

# Identifying Major Labour Policy Issues in Myanmar

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## I. Summary

Labour Law reform in Myanmar has been initiated since 2011 as an effect of political and economic policy reform and open to international collaboration and economic integration. Prominent policy reforms which change the landscape of industrial relations and labour market are systemic labour dispute resolution mechanism, new labour organisation law, new social security system, stipulation on compulsory employment contract and minimum wage rate and so on. However, Myanmar labour market faces many major labour issues such as skill shortage, mismatch of education and labour market demands, weakness on labour law enforcement, limited social security coverage and awareness building on labour laws and regulations.

## II The changing features of industrial sectors, business organisations and business activities

The economy of Myanmar had been predominated based on agriculture sector since 1990s.<sup>1</sup> After 2000, the GDP share of manufacturing and service sectors constantly increased. In 2014-2015, manufacturing sector contributed 34% of GDP and service and agriculture sector are 32% and 17% respectively.<sup>2</sup>

According to the Myanmar Enterprise Survey 2014, there are 632 registered enterprises in Myanmar.<sup>3</sup> By sector, 353 enterprises in manufacturing sector, 105 in retail and 174 in other services. According to World Bank report, 80% of enterprises in Myanmar can be categorized as small and medium enterprises (SMEs).<sup>4</sup>

In 2015, 90.6% of the employed persons work in a business/establishment privately owned by national(s) and 7.3% work in government or joint ventures.<sup>5</sup> Only 0.3% of establishments (including own account farm/business) are owned by households for domestic purposes.<sup>6</sup> More than 61% of employed persons work in a business or establishment with a size of less than five persons.<sup>7</sup>

### 1. Development of labour intensive industrial sectors and new business activities

The pace and pattern of economic growth over the past five years have contributed to major shifts in

1 Central Statistical Organization, Myanmar Statistical Yearbook, 2015.

2 Central Statistical Organization, N 1 above.

3 World Bank Group, Myanmar Enterprise Survey 2014.

4 World Bank Group, Myanmar Economic Monitor, Anchoring Economic Expectations, December 2016.

5 Ministry of Labour, Immigration and Population and International Labour Organization, Myanmar Labour Force, Child Labour and School-to-work transaction Survey 2015, August 2015.

6 Ministry of Labour, Immigration and Population and International Labour Organization, N 5 above.

7 Ministry of Labour, Immigration and Population and International Labour Organization, N 5 above.

the sector composition of GDP.<sup>8</sup> Despite some increase in agriculture output in 2013 and 2014, the share of the sector has dropped from around 37% of GDP in 2010 to around 29% in 2015.<sup>9</sup> This has been offset by big gains in services (wholesale and retail trade, followed by transportation, and communications), which have been the biggest drivers of growth; and industries (manufacturing and processing, followed by construction, and energy, including gas).<sup>10</sup>

According to 2015 Survey, 51.7% of the employed persons were working in the agriculture, forestry and fishing sector, followed by the wholesale and retail trade, repair of motor vehicles and motorcycles at 14.3%, manufacturing 10.9%, transportation and storage 4.4%, other services activities 9.1% and construction 4.7%.<sup>11</sup> All other sectors account for less than 3%.<sup>12</sup>

Agriculture growth decelerated to 2% in 2015-2016 compared to 5.6% the previous year due to the impact of heavy rains between July and September 2015 causing widespread flooding and landslides.<sup>13</sup> The agriculture sector is projected to bounce back, though there are downside risks from the effects of El Niño, which have created severe drought in early 2016.<sup>14</sup>

Myanmar's light manufacturing sector, dominated by food processing, is facing more competition from cheaper imports, which affects its ability to create new employment.<sup>15</sup> Around 60% of industrial output comes from manufacturing and processing, approximately 70% of which is from food processing.<sup>16</sup> Over the medium to longer term, the manufacturing and processing sectors continue to hold strong promise as potentially important drivers of inclusive growth.<sup>17</sup>

Food processing (e.g. rice milling, edible oils, snacks) accounts for around two thirds of manufacturing output.<sup>18</sup> However, the slow recovery in agriculture has had negative spillover effects on the food processing industry, which accounts for an important share of manufacturing and industrial output.<sup>19</sup> The industry is also finding it increasingly difficult to compete against cheaper and better quality imports of processed foods.<sup>20</sup>

The garments sector could help address binding constraints in services and infrastructure that affect the manufacturing sector as a whole, whilst also absorbing unskilled labour. According to Myanmar Garment Manufacturers Association (MGMA) estimates, the sector employs nearly 1% of the country's working population.<sup>21</sup> Most of this estimated workforce is unskilled youth, especially young women, migrating from rural locations to Yangon where 95% of the garment sector is located.<sup>22</sup> The garments sector is slowly emerging as a potential source for non-commodity export growth.<sup>23</sup>

