

The Myanmar Dilemma

Can the garment industry deliver decent jobs for workers in Myanmar?



SOMO & ALR & LRDP

Colophon

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August 2017 – updated version. The report was originally published in February 2017.

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ISBN: 978-94-6207-116-2

Print: Drukkerij Raddraaij

Acknowledgments

SOMO says thanks to all workers who were interviewed and shared their stories. SOMO would also like to thank all civil society organisations in Myanmar and internationally that contributed to this report.

This publication is made possible with financial assistance from the Dutch Ministry of Foreign Affairs. The content of this publication is the sole responsibility of SOMO and can in no way be taken to reflect the views of the Dutch Ministry of Foreign Affairs.

Disclaimer

SOMO takes full responsibility for the wording used in this report. ALR and LRDP have co-authored the executive summary and chapters 4 and 6. Chapters 1, 2, 3 and 5 are SOMO's work.



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Labour Rights Defenders & Promoters
lrdpmyanmar.blogspot.nl/2013/04/labour-rights-defenders-promoters.html

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Acronyms

AC	Arbitration Council	LRDP	Labour Rights Defenders & Promoters
ACT	Action, Collaboration, Transformation	MGMA	Myanmar Garment Manufacturers Association
ALR	Action Labor Rights		
ASSK	Aung San Suu Kyi	MICS	Myanmar Industries Craft & Services Trade Unions Federation)
BSPP	Burma Socialist Programme Party	MoU	Memorandum of Understanding
BSR	Business Social Responsibility	NCA	Nationwide Ceasefire Agreement
CBA	Collective Bargaining Agreement	NGO	Non-governmental organisation
CoF	Certificate of Fitness	NLD	National League for Democracy
CTUM	Confederation of Trade Unions of Myanmar	NRC	National Registration Card
		OECD	Organisation for Economic Co-operation and Development
CCC	Clean Clothes Campaign	OHS	Occupational Health and Safety
CSO	Civil Society Organisation	SEZ	Special Economic Zone
CSR	Corporate Social Responsibility	SIA	Sustainability Impact Assessment
EAO	Ethnic Armed Organisation	SLORC	State Law and Order Restoration Council
EBA	Everything But Arms	SOMO	Centre for Research on Multinational Corporations
EC	European Commission	SPDC	State Peace and Development Council
EP	European Parliament		
ETI	Ethical Trade Initiative	SSB	Social Security Board
EU	European Union	STUM	Solidarity Trade Union of Myanmar
FLA	Fair Labor Association	TRC	Temporary Registration Card
FPIC	Free Prior and Informed Consent	TTIP	Transatlantic Trade and Investment Partnership
FWF	Fair Wear Foundation	UN	United Nations
FY	Fiscal year	UNGP	United National Guiding Principles
GFA	Global Framework Agreement	USDP	Union Solidarity and Development Party
GDP	Gross Domestic Product		
GSP	Generalised System of Preferences	US	United States
GUF	Global Union Federation	WCC	Workplace Coordinating Council
IDP	Internally Displaced Person		
IFA	International Framework Agreement		
ILO	International Labour Organization		
IPA	Investment Protection Agreement		
LDC	Least Developed Country		

About the authors

Centre for Research on Multinational Corporations (SOMO)

The Centre for Research on Multinational Corporations (SOMO) is a critical, independent, not-for-profit knowledge centre on multinationals. Since 1973 we have investigated multinational corporations and the impact of their activities on people and the environment. We provide custom-made services (research, consulting and training) to non-profit organisations and the public sector. We strengthen collaboration between civil society organisations through our worldwide network. In these three ways, we contribute to social, environmental and economic sustainability.

Action Labor Rights (ALR)

Action Labor Rights (ALR) was set up in 2002 and focuses on the promotion of freedom of association and the abolishment of forced and child labour in Myanmar. ALR provides trainings to workers about labour rights, labour laws and the formation of unions. Furthermore, ALR conducts research on labour rights issues, mainly in the garment industry.

<http://www.actionlaborrights.org/>

Labour Rights Defenders & Promoters (LRDP)

Labour Rights Defenders & Promoters (LRDP) was formed in 2010 by Burmese human rights activists in exile in Mae Sot, Thailand. LRDP aims to promote leadership among workers and to promote the implementation of international standards to improve workers' living and employment conditions. LRDP shares information about new labour laws and principles with workplace unions and also trains workers on their rights, helping them to negotiate with factory managers where needed.

<http://irdpmyanmar.blogspot.nl/>

Executive summary



Garment factory workers walk down the footpath near their home on their way to work. Lauren DeCicca

Why this report?

The garment industry is one of the most labour-intensive manufacturing industries in the world. Clothing companies are constantly on the look-out for production locations that can make clothes quickly and at low costs. Over the past few years, Myanmar has rapidly become a popular sourcing destination for the garment industry – due to a huge pool of cheap labour and favourable import and export tariffs. However, working conditions in this industry are far from acceptable. Labour rights violations are rife. Workers who are bold enough may file complaints or resort to open protests, news of which sometimes finds its way into international media. More often, workers toil on in silence. As well as describing the most pressing problems, the authors of this report offer suggestions for constructive ways forward to head off a crisis before it escalates.

Myanmar was ruled by a military junta for 50 years. After years of economic isolation, foreign investment is now booming as economic sanctions have been lifted following Myanmar's fledgling steps towards democracy. Although the export-oriented garment industry in Myanmar is still in its infancy, it is expanding at a rapid rate and is increasingly producing clothes for European and Asian, customers.

In 2014, Myanmar's total export value of garments reached US\$ 986 million (€720 million), nearly tripling the value of the 2010 garment exports (US\$ 337 million/ €270 million). According to the Myanmar Garment Manufacturers Association (MGMA), garment exports totalled US\$ 1.46 billion (€ 1.32 billion) in 2015, accounting for 10 per cent of the country's export revenues.¹

The European Union (EU) is the fastest growing export market for clothing made in Myanmar. In 2015, the EU imported clothing at a value of €423 million, a staggering 80 per cent growth compared to the previous year.²

The number of garment factories grew from 130 factories during the sanctions era to the current number of over 400 factories. As of 2016, the rapidly growing garment industry was employing around 350,000 workers, of whom 90 per cent are women.³ MGMA estimates that the industry will employ around 1.5 million workers by the year 2024.⁴

Today, Myanmar is cheaper as a production hub than other garment producing countries like Thailand, Cambodia, China and Indonesia. Asian suppliers are setting up shop in Myanmar in an unseemly "race to the bottom", pushed by foreign buyers who are eager to secure the cheapest possible prices. Almost half of the garment factories are foreign-owned or they are joint ventures between Myanmar and foreign companies. Most foreign-owned factories are in the hands of Chinese, Korean, Taiwanese and Japanese owners.

The number of western buying companies that are placing orders in Myanmar is increasing at a rapid pace. A number of Western brands are particularly keen to expand their supplier base in Myanmar. H&M and C&A are among the companies that are steadily expanding their supplier base in Myanmar.

However, this rush to invest is fraught with perils when it comes to a fragile democracy like Myanmar, where more than a quarter of the population lives in poverty. While small steps towards democratic reform have been undertaken in the country in recent years, great problems remain, particularly as fighting between the Myanmar army and ethnic groups continues in some states. In addition, the military continues to exert great power over all domains of society.

Current labour law in Myanmar still has many shortcomings. This is partly explained by the fact that the laws were often introduced without a process of social consensus or open discussion. There are inconsistencies between various laws. Labour laws contain obstacles to join and form unions and engage in collective actions. They do not adequately provide for collective bargaining

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- 1 Textile Excellence, "Myanmar Rises As An Alternative Garment Manufacturing Hub," 11 December 2016, <<http://www.textileexcellence.com/news/details/1651/myanmar-rises-as-an-alternative-garment-manufacturing-hub>>
 - 2 European Commission DG Trade, "European Union, Trade in goods with Myanmar," 4 November 2016, <http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_113423.pdf>
 - 3 Oxfam, "Made in Myanmar – Entrenched poverty or decent jobs for garment workers?" December 2015, <https://www.oxfam.org/sites/www.oxfam.org/files/file_attachments/bp209-made-in-myanmar-garment-workers-091215-en_0.pdf>
 - 4 Myanmar Garment Manufacturers Association (MGMA), "Myanmar Garment Industry – 10 year strategy 2015 – 2024," August 2015, <<http://www.myanmargarments.org/wp-content/uploads/2015/09/Myanmar-garment-industry-10-year-strategy-Aug-2015.pdf>>

beyond dispute resolution. In other laws essential clauses are simply missing. In some cases, legal clauses are open to multiple interpretations.

Civil society and trade unions have only recently been granted more space to operate. Independent trade unions were prohibited for more than 50 years, strikes were banned and any form of dissent was violently suppressed. Trade unionists, human rights defenders and members of the opposition were detained and served many years in prison while others fled the country and lived in exile for many years.

At this turning point in Myanmar's history, there is a huge task ahead for the newly installed government to update, amend and enforce legislation that is in line with international human rights standards. In the meantime, there are significant risks of labour rights violations being committed in Myanmar's garment industry that need to be addressed as a matter of urgency.

Aim and research approach

Through this research, the Centre for Research on Multinational Corporations (SOMO), Action Labor Rights (ALR) and Labour Rights Defenders & Promoters (LRDP) focus on European garment companies that are now sourcing from Myanmar or are planning to start doing so shortly, and their suppliers. The main question at play is about the current human rights and labour rights risks and actual violations of labour rights in the export-oriented garment industry in Myanmar.

The authors also aim to contribute to discussions about whether, and how, the ever-growing Western demand for cheap garments can help to create better employment and labour conditions in Myanmar. This question is based on the understanding that the operations of big companies in a fragile democracy that is opening up to the global economy – such as Myanmar – may very well have negative impacts on people, the environment and on the local economy.

Industry is the main target of this report, particularly buying companies (including retailers, agents and buying houses) and garment factories (both foreign-owned and Myanmar-owned factories). Identified buying companies that stand out are C&A, H&M and Primark. Their presence in Myanmar and their position as well-known brands and retailers in Europe and globally warrant this attention. The research also looks at the efforts of multi-stakeholder initiatives – such as Fair Labor Association, Fair Wear Foundation and Ethical Trading Initiative. Overall, the research finds industry and supply chain initiatives have not delivered the needed positive impact on labour conditions.

The findings are also aimed at the Myanmar government and governments of countries hosting these foreign-owned buying companies and garment factories companies – particularly those that are member countries of the Organisation for Economic Co-operation and Development, including Sweden, the UK, the Netherlands, Germany, Japan and South Korea.

This research focuses on 12 factories located in and around Yangon, Bago and Patheingyi. From February to June 2016, over 400 workers were interviewed. In addition, information was obtained from and interviews were held with relevant stakeholders, including Myanmar labour unions,

global union federations, trade union support organisations, local and international NGOs, international organisations (including ILO), the Myanmar Garment Manufacturers Association, Fair Wear Foundation, Ethical Trading Initiative and brands sourcing from Myanmar.

All companies mentioned in this report were offered the opportunity to respond to a draft version of this report.

Overview of researched factories and their buyers

Table 1 presents the researched factories and their buyers. Buyers were identified on the basis of workers interviews, public supplier lists and US import data. Some companies confirmed these relationships, others did not respond to SOMO’s review request. For more details see paragraph 4.2 of the full report. The names of the 12 researched factories are not disclosed in this report or in any external communication around this research. Originally, SOMO did intend to mention the 12 factories by name. SOMO is a strong advocate of full supply chain transparency. Publicly linking factories and their customers to labour issues increases the pressure on supply chain actors that is needed to bring about improvement of labour conditions. Buyers need to be aware of risks and actual violations of labour rights at their suppliers and potential suppliers to make informed purchasing choices. Disclosing factory names also contributes to factuality and verifiability, and therefore the quality of the reporting. There is, however, a flip side to this level of transparency, and that is the risk that interviewed workers, other workers, communities, union activists, labour groups, and/or labour unions are negatively affected. This report describes the weak position of workers in the garment industry who are often young and uninformed of their rights. There is limited space for the labour movement in Myanmar to operate. Human rights defenders have a very precarious position. SOMO needs to be careful not to jeopardise that space. As only one of the 12 researched factories responded to SOMO’s review request, SOMO has little to go by in knowing how factories may take to this report that outlines a number of severe labour rights violations in their production facilities. SOMO has therefore decided to exercise extra caution. This analysis is shared by SOMO’s local and international partners.

Table 1 The researched factories and their buyers

Factory	Buyers
Factory 1	I-max and Giorenzo
Factory 2	Lonsdale (Sports Direct)
Factory 3	Suitsupply
Factory 4	H&M, Primark, Muji
Factory 5	Fair Wear Foundation members, Kawasaki, Hudy, Erima, Henri Lloyd
Factory 6	Karrimor (Sports Direct)
Factory 7	Pierre Cardin, Bessshirt, Arrow
Factory 8	H&M, C&A
Factory 9	H&M, Muji
Factory 10	Izumifuhaku
Factory 11	New Look, Takko
Factory 12	K2 (Korea), Gaastra, LL & S Purchasing Corp (The Levy Group)

Key findings

This research uncovers a series of worrying labour rights and human rights issues.

Low level of unionisation

Active independent unions are scarce. Many workers have no idea about freedom of association and the right to collective bargaining. Some of the better informed workers indicated that forming a union was out of the question at their factory.

Low wages and unlawful deductions

The legal minimum wage in Myanmar is a mere 3,600 kyat per day, which amounts to €2.48. This is not enough to make a decent living and as a result many workers are in debt. To make matters worse, a considerable number of workers do not even earn the minimum wage, as factories avoid paying the minimum wage by abusing the apprenticeship and probation provisions of the minimum wage law.

The research has found cases where workers are obliged to work overtime hours in order to earn the minimum wage or keep their jobs. The report further documents cases where the worker's vulnerability is exploited by imposing work under the menace of a penalty. Huge pressure is exerted on workers to complete production targets, without missing a single day of work. At most factories, one day of absence, even due to illness, means part of the wage is deducted. These imposed deductions in fact amount to perverse incentives, compelling workers to continue working even when they are ill or injured. In line with the ILO definition of forced labour, it can be argued that this situation may qualify as forced labour.

