



## ▶ Child Labour in Myanmar **A legal review**

**This brochure is based on the edition of the legal review of national laws and regulations related to child labour in light of international standards in Myanmar, which was conducted in 2020. It covers the period up to December 2020.**

### **What is child labour?**

The term ‘**child labour**’ is often defined as work that deprives children of their childhood, their potential and their dignity, and that is harmful to their physical and mental development.

Whether or not particular forms of ‘work’ can be called ‘child labour’ depends on the child’s age, the type and hours of work performed, the conditions under which it is performed and the objectives pursued by individual countries.

More particularly, child labour is:

- ▶ Firstly, **work performed by a child under the minimum legal age for admission to work or employment** as defined by the national legislation in accordance with ILO Convention No. 138; *and*

- ▶ Secondly, **work performed by a child below the age of 18 if it constitutes one of the worst forms of child labour**. Article 3 of ILO Convention No. 182 identifies the worst forms of child labour as: (a) all forms of **slavery or practices similar to slavery**; (b) the use, procuring or offering of a child **for prostitution, for the production of pornography or for pornographic performances**; (c) the use, procuring or offering of a child for **illicit activities**, in particular for the production and trafficking of drugs; and (d) work in **hazardous conditions**.

### **To what extent does child labour exist in Myanmar?**

According to the 2015 Myanmar Labour Force Survey:



More than **1.1 million** 5- to 17-year-olds are engaged in child labour.



Around **half** of Myanmar child labourers perform hazardous work.

In the subsequent years, a certain reduction in child labour has been observed, but child labour, in particular in its worst forms, remains widespread in Myanmar.

## What are the international commitments taken by Myanmar to fight against child labour so far?

As summarized in the table below, Myanmar has ratified a number of relevant international instruments on child labour. In 2019 and 2020, Myanmar strengthened its commitment to undertake action for the prohibition and elimination of child labour by ratifying:

- ▶ **the ILO Minimum Age Convention, 1973 (No. 138)** on 8 June 2020
- ▶ **the Optional Protocol to the United Nations (UN) Convention on the Rights of the Child** on the involvement of children in armed conflicts, on 27 September 2019.



Photo: Marcel Crozet/ ILO

### Most relevant international instruments on child labour

International instrument	Ratification	Status
ILO Forced Labour Convention (No. 29)	4 March 1955	In force
ILO Minimum Age Convention (No. 138)	8 June 2020	In force
ILO Worst Forms of Child Labour Convention (No. 182)	18 December 2013	In force
UN Convention on the Rights of the Child (CRC)	15 July 1991	In force
Optional Protocol to the CRC on the sale of children, child prostitution and child pornography	16 January 2012	In force
Optional Protocol to the CRC on the involvement of children in armed conflict	27 September 2019	In force
UN Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000	30 March 2005	In force

## Are these international commitments reflected in national legislation?

Myanmar's legal system is composed of a **series of old laws from the colonial Indo-British legal system, and labour legislation is fragmented by sector** (factories, shops, mines, oilfield etc.) **or by theme** (wages, leave and holidays etc.).

This fragmentation has serious implications, in particular from an international labour standards perspective, as it creates legal gaps and inconsistencies regarding the protection for certain categories of workers, including children.

It further results in a lack of clarity and accessibility for rights-holders and law enforcement bodies, as well as workers and employers.

