

# BURMA/MYANMAR



There have been positive developments in Burma/Myanmar over the past year, though much work remains to be done. In September 2012, the Federation of Trade Unions – Burma (FTUB), now Federation of Trade Unions – Myanmar (FTUM), and its leaders were permitted to return to the country following decades in exile and to continue their trade union activity. FTUM General Secretary Maung Maung has established an office in Yangon and, in roughly six months, the Federation counts over 130 affiliated unions with 18,000 members.

## FREEDOM OF ASSOCIATION

The Labour Organizations Law, adopted in October 2011, took effect on March 2012 with the promulgation of implementing regulations. This created a legal framework for the establishment and operation of trade unions – undoubtedly a major step forward from the long-standing situation in which freedom of association was prohibited both in law and practice. A new Settlement of Labour Dispute Law was enacted on March 28, 2012, which now provides rules for the resolution of disputes through conciliation and arbitration, as well as regulating industrial action.

The new laws, while a meaningful improvement, do not however fully afford the rights guaranteed under ILO

Convention 87. The law contains, for example, a minimum membership requirement which is far too high (10 per cent of the workplace), is overly prescriptive on union structure and internal organisation, limits the right to strike, and provides inadequate protection against anti-union discrimination – which is a very serious problem. The constitution also still contains provisions that could undermine the exercise of free association.

In practice, over 400 basic-level unions have been registered in the last year, reflecting a strong demand for a collective voice at work. Workers report, however, that some union organisers and leaders suffer retaliation for their legally-protected activity. Further, the dispute resolution procedures are not always effective in providing the necessary remedies. In particular, the newly established arbitration councils do not yet have the tools necessary to enforce its decisions – especially as to reinstatement. Further, agreements reached between employers and workers through the conciliation process are not always respected and are not enforced as binding agreements.

Recently, when workers attempted to organise unions in four government ministries, the leaders were forcibly transferred to distant locations when the government learned of the union activity. Furthermore, an anti-union memo allegedly had been circulated describing the best methods to avoid a union. The labour ministry had explained that workers had the right

to freedom of association, but other government ministries expressed that this was not their policy. The lack of a clear prohibition in the law regarding anti-union conduct short of dismissal is a serious failing in the new legislation. In private sector manufacturing, sweatshop labour conditions, including excessive hours, low wages and health and safety violations are common. Child labour is also alleged. There are insufficient numbers of labour inspectors, and workers allege that they are subject to corruption by employers.<sup>56</sup>

Workers at the Inlay shoe factory in Bago reported hostility by their employers, including cases of managers physically abusing the workers. Workers were not paid appropriately for overtime, and they were punished by deducting from their wages when they were sick. The workers had initially tried to form a union with 30 workers but were told by the registrar that they would need 300, as the factory employed 3,000 workers. The registrar allegedly called the factory owner, who had then begun to retaliate against the workers who had supported the registration process. Whenever anyone is rumored to be a union activist, they are usually transferred to separate them from their co-workers. Workers were also instructed not to contact outside organisations. Subsequently, it is believed that the company registered their own management-dominated union with only 30 workers.

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*The Federation of Trade Unions- Myanmar organised 18,000 new union members within six months.*

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At the Taw Win embroidery factory, workers started to form a union and went on strike over very low wages. The employer agreed to raise the wages but never implemented the agreement. The workers took the case from conciliation to the arbitration council, which ruled that the employer should comply with the agreement. The employer retaliated by finding minor reasons to discipline the workers involved in the complaint. The employer also refused to allow workers to collect dues, claiming that it was not legal. The employer also claimed that the union was not legitimate because of its association with the FTUM.

## **FORCED LABOUR REDUCED BUT NOT ELIMINATED**

In 1997, the ILO established a Commission of Inquiry on Forced Labour, which in 1998 made three specific recommendations to the Government of Burma: to amend its laws, to eliminate forced

labour in practice and to strictly enforce penal sanctions against those responsible. The Government's failure to comply with these recommendations led to the cut-off of ILO technical cooperation in 1999 and, in 2000, a resolution calling on member states to take appropriate measures (sanctions) to bring the country into compliance with its international obligations.

