



International  
Labour  
Organization

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

Executive Report





# Executive Summary



## Background Context

This paper summarizes a review of laws and practice relating to child labour that was undertaken in and covers developments up to December 2020.

The ILO's Myanmar Programme on the Elimination of Child Labour (My-PEC) 2014-2021, funded by the United States Department of Labour, was launched to establish a comprehensive, inclusive and efficient multi-stakeholder response to reducing child labour in Myanmar by increasing awareness and knowledge about child labour, improving legislation and strengthening national and local capacity to address child labour in compliance with international standards.

Indeed, according to the 2015 Myanmar Labour Force Survey, the first of its kind, more than 1.1 million children aged 5 to 17 years were engaged in child labour, with more than half of them being engaged in hazardous work. A certain reduction in child labour has been observed in the subsequent years, as according to the Myanmar Labour Force Survey of 2018, the proportion of child labour in total child population dropped from 9.3 percent in 2015 to 3.4 percent in 2018; and the proportion of children engaged in hazardous work also dropped from 5.1 percent to 3.2 percent during the same period. Poverty and household vulnerability, indebtedness, pervasive land governance issues, low agricultural productivity, cultural tradition and belief and weakness in the education system were identified as important factors that contribute to both forced labour and child labour in Myanmar.

## Objectives and methodology

In this framework, My-PEC commissioned a detailed assessment of the existing national laws and regulations on child labour in order to identify major issues and gaps and provide recommendations in light of relevant international standards. The first edition of this legal review was published in 2015. However, taking into consideration the major developments that occurred in the past five years, such as the adoption of the Child Rights Law in 2019 and the ratification of relevant international standards, it appeared necessary to update the legal review in 2020, in order to provide a better understanding about the main developments as well as the remaining challenges.

This second edition is based on a comprehensive desk review of both international and national legal frameworks and relevant publications; interviews with key stakeholders, including representatives from the Government, employers' and workers' organizations, as well as lawyers, legal scholars, United Nations (UN) agencies and non-governmental organizations (NGOs); and feedback which was provided by these key stakeholders during the validation process. It covers the period up to December 2020.

While progress has been achieved in a number of areas, the situation remains fragile in practice and several challenges in the fight against child labour still need to be overcome in Myanmar. The following paragraphs offer a snapshot of the situation as of December 2020<sup>1</sup>. However, recent developments with the COVID-19 pandemic has highlighted the vulnerability of children to child labour including in its worst forms. Sustained attention is required to prevent a long term negative impact of the pandemic on children as well as political and conflict driven crises.

This analysis is without prejudice to the views of any United Nations supervisory mechanisms relating to child labour, including the ILO in relation to the application of international standards including ILO Conventions and recommendations.

<sup>1</sup> For a detailed analysis, please refer to the full version of the legal review.



## Regulatory framework on Child Labour

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### International Instruments

To date, Myanmar has ratified 25 out of 190 ILO Conventions and 4 out of the 8 fundamental Conventions,<sup>2</sup> including the Forced Labour Convention, 1930 (No. 29) in 1955, and the Worst Forms of Child Labour Convention, 1999 (No. 182) in 2013, thereby making a clear commitment to undertake immediate action for the prohibition and elimination of the worst forms of child labour. Recently, Myanmar further ratified the Minimum Age Convention, 1973 (No. 138) on 8 June 2020, which entered into force on 8 June 2021. Myanmar also ratified the UN Convention on the Rights of the Child (CRC) in 1991 and, most recently, its two accompanying Optional Protocols.<sup>3</sup>

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

### National laws and policies

Myanmar's legal system is composed of a series of old laws from the colonial Indo-British legal system, although the Government has been making efforts to modernize it. Meanwhile, the labour legislation is fragmented by sector (factories, shops, mines, oilfield etc.) or by theme (wages, leave and holidays etc.) and multiple laws, developed over a number of years, regulate the basis of employment relationships. Consequently, this created gaps and inconsistencies in legal protection for certain categories of workers, including children, as well as lack of clarity and accessibility for rights-holders and law enforcement bodies, as well as workers and employers. However, up until December 2020, the Government had been making efforts to improve the regulatory framework, more particularly with regard to child labour and protection of young workers from exploitative conditions. This resulted 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 (which repealed the Shops and Establishment Act of 1951).