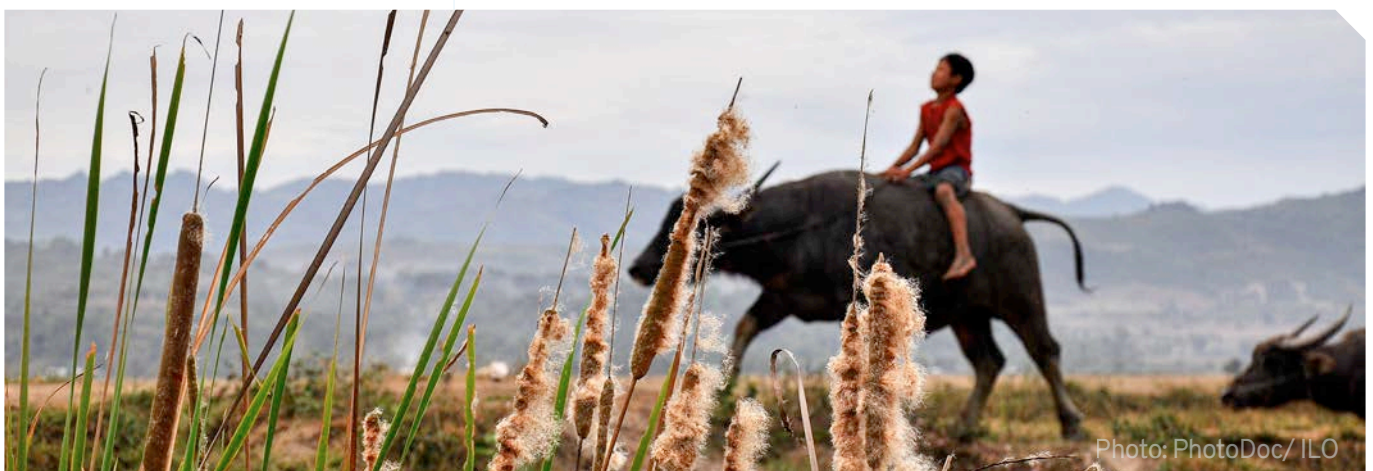
Up until December 2020, the Myanmar Government had been making some progress to improve the regulatory framework, more particularly with regard to child labour and the protection of young workers from exploitative conditions. This resulted, inter alia, in:

- ▶ the adoption of a **landmark Child Rights Law in 2019** (which repealed the Child Law of 1993);
- ▶ the amendment of the **Factories Act in 2016**; and
- ▶ the adoption of a **new Shops and Establishments Law in 2016**.

Action plans were also adopted, such as the National Education Strategic Plan (2016-2021) and the Myanmar third five-year National Plan of Action to Combat Human Trafficking (2017-2021). Furthermore, the **National Action Plan against Child Labour** was adopted in January 2019.

The legislative framework, and more particularly the provisions of the Child Rights Law of 2019, which extends its protection to all children, including those who are not protected, fully or partially, by the fragmented labour laws, were at the time of the legal review generally consistent with the provisions of the international instruments on child labour ratified by Myanmar.

The table on the following page gives an overview of the national regulatory framework on child labour vs Myanmar's international commitments as at December 2020.



## Overview of the national regulatory framework on child labour vs Myanmar's international commitments as of December 2020

	Light Work (Optional)	General minimum age for admission to work (Mandatory)	Worst forms of Child Labour incl. hazardous work (Mandatory)
Age of child ↑	<p><b>NOT CHILD LABOUR</b> but need to ensure decent working conditions as defined by international labour standards</p>	<p><b>NOT CHILD LABOUR</b> but need to ensure decent working conditions as defined by international labour standards</p>	<p><b>18 years (16 years as an exception and under strict conditions)</b> A list of hazardous work shall be adopted at national level Art. 3 of ILO Convention No. 138 &amp; Art. 3 of ILO Convention No. 182</p> <p>~</p> <p><b>Myanmar: 18 years</b> Sections 3(t) and 48(a) of the CRL <b>or 16 years</b> <i>but without providing the necessary safeguards requested by ILO instruments</i> Sections 25, 29 and 75(a) of the Factories Act Section 14(e) of the Shops and Establishments Law, 2016 &amp; <i>no list of hazardous work adopted</i></p>
	<p><b>NOT CHILD LABOUR</b> but need to ensure decent working conditions as defined by international labour standards</p>	<p><b>15 years or 14 years for developing countries</b> Art. 2 ILO Convention No. 138</p> <p>~</p> <p><b>Myanmar: 14 years</b> Section 48(b) of the CRL Section 75 of the Factories Act Section 13(a) of the Shops and Establishments Law, 2016</p>	<p><b>CHILD LABOUR</b> to be prohibited and eliminated</p>
	<p><b>13 years or 12 years for developing countries</b> Art. 7 of ILO Convention No. 138</p> <p>~</p> <p><b>Myanmar: has not made use of this flexibility clause for now</b></p>	<p><b>CHILD LABOUR</b> to be prohibited and eliminated</p>	<p><b>CHILD LABOUR</b> to be prohibited and eliminated</p>





