

Raising the Bottom

A Report on the Garment Industry in Myanmar



Raising the Bottom: A Report on the Garment Industry in Myanmar

Written and Published by Progressive Voice
December 2016

Progressive Voice

www.progressivevoicemyanmar.org
info@progressive-voice.org

About Progressive Voice

Progressive Voice is a participatory rights-based policy research and advocacy organization rooted in civil society, maintaining strong networks and relationships with grassroots organizations and community-based organizations throughout Myanmar. It acts as a bridge to the international community and international policymakers, amplifying voices from the ground, and advocating for a rights-based policy narrative.

Underpinning our work and identity is a commitment to human rights principles. We stand for the universality, inalienability and absolute nature of human rights, and do not discriminate against people on grounds of race, color, nationality, ethnicity, gender or gender identity, sexual orientation, age, disability, social standing, religion, political or other beliefs.

Progressive Voice's research is done ethically, following the principle of 'do no harm.' Based on this research, we produce independent and principled analysis that remains non-aligned and independent of any political parties and political or religious institutions.

Contents

Acronyms	7
Executive Summary	8
Research Methodology	14
Introduction	16
Section One: Myanmar’s Garment Industry	19
Section Two: International Human Rights, Labor Law, Standards and Guidelines	24
2.1: Freedom of Association and Assembly	24
2.2: Right to Collective Bargaining	25
2.3: Decent Working Conditions	27
2.4: OECD Guidelines for MNEs	28
2.5: UN Guiding Principles on Business and Human Rights	28
2.6: Multi-stakeholder Initiatives and Global Framework Agreements	29
2.7: Other Standards	29
2.8: Trade Agreements and Bilateral Investment Treaties	30
2.9: Corporate Social Responsibility	31
Section Three: Domestic Labor Legislation	32
3.1: Freedom of Association and Assembly	32
3.2: The Labour Organization Law	33
3.3: The Settlement of Labour Dispute Law	35
3.4: The Minimum Wage Law	38
3.5: Other Relevant Laws	40
3.6: Summary	41
Section Four: Waves of Strikes	42
Section Five: Main Findings	46
5.1: Working Hours	46
5.2: Working Conditions	51
5.3: Impact of the Minimum Wage	58
5.4: Trade Unions and Labor Dispute Settlements	63
Section Six: Raising the Bottom?	73
Recommendations	78
Acknowledgements	82
Boxes:	
Box One: CMT/FOB/ODM	22
Box Two: SMART Myanmar	23
Box Three: ILO in Myanmar	30
Box Four: US Reporting Requirements	31
Box Five: MGMA Code of Conduct	41
Box Six: Hlaingtharyar Industrial Zone – Dangerous and Crime-Ridden	57
Box Seven: Rising Cost of Living and Inflation	61
Box Eight: Union Persecution	64
Box Nine: A Trade Union Success Story	66
Box Ten: Factory Pressures	70

Acronyms

ADB	■ Asian Development Bank
CEACR	■ Committee of Experts on the Application of Conventions and Recommendations
CMT	■ Cut-Make-Trim
CSO	■ Civil Society Organization
CSR	■ Corporate Social Responsibility
ETI	■ Ethical Trading Initiative
EU	■ European Union
GFA	■ Global Framework Agreement
FLA	■ Fair Labor Association
FOB	■ Free-On-Board
GSP	■ Generalized System of Preferences
HRD	■ Human Rights Defender
ICCPR	■ International Covenant on Civil and Political Rights
ICESCR	■ International Covenant on Economic, Social and Cultural Rights
IFC	■ International Finance Corporation
IFI	■ International Financial Institution
ILC	■ International Labour Conference
ILO	■ International Labour Organization
ITUC	■ International Trade Union Confederation
LDC	■ Least Developed Country
MGMA	■ Myanmar Garment Manufacturers Association
MMK	■ Myanmar Kyat
MNE	■ Multinational Enterprise
NCP	■ National Contact Point
NGO	■ Non-Governmental Organization
NLD	■ National League for Democracy
ODM/OBM	■ Own Design Manufacturing/Own Brand Manufacturing
OECD	■ Office for Economic Co-operation and Development
PNA	■ Preliminary Needs Assessment
SEZ	■ Special Economic Zone
SMART	■ Small and Medium Enterprises for Accountability, Responsibility and Transparency Myanmar
UDHR	■ Universal Declaration of Human Rights
US	■ United States
WB	■ World Bank

Executive Summary

The garment industry in Myanmar, while still small compared to major producers such as China and Bangladesh, is growing exponentially, as more and more buyers source from the over 350 factories in its industrial zones. Yet despite an increase in jobs, labor standards remain low. This report, 'Raising the Bottom,' finds that Myanmar has a long way to go for this industry to be sustainable as factory workers, the majority of whom are women, bear the brunt of an extremely competitive global market in which labor standards remain below internationally recognized human rights and labor standards.

Based on 199 interviews with garment factory workers, 87% of whom were women, as well as key stakeholders in the industry, from the private sector to trade unions, the research presented in 'Raising the Bottom' finds that labor rights in Myanmar are not adequately protected through national legislation. Furthermore, structural pressures as a result of Myanmar's integration into global markets will create negative impacts. This necessitates an evaluation of how Myanmar's broader economic development will benefit those without adequate protection.

The main research findings of this report relate to four different aspects of life for workers in the garment industry – working hours, working conditions, the impact of the minimum wage, and trade unions and labor dispute settlements.

Working Hours

- 95% of workers interviewed regularly work 6 days per week.
- 88% of workers interviewed regularly work 10 or more hours per day.
- Workers rarely refuse to work overtime. This is for various reasons including not knowing whether or not they can say no, the need for any extra overtime pay to supplement a salary that fails to meet rising living costs, or sometimes as a result of coercion or intimidation.
- Management and owners actively discourage workers from taking time off work. Most face disproportionate wage deductions for taking days off. 61% of workers interviewed stated that the fine was 5,000MMK per day or over, while 36% said it was 10,000MMK per day or over. Given that the minimum wage is 3,600MMK per day, and that most workers struggle with this wage, this deduction is disproportionate. Some workers even stated that the deduction, used as a punishment and deterrent, was over 20,000MMK per day.
- Workers regularly stated that permission to take a day off is regularly denied, if they were to take more than three days off without permission they would be fired.

Working Conditions

- 54% of workers interviewed reported problems with their managers and supervisors, ranging from applying undue verbal pressure, to arbitrary lay-offs. Other workers talked of the threat or the actualization of physical assault, but the most common complaint is that of pressure to fulfil orders, including being forced to work overtime, reduced break times, threat of dismissal and continual verbal pressure.
- 40% of workers complained of toilets being inadequate, whether through lack of water, not enough toilets related to the size of the workforce, restrictions on how many times and for how long to use the facilities, or a lack of cleanliness.
- 70% of the factory workers interviewed reported the existence of a healthcare clinic (as stipulated by law) although over a quarter of these (27%) reported problems that the medication was inadequate, or that staff were not skilled enough to address health problems.
- Key stakeholders interviewed for this research reported that the social security system, which covers healthcare and maternity leave, is vulnerable to corruption. Instances were reported in which the relevant authorities and the factory owners would collude to distort the number of workers paying into the social security fund for their own gain.
- 27% of workers interviewed believed that maternity leave was not available and 15% were not sure, despite this being a legal requirement. One of the methods that some factory owners used to avoid paying maternity leave is encouraging pregnant women to voluntarily leave the factory without paid leave, and restart work after childbirth on the starting wage.
- Language barriers with foreign factory owners resulted in problems over wage slips and resolution of disputes.
- Most of the workers interviewed, of which 87% were women, felt safe in their workplaces as regards sexual harassment or gender-based mistreatment by their male colleagues and supervisors, although a small number of workers did report that this occurred. This is partly because many of the supervisors and most of the staff themselves are female. However, 32% said that they did not feel safe when walking home after work. This is exacerbated when they need to work overtime and are thus walking home in the dark during later evening hours. Women felt that they were vulnerable to attack, often were verbally harassed, and there were reports of sexual assault or rape of women they knew or had heard of.

Impact of the Minimum Wage

- 99% of workers interviewed reported that their employer is following the minimum wage policy since it was introduced on 1 September, 2015.
- 61% of workers interviewed reported negative impacts of the minimum wage policy.
- According to over two thirds of those who noted a negative impact since the minimum wage introduction, working conditions have become harsher both in terms of expected worker output and strict regulations.
- Over half of those workers interviewed who expressed negative effects of the minimum

wage policy highlighted the loss of bonuses and benefits as a negative impact.

- For many workers, the introduction of the minimum wage, and the rise in the average monthly wage for a worker in the garment industry and the manufacturing industry as a whole, is still not commensurate with a living wage. Workers struggle to make ends meet just as they did in the years before the minimum wage was implemented due to the rises in inflation and commodity prices.
- The research findings indicated several instances of a levelling out of pay-scales as regards skill levels. Thus some skilled or long-term workers actually had their basic pay reduced after the introduction of the minimum wage.

Trade Unions and Labor Dispute Settlements

- Only 33% of workers interviewed stated that a trade union existed in their factory and secondly, for those who do know of the existence of a union, many are not members. A total of 8% of the workers interviewed stated that they are a member of a trade union.
- There is a low awareness of trade unions. A third of the respondents (35%) were not even aware of whether a union existed or not.
- Of interviewees who were aware of unions 22% felt it was unsafe to become a member. The fear of being laid off and being threatened with dismissal from factory owners due to trade union membership was the most oft-cited reason for deeming membership unsafe.
- 13% of workers who stated that there was a union reported that the union was in fact employer-controlled or had been established by the employer.

The report also finds that domestic legislation is not adequate enough to protect workers' rights, including the right to organize, while the new labor laws are not in line with International Labour Organization (ILO)'s labor standards. In particular, the lack of mechanisms and legal provisions that ensure good faith bargaining do not bind factory owners to follow the decisions of the arbitration bodies and the Arbitration Council during disputes. While some factories follow the Myanmar Garment Manufacturers Association (MGMA)'s Code of Conduct or other brands' codes of conduct, such policies and standards, unilaterally implemented by private sector enterprises, are voluntary. While there are some buyers in Myanmar that are part of global framework agreements (GFAs), which are negotiated between multinational enterprises and trade unions and provide grievance mechanisms for labor rights abuses, there will always be unethical factories and unethical buyers, keen to exploit a legal framework that is not strong and comprehensive enough to protect workers.

The pressures of the global market are such that Myanmar risks joining a 'race to the bottom.' For factory owners, the pressure to exist and make a profit mean that they need to extract as much labor from their workers as possible. There is a pressing need to produce as cheaply and as quickly as possible. The widespread and prevalent world of 'fast fashion' gives global consumers the choice of purchasing 'fashionable' apparel at a low cost through quick and inexpensive production processes, with buyers putting pressure on garment factories. These pressures are then projected by factory owners and management onto their workers, as this report evidences. If this means forcing workers to do overtime, or threatening them with dismissal if they take a day off, then this is something many factory owners and managers

RAISING THE BOTTOM

A report on the garment industry in Myanmar



90% of 240,000 garment factory workers are female in Myanmar



The garment industry in Myanmar, while still small compared to major producers such as China and Bangladesh, is growing exponentially, as more and more buyers source from the over 350 factories



99% of workers reported that their employer is following the minimum wage policy since it was introduced on 1 September, 2015



61% of workers interviewed reported negative impacts of the minimum wage policy



54% of workers interviewed reported problems with their managers and supervisors, ranging from being forced to work overtime, reduced break times, threat of dismissal and continual verbal pressure



The most commonly reported negative impact since the minimum wage introduction was harsher working conditions, both in terms of expected worker output and strict regulations



"I can be threatened and deterred by my factory if I happen to join it [union] but I am not afraid of it. I know what my rights are."
Female Garment Factory Worker, Mingarlardon, Myanmar



88% of workers spend more than 10+ hours a day at work



95% of workers regularly work 6 days per week

will do. In order to make a profit, factories may save money by not equipping the clinic with proper resources, or by not updating or cleaning toilet facilities for workers. Furthermore, as the movement of capital becomes easier through trade liberalization, it is easier for investors to move operations to where labor is cheaper or less organized while buyers can shift where they source from. It is on this point where opportunities should be pursued for transnational connections between labor groups and trade unions in the Asia region, working together for their mutual benefit. By resisting this capital flight together they can collectively raise the bottom of labor standards, regionally and globally.

Workers, given the rising rates of inflation and resulting increase in living costs, cannot afford the wage deductions for taking a day off or as a result of refusing overtime. This is exacerbated by a large pool of labor migrating to Yangon, meaning that it is easy to replace a worker deemed not productive enough or one that is engaged in trade union activities. Further, migrant workers from rural areas cannot survive in the city without a consistent form of income, as they do not have the benefit of social and family support. For these workers, returning to the countryside is not an option as there are very little job opportunities and in most cases their family solely depends on them for their livelihood.

Myanmar's push towards the privatization of communal land, the endemic of land confiscation in rural areas for natural resource extraction, infrastructure construction and the development of monocrop plantations and agribusiness has left many without land, bolstering the population of the rural poor. This creates a situation in which small-scale, labor-intensive farming is replaced by large-scale capital-intensive farming techniques, creating a large pool of unskilled labor.¹ While many of these people work on farmland as day-laborers as opposed to owning land, many also migrate to industrial urban areas for jobs, creating an abundance of labor supply. Devastating effects of natural disasters also contribute to this increasing number as rural livelihoods are wiped out. Thus, the issue of advancing labor rights finds its place in the broader concept of Myanmar's economic development and finds itself inextricably linked with disenfranchised rural poor. Strengthening land tenure and pursuing sustainable development policies in rural areas is therefore part of the bigger picture of structural pressures that affect labor rights in Yangon's industrial zones.

Labor rights are human rights; they are inseparable from each other. Internationally recognized human rights and labor standards should not be eroded in the search for profit and investment opportunities. The Myanmar Government has a responsibility to make policy and legislative changes that protect the rights of workers to form or join trade unions, to ensure good-faith bargaining in industrial disputes, to promote and entrench regulations and standards that ensure decent working conditions and the rights of workers such as maternity leave and healthcare access, and to punish abusive factory owners who flout the law. Furthermore, in the absence of such policy and legislative protections, actions by actors in the labor movement that push for victories for workers' rights should be protected and supported. Meanwhile the private sector, in the absence of adequate national legislation, has a duty to follow inter-

1. See Jenny Franco, Hannah Twomey, Khu Khu Ju, Pietje Vervest and Tom Kramer, 'The Meaning of Land in Myanmar: A Primer,' Transnational Institute, November 2015. Available at https://www.tni.org/files/publication-downloads/tni_primer-burma-digitaal.pdf (accessed 7 September, 2016).

national guidelines such as the UN Guiding Principles on Business and Human Rights and the Office for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises (MNEs). Being a country that is still a relative newcomer to the global garments market, and especially given the democratic transition that is underway, Myanmar should strive to become a model for sustainable development in the garment industry, where workers' rights are protected.



Workers from Nay Min Aung, Jasmine Phyu, and Toe Myat Aung garment factories protest in 2012
Copyright: *Let's Help Each Other*

Research Methodology

The purpose of this report is to provide an overview of the garment industry in Myanmar from a rights-based perspective. It thus focuses on the struggles of factory workers in realizing their rights in relation to internationally-recognized human rights and labor standards.

This report is based on qualitative and quantitative field and desk research. Field research involved a largely quantitative survey but with some qualitative aspects more akin to semi-structured interview questions with 199 garment factory workers – 173 of whom were female, and 26 were male. The workers came from 62 factories in 14 industrial zones, mainly in the Yangon area but also in Patheingyi, Indagaw and Bago. More tailored, semi-structured, qualitative interviews were also conducted with various stakeholders including buyers, factory owners, labor activists, lawyers, arbitration body members and trade unions. Desk research was also undertaken. The field research took place between February and April 2016.

The research methodology was designed based on a preliminary needs assessment (PNA). The PNA involved informal discussions and interviews with key stakeholders including labor rights activists and unions, an Arbitration Council member, and the private sector. The aim of the PNA was to help design the research methodology, addressing security, ethical and practical considerations. The PNA also shaped the framing of the report, as well as feeding into the design of the interviews as regards which issues should be addressed. The interviews that took place as part of the PNA were informal and provided background information for this report and are not directly quoted or referenced.

Based on the PNA, the research methodology was designed to cover many of the industrial zones in the Yangon area. This is because the report does not target specific factories or brands, but to provide a broad overview of the situation of garment factory workers throughout the industry. The most important industrial zones identified were in Hlaingtharyar, which is the biggest, as well as in Shwepyithar, Shwepaukkan, South Dagon, North Okkalapa, and Mingalardon. These zones have a large number of garment factories and have also seen large bouts of industrial unrest. Patheingyi, Indagaw and Bago were chosen as they also have concentrations of garment factories, albeit smaller than those in Yangon, and also to ascertain if the issues that garment factory workers face in the Yangon area are also applicable outside the main manufacturing centers. The report did not find tangible differences between Bago, Indagaw and Patheingyi and the Yangon-based industrial zones. While Mandalay also has a sizeable garment industry, this is mainly for the domestic market, with small factories producing items such as traditional Myanmar dresses. The focus of this report is on the export market as this is where the industry will expand as overseas buyers and investors enter the country.

Thus, Mandalay was not chosen as a research site. Despite this, some of the fundamental labor issues highlighted in this report do pertain to the manufacturing industry as a whole.

The Progressive Voice staff member leading the field research provided a training session to contracted field researchers on how the interviews were to be conducted, the ethical issues, and security measures. Gender sensitivity was also ensured in the research, which was particularly important as the PNA suggested that sexual harassment was a pressing issue. As such, the five female researchers who were hired for the research underwent a training on conducting interviews that address the issue of sexual violence, including sexual harassment and sexual assault. An external consultant with experience and expertise in these issues was contracted to conduct this training. On each of the days that research was conducted, three teams of two or three field researchers conducted interviews simultaneously in three different industrial zones. Throughout the whole project, steps were taken to ensure the security of the data and the anonymity of the interviewees.

Research was undertaken with the help of local labor organizations, who helped with practical matters and offered advice and support throughout the research and report production period. They are Action Labor Rights (ALR), Let's Help Each Other (LHEO), Cooperative Committee for Trade Unions (CCTU), Independent Worker Unions Cooperative Program (IWUCP), the Network for the Establishment of Labor Unions and Women's Rights Education (Bago Network), and the Common Office for Labor and Farmer (Shwepyithar).

The research team did face certain challenges. One challenge was that of accessing workers. Typically workers only have one day off – Sunday – so this was the only day the researchers could speak to them inside the industrial zones or at their homes. The interviewees, however, were interviewed for no more than one hour, close to their homes and with their full consent. There were also issues around privacy in the locations of the interviews, and the researchers thus improvised, with some interviews taking place on balconies, rice fields or other locations. There was also hesitation among some workers that they would face retaliatory consequences for their participation in the research. Early on, the research team went into detail to explain how their participation would remain anonymous, how the data was always secured, and allowing ample time for any questions or inquiries about the purpose of the research or any other matter. This reassured them that their employer would not know they were interviewed and encouraged them to feel comfortable and speak openly. Furthermore, because of the assurance, workers felt comfortable and relayed this to their colleagues, thus more workers agreed to or became interested in talking to the researchers.

Introduction



Top Myanmar garment factory, Hlaingtharyar Industrial Zone 4
Copyright: Action Labor Rights

Myanmar has been going through political and economic reforms since 2011, and none more so than far-reaching economic liberalization. Facilitated by greater openness to integration into global markets on the part of the previous quasi-civilian Government of President U Thein Sein, and the lifting of trade embargoes by the United States (US), the United Kingdom, the European Union (EU), and Australia among others, Myanmar is seen as the last economic frontier, filled with potential.

The economic policy of the National League for Democracy (NLD), who were successfully elected in 2015, looks to further liberalize and incentivize investment.² One industry in particular, that is actively seeking to rapidly expand in this new economic and political context, is the garment industry. The MGMA is aiming to increase the export value of garments made in Myanmar from \$912 million as it stood in 2012, to \$8-10 billion in 2024, and to increase employment from around 240,000 to 1 – 1.5 million people.³ Already, brands from Europe and the US have begun sourcing in Myanmar, including H&M, Gap Inc, and Adidas.