Myanmar has also implemented a number of national policies and programmes for children. New important action plans were adopted and are being implemented as of 2020, such as the National Education Strategic Plan (2016-2021) and the Myanmar third five-year National Plan of Action to combat human trafficking (2017-2021). Furthermore, in 2014, a Technical Working Group on Child Labour (TWG-CL) was established, with the technical assistance of the ILO, with a view to ensuring a comprehensive and collaborative response against child labour. The TWG-CL has overseen: the development of the List of hazardous work to be prohibited for children under 18 years in 2018 (yet to be adopted) and the National Action Plan on Child Labour (NAP on CL). The duration of the NAP on CL, which was adopted in January 2019, is expected to be 15 years from 2019 to 2033, divided into three separate phases. The first five-year plan (current NAP) covers the first phase from 2019 to 2023.

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<sup>2</sup> Myanmar has not ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98); the Equal Remuneration Convention, 1951 (No. 100); the Abolition of Forced Labour Convention, 1957 (No. 105); and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111). For further information in this regard, please refer to [Myanmar's NORMLEX Country Profile](#).

<sup>3</sup> Myanmar has ratified the Optional Protocol on the sale of children, child prostitution and child pornography in 2012 and most recently the Optional Protocol on children in armed conflicts in 2019. For further information in this regard, please refer to [Ratification Status for Myanmar](#).



## Definition of a child

Under section 3(b) of the Child Rights Law adopted in 2019, a child is now defined as anyone under the age of 18, which is consistent with the definition of a child in international instruments ratified by Myanmar (Article 1 of CRC and Article 2 of ILO Convention No. 182).

## Minimum age for admission to work

Article 32 of the CRC requires ratifying States to ensure the child's right to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development, in particular by providing for a minimum age or minimum ages for admission to employment. ILO Convention No. 138 sets a general minimum age for admission to work, subject to limited exclusions regarding categories of employment or work or economic sectors (Articles 4 and 5) or exceptions (Articles 6 and 8), and provides for the possibility of setting a lower minimum age for light work (Article 7). ILO Conventions also provide that a higher minimum age shall be set for hazardous work (Article 3(1) of Convention No. 138 and Article 3(d) of Convention No. 182).

At the time of the ratification of ILO Convention No. 138, the Government of Myanmar made a declaration, pursuant to Article 5(1) of the Convention, that the scope of application of the Convention would initially be limited to the sectors enumerated, at a minimum, in article 5(3) plus some additional sectors already legislated for in relation to child labour.

## General minimum age for admission to work

According to Article 2 of ILO Convention No. 138, the minimum age for admission to employment shall be no less than 15 years, or for a Member State whose economy and educational facilities are insufficiently developed, 14 years. In Myanmar, both the Factories Act, as amended in 2016 (section 75), and the new Shops and Establishments Law adopted in 2016 (section 13(a)) raised the legal minimum age for employment from 13 to 14 years. Furthermore, the Child Rights Law, which applies to all sectors unlike the above-referred laws, also sets 14 years as the general minimum age for admission to employment (section 48(b)). It remains to be seen how the Child Rights Law will be implemented in practice, in particular in sectors which are not covered by labour laws.

ILO Convention No. 138 also provides that the minimum age for admission to work shall be harmonized with the age of completion of compulsory schooling (Article 2(3)) in order to avoid any period during which children would be more vulnerable to child labour - i.e. children who have completed compulsory school education but have not attained the legal minimum age for admission to employment. In Myanmar, compulsory education is currently up to 10 years old but the Government has been undertaking education reform, including at the legislation level: the National Education Law (NEL) was adopted in 2014<sup>5</sup> the new Basic Education Law was adopted in 2019; and the Technical and Vocational Education Law was being drafted in 2020.<sup>6</sup> Furthermore, the NEL "targets" to extend free and compulsory education to middle school (grades 6 to 9, which corresponds to 10 to 14 years old) (Chapter 5 of the NEL). However, weakness in the education sector is an important factor that can contribute to child labour, in particular for children already in vulnerable and disadvantaged

<sup>4</sup> Ratifying States must, at a minimum, apply ILO Convention No. 138 to: mining and quarrying; manufacturing; construction; electricity, gas and water; sanitary services; transport, storage and communication; and plantations and other agricultural undertakings mainly producing for commercial purposes, but excluding family and small-scale holdings producing for local consumption and not regularly employing hired workers.

<sup>5</sup> In 2020, this law was being amended.