Photo: Marcel Crozet/ ILO



**While important progress has been achieved recently, significant challenges remain in practice, in particular at the enforcement level.**

## What challenges remain?

While important progress has been achieved recently, **significant challenges remain in practice, in particular at the enforcement level**, as it has been repeatedly highlighted by the international supervisory bodies, such as United Nations treaty bodies and the ILO Committee of Experts on the Application of Conventions and Recommendations. Several reasons were identified to that end, such as the prevalence of the informal economy; the general lack of awareness of labour laws and the Child Rights Law; and the low level of prosecution, in particular as a result of the limited knowledge about what actually constitutes child labour. One of the specific practical difficulty in enforcing the prohibition of employment of underage children in Myanmar is linked to **age verification**.

As regards more specifically the **worst forms of child labour**, as defined under the terms of Article 3 of ILO Convention No. 182, the legal review found that as of 2020:

- Myanmar still needed to **adopt a list of hazardous work**. Such a list has been elaborated by the Technical Working Group on Child Labour, with the technical assistance of the ILO, but has not been adopted yet. It is still unclear whether

**child domestic work**, which is prevalent in Myanmar, will be included in the final list of hazardous work.

- Specific concerns have been repeatedly expressed by the international supervisory bodies concerning more particularly: (i) the **compulsory recruitment of children for use in armed conflicts** by the State armed forces (the Tatmadaw) and non-State armed groups; and (ii) the **sale and trafficking of children for both sexual and labour exploitation purposes**.

### **The situation remains fragile in practice.**

Indeed, Myanmar's commitment to prohibit and eliminate child labour, including in its worst forms, is still new and a lot of concepts, which are often conflicting with traditions, customary rules and culture, still need to be effectively understood, assimilated and implemented at national level.

In this regard, recent developments that occurred at international level, with the **COVID-19 pandemic**, as well as at national level, with the **removal of the civilian Government by the military on 1 February 2021, are of grave concern** as they could potentially negatively impact recent progress achieved in the fight against child labour in Myanmar.

## What next steps are recommended?

In order to continue working towards the effective prohibition and elimination of child labour, including in its worst forms, several recommendations are made in the second edition of the legal review of national laws and regulations related to child labour in light of international standards in Myanmar, which was conducted in 2020.

**The main priority areas** which were identified for further actions, include:

- ▶ To finalize and adopt the list of “hazardous work” prohibited to children under 18 as requested by ILO Conventions Nos. 138 and 182, both ratified by Myanmar, including by examining the inclusion of child domestic work in such a list;
- ▶ To elaborate the rules and procedures for the effective implementation of the Child Rights Law;
- ▶ To harmonize the provisions contained in labour laws and other laws with the provisions of the Child Rights Law of 2019 for legal certainty purposes, in order to ensure a consistent national legal framework, in line with international standards;
- ▶ To strengthen awareness-raising activities on child labour and relevant national provisions, in particular of the Child Rights Law and labour laws, for law enforcement authorities, employers, workers, communities, parents and children;
- ▶ To strengthen law enforcement mechanisms, while ensuring a better access to justice, and ensure systematic labour inspections in all sectors; and
- ▶ To effectively prosecute perpetrators of child labour, in particular in its worst forms, as well as to impose and enforce dissuasive penalties.



**Further information about child labour in Myanmar can be found at:**

[www.ilo.org/yangon/areas/childlabour](http://www.ilo.org/yangon/areas/childlabour)



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