has already addressed above the requests made by the military authorities to unions to return their registration certificates ("form 7") in relation to Article 2 of the Convention (see above, paragraphs 573-577). However, this practice also raises issues under Article 4 of the Convention, as the cancellation of registration, in the present circumstances, implies serious consequences with an effect tantamount to administrative dissolution or suspension.
- 589.** Furthermore, the Commission notes that the military authorities have declared 16 trade unions and civil society organizations as not being registered legally in accordance with the Labour Organization Law (LOL) (see above, paragraph 434). While the military authorities have claimed in communications to the ILO supervisory mechanisms and in the national media, that this does not amount to having declared these organization "illegal", several of their own public pronouncements do refer to them in such terms. Irrespective of whether or not these organizations have been declared illegal, the announcement declaring them not registered in accordance with the LOL, especially in view of the actions taken or threatened against them in this connection, have in practice

resulted in these organizations no longer being able to carry out their activities in the defence of workers' rights.

- 590.** The Commission emphasizes that, in accordance with Convention No. 87, workers' and employers' organizations shall not be liable to be dissolved or suspended by administrative authority. Where administrative authorities impose such measures – which involve a serious risk of arbitrary interference in the existence and activities of organizations – they must be accompanied by effective judicial safeguards including, importantly, the right to appeal to an independent and impartial tribunal.
- 591.** The Commission concludes that the above practices, insofar as they concern trade unions, amount to the administrative suspension or dissolution of the respective organizations, which cannot be challenged through any independent procedures, and is not therefore in conformity with Article 4 of the Convention.

### Conclusions with respect to specific restrictions on the rights set out in Convention No. 87

- 592.** Based on the evidence received, the Commission finds that unions in post-coup Myanmar are being asked to return their registration certificates and to re-elect their leadership, they are unable to collect union dues and have to compete with yellow unions and employer-supported workplace coordination committees. Workplace strikes are dispersed by the police or the military, strike participants are threatened and arrested and there are no independent and impartial remedies for labour rights violations.
- 593.** In these circumstances, the Commission concludes that the various measures imposed by the military authorities, including the labour authorities under their control, in combination with the climate of complete insecurity and constant threats to trade union leaders and members, result in far-reaching restrictions on the specific trade union rights set out in Convention No. 87. These include restrictions on the right to establish workers' organizations without previous authorization (Article 2), the right to elect union representatives in full freedom, the right to freely organize their administration and activities and to formulate their programmes (Article 3) and the right not to be suspended or dissolved by administrative authority (Article 4). Accordingly, the Commission concludes that the above actions by the military authorities violate Myanmar's obligations under Convention No. 87 and impede the Convention's full and effective application in law and practice.
- 594.** The Commission emphasizes that, while it has focused in its mandate on the situation of freedom of association in Myanmar following the 2021 military coup, it is of the opinion that, to ensure full compliance by Myanmar with the Convention, measures also need to be taken, once the country has returned to democratic institutions and processes, to address the legislative and other matters pending before the CEACR, which has for a number of years been making specific recommendations concerning labour law reform in the country.

### B. Conclusions concerning compliance with Convention No. 29

- 595.** States for which Convention No. 29 is in force are under the obligation to suppress forced or compulsory labour in all its forms (Article 1(1)), to make its exaction punishable as a penal offence, and to ensure that the penalties provided for by law are really adequate and are strictly enforced (Article 25). Article 2(1) of Convention No. 29 defines the term "forced or compulsory labour" as all work or service which is exacted from any person under the menace of any penalty, and for which the said person has not offered himself

voluntarily. Article 2(2), paragraphs (a) to (e), exclude certain forms of compulsory “work or service” from the definition of “forced or compulsory labour”, thus excluding these forms of work or service from the scope of the Convention.

- 596.** For the purpose of arriving at a conclusion as to the compliance by Myanmar with its obligations under Convention No. 29, the Commission must first assess whether any of the practices that the Commission has found to exist, as set out in Chapter 7, Section C, above, fall within the scope of the definition of “forced or compulsory labour” contained in Article 2 of the Convention. It will then examine Myanmar’s compliance with its obligations under Articles 1 and 25 of the Convention.
- 597.** The Commission recalls that the Myanmar military declared a state of emergency on 1 February 2021. As established above in relation to Convention No. 87, the Commission considers that it is not necessary for it to examine the constitutionality of the military-declared state of emergency, but that it must assess its effects on the application of Convention No. 29.
- 598.** Similarly to Convention No. 87, Convention No. 29, which is also one of the ILO’s fundamental Conventions does not contain a general derogation clause that would allow ratifying States to derogate from its obligations in the event of a public emergency, as can be found in other international human rights instruments.<sup>1019</sup> However, one exception to the forced labour definition set out in Article 2(2)(d) of the Convention concerns work or service exacted in cases of emergency. This exception is subject to specific conditions, and it is for the Commission to assess whether any compulsory work or service can be excluded from the scope of the Convention by virtue of this provision. While this clause has not been invoked before the Commission, it will nevertheless assess its applicability should the need arise in light of the facts established.

### Assessment of particular practices against the definition of forced or compulsory labour contained in Article 2 of the Convention

#### Labour exacted by the Myanmar military in the context of armed conflict

- 599.** The Committee finds, on the basis of the evidence gathered, that the Myanmar military and associated armed forces continue to rely on local populations to perform work or services in the context of the armed conflict and military activities (see above, paragraphs 475-496). The types of work or services required from local residents and the circumstances under which they are exacted have been evolving with the nature and the extent of the conflict. Military interventions on the ground are no longer solely designed to obtain and maintain territorial control over areas dominated by ethnic-based political movements seeking greater autonomy, and their armed organizations. Since its takeover on 1 February 2021, the army’s objectives, strategies and tactics have also been aimed at eradicating all political forces opposed to the military, including armed groups associated with them.
- 600.** As a result, the military is resorting to indiscriminate artillery and air strikes, as well as burning down villages, leading to a massive displacement of the population. One witness reported that, because of such attacks and displacement, in certain areas there is no one left who could be subjected to forced labour. However, in areas with military presence on the ground, there is a permanent threat of labour exacted by the military, which often leads young men to hide outside their villages so as to avoid encounters

<sup>1019</sup> ICCPR, Article 4(1).

with the military which could end up with them being forced to serve as porters. Indeed, the evidence gathered shows that one of the main aspects of the work or services exacted by the military is the use of civilians for portering. Where no men are found in villages, the troops call up women to perform work or services for them. The Commission has found that local residents are being ordered verbally to accompany troops as porters or guides, and that they are picked up randomly when the troops pass through villages or along roads and fields. In other instances, troops verbally order local administrators to identify or assemble a certain number of residents to provide these services to the military.