Excessive overtime, unpaid overtime

Workers reported they regularly work more than 60 hours per week. In some cases, workers reported that they have to continue working until deep in the night when shipping deadlines come close. In some cases, overtime hours are unpaid.

Child labour

Child labour is widespread in Myanmar. This research found that at all 12 investigated factories workers were interviewed who were younger than 18 years when they started. At six of the 12 factories investigated, strong indications were found that some of the current workers were younger than 15 years old when they started at the factory. It seems that these young workers were performing the same demanding work as their adult colleagues. This is a violation of both Myanmar legislation and international labour standards with regard to child labour. In addition, this research found that a number of factories are hiring young workers as daily labourers.

No contracts

Almost half of the interviewed workers did not sign a contract of employment. Of the workers who did sign a contract, only a fifth received a copy of their contract. Without contracts, workers lack information about their entitlements.



A garment factory in Myanmar (this factory was not included in the research). Martje Theuvs | SOMO

Daily labourers were found to be among the workforce at four of the 12 investigated factories. Daily labourers do not sign contracts; they only receive the basic daily wage, which may be below the minimum wage of 3,600 kyat (€2.48) per day; they are not eligible for bonuses and benefits; and they are not covered by the social security system. In addition, daily labourers have very insecure jobs as in the absence of a formal employment relationship they are easily dismissed.

Lack of grievance mechanisms

Workers reported that there are very few opportunities to discuss working conditions with management or to file complaints. The fear to be punished is real. The legal dispute settlement system is not functioning optimally. Companies lack credible grievance mechanisms.

Land rights issues

Under the military regime, industrial zones and Special Economic Zones were generally created from farmlands. Therefore, the land that factories occupy may not have been acquired in line with international practices. This is still an on-going issue as complaints by duped villagers have not yet been fully resolved. Additionally, current factory and land ownership may be questionable, as army and crony involvement is rife in key economic sectors. The military has a stake in nearly all profitable businesses in Myanmar. One of the 12 investigated factories, is located in Thilawa SEZ. There is well-documented evidence that the development of Thilawa is associated with some serious land rights violations.

Urgent action needed

In the light of these findings, actors in the garment industry and involved governments urgently need to rethink their policies and practices with regard to Myanmar. There is still an opportunity to make sure that Myanmar is not the next Cambodia or the next Bangladesh, low-wage garment-exporting countries where working conditions are notoriously hard and unsafe.

Contributing to peace and a pro-poor sustainable economy in Myanmar is a huge challenge. Improving working conditions in the Myanmar garment industry is a piece of this puzzle. Clearly this demands multiple interventions from diverse actors. The heaviest burden falls, of course, on the Myanmar government. The Myanmar government has an overall obligation to respect, protect and fulfil human rights and fundamental freedoms. The government of Myanmar should amend, develop and uphold progressive pro-labour laws that are in line with the highest international standards. The broader labour movement in Myanmar should be included in consultations on law and policy reform with regard to labour, land and human rights from the design to implementation of these laws.

The industry is a powerful player. In line with the United Nations Guiding Principles on Business and Human Rights (UNGPR), all businesses operating in and sourcing from Myanmar have the responsibility to identify, prevent and mitigate risks and remediate negative impacts on human rights that occur through their own activities – or as a result of their business relationships with other parties – including in their supply chains.

Garment companies that wish to operate in Myanmar should apply due diligence. Unfortunately, the country is becoming more entrenched in armed conflict, in particular over the past few months. Given the broad range of human rights risks, foreign-owned manufacturers and buying companies should develop and implement rigorous and country-specific due diligence procedures. As a first step, a thorough risk assessment of human rights and labour rights violations is required before business is started up in a particular state, region or production facility. Companies should make an effort to fully understand the socio-economic environment in which they will be operating. When assessing risks, companies should consult local labour unions and labour NGOs, as well as relevant international CSOs.

Buying companies should develop and adhere to strict selection criteria to identify suppliers in compliance with international standards, local labour law and their own corporate code, before they start placing orders. If risks cannot be mitigated, companies should refrain from starting up businesses or starting placing orders.

Once manufacturers or buyers have become active in Myanmar, continuous monitoring of human rights and working conditions and remediation of specific violations is required. On top of that, companies should continuously work on structural improvement of working conditions.

Labour unions, labour groups and other civil society organisations should be enabled to play their designated roles, with the understanding that the Myanmar labour movement and civil society is in full development and should be given the space to operate.

Each individual company – manufacturers and buyers alike – has a clear responsibility to act without delay if labour rights are violated. However, companies should also seek collaboration with others, preferably in a multi-stakeholder setting. An industry-wide approach requires companies to join forces in risk analysis, share findings of social audits and investigations, jointly address non-compliances at shared suppliers, and strive for structural improvement, all in close cooperation with local stakeholders. Business enterprises should communicate how they are addressing their human rights impacts, for the benefit of other corporate actors as well as for the benefit of affected workers, and communities and their organisations.

Recommendations

Freedom of association and collective bargaining

Workers have the right to form and join labour unions of their choice. Unions should be able to operate without hindrance, in all factories and zones, including industrial zones and Special Economic Zones. Union busting should not be tolerated.

Both government and businesses have a crucial facilitating role to play. Factories and buyer companies should only accept democratically elected unions that are independent from employers or the government as partners for collective bargaining and other forms of negotiations and consultations. Manufacturers and buyers should contribute to creating an environment of trust between workers and employer. They should pro-actively support organising and union activities with concrete measures.

Wages

Workers are entitled to receive a decent wage for a regular working week without overtime. The current legal minimum wage is 3,600 kyat/day (€2.48). Already back in 2015, when the minimum wage was negotiated, labour unions and labour NGOs asked for 4,600 kyat/day. Now, labour NGOs suggest that a daily wage of 6,000-10,000 kyat would be reasonable.

The legal minimum wage should not be seen as a maximum wage but as a floor wage, regardless of the level at which the wages are set as a result of a CBA, or unilaterally by the employer.

There is a need for a regional floor wage, to stop the garment industry's wage race to the bottom. To this end, the Myanmar government should collaborate with garment producing countries in the Association of Southeast Asian Nations (ASEAN) region, in particular Thailand, Bangladesh and Cambodia.

Child labour

Workers younger than 15 years old should by no means be accepted in the garment industry. Child workers of 15 years can only work for four hours per day and should have the possibility of going to vocational school for the remaining part of the day. Young workers aged 15 to 18 years old should be exempt from dangerous work.

Garment factories in Myanmar – both Myanmar-owned and foreign-owned – should verify whether there are under-age workers among their current labour force.

It is also of the utmost importance that companies facilitate child workers transition to formal part-time or full-time education, depending on their age. Former child workers may also need health care, adequate adult support, temporary financial support or other services. Employer and buyer companies should pay for wages and school fees until the worker reaches the legal working age.

Post-conflict setting requires conflict-sensitive policies and practices

Myanmar is emerging from decades of military rule. Armed conflict is far from resolved. All companies operating in this environment have a responsibility that goes beyond usual corporate compliance. They should develop conflict sensitivity and implement 'do no harm' policies. This means for instance that companies should respect community rights, customary land rights, by consistently applying the principle of Free Prior and Informed Consent, especially in relation to existing and developing industrial areas and Special Economic Zones. As part of their due diligence companies should investigate factory and land ownership and possible involvement of (former) members of the army and cronies. The Myanmar government should act against land speculators in order to control land prices. Companies should refrain from engaging in land speculation.

Access to remedy

All parties involved in labour disputes should respect the formal legal dispute settlement procedures and escalation processes that are in place in Myanmar. Individual workers, as well as groups of workers or factory unions, should be able to get legal recourse, without hindrance, threat or sanctions from their employers.

Garment companies, both manufacturers and buyers, should provide access to remedy for individuals, workers and/or communities that may be impacted by their activities. They should do so by establishing credible grievance mechanisms.

Transparency

Garment companies, both manufacturers and buyer companies, should put into practice full corporate transparency. Public disclosure of detailed information regarding corporate structure, suppliers' base, employment relations, work force and due diligence processes, among others, helps the different actors along the supply chain to address the adverse effects of corporate activities effectively.

Business initiatives, multi-stakeholder initiatives and trade associations should also push for further supply chain transparency in the global garment sector. Brands, retailers and manufacturers must develop a positive and pro-active view on inter-sector sharing of business-related information.

The EU should oblige EU businesses to disclose their activities and investments, including supply chain relations, in Myanmar.

Sustainable economic development and decent jobs

Myanmar is a desperately poor country – it is vital that the growth of the garment industry benefits the people and not just foreign brands that source from Myanmar or factory owners. Employment needs to be created, but not at all costs. There is a need for decent employment, rather than precarious jobs. Economic development should put people at the very centre.

The Myanmar government should develop and uphold strict rules for foreign investors and see to it that foreign-owned companies, including garment manufacturers do not operate without the required licences.

Conclusion

The export-oriented garment industry has the potential to make a contribution to economic development and poverty reduction by creating employment in Myanmar. However, this industry may also make things worse by directly violating labour rights or contributing to negative impacts on workers and communities, the environment and the economy.

Therefore, all the actors involved – from garment factories to buying companies, from the Myanmar government to the host governments of foreign-owned companies – have a fundamental responsibility to protect and respect human rights and labour rights. As this report reveals, better risk assessment, risk mitigation, as well as remediation of actual violations and focus on structural improvement is needed as a matter of urgency. All actors need to get their act together and focus on creating not just jobs, but decent work for garment workers in Myanmar.

1 Introduction

1.1 Why this report?

The garment industry is constantly on the move. It is one of the most labour-intensive manufacturing industries. With a significant increase in the number of clothes collections launched each year and competition between brands and retailers keener than ever before, brands and retailers are looking for production locations that meet the main requirements of low prices and fast delivery.

Myanmar fits the bill. It has a large pool of cheap labourers and, since the country has implemented a number of democratic reforms, it is allowed to export its products under favourable conditions to European and American markets. Over the past few years, Myanmar has fast become a popular sourcing destination for the global garment industry. The Myanmar garment industry is expanding at a rapid rate and is increasingly producing apparel products for the European market.

This report describes a series of labour rights and human rights issues in this industry, including very low wages, unlawful wage deductions (for sick leave, for instance), very long working days, unpaid and forced overtime, abuse of apprentices to avoid paying the legal minimum wage, child labour, and unhealthy and unsafe working conditions.

Companies have a responsibility to respect human and labour rights. In the light of this report's findings, it is of utmost importance and urgency that the industry gets its act together. As this report reveals, better risk assessment and mitigation as well as remediation of actual violations are urgently needed.

Industry is the main target of this report, particularly buying companies. The findings are also aimed at governments, in particular the Myanmar government and governments of countries hosting these companies – particularly member countries of the Organisation for Economic Co-operation and Development (OECD). Buying companies should act responsibly when selecting suppliers and in the purchasing practices they impose on their suppliers.

Over the coming years, SOMO and its partners will continue to remind selected companies and governments that they need to take action.

Background

Myanmar was ruled by a military junta from 1962 to 2010. In 2010, a military-backed civilian government replaced the military junta and, since then, a process of moderate reform has been underway. In November 2015, general elections were held in Myanmar. The National League for Democracy (NLD), led by Aung San Suu Kyi, won 77 per cent of the votes. In April 2016, a newly NLD-led government took office and Htin Kyaw was sworn in as President.

It is the first time the NLD has held government power and responsibilities. This is a huge challenge. In the government and public institutions – including the Ministry of Labour, the labour inspection and the labour offices – the work force has remained largely unchanged. This means that the same civil servants who were acceptable for the junta are still in their seats and now have to deal with trade unions that were forbidden until 2012.

Civil society and trade unions enjoy limited space in Myanmar. For more than 50 years, independent trade unions were prohibited, strikes were banned and any form of dissent was violently suppressed. Trade unionists, human rights defenders and members of the opposition were detained and served many years in prison while others fled the country and lived in exile for many years.

While small steps towards democratic reform have been undertaken in recent years, great concerns remain, particularly as fighting between the Myanmar army and ethnic groups continues in some states. In addition, the military continue to exert great power over all domains of society. There is a huge task ahead for the newly installed government to update, amend and enforce legislation that is in line with international human rights standards.

Booming garment industry

After years of economic isolation, foreign investment is now booming in Myanmar as many economic sanctions – including those of the European Union (EU) – were suspended and later lifted following the first steps towards democracy. The garment industry has benefited greatly from the influx of foreign investment and has grown exponentially in recent years.

In 2014, Myanmar's total export value of garments reached US\$ 986 million (€720 million⁵), nearly tripling the value of the 2010 garment exports (US\$ 337 million/ €270 million⁶).⁷ According to the Myanmar Garment Manufacturers Association (MGMA), garment exports totalled US\$ 1.46 billion (€1.32 billion⁸) in 2015, accounting for 10 per cent of the country's export revenues.⁹

The EU is the fastest growing export market for Myanmar garments. In 2015, the EU imported clothing at a value of €423 million from Myanmar, a staggering 80 per cent growth compared to the previous year.¹⁰

While the Myanmar garment industry has become an important player in just a few years, little is known about the labour rights and human rights situation in this industry. Organisations including

5 For this conversion (US dollar to Euro) the currency rate of 1 July 2014 was used.

6 For this conversion (US dollar to Euro) the currency rate if 1 July 2010 was used.

7 HKTDC Research, "Myanmar Rising: The Garment Sector Takes Off", 22 June 2016. <<http://economists-pick-research.hktdc.com/business-news/article/Research-Articles/Myanmar-Rising-The-Garment-Sector-Takes-Off/rp/en/1/1X000000/1X0A6IQS.htm>>

8 For this conversion (US dollar to Euro) the currency rate if 1 July 2015 was used.

9 Textile Excellence, "Myanmar Rises As An Alternative Garment Manufacturing Hub," 11 December 2016, <<http://www.textileexcellence.com/news/details/1651/myanmar-rises-as-an-alternative-garment-manufacturing-hub>>

10 European Commission DG Trade, "European Union, Trade in goods with Myanmar," 4 November 2016, <http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_113423.pdf>

Action Labor Rights,¹¹ Progressive Voice¹² and Oxfam¹³ have recently released reports that highlight labour rights violations in the garment industry in Myanmar.