<sup>6</sup> In 2020, it was not clear whether the TVEL Law would remain a sector law or would be part of the rules and regulations under the NEL.

situations, such as children from ethnic minority groups, including Rohingya children. In that regard, the Child Rights Law provides that all children shall have the right to free education and educational opportunities without discrimination (section 46) and that the Ministry of Education shall take the necessary measures to ensure, in particular, school enrolment, regular attendance of children, and reduce drop-out rates to provide children with full opportunities for education (section 47). Furthermore, the National Education Strategic Plan for 2016-2021 also aims at strengthening the functioning of the education system, including by increasing school enrolment, attendance and completion rates and by reducing school drop-out rates. However, several UN supervisory mechanisms have expressed specific concerns about the effective implementation of compulsory educations as a results of low school enrolment, high dropout rates, as well as regional disparities

### **Exception for apprenticeship and vocational training**

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

In Myanmar, there is currently no comprehensive law regulating apprenticeship and vocational training of children and young persons. Some specific laws contain incomplete provisions, such as the Employment and Skill Development Law of 2013, which provides for admission to apprenticeship and vocational training at 16 years of age (section 15(b) but does not specify any working conditions. However, in 2020, the Government was in the process of drafting the Technical and Vocational Education Law which seems, among others, to aim at extending vocational training to children who dropped out from basic education.

### **Exception for artistic performances**

Article 8 of ILO Convention No. 138 provides that under specific conditions and limited numbers of hours, a child who did not reach the minimum age for admission to work (i.e. 15 years or 14 years for developing countries like Myanmar) may be granted an individual authorization to participate in artistic performances.

The Child Rights Law provides for the right of children to participate in «artistic activities» but does regulate their participation in «artistic performances».

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

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

In Myanmar the regulatory framework does not provide for a lower minimum age for admission to light work and, therefore, no list has been established in that regard. However, the Government could be encouraged to consider regulating light work for children between the ages of 12 and 14, as it would provide them with greater protection against child labour and exploitation.

## Specific minimum age for admission to hazardous work

Hazardous work is defined as work which, by its nature or the circumstances in which it is carried out, is likely to harm/jeopardize the health, safety or morals of children, and should be prohibited for all children under 18 years as a worst form of child labour (Article 32(1) of the CRC, Article 3 (1) of ILO Convention No. 138 and Article 3(d) ILO Convention No. 182). Both ILO Conventions Nos. 138 and 182 provide that the types of work to be considered as hazardous work shall be determined at national level, as well as periodically examined and revised as necessary, in consultation with the organizations of employers and workers concerned. ILO instruments however provide, as an exception, that national laws or regulations or the competent authority may, after consultation with the organizations of employers and workers concerned, where such exist, authorize employment or work as from the age of 16 years on condition that: (i) the health, safety and morals of the young persons concerned are fully protected and that (ii) the young persons have received adequate specific instruction or vocational training in the relevant branch of activity (Article 3(3) of ILO Convention No. 138; Article 4(1) of ILO Convention No. 182 and Paragraph 4 of ILO Worst Forms of Child Labour Recommendation, 1999 (No. 190).

The Child Rights Law defines hazardous work as one of the worst forms of child labour and prohibits it for all children under 18 years (sections 3(t) and 48(a)). However, other labour laws, such as the Factories Act, contain provisions which are not consistent with the Child Right Law, as they provide for the possibility for children from the age of 16 years to be employed in hazardous work, sometimes as a general rule and not as an exception. Furthermore, the necessary safeguards requested by ILO instruments for authorizing employment or work as from the age of 16 years in hazardous work are not always guaranteed in law and/or practice.

As mentioned above, a list of types of hazardous work prohibited to children under 18 years has been developed and validated by the Technical Working Group on Child Labour (TW-GCL) after tripartite and intensive stakeholders consultation. This draft list is comprehensive: it provides some sector-specific hazards, such as in agriculture, construction, fishing, manufacturing, food-processing, and at the same time also allows flexible identification of hazardous work in any other sectors or occupations where children may be working, by applying the general principles on hazardous work. However, this list had not been promulgated as of December 2020.

## Worst forms of Child Labour

Besides hazardous work, Article 3 of ILO Convention No. 182 identifies other types of worst forms of child labour that should be prohibited and eliminated for all children under 18 years. In this regard, it should be noted that unlike Convention No. 138, which contains several flexibility clauses, Convention No. 182 does not permit any exceptions or exclusions. Some other UN instruments ratified by Myanmar also deal more specifically with some aspects of the worst forms of child labour, such as the CRC and its two accompanying Optional Protocols.

Until recently, Myanmar's labour laws provided limited definitions and prohibitions of some forms of child labour to be considered as "worst forms". The Child Rights Law of 2019 however provides now for a comprehensive definition of the worst forms of child labour (section 3(t)).