- 601.** Many of the accounts received attest to extreme brutality and violence against the local population, including accounts by residents from whom forced labour has been exacted. Many of them have been beaten, tortured or killed. People who refuse to perform the work ordered face a high risk of being accused of supporting the opposition and being killed on the spot. While the Commission has not received direct evidence or testimony concerning cases of gender-based violence, the findings and information reported by the relevant UN bodies point to women being subjected to such violence in the context of portering, guiding or other services provided to the military (see above, paragraph 473).
- 602.** Oral testimony heard by the Commission, written submissions and other documentary materials indicate that villagers serving as porters or guides are also being used by troops as “human shields”, or that villagers are being taken hostage to serve as human shields without being asked to perform any other work. Soldiers also force local residents to provide transportation services using their private civilian vehicles, in particular to transport soldiers or their equipment and materials from one place to another. Such transportation services not only support military operations, but may also be intended to shield soldiers from being attacked. The services exacted by the military from the local population include labour for camp construction and maintenance, domestic work in camps, as well as the provision of food and accommodation. As in the case of portering and guiding, local residents are at serious risk of punitive action by the military if they refuse to perform the above services or labour.
- 603.** Due to the relative calm in Rakhine state resulting from an informal ceasefire agreement between the Myanmar military and the Arakan Army, the practice of forcing local residents to serve as porters is believed to be less prevalent in that part of the country. However, the Commission has found that the Myanmar military continues to use members of the Rohingya community, including children, to perform other types of labour, including for cultivation, the construction and maintenance of camps or fortifications, and the collection of natural resources. Penalties are imposed in various ways for non-performance of the work requested, including the extraction of money or denying access to forests for the collection of natural resources for self-sustenance.
- 604.** The Commission recalls in this respect that the report of the 1998 Commission already pointed to the particular vulnerability of the Rohingya to being subjected to forced labour practices. Subsequently, the Independent International Fact-Finding Mission on Myanmar (IIFMM) has confirmed the continuing existence of a pattern of abusive practices, including forced labour, to which the Rohingya are subjected. Based on the information gathered, the present Commission can only conclude that the factors underpinning this vulnerability and fomenting the exaction of forced labour from the Rohingya have remained the same. The Rohingya continue to be marginalized and discriminated against based on their religion and ethnicity, including with regard to access to citizenship as a result of the Citizenship Act 1982. They face restrictions on

their freedom of movement and lack equal access to protection under the law. Furthermore, Rohingya women are exposed to intersectional discrimination based on gender, religion and ethnicity, including gender-based violence and harassment.

- 605.** In light of the above, the Commission concludes that the practices described in paragraphs 600 to 604 above constitute “work or service” within the meaning of Article 2(1) the Convention, that they are exacted by the military under the menace of a penalty and that the persons subjected to such labour do not offer themselves voluntarily. The Commission emphasizes in this regard that the 1998 Commission held that the work or services described above, which also formed part of its findings, did not fall within any of the exceptions clauses set out in Article 2(2) of the Convention.<sup>1020</sup> For this reason, the Commission does not consider it necessary to re-examine this question, as the circumstances and modalities under which labour is exacted have not changed substantially. The Commission therefore concludes that none of the above practices fall within the scope of Article 2(2)(d) or any other of the exceptions clauses set out in Article 2(2) of the Convention.
- 606.** The Commission also acknowledges that, based on the evidence and information before it, it is not in a position to assess the precise extent to which forced labour is being exacted from the local population in the context of armed conflict in all areas of the country. However, it considers that the widespread and systematic use of such forced labour that has been found to exist by the IFFMM continues to persist and has intensified given the spread of the armed conflict into large parts of the country.<sup>1021</sup>

#### Recruitment into the military or associated militias and participation in military training

- 607.** As provided in Article 2(2)(a) of Convention No. 29, “any work or service exacted in virtue of compulsory military service laws for work of a purely military character” does not constitute forced or compulsory labour under Convention No. 29. The Commission notes that the Peoples’ Military Service Law issued in 2010 by the then State Peace and Development Council establishes a duty to perform compulsory military service for all Myanmar citizens, women and men who have reached 18 years of age. Nevertheless, the Commission is not aware of any implementing regulations, by-laws, procedures, announcements, orders or directives issued as required under section 32 of that Law to put compulsory military service into practice. Furthermore, the Commander-in-Chief has made a statement that the Commission understands as an indication that the Law has not yet been implemented (see above, paragraph 491). It thus appears that Myanmar is not operating a system of conscription on the basis of compulsory military service legislation. The Commission infers from this that citizens are not called up to perform military service and therefore the exception clause contained in Article 2(2)(a) does not apply. As far as recruitment into the Myanmar military forces is concerned, such recruitment therefore has to be on a voluntary basis and without the menace of any penalty in order to be in conformity with the Convention.
- 608.** As the Commission has not received sufficiently detailed information or direct evidence concerning specific incidents of forced recruitment into the armed forces or associated armed forces or militias, or forced participation in military training, it will not reach a

<sup>1020</sup> Report of the 1998 Commission of Inquiry, paras 485-488.

<sup>1021</sup> In March 2023, the Office of the United Nations High Commissioner for Human Rights (OHCHR) reported that nearly 80 per cent of the country’s 330 townships have been impacted by armed clashes. OHCHR, “[Situation of human rights in Myanmar](#)”, 2023.

conclusion of its own on this issue. Nevertheless, the Commission is concerned at reports by the UN, local media and non-governmental organizations indicating that forced recruitment into the Myanmar military and associated armed groups, as well as participation in military training, including by children, continue to exist (see above, paragraphs 493-494).

### Work in prisons

- 609.** As is the case in other countries, prison sentences are among the penalties provided for in the Penal Code and persons convicted to such penalties are under an obligation to perform labour (see above, paragraph 502). The Commission notes that, following the coup d'état in February 2021, the military authorities have decreed new criminal offences which, as noted above, are very broadly formulated. Persons found guilty of having committed these offences are liable to imprisonment with hard labour.
- 610.** As a result of the declaration of a state of emergency, judicial powers have been transferred to the Commander-in-Chief and the military has assumed control over the judiciary, including by establishing special courts in prisons and replacing Supreme and High Court judges across the country. In addition, in 48 of the 330 townships, martial law has been declared. In the townships under martial law, 23 listed crimes, including newly introduced offences that are vaguely formulated, are punishable by imprisonment with hard labour through sentences imposed by military courts, the decisions of which cannot be appealed.
- 611.** Large numbers of persons who have expressed views or opinions criticizing the military takeover and rule, including trade union leaders and members, have been sentenced to imprisonment with hard labour, including by military courts. The evidence before the Commission attests to the systematic absence of due process in these criminal proceedings (see above, paragraphs 415-421).
- 612.** Taking into account the above, the Commission considers that, in the present case, it is difficult to accept that the exaction of forced labour as a consequence of a sentence from persons who have expressed opinions opposing the military would be covered by the exception provided under Article 2(2)(c) when the court proceedings have manifestly lacked independence and impartiality and have failed to meet any minimum standards of due process of law. The Commission considers that, following the declaration of the state of emergency and the military's subsequent actions to take control over the judiciary and to suppress any opposition, proceedings against such persons, in particular, have lacked independence and impartiality. Accordingly, the Commission concludes that the exaction of prison labour from such persons does not fall within the exception to forced labour set out in Article 2(2)(c) of Convention No. 29.
- 613.** While noting that Convention No. 105 does not fall within the Commission's mandate, as elaborated above, the Commission wishes to recall that it is a fundamental Convention that prohibits the use of any form of forced or compulsory labour, including prison labour, "as a means of political coercion" or "as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system",<sup>1022</sup> or "as a punishment for having participated in strikes".<sup>1023</sup> It should be emphasized that, in accordance with the 1998 ILO Declaration on Fundamental Principles and Rights at Work, as amended in 2022, "all Members, even if

<sup>1022</sup> Abolition of Forced Labour Convention, 1957 (No. 105), Article 1(a).

