



International
Labour
Organization

Transparency to Enable Better Dispute Resolution Systems

Business for Social Responsibility

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► Executive Summary

Transparency is necessary to enable trusted, predictable, and equitable dispute settlement processes in any given context, including in Myanmar's evolving industrial environment. More specifically, transparency in the dispute resolution processes has a number of more specific outcomes including allowing alignment with the rule of law, enabling coherent, predictable dispute resolution decision making, and enabling alignment between local and international value chains when workplace grievances arise. These together can help build trust, fairness and mutual understanding within the workplace and the industrial sector. Specifically in Myanmar, enhancing transparency in the dispute settlement processes - starting at the factory level and ascending through the Supreme Court - is a potentially important development opportunity to strengthen the link between factory level dispute preventions and resolution processes, employers and trade unions, government, and other actors present in international value chains.¹

► Why transparency in the dispute settlement processes is important

Labour disputes are normal and a result of evolving workplaces and economies

Labour disputes are a normal occurrence in any country and take place within the context of evolving local economies and constantly changing workplaces. The stresses and strains of individual business and broader societal conditions impact laws, norms, and workplace expectations. Rapid industrialization, evolving labour laws, changing availability of labour as migrants move to cities and new generations join the workforce, adjustments to the minimum wage rates, workforce and management turnover at factories, global economic pressures, and the reactions of individuals workers and employers to these stresses can contribute to the emergence of disputes within workplaces.

Labour disputes resolution will impact Myanmar competitiveness

Taking into consideration the many transitions Myanmar is going through, with an estimated labour force of 24.7 million (World Bank, 2019), friction and disputes in the workplace are to be expected. How these disputes emerge, how they are handled, and how the resolutions (if actually resolved) are complied with is important both to the parties to the dispute, as well as other local stakeholders including workers and employers representatives, the government and the sector more broadly. The competitiveness of local industry of an effective dispute settlement system can manifest itself in many ways – in terms of lost work-days due to strikes or disruptions, the ability of a sector to retain and recruit workers, or in the internal culture and engagement between management and labour.

Effective dispute resolution can positively impact Myanmar's global reputation

The efficiency of the dispute resolution is also important to global supply chains and international buyers seeking to ensure respect for workers' rights within their supply chains and can impact the global reputation of specific sectors as they compete for business on the global stage. Both factory-level cases and broader sectoral disputes can influence global buying decisions and the international

¹ This paper is based on the research outlined in the BSR report "Labor Disputes in Myanmar: From Workplace to the Arbitration Council" first published on May 7, 2017. The link to the report in both English and Burmese is found here: <https://www.bsr.org/en/our-insights/report-view/labor-dispute-systems-in-myanmar-workplace-to-arbitration-council>

competitiveness of Myanmar. A system that efficiently handles normally occurring disputes in predictable ways where resolutions are not only adhered to, but integrated within the business and stakeholder community – this is a competitive advantage for an economy in terms of both supplier efficiency and sectoral reputation. This can impact the decision making of employers wishing to set up a manufacturing facilities or buyers looking to place orders.

Disputes will be resolved one way or another - but a trusted process is most effective

In the absence of an effective grievance resolution system at enterprise level, disputes often result in individual or collective actions, lawsuits, or other means of trying to achieve redress. Preventing and resolving grievances and disputes is much easier and more effective when there is a trusted, efficient, and predictable pathway to identify a solution, to ensure adherence to that solution, and a system in place to ensure that stakeholders are aware of the results.

The core of an effective dispute resolution process is transparency

Transparency in the dispute resolution processes has a number of specific outcomes including allowing alignment with the rule of law, enabling coherent and predictable dispute resolution decision making, and enabling alignment between local and international value chains when workplace grievances arise. These together can enable trust, fairness, and mutual understanding. Conversely, the lack of transparency can lead to a lack of understanding, an unwillingness to use dispute resolutions systems, misinterpretation of the law, lack of predictability and precedence-based decision making, and the growth of the perception of - or actual - graft in decision making processes. These all undermine a fair and trusted dispute resolution process.

A consensus exists for transparent and effective dispute resolution systems in Myanmar

There is general consensus arising from workers, employers, government, and the international business community supporting the potential benefits of a reliable and equitable dispute resolution process in Myanmar (BSR, 2017). Establishing trust and buy-in in practice should be a priority not only for the Ministry of Labour, Immigration and Population (MOLIP), but also for trade union organizations, employer organizations and industry associations, and local and international labour rights groups.

