

**A Study of Labour Conditions in
Yangon's Industrial Zones
2012-2013**



MODERN SLAVERY

**Modern Slavery:
A Study of Labour
Conditions in Yangon's
Industrial Zones**

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Executive Summary¹

With Myanmar going through a period of transition and the space for civil society is expanding, the role of labour unions in promoting and protecting fundamental rights of workers is vital yet the challenges they face in the current environment are huge.

Workers in Yangon's 13 industrial zones work in unsafe, hot, overcrowded factories, typically for around 11 hours per day, 6 days per week. A complex system of bonus pay for punctuality and non-absence pay as well as a meagre daily wage leaves most workers needing to work overtime to make money. This cycle is completed by the need to go to pay-day-lenders at the end of the month to make up for the shortfall in meeting their basic needs. Thus they have no choice but to continue working as many hours as possible to pay off this debt. The living conditions are also squalid, and transportation between factory-provided hostels or rented spaces shared with many others can add hours onto a day and for many women leave them vulnerable to sexual harassment late at night.

Yet the last two years, more and more labour unions have emerged from the shadows of direct military rule, and two waves of strikes have seen workers fight for their rights as people are beginning to test the waters in a new political environment. Unfortunately their rights are not adequately protected by law. Despite two new laws promulgated in 2012, the Labour Organization Law and the Labour Dispute Settlement Law, weaknesses, holes, and lack of concrete protection in this legislation means that they contravene aspects of the two core ILO Conventions that are relevant to this report, the *Freedom of Association and Protection of the Right to Organise, Convention N°87* and the *Right to Organise and Collective Bargaining, Convention N°98*. Striking workers and labour activists are routinely threatened, intimidated, or dismissed by employers. The mechanisms established by the legislation do not sufficiently protect workers against such consequences while dispute settlement processes are further complicated by third parties who intervene with good intentions yet lack the competency and knowledge of labour standards or an awareness of the situation on the ground for workers themselves.

The struggle for workers in Yangon's industrial zones, and indeed everywhere in Myanmar, will be long and complex. Despite some positive noises from the government there is still a lack of political will to genuinely protect and promote labour rights. With the imminent onset of a huge increase in foreign direct investment, the industries in Yangon's industrial zones, especially the garment industry, are set to grow substantially over the next few years, thus exacerbating existing problems unless labour standards are vastly improved. Prevailing corruption and the lack of rule of law is another debilitating factor in this struggle as those with power and money, who are certainly not the workers, seek to maintain the status quo.



¹ An update on developments that have occurred since this report was written is available in the Burmese language version

Methodology

The research for this report was conducted by three organisations through two types of questionnaires. One questionnaire was for workers themselves while a more in-depth questionnaire including open-ended discussions was conducted with labour activists, union members and strike leaders. The questionnaire for the workers was devised after consultations and discussions between the leading organisations on this report, taking into account gender issues, safety of workers, and other contextual considerations. This questionnaire was conducted in three main areas; Area A covered factories in South Dagon, North Dagon and North Okkalapa industrial zones. Area B covered factories in Hlaing Tharyar 1, Hlaing Tharyar 2 and in Insein. Area C covered factories in the Mingarladone and Shwe Paukkan industrial zones. It was important for this report to capture information in Hlaingtharyar. Hlaingtharyar is the biggest industrial zone in the country in terms of number of factories, number of employees, and geographical coverage. As it was the first and biggest, it is seen as the pioneer of industrial zones in Myanmar as well as of employment practices in other sectors. Thus the extremely low basic wage meaning workers relying on working as much overtime as possible to make ends meet is something that spreads to teashops, karaoke bars, and other sectors in all of Myanmar. Such practices were developed in Hlaingtharyar.

For the factories themselves, the researchers chose those with large workforces to get a more representative picture. The type of factories was based on a representative sample of the types of factories in that zone. If there were overwhelmingly garment factories in a particular zone, mostly garment factories were chosen for interviews. The workers themselves were chosen to represent the male female ratio and interviews tended to be with workers who had been employed at the factory for a longer period of time. Thus they were more aware of the problems and vulnerabilities of working in the factory. Newly employed workers might not have been able to express and share the problems of this environment.

The interviews themselves mostly took place at the office of the leading organisation although occasionally they were conducted in a teashop or living quarters. People felt more confident sharing information in the office space than in their living quarters as many people come and go often so privacy is an issue. Interviewers were almost always female in reflection of the mostly female workforce and thus survey sample. This was a conscious decision. Interviewers were usually in pairs and interviewees usually sat alone or in a pair.

There were some problems and issues that arose when conducting this research, mainly around issues of security. A more random sampling could have occurred if the researchers were able to approach people on the way in to the factory but this was not possible as neither the researchers nor the interviewees felt secure in this method. Their participation would be exposed and they are fearful of losing their job.



¹ *At the time of writing the Myanmar Army, or Tatmadaw, continues its offensive against the Kachin Independence Organization*
² http://www.nbcnews.com/id/49399580/ns/business-stocks_and_economy/t/vital-myanmar-re-engage-lenders-brainard/
³ Charney, 2009, *A history of Burma*

As mentioned earlier, interviews were not usually conducted in living quarters. An issue here is that a lot of the housing is also owned by the employer and is in a state of disrepair. Fearing exposure of the living conditions, if the landlord/employer found that such types of interviews were being conducted in the housing, they would evict the residents.

A final comment on the methodology is that relationships between the researchers and the workers have been built up over many months and years of interaction and exchange. This trust was essential for participation in this kind of survey as many workers live in precarious situations, fearing for job security as well as their own personal safety.

Introduction

This report is a study of the working conditions in Yangon's 13 industrial zones and the efforts made by workers to organise themselves into effective organisations to fight for their rights. Myanmar has been in the international spotlight since March 2011 when a quasi-civilian, military backed government came to power on the back of a widely disputed election, based on the 2008 Constitution that was adopted after a sham referendum. Since then, significant developments have occurred, including the election of Daw Aung San Suu Kyi and her party to the newly established Parliament in by-elections in April 2012, preliminary ceasefires being signed with many ethnic armed groups,² the release of some political prisoners, the loosening of certain media restrictions and the return of many exiled dissidents. The international community has responded quickly and most economic sanctions have been lifted, allowing aid money and foreign direct investment to flow into the country. Huge firms have already signalled their intent to invest with cheap labour cited as one of the many attractive elements of establishing a base.³ In this context of a changing Myanmar, the rights of workers have not gone unnoticed and two new laws have been promulgated that directly relate to forming labour unions and engaging in industrial action.

Labour Unions in Myanmar

Banned under the occupation of the Japanese fascist regime in World War II, labour unions were re-established shortly after the end of the war. In 1949 the Trade Union Congress of Burma (TUCB) was founded and throughout Prime Minister U Nu's rule in the 1950's, the union movement flourished.

The attack on unionism in Myanmar started during the caretaker government of 1958-1960 when the elected Prime Minister U Nu handed power to the army to keep a lid on disorder, factional politics and a growing political crisis. In this caretaker government period, labour union leadership was purged as politicians were banned from leadership positions. These positions were required to be filled with military officials.⁴



¹ <http://webfusion.ilo.org/public/applis/appl-byCtry.cfm?lang=EN&CTYCHOICE=1670&hdroff=1>

² <http://www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang-en/index.htm>

³ <http://www.unison.org.uk/file/ILO.pdf>

After the military coup in 1962 and subsequent one-party rule by the Burma Socialist Program Party under General Ne Win, all sectors of civil society became targets of repression, including the once vibrant labour unions. In 1988, however, mass demonstrations throughout the country briefly threatened to overthrow the military. Nationwide strikes and demonstrations were the backdrop as labour unions formed from a wide range of trades and, at the behest of the student union calls, participated in a nationwide strike. After the military coup in 1988, most union leaders were either arrested or fled into exile.

Since the election of President Thein Sein in November 2011, there has been a move away from the arrests, torture, and blatant persecution of those involved in labour union activity. Passed in March 2012, the Labour Organization Law and in April 2012, the Trade Disputes Act, give much more room for labour unions to establish themselves. Certainly the number of above ground labour organisations has increased rapidly, as underground organisations are coming out of the shadows to diversify and strengthen Myanmar's civil society, giving support to the democratic changes that are in a nascent stage.

Legal Framework

Before going into the details of Myanmar's current legal framework for collective action it is apt to discuss Myanmar's obligations under international law.

International Law

International labour law is promulgated by the tripartite body, the International Labour Organisation (ILO) which consists of 184 members. There are around 180 conventions relating to labour standards, that, when ratified by a country, become legally binding. Once a convention is ratified, that country must incorporate it into domestic law and allow a supervisory body from the ILO to make sure that the conventions are being implemented. Myanmar has ratified 19 conventions that are still in force today.⁵

Of all the ILO's conventions, eight make up the organisation's 'Fundamental Labour Standards.'⁶ These core conventions cover the elimination of all forms of forced and compulsory labour (Convention N°29 and 105), the effective abolition of child labour (Convention N°138 and 182), freedom of association and the effective recognition of the right to collective bargaining (Convention N°87 and 98) and elimination of discrimination in respect of occupation and employment (Convention N°100 and 111).

Of these eight fundamental conventions, Myanmar has ratified only two. In 1955, it ratified the Forced Labour Convention (N°29) and Freedom of Association and Protection of the Right to Organise Convention (N°87). In 1998, however, at the 86th International Labour Conference, the ILO introduced the *Declaration on Fundamental Principles and Rights at Work* in which all member states agreed to respect, promote and realise the eight fundamental labour conventions, whether they had ratified them or not.⁷

1 http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_007995/lang-en/index.htm

2 http://www.ilo.org/yangon/info/WCMS_106130/lang-en/index.htm

3 http://www.tiki-toki.com/timeline/embed/45845/1232102668/#vars!date=2012-06-01_23:26:07!

4 <http://www.dvb.no/news/ilo-to-ease-criticisms-on-burma-forced-labour/22260>

ILO in Myanmar

Much of Myanmar's history with the ILO, of which it became a member in 1948, is concerned with forced labour. In the 1960's, reports of forced labour began to be received by the ILO, despite Myanmar signing the Forced Labour Convention. In 1997, a Commission of Inquiry was set up to investigate allegations of forced labour committed by the ruling regime. In 1998, the report found the "widespread and systematic use"⁸ of forced labour by the authorities and made a set of recommendations to bring Myanmar in line with international law. These recommendations were consistently ignored by the regime and at the 1999 International Labour Conference, member states decided that Myanmar would no longer be the recipient of any technical assistance or cooperation until it had implemented the recommendations derived from the Commission of Inquiry. At the 2000 International Labour conference, article 33 of the ILO constitution was invoked for the first time in ILO history, as the ILO asked other UN bodies and international organisations to rethink their assistance to Myanmar.

After negotiation with the regime, a mission and permanent liaison officer were established in the country in 2002⁹ and in 2003, the ILO and the regime announced a joint plan of action to eliminate forced labour. Progress, however, was limited. After a lack of cooperation from the regime, death threats to the ILO liaison officer, and harassment and arrest of any person found to be associated with the ILO, relations reached an all-time low. The ILO again called on member states to rethink their assistance to Myanmar as the regime threatened to leave the ILO altogether.¹⁰

A thaw in relations after 2007 resulted in a complaints mechanism being established and promises that complainants would not be the victims of retaliation. After initial fears, more and more people began to file complaints and in 2011, 166 people were prosecuted and of these 166, five people were convicted under the penal code.¹¹ In 2012, an agreement¹² was signed to work towards the elimination of forced labour by 2015. For the first time, the ILO will have access to ethnic nationality areas.¹³ The governing body of the ILO visited Myanmar in March 2012 and at the ILO International Conference in June of that year, the restrictions on Myanmar were lifted and its full membership rights restored.¹⁴

ILO's troubled history with Myanmar has largely been focused on forced labour but ILO has consistently highlighted the "continued failure, by the Government, over several years, to eliminate serious discrepancies in the application" of Convention N°87,¹⁵ as well as in adopting a minimal legal framework to implement Convention N°87. Now that sanctions have been lifted, a broader scope of labour rights will come into the international spotlight. Problems with forced labour still exist, but the ILO now has the mandate to work on the implementation and respect of the eight fundamental conventions.