<sup>1023</sup> Convention No. 105, Article 1(d).



they have not ratified the Conventions in question, have an obligation, arising from the very fact of membership in the Organization, to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those [fundamental] Conventions".<sup>1024</sup>

### National service obligations, call-up for labour in emergencies and the freedom to terminate public employment

- 614.** The mandatory military service envisaged under the Peoples' Military Service Law (2010) provides for the conscription of so-called "Tatmadaw technicians", a term defined as "people serving in the defense forces and those who are enlisted as technicians and technical experts according to criteria of Defense service council" (section 2(c)).<sup>1025</sup> Furthermore, the Law provides for the conscription of "experts", a term that is defined by the Law as "medical doctors, engineers, technicians or anyone who practices some form of expertise" (section 2(d)).
- 615.** Even though the 2010 Law has not yet been implemented in practice, as seems to be the case (see above, paragraph 491), the Commission must address its compatibility with the Convention. As far as the conscription of "Tatmadaw experts" is concerned, Myanmar has an obligation in law and practice to ensure that conscripts serving as "Tatmadaw experts" only carry out work of a purely military nature. Work that is not of a purely military nature performed by "Tatmadaw experts" is not covered by the exception clause contained in Article 2(2)(a) of the Convention, and therefore falls within the scope of the Convention and accordingly constitutes forced or compulsory labour. As defined in section 2(d) of the Law, "experts" are apparently not integrated in the Tatmadaw and they do not prima facie perform work of a purely military nature. Accordingly, this type of compulsory service is not covered by the exceptions clause contained in Article 2(2)(a) of the Convention and is therefore not compatible with the Convention.
- 616.** Furthermore, the 2010 Law provides a legal basis for military mobilization "when there arises or there is sufficient reason to arise a state of emergency endangering defense and security of a state in a region, or in the whole state" (section 21(a)). The Commission considers that there is a need to further examine section 21(a) of the 2010 Law and how it would be applied in practice to understand its implications for the application of the Convention, as it is formulated in broad terms. In this regard, the Commission considers that it would also be necessary to ensure in law and practice that the duration, extent and nature of compulsory service in emergency situations is limited to what is strictly required by the exigencies of the situation.
- 617.** Finally, the Commission recalls that it has received testimony relating to health workers who, upon completion of their studies, have an obligation to work in public sector establishments for a specific number of years and that anyone who decides to resign is subject to a penalty. Information has also been received on soldiers not being allowed to resign from their employment in the military (see above, paragraph 514). Future efforts to bring the law and practice in Myanmar into line with Convention No. 29 should assess and address these matters in detail, taking into account the guidance of the ILO supervisory mechanisms.

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<sup>1024</sup> ILO Declaration on Fundamental Principles and Rights at Work (1998), as amended in 2022, para. 2.

<sup>1025</sup> Unofficial translation.

## Service obligation imposed on businesses

**618.** The Commission has gathered evidence showing that, ahead of the so-called “silent strikes” organized by the CDM as a means of expressing opposition to the military takeover and rule, owners of shops or businesses were warned by the military authorities that they would be sanctioned by the closure of their establishments if they participated in the strikes. As the Commission has been able to ascertain, some businesses nevertheless closed during the strikes and their owners were subsequently arrested, criminally charged, convicted and imprisoned. At the same time, the Commission observes that other business owners who would have normally closed their establishments in support of the CDM, kept them open due to the menace of sanctions by the military. Under these circumstances, the Commission concludes that businesses were required to provide services under the menace of a penalty and were therefore subjected to forced or compulsory labour within the meaning of the Convention, as this type of compulsory service is not covered by any of the exceptions referred to in Article 2(2) of the Convention.

## Overtime work

**619.** Several witnesses and written submissions refer to practices of “forced overtime” in the garment sector and the related findings of the Commission are set out in paragraphs 505 to 513 above. In this regard, the Commission notes that, under the terms of the Factories Act, no worker shall be required or allowed to work in a factory for more than 44 hours in a week in work that is not for technical reasons of a continuous nature.<sup>1026</sup> The Act further sets a limit of eight working hours a day, with a break at least every five hours, and provides that breaks and working hours taken together cannot exceed ten hours in any day.<sup>1027</sup> An overtime limit for work in factories has been set by a 2012 administrative directive at 20 hours per week, with a three hour maximum limit a day from Monday to Friday and a five hour limit on Saturday.<sup>1028</sup> The employer must seek the worker’s consent and the approval of the labour inspection authorities before requiring the performance of work on a weekly rest day<sup>1029</sup> or on a public holiday.<sup>1030</sup> Under the Employment and Skills Development Law, “overtime” is one of the “particulars” that “shall be included in the employment agreement”.<sup>1031</sup> The official standard employment contract issued by the Ministry of Labour, Immigration and Population (MOLIP) in 2017 includes a clause stipulating that “the employer and

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<sup>1026</sup> Factories Act, section 59.

<sup>1027</sup> Factories Act, sections 62 and 63.

<sup>1028</sup> Employment and Social Security/Factories and General Labour Laws Inspection Department, Directive No 615/2/a la ya- law 2/12 (1584) of 11 December 2012.

<sup>1029</sup> Factories Act, section 60 (1)(b)(ii), as amended by section 27 of the [Law Amending the Factories Act, 1951](#) (2016), which reads as follows: “the employer or manager, if required for work to perform duty on weekly holiday, with the consent of the workers, may apply permission at least 3 days in advance to the Factories and General Labour Laws Inspection Department or to an inspector assigned by the Department, and shall allow the workers to perform duty only after receiving such permission”. The [Leave and Holidays Rules](#), para. 9 of which reads as follows: “If circumstance demands/causes work on the weekly day off, one must receive the worker’s prior consent first. Also, this must be reported to the Department before that day and ask for [Department] permission. You have to instruct solely upon the Department’s approval.” (Unofficial translation).

<sup>1030</sup> [Leave and Holiday Rules](#), paras 17 and 18.

<sup>1031</sup> [Employment and Skills Development Law](#), section 5(2)(b)(8).

employee may mutually agree on the employee working overtime in accordance with the applicable labour laws".<sup>1032</sup>