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*"Let's try to work together to form sustainable investment so we create an ethical economy."*

**Maung Maung (General Secretary, Federation of Trade Unions - Myanmar)<sup>62</sup>**

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Today, the Villages Act and the Towns Act has been amended, which brings the definition of forced labour into line with ILO Convention 29, though the Constitution remains to be amended. The adequacy of the penal sanctions as to civilian perpetrators (one-year maximum) may also be too low. The ILO and the government also adopted in June 2012 a joint strategy to ensure that the government fully complies with the Commission of Inquiry's recommendations by the end of 2015. Since the joint strategy was adopted, the Government and the ILO have engaged in numerous awareness-raising activities, and the Government at the highest levels has made statements to the effect that forced labour must end.<sup>57</sup>

In practice, forced labour is reduced but continues, however, with credible reports of various forms of unpaid forced labour conscripted primarily by the military in 2012-13, particularly in the state Rakhine.<sup>58</sup> Forced labour is most prevalent in areas where the military is engaged in on-going conflicts, such as Arakan State and Kachin State. This includes, for example, portering, road construction, road-repair and military camp construction, fence building and road clearing and food production for troops.

Impunity remains high for those responsible for forced labour. Penal sanctions for the exaction of forced or compulsory labour have not yet been strictly enforced against military or civilians perpetrators. The Liaison Office report, submitted to the ILO Governing Body in March 2013, notes the prosecution of 329 persons – five under Penal Code and 324 under the military regulations. Those imprisoned for this crime have risen from four to 11 in recent months. However, the ILO Committee of Experts reports that "disciplinary measures have been taken against 166 military personnel and action taken under section 374 of the Penal Code against 170 other government officials and five military personnel." Regardless, from available information, the majority of the penalties imposed appear to be

disciplinary. The Commission of Inquiry had importantly stated in 1998 that, "The power to impose compulsory labour will not cease to be taken for granted unless those used to exercising it are actually brought to face criminal responsibility."

## THE ILO RESOLUTION OF JUNE 2012

In June 2012, the Selection Committee passed a resolution terminating the 1999 resolution, which had limited ILO technical cooperation or assistance to forced labour programs and which had prohibited the Government from participating in ILO meetings, symposia and seminars. This was seen as a means both to encourage further reform in Burma and to allow resources to be expended on capacity building on freedom of association. The provision of the 2000 resolution that authorised member states to take appropriate measures was merely suspended for one year to assess the extent to which Burma made progress on the elimination of forced labour. It has an obligation to report to each Governing Body, which in March 2013 will make recommendations as to whether to extend the suspension or terminate the 2000 resolution in June 2013. It is widely expected that the 2000 Resolution will be terminated in June 2013.

## OTHER CAUSES FOR CONCERN

Human rights organisations and the United Nations have documented widespread and systematic human rights violations, including war crimes and crimes against humanity, throughout Burma in 2012. In ethnic territories in particular, these include extrajudicial killings, torture, rape, disappearances, forced relocation, destroying water and food supplies and razing villages.<sup>59</sup> This has created a massive refugee crisis, with hundreds of thousands of internally

displaced persons and a much larger number of refugees in Burma's neighbouring and third countries.

Most recently, ethnic violence in Arakan state largely aimed at the Rohingya, a largely Muslim population effectively denied citizenship under a 1982 law, provoked a deep crisis which threatened the democratic reform process in Burma. Indeed, numerous people were killed, villages razed and thousands displaced internally or into neighboring Bangladesh. Anti-Muslim riots erupted in March 2013 in Meikhtila, in central Burma, leaving at least 40 dead. Attacks subsequently spread to other parts of the country, edging into Yangon.

Land confiscation also remains a very serious problem, as peasant farmers are ejected from their land to make way for new infrastructure projects meant to attract investment.<sup>60</sup> Indeed, Special Rapporteur Tomas Ojeda recently stated, "Given the expected wave of privatisations and the increase in foreign investment, along with accelerated economic development, there is likely to be an increase in land confiscations, development-induced displacement and other violations of economic, social and cultural rights. Myanmar has an obligation to refrain from and protect against forced evictions from homes and land."<sup>61</sup>

Indeed, protests over the expansion of a copper mine, a joint project between the Burmese military and a Chinese weapons manufacturer, turned violent last year. Burmese military used white phosphorous to displace the protestors, leaving dozens injured, some with severe burns. The protestors denounced the "unlawful confiscation" of more than 7,800 acres of land and a large number of forced evictions to allow for the mine's expansion. A parliamentary commission investigating the mine found in March 2013 that the project should continue, even though it would not create local jobs and did not contain adequate environmental protection measures. The report also failed to demand the punishment of those police involved in the violent crackdown.

## WHAT NEEDS TO HAPPEN IN 2013?

- Anti-union discrimination of all forms and at all times must be clearly prohibited in law and in practice, with sufficiently dissuasive sanctions.
- Labour laws must be amended to conform with international standards.
- Forced labour must be eliminated as soon as possible.