Of these eight fundamental conventions, there are two¹⁶ with which this report is most concerned: the *Freedom of Association and Protection of the Right to Organise*, Convention N°87, which Myanmar has ratified, and the *Right to Organise and Collective Bargaining Convention* (N°98), that Myanmar has not ratified but still agreed to respect, promote and realise.



⁵ http://www.ilo.org/yangon/info/WCMS_172472/lang-en/index.htm

⁶ <http://www.dvb.no/news/ilo-to-begin-work-in-ethnic-conflict-zones/21386>

⁷ <http://www.irrawaddy.org/archives/6745>

⁸ http://www.ilo.org/wcmsp5/groups/public/-dgreports/-exrel/documents/publication/wcms_193195.pdf

Freedom of Association and Protection of the Right to Organise, Convention N°87¹⁷

This forms the basis of the rights of involvement with labour unions without state interference, including membership, engaging in union activities, organising union elections, the right for labour unions to affiliate with federations domestically and internationally and the right to go on strike.

Right to Organise and Collective Bargaining, Convention N°98¹⁸

This entrenches the rights of labour unions, including non-interference by employers, protection against discrimination due to union membership, and the right to collective bargaining.

Domestic Law

Labour Organization Law, 2012¹⁹

On March 9, 2012, President Thein Sein signed the Labour Organisation Law, ostensibly giving workers the right to strike and form labour unions. Section 3(a) states: "Every worker, who has attained the age prescribed in respective existing law to work in any trade or activity shall have the right to: join as a member in a labour organisation and to resign from a labour organisation according to their own desire."

Under section 17, labour organisations themselves "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."

Under section 18, a labour organisation "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 organisation membership or activities, or were not in conformity with the labour laws."

Labour organisations must consist of at least 30 members and be supported by at least 10% of the workforce.²⁰ The Labour Organization Law prohibits employers from closing workplaces while a dispute is on-going or dismissing employees if they oppose an unlawful closure. Employers are also prohibited from dismissing employees if they engage in lawful industrial action or for membership in a labour union. The penalty for an employer violating these laws include a 100,000 kyat (US\$105) fine and/or one year imprisonment.²¹

The law was cautiously welcomed. Steve Marshall, the ILO liaison officer in Yangon stated at the time that the new law "creates a completely new environment for all parties, from employers to the government and workers."²² The new law, however, contains many controversial elements that are restricting union activity, entrenching limitations on freedom of association, and independence of labour unions, thus contravening *Convention N°87*.



¹ http://www.unison.org.uk/file/ICTUR_ILO_ReportSum.pdf

² https://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_ILO_CODE:C087

³ https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_ILO_CODE:C098

⁴ <http://www.mol.gov.mm/en/the-labour-organization-law/>

A controversial element in the registering of a labour organisation is the approval needed by the Chief Registrar who is appointed by the President of the Union of Myanmar (Section 32 (b)). The Chief Registrar in turn appoints Township Registrars who scrutinise any application to form a labour organisation. This scrutiny then provides the basis on which the Chief Registrar decides whether he will accept the registration. By placing the decision as to whether a labour association can form in the hands of a president-appointed figure, as well as decisions on deregistering an organisation (Section 32 (d)) drastically limits the independence of labour organisations and gives power to the executive to limit the landscape of trade unionism. If there is disagreement over the decision to register or deregister an organisation, the case can be taken to the Supreme Court. Given the historical lack of an independent and effective judiciary in Myanmar, something that Daw Aung San Suu Kyi has been keen to point out,²³ this is hardly an effective remedy.

The Labour Organisation Law gives regulations regarding the funding, registering, and role of township and state labour organisations as well as a labour federation and a “Myanmar Labour Federation” (Sections 4, 6, 7, 26, 38, 39, 40, 41). The International Trade Union Council (ITUC) has pointed out that there are three aspects to this that are in violation of *Convention N°87*. One such aspect is the approval needed by the relevant labour federation before a union can go on strike.²⁴ For the ITUC, the “right to strike should not be subjected to legislative restrictions which would place the authority to permit strike action with higher-level workers’ organisations regardless of the rules of the organisations concerned or the affiliation of the lower-level organisation.”

Secondly, the law indicates that only one labour confederation, namely the Myanmar Labour Confederation will be established, thus inhibiting the diversity of unionism that article 5 of the *Freedom of Association and Protection of the Right to Organise, Convention N°87* stresses: “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.”

There should be no stipulation that one ‘Myanmar Labour Confederation’ is to be established. Rather, diversity is protected by the freedom to form any number of national level federations or confederations.

Thirdly, section 26 stipulates that labour organisations will allocate 2% of its members’ monthly salaries to the township labour organisation, labour federation or labour confederation. The ITUC points out that Article 3 of the *Freedom of Association and Protection of the Right to Organise, Convention N°87* highlights that financial independence of a labour organisation is vital, and interference from authorities damages this independence. Accordingly, “transmission of funds to a higher-level worker’s organisation is a matter wholly for determination by the organisations themselves and without any legislative or other intervention on the part of the Government.”²⁵



¹ <http://www.mizzima.com/news/inside-burma/6061-govt-must-put-new-labour-organization-law-into-practice-opposition.html>

² At the time of writing \$1 = 950 kyat but this has been steadily increasing since the beginning of 2013.

³ http://www2.irrawaddy.org/print_article.php?art_id=23200

⁴ <http://www.voanews.com/content/voa-scott-stearns-interview-with-aung-san-suu-kyi/1510542.html>

A Study of Labour Conditions in Yangon's Industrial Zones (2012-2013)

A raft of restrictions undermine proclamations that workers are free to strike in Myanmar, thus contravening *Convention N°98*. Under section 38 (a), strikes can occur in the public sector only if 14 days notice is given, while three days notice must be given in the private sector. Along with this notice, information regarding the date, place, number of participants, manner and the time of strike need to be provided. If a strike does not conform to these details, it is deemed illegal under section 41 (e). Section 41 stipulates that strikes are also illegal if:

- (a) They interfere with essential services including water, electricity, fire, health, and telecommunications. Meanwhile, non-essential services can become essential services if a strike is deemed to “exceed a certain duration” that causes “disproportionate damage.”
- (b) Permission has not been granted by the relevant federation.

Furthermore, section 50 of the Law prohibits demonstrations within 500 yards of hospitals, schools, religious buildings, airports, railways, bus terminals, ports or diplomatic missions and military or police installations.

These restrictions have been pointed out by the ITUC²⁶ and the Special Rapporteur on the Situation of Human Rights in Myanmar, Tomás Ojea Quintana, in his progress report to the 19th Session of the UN Human Rights Council.²⁷ (At the time of reporting, there are around 600 registered labour organisations who faced many problems in their formation)

The Settlement of Labour Dispute Law, 2012²⁸

The Settlement of Labour Dispute Law was promulgated on March 28, 2012 with the purpose of “safeguarding the right of workers” and “obtaining the rights fairly, rightfully and quickly by settling the dispute of employer and worker justly.” The law, however, includes unclear and confusing definitions, the absence of key components of collective bargaining and, as is demonstrated in chapter four, the lack of effective enforcement mechanisms for implementing decisions of the relevant arbitrary council.

The definition of essential services includes water, electricity, fire, health, and telecommunications. This definition also includes services that could be reclassified from non-essential to essential services. It is unclear, as in the Labour Organization Law, how and when non-essential services can be reclassified as essential. The Labour Organisation Law stipulates that services can be reclassified when a strike causes “disproportionate damage” or exceeds “a certain duration”, while the Settlement of Labour Dispute Law does not explain how services can be reclassified. This becomes problematic as section 28 of the Settlement of Labour Dispute Law denies the right to strike for essential services in case of dissatisfaction with a decision of the Arbitration Body. This leaves the door open for a huge range of services being arbitrarily reclassified as essential in order to restrict collective action such as strikes.



¹ http://www2.irrawaddy.org/article.php?art_id=23177

² https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO::P13100_COMMENT_ID:2698694

Section 28 (b) states that the option to strike is available after a decision is made by the Arbitration Body. The definition of the word "strike" supports this idea: "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 slowdown or other collective actions that are designed to limit production or services *relating to social or occupational matters in any dispute.*" (Italics added for emphasis.)

It appears that strikes are only permitted after a decision on a dispute has been made. Section 40 specifically states "no party shall proceed to lock-out or strike without accepting negotiation, conciliation and arbitration by Arbitration Body in accord with this law in respect of a dispute." The restrictions on striking contradict Article 11 of the ILO's *Convention N°87*, which states: "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." By restricting the right to strike until after a dispute settlement decision by the Arbitration Body, the law does not ensure that workers can exercise freely the right to organise.

Another section of this law that is worrying is that which deals with special economic zones (SEZs). Section 14 states: "If there is no particular provision of law for carrying out conciliation of disputes in the special economic zone established within the Republic of the Union of Myanmar, the relevant Region or State Government shall form the special Conciliation Bodies."

This implies that for Myanmar's SEZs there is a possibility that a different set of regulations will apply. These SEZs, with the biggest being Kyaukphyu in Rakhine State, Dawei in Tanintharyi Division and Thilawa near Yangon, will have industrial zones with labour intensive industries similar to those currently in Yangon. With the special Conciliation Bodies' composition determined only by the government, there is no guarantee that genuine representation of the workers will be included. Also, if a weaker set of laws or regulations apply in these zones, it renders the limited protection provided in this law invalid, leaving huge populations of workers vulnerable to exploitation.

Similarly to the Labour Organization Law, section 23 stipulates that if an individual dispute settled by a Conciliation Body leaves the said individual dissatisfied, he/she can take the case to the courts. While this may look good on paper, in practice it is ineffective. The judicial system in Myanmar is not independent, is often used for political expediency, access for the average citizen is difficult, and information on judgments is secret and not published. Until the rule of law is established this will remain a problem. (See chapter 6 on institutional challenges.)

The ITUC has flagged some unclear issues regarding the Workplace Coordinating Committee, the instrument for collective bargaining. The Workplace Coordinating Committee is made up of two representatives from each union as well as the same number of representatives of the employer. If, however, one union represents 2/3 of the workforce and another represents just 1/10, it is unclear whether they have the same rights and influence in dispute settlements. It is



¹ https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO::P13100_COMMENT_ID:2698694

² http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-67_en.pdf

³ <http://www.mol.gov.mm/en/the-settlement-of-labour-dispute-law/>

also unclear as to whom negotiated agreements apply to, whether it will just be members of the labour organisations, or non-union workers as well.

The key components of collective bargaining that are missing from this law include;

- **Duty to bargain in good faith** – Both parties must enter negotiations with the sincere aim of finding an agreement. If, as can happen, one party wants negotiations to fail, this renders the collective bargaining process a failure. Therefore, there must be stipulations in the law that enforce a duty to bargain in good faith.
- **Period for bargaining** - If an employer decides to change something e.g. decrease wages, the union needs time to consult members and come up with a plan. e.g. in the UK the law states that if there are plans for redundancies of over 100 people, there is a 90 day consultation period. If it is a big workforce it can be difficult and take time for example to ballot members. There needs to be a balance between having a timetable as well as having flexibility regarding difficult situations such as an unusually large workforce. There is no timeframe for collective bargaining in this law.
- **First Contract Arbitration** – There need to be provisions that ensure recognition of labour unions by employers. For newly formed unions, it is often difficult to gain recognition from employers and enter into contracts with them. This stalls negotiations and undermines a union's ability to negotiate for better conditions. First Contract Arbitration involves a third party that will arbitrate on a first contract between a union and employer if negotiations are stalling. It binds the employer and therefore underpins a good faith agreement.
- **Levels of negotiation** – National level collective bargaining can have many benefits such as uniform pay, minimum health and safety conditions, and equality between geographical areas. It is also much more efficient to form one agreement as opposed to a myriad of local level deals. Some limited flexibility to negotiate at local level within a national framework is a method of combining the advantages of both yet there is no expression of national or regional collective bargaining agreements in this law.
- **Extension, registration, and enforcement of collective agreements** - This again relates to good faith agreements. If there are no laws, particularly financial penalties that enforce good faith bargaining, the employer can easily renege on agreements without serious consequence. For example if an agreement over a pay rise is negotiated but never implemented by the employer, there is no legal remedy for the workforce. There is no mechanism to ensure that decisions are being implemented or a specific punishment for employers or labour union if they do not follow the Conciliation Body or Arbitration Body decisions. The minimum financial penalties are also relatively small. A minimum fine of 100,000 (US\$105) is not a significant deterrent for employers breaking this law.



