

Chapter 4.6 Labour



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Labour

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A. Context

Worker rights in Myanmar have experienced numerous challenges. For 50 years, independent trade unions and employer organisations were prohibited; laws covering labour protection were antiquated and/or restrictive; forced labour of civilians by the military and civil authorities was common; and child labour is still an ongoing problem. There have however been positive developments since the 2011 reform process began.

The 2008 Constitution includes protection from discrimination and freedom of association, though these constitutional provisions contain some significant gaps in protecting workers rights. Article 358 of the Constitution prohibits slavery and human trafficking, but Article 359 provides for “*hard labour*” as part of a criminal sentence. The rights to peaceful assembly and freedom of association are also provided for, but another part of the Constitution subjects the exercise of these rights to a wide qualifier that the exercise of the rights cannot be contrary to laws on *inter alia* “*community peace and tranquillity*”. Article 31 of the Constitution aims to reduce unemployment. Under Article 349(b), citizens have the enforceable right to equal opportunity in occupation.⁴³⁸

An estimated 70% of the population is engaged in agriculture or related activities; 23% in services, and 7% in industry.⁴³⁹ Low-paid and insecure jobs (often only on a daily basis) characterise the employment situation. The 2014 Census results indicate an

⁴³⁸ Legal Analysis of the 2008 Constitution, Appendix 1, commissioned by IHRB.

⁴³⁹ Labour Background Paper commissioned for IHRB, p 2 (on file with IHRB).

unemployment rate of 4% for workers age 10 and over; 3.9% for over 15s; and 4% for ages 15-64. The Census reports a labour force participation rate of 57% for those aged 10 and over; 64.4% of those 15 and over; and 67% of those aged 15 – 64.⁴⁴⁰ Underemployment in Myanmar was 37% in 2010, affecting rural and urban areas, poor and non-poor, male and female alike, and young people in particular.⁴⁴¹ To improve the quality of statistical data on labour, the Ministry of Labour, Employment and Social Security, with International Labour Organisation (ILO) support, is undertaking a comprehensive national labour force survey,⁴⁴² with results expected in late 2015. The lack of reliable statistics and accurate data hold true for the ICT industry workforce.

According to the General Secretary of the Myanmar Computer Federation, Myanmar has an estimated 1,600 software engineers, 1,000 network engineers, including those working in the telecom companies and about 1,000 service technicians, including handset repair technicians. No statistics on fibre installation or tower construction workers are available. It is also estimated that by 2025, Myanmar will have 25,000 engineers. Currently, there are 26 Computer Universities in Myanmar. There is no existing data on the employment rate of ICT university graduates.

The development of the ICT industry has led to a dramatic increase in jobs in the sector. According to a survey conducted by work.com.mm, an online job search company, during the month of April 2015, the highest number of job announcements was in the field of engineering, followed by the software and IT sector.⁴⁴³ There is however a mismatch between demand and the quality of supply, a consequence of poor quality ICT education. There are many ICT graduates, but few who are qualified, and those there are often leave Myanmar for better work opportunities abroad.

As to the international telecom operators, Ooredoo currently has around 1,000 employees of whom 87% are Myanmar nationals (41% male/59% female). Ooredoo has committed to the Government to employ 99% Myanmar nationals within 5 years. Telenor Myanmar currently has 478 employees (64% male/36% female) of whom 80% are Myanmar nationals. There are no statistics on the number of people working as SIM card and phone vendors at points of sale, but operators have set targets: Ooredoo promises 240,000 SIM card sale points and 720,000 top-up locations; Telenor aims for 70,000 SIM card sale points and 95,000 top-up locations.

ILO Fundamental Principles and Rights at Work: Freedom of Association and the Right to Collective Bargaining in Myanmar

For the first time in 50 years, the 2008 Constitution and new labour laws provide for independent trade union activity, though some gaps in protecting freedom of association remain. The 2011 *Labour Organisation Law* permits the exercise of freedom of association and the 2012 *Settlement of Labour Dispute Law* provides for disputes resolution institutions and mechanisms. Parliament amended the latter law in October 2014 providing for *inter alia* increased fines for employers who break this law, but rejected

⁴⁴⁰ The Republic of the Union of Myanmar, “[2014 Myanmar Population and Housing Census, Census Report Volume 2-A](#)” (May 2015).

⁴⁴¹ Underemployment refers to people who worked or had a job during the reference week but were willing and available to work more. ILO, “[Underemployment Statistics](#)” (last accessed August 2015).

⁴⁴² ILO, “[Myanmar sign agreement on National Labour Force Summary](#)”, (14 November 2013). The survey is intended to inform national labour policy and will examine youth employment, child labour, forced labour, and social security.

⁴⁴³ Internet Journal, “[The top job in the field of telecommunications services](#)” (15 May 2015) (Burmese).

the President's proposal which provided for imprisonment of such employers.⁴⁴⁴ In May 2015, the ILO reported that over 1660 independent trade unions have been registered, mostly at the enterprise level.⁴⁴⁵ While these are predominantly based within the apparel, other manufacturing or farming sectors, at least one of the international telecommunications operators, Telenor, has a global framework agreement with the union representing service sector workers around the world. The agreement provides a platform and framework for dialogue between UNI Global and Telenor on fundamental labour rights that can also cover a dialogue on working conditions in Myanmar.⁴⁴⁶

On a national scale, there is an opportunity to build from scratch the sort of 'development' model of industrial relations the country needs. However, the current laws relating to freedom of association and collective bargaining mentioned above promote fragmentation of industrial relations by making it difficult for unions to establish themselves beyond the enterprise level. A lack of understanding, or in some cases entrenched attitudes, might see the new rights-based industrial relations framework drift towards a conflict model. This risk has been increased by the perceptions created by several high profile labour disputes and the weaknesses in the law and its implementation, which mean that, in practice, employers can discriminate against workers who seek to exercise their rights in accordance with the new laws, including by dismissing them from their jobs.

