

## Regulating for Decent Work in Burma

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*After 50 years of suppression of fundamental labour rights in Burma, and under pressure from the international trade union movement through the International Labour Organisation (ILO), the new elected Myanmar government has legislated two new laws; the Labour Organisation Law and the Settlement of Labour Disputes Law, which came into effect in March 2012. These laws introduce freedom of association rights, including the right to organise, to bargain collectively, and to take strike action. More than 750 new unions have been registered.*

*The paper will review the progress and issues in regulating for decent work in Burma during the first 18 months of the new laws.*

Not long after I began work with the ILO in Yangon in June 2012, a maintenance mechanic from a factory came to see me with a grievance. I frequently had groups of workers from all parts of the country coming for advice and assistance. Most people in Burma regard the ILO, which has been active on forced labour issues for more than 10 years, as an organisation which helps workers. The maintenance mechanic, who I will call Ko Than, was concerned about the amount of pay which had been deducted for a few days he was off work sick. After struggling to work for nine days while he was sick, he had to take three days off. When I inquired into his conditions of employment, I discovered that his pay was made up of:

Base pay per day	= 1,110 MK	= \$1.37 per month	\$30.82
Monthly attendance bonus	=18,000MK	= \$22.44	
Monthly punctuality bonus	=18,000MK	= \$22.44	
Monthly try-hard bonus	= <u>17,000MK</u>	= <u>\$21.97</u>	
		54,100MK	= \$97.67

Unfortunately for Ko Than, the employer's (unilaterally decided) conditions resulted in bonus deductions for sick leave; 25 per cent for one day, 50 per cent for two days, and 100 per cent for three or more days. So Ko Than's three-day illness absence resulted in his monthly pay being slashed from \$97.67 to \$30.82.

Of course, I reacted with outrage at this injustice, only to be told quietly by my Burmese assistant that these are standard provisions in most factories. This is the result of 50 years of brutal suppression of worker rights, which has allowed employers to impose such conditions. Pay deductions for going to the toilet is another example.

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The Republic of the Union of Myanmar is in a process of transition to democracy under a multiparty system (as outlined in the 2008 constitution)<sup>1</sup>. It has seen a succession of ruling juntas since 1962 when the military took control after a period of democratic government following independence from British colonial rule in 1948.

Myanmar in 2013 is a long way from achieving “decent work” for its citizens in accordance with the ILO Decent Work Agenda which requires:

- Job creation and skill development
- Guaranteed rights at work
- Extending social protection
- Promoting social dialogue

The labour force in Myanmar was estimated<sup>2</sup> at 32.5m in 2011, with 70 per cent occupied in agriculture and related activities, 23 per cent in the services sector and seven per cent in industry. According to Myanmar’s official statistical yearbook for 2009, the total employed population in the country was 15.83m people (the estimate is based on a 1990 labour force survey) with a distribution as follows: agriculture – 56.47 per cent, industry including mining, manufacturing, and electricity, gas and water – 12.49 per cent; construction – 2.64 per cent, and services including logistics, financial institutions, trade, hotels, restaurants and social services – 28.4 per cent. The unemployment rate is estimated at 5.5 per cent. Myanmar has a youthful population, with the 15-28 working cohort of 13 million accounting for almost 40 per cent of the working age population. The under working age cohort is 25 per cent of the working age population. The labour market participation rate is estimated<sup>3</sup> to be 66.16 per cent (male 82.49 per cent and female 50.11 per cent).

Labour productivity is on average 70 per cent lower than Asian benchmark countries, largely as a result of the large and growing share of agriculture in GDP. Myanmar has the potential to create 10 million non-agricultural jobs and lift 18 million people out of poverty by 2030, provided it can double labour productivity. To achieve that will require a massive investment in education and the development of skills for the expansion of manufacturing, infrastructure, tourism, financial services, energy/mining and telecom, an active programme of adoption and implementation of ILO labour standards, the development of social protection mechanisms, and active social dialogue.

The past 18 months have seen the birth of a union movement in Myanmar. A Labour Organisation Law<sup>4</sup>, purporting to comply with ILO Convention 87<sup>5</sup>, was passed and came into effect in March 2012. This permits workers to organise and register “labour organisations” (unions), initially, at enterprise level but also allowing the development of unions at township, state and national level. A counterpart Settlement of Labour Disputes Law<sup>6</sup> provides dispute resolution processes and institutions. More than 750 labour organisations have now been registered under the Labour Organisation Law, mostly small unions at enterprise level and concentrated in the agricultural, manufacturing and transport sectors, and with an estimated total membership of close to 200,000 workers.

