



Evaluation Summary



International
Labour
Office

Evaluation
Office

Labour Law and Industrial Relations Reform in Malaysia

Quick Facts

Countries:	<i>Malaysia</i>
Final Evaluation:	<i>April 2, 2020</i>
Evaluation Mode:	<i>Independent</i>
Administrative Office:	<i>RO-Bangkok</i>
Technical Office:	<i>DWT Bangkok</i>
Evaluation Manager:	<i>Hirania Wiriyasti</i>
Evaluation Consultant(s):	<i>Sadie Xinxin Yang</i>
Project Code:	MYS/16/01/USA
Donor(s) & Budget:	<i>USDOL (US\$ 1.55 million)</i>
Keywords:	<i>Labour Law Reform</i>

Background & Context

The Labour Law and Industrial Relations Reform Project (LLIRR) was developed in response to a request by the government for the ILO, in consultation with tripartite partners, namely the Ministry of Human Resources (MOHR), the Malaysian Trades Union Congress (MTUC), and the Malaysian Employers Federation (MEF).

The Project's objective is to increase compliance with labour law and ILO fundamental principles and rights in the workplace. The Project pursues three distinct and mutually reinforcing Components: (1) Legal and regulatory reform; (2) Labour inspection assessment, strategic planning, and capacity building; and (3) Reform and improvement of the systems for the resolution and adjudication of disputes. The direct beneficiaries are government officials involved with drafting legislation, regulations, policies, and other legal instruments.

Present Situation of the Project

Funded by the US Department of Labor (USDOL), the Project officially commenced in October 2016, and implementation started in October 2017. Though the Project was originally scheduled to end in March 2020, it was granted an extension to September 30, 2020. The Project was planned to be provided with incremental funding pending availability up to 10 years, totaling an amount of USD 5 million, depending on the availability of funding. Initial obligation of funds was USD 1.55 million over the course of 30 months.

Purpose, scope and clients of the evaluation

The main purpose of this evaluation is to ensure accountability to donor and ILO constituents, and for internal learning. Specifically, the evaluation has the following key objectives: (1) to assess the extent to which the project has or has not achieved its objectives; (2) to assess project effectiveness vis-à-vis achieving its work plan, Performance Monitoring Plan (PMP) and indicators; (3) to assess the relevance and validity of project design and strategy; and (4) to identify lessons and good practices for increasing country conformance with international labour standards.

The final evaluation covers all stages of the Project, including the inception phase and all components of the Project. The primary clients of the evaluation are: USDOL, project constituents, other donor or international organizations, direct beneficiaries, indirect beneficiaries, the ILO project team and relevant ILO Offices.

Methodology of evaluation

The evaluator has applied a mixed methodology, including both qualitative and quantitative data

collection methods. A field mission to Malaysia was conducted during the second week of February 2020. The following evaluation activities were carried out: extensive document review, key informant interviews, and focus group discussions.

The evaluation has the following limitations. Firstly, the duration of the field mission was too short. Secondly, the evaluator was not able to obtain the perspectives of non-tripartite participants or non-ILO staff of the project. Lastly, the evaluator was not able to visit Sabah and Sarawak where numerous project activities took place. As a result, limited sources of information had an impact on the findings in this evaluation report.

Main Findings & Conclusions

Relevance. The project design is consistent with the national priorities provided in the New Economic Model adopted in 2010 and the Eleventh Malaysia Plan (2016 – 2020) adopted in 2015. The ILO conducted scoping missions in 2016 and 2017. Information collected from consultations and discussions with tripartite constituents and other key stakeholders formed a baseline to inform the project design. The MOHR confirmed that project design was consistent with their priorities and needs. However, only some of the MEF's and MTUC's priorities and needs were met by the Project. The Project provided inputs for the development of the DWCP. The Project directly supported Malaysia in implementation of SDG 8.

The key assumptions have proven to be appropriate most of the time during project implementation. It should be noted that a new government came into power in February 2020. The senior officials of the MOHR reassured the project team that the Project will continue under the new government.