Yet economic liberalization and the rapid expansion of industry can come at a human cost. Unregulated investment in a context where the most vulnerable populations have very little protection from corporate abuses can exacerbate inequality and a fragile human rights situation. This is the case in Myanmar, where investments have caused land confiscations, environmental damage, the loss of access to traditional livelihoods, and labor rights abuses in the past few years. Furthermore, this is also contributing to a large pool of unskilled labor, migrating from rural to urban areas in search of jobs, particularly in industrial zones where many garment factories are located. Thus the poverty in rural areas that leads to this migration means that the interconnectedness of rural and industrial development cannot be ignored.

Recent research has shown that workers in the manufacturing sector in Myanmar, including the garment industry, work long hours in sweatshop conditions and face many challenges when demanding a betterment of their working conditions. The rule of law remains weak, and labor legislation is either outdated, or, in the case of recently enacted laws, full of gaps that do not adequately protect workers from their pursuit of decent wages, working conditions, and freedom of association. These recent changes to the legal framework, however, have given impetus to a fledgling labor movement in Myanmar, much of which is concentrated in Yangon's industrial zones, where as of today, over 350 garment factories operate. Trade unions and other labor organizations are organizing workforces and engaging in collective action to better the working conditions of garment factory workers.

The instalment of the new NLD-led Government, which is riding on the wave of popularity that enabled it to sweep to victory in the 2015 elections, means they have an obligation to make national policy and legislative changes that will ensure that labor rights are protected. The garment industry in Myanmar has the potential to be a model for sustainable growth, with productive industrial relations between employer and worker, compliance with international labor standards, all the while maintaining an attractive and competitive option for international investors. Yet for decent working conditions to be realized, Myanmar must also address the structural pressures on labor that integration into global markets brings as well as pursuing a development path that is sustainable nationwide, particularly in rural areas.

2. Claire Hammond, "Revealed: NLD's economic policies" The Myanmar Times, 17 August, 2015. <http://www.mmmtimes.com/index.php/business/16025-revealed-nld-s-economic-policies.html> (accessed 15 July, 2016).

3. "Myanmar Garment Industry 10 Year Strategy 2015-2024," Myanmar Garment Manufacturers Association, August 2015. <http://www.myanmargarments.org/wp-content/uploads/2015/09/Myanmar-garment-industry-10-year-strategy-Aug-2015.pdf> (accessed 15 July, 2016).

Building on important research⁴ already conducted on labor rights and garment manufacturing in recent years, this report aims to provide an overview of the garment industry in Myanmar today, especially in light of recent changes to the minimum wage, from a human rights perspective. Fundamental human rights and labor rights are not mutually exclusive, and should not be seen as a commodity for either exploitation to reduce costs, or for promotion to enhance reputations. They are a huge part of the success of a movement towards democracy and a sustainable economic future. This report will thus make concrete recommendations to solidify these rights as an imperative part of Myanmar's future.

Section One gives an overview of the garment industry in Myanmar, including a brief history. Section Two outlines how international labor standards are applied and enforced and how these relate to Myanmar. Section Three follows on from this to provide an overview of Myanmar's relevant domestic legislation in regard to these internationally-recognized labor rights and human rights, and highlight flaws in this legislation. Section Four summarizes key developments in the labor movement over the past five years and the waves of collective action seen in Yangon's industrial zones especially. Section Five presents the main research findings of this report, based on 199 interviews with garment factory workers as well as other key stakeholders such as factory owners and labor organizations. It also analyzes these key findings and how they relate to international labor standards, and national labor laws and policies. Section Six concludes the report by analyzing and emphasizing the importance of labor rights, not as a commodity but as fundamental human rights in the broader context of Myanmar's economic development, before ending on a set of recommendations for key stakeholders in the garment industry in Myanmar.

4. See "Modern Slavery," A Study of Labour Conditions in Yangon's Industrial Zones," Labour Rights Clinic, Cooperation Program of Independent Laborers, Construction-based Labor Union and Workers Support Group, November 2013. <http://www.burmapartnership.org/2013/11/modern-slavery-a-study-of-labour-conditions-in-yangons-industrial-zones/> (accessed 14 July, 2016), "Made in Myanmar: Entrenched Poverty or Decent Jobs for Garment Workers?" Oxfam, 9 December, 2015. <http://www.burmapartnership.org/2015/12/entrenched-poverty-or-decent-jobs-for-garment-workers/> (accessed 14 July, 2016) and "Under Pressure: A Study of Labour Conditions in Garment Factories in Myanmar which are wholly Korean owned or in a joint venture with Korean Companies," Action Labor Rights, March 2016.

Section One: Myanmar's Garment Industry

The garment industry in Myanmar started to evolve as the economy took steps towards privatization in the early 1990's, coinciding with the establishment of industrial zones, particularly in and around Yangon, the main commercial city and at the time the capital of Myanmar. Between 1990 and 2000, garments increased from 2.5% of total exports to 39.5%.⁵ In 2000, its largest export market was the US, which bought over half of Myanmar's garments, followed by the European Union (EU).⁶ After sanctions by the US were introduced in 2003 through the Burmese Freedom and Democracy Act that prohibited US firms buying products made in Myanmar, this fell to zero. Domestic policy, including stricter restrictions on importing equipment, also contributed towards the decline in Myanmar's garment industry. It is estimated that the number of garment factory workers fell from around 135,000 at its peak in 2001, to around 51,000 in 2005.⁷ A shift towards the Asian market following the loss of the American market resulted in Japan becoming the biggest importer of Myanmar garments with South Korea also constituting around 25% of Myanmar's exported apparel. The industry revived to employ around 72,000 workers in 2010.⁸

Political reforms and further economic liberalization began when a quasi-civilian Government led by President U Thein Sein came to power in 2011. Since then, most US sanctions were lifted, Myanmar became one of the countries on the EU's preferential trading partners list - the 'Everything But Arms' arrangement of the Generalized System of Preferences (GSP) - and foreign direct investment from non-Asian countries increased significantly. Myanmar is also classified as a Least Developed Country (LDC), which helped facilitate its status on the EU's GSP list as well as enjoying reduced tariffs when exporting to Japan.⁹

The notion of Myanmar being the last economic frontier, abundant with natural resources and investment opportunities now dominates the narrative on foreign trade. The garment industry is a part of this with a large and available low-cost labor force oft-cited as a major comparative advantage. With the increasing ease of capital mobility within the Asia region, and thus the risk of capital moving to production bases where wages are lower or the labor movement offers less resistance, the interest in Myanmar as a large pool of cheap labor to be used for production is enticing buyers and investors.

5. Toshihiro Kudo, "How Has the Myanmar Garment Industry Evolved?" in *Dynamics of the Garment Industry in Low-Income Countries: Experience of Africa and Asia*, edited by Takahiro Fukunishi (Institute of Developing Economics – Japan External Trade Organization: 2012), Chapter 8.

6. Ibid.

7. Ibid.

8. Ibid.

9. Myanmar has always enjoyed reduced tariffs to Japan as a LDC country, see Toshihiro Kudo, "Myanmar's Apparel Industry in the New International Environment: Prospects and Challenges," Institute of Developing Economics – Japan External Trade Organization, Discussion Paper 430, September 2013.



Inside garment factory in Hmawbi
Copyright: Progressive Voice

The garment industry is therefore expanding rapidly. Throughout 2014, a new garment factory was opening each week and by the end of that year, the industry's total exports was \$1.56 billion, up from \$349 million in 2010.¹⁰ Exports to the EU doubled between 2013 and 2014, and a twenty-fold increase in exports to the US was reported in the same period.¹¹ Many international brands such as Gap Inc, H&M, Topshop, Marks and Spencer, Tesco and Primark are now sourcing from Myanmar.¹² It is estimated that there are now around 350¹³ garment factories in Myanmar, employing around 240,000 people, over 90% of whom are female.¹⁴

10. MGMA Export Data, MGMA, <http://www.myanmargarments.org/events-news/export-data/> (accessed 15 July, 2016).

11. "Myanmar Garment Industry 10 Year Strategy 2015-2024," Myanmar Garment Manufacturers Association, August 2015. <http://www.myanmargarments.org/wp-content/uploads/2015/09/Myanmar-garment-industry-10-year-strategy-Aug-2015.pdf> (accessed 15 July, 2016).

12. Sarah Butler, "Burma's minimum wage pledge welcomed by UK retailers," *The Guardian*, 31 August, 2015. <https://www.theguardian.com/business/2015/aug/31/burma-minimum-wage-uk-retailers> (accessed 15 July, 2016).

13. "SMART Myanmar Factories Improvement Program – Success Stories and Results," SMART Myanmar, August 2015. http://www.switch-asia.eu/fileadmin/user_upload/Project%20news/SMART_Myanmar_news/SMART_Myanmar_Garment_Factories_Improvement_Program.pdf (accessed 15 July, 2016).

14. MGMA Export Data, MGMA, <http://www.myanmargarments.org/events-news/export-data/> (accessed 15 July, 2016).

Map of Yangon's Industrial Zones



Many garment factory workers come from Irrawaddy Region, which was severely affected by Cyclone Nargis in 2008, and Rakhine State, which suffered the effects of Cyclone Giri in 2010. The devastation to homes and livelihoods of hundreds of thousands of people caused many to migrate to find livelihood opportunities, such as in industrial zones in Yangon. Damaging investments in rural areas are also pushing people off their land in rural areas for agribusiness, natural resource extraction and infrastructure projects, also contributing to internal migration to industrial zones.

While still far from the level of renowned garment exporting neighbors, Cambodia and Bangladesh – Bangladesh has nearly 3,500 garment factories, employing around four million people¹⁵ – Myanmar’s garment industry continues to grow. The vision of the MGMA is of the garment industry being “the highest revenue earning industry in Myanmar” and aims to employ 1 – 1.5 million workers by 2024.¹⁶ With this rapid expansion envisaged, it only brings into focus the need for better working conditions. Simply creating more jobs is not enough if the people working in them suffer from the current abuses and conditions that garment factory workers currently face – 1.5 million people working in sweatshop conditions is not a better situation than 240,000 people working in sweatshop conditions.

Ownership of garment factories can at times be opaque, with ‘sleeper’ owners (domestically owned in name-only with real ownership in the hands of foreign investors) common. For example, it is estimated that 20% of garment factories are officially Korean-owned, with another 20% unofficially owned by Korean firms through the use of local registration.¹⁷

Many of Myanmar’s garment factories are concentrated in Yangon’s industrial zones, with the most factories located in the country’s biggest industrial zone – Hlaingtharyar. Myanmar’s second biggest city, Mandalay, also has a sizeable garment industry, producing items such as longyis¹⁸ for the domestic market. Other industrial zones include Patheingyi and Bago. There are also plans to establish garment factories at Thilawa Special Economic Zone (SEZ). Located around 25km from Yangon and yet to be completed, Thilawa SEZ will consist of a port, manufacturing zones, and residential and commercial areas backed by the Government of Japan with investment from both Japanese and Myanmar companies.

Box One: CMT/FOB/ODM

Cut-Make-Trim (CMT): Raw materials are imported to the country and the factories cut the textiles, sew them into the ordered item and pack the end product ready for export.

Free On Board (FOB): Manufacturer sources the raw material as well as producing the order at which point the buyer buys the product when it is on the freight ship ready for export.

Own Design Manufacturing/ Own Brand Manufacturing (ODM/OBM): In which all stages are undertaken within the factory, including design. The MGMA intends factories in Myanmar to reach this level.

15. Nurul Islam Hasib, “Myanmar business leader invites Bangladesh to fight together for US GSP,” *bdnews24*, 4 March, 2016. <http://bdnews24.com/business/2016/03/04/myanmar-business-leader-invites-bangladesh-to-fight-together-for-us-gsp> (accessed 15 July, 2016).

16. “Myanmar Garment Industry 10 Year Strategy 2015-2024,” Myanmar Garment Manufacturers Association, August 2015. <http://www.myanmargarments.org/wp-content/uploads/2015/09/Myanmar-garment-industry-10-year-strategy-Aug-2015.pdf> (accessed 15 July, 2016).

17. Zaw Zaw Htwe, “S Korean factories slammed for labour violations: report,” *The Myanmar Times*, 30 March, 2016. <http://www.mmtimes.com/index.php/national-news/yangon/19720-s-korean-factories-slammed-for-labour-violations-report.html> (accessed 15 July, 2016).

18. Traditional Myanmar sarong.

Box Two: Small and Medium Enterprises for Accountability, Responsibility and Transparency Myanmar (SMART)

SMART Myanmar is an EU-funded project that began in 2013 and is funded up until 2019. Its overall objective is “to promote and support the sustainable production of garments ‘Made in Myanmar’ and to increase the competitiveness of SMEs in the Myanmar garment sector.”¹ It has been engaged in capacity-building initiatives as well as assisting the MGMA draw up its ‘Code of Conduct’ for factory owners.

1. About SMART Myanmar, SMART Myanmar, <http://www.smartmyanmar.org/about/> (accessed 15 July, 2016).

Yet the industry still faces impediments to growth. Much of the industry is based on Cut-Make-Trim (CMT). CMT is labor intensive and until Myanmar can move towards a Free-On-Board (FOB) system, it will limit the overall growth and development of the industry. For example, it can take up to three weeks for raw materials to be imported from China to Yangon.¹⁹

Infrastructure problems are oft-cited as one of the biggest problems for industry development in Myanmar. The MGMA points to unreliable electricity, the lack of a deep-sea port and poor rail and road connections.²⁰ According to the most recent World Bank Logistics Performance Index of 2014, Myanmar ranked 145 out of 160 countries.²¹ The lack of a reliable supply of electricity means that many factory owners use generators, a more costly source of power. The lack of compliance with international labor standards is also quoted as an impediment to industry growth, and the waves of strikes seen at garment factories attests to this. (see Section Four)

19. Justin Kent, “Can Manufacturing Succeed in Myanmar?” *Forbes*, 18 October, 2012. <http://www.forbes.com/sites/connorconnect/2012/10/18/can-manufacturing-succeed-in-myanmar/#f77ef544b7d5> (accessed 15 July, 2016).

20. MGMA Infrastructure, MGMA, <http://www.myanmargarments.org/factory-information/infrastructure/> (accessed 15 July, 2016).

21. International Scorecard- Myanmar 2014, The World Bank, <http://lpi.worldbank.org/international/scorecard/radar/32/C/MMR/2014> (accessed 15 July, 2016).

Section Two: International Human Rights, Labor Law, Standards and Guidelines

International labor law as well as key human rights that directly relate to the labor context such as freedom of association are well defined and established. The ILO, of which Myanmar has been a member since 1948, is the international body that has been at the forefront of setting and developing labor law, and various ILO Conventions bind the Myanmar Government. The Universal Declaration of Human Rights (UDHR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), further provide responsibilities that the Government should comply with. Additional guidelines and standards can be found in the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for MNEs. These additional guidelines place responsibilities and expectations on enterprises, differing from ILO Conventions, the UDHR and the ICESCR, while the UN Guiding Principles on Business and Human Rights are a hybrid in that both the state and business are included. Global framework initiatives (GFAs) and multi-stakeholder initiatives are gaining increasing traction among western brands while voluntary codes of conduct and the concept of corporate social responsibility are used by private enterprises but are generally regarded as the bottom rung of the labor rights protection ladder.

2.1 Freedom of Association and Assembly

These are key human rights that, in the context of unionization, must be promoted and protected to strengthen the labor movement in Myanmar. The right to organize and to form and join trade unions has always been and still is a vital part of the promotion of labor rights and decent working conditions. The peaceful assembly of workers to demand a betterment of their working conditions is the next actionable step of such associations and unions.

The ILO Convention 87, The Freedom of Association and the Protection of the Right to Organise Convention, states that;

Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation.²²

Convention 87 also guarantees collective rights, i.e. of trade unions or other associations, to non-interference by authorities or employers and their autonomy to organize and administer their own activities. Myanmar has ratified ILO Convention 87 and thus has a legal obligation to incorporate the articles in this convention into national legislation and to comply

22. Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), International Labour Organization, (adopted at 31st ILC session, 9 July, 1948, entered into force 4 July, 1950). Article 2.

with its core values. Myanmar is also subject to the ILO's supervisory system regarding this Convention, including complaint procedures.

Myanmar has a duty to protect freedom of association and freedom of assembly through UDHR Article 20 (1). Specifically related to the labor context, this is expanded upon in Article 23 (4) of the UDHR;

*Everyone has the right to form and to join trade unions for the protection of his interests.*²³

Furthermore, Article 81(a) of the ICESCR states;

*The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests.*²⁴

The UDHR is international customary law and thus binds the Myanmar Government to its principles. While Myanmar has not ratified the ICESCR, it did sign in 2015, and is therefore committed to respecting the object and the spirit of the treaty.

2.2 Right to Collective Bargaining

Collective Bargaining is one of the most important activities of trade unions as they seek better employment conditions for their members. ILO Convention 98, The Right to Organise and Collective Bargaining Convention outlines that;

*Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements.*²⁵

This is closely linked to freedoms of association and assembly and is the machinery to achieve collective agreements. Collective agreements, as defined in the ILO's Collective Agreements Recommendation 1951 are;

*All agreements in writing regarding working conditions and terms of employment concluded between an employer, a group of employers or one or more employers' organisations, on the one hand, and one or more representative workers' organisations.*²⁶

23. Universal Declaration of Human Rights (UDHR), (adopted 10 December, 1948), UNGA Resolution 217 (III) A. Article 20 (1).

24. International Covenant on Economic, Social, and Cultural Rights (ICESCR), (adopted 16 December, 1966, entered into force 3 January, 1976), UNGA Resolution 2200A (XXI). Article 8 1(a).

25. Right to Organise and Collective Bargaining Convention, 1949 (No. 98), International Labour Organization, (adopted at 32nd ILC session, 1 July, 1949) Article 4.

26. Collective Agreements Recommendation, 1951 (No.91), International Labour Organization, (adopted at 34th ILC session, 29 June, 1951), Article 2(1).



Workers protest against the proposed K3600 minimum wage in Yangon on July 12, 2015
Copyright: Aung Myin Ye Zaw/The Myanmar Times

ILO Convention 98 further states the need to protect workers from discrimination based on their union membership activities. A key part of this Convention is the duty to act in good faith, in which laws and regulations ensure that agreements agreed upon with genuine intent are honored.

Although Myanmar has not ratified ILO Convention 98, it is one of the eight core conventions of the ILO referred to in the Declaration on Fundamental Principles and Rights at Work. As a member of the ILO, Myanmar has a duty to respect, promote and realize these eight Conventions.

The right to strike exists under Convention 87 and is also enshrined in the ICESCR Article 8 (d);

The States Parties to the present Covenant undertake to ensure [...] The right to strike, provided that it is exercised in conformity with the laws of the particular country.²⁷

27. ICESCR, Article 8(d).

2.3 Decent Working Conditions

Numerous ILO Conventions also set out the provisions for decent work although by and large, Myanmar has not ratified many of them. The exceptions being: Hours of Work (Industry) Convention, ratified in 1921, which states;

*The working hours of persons employed in any public or private industrial undertaking [...] shall not exceed eight in the day and forty-eight in the week.*²⁸

And also the Weekly Rest (Industry) Convention, ratified in 1923, which states that workers;

*Enjoy in every period of seven days a period of rest comprising at least twenty-four consecutive hours.*²⁹

In 2008, however, the ILO member states, including Myanmar, adopted the 2008 Declaration on Social Justice for a Fair Globalization, in which member states must pursue the ILO's "decent work agenda."³⁰ Member states have a responsibility to implement policies and strategies aimed at achieving the four key components of the ILO's Decent Work Agenda - employment, social protection, social dialogue, and rights at work, including the right to collective bargaining and freedom of association.

Furthermore, UDHR Article 23 (3) stipulates that;

*Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.*³¹

While Article 7 of the ICESCR iterates that state parties to the covenant must;

*Recognize the right of everyone to the enjoyment of just and favourable conditions of work.*³²

This involves a fair living wage, a safe and healthy working environment, equal opportunities and pay for men and women, and provision of adequate rest or leisure time.