## Slavery or practices similar to slavery

Several practices are expressly identified as slavery or practices similar to slavery under the terms of Article 3(a) of Convention No. 182, such as the sale and trafficking of children, debt bondage and serfdom, and forced and compulsory labour, including forced or compulsory recruitment of children for use in armed conflict.

As regards **sale and trafficking of children**, the Penal Code prohibits the sale of children (Section 372) but it is limited to the purpose of sexual exploitation or for any unlawful and immoral purpose. The Child Rights Law now goes further and prohibits and criminalizes the sale of children regardless of its purposes (sections 3(p) and (t), 48(a), and 106(a)). Regarding trafficking of children, the Child Rights Law prohibits child trafficking by including it as one of the worst forms of child labour (section 3(t)), in line with ILO Convention No. 182. The Anti-Trafficking in Persons Law further defines trafficking in persons, while paying particular attention to children and youth. However, in practice, Myanmar remains a source country for trafficking in persons, both internal and abroad. Indeed, girls as young as 12 years are trafficked for sexual exploitation and children (girls and boys) as young as 11 years are trafficked for labour exploitation.

As regards **debt bondage and serfdom**, while the new Child Rights Law expressly defines and prohibits debt bondage as a worst form of child labour (sections 3(t) and 48(a)), no explicit reference is made to serfdom. Although land-related forced labour is somewhat a practice for long time in Myanmar, it does not apply directly to children and rather applies to their parents and family units or to specific situation linked to trafficking. However, when family units including children are altogether in land-related forced labour, it is also an issue of a worst form of child labour. Therefore, serfdom should be specifically included in the legislative definition and prohibition of the worst forms of child labour.

As regards **forced labour**<sup>7</sup>, article 359 of the Constitution of 2008 prohibits forced labour except «duties assigned by the Union in accordance with the law in the interest of the public» which, according to the ILO's supervisory bodies, could be interpreted in such a way as to allow a generalized exaction of forced labour from the population<sup>8</sup>. Despite a proposal to amend this provision brought before the Pyidaungsu Hluttaw (Assembly of the Union) on 19 March 2020, such proposal was rejected. The Child Rights Law explicitly prohibits forced labour against children by recognizing it as a form of "exploitation" (section 3(s)) and a "worst form of child labour" (sections 3(t) and 48(a)). Nonetheless, the fact that the Child Rights Law does not define what exactly constitutes forced labour may make it difficult to properly identify all forms of forced labour and effectively prohibit them in practice.

Regarding more particularly, the **compulsory recruitment of children for use in armed conflict**, the 1959 Defence Services Act (amended in 1974) and the War Office Council Directive 13/73 of 1974 prohibit persons under the age of 18 from joining the armed forces. Furthermore, the Child Rights Law includes a chapter on "Children and Armed Conflict" (Chapter XVII) which explicitly prohibits which explicitly prohibits "forced or mandatory recruitment of children to be used in armed conflict" by State army or non-state armed groups as a worst form of child labour (sections 3(t), 48(a), 60(c), 63 and 64). However, the involvement of children in armed conflicts is a longstanding serious problem in Myanmar, as during decades of armed conflict between the Government and ethnic armed groups, children have been reported to be forcibly recruited by both the regular armed forces (the Tatmadaw) and the non-state armed groups. Children have been deployed at the front line as combatants and in support roles, and were also used as porters and scouts. The ILO has long been monitoring and dealing with the underage recruitment through its forced labour complaint mechanism which was established in February 2007 under the Forced Labour Convention, 1930 (No. 29). The ILO's forced labour complaints mechanism was not renewed beyond the end of December 2018, but the Government established its own National Complaints Mechanism (NCM) ad interim in 2019, which became

<sup>7</sup> Myanmar has ratified the Forced Labour Convention, 1930 (No.29), but has not ratified the Abolition of Forced Labour, 1957 (No. 105) and the Protocol of 2014 to the Forced Labour Convention, 1930.

<sup>8</sup> See CEACR's observations made on the application of the Forced Labour Convention, 1930 (No.29) by Myanmar, available at: [https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID:4054102](https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:4054102)

operational in February 2020. However, the ILO has expressed concern with the insufficient elements in the mechanism to ensure credibility, impartiality, and accountability and the ILO Governing Body made several recommendations in this regard<sup>9</sup>. A joint action plan signed with the United Nations in June 2012 to end and prevent recruitment and use of children by armed forces and to release of children under 18, led to a decrease in the cases of recruitment and use of child soldiers, but several UN reports highlighted the continued formal recruitment and informal and temporary use of children, some as young as 13 years, by the Tatmadaw, non-state armed groups and Border Guard Police.