Early 2015 saw a number of strikes and protests in Yangon by garment factory workers calling for higher wages and better working conditions. Although some disputes were resolved by employer-worker meetings, others were not, leading to protest demonstrations and arrests of workers.⁴⁴⁷ An ILO official noted in August 2014 that factory owners appear to be dismissing employees because of their union activities and recommended that the Government outlaw this practice.⁴⁴⁸ The ILO has recommended a number of amendments to the new laws on freedom of association to improve their functioning, including an obligation on parties to engage in collective bargaining in good faith, and to strengthen the enforceability of decisions of the labour arbitration bodies.

⁴⁴⁴ Unofficial translation of The Republic of the Union of Myanmar, Board of Information, Issue No (5/2014), October 14, 2014, announcing the Draft Bill which amends the Settlement of Labour Dispute Law, on file with IHRB/MCRB.

⁴⁴⁵ Mizzima "[Unions have hit a glass ceiling](#)" (10 March 2015).

⁴⁴⁶ Telenor, "[Telenor renews global agreement with UNI Global Union](#)" (May 2015).

⁴⁴⁷ Myanmar Times "[Time for government to step up on labour disputes](#)" (17 March 2015).

⁴⁴⁸ DVB, "[Burma's Industrial Relations at a Crossroads](#)" (30 August 2014).

ILO Fundamental Principles and Rights at Work: Discrimination in Myanmar

Article 348 of the 2008 Constitution guarantees that discrimination by the Union against any citizen is prohibited on grounds of race, birth, religion, official position, status, culture, sex and wealth. However, the internationally recognised grounds of discrimination based on colour, language, political or other opinion and national origin are not prohibited by the Constitution, leaving significant gaps in protection against discrimination. Labour leaders, religious and ethnic minorities, women and children, people living with disabilities and LGBT people (as discussed in further detail in [Chapter 4.8](#) on Groups at Risk) all face discrimination in hiring and in the workplace.

ILO Fundamental Principles and Rights at Work: Forced Labour in Myanmar

A major concern in Myanmar has been the widespread and systematic use of forced labour of civilians by the *tatmadaw* (the Myanmar army) and the civil administration for several decades, despite the fact that the Government had ratified *ILO Forced Labour Convention (No. 29)* in 1955. The ILO first established an office in Myanmar during 2002 after the Government and the ILO reached an “*understanding*” and the appointment of an ILO Liaison Officer. The Understanding provided that the Liaison Officer would conduct activities aimed at the elimination of forced labour in the country. The Understanding remains in force and in 2007 the ILO and the Government agreed a Supplementary Understanding. The Supplementary Understanding established a complaints mechanism to allow victims of forced labour to seek redress/remedies from the authorities.⁴⁴⁹ Since the reform process began in 2011, many observers, including the ILO, have welcomed the decrease in forced labour, but noted that the practice is still continuing in some areas.⁴⁵⁰ President U Thein Sein made a public commitment to end forced labour by 2015.

Although there is now less risk to communities and companies of forced labour being used by the military in relation to projects, such as road construction, there is a need to remain vigilant, as it was a common practice for several decades, and local Government and other authority figures still sometimes resort to it. The ILO noted that while there are currently relatively few complaints of forced labour in the private sector, this may be because in Myanmar forced labour is generally perceived to be associated with the Government⁴⁵¹.

ILO Fundamental Principles and Rights at Work: Child Labour in Myanmar

Child labour is widespread throughout Myanmar, including as tea shop or restaurant attendants, street vendors, manual labour, waste collectors or beggars, in food processing and light manufacturing, and on farms in rural areas. The risk of child labour to companies operating in Myanmar is high, as they are working in a wide variety of industry sectors. Moreover, ascertaining someone’s age in Myanmar is not always straightforward. Birth registration in urban areas was reported at 94%, but in rural areas the rate was only 64%.⁴⁵² Many people, especially under-18s and ethnic minorities, do not have any form of official identification which indicates their date of birth.

⁴⁴⁹ See: ILO, “[ILO in Myanmar](#)” (last accessed August 2015).

⁴⁵⁰ ILO Committee on the Application of Standards, “[Extract from Record of Proceedings](#)” (June 2012), para18

⁴⁵¹ ILO, “[Update on the operation of the complaint mechanism in Myanmar](#)”, *Report of the ILO Liaison Officer to ILO Governing Body, 319th Session, Geneva* (16-31 October 2013), GB.319/INS/INF/2. Please note that complaints include underage military recruitment.

⁴⁵² UNICEF, “[Situation Analysis of Children in Myanmar 2012](#)” (2012).

An August 2014 report by one telecoms operator noted that on-site inspections of its supply chain found cases of underage labour (15 – 17 years old) and child labour (under 15 years old), including on tower construction sites.⁴⁵³ In May 2015 the same company reported they had uncovered additional cases of child and underage labour in its supply chain, as they continued their work to eradicate all such cases in tower construction sites. The Government's ratification of *ILO Convention No 182 on the Worst Forms of Child Labour* in December 2013⁴⁵⁴ is part of the Ministry of Labour's reported aim to eradicate the worst forms of child labour by 2015. Parliament approved the ratification of the convention in July 2014, with full implementation pledged by the Government in December 2014 although this has yet to take place.⁴⁵⁵

Overview of the Revision of Myanmar Labour Laws

In addition to the laws on freedom of association and collective bargaining noted above, new labour laws passed by Parliament since the 2011 elections include the 2013 *Minimum Wage Act*, the 2012 *Social Security Law*, and the 2013 *Employment and Skills Development Law*. Other laws are believed to be in draft form or in the process of being drafted, including a *Shops and Enterprises Act*, an *Occupational Health and Safety Act*, a *Factories Act Amendment Bill* and a *Foreign Workers Act*. The ILO is currently working with the Government to come up with an overall legal and policy framework on labour, with the aim of drafting one comprehensive labour code after 2015 that would consolidate these laws and draft laws into a coherent code or framework.⁴⁵⁶ Given the rapid enactment of labour laws, it is likely that there will be overlap and contradiction within the laws, at least until the more comprehensive labour code is in place.