SOMO has chosen to focus on European garment companies that are now sourcing from Myanmar or are planning to start doing so shortly, and their suppliers. The EU is already an important export partner for Myanmar. Likewise, with the last remaining US sanctions lifted in November 2016, garment exports to the US are expected to increase in the near future. An important number of European garment companies are already sourcing from Myanmar. As a Netherlands-based research centre that is closely collaborating with European Clean Clothes Campaign coalitions, SOMO is specifically addressing European garment brands and retailers through this report.

A number of fundamental questions lie at the heart of this research. The main question at play is about the current human rights and labour rights risks and actual violations of labour rights in the export-oriented garment industry in Myanmar. Through this research, the Centre for Research on Multinational Corporations (SOMO), Action Labor Rights (ALR) and Labour Rights Defenders & Promoters (LRDP) also aim to contribute to discussions about whether, and how, the ever-growing Western demand for cheap garments can help to create better employment and labour conditions in Myanmar. This question is based on the understanding that the operations of big companies in a fragile democracy that is opening up to the global economy – such as Myanmar – may very well have negative impacts on people, the environment and on the local economy.

1.2 Methodology

In July 2015, SOMO researchers visited Myanmar for a first scoping visit. Contact was made with diverse local and international organisations, including trade unions and labour non-governmental organisations (NGOs). The purpose was to obtain insight into the labour movement and to understand the history, background, agendas, ambitions and challenges of the different actors. Also, SOMO aimed to identify local organisations that were interested in and equipped to collaborate in a joint research project.

This scoping visit resulted in a partnership between SOMO and ALR and LRDP for a project comprising capacity building and training, field research, and lobby and advocacy activities.

The terms and focus of the field research were discussed and fine-tuned in a series of meetings between SOMO, ALR and LRDP.

11 ALR, 'Under Pressure – A study of labour conditions in garment factories in Myanmar which are wholly Korean owned or in a Joint Venture with Korean Companies,' March 2016, <http://www.actionlaborrights.org/attachments/view/?attach_id=1060>

12 Progressive Voice, "Raising the Bottom - A Report on the Garment Industry in Myanmar," December 2016, <<http://progressivevoicemyanmar.org/wp-content/uploads/2016/11/Raising-the-Bottom-Layout-English-Version-15-11-20161.pdf>>

13 Oxfam, 'Made in Myanmar – Entrenched poverty or decent jobs for garment workers?,' December 2015, <https://www.oxfam.org/sites/www.oxfam.org/files/file_attachments/bp209-made-in-myanmar-garment-workers-091215-en_0.pdf>

For the field research, a number of garment factories were selected. The selection was made on the basis of the following criteria:

- ❑ Factories producing for the export market.
- ❑ Accessibility and contacts among workers. In the past few years, ALR and LRDP have established contacts with hundreds of workers, through awareness raising, training and organising efforts.
- ❑ The factories' record in terms of working conditions. ALR and LRDP have a wealth of information on garment factories in Myanmar, based on research and networking among workers in Yangon and other cities with garment industry activities.
- ❑ Ownership. The final selection of factories includes both Myanmar-owned factories and foreign-owned factories.
- ❑ Geographical location. The final selection of factories includes facilities in different industrial zones and Special Economic Zones (SEZs) in Yangon, as well as one facility in Bago and one in Patheingyi.

The names of the 12 researched factories are not disclosed in this report or in any external communication around this research. Originally, SOMO did intend to mention the 12 factories by name. SOMO is a strong advocate of full supply chain transparency. Publicly linking factories and their customers to labour issues increases the pressure on supply chain actors that is needed to bring about improvement of labour conditions. Buyers need to be aware of risks and actual violations of labour rights at their suppliers and potential suppliers to make informed purchasing choices. Disclosing factory names also contributes to factuality and verifiability, and therefore the quality of the reporting. There is, however, a flip side to this level of transparency, and that is the risk that interviewed workers, other workers, communities, union activists, labour groups, and/or labour unions are negatively affected. This report describes the weak position of workers in the garment industry who are often young and uninformed of their rights. There is limited space for the labour movement in Myanmar to operate. Human rights defenders have a very precarious position. SOMO needs to be careful not to jeopardise that space. As only one of the 12 researched factories responded to SOMO's review request, SOMO has little to go by in knowing how factories may take to this report that outlines a number of severe labour rights violations in their production facilities. SOMO has therefore decided to exercise extra caution. This analysis is shared by SOMO's local and international partners.

From February to June 2016, interviews with 403 workers were conducted: 300 interviews typically taking 45 minutes each, plus another 103 in-depth interviews lasting over an hour on average. The interviews were held on the basis of questionnaires and interview outlines jointly prepared by SOMO, ALR and LRDP. Themes, topics and formulation of the questions were carefully considered. The longer interviews in particular allowed for more in-depth conversations with the interviewees, which brought up more details and background information on workers' lives. Interviews were conducted by ten ALR and LRDP staff and volunteers. In addition, some of the interviews were conducted by SOMO with the help of a qualified interpreter.

In February 2016, SOMO researchers provided a two-day training session to ALR and LRDP staff and volunteers focusing on research methodology and deontology. As well as discussing the concepts of supply chain responsibility, topics included supply chain transparency, due diligence (UN Guiding Principles), important aspects such as establishing trust with workers, and ensuring the privacy and safety of the interviewees.

From February to May 2016, Martje Theuws of SOMO was based in Yangon to coordinate the field research in close collaboration with ALR and LRDP. Ms Theuws was assisted by an experienced Burmese interpreter.

The interviews with workers were held and transcribed in Burmese, and subsequently translated into English. The transcripts of the translated interviews were then analysed and processed by SOMO. A first concept version of the subsequent report was drafted by SOMO with feedback and input from ALR and LRDP.

In July 2015 and in the period February to April 2016, and again in November 2016, information was obtained from and interviews were held with relevant stakeholders, including Myanmar labour unions, Global Union Federations (GUFs), Trade Union Support Organisations (TUSOs), local and international NGOs, international organisations (including ILO), the Myanmar Garment Manufacturers Association (MGMA), Fair Wear Foundation (FWF), Ethical Trading Initiative (ETI) and brands sourcing from Myanmar.

Company review

In December 2016, SOMO conducted a company review, offering the 12 researched factories and all companies that were tentatively identified as customers of these factories the opportunity to respond to the concept of the report and to correct possible factual mistakes, in line with SOMO's standard review procedures. SOMO also contacted Fair Wear Foundation and the FWF member brands that are known to be sourcing from Myanmar to see whether they were placing orders at the 12 researched factories. The review was announced with two weeks' notice and companies were given two weeks to respond.

In addition to the report review, the 12 researched factories were asked to answer some questions about their operations in Myanmar. Likewise, notified buying companies were asked to answer some questions about their Myanmar sourcing policies and practices:

At the close of the review period, SOMO had received nine responses from companies that were identified as buyers of one or more of the investigated factories.¹⁴ Responses were received from C&A, Deuter, Gaastra, H&M, Primark, New Look, Muji, Suitsupply and Takko.

14 In the draft report, UK retailer Marks & Spencer and US brand Lollytogs were mentioned as customers of Factory 3 and Factory 4 respectively. Replying to the request to review the draft, Marks & Spencer replied that since a trial order in May 2015 they have not placed orders at Factory 3. Factory 4, in a communication to SOMO, confirmed H&M, Primark and C&A as their customers, but did not mention Lollytogs. See also paragraph 4.2



Garment factory workers get dropped off by a shuttle bus service in the morning before work. Lauren DeCicca | MAKMENDE

The following buying companies did not respond to the review request: Lonsdale (Sports Direct), Kawasaki, Hudy, Erima, Henri Lloyd, Karrimor (Sports Direct), Pierre Cardin, Arrow, Bessshirt, Izumifuhaku, K2, and LL & S Purchasing Corp. (The Levy Group).

In addition, FWF members that are sourcing from Myanmar, but not from the 12 investigated factories, were asked to answer a set of general questions. The FWF members that responded are Engelbert Strauss, Fond of Bags, Jack Wolfskin, Mammüt, Odlo, Salewa and Vaude. Contacted FWF member Outdoor & Sports did not respond. Furthermore, SOMO received a written reaction from FWF. Marks & Spencer and O'Neill Europe responded to the review request, claiming they are not sourcing at any one of the 12 factories.

Only one of the 12 factories responded to the review request: Factory 4.

Upon request, the Ethical Trading Initiative (ETI) shared information about their approach regarding payment of minimum wages in Myanmar.

Remarks in this report about the Myanmar policies of the Fair Labor Association (FLA) and Business Social Responsibility (BSR) are based on publicly available documents. Information about other initiatives that are mentioned here is also derived from publicly available sources, as well as from conversations with SOMO researchers.

It is inevitable that companies and initiatives that were more open have received more attention than those that were not so transparent. Actors that share information and are willing to discuss their policies, practises and plans – as well as the analysis and risks these are based upon – get more attention, and not always necessarily in a positive way. In a sense they bear the brunt. Those actors that hide and remain silent seem to remain under the radar. SOMO realises that there is a certain level of unfairness to this. This is maybe the downside of transparency or even of engaging with stakeholders. Nevertheless, critical analysis of the corporate impact on people and the planet is SOMO's core business. This is part and parcel of SOMO's role as watchdog.

1.3 Outline

Chapter 2 describes recent political, social and economic developments in Myanmar.

Chapter 3 provides information about relevant international treaties, norms and guidelines. The chapter also describes Myanmar labour law. In this chapter, information is used from Fair Wear Foundation's Myanmar Country Study. This country study is based on information gathered and analysed by SOMO.¹⁵

Chapter 4 presents the findings of the field and desk research undertaken by SOMO, ALR and LRDP. Where relevant, reactions of factories and buying companies have been included in the chapter.

Chapter 5 provides information about the policies and practices of buying companies with regard to Myanmar. In addition, the chapter gives information about the Myanmar labour movement and about industry, multi-stakeholder and supply chain initiatives active in Myanmar.

Chapter 6: the report ends with a set of conclusions and recommendations.

SOMO takes full responsibility for the wording used in this report. ALR and LRDP have co-authored the executive summary and chapters 4 and 6. Chapters 1, 2, 3 and 5 are SOMO's work.

15 Fair Wear Foundation, "Myanmar Country Study", 2016, <<http://www.fairwear.org/wp-content/uploads/2016/11/CS-Myanmar-2016.pdf>>

2 Myanmar in motion

This chapter gives a summary of recent political, social and economic developments as a backdrop to the emerging garment industry in Myanmar. The chapter describes socio-economic and political issues and challenges that the garment industry should be aware of and take into consideration.

The transition from a military regime to a parliamentary democracy is described. Figures and analysis are provided with regard to the composition of the Myanmar population, as well as details about the situation and the aspirations of the different ethnic minority groups, in particular also those self-identifying as Rohingya in Rakhine State.

The chapter describes how the inadequate peace process continues to pose a threat for the stability of the country and the livelihood of the population, with the army continuing to fight violent battles with a number of ethnic armed organisations.

Under the heading economy and trade, figures and analysis are presented on economic growth and poverty, EU and US trade policies and trade sanctions, post sanction investments, and the EU-Myanmar Investment Protection Agreement that is currently being negotiated and debated. The chapter also gives information about the creation of Special Economic Zones (SEZ) in Myanmar.

2.1 Bumpy road from military rule to parliamentary government

Myanmar is a fledgling and fragile democracy. The country has only recently started its transition from decades of military rule to a yet unconfirmed parliamentary government. It is clear that this is going to be a long and bumpy road, and the future is still very uncertain.

In 1962, General Ne Win took control of Burma, as the country was then named. The country was under direct or indirect control by the military for many years. Since 1962, there has been only one party in power – the national armed forces or Tatmadaw – and its presence in government is pervasive and indomitable.¹⁶ The military regime of Ne Win was responsible for the “Burmese Way to Socialism”, which involved nationalisation of the economy and a policy of autarky, or a radical economic isolation of the country from the world.

All protest was violently and effectively suppressed for decades. In 1988, for the first time, unrest over economic mismanagement and political oppression led to country-wide pro-democracy demonstrations. Again, the regime responded with violence and security forces injured and killed hundreds if not thousands of demonstrators. While Ne Win resigned as Chairman of the ruling Burma Socialist Programme Party (BSPP) in July 1988, he remained very influential behind the scenes until he was side-tracked in 1998. General Saw Maung, Ne Win’s successor, formed the State Law

16 Transnational Institute, “Myanmar: The Dilemma of Ceasefires but No Peace. A Commentary by Lahpai Seng Raw,” 19 October 2016, <<https://www.tni.org/en/article/myanmar-the-dilemma-of-ceasefires-but-no-peace>>

and Order Restoration Council (SLORC, in 1997 renamed the State Peace and Development Council, SPDC). In 1989, the SLORC declared martial law. Aung San Suu Kyi, leader of the Nation League for Democracy (NLD), was placed under house arrest. That same year, the name of the country was changed to Myanmar.

In May 1990, free elections took place for the first time in almost 30 years. The NLD won 80 per cent of the votes. However, the sitting regime refused to cede power. In 2008, the junta introduced a new constitution that is currently still in place despite it being widely criticised. The 2008- constitution stipulates that unelected military representatives hold 25 per cent of the seats in the Upper and Lower House and that the Minister of Home Affairs, the Minister of Defence and the Minister of Border Affairs are to be appointed by the military. In addition, the constitution bars anyone who has foreign citizens in their immediate family from the presidency. NLD leader Aung San Suu Kyi has two sons who are British nationals, as was her late husband, and is therefore ineligible to be president. Constitutional amendments require a 75 per cent majority, giving military representatives a crucial veto opportunity.

In November 2010, general elections were held. The newly formed, military-backed Union Solidarity and Development Party (USDP) claimed victory, while opposition groups spoke of widespread fraud and many Western countries condemned the vote as a sham. Nevertheless, in 2010, a process of reform was started: Aung San Suu Kyi was released from house arrest; more than 200 political prisoners were released; new labour laws that allow labour unions and strikes were passed and press censorship was relaxed.¹⁷ However, great concerns remained: armed clashes between government forces and ethnic groups continued in various states; child soldier recruitment by government and other armed forces was still reported.¹⁸ Overall, the military continued to exert great power over all domains of society.

