



**Workplace
social dialogue
in Myanmar:
experiences and
lessons learned**

**FAIR
WEAR**

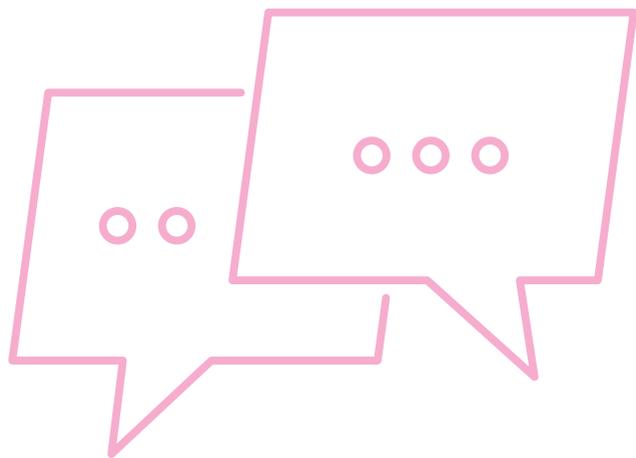
Acronyms used

CCTV	»»	Closed-Circuit Television
COLP	»»	Code of Labour Practices
CTUM	»»	Confederation of Trade Unions in Myanmar
EC	»»	Employment Contract
FDI	»»	Foreign Direct Investment
FOA	»»	Freedom of association
HR	»»	Human Resources
ILO	»»	International Labour Organization
LOL	»»	Labour Organisation Law
MICS	»»	Myanmar Industries Craft and Services Trade Unions Federation
MOLIP	»»	Ministry of Labour, Immigration and Population
MGMA	»»	Myanmar Garments Exporters Association
MMK	»»	Myanmar Kyat
MSI	»»	Multi-stakeholder initiatives
NGO	»»	Non-Governmental Organisations
SLDL	»»	Settlement of Labour Dispute Law
STUM	»»	Solidarity Trade Unions of Myanmar
WEP	»»	Workplace Education Programme
WCC	»»	Workplace Coordinating Committee

Introduction

The rise in labour conflict and strikes in Myanmar over the past few years reflects a lack of effective communication and problem-solving skills in the workplace. While having gained awareness and attempting to exercise their rights, both employers and employees are struggling to meet their obligations and responsibilities in line with national law and international standards.

Fair Wear Foundation (Fair Wear) started working in Myanmar in 2016. Since then, Fair Wear has set up and is implementing its verification infrastructure comprising of social audits, a complaints helpline, and factory training. At present, Fair Wear member brands are (actively) sourcing from 23 factories in Myanmar. In 2018, Fair Wear received 28 complaints through Fair Wear's complaints helpline from workers from these factories. This demonstrates trust in the Fair Wear complaints mechanism, but also points to a lack of effective communication channels for issues to be resolved internally. Complaints received from workers often have a common root cause: a lack of meaningful social dialogue.



To help address this, Fair Wear has been providing mediation support as a complementary approach to dispute resolution. This has either been implemented in parallel with the necessary legal action, or when legal action has failed. The conditions for effective mediation are strongly determined by the involvement and support from the stakeholders concerned, including buyers, civil organisations, union federations, factory management and labour non-governmental organisations.

The support of the brands working directly with the employers, and the trust gained from workers in the complaint helpline programme, have enabled Fair Wear to explore complementary approaches for the resolution of labour disputes in Fair Wear factories, which have resulted in some positive outcomes and, most of all, valuable learning for future progress.

Fair Wear's main objective during mediation is not only to support workers and management to resolve problems and improve working conditions in the short-run, but also to heal wounds and re-connect the conflicting parties so that they can continue to be in a sustainable and healthy dialogue for the betterment of factory working conditions.

Much has been learned through the process. It is hoped this publication will play a small part in stimulating and encouraging discussion and action among local and international stakeholders to revise, adjust, and improve ways of dealing with labour disputes. Effective social dialogue is needed at all levels of the supply chain, from the workplace to wider industry at national and international level, which benefits all parties and strengthens the development of Myanmar's society and economy, including the improvement of workers' working and living conditions.

Social dialogue in Myanmar

INTRODUCTION

According to the definition of the International Labour Organization (ILO), social dialogue represents all types of negotiation, consultation, and information sharing among representatives of government and social partners, or between social partners (employers and employees or their representative organisations) on issues of common interest relating to economic and social policy.

Social dialogue is not an end in itself, but rather a tool for dealing with various economic and social problems. It might not necessarily produce consensus, but it does at least generate better understanding of the diverse views expressed by various stakeholders and commitment to the ideas produced and actions agreed based on active participation.

There is no universal model of social dialogue. It is a concept that is flexible enough to be adapted to the most diverse situations. Content and impact on real social and economic life are what should be assessed.¹

At the industry (or sectoral) level, social dialogue requires commitment, resources, and an agreed structure for it to operate effectively. At the enterprise or workplace level, social dialogue can be less formal but more specific. Collective bargaining can take place at any level of this structure, according to national circumstances and economic environment.²

¹ See Methodological Tool: Social Dialogue-Consultation Framework for promoting Quality and Social Responsibility in Regional/Local Government, pg. 7, www.southeast-europe.net/document.cmt?id=504

² See Methodological Tool: Social Dialogue-Consultation Framework for promoting Quality and Social Responsibility in Regional/Local Government, pg. 13, www.southeast-europe.net/document.cmt?id=504

Social dialogue processes must recognise the importance of combining bipartite and tripartite processes to increase the responsibility and involvement of all actors, and interaction between the social partners at all levels. Social dialogue is a complex activity that requires much preparation and a participatory approach that should actively engage parties from the beginning.³

Experience in Myanmar with social dialogue is relatively new. In September 2013, a tripartite national minimum wage committee was set up in Myanmar under the Office of the President. The committee includes five representatives from workers' organisations, i.e. Confederation of Trade Unions in Myanmar (CTUM) and Myanmar Industries Craft and Services Trade Unions Federation (MICS), five representatives from employer organisations, five government representatives, and two individual experts. It is a forum for discussion and negotiation between different parties and is one of the first times that a dialogue between the various parties (employers, labour unions, government, and civil society organisations) has taken place.

In 2015, a National Tripartite Dialogue Forum was set up, consisting of nine representatives from the Ministry of Labour, Immigration and Population (MOLIP), nine from registered trade unions (including CTUM and MICS), and nine from the Employers Association. The National Tripartite Dialogue Forum is the focal consultative forum for all matters concerning labour law. However, in late January 2019, MICS and CTUM temporarily suspended their participation in the tripartite mechanism due to a lack of consultation and continually having their input ignored. Both union federations resumed their participation in the National Tripartite Dialogue Forum late May 2019.

³ See Methodological Tool: Social Dialogue-Consultation Framework for promoting Quality and Social Responsibility in Regional/Local Government, pg. 16-17, www.southeast-europe.net/document.cmt?id=504

LEGAL FRAMEWORK AND LABOUR DISPUTE RESOLUTION MECHANISM IN MYANMAR

For nearly fifty years, independent trade unions and strikes were prohibited in Myanmar. In 2011 and 2012, the Labour Organisation Law and the Labour Dispute Settlement Law came into force respectively, which allow workers to organise and form trade unions and undertake lawful industrial action.



Over the past few years, the workplace environment in Myanmar has been confronted with many changes. There have been several additions and revisions to the law and regulations, while legal rights and obligations of workers and employers have changed substantially.

