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“Analyzing the Impact of Labor Laws on Child Labor in Myanmar”

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Abstract

The objective of this research is examining the national labor laws to prevent child labor from exploitation. In Myanmar, child laborers are working in many works for small wages, and they lose their rights such as access to education and healthy lives. The Myanmar government has enacted many labor laws including the stipulations on minimum working age and working hours for working children. However, in reality child laborers are being exploited through long working hours, low wages, and unsafe working conditions. This paper hypothesizes that national labor laws might have been reinforced better to have an impact on child labor. The qualitative research method is applied in this research answers the research question of “What is the impact of the existing Myanmar labor laws on child labor.” Data collection has been conducted for nearly two months to set interviews with five law- drafting officers and legal advisers on labor laws in Nay Pyi Taw, Myanmar. This research finds that national labor laws still need to provide more specific legal provisions for preventing the exploitation of child labor throughout the incorporation of the international labor standards into domestic labor laws. Therefore, this paper suggests that government should amend the current labor laws to become more effective for preventing the exploitation of child labor. This paper also suggests that the government and all other institutions such as NGOs and civil societies should join hands to stop the exploitation of child labor and to secure the rights of working children in Myanmar.

Keywords: *Child Labor, exploitation, working condition, national labor laws, domestic labor*

1. Introduction

Child labor problem is ubiquitous in both rural and urban areas of Myanmar. Poverty is the main cause to increase child laborers who work in farms, factories and industries, domestic works, constructions, tea shops and restaurants, and other kinds of work in their families' businesses. Children in Myanmar between 6 and 17 years are working in these kinds of works for small wages (CRC Shadow Report, 2011). They lose their rights such as access to education and healthy lives.

Myanmar Government has enacted national labor laws for laborers, and the existing Labor Laws adopt the provisions of the minimum age for children to engage work and to limit working hours. Under the Labor Laws, children of 14 can work legally not more than four hours per day. However, child laborers work long hours and work at night especially in factories and industries.

Child laborers work in garment factories, mosquito coils factories, detergent manufacturing factories, and other small scale industries in Myanmar. Working conditions in some factories are unhealthy with inadequate lighting and airless rooms. Child laborers engage in dangerous and hazardous works such as cutting clothes with sharp blades or fast moving needles, using hot irons, using chemical substances and materials, and suffering from burnt or injuries from these kinds of works (Neelam, 2015). Thus, the workplaces need to be safe and protected for child labor's health, well-being and educational opportunities. Although comprehensive statistics for child labor are not available, the ILO estimates that there were 1,228,000 economically- active children in the year 2000 in Myanmar: 534,000 girls and 694,000 boys at the ages of 10-14 (The Global Slavery Index, 2014).

The national labor laws focus on adult laborers and the provisions in the laws are stipulating only the working hours and working ages for child labor. The provisions of current labor laws are too weak to protect child laborers from exploitation. Therefore, this paper aims to examine the national labor laws on the prevention of child labor exploitation. The research question is ground "the impact of existing Myanmar Labor Laws on child labor."

2. Child Labor in Myanmar

Poverty is the root cause of child labor problem, and then the social/cultural causes in Burmese families are other important factors in child labor issue in Myanmar. Myanmar has changed its economic policy to increase foreign investment through industrialization in urban areas. The local labor markets increase demand for workers through the incensed foreign investments. Employers pay higher wages to adult workers, but they are interested more in child workers available for cheaper wages than adult workers (Rieffel, 2012). As many families from the south and middle parts of Myanmar have been hit by disasters such as flooding, cyclones, and insecurity of foods and water (JICA, 2010), families move to better places for their jobs and living standards like Yangon and Mandalay Regions. Children also migrate with their parents and work to support their families. Many children both boys and girls from the ages of 13 to 16 are working in garment factories in Yangon, and they work nearly 14 hours each day from 7 a.m. to 9 p.m. in factories producing foodstuffs, consumer goods, construction industry, electronics, paper and stationary, machine and machine tools, or warehouse industry (Inter Press Service, 2010).