Around 60% of growth in 2015-2016 came from expansion in the service sector, which helped maintain resilience amid external shocks.<sup>24</sup> The transparency, efficiency and stability of business regulations in particular areas may be affecting the pace of expansion in the service sector. Myanmar is also expected to

8 World Bank Group, Myanmar Economic Monitor, May 2016.

9 World Bank Group, N 8 above.

10 World Bank Group, N 8 above.

11 Ministry of Labour, Immigration and Population and International Labour Organization, N 5 above.

12 Ministry of Labour, Immigration and Population and International Labour Organization, N 5 above.

13 World Bank Group, N 8 above.

14 World Bank Group, N 8 above.

15 World Bank Group, N 8 above.

16 World Bank Group, N 8 above.

17 World Bank Group, N 8 above.

18 World Bank Group, N 8 above.

19 World Bank Group, N 8 above.

20 World Bank Group, N 8 above.

21 International Labour Organization, Myanmar Garment Sub-Sector Value Chain Analysis, 2015.

22 International Labour Organization, N 21 above.

23 World Bank Group, N 4 above.

24 World Bank Group, N 4 above.

continue building on the good foundations laid for expansion of tourism activity.<sup>25</sup>

There has been a gradual easing in construction activity over the course of 2015-2016. The big construction boom of recent years was dominated by an expansion of the residential market, which in 2013 was estimated to account for around 40% of construction activity.<sup>26</sup> Construction activity, which has experienced a general slowdown in 2015-2016, decelerated further in 2016-2017.<sup>27</sup> Construction accounts for around 5.2% of GDP or around 18% of industrial output.<sup>28</sup> The earlier easing of construction activity was linked to slowing demand in the residential market. Although there was some shift towards commercial properties, even this has decelerated. Then in May 2016, the Yangon City Development Corporation suspended the construction of around 200 high-rise building projects.<sup>29</sup> This was prompted by concerns over projects starting without the necessary permits and violation of building standards.

Food and beverages, mineral-based products, textiles, footwear, furniture, jewelry, toys and various rubber and plastic products are all industries that match the country's current capabilities and benefit from high domestic demand.<sup>30</sup> At the same time, Myanmar could encourage investment and innovation by beginning to develop a few core industries with high growth potential and higher productivity, and where it could feasibly develop the capabilities to compete successfully over the long term. These segments could include automotive parts and assembly, chemicals, petroleum refineries, electrical machinery, and communications equipment, which are all high-growth and high-productivity industries.<sup>31</sup> There is also more interest on intellectual property rights, licensing, franchising, standardization and environmental issues for commodities, showing signs of growth.<sup>32</sup> IT utilization is also growing in the previous government period.

## 2. The importance of SME in economic growth

Increased private sector growth and competition in Myanmar affect firms' ability to survive, enter, and expand in increasingly dynamic markets. An ongoing update to the World Bank's 2014 Enterprise Survey (ES) points to high rates of firm exits in Myanmar over the past two years, with around 17% of firms ceasing operations annually.<sup>33</sup> This may not be a bad sign if exit reflects underlying reallocation of resources to more productive and innovative firms. Over 80% of exits are either micro or small enterprises, which tend to be less productive than larger enterprises.<sup>34</sup> Surviving firms tend to be larger, less likely to be credit constrained, and tend to have more experienced managers.<sup>35</sup> The net job creation from firm entry, expansion and exit was around 13%.<sup>36</sup> The high rates of firm exit underline the importance of continued efforts to improve the business environment, particularly access to credit, and maintain macroeconomic stability.<sup>37</sup>

The only available estimates of the contribution of SMEs to the economy are those from the Institute of Developing Economies, which reports that in 2004 SMEs accounted for 92.6% of enterprises, 69% of output (in the private sector), 68% of investment value and 80% of employment.<sup>38</sup> In micro enterprises,

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25 World Bank Group, N 4 above.

26 World Bank Group, N 4 above.

27 World Bank Group, N 4 above.

28 World Bank Group, N 4 above.

29 World Bank Group, N 4 above.

30 McKinsey Global Institute, Myanmar's Moment: Unique opportunities, major challenges, June 2013.

31 Mc Kinsey Global Institute, N 30 above.

32 Aung Min and Toshihiro Kudo, In Economic Reforms in Myanmar: Pathways and Prospects, New Government's Initiatives for Industrial Development in Myanmar, 2012.