Coherence. The Project has closely collaborated and coordinated with other ILO projects targeting forced labour, child labour, and migrant workers in order to ensure integration of activities related to labour law reform, labour inspection strategy, and training and capacity building, to the extent possible while avoiding duplication. In particular, the Project has strong synergy with the Improved

Migration Governance (IMG) Project and Protocol to Practice: A Bridge to Global Action on Forced Labour (Bridge) Project.

Effectiveness. The LLIRR Project experienced a one-year delay at the beginning. Despite a slow start, the Project has been able to make substantial progress in all three components.

Under the labour law reform component, the amended Industrial Relations Act (2019) has been considered compliant with ILO Convention 87. Amendments to the Trade Unions Act and the Employment Act are expected to be discussed by Parliament in May 2020. The Project team expects these acts will contain important changes to address major concerns previously raised by the ILO.

Under the labour inspection component, the Project has introduced a Strategic Compliance Planning (SCP) approach to the MOHR for labour inspection. This has resulted in the development and agreement of a new national Strategic Compliance Plan for the palm oil sector in December 2019. In conjunction, the establishment of a MOHR Strategic Compliance Task Team will serve to replicate the palm oil sector's success in other priority industrial sectors. Several capacity development activities have been carried out for inspectors, covering important areas such as occupational safety and health.

Under the labour dispute resolution component, the Project team has carried out capacity building activities targeting MOHR conciliators and union officials that are involved in collective bargaining. As per the work plan, a full review of the process of labour dispute resolution has been undertaken and completed late 2019.

Several factors have also limited achievements of the Project. The withdrawal of the US Government from the Trans Pacific Partnership Agreement led to a decline in support for labour law reforms from employers. Moreover, some social partners pointed out that although the ILO's interventions were helpful, their input ultimately could not be adopted in the labour law reform. The outbreak of Covid-19 has brought a significant change to the normal pace and routine of work in Malaysia.

Many project activities, such as training and workshops, cannot be carried out as scheduled.

The extent to which tripartite constituents were involved in the project varies. The MOHR was well involved in all three project components. The Project also facilitated MTUC affiliates in attending trainings and workshops. However, the MTUC reflected that their participation in activities under component 2 was passive. There was no real dialogue with the project team to ensure their priorities were addressed by these activities.

Knowledge sharing and technical communication has been an important tool employed by the project team to enhance institutional learning of tripartite constituents. The Project team has conducted regular technical consultations with the MOHR to explain ILS, to comment on draft amendments, and to provide examples of legislative texts on various issues. Knowledge sharing on SCP enabled relevant stakeholders to strike the right balance between preventive, punitive, and social policing interventions when developing inspection policies. The Project team also commissioned a Study and Review of Malaysia's Labour Dispute Resolution System. The study results proposed systematic changes for the MOHR to consider.

Efficiency. The Project is managed by an internationally recruited Chief Technical Advisor with support from a National Project Coordinator. The government counterpart commented that in spite of the limited human resources, the project team has managed to provide technical support in an efficient and timely manner. However, some tripartite constituents reflected that due to limited manpower, the Project tends to give short notice leaving inadequate time for the constituents to prepare for their participation.

The regional finance office provides support for the Project, specifically to the administrative assistants, on the ILO's financial system and software. In addition to the grant approved by the USDOL, the ILO has also contributed about US\$80,000 from its regular budget to the Project. As of December 2019, 90% of the budget under Component 1 has been expended, while only about 70% of the budget under Components 2 and 3 have been spent.

Although the Project has good systems for budget, work planning, and reporting to provide accountability to the donor, information about the budget and work plan was not clearly shared with the social partners. According to the social partners, if they were better informed of fund allocations, they could have better proposed modules of training to meet their needs, and made complementary contributions to maximize the effectiveness of project activities.

Effectiveness of Management Arrangements.

