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## Labour Laws in Myanmar

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### Introduction

Since 2011, Myanmar has been one of the main countries to draw international attention. Before that year, international news coverage on the country was mostly related to oppression and political turmoil caused by military dictatorship. However, after 2011, the reasons were quite different. Several political and legal reforms brought by the civilian-led government, although backed by the military group, have made a drastic shift of international climate towards the country. Still, there is cautious scepticism on the real intention of these reforms, which included releasing Aung San Suu Kyi from house arrest, and a massive number of political prisoners from prison, relaxing censorship and legalizing trade unions. All these changes were welcomed by international society and rewarded by cancellation of all actions implemented by mostly US and European countries. These reforms turned the country from a problematic country under military dictatorship to an attractive one for investment with natural resources and cheap labours. The reforms also brought about new dynamics in society: trade union legalization has had a big impact on workplace and led to mushrooming labour unions.

Together with government efforts to lure foreign investment through various measures including favourable legislation for foreign capital, foreign direct investment has increased dramatically in a short period. In order to secure an advantageous political position in the 2015 election against a prominent political rival, Aung San Suu Kyi, President Thein Sein has pushed liberal economic policies such as the Foreign Investment Law enacted in 2012 in the hope of getting positive outcomes such as increasing jobs and rapid economic growth in a short time.

The increasing number of companies boosted by foreign investment together with legalization of trade unions has brought the promulgation of labour organisations. More than 670 labour organisations have been registered in the 2 years since the implementation of the law (Wilson, 2013).

### Historical Background

The legal system of Myanmar is rooted in common law as other previous British colonial countries. However, the country is distinctive with common law tradition even before British colonization in 1884. The pre-colonial legal system was quite similar with that of UK: authorities functioning as legal courts; full uniformed legal professions titled *shene* for plain-

tiff and defendant with different colour of hats respectively; legal text called *dhammasat* and *Yazathat* based on Buddhism, which was dated back to twelve century; and training system for legal profession (Huxley, 2001). British colonial administration replaced all the existing legal system with exception regulating marriage, religion and succession [1] (Huxley, 1998). Traditional religious laws were applied to these areas according to the religions of parties, that is, Buddhist rules for Buddhists and Islamic rules for Muslims, etc.

Independence of the country in 1948 did not bring a big change at least in legal system which was in pursuit of minimum amount of decolonization (Huxley, 1998). However, the military coup in 1962 led by Ne Win changed all the landscapes of the state including those of courts. Under the name of building socialism along the Burmese way, the military junta brought a radical reform in legal system: the military government restructured legal system by making the judiciary a part of the executive and legislature of the one party state and by introducing “a system of people’s justice”. The governmental manual for the courts directed judges on where to (and where not to) find the law and stated that judges should not refer to any decisions from other countries nor earlier decisions from Burma’s courts. And the courts were operated by panels of three party members (normally laymen) with advice of ex-judges which was not necessary to be taken (Southalan, 2006). In 1988 along with the country’s re-orientation to market economy after economic debacle for a decade, the legal system returned to the previous one. Academics and legal practitioners in Myanmar have characterized their present legal system of Myanmar as a combination of common law [2] and civil law, which uses “the principles of common laws and implants them into the vehicle of codified laws and statutes”. The sources are customary laws from ancient times, statutes, directives of ministries and departmental notifications or instructions (Nyo Nyo Thinn, 2006: 388).

## **Labour Laws**

As many other laws introduced by the British colonial administration, most of the labour laws from colonial period have survived and been effective until recently. For instance, the Workers’ Compensation Act of 1923 was amended in 2005: Trade Disputes Act of 1929 along with the Trade Union Act of 1926 was reformed in 2012: and Payment of Wages Act of 1936 is still in effect. After independence in 1948, the country started to equip more labour laws such as Minimum Wage Act in 1949, Employment and Act in 1950, Factories Act in 1951, Leaves and Holiday Act in 1951, Shops and Establishments Act in 1951, and Social Security Act in 1954, etc., most of which are still in effect or in the process of reformation now.