► The value of transparency for government, workers, employers and stakeholders

Transparency of dispute specifics enable understanding, learning and predictability

Transparency when it comes to dispute settlement processes is based on the specifics of cases and parties to the dispute as well as the reasoning and outcomes of cases by the relevant actors involved in the process. The conclusion of these cases provides the foundation for understanding interpretations, identifying divergences in decisions, and the creation of precedents. Administrative transparency about the actors in the system themselves (e.g., the conciliators and arbitrators), dispute resolution processes, timelines, confidentiality rules and expectations, and caseloads also enable accountability and understanding thus making decision making more predictable.

Enabling dispute specific transparency: Data, insight and communication

Transparency is defined by what data is available, to whom, how often and when. Case specific information, catalogued in a searchable format, presented in an open, public facing database would be a foundational building block behind an effective and transparent dispute resolution process. The information set provided by this database would enable knowledge sharing, accountability, education, research and support analysis for the challenges and improvement opportunities of dispute settlement processes in Myanmar. The information, analysis and learning generated would enable effective communication by and amongst key stakeholders.

Transparency enable improved communication

Transparency requires and enables communication. Communication based on transparency about dispute resolution processes includes basic knowledge sharing and education (what the issues, topics, definitions, etc. are). Communication also includes process transparency (when, how and by whom, etc. disputes will be resolved). Communication based on transparency and dialogue also enables sharing of insights and knowledge about specific cases, about the effectiveness of disputes resolution processes as well as about opportunities for improvement. Together these create the social dialogue on which trust and accountability are built.

Transparency and communication enables value for all stakeholders

Transparency in the decision making process and the communication thereof enable the alignment of multiple stakeholders involved in the administration of justice in Myanmar, supporting accountability to the system, predictability of how the system will behave, and a deeper understanding of the system by workers, management and many other stakeholders. Transparency around process and outcomes would enable:

- **Trade unions and labour rights groups** to better educate and inform workers' representatives at the factory level and assist in preventing similar cases and effective preparation for the dispute process.
- **Employers' organizations** to be better able to understand the causes and nature of disputes and improve their management practices accordingly to avoid disputes.
- **Members of the conciliation and arbitration bodies themselves** to be able to easily research and refer to the precedents and reasoning of previous cases, improving the consistency and coherence of dispute decisions and legal interpretations.
- **Local and international stakeholders/buyers** to be able to utilize labour dispute information in their suppliers' assessment and suppliers' engagement processes.
- **The legal community in Myanmar** to be engaged, enabling support for regularized and predictable arbitration process outcomes. Increased access to information enables the ability to influence based on evidence, and therefore accountability.
- **Women factory workers, in particular, would benefit.** BSR's research indicates that although cases have been brought related to maternity leave and the right of a worker to return to her previous position after taking leave, overall awareness of gender rights, maternity leave, and issues like sexual harassment remain low. Transparency would therefore increase the ability

of women to address and resolve similar issues. Over time, analysis of broader trends that impact women would be possible, which could then result in targeted interventions aimed at alleviating negative impacts on women.

Improved transparency would improve Myanmar's conciliation, arbitration and dispute resolution processes

BSR's prior research on arbitration councils called out five key elements for continued improvement of arbitration and dispute resolutions processes – each of which would be influenced by transparency:

1. **Clear legal functions and boundaries** (Setting boundaries, continued amendment and revision, and utilizing process to improve legal awareness and compliance). Transparency enables each of these and allows for analysis of decision and the enablement of revisions, awareness and compliance.
2. **Consistent and professional process for decision making.** Transparency is the foundation on which to build a consistent process, building of precedence, and enabling a predictable and understood outcomes which are decided in a professional process.
3. **Effective enforcement of decisions.** Transparency of decisions helps create pressures, be they social, legal, supply chain or otherwise to ensure effective enforcement of decisions.
4. **Qualified members selected fairly.** Broader transparency, not only of decisions themselves, but about the arbitration body members, their qualifications and history enable stakeholder understanding and accountability. The involvement of the tripartite social partners is key.
5. **Effective administration and capacity.** Understanding of caseloads, timing, scheduling, confidentiality, rule-making and other factors are important to expectations management, understanding effectiveness and the responsiveness of the arbitration system itself. Each of these can impact trust and buy-in to arbitration processes.

► Elements of importance to a transparent dispute resolution system

The above sections have outlined why transparency in the dispute settlement process is important. In the sections below specific elements of an effective, transparent dispute resolution system, their impacts and relevant examples are explored. Transparency of a dispute resolution process impacts each of these.