28. Hours of Work (Industry) Convention, 1919 (No. 1), International Labour Organization, (adopted at 1st ILC session, 28 November, 1919, came into force 13 June, 1921) Article 2.

29. Weekly Rest (Industry) Convention, 1921 (No. 14), International Labour Organization, (adopted at 3rd ILC session, 17 November, 1921, came into force 19 June, 1923) Article 2.

30. ILO Declaration on Social Justice for a Fair Globalization, International Labour Organization, (adopted at 97th ILC session, 10 June, 2008).

31. UDHR, Article 23(3).

32. ICESCR, Article 7.

2.4 OECD Guidelines for MNEs³³

The OECD Guidelines for MNEs (the Guidelines) are a set of guidelines signed by states (46 countries), which are aimed at ensuring that multinational enterprises (MNEs) headquartered in that country abide by certain standards. These standards include the rights to freedom of association and collective bargaining;

*Enterprises should [...] Respect the right of workers employed by the multinational enterprise to have trade unions and representative organisations of their own choosing recognised for the purpose of collective bargaining, and engage in constructive negotiations, either individually or through employers' associations, with such representatives with a view to reaching agreements on terms and conditions of employment.*³⁴

There is also a section on human rights, stating;

Enterprises should, within the framework of internationally recognised human rights, the international human rights obligations of the countries in which they operate as well as relevant domestic laws and regulations:

*Respect human rights, which means they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.*³⁵

Each country that is a signatory is required to have a National Contact Point (NCP), which has a mandate to address complaints regarding a breach of the Guidelines. Although the recommendations from these NCPs are not enforceable through courts, they have some proven success in bringing MNE's in that host country into line with the Guidelines. Regarding the particularities of Myanmar's garment industry, MNEs from South Korea, which have extensive investments in the garment industry, are subject to the Guidelines as South Korea is a signatory. Another major Asian investor in Myanmar's garment industry, China, is not a signatory, and therefore not subject to the Guidelines. However, with buyers from Europe and the US increasingly sourcing from Myanmar, the OECD Guidelines on MNEs and its complaint mechanisms may well become more relevant in Myanmar as the US and many European countries are signatories.

2.5 UN Guiding Principles on Business and Human Rights³⁶

Passed by the UN Human Rights Council in 2011, the UN Guiding Principles on Business and Human Rights (the Guiding Principles) are a set of 31 principles that define the

33. OECD Guidelines for Multinational Enterprises, Organisation for Economic Cooperation and Development, 2011 Edition. <https://www.oecd.org/daf/inv/mne/48004323.pdf> (accessed 15 July, 2016)

34. OECD Guidelines for Multinational Enterprises, Section V.

35. OECD Guidelines for Multinational Enterprises, Section IV.

36. UN Guiding Principles on Business and Human Rights (endorsed by the UN Human Rights Council, 16 June, 2011, Resolution 17/4)

responsibilities of corporations in regards to human rights, frame the duty of states to protect against corporate human rights violations and which guarantee effective remedy for victims. The Guiding Principles are split into three pillars. The first pillar is the state's duty to protect against corporate human rights violations through legislation, policies, and adjudication. Thus, states must ensure that businesses that are operating in their country, as well as those domiciled in their country but operating overseas, abide by the Guiding Principles. The second pillar is the corporate responsibility to respect internationally recognized human rights standards, including the eight ILO Core Conventions and those rights outlined in the UDHR, International Covenant on Civil and Political Rights (ICCPR), and the ICESCR. This involves conducting human rights due diligence, identifying, preventing and mitigating human rights risks and violations, and providing remedy to human rights violations. This is expanded upon in the third pillar - access to remedy for business related human rights violations such as compensation or sanctions. This involves both judicial and non-judicial remedies. While the Guiding Principles can provide guidance and moral argument, there is no enforcement or sanction mechanism.

2.6 Multi-stakeholder Initiatives and Global Framework Agreements

Multi-stakeholder initiatives, such as the Fair Labor Association (FLA) and the Ethical Trading Initiative (ETI), consist of non-governmental organizations (NGOs), buyers, trade unions and companies, and are another example of the private sector taking the initiative to monitor compliance of its investments with labor and other social standards. Such initiatives include trade unions and NGOs, and are often based in the ILO's labor standards. However, such initiatives remain voluntary and are not binding although they do provide a degree of accountability through complaint mechanisms. An example related to Myanmar is the Fair Labor Association, of which the US sports brand, Adidas, which sources products from Myanmar, is a member.

GFA's are contracts between multinational enterprises and global trade unions that contain provisions for protecting workers rights, resolving industrial disputes, adhering to core ILO Conventions and ensuring recognition of the legitimacy of both the workers and the company in negotiations. An example of this in Myanmar is the GFA between H&M and the global trade union, IndustriALL, signed in November 2015. (see Box Nine: A Trade Union Success Story)

2.7 Other Standards

International financial institutions (IFIs) have their own safeguard policies when issuing loans for projects or investments for the private sector. IFIs, such as the World Bank (WB), the International Finance Corporation (IFC), and the Asian Development Bank (ADB), have reengaged in Myanmar, and their lending partners are subject to their social and environmental impact policies, and these cover certain labor rights. Examples of these policies include the WB's Safeguard Policies, the IFC's Performance Standards, and the ADB's Safeguard Policy Statement. These institutions also have grievance or complaint mechanisms whereby victims can seek redress or even the halting of a project.

Box Three: ILO in Myanmar

Realizing the need for better recognition of trade unions and the importance of freedom of association in the fledgling labor movement in Myanmar, the ILO established its 'Freedom of Association Project' in late 2012. The project is aimed at increasing awareness and the implementation of freedom of association in light of the promulgation of the Labour Organization Law. It has included trainings and workshops for employers and workers as well as various awareness raising activities, including helping to organize the Labour Organisations' Leaders Forum in 2013.¹ In 2014, the ILO, along with the Governments of Myanmar, Denmark, Japan, and the US established the 'Initiative to Promote Fundamental Labour Rights and Practices in Myanmar.' This initiative aims to promote labor policy reform and to improve the consultation process between the government, employers, civil society organizations (CSOs), and workers' organizations. The EU joined this initiative in 2015.²

1. Ross Wilson, "The New Union Movement in Myanmar," *Global Labour Column*, Number 149. September 2013.

2. "Factsheet: New Initiative to Improve Labor Rights in Burma," Office of the United States Trade Representative, November 2014. <https://ustr.gov/about-us/policy-offices/press-office/fact-sheets/2014/November/New-Initiative-to-Improve-Labor-Rights-in-Burma> (accessed 17 July, 2016).

2.8 Trade Agreements and Bilateral Investment Treaties

Trade agreements offer both advantages and problems regarding the realization of labor standards. For example the EU's GSP offers a reduction on tariffs imported into the EU on certain products, including garments, if the country producing those garments complies with the eight core labor standards covered in the ILO's Declaration on Fundamental Principles and Rights at Work (see above). Since 2013, Myanmar has been a beneficiary of the EU's GSP.

Investment treaties are designed to protect foreign investors in a country against any government legislation or policy that is deemed damaging to their profit margin. Disputes go to an international arbitration body in often costly and lengthy processes, which can prove to be a deterrent to governments introducing legislation and policy that favor social protection over profit. Myanmar currently has treaties with various countries including China, Japan and South Korea and is in the process of negotiating such a treaty with the EU. Yet with Myanmar's legislative framework, including labor legislation, still severely lacking in social, environmental and human rights protection, bilateral investment treaties pose a risk of entrenching a privileged position of profit and private enterprise over people and the environment, and could provide expensive and difficult obstacles to overcome in introducing legislation that will protect labor rights.³⁷

37. See Daniel Aguirre, "Reconciling Investment Protection and Human Rights, *The Myanmar Times*, 30 August, 2016. <http://www.mmTimes.com/index.php/opinion/22221-reconciling-investment-protection-and-human-rights.html> (accessed 6 September, 2016).

Box Four: US Reporting Requirements

When the US suspended the majority of its sanctions in 2012 and 2013, it also introduced the Reporting Requirements, which came into effect on 23 May 2013. Thus, any US companies or individuals investing more than \$500,000 (increased to \$5million in 2016)¹ “are required to report on a range of policies and procedures with respect to their investments in Myanmar, including human rights, labor rights, land rights, community consultations and stakeholder engagement, environmental stewardship, anti-corruption, arrangements with security service providers, risk and impact assessment and mitigation, payments to the government, any investments with the Myanmar Oil and Gas Enterprise (MOGE), and contact with the military or non-state armed groups.”² These reports, which are publically available, are intended to encourage US businesses to invest responsibly in Myanmar and to provide information for civil society to monitor investments. On 25 August, 2014 and 1 July, 2015, Gap Inc. submitted reports outlining their operations, activities, and human rights and labor rights due diligence³ sourcing from two garment factories in Myanmar. As of 7 October, 2016 in conjunction with the lifting of the remaining economic sanctions by the US, the Reporting Requirements are now voluntary.

1. Sean Gleeson, “The Sanctions Saga,” *Frontier Myanmar*, 2 June, 2016. <http://frontiermyanmar.net/en/the-sanctions-saga> (accessed 17 July, 2016). or <http://burma.usembassy.gov/reporting-requirements.html>

2. “Burma Responsible Investment Reporting Requirements,” US Department of State, 23 May, 2013. <http://www.state.gov/r/pa/prs/ps/2013/05/209869.htm> (accessed 17 June, 2016).

3. See “Responsible Sourcing in Myanmar, Gap Inc., 25 August, 2014 http://photos.state.gov/libraries/burma/895/pdf/Gap_Inc_Myanmar_Public_Report-8_25_14FINAL.pdf (accessed 17 June, 2016) and Responsible Sourcing in Myanmar, Gap Inc., 1 July, 2015. <http://photos.state.gov/libraries/burma/895/pdf/20150701GapIncMyanmarPublicReport.pdf> (accessed 17 June, 2016).

2.9 Corporate Social Responsibility (CSR)

In response to various criticisms of the working conditions in outsourced factories in developing countries, many companies in the private sector have developed their own codes of conduct or internal policies, often termed corporate social responsibility (CSR), regarding due diligence and working conditions. CSR programs are often criticized by being driven by the private sector itself, rather than from the workers, and are largely in lieu of government regulation or legislation. Implementation of CSR initiatives or codes of conduct varies, is voluntary, and is not binding in any way. While some CSR or codes of conduct can have a positive impact, it can also be described as the ‘proverbial fox guarding the proverbial chickens.’³⁸ Or in the Myanmar proverb, “Htaung Myinh Yar Sunt,” meaning donating 100 Kyat foreseeing a profit of 1,000 Kyat to follow, meaning there is no real merit but only for further profit.

An example of a code of conduct in Myanmar is the MGMA’s ‘Code of Conduct,’ a voluntary initiative which outlines responsible business practices for its members in the garment sector. (see Box Five: MGMA Code of Conduct).

38. Jonathan Rosenblum, “Monitoring Labor Rights: A Resource Manual for NGOs,” AAAS Science and Human Rights Program, 2005. P.17.

Section Three: Domestic Labor Legislation

3.1 Freedom of Association and Assembly

Regarding the rights to freedom of association and assembly, Myanmar has had a troubled past. Those advocating for labor rights have been routinely locked up on spurious charges since the 1962 military coup headed by former army chief, General Ne Win. Many of the laws used to charge rights activists remain in effect and human rights defenders (HRDs) from various sectors are still vulnerable to arrest, arbitrary detention and imprisonment. This is despite Section 354 of the 2008 Constitution, which states that every citizen has the right to;

*Assemble peacefully without arms and holding procession and form associations and organizations.*³⁹

For example, after a wave of strikes at Korean and Chinese owned factories in early 2015, dozens of workers were arrested. Two union leaders who worked at garment factories and organized protests and strikes, Myo Min Min and Naing Htay Lwin, were charged under Section 505(b) of the Penal Code and Section 18 of the Right to Peaceful Assembly and Peaceful Procession Act.⁴⁰ Both of these laws are particularly controversial and have been used to persecute unionists and many other HRDs.⁴¹

Section 505(b) of the Penal Code states that;

*Whoever makes, publishes or circulates any statement, rumour or report [...] with intent to cause, or which is likely to cause, fear or alarm to the public or to any section of the public whereby any person may be induced to commit an offence against the State or against the public tranquillity [...] shall be punished with imprisonment which may extend to two years, or with fine, or with both.*⁴²

39. Constitution of the Republic of the Union of Myanmar (2008). Section 354.

40. "Drop the Charges: Labour Activists Arrested for Demanding A \$1 Pay Rise," Burma Campaign UK, 30 April, 2015. <http://burmacampaign.org.uk/drop-the-charges-labour-activists-arrested-for-demanding-a-1-pay-rise/> (accessed 17 July, 2016).

41. Myo Min Min and Naing Htay Lwin were released in a presidential pardon on 17 April, 2016, soon after the NLD-led Government came to power. Other cases of unionists imprisoned and since released include Ma Win Pa Pa, Ma Khine Sabel Oo, and Ko Naing Htay Lwin, among others. See Kyaw Phone Kyaw, "Workers hit with prison time," The Myanmar Times, 18 August, 2015, <http://www.mmtimes.com/index.php/national-news/16031-workers-hit-with-prison-time.html> (accessed 17 July, 2016).

42. The Penal Code Section 505(b). Available at http://www.burmalibrary.org/docs13/ Penal_Code-articles.pdf

This is problematic in that it violates the fundamental rights to freedom of assembly and association while vague terms such as ‘public tranquillity’ are open to interpretation and therefore abuse.⁴³

Section 18 of the Right to Peaceful Assembly and Peaceful Procession Act, which Myo Min Min and Naing Htay Lwin were also charged with, is another problematic law that was introduced during President U Thein Sein’s term, ostensibly allowing peaceful protests. Ironically, this law was one of the most potent weapons of President U Thein Sein’s Government to lock up HRDs and democracy activists, including unionists. Section 18 of this law stipulates that “consent” (changed from “permission” in the original formulation of the law) is needed for peaceful processions of demonstrations. If consent is not attained from local authorities (often denied), organizers and participants in protests are subject to charges with up to six months imprisonment. At the time of writing this report, the NLD-led Government is in the process of amending this law to remove the stipulation that “consent” is needed but due to disagreements between the Upper and Lower Houses of Parliament, the amendment process has stalled. However, human rights groups have continued to criticize the amendments in that they do not go far enough. According to Human Rights Watch;

The draft maintains the fundamental problem of existing law by allowing criminal penalties for violating any of the law’s broadly worded restrictions on speech, for deviating from the assembly’s specified location, and for failing to give notice.⁴⁴

3.2 The Labour Organization Law⁴⁵

Section 24 of the 2008 Constitution states that;

The Union shall enact necessary laws to protect the rights of workers.⁴⁶

The Labour Organization Law that was promulgated in 2011 and came into effect in March 2012 ostensibly gives workers the right to form and to freely join labor organizations. These organizations:

Shall have the right to carry out freely in drawing up their constitution and rules, in electing their representatives, in organizing their administration and activities or in formulating their programmes. The Labour Organizations have the right to negotiate and settle with the employer if the workers are unable to obtain and enjoy the rights of the workers contained in the labour laws and to submit demands to the employer and claim in accord with the relevant law if the agreement cannot be reached.⁴⁷

43. “How to Defend the Defenders: A Report on the Situation of Human Rights Defenders in Burma and Appropriate Protection Mechanisms,” Assistance Association for Political Prisoners and Burma Partnership, July 2015. <http://www.burmapartnership.org/2015/07/how-to-defend-the-defenders/> (accessed 17 July, 2016).

44. “Burma: Proposed Assembly Law Falls Short,” Human Rights Watch, 27 May, 2016. <https://www.hrw.org/news/2016/05/27/burma-proposed-assembly-law-falls-short> (accessed 17 July, 2016).

45. The Labour Organization Law. Available at http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-yangon/documents/genericdocument/wcms_185567.pdf (accessed 17 July, 2016).

46. Constitution of the Republic of the Union of Myanmar (2008). Section 24.

47. The Labour Organization Law. Chapter V, Section 17.

The law also enshrines the right to strike;

*The labour organizations shall carry out peacefully in carrying out holding of meetings, going on strike and carrying out other collective activities in accord with their procedure, regulations, by-laws and any directives prescribed by the relevant Labour Federation.*⁴⁸

The Labour Organization Law, while undoubtedly an important step forward for the labor rights movement in Myanmar, is not without flaws that need to be amended. After the law was enacted, the ILO's Committee of Experts on the Application of Conventions and Recommendations (CEACR) noted the following problems that do not comply with ILO Convention 87, Freedom of Association and Protection of the Right to Organise Convention in an Observation that was published at the 2012 ILC.⁴⁹ These include:

- i. The reference throughout the law to a single labor confederation. This contravenes Articles 2 and 5 of Convention 87 that emphasize the need for trade union diversity. The CEACR thus recommended that the law recognize that more than one labor confederation be allowed to form.
- ii. The abovementioned right to strike (Section 22 of the Labour Organization Law) is restricted by the stipulation that this is based on the authority of a higher-level labor organization, or in this case, "the relevant Labour Federation." This contravenes Article 3 of Convention 87 that outlines the freedom of unions to formulate their own activities. The CEACR thus recommended that this section be amended to give labor organizations and trade unions full freedom on the right to strike rather than subject to the authority of a federation or confederation.
- iii. Section 26 of the Labour Organization Law also contravenes Article 3 of Convention 87 by stipulating that money is allocated to higher-level worker organizations and federations, thus impacting its financial independence and freedom to organize and administer its own activities. The CEACR recommended that this stipulation be removed and that the decision to allocate funds to another labor organization is based on the unions' own decision, not a legislative requirement.

Another Observation from the CEACR that was published at the ILC of 2012, 2013 and 2015, is related to Section 4 of the Labour Organization Law.

- iv. The CEACR stated that the provisions for membership when establishing a trade union or labor organization of 30 people or 10% of workers in that trade or activity is unreasonable, particularly for large enterprises, and therefore restricts Article 2 of Convention 87 giving workers the right to freely establish a trade union or organization. It recommended

48. The Labour Organization Law, Chapter V, Section 22.

49. ILO Committee of Experts on the Application of Conventions and Recommendations, Observation - Follow up to the conclusions of the Committee on the Application of Standards (International Labour Conference, adopted at 100th Session, June 2011, published 101st Session, June 2012). Available at http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:2698694 (accessed 17 July, 2016).

that the Government review this stipulation in consultation with workers and employers' organizations.⁵⁰

The former Special Rapporteur on the Situation of Human Rights in Myanmar, Tomas Ojea Quintana, while welcoming the promulgation of the Labour Organization Law in his report to the UN Human Rights Council in 2012, also pointed out problematic sections of the law that restrict workers' rights.⁵¹ Specifically, that the stipulation for those in the public sector who decide to strike must disclose the date, time, number of participants, location, and manner of the strike 14 days in advance and for those in the private sector, three days in advance, as being excessive.

The Labour Organization Law does not provide adequate penalties to ensure that employers engage in good faith bargaining. If an employer dismisses a worker for their membership in a trade union or their participation in collective action, the employer can be charged with a fine of 100,000 Myanmar Kyat (MMK) or a one-year prison sentence. The fine, however, is far too low to ensure compliance with this stipulation, and in practice, the use of a prison term had not been used once.⁵²

Another flaw in the Labour Organization Law is the vague wording on restrictions on essential services. According to Section 41 a strike is illegal if it is involved with essential services. It also describes the process of a non-essential service becoming an essential service;

*If the strike affecting it exceeds a certain duration so as to give rise to damage which are irreversible or out of all proportion to the occupational interests of those involved in the dispute.*⁵³

This wording is too vague and could potentially be arbitrarily interpreted to deem a strike illegal.⁵⁴

3.3 The Settlement of Labour Dispute Law⁵⁵

Promulgated in 2012, this law provides the institutional machinery for dispute resolution. Thus, initial disputes are to be resolved at enterprise level within five days by the 'Workplace Coordinating Committee,' which consists of two workers' representatives and two employers' representatives. If the dispute is not resolved, it shall go to the township-level 'Conciliation Body.' This is comprised of three representatives of the employers and workers respectively,

50. ILO Committee of Experts on the Application of Conventions and Recommendations, Observation, (International Labour Conference, adopted 2014, published 104th Session, 2015). Available at http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID:3189887 (accessed 17 July, 2016).