On 8 November 2015, general elections were held – the first free elections since those in 1990. The NLD again came out as winner with 77 per cent of the votes against the USDP (which gained 10 per cent of the vote). On 30 March 2016, Htin Kyaw was sworn in as the first NLD President. Aung San Suu Kyi was appointed as Minister of Foreign Affairs and Head of the President's Office. A new post of State Counsellor – a role similar to that of Prime Minister – was approved by the Myanmar Parliament in April 2016,¹⁹ which places Aung San Suu Kyi at the heart of the Myanmar administration.

The new government is partly formed by people who had high positions in the old regime, including for instance Thein Swe, USDP central executive member and Minister of Transport under the military government. He is now heading the combined Ministry of Labour, Immigration and Population Affairs.²⁰

17 BBC, "Timeline: Reforms in Myanmar, 8 July 2015," <<http://www.bbc.com/news/world-asia-16546688>> (18 November 2015).

18 UN Office of the Special Representative of the Secretary General for Children and Armed Conflict, no date, <<https://childrenandarmedconflict.un.org/countries/myanmar/>> (16 June 2016).

19 The army representatives in parliament refused to vote, stood in protest and complained repeatedly that this new bill is unconstitutional. Source: BBC News, "Myanmar parliament approves Aung San Suu Kyi 'PM-like' role," 5 April 2016, <<http://www.bbc.com/news/world-asia-35967763>>

20 Myanmar Times, "Who's who: Myanmar's new cabinet," 23 March 2016, <<http://www.mmtimes.com/index.php/national-news/nay-pyi-taw/19609-who-s-who-myanmar-s-new-cabinet.html>>



A woman and children walk down the flooded streets of Yangon's Hlaing Tharyar industrial Zone, an area that houses many garment factory workers. Lauren DeCicca | MAKMENDE

Moreover, the current administration relies heavily on civil servants who served under the previous government – including, for example, the Director General and the Secretary of the Ministry of Labour. District and township level dispute handling bodies are also still run by civil servants who have been in post since the days of the military regime.

Many also criticise the form of the new national government, which remains a centralised, unitary system that does not do justice to the aspirations for influence and autonomy that many ethnic groups have been voicing for many years now (see below).

Another concern relates to the interconnectedness between political, military and economic actors. Many former members of the military have important economic interests.²¹

The NLD for the first time ever has executive and legislative positions and responsibilities. However, concerns have been raised about the obvious lack of experience of the NLD for these new roles. This is particularly true for NLD members of parliament. It also seems that the political leaders

21 Shibani Mahtani and Richard C. Paddock , “‘Cronies’ of Former Myanmar Regime Thrive Despite U.S. Blacklist. Targeted companies such as Myanmar’s Asia World keep a tight hold on the country’s economy,” Wall Street Journal, 12 August 2015, <<http://www.wsj.com/articles/cronies-of-former-myanmar-regime-thrive-despite-u-s-blacklist-1439433052>>

of the NLD are not particularly interested in consulting or seeking collaboration with civil society organisations, including the newly emerging labour unions.²²

2.2 Population, nationality, ethnicity, conflict

Myanmar has an estimated population of around 56.9 million people. This estimate takes into account the effects of excess mortality due to HIV/AIDS, which is a major problem in Myanmar. Nearly 69 per cent of the population is aged between 15-64 years old. Life expectancy at birth is 65.5 years for the total population (men and women combined).²³

Myanmar is a diverse nation with 135 distinct ethnic groups officially recognised by the national government. These are grouped into eight 'major national ethnic races': Kachin, Kayah, Kayin, Chin, Mon, Bamar, Rakhine and Shan.²⁴ Ethnic Burmans (or Bamar) form roughly two-thirds of the population. Shan (9 per cent), Karen (7 per cent), Rakhine (4 per cent) and Mon (2 per cent) are among the largest ethnic groups. There are also significant Chinese (3 per cent) and Indian (4 per cent) populations.²⁵ Over 100 languages and dialects are spoken across the country.

Ethnic conflict

This ethnic diversity has not been celebrated. On the contrary, ethnic minority groups have long been marginalised and discriminated against by the Burman (Bamar) majority. A large number of ethnic armed organisations have been fighting the central government – dominated by the ethnic Burman – for ethnic rights and autonomy. The fighting has taken place mostly in the borderlands, where ethnic minorities are mostly concentrated.²⁶ It is no exaggeration to say that the country has been in a state of constant civil war since its independence in 1948.

In October 2015, the USDP-led government signed the Nationwide Ceasefire Agreement (NCA) with a number of ethnic armed organisations (EAOs).²⁷ The NCA was the result of two-year long negotiations involving more than 15 ethnic non-state groups. The NCA was controversial from the start. Three key parties – the Arakan Army, the ethnic Chinese Myanmar National Democracy Alliance (MNDAA) and the Ta'ang National Liberation Army (TNLA) – were all engaged in open fighting with the Tatmadaw in the Kokang region in North East Shan state bordering China. They were excluded from the process. Another seven ethnic armed organisations declined to sign due to disagreements over who the process should include, as well as ongoing distrust of the Myanmar government and

22 SOMO conversations with labour NGOs in Myanmar in December 2016.

23 CIA World Factbook. <https://www.cia.gov/library/publications/the-world-factbook/geos/bm.html> (1 December 2016).

24 Embassy of the Union of Myanmar, Brussels, "Composition of the Different Ethnic Groups under the 8 Major National Ethnic Races in Myanmar," no date, <<http://www.embassyofmyanmar.be/ABOUT/ethnicgroups.htm>>, (11 May 2016).

25 Central Intelligence Agency (CIA), "The World Fact Book – Burma," last updated 5 May 2016, <<https://www.cia.gov/library/publications/the-world-factbook/geos/bm.html>>

26 Transnational Institute and Burma Centrum Netherlands, "Access Denied - Land Rights and Ethnic Conflict in Burma," Burma Policy Briefing Nr. 11, May 2013, <<https://www.tni.org/files/download/accesdenied-briefing11.pdf>>

27 Myanmar Times, "Ceasefire to be signed October 15 ", 5 October 2015 <<http://www.mmmtimes.com/index.php/national-news/16822-ceasefire-to-be-signed-october-15-2.html/>> and Euro-Burma Office, "EBO Political Monitors", October 2015 <<http://www.euro-burma.eu/activities/research-policy/ebo-political-monitors/>>

the military. The Kachin Independence Army (KIA), Shan State Army-North (SSA) and United Wa State Army – the armed wings of respectively the Kachin Independence Organisation (KIO), the Shan State Progress Party (SSPP) and the United Wa State Party (UWSP) – were among the parties that refused to sign the agreement.

In 2015, fighting intensified between the government army and armed ethnic groups, as well as between different ethnic groups. Kachin State, Shan State and Rakhine State are particularly affected by conflict. There are ongoing reports of killings, disappearances, rape and other crimes of sexual violence and forced labour.²⁸

In August 2016, the so-called “21st Century Panglong Conference” took place, a national peace conference offering a new window of opportunity to bring the parliamentary and ethnic peace processes together on the same track in the interest of all peoples in Myanmar. Remarkably, the new NLD-led government invited the non-signatory ethnic armed organisations (EAO) to the conference. The potential for peace, however, again turned out to be short-lived. The army operations and offensives escalated from mid-September 2016, including air strikes and artillery shelling on KIA positions. Concern have been expressed that humanitarian aid was blocked by the authorities in some areas.²⁹

There were also concerns about the NLD’s understanding of the complexities of the peace process. Also, the control of the new government over the army is questionable. Recently, the Tatmadaw has been carrying out operations in Karen state, an area supposedly covered by the NCA, and attacking the Restoration Council of Shan State (RCSS), an NCA signatory. Still, the new NLD government seems to hold on to the belief that, as long as the NCA is signed, the ethnic conflicts will be over.³⁰ Critical voices even see a sinister pattern pointing out that for over five years now, every peace announcement or initiative has seen a build-up in Tatmadaw operations. *“It is almost as if peace talks and ceasefires are being used as a stratagem of war”*.³¹

There are several ethnic groups that are not officially recognised by the Myanmar government. Among these unrecognised groups is a Muslim minority in Rakhine state that self-identifies as Rohingya. This community has suffered systematic persecution and severe human rights violations for decades. The 1982 Citizenship Law denies them the right to a nationality. According to the United Nations (UN), they are at the moment one of the most persecuted minorities in the world. In February 2015, the then President announced the revocation of all Temporary Registration Cards (TRCs) – also known as “white cards” – leaving them without any form of identity document.

28 Amnesty International website, ‘Countries – Myanmar 2015/2016’, no date, <<https://www.amnesty.org/en/countries/asia-and-the-pacific/myanmar/report-myanmar/>> (27 May 2016).

29 “Concerned by recent violence in Myanmar, UN aid chief calls for stronger humanitarian action,” UN News Centre, 14 October 2016, <http://www.un.org/apps/news/story.asp?NewsID=55306#.WGz8z1UrKUK>

30 TNI, “Myanmar: The Dilemma of Ceasefires but No Peace”, 19 October 2016, <<https://www.tni.org/en/article/myanmar-the-dilemma-of-ceasefires-but-no-peace>>

31 TNI, “Myanmar: The Dilemma of Ceasefires but No Peace”, 19 October 2016, <<https://www.tni.org/en/article/myanmar-the-dilemma-of-ceasefires-but-no-peace>>

The move effectively barred this minority group – and other former TRC holders – from being able to vote in the November 2015 elections.³²

A UN Human Rights Council report documents a wide range of rights violations, including arbitrary deprivation of nationality, severe restrictions on freedom of movement, threats to life and security, denial of rights to health and education, forced labour, sexual violence, arbitrary confiscation of property, and limitations to political rights. It also notes that, for those formally charged, fair trial guarantees are often not respected. The report notes that the pattern of violations against the Rohingya Muslims in Rakhine state may amount to crimes against humanity.³³ From October 2016 onwards, the Myanmar security forces have been waging another campaign of violence. Amnesty International has reported about soldiers and police randomly firing on and killing civilians, raping women and girls, torching whole villages and arbitrarily arresting men without revealing any information about their whereabouts or charges. These actions have been a form of collective punishment targeting Rohingya in northern Rakhine State. Again, according to Amnesty International, these actions may amount to crimes against humanity.³⁴

Internally displaced people and labour migrants

Decades of fighting between ethnic minority groups and the government have resulted in large numbers of internally displaced persons (IDPs), a massive exodus of refugees from Myanmar to Thailand and other nearby countries and mass human rights abuses. There are currently still over 600,000 internally displaced persons in Myanmar, many of them living in IDP camps, often in deplorable conditions.³⁵

As a result of conflict and poverty, people have left and are leaving their conflict-torn regions. Many young people end up in Yangon hoping to eke out a living in the emerging manufacturing industries.

2.3 Economy and trade

After years of dictatorship and isolation, Myanmar's economy is taking off with an average annual growth of 5 per cent in recent years.³⁶ The Asian Development Bank reported a Gross Domestic Product (GDP) growth rate of 7.2 per cent for 2015. At the same time, an inflation rate of 11 per cent

32 Amnesty International Annual Report Myanmar 2015/2016, "The Rohingya Minority," <https://www.amnesty.org/en/countries/asia-and-the-pacific/myanmar/report-myanmar/>

33 UN News Centre, "Myanmar must address 'serious' human rights violations against minorities – UN rights chief," 20 June 2016, <http://www.un.org/apps/news/story.asp?NewsID=54268#.V301vKJh4qh>

34 "Myanmar: Security forces target Rohingya during vicious Rakhine scorched-earth campaign," 19 December 2016, <https://www.amnesty.org/en/latest/news/2016/12/myanmar-security-forces-target-rohingya-viscious-scorched-earth-campaign/>

35 Internal Displacement Monitoring Centre website, "Myanmar IDP Figure Analysis," no date, <http://www.internal-displacement.org/south-and-south-east-asia/myanmar/figures-analysis>

36 UNDP, "About Myanmar," no date, <http://www.mm.undp.org/content/myanmar/en/home/countryinfo.html> (6 January 2016).

is noted.³⁷ The high inflation rate is caused by floods that have badly damaged agricultural crops and pushed up food prices.

In 2007, an estimated 32.7 per cent of the population lived below the poverty line.³⁸ In 2014, the poverty rate was approximately 26 per cent.³⁹ Approximately 70 per cent of the population lives in rural areas, where poverty is twice as high as in urban areas. The remote border areas, mainly populated by Myanmar's minority ethnic groups, and areas emerging from conflict are particularly poor.⁴⁰

Access to electricity is limited to about a quarter of the population.⁴¹ Firewood is widely used as a source of energy.

The country is highly vulnerable to climate change and extreme weather events, such as the devastating Cyclone Nargis of 2008. This heightens the risks and vulnerabilities for the rural poor, particularly women and children and other vulnerable groups – a challenge for which local communities are still woefully unprepared.

However, the country has abundant natural resources and a young labour force, which is attracting foreign investment. The energy sector, garment industry, information technology, and food and beverages are most in demand. Pledged foreign direct investment has grown from US\$ 4.1 billion (€3.1 billion) in Fiscal Year (FY) 2013 to US\$ 8.1 billion (€5.9 billion) in FY 2014.⁴²

Oil and natural gas dominate Myanmar's exports. Other exports include vegetables, wood, fish, clothing, rubber and fruits. Myanmar's main exports partners are China, India, Japan, South Korea, Germany, Indonesia and Hong Kong.⁴³ EU imports from Myanmar are dominated by clothing and agricultural products.