33 World Bank Group, N 4 above.

34 World Bank Group, N 4 above.

35 World Bank Group, N 4 above.

36 World Bank Group, N 4 above.

37 World Bank Group, N 4 above.

male workers were found to be in the majority. Female workers are in the majority in trading and services. A large majority of SMEs employ family members and relatives.<sup>39</sup>

Over the past two years the new Government has given indications that it accords higher priority to the development of SMEs. A Central Committee for Development of Small and Medium Enterprises, chaired by the President was set up in 2013 to develop an SME policy. The SME Development Centre is charged with implementing the SME policy. The Centre has only recently become operational, and its staffing and budget are unclear.<sup>40</sup> So far it has no representation outside Yangon.<sup>41</sup> The focus appears to be on manufacturing, in spite of expected growth in the service and trade sectors.<sup>42</sup>

In Myanmar, more than two third of the enterprises are SMEs and more than half of employment population work at SMEs. Regarding the increasing productivity and growth economy, development of SMEs is important. In order to support SME development, there are many tasks which require improving such as skilled labour, technology, financial support and so on.

### **III. The changing features of working relations, work organisations and working styles**

There is a lack of up-to-date basic data on the composition of employment and labour markets in Myanmar. The Ministry of Labour, Immigration and Population conducted the Household Labour Force Sample Survey in 1990 with the collaboration and cooperation of ILO,<sup>43</sup> UNDP<sup>44</sup> and UNFPA<sup>45</sup> and after that no survey of this kind had ever been carried out for more than two and a half decades. In 2015, the “Myanmar Labour Force, Child Labour and School-to-Work Transition Survey” had been conducted by the Ministry with the collaboration of ILO and this is the latest data from official survey nationwide. Most of labour force data in this country report are used from this 2015 Survey.

The estimated household population in Myanmar is 48 million people living in 10.9 million households and persons in the working age group 15-64 years account for 64.94%.<sup>46</sup> The 2015 Survey estimated that the labour participation rate (of women and men above 15 years of age) in 2015 was 64.7%.<sup>47</sup> This is lower for women than for men (52% and 80% respectively).<sup>48</sup> The overall unemployment rate was 0.8%, with a male rate of 0.7% and female 0.9%.<sup>49</sup> The aggregate measure of the labour underutilization rate, which comprises unemployment, underemployment and potential labour force, was 6.9% and higher for females compared to males.<sup>50</sup> It can be said that the working age group in Myanmar is strong and the proportion of employment population is also high.

#### **1. Working relation, labour dispute resolution mechanism and development of labour organisations**

Since 2011, the previous government has made various labour policy reforms. In the working relation landscape, promulgation of Settlement of Labour Dispute Law on 28th March, 2012 was one of the key changes in the reform period. The Trade Dispute Law has been repealed with this law and the former

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38 Gemunu Wijesena and Roel Hakemulder, International Labour Organization, Assessment of the business service and training market in Myanmar, 2014.

39 Gemunu Wijesena and Roel Hakemulder, N 38 above.

40 Gemunu Wijesena and Roel Hakemulder, N 38 above.

41 Gemunu Wijesena and Roel Hakemulder, N 38 above.

42 Gemunu Wijesena and Roel Hakemulder, N 38 above.

43 International Labour Organization.

44 United Nation Development Program.

45 United Nation Population Fund.

46 Ministry of Labour, Immigration and Population and International Labour Organization, N 5 above.

47 Ministry of Labour, Immigration and Population and International Labour Organization, N 5 above.

48 Ministry of Labour, Immigration and Population and International Labour Organization, N 5 above.

49 Ministry of Labour, Immigration and Population and International Labour Organization, N 5 above.

50 Ministry of Labour, Immigration and Population and International Labour Organization, N 5 above.

labour dispute resolution system has been resolved. The Law sets out the process and institutional framework for the resolution of labour conflict, replacing a very limited system of dispute resolution based around ‘trade disputes committees’ at township, divisional and central levels. The new system includes five levels such as workplace coordinating committee, township conciliation body, state/regional arbitration body, arbitration council and Supreme Court.

After promulgation of new law, the cases rapidly increased from year by year since 2012. Although the dispute resolution system has been initiated since 2012, the data are hardly collected. Based on public sharing decisions<sup>51</sup> on the Ministry website,<sup>52</sup> there are approximately 110 cases that have been decided by state/regional arbitration body. The disputes mostly came from factories especially garment factory and the number of disputes from service sector has also increased. The types of labour disputes are mostly for unfair termination of employment, severance payment, wages and salary, overtime, unfair dismissal, working hours, and annuity and other allowances. While the law frames unfair dismissal/termination of employment as requiring the reinstatement of affected workers, the Arbitration Council in some instances merely ordered the employer to pay compensation to the aggrieved worker. Furthermore, the sanctions and penalties for failure on complying with the decisions of disputes not strongly deterred the employers or employees.

