

ILR New Conversations Project



SUSTAINABLE LABOR PRACTICES IN GLOBAL SUPPLY CHAINS

Social Dialogue in the 21st Century

Mapping Social Dialogue in Apparel: **Myanmar**

January 2021

GAVAN BLAU



Cornell University School of Industrial and
Labor Relations & The Strategic Partnership for
Garment Supply Chain Transformation

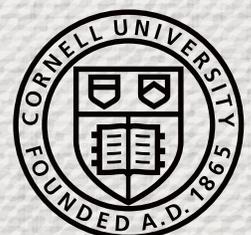
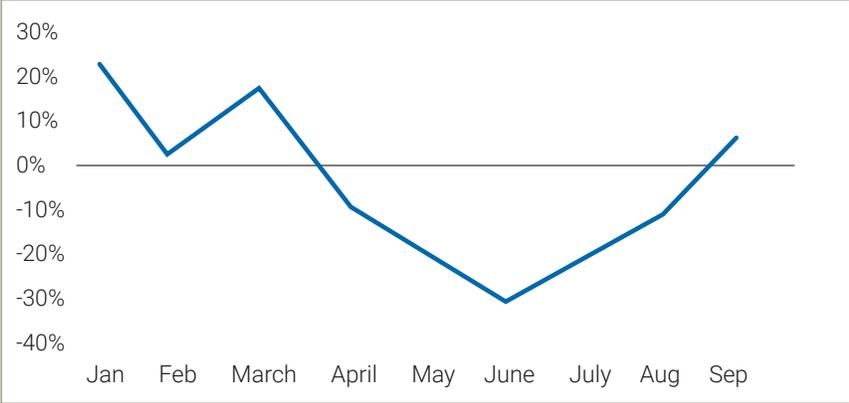


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Myanmar COVID-19 Garment Industry Impacts

<p>State of COVID-19¹</p>	<p>As of October 28, 2021,</p> <ul style="list-style-type: none"> • Confirmed COVID-19 cases: 138,802 • COVID-19 deaths: 3,089 • Case-Fatality: 2.2% • Deaths/100K Pop: 5.75 																				
<p>Year on year US & EU imports from Myanmar 2020 vs 2019² show an overall 4.6% decrease from January to September with a 35% drop in June.</p>	 <table border="1"> <caption>Year on year US & EU imports from Myanmar 2020 vs 2019</caption> <thead> <tr> <th>Month</th> <th>Change (%)</th> </tr> </thead> <tbody> <tr> <td>Jan</td> <td>22%</td> </tr> <tr> <td>Feb</td> <td>2%</td> </tr> <tr> <td>March</td> <td>18%</td> </tr> <tr> <td>April</td> <td>-10%</td> </tr> <tr> <td>May</td> <td>-25%</td> </tr> <tr> <td>June</td> <td>-35%</td> </tr> <tr> <td>July</td> <td>-20%</td> </tr> <tr> <td>Aug</td> <td>-10%</td> </tr> <tr> <td>Sep</td> <td>5%</td> </tr> </tbody> </table>	Month	Change (%)	Jan	22%	Feb	2%	March	18%	April	-10%	May	-25%	June	-35%	July	-20%	Aug	-10%	Sep	5%
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<p>Length of apparel industry lockdown</p>	<p>First Wave</p> <ul style="list-style-type: none"> • Public Holiday closure, Thingyan Water festival: 10 – 19 April. • Factories closed, pending inspection: April 20 – 30 April <p>Second Wave</p> <ul style="list-style-type: none"> • September 24 – October 21 (Yangon)³ 																				
<p>Job losses</p>	<p>Over 60,000 workers from 175 factories.⁴</p>																				
<p>Government support specific to apparel industry</p>	<p>Covid-19 Economic Relief Plan (CERP)</p> <ul style="list-style-type: none"> • SMEs, Hotel and Tourism, and CMP (Cutting, Making, Packaging) companies are able to apply for loans with a 1% interest rate for a period of 1 year, drawing from a relief fund of MMK 100 billion (USD \$72m).⁵ • Emergency cash transfer 30,000-40,000 MMK per household (USD \$23 - \$31) <p>MOLIP to provide 40% wages as social security benefits for insured workers from factories which are temporarily suspended for COVID-19 inspections.</p> <p>EU Myan Ku assistance funds (funded by EU, not Myanmar government)</p> <ul style="list-style-type: none"> • MMK 7.9 billion (USD \$6.1m) electronic direct cash transfer for laid off garment workers, and for garment SMEs to retain employees 																				

1. Data from the Johns Hopkins University Coronavirus Resource Center

2. Imports refer to imports of products with HS commodity codes 61, 62, 63, and 64. Data from UN Comtrade.

3. <https://www.mmtimes.com/news/govt-extends-factory-restrictions-oct-21-yangon-govt-office-under-lockdown.html>

4. <https://www.mmtimes.com/news/myanmar-govt-will-pay-social-security-insured-workers.html>

5. <https://home.kpmg/xx/en/home/insights/2020/04/myanmar-government-and-institution-measures-in-response-to-covid.htm>

<p>Characterization of social dialogue activities</p>	<p>National Level discussions to negotiate April factory shut down, worker safety and worker entitlements:</p> <ul style="list-style-type: none"> • National Tripartite Dialogue Forum • Covid-19 Tripartite Committee <p>Union input into design and implementation of EU Myan Ku assistance funds</p> <p>Union and CSO pressure on global brands to support established social dialogue programs, and uphold Myanmar Freedom of Association Guidelines agreed to in November 2019.</p>
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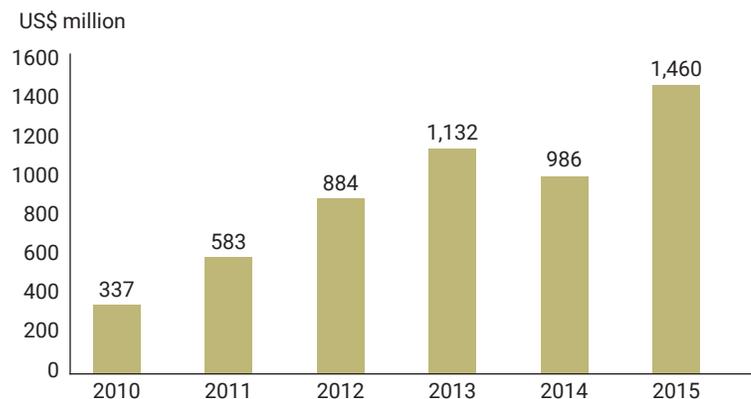
Overview of the Garment Industry in Myanmar

Myanmar's contemporary textile industry can be traced to the political changes of 1988, when the isolationist military junta government first allowed foreign investment into the Burmese economy. The industry peaked in the early 2000s at approximately 400 factories, 300,000 employees, and an export volume of US\$600 million. The industry stalled during the 2000s when trade and investment sanctions were imposed on the Military junta government by the US and EU and other countries, reducing the industry to around 130 factories which continued to supply Korean, Japanese, Taiwanese and Chinese supply chains.

The garment industry subsequently recovered when sanctions were lifted in response to the replacement of the military junta government in 2011. Since then, foreign investment into the garment industry has grown sharply as manufacturers have been attracted by low wages, zero-tax policies, new special economic zones, and preferential trade arrangements such as the EU's Everything But Arms (EBA) / Generalized System of Preferences (GSP) schemes. Accordingly, the industry has grown from an export value of US\$337 million in 2010, to \$2.5 billion in 2017.¹ Over this period, Myanmar's garment sector has been boosted by its regional competitiveness. Wages have become increasingly expensive in production hubs such as Vietnam, while production hubs such as Bangladesh have seen a decline in safety and security.

The most important source countries of foreign direct investment (FDI) have been Singapore and China, as well as various EU and ASEAN member countries. While the garment sector continues to grow, FDI in Myanmar has more generally tapered off since its peak at over \$9 billion in 2015–16 to just under \$6 billion in 2017–18². This tapering is on the one hand due to the continued challenges for foreign companies of

Myanmar's Clothing Export, 2010 - 2015



Source: Hong Kong Trade Development Council³

1. https://wits.worldbank.org/CountryProfile/en/Country/MMR/Year/2017/TradeFlow/Export/Partner/by-region/Product/50-63_TextCloth

2. https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_673020.pdf

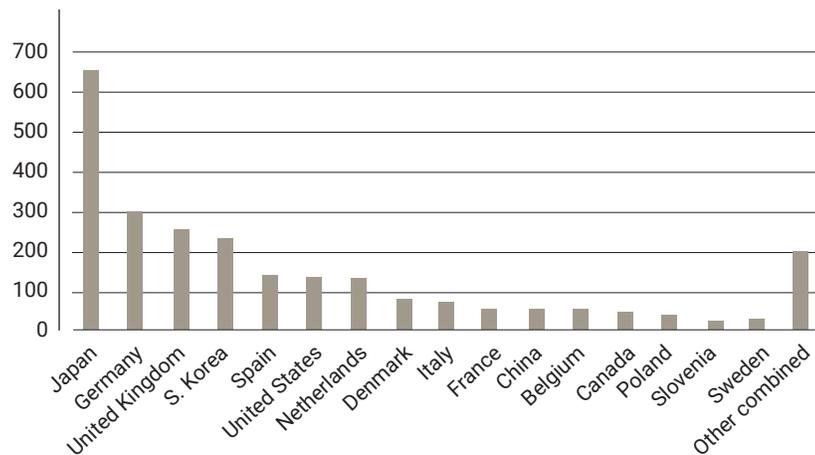
3. <https://hkmb.hktdc.com/en/1X0A6lQS/hktdc-research/Myanmar-Rising-The-Garment-Sector-Takes-Off>

doing business in Myanmar, but is especially due to the impact of the genocide of the Rohingya people in Rakhine State. The findings of recent fact-finding missions by the UN and EU continue to be considered in political forums that threaten to result in trade sanctions and the withdrawal of trade preferences against Myanmar.

The Burmese garment industry is set up to supply low cost labor to service global supply chains. With a lack of both capital and expertise to upgrade the industry, the government has adopted an FDI-led development strategy attracting the production

of major global brands such as H&M, Adidas, Bestseller and Primark to name but a few. Many of these global brands source their garments from multiple suppliers, comprising of some Burmese owned factories, but mostly of foreign owned factories belonging to Chinese Korean, Japanese and Taiwanese manufacturers. As a global supplier, the vast majority of garment production is realized as exports. The largest export destination for garments produced in Myanmar is the European market, followed by Japan, Korea and North America. Europe accounted for 47 percent of garment exports in 2018, according to figures from the Myanmar Garment Manufacturers Association (MGMA), and that figure is expected to rise to 60 percent in 2019.

Garment and Textile Exports (US\$m) Myanmar 2017



Source: World Bank⁴

Myanmar’s garment factories generally operate under the ‘Cut-Make-Pack’ (CMP) system. Under this model, a foreign buyer pays a factory to carry out the labor-intensive aspects of garment production including cutting fabric and sewing garments together according to design specifications and then packing the garment for export to international markets. Hiring factories on a contract basis, the buying company (clothing brand, retailer or buying house) is responsible for supplying the factory with the necessary input, including threads, buttons, zips, labels, linings and most of the packaging, and for shipping the goods to their final destination. Thus, despite being a source of

4. https://wits.worldbank.org/CountryProfile/en/Country/MMR/Year/LTST/TradeFlow/Export/Partner/by-country/Product/50-63_TextCloth

low cost labor, Myanmar's garment industry is highly import-intensive, and most of the necessary inputs have to be acquired from abroad. However, an increasing number of factories have reportedly been upskilling in recent times, now adopting various forms of wet processing, such as dyeing, washing and printing.⁵ There has also been investment into new product lines such as handbags and footwear, creating new skill sets in athletic footwear production, hiking boots, slippers, and various other product lines.

Over 1.1 million workers are currently employed in the garment sector in Myanmar, with additional tens of thousands participating in the industry indirectly through services such as logistics and transport. It is estimated that the sector could employ over 1.5 million people by 2020.⁶ Women constitute over 90% of the workforce⁷, and most are between 16 and 26 years old. Employers reportedly have a preference for hiring young women as they supposedly have higher productivity and skill; commentators suggest rather it is because employers believe young women are easier to control and intimidate, and can be paid less as young women are viewed as secondary income earners. A large proportion of female garment workers are unmarried, rural-urban migrants. After five or ten years, most will stop working at the factory in order to have children, with many employers known to fire workers when they become pregnant. The majority of garment factories are located in regular industrial zones in and around Yangon (ie. Hlaing Tharyar, Bago, Patheingyi) as well as around 8 garment factories at Thilawa Special Economic Zone.

Industrial Relations in Myanmar

Legal Framework⁸

Since 2011, Myanmar has entered a period of labor law reform, in two main phases. An initial phase in 2011 and 2012 produced the Labor Organization Law 2011 allowing for the formation of trade unions and the *Settlement of Labor Dispute Law 2012* which set up a system for labor grievances. This legislation effectively amended a whole range of existing laws relating to factories, payment of wages, leave and holidays, while new laws relating to workers' compensation, minimum wages, skill development and social security were introduced. Overall, these laws were far from compliant with international standards and the Burmese government (still under sanctions at the time) agreed to further amend these laws in relation to various labor issues. Work on further amending these two items of legislation started in 2017, culminating in an amended version of the *Settlement of Labor Dispute Law* being passed in June 2019. Meanwhile, amendments to the *Labor Organization Law* are still in progress.

Under the *Labor Organization Law 2011*, trade unions became legalized. The law sets out unions' responsibilities including for the collection of members' dues and rep-

5. <https://investmyanmar2019.com/garment-industry-cmp/myanmars-garment-industry/>

6. <https://investmyanmar2019.com/garment-industry-cmp/myanmars-garment-industry/>

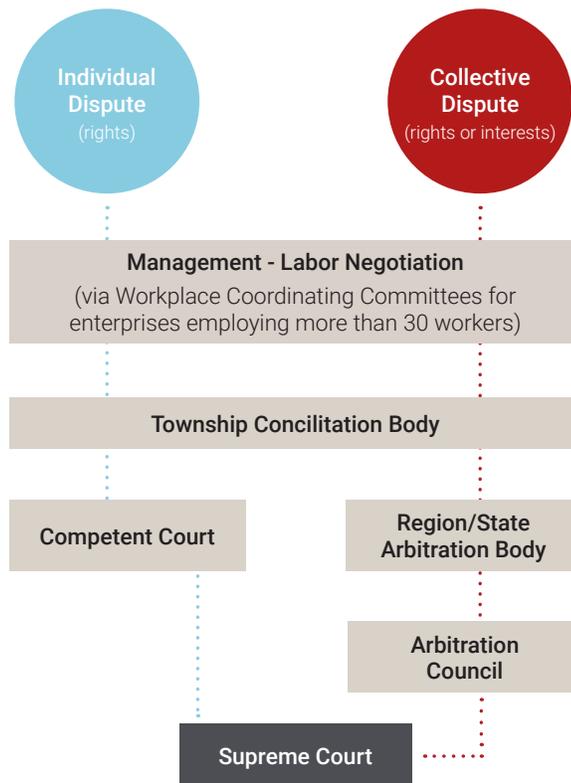
7. Theuvs & Overeem (2017) at citation 29

8. https://www.ilo.org/wcmsp5/groups/public/--asia/--ro-bangkok/--ilo-yangon/documents/publication/wcms_577563.pdf

resentation of workers in collective bargaining. Employers are similarly required to recognize unions and labor organizations, to not interfere with their functioning, and to not form any labor organization under their own ‘domination or control by financial or other means” (ie. a yellow union).

The *Settlement of Labor Dispute Law 2012* sets out the institutional framework for labor conflict, requiring the formation of a Workplace Coordinating Committee (WCC) in all enterprises with more than 30 employees. Under this system, all disputes should be first referred to the WCC, by which it is envisaged that worker representatives and employers try to negotiate a resolution to the dispute. If a resolution is not achieved, a complaint proceeds to a formal conciliation with the Township Conciliation Body. If settlement is not achieved, the case is referred to the regional or state Dispute Settlement Arbitration Body, which makes a decision on the case. If the parties disagree with this decision they have two choices: to go for strikes (workers) or lockout (employers), or to appeal to the Dispute Arbitration Council which is the ultimate forum for labor complaints. The Dispute Settlement Arbitration Council is a Tribunal set up and administered by the central government and comprises of 15 members nominated by each of the Ministry of Labor, Immigration and Population (MOLIP)⁹, employer organizations and labor organizations.¹⁰

Labor dispute settlement process under SLDL



Source: BSR | Labor Disputes in Myanmar: From Workplace to Arbitration Council pg 7¹¹

9. Previously known as Ministry of Labor, Employment and Social Security (MOLES)

10. <http://www.ilo.org/yangon/complaints/lang-en/index.htm>

11. https://www.bsr.org/reports/BSR_Labor_Disputes_in_Myanmar.pdf

WCCs are a key component of the labor system, and are considered to be a mechanism comprising of a combination of social dialogue and dispute settlement processes. The function of the WCC is supposed to extend to the negotiating and concluding of collective agreements within individual workplaces, with the negotiation of employment conditions, OH&S, workers' welfare and productivity arrangements. The WCC is also presented as a measure designed to promote a good relationship between an employer and their workers and/or union.

Critics say the WCC system has been introduced in order to diffuse adversarial organizing and direct action measures in factories. The WCC should comprise a minimum of two worker representatives, and an equal number of employer representatives. If there is a Union present, worker representatives should be nominated by the trade union(s), but otherwise workers have to nominate worker representatives independently. While the employer cannot use the elected non-organized worker representatives to undermine the position of Labor Organizations and Labor Organization representatives, in practice it is an open question as to whether the WCC system crowds out unions at the factory floor. It is very common for employers to nominate the worker representatives for the WCC and select workers who are sympathetic to the management. The emerging practices of operating a WCC are described below in section 2b, "Social Dialogue".

Perhaps the most significant aspect of Myanmar's legal framework is its difficulty in application due to their inherent uncertainty. Firstly, the legislation is widely regarded to have been vaguely drafted, resulting in difficulty for all stakeholders to operationalize them, including government officials. Secondly, there is low levels of stakeholder knowledge of the labor laws due to the fact that labor laws are relatively new and continue to be amended regularly, creating confusion and lack of awareness.