- 620.** A series of witnesses, who are themselves workers who are or have been employed in garment factories and unionists from the sector, all women, stressed that workers are eager in principle to work overtime. Overtime work is essential for their livelihoods as the basic remuneration is extremely low and the prices of commodities have been increasing. The Commission considers that the general availability or indeed willingness of workers to perform overtime work, and even their agreement in principle to perform overtime, does not as such preclude overtime work being subsequently exacted from such workers in a manner contrary to the Convention, as the menace of a penalty may override a previous voluntary offer.
- 621.** While accounts by witnesses and reports by non-governmental organizations presenting survey results suggest that very long working hours are being performed in the garment sector, including on weekends and public holidays, the Commission does not have at its disposal sufficiently detailed information to assess the extent to which overtime has been performed, in specific instances, above and beyond the working time limits imposed by national legislation. Nevertheless, the evidence gathered by the Commission clearly shows that factories have been increasing production targets and have exerted various types of pressure on workers in connection with the achievement of those production targets. Due to the increase in production targets, workers have been unable to achieve them by working regular hours and have been made to work beyond regular working hours until the targets have been achieved, with such overtime often not being compensated. At the same time, workers who have not reached production targets have had to sign warning letters, have been threatened with dismissal, transferred to less-skilled positions or verbally abused by supervisors. In several instances, workers who were not willing or available to perform overtime were told that they would not be assigned overtime work in the future, which amounts to an important loss of potential future income, or would face other difficulties, such as not being granted leave.
- 622.** The Commission is not drawing conclusions concerning overtime work practices in specific establishments or cases, as reaching such determinations would require more detailed information, including access to the country and the factories concerned, to take into account all the circumstances of each case. However, the Commission finds that the information and evidence before it point prima facie to the existence of situations in which overtime work has been imposed under circumstances that may have amounted to forced labour within the meaning of the Convention. This would be the case, for example, in instances in which workers are obliged to work overtime without pay in order to achieve production targets set at an unreasonable level, with the workers concerned being threatened with sanctions, including dismissal or exclusion from future overtime work. While both paid and unpaid work could amount to forced labour within the meaning of the Convention, the unpaid performance of overtime in such cases clearly points to a lack of voluntary offer. Furthermore, threats of dismissal and exclusion from future overtime opportunities are a particularly serious menace in the current context of severe economic hardship and vulnerability faced by workers and households in Myanmar, in which daily workers are particularly vulnerable. The fact that the current level of the legal minimum wage no longer provides any meaningful

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<sup>1032</sup> MOLIP, [Notification No. 140/2017](#), 28 August 2017 and employment contract template, clause 8 (Unofficial translation).

protection in view of the recent steep increases in commodity prices (see above, paragraphs 225 and 226) is a contributing factor to the economic vulnerability of workers, including their vulnerability to forced labour practices.

- 623.** Finally, based on the specific evidence received, the Commission considers that the serious restrictions on trade unions representing workers' interests, which have evolved since the military takeover and which are described in detail in the Commission's findings concerning Convention No. 87 (see Chapter 7, section B), further increase the risk of overtime work being imposed on workers in a manner that could amount to forced or compulsory labour within the meaning of Convention No. 29. Under the prevailing circumstances, trade unions are in most cases no longer able to assist in the protection of workers' rights, including by monitoring labour laws and regulations, assisting workers to bring complaints of forced labour or other labour law violations, and engaging in collective dispute settlement or collective bargaining.

### Compliance by Myanmar with its obligations under Articles 1 and 25 of Convention No. 29

- 624.** As elaborated in Chapter 6 above, Myanmar's obligation to suppress forced or compulsory labour in all its forms, provided for in Article 1(1) of Convention No. 29, entails an obligation for the State to refrain from using forced or compulsory labour as defined in the Convention. This obligation rests with the State itself, including all its organs and entities, including the military and the public service. Article 1 also entails an obligation for the State to take measures with a view to withdrawing any legislation that authorizes or enables the imposition of forced or compulsory labour by the State, as well as to ensure that such labour is not exacted in practice by any of its organs or entities, including individuals acting on their behalf. Furthermore, under Article 1(1) of the Convention, the State has an obligation to ensure that no form of forced or compulsory labour is exacted by third parties, such as private individuals and employers.
- 625.** Based on its findings, as set out in Chapter 7, section C, above, the Commission concludes that the continuing systematic and widespread use of local residents by the Myanmar military to perform a range of different types of work or service, including as porters, guides and human shields, as well as for cultivation, the construction and maintenance of military camps or installations, and the provision of transport, accommodation, food and domestic work, is in violation of Myanmar's obligations under Article 1 of the Convention.
- 626.** Further to its finding that the exaction of prison labour, as a result of a conviction, from persons who have expressed opinions opposing the military, when the proceedings have manifestly lacked independence, impartiality and due process of law, is not covered by the exception contained in Article 2(2)(c) of the Convention (see above, paragraph 612), the Commission accordingly considers that the exaction of prison labour in such cases is not in conformity with Articles 1 and 2 of Convention No. 29.
- 627.** In addition, the services that the military authorities required businesses to perform during days of "silent strikes" in the context of the Civil Disobedience Movement amounted to forced or compulsory labour within the meaning of the Convention, and the exaction of these services was in violation of Myanmar's obligations under Article 1 of the Convention, as this type of compulsory service is not covered by any of the exceptions referred to in Article 2(2).
- 628.** The Commission further notes that the ILO supervisory bodies have for many years been calling for the amendment of the broadly worded exceptions clause in Article 359 of the Constitution, which allows for the exaction of forced labour in the context of "duties

assigned thereupon by the Union in accord with the law in the interests of the people". The Commission concurs with this request and considers that Article 359 of the Constitution allows for the exaction of compulsory labour in contravention of the Convention. A case in point is the Peoples' Military Service Law (2010), which allows the use of military conscripts for work that is not of a purely military nature, which is not compatible with Myanmar's obligations under Convention No. 29.

- 629.** Noting that in Myanmar several laws prohibit the use of forced labour by anyone, the Commission recalls that Article 25 of the Convention requires Myanmar to ensure that the penalties imposed by law are strictly enforced. However, forced labour continues to be exacted by the Myanmar military with full impunity in the context of armed conflict and military activities. Although in 2018 the IFFMM found widespread and systematic use of forced labour by the military, the Government, and since the military takeover, the military authorities, have failed to provide any satisfactory information on the prosecution and conviction of perpetrators to the CEACR or the ILC Committee on the Application of Standards. The military authorities also did not provide any adequate information in response to the Commission's request for information on the number of investigations, prosecutions, convictions and penalties imposed for violations of the prohibition of forced labour (see above, paragraph 518). The Commission is bound to conclude that the situation regarding the enforcement of the prohibition of forced labour has deteriorated since the military takeover and the resulting generalized breakdown of the rule of law. The direct control by the military over, and their involvement in, the work of the executive and the judiciary under the state of emergency precludes any objective, independent or meaningful examination of forced labour complaints. In addition, in the prevailing climate of violence, victims of forced labour imposed by the military fear retaliation if they bring forward any complaints.
- 630.** Turning now to Myanmar's obligation not to allow third parties, such as private individuals and employers, to use forced or compulsory labour, the Commission finds that the information and evidence before it point prima facie to the existence of situations in which overtime work performed in the garment sector may, in certain cases, have amounted to forced or compulsory labour within the meaning of the Convention (see above, paragraph 622). In this regard, the Commission recalls that Articles 1 and 25 of the Convention require Myanmar to ensure that the authorities responsible for enforcing the application of the law are in a position to fulfil their functions with a view to ensuring the strict enforcement of the legal prohibition of forced labour. Because in many cases forced labour is characterized by simultaneous violations of labour law, labour inspectors play a crucial role in identifying labour law violations, preventing forced labour and alerting other competent authorities to cases of forced labour that have been detected with a view to ensuring strict enforcement, as required by Article 25 of the Convention.
- 631.** Neither the Government nor the military authorities following their takeover on 1 February 2021 have supplied satisfactory information on enforcement action for the prohibition of forced labour in any sector of the economy. While a National Forced Labour Complaints Mechanism was set up in 2019, the Commission notes from the information provided by the military authorities in July 2023 that the Mechanism has not received any complaints since the beginning of 2021.
- 632.** The main union federations have withdrawn from the committee overseeing the National Forced Labour Complaints Mechanism because of their disagreement with the military takeover and, in particular, because their leaders are being charged and prosecuted by the military authorities. This also implies that they, as unionists

representing workers' interests, cannot bring any cases before the Mechanism. Furthermore, the military authorities have not provided any information on the outcomes of the labour inspections undertaken, while witnesses with direct insights into the functioning of the labour inspectorate and labour inspection in Myanmar have coherently and consistently raised the issue of the competence, corruption and lack of objectivity and independence of labour inspectors.