The Labour Organization Law was promulgated on October 11, 2011. But the law came into effect on March 9, 2012 by announcing the Notification of the office of the President of Myanmar. The law clearly provides the rights and duties of labour organizations<sup>53</sup> and introduces collective bargaining<sup>54</sup> and permission on strikes and lock-out activity in some stipulation.<sup>55</sup> The formation and development of work organizations has flourished since the inception of the New Labour Organization law, with their number jumping from about 635 in mid-2013 to over 950 by March 2014.<sup>56</sup> All of this has fueled the rapid growth of farmers’ and agricultural workers’ unions, which in fact comprise a clear majority of all registered basic labour organisations.<sup>57</sup>

The law allows the employers to organize parallel with labour organizations.<sup>58</sup> There are a number of established employer and business associations — most notably the Myanmar Garment Manufacturers Association (MGMA) and the peak national business association, the United Myanmar Federated Chambers of Commerce and Industry (UMFCCI) — that have in certain respects engaged with the design and practice of employment relations.

Another important aspect of the situation in Myanmar is that labour advocacy and representation is not solely a domain of the work organizations. In many cases, workers have sought support from a labour NGO, civil society organisation or a sympathetic labour lawyer to advise and represent them in the course of staging a strike or demonstration or pursuing a grievance through the dispute resolution system.<sup>59</sup> The gendered character of unionism is also important: while there are several female labour NGO leaders, and the large majority of workers are women in high-profile export industries such as garment manufacturing, it is unlikely that women will be equally represented in union organisational structures or that unions will

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51 Decisions of State/Regional Arbitration Body, Arbitration Council and Supreme Court. Not all of the decisions are shared since some numbers of decisions are missing.

52 Website of Ministry of Labour, Immigration and Population, <http://www.mol.gov.mm/en/>.

53 Sections 17 to 23 of Labour Organization Law.

54 Section 21 of Labour Organization Law.

55 Sections 37 and 38 of Labour Organization Law.

56 Sakiko Tanaka, Christopher Spohr, and Sandra D Amico, ADB Economics Working Paper Series, Myanmar Human Capital Development, Employment, and Labour Markets, December 2015.

57 Michael Gillan and Htwe Htwe Thein, *Journal of Industrial Relations, Employment relations, the state and transactions in governance in Myanmar*, 2016.

58 Section 8 of Labour Organization Law, 2011.

59 Michael Gillan and Htwe Htwe Thein, N 57 above.

take up as central demands issues such as equal pay.<sup>60</sup>

Finally, awareness and membership of labour organizations by employed persons has a very low percentage, according to the 2015 Survey. More than 88% of the employers as well as workers are not members of an employers' or workers' organization and about 12% were not aware of membership in a workers'/employers' organization.<sup>61</sup> In regards to rights given in becoming a member of a workers'/employers' organization, awareness is still quite low and at the national level it was only 2.4% for employers and 4.1% for workers.<sup>62</sup>

The laws provide the rights and duties of labour organizations, simple and complete Labour Dispute Resolution Mechanism, rights to collective bargaining, and encourage on registration and forming of employer/worker organizations. However, there are some negative facts on work relations in Myanmar such as weak awareness on laws, and less of law enforcement.

## 2. Features of working styles in Myanmar

The nature of work in Myanmar is predominantly informal. In 2015, 45.9% of all persons in employment were own account workers who refer to self-employed persons who do not hire paid employees on a regular basis.<sup>63</sup> The main occupations in Myanmar are: skilled agricultural, forestry and fishery workers (42.7%); elementary occupations (17.8%); service and sales workers (16%); craft and related trades workers (11.9%).<sup>64</sup>

In urban areas the proportion of making contracts with limited terms is lower than in rural areas.<sup>65</sup> It is 62% in rural areas and 25% in urban areas.<sup>66</sup> 56.2% of contracts are made orally and only 12.6% is written contract.<sup>67</sup> For the length of the contract, 75.9% of contracts are in daily arrangements and the figures in rural is higher than in urban areas.<sup>68</sup> For a contract period of 12 months or more, the national average is 4%; females have more than males and the rate is much higher for urban areas compared to rural areas.<sup>69</sup> Occasional/ daily work accounts for 58.2% at the national level followed by seasonal work which accounts for 32%.<sup>70</sup>

By occupation, the high average hours per week worked was in service and sales, at 54.06 hours and the shortest weekly working hours, 39.49 hours was for professionals.<sup>71</sup> It also revealed that there are only a few employed persons working less than 40 hours per week at about 19%.<sup>72</sup>

Considering all employees, the average wage per day (periodically all types of receipts are converted to day) was 4,760 Kyats and the daily wage was 4,280 Kyats.<sup>73</sup> It is much higher in urban areas than rural areas. Similarly males get higher wages than females. The service sector has the highest wage rates.<sup>74</sup>

Length of service in a job is a good measure of the stability of a job. The length of service at present main job did not vary much over sex, but for type of residence the variation is quite high for urban areas compared to rural areas.<sup>75</sup> In the agriculture sector 56.7% of employed persons had continued with their