¹ At the time of writing the government is attempting to enact a new association law for civil society organisations. Meanwhile, over 500 civil society organisations, including the Free Funeral Service issued a public statement calling for the abolishment of current association law enacted in 1988.

The 2008 Constitution and Military Era Laws

The widely disputed 2008 Constitution also has a provision related to the protection of workers yet includes caveats that facilitate state restrictions on union activity.

Under section 31, freedom to form associations and organisations is permitted: “By economic and other measures the State may assist workers to associate and organize themselves for protection against economic exploitation.” But these apply only “if not contrary to the laws, enacted for Union security, prevalence of law and order, community peace and tranquillity or public order and morality.”

Under international law, only certain limitations, strictly and narrowly defined, may be imposed on a limited number of rights. The 2008 Constitution's restriction of the right of freedom of association as long as it does not interfere with “community peace and tranquillity” is not legitimate grounds for a restriction of fundamental rights. These concepts are too broad to justify a restriction on freedom of association; this is in violation of international human rights law.

In addition, neither the Labour Organization Law nor the Settlement of Labour Dispute Law revokes any of the laws that have been used for decades to persecute those attempting to form workers associations, as well as a plethora of other social forces such as journalists, political opposition, ethnic groups, human rights defenders and students. These oppressive laws remain on the books. They have been identified by the Special Rapporteur as laws that should be reviewed or repealed to conform with international human rights standards and include among others: the Unlawful Associations Act (1908), the Emergency Provisions Act (1950), and the State Protection Law (1975).

The only law that the Labour Organization Law repeals is the Labour Union Act of 1926, while the only law that the Settlement of Labour Dispute Law repeals is the Trade Disputes Act of 1929.

The continued existence and implementations of the above laws dilutes citizens' fundamental right to form a truly free organisation or association. These out-dated, draconian, military-era rules must be reviewed.²⁹



¹ <http://epress.anu.edu.au/wp-content/uploads/2011/03/ch0829.pdf>

² http://www.ide.go.jp/English/Publish/Download/Brc/pdf/06_chapter5.pdf

Chapter Two

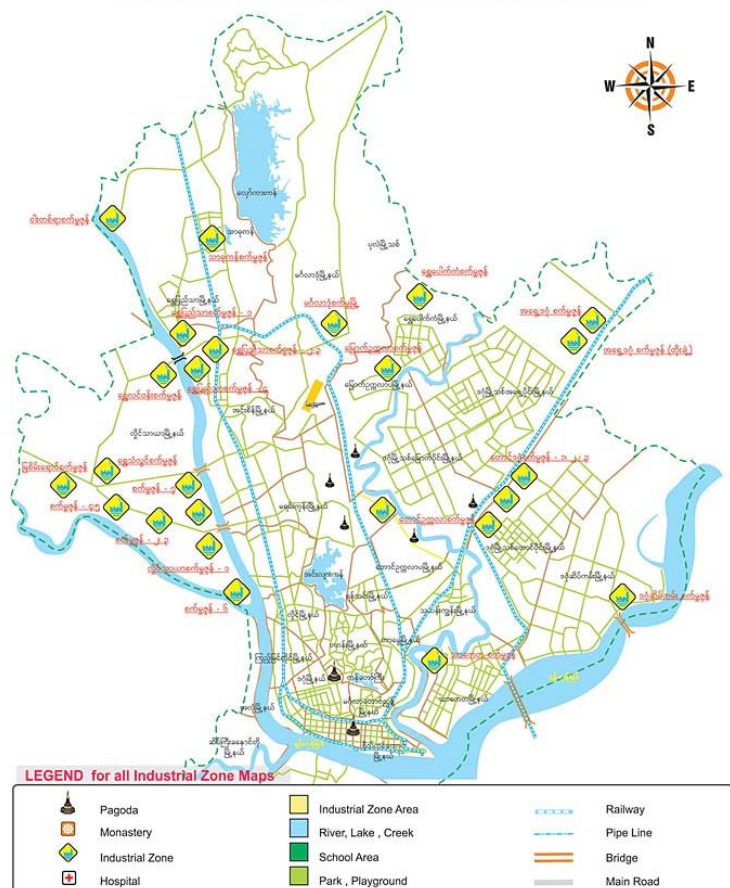
Industrial Zones

This report focuses on Yangon's industrial zones. They provide the hub of Myanmar's production and manufacturing facilities. Myanmar's industrial zones were set up in the 1990's as part of a move away from the "Burmese Way to Socialism" towards a more market-orientated economy and to attract foreign investment.³⁰ Yangon's 14 industrial zones are the centre for most of Myanmar's labour-intensive industries such as garments and footwear. Although the zones lack infrastructural facilities, such as decent roads, and consistent water and power supply, they provide a cheap workforce, and proximity to the main port of Myanmar for exports, as well as the biggest domestic consumption market for domestic sales.³¹ There are industrial zones in other parts of the country, namely Mandalay but also in other cities such as Mawlamyain and Bago although Yangon has by far the most as well as the biggest industrial zones in the country.

Yangon's Industrial Zones:

- South Dagon Industrial Zone (1, 2 and 3)
- East Dagon Industrial Zone
- Dagon Seikkan Industrial Zone
- North Okkalapa Industrial Zone
- South Okkalapa Industrial Zone
- Shwe Pauk Kan Industrial Zone
- Tharketa Industrial Zone
- Hlaing Thar Yar Industrial City
- Shwe Pyi Thar Industrial Zone
- Yangon Industrial Park Tharketa Zone
- Shwe Linban Industrial Zone
- Mingalardon Industrial Park

YANGON INDUSTRIAL ZONE INDEX



¹ <http://www.forbes.com/sites/connorconnect/2012/10/18/can-manufacturing-succeed-in-myanmar/>

A Study of Labour Conditions in Yangon's Industrial Zones (2012-2013)

Garment factories are the biggest manufacturing industry in Yangon with around 200 factories employing between 85,000 and 100,000 people.³² Most of the garment factories in Myanmar cater to the domestic market although some export to the Japanese, Korean, or Chinese markets. Exports in the year 2011-2012 reached \$846 million, increasing dramatically from 2010-2011 performance of \$554million.³³ Many factories are in fact owned by Korean or Chinese businesspeople but the factory is usually in the name of a local, Burmese partner.

The following is a breakdown of Dagon Seikkan industrial zone that illustrates the character of zones in Yangon more generally. As of May 2011 it had 102 running factories with a further 185 vacant plots of land.

The breakdown of the types of factories is as follows;

Garments	–	11
Foodstuffs	–	16
Consumer goods	–	24
Construction industry	–	5
Electronics	–	1
Forest products and value added wood	–	18
Chemical product	–	2
Paper and stationary	–	5
Machine and machine tools	–	3
Warehouse industry	–	2
Marine product and cold storage	–	6
Auto industry	–	8
Transportation	–	1

Dagon Seikkan Industrial Zone employs nearly 7,788 people, with half of these, (3890) working in garment factories. Only 7.5% of the garment factory workers are male. The next biggest employers are the forestry and wood products factories, with 1061 employees (64% male – 36% female) and the food industry with 862 employees (65% male – 35% female). Other significant employers were consumer goods (580 employees) marine products (505 employees) stationary and paper (383 employees). Overall the male female ration was 35% male – 65% female.

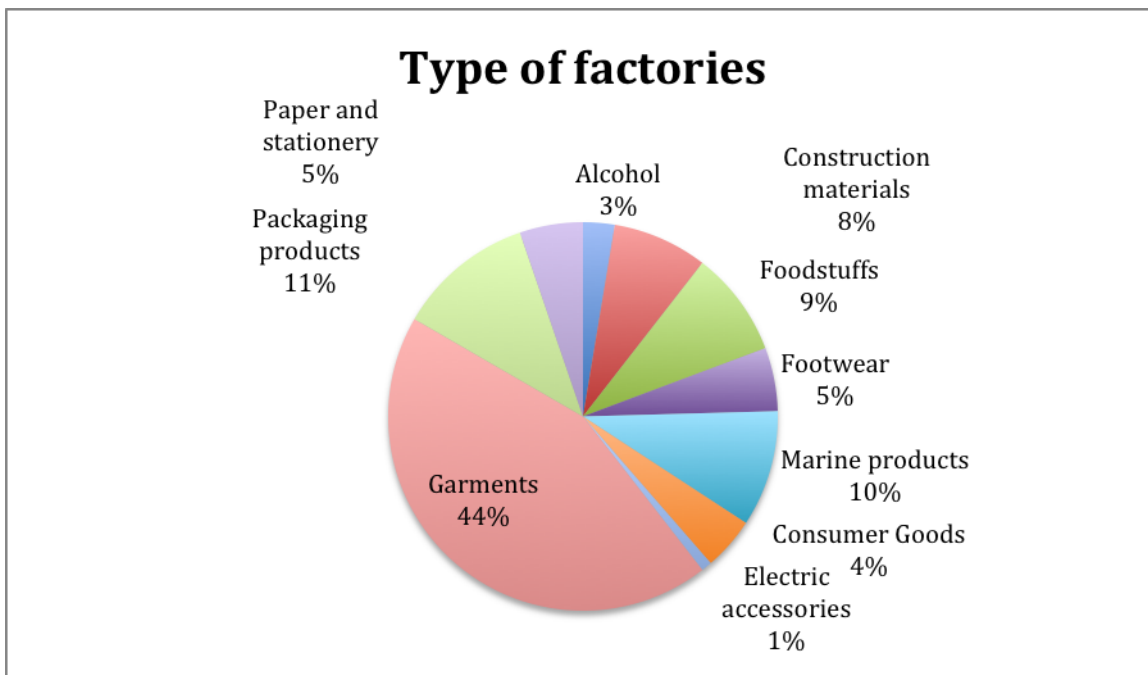
As is reflected in our data, most of the workers in the industrial zones are female and work in garment factories.



¹ http://www.technopak.com/resources/Fashion/Garment_Industry_in_Myanmar_Feb2013.pdf

Living and Working Conditions

Of the 114 interviewees, the gender split was 33% male, 67% female, reflecting the female dominated workforce in the industrial zones. The interviewees worked in the following kinds of factories:



Workers from garment factories made up nearly half of interviewees, reflecting the size of this industry in the zones. Packaging products consisting of mostly rice sacks, but also paper boxes, and bottles, made up a substantial portion of interviewees (11%), as did foodstuffs (9%) that includes biscuits, soft drinks, snacks, coffee, drinking water, and candy. Marine products factories include processing shrimp and fish into tins or dried products as well as ice packing. Construction materials consist of glass, building blocks, timber, fibres, paint and iron doors. Consumer goods include traditional medicine, tissues, and plates.

Female workers, making up 88% of the garment workers interviewed, dominate the garment industry. Workers in foodstuff factories were 90% female and those in construction materials factories were all male. The male-female ratio in other industries was split roughly 50-50.