The growth of unions and labour rights NGOs has helped to increase workers' awareness of their rights as well as their capacity to communicate and negotiate with employers, but true collective bargaining agreements, as defined by international best practice, are still rare.⁴

The Labour Organisation Law

The Labour Organisation Law (LOL, 2011) regulates collective industrial relations, including trade unions, employers' associations, collective actions, and lockouts. Section 29 of the law stipulates that the employer shall recognise the labour organisations of its trade as the organisations representing the workers. The law distinguishes basic labour organisations at company level; township labour organisations and regional or state labour organisations in the same trade or activities; labour federations in same trade or activities; and a labour confederation at the national level.

⁴ Interview with ILO official in Myanmar

The settlement of labour dispute law

The Settlement of Labour Dispute Law (SLDL) was promulgated in 2012 and specifies that individual disputes may be dealt with by a Workplace Coordinating Committee (WCC)⁵, then be brought to the Township Conciliation Body, and end at the competent courts if conciliation is not successful.

Collective dispute cases pass through an arbitration process in addition to negotiation and conciliation. Collective disputes are first dealt with by the WCC, and if unresolved, are passed on to a Township Conciliation Body. If settlement is not achieved, the case is handed over to the regional or state Arbitration Body, which decides the case. With regard to the decision, the parties in non-essential services have two choices: to strike (workers) or lockout (employers), or to appeal to the national Arbitration Council for a Tribunal to be set up and administrated by the central government. The arbitration system is in place to provide a fair and quick process that minimises negative impacts from labour disputes such as strikes or lockouts.

If the workplace has a trade union, the union can nominate the representatives for the WCC to make a collective bargaining, and all the workers can elect their representatives democratically when there is no trade union.⁶

Usually, the Chairman and/or the secretary of the trade union are nominated to be part of the WCC. The Committee is expected to conduct regular monthly meetings to discuss about labour issues raised. However, in many cases, WCC are not functioning because the decision-making role of

⁵ According to the 2012 Settlement of Labour Disputes Law, enterprises with more than 30 employees are required to establish a Workplace Coordinating Committee. These committees are mandated to play a central role in resolving workplace disputes. The Committee should comprise a minimum of two worker representatives, and an equal number of employer representatives.

⁶ Article 3, The Settlement of Labour Dispute Law, 2012.

members are not clearly defined, there is a lack of management support, and the election of workers' representatives in the WCC is sometimes not democratic, which makes the workers distrust the committee.

International conventions

The Government of Myanmar has ratified ILO Convention 87 on Freedom of Association (FOA) and Protection of the Right to Organise. It has not ratified the Right to Organise and Collective Bargaining Convention (No. 98), which is also part of the ILO's fundamental conventions.

CHALLENGES IN THE LEGAL PROCESS FOR DISPUTE SETTLEMENT

Many cases have gone through the dispute settlement process, with some successes and some failures. However, according to an ex-arbitration council official, these processes are not functioning properly. Not every factory has a WCC as required by law due to a lack of law enforcement and the absence of clear consequences of non-compliance.

By law, a worker can bring his/her individual case to court. However, taking into the account the financial constraints of workers, as well as lack of knowledge and access to the legal system, this law is not practical for workers.

'The government only takes the ILO convention in principle, but there is no clear action on how to do it or process it. There is no specific legal process nor rules to deal with a labour dispute.'

'Workers made complaints, sent letters, demanded a meeting and remedy of problems, but the management did not pay attention to their demands. Therefore, the same issue repeated and could not be resolved. After several times of complaining, and the workers still do not hear from the management, they submit a letter to the Township Conciliation Body and/or gather somewhere and stop working as a type of protest. As a result, workers are found guilty because they do not know how to strike legally.' /
Arbitration Council official

One of the challenges is the low unionisation rate and lack of a specialised labour court to handle labour cases. The nature of the court is different to arbitration:

'While the court focuses on laws and rules and their compliance, the arbitration focuses on examples of previous cases, reviews dialogue, social justice, and better communication.'

Furthermore, even when the Arbitration Council issues a final decision in favour of the workers/union, some employers do not comply because there is no enforcement or the defined consequences for non-compliance do not sufficiently dissuade labour violations.

The whole system has weaknesses, both in terms of the law and process to handle cases. In the recently amended SLDL, there is no provision for individual or collective disputes. Instead, there are rights-based disputes which need to go to the respective labour department or the court, whereas the

interests-based disputes will have to go through the arbitration process.⁷ In the labour court forum organised by the MICS on 14-15 May 2019, the stakeholders discussed the lengthiness, the expertise of judges on labour laws, and the costly process for workers. Therefore, the newly amended requirement for workers to go to the existing courts was deemed not helpful and effective. Stakeholders argued the need for a separate labour court with knowledgeable judges. The stakeholders also mentioned that the employers' economic power has also always been a major issue both in the arbitration and legal process. For example, employers often do not come to the meeting place in time and/or do not send the decision makers for the discussion, and they hire a lawyer for their representation at the court whereas the workers have to wait for the final decision after several meetings, and appear at the court at their own cost

In the 2014 SLDL, a provision is included that stipulates the punishment for those who do not follow the Council's decision. It specifies a minimum fine of 100,000 MMK (kyats), which is considered a very low that does not dissuade future labour violations, nor does it stimulate remediation of existing violations. Therefore, in most cases, the factory is willing to pay the fine to end the case.

'Paying a fine has become the normal practice of management. Workers and unions have lost trust in the government and do not feel protected by the law. Plus, without the ratification of ILO Convention 98, there is no clear procedure for collective bargaining agreements.'

⁷ Article 23, Amended Labour Dispute Law 2019, source from the official facebook page of Law Drafting Committee, Union Parliament, posted on 07 May 2019. <https://www.facebook.com/1228125320555815/photos/pcb.2150630524971952/2150628701638801/?type=3&theater> https://www.facebook.com/permalink.php?story_fbid=2150630524971952&id=1228125320555815. The law was passed by the parliament awaiting the president's signature.

'The law does not specifically say how many days it should take to handle a case. So, when workers do not hear anything, they just stop working and break the employment contract (EC) so the employer uses this as reason to terminate the employment of the workers according to the EC.' / former Arbitration Council official⁸



⁸ According to the employment contract, workers can be dismissed if they are absent for more than three days.

Fair Wear in Myanmar

INTRODUCTION

Following the lifting of economic sanctions in 2013, Fair Wear committed to a number of steps to set up activities in Myanmar to be able to effectively verify improvements in working conditions in factories and to promote social dialogue and effective grievance mechanisms. In 2016, Fair Wear established its standard verification model including factory audits (including off-site worker interviews), setting up a stakeholder network and a local complaints helpline for workers and in-factory training for workers and management. These steps enable Fair Wear to effectively support its member companies in factory improvement processes, in cooperation with their local suppliers.

The basis of the collaboration between Fair Wear and a member is the Code of Labour Practices (COLP). The core of the COLP is made up from eight labour standards derived from ILO Conventions and the UN's Declaration on Human Rights. This means the Fair Wear Code of Labour Practices is based on internationally recognised standards which have been set through tripartite negotiation. Fair Wear's COLP is comprised of the following eight labour standards: employment is freely chosen, no discrimination, no child labour, freedom of association, living wage, reasonable hours of work, safe & healthy working conditions, legally binding employment relationship, as well as those related to gender-based violence.