- 633.** Finally, the Commission notes that the sanction for the exaction of forced or compulsory labour provided for under section 374 of the Penal Code is a prison term which may extend to one year, or a fine, or both, and under section 27A of the Ward or Village Tract Administration Law the sanction is imprisonment for a term not exceeding one year or a fine of not more than 100,000 Kyats, or both. In contrast, forced labour in the context of trafficking in persons under the Anti-Trafficking in Persons Law is punishable with imprisonment for a minimum of five and a maximum of ten years, and from 10 years to life imprisonment in the case of trafficking of women, children or youths. Considering the seriousness of the offence in question and the need for the penalties to have a dissuasive effect, the Commission is of the view that the sanctions provided for in the Penal Code and the Ward or Village Tract Administration Law, which even allow for punishment by only a fine, cannot be considered to be really adequate.
- 634.** In light of the above, the Commission concludes that the failure of Myanmar to take the necessary measures both in law and in practice to ensure that no forced labour is imposed by members of the armed forces, through the strict enforcement of the penalties established by law, and the current lack of adequate enforcement of the prohibition of forced or compulsory labour in respect of third parties, including in the garment sector, is in violation of Myanmar's obligations under Articles 1 and 25 of Convention No. 29. Furthermore, the Commission considers that future efforts to ensure the full application of the Convention in law and practice by Myanmar should ensure that the penalties established by the legislation are really adequate and dissuasive and strictly enforced.

## Chapter 9. The Commission's recommendations and final observations

**635.** Having recorded its findings of facts and conclusions concerning compliance with Conventions Nos 87 and 29, the Commission will now provide its recommendations, with indicative timeframes for their implementation, in line with its terms of reference under Article 28 of the ILO Constitution, as well as its final observations.

### A. Recommendations

**636.** Before proceeding to the recommendations, the Commission highlights once again the interdependence and complementarity between the two Conventions put before it for examination and emphasizes that this link must be taken into account in the implementation of the recommendations. Freedom of association is needed to create an environment in which essential and effective action can be taken for the elimination of forced labour. Where trade unions exist and function freely and independently, workers have an avenue to monitor, report and address possible instances of forced labour. In turn, freedom from forced or compulsory labour, by enabling workers' choice and voice, is crucial for the realization of freedom of association, and ultimately the attainment of freely chosen employment, decent work and social justice for all. The Commission is also conscious of the linkages between Conventions Nos 87 and 29 and other international human rights instruments.

**637.** While the Commission's mandate is to assess Myanmar's compliance with Conventions Nos 87 and 29, the Commission trusts that, beyond achieving such compliance, these recommendations will also constitute an important step in the broader process towards building democratic institutions and the rule of law, which are needed to achieve social justice, peace, stability and decent work for all in Myanmar. The recommendations also take into account the plight of the population directly witnessed by the Commission in the exercise of its mandate.

**638.** Part of the Commission's recommendations are addressed to the military authorities for immediate action, so as to stop continuing egregious violations of the two Conventions and prevent future abuses, while others propose measures aimed at full compliance with Conventions Nos 87 and 29 to be implemented when the country returns to a situation characterized by governance through democratic institutions and processes. The Commission considers that freedom of association lies at the heart of democracy and the rule of law and is a prerequisite for social dialogue, collective bargaining and tripartite cooperation.

**639.** Given the urgency of the national situation and the serious impact of the measures taken by the military authorities on the safety and well-being of trade union leaders and members and the trade union movement as a whole, the Commission considers it important that the situation continues to be monitored, at least annually, by the ILO following the adoption of this report.

**640.** In the following sub-sections, the Commission provides its recommendations concerning the action to be taken by the military authorities and further recommendations to Myanmar to achieve full and effective observance of Conventions Nos 87 and 29.

**Recommendations concerning the action to be taken by the military authorities**

- 641.** While the UN General Assembly and the ILC have not recognized the military authorities as representing the Government of Myanmar, the Commission concludes that the military remains answerable for its actions that raise concerns with regard to Myanmar's compliance with its obligations under Conventions Nos 87 and 29.
- 642.** The military and the authorities under its control should immediately cease or reverse any measures or actions that violate Myanmar's obligations under Conventions Nos 87 and 29, including military orders and other measures, and legislative amendments identified in the Commission's findings as contrary to these Conventions. Accordingly, the Commission makes the following specific recommendations.

**Convention No. 87**

- 643.** With regard to Convention No. 87, the Commission urges the military authorities to take the following action immediately and no later than 1 October 2023:
- (a) immediately cease all forms of violence, including gender-based violence, torture and other inhumane treatment against trade union leaders and members and other persons in relation to the exercise of legitimate workers' or employers' activities, including ethnic, religious and other minorities; this includes, in particular, violence perpetrated in the context of the suppression of peaceful public protests and demonstrations, at the time of arrests, during detention, as well as military attacks against civilian infrastructure, which all together create a climate of violence and terror that undermines the effective exercise of freedom of association;
  - (b) unconditionally and without delay release all trade unionists arrested, sentenced and detained in relation to the exercise of their civil liberties and legitimate trade union activities, including those that have been arrested, sentenced and detained for having expressed opinions critical of the military authorities, or for having participated in, or organized, peaceful protests or otherwise peacefully demonstrated opposition to the military authorities following the coup d'état;
  - (c) withdraw all criminal charges pending against trade unionists and others peacefully exercising their civil liberties in relation to legitimate trade union activities; and immediately stop all forms of intimidation, threats, stigmatization, harassment and surveillance of trade unionists and their families, as well as attacks against and destruction of trade union premises and property;
  - (d) revoke any military orders or other measures, including those of a legislative nature, decreed since February 2021 and identified as restricting freedom of association and the basic civil liberties of trade unionists; and fully restore the protection of the basic civil liberties necessary for the exercise of freedom of association that have been suspended or restricted, including freedom from arbitrary arrest and detention, the right to a fair trial by an independent and impartial tribunal, freedom of assembly, opinion and expression and the protection of private property;
  - (e) cease all disproportionate or arbitrary punitive measures against those peacefully exercising their civil liberties in calling for the return to democratic rule in which their freedom of association rights could be fully exercised;
  - (f) revoke the withdrawal of citizenship and return travel documents to the trade union leaders and members concerned without delay;



- (g) stop any form of interference in the establishment, administration and functioning of trade unions at all levels, including interference in the election of trade union leadership, labour dispute resolution, conduct of collective action and administrative dissolution or suspension of trade unions; and
- (h) refrain from taking any action and measures or issuing statements that condone, facilitate or encourage union-busting, interference and other abuses of trade union rights by private and public employers.