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<sup>1</sup> Myanmar “Constitution of the Republic of the Union of Myanmar” (2008) <[www.burmalibrary.org](http://www.burmalibrary.org)>.

<sup>2</sup> Myanmar Ministry of Labour “Handbook on Human Resources; Development indicators 2009” Ministry of Labour Nay Pyi Taw 2011.

<sup>3</sup> As above.

<sup>4</sup> Refer Ministry of Labour Myanmar <[www.mol.gov.mm/en/regulations/](http://www.mol.gov.mm/en/regulations/)>.

<sup>5</sup> See critique of Law in International Trade Union Confederation submission to the ILO Committee of Experts.

<sup>6</sup> Refer Ministry of Labour Myanmar, above n 4.

Given the history of oppression and the continuing hostility from many employers, this is a remarkable achievement, and reflects the determination of workers to exercise their new rights to associate, organise and negotiate. Many of them are young factory workers struggling to improve their wages and conditions of employment which, for many, are at exploitative levels.

I was charged with developing a project to promote and support the new freedom of association rights, which included an awareness raising campaign with education and advice for workers, government officials and employers. However, the core of the programme has been bi-partite training workshops for the leaders of the new unions and their employers.

The new union leaders have taken up the opportunity to learn with enthusiasm; the first major workshop in July last year attended by almost 300 people. To date, more than 2,000 people have attended ILO workshops, with the two key leaders from each union being provided with the opportunity to attend the two day basic training workshop.

The new leaders took their first real steps as a national movement when they came together at the Labour Organisation Leaders' Forum in Yangon at the end of April 2013, organised by the ILO FOA Project and the Friedrich Ebert Foundation (FES). More than 363 registered unions were represented, along with more than 100 related organisations, at this historic event; the largest conference of elected worker representatives in more than 50 years.

Not surprisingly, there was some suspicion about hidden agendas, and tension around the process for election of the Worker Delegate to the 2013 International Labour Conference. A substantial portion of the plenary sessions were spent debating and deciding the rules to govern the election of the Worker Delegate. It was, at times, a bruising debate, but the conference delegates became increasingly confident in the process of democratic decision making. Five of the six key rules for the election process were agreed by consensus with the issue of whether candidates had to be an existing member of a registered labour organisation going to a secret ballot of accredited delegates from registered labour organisations.

The ballot itself, conducted in the conference hall, was a moving process with many delegates participating in such a democratic vote for the first time in their lives. They decided decisively (220 to 101) that only members of registered labour organisations would be eligible to stand. A further secret ballot was held the following day to elect the Worker Delegate to the 2013 International Labour Conference.

In working together to make these key decisions by democratic process, the new union leaders of Myanmar took their first steps as a national movement. This was, undoubtedly, the most valuable outcome of the conference. There is a long way to go in building a national union movement, but the 2013 Forum delegates can feel proud that they agreed the ground rules for, and participated in, a democratic decision making process.

But 750 enterprise unions, even working together in a national movement, will not provide the workers of Myanmar with the collective strength they need to shift the political economy of Myanmar to a focus on Decent Work objectives. The ILO education workshops have encouraged new union leaders to think critically and strategically about how they might help to build a union movement which will do that. Overwhelmingly, the feedback has been that they want recognition and respect from their employers for their role as the voice and negotiators for the workers they represent, and they are keen to learn new knowledge and skills. The keen interest in the April Forum

workshops on organising skills, collective bargaining and workplace health and safety was an example of this.

There is also developing understanding among union leaders and employers of a development model which builds constructive dialogue, including collective bargaining, at enterprise, industry and national level between the new unions, business and (where appropriate) government. This would be a model for building value, profitability and workers' incomes as a common objective, with union participation in industry development programmes, which are benchmarked to labour standards, skill development and skill-based pay systems.

Some tentative progress has been made with a Decent Work Agenda. In October 2012, an agreement was reached between the government of Myanmar and representatives of social partners at a meeting in Nay Pyi Taw on an agenda called "Decent Work – a tool for Economic Development and Poverty Reduction". This agenda identified seven key policy areas; the elimination of forced labour by 2015, the successful introduction of freedom of association and social dialogue, enhanced employment opportunities (particularly for youth), labour legislation and labour market governance, socially responsible enterprise development, labour migration, and the employment dimension of trade and development. An eighth policy area, social security and the social protection floor was subsequently added by agreement. The ILO Liaison Office in Myanmar reported to the ILO Governing Body at its 319<sup>th</sup> Session 16-31 October 2013 on progress on the implementation of this agenda, and noted considerable macro risk to the agenda, including internal governance/politics associated with constitutional reform, peacebuilding in the context of ethnic communities and their associated armed groups, and social unrest in the context of widespread poverty and uneven distribution of wealth exacerbated by the rise of nationalism and associated religious intolerance<sup>7</sup>.