Industrial Relations

Unions and Freedom of Association (FOA)

Under the Military junta, trade unions and political organizations were illegal and harshly repressed by the government. Trade union activity was extremely difficult, limited to underground organizing in Myanmar and organizing that was carried out abroad from Thailand. Today's largest unions can be traced back to this period, with many of Myanmar's prominent trade unionists having been active in exile in Thailand or having served long prison sentences under the military regime. Trade unions were legalized in 2011 with the change of government, which has since ratified ILO Convention 87 on the *Freedom of Association and Protection of the Right to Organize*.

Myanmar has one labor confederation, the Confederation of Trade Unions of Myanmar (CTUM). The CTUM originated as the Federation of Trade Unions in Burma (FTUB), a union in exile sustained with support of global unions and the International Trade Union Federation (ITUF). Exiled union leaders were able to return to Myanmar in 2012

and restart the movement, after the government removed more than 2,000 people from a list of more than 6,000 pro-democracy supporters banned from entering the country. After briefly being renamed the Federation of Trade Unions Myanmar (FTUM), the FTUB became the CTUM in 2015 and officially recognized as the first trade union confederation in Myanmar. By October 2016, CTUM encompassed eight federations with 783 factory unions as members, representing roughly 70,000 workers. Member federations include the Agriculture and Farmers Federation of Myanmar (**AFFM**), the Building and Wood Workers Federation of Myanmar (**BWFM**), the Industrial Workers' Federation of Myanmar (**IWFM**), Mining Workers' Federation of Myanmar (**MWFM**), Myanmar Transport and Logistics Federation (**MTLF**) as well as Public Sector and Education Sector Unions. Some of them are affiliated with global unions.

The legalizing of unions has led to a flourishing of a wide variety of new labor organizations in ensuing years and the growth of the union movement has been rapid until around 2016, when the government ramped up efforts to slow union growth. By 2013 there were already 670 registered factory unions; these being unions at the lowest level and referred to as "basic labor organizations" (**BLOs**) under Burmese law.¹² According to the ILO, at the end of 2018, there were 2,761 basic labor organizations, 146 township labor organizations, 22 state/regional organizations, eight labor federations and one confederation.¹³ Not all union federations are members of CTUM however. Important other federations are the Agriculture and Farmers' Federation Myanmar (**AFFM/IUF**) and the Myanmar Industries Craft and Services Unions Federation (**MICS**), the latter of which traces its roots to underground activism during the military era. There are also some union federations that have declared formation but have not yet successfully registered. This includes the Building and Wood Workers Federation of Myanmar (**BWFM**), an affiliate federation under CTUM. There is at least one labour rights organization that operates akin to a union federation, the All Burma Federation of Trade Unions (**ABFTU**), that does not seek to register as a union as they do not feel the need for government acknowledgement. The Coordinating Committee of Trade Unions (**CCTU**) is a quasi-NGO that plans to give birth to a federation and is in progress of doing so. The Solidarity of Trade Unions Myanmar (**STUM**) initially declared an intention to become a federation but seemed to operate more like an NGO for a time before recently reaffirming its wish to become a federation and seek legal registration. Additionally, there are networks of unions supported by various labor NGOs such as Action Labor Rights (**ALR**) that has a network of roughly 30 factory level unions with around half of these looking to register a township-level union. There are also many informal labor unions at the workplace level, many of whom are in the process of seeking registration – a process that can take months.

Trade unions continue to complain that some local labor offices impose unnecessary bureaucratic requirements that are not included in the current law, thereby discouraging registration. Alongside the growth of unions, it is also worth noting the flourishing of labor rights organizations in Myanmar which work independent of trade unions.

12. Figures available at <http://www.mol.gov.mm/mm/departments/department-of-labor/dol-manpower-statistics-division/emp-asso-lists>

13. The law distinguishes basic labor organizations at company level; township labor organizations and regional or state labor organizations in same trade or activities; labor federations in same trade or activities; and a labor confederation at the national level.

These organizations operate in an activist mode, lobbying for political change without any reference to tripartism, and do not sit on the National Tripartite Dialogue Forum (NTDF). In general, most such labor NGOs provide services to help workers, including assisting in disputes, helping to resolve strikes, helping to form and register workplace-level unions, and helping with union building efforts. Some get involved in policy advocacy, albeit within narrowly defined matters such as discussion around minimum wage rates every 2 years. Several organizations have also engaged in research efforts, including ALR, CCTU and Labor Rights Defenders & Promoters (LRDP).

The unionization rate in Myanmar is still low however, currently estimated at less than 2%. Union federations composed of farmers are most predominant, followed by unionized factories in the garment industry.¹⁴ Nonetheless, the vast majority of garment factories in Myanmar are not unionized, and even in those factories with unions the majority of workers are not union members. Thus unions hold a minority status among garment factories. On the one hand, there is a lack of knowledge among workers about the role of trade unions, on the other there is ample discouragement from employers, as well as government who do not offer much support in upholding trade union rights.¹⁵ The unions prominent in the garment sector are IWFM and MICS, as well as networks of unions helped by NGOs such as ALR. On recent figures, there were more than 3,000 garment workers among MICS' 12,800 members, while IFWM has approximately 17,200 members, of which the majority are garment workers.¹⁶ Added up, this is roughly 3% - 4% of the garment workforce. In addition workers that belong to the IWFM or MICS, there are many workers who are members of unregistered or unaffiliated Basic Labor Organizations (**BLOs**), which operate as worker unions only within a single factory. Some of these BLOs are loosely affiliated to activist labor CSOs, such as ALR, which provide them with strategic support.

As unionization rates have grown, progress has been made in strengthening FOA and union legitimacy. The union federations regularly take part in the National Tripartite Dialogue Forum (NTDF), through which a culture of tripartite social dialogue has been established to deal with industrial relations at the national level. Nonetheless, many challenges remain for the union movement in both law and practice. Most recently, workers have been alarmed by a growing trend of anti-union dismissals at the factory level, particularly during the process of registering BLOs. These cases are currently being treated by the Government and conciliation and arbitration bodies as individual rather than collective disputes, requiring lengthy and costly court proceedings.¹⁷ While the law allows for unions, it does not provide clear protection to workers seeking to form a trade union, nor does it prohibit discrimination in hiring, or blacklisting.

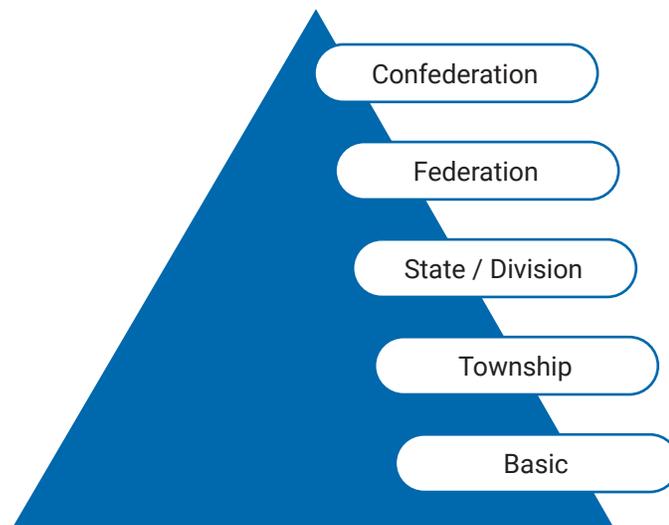
14. https://www.ilo.org/wcmsp5/groups/public/--ed_norm/--relconf/documents/meetingdocument/wcms_673020.pdf

15. <https://www.fairwear.org/wp-content/uploads/2016/11/CS-Myanmar-2016.pdf>

16. Sourced from interview with Mondiaal FNV

17. https://www.ilo.org/wcmsp5/groups/public/--ed_norm/--relconf/documents/meetingdocument/wcms_673020.pdf

Hierarchy of Labor Organization



Source: ILO¹⁸

Collective Bargaining¹⁹

Unions can negotiate Collective Bargaining agreements (CBAs) in Myanmar to address labor issues, covering the usual items such as terms and conditions of employment, recognition of unions, dispute settlements and workers protections against social risks. Nonetheless, the government of Myanmar has not ratified the *Right to Organize and Collective Bargaining Convention (No. 98)*. While the *Labor Organization Law* provides labor organization with the right to undertake collective bargaining, it does not address the responsibility of employers with respect to CBAs and there is no duty for employers to bargain in good faith.²⁰ Similarly, the law lacks provisions relating to the period for bargaining, first contract arbitration, levels of negotiation, extension of collective agreements, registration of collective agreements, or enforcement of collective agreements.

In Myanmar, there was an estimated 70 Collective Bargaining agreements (CBAs) as of 2015, many of which pertain to the garment industry. Stakeholders suggest the actual figure is somewhat higher, estimating that CTUM alone had around 70 that year, with some CBAs agreed by other unions as well. Scores of additional CBAs have been negotiated in subsequent years too, putting the likely current figure at over 100.

It is not common practice for employers and employees to negotiate on labor issues in Myanmar, and such discussions rather occur in response to a specific conflict, as stipulated by the labor law. Many CBAs might better be described as dispute agree-

18. https://www.ilo.org/wcmsp5/groups/public/--asia/--ro-bangkok/--ilo-yangon/documents/publication/wcms_577563.pdf at p34

19. <https://www.fairwear.org/wp-content/uploads/2016/11/CS-Myanmar-2016.pdf> at p32

20. see s17 Labor Organization Law (2011)

ments, since the law describes them in this manner. These CBAs are often limited in scope and only cover the specific issue in dispute. Many of the purported CBAs could be characterized as return to work agreements that have been formalized following an arbitration ruling or dispute settlement. While the agreement may have involved employer and union negotiation, many CBAs only concern wages and the agreement lacks the breadth or wide-reaching implication of CBAs in other countries.

CBAs in Myanmar are rarely up to international best practice standards, and where CBAs have been arranged in certain factories, they are not considered to be very strong. This is in part because Myanmar labor law and policies still fall short of international standards in the construction of CBAs. Another reason is because collective bargaining generally occurs in response to a specific dispute and therefore a limited range of issues, rather than addressing labour conditions widely. Although the CBAs are simple and far shorter than many in developed countries, many CBAs have nonetheless addressed working conditions in substantial ways and have resulted in improved working conditions to some degree. Unfortunately, many employers sign CBAs and then soon violate the agreements. This is likely because many CBAs have come about as a result of workers striking and the employers often looked to demobilize the workers by signing a CBA to get them back to work. Many employers then commence in anti-union tactics of intimidation to grind down the union in its demobilized state.

Many CBAs have been signed at the township level between employers and workers, where workers can be parties to the CBA as a union member or as an individual. If an employer violates any terms of the CBA or conditions in the contract, the Ministry of Labor, and not the individual worker, is considered the plaintiff in dispute resolution. Yet the terms and conditions agreed in CBAs are often not included in individual contracts, generally rendering them ineffectual.

The WCC System – A Space for Social Dialogue?

The current WCC process is designed to be both a social dialogue and a dispute resolution mechanism, and it remains to be seen as to the extent to which they have become a true forum for social dialogue.

While WCCs are legally required to be set up in all factories that employ more than 30 people, there is no evidence available on the true number of WCCs and WCC implementation is likely to be low.²¹ According to 2016 research by Action Labor Rights into working conditions at 39 Korean-owned garment factories, WCCs existed in only 14% of the factories at that time.²² For negotiation practices to occur, legal capacity training programs for workers are first necessary to inform workers that they can use the WCC system to communicate their complaints to management and provide the necessary knowledge to do so. For this reason, CSOs and unions continue to provide trainings and workshops for using this mechanism effectively. Several activist labor organizations and unions alike have in fact focused their strategies on promoting the effectivity of WCCs in this manner.

21. See Lin et al. 2019: <https://www.theigc.org/wp-content/uploads/2019/04/Lin-et-al-2019-Working-paper.pdf>

22. <https://cleanclothes.org/resources/national-cccs/under-pressure>

Secondly, WCCs are often promoted as a first step towards collective bargaining at the factory floor level, by way of capacity building for workers. However, the WCC does not necessarily lead to worker participation or pressure the employer to follow the labor law. WCC representatives are often selected by employers and so lack independence from management and lack legitimacy among workers. Such WCCs can effectively operate as a yellow union loyal to management that has the effect of crowding out genuine union activity. On this point, global brands can use WCCs as an indicator for worker representation and freedom of association in their legal compliance and CSR programs and have little incentive for WCC mechanisms to promote real worker representation. In fact, some WCCs are likely used by employers as a union avoidance tactic.

Thirdly, social dialogue is not yet ingrained in cultural practice. Under military rule, labor relations in Myanmar were authoritarian, preventing the emergence of cultural practices of social dialogue between management and workers. Workers and employers remain unfamiliar with making requests and demands of each other to diffuse conflict. According to informants, parties are not experienced with practices of negotiation, compromise and respectful disagreement, meaning that attempts to negotiate in good faith quite regularly fail and result in acrimony. In general, the industrial relations landscape is characterized by mistrust and polarization. Parties rarely view social dialogue as an ongoing process or compromise, building trust and working together towards mutually beneficial outcomes. Rather, social dialogue is seen as an issue-specific stage within the dispute process. In this context, workplace issues are said to progress readily to the stage of legal grievances. Although unions first try to mediate or facilitate negotiations inside factories in response to worker issues, upper structure unions often help BLOs with their problems through legal claim making. As unions have become more prevalent, there has been a rise in legal claims, as well as a rise in the number of strikes as workers become disaffected that legal channels can be effective.

Finally, the WCC plays a functional role within the context of Myanmar's labor laws, which remain vague and difficult to implement. Stakeholders working alongside unions say that the WCC can potentially play the role of assisting parties to operationalize the law by agreeing how the laws will be implemented in practice. For this reason, there is ample space for social dialogue and training programs concerned with filling in gaps in the law. So far, social dialogue discussions have been invoked towards creating supplier codes of conduct and standardized methods for setting up WCCs, as well as establishing channels for feedback and complaints on the factory floor.

Strikes

By law, the right to strike is only available after a decision on a specific case has been provided by the Regional Arbitration Body. Striking it is not allowed during the arbitration process, as it is seen to pressure employers into making a particular decision. Commentators note that it would be more logical if strikes were allowed either during or after the conciliation process, prior to arbitration.

While the law allows unions to carry out strikes, various clauses in the *Labor Organization Law 2011* effectively put up further barriers for unions to strike and engage in collective action²³ :

- the employer and the relevant conciliation body must be notified at least 14 days in advance by 'mentioning the date, place, number of participants, manner and time of the strike';
- strikes are declared illegal if not held according to the stipulations in the permission;
- trade unions cannot go on strike without advance permission of the relevant labor federation;
- the law also allows employers' lockout with permission of the relevant conciliation body at least 14 days in advance;
- strikes or lockouts are not allowed during the dispute settlement process;
- while the law prohibits dismissal of a worker for union membership and for the exercise of trade union activities or a strike, it does not clearly prohibit other forms of discrimination or retaliation.

In recent years, CTUM and its members have generally not encouraged strikes among its members, for several reasons.²⁴ Firstly, unions do not want to appear too confrontational while they still wish to establish their credibility with Myanmar's emerging industrial relations system. Secondly, international organizations and donors pressure unions to solve disputes through dialogue and arbitration, and encourage unions to avoid open conflict. Until recently, many trade unionists also believed that arbitration offers better outcomes for workers than strikes, which are risky and hard for workers to maintain. In recent times, many unions and labor NGOs outside of CTUM appear to be rethinking this position, after finding the dispute process has remained dysfunctional and proven in many cases to not protect workers' rights. These unions have concluded that the dispute system is not working and see strikes as the only option available to them.

Recent reports meanwhile tell of increasing number of wildcat strikes occurring in Myanmar. For workers not yet unionized, strikes appear appealing as they see others around them succeeding in improving work conditions through strike action, (at least initially before anti-union efforts are taken in response). Stakeholders have speculated that the major reason for the strikes has been a reported increase in dismissals of union leaders within factories. Another possible factor may be that this represents frustration at the current difficulties of implementing the WCC system. In some cases of foreign owned factories servicing large brands, cultural barriers have been speculated to contribute to unrest and perceptions of harsh conditions.

Industrial Conditions

Despite the rapid increase in union organizing, positive change to working conditions and industrial relations in Myanmar remains disappointing. Unions still have limited

23. Fair Wear Foundation (2016)

24. Gillan & Thein (2016)

power and influence, and most garment factories remain non-unionized. Even where independent unions are set up, discrimination, layoffs and violence against union members are reportedly widespread. Trade unionists and trade union leaders are routinely fired by management or have their meagre wages cut, while employees who are non-unionized can be rewarded with bonuses. Employees who attempt to negotiate with employers or strike are fired or transferred to another workplace.²⁵ Similarly, ‘yellow unions’ set up and controlled by the employer to prevent the establishment of genuine worker representation, remain commonplace.²⁶ Trade union representatives also say that the high turnover of workers makes organizing much more difficult, with workers often leaving employment in search of higher wages.

Working conditions similarly present ongoing challenges for the labor movement. Common workplace issues include the following:²⁷

- *inadequate time for toilet breaks;*
- *excessive production requirements;*
- *regular use of abusive language by supervisors;*
- *pregnancy tests for female workers and discrimination to pregnant workers;*
- *systematic hiring for six months of probation where “trainees” receive just over half of minimum wage. While this is legal it undermines the minimum wage entirely;*
- *probation system discourages workers from changing jobs;*
- *various forms of wage theft;*
- *rejection of entitled leave;*
- *unclean drinking water;*
- *long working hours with inadequate breaks; and*
- *remuneration below living wages.*²⁸

Government Policy

It is notable that labor conflict was not a key driver of recent labor law reforms and the formation of Myanmar’s labor institutions. Rather, these reforms were part of a broader process of reintegrating Myanmar to the international economic and political community.²⁹ While the political motivations were varied, they can generally be ascribed to the new regime’s desire to shore up its international political legitimacy, as both a political actor on the world stage and as an economic actor attractive to foreign investment. This approach proved successful when in 2012, Myanmar was readmitted

25. <https://danwatch.dk/undersogelse/bagsiden-af-eventyret-om-made-in-myanmar/>

26. <https://danwatch.dk/undersogelse/ansatte-tyangstestes-og-toer-ikke-tage-toiletpauser/>

27. <https://frontiermyanmar.net/en/garment-factories-supplying-eu-market-accused-of-targeting-union-leaders>

28. Until 2015, Myanmar had no minimum wage at all, and Myanmar had one of the world’s lowest labor costs. In 2018, the minimum wage was raised to 4,800 kyat, which is reportedly not enough to meet the basic needs of textile workers, such as food, housing, consumption, medicine or sending their children to school. It remains the lowest wage rate in the region.