Cultural practices among Burmese families are related to the phenomenon of child labor in Myanmar. Children must look after their parents when they are getting old or suffering disabilities. Thus, children work outside and find income for providing for their parents and for surviving themselves Myanmar children have to work outside and provide for their families as parts of customs and sociocultural practices in Myanmar. Based on the above view, this caption discusses the relationship between children and families in Myanmar household and some elementary points of Burmese culture that drive children to work. Burmese society has strongly hierarchical structure and respect to parents and to the elders. Parents and older people are benefactors and knowledgeable people for the younger children and young people to listen, obey and follow as guardians. Children take care of their parents when they grow old or sick and it is described as a great duty of children to their parents and older people (IOM, 2015).

The poor education system is another cause of child labor in Myanmar. Insufficient school infrastructures, overcrowded classrooms, and inadequate textbooks are reducing the quality of education. School fees and other costs of uniforms, shoes, books,

and transportation fees are obstacles to access the education for children in Myanmar. In rural areas, parents pay the high costs for schools buildings and infrastructures. Many families cannot afford the costs of the school fees and education materials. So, they pull their children out of school and send children to work to earn money. These causes linked to children leave the school and engage at work (Martin and Richard, 2013).

3. International Convention and National Labor Laws on Child Labor in Myanmar

According to the ILO's definition, child labor means a work that is harmful or dangerous to physical and mental to children, pulling them from schools, exposing them precarious work, and representing a kind of heavy work (ILO, 2004).

There is no legal definition of child labor in Myanmar national laws. However, Section 2 (a) of the Child Law (1993) defines 'child' means "a person who has not attained the age of 16 years." Myanmar Government has ratified the Convention on the Rights of the Child in 1991. Article 32 of the Convention on the Rights of the Child provides that "States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development". Therefore, the Government has promulgated the above Child Law of 1993. According to the Law, children must be protected mainly on the rights of a child such as the right to life, the right to citizenship, the right to health, the right to education, the right to work, etc. Section 24 of the Law rules on the right to work that "every child has right to work in accordance with law and right to hours of employment, rest and leisure and other reliefs" (CRIN, 2011). Therefore, children have right to work under the Law, but the rights and opportunity for working children are not clearly provided in the Child Law.

Rights of working children are listed in the local Labor Laws such as the Factories Act of 1951 and the Shop and Establishment Act of 1951. For example, these laws provided the working hours and the minimum age for working children who work in factories, shops and establishments in Myanmar. According to the Factories Act of 1951 and the Shop and Establishment Act of 1951, children of 13 can work in factories and shops of Myanmar. The legal ages of working children are important to protect their rights; however, the minimum age for working children may be different in developed and developing countries. The ILO Minimum Age Convention No. 138 stipulates the

minimum age for admission to any types of work in 1976. Myanmar Government has not signed or ratified the ILO Convention No. 138 on the minimum age for work.

Actually, children can participate in works which do not affect their health, well-being and education opportunity. The International Labor Organization Convention 138 permits light work by 12- year old children shorter than 14 hours per weeks, and the Convention determines child labor at 12 to 14 should not engage in worst forms, harmful and dangerous works.

Limited hours of work should be stipulated to allow enough time for education or other vocational training. The Factories Act of 1951 defines the limitation of working hours for child labor of not more than 4 hours per day and no work between 6 p.m. and 6 a.m. in any factory. Similarly, the Shop and Establishment Act of 1951 also forbids child workers to work between 6 p.m. and 6 a.m. in any shop and establishment.