51. Tomas Ojea Quintana, "Progress report of the Special Rapporteur on the situation of human rights in Myanmar," UN Human Rights Council, A/HRC/19/67, 7 March, 2012. http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-67_en.pdf (accessed 17 July, 2016).

52. "Foreign Direct Investment in Myanmar: What Impact on Human Rights?" International Trade Union Confederation (ITUC), October 2015, P.15. <http://www.ituc-csi.org/foreign-direct-investment-in?lang=en> (accessed 17 July, 2016).

53. The Labour Organization Law, Chapter XI, Section 41.

54. "Foreign Direct Investment in Myanmar: What Impact on Human Rights?" ITUC. P.15

55. The Settlement of Labour Dispute Law. Available at http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=90651&p_country=MMR&p_count=86 (accessed 17 July, 2016).

two persons trusted by both employers and workers, and three local and national-level appointees, totalling 11 members. If a dispute is still not resolved, it goes to the region or state level 'Arbitration Body' which has a similar composition to the 'Conciliation Body' while the dispute can eventually reach the national level 'Arbitration Council,' the highest level employment dispute resolution body before the court system. The 'Arbitration Council' is comprised of 15 members, five workers' and employers' representatives respectively, as well as five from the Ministry of Labor. Disputes are settled through an employment tribunal of which nine persons from the Arbitration Council sit on, three individuals from each party, and pass a binding decision.

The last resort for an individual worker, after going through the process of negotiation at the Conciliation Body level, according to Section 23 of the Settlement of Labour Dispute Law;

[...] If he is not satisfied with the conciliation of such body in accord with stipulated manners, may apply to the competent court in person or by the legal representative.⁵⁶

Regarding collective disputes, if an industrial dispute is still not resolved after going to the Arbitration Council, the Ministry of Labor, in cooperation with the Supreme Court, can establish a Labor Court to resolve the dispute. Given the historical and as of yet unreformed problems of the judiciary in Myanmar being ineffective, politically pliant, non-transparent and inaccessible, the ability to resolve disputes in a fair and transparent manner in court is very low. It also limits the finality of the decision-making power of the Arbitration Council.

One of the main problems of this law is that penalties for non-compliance with the decisions made by the Arbitration Council are not effective. For employers, the minimum fine for non-compliance is 1,000,000MMK (in the initial promulgation of the law, this was 100,000 MMK but was amended in 2014 to 1,000,000MMK). Although 1,000,000MMK is the minimum, in practice, this amount is used as the maximum, and larger, more punitive fines are not applied. Therefore, it is easy for employers to ignore the decisions made by the Arbitration Council and to wilfully pay the fine, something that has happened on a regular basis and has been a spark for more conflict within the industry.

There are also certain restrictions on the right to strike within this law. Section 40 does not allow strikes unless the dispute has proceeded through the mechanisms above (Workplace Coordinating Committee, Conciliation Body, Arbitration Body, and Arbitration Council). According to the International Trade Union Confederation (ITUC), this limits strikes to those that are subject to particular disputes, and excludes "sympathy strikes, protest strikes, strikes over economic and social policy, etc.," contravening ILO Convention 87.⁵⁷

The ITUC has also pointed to key components of collective bargaining that the Settlement of Labour Dispute Law does not provide for:

- 1) duty to bargain in good faith - stipulations in the law that ensure that each party bargains

56. The Settlement of Labour Dispute Law. Section 23.

57. "Foreign Direct Investment in Myanmar: What Impact on Human Rights?" ITUC, P.16



A Demonstrator Protests the Government's proposed minimum wage during a march through Hlaingtharyar industrial zone
 Copyright: Aung Myin Ye Zaw/The Myanmar Times

with the aim of successfully finding a resolution;

- 2) period for bargaining - time for a union to consult members and establish their position and plan of action, especially relevant for large workforces;
- 3) first contract arbitration - involvement of a third party to ensure recognition of the legitimacy of the trade union in the eyes of the employer if this is that union's first negotiation;
- 4) levels of negotiation - for example national level collective bargaining that applies across regions and sectors;
- 5) extension, registration and enforcement of collective agreements - effectively implementing the decisions of the conciliation or arbitration bodies by binding the two parties.⁵⁸

58. "Foreign Direct Investment in Myanmar: What Impact on Human Rights?" ITUC, p.16

3.4 The Minimum Wage Law⁵⁹

After a wave of industrial actions in 2012, with tens of thousands of workers striking to demand better working conditions including increased pay, the government enacted the Minimum Wage Law on 22 March, 2013, an achievement for the actions of the workers. This law established the Myanmar National Minimum Wage Committee, a tripartite body consisting of government and representatives of both workers and employers with the mandate to set the minimum wage. After over two years of deliberation, a provisional wage was set on 29 June, 2015 at 450MMK per hour and 3,600MMK per day based on an eight hour working day.⁶⁰ All sides were given two weeks to submit any disputes to this figure.

The initial response by the private sector was that this figure was too high. Numerous investors threatened to pull out of Myanmar, stating the figure of 2,500MMK as a reasonable amount given that overtime rates are one of the highest in the Asia region. Over 200 employers from 145 garment factories submitted a rejection of this amount⁶¹ to the Myanmar National Minimum Wage Committee while over 30 Chinese and South Korean manufacturers threatened to close down their operations, putting 70,000 jobs at risk.⁶² An attempt by employers to exempt the garment industry from this law being applied was also made. This move was rejected by two multi-stakeholder initiatives. The FLA, which includes international brands such as Adidas and Patagonia, as well as labor groups, rejected the move in a letter to the Myanmar Government, stating;

*Our concern is that any exemption negotiated for the garment industry would lead to hundreds of thousands of garment workers not having a wage that meets their basic needs.*⁶³

The ETI, another multi-stakeholder initiative that includes brands such as H&M, Gap Inc. and Primark, as well as trade unions and international NGOs and labor rights groups, also rejected attempts to exempt the garment industry from the minimum wage proposal, and urged manufacturers to accept the figure;

*A minimum wage that has been negotiated by all parties will attract rather than deter international companies from buying garments from Myanmar, particularly companies such as ETI members that have committed to upholding international labour rights standards in their global supply chains.*⁶⁴

59. The Minimum Wage Law. Available at <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/90652/114148/F1221961295/MMR90652%20Eng.pdf> (accessed 17 July, 2016).

60. Yen Saning, "3,600 Kyat Daily Minimum Wage Proposed for All Sectors," The Irrawaddy, 30 June, 2015. <http://www.irrawaddy.com/business/3600-kyat-daily-minimum-wage-proposed-for-all-sectors.html> (accessed 17 July, 2016).

61. "Garment factories vote against proposed minimum wage," The Global new Light of Myanmar, 2 July, 2015. <http://global-newlightofmyanmar.com/garment-factories-vote-against-proposed-minimum-wage/> (accessed 17 July, 2016).

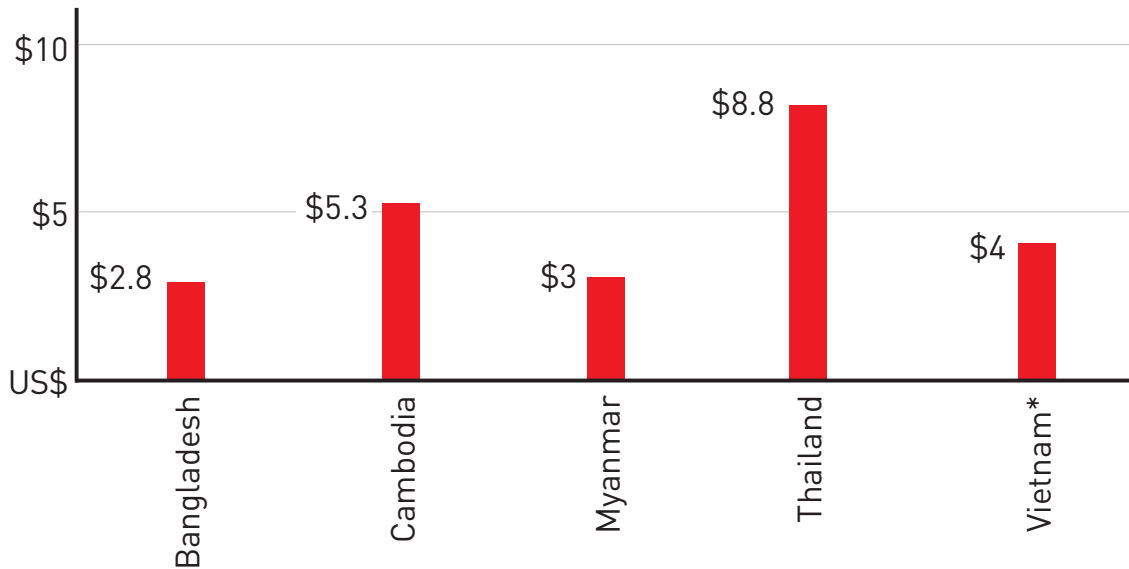
62. "Myanmar workers protest demanding higher wages," Business Standard, 12 July, 2015. http://www.business-standard.com/article/news-ians/myanmar-workers-protest-demanding-higher-wages-115071200351_1.html (accessed 17 July, 2016).

63. 17 FLA affiliates oppose unfair minimum wage exemption for Myanmar garment workers," Fair Labor Association, 15 July, 2015. <http://www.fairlabor.org/report/17-fla-affiliates-oppose-unfair-minimum-wage-exemption-myanmar-garment-workers> (accessed 17 July, 2016).

64. "ETI supports call for new Myanmar minimum wage to apply to garment sector," Ethical Trading Initiative, 15 July, 2015. <http://www.ethicaltrade.org/blog/eti-supports-calls-new-myanmar-minimum-wage-apply-garment-sector> (accessed 17 July, 2016).

Daily Minimum Wage

Daily minimum wage



All amounts based on the current exchange rate and a 48-hour maximum work week

* Vietnam's minimum wage varies by region, from \$4 to \$5.90

Copyright: The Myanmar Times

On the other hand, workers organizations that had been campaigning for a figure of 4,000MMK were also disappointed though largely accepted the amount of 3,600MMK.⁶⁵

After the two-month deliberation period, the proposed minimum wage of 3,600MMK per day remained and was passed into law, coming into effect on 1 September, 2015 with no industries considered exempt from this policy.⁶⁶ Those who violate this law can face up to 12 months imprisonment and/or a 500,000MMK fine. Companies with 15 employees or less are not subject to the rate, while there is a tiered system for those who are in intern programs for up to three months and then a probationary period for a further three months of 1,800MMK

65. Nyan Lynn Aung, "Proposed K3600 minimum wage draws mixed response from workers, employers," The Myanmar Times, 26 June, 2015. <http://www.mmtimes.com/index.php/national-news/yangon/15224-proposed-k3600-minimum-wage-draws-mixed-response-from-workers-employers.html> (accessed 17 July, 2016).

66. Khin Wine Phyu Phyu, "New minimum wage sees workers sacked and struggling," The Myanmar Times, 31 August, 2015. <http://www.mmtimes.com/index.php/national-news/yangon/16221-new-minimum-wage-sees-workers-sacked-and-struggling.html> (accessed 17 July, 2016).

and 2,700MMK per day respectively.⁶⁷ This makes Myanmar's minimum wage one of the lowest in the Asia region, comparable with nearby Bangladesh and lower than Cambodia and Vietnam.

3.5 Other Relevant Laws

The Factories Act⁶⁸ of 1951 stipulates that the standard working week is eight hours per day, 44 hours per week with a mandatory day off (typically Sunday). Overtime is limited to 12 hours per week and is paid at double the hourly rate, one of the highest overtime rates in the Asia region. The implementation of this law, however, is quite different. Previous research conducted by labor groups found that most factory workers worked more than 12 hours overtime per week just to make ends meet.⁶⁹ A complex system of bonuses and low wages resulted in the average working week for factory employees being 11 hours per day, 6 days per week.⁷⁰

The Leave and Holidays Act of 1951 which was amended in 2014 provides for medical, maternity, earned and casual leave, as well as leave for public holidays.⁷¹ The Social Security Law⁷² of 2012 and the Social Security Rules of 2014 require both employer and worker to pay into a social security fund, 3% of which is from the employer and 2% from the worker. Those who earn more than 300,000MMK per month do not qualify for this fund. The fund covers medical treatment and payment in case of sickness or injury, payment in case of maternity leave, and payment for beneficiaries in case of death among other benefits.⁷³ The Employment and Skill Development Law⁷⁴ of 2013 stipulates that contracts between employer and worker must be drawn up and submitted to the relevant labor exchange office and also establishes a fund that employers pay into for skills training which is administered by a new government skill development team.⁷⁵ A new Occupational Health and Safety Act has been in the pipeline for a number of years but as of yet, has not passed.⁷⁶

67. MGMA, Factory Information – Labour Laws and Regulations, MGMA, <http://www.myanmargarments.org/factory-information/laws-regulations/> (accessed 17 July, 2016).

68. The Factories Act. Unofficial translation available at <http://www.ilo.org/dyn/natlex/docs/MONOGRAPH/88477/123120/F1558150740/MMR88477%20Eng%202016.pdf> (accessed 17 July, 2016).

69. See "Modern Slavery," A Study of Labour Conditions in Yangon's Industrial Zones," Labour Rights Clinic, Cooperation Program of Independent Laborers, Construction-based Labor Union and Workers Support Group, November 2013. <http://www.burmapartnership.org/2013/11/modern-slavery-a-study-of-labour-conditions-in-yangons-industrial-zones/> (accessed 14 July, 2016), "Made in Myanmar: Entrenched Poverty or Decent Jobs for Garment Workers?" Oxfam, 9 December, 2015. <http://www.burmapartnership.org/2015/12/entrenched-poverty-or-decent-jobs-for-garment-workers/> (accessed 14 July, 2016) and "Under Pressure: A Study of Labour Conditions in Garment Factories in Myanmar which are wholly Korean owned or in a joint venture with Korean Companies," Action Labor Rights, March 2016. http://www.actionlaborrights.org/attachments/view?attach_id=1060 (accessed 14 July, 2016).

70. Modern Slavery, Labour Rights Clinic, Cooperation Program of Independent Laborers, Construction-based Labor Union and Workers Support Group.

71. MGMA, Factory Information – Labour Laws and Regulations, MGMA, <http://www.myanmargarments.org/factory-information/laws-regulations/> (accessed 17 July, 2016).

72. The Social Security Law. Available at http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=90653&p_country=MMR&p_count=106 (accessed 17 July, 2016).

73. MGMA, Factory Information – Labour Laws and Regulations, MGMA, <http://www.myanmargarments.org/factory-information/laws-regulations/> (accessed 17 July, 2016).

74. Employment and Skill Development Law. Available at <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/90699/118441/F135623278/MMR90699%202.pdf> (accessed 17 July, 2016).

75. Employment and Skill Development Law.

76. Shwe Yee Saw Myint, "Myanmar to draft first labour safety law," The Myanmar Times, 21 December, 2012. <http://www.mmtimes.com/index.php/national-news/3625-myanmar-to-draft-first-labour-safety-law.html> (accessed 17 July, 2016).

Box Five: MGMA Code of Conduct

In 2015, the MGMA ratified a code of conduct for its members, which number over 300 factories. It is a voluntary code, which outlines best practices for the sustainable production of garments in Myanmar, including provisions for child labor and references to ILO conventions on labor standards. The code, like most codes of conduct, is voluntary, drawn up by the private sector itself and there is nothing that binds members to follow such guidelines.¹

1. "Myanmar Garment Manufacturers Association publishes first ever Code-of-Conduct for Myanmar's apparel industry," MGMA, 1 February, 2015. <http://www.myanmargarments.org/wp-content/uploads/2015/02/MGMA-Code-of-Conduct-Press-Release.pdf> (accessed 17 July, 2016).

The Myanmar Special Economic Zones Law, passed in 2014, is also problematic in that it overrides all other legislation, including the Labour Organization Law and the Settlement of Labour Dispute Law, meaning that such laws may not apply in SEZs. Given that there are plans for garment factories in SEZs such as Thilawa SEZ, the protection for workers' rights afforded by the two aforementioned laws, however problematic, will become inapplicable to the workers who will work in SEZs.⁷⁷

3.6 Summary

The Myanmar Government, due to its obligations under international human rights and labor law, has a duty to incorporate protections and provisions pertaining to freedoms of association and assembly, the right to collective bargaining and the right to decent work into national legislation. Soft law such as the UN Guiding Principles on Business and Human rights and the OECD Guidelines for MNEs provide further guidance and duties to Governments, private companies, and host states of MNEs to respect fundamental human rights and labor rights, conduct due diligence in their operations and provide access to remedies.

Yet despite the existence of international human rights law, labor law and standards and guidelines, these all have varying degrees of implementation problems that ultimately result in inadequate legal protection of the rights of workers. Robust national-level legislation and policy that complies with internationally recognized human rights and labor standards and is based on the demands of worker-led struggles on the ground is needed. While ostensibly Myanmar does provide legislation that protects these rights, major loopholes in such legislation and policy, as well as the realities of implementation challenges, contribute to an unsustainable environment in the protection of the rights of workers. As it stands, Myanmar does not provide adequate legal protection for its workforce that, at this critical juncture in the transition to democracy, is of the utmost importance as the government seeks to revive its outdated economy and pursue an equitable development model.

77. Myanmar Special Economic Zones Law, Section 89. Available at http://www.burmalibrary.org/docs17/2014-Myanmar-SEZ_Law-en.pdf (accessed 6 September, 2016).

Section Four: Waves of Strikes

While trade unionism was strictly suppressed during previous military regimes, the public emergence of trade unions and the growth in their number has increased rapidly after the quasi-civilian government of President U Thein Sein came to power in 2011 and the promulgation of two key labor laws, the Labour Organization Law and the Settlement of Labour Dispute Law. It is reported that there are now over 1,900 labor organizations at basic or factory level, 105 at township level, 14 at region or state level, seven labor federations and one labor confederation.⁷⁸ There has also been a surge in industrial action, as waves of strikes with workers demanding the end of desultory wages, better working conditions and an end to the discrimination against unionists that has contributed to tensions and at times, violence. Individuals participating in or organizing strikes have been arrested, charged and imprisoned by the authorities.

The first major wave of industrial action occurred in spring 2012, as thousands of workers from various workforces from factories, mainly in Yangon's industrial zones, engaged in strikes, including garment factories.⁷⁹ Many of their demands included an increase in pay, betterment of poor working conditions as well as an end to the complicated payment system in which bonuses for punctuality, overtime and no absences, combined with a very low basic wage, forced many workers to work extremely long hours without taking any leave of absence, just to make ends meet.⁸⁰

Research conducted in late 2012/early 2013 by a network of independent labor rights activists groups and trade unions expanded on the issues that caused the first wave of industrial action. Their report, 'Modern Slavery: A Study of Labour Conditions in Yangon's Industrial Zones' found that average wages, after overtime, were 75,000MMK to 95,000MMK per month, with the average workday being 11 hours.⁸¹ The report also found that for garment factories, if a big order came in, they regularly had to work through the night until the early hours of the morning, otherwise their 'no absence bonus' and/or 'overtime bonus,' would be cut. Given that combined, the 'no absence bonus' and 'overtime bonus' amounted to around 10% of a worker's wage, and with most living precariously on the breadline, many workers felt forced to work overtime whenever requested.⁸² Similar findings were presented in a later report, 'Under

78. "Myanmar to promote, protect, labour rights," Business Standards, 2 May, 2016. http://www.business-standard.com/article/news-ians/myanmar-to-promote-protect-labour-rights-116050200353_1.html (accessed 18 July, 2016).

79. Nyein Nyein, "Over 5,000 Workers Still on Strike in Rangoon," The Irrawaddy, 22 May, 2012. <http://www.irrawaddy.com/burma/over-5000-workers-still-on-strike-in-rangoon.html> (accessed 18 July, 2016).

80. Noe Noe Aung and Myat May Zin, "Eighteen strikes Yangon in May," The Myanmar Times, 28 May, 2012. <http://www.mmtimes.com/index.php/national-news/yangon/658-eighteen-strikes-yangon-in-may-activist.html> (accessed 18 July, 2016).