Working hours are generally very long but with new labour laws in place, there is a focus on reducing hours. The 2012 *Minimum Wage Law* provides for a minimum wage to be set. This finally took place in August 2015 when the rate was set at 3,600 MMK per day.⁴⁵⁷ The *Minimum Wage Law* requires that salaried workers should have one day off per week with pay, and the payment of over-time if a salaried worker works on the day of leave (Article 16d). Protections for daily wage workers are predictably less. However, if a worker in a daily wage job works less than the set hours per day because the employer requires fewer hours, the worker should still receive the full wage for the day (Article 16(e)). The law covers part-time work, hourly jobs and piecework (Article 16c) and provides that both men and women should receive the minimum wage without discrimination (Article 16f). The *Minimum Wage Law* also provides for penalties if the employer fails to pay the minimum wage.⁴⁵⁸

The 2012 *Social Security Law* provides for a health and social care insurance system; a family assistance insurance system; invalidity benefit, superannuation benefit and survivors' benefit insurance system; and an unemployment benefit insurance system from

⁴⁵³ Telenor Myanmar, "[Business Sustainability Update](#)" (19 August 2014). Children were immediately removed from the sites. The company's policy states that no one under 15 will be employed and that workers must be at least 18 years of age to work on tower construction sites, as the company considers the work to be potentially hazardous. It also works to educate and train local suppliers and the community on its child labour policies. See also Myanmar Times, "[Telenor works to address its child labour troubles](#)", (22 May 2015).

⁴⁵⁴ Eleven Media, "[Myanmar Vows To Root out Child Labour By 2015](#)" (4 May 2014).

⁴⁵⁵ The Irrawaddy, "[Govt to Start Child Labor Elimination Policy in December](#)" (18 July 2014).

⁴⁵⁶ ILO is expecting to put in place a full [Decent Work country programme in 2016](#).

⁴⁵⁷ Myanmar Times, "[Minimum wage set at K3600](#)" (19 August 2015).

⁴⁵⁸ Myanmar Ministry of Labour, Employment and Social Security, [2012 Minimum Wage Law](#).

a social security fund, which both employers and workers pay into. The Law revokes the 1954 *Social Security Act*,⁴⁵⁹ and came into effect on 1 April 2014.⁴⁶⁰ The *Social Security Rules* (Notification No. 41/2014) are also in place.⁴⁶¹ However, as of January 2015 only 1.5% of the population was registered in the social security system, according to a Ministry of Labour official.⁴⁶² It appears that companies with two or more employees, including those in the ICT sector, are required to pay social security.⁴⁶³

The 2013 *Employment and Skills Development Law* provides for skills training and a fund into which employers pay. The law also provides for the establishment of an employment and labour exchange office by the Ministry of Labour, Employment and Social Security. Significantly, written employment agreements between employer and employee will now be required under Chapter 3 of the law. The law went into effect on 30 November 2013 and revoked the 1950 *Employment and Training Act*.⁴⁶⁴

The 1951 *Leave and Holiday Act* was amended in July 2014 and provides for leave, holiday, maternity leave and covers daily wage, temporary and permanent workers.⁴⁶⁵ The forthcoming *Occupational Health and Safety Act* is expected to be passed by Parliament by September 2015.

Chapter II (Article 3) of the *Settlement of Labour Dispute Law* requires an employer with more than 30 workers to form a Workplace Coordinating Committee (2 representatives of workers, 2 representatives of employer) whether or not there is a labour organisation (e.g. union) in the enterprise.

Awareness and Enforcement of Labour Rights in Myanmar

There is an overall lack of awareness by workers and employers of these new legal rights and safeguards, including lack of understanding of the concept of a minimum wage. The ILO, trade unions, and other labour activists are helping to inform both workers and employers about the new labour laws and poorly understood concepts such as collective bargaining and a minimum wage. So far enforcement of the new laws is piecemeal, and full-scale implementation will be a long-term process. Although the Factories and General Labour Law Inspection Department (FGLLID) is the main Government agency responsible for occupational safety and health, a number of other agencies in other ministries are responsible for specific areas or sectors related to safety and health at work and/or public safety and health in general. These include the Ministry of Mines, Ministry of Industry (boilers and electrical equipment), Ministry of Construction, Ministry of Agriculture and Ministry of Health etc.⁴⁶⁶ The Government recognises the need for a greater number of trained labour inspectors for worksites and is reportedly taking steps to increase the number of qualified inspectors.

⁴⁵⁹ *The Social Security Law*, 2012, on file with IHRB.

⁴⁶⁰ New Light of Myanmar, "[State is also exerting efforts to ensure fair protections without affecting the interest of both workers and employers](#)" (1 May 2014).

⁴⁶¹ Myanmar Garment Manufacturers Association "[Labour Laws and Regulations](#)" (accessed August 2015).

⁴⁶² Mizzima "[Social Security Sign-up slow in coming](#)" (5 January 2015).

⁴⁶³ This excludes except for government departments, international organisations, seasonal farming and fishing, non profit organisations, establishments operating less than three months, family and domestic businesses. *Social Security Law*, August 2012, Section 11, a) and b) and Section 12, b), on file with IHRB/MCRB.

⁴⁶⁴ *Employment and Skill Development Law* (2013), unofficial translation on file with IHRB.

⁴⁶⁵ Myanmar Garment Manufacturers Association "[Labour Laws and Regulations](#)" (last accessed August 2015).

⁴⁶⁶ Labour Briefing paper commissioned by IHRB, August 2013, on file with IHRB.

B. Field Research Findings

The following findings concerning respect for the rights of workers, while not universal, were found to be widespread in the field. Examples of good practice observed are included at the end of the chapter.