However, most shops and commercial establishments in Myanmar opening long hours and some shops open for 24 hours. For example, tea shops and food courts in Yangon usually open from 6 a.m. to 9 p.m. every day. Child laborers work more than four hours per day to serve food as waiters and to dishwashers in these shop for just over USD 1 a day (Roxana, 2015). Therefore, the provisions of the local law are not effective and inadequate to bar children from becoming child laborers. This paper argues that stronger legal framework will produce a better result for the protection of child labor from exploitation in Myanmar.

4. Impact of National Laws on Prevention of Child Labor Exploitation in Myanmar

To examine the impact of local Labor Laws on child labor in Myanmar, this paper applies a qualitative research method. Interviews are set with totally five key informants, and they are law-drafting officers and legal adviser on labor laws in Nay Pyi Taw, Myanmar. Each two original legal drafters are from the Ministry of Labor, Employment and Social Security, and the Ministry of Social Welfare, Relief and Resettlement Myanmar. They reveal their views on the existing national laws of child labor. Then, the interview is also set with one legal advisor from the Union Attorney General's Office. Legal advisor offers legal views on national laws of child labor and related International Conventions on child labor.

After analyzing the interviewed results, three main issues remain as the impact of the Labor Laws on child labor in Myanmar: the specific legal definitions related to child labor exploitation, the incorporation of international conventions in local laws related to child labor, and weak in law enforcement relevant to child labor.

4.1 Specific legal definitions relation to child labor and child labor exploitation

Legal definitions are important when legal drafters create the laws, and specific definitions must be stipulated for special laws. The Child Law of 1993 is a major law for the protection of the rights of children, but this law has no legal definition related to child labor and child labor exploitation. Current labor laws such as the Factories Act and the Shop and Establishment Act provides the working hours and minimum working age for working children, and these laws have not provided the specific legal definitions for the meanings of ‘child labor’, ‘light work’, ‘hazardous work’, ‘appropriate working condition’, and ‘exploitation’. Daw Khin Thu Zar¹ (Officer from the Ministry of Social Welfare, Relief and Resettlement) and Daw Tin Mar² (Officer from the Ministry of Labor, Employment and social Security) explain that, “the definitions of child labor, worst form of child labor, and hazardous work are not provided in the Child Law and Labor Laws. But, we have the plan to insert these definitions if the laws will pass amendments.”

Child laborers face dangerous and harmful working materials in factories, and they may have injured themselves by using hazardous materials such as hot irons, sharp needles, electric materials and machines, chemicals, hazardous properties, etc. The laws shall include the preventive measures of child labor exploitation such as the effective penalties on the offenders who exploit and permit children to work with hazardous substances. Section 56 of the Child Law of 1993 punishes the offender for permitting a child to perform work which is hazardous to the life of the child or which

¹ Interview 1: Khin Thu Zar, 2016. *Personal Interviews on Child Labor Laws in Myanmar*. Interviewed by Cho Nge. Nay Pyi Taw, Myanmar. 16 January 2016.

² Interview 2: Tin Mar, 2016. *Personal Interview on Child Labor Laws in Myanmar*. Interviewed by Cho Nge. Nay Pyi Taw, Myanmar. 16 January 2016.

may cause a disease to the child or which is harmful to the child's moral character. According to this section, the offender shall be punished with imprisonment of six months or with a fine or with both. However, the penalty is not effective to bar the offense of child labor exploitation.

Yupa³ (Officer from the Ministry of Social Welfare, Relief and Resettlement) said that "The currently stipulated penalties of the Child Law do not threaten offenses with penalties and thus should be amended to become more effective." Child laborers may suffer health problems from the impact of hazardous and dangerous works. The old laws are weak in the preventive measures against worst forms and dangerous workplace in child labor.

The provisions in the two Labor Laws on child labor are similar, and these provisions focus only on the working hour and minimum age of employment for child labor. The Child Law has contained no provisions related to child labor. The important provisions in the law need to stipulate definitions of child laborers and child workers, list the kind of light work or suitable work for child laborers, and list the kind of hazardous, exploitative and intolerable works for working children. Furthermore, the law weak in the preventive measure to protect the exploitation of child labor. Therefore, this paper finds that national Labor Laws still need to provide more specific legal provisions and effective legal ways to prevent the exploitation of child labor.