### Convention No. 29

- 644.** With regard to Convention No. 29, the Commission urges the military authorities to take the following action immediately and no later than 1 October 2023:
- (a) act to end the exaction of all forms of forced or compulsory labour, as defined by the Convention, by the army and its associated armed forces and groups, including any forced labour exacted from ethnic, religious or other minorities; and to end any forced recruitment into the military, including the forced recruitment of children;
  - (b) cease any action interfering with the freedom of businesses to open and close their establishments, contrary to the Convention; and
  - (c) cease with immediate effect the exaction of prison labour as a consequence of a criminal conviction imposed since 1 February 2021 through proceedings manifestly lacking independence, impartiality and due process guarantees.

### Further recommendations to Myanmar

- 645.** With a view to ensuring the full and effective observance of Conventions Nos 87 and 29, the Commission is also formulating additional recommendations addressed to Myanmar once it has returned to democratic rule.
- 646.** The Commission calls for the implementation of these recommendations without delay and as soon as national circumstances allow. Genuine implementation will require the return to a civilian government, fully democratic institutions and the rule of law. A climate must be created that is conducive to social dialogue in which workers' and employers' organizations can freely express their views without any threat and contribute to the development of the measures called for by the Commission. The Commission emphasizes that the role of workers' and employers' organizations is critical to achieving harmonious labour relations, peace and prosperity, as well as decent work for the people of Myanmar, and these organizations should therefore be fully involved in the process.
- 647.** The Commission believes that, once conditions allow, an effective way forward could include the development and adoption of a tripartite time-bound road map for Myanmar setting out concrete goals and steps to achieve compliance with Conventions Nos 87 and 29, as well as with all the fundamental ILO principles and rights at work. International cooperation can provide important support for the full implementation of the recommendations below.

### Conventions Nos 87 and 29

- 648.** In relation to the application and observance of both Convention No. 87 and Convention No. 29, and taking into account their interrelated nature, the Commission recommends that Myanmar:

- (a) ensures that its Constitution and laws respect freedom of association and freedom from forced labour, as guaranteed by Conventions Nos 87 and 29;
- (b) resumes and reinvigorates the labour law reform process that was halted by the military takeover to review the legislation affecting the application of Conventions Nos 87 and 29 with a view to ensuring its full conformity with the Conventions, in consultation with workers' and employers' organizations; and
- (c) builds an effective labour inspectorate and labour dispute settlement mechanisms, including courts competent to hear matters concerning freedom of association and the prohibition of forced labour, as part of the overall efforts to establish democratic institutions, including an independent judiciary and a modern and accountable civil service, which are needed for the protection of fundamental rights and freedoms.

### Convention No. 87

**649.** With regard to Convention No. 87, the Commission recommends that Myanmar:

- (a) rapidly investigates, through an independent and impartial mechanism, serious violations of the basic civil liberties of trade unionists who call for democratic rule in which freedom of association can be fully exercised and who have been affected by the measures imposed by the military authorities since 1 February 2021, so as to establish the facts, determine responsibilities, punish the perpetrators and prevent the repetition of such acts in the future;
- (b) takes all the necessary measures to create and maintain an environment in which workers' and employers' organizations can freely exercise the rights granted under Convention No. 87 without threat of intimidation or harm, including through actively promoting social dialogue and tripartite cooperation; and
- (c) ensures that the labour authorities have the capacity and resources to carry out the functions assigned to them by the legislation respecting freedom of association and ensure its proper application in practice, including through the provision of adequate services to workers' and employers' organizations in line with the Convention, such as timely registration and assistance in the resolution of labour disputes.

### Convention No. 29

**650.** With regard to Convention No. 29, the Commission recommends that Myanmar:

- (a) assesses the functioning of the national authorities and mechanisms responsible for the suppression of forced or compulsory labour and the enforcement of the relevant legislation, with the participation of workers' and employers' organizations, and takes the necessary measures to strengthen their capacity and cooperation; and ensures that workers' and employers' organizations have access to such authorities to report any practices contrary to the Convention;
- (b) takes specific measures to end the exaction of forced labour from Rohingya women and men and other ethnic or religious minorities, including by identifying and addressing discrimination against them and its root causes, in law and practice, which renders them vulnerable to forced labour practices; the participation of these communities themselves in the development of such measures is essential;

- (c) ensures that any future system for compulsory military service or any other national service obligation and any restrictions on civil servants, including military personnel, to resign from their positions are designed and implemented in accordance with the requirements of the Convention; and
- (d) revises the national legislation prohibiting forced or compulsory labour to ensure that it provides for penalties that are really adequate and dissuasive, in line with the requirements of the Convention, and ensures the strict enforcement of the legislation; in this regard, Myanmar should also develop ways and means of monitoring and assessing enforcement on a regular basis.

## B. Final observations

- 651.** The Commission is conscious of Myanmar's intricate history, including the decades of military presence in the political process, and the challenges faced by the population prior to the coup, even during the transition to civilian rule. It further acknowledges that Myanmar is currently confronted with a complex political, human rights, humanitarian and economic crisis, resulting from the military takeover on 1 February 2021, which is having a disastrous impact on the population. The state of emergency declared by the military authorities put a halt to a decade during which important steps had been taken by the Government with a view to enhancing the application of Conventions Nos 87 and 29 in law and practice, during which time workers' organizations were able to develop.
- 652.** The Commission hopes that, through the resilience of its population and the concrete measures taken, Myanmar will return very soon to its path towards democracy so that the rule of law and separation of powers can be fully established. The Commission cannot overemphasize the importance of legal frameworks in line with international standards and strong institutions, including an independent judiciary, for the effective promotion and protection of basic civil liberties and fundamental freedoms and rights, including freedom of association and freedom from forced labour. The Commission considers that respect for all the ILO fundamental principles and rights at work, including the principle of equality and non-discrimination, is needed for an inclusive and prosperous future for Myanmar.
- 653.** These are matters of the utmost urgency, as division and conflict are deepening and the capacities for achieving decent work built over a decade, and more sadly, the aspirations and talents of an entire generation, are at risk of being lost irreversibly. Therefore, the Commission considers that all relevant parties should strive to achieve a peaceful transition to fully democratic institutions and processes which is so long overdue.
- 654.** A change of course will require the support and engagement of the international community, including ILO Member States, the UN and relevant regional intergovernmental organizations. The Commission trusts that its recommendations will be taken into consideration in their efforts, so as to ensure that they contribute to the implementation of the recommendations, and ultimately to the full realization of freedom of association and freedom from forced labour in Myanmar.
- 655.** Having heard directly from victims of forced labour and trade unionists who left Myanmar because of the risk of persecution that they faced, the Commission trusts that all ILO Member States will fully apply the principle of non-refoulement in line with international law. Further acknowledging the challenges encountered in their present locations by the people who have left Myanmar, the Commission hopes that the relevant UN agencies will provide the necessary support to all people arriving in Myanmar's neighbouring countries, in line with their mandates.

## Acknowledgements

The Commission thanks the governments and workers' and employers' organizations, UN agencies and non-governmental organizations that have assisted it in the exercise of its mandate by providing valuable information and expertise.

