



Governing Body

312th Session, Geneva, November 2011

GB.312/INS/7(Add.)

Institutional Section

INS

SEVENTH ITEM ON THE AGENDA

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 (June 2010) of the International Labour Conference under article 26 of the ILO Constitution

Addendum

This document contains information addressed to the Office by the Government of Myanmar on 4 November 2011.

Geneva, 11 November 2011



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URGENT

No. 264/3-20/39

The Permanent Mission of the Republic of the Union of Myanmar to the United Nations Office and other International Organisations in Geneva presents its compliments to the Office of the Executive Director of International Labour Office and has the honour to forward herewith a copy of the Labour Organization Law (English version in 13 pages) signed and enacted by the President of the Republic of the Union of Myanmar on 11th October, 2011.

In this connection, The Permanent Mission would be grateful if the Office of the Executive Director could bring this important development to the attention of the ongoing Governing Body meeting and other relevant parties of the ILO as deems appropriate.

The Permanent Mission of the Republic of the Union of Myanmar to the United Nations Office and other International Organizations in Geneva avails itself of this opportunity to renew to the Office of the Executive Director of International Labour Office the assurances of its highest consideration.



Office of the Executive Director
International Labour Office
GENEVA.

The Labour Organization Law

(The Pyidaungsu Hluttaw Law No. 7 / 2011)

The 14th Waxing day of Thadinkyut 1373, M.E.

(11th October, 2011)

Preamble

The Pyidaungsu Hluttaw hereby enacts this Law, in accord with section 24 of the Constitution of the Republic of the Union of Myanmar, to protect the rights of the workers, to have good relations among the workers or between the employer and the worker, and to enable to form and carry out the labour organizations systematically and independently.

Chapter I

Title, Enforcement and Definition

1.
 - (a) This Law shall be called the **Labour Organization Law**.
 - (b) This Law shall come into force on the date prescribed by notification by the President.
2. The expressions contained in this Law shall have the meanings given hereunder:
 - (a) **Worker** means a person who relies on his labour to engage in economic activity or to generate a livelihood, including a daily wage earner, temporary worker, worker engaged in agriculture, domestic worker, government employee and apprentice, but does not include the Defence Services personnel, member of the Myanmar Police Force or member of the armed organizations under the control of the Defence Services.
 - (b) **Employer** means a person who carries out by hiring one or more worker on wages of mutual consent in any trade under the relevant employment agreement, including a person who manages, supervises and administers directly or indirectly and is responsible to pay wages to the worker. This expressions include the legal managerial agent of the employer.
 - (c) **Trade or activity** means the 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.

- (d) **Utility service** includes public utility services and non-public utility services.
- (e) **Public utility service** means the following businesses:
 - (i) transportation business;
 - (ii) port business and port cargo handling business;
 - (iii) postal, telex or fax business;
 - (iv) business relating to information and communication technology;
 - (v) petroleum or petroleum products distribution business for the public;
 - (vi) night soil disposal or sanitation business;
 - (vii) business of production, transmission and distribution of electricity or fuel energy to the public;
 - (viii) business of public financial service;
 - (ix) business which is stipulated by the Union Government as the public utility service, from time to time.
- (f) **Lock-out** means the temporary closing of the work place of any trade, suspension of work or refusal by the employer to allow the workers at the work site to continue to work in consequence of the situation of any dispute of the employer and workers which remains in dispute.
- (g) **Strike** means collective action taken by decision of some or all workers resulting in a suspension of work, a refusal to work or to continue to work, or a slow-down or other collective actions that are designed to limit production or services relating to social or occupational matters in any dispute. This expression does not include workers' exercise of their right to remove themselves, having reasonable justification to believe that the work situation presents a sudden and serious danger to their life or health.
- (h) **Labour Organization** means the Basic Labour Organization, Township Labour Organization, Region or State Labour Organization, Labour Federation and Myanmar Labour Confederation formed under this Law.
- (i) **Executive Committee** means the executive committee of the respective labour organization.
- (j) **Conciliation Body** means the Township Conciliation Body formed under the Trade Disputes Act.
- (k) **Fund** means a fund established in a labour organization under this Law.