## Prostitution, pornography or pornographic performances

Article 34 of the CRC requires ratifying States to protect children from all forms of sexual exploitation and abuse, including the exploitative use of children in prostitution and in pornographic performances and materials, and Article 3 (b) of ILO Convention No. 182 provides that the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances shall be prohibited as a worst form of child labour to be eliminated.

The Child Rights Law defines and prohibits the persuasion, purchasing, utilizing or proposing a child for prostitution, child pornography or acting in a pornographic performance (sections 3 (q), (r) and (t)(2) and 48(a)). The Law also defines and prohibits «sexual violence» explicitly referring to sexual abuse or exploitation for monetary gains, and to production and distribution of child pornography on web pages and social networks using electronic technologies (sections 3(x)) and 56). However, as already mentioned above, commercial sexual exploitation of children is a reality in Myanmar, and it is often the purpose or result of human trafficking.

## Illicit activities, in particular production and trafficking of drug

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

The Child Rights Law defines and prohibits the persuasion, purchasing, use, or proposing of a child for illegal drug operations as a worst form of child labour (sections 3 (t) and 48(a)). However, this provision is narrower than Article 3(d) of ILO Convention No. 182, as it only refers to “illegal drug operations” and does not cover other kinds of “illicit activities”, like for example “activities which involve the unlawful carrying or use of firearms or other weapons” as referred to in Paragraph 12 (c) of ILO Recommendation No. 190. However, while the Child Rights Law only considers the involvement of children in illegal drug operations as a worst form of child labour, other provisions of the Law expressly prohibit and punish the use of children under 18 years for gambling or begging which are considered as “illicit activities” in the meaning of ILO Convention No. 182. The fact that such illicit activities are not considered as a worst form of child labour under the Child Rights Law may however lead to some confusion in practice as well as discrepancies in the protection and assistance afforded to children who have been victim of child labour in “illicit activities”. Therefore, the use, procuring and offering of a child in all types of «illicit activities» should be defined in the national legislation as a worst form of child labour and effectively prohibited and eliminated in practice for all persons under the age of 18.

<sup>9</sup> See ILO Governing Body, “Progress report on the follow-up to the resolution concerning remaining measures on the subject of Myanmar adopted by the Conference at its 102nd Session (2013)», document GB.338/INS/10, 338th Session, March 2020. Available at: [https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_736391.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_736391.pdf)

## Hazardous work

As already mentioned above, the Child Rights Law defines and prohibits hazardous work for all children under 18 years as a worst form of child labour (sections 3(t) and 48(a)), while other labour laws provide for the possibility for children from the age of 16 to be employed in hazardous work without providing the necessary safeguards requested by ILO instruments. Therefore, it remains to be seen how the Child Rights Law will be articulated, in practice, with the provisions contained in the labour laws. Section 49(a) of the Child Rights Law provides that the Ministry of Labour, Immigration and Population shall establish what types of work shall be considered hazardous, in consultation with relevant employers' and workers' organizations. Such a list has been elaborated by the Technical Working Group on Child Labour, with the technical assistance of the ILO, but as of December 2020 had not been promulgated.

As recently highlighted by the CEACR, **child domestic workers** are particularly vulnerable to the worst forms of child labour, including hazardous work. Indeed, according to a Rapid Assessment of Child Domestic Work in Myanmar, undertaken in 2018, child domestic work is prevalent in Yangon and the majority of child domestic workers, some as young as nine years old, come from poor rural areas or conflict-affected ethnic minority areas. This report also indicates that child domestic workers often work from 4 a.m. until nightfall, work in seclusion and in debt bondage, and are subject to physical and verbal abuse as well as sexual exploitation.

At the time of the publication of this report, in Myanmar, child domestic work is allowed for children over 14 years, pursuant to the general age for admission to work set in the Child Rights Law. Indeed, child domestic work has not been included until now in the draft list of types of hazardous work, as validated by the Technical Working Group on Child Labour, as the relevant stakeholders were not able to reach a consensus on that point. The working conditions of domestic workers are only partially regulated under some labour laws, such as the Payment of Wages Law, the Minimum Wages Law, or the Labour Organization Law. Therefore, the recommended next steps will be to regulate the working and living conditions of child domestic workers over 14 years, and to identify hazardous types of child domestic work that should be prohibited for all children under 18 years, as required by international labour standards. In that regard, ILO Domestic Workers Convention, 2011 (No. 189) and its accompanying Recommendation No. 201 can provide useful guidance.