29. Gillan & Thein (2016)

to the ILO as a full member, partly as a result of legalizing trade unionism, FOA and addressing labor trafficking. Meanwhile the US and other potential trading partners suspended trade sanctions against Myanmar - eventually lifting them altogether - and Myanmar was awarded preferential trade status with several countries. The philosophy of political legitimacy and attracting foreign investment underpins the approach of the government to economic development and industrial policy to this day.

At present, the approach of the government to the garment industry is laid out in the policy document, *"The Republic Of The Union Of Myanmar National Export Strategy Textiles And Garments Sector Strategy 2015-2019."*³⁰ While the details of this strategy can be read further in the publication, the goals for the garment sector include:

- *regional integration to spur growth (via the "single ASEAN market" / China-ASEAN Free Trade Area "CAFTA");*
- *national export strategy for the garment sector³¹ (a five-year plan aimed at increasing national export capacity through export infrastructure, compliance with international quality standards, upgrading regulatory framework to better protect the rights of producers and workers, and a drive for the garment industry to move up the value chain);*
- *streamlined import and export licensing to promote trade;*
- *improving labor relations to boost buyers' confidence;*
- *streamlining government structure to improve efficiency (consolidating ministries and operations);*
- *growing interest from international investors;*
- *developing the "immature" local supply chain (the garment sector lacks locally available input supply, limiting ambitious export targets);*
- *overcoming an under-developed banking system as a key obstacle (the garment industry consists mostly of SMEs that do not have the necessary financial resources or knowledge to secure a loan from the financial sector).*

Similarly, a key motivator of government policy is to ensure that Myanmar maintains its preferential trade status which allows it to export at low tariff rates to other member countries and is an important growth driver for the sector; in particular, its Most Favored Nation (MFN) status at the WTO, and the Generalized Scheme of Preferences (GSP) status at the EU under the Everything But Arms (EBA) scheme. These trade preferences are currently under threat as foreign countries consider sanctioning Myanmar for its (genocidal) treatment of its Rohingya population.

30. <https://www.myantrade.org/files/2018/9/5b9783179f30e9.56747063.pdf>

31. <http://economists-pick-research.hktdc.com/business-news/article/Research-Articles/Myanmar-Rising-The-Garment-Sector-Takes-Off/rp/en/1/1X000000/1X0A6IQS.htm>

Stakeholder Mapping and Analysis

Unions

As discussed above (section 2b), the ILO reports that at the end of 2018 there were 2,761 basic labor organizations (BLOs), 146 township labor organizations, 22 state/regional organizations, eight labor federations and one confederation in Myanmar. The CTUM is the one registered labor confederation, allowing it to operate within the legal industrial relations framework at the national level. Along with the federations, MICS and AFFM, the CTUM have participated in the NTDF meetings, indicating their prominence among labor organizations. Among the federations, IWFM and MICS are prominent in the garment sector. Despite the affiliation between IWFM and CTUM (even sharing executive members), the IWFM are keen to assert that they are operationally distinct entities and should be treated as such. At the national level, union capacity is high with many leaders trained internationally and taking a professional approach to organizing.

In addition, there are several labor NGOs that operate to support BLOs at the local and factory level, but are not registered as unions. These groups aim their efforts at factory level organizing and promoting worker organization through WCCs. Labor NGOs often operate in parallel to the national industrial relations framework by drawing on pre-existing political connections (often networks forged through the 1988 uprising) to parliamentarians and powerful figures who are approached to place political pressure on factories and factory owners in relation to specific workplace issues and legal cases. Unlike at the federal level, union leaders' capacity falls away sharply at the local levels, where unionists lack experience and training of standard union activity. Labor NGOs can thus be helpful to dissatisfied workers in addressing target issues and specific problems, and indeed, this is often how new BLOs and unions are formed. Strikes are also one of the most common ways new unions are formed as various union federations and labor NGOs gravitate to wildcat strikes seeing an opportunity to unionize striking workers.

Generally, trade unions in Myanmar have been focused on relatively concrete demands for improved wages, conditions and rights at the workplace, rather than expressing a transformative social vision or oppositional politics. Union federations in Myanmar are nonetheless highly politically adept, owing to longstanding political ties since the pro-democratic movement. Within the movement, "the trade union and labor representation sphere in Myanmar ha[s] been contested from the outset."³² One issue has been that many local labor organizations and labor NGOs have challenged the accepted "hegemony" of the CTUM. CTUM while in exile had long held relations with the international labor community. CTUM thus garnered the vast majority of international union support in the first years since the military regime, and was the first registered

32. Gillan & Thein (2016)

federation. For some time since, other groups that have formed outside of CTUM have been less well known by the international community. While this is slowly changing, CTUM still garners the majority of international support and has successfully affiliated to the ITUC with several of its federations affiliated to international GUFs. Many labor NGOs and non-CTUM affiliated unions have a record of political activism over many years and have suffered imprisonment and victimization under military rule, further underscoring their various claims to legitimate political clout. Moreover, pre-existing histories of political organizing (some outside of Myanmar) have led to divisions driven by personal conflicts and tensions between externally supported and local union activists, rather than by political ideology. These tensions came to a head in April 2013 during the first election of labor delegates from Myanmar to the International Labor Conference that was characterized by acrimonious exchanges.³³ Accordingly, it took some diplomacy for the CTUM, MICS and AFFM to work together to form a shared agenda for dialogue at the NTFD.

Confederation of Trade Unions of Myanmar (CTUM)

CTUM was formed in 1991 as the Federation of Trade Unions of Burma (FTUB) operating in exile in Thailand during the years of military junta. During those years FTUB organizing focused on building democratic and union movements in Myanmar, and supported the rights of Burmese migrant workers in Bangladesh, Thailand and India. After years in exile, CTUM leaders only returned to Myanmar in 2012. FTUB was renamed the Federation of Trade Unions of Myanmar (FTUM) before transforming into the CTUM in November 2014. The International Trade Union Confederation (ITUC) channeled resources and institutional support exclusively to the FTUM and pushed for its immediate recognition as a national federation. In July 2015, CTUM was officially registered as a trade union confederation by the Myanmar government. CTUM is the only trade union confederation in Myanmar, bringing together 9 labor federations, including the IWFU in the garment sector. CTUM covers the following sectors: agriculture, industrial, mining, transport, wood workers, education and aquaculture. As of December 2016, 745 basic unions are affiliated with CTUM with a combined paid membership of over 61,000.³⁴ The organization has grown since. CTUM continues to be affiliated with the International Trade Union Confederation (ITUC) and has strong backing from large international labor organizations.

Myanmar Industries Craft & Services Trade Unions Federation (MICS)

MICS (formerly known as Myanmar Trade Union Federation, MTUF) has its roots in the 'underground' organizing of activists during the junta, with several MICS leaders and founders having been imprisoned by the military government during this time. Following the end of the junta MICS continued its activities as a cluster of local and township level unions based mainly in the industrial zones of Yangon and Mandalay, driven by grassroots labor organizing and activism, before becoming a registered union feder-

33. Campbell, S. (2013)

34. Theuvs & Overeem (2017) at p104-105

ation in May 2016. MICS covers the following sectors: commodity goods production; lead, steel & iron; food & beverage; services (hotels and restaurants); construction, fishery, loading, garment, textiles & leather, oil & gas; mining; and cement. At township level MICS has eight affiliated unions. In March 2016, MICS had 70-75 affiliated unions and a combined membership of more than 10,000 members.³⁵ MICS is growing rapidly in recent years, as it is very effective at grass roots organizing, particularly within the informal sector with self-employed workers such as smallholder farmers forming agriculture unions. At present, the organizing and leadership capacity of MICS is not as sophisticated as the CTUM, but it has increased in influence at the national level due to its presence in the National Tripartite Dialogue Forum (NTDF). Similarly, in 2019 MICS initiated the Labor Consultative Forum (LCF) with the technical support of Apheda and Mondiaal FNV, which runs parallel to the NTDF and brings together trade unions and labor rights organizations to discuss labor rights issues and a collective NTDF agendas. Commentators note that MICS may hope to one day become a confederation. MICS is not yet affiliated with any global union federation.

Industrial Workers Federation of Myanmar (IWFM)

The IWFM is affiliated with CTUM and IndustriALL and is the leading federation in the garment sector. IWFM covers workers in the manufacturing industries (garment, bags and shoe production³⁶). As of November 2019, IWFM had 54 union affiliates (factory level unions) with 13,700 cumulative members. Most members are women (previously estimated at 82%)³⁷. The IWFM is prominent in the garment sector, undertaking many programs with global partners. They reportedly have a very high leadership capacity who are capable of bargaining at the sectoral level, and have shown keen strategic insight in dealing with global brands and suppliers. IWFM boast a relatively high number of CBAs compared to others unions in Myanmar, which vary from being average to relatively higher in quality compared to others in Myanmar. Of particular note is the Myanmar Freedom of Association (FoA) Guideline negotiated with ACT Brands in conjunction with IndustriALL.³⁸ The IWFM continues to build its capacity at the factory level through trainings and organizing outreach.

Agriculture and Farmers Federation Myanmar (AFFM-IUF)

The largest registered federation in Myanmar representing the agricultural sector. The AFFM-IUF is one of the three unions sitting at the NTDF (alongside CTUM and MICS), indicating their clout at the federal level and influence on the labor law reform process. AFFM may one day become a confederation. (Not to be confused with the AFFM-CTUM, which recently affiliated to the IUF.)

35. Theuws & Overeem (2017) at p104-105

36. IWFM no longer represents food processing workers. Recently, CTUM decided to separate food processing from IWFM and form a new federation called the Food Workers Federation of Myanmar (FWFM) which subsequently affiliated to the IUF.

37. Theuws & Overeem (2017) at p104-105

38. <http://www.industrialunion.org/garment-workers-suppliers-and-act-brands-launch-freedom-of-association-guideline>

Union Members

Industrial relations scholars, Gillian and Thein,⁴⁰ characterize Burmese union members as “hot shopper[s]”, indicating that their involvement in union activity is based on seeking assistance with case-specific circumstances:

“Workers come to trade union centres in industrial zones and register as union members when they have a problem. They seek support from unions in solving the problem. This trouble shooting approach is also called “hot shopping”, when workers choose a trade union less for political or ideological reasons or general questions of democratic representation, but for pressing hot issues including unpaid wages, forced overtime work, being dismissed, harassed or even sexually abused. Then trade unions become involved ...”

Commentators do agree that workers’ involvement in unions and formation of new unions is often done in response to specific workplace issues as they arise, however this is in the context of low prevalence and low awareness of unions. In this sense, workers undertake a process of seeking practical support wherever possible.

In recent years, unions have responded to this situation by implementing clear organizing strategies. In fact, IWFM, MICS and both federations have organizing strategies that they review every quarter. Unions aim to broaden membership and recognize that hot shopping does not yield enough support to build up unions over time.

Civil Society Organizations⁴¹

In Myanmar there has been a growth in activist CSOs dealing with labor rights. These CSOs provide support to workers directly, factory level BLOs, as well as networks of small unions. They each provide a variety of different services, which can include conducting trainings, providing advice with worker organizing and tactics, or advising on labor and WCC practices. Some factory managers report that CSOs are more adversarial than unions, owing to their activist roots and higher willingness to strike. It has been speculated that factory managers are becoming more open to working with unions as a result, in preference to workers affiliated with activist CSOs.

Action Labor Rights (ALR)

ALR was set up in 2002 and focuses on promoting FOA and abolishing forced and child labor. ALR is worker focused at the factory level, providing training to workers about labor rights, labor laws, and the formation of unions. ALR trainings for BLOs focus on collective bargaining, negotiation skills, drawing up a constitution and operating WCCs.⁴² Like union federations such as IWFM and MICS, ALR help form new BLOs when issues arise which then form part of their union network. ALR are known to take an activist or “militant” approach, which means that ALR are less likely to have

40. Gillan & Thein (2016)

41. This section relies heavily on Theuws & Overeem (2017)

42. <https://www.apheda.org.au/promoting-workplace-social-dialogue-myanmar/>

the standing to deal with managers directly, although this is not always the case. ALR also conducts research on labor rights in the garment industry, having worked with Oxfam and the Myanmar Centre for Responsible Business and Korean Transnational Corporations Watch.

The Federation of Garment Workers Union Myanmar (FGWM)

FGWM is a CSO alliance of local unions that brings together thousands of workers in the garment industry in Myanmar. FGWM is comprised of 20 factory-level independent and grassroots unions. FGWM has an informal relationship with the International Confederation of Labor (ICL).⁴³

Solidarity for Trade Union Myanmar (STUM)

Recently set up by a former MICS leader, this unregistered union covers transport, the industrial sector (garments, construction) and agriculture industries. STUM aims to become a registered confederation and has a membership of around 1,740 workers as of July 2016.

Burmese Women's Union (BWU)

BWU was established in 1995 in the Thai-Burma border area by women leaders from the pro-democracy movement. BWU focus on women's rights and political participation. BWU's work on labor rights is focused on trainings for female garment workers on labor rights, gender issues and female leadership for trade unions. BWU conducts research on labor rights and gender issues in the garment industry, focusing on the Yangon industrial zones.

Cooperative Committee of Trade Unions (CCTU)

Formed in 2012, CCTU was formed by labor activists within the pro-democracy movement. CCTU trains workers on their rights, carries out research and advocacy, organizes classes to develop workers' skills and supports the formation of trade unions. CCTU currently focuses on the formation of women's trade unions in the garment and shoe industry.

Labor Rights Defenders & Promoters (LRDP)

LRDP was formed in 2010 by Burmese human rights activists in exile in Mae Sot, Thailand, before coming to Myanmar in 2011. LRDP conduct worker rights trainings and conducts research on industry conditions. The organization aims to promote leadership among workers and promote the implementation of international standards to improve workers' living and employment conditions.

43. <https://www.icl-cit.org/actions-in-support-of-fgwm-myanmar-solidarity-cant-be-quarantined/#~:text=The%20Federation%20of%20Garment%20Workers,the%20garment%20industry%20in%20Myanmar.&text=FGWM%20is%20comprised%20of%2020%20factory%20level%20independent%20and%20grassroots%20unions.>

Thone Pan Hla (TPH)

TPH focuses on the welfare of women garment workers by providing its members with services such as its 'Sunday Cafe' and temporary dormitory spaces for female workers to socialize, learn skills and share knowledge. TPH also advocate for better industry standards. While not a union organization, TPH has over 2000 members.

Other Burmese labor groups

These include, "88 Generation Peace & Open Society", "Let's Help Each Other", "ABFTU", "We Gen, "Future Light" and "Yaung Chi Oo Workers' Association".

International Labor Organizations

Unionism in Myanmar has been shaped by international unions and actors, especially because the changes in industrial relations have been motivated by Myanmar's recent desire to engage with the international community.

International Labor Organization (ILO)

In comparison to other countries, the ILO has a very large program in Myanmar, currently comprising of 19 development cooperation projects at both the factory level and at the state level (valued at US\$30 million).⁴⁴ At the state level, ILO has been an active participant in setting up Myanmar's industrial relations framework, seeking to promote fundamental workers' rights and FOA as the country updates its Labor Laws and establishes a functional tripartite industrial relations system. The ILO has been engaged in providing technical assistance to the Government of Myanmar, including providing Minister of Labor, Immigration and Population (**MOLIP**)⁴⁵, with substantive comments on both existing laws and specific draft legislation. The first ever Decent Work Country Program for Myanmar was signed between the Government, employer organizations, worker organizations and the ILO in September 2018, providing a comprehensive tripartite framework for ILO support to the Government and social partners from 2018–21. A new joint project with the OECD, funded by the European Union, entitled "Responsible Supply Chains in Asia" is promoting the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration) and other business and human rights standards. At the factory level, ILO has been involved in projects such as ILO-GIP (see below) aimed at strengthening social dialogue processes in the garment industry through brands, suppliers and unions. ILO also supports training for strengthening the capacity of representative employers' and workers' organizations to influence economic, social and governance policies. One context specific point to note is that the ILO is viewed poorly by employer groups in Myanmar. This is because the ILO are widely considered to have been a driver of the trade sanctions imposed up to 2012 which decimated local industry. Producers from the MGMA remain skeptical of working with the ILO. Moreover, there is a perception that the ILO is

44. https://www.ilo.org/wcmsp5/groups/public/--ed_norm/--relconf/documents/meetingdocument/wcms_673020.pdf
45. Known as Ministry of Labor, Employment and Social Security (MOLES) at the time of the SLDL

a worker's organization ("a giant union") rather than a tripartite organization, owing to the way that the name of the ILO has been translated into Burmese. In addition, some trade unions view ILO as an employer driven organization.

IndustriALL

IndustriALL is a global alliance of international unions representing 50 million workers in 140 countries in the mining, energy and manufacturing sectors, founded in 2012. There are two IndustriALL affiliates in Myanmar: the Industrial Workers Federation of Myanmar (IWFM) and the Mining Workers Federation of Myanmar (MWFM). IndustriALL's work in Myanmar focuses on strengthening these two affiliates. IndustriALL also has an impact on Myanmar's garment sector through its international operations. In November 2015, H&M and IndustriALL Global Union signed a Global Framework Agreement which includes setting up national monitoring committees (NMC), as well as facilitating social dialogue. A Myanmar NMC, comprised of H&M staff and local trade union representatives was set up at the beginning of 2016.