Promote processes to ensure freedom of association (FOA) and enhance social dialogue at supplier level

- »» **Member companies preferably source from factories that have democratically elected unions.**
- »» **Member companies are to ensure with their suppliers (and thus request proof) that worker representatives of Worker Coordination Committees (WCC) are elected democratically and are not nominated by factory management. Brands may suggest that an external party witnesses the election process. If a union is active in the factory, the union should be entitled to nominate one or more of the worker representatives of the WCC in accordance with relevant legislation.**
- »» **Member companies should act against any form of discrimination or unlawful dismissal of union leaders, irrespective of whether the union is formally registered, and actively convey this message to their suppliers. In case of FOA violations, member companies should actively support remediation.**
- »» **Fair Wear member companies are encouraged to contribute to processes that strengthen social dialogue in factories. This means discussing and raising the importance of proper social dialogue with the suppliers and the importance of regular meetings between union and factory management. In addition, during the year following the first bulk order, Fair Wear member companies sourcing from Myanmar should enrol their suppliers in training on labour standards, grievance mechanisms and/or social dialogue at the factory level (e.g. Fair Wear's Workplace Education Programme).**
- »» **Fair Wear member companies are to ensure that factory management does not hinder the registration of factory unions, but rather supports the union formation and registration process as needed.**

FAIR WEAR'S ENHANCED MONITORING PROGRAMME

While Myanmar has demonstrated significant progress on civil and political rights, Fair Wear continues to regard it as a high-risk country regarding the implementation of labour standards. Therefore, sourcing from Myanmar requires additional specific measures from Fair Wear member companies. Increased understanding of the specific risks that brands sourcing in Myanmar will be faced with, combined with a changing political environment, were grounds for updating Fair Wear's existing programme. In April 2018, the Fair Wear Board approved the updated Enhanced Monitoring Programme for Myanmar.⁹

It describes the political and legislative context, Fair Wear activities in recent years, and the specific risks related to labour violations at garment factories in Myanmar. Based on this, it outlines specific requirements for Fair Wear member brands sourcing in Myanmar, including promoting processes to ensure freedom of association and enhance social dialogue at supplier level. These country-specific requirements are in addition to Fair Wear's general requirements for its members.

FAIR WEAR COMPLAINTS MECHANISM

Fair Wear has established a complaint procedure that is designed to provide a 'safety net' or backup system when factory-level systems for remediation are not working properly. The Fair Wear complaints handler, who speaks the local language, receives complaint calls, follows up with complainants for more details ensuring confidentiality and their anonymous status, and works directly with the factory and responsible brands to fix the problems.

⁹ <https://www.fairwear.org/wp-content/uploads/2018/08/Enhanced-monitoring-programme-Myanmar-update-April-2018.pdf>

Making use of the leverage of Fair Wear members, the mechanism is also established to secure respect for freedom of association, secure the rights and responsibilities of all parties in the workplace, ensure that trade union rights can be exercised in normal conditions in a climate free of violence, pressure, fear, or threats of any kind, and that workers can join union activities without fear of retaliation and without interference by management.

Fair Wear's complaints procedure enables member brands to provide access to remedy for workers in their supply chains. It allows workers and their representatives, including trade unions and civil society organisations (e.g. labour NGOs), to bring forward complaints about working conditions and violations related to Fair Wear's COLP at factories supplying to member brands.

As part of their membership requirements, Fair Wear members must post the Code of Labour Practices in all factories where they have production. There, workers can find contact information for Fair Wear's complaints helpline. It allows workers, their representatives, including trade unions and civil society organisations, to present complaints about working conditions and violations of Fair Wear Code at factories supplying to Fair Wear members. Fair Wear then notifies the brand(s) that source at that factory and tries to find solutions for the immediate problem, together with factory management and worker representatives. Members then are encouraged to look for the root causes of the problem, and also to try to work towards their improvement.

Several principles guide Fair Wear's complaint procedure:

- 1) Factory-level systems should be the first place to try to resolve complaints: It is Fair Wear's position that complaints from workers or their representatives against an employer should ideally be handled at the factory level. Appropriate processes to resolve grievances may include factory human resource procedures, negotiations with trade unions, or legal systems available in each country. In practice, however, these options are not always present, functional, trusted, or safe for workers to use. The Fair Wear complaints procedure is designed to provide a 'safety net' or backup system when factory-level systems for remediation are not working properly.
- 2) Support for social dialogue and the role of trade unions: It is important to note that the system is not intended to replace or undermine existing functional mechanisms, in particular the role of trade unions. Rather, the system is designed to strengthen local systems, to strengthen trade unions, and to create an enabling environment for constructive social dialogue. A worker's or trade union's decision to use the Fair Wear system is a clear signal that the factory's internal mechanisms are not functioning properly. Any remediation plan for complaints received by Fair Wear should, therefore, include steps to improve the factory's internal grievance mechanism and compliance with Fair Wear's Code regarding freedom of association. Respect for freedom of association means trade union rights can be exercised in normal conditions, in a climate free of violence, pressure, fear, or threats of any kind, and workers can join union activities without fear of retaliation and without interference by management.
- 3) Transparency: The Fair Wear procedure must provide sufficient transparency in terms of process and outcome to meet the public interest concerns at stake and must aim to be as transparent as possible. This is also important for worker representatives and businesses, as public reporting on complaints offers examples of how problems common to other factories around the world may be resolved. Transparency regarding the filing of complaints and the key elements of their remediation are most important. In order to prevent possible retaliation from employers or individual workers, the system is designed to protect the complainant's anonymity when necessary, both locally and in published reports about the complaint.

- 4) Shared responsibility: The system is based on the principle of shared responsibility between the member brand and the factory, one of the main principles underpinning the Fair Wear approach, and on dialogue and engagement. Fair Wear member companies have committed to the implementation of the Code of Labour Practices and to responding adequately to complaints regarding working conditions. The complaint mechanism seeks to facilitate access to effective remedy for workers, through using and increasing the leverage that Fair Wear member companies (together with non-Fair Wear member brands) have at factories to facilitate remediation of non-compliance or violation of the Fair Wear Code of Labour Practices. Fair Wear does not have the same mandate over all involved actors to compel action from brands and factories that a legal system could have. Fair Wear's complaints system has often led to full remedy for the affected workers – and full remedy is and should be the goal of any mechanism that aims to provide access to remedy. However, Fair Wear and its member brands cannot guarantee that full remedy is always achieved, due to constraints in terms of mandate and influence.

FAIR WEAR WORKPLACE EDUCATION PROGRAMME

Fair Wear's Workplace Education Programme (WEP) is a set of training modules that aim to move companies beyond auditing and corrective action, and towards collaborative workplaces, where issues are raised and resolved through open communication.

One of Fair Wear's long-term goals in this area is to stimulate the development of locally managed and supported worker grievance systems. Establishment of such systems will take time and require shifts in thinking on the part of managers, workers, and often other local stakeholders. In situations where such systems are not possible, or not yet functioning.

WEP Basic training module

The WEP Basic module focuses on making workers aware of their rights and supporting the development of worker-led complaint procedures, while parallel training for managers on the importance of grievance systems and social dialogue is equally important. The more amenable factory managers are to the establishment of grievance systems, the more effective the overall resolution of grievances will be. Training for managers includes not only relevant national legislation and the expectations of the Fair Wear Code of Labour Practices, but also information on the benefits to factories of having such systems, in terms of better employee morale, lower worker turnover and absenteeism, and higher productivity.