## Decent working conditions

International instruments contain also a number of other provisions concerning working conditions that shall apply to children above the legal minimum age for employment in order to ensure decent work for all.

## Fundamental principles and rights at work

Firstly, as provided in the CRC (Articles 2 and 15) and the ILO Declaration on Fundamental Principles and Rights at Work<sup>10</sup>, children shall also benefit from the right to equality and non-discrimination, as well as from the right to freedom of association and collective bargaining.

As regards **freedom of association and collective bargaining**<sup>11</sup>, in Myanmar four national statutes are relevant to freedom of association and the right to organize: the Constitution, the Law on the Right to Peaceful Assembly and Peaceful Procession, the Labour Organization Law, and the Child Rights Law. The

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<sup>10</sup> Adopted in 1998, the ILO Declaration on Fundamental Principles and Rights at Work commits Member States to respect and promote principles and rights in four categories, whether or not they have ratified the relevant Conventions. These categories are: freedom of association and the effective recognition of the right to collective bargaining, the elimination of forced or compulsory labour, the abolition of child labour and the elimination of discrimination in respect of employment and occupation. As the elimination of forced or compulsory labour as well as the abolition of child labour have been examined in the above sections, reference is only been made here to the other ILO Fundamental Principles and Rights at Work.

<sup>11</sup> Myanmar has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), but has not ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

main report provides detailed analysis of these statutes in light of international laws and standards, identifies key shortcomings and provides recommendations for improvement.

As regards the right to **equality and non-discrimination**<sup>12</sup>, the Child Rights Law strengthens the protection of the principle of non-discrimination by expanding the prohibited grounds for discrimination as follows: “citizenship, ethnicity, nationality, caste, origin, colour, man or woman, language, religion, occupation, social status, culture, economic situation, disability, political beliefs or sexual orientation” (section 3(u)). However, while the Law explicitly provides for the right to educational opportunities without discrimination, no reference is made to protection against discrimination in access to employment or in the terms and conditions of employment. Concerning sexual harassment, which is considered as a serious form of sex discrimination, the Child Rights Law prohibits “sexual violence” against children (section 56) while it is mainly defined by referring to physical forms of sexual violence (section 3(x)). This provision is therefore more restrictive than the definition of sexual harassment adopted by the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR)<sup>13</sup>, which may lead to some confusion in practice regarding the types of conducts that could be considered as sexual harassment against children at national level. Further guidance on this subject can be found in the newly adopted ILO Violence and Harassment Convention, 2019 (No. 190) and its accompanying Recommendation (No. 206).

As regards the principle of equal remuneration between men and women for work of equal value<sup>14</sup>, provided for in ILO Convention No. 100, the Child Rights Law does not contain any provision ensuring equal remuneration between boys and girls for work of equal value. In practice, in Myanmar, girls are most often paid lower wages than boys.

## Wages

The national legislation provides for a minimum wage fixing machinery<sup>15</sup> but serious issues of compliance and enforcement that hamper its effective implementation have been identified.<sup>16</sup> The Child Rights Law does not contain any reference to the fixation or payment of wages for young workers. However, as highlighted by the UN Committee on the Rights of the Child in its most recent concluding observations, in Myanmar, economic exploitation of children persists, including low wages.

## Hours of work and night work

The Factories Act, as amended in 2016, and the Shops and Establishments Law of 2016 contain specific regulations concerning the hours of work of young workers, but no provision has been included in the Child Rights Law in that respect. Young workers who are not covered by such labour laws do not benefit from any protection regarding their hours of work. As regards night work, which may be considered as part of the

<sup>12</sup> Myanmar has not ratified the Equal Remuneration Convention, 1951 (No. 100) and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

<sup>13</sup> Indeed, according to the CEACR, sexual harassment includes (1) (quid pro quo): any physical, verbal or non-verbal conduct of a sexual nature and other conduct based on sex affecting the dignity of women and men, which is unwelcome, unreasonable, and offensive to the recipient; and a person’s rejection of, or submission to, such conduct is used explicitly or implicitly as a basis for a decision which affects that person’s job; and (2) (hostile work environment): conduct that creates an intimidating, hostile or humiliating working environment for the recipient.

