

Law, labour disputes and trade union building in Myanmar

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On June the 9th 2016, More than 12,000 workers from different Yangon factories were protesting in Hlaing Tharyar township against low wages, forced and unpaid overtime, and the firing of organized workers. They were also protesting against the employers' ignorance against the decisions made by the Dispute Settlement Arbitration Council.¹

With the introduction of the new labour law and the democratic opening in Myanmar since 2011, workers increasingly articulate inhumane working conditions and labour disputes are rising. Trade unions play a crucial role in helping workers formulating and articulating their complaints. Claiming rights is an important driver for democratic change in a political environment which was characterized by brutal repression of trade unions and labour rights under the military regime for over 50 years. This article discusses the link between trade union's role in the interpretation, spread, and application of the labour law and the current model of worker organizing. Unions are important vehicles combining legal institution building and democratization through worker participation. This is important in a context where the labour law, a key pillar in Myanmar's transition to democracy, is not coherent and the same concepts and words have different meanings to different actors. Today, a multitude of actors, including lawyers, firms, international organizations, the bureaucracy, global and local trade unions, as well as social movements are involved in shaping the meaning of law. Thereby they contribute to the process of its codification.

This contribution shows that law and trade union building are tightly intertwined in Myanmar: Labour disputes have become a key driver for trade union organizing. I point out three ways through which trade union building is linked to labour disputes, shaping the meaning of law in due course: solving disputes through workplace negotiations, supporting dispute settlements through arbitration, and more fundamentally through the involvement of labour in the labour law reform process.

Overall, while trade unions are important for turning law into a social reality, considerable barriers remain leaving employers often disregarding decisions made by the arbitration council and other legal innovations.

The trade union movement in Myanmar

The development of trade union structures in Myanmar is an unprecedented success story, given the repression of trade unions and all other political organizations under military rule in Myanmar since 1962 and even harsher repressions after 1988, after the violent crackdown of the 8888 student uprising against the military rule². Trade unions had to operate underground or flee the country and

¹ According to the Myanmar Times <http://www.mmmtimes.com/index.php/national-news/yangon/7150-thousands-of-workers-protest-in-hlaing-tharyar.html>; last accessed 19. December 2016

² 8888 stands for the date 8th of August 1988, where hundreds of thousands of people demonstrated across the country. The All Burma Labour Union (ABLU), one early predecessor of the Federation of Trade Unions in Burma (FTUB) formed in 1991, which is called Confederation of Trade Unions of Myanmar (CTUM) since 2015.

tried to operate from Thailand. Support by the global unions and the international trade union federation was crucial for the survival of Federation of Trade Unions in Burma (FTUB) within Thailand.

In 2012 trade unions became legal, and union leaders from FTUB (later CTUM) in exile could return to the country. By 2013 there were already 670 registered factory unions. In 2015 the Confederation of Trade Unions of Myanmar (CTUM) was officially accepted recognized as the only trade union confederation in Myanmar. By October 2016 CTUM has 8 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. Not all union federations are members of CTUM. Important other federations are the Agriculture and Farmers' Federation Myanmar (AFFM/IUF) or the Myanmar Industries Craft and Services Unions Federation (MICS), which might form a second confederation in the future. In addition, there are also labour rights organizations active in Myanmar, which work independent of trade unions.³

Unions are involved in a range of activities. This contribution focusses on the trade unions' role in labour disputes.⁴ The rise in labour disputes is linked to greater freedom of expression and association rights since the democratic opening of the country. Trade unions in Myanmar help workers with their problems mainly through legal claim-making. CTUM and its members don't encourage strikes. By law the right to strike is only given after the decision of the arbitration body, not during arbitration to pressure employer into the decision. But that unions prefer legal-institutional means over strike has also other reasons. Unions aim to establish themselves as a credible actor in the emerging industrial relations landscape in Myanmar, which is difficult if they are too confrontational. In addition, international organizations and donors put friendly pressure on them to solve disputes rather through dialogue and arbitration than through open conflict. More fundamentally, trade unionists also believe that they can achieve more through participatory channels within the emerging institutions, especially arbitration, than through strikes which are hard for workers to maintain and risky.

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 in the following ways.

Worker capacity building and negotiations without collective bargaining

³ For a more detailed overview of the trade unions structure in Myanmar see Sabrina Zajak: Law, labour disputes and trade union development in Myanmar, paper to be presented at the cross-movement mobilization conference University Bochum April 2017, <http://www.isb.ruhr-uni-bochum.de/forschung/cross-movement-mobilization.html.en>

⁴ According to a recent study of the garment industry by Labour Rights Action there were 447 workers' demonstrations at garment factories between 2012-2014. General or more recent figures are not available at the moment.

The first approach is to try to mediate or facilitate negotiations inside factories. In order for negotiations to work, legal capacity training programs for workers are crucial (see picture). In those trainings workers not only learn about their rights (e.g. that forced overtime is illegal), but also that it is their right to make claims vis-à-vis management. Workers could then use the Workplace Coordination Committee (WCC), which consist of workers and management, to communicate their complaints. If this works also depends on the presence of unions and worker leaders who are respected and able to negotiate with management. Ideally, disputes are solved by negotiating and signing a list made of workers' demands. To outsiders, mainly the international community, such negotiations are framed as collective bargaining, which doesn't really exist in Myanmar. Still, it is a first and important step to realize workers' rights. It can be an important source of self-empowerment for workers and a first step towards collective bargaining at the shop floor level in the future. However, the Workplace Coordination Committee (WCC) is not per se an instrument for worker participation and the implementation of the law inside the factory. WCCs remain contested as its independence from management cannot be taken for granted. Management can use it to govern workers and enforce their own interpretation of the law. Furthermore, global brands can use WCCs as an indicator for worker representation and freedom of association in their legal compliance and CSR programs. As WCCs can be completely decoupled from trade union structures or real worker representation, they can also become an effective means for management to bypass unions and spread their interpretation of law.