In 2015, the labour force was estimated at 36.18 million people.⁴⁴ 51 per cent of the labour force are men; 49 per cent are women.⁴⁵

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- 37 Asian Development Bank, "Outlook 2016 – Update", 2016, <<https://www.adb.org/sites/default/files/publication/197141/ado2016-update.pdf>>
- 38 CIA, "The World Factbook – Burma", last updated 19 December 2016, <<https://www.cia.gov/library/publications/the-world-factbook/geos/bm.html>>
- 39 UNDP, "About Myanmar," no date, <<http://www.mm.undp.org/content/myanmar/en/home/countryinfo.html>> (6 January 2016).
- 40 UNDP, "About Myanmar," no date, <<http://www.mm.undp.org/content/myanmar/en/home/countryinfo.html>> (6 January 2016).
- 41 UNDP, "About Myanmar," no date, <<http://www.mm.undp.org/content/myanmar/en/home/countryinfo.html>> (6 January 2016).
- 42 CIA, "The World Factbook – Burma", last updated 19 December 2016, <<https://www.cia.gov/library/publications/the-world-factbook/geos/bm.html>> Conversion rates (US Dollars to Euro's) used here from 1 July 2013 and 1 July 2014.
- 43 Trading Economics website, "Myanmar Exports 2010-2016," no date, <<http://www.tradingeconomics.com/myanmar/exports>> (11 May 2016).
- 44 CIA, "The World Factbook – Burma," last updated 19 December 2016, <<https://www.cia.gov/library/publications/the-world-factbook/geos/bm.html>> (7 January 2017).
- 45 UNCTADSTAT, General profile: Myanmar, Labour force by gender, <<http://unctadstat.unctad.org/CountryProfile/GeneralProfile/en-GB/104/index.html>> (10 January 2017).

2.3.1 Trade sanctions

In response to grave human rights violations in the 1980s and 1990s, trade and investment sanctions and other restrictions were imposed on Myanmar's military government by the US, the EU and the International Labour Organization (ILO), amongst others.

In 1999, the International Labour Conference imposed various restrictions on Myanmar. The country was excluded from receiving technical assistance from the ILO except for the purpose of combating forced labour. In addition, Myanmar was no longer invited to ILO meetings or activities on various labour matters. The restrictions were put in place after it was concluded that the use of forced labour was widespread in the country.

A number of recommendations were made in terms of changes in legislation and practice. When it was concluded in 2000 that Myanmar was not implementing these recommendations, further measures were enacted by the ILO. These included a request to ILO Member States to review their relations with Myanmar to ensure that their actions could not be used to perpetuate the use of forced labour. In June 2012, the ILO lifted its restrictions.⁴⁶

2.3.2 European Union trade policy

The EU imposed various sets of sanctions on the Myanmar military government. In 1991, in response to the refusal of the SPDC to accept the 1990 election results, the EU stopped non-humanitarian aid, implemented an arms embargo and withdrew military staff from embassies; following the 1996 death during detention of the honorary consul of several European nations, James Leander Nichols, a travel ban was applied to members of the military junta, their relatives and their supporters. In 1997, due to violations of the principles of the ILO convention on forced labour, the EU Generalised System of Preferences (GSP) and tariff preferences were withdrawn; further extension of restrictive measures to the trade of goods from which the junta leaders and its supporters benefited – including timber, gold, tin, iron, copper – were imposed after violent repression of the 2007 protests.⁴⁷

In 2012, the EU suspended sanctions following a series of reforms put in place by the quasi-civilian government installed in 2011. The EU reinstated Myanmar to GSP in 2013 after the ILO stated that the country had made progress with enforcing labour rights. The GSP programme allows exporters from developing countries to pay lower or no duties on their exports to the EU. As a Least Developed Country (LDC), Myanmar benefits from the most favourable regime available under the GSP scheme, the Everything But Arms (EBA) scheme. The EBA scheme gives the 49 LDCs duty free

46 ILO website, "ILO lifts restrictions on Myanmar," 13 June 2012, <http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_183287/lang-en/index.htm>

47 European Policy Centre, "The effectiveness of EU sanctions - An analysis of Iran, Belarus, Syria and Myanmar (Burma)," November 2013, <http://www.epc.eu/documents/uploads/pub_3928_epc_issue_paper_76_-_the_effectiveness_of_eu_sanctions.pdf>

access to the EU for export of all products, except arms and ammunition.⁴⁸ In April 2013, the EU agreed to lift all sanctions on Myanmar, except for an arms embargo.

The Ethical Trading Initiative (ETI), an alliance of trade unions, NGOs and companies, is critical of the EBA scheme. Countries can qualify without having to prove that they respect human rights or ILO labour conventions, says ETI. *“Companies exporting under the EBA are not required to demonstrate good practice or that they don’t infringe on the rights of workers or local communities. This needs to change.”*⁴⁹ ETI wants the EU to put new mechanisms in place in the EBA arrangement to enforce labour standards and human rights. In countries with a weak government, like Myanmar, exporting companies should be required to conduct full audits and to develop proper due diligence policies. In this way they can demonstrate that they protect workers and other vulnerable groups.

Human Rights Watch (HRW) responded that the EU decision to reinstate GSP preferences for Myanmar came too early. The humanitarian reforms of Myanmar were far from sufficient.⁵⁰ In contrast, the US waited until the arrival in 2016 of the democratically elected government, before it restored the admission of Myanmar to its own GPS programme for LDCs. Several surveys concluded that the US has, in general, been a more adamant enforcer of human rights provisions through its trade policy than the EU.⁵¹ The US has shown stronger determination to withdraw GSP benefits from countries when they fail to meet labour or humanitarian standards. Washington has done this 13 times, while the EU has only done so three times.

The EU presents its trade policy as a tool to promote human rights and good governance globally. Alongside its GSP programme, it uses bilateral agreements like the proposed Investment Protection Agreement (IPA) with Myanmar (see Section 2.3.3), for this goal. However, in a paper published by the Leuven Centre for Global Governance Studies it is argued that the EU tends to subordinate its normative objectives including respect for human rights to its direct political or economic interests.⁵² The paper mentions that Chinese investors seem to have taken the lead in Myanmar with EU-investors missing out on the opportunity if they do not act fast. This is the main reason, suggests the paper, why the EU started negotiations with Myanmar about an IPA.⁵³

48 European Commission, “Everything But Arms (EBA) – Who benefits?”, 10 October 2014, <http://trade.ec.europa.eu/doclib/docs/2014/october/tradoc_152839.pdf>

49 ETI, “Cambodia, Myanmar and the EU’s ‘Everything But Arms’ trade deal,” 1 June 2016, <<http://www.ethicaltrade.org/blog/cambodia-myanmar-and-eus-everything-arms-trade-deal>>

50 Financial Times, “Critics hit out at EU move on Myanmar,” 23 April 2013, <<https://www.ft.com/content/4e07bd72-ab86-11e2-ac71-00144feabdc0>>

51 European Parliament DG for external policies, “A comparative study of EU and US approaches to human rights in external relations,” November 2014, <http://www.europarl.europa.eu/RegData/etudes/STUD/2014/534981/EXPO_STU%282014%2953481_EN.pdf>, p46.

52 KU Leuven, Leuven Centre for Global Governance Studies, “The EU GSP: A Preference for Human Rights and Good Governance? The Case of Myanmar,” March 2015, <https://ghum.kuleuven.be/ggs/publications/working_papers/new_series/wp151-160/wp155-beke-hachez.pdf>, p 24.

53 KU Leuven, Leuven Centre for Global Governance Studies, “The EU GSP: A Preference for Human Rights and Good Governance? The Case of Myanmar,” March 2015, <https://ghum.kuleuven.be/ggs/publications/working_papers/new_series/wp151-160/wp155-beke-hachez.pdf>, p 23.

2.3.3 Investment Protection Agreement

An Investment Protection Agreement (IPA) between the EU and Myanmar is in the making. So far, three rounds of negotiations have taken place – in February, May and September 2015, in the Myanmar capital, Yangon. This IPA has supporters and outspoken critics. EU Commissioner for Trade Cecilia Malmström is a strong supporter of an EU-Myanmar IPA.⁵⁴ Hundreds of Myanmar and international civil society organisations (CSOs), however, have joined forces in expressing strong concerns about the intended IPA in a series of statements and open letters issued since 2014.

From the point of view of the European Commission (EC), this IPA will make it easier for EU companies to compete in Myanmar. China, India, Laos, the Philippines, Thailand and Vietnam have already signed agreements about trade and investments. Currently, EU countries are at a disadvantage, according to the EC. An IPA between the EU and Myanmar should also prevent individual EU member states from signing bilateral investment treaties with Myanmar which may lead to unwanted competition in Myanmar among European countries.⁵⁵ An IPA should help Myanmar to diversify its economy away from natural resources, agriculture and the energy sector. In this context, EU investments in labour intensive areas including clothing are specifically mentioned.⁵⁶

On 1 June 2016, the new Myanmar government and the EC in a Joint Communication asked the European Council and the European Parliament to support the initiative for an IPA.⁵⁷ The European Council responded positively, expressing its supports for the expansion of bilateral trade between the EU and Myanmar. *“The conclusion of an Investment Protection Agreement will provide further economic opportunities and contribute to sustainable growth while underscoring commitment to responsible investment,”* said the Council.⁵⁸

The EC commissioned a Sustainability Impact Assessment (SIA) in support of the IPA between the EU and Myanmar. The SIA final report mentioned that some stakeholders identified negative impacts or human rights risks arising from an EU-Myanmar IPA, specific to the textile sector and other sectors.⁵⁹ At the same time, the report refrained from implying a causal link between an EU-Myanmar IPA

54 Letter by Cecilia Malmström, Member of the European Commission, 4 April 2016, <<http://www.eu-myanmarasia.com/data/info/201604172002043593pic.pdf>>

55 European Commission, “Executive Summary of the Impact Assessment - Report on the EU-Myanmar/Burma Investment Relations”, 19 February 2014, <http://ec.europa.eu/smart-regulation/impact/ia_carried_out/docs/ia_2014/swd_2014_0040_en.pdf>

56 European Commission, “Executive Summary of the Impact Assessment - Report on the EU-Myanmar/Burma Investment Relations”, 19 February 2014, <http://ec.europa.eu/smart-regulation/impact/ia_carried_out/docs/ia_2014/swd_2014_0040_en.pdf>

57 European Commission, “Taking the EU-Myanmar partnership to the next level: an EU strategy in support of Myanmar’s reforms,” 1 June 2016, <http://europa.eu/rapid/press-release_IP-16-2008_en.htm>

58 Council of the European Union, “Myanmar/Burma – Council conclusions on EU strategy with Myanmar/Burma,” 20 June 2016, <<http://data.consilium.europa.eu/doc/document/ST-10482-2016-INIT/en/pdf>>

59 Development Solutions, “Sustainability Impact Assessment (SIA) in support of an investment protection agreement between the European Union and the Republic of the Union of Myanmar. Final Report,” June 2016, <<http://www.eu-myanmarasia.com/data/info/201612111858154952pic1.pdf>>, p. 135.



A young girl walks into her home, where many garment factory workers live. The area is full of trash and is flooded with dirty water.
Lauren DeCicca | MAKMENDE

and human rights risks, unless expressly stated.⁶⁰ The SIA final report expected the textile sector “to derive net positive gains from an EU-Myanmar IPA in all sustainability issue-areas.”⁶¹

The European Parliament (EP), however, has been critical of an IPA. In a resolution on Myanmar in particular on the situation of the Rohingya adopted on 7 July 2016, the EP called for “caution” on the conclusion of the planned agreement. The absence of legislation on corporate social and environmental responsibilities and liabilities, labour rights, land ownership and anti-corruption measures, the EP argued, could endanger the future socially balanced development of Myanmar.⁶²

Civil society organisations (CSO) have been even more critical of an IPA between the EU and Myanmar. Since 2014, Myanmar and international CSOs, including the Amsterdam-based Trans-

60 Development Solutions, “Sustainability Impact Assessment (SIA) in support of an investment protection agreement between the European Union and the Republic of the Union of Myanmar. Final Report,” June 2016, <<http://www.eu-myanmarsia.com/data/info/201612111858154952pic1.pdf>>, p. 135.

61 Development Solutions, “Sustainability Impact Assessment (SIA) in support of an investment protection agreement between the European Union and the Republic of the Union of Myanmar. Final Report”, June 2016, <<http://www.eu-myanmarsia.com/data/info/201612111858154952pic1.pdf>>, p. 208.

62 European Parliament, “European Parliament resolution of 7 July 2016 on Myanmar, in particular the situation of the Rohingya”, 7 July 2016, <<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2016-0316+0+DOC+XML+V0//EN>>

national Institute (TNI) have been expressing strong concerns that signing investment treaties will freeze further democratic development.⁶³

In December 2015, the Myanmar Centre for Responsible Business (MCRB) proposed that EU-businesses will be obliged to disclose their activities in Myanmar. MCRB asked the EU to draw up specific reporting requirements for investments in the country, in line with the requirement formulated by the US government for US enterprises operating in Myanmar.⁶⁴ However, the EC rejected the imposition of binding regulations on European companies that invest in Myanmar. The EC said that explicit mention of human rights in the IPA "may not be necessary".⁶⁵

In January 2016 and again in April 2016, more than 500 Myanmar CSOs addressed the EC with complaints about the Sustainability Impact Assessment.⁶⁶ Concerns were voiced about the SIA consultation process and the invalid questionnaire used by the commissioned SIA consultant. The questionnaire failed to address the most important issues, according to the signatories of the letter. These included the potential impacts of the IPA on the peace process, and the investor protection and Investor-State Dispute Settlement (ISDS), and the expected impacts on the space of the Myanmar government to govern in the interests of the environment and the public at large.⁶⁷

Ahead of the fourth round of negotiations of the IPA, the discussion is continuing. In an open letter published in November 2016, CSOs from Myanmar and Europe called for the suspension of the whole process. The key point raised is that Myanmar is in a state of transition, facing formidable challenges to build regulatory frameworks to protect the economic, social and cultural right of its people as well as its natural resources. It is argued that *"inclusion of an investor-state dispute settlement mechanism in the EU-Myanmar IPA will seriously hamper any initiatives for equitable and sustainable development by laying Myanmar wide open to multimillion dollar law suits by foreign investors should the governments introduce new and tighter regulation to protect public health,*

63 Transnational Institute (TNI), "Over 70 Myanmar CSOs express their concerns over the EU-Myanmar Investment agreement", 26 March 2014, <<https://www.tni.org/en/declaration/over-70-myanmar-csos-express-their-concerns-over-eu-myanmar-investment-agreement>> and Transnational Institute (TNI), "CSO Statement on Myanmar investment treaties," 25 June 2014, <<https://www.tni.org/en/declaration/cso-statement-myanmar-investment-treaties>>