Chapter II

Establishment of the Labour Organizations

3. Every worker, who has attained the age prescribed in respective existing law to work in any trade or activity shall have the right to:

- (a) join as a member in a labour organization and to resign from a labour organization according to their own desire;
- (b) join as a member only in a labour organization formed according to the category of trade or activity relating to them.

4. In forming the various levels of labour organization to enable to carry out the interest of the workers and employers:

- (a) (i) Basic Labour Organizations may be formed by a minimum number of 30 workers working in the relevant trade or activity according to the category of trade or activity. If it is a trade or activity having less than 30 workers, it may form so jointly with any other trade of the same nature;
- (ii) In so forming, it shall be recommended by not less than 10 percent of all workers of the relevant trade or activity;
- (b) Township Labour Organizations may be formed if it is recommended by not less than 10 percent of all Basic Labour Organizations in the relevant township according to the category of trade or activity;
- (c) Region or State Labour Organizations may be formed if it is recommended by not less than 10 percent of all Township Labour Organizations in the relevant Region or State according to the category of trade or activity;
- (d) Labour Federation may be formed if it is recommended by not less than 10 percent of all Region or State Labour Organizations according to the category of trade or activity;
- (e) Myanmar Labour Confederation may be formed if it is recommended by not less than 20 percent of all Myanmar Labour Federations according to the category of trade or activity.

5. The Labour Organization shall have the right to carry out under its own name and common seal and perpetual succession and the right to sue and be sued.

6. The Myanmar Labour Confederation and the Labour Federations are entitled to make mutual contact with other organizations or other Labour Federations formed in accord with law.

International Labour Organization and the Labour Confederations or Federations of any foreign country and to affiliate with international labour confederations and federations.

7. (a) The Executive Committee of the Basic Labour Organizations shall be elected and formed with at least five members or any higher odd numbers.
 - (b) The Township Labour Organization, Region or State Labour Organization and the Labour Federation shall form its executive committee with "odd" number from a minimum of 7 to a maximum of 15 members.
 - (c) The Myanmar Labour Confederation shall be formed with "odd" number of executive committee members from a minimum of 15 to a maximum of 35 members.
8. The employers may organize in parallel structures under this Law.

Chapter III Registration

9. (a) The Chief Registrar shall be a person assigned duty by the President of the Republic of the Union of Myanmar.
 - (b) The Township Registrar shall be a person assigned duty by the Chief Registrar.
10. The relevant labour organization shall, subject to the provisions contained in this Law, draw the constitution or rules of the labour organization containing the following facts with the approval of the majority of its members:
- (a) name of the labour organization;
 - (b) object of the formation of labour organization;
 - (c) matters relating to scrutinizing the membership of labour organization, granting membership, issuing recognition certificate, resigning from the membership of labour organization;
 - (d) matters relating to election and assigning duty to the Executive Committee members, removal and resignation from duty;
 - (e) matters relating to holding of meeting;
 - (f) matters relating to the establishment of fund, maintaining and expending of such fund;
 - (g) matters relating to monthly and annual auditing of the fund.
11. (a) The Executive Committee of any Labour Organization other than Myanmar Labour Confederation and the Labour Federation shall submit to the relevant

township registrar in accord with the stipulation, attached with the rules of its organization and register as labour organization according to the category of trade or activity.

- (b) In registering under sub-section (a), if it is a Basic Labour Organization, it shall be attached with the form signed by the founding members of the relevant labour organization and if it is a Township Labour Organization and a Region or State Labour Organization signed by the executive committee members of the relevant labour organization that they have agreed to the relevant rules.

12. The Executive Committee of Myanmar Labour Confederation and any Labour Federation shall submit constitution of the Labour Federations and Myanmar Labour Confederation to the Chief Registrar in accord with stipulation and register as Myanmar Labour Confederation and Labour Federations according to the category of trade or activity. In so registering, the form signed by the executive committee members of the relevant labour organizations that they have agreed to the constitution, shall be attached.