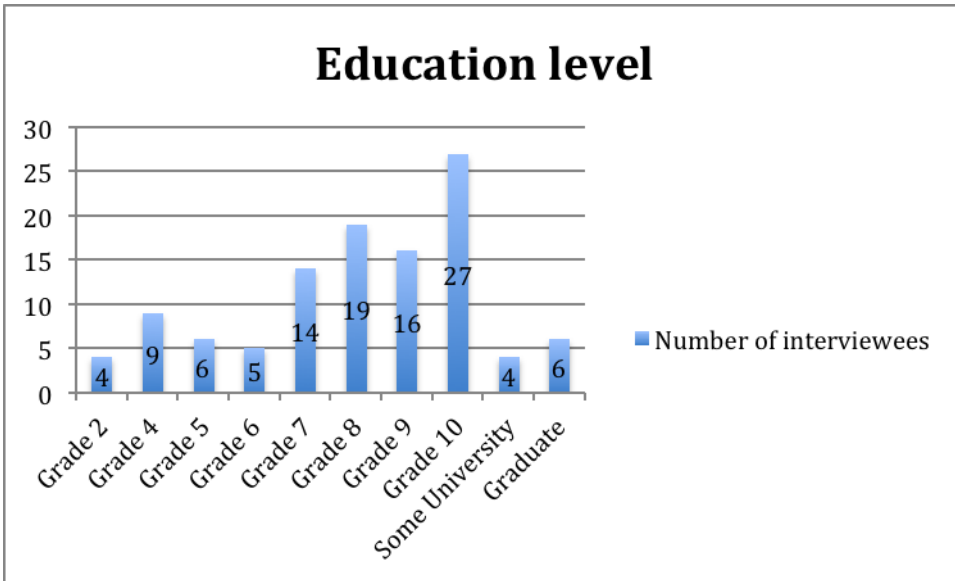
Only one third of the interviewees (34%) had passed the grade 10 standard exam that is taken when leaving school. Below is a breakdown of the education level of the workers interviewed:



¹ http://www.technopak.com/resources/Fashion/Garment_Industry_in_Myanmar_Feb2013.pdf

² <http://www.forbes.com/sites/connorconnect/2012/10/18/can-manufacturing-succeed-in-myanmar/>

³ <http://www.thygarment.com/>



Chapter Three

Areas Researched

As outlined in the methodology section, there were three teams of interviewers which were split into three areas. Area A covered factories in South Dagon, North Dagon and North Okkalapa industrial zones. Area B covered factories in Hlaing Tharyar 1, Hlaing Tharyar 2 and Insein. Area C covered factories in the Mingarladone and Shwe Paukkan industrial zones.

In Area A there is a much bigger variety of types of factories, with construction products, foodstuffs and everyday items being produced as well as garments. Areas B and C were predominantly garment producing areas although fishery products were concentrated in Area B.

Difficulties in commuting to the workplace were common across all areas, but the biggest problem area was Area C where around three quarters of respondents described hardships regarding their daily commute.

In Area A, there seemed to be much less union activity, although more than the other areas, trainings were conducted to educate workers of their rights. Nearly 20% of workers in Area A had been to a labour rights training, conducted by different groups, mainly from the Myanmar NGO, Local Resource Center, but also from labour organisations such as the Federation of Trade Unions – Burma (FTUB) as well as two workers going to an ILO training. Surprisingly, no interviewee from these areas had participated in a strike or other collective action while only a very few knew of labour unions that they could join. More unions were founded in Area C where half of the interviewees knew of labour unions at their place of work that were not affiliated with their employer while in Area B this was one fifth. Furthermore collective action was prominent in Area C with around half of interviewees telling of collective action that had happened at their

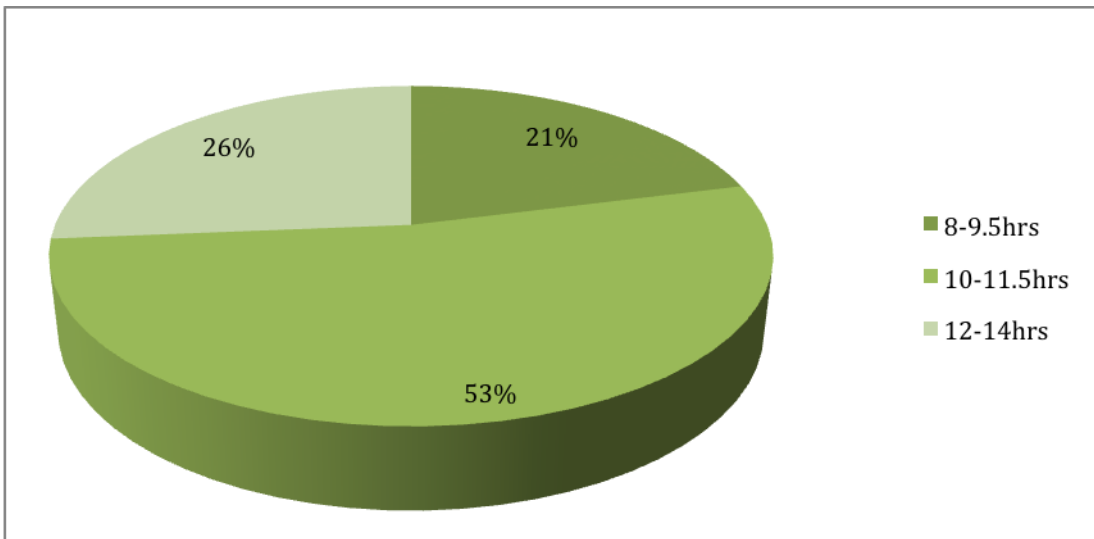
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¹ Workers’ and employers’ organisations shall have the right to establish and join federations and confederations and any such organisation, federation or confederation shall have the right to affiliate with international organisations of workers and employers.

factory or in which they had participated. This is compared to just 14% in Area B and nobody from Area A.

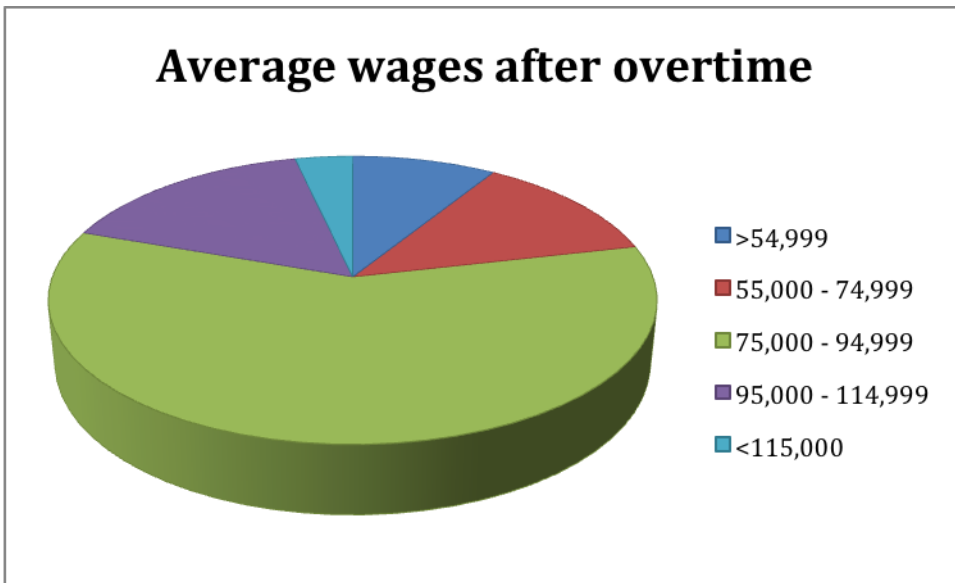
Life of a Worker

One of the reasons cited as a major draw for foreign investors is the low wages. Reports from consultant firm Technopak³⁴ and Forbes³⁵ magazine cite US\$32 per month as the minimum wage of workers before overtime while the garment factory, THY in Shwe Paukkan industrial zone, boasts of \$2 daily wages for its workers.³⁶ This roughly matches the response to our questions on basic wages. 55% of workers stated that their average basic wage is between 24,000 and 35,000 kyat per month (\$25 and \$37). However, costs of living are too high for workers to rely on their basic salary and most workers need to work many hours of overtime to earn enough to make ends meet. Therefore the average working day is nearly 11 hours.



With overtime, wages in kyat look more like this:

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¹ <http://www.mmtimes.com/index.php/business/1470-garment-makers-fight-to-survive.html>
² <http://www.npr.org/2012/08/06/158185304/myanmars-workers-exercise-rights-to-organize>
³ <http://www.irrawaddy.org/archives/10695>
⁴ <http://www.mmtimes.com/2012/news/626/news62618.html>



Still, the cost of living means the economic situation of most workers is dire. The following is a typical example of a breakdown of living costs from one interviewee. She is a 24-year-old woman working in a garment factory. She works 6 days per week, 13 hours per day, earning 80,000 kyat per month (\$84). Her basic wage is 720 kyat per day, or 18,720 (\$20) kyat per month. The following is her approximate monthly budget:

50,000	Food
3,000	Thanaka (Traditional Burmese makeup/sun screen)
1,200	Washing soap
500	Body Soap
5,000	Travel Costs
3,000	Medicine
3,000	Communication
800	Hair Cream
6,000	Other Daily Costs
10,000	Housing

Total: 82,500 kyat (\$87)

According to this breakdown, her income does not fulfil her basic needs, so the typical worker relies on loans to make ends meet at the end of the month. If he or she needs to support their family, they need to borrow even more money and thus have no choice but to work continuously



⁵ <http://www.mmtimes.com/2012/news/626/news62618.html>

⁶ <http://www.irrawaddy.org/archives/3941>

⁷ <http://www.mmtimes.com/2012/news/626/news62618.html>

to repay the previous months loan. It is a vicious cycle of debt. While this is an average, there are also many workers who earn less than this, thus needing to borrow more money and going deeper into the debt cycle while others can afford to make ends meet and do not need loans.

The difference between the basic salaries of many of these workers, and the actual wage they earn is important. It gives the employer greater control over their workers. A bonus is paid at the end of the month if the worker has not taken any days off sick. This is substantially more than the daily wage. For example in the case of the above, the bonus for not taking any leave is 5,000 kyat, over 5% of her monthly salary, or nearly seven times the basic daily wage. This is a significant portion of her wage. Her bonus for not missing any overtime is 3,000 kyat. In total (8,000 kyat), these bonuses amount to 10% of her wage. Thus, her incentive not to miss a single day or overtime hour each month is motivated by the significant amount of money she will lose from her monthly pay packet. In her case, this has knock on effects if one of her family members is ill. If a worker has a dependent in school, a day off can mean not affording the education costs. Furthermore, the rising cost of living is not reflected in commensurate pay increases. One interviewee explained how her family's eating habits have changed as now they cannot eat vegetables every day, while meat has become a once a week treat.

Forced to Work Overtime

There is no stipulation in any current law that requires the workers to commit to overtime yet the control that employers have over their workers' *need* for overtime and no absence bonus is routinely exploited. Workers cannot refuse overtime if their employer needs more work done on their day off. The workers in the fish and shrimp factories explained how they have no choice but to work if boats with new catch come in, even if it means working through the night. In the garment factories, if orders come in, workers regularly have to work until late at night. The issue here is that they cannot afford say no. One interviewee used a Burmese phrase to describe the situation:

“The master becomes greedy from the fruits of the slaves' labours.”

The employer has become so accustomed to the riches that the excessive workload brings he cannot do without it.

Wage Deductions

It is not just overtime pay and no absence pay that employers use to control their workers. Almost all interviewees stated that fees for any broken tools, materials or machinery are deducted from their wages.