International Trade Union Confederation (ITUC)

ITUC is the world's largest [trade union](#) federation. CTUM is an affiliate of ITUC and is the only ITUC affiliate in Myanmar at this time. ITUC was historically supportive of the FTUB, which now continues through support to the CTUM.

Mondial FNV

Mondial FNV is a trade union support organisation linked to the Dutch Trade Union Federation. In Myanmar, Mondial FNV supports IWFM in collaboration with IndustriALL and support organising and social dialogue both at factory and sectoral level. In collaboration with Mondial FNV support MICS on capacity building and the labour consultative forum. Upon request of MOLIP Mondial FNV recently conducted a cost of living survey covering several sectors and states as input for minimum wage policy reform.

Fagligt Fælles Forbund (3F)

This trade union 3F is Denmark's largest and most powerful trade union. It works with Danish brand, Bestseller, to support social dialogue in supplier factories in Myanmar.

Solidarity Center

Solidarity Center is a union support organization aligned with the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO). It is funded through a variety of US government agencies through cooperative agreements, such as U.S. Aid for International Development (USAID), as well as through grants, the National Endowment for Democracy and some private foundations. Solidarity Center provide training, research, education, legal support and capacity building to support building effective unions internationally.

Union Aid Abroad / APHEDA

APHEDA is a union support organization aligned with the Australian Council of Trade Unions (ACTU) as well as from the Australian government aid agency, DFAT. APHEDA provides resources and programs to union building internationally. In Myanmar, they have been working closely with MICS to strengthen the efficacy of WCCs in factories.

Friedrich Ebert Stiftung (FES)

FES is a non-profit government funded German foundation working for the advancement of political and economic social democracy. Active in Myanmar since 2004, FES supports the process of trade union formation through capacity building and the promotion of social partnership dialogue.

ActionAid

ActionAid is an international non-governmental organization whose stated primary aim is to work against poverty and injustice worldwide. ActionAid is a federation of 45 country offices that works with communities, often via local partner organizations, on a range of development issues. In Myanmar, ActionAid provides training for female workers on labor rights, trade union rights, and more broadly on gender issues. ActionAid Myanmar focuses on female garment workers within its 'safe public spaces' program, researching how factory conditions affect women workers' lives.

Myanmar Centre for Responsible Business (MCRB)

Myanmar Centre for Responsible Business is a joint initiative of the Institute for Human Rights and Business (IHRB) and the Danish Institute for Human Rights (DIHR). It aims to provide a trusted, impartial forum to encourage responsible business activities throughout Myanmar through research, seminars and forums for dialogue.

Employer Associations

The *Labor Organization Law 2011* allows for employers to organize in parallel structures to workers, however employer organizations have not been quick to coalesce, in part due to having already strong power vis-a-vis workers, but also due to difficulties in organizing under the current law.⁴⁶ According to the ILO, in 2018, there were still only 26 basic employers' organizations (ie. operating as business associations), one township employers' organization and one employers' federation (maritime) registered.⁴⁷

The only true employer association in the garment sector is the Myanmar Garment Manufacturers Association (MGMA), who is affiliated under the peak national busi-

46. https://www.ilo.org/wcmsp5/groups/public/--ed_norm/--relconf/documents/meetingdocument/wcms_673020.pdf
47. https://www.ilo.org/wcmsp5/groups/public/--ed_norm/--relconf/documents/meetingdocument/wcms_673020.pdf

ness association, the United Myanmar Federated Chambers of Commerce and Industry (UMFCCI) have both played active roles in the development of industrial relations in Myanmar. The MGMA give license to factories under the CMP model and represent local industry in tripartite forums. Many industry employers lack understanding of the labor laws, so the MGMA has provided their support in being associated with programs that provide basic education and training for their members on industrial relations and labor regulation. A number of industry initiatives have been underway to improve workplace standards in the garment industry, such as the SMART Textile & Garments program. Meanwhile, smaller employer associations have been established mainly in the manufacturing sector in response to strikes and labor organizing in industrial zones, and have garnered educational and technical assistance from the ILO.

Employer Associations have been reticent to engage in social dialogue efforts however, maintaining that the industrial relations system is too immature to support respectful dialogue. Most likely it is rather a reflection of their strong industrial position that means they are not forced to engage in lobbying government authorities or engaged in bargaining or dialogue with unions:

"The absence of a serious attempt on the part of employers to organise reflects the fact that employers and owners retain enormous coercive and institutional power in the workplace. They are yet to confront a labor counterpart sufficiently strong to compel effective industry or even enterprise-based collective bargaining, and so have no urgent need for collective representation. As a consequence, the domain of industrial relations on the employer side is limited in the main to small and medium local enterprises and some factories part-owned by Korean and Taiwanese interests."⁴⁸

Myanmar Garment Manufacturers Association (MGMA)

The MGMA is dominated by domestic factory owners that continued to operate throughout the period of trade sanctions, and are connected to Japanese and Korean supply chains. In contrast, the Western brands invited their preferred multinational suppliers to set up factories in Myanmar when they began production, and thereby not rely on pre-existing Myanmar-owned factories which were not in a position to fulfill code of conduct and quality requirements. Thus the MGMA has little connection to large producers and to the interests of global brands who are sensitive to EU trade preferences and EU market publicity. The MGMA has been described to have "old thinking" in terms of viewing unionization as a potentially disruptive problem that ought to be contained, and in this spirit have turned down offers to be included in various Social dialogue programs that have been operating in the country.

In 2015 MGMA published a 10 year strategy plan for industrial growth & development with a focus on responsible manufacturing practices, skills development and facilitating ethical sourcing, thus building up the brand label of "Made in Myanmar". The strategy aims to support the government strategy of upskilling the sector to

48. Gillan & Thein (2016)

move from operating on a CMP basis to operating on a FOB basis, which offers more opportunities for value retention through value-adding activities, such as sourcing and design. The MGMA has also been tasked with training employers to better understand and follow labor regulations, particularly with the purpose of improving the skills and competitiveness of the sector's labor force.⁴⁹ In January 2015, the MGMA ratified a Code of Conduct for its member companies as a guide and framework for responsible business practices in the country's garment sector. The MGMA has also been supportive of increasing labor inspection capacity, aware that it is necessary to attract global brand and have assisted in developing a self-assessment tool for factories. In the years since the formation of the strategic plan, Myanmar garment factory owners have not been able to attract orders from the Western brands as they had hoped, in turn lessening MGMA's commitment to responsible business practices, and in particular its Code of Conduct under the 10-year strategy plan.

The MGMA has not been supportive of social dialogue and has an adversarial stance towards unions. The MGMA not only declined to take part in various Social Dialogue projects, but also discouraged certain factories from participating, stymieing industrial bargaining at the sectoral and the factory level. The animosity between unions and the MGMA is long standing however, stemming from political differences, mistrust and oppression existing under the old political regimes. For the most part the MGMA is motivated by attracting FDI and ensuring that no sanctions are placed on Myanmar, particular if the EU were to lift its EBA status.

United Myanmar Federated Chambers of Commerce and Industry (UMFCCI)

The UMFCCI is national level NGO representing the interests of the private sector to Myanmar's government. Founded in 1919, UMFCCI comprises 16 Regional and State Chambers of Commerce and Industry, nine Border Trade Associations, 76 Affiliated Associations (including MGMA) and about 30,000 members.

Chinese Employers' Associations

These include the China National Textile and Apparel Council (**CNTAC**) the Chinese Textile & Garment Association In Myanmar (**CTGA**), and the China Enterprises Chamber of Commerce in Myanmar (**CECCM**). CNTAC and CECCM have worked with SMART Myanmar to provide CSR training for Chinese textile and garment suppliers in Myanmar, as well as the Ethical Training Initiative (ETI)'s codes of conduct and requirements. CNTAC has signed MOUs for cooperation for sustainable development of Myanmar's garment industry with both MGMA and CECCM. On the face of it, Chinese associations have been quite open to social dialogue, indicating a willingness to meet with IWF and establish a forum for discussion and preserve a good relationship. Commentators point out however that this has not resulted in many concrete improvements to working conditions or respect for trade union rights. Rather, it is more likely that the association must show support for ILO conventions since most of

49. <https://www.myantrade.org/files/2018/9/5b9783179f30e9.56747063.pdf>

their garment factories in Myanmar are suppliers to Western brands. In distinction to MGMA members, Chinese suppliers are linked to global brands and possess a significant degree of capital mobility.⁵⁰ This means they can relocate operations if industrial relations become too unfavorable to them. Cultural difference is also a factor, and Chinese suppliers reportedly have clashes with workers, with differing communication styles and expectations with regards to harsh treatment of workers, labor standards and excessive production quotes.

Other Employer Associations

These include an association for Korean factory owners, and the Myanmar-Korea Chamber of Commerce and Industry (MKCCI).

Global Brands

Major global brands active in Myanmar include H&M, C & A, Deuter, Gastra, Muji, New Look, Primark, Suitsupply, Bestseller and Takko. These brands have only become involved in Myanmar since 2012. For example, companies like H&M and Danish Bestseller have gone from having zero Burmese suppliers in 2012 to having around 60 and 20 respectively in 2018. Unlike regional brands and brands supplying the Japanese and Korean markets that operated via local Burmese suppliers throughout the sanctions period, these global brands order their production stock via suppliers in Hong Kong or Beijing who manage production among a whole raft of Chinese suppliers throughout the South East Asian region. Thus, major global brands are characterized by having multiple suppliers and so have a high degree of capital mobility. This makes them sensitive to changes in production costs - including labor costs and wage rates - as well as regulatory changes, political stability and trade tariffs. If the EU suspends Myanmar's EBA GSP status, there is a significant likelihood that global brands will source production elsewhere.

As global brands, they are subject to consumer pressure in downstream markets to ensure ethical supply chains, and for this reason are sensitive to maintaining positive publicity and marketing and avoiding reputational damage that would be caused by reports of labor exploitation and rights abuses by suppliers. Global brands thus consider it within their business interests to participate in ethical supply chain initiatives. This can be seen in social dialogue projects discussed below, involving global brands such as H & M, Tchibo and Bestseller. Major brands similarly like to be seen to be working with labor representatives towards promoting labor rights, for example, H&M and IndustriALL entered into a Global Framework Agreement in November 2015 setting up national monitoring committees to ensure the implementation of social dialogue projects within factories. Accordingly, the global brands like to suggest that they are thereby driving up labor standards across the whole sector and even the country.

50. http://www.xinhuanet.com/english/2018-10/18/c_137542089.htm

To some degree, it may be true that large European buyers have helped to raise standards in the garment sector by improving OH&S standards and addressing issues such as underage labor, discrimination and forced labor. Brands and retailers have become more hands-on in supporting suppliers through capacity building initiatives, going beyond a traditional audit and compliance approach. However, brands do not own or manage supplier factories, meaning that suppliers ultimately determine factory working conditions and this leads to a great deal of variance in the sector. Accordingly, supply chains in Myanmar remain riddled with labor rights problems that the audit systems and improvement projects fail to address.⁵¹

For major brands, ongoing challenges in Myanmar include the instability of the labor law, and the threat that the EBA/GSP will be withdrawn which would cause large brands to leave. Another challenge is for brands that so much of the country is tied to the military regime, which has blacklisted commercially; it is therefore difficult for brands to do their due diligence and creates significant political risk.

Suppliers

Suppliers are a diverse set of factory owners and operators, but generally they can be put into two categories in the case of Myanmar. On the one hand, there are a set of domestic suppliers that produce for Korean and Japanese owners and retailers. These suppliers continued to operate throughout the sanctions period and are over-represented within the MGMA. The largest domestic business conglomerates have close relationships with the military political elites, and operate in an oligarchic manner and for this reason are difficult targets for labor organizing and activism.⁵² These suppliers are less sensitive to global conditions and reputational issues. In some cases, these factories have relatively less formalized labor standards yet better labor conditions in practice, reportedly stemming from a higher degree of cultural understanding and mutual trust afforded by the fact that these factories are Burmese managed with Burmese workers. However, these suppliers ultimately have a low level of understanding of labor rights and have been subject to training programs set up in conjunction with the MGMA.

The other set of suppliers are more recently established Chinese factories that have set up in Myanmar since 2012 to service global brands. Many of these factories were set up at the express invitation of those global brands, as the same suppliers already operate factories within that brand's supply chains in other countries. These factories are members of Chinese manufacturing associations. It is often said that these suppliers suffer from a degree of intercultural misunderstandings with workers which impact work conditions negatively, as well as the fact that Chinese factories do not have a cultural practice or tradition of labor organizing, which makes worker represen-

51. See for example:
Frontier Myanmar <https://frontiermyanmar.net/en/garment-factories-supplying-eu-market-accused-of-targeting-union-leaders>
HRW report <https://www.hrw.org/report/2019/04/23/paying-bus-ticket-and-expecting-fly/how-apparel-brand-purchasing-practices-drive>

52. Ford et al (2016)

tation a foreign concept. However, these Chinese companies have been operating for many years in multiple countries such as Bangladesh, Cambodia, Indonesia and even in Africa in which they have been subject to the Western brands' codes of conduct. Labor rights expectations are well known and yet these companies have become adept at passing audits despite their union-avoidance tactics. Nonetheless, these factories are still subject to downstream buyer pressure, and so aim to fulfil labor standards to the extent they feel they must in order to maintain business relationships, even if they do so in pragmatic ways.

In both cases, suppliers remain wary of labor organizers and assume that unionization will lead to lower productivity, more work disruption and higher wages. In both cases, suppliers have been hesitant to be included in social dialogue processes, and have done so seemingly only after brands compelled these suppliers to participate in their high-profile social dialogue projects. Factory managers report that it is somewhat of a learning curve for them to understand the benefits of having worker representation in their factories. Supplier workshops and trainings has been a key part of this process. For suppliers to global brands, training programs have been provided by international CSOs and NGOs. For example, SMART (SMEs for Environmental Accountability, Responsibility and Transparency) Program Myanmar is a four-year project funded by the European Union which assists garment manufacturers in the areas of productivity, social compliance and energy reduction. While the British Council sponsors The Pyoe Pin Program which is currently working with 12 Myanmar owned factories to support them in their development from CMP to FOB manufacturing.

Government

Government of Myanmar

The Government is driven primarily by a desire to attract FDI. It has taken a number of important steps to improve the investment environment such as the *Myanmar Investment Law 2016* which includes provisions to facilitate setting up investments in Myanmar, to provide equal treatment of local and foreign investors, and a commitment to promote responsible investment. In November 2018, the Government created a new *Ministry of Investment and Foreign Economic Relations*, while enacting changes to the banking system to allow foreign banks to lend to local businesses, while also permitting 100 per cent foreign ownership and joint ventures.

The Government has supported tripartite labor institutions and policies, again with the purpose of attracting FDI and becoming an accepted political actor internationally. Myanmar's access to foreign investment and international markets is linked to the establishment of a democratic reform agenda, a crucial part of which is the promotion of labor rights and employment relations of an internationally acceptable standard.⁵³ The promotion of workers' rights, labor standards and workplace conditions has stemmed more from external influence than it has from the internal pressures of a vibrant grass-roots labor movement within Myanmar. The official tolerance of trade

53. Gillan & Thein (2016)

unions does not therefore represent an advancement of workers interests vis-a-vis elites, and the support of the labor movement remains conditionally sanctioned.

Among progressive parliamentarians (elected members of the NLD party), there is a desire to represent their constituents in a favorable manner, supporting workers' rights and democracy. Nonetheless, the country has only been a democracy since 2015, and many members consider it to be their exclusive role to represent citizens, and so remain resistant to the idea that a union also has a role to play in worker representation. While the current government claims to be pro-worker, it is nonetheless unfamiliar with worker organizations. The government thus aim towards a paternalistic vision of the state that directly takes care of workers as individuals, but is legally unsupportive of worker organizations and collective representation. For example, while workers are allowed to form CBAs, there is little support for the practical worker organizing frameworks that would allow this to eventuate. It could be said that this is tied to the authoritarian tradition of the militarized state that remains significant in Myanmar, favoring chain of command practices over oppositional counter-politics. This dynamic continues to shape the responses of government officials and employers on a day-to-day basis. There is a sense among CSOs that it will take a new generation of Burmese leaders who are familiar with Industrial Relations to truly establish tripartite institutions and supersede old political ties.

Much of the political reform to the labor laws since 2012 has also represented a consolidation of economic power in the hands of military-owned business firms and domestic business conglomerates via processes of privatization.⁵⁴ Many politicians and members of government are tied to old military elites who have owned land that has been used to develop industrial zones and factories. Worker mobilization and industrial conflict is not yet threatening to the state, which is content to keep the peace to serve the interests of local capital, that being the military-political elites. Government remains dominated by ties to the military and members of the old military regime, while the power of the military remains significant in the government bureaucracy, in the economy and in political representation. Thus there have been incidents of state – employer collusion to repress labor activism and demonstrations.

Ministry of Labor, Immigration and Population (MOLIP)

Formerly known as the Ministry of Labor, Employment and Social Security (**MOLES**), MOLIP is the government department with oversight of the garment industry and workplace relations. According to CSOs, the greatest obstacle for MOLIP is a lack of capacity and skills among MOLIP officials. Many policy actors are unfamiliar with industrial relations systems and have poor understanding of the Labor Laws. MOLIP was instrumental in constructing the Garment sector's strategy, setting out a plan to upskill the sector and make it more attractive to FDI.⁵⁵

Other noteworthy government departments include, Ministry of Commerce (MOC) and Ministry of Information (MOI).

54. Ford et al. (2016)

55. <https://www.myantrade.org/files/2018/9/5b9783179f30e9.56747063.pdf>

Table 12: Relative influence and support capacity of textile and garment sector TSIs

		Capacity of institution to respond to sector's needs	
		Low	High
Level of influence in the sector	High	Dica MGMA Customs MIC MoEP MoFR MoRT MoT	CMP Monitoring Committee MoC Mol MoLESS
	Low	Myanmar Customs Brokers Association Myanmar Centre for Responsible Business Myanmar Inspection and Testing Services MoIP Truck associations	eTrade Myanmar UMFCCI

Source: National Export Strategy Textiles and Garments Sector Strategy 2015-2019

International Development Agencies

The European Union (EU)

Under the EU's Generalized Scheme of Preferences (GSP), Myanmar exports can enter Europe without any tariffs or quotas due to the Everything But Arms (EBA) program for least developed countries. Due to growing concern over human rights violations in Rakhine, Kachin and Shan states, and concerns about labor rights, the EU is currently conducting investigations with the possibility of suspending Myanmar's trade privileges under the EBA scheme. In February 2019, an EU mission concluded a second monitoring trip to gauge progress on human and labor rights indicators. If the trade status was revoked, EU buyers and brands would have to start paying tariffs to import Myanmar-made garments, and are likely to source production from other countries. Without GSP status, Myanmar's garment exports may no longer be price competitive. This would most affect Myanmar's garment sector.