60 Michael Gillan and Htwe Htwe Thein, N 57 above.

61 Ministry of Labour, Immigration and Population and International Labour Organization, N 5 above.

62 Ministry of Labour, Immigration and Population and International Labour Organization, N 5 above.

63 Ministry of Labour, Immigration and Population and International Labour Organization, N 5 above.

64 Ministry of Labour, Immigration and Population and International Labour Organization, N 5 above.

65 Ministry of Labour, Immigration and Population and International Labour Organization, N 5 above.

66 Ministry of Labour, Immigration and Population and International Labour Organization, N 5 above.

67 Ministry of Labour, Immigration and Population and International Labour Organization, N 5 above.

68 Ministry of Labour, Immigration and Population and International Labour Organization, N 5 above.

69 Ministry of Labour, Immigration and Population and International Labour Organization, N 5 above.

70 Ministry of Labour, Immigration and Population and International Labour Organization, N 5 above.

71 Ministry of Labour, Immigration and Population and International Labour Organization, N 5 above.

72 Ministry of Labour, Immigration and Population and International Labour Organization, N 5 above.

73 Ministry of Labour, Immigration and Population and International Labour Organization, N 5 above.

74 Ministry of Labour, Immigration and Population and International Labour Organization, N 5 above.

main job for ten years or more.<sup>76</sup> It implies the persons employed in agriculture may not have enough avenues to find other jobs.<sup>77</sup>

During the years 2011 to 2014, only 3.3% of people in Myanmar changed their usual place of residence from one township to another.<sup>78</sup> 25% of the persons changed their place of residence due to employment purposes.<sup>79</sup> Migrants mostly found work in the informal labour market. They tend to work as casual employees in restaurants, construction, and other low-skill employment and a quarter of male migrants worked in construction.<sup>80</sup> Around 55% of female migrants in Yangon were employed in light manufacturing, particularly garments, which are sought after due to better pay, more regular, and longer term work compared to alternatives.<sup>81</sup>

For the migrants to abroad, at the national level about 6% of households had at least one member currently living abroad.<sup>82</sup> The percentage from rural areas is almost double in urban areas.<sup>83</sup> From a gender perspective, the proportion of males is slightly higher than females among the persons living abroad.<sup>84</sup> 98% of the persons living abroad went for employment, either to search for a job or to take up a job or to transfer to a job.<sup>85</sup>

For the working age population (persons aged 15 years and above), the literacy rate for the country was 89.6%.<sup>86</sup> Literacy for females was lower than males and for rural areas lower than urban areas.<sup>87</sup> At the national level, the proportion of the working age population that have completed high school is 6.5%.<sup>88</sup> It is 11.1% in urban areas and only 4.4 % in rural areas.<sup>89</sup> Regarding attaining higher levels of education, the proportion is slightly favourable for males compared to females.<sup>90</sup> The proportion of the working age population with a graduate education qualification and above is 5.8%. In urban areas it is 13% while in rural areas it is 2.6%.<sup>91</sup> The data shows 0.7% of the working age population had undergone trainings in the last year.<sup>92</sup> In 2015, 56% of the employed population at a main job had a primary or below primary level of education.<sup>93</sup> The proportion rose to 77% for an education level below high school and 13% had an education level of high school or above.<sup>94</sup> The percentage of the employed population with an education level of bachelor degree and above is highest in the service sector. It is higher for males and higher in urban areas.<sup>95</sup>

Based on recent surveys, in Myanmar, more than half of workers work in agricultural, forestry and fishing sector, and the majority are daily arrangement workers and work with oral contract. Most of migrants work in informal labour market. Moreover, wage rates in service sector are highest and

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75 Ministry of Labour, Immigration and Population and International Labour Organization, N 5 above.

76 Ministry of Labour, Immigration and Population and International Labour Organization, N 5 above.

77 Ministry of Labour, Immigration and Population and International Labour Organization, N 5 above.

78 Ministry of Labour, Immigration and Population and International Labour Organization, N 5 above.

79 Ministry of Labour, Immigration and Population and International Labour Organization, N 5 above.

80 World Bank Group, N 8 above.

81 World Bank Group, N 8 above.

82 Ministry of Labour, Immigration and Population and International Labour Organization, N 5 above.

83 Ministry of Labour, Immigration and Population and International Labour Organization, N 5 above.

84 Ministry of Labour, Immigration and Population and International Labour Organization, N 5 above.

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92 Ministry of Labour, Immigration and Population and International Labour Organization, N 5 above.

93 Ministry of Labour, Immigration and Population and International Labour Organization, N 5 above.

94 Ministry of Labour, Immigration and Population and International Labour Organization, N 5 above.

95 Ministry of Labour, Immigration and Population and International Labour Organization, N 5 above.

job stability is quite high; however, it is unclear because of less opportunities to change jobs. Another important fact is that there is high number in literacy but low in the skilled labour population.