81. Modern Slavery, Labour Rights Clinic, Cooperation Program of Independent Laborers, Construction-based Labor Union and Workers Support Group.

82. Modern Slavery, Labour Rights Clinic, Cooperation Program of Independent Laborers, Construction-based Labor Union and Workers Support Group.

Pressure: A Study of Labour Conditions in Garment Factories in Myanmar which are wholly Korean Owned or in a Joint Venture with Korean Companies,' with research conducted in late 2014/early 2015 by Action Labor Rights on Korean owned garment factories.⁸³

After the promulgation of the Labour Organization Law and the Settlement of Labour Dispute Law, as well as the announcement of the Minimum Wage Law in 2013 that sought to find an acceptable legal minimum wage, strikes died down as workers achieved one of their demands. New arbitration mechanisms were established and began to address industrial disputes.

Problems with these bodies, however, began to surface, particularly with the lack of effective enforcement mechanisms on arbitration body and Arbitration Council decisions proving problematic. The penalty for not abiding by Arbitration Council (the national level arbitration mechanism) decisions was originally set at 100,000MMK although later increased to 1,000,000MMK. Yet according to many unions and labor representatives, this is not enough to ensure that employers abide by or comply with decisions, deeming the penalty to be too low as employers can afford to pay the penalty easily and ignore the decision. Strikes in June 2013 in Hlaingtharyar industrial zone included demands that employers comply with the decisions made by arbitration bodies. For example, six workers who were fired from the Htaik Tan garment factory in 2013 were still not rehired, even after the Arbitration Council ordered that they could return to their jobs.⁸⁴

Teething problems with the arbitration bodies and the Arbitration Council, slow progress on the setting of the new minimum wage, as well as many of the similar problems cited by those participating in strikes in 2012, culminated in another wave of industrial action in February 2015.⁸⁵ Thousands of workers participated in strikes that began in late January/early February 2015, with the main factories affected being Red Stone, Costec, E-Land Myanmar and Ford Glory garment factories and Tai Yi shoe factory. All demanded a pay increase among other issues, including the participation of trade unions when drawing up regulations for industrial relations and the same benefits to casual workers that permanent workers received.⁸⁶ Some of the strikes lasted for most of February. After E-Land employee and Shwepyithar Township Garment Workers Union leader, Myo Min Min, and Naing Htay Lwin, worker at Ford Glory garment factory, were arrested for their role in the strikes, their release became one of

83. "Under Pressure: A Study of Labour Conditions in Garment Factories in Myanmar which are wholly Korean owned or in a joint venture with Korean Companies," Action Labor Rights.

84. Noe Noe Aung, "Workers strike over wage demands," *The Myanmar Times*, 17-23 June, 2013. <http://www.mmtimes.com/index.php/national-news/yangon/7150-thousands-of-workers-protest-in-hlaing-tharyar.html> (accessed 18 July, 2016). In a recent update, however, two years later, at the same factory, the Yangon Region Labour Relations Department decided to sue the owner after he repeatedly failed to attend township-level Conciliation Body hearings on a dispute involving back-pay. See "Ministry to sue garment factory boss," *The Myanmar Times*, 15 January, 2016. <http://www.mmtimes.com/index.php/national-news/yangon/18483-ministry-to-sue-garment-factory-boss.html> (accessed 18 July, 2016).

85. Yen Saning, "Thousands of Garment Workers Strike in Rangoon," *The Irrawaddy*, 20 February, 2015. <http://www.irrawaddy.com/burma/thousands-garment-workers-strike-rangoon.html> (accessed 18 July, 2016).

86. "Police break up striking workers in Shwepyithar," *Democratic Voice of Burma*, 21 February, 2015. <http://www.dvb.no/news/police-break-up-striking-garment-workers-in-shwepyithar-myanmar-burma-yangon/48587> (accessed 18 July, 2016).



Employees of the Tai Yi shoe factory camp out in Yangon's Hlaingtharyar Township demanding higher wages, 19 February, 2015
Copyright: *The Irrawaddy*

the workers' demands.⁸⁷ A Costec factory worker, Naing Zaw, was also arrested.⁸⁸

It wasn't only arrests that authorities used to break up the strikes. The Yangon Region Government threatened legal proceedings against those striking,⁸⁹ while the police violently broke up groups of sitting strikers at factories including E-Land on 20 February.⁹⁰ Many of the strikers dispersed as a result of the police violence and some workers went back to work after an offer of a 300MMK per day pay increase.⁹¹ Some from Ford Glory and Costec factories remained on strike, however on 4 March, riot police arrested 14 workers and a labor rights activist, while gangs of thugs in red bands bearing the word 'duty' joined the riot police, using violence to disperse the striking workers. In all, dozens of workers, labor rights activists and unionists were arrested for their participation in these strikes.⁹²

87. "Myanmar Garment Workers Threaten Further Strikes if Demands Not Met," Radio Free Asia, 24 February, 2016. <http://www.rfa.org/english/news/myanmar/strikes-02242015130920.html> (accessed 18 July, 2016).

88. Yen Saning, "Rangoon Labor Strike Continues on Small Scale Amid Rising Tension," *The Irrawaddy*, 25 February, 2015. <http://www.burmanet.org/news/2015/02/26/the-irrawaddy-rangoon-labor-strike-continues-on-small-scale-amid-rising-tension-yen-snaing/> (accessed 18 July, 2016).

89. "Sit-in held at Taiyi factory despite govt threats," *Democratic Voice of Burma*, 20 February, 2015. <http://www.dvb.no/news/sit-in-held-at-taiyi-factory-despite-govt-threats-labour-burma-myanmar/48542> (accessed 18 July, 2016).

90. "Police break up striking garment workers in Shwepyithar," *Democratic Voice of Burma*, 21 February, 2015. <http://www.dvb.no/news/police-break-up-striking-garment-workers-in-shwepyithar-myanmar-burma-yangon/48587> (accessed 18 July, 2016).

91. Kyaw Phone Kyaw, "Workers issue threat to government over arrests," *The Myanmar Times*, 9 March, 2015. <http://www.mmmtimes.com/index.php/national-news/13409-workers-issue-threat-to-govt-over-arrests.html> (accessed 18 July, 2016).

92. Kyaw Phone Kyaw, "Workers hit with prison time," *The Myanmar Times*, 18 August, 2015. <http://www.mmmtimes.com/index.php/national-news/16031-workers-hit-with-prison-time.html> (accessed 18 July, 2016).

After the implementation of the minimum wage on 1 September, 2015, downsizes, one factory closure, as well as changes to certain benefits and payments (for example providing meals or transport for workers) occurred as the industry adjusted to the new pay scales. This demonstrates the problem of capital mobility with regards to labor rights, as investors can seek cheaper wages elsewhere in the Asia region whereas workers cannot simply move to somewhere like China where garment factory wages are higher.⁹³ Workers have also complained of being fired and then rehired on a reduced internship or probation wage,⁹⁴ as a spate of labor disputes ensued the weeks after the introduction of the minimum wage.⁹⁵

93. Thuzar, "Garment Factories Downsize in Response to Minimum Wage," The Irrawaddy, 5 September, 2015. <http://www.irrawaddy.com/burma/garment-factories-downsize-in-response-to-minimum-wage.html> (accessed 18 July, 2016).

94. Nyan Lynn Aung and Khin Wine Phyu Phyu, "Payday unpleasant surprise for workers," The Myanmar Times, 1 October, 2015. <http://www.mmmtimes.com/index.php/national-news/16774-payday-unpleasant-surprise-for-workers.html> (accessed 18 July, 2016).

95. Nyan Lynn Aung and Khin Wine Phyu Phyu, "Labour disputes rise as factories cut back," The Myanmar Times, 17 September, 2015. <http://www.mmmtimes.com/index.php/in-depth/16520-labour-disputes-rise-as-factories-cut-back.html> (accessed 18 July, 2016).

Section Five: Main Findings

5.1 Working Hours

Long Hours

One of the key findings of the research was that workers are often forced to work very long hours, six days per week, despite official working hours being eight hours per day with a maximum overtime of 12 hours per week. Of the 199 workers interviewed, 95% of workers regularly work six days a week, with some of those working seven days per week, depending on the amount and scale of the orders that that factory is dealing with.⁹⁶

Forced to Work Overtime

Most workers still have no choice but to work overtime, with 88% of workers interviewed regularly working for 10 or more hours per day. This is for various reasons including not knowing whether they may decline the extra hours, the need for any extra overtime pay to supplement a salary that is battling against rising living costs, or as a result of intimidation.

While many workers interviewed stated that their working day was eight hours per day, plus overtime, many actually worked regularly nine or 10 hours per day with anything extra being told as overtime. For example, one factory worker in Bago reported that they have to work eighth hours per day but stated their working hours as 8am to 6pm.⁹⁷ This strategy is common and is used to deceive workers. They are aware that the standard working hours are eight per day but have no choice but to work 10 hours – they are simply told when the finishing time is.

Regarding their payslip, this confusion continues as many cannot understand their payslips as they are often not in Myanmar language. They can be in Chinese, Korean, or English languages, and workers are unable to analyze their actual pay breakdown and if they are being paid the correct overtime amount. An example of how it is easy to deceive the workers regarding overtime is another factory worker in Bago, who stated that he works 10 hours per day, six days per week, but also stated that he does not work any overtime.⁹⁸ Furthermore,

96. This complements previous research from Action Labor Rights, and a network of labor rights activists groups and trade unions who found that the average working day was over ten hours per week. See "Modern Slavery," A Study of Labour Conditions in Yangon's Industrial Zones," Labour Rights Clinic, Cooperation Program of Independent Laborers, Construction-based Labor Union and Workers Support Group, November 2013. <http://www.burmapartnership.org/2013/11/modern-slavery-a-study-of-labour-conditions-in-yangons-industrial-zones/> (accessed 14 July, 2016) and "Under Pressure: A Study of Labour Conditions in Garment Factories in Myanmar which are wholly Korean owned or in a joint venture with Korean Companies," Action Labor Rights, March 2016. http://www.actionlaborrights.org/attachments/view/?attach_id=1060 (accessed 14 July, 2016).

97. Female garment factory worker, interview with field researcher, Bago, March 2016.

98. Male garment factory worker, interview with field researcher, Bago, March 2016

in many cases, the factory-provided transportation leaves the factory only when the factory owner wants the workers to finish work, rather than at the standard finishing time.

Pressure to work overtime comes from the factory owners and in turn, supervisors, with workers feeling that they simply do not have a choice in the matter. In some cases, workers know that they will be working overtime but are told that they have no choice. A worker in South Dagon explained;

Normally, I have to work six days a week, from Monday to Saturday. Exceptionally, sometimes workers are forced to work even on a Sunday. But, the good thing is that workers are doubly paid more than any other working days. If workers including me refuse to work on Sunday, I will be intimidated and threatened to be laid off.⁹⁹

A rare case was reported by a worker in Mingalardon, who refused to do overtime but paid the consequences;

Regarding the situation of overtime, it is a problem for me. I sometimes do not want to work overtime, since it is very exhausting and time consuming. So, I choose not to work it. In doing so, my manager, the Japanese factory owner, does not like this and scolds and pressures me for not obeying him. As a result, they reduce my monthly salary as a punishment. But I really think that this is my personal choice.¹⁰⁰

Another worker in Hlaingtharyar stated how they would like the factory to improve regarding this issue;

For the improvement of working conditions for workers in the factory [...] I do not want workers to be forced and coerced to work overtime without their consent, especially those late overtime hours until late at night.¹⁰¹

In some cases, this is extremely late as this worker from North Okkalapa reported;

“

Normally, in this factory, I have to work from 7:30am to 6:40pm. If there is overtime to work, workers are forced and coerced to work until 2:00 am.¹⁰²

”

By continuously being forced to work long hours, coupled with the pressure to meet targets, this has a negative effect on the physical and psychological health of workers. A worker

99. Male garment factory worker, interview with field researcher, South Dagon, March 2016.

100. Female garment factory worker, interview with field researcher, Mingalardon, March 2016.

101. Female garment factory worker, interview with field researcher, Hlaingtharyar, April 2016.

102. Female garment factory worker, interview with field researcher, North Okkalapa, March 2016.

in South Dagon, whose standard finish time is 5pm, but has to work until 8pm if there is overtime, explained;

“

*In cases when there are too many bulk orders, workers are harshly pressured, forced and shouted at to work hard and in a rush. Workers end up being very exhausted, overwhelmed and stressed as a result.*¹⁰³

”

In some cases, extra time is ‘stolen’ from workers as they struggled to complete orders and were pressured from supervisors. For example, a worker in Bago reported;

*One big problem is that workers are poorly and unfairly treated, i.e. Time to go home is always late as it is unfairly taken or stolen for cleaning.*¹⁰⁴

In extreme cases, sometimes workers are not paid for overtime. For example, a worker in Hlaingtharyar explained;

*We are not paid for working overtime. They prepare the ferry for those who work overtime. If we refuse to work overtime because it is too far to go home, they threaten to demote us which means we will get less salary.*¹⁰⁵

Or as this worker in Pathein stated;

“

*Sometimes, workers are not paid for overtime and they have to sleep in the factory and stay up late at night because of it being too late to go home.*¹⁰⁶

”

Wage Deductions for Sick Days

Taking a day off is actively discouraged by management and owners. Most face wage deductions and 61% of workers interviewed stated that the fine was 5,000MMK per day or over, while 36% said it was 10,000MMK per day or over. Given that the minimum wage is 3,600MMK per day, and that most workers struggle with this wage, this deduction is disproportionate. Some workers even stated that the deduction, used as a punishment and deterrent,

103. Male garment factory worker, interview with field researcher, South Dagon, March 2016.

104. Female garment factory worker, interview with field researcher, Bago, March 2016.

105. Female garment factory worker, interview with field researcher, Hlaingtharyar, April 2016.

106. Female garment factory worker, interview with field researcher, Pathein, March 2016.

was over 20,000MMK per day. For example a worker in Hlaingtharyar reported;

If workers happen to take a day off, all types of payments on the day are cancelled or terminated as a fine or punishment. It is totally about 26,000 Kyat [MMK]. It does not matter whether permission for the day off taken is asked or not.¹⁰⁷

Furthermore, many workers stated that permission to take a day off is regularly denied, and that if they were to take more than three days off, and without permission, they would be fired. One worker in Pathein noted that they would be fired for taking three days off, and if they take one day off, they are deducted three days of wages. She also explained;

Before [the minimum wage law], we can sometimes take leave. But now we are afraid that we will be fired, so we go to work although we are not feeling well and we can't concentrate at work. We can ask for leave from the manager, but still, the supervisor doesn't let us go except for those who are friendly with the supervisor.¹⁰⁸

Another worker in Shwepyithar reported;

I took a day off to visit my sister-in-law who gave birth at the hospital. I was scolded badly when I came to work the next day. I was scolded badly because I just started working one month ago and took a day off. I was told that I will be laid off if I take a day off again.¹⁰⁹

For some factories, taking days off was completely prohibited as this worker from Hlaingtharyar stated;

“

No day off is allowed in this factory. But if I still happen to take it, I can be fired from my job, no excuse.¹¹⁰

”

Since the introduction of the minimum wage, bonuses, incentives and other types of payment that were added to previously very low basic wages were subsequently cut. Many factory owners use large fines, deductions, and threats of dismissal as a deterrent for workers taking a day off, ensuring that workers, regardless of their own circumstances, are still in the factory working on time-sensitive orders in order to meet targets.

107. Female garment factory worker, interview with field researcher, Hlaingtharyar, March 2016.

108. Female garment factory worker, interview with field researcher, Pathein, March 2016.

109. Female garment factory worker, interview with field researcher, Shwepyithar, March 2016.

110. Female garment factory worker, interview with field researcher, Hlaingtharyar, April 2016.

Squeezed Break Times

Typically garment factory workers have a 30-60 minutes scheduled break for lunch, and if there is overtime, they usually receive another 20-30 minutes break. However, problems around the actual break time were reported by around 10% of the workers interviewed, who stated that their break is often reduced if there is overtime. According to other key stakeholders interviewed for this research, the amount of workers who experience these problems is likely to be higher in reality, as when interviewed, many workers stated their allocated break time rather than the actual break time. For example, one worker in Bago reported that in reality, their break time amounted to just seven minutes¹¹¹ or another worker who stated that they have to work through the lunch break.¹¹² A worker from Mingalardon explained;

*There is only one break time a day, which lasts for 30 minutes. Sometimes, we do not even have time to have a break and have our lunch, especially if we have a problem with our work performance in regard to the daily targets assigned to us. We are scolded too.*¹¹³



Workers attach beads to blouses at a garment factory on the outskirts of Yangon
Copyright: Aung Htay Hlaing/The Myanmar Times

111. Female garment factory worker, interview with field researcher, Bago, March 2016.

112. Female garment factory worker, interview with field researcher, Patheingyi, March 2016.

113. Female garment factory worker, interview with field researcher, Mingalardon, March 2016.

5.2 Working Conditions

Regarding working conditions in garment factories, the main issues reported are aggressive supervisors, inadequate and poorly attended to toilets and sanitation, personal security issues (especially for women traveling home during late evening hours), and the lack of maternity leave in many factories.

Aggressive Supervisors

54% of workers interviewed reported problems with their managers and supervisors, ranging from applying undue pressure to arbitrarily dismissal. Other workers talked of the threat or the actualization of physical assault, but the most common complaint is that of pressure to fulfil orders, including being forced to work overtime (mentioned above, section 5.1), reduced break times (mentioned above, section 5.1), the threat of dismissal, and continual verbal pressure. One worker in Shwepyithar explained;

I am really scared of the supervisors. On the third day after I started work at the factory, I made a mistake by accidentally cutting the fabric since the scissors I used were new and sharp [...] When the supervisor checked it, she scolded and shouted at me very loudly and aggressively, and I felt really embarrassed. I even thought to leave the job, but then I decided not to leave since my family's situation is not good [...] Sometimes, the supervisor hurries me and forces me to work faster while I am working my hardest, and it is tiring. The most frustrating time is in the evening before leaving work. A lot more work comes to me with only one or two people to help.¹¹⁴

Or as this worker in Hlaingtharyar explained;

As for the behavior of supervisors and managers, sometimes it can be really harsh and severe. Workers get really mad and even cry because of their attitudes towards workers.¹¹⁵

The treatment of the supervisors even includes arbitrarily laying off workers, as one former garment factory worker in South Dagon explained;

Unexpectedly, 20 workers, including myself were just laid off and we are all in trouble as we are unemployed. Supervisors, leaders and the owners of the factory are also very selfish and bad to workers. If they do not like any one, they just kick him or her out of his or her job at once.¹¹⁶

Workers also brought up physical assault. Although physical assault was not a pervasive practice, it was still reported 6 times by workers during field research, or 3% of interviewees. This shows that it is regular enough to be a problem. A worker in Shwepaukkan explained;

114. Female garment factory worker, interview with field researcher, Shwepyithar, March 2016.

115. Female garment factory worker, interview with field researcher, Hlaingtharyar, March 2016.

116. Female garment factory worker, interview with field researcher, South Dagon, March 2016.

*The supervisors can sometimes overly shout, scold, pressure and even assault workers by hitting them on the head over the working performance of workers. In addition to this, warnings and punishments are commonly meted out to workers in the factory.*¹¹⁷

At another factory in Shwepaukkan, a worker explained;

*As for the attitudes or treatment of supervisors, managers and leaders towards workers, it is so bad that workers can sometimes be slapped, hit or physically assaulted by them. Sometimes this can result in workers leaving their job.*¹¹⁸

A worker in Bago reported similar behaviour;



*Supervisors and managers are very aggressive and bad to workers. They physically assault workers, beating, shouting at and slapping them on the face. But we, as workers, just have to be quiet and submissive.*¹¹⁹



The constant pressure, intimidation and at certain factories, physical assault on workers, largely relates to the pressures to complete orders in time for buyers, as well as an entrenched, top-down, authoritarian culture that pervades Myanmar society. The psychological and physical strains on workers, especially when they are working long hours with few breaks, was one of the most troubling aspects of a worker's life according to this research. Many respondents stated that this pressure increased after the introduction of the minimum wage.