<sup>14</sup> It should be noted that the principle of “equal remuneration for men and women for work of equal value” is not the same as “equal pay for equal work”. Not only should men and women get equal pay for doing the same or a similar job, but also when they do work that is completely different but which, based on objective criteria, is of equal value. For further information, please see: ILO (2013). Equal Pay: An Introductory Guide. Available at:

<sup>15</sup> Myanmar has adopted the Minimum Wage Law in 2013, which provides for minimum wage fixing machinery covering the commercial, production, service, agricultural and livestock breeding sectors, and the Payment of Wages Law in 2016. A minimum wage was established in 2015, irrespective of the regions and categories of industry

<sup>16</sup> In its 2018 Decent Work Diagnostic Report, the ILO highlighted several issues of compliance and enforcement of the national legislation. See ILO, [Decent Work Diagnostic Report, Myanmar’s progress and challenges, 2018](#).

hazardous work to be prohibited for children under 18 years, the national legislation contains some provisions in that regard, but such prohibition does not apply to children in all sectors and allows for exceptions and as such do not appear to be consistent with the international standard.

## Occupational Safety and Health

In Myanmar, several provisions can be found in the different national statutes but are often limited and applicable to specific sectors (e.g. the Factories Act and the Shops and Establishments Law). The Child Rights Law recognizes the importance of ensuring safety and health for working children and provides that the Ministry of Labour would be responsible for coordinating with relevant Union Ministries to ensure “occupational safety including freedom from physical and verbal harassment as well as infringement of health rights” (sections 44 and 49(b)). While the Child Rights Law does not contain further details in this regard, the very first, stand-alone Occupational Safety and Health Law, was passed in 2019 but was not yet in force as of the end of 2020.

## Social security

Adequate national systems of social security are a powerful instrument to prevent child labour, by alleviating poverty and shocks (e.g. economic or health-related shocks) resulting in a loss family income for the households which may otherwise have to resort to child labour. In Myanmar, the Social Security Law, enacted in August 2012 with the technical assistance of the ILO, covers the nine contingencies established by the ILO Social Security (Minimum Standards) Convention, 1952 (No. 102)<sup>17</sup> although all are not currently operative. It also opens the way for the protection of workers in smaller enterprises and outside formal employment (agriculture, informal sector, family businesses), where a large number of young workers may be found, through the establishment of a voluntary scheme. However, the effectiveness of the voluntary scheme has been limited so far, in particular as a result of the financial burden it places on workers. The Child Rights Law and other labour laws do not contain specific provisions regarding access of young workers to social security benefits.

## Migration of young workers

In Myanmar, migration of young workers between 14 and 18 years is not specifically prohibited by law; that is to say, except the worst forms of child labour, in particular trafficking. Myanmar has concluded a Memorandum of Understanding (MOU) on labour migration with Thailand, which is the major destination country of Myanmar workers (over 2.2 million officially registered migrants, as of September 2018). The legal minimum age for employment in Thailand is 15 years, so in theory, young Myanmar workers who are above 15 years could migrate under the MoU. However, very little information or data is available, for instance in which sectors or businesses in Thailand are Myanmar young workers working lawfully and under what conditions (employment contracts, wages, working hours, etc). Some available data and studies indicate that in some cases, if not many, young workers find themselves in unlawful or irregular situations. In that regard, a MOU could include some provisions to ensure that if both countries agree that young workers can migrate, there should be specific clauses providing appropriate protection and services for young workers.

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<sup>17</sup> This Convention has not been ratified by Myanmar yet but the Ministry of Labour, Immigration and Population is considering its ratification.



## Monitoring and Enforcement

### Monitoring

Following the adoption of the National Action Plan on Child Labour in 2019, Myanmar was considering in 2020 establishing a Child Labour Monitoring System (CLMS). One of the purposes and roles of a CLMS is to identify children trapped in child labour and remove them from labour exploitation, as well as to protect young children from hazardous work. As of late 2020, the Standard Operating Procedures were being reviewed by all the development partners, UN agencies, international NGOs and civil society organisations in line with the Child Rights Law. The Child Rights Law and other labour laws provide for monitoring mechanisms, but such mechanisms are still to be elaborated or implemented, or when they do exist often lack efficiency and face resources constraints in practice, such as for example inspectors in charge of monitoring the implementation of the Factories Act.

### Enforcement

#### Penalties

Sufficient dissuasive penalties are necessary to act as deterrent and contribute to the effective elimination of child labour. International instruments request ratifying States to ensure appropriate penalties and other sanctions in case of child labour, including penal sanctions for child labour in its worst forms (Article 25 ILO Convention No. 29; Article 9(1) of Convention No. 138; Article 7(1) of Convention No.182; Article 32(2) of the CRC and Paragraph 12 of ILO Recommendation No. 190).