#### IV. Background factors

After decades of near-dormancy, political reforms initiated by the Previous Government since 2011 have been in part premised on greater openness to international collaboration and economic integration. Broader changes in forms of political representation and participation in Myanmar, in part driven by international compulsions as the nation re-integrates into the global capitalist system, have clearly opened space for labour regulation, representation and labour-management relations.<sup>96</sup>

These reforms, and the NLD's<sup>97</sup> return to politics in by-elections held in April 2012, led to the suspension or rolling back of sanctions by various nations, and most importantly by the United States in 2012.<sup>98</sup> In the same year, Myanmar was readmitted to the ILO as a full member on the basis of its efforts to address forced labour issues and significant reforms in the area of freedom of association.<sup>99</sup>

The on-going reforms, with the aim of improving the business and investment climate also have positive impacts on development of labour productivity and labour market. They include: Promoting on industrialization; Easing restrictions on foreign investment under the Myanmar Investment Law; Changes in banking legislation; Establishing Special Economic Zones; and Plans to make increases in the health and education budgets and educational reform.

The military government aimed at changing the economy from agro-based to industrial-based with the implementation of a 30-year industrial development plan 2000-2030.<sup>100</sup> The share of the industrial sector in GDP in 2010-2011 was 24%, achieving the target set in the plan.<sup>101</sup> The share of the industrial sector in GDP was 15% on average in the 1990s.<sup>102</sup> The share of industry in GDP increased to 19% in 2010-11.<sup>103</sup>

The new Myanmar Investment Law (2016) has introduced important reforms that could further help catalyse domestic and foreign private investment. One such important reform is the relaxation of the overly restrictive requirement that all Foreign Direct Investments or Joint Ventures (JV) have to be new processing plant, which can take up to two years to start. The Investment Law now allows for FDI<sup>104</sup> and JV with existing plant with intent to upgrade or build additional processing capacity, or a JV involving a combination of new processing plant and existing plant investments in selected sectors. The Law will become effective in April 2017, and swift adoption of by-laws and related regulations could help spur private investment.<sup>105</sup>

It also complements another important initiative — the creation of special economic zones with favourable policies on customs, labour and utilities. One of the most promising is the 2,000-hectare Thilawa Special Economic Zone outside Yangon.<sup>106</sup> Funded by a number of large Japanese conglomerates, construction of factories in the zone has been commenced since 2014.<sup>107</sup>

Changing in banking legislation gave the Central Bank of Myanmar more independence in setting

96 Michael Gillan and Htwe Htwe Thein, N 57 above.

97 National League for Democracy, currently serving as the government party by winning landslide election in 2015.

98 Michael Gillan and Htwe Htwe Thein, N 57 above.

99 Michael Gillan and Htwe Htwe Thein, N 57 above.

100 Aung Min and Toshihiro Kudo, N 32 above.

101 Aung Min and Toshihiro Kudo, N 32 above.

102 Aung Min and Toshihiro Kudo, N 32 above.

103 Aung Min and Toshihiro Kudo, N 32 above.

104 Foreign Direct Investment.

105 World Bank Group, N 4 above.

106 Peter Chalk, Australian Strategic Policy Institute, *On the path of Change: Political, economic and social challenges for Myanmar*, December 2013.

107 Peter Chalk, N 106 above.



monetary policy, aim at improving access to credit, easing interest rates controls, allow private banks to expand branch network and may allow foreign banks to operate in Myanmar.<sup>108</sup>

As a critical foundation for evidence-based reforms, in early 2012 the government announced the first systematic analysis of the entire education sector in two decades. It completed the first phase of the CESR<sup>109</sup> in 2013 in collaboration with development partners in education.<sup>110</sup> Following the completion of in-depth analysis under Phase 2, the CESR<sup>111</sup> will support the government's formulation of a National Education Sector Plan as a unified guide to government and development partner investments through the next five year plan period (2016-2020).<sup>112</sup> Priority health and education spending have seen large increments over the past five years, and whilst spending is still below needs, the pattern of further increases deserves close consideration.<sup>113</sup> The share of health and education spending has increased rapidly from 8% of the Union Budget in 2010 to around 20% in 2015.<sup>114</sup> At the same time, it will be critical to continue to increase public financing on education, particularly in the forthcoming National Education Sector Plan now being formulated for 2016-2020.<sup>115</sup>

There are many factors that will be directly or indirectly affected to the development of labour market and productivity. In Myanmar, Political reform, some prominent economic policy reforms and education policy reform have mainly positive impacts on labour market.

## V. Major issues of labour policies

A large youth population is frequently cited as one of Myanmar's major strengths.<sup>116</sup> Although the literacy rate for the working age population is high, the proportion of completed high school and graduate of higher education is moderately low in 2015.<sup>117</sup> Due to university course offerings, enrolments are very limited in more practical subjects such as education, health and medical sciences, accounting, and entrepreneurial studies, which are likely to be in high demand in the labour market.<sup>118</sup> One of the issues of labour force in Myanmar is under educated, skills shortage and mismatch of education.