Trust and accountability

- **Poorly Designed Labour Resolution Processes Degrade Trust**
If the labour dispute resolution process is poorly designed or adhered to, it can risk compounding a sense of grievance amongst affected parties and heighten their sense of distrust for the process. In particular when disputes are adjudicated inconsistently with the results of similar, prior cases, or when similar types of disputes are brought frequently which may imply a structural deficiency, it is crucial to build up a transparent system to allow for the creation of a consistent and empowering labour dispute resolution system.

- **Transparency Allows A Focus on Predictability and Responsiveness**

Increased transparency would also enable a broader and more thorough understanding of the process and how it functions, for both parties to the dispute as well as other stakeholders. Transparency allows a focus on the effectiveness of the dispute resolution system itself as the predictability and responsiveness of the system are more easily measured. Enabling workers, conciliation and arbitration council members, foreign investors and buyers, and the public to more easily access information about the dispute settlement process' decisions would help to enhance the value of the dispute resolution process and increase accountability, uniformization of the application of the law across the country, and compliance with decisions made. Stakeholders can develop points of view as to strengths, weaknesses and gaps in the system and propose solutions. With greater data and greater stakeholder engagement, both individual case resolutions and the robustness of the broader dispute resolution system can be improved

Case based knowledge

- **Transparency and Communication Create Knowledge**

The benefits of a transparent system are not only evident in the outcomes, but in the arbitration process itself. For workers and employers, the dispute resolution process provides access to a low-cost legal resource. Information from dispute resolution decisions can inform labour officers as they advise based on labour law and similar cases. The dispute resolution process also functions as a testing ground for changes taking place with Myanmar labour laws and practices, in a context where legal drafting sometimes generates different interpretation. For example, in 2016, an increased minimum wage and changes to the mandatory employment contract created significant workforce disruptions, as employers had varying interpretations and responses to the new requirements, including termination of workers to reduce costs (Nyan Lynn Aung, Khin Wine Phyu Phyu and Zaw Zaw Htwe, 2015). Transparency in arbitration processes can help to speed up learning, disseminate decisions and enable understanding and conformance.

- **Transparency Based Knowledge Can Impact Business Decisions**

From an international business perspective, buyers and investors see value in a dispute resolution process that is fair, efficient, and consistent, as a means of helping to uphold the rights and obligations of both workers and employers. For an international buyer, understanding whether a current or prospective business partner or supplier is involved in disputes provides an important dataset. This data, context and the knowledge therefrom can be used in the due diligence process of supplier selection and as means of evaluating the good-faith participation of employers and workers in industrial dialogue. Consequently, transparency of dispute settlement processes and outcomes can create pressures for better labour law implementation (and prevention of disputes) by employers participating in global supply chains.

► Professionalization

Increase professionalization will derive from and support a transparent dispute resolution process

A shared, transparent and understood set of facts, interpretations, processes and laws and regulations helps create the foundation for increasingly professional engagement in the dispute settlement processes by all participants. Trade unions and, in some cases, labour rights NGOs play an important role in increasing awareness and supporting fair and effective utilization of the dispute settlement system. Transparent data informs their efforts – be it in direct support to the varied parties to a grievance or in terms of training for employers, workers and trade unions on how the process functions and how to access them. Information about dispute settlement processes will help provide knowledge, training and enhance the capabilities of these organizations and the workers in their networks. The same value can also be assigned to employers as industry associations, the legal profession and users of the information including human resource professionals work to understand and navigate dispute resolutions processes from the employer perspective.

Technology

- **Digital Technology Will Enable Cost-Effective Transparency**

Web-based transparency (e.g., via the above suggested database) will enable broad, easy and cost-effective information proliferation. Additional digital technology could further enhance the speed, timeliness and direct input of data to a web-based database and portal. It would also be a signal of effectiveness, a means of spotting trends in certain topics or sectors that merit more attention, and a way to demonstrate fairness and transparency.

International examples

The Hague Rules on Business and Human Rights Arbitration Reaffirmed the Necessity of Greater Transparency

A new set of international arbitration principles, the *Hague Rules on Business and Human Rights Arbitration* launched in December 2019 has reaffirmed the necessity of greater transparency within an arbitration and reconciliation process. The Working Group who led the Hague process was composed of an international network of interested parties ranging from possible users, experts in human rights and arbitration, arbitral institutions, academics and relevant national and international governmental organizations. The principles drafted by the Working Group emphasized that changes are generally needed to how dispute settlement systems operate to ensure that, among other things, there is better transparency of proceedings and awards, that numerous victims are able to aggregate their claims and that the arbitrators chosen are prominent experts in business and human rights matters (Working Group, 2017). It signals a global awareness of the importance of procedural and data transparency to enable all stakeholders to have an equal access to uplift a fair and systematic dispute resolution mechanism.