64 Myanmar Centre for Responsible Business (MCRB), "Challenges of the proposed EU-Myanmar Investment Protection Agreement," 17 December 2015, <<http://www.eu-myanmarsia.com/data/info/201601111829593619pic.pdf>>

65 European Commission, "Civil Society Dialogue. Meeting on the Trade Sustainability Impact Assessment of the EU – Myanmar Investment Protection Agreement (IPA)", 4 May 2016, <<http://www.eu-myanmarsia.com/data/info/201607050036221319pic.pdf>>

66 Transnational Institute (TNI), "More than 500 civil society organisations from Myanmar express their concerns about the Investment Protection Agreement with the EU. Letter from civil society organisations in Myanmar to EC Commissioner Malmström", 14 January 2016, <<https://www.tni.org/en/article/more-than-500-civil-society-organisations-from-myanmar-express-their-concerns-about-the>>; and "Concerns of Myanmar Civil Society on 'Sustainability Impact Assessment (SIA) in support of an investment protection agreement between EU and Myanmar. A letter of concern", 5 April 2016, <<https://www.tni.org/en/article/concerns-of-myanmar-civil-society-on-sustainability-impact-assessment-sia-in-support-of-an-0>>

67 TNI, "More than 500 civil society organisations from Myanmar express their concerns about the Investment Protection Agreement with the EU. Letter from civil society organisations in Myanmar to EC Commissioner Malmström", 14 January 2016, <<https://www.tni.org/en/article/more-than-500-civil-society-organisations-from-myanmar-express-their-concerns-about-the>>

access to water, access to public services, degradation of the environment and regulation supporting a sustainable peace in Myanmar".⁶⁸

2.3.4 United States trade policy

The US first imposed sanctions in 1988, in response to the violent repression of protests. All foreign assistance and arms sales to Myanmar were suspended. In 1989, the US suspended Myanmar's GSP eligibility because GSP criteria related to workers' rights had not been met.⁶⁹ Additional sanctions were imposed after the military government ignored the results of the 1990 elections. In 1997, sanctions were tightened as new investments in Myanmar were banned and travel to the US by Burmese officials was limited. Following a crackdown, which included the detention of Aung San Suu Kyi in 2003, the US Congress passed the Burmese Freedom and Democracy Act, which authorised the prohibition of imports of any article that is produced, manufactured or grown in Myanmar.⁷⁰

In 2011, the US began loosening its sanctions, in response to the instalment of the quasi-civilian government. US investment, imports of Burmese products into the US (except for jadeite and rubies), and the use of the Myanmar financial sector were now allowed. Remaining restrictions included a restriction for US citizens on dealing with people or entities owned 50 per cent or more by persons on the Treasury Department's Specially Designated Nationals (SDN) list or any investments with the military.

In addition, the Burma Responsible Investment Requirements, introduced in 2013, require US businesses investing US\$ 500,000 (€465,920) or more in Myanmar to submit annual reports to the US State Department on their operations, procedures and impacts. The Department of State aims to use the information collected as a basis to conduct informed consultations with US businesses to encourage and assist them in developing robust policies and procedures to address a range of impacts resulting from their investments and operations in Myanmar. In addition, *"the public reports should empower civil society to take an active role in monitoring investment in Myanmar and to work with companies to promote investments that will enhance broad-based development and reinforce political and economic reform"*.⁷¹

68 Transnational Institute (TNI), "Suspend negotiations for an investment protection agreement between the EU and Myanmar. Open letter", 16 November 2016, <<https://www.tni.org/en/article/suspend-negotiations-for-an-investment-protection-agreement-between-the-eu-and-myanmar>>

69 Congressional Research Service, "Generalised System of Preferences: Background and Renewal," August 2015, <<https://fas.org/sgp/crs/misc/RL33663.pdf>>

70 USA, Engage website, "US Foreign Policy Sanctions: Burma," no date, <<http://usaengage.org/Issues/Sanctions-Programs/Myanmar/>> (13 July 2016).

71 US Department of State, "Burma Responsible Investment Reporting Requirements," May 2013, <<http://www.state.gov/r/pa/prs/ps/2013/05/209869.htm>>

In September 2016, the US government announced that all remaining sanctions would be lifted and that, as of 13 November 2016, Myanmar would be reinstated in the GSP programme.⁷² The US GSP programme excludes certain articles from receiving GSP treatment, including most textile and apparel articles.⁷³

Sanctions were lifted despite US officials having said that lifting the remaining sanctions would require Myanmar to demonstrate more progress in reducing the military's influence on the government and that this would require constitutional change.⁷⁴

Human Rights Watch criticised the decision of the US government to fully lift all remaining sanctions. HRW urged the US government to keep in place sanctions to deter the Burmese military from derailing democratic reforms. Most of the remaining sanctions were not targeted at the country as a whole but were imposed for those who represent an obstruction to the country's democratic movements.⁷⁵

2.3.5 Post-sanction foreign investment

Since the suspension of most of the sanctions, foreign investment has increased sharply – for example, in agribusiness, mining, oil and gas, and dam and logging projects. The export-oriented garment industry is also benefiting from these investments and has grown exponentially over the past few years. The Myanmar government is attracting foreign investors by offering zero-tax policies and building new economic zones.

2.4 Special Economic Zones

To facilitate and attract foreign investments, three Special Economic Zones (SEZ) have been set up in Myanmar, as part of port and coastal development projects:

- Dawei SEZ in the South East of the country near the Thai border
- Thilawa SEZ, 25 kilometres south of Yangon
- Kyaukphyu SEZ in Rakhine state

These SEZs are in a way the symbol of the rapid economic development and opening up of the country to foreign capital and investors. In terms of legislation, governance, community involvement

72 Office of the United States Trade Representative, "United States Reinstates Trade Preference Benefits for Burma Following Review of Eligibility Criteria", September 2016 <<https://ustr.gov/about-us/policy-offices/press-office/press-releases/2016/september/united-states-reinstates-trade>>

73 Office of the United States Trade Representative, "US Generalized System of Preferences Guidebook," September 2016, <<https://ustr.gov/sites/default/files/GSP-Guidebook-September-16-2016.pdf>>

74 The Wall Street Journal, "U.S. to End Economic Sanctions Against Myanmar," 14 September 2016, <<http://www.wsj.com/articles/u-s-to-end-economic-sanctions-against-myanmar-1473874082>>

75 Human Rights Watch, "Burma: US Should Retain Key Sanctions", 6 September 2016, <<https://www.hrw.org/news/2016/09/06/burma-us-should-retain-key-sanctions>>



A garment factory in Myanmar (this factory was not included in the research). Martje Theuvs | SOMO

and dispute settlement and the presence of labour unions and CSOs, the SEZs have special rules. Human rights and labour rights are not necessarily well served in these zones.

Garment production is taking place – or will soon take place – in both Thilawa SEZ and Kyaukphyu SEZ. On the list of approved investors for the Thilawa SEZ, there are six garment factories.⁷⁶ One of the 12 factories investigated for this report is located in Thilawa SEZ. Once finished, the Thilawa SEZ will cover an area of 2,400 hectares and will include three zones along the Thilawa port. The Thilawa SEZ is being constructed in two phases. The first phase has been completed and the first companies started their operations in Thilawa SEZ in 2015.

The relocation and resettlement of the first-phase area was conducted by the Yangon Regional Government in coordination with the Thilawa SEZ Management Committee. However, the Yangon Regional Government failed to properly notify affected communities or provide adequate compensation for relocation. Displaced residents have complained about unfair relocation agreements and a cramped, flood-prone resettlement site with substandard housing and basic infrastructure. Relocated residents say they have lost access to farmland and other livelihood opportunities, as well as losing

76 Thilawa SEZ Management Committee website, "List of Approved Investors," no date, <<http://www.myanmarthilawa.gov.mm/list-investors>> (1 June 2016).

access to clean water and educational opportunities for their children.⁷⁷ In June 2014, displaced villagers from the Thilawa SEZ did something exceptional in Myanmar: they complained to the Japanese International Cooperation Agency in Tokyo, Japan, about the inadequate compensation they had received and the place they were relocated to.⁷⁸

At the time of writing, construction of Zone B, which will cover 700 hectares, had yet to start. Households facing resettlement as part of Zone B's development have raised concerns about the resettlement plans, and are demanding more and better engagement with the local community.⁷⁹

Kyaukphyu in Rakhine State is to house different types of manufacturing plants, including textile and garment factories.⁸⁰ CITIC Group from China, together with four other Chinese companies and one company from Thailand, will build an industrial park and deep-sea port in the Kyaukphyu Special Economic Zone. In January 2016, local residents lodged a complaint with the Kyaukphyu Special Economic Zone Committee. They are concerned about the 70-year lease on the land (which can be extended) that was granted to the consortium led by CITIC Group. A month earlier, a coalition of 107 Rakhine NGOs demanded that the project should be suspended. They raised objections regarding a lack of transparency in the tender selection process and demanded more consideration for the welfare of local people, particularly for farmers, who often lose out as a result of such large-scale, land-hungry developments.⁸¹

77 Business & Human Rights Resource Centre, "Myanmar: Thilawa Special Economic Zone – summary of impacts, company responses and updates," no date, <<http://business-humanrights.org/en/myanmar-thilawa-special-economic-zone-per-centE2-per-cent80-per-cent93-summary-of-impacts-company-responses-and-updates-0>> (1 June 2016).

78 Earth Rights, "Resettled Farmers from Thilawa SEZ Travel to Tokyo to Demand Right to Land Compensation," 11 June 2014, <<http://www.earthrights.org/campaigns/resettled-farmers-thilawa-sez-travel-tokyo-demand-right-land-compensation>>

79 Myanmar Times, "Protests dog Thilawa SEZ as second phase nears start," 3 October 2016, <<http://www.mmtimes.com/index.php/business/22850-protests-dog-thilawa-sez-as-second-phase-nears-start.html>>

80 China Daily Asia, "Hopes high for potential of China-led investment", 1 April 2016, <http://www.chinadailyasia.com/asiaweekly/2016-04/01/content_15409599.html>

81 The Irrawaddy, "NGOs Seek Kyaukphyu SEZ Delay as President Pushes Implementation," 22 December 2015, <<http://www.irrawaddy.com/business/ngos-seek-kyaukphyu-sez-delay-as-president-pushes-implementation.html>>

3 Normative framework

3.1 International standards

3.1.1 ILO Conventions

Labour-related human rights have been laid down in the Universal Declaration of Human Rights (UDHR) and have been further elaborated on by the International Labour Organization (ILO) in numerous conventions and recommendations.

The ILO sets international labour standards by adopting conventions that the ratifying countries have to implement in their legislation. After implementation, the conventions are binding for the implementing country. Eight of the ILO's conventions have been qualified as 'fundamental'. These conventions are binding upon every member country of the ILO, regardless of ratification. The conventions cover the issues of child labour, forced labour, discrimination and freedom of association and collective bargaining.

The Myanmar government has ratified three of these fundamental conventions:⁸² the Forced Labour Convention (C29); the Freedom of Association and Protection of the Right to Organise Convention (C87); and the Worst Forms of Child Labour Convention (C182).

The Myanmar government has not (yet) ratified: the Minimum Age Convention (C138); the Right to Organise and Collective Bargaining Convention (C98); the Equal Remuneration Convention (C100); the Discrimination Convention (C111); and the Abolition of Forced Labour Convention (C105).

3.1.2 United Nations Guiding Principles on Business and Human Rights

After ratification, ILO conventions are binding for states but do not directly apply to companies. However, it has been acknowledged at the UN level that companies have the responsibility of respecting human rights. This notion was formalised with the adoption of the 'Protect, Respect and Remedy' framework in 2008,⁸³ followed by the adoption in 2011 of the United Nations Guiding Principles on Business and Human Rights (UNGPs),⁸⁴ which outline how states and businesses should implement the UN framework.

82 ILO Normlex, "Ratifications for Myanmar", no date, <http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:103159> (5 January 2016).

83 Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie. "Protect, Respect and Remedy: a Framework for Business and Human Rights", 2008, <<http://www.ohchr.org/EN/Issues/TransnationalCorporations/Pages/Reports.aspx>>

84 United Nations Human Rights Office of the High Commissioner, "Guiding Principles on Business and Human Rights. Implementing the United Nations 'Protect, Respect and Remedy'", 2011, <http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf>

The ‘Protect, Respect and Remedy’ framework rests on three pillars. The first is the state’s duty to protect against human rights abuses by third parties, including business enterprises, through appropriate policies, regulation and adjudication. The second is the corporate responsibility to respect human rights, which means that business enterprises should act with due diligence to avoid infringing on the rights of others and to address any adverse impacts. The third is the need for greater access by victims to effective remedy, both judicial and non-judicial.

An important principle under the corporate responsibility to respect human rights is for companies to act with due diligence. Due diligence can be understood as a business process through which enterprises actively identify, prevent, mitigate and account for how they address and manage their potential and actual adverse human rights impacts. The process should include assessing actual and potential impacts throughout their business operations, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed. (Potentially) affected rights holders, or their legitimate representatives, should be engaged in a meaningful manner.

Due diligence implies more than just an assessment of risks for the company; the purpose is to understand and address risks and abuses that the company’s activities pose to rights holders, such as factory workers, their dependents and communities, including in its supply chain and through its other business relationships.⁸⁵ Moreover, due diligence requires companies to see to it that future violations of human rights are prevented and that adverse impacts are mitigated and remediated.

Remediation and redress for victims of human rights abuses is an important principle under the corporate responsibility to respect human rights. In the UN Protect, Respect, Remedy Framework, ‘impact’ is a key concept for attributing responsibility. This means that the severity of the breach is guiding not the possible leverage a company may have over the perpetrator. The scope of due diligence to meet the corporate responsibility to respect human rights depends on the potential and actual human rights impacts resulting from a company’s business activities and the relationships connected to those activities.

Due diligence requires that business enterprises have policies and processes in place through which they can both know and show that they respect human rights in practice. Showing involves communication, providing transparency and accountability to individuals or groups that may be impacted, as well as to other relevant stakeholders.