ILO Fundamental Principles and Rights at Work: Freedom of Association & the Right to Collective Bargaining

Human Rights Implicated: Right to peaceful assembly; Right to freedom of association and collective bargaining

Field Assessment Findings

- There was a general **lack of worker-management engagement** in most companies across the ICT value chain, and only a few companies provided grievance mechanisms through which workers could raise complaints regarding their jobs and seek a resolution.
- **Unskilled workers tend to be relieved to secure a job at all** because the supply of workers exceeds work available. This leads to a tendency for workers to **refrain from raising workplace and employment related complaints**, such as unpaid or inadequate wages, poor health and safety standards, or barriers to unionising.
- **At fibre factories, workers were unaware of their basic association and collective bargaining rights**, or the requirements to form a union, such as that there must be a minimum of 30 members. They did not feel the company would allow it even if it was permitted under national law. They were also concerned that joining a political party could also affect their jobs.
 - Workers were **able to raise complaints at meetings or anonymously through a letter box system**, but issues previously raised, such as deductions from daily wages and bonuses had **failed to be addressed**.

ILO Fundamental Principles and Rights at Work: Non-Discrimination

Human Rights Implicated: Right to non-discrimination; Right to work; Right to just and favourable conditions of work

Field Assessment Findings

- It was very unusual for **any women to work on tower construction**.
 - This was often justified on the grounds that it unsafe for them due to night work and distances between the site and their village/ accommodation.
 - Where women were able to work on tower construction sites, they were only allowed to do certain manual tasks, such as backfilling or moving materials.
- **Racial and religious tensions were observed in some areas, mainly where communities identified the company or its workers as Muslim** This followed intercommunal violence in other parts of the country:
 - Researchers heard of several incidents in which subcontractors of a company from a majority Muslim country were disturbed by communities protesting the company's presence.
 - Workers were denied accommodation due to working for that company;
 - Communities threw stones at cars carrying workers of companies that were perceived to be owned by Muslims.

ILO Fundamental Principles and Rights at Work: Forced Labour and Child Labour

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Human Rights Implicated: Right to freedom from forced labour and servitude; Right to freedom from child labour; Right to an adequate standard of living; Right to education

Field Assessment Findings

- Researchers heard of **several cases where workers were brought on to dig fibre cable trenches due to a debt owed to the group leader**. This often arose where workers asked for advance payments during the rainy season in order to make ends meet until the next crop yields. As such, workers were often in positions of **debt bondage**, reporting that where they expressed a wish to quit or move to another job the creditor threatened to increase interest rates.
 - This impact was heightened where workers were also required to purchase food, water and other supplies from labour leaders, often at inflated prices and on a credit-based system.
- Occasional practices of reviewing identification to verify workers' age were reported, but many more instances of lack of identification cards or documents were described to researchers, indicating a **general lack of basic measures to prevent underage workers in fibre cable digging in particular**.
- Fibre cable line workers often had to travel long distances from their homes in order to take up work. They sometimes brought their children with them as they could not afford child care or because it was difficult to reliably arrange due to moving from site to site regularly. As such, **children were regularly left with someone connected to the works in the worker camps during the 10 hour shift periods**.

Employment Status

Human Rights Implicated: Right to just and favourable conditions of work; Right to equal payment for equal work

Field Assessment Findings

- Across the ICT value chain **employment contracts were not being used** in the majority of observed cases, with the limited exception of direct, permanent employees of a tower company.⁴⁶⁷
 - Consequently, **wage slips** itemising pay and deductions were not being provided.
- It was reported that manual labourers and construction workers regularly secured jobs through relatives/connections. Wages were already negotiated and contracts were not given, as workers will "take what they are given".

⁴⁶⁷ The research team was not permitted to meet the staff of the telecoms operators so this does not necessarily apply to those employers.

Working Hours, Wages and Benefits

Human Rights Implicated: Right to just and favourable conditions of work; Right to an adequate standard of living

Field Assessment Findings

- **Daily wage workers** typically worked every day possible to maximise income while work was available, thereby exceeding legal working time limits
- **Awareness of rights to wages and benefits varied considerably.** Many workers admitted to a **very low level of understanding of their rights** vis-à-vis employers or the Government. There was also little to no information regarding labour rights or working conditions shared proactively by most companies with their workers, which will be important as a number of new labour laws such as the *Minimum Wage Law* have recently come into force.
- **For tower construction:**
 - It was regularly reported to researchers that **workers did not receive any rest days until after the completion of a site**, i.e. usually a 1-1.5 month build period.
 - **Working hours** were often 7 or 8 a.m. until 5 or 6 p.m. with a (usually 30-60 minute) lunch break. A second night shift was occasionally reported of 7 p.m. to 11 p.m.
 - **Wage rates varied** depending whether workers were directly employed by tower companies, labour sub-contractors, or brought on for peak periods (such as on foundation sections) as day labourers from nearby villages.
 - Worker daily wages were reported anywhere between 5,000 MMK per day up to 15,000 MMK (30,000 MMK if able to work a double shift)
 - Overtime was not usually paid. Where it was reported as a practice, for example where workers worked beyond 11 p.m., the rate given was not specified.
- **For fibre line digging:**
 - **Working hours** were commonly cited as 6 or 7 a.m. to 6 or 7 p.m. by managers, but workers often reported that they were often pressured to continue until target distances were dug regardless of the hours worked.
 - **Workers were not given set rest days** as they were not paid until their target distance had been dug, which was dependent on soil conditions and the number of workers grouped together.
 - **Wages often did not amount to levels sufficient to cover basic needs:**
 - Workers were paid according to distance dug, with no reflection of soil conditions or geography where it takes more time and effort to achieve the same distances. In terrain where distances were harder to achieve, workers regularly struggled to earn enough to feed themselves or families.
 - **Sick pay was not provided.** As such, workers continued to work 12 hour days of hard labour even when ill in order to ensure their incomes.
- **For fibre cable factories:**
 - Working hours:
 - Working hours lasted around 8 hours per day.
 - Overtime was only paid after 8 years of continuous work.
 - Wages:
 - The basic daily wage rate was 2,200 MMK (\$2.00), but workers reported not receiving salary increases or promotion despite 4 or 5 years continuous service.

- Bonuses were reportedly provided for regular attendance.
- Leave:
 - Workers received one and a half days off per week.
 - Workers were able to take public holidays off with pay.
 - Workers did not receive paid sick leave or company-provided insurance.
 - Workers received 10 days unpaid annual leave.
 - Female workers were entitled to three months paid maternity leave at the basic salary band.