The ILO Liaison Office Report noted<sup>8</sup> and active legislative programme has included further new labour laws in the past year; a Minimum Wage Law, an Occupational Safety and Health Law, and Employment and Skills Training Act and a Social Security Law. The government has also ratified ILO Convention 182 on the Elimination of the Worst Forms of Forced Labour, and the government and social partners have, with support from the ILO, engaged in a number of social dialogue workshops on the new laws and their implementation. The government has also had a strong focus on developing skills training (often through partnerships with tertiary institutions from other countries in the region).

However, there is a real risk that the new industrial relations system in Myanmar will drift towards a conflict model. The new Labour Organisation Law was greeted with a wave of strikes in the industrial estates around Yangon in 2012, and began to increase again earlier this year as factory workers, frustrated with their poor wages and working conditions and the lack of respect from their employers, exercised their right to strike.

At present, most employers have been ignoring the new law and many of them have been actively hostile with large number of workers being dismissed for labour organisation activity. The law has been found to be weak in providing legal protection against this sort of discrimination and, in particular, has no effective penalties against employers who have directly challenged the authority of the Arbitration Council by refusing to comply with its orders reinstating workers who have been unlawfully dismissed. Union leaders also complain that employers do not give them the recognition that the law requires and few genuinely engage in collective bargaining.

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<sup>7</sup> Refer Report to the ILO Governing Body by the ILO Liaison Office in Myanmar "Update on the implementation of technical cooperation activities in Myanmar" (3 October 2013) ILO <[www.ilo.org](http://www.ilo.org)>.

<sup>8</sup> As above.

Not surprisingly, workers are becoming increasingly frustrated and angry. The risks have been highlighted by cases like the Taw Win Timber products case where the employer's refusal to comply with reinstatement orders provoked consequential action by workers and the arrest of young union leaders.

Despite the urgent need to strengthen the legal protection for workers and to introduce an enforceable good faith requirement to ensure that collective bargaining can get some traction, the government has so far taken no action to amend the laws. In doing so, it is effectively endorsing the status quo, which is likely to move industrial relations towards the conflict model we have seen in other countries like Cambodia.

Myanmar workers deserve, and want better than that. But it will require a deliberate strategy, actively supported by employers, workers, and their organisations, working with government to build a modern industrial relations system based on democratic industry/sector structures, which will lift the skills and pay of workers as an integral part of industry development.

To do that will be a major challenge. The ILO core labour standards, as a minimum, should be implemented in practice as well as in law, and the ILO tripartite supervisory processes will continue to address that. The ILO will also be expanding its current Freedom of Association Project education and training work to support the development of social dialogue, including collective bargaining. But employer and worker organisations, both locally and internationally, will need to work together to ensure that local employers and workers are provided with the opportunity to understand and build a modern industrial relations model. And the reality is that the current laws will need to be amended to actively support the formation of strong, democratic, well-resourced industry unions.

The experience of the past 18 months has shown that Myanmar workers are keen to learn about international labour rights, and how they can assist workers to be involved, through democratic industry based unions, in the development of their country. The April Leaders Forum demonstrated that they want to, and can, debate and decide difficult issues democratically.

The farmers' unions being mainly self-employed small farmers have particular issues, such as land security and modernising their farming practices, but it is important that greater understanding and unity is built between them and industrial unions.

A process of democratic discussion is needed so that workers and their leaders can decide the model of industrial relations they prefer. And organisations like the Agriculture and Farmers Federation of Myanmar (AFFM), the Federation of Trade Unions of Myanmar (FTUM), the 88 Generation, the Labour Rights Defenders and Promoters Network (LRDP) and Action Labour Rights (ALR) locally, and the ITUC and Global Union Federations internationally, can play a key role in jointly supporting such an initiative. The discussion should include a consideration of whether the government and employers will support law change and build the respect for both the law and unions necessary for the development of a social dialogue model.

The choices are clear enough. On the current trajectory in Myanmar, the conflict model may win by default. Workers and employers should be given the information and the support from government and social partners so they can make democratic choices for a better future.