4.2 Implementation of International Conventions in Local Labor Laws Related to Child Labor

The Convention on the Rights of the Child (CRC), the ILO Convention on Worst Forms of Child Labor, and the ILO Minimum Age Convention are fundamental human rights Conventions to child rights and child labor. Myanmar Government has ratified the CRC in 1991 for the protection of child rights. International Conventions create the international human rights standards and, under the doctrine of international law, state parties need to perform treaties obligations after ratifying these Treaties or

³ Interview 3: Yupa, 2016. *Personal Interview on Child Labor Laws in Myanmar*. Interviewed by Cho Nge. Nay Pyi Taw, Myanmar. 16 January 2016.

Conventions. Therefore, the Government has enacted the Child Law of 1993 in accordance with the Convention on the Rights of the Child.

The Government has already ratified the ILO Convention No. 182 for preventing the worst forms of child labor on December 18, 2013. Worst forms of child labor mean “all forms of slavery, forced labor, trafficking, and forced children to use in arm conflicts, offering children for prostitution and for the production of pornography, work which is carried out to harm the health, safety or morals of children.” The Convention also provided hazardous works as “kind of work that affects the physical, mental or moral well-being of a child” (ILO, 2004).

Article 4 of the Convention provides that State parties shall determine the list of the type of works for such worst forms in accordance with their national laws (ILO, 2004). But, the Government has not created or enacted the national law to fulfill obligations of the Convention. The current labor laws not inserted the provisions relating to worst forms of child labor, and the list of worst forms and the list of hazardous works.

Win Kyaing⁴ (an officer from the Ministry of Labor, Employment, and Social Security) said that “Dangerous works are not permitted by the labor laws for child factories workers. However, there is no list for kinds of worst forms and types of hazardous works stipulated in local labor laws.”

The minimum age is important to determine the categories of child labor and classify the types of work for them. ILO Convention No. 138 standardizes the minimum working age for working children. The Myanmar Government has not signed or ratified the ILO Minimum Age Convention. However, provisions related to the minimum age of working children are already stipulated in labor laws.

Dr. Swe Swe⁵ (an officer from Union Attorney General’s Office) said that “The existing labor laws are not consistent with the international labor standards or

⁴ Interview 4: Win Kyaing, 2016. *Personal Interview on Child Labor Laws in Myanmar*. Interviewed by Cho Nge. Nay Pyi Taw, Myanmar. 16 January 2016.

⁵ Interview 5: Swe Swe, 2016. *Personal Interview on Child Labor Laws in Myanmar*. Interviewed by Cho Nge. Nay Pyi Taw, Myanmar. 16 January 2016.

human rights standards such as the ILO Conventions and United Nations Conventions on child labor problem. Thus, the domestic laws need to be implemented in accordance with the ratified international conventions.”

The International Conventions on child labor are essential to be incorporated into the local laws. The ILO Convention No. 182 is the international instrument for the prevention of children from doing worst forms. Myanmar has ratified the Convention in 2013. The convention asserts the specific types of work from prevention of worst form and hazardous works. The main gap for the implementation of international Conventions is weakly implemented national laws for worst forms of child labor in Myanmar. However, the laws can insert the list of hazardous works and worst forms in a chapter or provisions in the existing labor laws, because there are no such provisions in the laws.

Moreover, the ILO Minimum Age Convention NO. 138 stipulates the minimum working age for children. According to the Article 2 of the Convention, the minimum ages shall not be stipulated under 15 unless in the developing countries. The Convention further addresses the types of work in line with the minimum ages. Article 3 of the Convention provides that the State parties shall determine the type of employment or work which do not jeopardize the health, safety or morals of young persons in the national laws. Myanmar has not signed the Convention, but the minimum age for working children are already stipulated by the national laws. This evidence can be seen as a gap between the international and national standards. The government has the plan to implement the Convention into the national laws. Therefore, this paper finds that the domestic laws need to implement the international standards to prevent worst forms and exploitation of child labor.

