



Research Brief

Labor Rights Challenges in the Private and Small enterprises in Yangon, Myanmar

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Introduction

Despite the strengthening of labour laws in Myanmar as it undergoes a period of political reform, the strength of the protection of workers, especially non-factory workers in Small and Medium Enterprises (“SMEs”), under such enhanced laws has not necessarily improved. Many employers continue to dominate the employer-employee relationship due to a lack of awareness and proper enforcement of the law, resulting in the continued prevalence of undesirable working conditions, such as long working hours without extra pay, and lack of job security and benefits for workers. There is a need for action from the government, civil society organisations, and international organisations to create greater awareness of labour law among all workers and employers in Myanmar in order to better protect those whom such law has been intended to protect.

Research background and methodology

Under the former military regime in Myanmar from 1962 to 2010, legal standard for labour protection was poor and workers had few rights. Violations of internationally recognised labour rights were widespread in the country, and workers often had to work long hours for low salaries under unfavourable conditions. Since 2010, new labour laws, such as those pertaining to minimum working age, minimum wages, and occupational safety and health, have been introduced. In theory this bring laws in Myanmar into greater conformance with international labour rights standards and provide greater protection to workers. However, in practice workers are still not fully protected by these laws, and remain largely at the mercy of their employers who employ various means to avoid their obligations under the law. In particular, the challenges of SME workers receive less attention from the government as they tend to conduct studies and implement policies with a focus on factory workers. The protection of SME workers therefore remains weak and violations of their rights persist under the new laws. This is a major cause for concern, given that 99.4% of registered enterprises in Myanmar are SMEs.¹

This research interviewed 20 workers in Yangon. It reveals the reasons for the weak protection of the rights of workers, especially those who work in SMEs. The reasons for the weak protection include the lack of, or mistaken awareness of, rights among such workers; the fear of the potential loss of a job by claiming their rights, and the lack of assistance to enforce rights.

Common violations of workers’ rights

Some common violation of workers’ rights under the law include excessive working hours (including the failure to provide sufficient rest days, paid annual or medical leaves of absence and holidays, and failure to provide overtime wages), and the failure to sign fair employment contracts.

A large number of participants in the research revealed that their working hours are set according to the needs of the employers, who often require the employees to work longer hours than lawfully allowed on a daily basis with no extra pay – usually employees ending up in working more than 10 hours a day, often without a rest day in the week. Employers justify overtime working hours by

¹*Global New Light of Myanmar*, “SMEs lie at the core of national economic growth in developing countries and some developed countries: President U Thein Sein”, 12 January 2013.

making employees feel guilty because they are lazy and not working hard enough, and claiming that long hours are necessary. Many of them are also not allowed to take annual leaves of absence, at least in the first few months of the employment.

This is despite Burmese laws providing a ceiling on the hours of work an employee can clock, such as 8 hours per day and 6 days per week,² at which no overtime pay is required and normal minimum wages apply. Minimum wage laws apply only to employees in businesses with at least 15 employees. Employers with more than 15 staff are reluctant to force their workers to work overtime because of the need to pay for extra working hours. But, employees in small enterprises are not protected by such laws. Therefore, especially in such small enterprises, even where employees work overtime, they are often not paid overtime wages which, according to the law, should be double the usual wages. Similarly, employees are also frequently made to work during official holidays without extra wages.

In addition to not paying overtime wages, employers also often 'fine' employees for taking medical leave, resulting in their monthly wages reduced to as low as 10,000 Kyats (about US\$7.40). Besides financial loss, they would also face censure from, and be treated badly, by the employers for taking medical leave.

Failure to sign fair employment contracts

Burmese law provides that all employers are required to sign an employment agreement with an employee within the first 30 days of his/her employment.³ While the law provides for certain aspects of the employment that must be included in the employment contract, and also the Ministry of Labour, Employment, and Social Security has prescribed a standard form for such contracts, research suggests that less than half of employees actually sign an employment contract, and for those who signed, it is unclear if they sign the prescribed form. Further, the details of the contracts are usually not explained to the employees, leaving them with limited understanding about what they are signing. Such a practice could result into employees signing unfair contracts. Examples of unfair clauses include those that tie an employee to an employer for 2 to 3 years or more, and in failing to do so, the employee must pay a high penalty. The contract is therefore used not to protect workers' rights, but to allow the employer to bind their employees.

Many employees therefore find it burdensome to sign an employment contract which is not negotiated at arm's length or at all, because such a contract gives them little or no benefit, but instead enslaves themselves to their employers. Even in cases where employment contracts seemed to be fair on the surface, in reality, there is a high chance that the beneficial clauses may still be ignored by the employers.

Lack of awareness and employers' dominance

The research suggests that many workers are unaware of their rights, and feel subservient to their employers such that they do not dare voice out any discontent that they feel or unfairness that they encounter.

²There may be variations for workers in different sectors.

³ Chapter 3, Employment and Skills Development Law (2013).

Prior to the interviews conducted, most research participants had not known about their entitled to weekly off days, paid annual leave and paid holidays, as well as entitlement to overtime wages. Those few employees interviewed who are aware of their rights do not dare to claim their rights because they fear potential job loss as a result of making their employer unhappy due to their claim. Some of them witnessed such a situation when their colleagues were pressurised and made to feel compelled to work; for example an employer frequently criticises employees for poor performance at work despite only making inconsequentially small mistakes. Other cases workers have to quit their job after they claimed for various rights such as overtime pay and membership in a labour union. Unlike other cases where an employer who terminates an employee is obligated to provide compensation, when an employee quits their job, the employer avoids having to compensate the employee. In other instances, some employees were threatened by their employers with loss of promotions and bonuses should they refuse to work extra hours. Similar consequences ensue for employees who try to enforce the terms of their employment contracts.

The employees' lack of awareness of their rights or their reluctance to enforce such rights may be attributed partly to the lack of a structured process by which they can be educated about their rights and enforce them. Such a situation is particularly relevant to SMEs unlike in factories, where workers do not have team leaders, if at all, who are educated sufficiently about labour rights and who can make a concerted demand to claim rights against their employers. Furthermore, while the law prescribes that all employees have the right to join a labour union, there exists some limitations that make it harder for employees in SMEs to do so. This is because under Article 4(a)(i) of the Labour Organization Law (2011),⁴ such organisations "may be formed by a minimum number of 30 workers working in the relevant trade or activity according to the category of trade or activity". However, SMEs do not have that many workers, and it may be difficult for such workers to find at least 29 other workers in the same trade or activity because of the limitation in communication or relationships among SMEs workers in the relevant trade or activity. The lack of awareness of labour rights may also be a reason why employees believe that there have been no violations of their rights, therefore nullifying the need to join a labour organisation.

Conclusion

Although the existence of laws protecting labour rights in Myanmar is commendable, their implementation in practice do not adequately safeguard the rights and welfare of workers, particularly those working in SMEs where the number of workers are usually much fewer than those working in factories and therefore can be better organised. Most of the ordinary employees are not aware of their rights, and those who are aware, they do not know how to enforce them effectively in regards to their demands from employers that have control over employees, who often have no choice but to acquiesce to threats from their employers.

⁴ The Pyidaungsu Hluttaw Law No. 7