¹ <http://www.irrawaddy.org/archives/5996>

² http://transitions.foreignpolicy.com/posts/2012/02/24/burmas_workers_push_back

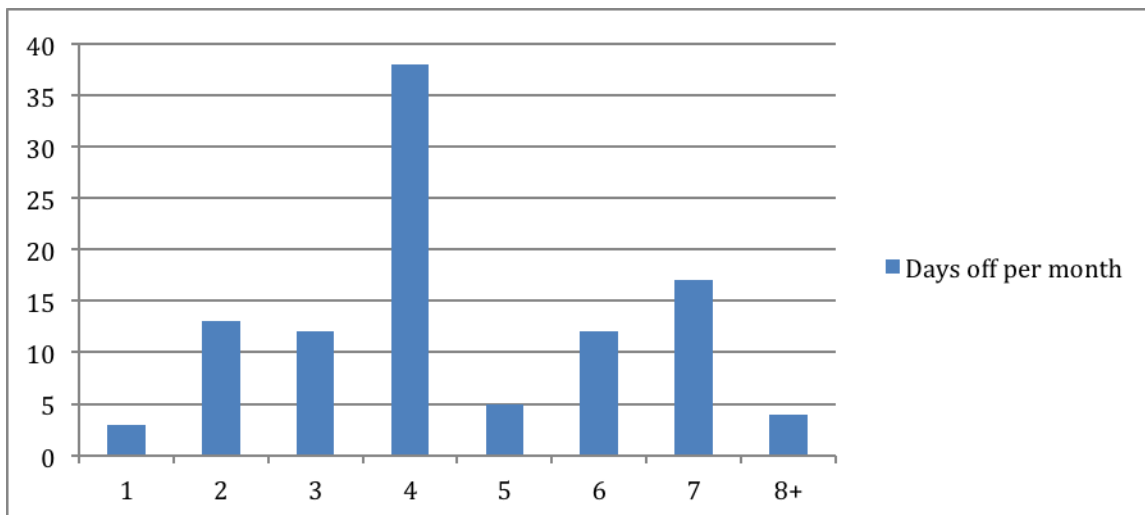
³ https://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_ILO_CODE:C098

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Rules that are hard to follow including not wearing the designated clothing, bringing snacks into the workplace, going to the toilet without the appropriate card, and being late for work are heavily punished if broken and used as tools to make wage deductions. While such measures are commonplace in working environments around the world, the thin line between having enough money to get by and needing to borrow money is thus made more tenuous by the harsh implementation of such disciplines. For example, many of the workers who described the penalty for eating snacks while on shift stated that the deduction from their wage was more than the basic daily rate of pay. It could be anywhere between 200 and 2,000 kyat, depending on the factory. In most cases, the daily basic wage is less than 1,000 kyat (\$1) per day.

Holidays

Days off per month are also few. 68% of interviewees get four or less days off per month. The necessity to work overtime on days off as well as the very few days of leave given by the employer means that most workers work 6 days per week, every week.



Meanwhile maternity leave and sick leave are almost unheard of. As outlined earlier, if a worker takes a day off sick, they will lose their “no absence” bonus. While paid maternity leave is almost unheard of (only 4% of those asked said it existed), some said there is the possibility that they can remain an unpaid employee and come back to work after giving birth, depending on the amount of time off taken. For example, one interviewee stipulated that 45 days unpaid leave is the maximum. If a new mother takes more than 45 days, she would have to reapply for her job and start as a new worker.

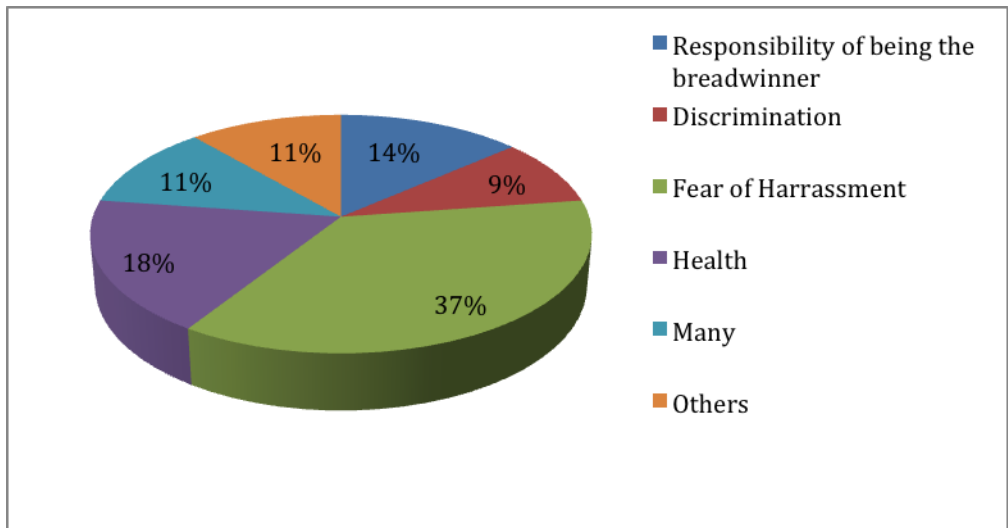
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¹ https://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_ILO_CODE:C098

² <http://www.mmtimes.com/2012/news/638/news63825.html>

Women's Difficulties

Problems particular to women are not just limited to a lack of maternity leave. Of the employees who answered, 43% believed that women suffered particular difficulties. The following shows how these difficulties have been broken down:



As demonstrated, one of the common issues raised was the fear of going home alone late at night and fearing or suffering sexual harassment on their journey. For example, one woman explained how public transport stops at 7pm and she is forced to walk home. If a woman works the night shift, she leaves even later and if the factory does not provide transportation, women often have to face the walk home where they can encounter drunks or groups of aggressive people. Sexual harassment is not limited to walking home. On public transport, women often face drunks or belligerent men. The attendants on the ferries are also known to treat women in a poor manner. Sometimes, women find coping strategies to deal with these problems. Going home with friends is one of these, yet this restricts a woman's freedom of movement. Another coping strategy is staying at a friend's hostel closer to the factory if finishing late. Women do not just experience sexual harassment when walking home at night but at other points in the day when they are at work.

A number of women cited health problems as one of their main worries as a woman. Given the poor working and living conditions, the pressure not to take a single day of sick leave, and the few days leave, it is not surprising that health issues are a worry. This includes both the physical difficulties of the work involved and psychological effects that can lead to depression. One woman, when asked what the main difficulties are for being a woman, her response was, "If we



¹ <http://www.mmtimes.com/2012/news/627/news14.html>

² <http://www.irrawaddy.org/archives/18062>

talk about these difficulties, we will not stop talking.” 11% of women said something similar, that they were overwhelmed and suffered so many problems. Many women bear responsibility for the livelihood of their families and as such, have no choice but to spend their life in these factories to try and make ends meet. The psychological effects of this can be devastating, as expressed by a 23-year-old woman working in a bag factory, “I must say that the biggest challenge is that my life will go on continuously like this.”

A few women described the discrimination they endure at the hands of their superiors and how they have to treat them well. One woman, using a Burmese phrase describes the situation: “We have to kiss them even though we don't love them,” meaning they have to give them special treatment even though they don't like them, while the men in the workforce don't have to give any special treatment. Other women complained of preferential treatment given to men yet on the whole, much of the discrimination by superiors is not gender based. Those who get on with their superiors get preferential treatment and even better pay.

Discrimination

Of the respondents who answered the question about discrimination, about one third had experience of this. Discrimination against women was not the most common. Rather, 85% of respondents who had experienced discrimination expressed how those who got on better with their supervisor were treated much better and in some cases, get a better salary. Here, the situation is described by a 20-year-old woman working in a garment factory:

“For those who are liked by the supervisors, no matter what they do wrong, no matter how behind their work is, the supervisors won't complain to them, will show understanding and will forgive and praise them. For those who are not liked by the supervisors, no matter what good they do or what they do well, the supervisors will never say good things about them. They just look for faults and if they find one, they will discipline them, whether directly or indirectly.”

Such arbitrary treatment becomes even more problematic when those who organise workers or participate in union activity are discriminated against. While some unions have been established by the workers themselves, there are various cases where factory owners establish unions in an effort to control collective action. (See Chapter Four) Worryingly, there are some incidents where there is discrimination against those workers who try to become involved in non-employer unions:

“When another organisation invites us to attend meetings, we cannot go. When we are invited to ILO seminars we are not allowed to go. If we go, confrontations occur in the factory and they [factory bosses] keep it in their mind to give us trouble.”

An example of this is in the ADK Garment factory where four employees relayed the details of a strike. After the strike action, 7 members of the Executive Committee and 2 activists were fired while those who participated in the strike action were discriminated against after the event.



¹ <http://elevenmyanmar.com/national/1149-more-protests-against-low-salaries-unfair-dismissal>

² Worryingly, 5 of these hunger strikers were attacked by men with knives near the factory, and workers accused the owners of inciting this violence to lower the morale of the strikers.

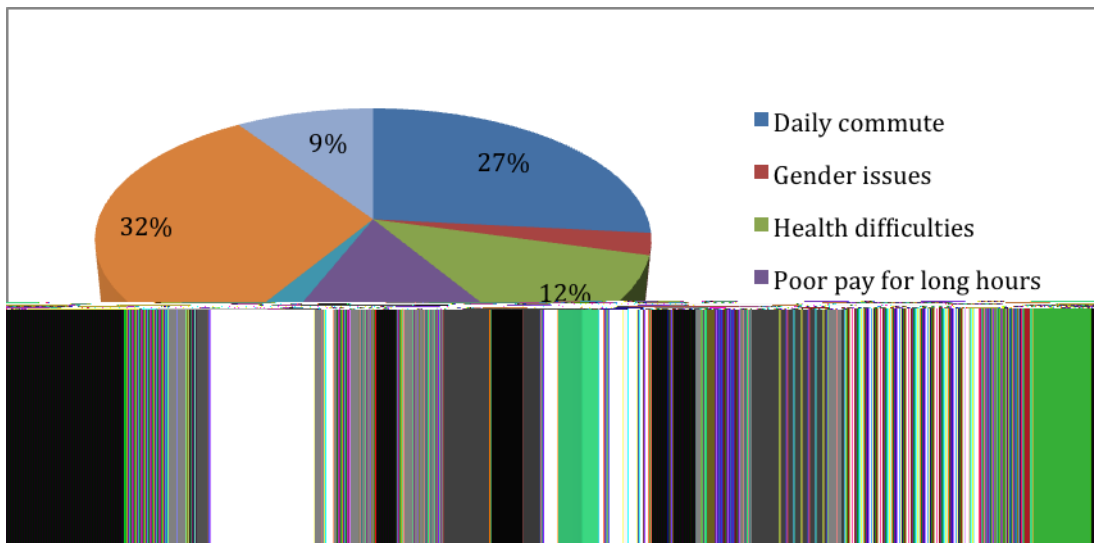
³ <http://www.irrawaddy.org/archives/18617>

(See more details in Chapter 4) Furthermore, one of the members who was living in the factory hostel was also accused of being a thief, causing her to leave in fear of police proceedings.

Regarding another strike described by two workers at the A1 garment factory, life for those who supported the action became much more difficult. They fear for their jobs while discipline and conditions have become much worse. For example, the finish date for orders were brought forward, thus increasing the daily workload and putting pressure on the workers to work longer hours to finish their tasks. Another worker described how she is disciplined more than before because she participated in the strike action.

Poor Treatment

In fact, it is this treatment by superiors that many (32%) interviewees stated as their biggest difficulty at the workplace. Not finishing daily targets in time, turning up late for work even if it is a factory assigned mode of transport, going to the bathroom without a toilet card, breaking something, the supervisor being in a bad mood or simply not liking the worker are all causes of verbal abuse cited by the interviewees. Sometimes it is sexual in nature and is often humiliating for the worker in question. One interviewee told of physical abuse such as hair dragging or striking in face, and another told of regular beatings.