The Child Rights Law provides for specific penalties of imprisonment and/or a fine which seem sufficiently severe and dissuasive for three out of the four worst forms of child labour. However, the Law does not establish specific penalties for one of the worst form of child labour, namely for the involvement of children in illegal drug operations, and the employment of children below the legal minimum age for admission to work, only providing that in such cases penalties provided for under «one of the relevant existing legislation» shall apply (section 108). In practice, this provision can lead to major implementation problem because the existing labour laws only apply to limited sectors such as factories and shops and establishments, and therefore there can be no penalties for the employment of underage children in any other sectors or businesses that are not covered by the existing legislation. As regards penalties provided in labour laws, such penalties seem sufficiently severe and dissuasive providing for imprisonment and a fine. Penalties applicable in case of procuring or offering a child for the production and trafficking of drugs, as well as for the use of a child aged between 16 and 18 years to this end, do not appear clearly in the national legislation which may lead to some confusion in practice. Penal sanctions could be completed by legally mandated and appropriate administrative sanctions administered through labour inspectors, for greater efficiency in applying legal sanctions.

## Enforcement

As regularly reaffirmed by the CEACR, effective legislation requires adequate penalties that are enforced in practice. In this regard, several international supervisory bodies highlighted that law enforcement to fight against child labour is very weak and remains an important challenge in Myanmar, due to a number of reasons, including:

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

One of the specific practical difficulties in enforcing the prohibition of employment of underage children in Myanmar is linked to **age verification**. In Myanmar, children sometimes do not have any official identification documents or such documents (such as birth certificate, national identity card, etc.) are inaccurate. The Factories Act addresses this problem by providing a reverse onus on the employer to establish a child is not under the legal minimum age for admission to work (section 96 (1)). While section 21 of the Child Rights Law provides that all children born within the country shall have the right to birth registration free of charge and without any discrimination, it does not contain similar provisions regarding the onus as to age.

## Assistance to victims

International standards provide that States shall take appropriate and effective measures to provide assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social reintegration (Article 39 of the CRC and Article 7(2)(b) of ILO Convention No. 182). The Child Rights Law provides for the care and protection of children victims of the worst forms of child labour, but no reference is made to their rehabilitation and social reintegration. However, the Law provides for the assistance, as well as for the physical and psychological rehabilitation and reintegration into society of children recruited or used in armed conflicts. It remains to be seen how these provisions will be implemented in practice.



# Conclusions and recommendations

## Conclusions

In Myanmar, the political and legal framework for the protection of children against child labour has long been deficient. Important progress was made as of 2020, including the amendment of the Factories Act and the adoption of the Shops and Establishments Act in 2016, and the adoption of the landmark Child Rights Law in 2019 which extends its protection to all children, including those who are not protected, fully or partially, by the fragmented and sector-specific labour laws. Myanmar also adopted a number of important policies and action plans such as the National Action Plan on Child Labour (2019-2023), the National Education Strategic Plan (2016-2021) and the Myanmar third five-year National Plan of Action to combat human trafficking (2017-2021). Several other key instruments have already been elaborated and are now awaiting their adoption or entry into force, among others the new Occupational Safety and Health Law of 2019 and the List of hazardous work to be prohibited for children under 18 years.

However, substantial and urgent measures are still needed to ensure the effective implementation of existing legislative provisions, as well as the imposition of dissuasive sanctions in practice in order to effectively eliminate child labour, including in its worst forms. However, recent developments with the COVID-19 pandemic has highlighted the vulnerability of children to child labour including in its worst forms. Sustained attention is required to prevent a long term negative impact of the pandemic on children as well as political and conflict driven crises.

## Recommendations

The legal review contains a number of valuable priority and specific recommendations. A summary of the main recommendations made for each of the 22 national statutes related to child labour examined in the framework of the legal review is available in Annex I of the review.

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

- ▶ the finalization and adoption of the list of “hazardous work” prohibited to children under 18, including examining the inclusion of child domestic work in such a list;
- ▶ the elaboration of the rules and procedures for the effective implementation of the Child Rights Law;
- ▶ the harmonization of the provisions contained in labour laws and other laws with the provisions of the Child Rights Law of 2019 for legal certainty, in order to ensure a consistent national legal framework, in line with international standards;
- ▶ the strengthening of 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;
- ▶ the strengthening of law enforcement mechanisms, while ensuring a better access to justice, and the establishment of systematic labour inspections in all sectors; and
- ▶ the effective prosecution of perpetrators of child labour, in particular in its worst forms as well as the imposition and enforcement of dissuasive penalties



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