The EU also funds the SMART (SMEs for Environmental Accountability, Responsibility and Transparency) Textile & Garments project in Myanmar, in conjunction with private sector partners such as brands, retailers and factories. Running since 2013, SMART assists garment manufacturers in the areas of productivity, social compliance and energy reduction and aims at improving working conditions, promoting labor and environmental standards and reducing labor right abuses in the textile and garment industry. Activities include training and advisory support for factory managers and workers on workplace safety, labor law compliance and environmental practices, as well as facilitating dialogue between the public and private sectors.

Japan International Cooperation Agency (JICA)

JICA, Japan's international development agency, has established several technical assistance projects, alone and in cooperation with MGMA, to train Myanmar garment workers in sewing machine operation, garment manufacturing and garment factory supervision. Other trainers are commonly hired from abroad to build skills in computer-assisted design.

Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ)

GIZ, Germany's international development agency supports industry in developing countries. GIZ is a federal enterprise founded as a company under private law. Its mandate is to support public-private partnerships towards economic development. In Myanmar, GIZ currently partners with Tchibo in the garment sector, as part of their global partnership.

Swedish International Development Agency (SIDA)

SIDA is a government agency of the Swedish Ministry for Foreign Affairs, and supports industry in developing countries. In Myanmar, it currently partners with H & M in the garment sector.

Stakeholder Summary

Stakeholder	Influences	Interest in Reform	Capacity for Reform
Unions	<ul style="list-style-type: none">• Internal politics within organizations• Political differences and personal differences among major unions• Pressure from international funders• Major unions have learnt to work together in tripartite dialogue to avoid differences.	<ul style="list-style-type: none">• High commitment to reform	<ul style="list-style-type: none">• CTUM - High capacity at upper level, capacity still developing at grass roots level• IFWM - High capacity at upper level, capacity still developing at grass roots level; still growing institutional recognition away from CTUM• MICS - Committed and growing constituency; organizational capacity still developing; are able to influence policy and industrial relations

Union Members	<ul style="list-style-type: none"> • Individual case focus 	<ul style="list-style-type: none"> • Want to see tangible changes to wages and work conditions 	<ul style="list-style-type: none"> • Not highly organised • Low union membership
Civil Society Organisations	<ul style="list-style-type: none"> • Activist orientation • Not interested in tripartism • Can be donor focused 	<ul style="list-style-type: none"> • High commitment to reform working conditions and political landscape • Not tied to social dialogue / tripartite model • Not always pro-union 	<ul style="list-style-type: none"> • Effective at grass-roots level • Some long standing connections to political class • Have had little influence on labor law reform process • Limited ability to partake in social dialogue forums & influence at state level
International Labor Organisations	<ul style="list-style-type: none"> • ILO looks for win-win / tripartism, is politically neutral & conflict avoidant • International unions seek to strengthen tripartite model and implementation of ILO conventions 	<ul style="list-style-type: none"> • High commitment to sustainable working conditions 	<ul style="list-style-type: none"> • Highly experienced at capacity building and training • Foreign driven and still have to adapt to local conditions
Employer Associations	<ul style="list-style-type: none"> • Wants to grow exports and attract investment • Beholden to members interests and attracting members • Resistant to unions 	<ul style="list-style-type: none"> • MGMA - resistant to reform • Asian Associations - minimalist but pragmatic approach 	<ul style="list-style-type: none"> • Moderate capacity for sectoral interventions and bargains • Low capacity in pressuring individual suppliers
Global Brands	<ul style="list-style-type: none"> • Profit driven • Sensitive to negative publicity in consumer markets • Can easily move production elsewhere 	<ul style="list-style-type: none"> • Want to protect value of brand and image, and will support basic labor rights to the extent they are guaranteed to protect their brand • Limited interest - will only get involved to the degree they feel they must 	<ul style="list-style-type: none"> • Rely on suppliers to control factory conditions • Resist direct oversight of factories to avoid responsibility, so often have limited control over individual suppliers • Can influence their domestic governments and government agencies

Suppliers	<ul style="list-style-type: none"> • Economic profit focus • Influenced by supply chain pressure; buyers, brands and timelines 	<ul style="list-style-type: none"> • No real motivation unless enforced by buyers or head office • Cost pressures - low prices and fierce competition is driving suppliers to cut on working conditions 	<ul style="list-style-type: none"> • Poor understanding of the Labor Law and industrial relations concepts • Have little experience of industrial relations; can be a foreign concept
Government	<ul style="list-style-type: none"> • Wants to maintain preferential trade status and increase FDI • Aims to shore up international legitimacy • Oligarchical political structure - ties between industry owners, military elites & government officials 	<ul style="list-style-type: none"> • Keen to meet international legal standards to attract FDI • MOLIP - keen to increase capacity and skill level of staff and industry • Pro-worker politicians - interested in reform but unsupportive of unions. • Military tied politicians - protect 	<ul style="list-style-type: none"> • Government is unfamiliar with industrial relations practice and culture • MOLIP - poor knowledge of labor law among staff, but high relative to other government ministries
International Development Agencies	<ul style="list-style-type: none"> • Economic development focus • Can seek measurable & narrow outcomes 	<ul style="list-style-type: none"> • Interest in producing sustainable economic development 	<ul style="list-style-type: none"> • Ability influence associations and groups through partnerships, training and funding

Case Studies of Social Dialogue in Myanmar

Labor Law Reform and the National Tripartite Dialogue Forum (NTDF)

Since 2012, the Burmese government has undertaken a process of amending and updating Myanmar's labor laws in order to make them suitable for foreign investment and production for international supply chains. With involvement from the ILO, the government has purported to conduct the reform according to a tripartite consultative process called the NTDF. Within the course of this process, various mechanisms for social dialogue have been established at the national and sectoral levels, as follows:

- In September 2013, a tripartite national minimum wage committee was set up under the Office of the President. The committee includes five representatives from workers' organizations, five representatives from employer organizations, five government representatives and two individual experts. It has been the first social dialogue forum within Myanmar. In May 2018, the Government and social partners successfully completed the first tripartite review of the minimum wage, raising the rate from 3,600 to 4,800 Myanmar Kyats per day.⁵⁷
- In October 2014, the Government established a technical working group for labor law reform to review amendments from a legal perspective, known as the "Technical Committee Cluster on Labor Law Reform and Institutional Capacity Building". This Cluster brings together a broad group of stakeholders including various government ministries, foreign governments, research and policy institutes, international development banks, the Chamber of Commerce, employer organization representatives, and others. Worker representatives joined the forum from February 2015.
- In November 2014, the "Initiative to Improve Labor Rights and Practices in Myanmar" was formally launched by Myanmar, the United States, Japan, Denmark, and the ILO. The EU joined in May 2015. The Initiative seeks to (1) develop a multi-year labor law reform plan to build on previous legislative progress in Myanmar, (2) support institutional capacity building and (3) provide a forum for domestic and international stakeholder engagement and input.
- In December 2014, the first meeting of the quarterly National Tripartite Dialogue Forum (NTDF) was held, attended by representatives from government (led by MOLIP), leading trade unions (including CTUM, MICS and AFFM) and employers (UMFCCI), with technical support from the ILO.⁵⁸ The NTDF is the main forum for consultation and social dialogue with respect to the labor law.
- In parallel to the NTDF process, the registered union confederations have hosted the Labour Consultative Forum (LCF), a separate forum for labor groups to meet, discuss issues, and come to a collective strategy in order to enhance their collective bargaining positions at the NTDF. This forum has been significant in putting aside differences between the unions so that they work together, as well as providing a channel for the unregistered unions to be involved in the labor law reform process. The Labour Consultative Forum (LCF) invites trade unions, labour rights organisations and international stakeholders like ILO, and trade union support organizations. During certain sessions MOLIP, employers' associations and MPs have also been invited. Lately, the focus of the forum has been on labour court reform and minimum wage policy.
- The NTDF has displayed the many challenges for undertaking social dialogue at the federal level in Myanmar. Parties report that there have been major shortcomings with respect to the substance of legal amendments, the relationship and communications between the government and stakeholders, and the implementation of the reform process itself.

57. https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_673020.pdf

58. The National Tripartite Dialogue Forum is the focal consultative forum for all matters concerning labor law.108

Regarding the substance of legal amendments, the NTFD has been problematic because the Government had introduced amendments to the *Settlement of Labor Disputes Law* and the *Labor Organization Law* that seemed to contravene and bypass ongoing consultation from stakeholders and overlook numerous submissions that had been made. Rather than improve labor rights as planned, the amendments provided by the Government actually equated to decline in labor rights and FOA.⁵⁹ Firstly, the *Labor Organization Law* amendments introduced new restrictions on (1) the constitution and structure of unions and required them to re-register every two years; (2) the right to strike; and (3) prohibited temporary workers from joining trade unions. Moreover, the reforms did not address well known existing concerns regarding FOA and CBAs. The amendments also failed to renew the *Supplementary Understanding for Labor Disputes* that expired in December 2018, meaning that no credible and reliable complaints mechanism would be available for labor rights violations.

Simultaneously, the relationship between the unions and the government began to decline as a result of the prosecution of eight trade unionists in Mandalay charged under the *Peaceful Assembly Law* for their participation in a peaceful demonstration against the labor laws.⁶⁰ The Ministry of the Interior had previously claimed they would not construe the assembly laws in a manner that would restrict FOA. The charges appeared to be arbitrary and disproportionate prompting the ILO to intervene in the case, and in October 2018 an ILO direct contacts mission came to report on Myanmar's compliance with ILO Convention 87. Tensions between stakeholders had also been rising as a result of increasing discrimination of unionized workers, often being dismissed in retaliation for peaceful and legitimate trade union activities. Such as registering a new union. Employers had escalated the issue by refusing to abide by the decisions of the Arbitration Council, seemingly with state approval as they were punished only with a minimum fine rather than meaningful penalties.

In protest of ongoing issue with the labor law and the lack of consultation by the Government, both CTUM and MICS withdrew from the NTFD in February 2019.⁶¹ The unions claimed that the NTFD was an ineffective tripartite mechanism because the Government bypassed the established consultation process for the drafting of the new laws, thereby making seemingly unilateral and arbitrary decisions and refusing to include the view of workers. In the opinion of the unions, the legislative proposals would contravene Myanmar's obligations under ILO Conventions Nos 87 and 98, and represented a rejection of genuine tripartite social dialogue. While the unions have rejoined the forum and reiterated their ongoing commitment to the development of effective social dialogue and tripartite industrial relations, significant mistrust remains and doubts about the forums effectiveness.

From an employers' perspective, representatives have stated their support of the NTFD and effective tripartism, restating their support of FOA and urging the Government to take into account the input of unions in the legal reform process. Meanwhile, employers voiced their own concerns with the amended legislation, voicing concern about the current pyramidal administrative structure imposed on organizations which

59. https://www.ilo.org/wcmsp5/groups/public/--ed_norm/--relconf/documents/meetingdocument/wcms_673020.pdf
60. https://www.ilo.org/wcmsp5/groups/public/--ed_norm/--relconf/documents/meetingdocument/wcms_695343.pdf
p.96 - 97

61. <https://www.apheda.org.au/unions-myanmar-suspend-participation/>

prevented employers from creating legally recognized national employers' organizations. Regarding the *Settlement of Labor Disputes Law*, employers have argued for the use of alternative dispute resolution mechanisms that would "ensure efficiency, ease of access, low-cost participation and speed of outcome". They have also advocated for criminal penalties to be distinguished from administrative or civil labor violations.

In response to the tensions at the NTDF, the Government has claimed a lack of capacity on its part, requesting further training from international partners. Following the unions withdrawal, the government ultimately provided consultations between Members of Parliament and unions to draft new amendments to the proposed legislation. Various amendments were subsequently adopted by the two houses of Parliament and reconciled by a joint bills committee.⁶² It remains to be seen whether the passed law will incorporate stakeholder recommendations or comply with international labor standards.

From the perspective of the ILO, tripartite dialogue in Myanmar has nonetheless, "developed significantly in recent years, but remain[s] fragile and could not be taken for granted":

"The culture of tripartite social dialogue has grown stronger at the national level, but cannot be taken for granted if its outcomes are not respected, and trust and cooperation are not achieved on the ground. The forthcoming labor law amendments, particularly to the Labor Organization Law, will be a critical test for whether freedom of association is to move forwards or backwards."⁶⁴

The ILO has also pointed to the recent enactment of the new Occupational Safety and Health Law as a significant achievement for the tripartite process, as it had been discussed with the social partners for many years and demonstrated the value of social dialogue in the law-making process.

Going forward, the recommendations of the ILO's Direct Contacts Mission report have been incorporated into an updated road map that will guide the work of the NTDF through 2019 and beyond; specifically that there be amendments of key labor laws, future capacity-building and the development of the dispute settlement mechanisms. The new road map also prioritizes training for local labor officials and conciliators and arbitrators at the township and regional level, in order to reinforce government capacity and help to build competency in the area of prevention and resolution of labor disputes.

The NTDF is considered to be a potential forum for one day conducting the tripartite consultations required by the ILO's Tripartite Consultation convention 144.

ILO Garment Industry Project (ILO-GIP): ILO, SIDA, and H&M ⁶⁵

The ILO - GIP is a 3-year project completed in March 2020, focusing on industrial relations capacity building and training. Major themes of the project are opening up

62. https://www.ilo.org/wcmsp5/groups/public/-ed_norm/-relconf/documents/meetingdocument/wcms_695343.pdf p95

63. https://www.ilo.org/wcmsp5/groups/public/-ed_norm/-relconf/documents/meetingdocument/wcms_673020.pdf

64. https://www.ilo.org/wcmsp5/groups/public/-ed_norm/-relconf/documents/meetingdocument/wcms_695343.pdf p94

65. Contains sensitive material, not ready for wide circulation

spaces for social dialogue, relationship building, gender equality and women's empowerment. The GIP is predominantly managed and delivered by the ILO. Development partners, Swedish International Development Cooperation Agency (SIDA) and Swedish multinational clothing retailer, H&M fund the majority of the USD\$2.5m project, with a minor portion sourced from two other major international garment brands. Operationally, SIDA and H&M rely on the ILO for implementation, with H&M having assisted by joining its suppliers to the program. In practice, H&M's role also includes the possibility of placing pressure on the ILO to enlist their help if their suppliers need assistance in dealing with unions.

The program is administered at three distinct levels - worker level, factory level and sectoral level - the latter two of which specifically involve a social dialogue component. At the worker level the project focuses on training garment workers about their rights and responsibilities in the workplace. The project has developed a curriculum that can support unions and worker organizations to conduct trainings with their own members.

At the factory level, the project is focused on working with employers, unions and workers' representatives to strengthen workplace dialogue, particularly through the WCC channel. ILO is working with 20 factories, 10 of which are H&M suppliers, while the remaining 10 factories were sourced subsequently through the project. The ILO has developed a training curriculum covering 5 topics: social dialogue, productivity, sexual health, sexual harassment, and OH&S. A large part of the training is designed to open a space for social dialogue so that stakeholders can be responsive to the specific needs and conditions of the particular factory. WCC members are assisted to develop factory baseline assessments, needs analysis, action plans and prioritizing areas for interventions.

So far, the factory level program has shown that positive results are heavily dependent on the level of time and effort that can be dedicated to developing dialogue and training. Myanmar is new to having a tripartite industrial relations system, and for social dialogue practices to develop it requires a significant shift in mindset among stakeholders which can be a lengthy process. At the outset, it was difficult to convince factory owners to join the program. Most managers were unfamiliar with unions, or viewed unions as being disruptive and a drag on productivity. Moreover, factory managers are constrained by having production quotas and tight production timelines. This program has benefited from the involvement of the purchaser H&M, who were prepared to concede the time and space that would allow the promotion of social dialogue. In general, this suggests that in order to promote space for dialogue there needs to be pressure on purchasing practices.

Another challenge to garnering the involvement of factories is "training fatigue". Workers and factories are subject to numerous programming and training efforts of NGOs and CSOs, and amidst production imperatives, managers can find it difficult to assess how many trainings can be practically accommodated. One way the ILO-GIP has successfully navigated this challenge has been to design the training program so as to target different groups within the factory, and not only the WCC members. A further challenge has been in targeting locally owned factories, which are preferable sites for capacity building because it ensures that expertise remains in the country to develop.

In contrast, the foreign owned (generally Chinese) factories always have a high level of mobility, and will simply relocate if a union becomes too demanding or production conditions become unfavourable. Yet, because the global brands bring the supply chain pressure, there is more interest in training from the Chinese factories that service these supply chains, rather than locally owned factories that supply Asian buyers.

Factory managers have nonetheless been interested in the ILO-GIP due to the ongoing development of the WCC system, which is now compulsory. The law pertaining to the WCCs is recognized to be unclear and incomplete; no one has a clear understanding of their specific rights and responsibilities under the WCC that would lead to their operationalization. In this context, training programs are seen as a forum for social dialogue in which parties can come together to fill in gaps in order to find a practical application of the WCC law. Nonetheless, the gaps in the WCC law also make training programs difficult. Even after trainings, managers remain confused about the difference between WCCs and unions, as well as what their respective roles are in conducting social dialogue, disputes and CBAs. However, as the WCC system has been developing within factories, managers have come to see the value of having worker representation as a channel for raising issues and preventing disputes. One large change in mindset has been that managers have come to understand why it is important for WCC representatives to be selected by workers rather than management, ensuring that the elected representative has legitimacy and trust among workers.