"The Employment and Skills Development Law, 2013 proposes a number of bodies to take over responsibility for the development, adoption, assessment, and supervision of the skills system, and thus formalizing the temporary set-up of the NSSA.<sup>119</sup> It is also responsible for developing the national continuing education and training infrastructure, to deliver training to meet the manpower development in each economic sector in Myanmar. The other important development under the law is the creation of a training fund based on a levy system on employers, and by donations from workers.

In recent years, the Ministry of Science and Technology has served as the technical lead agency for TVET<sup>120</sup> (and has played a prominent role in TVET analysis within the CESR).<sup>121</sup> Furthermore, roughly a dozen other Ministries also offer TVET programs (depending on the precise definition of TVET).<sup>122</sup> Due to financial constraints, training centres under the Ministries have limited capacity.<sup>123</sup>

108 McKinsey Global Institute, N 30 above.

109 Comprehensive Education Sector Review by ADB, Australian Aid, United Nations Educational, Scientific and Cultural Organization (UNESCO).

110 Sakiko Tanaka, Christopher Spohr, and Sandra D Amico, N 56 above.

111 Comprehensive Education Sector Review.

112 Sakiko Tanaka, Christopher Spohr, and Sandra D Amico, N 56 above.

113 World Bank Group, N 8 above.

114 World Bank Group, N 8 above.

115 World Bank Group, N 8 above.

116 Ministry of Labour, Immigration and Population and International Labour Organization, N 5 above.

117 Ministry of Labour, Immigration and Population and International Labour Organization, N 5 above.

118 World Bank Group, N 8 above.

119 Myanmar's National Skill Standards Authority (NSSA).

120 Technical and vocational education and training (TVET).

121 Sakiko Tanaka, Christopher Spohr, and Sandra D Amico, N 56 above.

There are over 100 private-sector vocational/skills training providers and a few local NGOs (initiated with international support) that provide vocational and technical training.<sup>124</sup> At the national level, there are more investment on TVET programs required in Myanmar.

The labour legislation in Myanmar is currently composed of a number of old labour laws passed during colonial time and new laws adopted since the beginning of the reform process. This has included inputs into the Labour Organization Law 2011; the Settlement of Labour Dispute Law 2012; the Minimum Wage Law 2013; the Social Security Law 2012; the Payment of Wages Law 2016; Shop and Establishment Law 2016; the Employment and Skills Development Law 2013; and revision on Factories Act and Leave and Holiday Act.<sup>125</sup> There are however a lot more laws e.g.: a new law relating to overseas employment draft, a new workmen compensation law draft, a new dock labourers law, a new occupational health and safety law draft, a new labour census law draft, and a new foreign workers law etc. either currently in process or on the agenda for drafting.”<sup>126</sup>

The labour law reforms were initiated in 2011 with the promulgation of Labour Organisation Law. The ‘rights and responsibilities’ of labour organisations under the Law include the collection of members’ dues and representation of workers in collective bargaining.<sup>127</sup> The ‘duties’ of employers include recognition of labour organisations and non-interference with their functioning, as well as a requirement that they do not form any labour organisation under their own ‘domination or control by financial or other means.’<sup>128</sup> The law also sets out the process by which strikes and employer-initiated lock-outs must be conducted and outlines penalties for non-compliance.<sup>129</sup>

However, the labour advocacy and representation is not solely a domain of the work organizations and in many cases, workers have been supported from a labour NGO, civil society organizations or a sympathetic labour lawyer.<sup>130</sup> According to the 2015 labour force survey, more than 88% of the employers and employees are not members of an employers’ or workers’ organizations and awareness on becoming membership of labour/employer organizations is quite low at the national level.<sup>131</sup>

For all of the evident flaws of the reformed legislative framework, the enactment of the new labour laws had a direct effect on the perception of workers and citizens about the opening of social and political space for the representation of workers and their many grievances. However, in practice, it has been widely acknowledged that these laws, especially those pertaining to workers’ rights and representation, had little relevance or practical effect in contemporary Myanmar. Indeed, there were several high profile disputes in manufacturing enterprises where workers staged very visible public protests rather than relying on the formal institutional mechanisms of dispute resolution.<sup>132</sup> The institutional limits of Myanmar’s new employment relations are therefore many and various. Collective bargaining as a concept is poorly understood and seldom practiced.<sup>133</sup>

In 2012, the Government of the Union of Myanmar adopted a new Social Security Law, 2012. This new law provides for an extended social security scheme. In April 2014, the SSB<sup>134</sup> started the implementation of