According to the Prodoc, the ILO ROAP is the executing agency of the Project, responsible for overseeing the technical and administrative aspects of the project implementation. The ILO project team directly develops and implements activities. In practice, the representatives from the stakeholders often confused different ILO projects and project managers in Malaysia. This is caused in part by the fact that there are several ongoing ILO projects at the same time, and in part by the frequent internal movement of personnel within the different tripartite constituents.

The Project does not have its own Project Advisory Committee. Instead, a Tripartite Steering Committee was established under the DWCP to supervise all ILO projects in Malaysia. The first meeting of the DWCP Tripartite Steering Committee held in March 2020, where the MOHR reaffirmed its commitment to the DWCP agenda, including labour law and institutional reforms, in spite of recent domestic political changes.

The project has an M&E framework consistent with both the ILO Evaluation Policy and the agreement reached between the ILO and the USDOL. The project team conducts data collection and analysis on a regular basis in order to prepare the quarterly Technical Progress Reports (TPR). However, it has not been able to include the required performance data in the TPRs all the time.

Technical backstopping for the Project has been provided by relevant specialists from the Decent Work Technical Support Team of Bangkok and HQ in Geneva, in different subdomains (i.e. international labour standards, labour law, labour relations, labour inspection, workers and

employers). Their participation brings to the project good practices and lessons learned, not only from developed countries, but from other countries with a similar situation to Malaysia.

Sustainability and Impact. The project team developed the Strategic Plan in February 2019 to be fully compliant with the donor requirements. The LLIRR is well positioned to promote the long-term sustainability of project results through synergies with other ILO projects. Co-organized research activities, workshops, and training events by the LLIRR Project and other projects have enhanced participants' knowledge and capacity in carrying out labour inspection responsibilities, while simultaneously introducing new institutional practices on labour inspection.

The amended labour laws under the Project will introduce a new labour law framework that is broadly applied to the industrial relations and employment landscape of Malaysia. Many other ILO projects entail interventions to further develop rules, regulations, and policies in order to properly implement new amendments that protect specific vulnerable groups. The complementary nature and cooperation between the LLIRR and other ILO projects will ensure the long-term sustainability and impact of acts amended under the LLIRR.

The recent political development in Malaysia has brought some uncertainties to the Project. However, judging from its recent communication with the MOHR, the project team is cautiously optimistic that the MOHR still has a strong commitment to maintain and ensure project approaches will scale up after project completion. In addition, the social partners have shown commitment to continue labour law reform in the country. They also stress that ILO support should be long-term in order for the country to comply with ILS.

Under the Labour Law Reform Component, the key changes to the amended International Relations Act enhances the consistency of the Malaysian legal framework with the ILS by relaxing restrictions on union formation and collective bargaining, limiting the discretion of the government, as well as strengthening employees' rights to unionize and

choose their own representative to conclude collective labour agreements.

Under the Labour Inspection Component, the Project has laid a good foundation for the improvement of human resource skills and capacity development of inspectors. It also strengthens internal coordination among different inspection authorities of the government, and encourages better use of information technology by the inspectorate.

Under the amended Industrial Relations Act, the MOHR's discretion is limited. If the parties cannot settle the matter before the Industrial Relations Department, the referral will be automatic. However, it is unclear whether the transfer of duty to refer complaints to the Industrial Court will necessarily reduce any backlog and whether the Industrial Court has sufficient capacity to handle the potential increase in volume of claims without sacrificing efficiency.

Recommendations

1. **The Project team** should apply for an extension. Based on the extension duration approved by the donor, the Project team should develop an action plan to prioritize the activities under different components. Moreover, the Project team should further improve its reporting practice to comply with the USDOL requirements.
2. **ILO ROAP and HQ** should continue mainstreaming social dialogue in ILO interventions in Malaysia. The function of the Tripartite Steering Committee under DWCP as a joint body of all ILO projects in Malaysia to coordinate tripartite mechanism and monitoring project implementation should be further strengthened.
3. **The donor** should consider an extension of at least one year in order for the Project to follow through its plan. Depending on the duration of the extension, there should be a match between project objectives, timeframe and available human resources.