From the workers' perspective, the ability to organize the WCC is a slow process of "unlearning" the lessons of the military government; that is, that worker representation is something "illegal" that leads to imprisonment, and therefore something to be avoided and feared. The ILO-GIP can be assumed to be encouraging in this respect, as, it is reported that some BLOs (factory level unions) are being formed in the H&M factories. Through the project, worker representatives have been encouraged to approach management directly with issues, rather than to approach the brand requesting they put pressure on the supplier. This approach has seen some success in developing dialogue channels.

At the sectoral level the ILO-GIP works with unions, worker organizations and employer organizations in the garment sector to build industrial relations capacity. This involves training union leaders, building structures for social dialogue, and building trust between social partners. It also includes capacity building with trade union and employer representatives, teaching items such as negotiation skills, grievance handling, conciliation and arbitration processes, collective bargaining and policy development workshops.

At this level, the program has seen little enthusiasm from the employer organization, MGMA. MGMA has been very limited in their involvement, facilitating only a few select trainings that suit their interests and a narrow amount of research projects. The ILO originally wanted unions to deliver all worker trainings - for purposes of capacity and relationship building - but the MGMA insisted on the hiring of "neutral" trainers. Such hired trainers are unlikely to be conversant in the practicalities and power dynamics

within Burmese factories. Similarly, the MGMA have stalled the approval of curricula aimed at employers, preventing the operation of that program. They have also resisted the inclusion of worker training as part of national standards for the training of garment workers. Meanwhile, the MGMA resisted the inclusion of more factories in the program, as ILO had hoped.

In contrast, the worker side has seen positive development in union relations through the shared activity of the ILO-GIP trainings. IWFM and MICS have undertaken the training together, increasing their capacity to collaborate and relationships between union members. The two unions have recently signed an MOU together and are reportedly having an improved relationship. This may be in response to the growth of labor activist CSOs, and the unions seeing their mutual interest in supporting the union movement. Nevertheless, participating in programs together provides opportunity for members to form solidarity.

In the opinion of program operators, there is growing recognition in Myanmar that there is room for social dialogue to fill in gaps in the law, despite fragile FOA structures. However all parties acknowledge it takes a great deal of time and labor in order to achieve cultural changes over an extended period that will allow social dialogue to flourish. The ILO sees itself as taking a facilitative role in this project, supporting stakeholders to develop their capacity for tripartite dialogue. Critics suggest that for projects involving large international bodies such as ILO, a project runs the risk of being top down, with the pressure and advantage for change coming from international actors such as the ILO and buyers rather than through strong grass-roots organizing. It is thus a focus of ILO-GIP participants for this program to achieve sustainable outcomes.

WE Program: Tchibo and GIZ⁶⁶

Tchibo is German multinational coffee and consumer goods retailer. It has a relatively proactive corporate social responsibility agenda, which it implements worldwide through its WE program. Tchibo has signed a General Framework Agreement with IndustriALL committing them to supporting collective bargaining and FOA worldwide, and it is also an ACT member. Tchibo has been working with German development agency, GIZ, after approaching GIZ for assistance in applying the Global Framework Agreement to their worldwide operations. GIZ has a mandate for supporting socially responsible international development, and is committed to matching funds equal to that put forward by Tchibo on this project. Tchibo's involvement in Myanmar began with its first sourcing of garments from Burmese factories in 2018.

The WE program project is focused on promoting social dialogue within Tchibo's supplier factories in Myanmar by developing social dialogue practices among factory managers, factory workers and the garment union, IWFM. The project has been rolled out to Tchibo's 4 suppliers (now down to 3 with the expiry of one supply contract), while Tchibo are currently onboarding 3 more factories into the program. The idea is to

66. Contains sensitive material, not ready for wide circulation

treat the project as an experimental “incubator”, providing a proof of concept that can be scalable. Operationally, Tchibo and GIZ share responsibilities and tasks in running the program. While GIZ has no obligation to Tchibo other than to fund the budget, in practice it is an opportunity for them to offer expertise to develop the sector further. The role of Tchibo in the project is to “stand ready” for involvement as needed. Their official position is that they will not put pressure on either party in any way or anyone within the factory, rather they only offer a space for dialogue and play a facilitative role. Tchibo see themselves as investing in relationship building. It is worth noting that because Tchibo operations are small, they do not have the same leverage of a major brand like H&M with high production volume. The IWFM is a major stakeholder in the project, contributing and approving all aspects of the project’s “co-design”, along with GIZ and Tchibo. For IWFM the project is an opportunity for them to expand their membership, to deliver meetings and workshops, to build relationships, practice social dialogue and negotiation with management, and to teach workers about the value of unions.

Stakeholders report that the program has been most successful in instances where it has created a new channel within the workplace for responding to disputes. Specifically by providing a space for discussion to resolve issues before disputes escalate into legal complaints and industrial actions. For unions, workers and employers alike, the project has thus been a process of learning and development, especially in coming to understand each others’ perspective in greater depth. Program managers report that the project has achieved tangible improvements in stakeholders’ attitudes in practicing industrial relations, largely because the level of trust between the parties has increased.

From an employers’ perspective, management have come to see that union representatives are more capable partners than they first imagined. Factory owners previously believed unions to be disruptive and solely interested in strikes and demonstrations. The IWFM work conscientiously to dispel this misnomer by ensuring that they come across as a mature counterparty and this allows for dialogue to proceed. The professional character of the IWFM president creates a lot of trust with suppliers who have preconceived ideas that unions will not be easy dialogue partners. Similarly, IWFM are clear and forthright in explaining the project to the new suppliers, and all parties acknowledge the need for openness and honesty about the project and its goals in order for it to work effectively. Factories now realize the benefit that if there is enough time and space for union officials to do their work properly, then unionizations can provide a new communication channel to collect workplace issues and discuss them. Parties are currently discussing the possibility of raising union representative workdays from 2 days to 7 days per month. Suppliers have also learned to become more professional themselves through the program. Worker elections are now held to decide who will participate in training programs, while they have also learned to speak to the union and have frank conversations. Nonetheless, employers still have ample hesitations. This is the first time social dialogue has been brought into their workplace, and it can be a confusing process for factory managers who remain unsure whether labor organizing is of benefit to them.

IWFM has similarly learned many skills in dealing with factory managers through the project. Union representatives are used to being confrontational, and in early social dialogue meetings they would often stay silent and not offer their views readily. As trust has increased, union representatives articulate their needs to factory managers before escalating conflicts and issues. In this respect, unions initially would want to contact Tchibo and have them put pressure on the factories, but Tchibo has been forthright in redirecting dialogue to occur between factory managers and unions directly. Despite learning a lot about dealing with management, for IWFM their focus is ultimately about ensuring that workers are selected fairly and trained to a high standard about their rights so as to build a sustainable union membership. Nonetheless, IWFM have learned to leverage the GFA and how it can be a negotiation tool to approach brands directly, and has prompted them to come up with some strategies at the sectoral level.

Learnings from the project are several. Firstly, the importance of involving workers and unions in the design and implementation of the social dialogue project is crucial. In the early stages of the project GIZ found they lacked the perspectives of the workers, with initial plans being questioned by the unions. For example, in setting up a program for social dialogue training, neither Tchibo or GIZ gave great consideration to the selection of workers to partake in the training program. Factory managers assumed that participation was for the members of the WCC. IWFM prompted stakeholders to question which workers would be included in the trainings, pointing to the fact that WCC members were not elected and were therefore not viewed by workers as legitimate workers representatives. IWFM only agreed to take part in the trainings if there were elections with respect to participation. While this was a difficult point to explain to factory managers who could not see the reason for concern, it ultimately proved to be a worthy learning experience among the parties. GIZ and Tchibo now do not proceed without input and sign off from IWFM, at least where possible. This approach is challenging as it can slow down the process considerably, but it is worth it.

Another major lesson of the project is the need to localize the project because it takes considerable time and perseverance to achieve meaningful dialogue. The outcomes can be intangible for quite some time. Yet stakeholders say there has been a distinctly positive change in atmosphere as a result of the program. This also raises the question whether this approach is replicable and scalable. In many ways the project is very challenging and slow, relying on specific circumstances and slowly building up trust and relationships between factory owners, managers, unions and workers.

There are also several challenges to be considered. Firstly, there are many informal unions in the garment sector and the reach of the IWFM is limited. Tchibo factories still lack BLOs. While workers have been provided with off-site awareness trainings, it is ultimately not the role of Tchibo to promote unions as this is the role of workers to BLOs themselves. Another challenge is to get sectoral support. The MGMA were approached but did not want to be involved in the WE project. This corresponds to MGMA's negative view of unions, maintaining that the sector is not mature enough for social dialogue, and have been known to discourage some factories from partaking in social dialogue programs. This suggests that meaningful dialogue with all stakeholders at the sectoral scale will take some time yet.

MyPod Program: Bestseller and 3F⁶⁷

MyPod (Myanmar Productivity, Occupational Health and Safety and Social Dialogue) is a three year project launched in December 2017, aimed at improving productivity, technical skills, labor standards and social dialogue in garment factories supplying to Danish brand, Bestseller. The project is aimed not only on developing workers' capacity for labor rights and social dialogue, but also aims at economic development by upskilling the garment industry through "lean" efficiency production measures, increasing production quality and improving social standards. It is envisaged that together, these aspects of the project can provide a scalable business case for social standards and production standards that can be extended to other companies and workers across Myanmar's garment industry. The founding tenet of the MyPod project is that improvements in productivity, work environment and social dialogue can be integrated parts of the same processes.

The project is a multi-faceted collaboration. The social dialogue component of the project is operated by the Danish union confederation 3F in conjunction with the Danish clothing manufacturer Bestseller and the participation of local trade unions, IWFM and MICS. The program aims to upskill these unions in social dialogue and negotiation techniques through training programs, and is designed to promote social dialogue broadly along the lines of the Danish social democratic model. Lean manufacturing aspects of the project are operated by Aalborg University and Yangon Technological University. Other stakeholders collaborators include the Danish Ethical Trading Initiative (DIEH), Ethical Trading Initiative UK. The project is funded by the Danish government under the Danida Market Development Partnerships (DMDP) fund.

While the technical aspects of the project have proceeded according to plan, the social dialogue aspects of the project have not operated as originally envisaged. Despite early interest from the 10 participating Bestseller supplier factories, Chinese and Burmese factory managers have ultimately kept their premises unavailable to the program, preventing them from undertaking training workshops on site. The training program has been delivered in classrooms instead. Here it is worth noting the lack of power that Bestseller has in terms of compelling participation of the factory owners. This is because Bestseller has little leverage with the suppliers and no direct contact to them, rather, they are merely one buyer within a larger global supply chain. In order to place pressure on suppliers, Bestseller must call head offices (often in Beijing and around China) to pressure factory managers in Myanmar to respond to labor issues. Nonetheless, factory managers retain a degree of autonomy, so this relaying of messages often does not result in any response. One of the learnings of the project is the importance of factory engagement with the project and the implementation team, ensuring strong communication channels between relevant people within stakeholder organizations.

A second challenge has come from the unions⁶⁸. While IWFM remained open to social dialogue and co-operation with Bestseller and suppliers, in 2019 they paused the social dialogue aspects of the MyPod program in favour of negotiating at the sectoral

67. <https://danwatch.dk/undersogelse/toej-i-dit-supermarked-loennes-med-15-kr-i-timen/>

68. This paragraph is most confidential.

level. In their opinion, it had become difficult to engage in a process of social dialogue within many factories when the very basis of a functioning industrial relations system was not even securely established, that is, the Bestseller supplier factories were not even yet following basic labor law. The IWFM ultimately identified that a preliminary step ought to be addressed as a basis for social dialogue, and set about negotiating FOA guidelines with brands at the sectoral level in order for clear directions to be provided to factory managers. It is thought that if a common understanding can be established, then there will be a framework and reference point from which to engage in dialogue and negotiation with individual suppliers. Again, the lack of specificity in the labor law is one causative factor. Many brands and suppliers do not follow the labor law, often because they do not understand it or are not aware of new amendments. It is thought that by providing specificity in the FOA guidelines that all parties can establish a basic standard of relating that can ultimately provide a first step to a CBA. So far, 6 major global brands are involved in the FOA guidelines discussions, which will be signed by brands, suppliers and unions. These FOA terms will be designed as guidelines rather than protocols, thereby lowering barriers to agreement and participation from stakeholders. Despite the temporary pause in the social dialogue program, MyProd has precipitated positive developments for the labor movement via the FOA process. One lesson of this project has been the advantages of having a pragmatic and flexible approach to program design, ensuring that the program has been adaptable to realities on the ground. Any rigidity at the donor level in terms of measurement or targets could have left this opportunity for engagement on the FOA to be missed. Meanwhile, the initial social dialogue trainings are still slated to continue as intended, once the FOA guidelines are put in place.

Overall, implementing social dialogue has been constrained by the relative immaturity of the Burmese industrial relations system. Experience has shown that this program may have been improved by taking a gradual approach, allowing more time to build relationships and build the program to suit the cultural and political landscape. It has proved a big change for a country with a militarist, autocratic, hierarchical and repressive legacy to take on social dialogue processes without some misunderstandings. In many ways the success of the MyProd project has been that it has been given room to adapt to suit the conditions, as it was difficult to pre-empt targets and milestones ahead of the program.

Other Initiatives

Other notable programs involving social dialogue elements include:

Action Collaboration Transformation on Living Wages (ACT)

The ACT program was set up in 2015 by global brands and retailers in the garment sector in collaboration with IndustriALL. ACT aims to improve wages in the industry by establishing industry collective bargaining in key garment and textile sourcing countries, supported by responsible purchasing practices. As a long-term project, all

members commit to support higher wages and facilitate the payment of a living wage in the garment industry. The key innovation of the project is to link purchasing practices to wage payment, such that the negotiated wage is supported and enabled by the terms of contracts with global brands and retailers.

The ACT initiative is premised on the assumption that the cost of higher wages and better working conditions resulting from negotiations between unions and the employer association will in some way be covered by buyers. This opens up space for collective bargaining on the national level. ACT is thus a framework for all stakeholders to work together to achieve living wages, linking purchasing practices to collective bargaining at industry level between national unions and employer associations. The project also includes participation of local trade unions, IWFM and MICS, with the intention that the project provides an opportunity to upskill these unions in social dialogue and negotiation, and ultimately aims to work with IWFM and MICS to establish industry-wide collective bargaining.

At present, the key obstacles to achieving a living wage in Myanmar include the desire of brands to push down sales prices, as well as the desire of factory owners to protect profit margins. Unions criticize the government's failure to uphold minimum wages by not punishing employers who fail to pay minimum wages. Additionally, the systematic use of traineeship hiring to pay less than minimum wage is rife in Myanmar, and undercuts wages throughout the sector. This makes it expensive to change jobs and prevents workers from pushing against poor work conditions.

SMART Myanmar (SMEs for Environmental Accountability, Responsibility and Transparency)⁶⁹

SMART Myanmar is a four-year project funded by the EU. SMART assists small and medium-sized garment manufacturers in productivity, social compliance, energy reduction, auditing and advisory services. Partners in the SMART project include MGMA, ADFIAP (the Association of Development Financing Institutions in Asia and the Pacific), AVE (Foreign Trade Association of German Retail Trade) and Made-by. SMART is working to train 100 factories in its 'social compliance academy' - a six-month training program that includes on-site consultancy, workshops, social compliance assessments and corrective action plans.

Fair Wear Foundation (FWF)⁷⁰

Dutch organization FWF works with brands, factories, trade unions, NGOs and governments to improve workplace conditions in the garment industry through compliance measures. Once a brand becomes a FWF member, it commits to step-by-step implementation of better labor conditions in the factories where their clothes are being made. FWF considers Myanmar as a high-risk country and therefore requires that its members implement country-specific requirements, such as promoting social dialogue and avoiding links to military ownership.

69. Theuws & Overeem (2017)

70. Theuws & Overeem (2017)

Business for Social Responsibility (BSR)⁷¹

BSR is a network of more than 250 member companies and partners promoting collaboration for sustainable business. In July 2014, BSR launched the Principles of Responsible Sourcing in Myanmar, identifying four priority areas in Myanmar: strengthening industrial relations, developing modern human resources practice, eradicating child labor and securing land rights. H&M, Gap, Marks & Spencer and N Brown Group are members of the BSR Myanmar Responsible Sourcing Group to collaborate with local and international stakeholders to advance sustainability in Myanmar's supply chains by translating the four tenets of the principles of responsible sourcing into action: sustainability leadership; enhanced due diligence; stakeholder engagement; and transparency and accountability.

Conclusions

Myanmar's industrial relations institutions are very young, having only emerged alongside the country's political and economic transition since 2012. Firstly, labor laws continue to be reformed, yet despite enshrined legal rights such as Freedom of Association, legislation remains vague, not in compliance with international labor standards and difficult to implement and operationalize for stakeholders. Secondly, many employers do not know the relevant labor laws, remain unaware of emerging labor law standards, and rarely apply such laws even in cases where they are aware of labor laws. Many factory owners and managers are not at all familiar with worker organizing practices, and remain suspicious of worker input. Thirdly, worker organizing remains in a developmental stage, with low rates of unionization, few collective bargaining agreements and a low rate of WCCs in factories. The nascent union movement continues to focus its efforts on growing membership, building internal capacity and strengthening its political clout, while conducting outreach, education and training activities within factories. Taken together, Myanmar remains a way off from institutionalizing industrial organizing practices.

Myanmar still lacks the institutional arrangements that would underpin effective and widespread social dialogue. In this context, social dialogue appears as an aspirational horizon for all stakeholders. In most cases, the very channels by which social dialogue could meaningfully occur have yet to be established, operationalized and institutionalized. For this reason, programs aimed at social dialogue are not characterized by innovation in approach or technique, rather they are aimed at establishing from scratch the channels and social arrangements from which social dialogue can emerge.

Social Dialogue projects have been driven by international brands and development agencies, and have ultimately had to focus on foundational capacity building within the sector in order to underpin social dialogue. Where social dialogue efforts have been present, they are largely driven by international actors such as the ILO or major brands who are primarily concerned with ensuring the sustainability (in social and economic terms) of global supply chains.