Complaints in front of the Arbitration council

If no agreement is reached, then the complaint can be brought forward to arbitration. As in many other cases in Myanmar, international agencies, in this case the ILO, played a crucial role in designing and establishing a new institution based on experiences in other countries.⁵ The arbitration council was introduced in 2012. The arbitration process works the following way: the first step it to bring forward a complaint at the township level. The so called Township Conciliation Body tries to negotiate an agreement between the conflicting partners. If no agreement is reached the conciliation body sends the case to the regional arbitration body. If no settlement is found there the case is send to the national arbitration council, the Nay Pyi Taw council. This structure should help to solve to dispute at the lowest level possible. In practice, many complaints move up to the arbitration council. The Arbitration Council is also important as there is no functioning labour court and no capable labour lawyers. Trade unions are important in the whole process of arbitration as they help workers by explaining the procedure, formulating complaints, filling out the paper work or search for proof of the claim. For example, one common issue of conflicting interpretations is about termination of work. While management argues, the worker left, the worker complaints about being fired.

Trade unions also have a say in the Arbitration Council. It consists of five representatives of the tripartite bodies: the Ministry of Labour, employers' organisations and labour groups. The representatives of labour were newly nominated in mid-2016. According to the Settlement of Labour Disputes Law, representatives have to be elected by the ministry based on suggestions made by the employer organisations and worker's organisations.⁶

⁵ Cambodia was an important template, as there the introduction of the arbitration council counts as an important success story as institution building for the ILO

⁶ The procedure as such is also contested as not all union federations feel that they have had the change in participating in the nomination the labour representatives. E.g MICS and AFFM-IUF want to have a voting procedure established were more trade unions can participate in. CTUM officials argued that „The government

At the moment, labour is represented by CTUM members. Observers stress that the decision-making process is not influenced by the organizational background of the participants (state, labour, business) and they usually agree on the verdict. One trade unionist explains why: „The ILO strongly encourages them not to decide by their belonging but as a group.” He continues “the workers are not favoured but the labour law.” As the Arbitration Council aims towards becoming a law enforcement body, the decisions are made against labour rights violations. This is why workers tend to win, although this is also changing recently. However, even if decisions are made in favour of workers, employers tend to disregard the decision. During my talks with many trade unionists, the lack of enforcement is considered a key problem: “We don’t have a functioning labour court and arbitration still has no authority”.

This presents a crucial challenge for the whole emerging trade union and labour movement in Myanmar in multiple ways: First, it hampers trade union growth through registering workers as this is tightly connected to labour disputes and problem solution. Yet if their problem solution capacity is low, it reduced the acceptance of trade unions. Second, many cases in arbitration unfold around the issue of being fired. And increasingly union members get fired. If arbitration decisions are not respected, or reduced to a small compensation payment, unions have no ability to protect their members, which again reduces the motivation of becoming a trade union member. Third, trade union federations favour negotiation and arbitration over open conflict. This divides trade unions from other labour rights groups which favour a different approach to organizing workers and regard strikes as the most important means for making claims. Disfunctioning institutions weaken the unions’ approach vis-à-vis such alternatives. But how can decision become more binding? Currently, union federations, in particular those covering the garment sector, hope that global buyers will enforce the decisions made by the AC in their supply chains, Global brands have committed themselves to respect the labour law as part of global framework agreements or their membership in multistakeholder initiatives. And indeed, some successes within global framework agreements have been reported.⁷ This means brands become the last instance in the interpretation of the law. It then very much depends on the presence of participatory structures for unions if they can influence the corporate perspective on what is the right interpretation of the law.

Changing the labour law

Unions participate in shaping in the application of law through one additional mechanism – by proposing specific legal reforms. Basically all unions demand to strengthen the sanctioning capacity of the arbitration Council. In 2014 the fee was raised to 1,000,000 kyat, roughly 1000€. Still the penalty is too low for factory owners to respect the law. This is why CTUM demands not only monetary sanctions but prison penalty.

In 2017 amendments to the labour law are going to be made. CTUM has established a legal working group, where they identify flaws and dysfunctions in the current labour law practices and formulate a

invited all official worker organisations. The government publicised the event to let organisations that are not registered know about it. We can understand the objection of the worker organisations that were not included in the meeting. But I want them to understand: Over half of the worker organisations in Myanmar knew about the event.”

⁷ Further elaboration of the different labour groups as well as the role of global supply chains will be presented in: Sabrina Zajak: Law, labour disputes and trade union development in Myanmar, paper to be presented at the cross-movement mobilization conference

proposition for amendments. CTUM representatives also participate in the National Tripartite Dialogue Forum where they can present their suggestions for legal reform. If they succeed at least with some of their proposals, it could be a step to further to establish trade unions as important actors in the emerging industrial landscape in Myanmar. Once established, they could also move from a rights-based approach, fighting for the application of the law through solving pressing problems, towards a more pro-active engagement and long term organising inside factories.

Foto 1: worker training in labour rights in worker center

Foto 2 garment factory (right) and living area (left side).

This text is based on interviews, discussions and participant observations conducted during the Myanmar Trade Union Conference, “Trade Union Development, Industrial Relations and International Development Initiatives” Myanmar, Yangon, 07-09 November, 2016 and during visits of worker centres in industrial zones in Yangon.