Responsibility scenarios

The type of action that is required from a company to address a particular adverse impact depends on the company’s link and relation to the impact. The link between the company in question and the adverse impact can be roughly classified into one of three categories:⁸⁶

85 SOMO, Cividep India, CEDHA, “How to use the UN Guiding Principles on Business and Human Rights in company research and advocacy. A guide for civil society organisations”, November 2012, <<https://www.somo.nl/wp-content/uploads/2012/11/English-version.pdf>>

86 Ibid.

- *Causing*: a company is causing an adverse impact when it is the main actor in the violation (directly carrying out the abuse) through its own actions or omissions. The company should stop, prevent, mitigate and remedy the adverse impact it has caused or could potentially cause.
- *Contributing to*: a company is contributing to an adverse impact if its actions or omissions enable, encourage, exacerbate or facilitate a third party to create a negative impact. A company may be contributing to an adverse impact together with a business relationship (for example, in a joint venture) or via business relationships in its value chain. In this scenario, a company is expected to stop, prevent and remedy the adverse impact it has contributed to or risks contributing to in future. Additionally, the company should use its leverage to change the practices of business relationships so they mitigate or prevent their adverse impact.
- *Directly linked to*: if a company is not causing or contributing to an adverse impact, the company can still be directly linked to a negative human rights impact committed by a business relationship through its operations, products or services. In this case, the company is expected to use its leverage to change the practices of business relationships so they stop, mitigate and/or prevent their adverse impact.

3.1.3 Organisation for Economic Co-operation and Development Guidelines for Multinational Enterprises

The Organisation for Economic Co-operation and Development (OECD) has developed Guidelines for Multinational Enterprises that consist of a set of recommendations for multinational enterprises operating in or from adhering countries. The OECD Guidelines offer one of the few mechanisms available for holding corporations to account for their international operations. They provide guidance for responsible business conduct in areas such as: labour rights, human rights, environment, information disclosure, combatting bribery, consumer interests, competition, taxation and intellectual property rights. While the OECD Guidelines are not legally binding on companies, OECD signatory governments are required to ensure that they are implemented and observed by multinational enterprises domiciled in their territories.⁸⁷

Relevant OECD member countries in the context of this research include Sweden, the UK, the Netherlands, and Germany, Japan and South Korea.

Governments adhering to the Guidelines are required to set up a National Contact Point (NCP) whose main role is to further the effectiveness of the Guidelines by undertaking promotional activities, handling enquiries, and contributing to the resolution of issues that may arise from the alleged non-observance of the guidelines in specific instances. NCPs assist enterprises and their stakeholders to take appropriate measures to further the observance of the Guidelines.

87 OECD Watch, The OECD Guidelines for Multinational Enterprises: A tool for responsible business conduct, <http://oecdwatch.org/publications-en/Publication_3816/at_multi_download/files?name=OECD%20Watch%20brochure%20%28English%29>



A garment factory in Myanmar (this factory was not included in the research). Martje Theuvs | SOMO

They provide a mediation and conciliation platform for resolving practical issues that may arise with the implementation of the Guidelines.⁸⁸

Due diligence guidance for responsible supply chains in the garment and footwear sector

In February 2017, the OECD will release the Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector. With this Guidance the OECD aims to help enterprises to implement the due diligence recommendations contained in the OECD along the garment and footwear supply chain in order to avoid and address the potential negative impacts of their activities and supply chains. It seeks to support the aims of the OECD Guidelines to ensure that the operations of enterprises in the garment and footwear sector are in harmony with government policies to strengthen the basis of mutual confidence between enterprises and the societies in which they operate. This Guidance will also support enterprises to implement the due diligence recommendations contained in the UN Guiding Principles on Business and Human Rights. The Guidance is aligned with the International Labour Organization's (ILO) Declaration on Fundamental Principles and Rights at Work, relevant ILO Conventions and Recommendations and the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy. Together with its modules on

88 OECD website, "National Contact Points for the OECD Guidelines for Multinational Enterprises", no date <<http://www.oecd.org/investment/mne/ncps.htm>> (23 January 2016).

due diligence for specific risk areas, this Guidance provides enterprises with a complete package for enterprises to operate and source responsibly in the garment and footwear sector.⁸⁹

3.1.4 International normative framework regarding child labour

The most concrete international agreements on combating child labour are the conventions of the ILO concerning the minimum age for the admission to employment (Convention 138) and on the prohibition and immediate action for the elimination of the worst forms of child labour (Convention 182). Both conventions are fundamental conventions, and are therefore binding upon every member country of the ILO, regardless of ratification.

For the purposes of Convention 182,⁹⁰ the term 'child' applies to all people under the age of 18. Article 3 defines the term 'worst forms of child labour' as follows: (a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict; (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances; (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties; (d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

ILO Convention 138⁹¹ stipulates that the minimum age for admission to employment or work shall not be less than 15 years. The Convention further stipulates that a country whose economy and educational facilities are insufficiently developed may initially specify a minimum age of 14 years, but only after consultation with the organisations of employers and workers concerned.

3.1.5 International normative framework regarding forced labour

ILO Conventions 29 and 105 prohibit all forms of forced or compulsory labour. The ILO defines forced labour as *"all work or service which is extracted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily"*. The 'forced labour convention' (C29) requires that the illegal extraction of forced or compulsory labour should be punishable as a penal offence, and that ratifying states ensure the relevant penalties imposed by law are adequate and strictly enforced. The 'abolition of forced labour convention' (C105) is aimed at the abolishment of certain forms of forced labour still allowed under the forced labour convention.

89 OECD, "Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector", upcoming. Text taken from not yet published final version that is in SOMO's possession.

90 ILO, "Worst Forms of Child Labour Convention", 1999 (No. 182), <http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312327:NO>

91 ILO, "Minimum Age Convention", 1973 (No. 138), <http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312283:NO>

Additionally, forced or compulsory labour is considered as one of the worst forms of child labour in the Worst Forms of Child Labour Convention.

According to the ILO, the imposition of overtime does not constitute forced labour, as long as it is within the limits permitted by national legislation or collective agreements. However, in cases where workers are obliged to work overtime hours in order to earn the minimum wage or keep their jobs, or both, imposing overtime hours may qualify as forced labour. In the words of the ILO: *"in cases in which work or service is imposed by exploiting the worker's vulnerability, under the menace of a penalty, dismissal or payment of wages below the minimum level, such exploitation ceases to be merely a matter of poor conditions of employment; it becomes one of imposing work under the menace of a penalty which calls for protection of the workers."*⁹²

3.1.6 International normative framework regarding wages

The United Nations Universal Declaration of Human Rights, Article 23(3) states:

*"Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection."*⁹³

ILO Convention 95 on the protection of wages, in particular Articles 8 and 9, stipulate that deductions from wages shall be permitted only under conditions and to the extent prescribed by national laws or regulations or fixed by collective agreement or arbitration award. Workers shall be informed, in the manner deemed most appropriate by the competent authority, of the conditions under which and the extent to which such deductions may be made. Any deduction from wages with a view to ensuring a direct or indirect payment for the purpose of obtaining or retaining employment, made by a worker to an employer or his representative or to any intermediary (such as a labour contractor or recruiter), shall be prohibited.

This SOMO research shows that these rights and principles are not being respected in the Myanmar garment industry at the moment, based on the findings in the 12 researched factories.

3.2 Myanmar labour laws

The current legal framework in Myanmar is the product of its colonial past, post-independence military rule and reforms undertaken since 2011.

Below some of the most relevant Myanmar labour laws are discussed in brief. This is not an exhaustive overview, however. The information below is also presented in the Fair Wear Foundation

92 ILO website, "Q&As on Business and Forced Labour," no date, <http://www.ilo.org/empent/areas/business-helpdesk/faqs/WCMS_DOC_ENT_HLP_FL_FAQ_EN/lang--en/index.htm#Q9> (30 December 2015).

93 United Nations, "Universal Declaration of Human Rights," <<http://www.un.org/en/documents/udhr/index.shtml#a23>>

Myanmar Country Study, to which SOMO contributed.⁹⁴ In addition, the ITUC report “Foreign direct Investment in Myanmar – What impact on human rights?” provides further information.⁹⁵

3.2.1 Child labour

The recently (2016) amended Factories Act sets the minimum age for employment at 14 years. Before amendment, the minimum age was set at 13 years. Children aged 14 and 15 years old are now permitted to work for a maximum of four hours a day. They are not permitted to work between 6pm and 6am.⁹⁶

The Child Law (1993) currently classifies those up to the age of 16 as children and prohibits the employment of children in work that is “hazardous to the life of the child or which may cause disease to the child or which is harmful to the child’s moral character”.⁹⁷ However, there is no list that defines the types of hazardous jobs that children should not undertake.⁹⁸ This law is up for amendment.

The Factories Act further stipulates that children under 18 years may only work if they have a ‘certificate of fitness’. This certificate of fitness can be granted after an examination by a doctor has demonstrated that “*the young person has completed his thirteenth year [or fifteenth year in case of work in a factory as an adult], that he has attained the prescribed physical standards and that he is fit for such work*”. Non-adult workers who have been granted a certificate of fitness to work in a factory should carry a token referring to the certificate while working in a factory.⁹⁹

3.2.2 Employment contracts

Under the Employment and Skill Development Law (2013),¹⁰⁰ all employees in Myanmar must be employed under a prescribed employment contract. The employer should enter into a written contract with the employee within 30 days after commencement of work, with the exception of workers on training and probation periods.

94 Fair Wear Foundation, “Myanmar Country Study,” 2016,

<<http://www.fairwear.org/wp-content/uploads/2016/11/CS-Myanmar-2016.pdf>>

95 ITUC, “Foreign direct Investment in Myanmar – What impact on human rights?,” October 2015,

<<https://www.ituc-csi.org/IMG/pdf/ituc-burma.pdf>>

96 Republic of the Union of Myanmar, “The Factories Act, 1951” (unofficial translation), <http://www.ilo.org/dyn/natlex/docs/MONOGRAPH/88477/123120/F1558150740/MMR88477_per_cent20Eng_per_cent202016.pdf>

97 The State Law and Order Restoration Council, “The Child Law (The State Law and Order Restoration Council Law No. 9/93),” 14 July 1993.

98 ALR, “Under Pressure – A study of labour conditions in garment factories in Myanmar which are wholly Korean owned or in a Joint Venture with Korean Companies,” March 2016, <http://www.actionlaborrights.org/attachments/view/?attach_id=1060>

99 Republic of the Union of Myanmar, “The Factories Act, 1951” (unofficial translation), <http://www.ilo.org/dyn/natlex/docs/MONOGRAPH/88477/123120/F1558150740/MMR88477_per_cent20Eng_per_cent202016.pdf>

100 Employment and Skill Development Law (Pyidaungsu Hluttaw Law No. 29/2013), 30 August 2013, unofficial translation, <http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=90699&p_country=MMR&p_count=86>

There is a standard format for employment contracts that must be used. This format contains 21 items that must be included in the contract. The contract must contain a start and end date, making open-ended contracts impossible. It is not clear what the maximum period of employment is under this law.

There must be three copies of the contract: one for the factory's administration, one for the employee and one to be sent to the township labour office.

The individual employment contract, as proscribed by the government, is resented by the unions. In particular, CTUM is angry that the contract hinders its freedom to negotiate better agreements at factory level. The contract insists on a start date and an end date for workers, a de facto fixed term contract.

3.2.3 Wages

In 2013, the Minimum Wage Law was adopted (2013),¹⁰¹ which stipulates the framework for the minimum wage determination and implementation.

In June 2015, after nearly two years of tripartite negotiations involving the Ministry of Labour, employers' and employees' representatives, the country's first-ever minimum wage was established at 3,600 kyat a day. In June 2015, the equivalent in euro was €3.00; at the time of writing this report, however, 3,600 kyat amounts €2.48.¹⁰² After Bangladesh, this is the lowest minimum wage in Asia.¹⁰³ The amount of 3,600 kyat was highly disputed. Employers say that the proposed minimum wage is unsustainable for business – they say they cannot afford more than 2,500 kyats per day (in June 2015, this was €2.09, currently it is €1.72). Myanmar employers claimed that the amount was too high and that it would force them out of business. At least 90 Chinese and South Korean garment manufactures threatened to close down their factories.¹⁰⁴ Labour unions, for their part, stressed that the amount would not be enough for workers to provide a decent living.

101 Republic of the Union of Myanmar, "The Minimum Wage Law, 2013 (The Pyidaungsu Hluttaw Law No. 7/2013)," March 2013 (unofficial translation).

102 The currency rate of 23 January 2017 was used for the conversions in this paragraph. 1 MMK = 0,0006883327 Euro. Source: <<http://www.xe.com/currencytables/?from=MMK&date=2017-01-23>>

103 Government of the Philippines – Department of Labor and Employment, "Comparative Wages in Selected Countries," 29 December 2016, <http://www.nwpc.dole.gov.ph/pages/statistics/stat_comparative.html>

104 See <<https://business-humanrights.org/en/myanmar-govt-proposes-daily-minimum-wage-of-3600-kyats-factories-call-for-lower-pay-unions-workers-protest-includes-statements-by-intl-brands>>



Garment factory workers sit in their home at the end of their work day. Lauren DeCicca | MAKMENDE

The legal minimum wage applies across the country and across sectors and industries, but with the following exemptions:

- ❑ Micro enterprises (less than 15 workers);
- ❑ Companies operating in Special Economic Zones: The law stipulates that *“the SEZ management committees shall submit a proposed minimum wage rate to the national minimum wage committee, which then decides”*;
- ❑ Newly hired employees: The Minimum Wage Law allows employers to hire workers as apprentices for the first three months of employment. During the apprenticeship period, employers may pay 50 per cent of the minimum wage (1,800 kyat a day/ €1.24 (current rate). After the apprenticeship period, employers may hire workers on a probation period for another three months while paying them 75 per cent of the minimum wage (2,700 kyat /€1.86 (again, current rate).