The WEP Basic training offers first steps in raising awareness for both workers and management of their rights and responsibilities, which is necessary to create the relevant structures. However, it has become clear that additional follow-up training is required to work on effective communication and dialogue.

WEP Communication training module

Fair Wear believes that if provided with additional, in-depth training, there is a high chance that certain factories could emerge as models for improved worker-manager dialogue. Therefore, Fair Wear developed a new WEP Communication training module in 2016. While the one-day WEP Basic training focuses on rights and responsibilities, WEP Communication focuses on building relationships between workers/union and management.

Worker-management interaction is improved by developing communication skills, with an emphasis on collaborative problem solving, as well as issue prioritisation, data collection and analysis, listening, and dialogue skills. Workers learn how to voice their concerns in a constructive way, and how to represent the concerns of their colleagues when meeting to discuss these with factory management. Factory management is trained in how to deal with workers' concerns in a positive way. The training includes separate sessions for management and workers, as well as sessions where management and workers discuss work floor issues together.

Root causes of labour disputes

Based on experience gained through complaint remediation and supporting dialogue in factories, and through interviews with the factory management and union leaders, Fair Wear identified the following common root causes of labour disputes in the workplace.

POOR COMMUNICATION IN THE WORKPLACE

From Fair Wear experience and interviews, there is often one-way communication in the workplace. Most factories are managed in a hierarchical top-down manner, with little room for workers' input and real worker-management dialogue. Often the only channels of communication are the suggestion box or the notice board. Workers feel that suggestion boxes and notice boards are important, but have limited use, as there is no chance for them to have interactive communication with the management.

In order to understand work-floor issues, management normally relies on the supervisors. Many workplace rules are not specified explicitly in the employment contract (EC), but are announced verbally and are delivered by the supervisors to the workers. Workers have to report to their supervisors for their daily challenges. However, most of the supervisors do not know or have the power to actually solve problems for workers. Workers do not know who they should talk to next if the problem cannot be solved by the supervisors. Sometimes, supervisors just ignore the workers' problems in order to avoid getting into trouble with top management.

'If the workers raise complaints, the supervisor thinks that the workers disrespect them and then they will have a bias against those workers who make complaints. They did not even receive our complaint because they did not want to get involved and have more workload. They did not have power to solve any problems in the factory.' /union leader

In the rare cases that there is a union active in the factory, the initiative for dialogue often lies with the union. It is very rare that the management calls for a meeting with the Executive Committee of the union in order to discuss workers' concerns.

'We go up to the office four or five times a month to submit the workers' issues for discussion. However, we always have to start this communication. They never call us. And we are not allowed to go to the office during working hours for solving the problem even it is urgent matter for the workers. Once a sick worker was terminated which she found out only when she arrived at the factory following her sickness. She felt helpless as she did not know the reason and asked me. I went up to meet with the HR manager to check during working hours, but the manager shouted at me to go back to work' /union leader

LACK OF SKILLED HUMAN RESOURCES OFFICERS

HR officers are usually local staff who play a vital role in building better employee relations at the workplace. However, there is no clearly defined role of HR in decision making or policy development. Misunderstanding, misinterpretation, and distortion of information are often key contributors to conflict in the workplace, rather than the issues themselves. Many labour disputes are caused by the misunderstanding and misinterpretation of workers' demands by HR officers.

In addition, factories usually do not have clear policies and procedures or effective internal grievance mechanisms to handle workers' complaints. HR officers often use their own judgement and opinion to decide whether to take a complaint forward or listen to workers, which is not always in line with top management. Sometimes, the top management is not even aware of the issues until they have escalated into conflict.

LANGUAGE BARRIERS IN FOREIGN-INVESTED FACTORIES

The impressive growth of the garment industry is for a large part fuelled by Foreign Direct Investment (FDI).

According to the MGMA, two-thirds of the approximately 500 active garment factories in Myanmar are foreign-owned, half of these originating from China and Korea.

When the top management is comprised of foreigners, workers rarely have a chance to have direct communication and/or dialogue with the management. Workers therefore have to communicate through an HR officer or translator who acts as middleman and communication channel between the two parties.

Moreover, in case of a labour conflict, the factory management often has to report the issue to their headquarters outside of Myanmar. The resulting delay could lead to escalation of the conflict with workers because they feel that the management is ignoring the issue.

Furthermore, in foreign-owned factories, both parties need a translator to communicate with each other.

The foreign technicians assigned by the top management are mainly responsible for both technical and day-to-day human resources management, such as approving leave, asking overtime, taking disciplinary actions, recruiting new workers, etc.

Misunderstanding often occurs due to incomplete or biased translation. When workers seek clarification for unclear instructions, they often get scolded by the technicians and/or supervisors. The foreign supervisors also face challenges in explaining to workers why certain disciplinary actions are taken against them. There is often no cross-check to know if the messages are delivered as they were meant to be.

In some cases, the local translators are assigned as the primary point of contact for workers' concerns or the dispute settlement for easier communication with the foreign management. The capacity and role of translators are often questioned by the workers and the stakeholders involved because they are neither trained for dispute settlement nor do they have the authority to make decisions.

INSENSITIVITY TO LOCAL CULTURE

Related to the previous point, when the top management or middle management is foreign, management is often not aware of the existing cultural norms and sometimes act improperly in a way that seems disrespectful to the local culture and tradition. This could be highly disturbing for workers. For example, the most common cultural shock is when the foreign supervisors are shouting at the workers or using their feet to point at things. To the foreign supervisors it may feel that they are simply talking out loud, while workers may perceive it as being shouted at aggressively.

Another common misunderstanding is that foreign managers think that Myanmar workers want to work overtime all the time as it generates more money, which is the experience they have in their own country. However, although the workers do want to conduct overtime due to the insufficient wages, they get stressed and tired when they have no time to rest and enjoy with family, friends, and for seasonal events.

Furthermore, sometimes foreign supervisors impose certain disciplinary actions that they are familiar with from their home country without understanding the sensitivity to cultural norms in Myanmar. In one particular case, workers complained to Fair Wear that their foreign supervisor forced them to stand under the sun as a punishment for not meeting the production target. The workers felt dizzy, ashamed and cried. When Fair Wear investigated the case, the management explained that standing under the sun is a relatively more common disciplinary practice in the country from which that supervisor originated.

ABUSIVE LANGUAGE

Due to production pressure and lack of training in effective communication and supervisory skills, some supervisors adopt abusive language to get workers to produce quicker. Coarse language, cursing, swearing and use of sexual profanities are unfortunately not uncommon in garment factories.

Adversely, however, this demotivates workers and creates an unproductive work environment in which workers do not feel safe. There is ample evidence that abusive language leads to low staff morale, high worker turnover and increased absenteeism.

 *‘Workers feel embarrassed, disrespected, and offended by abusive language and behaviour, and it does not help them to work faster.’*

 *‘A lot of conflict cases happen because of the verbal and psychological abuse and use of abusive power of the management with the workers, which create a bad and toxic working atmosphere in the workplace.’ / union leader*

UNFAMILIARITY WITH THE UNIONS

Under Myanmar’s military rule, trade unions were prohibited since 1962, and collective bargaining was non-existent. After cracking down on the “88 student uprising against the military”, the restrictions on trade unions and all other political organisations got even tougher. Only in 2011, after 49 years of union prohibition, the Labour Organization Law was enacted and workers were allowed to organise lawfully and protect their rights and interests collectively.¹⁰

¹⁰ Industrial Relations and Workplace Communication in Myanmar Garment Sector, pg.4, F-53407-MYA-1, March 2019, International Growth Center (IGC).