Chapter IV

Functions and Duties of the Executive Committee

- 13. The executive committee shall maintain the fund of the relevant labour organization.
- 14. The executive committee shall prepare and keep the monthly accounts and annual accounts of the funds collected monthly, other funds and expenditure accounts and send the annual statement of the accounts of labour organization whenever the financial year ends, to the relevant township registrar and annual statement of the accounts of Myanmar Labour Confederation and the Labour Federations to the Chief Registrar without fail.
- 15. If it is desirous to join between a labour organization and another which has registered according to the category of trade or activity or re-secession from the labour organization joined, it shall be applied to the relevant township registrar, in accordance with the rules of the labour organizations and at least with the approval of majority of the total members of the relevant executive committee.
- 16. The functions and duties of the Executive Committee are as follows:
 - (a) to represent the workers;
 - (b) to carry out activities in protecting the rights and interests of the workers;
 - (c) to develop knowledge relating to the functions and duties of workers;

- (d) to provide job training and skill-training with a view to the emergence of workers with improved qualification which supports the development of productivity;
- (e) to undertake all activities designed to benefit the organization and its members including cooperative, housing, welfare and similar purposes.

Chapter V

Rights and Responsibilities of the Labour Organization

17. The labour organizations shall have the right to carry out freely in drawing up their constitution and rules, in electing their representatives, in organizing their administration and activities or in formulating their programmes. The Labour Organizations have the right to negotiate and settle with the employer if the workers are unable to obtain and enjoy the rights of the workers contained in the labour laws and to submit demands to the employer and claim in accord with the relevant law if the agreement cannot be reached.

18. The labour organization has the right to demand the relevant employer to re-appoint a worker if such worker is dismissed by the employer and if there is cause to believe that the reasons of such dismissal were based on labour organization membership or activities, or were not in conformity with the labour laws.

19. The labour organizations have the right to send representatives to the Conciliation Body in settling a dispute between the employer and the worker. Similarly, they have the right to send representatives to the Conciliation Tribunals formed with the representatives from the various levels of labour organizations.

20. In discussing with the Government, the employer and the complaining workers in respect of worker's rights or interests contained in the labour laws, the representatives of the labour organization also have the right to participate and discuss.

21. The labour organizations have the right to participate in solving the collective bargains of the workers in accord with the labour laws.

22. The labour organizations shall carry out peacefully in carrying out holding of meetings, going on strike and carrying out other collective activities in accord with their procedures, regulations, by-laws and any directives prescribed by the relevant Labour Federation.

23. The labour organizations shall assist in making agreements relating to management of works, individual employment agreements, bonds and other individual agreements between the employer and the workers.

Chapter VI

Establishing and Expending of Fund

24. The respective labour organizations has the right to establish a fund each separately.

25. The labour organizations:

- (a) have the right to establish the fund, in accord with the constitution or rules of their organization, with admission fees for the labour organization, monthly contribution not exceeding two percent of the wages or salary obtained by the worker who is a member of the organization, income from the cultural and sports works which are undertaken by the labour organizations and the money donated by the relevant employer;
- (b) shall deposit to the Fund if money is included in the grants provided by the Government.
- (c) shall abide by the provisions of the Control of Money Laundering Law.

26. The Basic Labour Organizations shall allocate the monthly contribution not exceeding two percent of the wages or salary obtained by the worker who is a member of the organization to the Township Labour Organization, Region or State Labour Organization, Labour Federations and the Myanmar Labour Confederation as prescribed by the relevant labour federation.

27. The fund of the labour organizations shall be used for the matters provided in their constitutions and rules such as social welfare, education, health, culture, sports, and training courses relating to skill etc. or those adopted by the majority of the members at a general meeting of that organization called for such purposes.

28. The relevant executive committee shall open a bank account in Myanmar for the fund of its organization.

Chapter VII

Duties of Employer

29. The employer shall recognize the labour organizations of his trade as the organizations representing the workers.

30. The employer shall allow the worker who is assigned any duty on the recommendation of the relevant executive committee to perform such duty not exceeding two days per month unless they have agreed otherwise. Such period shall be deemed as if he is performing the original duty of his work.

31. The employer shall assist as much as possible if the labour organizations request for help for the interest of his workers. However, the employer shall not exercise any acts designed to promote the establishment or functioning of labour organizations under his domination or control by financial or other means.