71. Theuvs & Overeem (2017)

Ongoing challenges to Social Dialogue include: (1) the instability of the labor law; (2) the threat that the EU EBA/GSP will be withdrawn which would cause large brands to leave Myanmar; (3) ongoing economic, cultural and political ties to the military regime; (4) the large commitment of time and work to create social dialogue projects; (5) low level of sectoral support from manufacturers and manufacturers associations; (6) low levels of unionization among workers, prevalence of informal unions, and low capacity at the local organizing level; (7) general immaturity of institutional arrangements in the Burmese garment sector and industrial relations landscape; (8) lack of due diligence, monitoring and compliance leadership from international brands.

The successes of Social Dialogue projects have been in terms of capacity building and relationship building among stakeholders. Stakeholders describe the various initiatives as having been learning and development experiences, building trust and understanding, as well as establishing channels for meaningful dialogue to occur in the future. The success of social dialogue projects has not been related to conceptual innovation or project design, but rather by focusing on relationships between key stakeholders and building trust, commitment and understanding among them. At the national level, social dialogue is similarly fostering relationships and practices that advance labor rights. With only a small number of union federations, the environment is suited to fostering collaboration among unions themselves, and also vis-à-vis the Myanmar government who recognizes that labor unions will have to play a role in the ongoing project of labor law reform.

The key lessons for social dialogue projects has been to be flexible and responsive to local contexts, circumstances and stakeholders, and to be focused on relationship and capacity building. The emphasis of social dialogue success relies on increasing the sensitivity to specific embedded actors and local conditions, focusing less on the abstractions of program design and legal frameworks, and more on the slow laborious work of building relationships and trust among key actors and stakeholders. Social dialogue case studies show that success hinges on the commitment of all parties to have the patience to continue embarking on an iterative process in good faith until a mutually beneficial mode of relating can be established in practice, with the hope of later institutionalizing these emergent outcomes within cultural, industrial and legal frameworks. The lessons for social dialogue programming elsewhere are thus to avoid the desire for abstract, general lessons, in favor of socially embedded, local lessons.

Addendum: Covid-19 and its Impacts on Social Dialogue in Myanmar's Garment Sector

Summary

By the time Myanmar confirmed its first case of Coronavirus infection on 23 March 2020, the country had already been feeling the impacts of the Covid-19 pandemic for months. The outbreak of the pandemic within China had caused significant supply chain disruption for Myanmar's garment factories, including raw material shortages, diminished access to fabrics and accessories from China, reduced product orders and production delays.⁷² The situation for Myanmar's garment sector soon went from bad to worse, with many international garment brands cutting back their orders worldwide, in many cases refusing to purchase or pay for stock they had already contracted to buy.⁷³ Workers in Myanmar felt the impact immediately, with factories closing, cutting back staff and reducing production, citing disruptions in the supply chain. CTUM reported that by mid-March, dozens of factories in the country had closed, resulting in over 10,000 workers being laid off.⁷⁴ Yet even at this early stage, trade unions and labor rights groups were skeptical, issuing a joint statement saying that in many cases, employers were using the coronavirus as an excuse to undertake union-busting.⁷⁵ As it would eventuate, the first wave of infection in Myanmar was relatively limited in scale, and even by the start of August, there had only been 353 cases of infection confirmed. Nonetheless, the impacts on the country have been immense, and by the end of April, 175 factories had ceased operations as a result of Covid-19, leaving over 60,000 garment workers without jobs.⁷⁶

In turn, the Covid-19 pandemic has tested Myanmar's social dialogue mechanisms, revealing the extent to which negotiation frameworks could be relied upon to support workers in a time of need. At the national level, the major union federations CTUM, MICS and AFFM-TUF were quickly consulted as a key member of industry response, with the government utilising the National Tripartite Dialogue Forum as a key site for discussing industrial policy responses to the pandemic, as well as setting up the Covid-19 tripartite committee which essentially convened tripartite meetings following the same format. On the one hand, unions were influential in shaping industry and policy responses to the pandemic through these forums, pushing strongly to negotiate a temporary industry shutdown in April and securing support for worker safety measures and union involvement in safety inspections. On the other hand, government and

72. https://www.just-style.com/analysis/coronavirus-shaking-up-chinas-apparel-supply-chain_id138078.aspx

73. <https://www.workersrights.org/issues/covid-19/tracker/>

<https://www.mmtimes.com/news/more-woes-myanmar-garment-industry-eu-cancels-orders.html>

74. <https://www.irrawaddy.com/news/burma/11-factories-myanmar-close-due-lack-orders-raw-materials.html>

<https://www.business-humanrights.org/es/%C3%BAltimas-noticias/myanmar-garment-factory-closes-due-to-raw-material-shortage-from-china-leaving-over-1000-employees-out-of-work/>

https://www.just-style.com/news/myanmars-garment-smes-feeling-covid-19-impact_id138317.aspx

<https://elevenmyanmar.com/news/garment-factories-may-face-temporary-shutdowns-due-to-shortage-of-raw-materials>

<https://www.irrawaddy.com/datetime/factories-not-use-covid-19-excuse-sack-staff.html>

75. <https://www.irrawaddy.com/news/burma/11-factories-myanmar-close-due-lack-orders-raw-materials.html>

<https://www.irrawaddy.com/datetime/factories-not-use-covid-19-excuse-sack-staff.html>

76. <https://covid19.business-humanrights.org/en/tracker/myanmar/>

<https://elevenmyanmar.com/news/myanmars-uncertain-reopening>

industry were resistant to covering workers demand for wages, and the government only agreed to cover 40% wage compensation during the factory shut downs, leaving laid off workers with no support. Alleviating this situation, the EU stepped in providing USD \$5.9 million (MMK7.9 billion) in emergency funds for laid off workers through the “Myan Ku” (Quick Assistance) Fund, thereby softening the hard edges of negotiations. Moreover, national level dialogues failed to ensure adequate oversight of how individual factories would manage the impacts of Covid-19, particularly with regard to worker dismissals, worker furloughs, and temporary shutdowns. No process was mandated for managing worker lay-offs, leaving factory owners to opportunistically discriminate against union members among their workforce. As a result, many factory owners have taken the Covid-19 pandemic as an opportunity to undertake union-busting in Myanmar, laying off union members discriminatingly. In the absence of rules regarding worker ‘right of recall’, some factories also temporarily shut down only to replace their entire workforces with new non-unionized probation workers.

At the factory level, social dialogue mechanisms did not prove to be robust. Throughout the pandemic, factory owners have disregarded legally mandated social dialogue mechanisms on the factory floor, failing to negotiate or consult with a Workplace Coordinating Committee (WCC) to manage worker lay-offs and address workers’ safety concerns. Unions that attempted to enforce the labor law through the Township Conciliation Body or Arbitration body, regularly found that the government officials on the panel swayed decisions against workers, effectively leaving the labor law ineffective with regards to requirements to undertake negotiation with workers. In recent years, protests and strikes have increasingly become a necessary tactic used by registered and unregistered unions in order to compel employers to engage in negotiations with workers. As the pandemic took hold, wildcat strikes and worker protests were emerging across Myanmar, as workers became concerned for their safety at work, their job security amid and increasing numbers of worker lay offs and factory closures, and the possibility of unpaid wages.⁷⁷ Under the pretense of a public health response to Covid-19, the government responded to rising tensions by banning – and heavily enforcing - meetings of five or more people, effectively preventing any worker strikes and protests. Without the ability to strike, employers were further emboldened to disregard social dialogue channels and engage in union busting.

Having found little support from legal arbitration channels, employer groups and government authorities, Myanmar’s unions were compelled to look further along the supply chain and pressure international buyers to uphold workers’ rights. Already, workers’ rights advocates worldwide had loudly condemned international brands for dubiously cancelling orders with little regard for the effect on garment workers, creating reputational damage and media pressure on global brands. Myanmar’s garment unions were able to take advantage of this situation, and leverage the relationships that they had already established with international brands through existing social dialogue programs. Unions were also able to compel brands to pressure factory managers by invoking the *Myanmar Freedom of Association Guidelines*, effectively a CBA that was recently negotiated by IWFM and IndustriALL in November 2019. To varying degrees, this

77. see for eg. <https://www.mmtimes.com/news/thousands-myanmar-garment-workers-go-strike-save-jobs.html-0>

strategy was successful in pressuring supplying factories to negotiate with workers and in some cases, reinstate laid off workers or provide unpaid wages and compensation. This strategy proved to be relatively effective when it was available to unions, with brands proving responsive to public pressure and factory managers sensitive to brand pressure in turn. The relative success of this strategy suggests that the publicity concerns and buying power of major brands continues to be the most effective leverage available to workers along the Burmese garment industry supply chain. However, this strategy is reliant on unions ability to identify and contact relevant brands, so in this sense, social dialogue programs (such as those mentioned earlier in this report) have proven effective in increasing unions' access to brands through establishing relevant relationships and channels of communication.

National Tripartite dialogue in response to the outset of the Covid-19 Pandemic

The National Tripartite Dialogue Forum (NTDF)⁷⁸ is the regularly recurring tripartite forum at the national level, gathering government, employer and worker representatives every four months. The regularly scheduled meeting took place on 25 March 2020, and amid escalating concerns about the Covid-19 pandemic, the forum became a platform for MOLIP, the unions and the MGMA to discuss how to manage the impact of Covid-19 on workers.⁷⁹

Unions had first proposed that garment factories close for a month due to COVID-19 in February, a call, which grew more urgent after the first cases of the coronavirus were detected. At the NTDF meeting, the union federations, CTUM, MICS and AF-FM-TUF,⁸⁰ collectively called for the temporary shutdown of factories, and that the government and employers should together contribute to provide workers with paid leave for the month of April. The unions proposed that the Social Security Board pay 60% of workers' salaries during the leave period and employers contribute the remaining 40% - a proposal based on the fact that April included 12 days of holidays (10 days for Thingyan and two Sundays), accounting for 40% of working time. On both the issues of temporary closures and worker pay, union recommendations were dismissed entirely. At the outset of the pandemic the impacts of the virus were still uncertain, so concerns about worker safety were of highest priority. Registered and unregistered unions throughout Myanmar had been increasingly concerned about worker safety and engaging in strikes and protests as the pandemic took hold. Unions called on employers to address OH&S concerns, provide Personal Protective Equipment (PPE), take measures to prevent overcrowded workplaces and worker housing, and provide other workplace safety measures.

Unions also called on stakeholders to ensure that salaries would be protected for workers in the case of worker dismissals or factory closures. Unions were also concerned that employers had been responding to initial protests by targeting unionised

78. <https://teacircleoxford.com/2020/07/09/covid-19-weaponized-against-unionists-in-myanmar/>

79. <https://teacircleoxford.com/2020/07/09/covid-19-weaponized-against-unionists-in-myanmar/>

80. Confederation of Trade Unions Myanmar (CTUM), the Myanmar Industries Craft and the Service-Trade Unions Federation (MICS) and the Agriculture and Farmer Federation of Myanmar (AFFM-TUF).

workers. While they asserted that there would be no reason for workers to strike if workers wellbeing was protected, they also called for immediate action to prevent the targeted termination of unionists without due process.

The Covid-19 tripartite committee was subsequently set up on April 7, 2020. The committee was set up with the instruction of State Councilor and initiated with a live public dialogue on Facebook with State Counselor Aung San Suu Kyi, in conversation with the MOLIP Permanent Secretary and the CTUM President. In this aspect, the unions were recognized as legitimate social dialogue partners by the government for dealing with the pandemic.

The first committee meeting was organized on April 18. Unions were again active in advocating for taking precautions to ensure the health of workers, calling for an urgent shutdown of factories, while most employers remained resistant due to uncertainty over how long the shutdown might last.⁸¹ As the pandemic had progressed, the committee was now more amenable to accommodate the demands made by unions at the March NTDF. This time, MOLIP issued a Directive Order for a temporary factory closure of 4 weeks to enable health inspections, opportunistically occurring adjacent to the Burmese New Year holidays (Thingyan), ensuring that workers would stay at their home villages throughout the period. The government also agreed to pay workers 40% of their wages as compensation where the factory had been shut down for inspection (applicable to MOLIP registered factories where workers were listed for Social Security). Unions also managed to be given the task of undertaking a substantial proportion of these inspections, thereby ensuring worker safety and employer compliance. During the first batch of inspections, 115 factories failed to meet the safety standard, out of around 7000 operational factories in Myanmar. By early May, 1850 out of 2600 factories in Yangon resumed their operation, 600 factories had reopened in Mandalay and 1000 in the Magwe Region, with similar rates represented across the garment sector. Nonetheless, closures had left at least 10,000 people out of work.⁸²

The case numbers for Covid-19 were low in Myanmar throughout this time, and by the next NTDF meeting on July 22, the focus had shifted towards the future. Stakeholders all agreed to collaborate toward defining a “new normal” for industry in Myanmar. MOLIP and the trade unions agreed to resume minimum wage dialogue at this meeting. The employers’ associations engaged in this dialogue too but were reluctant to resume negotiation over minimum wage increases due this year.

A few observations can be drawn at the national level. Firstly, the government was keen to take initiative in engaging both employers and unions in responding to the pandemic, seeing the advantages in presenting a united response to industry concerns. The involvement of trade unions was not superficial, and while they did not successfully have all their demands met, they did play an influential role in shaping the overall policy response. In this respect, commentators suggest that the unions were savvy in taking advantage of the government’s desire to appear attentive to workers’ concerns during the pandemic. Secondly, these discussions showed how the ongoing NTDF mecha-

81. <https://www.frontiermyanmar.net/en/deadlock-over-april-factory-shutdown-plan-as-garment-orders-dry-up/>

82. <https://www.frontiermyanmar.net/en/deadlock-over-april-factory-shutdown-plan-as-garment-orders-dry-up/>

nism has increased the capacity and collaboration among the union federations. For the purpose of the NTFD, CTUM and MICS-TUsF had already set up a Labor Consultative Forum (LCF) in order to debate and agree on common goals. The LCF mechanism held up well during the pandemic, as the federations were able to formulate and propose collective trade union demands and present a united front in tripartite forums. Thirdly, employers were largely compliant with MOLIP directives for factory closures and inspections. Imposition of new safety standards were not resisted, but implemented to varying degrees on the ground. Employers did not prove to actively engage with the federations throughout the national negotiations, however.

The EU Myan Ku (Quick Assistance) fund 83

Despite the government agreeing to pay compensation of 40% wages for registered workers where the factory had been shut down for inspection, it was immediately apparent to civil society stakeholders that a large swathe of workers would not be eligible to receive this financial support. Laid off workers in particular faced the prospect of having no income or other means of support. Myanmar offers no unemployment benefits, and the social security system has been set up only to offer medical benefits at this stage. While Myanmar's labor law requires laid off workers to be paid severance wages, this amount is pro-rated according to length of employment, meaning that few workers would be eligible to receive a substantial sum. In any case, many employers were not paying severance wages, as they were so obliged.

In recent years, the EU has been active in promoting industrial relations capacity in Myanmar's garment industry, particularly through their program partner, SMART Garment & Textile, which focuses on improving production standards and social dialogue in Myanmar. Given that EU markets represent 70% of Myanmar's garment industry exports, and that European major brands are significantly invested, the EU has remained involved and alert to labor issues in Myanmar's garment sector. Already by February as worker layoffs were increasing, the EU delegation sensed the potentially disastrous impact to laid off garment workers. The EU recognized that the Myanmar Social Security system lacked both funds and capacity for administering any sort of support to workers. Undoubtedly, they were also aware of escalating tensions among industry stakeholders domestically, not to mention the resentment at sudden order cancellations of European buyers who had shown little regard for the adverse impacts upon Burmese workers. Given these motivations, the EU sought to intervene in the situation. Together with SMART, the EU consulted with Myanmar's Social Security Board, Unions and the MGMA to devise *Myan Ku*, a USD \$5.9 million (7.9 billion MMK) emergency cash fund. Announced on 8 April, the fund was to be a direct electronic payment to laid off garment workers, at a time when 25,000 workers from more than 40 factories had already lost their jobs.⁸⁴

83. https://eeas.europa.eu/delegations/myanmar-burma/77355/covid-19-rapid-response-eu-creates-%E2%82%AC5-million-emergency-fund-myanmar-garment-workers_en?fbclid=IwAR2Qysdd9zKkRB4yKbrmlaZTAaetJFMM5Joa7P-nn94_srIIGn1IUV-WWzw
https://eeas.europa.eu/sites/eeas/files/myan_ku_factsheet_en_fin1_1.pdf
<https://www.business-humanrights.org/en/latest-news/myanmar-labor-alliance-publishes-selection-criteria-for-myan-ku-emergency-cash-fund-for-garment-workers/>
84. https://eeas.europa.eu/delegations/myanmar-burma/77348/eu-sets-%E2%82%AC5-million-79-billion-kyat-emergency-cash-fund-myanmar-garment-workers-impacted-covid_en

Specifically, the Myan Ku Fund was designed to offer three types of payment:

1. *“Workers in crisis fund”* - direct cash transfers (digitally using Wave Money) to workers who lost their jobs or face eviction from their homes. There are expected to be between 30,000 and 80,000 recipients, at an expected average of 75,000 MMK (Approx. \$58 USD, or 60% of minimum monthly wage) monthly for one to three months, totaling 80% of the Myan Ku funds.
2. *“Illegal termination support fund”* - cash transfers of up to 125,000 MMK for between 3,000-8,000 workers whose contracts were illegally terminated, expected to be 10% of total Myan Ku funds;
3. *“Workforce retention support fund”* - cash transfers to workers in SMEs, where the employer agrees to retain workers and provide matching support. Approximately 5,000 workers are expected to benefit, equaling 10% of the Myan Ku funds.

As well as SMART, the Myan Ku program was designed in consultation with the MGMA, CTUM, the Centre for Economic and Social Development (CESD), and local CSOs Pyi Gyi Khin, Opportunities NOW, and Thone Pan Hla. The design and implementation of the Myan Ku program is relatively unique in a number of ways. Firstly, *Myan Ku* is financed through the EU’s Humanitarian Development Peace Nexus Response Mechanism (NRM), managed by UNOPS. Unlike most labor rights programs that are administered through partners like ILO and take over a year to design and approve, *Myan Ku* was able to be set up in only a matter of weeks, because it was funded through the EU’s humanitarian arms. These bodies are usually deployed to solve urgent humanitarian crises, such as recent conflict in Myanmar’s Rakhine state, providing the program with more speed and flexibility in deployment.