Given the short history of unions, it is not surprising that both management and workers are not familiar with recognising or exercising the role of the union and working together for improved working conditions.

In most factories, the management is highly focused on compliance, where external parties (auditing firms) identify violations and management attempts to solve them. The benefits of involving workers in the discussion of possible problems and solutions are not understood. Management perceives dialogue with workers as time-consuming, potentially inviting for more worker demands, or even as a threat to their authority and/or creating unrest.

LACK OF NEGOTIATION SKILLS AND STRATEGY

Due to the young union movement, with most factory union being newly created, unions sometimes lack the skills and strategy to have a meaningful dialogue with the management. Putting forward a long list of issues with a non-compromising mindset does not support a fruitful and constructive dialogue. Being able to strategise in order to agree on the main priorities on the negotiation table is crucial for positive and constructive dialogue without burning all bridges.

Presenting and articulating the problems with evidence is also key to successful negotiation. Some union leaders have stronger presentation skills with more constructive attitude, but most need more improvement in understanding the importance of dialogue, where it can lead to, the best option to meet the workers’ interests, and making workers understand the process of dialogue.

LACK OF TRUST IN DIALOGUE WITH THE UNIONS

Sometimes, the management doubts whether the union can really represent the workers, especially when the union represents less than 50% of the workforce.¹¹ In one of the Fair Wear cases, the management conducted a survey with the workers to check if the claims raised by the union really reflected the interest of workers during the on-going negotiation with the union leaders. In another case, the management refused to accept the problem in their payment system by saying that it was the personal interest of the union leader to get more benefits.

Serious disputes and strikes occurred when there was no trust that the dialogue process could bring both parties to mutually-beneficial solutions. In all factories where Fair Wear facilitated dialogue, workers complained that the management team had a negative view of the union. Union leaders are seen as focusing on fault finding and making impossible demands of the company:

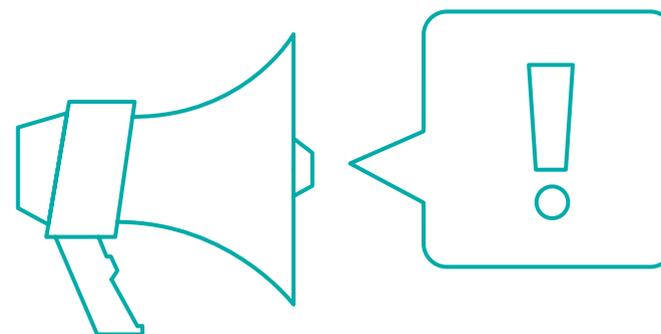
'They see us as the enemy and would not give opportunity to workers or the union to share thoughts and ideas for improvement. They do not trust that we really want to improve the workplace for everyone. The management always says that we do it for ourselves.' / union leader who was terminated by the management because he started a union

'We want them to listen to us and hear our voice at least. Now, they are leaving us with no room to share our concerns and difficulties. That makes us feel more resentful.' / another union leader who tried several times in written and verbal communications to meet with the management

¹¹ According to the article 4(a) of Labour Organisation Law (2011), a trade union can be formed with a minimum number of 30 workers in the same trade or activity.

'I can only talk to them when they stop demanding and start working to meet their production targets, and considering for the benefit of the factory.' / foreign general manager when he was asked about dialogue with the union.

The management's mindset as they participate in dialogue is critical for the success of the dialogue. In one case, Fair Wear mediated several sessions until both the factory management and the union felt confident running the dialogue by themselves. Many issues were raised and discussed, and they reached several points of mutual agreement. However, progress halted with a sudden change of management. The new management did not honour the commitments made by their predecessors. Within a few months, interaction between the two parties became more aggressive which eventually escalated into strike.



Example of failed union-management negotiation

» In one factory in which Fair Wear facilitated the dialogue in November 2017, the union raised a list of ten problems including the unclear bonus system and proposal for an increase in the bonus. Other demands included clarification, explanation, agreement on educating the supervisors, developing a more effective grievance channel, providing more training as well as reviewing the bonus system. Both parties agreed that the union could propose a new bonus system. However, there was no agreement when it came to the last agenda item, and the union asked for an immediate increase in bonus. The management indicated that it could increase the basic salary by 12% while the union asked for 30% to 40% in addition to the basic income. Given that the new minimum wage was likely to increase by roughly 30%, the management explained that it would add up to 70% to 80% additional cost if they agreed to the union demand. The management argued that this was not realistic. The union leader did not accept it.

The following day, the workers went on strike led by the union leader because there was no agreement made for the increase in bonus. The dialogue was broken, the situation got tense, which led to the termination of over one-hundred workers who went on strike including the union leaders. The management strongly refused to come back to dialogue despite the several efforts made by Fair Wear and the brand because they did not want to set an example for other workers that the union could disrespect them. Both parties went through the arbitration process for the dispute on 'terminating the workers', and finally the arbitration body decided that the strike was illegal because there was no prior permission obtained.

DISCRIMINATION AND UNFAIR TREATMENT OF THE UNIONS

Another serious dispute came when the management disrupted the unionisation process and terminated the union leaders. Unions state that one of the key issues is discrimination against the union and its members, including disciplinary procedures, job assignments, job evaluations, and compensation.

In one factory, eight workers who were members of the union (including the executive committee members) confirmed that they resigned because of the pressure and discriminatory practices of supervisors. The management found out about the unionisation, and the workers were told that the factory did not need a union and forming the union would lead to dismissal for those who initiated it. Subsequently, the workload of those who involved in formation of the union was increased, they got scolded by the supervisors for small mistakes, and they were put under surveillance by the supervisors and questioned about their whereabouts.

Furthermore, in another factory where most of the union leaders worked in the packing unit, the management installed additional CCTV cameras. The union leaders felt discriminated as they were being watched all the time. The management often questioned them why they were sitting or talking by showing the CCTV videos although they explained that they were simply waiting for products to pack.

LACK OF UNDERSTANDING OF RELEVANT LABOUR LAWS

Fair Wear observed several cases where the management did not fully understand the legal rights of workers related to working hours, leave entitlement, or Freedom of Association. Based on Fair Wear's experience in handling complaint cases, most of the disputes happened because of compulsory overtime, not being allowed leave, not receiving the social security cards, abusive

language, and termination of union leaders. This reflects a lack of understanding of relevant labour law, which is especially common in the many new foreign-invested factories. There is also a lack of awareness on the establishment of Workplace Coordination Committee and making these functional as a first step in establishing worker-management communication. Similarly, many workers do not understand their rights and responsibilities and how to exercise these.

'We did not know what leave we are entitled to until we formed the union with the help of CTUM' / a new union leader

Reflecting the WCC establishment, a factory owner said, 'We should have known about this. It's our job to know and understand the law and its requirement. The conflicts happened because we did not know, therefore, workers thought that we ignored and intended to violate the laws.'