Chapter VIII

Duties and Powers of the Chief Registrar

32. The duties and powers of the Chief Registrar are as follows:
- (a) determining the duties and powers of the Township Registrar;
 - (b) giving decision on the scrutiny and submission of the Township Registrar in respect of the application to register as a labour organization;
 - (c) giving decision relating to the registration of labour organization, if it is applied for registration as labour organization within 30 days from the day of receipt of the application;
 - (d) directing the relevant township registrar to institute a case for deregistration as a labour organization, if it was registered by fraud or mistake or registered with other purpose than to function as a labour organization;
 - (e) auditing annual accounts of the Myanmar Labour Confederation and the Labour Federations and causing to audit of annual accounts of various levels of labour organization, upon request by organization which coordinates not less than 10 percent of the labour organization;
 - (f) giving decision on the scrutiny and submission of the Township Registrar in respect of application to allow joining between a labour organization and another or re-secession from the labour organization joined;
 - (g) giving decision in respect of submission of the Township Registrar for deregistration as a labour organization due to any cause contained in section 33.
33. The Chief Registrar may deregister a labour organization if any of the following causes arises:

- (a) applying to deregister as the labour organization by the relevant executive committee;
- (b) finding out, on scrutiny, that the workers or the labour organizations do not reach the prescribed minimum number.

Chapter IX

Application relating to the Decision of the Chief Registrar

34. A person dissatisfied with the order refusing to register or deregistering as the labour organization passed by the Chief Registrar may apply to the Supreme Court of the Union in accord with the existing law.

35. The decision of Chief Registrar shall not take effect until the completion of 90 days after the day of such decision or, if application is made by the dissatisfied person under section 34 to the Supreme Court of the Union, until the final decision is passed by such Supreme Court.

Chapter X

Duties and Powers of the Township Registrar

36. The duties and powers of the Township Registrar are as follows:

- (a) submitting to the Chief Registrar after scrutinizing the application to register as a labour organization in accord with the stipulation;
- (b) requesting the requirements found on scrutiny under sub-section (a), from the relevant labour organization and staying the matter for registration during the period of requesting so;
- (c) informing the decision of the Chief Registrar to the relevant labour organization in respect of the application to register as a labour organization;
- (d) conferring the registration certificate to the labour organization permitted to register by the Chief Registrar;
- (e) accepting and keeping the number of members and the financial statement of the relevant labour organization;
- (f) submitting to the Chief Registrar in respect of the application for joining or secession of labour organization, after scrutinizing in accord with the stipulations;
- (g) informing the decision of the Chief Registrar relating to the submission under sub-section (f) to the relevant labour organization;
- (h) submitting to the Chief Registrar to deregister the registration as a labour organization due to any cause contained in section 33;

- (i) instituting a case to the relevant competent court for deregistration of a labour organization in accord with the directive of the Chief Registrar under sub-section (d) of section 32 of this Law;
- (j) carrying out the duties assigned by the Chief Registrar from time to time.

Chapter XI

Lock-out and Strike

37. The employer desirous of locking-out the public utility service or service which is not included in the public utility service shall inform the starting day and period of lock-out of the work in accord with the stipulation, at least 14 days in advance before the lock-out to the relevant township labour organization and relevant conciliation body and lock-out the work only after receiving the permission of the relevant conciliation body.

38. The labour organization desirous to go on strike in a public utility service shall, by the desire of the majority of the member workers:

- (a) inform the relevant employer and the relevant conciliation body in accord with the directive of the relevant labour federation by mentioning the date, place, number of participants, manner and the time of strike at least 14 days in advance.
- (b) negotiate, discuss and decide on the minimum service, prior to the dispute, which shall be such as to meet the basic needs of the public while not impacting the right of strike of workers. In doing so, the employers and the labour organizations shall seek to reach agreement on the number and kind of posts that need to be filled in the event of a strike and the persons who will be required to remain at work. If they fail to reach agreement, the minimum service shall be determined by the competent court.

39. The labour organization desirous to go on strike in service which is not included in the public utility service shall, by the desire of the majority of the member workers, inform the relevant employer and the relevant conciliation body in accord with the stipulation with the permission of the relevant labour federation by mentioning the date, place, number of participants, manner and the time of strike at least three days in advance before the day of strike.

- 40. (a) The relevant conciliation body shall reply in time to the relevant employer whether it is permitted or not relating to the submission to lock-out work;

- (b) The relevant labour federation shall reply to the relevant labour organization in time whether it is permitted or not relating to the submission of any labour organization to go on strike.