Globalization linkages

- **Global Supply Chains Bring Global Expectation Which are Impacted by Dispute Resolution Processes**

As global supply chains have proliferated and created opportunities in countries such as Myanmar, they have also brought, to some extent, the expectations of global consumers regarding workplace practices. The procurement driven exchange between a global buyer and a factory in Myanmar is not only about price, quality and delivery dates, but also for the working conditions under which the product was made. These working conditions often (though not always) include topics such as the safety of the workplace, environmental stewardship, community engagement responsibilities and of course working conditions. Working conditions encompass a broad swath of important topics including hours of work, pay and overtime rates, hiring, discipline, promotion, discrimination, harassment and abuse, freedom of association, collective bargaining, and other key topics. These are often the subject of labour disputes at the factory and sectoral levels.

- **Global Supply Chains Are Connecting Consumer to Factory**

Transparency is rapidly evolving and is being utilized to connect global value chains directly to consumers. Supply chain transparency refers to the strategy of how to disclose supply chain and sourcing information to stakeholders (including consumers, regulators, civil society, investors and others). An evolving example is H&M which is sourcing in Myanmar. H&M is rolling out a new transparency tool “in their online stores enabling customers to trace most of their products to the factory they have been made in, and find further information to make more conscious choices” (H&M, 2018)

- **Consumer Transparency Increases the Need for Effective Dispute Resolution Processes**

This type of transparency enables greater accountability as direct consumer engagement is connected to the factory in which the product is produced. The buyer’s reputation (in this case H&M) as the intermediary to the factory is therefore connected to the working conditions within that specific factory. As information increases about the working conditions within the factory, this transparency enables better, richer and more informed understanding of these workplace conditions and provides context to disputes, if any occur. As transparency and traceability systems evolve, factory performance will be linked to local accountability tools and information providers (such as the ILO’s Better Work program,² as well as governmental process such as legal, regulatory or other grievance resolution systems such as arbitration processes). The transparency of, and information from such linkages reinforce the connection between in-factory working conditions and global supply chain expectations. Where these fail or grievances arise, the fair, trusted and transparency dispute resolution process is important to the buyer as well as the parties to the dispute.

Regional examples

Dispute Resolution Systems Vary Across the Region

While Myanmar’s dispute settlement system was modeled after Cambodia’s, it is relatively unique in the region. Neighboring countries use a variety of means for assisting in the resolution of labour disputes. In Thailand and Bangladesh, differences between workers and employers are often dealt with in the court system. Singapore has an Industrial Arbitration Court in place to handle disputes between employers and trade unions. Vietnam has a labour arbitration council, but it is restricted to conciliation

² For more information on Better Work, please see <https://betterwork.org/>

of certain types of collective labour disputes. China uses Labour Dispute Arbitration Councils (LDACs) extensively, with an emphasis on mediation (China Labour Bulletin, 2017)

[Cambodia's Arbitration Council Has a Model on Which to Build](#)

The Arbitration Council of Cambodia is an interesting illustrative example, one which the government of Myanmar has studied. Created as an independent, national institution with quasi-judicial authority derived from the Labour Law of Cambodia, it was established in 2003. Its vision is “a just and economically vibrant Cambodia renowned for industrial peace.” It has a tripartite structure (labour, employers, government), with three arbitrators selected by the parties to the dispute to form an Arbitration Panel to issue a decision.

“...the [Cambodian] Arbitration Council (AC) has had an impact that transcends labour issues. The AC serves as a model of good governance and probity for the entire judicial system...there is no question that it has created a unique Cambodian standard that government officials can reflect and learn from in the wider judicial reform process.” –

USAID report (2009)

In terms of transparency, the Cambodian Arbitration Council has a website (<https://www.arbitrationcouncil.org/>) on which the resources and the function of the Arbitration Council are described. Of particular note, the website also links to a database of decisions which are listed, by title (including date and factory name) on the website. Arbitration awards “spell out the basis for each decision of the Arbitration Council, applying legal reasoning to resolve the issue in a case.” Award decisions are filterable by year, key word/s or title. English versions (unofficial translations) of some cases are available. A listing of award decisions, significant cases and decision digest of older cases (2003 – 2007) are also online.

Thus, the Cambodian example is a building block on which Myanmar can continue to evolve toward a transparency-based grievance resolution system as it endeavors to reform its existing dispute settlement process.

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