'Presently, the employers and workers are still learning about their rights and obligations under the new labour laws. Sometimes disputes occur because of a lack of understanding of relevant laws, and as labour laws continue to undergo revision and new provisions are instated, disputes often arise when new requirements are implemented.' / MGMA representative

Mediation as a complementary approach to dispute resolution

Fair Wear has received several worker complaints where the situation has escalated into worker strikes or lockouts. In some cases, union members felt intimidated or discriminated, sometimes union leaders were dismissed, while factory management felt the unions were creating unrest among workers. Such situations point to a breakdown in communication with both sides becoming more and more entrenched. Both sides feel the other side has wronged them and is at fault, and both sides lack a willingness to compromise or find solutions.

When parties can no longer engage in dialogue or resolve a dispute through other means, Fair Wear proposes a mediation process to support conflict resolution. The mediation aims to avoid a breakdown in communication, which could negative impact on the business, as well as the working conditions of the workers.

Realising that the process will not be successful without consent and commitment from workers, union, factory owners, and top management, Fair Wear works closely with relevant stakeholders including union federations, local and international labour NGOs, and responsible buyers in the factory concerned.

The support of the brands is essential to encourage the factory management to commit to the mediation process, monitor implementation of the agreed-upon actions and support longer-term sustainable solutions (e.g. provide financial support for training where necessary). Fair Wear communicates with the responsible brands and introduces the process to both management and workers to get consent for further interventions.

Before both parties are brought together, several dialogue sessions are held inside and outside the factories through different channels including phone calls, emails, and separate informal meetings to secure and maintain relationships with all parties and to deeply listen to their needs and suggest strategies to meet the needs of workers and factories.

When other union federations and labour NGOs are involved to support the workers/union or the factory, Fair Wear works and communicates closely with them to share and better understand the situation and listens to their recommendations for improvement. In addition to acting as a bridge between all parties to ensure that issues are resolved and all the stakeholders' voices are heard, Fair Wear also consults them to ensure commitment and that action is taken to support the social dialogue process.

Since issues are sometimes interest-based, the mediation process involves having all parties list out demands and sign a written agreement. This written recognition agreement is critical as it can be used as a baseline and guideline for further dialogue, and also strengthens the commitment from both sides to honour the agreements made.

CHALLENGES IN THE MEDIATION PROCESS

Supporting effective mediation has not been an easy process. Fair Wear has learned many lessons and gained a lot of experience through both the successes and failures. Some of these are reflected below:

Vital role of management representative in the dialogue

Failure or unsuccessful dialogue often occurred due to the absence of a decision-maker who was fully authorised to negotiate with workers, or due to slow response from top management. In all cases, except for one where the owner was present at all stages of the negotiation, the management's representative

could not make decisions and acted only as the intermediary between the union/workers and top management at the company's headquarters abroad.



'This is the huge problem for us because the issues dragged on and on and no clear solutions or actions for the problems we've raised. Some issues took more than a year to resolve.' /
union leader.

During a strike in a factory, there was no one representing the top management to make decisions in the meeting. The strike went on for many days and created significant financial damage for the factory. Only once the management's representative had full authority to make an agreement with the union, could an agreement be reached to end the strike.

In another case, there was a change in top management during the mediation process. The new person reacted differently and had a different approach to the union. Thus, indicating that the style and personality of the management representative influences the dialogue, the playing field, and the power structure. When there are such changes, the process has to be flexible enough to respond.

Time pressure

The limited timeframe and pressure to resolve problems, while working with different stakeholders, was one of the main challenges for the mediator. Organising the dialogue and getting all the key actors to attend, negotiate, and reach agreement is challenging. Workers and management are often non-compromising and impatient to resolve the issues. When more than one session is required, it is difficult to organise a second meeting and keep up the momentum. Without a clear agreement regarding the timeframe, keeping the dialogue going until resolution could be tough, also because additional issues may be brought up during the process.

Many parties involved with unclear roles

The participation of external civil society organisations, in addition to Fair Wear who acted as mediator, in some cases created unwanted complications. Management from two factories strongly refused to have representatives from a third-party present and insisted on only engaging in dialogue with the workers. When the workers/union insisted on having a third-party organisation present, there was more difficulty in arranging and initiating a meeting with employers.

'They have such bad attitudes about us and do not understand our foreign-owned business nor respect the investor. They always think that we are coming here to take advantage of the workers and look at us as evil. They need to realise that the coin always has two sides. And as the management, we also have concerns and voices to be heard.' / factory owner

In turn, third parties would argue that the rights of the union to have a third party supporting workers in the negotiation were being disrespected. Since the disputes were often sensitive and controversial, third party organisations like the federation that supported the union would sometimes support the dialogue. Understandingly, they could have legitimate concerns that workers might need support and additional input to reach a fair agreement.

One local NGO employee reflected that in one case the strategies of each organisation supporting the union were conflicting, leading to confusion of the union and parties involved. In addition, the roles and procedures were unclear, which meant the dialogue and negotiation took additional time.

Lack of a clear follow-up procedure and follow-through by brands

All of Fair Wear's efforts to mediate between parties would not be possible without the strong support of responsible brands. However, ensuring that all parties followed-through on commitments as agreed-upon during the dialogue requires careful follow-up from the brand. In one factory, the buying power of the brand was not significant and there was no contact person to follow-up with management.

In other cases, the brand placed orders through an agent, which was responsible for follow-up. Without a proper understanding, the brand could not effectively follow-up with the factory to ensure that the actions that were agreed-upon during the dialogue process were implemented properly.

According to one union leader, the lack of a clear commitment and communication by the brands meant that problems raised were not resolved and dragged out by management.

'During the meeting, the buyers and management spoke in a language we did not understand and provided vague answers. We felt the gap of communication.' / union leader

In cases where there were more than one brand following up on the issues at hand, the dialogue process ran more smoothly with better cooperation from the factory management. With conflicts arising during the dialogue, making sure that both parties can maintain the carefully built relationship is challenging. Therefore, continuous follow-up and regular check-up meetings are necessary to keep the momentum of good dialogue. In all cases, without follow-up and a push from the brands, the management tended to return to the same practice and ignore dialogue with workers.

Results achieved

TENDENCY OF STRIKING SHIFTS TO ROUNDTABLE DISCUSSION AND MEDIATION

With the very limited tools and strategies at the disposal of management and workers to deal with labour disputes, in many cases the conflict ended in a strike. After adopting the dialogue process, unions tend to favour mediation to resolve disputes before moving to strike.

There was one case in which a union asked Fair Wear to facilitate the dialogue with the management because they failed to communicate with them.



'They did not listen to us or even accept the complaint, so Fair Wear was the hopeful solution for us. It was one-way communication and a very top-down approach.'

Fair Wear facilitated the dialogue and ran three mediation meetings in the factory over the course of six months, until the union and management affirmed that they could continue to have dialogue without Fair Wear.

There were also a few similar cases where unions tried to apply for a dialogue process before going on strike as they had done in the past.

REINSTATEMENT OF TERMINATED UNION LEADERS

There were two cases where the social dialogue facilitated remediation, in accordance with the law. In the case of illegal and unfair termination of employment of union leaders, despite long processes with legal procedures,

the factories eventually reinstated the union leaders to their original positions and paid compensation retroactively according to the law. In addition, reinstated workers reported that the environment in the factory improved considerably, e.g. no more discrimination of union members and no interference by the management for the union establishment.

MANAGEMENT ACKNOWLEDGES WORKERS' RIGHTS ON FREEDOM OF ASSOCIATION

After several dialogue sessions, supervisors and management developed better awareness regarding freedom of association (FOA) in terms of its definition and practical steps. In one case, the union demanded the management acknowledge its role both in writing and in practice, by mentioning the 'labour organisation' in accordance with the law in the Burmese version of the FOA policy announcement to the workers. The management also agreed to give the original endorsement letter for union establishment to the union leader.