41. The lock-out or strike shall be illegal lock-out or strike if it is involved with any of the followings:

- (a) being the following essential services, those whose interruption are liable to endanger the life, health or security of the people in any segment of the population:
 - (i) water services;
 - (ii) electricity services;
 - (iii) fire services;
 - (iv) health services;
 - (v) telecommunications services.

Explanation: A non-essential service may become an essential service if the strike affecting it exceeds a certain duration so as to give rise to damage which are irreversible or out of all proportion to the occupational interests of those involved in the dispute.

- (b) going on strike by labour organizations without permission of the relevant labour federation;
- (c) failing to inform in advance in accord with the provision of this Law in respect of lock-out or strike;
- (d) not being relevant to the labour affairs such as wages, salaries, welfare and working hours or other matters relating to the occupational interest of the workers;
- (e) the strike not being in conformity with the date, place, time, period, number of participants and manner as obtained permission in advance.

42. If it is an illegal lock-out or illegal strike, it may be prohibited in accord with the existing law.

Chapter XII

Prohibitions

43. No employer shall, without permission of the relevant conciliation body, lock-out a public utility service or service which is not included in public utility service.

44. No employer shall:

- (a) lock-out a work due to such dispute during the pendency of a trade dispute settlement;
- (b) carry out an illegal lock-out which is involved with any provision contained in sub-sections (a) and (c) of section 41;
- (c) dismiss a worker who opposes an illegal lock-out which is involved with any provision contained in sub-sections (a) and (c) of section 41;
- (d) dismiss a worker for his membership in a labour organization for the exercise of organizational activities or participating in a strike in accord with this Law.

45. No worker shall go on strike, without informing in advance to the relevant employer or to the relevant conciliation body that a strike in a public utility service will be carried out in accord with the stipulation contained in section 38.

46. No worker shall go on strike without informing in advance to the relevant employer or to the relevant conciliation body that a strike in service which is not included in the public utility service will be carried out in accord with the stipulation contained in section 39.

47. No worker shall:

- (a) go on strike based on such dispute during the pendency of a trade dispute settlement for any dispute;
- (b) go on illegal strike which is involved with any provision contained in section 41.

48. The fund of the labour organizations shall not be used for the matters provided in their constitutions and rules such as social welfare, education, health, culture, sports, and training courses relating to skill etc. or those adopted by the majority of the members at a general meeting of that organization called for such purposes.

49. No person shall coerce, threaten, use undue influence or seduce by illegal means any worker to participate or not to participate in a labour organization.

50. No person shall:

- (a) interfere or obstruct the executive committees in performing duties and powers contained in this Law;
- (b) in respect of labour affairs, carry out demonstrations within 500 yards from hospitals, schools, religious buildings, airports, railways, bus terminals, ports or diplomatic missions and military or police installations.

Chapter XIII

Penalties

51. Any employer who violates any prohibition contained in sections 43 and 44 shall, on conviction, be punished with a fine not exceeding one hundred thousand kyats or with imprisonment for a term not exceeding one year or with both.

52. Any worker who violates any prohibition contained in sections 45, 46 and 47 shall, on conviction, be punished with a fine not exceeding thirty thousand kyats.

53. Any person who violates any prohibition contained in section 48 shall, on conviction, be punished with imprisonment for a term not exceeding one year or with fine or with both.

54. Any person who violates any provision contained in section 49 and sub-section (a) of section 50 shall, on conviction, be punished with a fine not exceeding one hundred thousand kyats or with imprisonment for a term not exceeding one year or with both.

55. In violating the provision contained in sub-section (b) of section 50, it shall be taken action under the relevant law in the matter of committing violence against person, causing damage to property or infringing other rights seriously.

Chapter XIV

Miscellaneous

56. The Union Government may provide assistance to a labour organization as appropriate. However, the right of labour organization to carry out activities independently according to law shall be regarded.

57. In implementing the provisions of this Law, the Ministry of Labour may issue necessary rules, regulations or by-laws with the approval of the Union Government or may issue necessary notifications, orders, directives and procedures.

58. The Trade Unions Act, 1926 is hereby repealed.