Working Conditions and Provision of Facilities to Workers

Human Rights Implicated: Right to an adequate standard of living; Right to just and favourable conditions of work; Right to non-discrimination

Field Assessment Findings

- **Observed working conditions for fibre cable digging were particularly harsh:**
 - **Workers had to dig long distances of trenches manually**, without any mechanical digging or drilling equipment, even in mountainous and rocky areas.
 - As noted above, **12 hour work days** were common practice.
 - **Workers were expected to dig set distances each day**, ranging from 2 – 10 metres each day per worker.
 - **If a worker was injured, they had to repay any medical expenses** covered by their company.
 - **Language barriers** were a commonly reported problem between managers and workers. Researchers heard that workers were often unsure whether any complaints or issues they raised were properly reported to the managers responsible.
- **Little to no facilities or equipment were provided to fibre cable diggers:**
 - **Workers were not provided with any equipment** such as shovels and pick axes and had to pay for their own tools or had the costs deducted from their salaries.
 - **Workers were not provided drinking water** and had to source their own, for example requesting from surrounding residents or boiling ground water.
 - **Workers had to find or build their own accommodation with their own money**, despite often being transported long distances from their homes for long periods of time in order to continue working on the lines. This **usually consisted of make-shift tents from tarpaulins and sticks**. Camp areas were commonly in nearby fields or off the side of the road and did not have any running water, power or adequate sanitation facilities.
 - Workers had to **pay for all food and supplies while on the job**, despite relocating far from home for long periods of time to undertake the work.
 - Workers were **commonly required to buy food through the wife of the group labour leader**, and several reports were received of **charging workers prices far above market value** for their food supplies.
 - Workers often had to **similarly pay for other supplies:** candles, blankets, mattresses, buckets of water to cook or shower with, and wood for cooking.
- **Some fibre factory workers were provided with accommodation** in permanent structures that were heated and had running water and electricity.
 - Workers' families were allowed to stay with them.
 - Rooms were reportedly 10 square feet, though researchers were unable to visit them due to time constraints.

- Workers were provided three meals per day, consisting of unlimited rice and up to two cuts of meat.

Health, Safety & Environment (HSE)

Human Rights Implicated: Right to the highest attainable standard of physical and mental health; Right to life, liberty and security of the person

Field Assessment Findings

- Workers of subcontractors were commonly not informed about which tower construction company or telecoms operator the tower was being built for, which implies that the operator's and their 1st tier subcontractor's **health and safety and other operational standards may not have been transmitted to the site level.**
- **Workplace attention to health and safety varied greatly** amongst the tower and fibre sites visited by researchers.
- Field teams regularly witnessed tower construction workers and fibre trench workers **without personal protective equipment (PPE)**, for example:
 - Not fastening **safety harnesses** when climbing the towers
 - No **gloves**, e.g. while digging fibre cable trenches
 - **Canvas shoes** rather than hard toed shoes
 - No **hard hats**
- **Even where workers had PPE to hand:**
 - Researchers observed a number of occasions where **workers asked if they "actually needed to wear it"** or companies reporting workers not wearing it due to discomfort, such as not wearing safety suits in hotter weather, indicating lack of enforcement of PPE use by all workers while on site.
 - It was common for workers to have to **buy or replace their own PPE, or compensate the value if they damaged it while working.**
- **Failure to ensure that emergency first aid kits were available at tower sites** was also a common occurrence.
 - Where companies did provide first aid kits or fire extinguishers, workers reported they **did not know how to use them** in cases of emergencies and had not been provided any training.
- **For fibre factories:**
 - PPE in the form of cotton gloves was provided.
 - Workers received training on how to work machines and use the fire extinguisher.

Conflict Areas

Human Rights Implicated: Right to life, liberty and security of the person; Right to take part in the conduct of public affairs; Right to information

Field Assessment Findings

- There were some cases in which companies attempted to negotiate access to areas to lay fibre cables with non-state armed groups (NSAGs). **In some cases a fee was paid for this access.**
- Researchers received reports of cases of operational delays, where local groups, including armed groups, **blocked access to sites, due to lack of consultation at the site level.** While some consultation with local leaders may have been undertaken, this may not have been communicated to or accepted by all stakeholders.

- Researchers observed **fire-arms being carried by NSAGs** present during roll-out in ceasefire areas. While researchers neither observed nor heard reports of shots being fired, the presence of fire-arms is a risk.
- Researchers also received reports from workers that they were aware that landmines **may have been sowed in the past, with land mines around infrastructure in conflict areas**. This led workers to avoid walking through certain areas. The measures companies took to protect their workers in such circumstances were unclear.

Business Relationships

Human Rights Implicated: Right to just and favourable conditions of work

Field Assessment Findings

- **Tower company acknowledgement and action concerning their responsibility for the safety of workers was uneven.**
 - Some tower companies indicated worker safety was **the responsibility of their subcontractors alone**. They did not provide any safety guidelines or training to subcontractor managers or workers, did not regularly monitor site safety or track incidents.
 - **Others undertook subcontractor skills-based and safety training and regular site monitoring to ensure safety standards** were upheld and practices corrected.
 - Of those tower companies who had systems in place for incident reporting and raising issues to more senior levels of the company depending on the severity of the incident, it was reported that **labour subcontractors may fear reporting incidents for fear of reprisal or lost business**.
- **Choosing to operate without contracts between tower companies and their subcontractors was a common occurrence.** This indicates the more rigorous control of working conditions by telecoms operators is not consistently carried through to business partners by contractual conditions committing sub-contractors to meeting business partners' standards.