In terms of discrimination against unions, workers in one factory confirmed that this has improved and supervisors and management are more careful in how they treat the union members. One union leader who was terminated at a factory, reflected one year after his reinstatement:



'I personally am involved with labour relation issues and closely worked with the local management and WCC to handle complaints effectively in a timely manner to avoid labour disputes like in the past.'

RECOGNITION AND IMPROVED FUNCTIONING OF THE WORKPLACE COORDINATION COMMITTEE

In a factory where there was no WCC, the factory organised the WCC election according to the law. In another factory, the management organised a WCC election and organised regular meetings to discuss workers' complaints. When there was an active union, the union was allowed to assign a union member to be part of the WCC, as per relevant legislation. The problems discussed with WCC were addressed and resolved by the management.

IMPROVED CULTURAL UNDERSTANDING AND SENSITIVITY

In the foreign-owned factory, the management learned how to work with the workers and respect the culture and tradition of people in the country. They were more sensitive and more careful in communicating with the workers and stopped culturally inappropriate behaviour such as pointing/gesturing with their feet or shouting at workers.

'As a foreigner, I told all supervisors to pay close attention to their workers' culture and to be respectful. Feeling sympathy and understanding their culture is important. We should learn what the do's and don'ts are in the country.'

/ owner of a factory where a labour dispute arose due to perceived disrespectful behaviour by foreign supervisors towards the local workers

IMPROVED HUMAN RESOURCE MANAGEMENT SYSTEM

According to the top management of a factory that had been through labour disputes for more than a year, dialogue had the positive effect in improving their human resource management system. The top manager stated that policies and procedures have been revised to ensure all workers are protected fairly and equally according to the same standards, e.g. in the event of disciplinary action. He now has a system in place so he can check regularly whether there are cases of concern, to ensure supervisors and managers are following written policy and procedure.

IMPROVED INTERNAL GRIEVANCE MECHANISM AND LISTENING TO WORKERS' CONCERNS

Management at one factory realised the importance of communication following a year of labour disputes and conflict in their workplace. They have focused on strengthening the internal complaint mechanism for workers and organising regular meetings with the WCC to listen to worker concerns and discuss solutions that have to be implemented in a timely manner.

One of the managers said his team of supervisors have improved their listening and problem-solving skills related to labour disputes, as they have seen the negative impacts of poor communication.

The union confirmed that management has been more in touch with workers and displayed a more positive mindset toward the union in being open to questions, listening to concerns, and discussing key issues.

SECURING BUSINESS AND INVESTMENT FOR THE COUNTRY

There were cases where labour disputes had a critical financial impact on the company. According to one factory owner, the social dialogue and Fair Wear mediation process helped solve the disputes and supported the companies and workers in working through the issues and moving forward.

'I came to a point when I really wanted to close down the factory because the problems were too big and the management team was just afraid that the disputes were out of control and would create unexpected impacts. However, after going through the mediation process where we could talk with the union directly to solve the problems and take necessary actions, we felt more hopeful with the business.' /one factory owner

He shared that the process was positive and the agreed-upon results were endorsed by all stakeholders.

'We were glad to be introduced to this mediation process and Fair Wear listened to everyone's needs and put them on the table for discussion.'

Lessons learned and recommendations for improvement of workplace social dialogue in Myanmar

Social dialogue is essential to enable personal and organisational development in the workplace. Having the right capacity and knowledge to conduct social dialogue is very important for the success and sustainability of the garment industry.

'In our country, meeting with the representatives from employers, employees and government was not happening in the past. We met only when there were problems. Now, although there are different interests with different needs from all parties, we meet regularly, have more understanding towards each other, and can discuss issues. In addition to tripartite mechanism, bipartite process also needs understanding, trust and sympathy towards each other and needs to be supported.' / Permanent Secretary of Ministry of Labour, Immigration and Populations.

Creating a respectful working environment would be the most fundamental condition that would sustain a constructive long-term dialogue which would improve the industrial relations. Based on interviews with the various stakeholders, as well as Fair Wear's experience, the list below provides a non-exhaustive list of suggestions for different stakeholders, inside and outside of the workplace.

UNION FEDERATIONS

Provide training for workers

Training is needed for worker representatives, WCC members and factory union leadership on basic rights, company regulations, grievance policies and procedures, and social dialogue strategies. It is important all parties are aware of their responsibilities and are equipped with the skills to build long-term relationships to ensure the sustainability of the workplace and the industry.

Management representatives stated that unions should have a basic understanding of business elements, such as the pricing and costing strategy, so they understand the payment and compensation structure.

‘The union should also be educated on business operations and all factors involved so they have more background and better knowledge on how to deal with the disputes and can communicate with the workers,’ said one factory manager.

Also, it is important to build and strengthen accountability and understanding regarding duties and responsibilities between the union and the WCC.

‘We are willing to help and aim to solve problems for a win-win solution. The leader of the union plays a very critical role. We do not want conflicts because in the end it affects the production, targets, and our performance bonus. We can collect the views and problems from workers and work together with the management.’ / union leader

Providing access for workers to a third party

When it becomes clear that direct communication with the management is not working and the legal process is not effective in preventing further escalation, workers should seek support from a third-party, such as the union federation or labour NGO, preferably at the early stages of the conflict.

FACTORY MANAGEMENT

Improve internal management processes

Factory management is advised to conduct risk assessments, internal training, and establish preliminary mediation processes to prevent conflicts or strikes at workplace level.

It is also important that management invests in understanding the role of the union and its organisation and administration strategies. Management should remain updated on related laws and regulations. Learn how to work with them as an organisation with a legal framework. In this regard, it is important to understand the difference between rights-based and interest-based issues to ensure unnecessary disputes do not occur based on lack of understanding of the law or regulations. Management is furthermore advised to improve the human resource management system by strengthening policies, internal monitoring mechanisms, documentation, communication, and grievance procedures. Top management should empower the local management team and supervisors to solve problems in the workplace and increase their ability to work with the union.

‘Today they have to record everything and establish a procedure and good strategy to meet the needs of the workers. With the democratic reform, many partners have focused on the rights-based approaches. However, despite great effort, there are still challenges to meet different needs of workers as they have different preferences in everything.’ / factory manager

Improve internal communication and grievance mechanisms that clarify roles and empower supervisors

Instead of top-down centralised systems, management should support and empower supervisors to take responsibility. The importance of listening must be emphasised, giving workers time to ask questions and share concerns with management.

In relation to this, factory management is advised to pay greater attention to the quality of translation of languages at all levels in all working areas to ensure smooth communication with all employees. The translator should have skills beyond translation that include cultural sensitivity and appropriate communication towards all parties involved.

Channels and mechanisms for regular discussions between management and workers regarding workplace concerns should be created, so that there is open communication and not only confrontation once there is a problem. It is important to have regular dialogue between union, management and WCC to strengthen communication and create space to listen to consider their suggestions. Agreements made between management and the union should be communicated to all workers, not simply with union representatives.

INTERNATIONAL BUYERS

Ensure compliance at the factory

All stakeholders recognise that brands play a vital role in encouraging factories to comply with the law and standards due to their bargaining power in the business. When the management resisted making the necessary improvements to remediate a labour dispute, the role of the brand to influence the factory’s decision to make positive change was of paramount importance. Needless to mention, brands would need to invest in understanding the local laws and regulations in order to monitor and support suppliers to comply.