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¹ <http://www.mmtimes.com/index.php/national-news/yangon/2452-taw-win-workers-strike-over-unfair-managers.html>
² <http://www.irrawaddy.org/archives/18062>
³ <http://www.mmtimes.com/2012/news/620/news62017.html>
⁴ <http://www.irrawaddy.org/archives/4803>

Difficulties Getting to Work

The second most common difficulty is the commute to work, with 27% of the interviewees who answered stating that this brings problems.³⁷ The particular problems that women face include fearing harassment when walking or taking public transportation home. Many workers have a long journey on crowded public transport that often runs late, resulting in being disciplined. Others take hostel provided transportation. For many of those who work a 12-hour day, an extra hour each way is a significant amount of their day that is lost. For those who live in factory hostels nearby, the control exercised by the employer increases. For example, if an order comes in on a Sunday (the usual day off for factory workers) the factory owner can easily call the employees in on their day off.

Conditions Inside the Factory

Ventilation

Of those who answered the question, nearly two thirds (63%) stated that conditions inside the factory were unhealthy. Half of these expressed problems with ventilation, such as faulty fans leaving the factory extremely hot, or being exposed to vile smells. This poor air quality can derive from the factory itself, from cooking smells from the workers' hostels, or from surrounding foodstuff factories such as fish packaging. Factories lack adequate ventilation systems, have very few fans, and fluorescent lamps that are used as lighting in garment factories become extremely hot. Adding to this problem is the overcrowding of workers in factories by the employer. The stale, hot, and stagnant air becomes much worse in the hot season when temperatures in Yangon can reach 38°C, leaving workers breathing in poor quality air that causes headaches and exhaustion.

Sanitation

Generally, the system for using the toilet in many factories includes getting a permission card from the superior, an undignified procedure resulting in long waits or discipline, including verbal abuse if this procedure is not followed correctly. Yet the ratio between the number of workers and the number of toilets is simply inadequate in many cases. One interviewee complained of queues of 60 people each time she needs to go to the bathroom. In some cases flooding occurs regularly, while in others there is not enough water, creating particularly unhygienic conditions. Some factory owners do not deem proper cleaning of sanitation facilities important enough. Some interviewees told how it is the workers' responsibilities themselves to clean the toilets while another told of how only there is only one cleaner for toilets that serve 2,000 people.



¹ <http://mmtimes.com/2012/news/625/news62510.html>

² <http://www.irrawaddy.org/archives/10695>

Safety

The most common fear regarding personal safety is that of a fire breaking out in the factory. The interviewees who spoke of such dangers describe the inadequate protective measures such as few fire extinguishers or water bottles, few emergency exits and no training in case of a fire. One interviewee at a garment factory told of how two fires had broken out in the 12 months he had worked there and another told of a gas explosion while some factories only have one emergency exit. One interviewee explained how emergency exits in the garment factory she works at were blocked by materials and boxes.

Fear of injury is commonplace. Some workers complained of a lack of protective clothing like gloves or glasses or that they are given them only when inspection teams visit the factory. Another interviewee also spoke about how the factory owners and management create the impression of clean and safe factories, and described how toilets were cleaned only for visitors.

Some interviewees also reported a lack of security for their personal belongings at the workplace with items such as lunch boxes being stolen.

A Difficult Life

Most workers in Yangon's industrial zones work over 10 hours per day, 6 days a week for wages that just about sustain them. Women face sexual harassment, whether at work, on transport, or walking home. The superiors in factories are strict taskmasters who will not hesitate to abuse verbally, and sometimes physically, those whom they perceive to be doing wrong. The conditions inside the factory are often hazardous, hot and dirty. Some interviewees could not even bear talking about their problems as there were simply too many, while those involved in labour union activity are discriminated against. It is a difficult life for Myanmar's workers.

Attaining Labour Rights

This section will look at the exercise of labour rights in practice, using both interviews with labour activists as well as media reporting, especially during the summer months of 2012 where a wave of industrial action spread throughout Yangon's industrial zones.



¹ <http://www.irrawaddy.org/archives/5403>

² <http://www.president-office.gov.mm/en/hluttaw/law/2012/11/23/id-1103>

³ <http://www.reuters.com/article/2012/11/03/us-myanmar-investment-idUSBRE8A204F20121103>

Chapter Four

A Wave of Collective Action

Between May and July 2012, around 70 garment factories in Yangon's industrial zones experienced strikes for better working conditions, increased pay and the freedom to form labour unions.³⁸ State media reported that in May alone 36,000 workers had gone on strike from 57 different factories.³⁹ Over May and June, an estimated 90 factories had experienced strikes.⁴⁰ The biggest strikes occurred at Myanmar Pearl, Nay Min Aung, Sabei Pwint, and YJ garment factories, as well as Lucky Shoe, Hi Mo wig factory and the Grand Royal Distillery.⁴¹ For the most part, extremely low wages, poor working conditions and being forced to work overtime were the grievances expressed by the striking workers.

The first major industrial action of the summer occurred at the Hi Mo wig factory in Hlaing Tharyar Industrial Zone. The factory exports wigs to South Korea, China and Japan, employing around 1,800 people.⁴² On May 9, nearly 2,000 workers launched a walkout over low wages, a filthy working environment, food that is unfit for consumption, and unfair treatment from superiors. On the afternoon of May 10th, their demands were met at a meeting between representatives from the workers, the management and officials at the labour administration office in Hlaing Tharyar.⁴³ A wage increase was agreed to increase the total monthly salary, including bonuses, from 65,000 to 100,000 kyat (\$68-\$105).

The lawyer who represented the workers in this agreement, U Htay expressed a warning that turned out to be extremely accurate, "(the employers) signed that they agreed to our demands but we have to look at their actions, whether they are true to their word."⁴⁴ A week later, the workers had to resort to another strike after the employer refused to honour the agreement made on May 10th. It was only in June that a second agreement was reached, this time in the context of increased media attention and the presence of the high profile 88 Generation Students activists.⁴⁵

The renegeing on the original agreement at Hi Mo wig factory highlights the flaws in the Labour Dispute Settlement Law in that it does not outline mechanisms and processes for collective bargaining. There is no legal stipulation that ensures that both the employer and the workers enter negotiations in good faith. In this case, the management at the Hi Mo factory certainly had no intention of agreeing to the demands made by the workers. As such, there was no penalty when there was no enforcement of agreements made on May 10th. This resulted in further strikes and a worsening of employer-worker relations throughout the period of collective action. The employer lost productivity, profit and face during this time while the workers suffered on strike, relying on food donations from external sources. They had to rely on these food donations as the factory cut off food and water provisions to the strikers. This was a tactic used by the Tai Yi slipper factory in February, when strikers had the water cut off from their living quarters.⁴⁶ If there had been a legal stipulation that ensured good faith bargaining, these problems would not have arisen.



¹ http://www.pwc.com/sg/en/assets/document/myanmar_business_guide.pdf

² <http://www.slideshare.net/KaungHtetZawSMU/pw-c-report-on-myanmar>

³ <http://www.dvb.no/analysis/the-pipeline-and-its-discontents/26798>

⁴ <http://www.irrawaddy.org/archives/2962>

Levels of Intimidation

This lack of good faith is a trait in the dispute settlement processes seen in 2012's wave of strikes. The employer often engages in actions that are in direct contravention of the ILO conventions that are concerned with freedom of association and the effective recognition of the right to collective bargaining (*Conventions 87 and 98*). Article 2 of *Right to Organise and Collective Bargaining Convention 98* states:

1. Workers' and employers' organisations shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration.
2. In particular, acts which are designed to promote the establishment of workers' organisations under the domination of employers or employers' organisations, or to support workers' organisations by financial or other means, with the object of placing such organisations under the control of employers or employers' organisations, shall be deemed to constitute acts of interference within the meaning of this Article.⁴⁷

In area C of our interviews, (Mingalardone and Shwe Paukkaun Industrial Zones) 50% of interviewees who knew that labour unions existed expressed that they did not want to join them as they were controlled by the employer, or to use the ILO's language from the above convention "under the domination of employers or employer's organisations." In area B (Hlaing Tharyar 1 + 2, and Insein) only 18% of interviewees knew of labour unions and over half of these were founded by the employer. By establishing organisations that the employer can manipulate or control is detrimental to the struggle for genuine improvement of workers rights.

Furthermore intimidation of key organisers of collective action is commonplace. Article one of the *Right to Organise and Collective Bargaining Convention (N°98)*, states:

1. Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment.
2. Such protection shall apply more particularly in respect of acts calculated to:
 - (a) make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership;
 - (b) cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours.⁴⁸

Yet the following example illustrates how anti-union discrimination is acted upon by employers with threats of, or actual, dismissal for union activity:



⁵ http://europa.eu/rapid/press-release_IP-13-695_en.htm

⁶ <http://www.mizzima.com/news/inside-burma/7555-us-trade-sanctions-on-burma-closer-to-approval.html>

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At the ADK garment factory, workers went on strike over being forced to work at night. The factory director had stated that the workers could go home at 4pm on Saturday, the 10th of June and Sunday would be their day off. On the Saturday afternoon, however, they were denied permission to go home. On Sunday, 144 workers formed a labour union to demonstrate against the factory's non-adherence to their employment contract. Nine members, including seven executive committee members of the new organisation were promptly dismissed. Not only were they dismissed, but the Yangon Arbitration Body ruled that the dismissals were legitimate, citing activities, "that can hurt the peaceful situation at the working environment, [including] holding meetings, protesting, inciting workers who are working peacefully, intentionally destroying the situation at the workplace, and causing delays in the work of others."⁴⁹ On July 19, the workers, unsatisfied at the arbitration body's decision, took the case to the Union-level tribunal where seven members were reinstated. Two, however, remain sacked and those who supported the strike are now discriminated against in the workplace.

This intimidation and threat of, and actual dismissal if involved in collective action are not limited to ADK factory. Both Myanmar Pearl and Sabwei Pwint garment factories issued an ultimatum to striking workers. After strikes began on 15th of May, the owners of both factories, (sisters) gave the workers until the 21st of May to return to work or face instant dismissal.⁵⁰ The workers eventually went back to work without a settlement being reached. There is no clear indication in law on how a workers association can proceed if they are not recognised by employers. This highlights the problems in the current legal framework outlined earlier in that there are no elements that guarantee the duty for both sides to bargain in good faith or for first contract recognition.

The ADK case is also an example of how more serious intimidation is used against union and labour activists. One of the founding members of the labour union was accused of theft and had to leave the factory hostel in fear of police. Corruption plays a big part of this intimidation as the employer can use his status and financial clout to bribe corrupt police officers to issue proceedings against those seen as troublesome. What is also worrying is the use of violence, committed by paid street thugs, to further intimidate strikers as seen in the Taw Win strikes later in 2012.⁵¹

Third Party Intervention and Negotiators' Minimal Understanding of the Issues

A common difficulty for those taking part in strikes and forming labour unions is a weakness in their capacity to deal with unscrupulous employers who are often supported by the local authorities. Third parties are often present to help the workers organise themselves but this can lead to further difficulties. An example of a prominent third party is the 88 Generation Students who, according to one of their leaders, Ko Ko Gyi, assisted in 37 strikes in May and June, 2012. The insufficient knowledge of labour rights and difficulties in dealing with the relevant authorities are cited as reasons for this third party intervention, "In every case, the workers and owners tried to negotiate themselves first. We were only involved in those cases where the owners and workers couldn't resolve it on their own."



¹ <http://www.irrawaddy.org/archives/12993>

² <http://www.mizzima.com/business/8964-us-dedicated-to-investing-in-myanmar.html>

³ http://www.nytimes.com/2012/12/18/world/asia/bangladesh-factory-fire-caused-by-gross-negligence.html?_r=0

⁴ <http://online.wsj.com/article/SB10001424127887323829504578267630667074360.html>

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The inexperience of workers in organising for collective action compared to the years of domination of employers means that unfair outcomes, disorganisation, and inability to strike fairer settlements are common. To remedy this will be a long term process, a mix of education, application, as well as the development of a sounder environment for collective action. While workers are sometimes in need of outside help, this does not necessarily benefit their struggle.