Myanmar Good Practice Examples:

- Some subcontractors ensured PPE was provided to their workers and used, provided emergency first aid kits and fire extinguishers, and paid workers' medical bills where incidents arose, despite not receiving safety guidelines or training from tower companies or telecoms operators.
- A small number of fibre cable digging companies provided workers with digging equipment, PPE and tents and supplies for accommodation without charge.
- One company has reported it has a zero tolerance policy for employment discrimination, and child and forced labour, stating health and safety and a living wage are key considerations.⁴⁶⁸
- One company has reported that its Myanmar operations are governed by a Code of Conduct and Code of Business Ethics, covering land, labour, health and safety, the environment, anti-discrimination, and privacy/freedom of expression. It conducted a

⁴⁶⁸ See further: Apollo Towers Myanmar, "[Response by Apollo Towers: Myanmar Foreign Investment Tracking Project](#)", *Business & Human Rights Resource Centre* (last accessed September 2015).

human rights impact assessment in 2013, which identified key risks that will be reflected in its management systems.⁴⁶⁹

- One company has reported that it has no manufacturing facilities but does have a small sales force in Myanmar. It applies its global policies on labour rights, health and safety, child and forced labour, living wage, anti-discrimination, and the environment.⁴⁷⁰

C. Labour: Recommendations for ICT Companies

Using International Standards

- **Use international standards as a basis for relationships with workers:** Given the large number of labour laws being enacted, it is likely that there will be overlap and contradiction between and within the laws. As noted above, the ILO is working with the Government to develop one harmonised, overarching labour code that is expected to be better aligned with ILO standards. Until such time, using international standards rather than Myanmar law is a better basis for developing policies and practices that respect the human rights of workers (see Part D).

Recommendations on Workplace Issues

- **Engage constructively on freedom of association and trade unions:** Since trade unions are unlikely at present to be able to provide information to workers about their labour rights, ICT companies should provide relevant information to employees and other workers, particularly in light of the many new labour laws. Given non-existent or only nascent awareness and understanding of the right to freedom of association and collective bargaining, companies should ensure that their workers are aware of and able to exercise their rights, and engage constructively with trade unions where workers choose to establish them. Moreover, they should ensure that workers who lead or join a union are not discriminated against, dismissed or otherwise impeded in carrying out their trade union functions.
- **Support business partners in respecting labour laws and standards:** Local Myanmar companies will need support in meeting a wider range of contracting requirements around quality, working conditions, health and safety and anti-corruption. Telecoms operators, network equipment providers, tower companies, and the other main contractors should put in place specific contractual requirements together with monitoring, support, training, and relevant incentives and disincentives with business partners supplying goods and services to prompt uptake and respect for relevant international, national and company standards.
- **Pay particular attention to the rights of workers of subcontractors:** Working conditions, including health and safety issues, were raised by workers of subcontractors met during field assessments. These workers were in lower-skilled, lower paid, manual labour positions, working on a temporary or irregular basis in which working conditions and preventative measures could be haphazard, with unclear access to company-provided health services or facilities.

⁴⁶⁹ Ericsson, "[Response by Ericsson: Myanmar Foreign Investment Tracking Project](#)", *Business & Human Rights Resource Centre* (last accessed September 2015).

⁴⁷⁰ See further: LG Electronics, "[Response by LG Electronics: Myanmar Foreign Investment Tracking Project](#)", *Business & Human Rights Resource Centre* (last accessed September 2015).

- **Exercise vigilance around the continued but declining risk of forced labour:** The ILO is not yet proposing to disband the Forced Labour Complaints Mechanism, indicating an ongoing if decreasing problem.⁴⁷¹ Even though the incidence of forced labour in Myanmar is diminishing, ICT tower construction companies and fibre cable operators in particular should remain vigilant to the potential risks of forced labour. There is still the potential for forced labour by the *tatmadaw* and local authorities in connection with road building and infrastructure construction, although the assessment did not find this is happening in connection with the rollout of the ICT infrastructure.
- **Be alert to and eliminate other forms of labour exploitation:** As a least developed country (LDC) with a high degree of rural poverty; a generally uneducated population; underemployment; corruption and a current lack of worker awareness about their rights and few trade unions, there is a high risk for exploitative working conditions. Many of the jobs for local communities will be in unskilled, daily wage jobs, often controlled via third party labour brokers operating either formally or informally – such as in the construction of the network infrastructure.
- **Be alert to working conditions for migrant and temporary workers:** ICT companies should be aware that while the prevailing pattern has been one of out-migration from Myanmar to other countries in search of work, as the economy develops, that trend may reverse. In any case, internal labour migration is widespread. Migrant workers are often particularly vulnerable to labour exploitation.⁴⁷² These circumstances create the possibility of exploitative working conditions and practices that can in some cases fall within the definition of forced labour, where work is undertaken by a person under the threat of a penalty. Workers indicated they are keen for any kind of paid work, so they are often very reluctant to speak out about what can be exploitative working conditions.
- **Carry out due diligence on labour brokers/labour agencies:** ICT companies will need to pay careful attention to the working arrangements and conditions for day labourers or temporary workers engaged through a third party labour agency or broker (who could also be a worker/team leader) to ensure that they are not directly linked to situations of exploitation. The field assessments indicated formal recruitment agencies and labour brokers are not yet commonly visible in network rollout operations. However they are present in other industries (e.g. pipeline construction) where various sub-standard practices have been observed, including not providing basic protections for workers, such as failure to uphold basic working conditions, provide written and understandable contracts, or pay a living wage, and charging workers for PPE provision (see the [Oil & Gas Sector-Wide Impact Assessment](#), Part 4.4)⁴⁷³. International labour standards prohibit labour brokers from taking fees from workers for job placements; instead, any placement fees should be paid by the employer. While the Myanmar Government has not ratified the relevant ILO Convention,⁴⁷⁴ it is a global standard in this emerging area of human rights risk that serves a relevant guide for company practice. Employers should:

⁴⁷¹ The ILO reports a reduction in occurrences generally throughout the country but notes that “forced labour remains a problem,” and that the “number of reported cases of forced labour in the private sector is relatively small ... but that this does not necessarily reflect the actual situation as there appears to be a general belief that forced labour is in some way an offence committed only by the Government.” ILO, “[Update on the operation of the complaint mechanism in Myanmar](#)” GB.319/INS/INF/2 (October 2013).