Strict Toilet Breaks

40% of workers complained of the toilets being inadequate and poorly attended to, whether through a lack of water, not enough toilets related to the size of the workforce, restrictions on how many times and for how long to use the toilet, or through a lack of cleanliness.

Regarding the toilet situation, however, it is the strictness that was the most pressing issue. 75% of interviewees who talked of problems with the toilets stated that strictness in terms of being allowed to use the toilets is manifest in regular monitoring, not being allowed to use the toilet until certain targets had been met, or being restricted to a certain amount of visits per day. The typical system used in factories is that of a key, (known as a key card), where a handful of key cards that are needed to use the toilet are shared throughout the workforce. This ensures that supervisors can monitor the amount of times workers use the toilet and how long for, therefore applying pressure on workers to abstain from using the toilet. In two instances,

117. Female garment factory worker, interview with field researcher, Shwepaukkan, March 2016.

118. Male garment factory worker, interview with field researcher, Shwepaukkan, March 2016.

119. Female garment factory worker, interview with field researcher, Bago, March 2016.

workers reported that using the toilet without a key card resulted in a fine. One factory worker in Bago reported a 3,000MMK fine if they were to use the toilet without a key card, equivalent to 80% the daily minimum wage¹²⁰ while another worker in Shwepyithar told of a 5,000MMK fine for using the toilet without a key card, more than the minimum daily wage. One worker in Shwepaukkan linked the increased strictness of going to the toilet to the introduction of the minimum wage;

Talking about the working conditions and environment in the factory, it has become stricter and more difficult for work as a result of the minimum wage policy. It has become more restricted for workers to go to the toilet, take a break and to smoke.¹²¹

The restricted access and times to use the toilet is directly linked to factory owners squeezing every drop of productivity from the workers, especially since the introduction of the minimum wage.

Poor sanitation was the second most commonly reported problem regarding toilet facilities and there were a few examples of particularly bad conditions. One factory worker in Mingalardon complained that;

The toilets for workers in the factory are very dirty and smell badly. We talked about it to the sanitation service center, but they do not seem to care at all. I really want to quit my job because of the bad smell pervading everywhere through the factory.¹²²

Other workers stated that an inadequate number of toilets per person was the biggest problem, such as one worker in Hlaingtharyar who reported that there were only 16 toilets for over 1,000 workers,¹²³ or another worker in a different factory in Hlaingtharyar who reported only 12 toilets for 800 workers.¹²⁴

Healthcare Provision

According to the Factories Act of 1951, factories must provide a clinic for the workers, staffed with a nurse if the factory employs over 250 people, and stocking medical supplies.¹²⁵ 70% of the factory workers interviewed did report the existence of a clinic although of these 70%, over a quarter reported problems that the medication supply was inadequate, or that the nurse was not skilled enough to address health problems. For example one worker in Mingalardon stated;

There is a clinic in the factory that renders a service to workers. I can go to that clinic if I fall sick or have any health problems. But I do not use this clinic because the medication services provided are very bad and the nurse hired in the clinic is old and

120. Female garment factory worker, interview with field researcher, Bago, March 2016.

121. Male garment factory worker, interview with field researcher, Shwepaukkan, March 2016

122. Female garment factory worker, interview with field researcher, Mingalardon, March 2016.

123. Female garment factory worker, interview with field researcher, Hlaingtharyar, April 2016.

124. Female garment factory worker, interview with field researcher, Hlaingtharyar, April 2016.

125. The Factories Act, Section 47.

*not nice. She does not give us the right medication so that it is dangerous for us. So, I mostly use hospitals or clinics outside the factory which costs me around 3,000Kyat [MMK] a time.*¹²⁶

Some workers reported that the clinic was there just for show, as a worker in Pathein explained;

*As for the healthcare, there is a clinic available for workers in the factory, but it is just for show. The nurse comes to the factory only once a week. Medication and health-care services for illnesses are bad because medication is not widely available.*¹²⁷

Some workers reported that if they were sick, they could not take a leave day, but rather would be told to rest in the factory clinic until they felt better. Others reported not being allowed to go home if they were sick despite reporting the issue to the clinic and the supervisor. One worker in Mingalardon gave this example;

*I would like to stress the weakness of workers' healthcare service in the factory. I want it to be seriously taken into account to adequately upgrade the service or management. Not very long ago, two female workers died due to poor health. Workers are not easily allowed to go home or leave work even though when they are sick or ill.*¹²⁸

Another issue regarding the clinics and healthcare provision relates to corruption. According to the Social Security Rules, workers contribute 2% of their wage and employers contribute a further 3% to a social security fund, which covers healthcare and maternity leave among other benefits.¹²⁹ However, key stakeholders interviewed for this research reported that this system is vulnerable to corruption, in which relevant authorities and factory owners will collude to distort the number of workers paying into the fund for their own gain. As one worker representative explained;

*If there are 200 workers in a factory, only 100 are presented to the government for social welfare service cards for workers. Therefore some workers do not get any rights or assistance that they should get like others in the factory.*¹³⁰

The knock-on effect of this, as put by an Arbitration Council member, is:

126. Female garment factory worker, interview with field researcher, Mingalardon, March 2016.

127. Female garment factory worker, interview with field researcher, Pathein, March 2016.

128. Female garment factory worker, interview with field researcher, Mingalardon, March 2016.

129. MGMA, Factory Information – Labor Laws and Regulations, MGMA. <http://www.myanmargarments.org/factory-information/laws-regulations/> (accessed 18 July, 2016)

130. Vice-chairperson of a labor federation based in Yangon, interview with field researcher, Yangon, March 2016.

“

*The healthcare centers and clinics at the factories are not functioning. There is not enough medicine or adequate facilities. As a consequence, the staff can't do anything if the workers get sick.*¹³¹

”

Given the long working hours, the exhaustion that many workers stated they felt, and at times hot, unsanitary working conditions, adequate and accessible healthcare is essential. The reluctance of some factory owners to allow people to go home if they are sick can have potentially drastic consequences, as outlined above with the case of two female workers dying due to poor health. Furthermore, corrupt local authorities can worsen the situation by misappropriating funds that are supposed to be for the benefit of workers through the social welfare fund.

Maternity Leave

Paid maternity leave is granted by the 2012 Social Security Law, which provides 6 weeks prior and 8 weeks post-delivery paid leave (see section 3.5).¹³² Yet, 27% of workers interviewed believed that maternity leave was not available, 15% were not sure and 58% said that maternity leave was allowed. One of the methods that some factory owners use to avoid paying maternity leave is that pregnant women voluntarily leave the factory without paid leave, and restart work after childbirth. However, this is on a lower starting wage, for example the 2,700MMK or 1,800MMK paid to those on probation. Many of them also lose their status as a skilled worker and/or permanent worker. A worker in Pathein explained;

*For the case of pregnant women in the factory, there is no maternity leave for them. There was a case that a pregnant woman in my working group went to ask the supervisor for the maternity leave but she was just ignored. So, most pregnant women here in this factory just have to leave their job when their pregnancies are due, no choice.*¹³³

Another worker at the same factory described the maternity leave as “lip-service.”¹³⁴ While a sizeable amount of factories are not granting maternity leave as is required by law, some workers reported good treatment and benefits for pregnant workers, for example, by a factory in South Dagon in which pregnant women can go home early, and are given the appropriate time of paid leave as required by the law.¹³⁵

131. Arbitration Council member, interview with field researcher, Yangon, March 2016.

132. The Social Security Law, Section 25(c).

133. Female garment factory worker, interview with field researcher, Pathein, March 2016.

134. Female garment factory worker, interview with field researcher, Pathein, March 2016.

135. Female garment factory worker, interview with field researcher, South Dagon, March 2016.

Communication Problems with Foreign Owners

Given the high levels of foreign ownership of garment factories, particularly Korean and Chinese, language and communication problems are common. For example, one worker in Hlaingtharyar complained of the Chinese owner;

Since most [managers] are Chinese in this factory, I and other co-workers have a lot of problems because of the language barrier. When we do not understand what they say, they get angry and sometimes aggressively shout at, scold and yell at and even beat or hit us.¹³⁶

Interpreters are employed in factories to counter these problems but sometimes exacerbate the problems. A worker in Indagaw explained;

The interpreter always stands on the side of the employer. And the interpreter does not translate completely what we have said and want the employer to know. If the employer speaks to us, the interpreter will translate completely. They will do whatever the employer asks them to do.¹³⁷

This language issue is also problematic when it comes to payslips, which are often not in Myanmar, as a worker at a Thai-owned factory who did not understand whether transportation costs were deducted from her wage;

Every payment bills is written in Thai, I do not understand what they mean.¹³⁸

A leader of a trade union also explained about the difficulties of dispute resolution with a Chinese factory owner;

They [the Chinese owner] don't understand what we mean when we talk to them. Currently, we are not complaining about low payment but we, the workers, want to know the details of how we are being paid, yet they refuse to do what we ask.¹³⁹

Sexual Harassment

Most of the interviewees, of whom 87% were women, felt safe in their workplaces as regards to sexual harassment or gender-based mistreatment by their male colleagues and supervisors although a small number of workers did report that this occurred. This is partly because many of the supervisors and most of the staff themselves are female. However, 32% said that they did not feel safe when walking home after work. This is exacerbated when they need to work overtime and are walking home in the dark after 8pm. Women felt that they were vulnerable to attack, often were verbally harassed, and there were reports of sexual assault

136. Female garment factory worker, interview with field researcher, Hlaingtharyar, April 2016.

137. Female garment factory worker, interview with field researcher, Indagaw, April 2016.

138. Female garment factory worker, interview with field researcher, South Dagon, March 2016.

139. Chairperson of factory level trade union, interview with field researcher, Yangon, March 2016.

Box Six: Hlaingtharyar Industrial Zone - Dangerous and Crime-Ridden

Nationwide, Hlaingtharyar is the most densely populated township, with around 700,000 residents, including a large population of squatters who come from around the country. The township suffers from an inadequate police force and is ridden with crime including robbery, assault, sexual violence, and murder. A September 2015 report by the Myanmar Times found that some parts of Hlaingtharyar are ‘no-go’ areas for the police, and gangs of young men are in control, extorting the local population.¹ Hlaingtharyar is also the biggest industrial zone in Myanmar and was the first to be established. It is home to the largest concentration of garment factories. Thus, the fears that many young women working at garment factories face when walking home late at night through the most crime-afflicted township in Myanmar is a huge problem. Furthermore, gangs of thugs are also reported to have been used by factory owners in disputes, both with each other, and against striking workers.

1. Zaw Zaw Htwe, “A town beyond the law: Hlaing Tharyar,” The Myanmar Times, 4 February, 2016. <http://www.mmmtimes.com/index.php/national-news/yangon/18817-a-town-beyond-the-law-hlaing-tharyar.html> (accessed 14 July, 2016).

or rape of women they knew or had heard of. The industrial areas are often densely populated, house high populations of migrants from other parts of the country and have high crime rates (see Box Six: Hlaingtharyar Industrial Zone: Dangerous and Crime-Ridden). For many of those women who said they did feel safe going home after work, this was directly related to the fact that one or more family member would meet them to pick them up, or they would walk home together.

A woman from Hlaingtharyar stated;

“

*It is not safe for women to travel from place to place near the factory because there are lots of pubs, teashops or restaurants. Women can be sexually harassed, assaulted, threatened and even robbed when they travel. As for inside the factory, there is only mocking, teasing or flirting, no big deal.*¹⁴⁰

”

A woman in Mingalardon concurred;

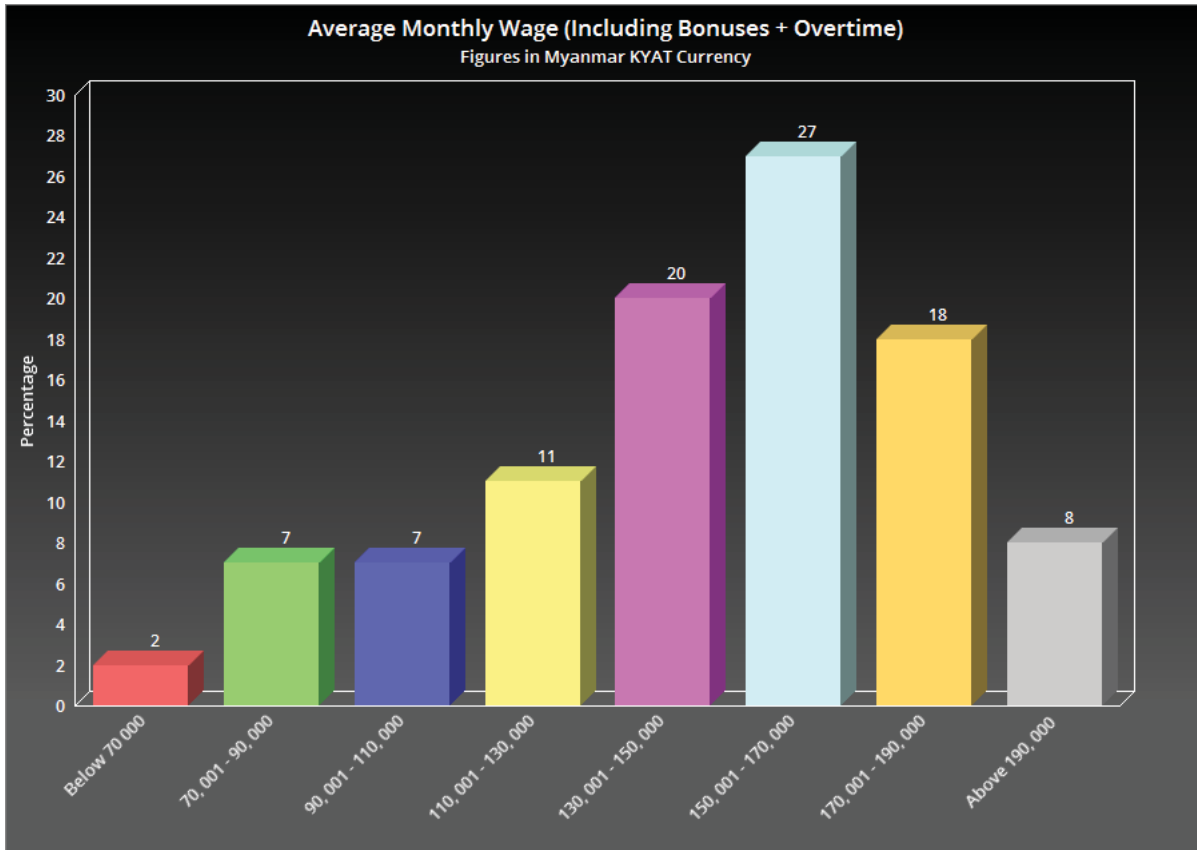
Now, the street is full of bars and alcohol shops on the way. By the time we go home, they are full of drunk men. It is not safe for girls. By the time we walk home, there are no more good men on that street. Sometimes, guys riding motorcycles touch girls' parts of the body while passing by. Furthermore, as I have to get to work very early

140. Female garment factory worker, interview with field researcher, Hlaingtharyar, April 2016.

*in the morning, it is still dark when I walk across the street to work.*¹⁴¹

One female worker reported how she felt unsafe to walk home due to a rape case she had heard about on the way back from the factory. Consequently, for that factory, if workers are coerced into staying late to work overtime, they sleep at the factory.¹⁴²

5.3 Impact of the Minimum Wage



Copyright: Progressive Voice

99% of workers interviewed reported that their employer is following the minimum wage policy since it was introduced on 1 September, 2015. Yet, 61% of interviewees reported negative impacts of this policy. It is also important to note that some of the respondents had only started their employment after the minimum wage was implemented and were not sure of the effects of this policy change. While the average monthly wage for most workers has increased compared to previous research carried out by labor rights groups, in 2012 and 2015 as mentioned earlier, this has largely been in line with inflation, and the standard of living has not

141. Female garment factory worker, interview with field researcher, Mingalardon, March 2016.

142. Female garment factory worker, interview with field researcher, North Okkalapa, March 2016.

improved while the average working hours per week remains very high.¹⁴³

The negative impact of the minimum wage comes in the form of a reduction of benefits and bonuses, such as provision of transport to the workplace or punctuality bonuses; and also an increase in pressure on productivity, including higher targets; and stricter enforcement of rules and regulations, such as toilet breaks or lunch time. Furthermore, a significant number of factories are taking advantage of the differing levels of pay-scales that see 3-month internship rates of 1,800MMK per day follow by 3-month probationary rates at 2,700MMK per day before having their employment terminated before workers receive the standard 3,600MMK per day minimum wage.

Stricter Working Conditions

According to over two thirds of those who noted a negative impact since the introduction of the minimum wage, working conditions have become harsher both in terms of expected worker output and strict regulations. For example, in one garment factory in Indagaw, seamstresses were previously expected to sew 50 items per hour but since the minimum wage was introduced, this has risen to 80.¹⁴⁴ Another worker in Indagaw noted;

*We have to work more after the basic pay was set as 3,600Kyat [MMK] per day. It is non-stop working. They will scold us even when we are having a conversation to each other while we are working. The rules are stricter than before.*¹⁴⁵

A worker in North Okkalapa reported;

“

*After the minimum wage policy came into practice, it is true that the amount of payments has increased to some extent. But at the same time, the treatment of workers has become very abusive, harsh and inappropriate as workers are constantly being fined, laid off and so on. The regulations on workers have become stricter and limiting. There has been more work and working hours are extended as a result of the minimum wage policy.*¹⁴⁶

”

143. Research undertaken by previous groups includes labor rights activists groups and trade unions in 2012, which found the average monthly wage to be 75,000MMK – 95,000MMK, and Oxfam in 2015 which found 122,000MMK to be the average monthly wage. See “Modern Slavery,” A Study of Labour Conditions in Yangon’s Industrial Zones,” Labour Rights Clinic, Co-operation Program of Independent Laborers, Construction-based Labor Union and Workers Support Group, November 2013. <http://www.burmapartnership.org/2013/11/modern-slavery-a-study-of-labour-conditions-in-yangons-industrial-zones/> (accessed 14 July, 2016) and “Made in Myanmar: Entrenched Poverty or Decent Jobs for Garment Workers?” Oxfam, 9 December, 2015. <http://www.burmapartnership.org/2015/12/entrenched-poverty-or-decent-jobs-for-garment-workers/> (accessed 14 July, 2016).

144. Female garment factory worker, interview with field researcher, Indagaw, April 2016.

145. Female garment factory worker, interview with field researcher, Indagaw, April 2016.

146. Female garment factory worker, interview with field researcher, North Okkalapa, March 2016.

A worker in Pathein noted that since the minimum wage;

If workers make a mistake while, e.g., sewing, they are also fined in accordance with the seriousness of their mistakes. In fact, to me, I feel like as there is no positive change at all after the minimum wage policy.¹⁴⁷

In Mingalardon, a worker talked of the impact this policy had on lunch breaks;

There are many negative changes that occurred after the minimum wage policy was put into practice. For example, there is no more bonus, no more financial support for healthcare, and we are forced to increase our working performance which is beyond our potential.¹⁴⁸

The pressure from global markets for the Myanmar garment industry is such that despite the introduction of the minimum wage, working conditions do not necessarily improve. While the cost that Myanmar factories sell products for remains the same, factory owners have a higher basic wage to deal with, and therefore squeeze productivity by imposing and implementing stricter regulations and rules at the workplace, transferring that pressure to the workers.

Reduced Bonuses and Benefits

Over half of those workers interviewed who expressed negative effects of the minimum wage policy highlighted the loss of bonuses and benefits as a negative impact. For example, a worker in Pathein reported;

After the minimum wage policy, it is true that the amount of salary increased to some extent, about 30,000MMK. But the problem behind this is that in turn, there have been demands of more work too. Moreover, some bonuses of punctuality/regularity or labor quality skills, rewards and perks and the payments for the fees of transportation previously provided have also been terminated as a result of the policy.¹⁴⁹

Or as this worker in Mingalardon stated;

After the minimum wage policy, there have been countless bad things. Many people [workers] are not happy and satisfied with it as their opportunities and some payments previously provided are cancelled or terminated.¹⁵⁰

This reduction of bonuses and other incentive payments – which are not stipulated by law so factory owners are able to easily remove them – is a predictable response to the introduction of the minimum wage. Yet despite many workers missing out on their previous payments, this change in policy also loosens the control that the employer has over the workers.