4.3 Weaker Law Enforcement on Child Labor Problem

Laws are needed as foundation rules for preventing child labor exploitation, and law enforcement mechanisms are also important for providing and effecting the spirit of the laws. Continually, the labor inspectors are also appointed for examining and testing the labor laws. Enforcement of labor laws can be weak or ineffective for the simple reason of inadequate labor inspectors especially in the developing countries (Almeida, 2012).

The Myanmar Government has promulgated the labor laws for protection the rights of laborers both adult and children workers. These Labor Laws are still working until the Government revises them. The Labor Laws provide the provisions of legal working age and working hours for child laborers. In reality, child laborers of 13 are working long hours (more than 4 hours) daily and working in night shifts in factories of Yangon. Some children are working with dangerous and hazardous materials in workplaces.

The Ministry of Labor, Employment, and Social Security has appointed thousands of labor inspectors in Myanmar to inspect the factories on working hours, wages, health and safety of labor. However, the size of labor inspectors is inadequate to give the ratio of inspectors per factories, and they cannot visit and inspect all factories on time. The number of labor inspectors is around one hundred, but there are thousands of factories around in Yangon. This research argues the inadequate amount of labor inspectors is a gap for implementing the labor laws in the country.

Tin Mar, an officer from Ministry of Labor said that “The problem of weaker enforcement is insufficiently a small number of labor inspectors. There are over 6,000 factories and industries in Myanmar and nearly 1,000 of various factories situated in Yangon. However, the labor inspectors are just around one thousand officers for the whole country, and hundreds of labor inspectors have been appointed to visit all factories and industries in Yangon area alone. Each inspector visits and inspects over 20 factories per month in Yangon. Our Ministry submits a request to the government to appoint more inspectors to solve this problem.”

The implementation of labor laws has been performed by labor inspectors. They inspect hours of work, wages, the prohibition of child labor (children are working in factories or not), safety, health and welfare of laborers. The Ministry shall strengthen the labor inspectorate ensuring the workplace inspection for child labor issues. The barriers to law enforcement are an inadequate number of labor inspectors for inspecting all factories in the country. Therefore, this paper finds that insufficiency of labor inspectors is one of the problems to implement and enforcement of labor laws in Myanmar.

5. Conclusion

The researcher believes the legislation is important for enacting the law for protection children's rights and for prevention child laborers from exploitation at work. The government is responsible for enacting the law for protecting children's rights and for preventing of child laborers' exploitation at work. A strong legal framework or specific law for preventing and protecting child labor is important as well as the continued to effective implementation mechanisms based on the law. Therefore, policy makers make sure the creation, implementation and enforcing the laws.

The researcher also believes that the domestic labor laws need to more incorporate with the international labor standards such as stipulation on the minimum ages and prevention of child labor from worst forms and hazardous substance in workplaces. Important provisions of international conventions need to be incorporated in national laws like the determination of the type of works forms and hazardous works in accordance with the Conventions No. 182. Furthermore, some conventions like the ILO Convention No. 138 should be signed or ratified in accordance to local needs.

After examining the impact of the domestic law on child labor, the researcher views a comprehensive law is actually needed for preventing of child laborers exploitation and, this law must be consistent with the international labor standards and international human rights standards. Therefore, the government should create a comprehensive set of child labor laws for preventing the exploitation of child labor.

Furthermore, child labor law is ineffective and weak in implementation, child labor problems are remaining. The researcher believes the Government might as well make sure that they initiate the proper implementation and enforcement of laws, for example, providing and appointing the adequate labor inspectors to visit and inquiry factories and industries to implement the Labor Laws and regulations.

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