The Commissioners thank the members of the secretariat, Mr Martin Oelz, Ms Veronika Vajdová and Ms Geraldine Scott-Scrivens, for their excellent support and assistance throughout the Commission's work. The Commissioners appreciate the meticulous research and advice they provided and the diligence and dedication they displayed. They further offer a special thanks to Ms Karen Curtis, Chief of the Freedom of Association Branch of the International Labour Standards Department (NORMES), whose expertise and contributions were highly appreciated. Furthermore, the Commissioners thank Ms Corinne Vargha, the Director of NORMES for her overall support and guidance. Finally, the Commission is grateful to the ILO Regional Director for Asia and the Pacific, Ms Chihoko Asada-Miyakawa, and her dedicated staff throughout the region for the important support they provided, as well as to the security coordinator, Mr Abdul Ali Rezayee.

Finally, the Commission pays tribute to all the women and men of Myanmar who testified before it at great risk to themselves and their families and shared detailed and sensitive information which was essential for the Commission to conduct its work, as well as their experiences attesting to the difficulties and hardship they are facing in the present circumstances and their struggle for freedom.

Geneva, 4 August 2023

*(Signed)*

Raul Cano Pangalangan (Chairperson)

Dhayanithie Pillay

Faustina Pereira

## Appendix I

### Biographies of the Commissioners

Chairperson: **Raul Cano Pangalangan (Philippines):** Professor of Law, University of the Philippines. Former judge of the International Criminal Court (The Hague). A graduate in political science and law from the University of the Philippines, he received his LL.M. (1986) and his SJD (1990) from Harvard University and a Diploma in Public International Law from The Hague Academy of International Law (1987). He served as the Law Dean of the University of the Philippines from 1995 to 2005 and has lectured at The Hague Academy of International Law, where he had earlier served as Director of Studies. He is also a Member of the Permanent Court of Arbitration (The Hague). He co-chairs the Editorial Board of the Asian Journal of International Law and is Editor-in-Chief of the Philippine Yearbook of International Law.

Members: **Dhayanithie Pillay (South Africa):** Former Judge of the High Court in Pietermaritzburg and Durban and the Labour Court of South Africa. She also served as judge on the Supreme Court of Appeals (2018) and the Constitutional Court (2021). Currently, she is the Judge Commissioner on the Electoral Commission of South Africa, an Extraordinary Professor at the University of the Free State and a non-executive director at the Cancer Association of South Africa. Admitted as an attorney in 1982, she specialized in human rights and administrative law disputes arising from various emergency and security laws in force at the time. After turning to labour law and industrial relations, she was involved in the drafting of key pieces of national legislation, including the Public Service Labour Relations Act, the new Labour Relations Act, and clauses of the Constitution relating to the Public Service Commission and Electoral Commission. She was a Senior Commissioner (part-time) of the Commission for Conciliation, Mediation and Arbitration from 1996 until her appointment to the bench.

**Faustina Pereira (Bangladesh):** Advocate, Supreme Court of Bangladesh, Senior Fellow, Centre for Peace and Justice, and Professor, BRAC University. Her areas of specialization are gender, access to justice, sustainable development and legal empowerment. She obtained her doctorate in International Human Rights Law in 1998 from the University of Notre Dame, United States of America, and completed her post-doctorate in 2002 from the National University of Ireland, Galway. She has served in senior leadership positions in national and international human rights organizations, including as Director, Human Rights and Legal Aid Services at BRAC, Director of Public Interest Litigation, Advocacy and Research at Ain o Salish Kendra, as Director, Strategic Global Legal Innovations, at the International Development Law Organization (IDLO) and as Senior Regional Director (Asia), Center for Reproductive Rights.

## Appendix II

### Substantive provisions of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Forced Labour Convention, 1930 (No. 29)

#### Convention No. 87

##### *Article 1*

Each Member of the International Labour Organisation for which this Convention is in force undertakes to give effect to the following provisions.

##### *Article 2*

Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation.

##### *Article 3*

1. Workers' and employers' organisations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes.

2. The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof.

##### *Article 4*

Workers' and employers' organisations shall not be liable to be dissolved or suspended by administrative authority.

##### *Article 5*

Workers' and employers' organisations shall have the right to establish and join federations and confederations and any such organisation, federation or confederation shall have the right to affiliate with international organisations of workers and employers.

##### *Article 6*

The provisions of Articles 2, 3 and 4 hereof apply to federations and confederations of workers' and employers' organisations.

##### *Article 7*

The acquisition of legal personality by workers' and employers' organisations, federations and confederations shall not be made subject to conditions of such a character as to restrict the application of the provisions of Articles 2, 3 and 4 hereof.

##### *Article 8*

1. In exercising the rights provided for in this Convention workers and employers and their respective organisations, like other persons or organised collectivities, shall respect the law of the land.

2. The law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in this Convention.

*Article 9*

1. The extent to which the guarantees provided for in this Convention shall apply to the armed forces and the police shall be determined by national laws or regulations.
2. In accordance with the principle set forth in paragraph 8 of article 19 of the Constitution of the International Labour Organisation the ratification of this Convention by any Member shall not be deemed to affect any existing law, award, custom or agreement in virtue of which members of the armed forces or the police enjoy any right guaranteed by this Convention.

*Article 10*

In this Convention the term organisation means any organisation of workers or of employers for furthering and defending the interests of workers or of employers.

*Article 11*

Each Member of the International Labour Organisation for which this Convention is in force undertakes to take all necessary and appropriate measures to ensure that workers and employers may exercise freely the right to organise.

**Convention No. 29***Article 1*

1. Each Member of the International Labour Organisation which ratifies this Convention undertakes to suppress the use of forced or compulsory labour in all its forms within the shortest possible period.
2. [deleted pursuant to Article 7 of the Protocol of 2014 to the Forced Labour Convention, 1930]
3. [deleted pursuant to Article 7 of the Protocol of 2014 to the Forced Labour Convention, 1930]

*Article 2*

1. For the purposes of this Convention the term forced or compulsory labour shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.
2. Nevertheless, for the purposes of this Convention, the term forced or compulsory labour shall not include –
  - (a) any work or service exacted in virtue of compulsory military service laws for work of a purely military character;
  - (b) any work or service which forms part of the normal civic obligations of the citizens of a fully self-governing country;
  - (c) any work or service exacted from any person as a consequence of a conviction in a court of law, provided that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies or associations;
  - (d) any work or service exacted in cases of emergency, that is to say, in the event of war or of a calamity or threatened calamity, such as fire, flood, famine, earthquake, violent epidemic or epizootic diseases, invasion by animal, insect or vegetable pests, and in general any circumstance that would endanger the existence or the well-being of the whole or part of the population;
  - (e) minor communal services of a kind which, being performed by the members of the community in the direct interest of the said community, can therefore be considered as normal civic obligations incumbent upon the members of the community,

provided that the members of the community or their direct representatives shall have the right to be consulted in regard to the need for such services.

*Article 25*

The illegal exaction of forced or compulsory labour shall be punishable as a penal offence, and it shall be an obligation on any Member ratifying this Convention to ensure that the penalties imposed by law are really adequate and are strictly enforced.



## Appendix III

### Provisions of the Constitution of the ILO with respect to complaints concerning failure to observe ratified Conventions

#### *Article 26*

##### *Complaints of non-observance*

1. Any of the Members shall have the right to file a complaint with the International Labour Office if it is not satisfied that any other Member is securing the effective observance of any Convention which both have ratified in accordance with the foregoing articles.

2. The Governing Body may, if it thinks fit, before referring such a complaint to a Commission of Inquiry, as hereinafter provided for, communicate with the government in question in the manner described in article 24.