Look beyond the surface

Following the translation of the UN’s Guiding Principles on Business and Human Rights into a set of due diligence guidelines¹², the global garment industry finds itself in a new regulatory environment. The guiding principles define due diligence as ‘the process through which enterprises can identify, prevent, mitigate and account for how they address their actual and potential adverse impacts’ in their sourcing practices.¹³

Against this background, brands should carefully look into the risks and challenges that may be occurring at factories, thoroughly investigating the root-causes of labour issues. Brands should also investigate how their own purchasing practices may impact on the working conditions in the factory.

¹² OECD 2017 Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear https://www.oecd-ilibrary.org/governance/oecd-due-diligence-guidance-for-responsible-supply-chains-in-the-garment-and-footwear-sector_9789264290587-en

¹³ UN Guiding Principles on Business and Human Rights, https://www.ohchr.org/documents/publications/GuidingprinciplesBusinessshr_eN.pdf

'The buyers should review the system, the company's regulations, workload of the workers, and see if any court cases are pending, asking for clarification and updates. By doing that, the factory's management is stimulated to solve the problems in a timely manner.' / union representative

Diligent follow-up with the factory

It is vital there is a follow-up process in place to ensure that disputes are resolved adequately, and relations are restored between conflicting parties. This could mean regularly checking in with factory management for updates, asking for a timeline of proposed resolution, meeting with worker representatives, etc.

Support capacity building at the workplace

Brands could support factories in building the necessary capacity to resolve disputes and solve non-compliances. Brands are encouraged to contribute to processes that strengthen social dialogue in factories. This means discussing and raising the importance of proper social dialogue with the suppliers and the importance of regular meetings between union and factory management. This could also mean enrolling suppliers in training on labour standards, grievance mechanisms, and/or social dialogue.

EXPORTERS ASSOCIATIONS

Support capacity building in the factories

The industry associations have an important role to play to build the capacity of factory managers to ensure compliance with laws and codes of conduct and provide suggestions for improvement as necessary to employers. In addition, there is considerable scope to provide training on dispute handling in the industry to prevent strikes. These parties should support both unions as well as employers.

'We want to build trust with all parties concerned and build the capacity of member factories to sustain the business. This is not only for the sake of the members, but also the country. We are looking for training courses on the role of employers and unions.' / Myanmar Garments Exporters Association (MGMA)

Realising that there is still a lack of knowledge regarding labour laws, MGMA should continue to educate employers through different channels, including training and newsletters, and to provide updates on the law. Training of foreign employers may need additional effort, e.g. translation of the law into Chinese, and qualified translators in the workplace need to be made available.

Strengthen stakeholder engagement

It is important that the exporters association continues to engage constructively with relevant stakeholders, including unions, activists, workers, and employers to work together and ensure that all parties abide by the law, strikes are avoided whenever possible and labour conflicts are resolved.

'Please be respectful to the unions. You don't need to be afraid of them. Sometimes, they might do what you don't like. Similarly, there are a lot that you did which they don't like. But we can work with them.' / MGMA representative

Take a third-party role as needed

When it comes to the disputes between management and workers, MGMA has supported conflict resolution on several occasions.

'We are cautious in taking this role and ensure a neutral position to gain trust from all parties. This is the area that we need improvement.'

‘MGMA and UMFCCI offer dispute settlement services as part of an employer package to our members. Whenever there is a conflict, employers are contacting us and seek advice for assistance. We really encourage our members to reach out to us for dispute resolution before it becomes a serious conflict.’ / MGMA representative

NON-GOVERNMENTAL ORGANISATIONS AND MULTI-STAKEHOLDER INITIATIVES

Support capacity building of unions and factories

Multi-stakeholder initiatives and NGOs have a role to play to support the creation of a better enabling environment for unions to operate freely.

Furthermore, they could support initiatives to build knowledge and capacity of basic unions in areas such as the law, strategic planning, administration, etc. Similarly, factory management needs support to enhance their capacity and knowledge regarding the law, cultural sensitivity, effective communication, etc.

Adopt a third-party role as needed

When there are labour disputes in the workplace, these bodies are expected to help stabilise the situation to prevent further escalation and play a third-party role to mediate and resolve conflicts.

‘We are willing to help and solve problems, but it’s hard to gain the management’s trust. We don’t want conflict because it impacts the production and working performance, which eventually impacts the workers’ wage and benefits, working and living conditions.’

‘We don’t want to fight but are willing to talk and work with the management and government. We want the management to respect the role of the NGOs in this area and realise that the objective of our organisation is to improve the social dialogue and communication between employer and employee.’ / representative of Future Light

Some NGOs stated that the government and employers see them as being against or at the opposing side versus employers and business.

One Future Light representative said:

‘The management thought that we only support workers to strike and management refuses to talk with workers with us representing them due to the lack of trust and respect of our role.’

‘We have been dealing with issues and heard voices of workers and I hope that the management realises that they could get benefit from working with us and get advice from us on how to work with workers effectively.’

‘We want the management to understand the importance and capacities of civil society organisations like ours; that we can help mediate cases and help de-escalate crises.’

‘We do not want to strike because it damages the company’s image. We try to maintain good performance and want to create a good working environment for business so our wages can increase. I also tried to regain trust with the management for a better working environment.’ / union leader

Strengthen the brands' role in labour dispute cases

MSIs should hold brands accountable for ensuring that the factory management takes the problem seriously, listens to workers, and invests in fixing the problems.

'I felt like, who else can do it? We feel hopeless when knowing that you can't pressure the buyers to deal with the issues with the management.' / union leader

Furthermore, stakeholders expressed that MSIs and international NGOs should encourage and convince brands to push their suppliers to correct the problems and recognise the role of unions. Brands need to ensure involvement of worker representatives in remediation.

Improve the follow-up process during and after mediation

All parties called for a follow-up process including proper documentation during and after the mediation process to ensure that all parties act according to what they have committed to in the agreed timeline and hold each other accountable.

Annex 1: Key respondents

- › Ministry of Labour, Immigration and Populations
- › Myanmar Garment Manufacturers' Association
- › Myanmar Garment Manufacturers' Association
- › International Labour Organisation
- › Solidarity Trade Unions of Myanmar
- › Future Light Center
- › Ex-Arbitration Council Official
- › Factory management involved in the mediation process
- › Factory union leaders involved in the mediation process and offsite interviews
- › Fair Wear complaint cases from 2017 to 2018

© 2019 Fair Wear Foundation is an international multi-stakeholder non-profit organisation that works with clothing companies—and their supply chains—to improve working conditions in the garment industry. By becoming a member of Fair Wear, a company commits to implementing the Fair Wear Code of Labour Practices throughout its supply chain. Currently over 130 brands have joined. Fair Wear strives to increase awareness about working conditions and workers' rights in textile factories. For more information, please visit www.fairwear.org.

This report is published as part of the Strategic Partnership for Garment Supply Chain Transformation, a cooperation between Fair Wear, Mondiaal FNV, CNV Internationaal and the Dutch Ministry of Foreign Affairs.

Special thanks to Tanida Disyabut, Koen Oosterom, Tina Rogers, San Latt Phyu and Claire Buswell for their roles in writing and revising this report. It was designed by Ruben Steeman of buro RuSt.



Government of the Netherlands



www.fairwear.org