147. Female garment factory worker, interview with field researcher, Pathein, March 2016.

148. Female garment factory worker, interview with field researcher, Mingalardon, March 2016.

149. Male garment factory worker, interview with field researcher, Pathein, March 2016.

150. Female garment factory worker, interview with field researcher, Mingalardon, March 2016.

Previously, a complex system of bonuses, overtime and benefits, which were docked easily and arbitrarily, coupled with a very low average basic wage, gave workers little choice but to work long hours with no recourse. While this situation still exists to some extent, for example the disproportionate cut in salary if a day off is taken, or being coerced to work overtime, the legal right to a minimum wage does give workers a degree of certainty and control over their monthly salary.

Commensurate with Living Costs?

For many workers, the introduction of the minimum wage, and the rise in the average monthly wage for a worker in the garment industry and the manufacturing industry as a whole, is not commensurate with a living wage. Workers still struggle to make ends meet just as they did in the years before the minimum wage was implemented due to the rises in inflation and commodity prices. As this worker from Hlaingtharyar stated in regards to the minimum wage;

I feel like as there is no positive change at all even though it is true that the salary has increased to some extent. The problem with this is that the price of commodities I consume has increased and the demands on our labor have also increased.¹⁵¹

Box Seven: Rising Cost of Living and Inflation

Since the economy began to liberalize rapidly at the onset of the President U Thein Sein Government, GDP has been increasing at the fastest rate in the region – 8.5% according to the International Monetary Fund¹ although Myanmar’s Central Bank put the figure higher, at 12%,² and foreign direct investment has been flowing in, resulting in a real estate boom and high rates of urbanization. Yet these rapid structural changes to the economy have created very high rates of inflation. While many garment factory workers have experienced an increase in wages since the introduction of the minimum wage, it must also be noted that inflation and the cost of living, including property rental and commodities have also been steadily rising, in effect nullifying the increase in wages. For example, one of the highest paid workers interviewed (about 250,000MMK per month), who had been working in a factory in South Dagon for 6 years, reported that she could barely support her family because of the increasing costs of living and commodities.³

1. “IMF forecasts strong growth despite signs of overheating,” Frontier Myanmar, 24 September, 2015. <http://frontiermyanmar.net/en/business/imf-forecasts-strong-growth-signs-overheating> (accessed 14 July, 2016).

2. Kyaw Hsu Mon, “Inflation Reaches 12%, Alarming Business Leaders,” The Irrawaddy, 23 August, 2016. <http://www.irrawaddy.com/business/inflation-reaches-12-percent-alarming-business-leaders.html> (accessed 2 September, 2016).

3. Female garment factory worker, interview with field researcher, South Dagon, March 2016.

151. Female garment factory worker, interview with field researcher, Hlaingtharyar, April 2016.

Another Hlaingtharyar worker concurred;

“

*After the minimum wage policy, it is true that superficially the amount of salary has been increased to some extent. But in terms of value, it does not increase at all as the price of living and commodities increase over time.*¹⁵²

”

Thus, some workers feel the need to work overtime hours that are available in order to meet the minimum needs of themselves and their families.

Different Pay-scales

There also were reports of a levelling out of pay-scales as regards to skill levels, meaning that some workers actually had their basic pay reduced as factories adjusted and took away



Around 400 workers from Myanmar Soe San Win shoe factory protest to demand better wages and a safer working place
Copyright: *Let's Help Each Other*

152. Female garment factory worker, interview with field researcher, Hlaingtharyar, April 2016.

certain pay grades from skilled workers. Thus in practical terms, the minimum wage amount - 3,600MMK - is widely used as the maximum pay. For example, a worker in Indagaw explained how 25,000MMK was paid to skilled workers each month, and this has been reduced to 5,000MMK.¹⁵³ A worker in Shwepaukkan talked of the negative impacts of the minimum wage policy in this regard;

*After the implementation of the minimum wage policy, there have been bad and negative changes to workers in that they are repositioned and their grade-levels are shifted from top to down.*¹⁵⁴

This has also impacted some experienced workers, as reported by a worker in Bago;

*I feel sorry for the seniors who have been working for so long. All their incentives are taken away. One of my senior co-workers, she has been working for 15 years. Juniors like me get at least 170,000 Kyats [MMK] per month, and she gets only 180,000 Kyats [MMK] per month which is not very different from us.*¹⁵⁵

The provisions in the Minimum Wage Law state that employers can employ workers on an initial 1,800MMK per day internship rate for the first three months of employment, followed by a period of three months at 2,700MMK per day probation rate. Some factory owners are exploiting these provisions. For some workers, this applies to when they first start the job, but there were also cases of workers being fired and rehired after the policy was implemented, only to start on a lower wage. A worker in Pathein explained how they were fired and told to re-apply for their own job by the factory owner so that they could be paid on the lower internship wage;

*You will only earn 1,800 Kyat [MMK] for daily wages whether you are a new or a former employee. For example you will only get 1,800 Kyat [MMK] when you re-apply for your job even though you were there only 3 or 4 days ago [earning 3,600MMK per day]. You will not earn 3,600 Kyat [MMK] per day [after re-applying the job].*¹⁵⁶

5.4 Trade Unions and Labor Dispute Settlements

From the perspective of the workers and their relationship with labor organizations and trade unions, two major issues stand out. One is that only 33% of garment factory workers interviewed stated that a trade union existed in their factory and secondly, for those who do know of the unions' existence, many are not a member. A total of 8% of the workers interviewed stated that they are a member of a trade union. This low rate of membership is for various reasons, including threats and intimidation from factory owners, low awareness of trade unions, and the existence of employer established or dominated trade unions.

153. Female garment factory worker, interview with field researcher, Indagaw, April 2016.

154. Female garment factory worker, interview with field researcher, Shwepaukkan, March 2016.

155. Female garment factory worker, interview with field researcher, Bago, March 2016.

156. Female garment factory worker, interview with field researcher, Pathein, March 2016.

Box Eight: Union Persecution

At one factory, from which various workers were interviewed, supervisors and management was reported to be abusive and insulting, yet a resulting trade union action was not successful due to persecution of union members by the factory owner. This factory in Bago had many problems with the Chinese management. When the factory owner instructed workers to complete tasks, she pointed at things with her feet, rather than her hands, a particularly offensive insult in Myanmar culture. When workers complained about this through the interpreter the owner said Myanmar people are beggars and that they can feed themselves only because they (the Chinese) were here. The workers, via telephone, informed labor authorities who came to the factory, whereby the factory owner signed a warning in recognition that she can't treat the workers in this way.¹

A union was established in this factory, and when labor authorities also informed the owner of the existence of this union, a supervisor replied that "that [*the union*] is nothing, nonsense, we don't need that because the owner is good to workers."² However, after the union was established, the owner began to investigate who were members and fired anyone they suspected of being part of the newly established union. For example, two workers [*who were union members*] in the packing department, after being insulted, told the owner that they would bring their case to the labor authorities. They were immediately fired.³

1. Female garment factory worker, interview with field researcher, Bago, March 2016.

2. Male garment factory worker, interview with field researcher, Bago, March 2016.

3. Male garment factory worker, interview with field researcher, Bago, March 2016.

Threats and Intimidation of Union Members

Many workers feel threatened and intimidated by their employers if they join a trade union. Of interviewees who were aware of unions, 22% felt it was unsafe to become a member. A worker from Hlaingtharyar who was not a member of a trade union explained that he did not join as it was "unsafe" due to other union members being fired because they joined the union and engaged in protests against working conditions.¹⁵⁷ The fear of being laid off and being threatened with dismissal from factory owners due to trade union membership was the most oft-cited reason for deeming membership unsafe. Yet by not allowing trade unions in factories, factory owners are in violation of national legislation, specifically the Labour Organization Law that gives the right to workers to form and join trade unions. A worker in Bago explained;

157. Female garment factory worker, interview with field researcher, Hlaingtharyar, March 2016.

“

*In this factory, there is a secret trade union and it is quietly organized. I am a part of it. Founding a trade union is not allowed or permitted [in this factory]. If the participants, including me, are found out by the owners of the factory, all of us will be immediately laid off. Before, there have been many workers laid off because of this issue.*¹⁵⁸

”

Another worker from Mingalardon stated they were warned against joining the union by the factory owner, and were told by the owner that;

*They [the workers] are already protected.*¹⁵⁹

In some cases this contributed to the dissolution of the union as this worker in Pathein noted;

*There is no more trade union in this factory anymore. This is because of the threats and intimidation posed by the factory.*¹⁶⁰

A union leader also reported a particularly troubling case of workers being threatened by gangs to leave the factory as the workers were engaged in a protest for better wages.¹⁶¹ This echoes the use of violent dispersal techniques on striking workers at Costec and Ford Glory factories in March 2015, as outlined in Section Four. A lawyer who works on labor dispute cases expanded on this issue;

*The use of thugs is very common but there is no action from law enforcement so it becomes a semi-official way of dealing with things. Whoever is working on labor and land issues has to face that kind of danger. Even when we try to submit or open a case with the police about this, they are not accepted, but in return, it is very easy to send us to jail.*¹⁶²

Despite these threats, some workers continue to be members of unions. For example a worker in Mingalardon stated;

*Yes, I know and I am now a member of it [union] but I just keep my profile low because there are some problems or threats that can put me into big trouble as a result of being a member of a trade union.*¹⁶³

158. Male garment factory worker, interview with field researcher, Bago, March 2016.

159. Female garment factory worker, interview with field researcher, Mingalardon, March 2016.

160. Female garment factory worker, interview with field researcher, Pathein, March 2016.

161. Chairperson of factory level trade union, interview with field researcher, Yangon, March 2016.

162. Labor lawyer, interview with field researcher, Yangon, March 2016.

163. Female garment factory worker, interview with field researcher, Mingalardon, March 2016.

Box Nine: A Trade Union Success Story

A GFA signed between the global union, IndustriALL and the Swedish brand, H&M in November 2015 bore fruit in an industrial dispute at the Jiale Fashion factory in Yangon, one of the factories that H&M sources from. Eight union leaders were fired in October 2015, and IndustriALL's local affiliate, the Confederation of Trade Unions Myanmar (CTUM), reported this case to IndustriALL's regional office, which in turn raised the issue with H&M's 'Sustainability' department. The GFA was invoked and after negotiations, an agreement was reached whereby the dismissed union leaders were reinstated and the factory recognized the legitimacy of the factory-level trade union.¹

1. "Agreement with H&M proves instrumental in resolving conflicts," IndustriALL, 1 July, 2016. <http://www.industrialunion.org/agreement-with-hm-proves-instrumental-in-resolving-conflicts-0> (accessed 18 July, 2016).

Another worker from Mingalardon stated that she didn't believe she would be terminated for joining a union but thought that the factory management would still try to deter her from joining;

“

*I can be threatened and deterred by my factory if I happen to join it [union] but I am not afraid of it. I know what my rights are. It is never possible for them to lay off workers if we happen to join the trade union, and they know it. But there are some other techniques of threat or deterrence posed on workers in order to prevent them from joining the trade union.*¹⁶⁴

”

Yet despite the threats and low membership, there are cases where trade unions have been able to be effective. A worker from Hlaingtharyar reported that abuse by supervisors and strict toilet monitoring became better after the workers, who were part of a union in the factory, demanded a betterment of this situation.¹⁶⁵ A trade union leader pointed out that at her factory, workers did not know that maternity leave was six weeks before and eight weeks after childbirth, as stipulated by the law. Since the union was established, workers in that factory are aware of this right.¹⁶⁶

Employer Controlled Unions

13% of workers who stated that there was a union at their factory reported that the union was in fact an employer controlled or established union. For example, one worker in Shwepaukkan stated;

164. Female garment factory worker, interview with field researcher, Mingalardon, March 2016.

165. Female garment factory worker, interview with field researcher, Hlaingtharyar, April 2016.

166. Chairperson of factory level trade union, interview with field researcher, Yangon, March 2016.

*In this factory, there is a trade union, but it does not really work because most of the top members of the organization are from top positions such as supervisors, managers and leaders.*¹⁶⁷

A worker from Pathein concurred;

*In this factory, there is a trade union, but I am not a part of it because it does not stand for the workers, instead it stands for the owners of the factory. This is because the labor organization is created by the owners of the factory, not by workers.*¹⁶⁸

As a worker in Indagaw put it simply;

*The labor union is just a fake organization.*¹⁶⁹

By controlling the unions and having allies in the workplace coordinating committee, factory owners and managers can control industrial disputes much more easily while also being able to show that their factory does in fact have a workers organization, however superficial it is.

Low Awareness of Trade Unions and Labor Rights

A third of the respondents (35%) were not even aware of whether there was a union or not. One of the most typical answers to being asked if there is a union at the factory and whether they are a member is this;

*I am not a part of a trade union. I do not even know what it is. In my factory, I do not see any of my co-workers joining this either.*¹⁷⁰

Trade unionism in Myanmar is still emerging from decades of suppression, and many workers feel that it is not their place to join a union. As one member of a trade union federation with over 10,000 members explained;

*Some workers have a mind-set that the union is not their business and they will get benefits when other people make the changes so they don't necessarily need to join a union. They don't want to get into trouble.*¹⁷¹

Frustration was echoed by another unionist;

*The law allows us to form a union, but the employers do not allow the workers to do it in some factories because they are afraid that the workers will know more about their rights and how to ask for their rights.*¹⁷²

167. Female garment factory worker, interview with field researcher, Shwepaukkan, March 2016.

168. Female garment factory worker, interview with field researcher, Pathein, March 2016.

169. Female garment factory worker, interview with field researcher, Indagaw, March 2016.

170. Female garment factory worker, interview with field researcher, Shwepyithar, March 2016.

171. Vice-chairperson of a labor federation based in Yangon, interview with field researcher, Yangon, March 2016.

172. Union leader and member of a confederation of unions, interview with field researcher, Yangon, March 2016.

Legal Obstructions, Dispute Resolution Bodies and a Fractured Labor Movement

The fear that workers have regarding the decision to join a trade union will continue as certain factory owners threaten, intimidate and apply pressure on their employees. Freedom of association is a universally recognized basic human right, and the right to join a trade union should not be obstructed in any way. This is directly related to weaknesses in domestic legislation, in that factory owners who fire union leaders or members are not adequately punished. According to the Labour Organization Law, an employer can face a prison term of one year for firing workers for their membership of a trade union or labor organization, but in practice, despite many reports of workers being terminated for this very reason, authorities have never taken this action against the employers.

One of the biggest problems with the Settlement of Labour Dispute Law that establishes the arbitration bodies and the Arbitration Council is that it does not ensure good faith bargaining and makes it easy for employers to do as they like, regardless of the decisions made by the relevant body during dispute resolution. If an employer reneges on an arbitration body or Arbitration Council decision, a fine (1,000,000MMK) is not enough to deter them from persecuting unionists or to encourage them to engage in good-faith bargaining. Unionists and labor rights activists consistently believed that this is a huge detriment to industrial relations. As one member of a labor federation stated quite simply;

*Since the law [Settlement of Labour Dispute Law] is not strong enough, the arbitration bodies and council are not effective.*¹⁷³

A lawyer who works on labor rights also pointed out this huge flaw in the law;

*The settlement of labor dispute law is not binding. It doesn't have punishment. There is the fine, but for workers, it is better for them to take compensation from factory owners rather than taking the case to the council which fines the owner 1,000,000 Kyat [MMK] because workers don't get anything since the fine goes into the government budget. So workers distrust the council.*¹⁷⁴

There is a lack of trust in the dispute resolution system as allegations of both pro-worker and pro-employer bias have been lodged at the Arbitration Council.¹⁷⁵ Some unions and labor activists feel that the Arbitration Council and arbitration bodies often side with employers. For example, one union leader stated;

*I hear that the arbitration body is not effective at solving the problem. There is some corruption there. I also hear they make decisions that are favorable to employers.*¹⁷⁶

173. Vice-chairperson of a labor federation based in Yangon, interview with field researcher, Yangon, March 2016.

174. Labor lawyer, interview with field researcher, Yangon, March 2016.

175. Noe Noe Aung, "Workers strike over wage demands," The Myanmar Times, 17-23 June, 2013. <http://www.mmmtimes.com/index.php/national-news/yangon/7150-thousands-of-workers-protest-in-hlaing-tharyar.html> (accessed 14 July, 2016)

176. Chairperson of factory level trade union, interview with field researcher, Yangon, March 2016.

A representative from a labor rights group concurred;

*For the Arbitration Council, they try to do their best according to my experience of sending the case to them. At the same time, there are also some weaknesses in their work and decision-making. For example, decisions are favorable to the employers and try to get the workers to compromise.*¹⁷⁷

An article in *The Myanmar Times*¹⁷⁸ published not long after the introduction of the minimum wage also highlighted the distrust in the dispute resolution bodies. In a case at the Asia Rose garment factory in September 2015, 196 workers were fired without warning as the new minimum wage came into force and the factory was trying to reduce costs. The dismissals were disputed and after the case reached the Yangon Region Arbitration Body, the factory was ordered to rehire just seven workers. A member of the Asia Rose factory union stated at the time that the workers did not trust the body and it was simply not worth pursuing the case up to the Arbitration Council. Further, the Arbitration Council itself does not include any member of a garment factory union among its five labor representatives.¹⁷⁹ One union leader who is also part of a confederation went as far as calling for the dissolution of the Arbitration Council;

*The Arbitration Council will decide on the dispute. Sometimes it is fair; sometimes it is not. After a decision was made we reviewed it and saw the weakness and ineffectiveness of the council. Thus we even tried asking to dissolve the council by holding a press conference.*¹⁸⁰

However, Arbitration Council members reject the allegations of bias towards employers, stating that they do in fact side with the workers when they can.¹⁸¹

There is also tension with certain federations of unions, with some stakeholders lacking confidence that the federations truly understand the real situation of the workers. A lawyer working on labor issues elaborated;

*Last year, when the minimum wage issue was discussed, those federation leaders agreed on 3,600 Kyat [MMK] even though the need from workers was 4,000 Kyat [MMK]. They met with Ministry of Labor officials and did the negotiation without actually representing workers.*¹⁸²

177. Labor rights organization representative, interview with field researcher, Yangon, March 2016.

178. Zaw Zaw Htwe and Laignee Barron, "Factory owners weary of the arbitration council," *The Myanmar Times*, 25 September, 2015. <http://www.mmmtimes.com/index.php/national-news/16690-factory-workers-weary-of-the-arbitration-council.html> (accessed 14 July, 2016).

179. Zaw Zaw Htwe and Laignee Barron, "Factory owners weary of the arbitration council," *The Myanmar Times*, 25 September, 2015. <http://www.mmmtimes.com/index.php/national-news/16690-factory-workers-weary-of-the-arbitration-council.html> (accessed 14 July, 2016).

180. Union leader and member of a confederation of unions, interview with field researcher, Yangon, March 2016.

181. Arbitration Council member, interview with field researcher, Yangon, March 2016.

182. Labor lawyer, interview with field researcher, Yangon, March 2016.

Box Ten: Factory Pressures

While the focus of this report is from the workers perspective, the pressures and challenges that factory owners experienced directly affects the working conditions and labor rights of workers. From interviews with the private sector, the most pressing problems for garment factory owners include:

- **Shortage of Electricity** - Although the situation is improving, power-outs still occur regularly;
- **Corruption** – Need to bribe local officials from municipal, labor, transportation, port, electricity and other authorities on a regular basis;
- **Rental Fees** – As inflation rises, the property boom raises the costs of renting space for a factory;
- **Minimum Wage** – Need to increase productivity since wage increases for most workers have left many factories with more expenditures;
- **Currency Fluctuations** – The MMK has been unstable for the past three years, creating an inconsistency in pricing when purchasing raw materials;
- **Importing Raw Materials** – As long as Myanmar’s garment industry continues with the CMT model, the cost of importing raw materials, for example from China, restricts growth;
- **Need for Skilled Labor** – Technical assistance and the availability of skilled seamstresses;
- **Pressure From Buyers** – In the world of ‘fast fashion’ production times are getting shorter and the demand for cheap clothing is getting greater, putting pressure on factories from buyers;
- **Poor Transportation Links** – Access to a deep seaport is inaccessible, the rail system is outdated and road links are poor.