While one of the main reasons of the legal stationary was political and economic stagnation since 1960s, the military government kept the laws as long as they served its benefits or issued orders and decrees to reinforce control over the country. The 1926 Trade Union Act gave a good example. The Act set an excessively high threshold required to establish a legally recognized trade union which was required to have 50 per cent of workers as members. The 1964 Law Defining the Fundamental Rights and Responsibilities of the People’s Workers stating the rights of workers has been criticized by ILO for imposing a single union system. Various orders and decrees were used to suppress people’s mobilization. Among these orders and decrees were the 1988 Order 2/88 on the Organisation for Building Law and Order in the State banning gathering more than 5 persons, and the 1988 Order 6/88 known as the Law on the Formation of Associations and Organisations requiring permission for any forms of organisations even including social clubs (International Trade Union Confederation, 2009). The Trade Union Act was one of the first laws to be repealed after the political reform in 2011 together with the Trade Disputes Act, which were replaced respectively by the Labour Organisation Law in 2011 and the Settlement of Labour Dispute Law in 2012. The 2008 Constitution provided legal base for these changes: Section 24

states that the union [of Myanmar] shall enact necessary laws to protect the right of workers: Section 354 stipulates that every citizen shall be at liberty in exercise of the following rights....to form associations and organisations [3] (Constitution of the Republic of the Union of Myanmar, 2008). In line with its open-up, the government has been working to repeal or amend the old labour laws covering working conditions and social security (Than Win, 2012).

#### *Leaves, Hours, and Wages*

**The Leave and Holidays Act** 1951 has been used as the basic framework for leaves with minor amendment in 2006. Workers are granted 14 public holidays (listed by the law) with full payment; full-paid 10 consecutive days of annual leave after 12 months of work with 20 working days in each month; 6 days of causal leaves each year with full payment which shall be used maximum for 3 days at one time; and 30 days of sick leave on medical certificate with full salary after 6-month service or without pay for workers employed for less than 6 months.

**Maternity leave** is provided to women workers covered by the Social Security Act 1954 for six weeks before and after the expected date of childbirth on the condition of 26 weeks of contribution before the benefit. A recent proposed draft of the new Social Security Act includes changes in maternity leaves such as: requirement of a minimum of one-year service and six-month contribution to the social insurance: 14 weeks of maternity leave and another four weeks of child care in the case of the twin delivery: 8-week adoption leave for adopting a child under one year old: and, 15-day parental leave to care for an infant delivered by an insured partner.

**Standard working hours**, regulated by the Factories Act 1951, are 8 hours per day and 44 hours per week, though with some variations by other laws such as 35 hours for government employees, 40 hours for underground mining workers and 48 hours for shops and service workers. 30-minute break should be given after 5 consecutive hours, which is counted as a part of working hours. Overtime payment is two times the normal wage.

**A new minimum wage law**, passed in March 2013, was replaced the 1949 Minimum Wage Act. The new law provides a framework for minimum wage determination: the presidential office establishing a tripartite minimum wage committee shall decide minimum wage with industrial variation based on a survey on living costs of workers possibly every two years. The Minimum Wage Law stipulates equal payment such as “employees, regardless of gender, have the right to be treated and compensated equally (article 14 (h))”, (Marla Bu et al., 2013) which is the first legalization in relation to discrimination in labour laws. The new minimum wage is not announced yet by November 2013, though the Ministry of Labour in 2012 set up as temporal minimum wage 56,000 kyat (US\$65) per month after serious disputes in garment factories. The **1936 Payment of Wages Act** stipulates the method of payment stating that the payment should be made in cash on a regular payday, and allows legal action against delayed payment or un-agreeable deduction.

#### *Dismissal and Severance Payment*

Although there is no legal regulation on termination and severance payment, the custom recommended and practiced by labour authorities is a package of one month notice and severance payment according to years of service: one month wage for more-than-3-month and less than one year service 2-month salary for 1~3 years of service: and 4-month payment for more than 3 years of service. However, it is not necessary to give a prior notice or severance in the cases of employee’s voluntary resignation or misconducts.

#### *Collective Bargaining and Union*

**The 2011 Labour Organisation Law** regulates collective industrial relations including trade unions, employers’ associations, collective actions and lockouts. The law us-

es industry/occupation and geographic categories such as: basic labour organisations at company level in same trade or activities; township labour organisations and regional or state labour organisations at township and regional level in same trade or activities; labour federation above in same trade or activities; and Myanmar labour confederation at national level. Labour organisations of all the levels should be legally registered with requirements such as: minimum 30 workers or 10% of workers in the case of smaller than 30-employee workplaces for basic labour organisation: minimum 10% of lower level organisations for township/ state and regional labour organisations and federations; and minimum 20% of all the federations for confederation. The law also allows for employers to organise in parallel structures.

Although the law states the rights of collective bargaining of the labour organisations, it does not mention the responsibility of employers on this matter. The law allows strikes for labour organisations but requires permission of labour federation in advance - 14 days for public utility service industry and 3 days for others. The law also allows employers' lockout but with permission of the relevant conciliation body at least 14 days in advance. However, both lockout and strike will be illegal in the essential service sectors such as water, electricity, health and telecommunication and even a non-essential service may become an essential service (article 41 (a)) depending on the situation. In addition, it bans strikes or lock-outs during the dispute settlement process, and prohibits dismissal of the members due to collective actions.