3. If the Governing Body does not think it necessary to communicate the complaint to the government in question, or if, when it has made such communication, no statement in reply has been received within a reasonable time which the Governing Body considers to be satisfactory, the Governing Body may appoint a Commission of Inquiry to consider the complaint and to report thereon.

4. The Governing Body may adopt the same procedure either of its own motion or on receipt of a complaint from a delegate to the Conference.

5. When any matter arising out of article 25 or 26 is being considered by the Governing Body, the government in question shall, if not already represented thereon, be entitled to send a representative to take part in the proceedings of the Governing Body while the matter is under consideration. Adequate notice of the date on which the matter will be considered shall be given to the government in question.

#### *Article 27*

##### *Cooperation with Commission of Inquiry*

The Members agree that, in the event of the reference of a complaint to a Commission of Inquiry under article 26, they will each, whether directly concerned in the complaint or not, place at the disposal of the Commission all the information in their possession which bears upon the subject matter of the complaint.

#### *Article 28*

##### *Report of Commission of Inquiry*

When the Commission of Inquiry has fully considered the complaint, it shall prepare a report embodying its findings on all questions of fact relevant to determining the issue between the parties and containing such recommendations as it may think proper as to the steps which should be taken to meet the complaint and the time within which they should be taken.

#### *Article 29*

##### *Action on report of Commission of Inquiry*

1. The Director-General of the International Labour Office shall communicate the report of the Commission of Inquiry to the Governing Body and to each of the governments concerned in the complaint, and shall cause it to be published.

2. Each of these governments shall within three months inform the Director-General of the International Labour Office whether or not it accepts the

recommendations contained in the report of the Commission and if not, whether it proposes to refer the complaint to the International Court of Justice.

...

*Article 31*

*Finality of decisions of the International Court of Justice*

The decision of the International Court of Justice in regard to a complaint or matter which has been referred to it in pursuance of article 29 shall be final.

*Article 32*

Effect of decisions of the International Court of Justice on findings or recommendations of Commission of Inquiry

The International Court of Justice may affirm, vary or reverse any of the findings or recommendations of the Commission of Inquiry, if any.

*Article 33*

Failure to carry out recommendations of Commission of Inquiry or the International Court of Justice

In the event of any Member failing to carry out within the time specified the recommendations, if any, contained in the report of the Commission of Inquiry, or in the decision of the International Court of Justice, as the case may be, the Governing Body may recommend to the Conference such action as it may deem wise and expedient to secure compliance therewith.

*Article 34*

Compliance with recommendations of Commission of Inquiry or the International Court of Justice

The defaulting government may at any time inform the Governing Body that it has taken the steps necessary to comply with the recommendations of the Commission of Inquiry or with those in the decision of the International Court of Justice, as the case may be, and may request it to constitute a Commission of Inquiry to verify its contention. In this case the provisions of articles 27, 28, 29, 31 and 32 shall apply, and if the report of the Commission of Inquiry or the decision of the International Court of Justice is in favour of the defaulting government, the Governing Body shall forthwith recommend the discontinuance of any action taken in pursuance of article 33.

## Appendix IV

### Rules of Procedure

#### A. General procedure

1. The purpose of the Commission is to examine, as completely and objectively as possible, the information it considers necessary to ascertain the matters submitted to it for investigation by the Governing Body of the International Labour Office, and to express its view thereon. It shall therefore accept only information, documents and statements of relevance to the matters concerning alleged non-compliance with Conventions Nos 87 and 29 before it.
2. Any questions of admissibility of the information or statements shall be determined by the Commission.
3. The proceedings of the Commission shall be strictly confidential, except insofar as the Director-General of the International Labour Office communicates the report of the Commission of Inquiry to the Governing Body and to Myanmar and proceeds with its publication.
4. To enable it to carry out its functions effectively, the Commission shall seek relevant information from the military authorities and shall request these authorities to designate a representative or representatives to act on their behalf in relation to the Commission for the purpose of the inquiry. The possible refusal of the military authorities to designate a representative, or more generally, to cooperate with the Commission shall not affect the completion of the inquiry.
5. The Commission shall establish a list of entities from which it shall seek to receive information, including Government members of the Governing Body, governments of countries neighbouring Myanmar or having an important economic relations with the country, workers' and employers' organizations with general consultative status at the ILO, other relevant national and international employers' and workers' organizations, intergovernmental organizations, civil society organizations and other entities which may be in a position to provide relevant information. As appropriate, organizations will be invited to designate a representative or representatives to act on their behalf in the proceedings before the Commission.
6. The Commission shall seek to ensure that its work does not prejudice the safety of persons appearing before it or being in contact with it, or their families and organizations.
7. In order to carry out its functions effectively, the Commission requires, and the Myanmar military authorities shall assure, that no witnesses are prevented from appearing before the Commission or communicating with it and that no retaliation, sanction or prejudice of any sort to any person, or their families and organizations, will occur as a consequence of their appearing before or being in contact with the Commission.
8. During any meetings that the Commission may hold, it will decide who may be present.

9. During any mission undertaken by the Commission, including a country visit to Myanmar or to any relevant country or countries, the Commission shall determine its schedule and meet freely with any bodies or persons it deems relevant so as to ensure that it is fully and objectively informed on all aspects of the case.
10. The Commission may review the Rules of Procedure or adopt any further rules or decisions it considers necessary with regard to its procedures.

## **B. Procedure for hearings of representatives and witnesses**

11. The hearings of representatives and witnesses set by the Commission shall be held in accordance with the following rules:
  - (i) The Commission shall hear the designated representatives and all witnesses in private sittings and the information and evidence presented to the Commission therein is to be treated as strictly confidential by all persons and organizations whom the Commission permits to be present.
  - (ii) The Commission reserves the right to consult the designated representatives in the course of, or upon the completion of, the hearings in respect of any matter on which it considers their special cooperation to be necessary.
  - (iii) Each representative may, if she or he so chooses, designate witnesses to present evidence to the Commission.
  - (iv) The Commission or any member of the Commission may question the designated representatives or the witnesses at any stage of the hearings.
  - (v) The Commission shall require each witness to make a solemn declaration identical to that provided for in the Rules of Court of the International Court of Justice. This declaration reads: "I solemnly declare upon my honour and conscience that I will speak the truth, the whole truth and nothing but the truth".
  - (vi) All statements by witnesses and questioning of witnesses, if authorized by the Commission, shall be subject to its control.
  - (vii) Except with the leave of the Commission, witnesses may not be present except when giving evidence.
  - (viii) All witnesses shall be given an opportunity to make a statement before questions are put to them. If a witness reads his or her statement, the Commission shall receive a copy thereof.
  - (ix) The Commission, upon application by a witness or his or her representative, or of its own initiative, reserves the right to permit a witness to give evidence or make a statement without the need to disclose name, address or information which could identify the witness. Such identifying information of a witness must, however, be provided to the Commission which will treat such information as confidential.
  - (x) The Commission reserves the right to recall witnesses, if necessary.
  - (xi) The opportunity to give evidence and make statements is provided to enable the Commission to obtain factual information on the case before it. The Commission shall give any persons or organizations participating in the hearings all reasonable

opportunity to furnish such information, but it will not accept any information, statements or materials on matters outside its mandate.