This is complicated by rival federations competing for legitimacy, which was evident at the Labour Organisation Leaders’ Forum held in 2013 to choose a delegate to the ILO’s ILC that year in Geneva. The forum was tense, with the Federation of Trade Unions of Myanmar threatening to pull out at one point during negotiations.¹⁸³ Analyzing the conference, Ross Wilson, who established the ILO’s Freedom of Association Project in Myanmar, noted that despite the eventual nomination of a delegate for the ILC through a democratic process, there was “some suspicion about hidden agendas and tension around the process for election” of the delegate.¹⁸⁴ In the end, a farmers’ representative was chosen as the delegate.

Another example regarding this competition for legitimacy and its detrimental effects on the labor movement was provided by a long time labor activist;

183. Ross Wilson, “The New Union Movement in Myanmar,” Global Labour Column, Number 149. September 2013. The Federation of Trade Unions of Myanmar became the Confederation of Trade Unions of Myanmar in July 2015..

184. Ross Wilson, “The New Union Movement in Myanmar,” Global Labour Column, Number 149. September 2013.



Workers demanding better wages at Nay Min Aung garment factory, Hlaingtharyar Industrial Zone 4
Copyright: Let's Help Each Other

A good example is the Taiyi Garment Factory Trade Union in Hlaingtharyar. Taiyi has 3,000 workers who are part of a trade union. Most of the workers are members of the union. They are vigorous and strong so other labor organizations such as xx, xx,¹⁸⁵ and others try to persuade them to become part of them. Now they got divided into two, and then into four. Some went to xx and some went to others.¹⁸⁶

Corruption

As outlined above, faith in arbitration bodies and the Arbitration Council remains low. Three reports of 'envelopes' given to Government officials by factory owners were stated by key stakeholders. In these cases township or other Government officials who sit on the various levels of dispute resolution bodies do not have enough budget to travel to and from locations where there are disputes. Factory owners, however, provide envelopes with money

185. Names of federations involved deleted by the author.

186. Labor rights activist, interview with field researcher, Yangon, February 2016.

inside for their 'taxi fare,' yet no one knows exactly how much is in these envelopes. One labor rights activist stated;

*Once the labor office officials came to check the factory, they were not even allowed to enter, and left with envelopes in their hands.*¹⁸⁷

The same labor rights activist reported another case, where labor officials came to negotiate between the factory owner and the workers. In the middle of negotiations, the factory owners stood up and said that they couldn't do this anymore. According to the labor activists, from the reaction of the labor officials, who "just went quiet," it was clear that;

*The employer has influence over the government labor office.*¹⁸⁸

A Future Labor Movement?

Despite the low awareness, low membership, the presence of employer established or dominated unions and the fear and intimidation used in certain factories against unions, there was a determination on the part of some workers to work for their rights. For example, a factory worker from Bago, who wants to better the workers' rights situation, but reports that as of yet there is no trade union in her factory;

*For the improvement of the working conditions in the factory, I have a very strong feeling to do it even though I do not know what I should do. Some people [workers] are reluctant to make changes in the factory because they are afraid of being laid off if they make mistakes. For me, I am not. I strongly believe that workers should be fairly and equally treated and paid in regards to working overtime and pressure.*¹⁸⁹

Yet it is not only external factors such as weaknesses in enforcing Arbitration Council and arbitration body decisions, threats and intimidation by employers and a lack of awareness of labor rights on the part of workers that makes a labor movement more difficult. The labor movement and the trade union landscape itself still need to unite and come together with a strong and cohesive voice.

187. Labor rights organization representative, interview with field researcher, Yangon, March 2016.

188. Labor rights organization representative, interview with field researcher, Yangon, March 2016.

189. Female garment factory worker, interview with field researcher, Bago, March 2016.

Section Six: Raising the Bottom?

Structural Pressures

It is clear that Myanmar has a long way to go in relation to decent working conditions in which negotiations entered in good faith solve industrial disputes in a fair and equitable manner. This is not to say that *all* factories in Myanmar are unethical and are abusing labor rights, but there are too many. As one western brand that recently started sourcing garments from Myanmar stated;

*For every unethical manufacturer there is an equal or more unethical buyer. There is no shortage of them.*¹⁹⁰

There are various reasons behind workers continuing to work long hours in poor working conditions, being forced or pressured to do overtime, and not taking a day off for any reason. Pressure on the factory owners to complete orders means that they feel they must have the workers at their disposal at any time. In a highly competitive industry, not just in Myanmar, but regionally and internationally, unethical buyers often look for the cheapest way to source garments in order to feed the 'fast fashion' preferences of consumers. Consequently, factory owners attempt to increase their advantage over other factories through shorter finishing times for orders. Therefore, when there is a big order, supervisors feel the pressure from the factory owners, which, in turn, shifts to the workers. The result is that factories cut corners, not giving their workers a choice but to work the hours needed to fulfil the said order. For example, this worker in Mingalardon explained;

*If I do not finish my daily-assigned work (let's say I am assigned to produce 15 pieces of cloth) between 7:30 am – 5:30 pm, I cannot go home, I have to accept and continue to work overtime right away even without my consent.*¹⁹¹

Further, an over-supplied workforce means that pressure is placed on workers to ensure they can maintain their employment. With migration to Yangon and its industrial zones increasing year on year, especially since reforms began in 2011, there is a steady supply of labor ready to fill any positions that are vacated. Natural disasters such as Cyclone Nargis, the increasing number of farmers losing their livelihoods due to land grabs for infrastructure projects, agribusiness and natural resource extraction, and the subsequent lack of job opportunities are contributing factors to this rural-urban migration. Capital is in a favorable position compared to labor in regards to mobility as seen in the potential disinvestment in production

¹⁹⁰. Western investor, interview with field researcher, Yangon, March 2016.

¹⁹¹. Female garment factory worker, interview with field researcher, Mingalardon, March 2016.

bases deemed to be too expensive or where the labor force is more resistant. This is also seen in rural areas as capital-intensive farming in agribusiness is the dominant narrative of development policy over labor-intensive farming that Myanmar's rural population has traditionally used.

This steady supply of labor in industrial zones is what can be called 'market labour controls,' in which "unfavourable labour market conditions discipline labour; strong worker organizing is curtailed because workers are afraid that active participation in a union may result in job loss and prolonged unemployment or underemployment."¹⁹² Thus, many workers acquiesce to employers' demands rather than resist, whether individually or through collective action, because they feel pressure not to lose their job at any costs. This is understood by the NLD labor committee, whose representative sympathized;

*The majority of workers come from Rakhine and Irrawaddy due to the loss of livelihood. The natural disasters, Cyclone Giri and Cyclone Nargis, destroyed the majority of their farmlands due to the salt water on their land, so internal migration happened. They cannot lose their jobs, no matter what.*¹⁹³

The labor movement in Myanmar is still in its infancy with low trade union membership. As outlined in section 5.4, membership of trade unions is very low, whether through lack of awareness of such a union or low awareness of labor rights more generally. The intimidation from owners or management of joining labor organizations and trade unions, whether through the threat or in some cases arrest, is also an issue. Hence, the demands not to be forced to work overtime, for better working conditions or to be a member of a trade union face difficult obstacles.

The importance of a strong labor movement to advocate and negotiate for the betterment of these conditions is thus huge. As one worker from Bago stated;

*For the improvement of working conditions in the factory, I think this issue has to be improved, enhanced and enriched by collective action with all the workers. No individual worker can try to improve the condition of working in the factory.*¹⁹⁴

A labor movement's strength is in its numbers and solidarity. As one labor activist stated;

192. Mark Anner, "Worker Resistance in Global Supply Chains," *International Journal of Labour Research*, Volume 7, Issue 1-2 (2015): p.18.

193. NLD Labor Committee Member, interview with field researcher, Yangon, March 2016.

194. Female garment factory worker, interview with field researcher, Bago, March 2016.



*The employer has money, the Government has authority, and we have our mouths. Therefore we need to collect our mouths together and work together as much as we can to speak out and demand what we want for the workers.*¹⁹⁵



It is therefore vital that labor organizations and trade unions work together for a common goal.

Conclusion

For the workers themselves in Myanmar's garment industry, the poor working conditions, the long hours and problems when attempting to organize are made even more difficult by the pressure on making ends meet as living costs rise, the pressure not to lose their job as the availability of replacement workers rises, and the fledgling power of the labor movement.

This is why it is important that legal and policy changes are undertaken to ensure that workers are not abused and are able to enjoy their rights. This includes changing domestic legislation, including effective enforcement mechanisms, to protect the rights of workers. The ILO's standards and Conventions, while providing guidance and ostensibly legally binding, still have limitations in their implementation. While an abusive factory owner in Myanmar may not envisage direct ILO involvement in its employment practices, if that factory owner is breaking a national law that enshrines the principles and standards of ILO Conventions, this *is* effective. A potential prison sentence is much more persuasive than abstract and perceived non-applicable concepts such as ILO Conventions. Yet currently, the legal framework is not strong enough to protect workers from abuses that they often face. This includes the long working hours, the constant pressure and abuse from owners, managers and supervisors to complete orders, the sexual harassment faced by women as they walk home late at night after finishing an 11 hour shift, strict toilet breaks or the threats of being laid off if they join a trade union.

While global framework agreements (GFAs), agreed upon by buyers and global trade unions, can have a positive impact on the buyers that sign GFAs and the subsequent factories that they source from (see Box Nine: A Union Success Story), they are ultimately voluntary. One company may promote labor rights and decent working conditions through such an agreement but this does not necessarily compel another company to sign and comply with the same agreement and the labor standards outlined in it.

Some brands make the 'business case' for the adherence to internationally recognized labor standards and fundamental human rights. In this argument, productivity increases, absenteeism is reduced, higher health and safety standards mean less costly accidents, and

¹⁹⁵. Vice-chairperson of a labor federation based in Yangon, interview with field researcher, Yangon, March 2016.



Employees of the Tai Yi shoe factory camp out in Yangon's Hlaingtharyar Township demanding higher wages, 19 February, 2015
Copyright: *The Irrawaddy*

workers are more likely to stay longer in a job, thus improving their own skills and the quality of the product as well as management enjoying a low staff turnover. Furthermore, particularly in the 'Global North,' brands are coming under more scrutiny regarding ethical and sustainable procedures and policies. They are not immune to boycotts and public criticism due to unethical sourcing practices, which damage their profit margins.

Yet labor rights should not be treated as a commodity as part of a cost-benefit analysis exercise for brands in which the major objective is profit. Some companies see the benefits of labor standards, but for many more, the 'business case' does not work. Labor rights are human rights; they are outlined in various international declarations and covenants, and agreed upon by states, including Myanmar, through UN bodies and procedures. The purpose of these standards is not profit; it is protection of fundamental rights and freedoms of all, including those of workers throughout the world. This should be the reason for better national-level reforms to labor policy and legislation aimed at bettering working conditions and protecting the rights of workers, including freedom of association and assembly, in Myanmar's garment sector.

It is important, in the context of a highly competitive industry, to also acknowledge the structural pressures that factories face in order to maintain profitability and existence, pres-

asures that are then transferred to the workers. This should not be a ‘get-out’ clause or a reason for factories to avoid responsibility but a realistic assessment of the global nature of the garment industry. If Myanmar becomes too expensive to source from, buyers and investors will simply move to a cheaper production base. A ‘race to the bottom’ occurs when production bases continue to cut corners at the expense of their workforces to reduce costs and therefore attract orders. It is important that the problems and solutions in protecting labor rights in Myanmar’s garment industry are analyzed with a regional and international understanding of the structural pressures on labor and the growing mobility of capital versus labor. Capital can move easily from production base to production base in the Asia region looking for cheaper production costs and lesser-organized or more restricted labor movements. To resist this, avenues for exploration such as solidarities between labor movements – say between Cambodia, Vietnam and Myanmar – provide the potential to collectively raise labor standards in the Asia region, combatting a race to the bottom and actually ‘raising the bottom.’

Domestically, structural pressures on the labor market must also be addressed, and this includes addressing the increasing size of the labor pool created by unsustainable rural policies that prioritize capital over labor. This must involve securing land tenure for farmers who have tilled their land for generations but are now becoming landless due to land confiscations, or the reduced employment opportunities due to large scale agribusiness and monocrop plantations.

By bringing labor standards and policies in line with internationally recognized human rights and labor standards, Myanmar can provide an example of an ethical, sustainable garment industry, which will grow and be a role model for the global garment industry, as well as for manufacturing and other industries throughout the country. With the garment industry growing exponentially, and huge potential investment from companies that are at least publicly committed to high labor standards, coupled with a new Government elected on a wave of public support and espousing the discourse of democracy, there is an obligation on those stakeholders for Myanmar to become this model. Yet labor is one component of a larger model of a sustainable development path that must prioritize people over profit, one that attempts to address both domestic structural pressures on rural communities as well as the inequities of integration into global markets. This involves listening to, working with and empowering the people on the ground in Myanmar, who bear the brunt of these inequities, many of whom have been marginalized by state power for decades and are now at risk of being marginalized by market power.

Recommendations

To the ILO:

- Open a country office under the regional office in Bangkok to assist putting legislation and practices in line with ILO Conventions, upgrading from the current liaison office;
- Engage and cooperate with independent, grassroots labor rights organizations and trade unions, including trade unions that operate at factory level;
- Ensure complaint procedures are easily accessible, in local languages, and provide assistance where necessary;
- Support training and capacity building to trade unions on negotiating skills and values;
- Allocate more resources into labor rights awareness training for factory owners, labor organizations, trade unions, and workers;
- Continue to send direct requests from the CEACR to the Myanmar Government on the application of the provisions in Convention 87; and
- Call on the Government to:
 - Sign remaining ILO Core Conventions, in particular Convention 98;
 - Bring its labor laws in compliance with Convention 87 and the principles of collective bargaining;
 - Ratify the ICESCR and ICCPR.

To the Myanmar Government:

- Ratify remaining ILO Core Conventions, in particular, Convention 98;
- Ratify the ICESCR and the ICCPR;
- Submit a response to the ILO's direct request from the CEACR on Convention 87;
- Continuously monitor the minimum wage implementation to ensure that employers follow the law and that it is in line with 'living wage' and inflation;
- Promote and provide space and protection for independent trade unions to form, organize and operate;
- Engage with independent, grassroots labor organizations and trade unions to learn the true situation in factories;
- Amend sections of the Peaceful Assembly Law to remove criminal penalties for peaceful protest;
- Amend problematic sections of both the Labour Organization Law and the Settlement of Labour Dispute Law (outlined in Section Three) so they are in line with ILO Conventions and ensure good faith bargaining. In particular:
 - Amend the section of the Settlement of Labour Dispute law to include prison terms for those who do not abide by Arbitration Council decisions;

- Amend the Social Security Law so that employers pay full compensation to workers that are victims of workplace accidents, therefore pushing factory owners to ensure a safer working place;
- Ensure factory owners are providing social welfare cards to all eligible workers;
- Enforce Section 51 of the Labour Organization Law so that employers who dismiss workers due to union membership are imprisoned;
- Ensure that government labor offices throughout the country are adequately funded to fulfil their responsibilities to protect the rights of workers;
- Amend the Minimum Wage Law so the maximum time for employment on probationary wages is three months and paid at 75% of the minimum wage rather than the current situation where employers can pay three months intern wages at 50% of the minimum wage followed by three months of probation wages paid at 75% of the minimum wage;
- Enforce anti-corruption measures against government officials in all applicable departments and institutions related to labor that receive bribes;
- Introduce legislation or amend existing laws to include a stipulation that safe transportation to their homes is provided for those working overtime;
- Consult with trade unions and labor rights organizations in amending current labor laws and formulating new laws;
- Conduct regular, unannounced, and thorough factory inspections to ensure that factory owners are complying with all relevant health and safety legislation and that labor rights are protected; and
- Allocate enough funds for arbitration bodies to conduct their work fairly and impartially without being vulnerable to corruption.

To the Arbitration Council:

- Establish clear, transparent and inclusive procedures for elections of workers' representatives to arbitration bodies and the Arbitration Council;
- Elect a representative from the garment industry on to the national-level Arbitration Council; and
- Publicly announce all decisions of arbitration bodies and the Arbitration Council to ensure transparency and accountability.

To Trade Unions and Labor Rights Organizations:

- Continue to engage in industrial relations based on the values of good-faith bargaining;
- Continue to advocate with the Labor Ministry, parliamentarians and other relevant Government ministries for the ratification of key ILO conventions, especially Convention 98;
- Continue to submit comments to the ILO's CEACR on the implementation of Convention 87;
- Continue to file complaints of unionists being intimidated, physically threatened or other forms of persecution to the ILO's Committee on Freedom of Association;
- Cooperate with other unions and federations for a stronger, more united labor movement;
- Build linkages, solidarities and networks based on common objectives with farmers groups and environmental and land rights activists;

- Build linkages, solidarities and networks with other labor movements, trade unions and organizations in the Asia region in order to collectively 'raise the bottom';
- Continue to raise awareness on labor rights among workers in factories; and
- Actively promote women leadership of trade unions, federations, and labor rights organizations, especially as the garment industry workforce is over 90% female.

To National Civil Society Organizations and Networks:

- Engage and work with independent trade unions and labor rights activists through national advocacy networks and initiatives;
- In coordination with trade unions, incorporate labor issues into thematic work and advocacy, showing solidarity with the labor movement; and
- Build coalitions and networks that link labor rights with the overall model of development that Myanmar is pursuing.

To Factory Owners:

- Abide by all national labor legislation and decisions of arbitration bodies and Arbitration Council;
- Provide written contracts, in Myanmar language, that clearly explain the terms and conditions of work, including the benefits that workers are eligible for, whether by law or by factory policy as well as leave requirements;
- Ensure that payslips are in Myanmar language and provide a clear breakdown between their basic pay, overtime pay, and any benefits or bonus pay;
- Provide safe transportation for workers if they work overtime;
- Take appropriate health and safety measures, including adequate training for equipment and machinery, and sufficient fire extinguishers;
- Provide social welfare cards for all workers;
- Ensure that health clinics are adequately stocked with medical supplies and staffed by qualified medical staff;
- Give workers appropriate time for breaks and unrestricted access to toilet facilities without undue pressure;
- Give workers the choice regarding working overtime;
- Provide details of maternity leave rights for all workers;
- Allow workers taking sick leave to show the doctor's note and prescription on the day they go back to work rather than the current situation where they must show the doctor's note on the day they are sick;
- Recognize the legitimacy of trade unions, federations and labor rights organizations;
- Refrain from interfering with the functioning of these organizations and end all persecution, intimidation and threats to trade union members and leaders; and
- Provide training and skill development programs and opportunities for workers as well as supervisors.

To International Buyers and Investors:

- Ensure all business operations within Myanmar comply with relevant international human rights and labor standards, including ILO Conventions, the UN Guiding Principles on Business and Human Rights, and the OECD Guidelines on MNEs.
- Engage in due diligence before, during and after sourcing from factories in Myanmar;
- Make publicly available the names, addresses, contact information, and ownership details of all factories that products are sourced from;
- Consult with all stakeholders from the labor sector, including trade unions and labor rights organizations, on a regular basis;
- Promote and advocate for internationally recognized labor standards to the Government and factory owners; and
- Invest in skill development initiatives and programs to upgrade the skills of the workforce and therefore the quality of products, thus contributing to the development of a more productive and sustainable garment industry in Myanmar.

Acknowledgements

Progressive Voice would like to thank the garment factory workers who generously gave their limited time to participate in this research. One of the main objectives of this report is to benefit the workers themselves, and Progressive Voice will endeavor to ensure that the product of their time – this report - will be accessible for them to use to help amplify their voices. In addition, we hope that this report will benefit the government, the private sector and all other relevant stakeholders to better understand the needs of the workers and to collectively raise the bottom of labor standards in Myanmar’s garment industry. Progressive Voice is also indebted to the labor rights activists and organizations who facilitated this research and contributed their expert insights. The framing and analysis of this report necessitates a mention of appreciation to the specialists and experts who commented and gave detailed inputs. Finally, Progressive Voice would like to thank the funders of this project - Freedom House and the Swedish Burma Committee – whose generous support made this project possible.