### *Dispute Resolution System*

The Settlement of Labour Dispute Law was promulgated in 2012 shortly after the Labour Organisation Law, which repealed the 1926 Trade Dispute Act. The individual dispute may start at a workplace coordinating committee, go to the township conciliation body and end at the competent courts if conciliation is not successful. Collective dispute cases pass through arbitration processes in addition to negotiation and conciliation such as: the workplace coordinating committee (negotiation): the township conciliation body (conciliation): the regional/state arbitration body, the arbitration council, and the tribunal (arbitration).

For this end, the law requires formation of all these mechanism to deal with industrial disputes. The workplace coordinating committee composed of 4 members in equal numbers representing an employer and a union (or workers if no union) should be established in a workplace with more than 30 employees. It shall deal with negotiating and concluding collective agreement and grievances at workplaces. Township Conciliation Body is formed by regional/state authorities and dealing with conciliation. If the unsettled case is a case of collective dispute, the case is handed over to the Regional/State Arbitration Body, which makes a decision on the case. With the decision, the parties in the non-essential service have two choices: to go for strikes by workers or lock-out for employers: or to appeal to the Arbitrary Council for a Tribunal, which are set up and administrated by the central government. Please refer to the table above for the detail of each body.

However, the decision in these processes is not legally binding and the dis-satisfied party would begin a litigation process by bringing the case to the Supreme Court after completing the process (Than Win, 2012).

## **Conclusion**

Myanmar has experienced the rapid changes including legislations. In relation to the legal changes, there are several serious criticisms. First one is the process of promulgation. The laws are introduced without social consensus or open discussion. The laws have been drafted by the government and passed by the parliament secretly. Public society cannot access the contents of the laws until the government officially releases them. People who

Table. Industrial Dispute Settlement Mechanism

	Composition	Issues	Roles	Working duration
workplace coordinating committee	4 members - 2 from employer - 2 from union or elected by workers	individual / collective dispute	- settling grievances - negotiating/concluding collective agreement	5 days for grievance
Township Conciliation Body	11 members - 3 from government - 3 from employers - 3 from unions - 2 from public interests	individual / collective dispute	- determining the types of disputes (individual/collective) - conciliating the issues - concluding agreement if the case settled	3 days
Regional/ State Arbitration Body	11 members - 3 from government - 3 from employers - 3 from unions - 2 from public interests	collective dispute	- making a decision on the case	7 days
Arbitration Council	15 members (experts) - 5 from government - 5 from employers - 5 from unions		- hearing by 3 members on the issues - forming a tribunal	
Tribunal			- having a trial - making a decision	- 7 days (essential service sectors) - 14 days for non-essential service sector

may be influenced by the changes do not have a chance to be involved to the process. Even the parliament members do not have enough time to review the drafts, which makes them rubber stampers for the new laws.

This weak formation process leads to creating another problem: the new law is promulgated without correcting controversies or weaknesses, which may not reflect actual situations and even hamper the objectives of laws. The Labour Organisation Law provides a good example: making it a difficult process to form the industrial level resulting in factory-level small unions such as requiring permission for strikes, which forces workers to organise “demonstrations” rather than legally protected strikes. In these cases, the law may not have effect enough to secure the workers’ rights to organise and to improve their working conditions collectively.

The last but most important issue is implementation of the laws. Let alone violation of labour rights at the workplaces, employers frequently disregard of the reinstatement orders from arbitration bodies and council, which do not have effective penalties (Pathak, 2013).

Even with these problems, workers in Myanmar have been actively utilizing the new laws and built labour movements. It is reported that there are more than 670 labour organisations with 200,000 workers registered under the law in less than two-year legalization of trade unions (Wilson, 2013). They have raised their voices and demanded their shares as workers and as members of society, which were suppressed under the 50-year dictatorship. The experiences of Myanmar may be a case to show how laws can stimulate and fa-

facilitate social changes when it is combined with active agents.

## Endnotes

[1] Huxley alleged that the reason to destroy this seemingly similar common law system rather than to preserve it might be the fear of colonialists on superiority of the colonized (Huxley, 1998: 10).

[2] There are some debates whether Burma/Myanmar should be regarded as a common law country due to unlawful situation created by military regime. Southalan (2006) points out the lack of judicial independence as a reason to hamper the proper operation of the common law, and Cheesman (2009) argues based on a court case of a political issue that Myanmar is a country of “the un-rule of law not thin rule of law”.

[3] However, this section puts a limitation to exercise the rights such as “if not contrary to the laws, enacted for Union security, prevalence of law and order, community peace and tranquility or public order and morality” (supra)

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