Secondly, this emergency humanitarian approach taken by the EU is reflected in the strategic priorities and the eligibility criteria of the program, designed to spread benefits widely to a large population of workers. The size of payments is designed to reflect a subsistence level wage, and the higher amount for illegally terminated workers is designed on the assumption that these workers will take longer to find and process and will have thus been without funds for a longer period of time. The eligibility criteria also includes workers observed by CSOs and trade unions to be in “acute need”. In practice, this means supporting workers that have “fallen through the cracks”, and there is some flexibility in the deployment of the funds. The management of the Myan Ku funds was delegated to SMART, in order to draw on their industry networks and practical knowledge, which would be helpful in sourcing information from partners in order to identify eligible workers. Under the design of the program, SMART must consult with the trade unions, local CSOs and manufacturers to select recipients for the fund. The MGMA, local CSOs and unions are all active contributors in identifying eligible factories and workers, and verifying information in workers claims. Commentators suggest that the criteria create the challenging problem of selecting workers for the illegal dismissal fund, given that employers will always claim illegal dismissals were legal. However SMART reports that this is not always the case, as several factories facing financial hardship have come to the fund seeking help to support workers.

Similarly, the involvement of many partners has allowed SMART to verify workers eligibility even where factories seek to ensure workers are not eligible for the program, fearing that information will be shared with MOLIP where factories deemed to have not followed regulations in terminating or suspending workers.⁸⁵

A third key aspect of the program is that the funds are paid through direct electronic debit over the WAVE mobile platform. This was done primarily because the EU recognized that the Myanmar Social Security Board (SSB) did not have the capacity for administering unemployment benefits. Rather, a direct payment would be more reliable and effective. Many factories and workers are not registered with the SSB. Nonetheless, the EU does mention that one hopeful outcome of the program will be to increase the capacity of the SSB and set out a prototype for developing unemployment benefits for workers in the future. The SSB has expressed interest in using direct electronic platforms such as WAVE. Similarly, the program has been an opportunity for SMART to assist factories in registering with the SSB and gather relevant industrial data. Initially the MGMA had wanted the funds to be paid to them to then pay out to eligible workers, but this suggestion was quickly rejected, reflecting the program's intention to provide direct worker support. Industry bodies were however successful in ensuring that priority outreach was first directed towards workers of Myanmar Garment Manufacturers Association (MGMA), and Myanmar Industries Association (MIA) member companies. On the other hand, the unions have been very supportive of the direct electronic payment method.

Critics of the fund say that the EU has not used its influence to better ensure that layoffs and workforce reductions are done in the least harmful of ways. The EU could have pushed the Myanmar government to provide assurances against discriminatory layoffs and targeting of union members. Common practice for example is to undertake last-in first-out layoffs or layoffs based on seniority, ensuring blindness to characteristics such as union membership, ethnicity, age, marriage status, and other. Similarly, the EU could have pushed the Myanmar government to ensure recall rights for workers if factories reopen or increase their workforce. As explained below, the current practice by nearly all employers is to permanently dismiss workers rather than furlough them with recall rights. However, those deploying the *Myan Ku* program explain that it was a great achievement to secure the funds on such short notice, and the fund had been designed and deployed urgently to avoid a humanitarian crisis. In any event, the program has been managed iteratively, and SMART report they often liaise with factory managers on these issues as the opportunity arises over the course of the program.

Union busting and the failure of legal mechanisms

Discussions at the national level forums failed to ensure oversight of pandemic measures, leaving workers vulnerable to exploitative factory owners. Specifically, no clear directive was given as to how worker layoffs were to be conducted, and rather than

86. https://smartmyanmar.org/files/uploads/myan_ku_eligibility_criteria_updated_april_26th.pdf

impose a standard last in-first out rule, workers were vulnerable to discrimination on the basis of their personal characteristics or their membership of unions. Additionally, no agreement was made to ensure recall rights for laid-off workers, enabling factories to permanently terminate unionized workers under the pretense of Covid-19, and then hire new workers on probation contracts and lower wages. Some even factories closed down, only to reconstitute themselves in a new corporate form a short time later. According to Myanmar's labor law, when factories reduce their workforce, employers are required to consult with the factory's Workplace Coordinating Committee (WCC). Union representatives report that during Covid-19 this has rarely occurred, and that factory operators have bypassed negotiation with the trade union as well. Rather, employers regularly laid off their workforce at will, especially as the government had provided no formal procedure to manage workforce reduction during Covid-19. According to unions, in practice there has thus been no mechanism to prevent union busting during the pandemic.

Of particularly high profile have been the cases of the Myan Mode, Rui-Ning and Huabo Times factories, which were even reported in the New York Times,⁸⁶ :

"Myan Mode workers had protested outside the factory for weeks, watching as daily wage workers entered and scores of exhausted former colleagues left at midnight after overtime shifts. Eventually, management offered severance but not re-employment to the 571 fired workers, plus 49 employees who had walked out in solidarity. All but 79 eventually took the severance pay."

In these cases, Covid-19 was used as a pretext to target and dismiss unionized workers.⁸⁷ As noted by the Clean Clothes Campaign:

"...in these three cases the pattern is clear: the union called management out for putting their workers at risk of contracting Covid-19 and/or not paying due wages, subsequently union members and union supporters were dismissed in the days following. In all cases, management refused to sit at the table with the union to address the human rights violations and negotiate a resolution."⁸⁸

87. https://media.business-humanrights.org/media/documents/files/documents/20200616_rejoinder_CCC_RuiNing_BHRRC.pdf

Inditex sources from all three factories, BESTSELLER buys from Rui Ning and Huabo Times, while MANGO and Primark are also buyers from Myan Mode and Huabo Times, respectively.

"On 28 March 2020, 571 workers – including all 520 members of the factory union – were dismissed from Myan Mode garment factory. While the factory has cited a decrease in orders due to COVID-19 as reason for the dismissals, they were made hours after union representatives requested increased protections against the risk of COVID-19 infection. Myan Mode has since dismissed a further 50 workers who walked out of the factory to protest against the dismissal of the union members. On 30 May, Myan Mode reached an agreement with the union to reinstate 75 fired unionised workers and recall hundreds of other fired union members when operations return to normal as the pandemic eases. Labor groups remain concerned that the brands have not pushed for the reinstatement of all dismissed union members."

"In early May 2020, Rui Ning factory laid off 324 workers – 298 of whom are union members – citing COVID-19 related reasons for the dismissals. Union leaders have accused Rui Ning of targeting them for dismissal due to their union affiliation, and report having since observed the factory hiring new workers who are not affiliated with the union. On 17 July after months of struggle, the Rui-Ning factory union won the reinstatement of the 298 fired union members, including the union's president."

"On 14 May 2020, just three days after workers registered a new union due to fears that Huabo Times would make dismissals in response to COVID-19, factory management dismissed 26 unionised workers – including four union leaders – and a further 81 workers openly supportive of the newly formed union (107 workers in total). Workers report the factory said it needed to downsize due to the impact of COVID-19, however a few weeks later transferred workers from another factory into Huabo Times."

88. https://media.business-humanrights.org/media/documents/files/documents/20200616_rejoinder_CCC_RuiNing_BHRRC.pdf

In general, unions have first responded to discrimination by taking these complaints of union busting to official channels, namely the Township Conciliation Body and then the Arbitration Council and Arbitration Body. Union leaders and labor advocates all reported that these official channels have provided little support in upholding the freedom of association. In many cases, local labor departments also approved the factory dismissals, despite their legal duty to ensure they were not discriminatory. Cases brought before the arbitration bodies were in most cases unsuccessful, with officials refusing to recognize the underlying discrimination behind employee dismissals, and the government representative siding with the employer representative against the worker representative in making their determinations.

Workers and unions have become used to this state of affairs, and hold little faith in these official legal channels, which regularly fail to uphold workers' rights. In addition, unions report they are overly slow and bureaucratically burdensome, leaving workers at risk when they need urgent funds and are facing acute crises. Accordingly, factory level unions have generally begun to increasingly rely on strikes and protest over the past few years, as the only practical tactic for compelling employers take workers concerns seriously and to enter into negotiations or social dialogue channels. While there are legal limits on the right to protest, Myanmar has seen more and more wildcat strikes, as well as general worker protests.

As fears for worker safety escalated at the start of the pandemic, many registered and unregistered unions felt they had no choice but to strike and protest. The government was keen to quell this unrest, firstly by compelling the unions to agree at the NTFD to cease and prevent all strikes as a measure of public safety. The government nonetheless followed this with a brutal crackdown on public assembly. In mid-April, the Burmese government introduced the *Prevention and Control of Communicable Diseases Law*, banning gatherings of five people or greater, under the auspices of preventing the spread of Covid-19.⁸⁹ Along with a raft of other measures, these bans carried heavy financial penalties and up to six months imprisonment. These laws were subsequently vigorously enforced and commentators have said that Burmese authorities have acted well beyond the public health threat posed by Covid-19.⁹⁰

The impact of this public assembly law has been substantial for factory workers. In the first instance, it must be noted that factory workers travelling to work were one listed exception to the five person gathering rule, indicating the lack of concern for workers' safety who are required to ride in large groups on the back of trucks to commute to work. However the major impact of this law has been to totally undermine workers' leverage vis-à-vis employers, specifically by completely restricting workers' ability to undertake legal protest, as well as legal strikes and wildcat strikes. In recent years workers have relied on the possibility of protest and strike as a key tactic in workplace disputes, indeed, without the threat of work stoppage most employers were reported to show little interest in undertaking social dialogue on the factory floor.

There have been several high profile examples of authorities opportunistically using Covid-19 as pretence for cracking down on freedom of assembly. On May 4, a group of

89. <https://www.mmtimes.com/news/myanmar-bans-gatherings-five-and-more-covid-19-spreads.html>

90. <https://www.hrw.org/news/2020/05/28/myanmar-hundreds-jailed-covid-19-violations>

six union leaders and members from the unregistered All Burma Federation of Trade Unions (ABFTU) were sentenced to three months in prison for holding a protest of 100 workers at the Blue Diamond bags factory in Yangon. Blue Diamond workers held strikes demanding their employer close the factory for a month with full pay to prevent the spread of COVID-19.⁹¹ Five other workers' leaders from the Rainwear House and Brightberg factories in Dagon Seikkan also were arrested over strikes held in early April.

Freedom of Association Guidelines and pressuring brands

Throughout the pandemic Burmese workers were confronted with unpaid wages, illegal terminations, inadequate OH&S, and a crackdown on any worker organizing. Unions had little success dealing with factory owners and factory managers, neither of which were regularly complying with legal requirements to consult unions in managing staff, let alone using social dialogue channels set up over the preceding years. Government authorities too, showed little support in these matters.

Unions were thus faced with no option but to involve the major international brands that purchase from the offending garment factories, appealing to them to pressure factory managers and owners to comply with existing laws and agreements. Already at this point, international coverage of how major brands had reneged on production orders had created significant reputational risk for buyers, and proved a leverage point for unions. In addition, existing relationships and dialogue channels that were established between unions and buyers in earlier social dialogue projects proved valuable to unions in pressuring brands. In particular, the IWFM were able to rely on the collective bargaining agreement, the *Myanmar Freedom of Association Guidelines*, they had developed in 2019 in conjunction with ACT (Action Collaboration Transformation) brands which required members to consult with factory unions prior to workforce layoffs.⁹²

By way of background, the *Myanmar Freedom of Association Guidelines* had been agreed to in November 2019, after eight months of negotiations between IWFM, IndustriALL, ACT, and ACT associated brands (such as H&M, Inditex, Bestseller, New Look, Next, and Tchibo). The guidelines had been developed in response to ongoing social dialogue efforts in the garment sector (such as the ILO-GIP program for instance), which had been met with mixed success. In the opinion of IWFM, factory owners and managers that had signed up to various social dialogue initiatives had lacked basic understanding and recognition of the principals of worker representation in industrial relations, leading to challenges and misdirection in dealing with worker representatives within social dialogue initiatives on the factory floor. Or put more simply, factory operators had too little basic understanding and recognition of unions to underpin these social dialogue initiatives. During 2019, IWFM had decided to pause their involvement with various social dialogue programs in favor of pursuing agreement on the guidelines, in order to provide a clear framework for pursuing any future social dialogue initiatives. In their view, having clear guidelines that had been agreed to by brands would provide legitimacy and clarity in maintaining standards vis-à-vis factory operators.

91. <https://www.irrawaddy.com/news/burma/six-labor-strike-leaders-jailed-breaking-myanmars-covid-19-rules.html>

92. <https://actonlivingwages.com/wp-content/uploads/2019/11/Myanmar-Freedom-of-Association-FOA-Guideline-3.pdf>

The FoA guidelines proved to be a useful mechanism throughout Covid-19, but not to the extent that they could be invoked without involving purchasing brands to facilitate discussions on the factory floor. In many cases, factory managers had avoided meeting with workers to discuss procedures for worker terminations and factory closures. In May, ACT brands, IWFM and IndustriALL together endorsed the *Covid-19: Action In The Global Garment Industry Call to Action*⁹³, explicitly reiterating a commitment to abide by the Myanmar FOA guidelines during the pandemic.⁹⁴ In practice however, brands such as H&M, Inditex and Tchibo were all called upon to directly intervene in union busting efforts arising out of Covid-19 circumstances. In some situations, the brands even had to have their own representative attend meetings virtually and act as mediator, in order to compel factory managers to meet with unions representatives and workers to engage in dialogue. According to a public statement by IndustriALL assistant general secretary Jenny Holdcroft, the FOA guidelines proved to have “laid the foundations of cooperation in the country’s garment industry and has enabled the parties to reach agreement on how they will respond collectively to the COVID crisis.” In this respect they are, “a concrete framework for further joint action to address the impacts of the next phase on factories and workers.”

Similarly, in the cases of the Myan Mode, Rui-Ning and Huabo Times factories, buyers such as Inditex, BESTSELLER, MANGO and Primark were all compelled to intervene after public campaigns calling them out for worker exploitation in their supply chains. Even in factories where the FOA guidelines were not directly applicable, buyers were called upon to exert influence up the supply chain, with reportedly varying degrees of success. Here commentators admit a major drawback that these tactics work only for official suppliers of famous brands and a union requires international connections and support for it to work. Nonetheless, repeat use of existing frameworks appear to be building capacity and norms among union and brand practices, particularly in pressuring buyers to drive union recognition on the factory floor.

Overall, these recent developments seems to suggest that pressuring international buyers remains the main leverage point available to garment unions in Myanmar, especially while the government supports crackdowns on union activity and seeks to undermine unions’ ability to strike and protest. It also seems to suggest that the existing social dialogue mechanisms remain dependent on external pressure in order for factory owners to engage in such discussions, and thus have not been truly integrated within standard industry practice.

Social dialogue and the “new normal”

Undoubtedly, the impacts of Covid-19 still have significant ways to play out on social dialogue in Myanmar’s garment sector. Infection rates started to climb in the middle of August, and by 20 October, the number of coronavirus infections had spiked to 38,502 and the country had entered lockdown in a bid to stem transmission of the virus.

93. https://www.ilo.org/wcmsp5/groups/public/--ed_dialogue/--dialogue/documents/statement/wcms_742371.pdf

94. <https://actonlivingwages.com/wp-content/uploads/2020/05/Final-joint-statement-brands-employers-union-on-Covid-Myanmar.pdf>

It is thus too early to say whether new structures of social dialogue are emerging out of the Covid-19 pandemic in Myanmar. The tripartite social dialogue forums developed at the national level to deal with the pandemic do hold a high degree of social legitimacy, and may prove to be an opportunity for trade unions to engage in defining the post-pandemic course of industrial relations for the garment industry. Unions are currently framing discussions to define the “New Normal for Industrial Relations” as a concept underpinned by better working condition, up-scaling worker representation, and commitment to good faith negotiation of policies and regulation among stakeholders. The unions hope to take this crisis as an opportunity to build a vision for the industry based on worker, government and employer participation. It seems that at the national level at least, industry and government see the need to involve unions as means for assuring worker cooperation in the future and creating legitimacy for the inevitable policy measures brought on by the pandemic.

Events throughout the pandemic show that no matter what is negotiated at the national level, there is still a long way to go in order to implement reliable social dialogue practices on the factory floor. Targeted union busting efforts, disregard for workers’ health, and failure to provide adequate PPE have reduced the level of faith and trust held by unions and workers vis-a-vis factory owners, and in turn, social dialogue processes. Formalised industrial relations systems under the labor law have proven to offer little help to workers, with arbitration at the township and council levels rarely supporting workers’ rights. In the eyes of unions, government officials within the dispute settlement system have shown little regard for the labor law, and shown themselves to be closely aligned to industry. The heavy-handed crackdown by government and police on worker protests and strikes has further undermined trust in that tripartite mechanisms can be held in good faith. In addition, the high number of worker layoffs throughout the crisis have reduced the number of overall union members, placing unions on the back foot and straining industrial relations more generally.

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a. List of Interviewees

The following organizations were interviewed in this report:

- Solidarity Centre Myanmar
- Action Labor Rights
- APHEDA Myanmar
- GIZ Myanmar
- ILO Myanmar
- ILO-GIP Myanmar
- 3F
- Fair Wear Foundation
- IWFM
- SMART Myanmar
- European Union Delegation Myanmar

The following organizations were approached for interview in this report:

- CTUM
- IndustriALL
- MGMA

b. Texts

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Acknowledgements

New Conversations Project

Cornell University, School of Industrial and Labor Relations

This report is part of the Social Dialogue in the 21st Century project, with the support of the Fair Wear Foundation through the Strategic Partnership for Garment Supply Chain Transformation.

Special thanks to all of the research participants without whom this report would not exist.

Special thanks to Mondiaal FNV and CNV Internationaal for their contributions and support via the Strategic Partnership for Garment Supply Chain Transformation.

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www.fairwear.org



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