Typically at strikes, the workers discussed their problems with an array of activists, civil society organisations and political groups. They were given many different suggestions and ideas, while competition between these external actors further confused the workers. During one strike, during negotiations with the employer, when representatives from the Labour Ministry and the 88 Generation Students Group were present, the workers did not accept a proposed wage increase, saying it was too small. This proposed wage increase offer was the result of discussions between employers and their fellow colleagues yet the workers felt they did not have enough time to find a common position. This highlights the need for time periods for collective bargaining, something that is missing from current legislation. They requested extra time to discuss among themselves as well as to solicit expert help from labour activists, especially those with experience of collective action from other factories. The extra time was granted and the following day, at discussions with the employer some of these newly experts accepted the proposed wage increase without discussing with the workers themselves. The confirmation of the agreement was rushed through and the workers felt unfairly treated and forced to accept an unsatisfactory compromise.

This example highlights the weakness in capacity and experience of workers in organising themselves for collective bargaining as well as the pitfalls of third parties intervening in the process. For example, many members of the 88 Generation Students Group have spent much of the past 20 years in prison, and know very little of the lives of factory workers. While no one is doubting their good intentions, the danger is that they can be used by employers and/or the authorities to rubber stamp dispute settlements that greatly favour the employers.

Second Round of Collective Action Reveals Similar Problems

In November, 2012 a second, smaller round of strikes occurred with around 1200 workers from factories in Shwepitha, South Dagon, and Dagon Seikkan industrial zones going on strike due to low salaries.⁵² Two hundred strikers, including 10 hunger strikers⁵³, from the Taw Win Carpentry Factory in Shwepitha Industrial Zone demonstrated for 18 days demanding a formal employment contract, as well as to be able to work inside the factory as opposed to outside, performing menial tasks.⁵⁴ In fact they were forced to work outside ever since a labour union was formed inside the factory. Yet they were denied access to their place of work, even after a decision was made by the Labour Dispute Arbitration Court that supported all but one of their demands. The factory owner simply closed the doors and did not let them in after the dispute was supposedly settled. This factory is notorious for suppressing the rights of workers. This was the fourth round of strikes that workers had organised. In October, 300 workers marched to the main



¹ <http://www.irrawaddy.org/archives/15447>

² <http://www.ethicalcorp.com/business-strategy/can-burma-be-next-business-frontier>

³ <http://www.mmtimes.com/index.php/business/property-news/3999-renewed-focus-on-industrial-zones.html>

office to speak to the owner about the treatment they receive from their superiors. ⁵⁵Seven were let in for talks but were later charged under section 18 of the Peaceful Demonstration Law.⁵⁶ This contradicts the comments of U That Naing Oo, the Director of the Department of Labour who stated that labour issues “do not relate to the peaceful protest law of the Ministry of Home Affairs. That law covers non-labour protests.”⁵⁷

Employer Dominated Settlement Bodies

While enforcement of decisions made by arbitration and conciliation bodies is proving difficult due to a lack of legal stipulations that enforces good faith bargaining, there is also a huge distrust of the bodies themselves.

The Workplace Coordinating Committee outlined in the Settlement of Labor Dispute Law is supposed to have two representatives each from the workers organisations and employers yet employers often attempt to form these with workers over whom they have greater control and who will be subservient to their demands. Regarding the Conciliation Body in which the authorities will form in townships, the makeup, according to the Settlement of Labor Dispute Law, is supposed to consist of one representative from the division or state government, three from the employer, three from the workers, one from the ministry and two people trusted by both the workers and employers. However, the formation of these bodies is usually unknown to most worker organisations, who do not know when or where they have been founded, or by whom.

The highest level labour dispute body is the Arbitration Council which forms a tribunal to rule on cases that have already been through the arbitration body and the conciliation body. The tribunal includes one member from a list of 5 nominations from the labour organisations, one person from a list of 5 nominations from the employer and one member from a list of 5 nominations from the ministry. In practice, the collusion between the employers and the authorities means that a decision based on the demands of the worker is extremely hard to achieve. As a striking worker from Sabei Pwint garment factory told press during the wave of strikes in summer 2012, “the authorities just favour the employers, we are told what their offer is but they are not listening to our demands.”⁵⁸ In reality, the bodies that the Labour Dispute Settlement Law has established are dominated by those without the workers interests at heart.

Conclusion

The experiences of striking workers and fledgling labour unions shows that there is a long way to go before adequate labour rights are attained in Myanmar. The laws have proved to be insufficient in providing protection as employers, often in collusion with authorities, continue to trample over the rights of workers. In particular the lack of any provisions to ensure good faith agreements in collective bargaining mean that employers can act with impunity, often intimidating key organisers of collective action. Contributing further to the difficulties for workers trying to organise is the lack of capacity and experience in dealing with these issues and the subsequent involvement of third party mediators that can complicate the issue and sometimes unwittingly benefit the employers in disputes.



⁴ For a more detailed study on this issue see the International Bar Association's December 2012 report, *The Rule of Law in Myanmar: Challenges and Prospects*

Challenges Ahead

This section will look at the more institutional challenges for the development of decent working conditions, including recent international developments that have the potential to put more pressure on industrial relations in Myanmar.

Chapter Five

Political Will

One of the key problems is simple political will by the current government. For decades union activity has been severely repressed and many of the rulers in Naypyitaw are the same generals who were part of the military dictatorship. A change in attitude to allow a flourishing union landscape is needed in order to show the political will to firmly establish labour rights. A telling example of the hesitancy of decision-makers is the word "union." The very word union is closely affiliated with Myanmar's democracy movement, the scourge of the military regime for decades. Since the All Burma Federation of Students Union (ABFSU) organised strikes and protests against General Ne Win's military coup in 1962, the word union was associated with 'enemies of the state' by the military. Similarly in 1988, when the ABFSU publicly declared its existence again, its leaders were locked up and the organisation was forced underground again. Thus the word union has been feared by the authorities due to its association with mass opposition of successive military regimes.

Yet this attitude to the word union still applies to this day as is evidenced by the language used by both authorities in the two new laws. Trade unions are referred to as labour organisations throughout. If a trade union tries to register with the word 'union' in its name, the application is refused. Speaking on May Day 2012, labour activist U Myint Soe stated, "When I went to the government office to register, officers told me to change the organisation name. We called it a labour union but they said they do not like the name union. According to the law, workers can name their organisation but in practice it is not allowed."⁵⁹ If the very word 'union' is still a taboo subject for the authorities, the work and practice of unions is likely to be both feared and disdained.

In the parliament, which is dominated by the military party, the Union Solidarity Development Party (USDP), a lack of political will to resolve the issue is also apparent. In late summer of 2012, after waves of industrial action had highlighted the problems to the Burmese public and authorities, a commission was proposed in Parliament to investigate the strikes. The labour minister at the time, Aung Kyi explained "labour laws are already enacted and it needs some time to be effective. Therefore, there is no need to form such an investigation."⁶⁰ That the proposal was overwhelmingly rejected (288 votes against, 43 votes for, with 17 abstentions) demonstrates how the ruling majority in Parliament is side-lining labour problems due to a lack of political will.



¹ <https://www.un.org/en/ruleoflaw/index.shtml>

² <http://newperimeter.org/our-work/access-to-justice/myanmar-rule-of-law.html>

³ <http://www.ibanet.org/Article/Detail.aspx?ArticleUid=65664916-85c3-4b91-9fb1-ff4485eb4f40>

In fact the ruling government is actively discouraging the development of a political movement towards greater labour rights. Under political party registration laws, Myanmar’s political parties are prohibited from backing or becoming involved in public protests. As such they were warned in May against backing strikes in the industrial zones. Soe Win, vice chairman of the New Democratic Force told Irrawaddy in May, “the deputy labour minister said that in 13 out of 20 factories, workers had agreed to go back to work, but among the remaining factories, four could not reach agreements because of the involvement of two parties—namely, the NLD and the NDF.”⁶¹ This separation of politics from union activity was also pointed out by 88 Generation leader, Ko Ko Gyi, in the same month, “Worst of all, employers state in job vacancies that applicants must state any political affiliations.” Employers often ask newly employed workers to write a letter stating that they will stay away from labour unions. Not only does this cause fear of association with the labour movement, but it also prevents workers from learning about their rights and raising their political awareness. This undermines any attempts made by labour unions to mobilise.

Depoliticisation of the labour movement denies workers legitimacy and disempowers their attempts to organise. Political parties should be free to support industrial action and workers should be free from discrimination based on their political affiliation in employment practices and free from intimidation if they want to join a labour union.

International Pressures

In the post-sanctions landscape, a glut of overseas investors, barred for years from having a presence in Myanmar, are eyeing up opportunities. This foreign investment is facilitated, not only by the lifting of sanctions, but also by the passing of the Foreign Investment Law in November 2012.⁶² Although the law contains many ambiguous and potentially restricting stipulations, it opens the door for the foreign investment that the government craves. It includes tax holidays, land leases of up to 50 years, guarantee of non-nationalisation during the contract period and 100% control of investments in activities approved by the Myanmar Investment Commission (MIC).⁶³ The process of passing this law has been long-winded and subject to many versions and changes. Since it has passed, however it has brought certainty and confidence to would-be investors. In February 2013, a business delegation from the US consisting of representatives from some of the US’s biggest companies such as Caterpillar, Target Corp, and General Motors met with the Union of Myanmar Chamber of Commerce and Industry.

Also of relevance is The Special Economic Zone Law that was promulgated in April 2011 by Thein Sein.⁶⁴ It provides incentives for investors such as tax holidays and customs exemption for the first five years. Although this does not apply to the industrial zones researched for this report, it will apply to future labour-intensive activities in the Special Economic Zones such as Dawei and Kyuakphyu.⁶⁵

<http://www.slideshare.net/KaungHtetZawSMU/pw-c-report-on-myanmar>



¹ <http://www.humanrights.asia/news/press-releases/AHRC-PRL-033-2012>

² <http://www.dvb.no/analysis/investment-discretion-and-burma%E2%80%99s-future-economic-development/24904>

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In fact, already in Kyaukpyhu, work on building the deep sea port by the Indian company, Punj Lloyd, has revealed the exploitative labour conditions that workers endure. Women at the project receive around 50-70% of the pay that their male counterparts receive while strikes occurred after wages were not paid for 3 months in October 2012.⁶⁶

There is also an added element in that many factories based in Thailand that use migrant labour from Myanmar could relocate to Myanmar. Taking advantage of new, better access to markets and an escape from the recently introduced Thai minimum wage of 300baht per day, some garment businesses, who often pay as little as 100 baht per day to undocumented workers, have announced that they will relocate to Myanmar.⁶⁷

Meanwhile since July 19 2013, the EU has included Myanmar in the **Generalised System of Preferences** (GSP) thus removing tariffs on accessing the European market.⁶⁸ The EU removed Myanmar from the GSP list in 1997 after concerns with forced labour and, although such measures do not amount to sanctions, it left Myanmar at a competitive disadvantage compared to other ASEAN countries. The US has also suspended the import ban bill of 2003, known as the Burmese Freedom and Democracy Act. In 2000, Myanmar exported around 54% of manufactured garments to the US. In 2003 this amounted to \$350 million worth of exports to the US but after the import ban bill of 2003, this fell to zero.⁶⁹ The garment industry, which employs around 100,000 workers in Myanmar, will be particularly affected by these moves. After US sanctions were imposed the Myanmar garment industry decided on a 'Look East' policy with Japan in particular a major importer of Burmese made garments. Furthermore, the US is currently considering adding Myanmar as a beneficiary developing country under its own GSP list. Now that the US and EU markets are opening up, two potentially major effects will be seen:

- (i) The industry will grow. The US market in particular is huge. As Myint Soe, Chairman of the Myanmar Garment Association (MGA) pointed out, before sanctions the US would order 100,000 of a single design, compared to only 3000-4000 in Japan.
- (ii) Betterment of labour rights - there is a perception in Myanmar that companies from 'the West' are more ethical and ensure the rights of workers. Myint Soe from the MGA certainly believes this, "US garment firms are very concerned with labour rights. Normally, US garment companies check the working environment of factories and other labour suppliers before they give the green light for trade."⁷⁰ This impression was reinforced by comments made by the US Assistant Secretary of State for Economic and Business Affairs when the US business delegation visited Myanmar, "the US government is dedicated to doing everything in its power to encourage and support social and corporate responsibility. We want US companies to invest here [Myanmar] in a social and responsible manner."⁷¹

The increase in orders, while giving more people jobs and expanding the industrial zones, carries dangers of worsening the conditions in which people are working. More people earning \$2 per day in unsafe, unhygienic factories is not necessarily a good thing. The rights of workers



¹ <http://www.irrawaddy.org/archives/20686>

² <http://www.bloomberg.com/news/2012-05-18/myanmar-s-corruption-legacy-shadows-opening-to-investors.html>

need to be guaranteed before new investment accentuates the problems that currently exist. The concept that companies from the EU and the US will take better care of workers is one that should be examined. A recent and tragic example is the fire in a Bangladeshi factory that killed seven people in January 2013 who were found to be working on orders from Spain and France. This was just two months after another fire in Bangladesh killed over a hundred workers.⁷² Orders were found in this factory for US companies Walmart and Sears. Both tragedies were caused by a complete lack of regard for safety at the workplace. While the European and US companies concerned claimed to have no knowledge that their products were being made at such negligent factories, this is scant consolation to the workers and families of the victims involved. A problem is that the supplier will subcontract orders to factories with the buyer having no knowledge of where their product is being made. This practice avoids the standards and systems that international companies have to audit the safety of factories.⁷³ The garment industry in Bangladesh is huge, second only to China as the biggest exporter of garments yet the workers in its 4500 garment factories work in poor, unsafe conditions for very low wages. Bangladesh enjoys the EU's GSP as well as access to the US market yet these have not brought about decent living and working conditions. In fact it has made the situation worse as the industry has expanded with four million people, mostly women, are employed in the industry, as the country relies on the income it generates.

The garment industry in Myanmar, while not the only industry in the industrial zones, is the largest and is an example of a sector that will feel the pressure of a huge increase in demand as investors from the EU and the US look to take advantage of a large pool of labour and low wages. Garments were also the biggest export before sanctions, accounting for 85% of total exports with 15% timber and seafood products.⁷⁴ Today, there are around 200 garment factories with up to 100,000 people employed in them.⁷⁵ Already some of Yangon's industrial zones are being developed. A real estate agency stated that Hlaing Tharyar Zone 5 is expanding its capacity by 30% while more and more companies from Japan and South Korea are investing in Yangon's industrial zones with land prices rapidly increasing.⁷⁶

While foreign investment is largely welcomed, particularly from Europe and the US, it carries great dangers. Expanding the size and production of the industrial zones with foreign money does not guarantee the rights of the workers in these factories. Rather, the extra pressure and money has the potential to exacerbate the already long list of problems. Myanmar must not be another Bangladesh.

Rule of Law and Prevailing Corruption

There is a distinct lack of rule of law in Myanmar, and this spreads into the sphere of labour rights as it obstructs access to justice for those wronged, facilitates corruption and impunity, and hinders the establishment of just, fair labour laws. It is beyond the scope of this report to explore and explain in depth the details of the state of the rule of the law in Myanmar but the following is an outline of the problems faced and how they affect the exercise of labour rights.⁷⁷



Although there exists different definitions of the rule of law, the following from the UN Secretary-General on the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies encapsulates the essence of this concept:

“For the United Nations, the rule of law refers to a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.”⁷⁸

Law-making

Laws are not publicly promulgated in Burma as the parliamentary process lacks transparency and proper deliberation of laws. Many laws are rushed through, prioritising haste over substance. This gives parliamentarians little chance of scrutinising bills, thus creating the perception that they are “law passers, not law makers.”⁷⁹ Furthermore, draft laws are often marked secret, and as such many parliamentarians are simply not allowed to comment on the substance of proposed laws. Not only does this result in a more opaque process but it blocks the input from relevant, informed and affected stakeholders outside of Parliament. For example, if the draft Labour Organization Law had been made public, with comment and input from labour activists encouraged, some of the problems outlined in chapter one would not be present and the law would have greater legitimacy.

No independence of the judiciary and poor access

For decades, judges have been heavily influenced, both institutionally and culturally, by the ruling military regime. Thus there remains today a big problem of trust in the justice system. Activists, grassroots leaders, and villagers do not think of the judicial system as an option to obtain justice. As an activist said “if someone robs us and we go to the court, we are the one who will end up in jail.” Today, the executive wields excessive influence over the judiciary. The President’s Office appoints the Chief Justice of the Supreme Court, who in turn consults with the President over the appointment of the remaining Supreme Court judges.⁸⁰ The President’s Office also has financial control over the court system. Not only are judges perceived as being under the control of the executive, but corruption is widespread.

Further impediments to the access of justice include the fact that judgments are not published, and thus not available to the public. Access to independent lawyers is very difficult as many lawyers over the last two decades have been imprisoned, reprimanded, had their license revoked or intimidated regarding cases seen as politically-sensitive. Although the situation has improved, incidents of harassment of lawyers are still reported. For example U Aung Thein, who is part of the Lawyers Network, an activist group of lawyers, had his passport taken by authorities after



returning home from Hong Kong to attend a conference on torture and ill treatment.⁸¹ Also, there is no legal aid system for those who, as is common, cannot afford legal counsel to defend their rights.

This further entrenches the idea that the law is a tool for repression and that the court system is not a viable option. In relation to labour rights, there are provisions in the Labour Organization Law and the Settlement of Trade Disputes Act that refer to using the courts as an arbiter of disputes over labour union registration and dispute settlements. The lack of confidence, the continued control over the judiciary by the executive and the inaccessibility of the system render such provision in the new law as worthless and reduce the protection for those working for the rights of workers.

Corruption

As mentioned earlier, corruption is a problem in the court system, but this corruption permeates through all sectors of society in Myanmar, including the police, land and factory owners, local administration officials, and politicians. One example is the son of Shwe Mann, Toe Naing Mann who owns a telecommunications company with a particularly large share of the market. Shwe Mann, speaker of the People's Parliament (lower house), and formerly the third highest ranked military officer in the military regime, is widely seen as one of the 'reformers' in the government. It is pretty clear that this preferential access to the telecommunications market was a result of family connections and will not be investigated.

The provision outlined earlier in the Foreign Investment Law that the Myanmar Investment Council (MIC) will decide in which sectors foreign investors can gain 100% ownership in certain activities is of concern. It gives the MIC a broad range of discretionary powers and that leaves the door open for corruption.⁸²

There have been efforts, recently, to start the fight against corruption. Thein Sein started an investigation into graft at the Ministry of Posts and Telecommunications in January 2013 with the result that the minister resigned while at the time of writing an anti-corruption bill is being drafted. Despite such efforts, Myanmar remains very near the bottom of Transparency International's corruption perception index (172 out of 176) and the culture of kickbacks, particularly at the lower level will take years to change.⁸³

The effect of this corruption puts further obstacles in the way of realising labour rights. Factory owners in the industrial zones need to pay bribes to local officials in order to receive 'licences' to operate and for basic services. Overseas factory owners are also vulnerable to local officials demanding money, as they risk deportation from the country.⁸⁴ All these costs, result in harsher conditions for workers as the employer seeks to make up the money lost to bribes.



Conclusion

While the lack of the rule of law, entrenched corruption, and inevitable pressures of foreign investment could take potentially generations to change, there are measures that can be taken to mitigate the negative effects these have on Myanmar's workforce. The ratifying of international conventions that will make the authorities accountable to international human rights standards is vital. They include the United Nations Convention Against Corruption, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social, and Cultural Rights.

There also needs to be political will to fight corruption, to ensure is law-making more transparent, and to accept the importance of workers' rights. Without this will, the implementation of international conventions will be weak. It is a difficult situation, however, when many in government are either former or current members of the armed forces. This is the same armed forces that for decades, have persecuted anyone standing up for labour rights. While there are those in power who are seen as reformers and quite possibly do have the political will to maintain and further the reform process, these actions are arbitrary. Reformers need to be institutionalised, and a starting step would be to change the 2008 Constitution that gives the military a disproportionate amount of power and prevents the country from beginning a true democratic transition.

Recommendations

While the following recommendations may not be comprehensive, they serve as a starting point and a base to better the lives of workers in Myanmar:

To Parliament/Government

- For all levels of government structures to cooperate closely with unions and labour support groups in order to protect the rights and wellbeing of workers.
- Enact a legislation that protects the rights of workers in full consultation with workers.
- Amend the Labour Organization Law and the Settlement of Labour Dispute Law in collaboration with the workers themselves.
- Ensure wide consultation on the Social Welfare Law.
- Introduce a minimum wage that is sufficient for workers to meet their needs.
- Create employment policies and job opportunities for workers.
- Ratify the remaining 6 core ILO Conventions.
- Repeal all repressive laws that undermine freedom of expression and association, including the Unlawful Associations Act, the State Protection Act and the Emergency Provisions Act.

To Employers

- Immediately end all intimidations and restrictions on labour unions and labour rights activists.
- Conduct regular and meaningful health and safety inspections of workplaces, and rectify any unhygienic or hazardous conditions.
- Abolish the complex bonus system that workers have to rely on to make ends meet. (This relates to setting a fair minimum basic wage, *before* bonuses)
- Recognise the right of unions to exist and the positive role they play for productivity.
- Cease all forms of manipulation on labour unions and forming of employer-controlled unions that serve against the wellbeing of workers.

To the International Community

- Pressure the Myanmar government to adopt and implement international labour standards.
- Make investment in compliance with the UN Guiding Principles on Business and Human Rights and avoid partnering with domestic companies that fail to comply.
- Provide technical assistance to the government in formulating legislations that affect labour rights.
- Provide supports and capacity building assistance to the newly formed labour unions.

To Workers

- Participate actively in the independent labour unions.
- Improve self-knowledge on the functioning of labour unions.
- Learn more about workers' rights.
- Recognize and respect the rights of other fellow workers and actively involve in discussions and exchanges activities.
- Challenge the viability of the legal system by resolving labour disputes under the current legal framework.
- Cooperate with union leaders to resolve labour disputes.

To Labour Unions

- Actively build up organisational capacity of unions through capacity building exercises.
- Educate and increase awareness widely on the issue of workers' rights.
- Work to ensure workers are given all their rights.
- Improve collaboration among unions based on similar type of productions and geographical location.
- Establish a mechanism for review and evaluation of activities.

- Ensure leaders of unions practice democratic principles.
- Respect and follow the collective decision of union members.

To Labour Activist Support Groups

- Enhance collaboration between one another with an open-minded approach keeping the wellbeing of the workers a priority.
- Serve as a supporting network for the systematic establishment of labour unions and formulation of labour laws that promote and protect workers' rights.
- Assist the workers with good understanding and empathy of their lives.
- Establish relationships with workers based on trust and respect.
- Restrain from intervening in labour disputes without the consent of the workers involved.

By

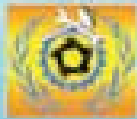
- Labour Rights Clinic
- Cooperation Programme of Independent Labourers
- Construction-based Labour Union
- Workers Support Group
- Other labour unions and labour activists who wish to remain anonymous



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အလုပ်သမားရေးရာဆောင်ရွက်သူများ (Labour Activists)



Cooperation Program of Independent Workers-CPIW
လွတ်လပ်သော အလုပ်သမားများ ပြုမင်္ဂလာဆောင်ရွက်ရေးအဖွဲ့