⁴⁷² See the IHRB, [Dhaka Principles for Migration with Dignity](#).

⁴⁷³ MCRB, IHRB, DIHR, “[Myanmar Oil & Gas Sector-Wide Impact Assessment](#)” (2014).

⁴⁷⁴ ILO, [C181 - Private Employment Agencies Convention](#) (No. 181) (1997).

- set in place a clear recruitment policy for hiring of staff or use of labour brokers
 - ensure that supervisors and managers are aware of the signs of exploitation
 - pay the recruitment fees for workers themselves and prohibit accepting payments or other inducements from labour brokers or workers
 - monitor the allocation of jobs and use of agencies for signs of suspicious practices
 - ensure that all workers, including temporary workers, have access to a grievance mechanism to complain about potential or actual violations of their labour rights
- **Monitor business relationships:** ICT companies should monitor business partners to ensure that they are upholding national labour laws and international labour standards, including through regular surprise field visits. The risks of labour rights violations tend to increase with each tier of the supply chain, where workers are in lower-skilled, lower paid, manual labour positions which are temporary or irregular.

Child Labour

- **Monitor business partners for child labour violations:** While there is a very low likelihood of child labour in direct employment situations within skilled operations of the ICT sector, the prevalence and general acceptance of child labour in Myanmar and the difficulties of validating age means that companies need to be vigilant. Companies should be alert to the possibility of child labour being used in supplying products or services, such as in construction or catering, directly linked to their operations. There are an increasing range of tools available to assist companies in assessing risks to children from their operations.⁴⁷⁵ (See also [Chapter 4.8](#) on Groups at Risk).

Discrimination

- **Seek to increase female representation in the workforce:** Discrimination against women and girls in education and the workplace is widespread in Myanmar.⁴⁷⁶ The current rate of female employment in the ICT sector is low, as it is in many other countries. (See also [Chapter 4.8](#) on Groups at Risk).
- **Be alert to ethnic and religious discrimination in the workforce:** Companies need to be aware of the potential for ethnic and religious tensions and discrimination in recruitment and in the workplace. The ethnicity or religion of company managers, particularly in human resources, can have significant consequences.⁴⁷⁷ Workers' ethnicity/religion will not be readily apparent, particularly to non-Myanmar managers. However it may not be wise for employers to collect data on the religious and ethnic make-up of their workforce; this may create more tension. Furthermore, many Myanmar people are of mixed heritage or self-identify in various ways. A better approach may be management awareness of the sensitivities, clear company policies on non-discrimination, reinforcement of those messages and modelling an approach to equal opportunities that includes active measures to achieve those outcomes. There are few easy answers on how to address hostility that may spill over into the

⁴⁷⁵ UNICEF and the Danish Institute for Human Rights, "[Children's Rights in Impact Assessments - A guide for integrating children's rights into impact assessments and taking action for children](#)" (2013).

⁴⁷⁶ For example, in [Coca Cola's report to the US State Department](#) on its activities in Myanmar, the company highlighted that it found that women were being paid approximately 11% less than male colleagues for the same work.

⁴⁷⁷ From IHRB, "[From Red Flags to Green Flags: The corporate responsibility to respect human rights in high risk countries](#)" (2011), pg. 73-76.

workplace; specialised expertise and re-emphasising a commitment to non-discrimination are a good place to start.

- **Community composition considerations:** Companies should be aware of the ethnic composition of communities where they operate and from where they may recruit workers. Myanmar's ethnic minorities make up an estimated 30 – 40% of the population, and ethnic states occupy some 57% of the total land area along most of the country's international borders.⁴⁷⁸ One location may have a mixture of ethnicities. For example there are many different ethnic groups in Shan State besides the Shan, including the Pa-O, Palaung (Ta-ang), and Bamar. Kayin State comprises other groups besides Kayin, including Mon, Pa-O and Bamar. Different ethnicities have different languages and traditions, which need to be taken into account in the workplace. This is especially important given the current rollout phase and expansion into new ethnic minority areas. As of March 2015, nearly 250 towers are planned for construction in Northern Shan State. 300 are planned for Rakhine state, and over 350 in Kachin State.
- **Take the opportunity to increase employment of people living with disabilities:** People living with disabilities are an invisible but substantial group in the Myanmar population and even more invisible in the workforce. As in many other countries, it requires positive steps by employers to recruit and retain disabled workers, and help them to become an integrated part of a workforce not accustomed to disabled co-workers.⁴⁷⁹ Where possible, companies may consider incorporating the principles of universal design (defined as the design of products, environments, programs and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialised design). (See also [Chapter 4.8](#) on Groups at Risk).
- **Be alert to discrimination against lesbian, gay, bisexual and trans-gender (LGBT):** Employers need to be aware of discrimination against LGBT people in the workplace and society more generally, and the fact that same-sex relationships are still criminalised in Myanmar. (See also [Chapter 4.8](#) on Groups at Risk).

Health & Safety

- **Focus on safety in network construction:** There is a clear need for greater attention to basic health and safety throughout network construction activities, particularly tower construction and fibre cable digging. The field research indicated that in numerous operations, there was a failure to meet even the most basic health and safety provisions such as drinking water, and personal protective equipment (PPE). There are clear challenges in transmitting standards to subcontractors' and other business partners. Companies need to use contractual requirements, monitoring and support to build the awareness and skills of local workers around HSE management. Myanmar has few labour inspectors and installations often take place in remote areas, where self-regulation by the ICT companies is the only safeguard. Thus it is even more incumbent on the sector to provide safety equipment and take strict safety measures. More robust protection is required in post- and active conflict areas, especially where armed groups may be active near site locations, or where there are risks of land mines around infrastructure.⁴⁸⁰

⁴⁷⁸ Transnational Institute/Burma Centrum Nederland "[Access Denied: Land Rights and Ethnic Conflict in Burma](#)" (May 2013).

⁴⁷⁹ See MCRB and Deaf Resources Centre Guide, "[Corporate Social Responsibility and Disability \(CSR-D\) – A Guide for Companies](#)" (2014). See also, ILO "[Disability in the Workplace: Company Practices](#)" (2010).