122 Sakiko Tanaka, Christopher Spohr, and Sandra D Amico, N 56 above.

123 Gemunu Wijesena and Roel Hakemulder, N 38 above.

124 Gemunu Wijesena and Roel Hakemulder, N 38 above.

125 Website of Ministry of Labour, Immigration and Population, <http://www.mol.gov.mm/en/>.

126 Website of Ministry of Labour, Immigration and Population, <http://www.mol.gov.mm/en/>.

127 Section 21 of Labour Organization Law.

128 Section 30 and 31 of Labour Organization Law.

129 Section 37 and 38 of Labour Organization Law.

130 Michael Gillan and Htwe Htwe Thein, N 57 above.

131 Ministry of Labour, Immigration and Population and International Labour Organization, N 5 above.

132 Michael Gillan and Htwe Htwe Thein, N 57 above.

133 Michael Gillan and Htwe Htwe Thein, N 57 above.

134 Social Security Board is found under the Social Security Law.

the new contribution and benefit levels for the existing benefits (medical care, sickness, maternity, funeral and work injury) as well as the collection of contributions for the family benefits. SSB is compulsory registration for companies with five workers or more, excluding the following: government personnel, international organizations, seasonal farming and fishery, non-profit organizations, domestic work.<sup>135</sup> The social security scheme and the civil servants pension scheme cover about 3% of the population of the country.<sup>136</sup> According to 2015 Labour Force Survey, more than 61% of employment works in an enterprise with a size of less than five persons.<sup>137</sup> It can be assumed that current SSB does not cover the whole population of employment.

In September 2015, Ministry of Labour, Immigration and Population issued notification and informed all enterprises which has five workers and more shall conclude the employment contract within 30 days from the appointment date. Ministry issued the sample of employment contract.<sup>138</sup> In the notification and sample of employment contract, it is mentioned that the employer shall make an employment contract with employee and submit this contract and get the approval from respective township department of labour within 30 days from first working day. The employment contract may amend with the agreement between employer and employee. In practice, the township department of labour did not allow amending the sample of employment contract. As the sample contract is based on the manufacturing sector, enterprises in service sector face the difficulties to follow the sample contract because of the different nature of business.

New minimum wage law replaced the 1949 Minimum Wages Act. The rate of minimum wages is 3,600 Ks (\$US 2.70) per day.<sup>139</sup> The rate will be changed every two years. This is the positive impact on wages security and likely to be moved from the informal sector to formal sector. However, it also has the negative impact on labour market such as laying off employees, reduction of overtime and other incentives. Recently the Ministry of Immigration, Labour and Population found the National Committee for Revision on Minimum Wages Rate in order to revise the rate.

Labour laws deserve more attention in the context of promoting equitable and sustainable development, as they help reduce unpredictability in labour relations and promote productivity. Ensuring that labour laws are accessible and equally understood by employers and workers are vital. However, the accessibility, understanding and applications on labour laws and regulations are still weak.<sup>140</sup> Furthermore, labour law sanctions and penalties should neither deter investors nor infringe on worker rights. It is important for employers and workers to take laws seriously. However, if violations result in sanctions and penalties (such as fines), consideration should be given to comparing them with international best practice so as not to deter investment.

Further issue facing Myanmar is to quickly develop a cadre of skilled and talented officials who can navigate the country through many challenges that lie ahead.<sup>141</sup> Laws and systems are decentralized and most of the decision power for labour matters is conferred to township level of the Ministry<sup>142</sup> such as approval on employment contract, approval on overtime especially at factories, approval on registration of social security, inspection on safety and health at workplace and so on. However, some of officials are weak in application and understanding on labour laws and current conditions of labour market. Since officials in township level are directly in touch with the employers and employees and their knowledge on labour laws and labour market conditions are important.

Overview on labour market, the issues which require urgent actions to be taken are skill shortage, mismatch of education and labour market demands, weakness in enforcement on labour laws, expansion

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135 Section 11 (a) of Social Security Law and Article 40 of Social Security Rule.

136 International Labour Organization, Social Protection within the framework of labour legislation reform in Myanmar, April 2015.

137 Ministry of Labour, Immigration and Population and International Labour Organization, N 5 above.

138 The notification 1/2015 is issued on 31st of August 2015. It is started effective from September, 2015.

139 By issuing the notification 2/2015 in August, 2015, Minimum wage rate is stipulated as 450 kyats per hour - 3600 kyats per day (official working hours - 8 hours per day) for workers in all enterprises except small enterprises with 15 employees and under and family enterprises and the stipulation started effective from on 1st of September 2015.

140 Sakiko Tanaka, Christopher Spohr, and Sandra D Amico, N 56 above.

141 McKinsey Global Institute, N 30 above.

142 The Ministry of Labour, Immigration and Population.

of social security coverage and awareness building on labour laws and regulations. Apart from the above issues, there are other issues to be settled at the same time, such as requirements on safety environment scheme for risky work sites, review of legislation and penalties, labour inspection, and so on.