⁴⁸⁰ A concern which was raised during the consultations to the World Bank "[Myanmar - Telecommunications Sector Reform Project: environmental and social management framework](#)" (2013), pg 63.

- **Address other sector-specific health and safety risks:** There are a number of sector specific occupational health and safety risks in connection with the installation of communications equipment, such as exposure to electrical fields, electromagnetic fields (EMF) and exposure to laser light during cable connection and inspection activities or working at elevations.⁴⁸¹
- **Address public concerns about health impacts of mobile phones:** One of the most commonly cited public concerns is over the potential health effects associated with exposure to EMF (such as from mobile phone base stations). To date, there is no empirical data demonstrating adverse health effects from exposure to typical EMF levels from power transmissions lines and equipment⁴⁸². However, the WHO will conduct a formal risk assessment of all studied health outcomes from radiofrequency field exposure by 2016.⁴⁸³ Exposure to the radiofrequency fields emitted by mobile phones is generally more than a thousand times higher than from base stations, so the greater likelihood of any adverse effect from handsets means that research has almost exclusively been conducted on possible effects of mobile phone exposure.⁴⁸⁴ However, two international bodies have developed exposure guidelines for workers (and the general public), based on a detailed assessment of the available scientific evidence, albeit they are now quite dated (2005 and 2009 respectively).⁴⁸⁵ There is no data available on whether Myanmar has EMF standards for workers⁴⁸⁶ which means that companies should use appropriate international or regional standards for appropriate safeguards for workers.
- **Address other health risks:** The rollout of telecommunications infrastructure across the country requires frequent use of motor transport. Give the poor state of Myanmar's roads and the steadily increasing rate of motor accidents and fatalities,⁴⁸⁷ companies should prepare and implement motor vehicle safety programs to protect the safety of their workers and the communities in which they operate.⁴⁸⁸ In some countries long-haul truckers have significantly higher rates of sexually transmitted diseases than the host communities. A specific education and training program for transportation contractors may be necessary if there are a lot of trucking services to be used.

⁴⁸¹ For a discussion and suggested safeguards, see IFC, "[Environmental, Health, and Safety Guidelines – Telecommunications](#)" (2007), section 1.2.

⁴⁸² Ibid.

⁴⁸³ WHO, "[Electromagnetic fields and public health: mobile phones](#)" *Fact sheet N°193* (October 2014). The fact sheet lists the "Key Facts" as follows: "*Mobile phone use is ubiquitous with an estimated 6.9 billion subscriptions globally; The electromagnetic fields produced by mobile phones are classified by the International Agency for Research on Cancer as possibly carcinogenic to humans; Studies are ongoing to more fully assess potential long-term effects of mobile phone use; WHO will conduct a formal risk assessment of all studied health outcomes from radiofrequency fields exposure by 2016.*"

⁴⁸⁴ WHO "[What are the health risks associated with mobile phones and their base stations?](#)" (20 September 2013). An earlier WHO 'Backgrounder' on basestations and wireless technology from 2006 noted: "*Recent surveys have indicated that RF exposures from base stations and wireless technologies in publicly accessible areas (including schools and hospitals) are normally thousands of times below international standards.*"

⁴⁸⁵ Institute of Electrical and Electronics Engineers (IEEE), "[Standard for safety levels with respect to human exposure to radio frequency electromagnetic fields, 3 kHz to 300 GHz, IEEE Std C95.1](#)" (2005) and International Commission on Non-Ionizing Radiation Protection (ICNIRP), "[Statement on the Guidelines for limiting exposure to time-varying electric, magnetic and electromagnetic fields \(up to 300 GHz\)](#)" (2009).

⁴⁸⁶ WHO, Global Health Observatory, Legislation, "[EMF Standards](#)" (accessed 28 April 2015).

⁴⁸⁷ UNESCAP, "[Present State of Road Safety in Myanmar](#)" (2013).

⁴⁸⁸ See, IFC "[General Environmental, Health and Safety Guidelines](#)" (2007), section 3.4.

Expectations of Local Employment

- **Be aware of different perceptions of ‘local’:** There are high expectations of employment from local communities. According to the *2012 Foreign Investment Law*, all unskilled workers must be Myanmar nationals. While companies may meet ‘local hire requirements’ by hiring workers from other parts of Myanmar, for local communities ‘local’ hiring means from the immediate area. This mismatch in terminology and perceptions may create longer-term tensions around projects. Genuinely ‘local’ workers are likely to be frustrated with the limited numbers and levels of jobs available which will be largely unskilled, low wage and temporary, as they lack relevant skill sets.

D. Relevant International Standards and Guidance on Labour Issues

Relevant International Standards:

- [IFC Performance Standard 2 and Guidance Note – Labour and Working Conditions](#)
- [IFC General Environmental, Health and Safety Guidelines](#)
- [IFC/World Bank Group Environmental, Health, and Safety Guidelines for Telecommunications](#)
- ILO, [Declaration on Fundamental Rights and Principles at Work](#)
- [UN Guiding Principles on Business and Human Rights](#)

Relevant Guidance:

- IFC:
 - [“Good Practice Note: Non-Discrimination and Equal Opportunity”](#)
 - [“Good Practice Note: Workers’ accommodation: processes and standards”](#)
 - [“Measure & Improve Your Labor Standards Performance: Performance Standard 2 Handbook for Labor and Working Conditions”](#)
- IHRB:
 - [“Dhaka Principles for Migration with Dignity”](#)
 - [“ICT Sector Guide on Implementing the UN Guiding Principles on Business and Human Rights”](#)
- ILO:
 - [“Indicators of Forced Labour”](#)
 - [“Combating forced labour: a handbook for employers and business”](#)
 - [“The Labour Principles of the UN Global Compact – A Guide for Business”](#)
 - ILO pages on [Postal and Telecommunications Workers](#)
- Verite, [“Help Wanted programme and Fair Hiring Toolkit”](#)