The minimum wage law allows for employers to hire workers either as apprentices for the first three months and on a probation period from the third to the sixth month and to pay apprentice and probation workers 50 per cent and 75 per cent of the minimum wage respectively. As discussed in the next chapters of this report, the minimum wage of 3,600 kyat (€2.49) per day (current rate) does not come close to what would constitute a living wage. The apprentice and probation wages are

Daily production report

LINE	Style	Target	O/p	H/i	9:00	10:00	11:00	12:30	1:30	2:30	3:30	4:30	5:30	6:00
1	1101				20 20	30 50	30 80	30 110	30 140					
2	538				-	-	-	-	-					
3	DT-115				35 35	35 70	35 105	30 135	35 170					
4	8093				19 19	25 44	30 74	25 99	30 129					
5	8021				30 30	30 60	30 90	30 120	30 150					
6	8096				25 25	35 60	40 100	35 135	35 170					
7	1100						40	35						
Apron							4	5						

Planning board in a garment factory (this factory was not included in the research). Martje Theuvs | SOMO

outright poverty wages. In addition, these clauses open the door to abuse as employers may dismiss workers after six months and hire new workers in order to avoid paying minimum wages.

3.2.4 Working hours

According to the Factories Act, standard working hours are eight hours per day and 44 hours per week. A 30-minute break should be given after five consecutive hours, and should be counted as a part of working hours. The combined working hours and interval time should not exceed ten hours a day. Working days should not exceed six days in a week and workers should be granted one holiday each week (Sunday). If Sunday service is required, there must be a substitution of another day.¹⁰⁵

In December 2012, the Ministry of Labour, Employment and Social Security issued a Directive that allows for working weeks of 64 hours (44 regular working hours + 20 overtime hours).¹⁰⁶

105 Republic of the Union of Myanmar, "The Factories Act, 1951" (unofficial translation), <http://www.ilo.org/dyn/natlex/docs/MONOGRAPH/88477/123120/F1558150740/MMR88477_per_cent20Eng_per_cent202016.pdf>

106 The Republic of the Union of Myanmar Ministry of Labour, Employment and Social Security, Factories and General Labour Laws Inspection Department, "Directive No. 615/2/FGLIID Law 2/12 (1584)", December 2012.

3.2.5 Freedom of association

For more than 50 years in Myanmar, independent trade unions were prohibited and strikes were banned. In 2012, the Labour Organisation Law and the Labour Dispute Settlement Law came into force, which allowed workers to organise and form trade unions, and undertake lawful industrial action. Until then, trade unions had operated ‘underground’, on a small scale or in exile. The only official ‘labour unions’ that existed prior to 2011 were those established by the military government.

The Labour Organisation Law¹⁰⁷ regulates collective industrial relations including trade unions, employers’ associations, collective actions and lockouts. Section 29 of the law stipulates that the employer shall recognise the labour organisations of its trade as the organisations representing the workers. The law distinguishes between basic labour organisations at company level; township labour organisations and regional or state labour organisations of the same trade or activities; labour federations of the same trade or activities; and a labour confederation at national level (the law suggests that only one confederation may exist).

Labour organisations at all levels should be legally registered and should meet the following requirements:

- ❑ *Basic labour organisations* need a minimum of 30 members from the same workplace (or 10 per cent of workers in the case of workplaces with less than 30 employees).
- ❑ *Township labour organisations* need a minimum membership of 10 per cent of all basic labour organisations in the relevant township and/or in the relevant trade or activity.
- ❑ *Region or state level labour organisations* need a minimum membership of 10 per cent of all township labour organisations in the relevant region or state and/or in the relevant trade or activity.
- ❑ *Labour federations* need a minimum membership of 10 per cent of all region or state labour organisations according to the category of trade or activity.
- ❑ *A Myanmar labour confederation* may be formed “if it is recommended by not less than 20 per cent of all Myanmar labour federations according to the category of trade or activity”.

The law allows strikes for labour organisations but requires the permission of the relevant labour federation in advance. In addition, the employer and the relevant conciliation body must be notified at least 14 days in advance by “*mentioning the date, place, number of participants, manner and time of the strike*”.¹⁰⁸

107 The Republic of the Union of Myanmar, “The Labour Organisation Law” (The Pyidaungsu Hluttaw Law No. 7/ 2011), 11th October, 2011, unofficial translation.

108 The Republic of the Union of Myanmar, “The Labour Organisation Law” (The Pyidaungsu Hluttaw Law No. 7/ 2011), 11th October, 2011, unofficial translation.

The law also allows employers' lockout but with the permission of the relevant conciliation body at least 14 days in advance. Strikes or lockouts are not allowed during the dispute settlement process. The dismissal of union members due to collective actions is prohibited.¹⁰⁹ Police officers are excluded from the right to join unions.¹¹⁰

Various clauses in the Labour Organization Law effectively put up barriers to join and form unions and engage in collective actions.

ITUC lists the following restrictions and barriers (among many others):¹¹¹

- ❑ The law appears to refer to a single labour confederation system restricting workers in their right to form and join organisations of their own choosing.
- ❑ Regarding strikes, the law stipulates that, in order to obtain permission for a strike, the organisers must provide information such as the date, place, time, period, number of participants and that strikes not being in conformity with the date, place, time, period, number of participants and manner as obtained permission in advance may be declared illegal. Furthermore, the law prescribes that trade unions cannot go on strike without the permission of the relevant labour federation. This restricts workers and workers' organisations in their rights to strike.
- ❑ While the law prohibits dismissal of a worker for union membership and for the exercise of trade union activities or a strike, it does not clearly prohibit other forms of discrimination or retaliation (such as forced transfers, a common problem). Also, the law does not provide clear protection to workers seeking to form a trade union. Nor does it prohibit discrimination in hiring (e.g., blacklisting).

3.2.6 Collective bargaining

The Labour Organisation Law stipulates that *"the labour organisations have the right to negotiate and settle with the employer if the workers are unable to obtain and enjoy the rights of the workers contained in the labour laws and to submit demands to the employer and claim in accordance with the relevant law if the agreement cannot be reached"*. It further states that *"labour organisations have the right to participate in solving the collective bargains of the workers in accord with the labour laws"*.¹¹²

In Myanmar, a Collective Bargaining Agreement (CBA) can be signed at the township level between employers and workers. Workers can be parties to the CBA as a union member or as an individual.

109 AMRC, "Labour Laws in Myanmar," May 2014, <http://www.amrc.org.hk/sites/default/files/field/alu-article/files/ALU_per cent202014_per cent20_per cent2383_per cent20- per cent20Labour_per cent20Laws_per cent20in_per cent20Myanmar.pdf>

110 ITUC, "Survey of Violations of Trade Union Rights – Myanmar", last updated 18 February 2014, <<http://survey.ituc-csi.org/+Burma-+.html?lang#tabs-2>>

111 ITUC, "Survey of violations of trade union rights," no date, <<http://survey.ituc-csi.org/+Burma-+.html?lang#tabs-2>> (3 November 2015).

112 Republic of the Union of Myanmar, "The Labour Organisation Law" (The Pyidaungsu Hluttaw Law No. 7/2011)', 11 October 2011, unofficial translation.

If an employer violates any terms of the CBA or conditions in the contract, the Ministry of Labour is considered the plaintiff in dispute resolution, not the individual worker.

Regulations regarding collective bargaining fall short as the Labour Organisation Law does not contain provisions on the duty to bargain in good faith, period for bargaining, first contract arbitration, levels of negotiation, extension of collective agreements, registration of collective agreements, or enforcement of collective agreements.¹¹³ Although the law states the rights of collective bargaining of the labour organisations, it does not mention the responsibility of employers on this matter.

Other clauses are open to multiple interpretations. In practice in Myanmar, collective bargaining usually follows a labour dispute. CBAs thus often only cover the issue that the dispute was about and are thus often limited in scope. It is not commonplace in Myanmar to start a process of negotiation between employers and employees about a whole range of labour issues without a conflict spurring negotiations.

ALR describes in its report 'Under Pressure' that, due to lack of legal enforcement, the terms and conditions agreed in CBAs are not often included in individual contracts, leaving Myanmar's CBAs toothless.¹¹⁴

3.2.7 Dispute settlement

The Settlement of Labour Dispute Law was promulgated in 2012 and specifies that individual disputes may be dealt with by a Workplace Coordinating Committee, go to the township conciliation body and end at the competent courts if conciliation is not successful. Collective dispute cases pass through arbitration processes in addition to negotiation and conciliation. Collective disputes may first be dealt with by the Workplace Coordinating Committee, then pass on to the township conciliation body. If unsettled, the case is handed over to the Regional/State Arbitration Body, which makes a decision on the case. In regard to the decision, the parties in non-essential service have two choices: to go for strikes (workers) or lockout (employers), or to appeal to the Arbitrary Council for a Tribunal, to be set up and administrated by the central government.¹¹⁵

The Workplace Coordinating Committee (WCC) is composed of four members representing in equal numbers the employer and the trade union (or workers, if there is no union). WCCs should be established in workplaces with more than 30 employees and should deal with "negotiating and concluding a collective agreement and grievances at workplaces".

113 ITUC, 'Foreign Direct Investment in Myanmar – What impact on human rights?', October 2015, <<http://www.ituc-csi.org/foreign-direct-investment-in>>

114 ALR, 'Under Pressure – A study of labour conditions in garment factories in Myanmar which are wholly Korean owned or in a Joint Venture with Korean Companies', March 2016 <http://www.actionlaborrights.org/attachments/view/?attach_id=1060>

115 The Republic of the Union of Myanmar, "The Settlement of Labour Dispute Law" (The Pyidaungsu Hluttaw Law No. 5/2012), 28 March 2012, unofficial translation.

3.2.8 Social security

In 2012, a new Social Security Law was adopted. This law extended social security provisions for formal sector workers in several ways. It introduced additional branches of social security: family benefit, superannuation benefits (i.e. old-age savings scheme), disability and survivors' pensions, unemployment insurance and housing benefits. In addition, it has increased the benefit levels of existing provisions (sickness, maternity/paternity, death, and work injury). It also has increased contributions for the various provisions and mandated the creation of three sub-funds for the different types of benefits. As of 1 April 2014, the following contributions should be made: health and social care fund: 2 per cent from employer, 2 per cent from employee; injury fund: 1 per cent from employer. In total, the employer's contribution is 3 per cent and the employee's contribution is 2 per cent. The accepted maximum salary per month to qualify for participation in the social security fund is set at 300,000 Kyat (€206).¹¹⁶

According to the Leave and Holidays Act that was adopted in 1951, with minor amendments passed in 2006, workers are granted 14 public holidays (listed by law) with full payment; ten full-paid consecutive days of annual leave after 12 months of work with 20 working days in each month; six days of causal leave each year with full payment, which shall be used for a maximum of three days at one time; and 30 days of sick leave upon medical certification, with full salary, after six months of service or without pay for workers employed for less than six months.¹¹⁷

According to the Social Security Law, the costs of medical care related to employment injury resulting from a criminal action or omission of the employer or from the employer's failure to meet occupational health and safety legal requirements shall be borne entirely by the employer.

3.2.9 Occupational Health and Safety

The Factories Act stipulates that any accident inside or outside an industrial establishment (with more than ten workers) must be reported to the Factories and General Labour Laws Inspection Department.

With respect to medical facilities, the Factories Act provides that a first aid box must be available. In factories with more than 250 workers, a dispensary run by a certified nurse must be available.

The Factories Act stipulates that the factory must be kept clean, that effective arrangements have to be made for the disposal of waste and effluences; latrines, adequate washing facilities and spittoons are to be provided; sufficient supply of clean drinking water must be available. Other health-related

116 The Republic of the Union of Myanmar, "The Social Security Law, 2012", 2012
<http://ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=90653&p_country=MMR&p_count=86>, draft version.

117 Derived from: AMRC, 'Labour Laws in Myanmar', May 2014, <http://www.amrc.org.hk/sites/default/files/field/alu-article/files/ALU_per%202014_per%20per%202383_per%20per%20Labour_per%20Laws_per%20in_per%20Myanmar.pdf>

provisions provided by the Factories Act include: adequate ventilation in workrooms; effective measures to prevent inhalation of dust and fumes; and use of sufficient and suitable lighting.¹¹⁸

3.2.10 Enforcement

The Labour Inspection, part of the Factories and General Labour Laws Inspection Department of the Ministry of Labour, Immigration and Population, is responsible for checking the implementation of labour laws.

Labour offices are formed at the state, division and township levels and fall under the responsibility of the Ministry of Labour, Immigration and Population. Labour offices at the township level are charged with *“ensuring peaceful industrial relations, managing employment issues (local and overseas), enhancing the skills development of workers in the workplace, enforcing workers’ rights in accord with labour laws, and cooperating in international and regional labour affairs”*.¹¹⁹

The Social Security Board (SSB) administers Myanmar’s social security programmes, including benefits and contributions. As the majority of the country’s townships do not yet have a SBB office, the implementation of the social security law remains highly problematic.

Weak enforcement of laws is a problem. According to local labour rights NGOs, the labour inspection is underfunded and under-capacitated and is plagued by corruption. Factory inspections may not uncover shop floor realities, as inspections are always announced and factory owners can thus prepare themselves. Labour rights NGOs reported instances where underage workers were hidden in a room during inspections. In addition, when labour law violations are addressed, employers often get away with low penalties. Also, verdicts of the Arbitration Council are easily ignored by factory owners.¹²⁰

3.3 Concluding remarks

While the previous government started bringing its labour regulations more in line with international laws – by adopting new laws and adapting old ones – these laws still have many shortcomings including missing clauses; clauses that are up to multiple interpretation; and employer responsibilities insufficiently addressed. In addition, the laws were introduced without a process of social consensus or open discussion.¹²¹ As described above, in addition to shortcomings in labour legislation, enforcement is also a problem.

118 Republic of the Union of Myanmar, “The Factories Act, 1951” (unofficial translation) <http://www.ilo.org/dyn/natlex/docs/MONOGRAPH/88477/123120/F1558150740/MMR88477_per_cent20Eng_per_cent202016.pdf>

119 Government of the Republic of the Union of Myanmar, National Employment and Skill Development, “Labour Exchange Office,” no date, <<http://www.nesdmyanmar.org/labour-exchange-office/>> (12 July 2016).

120 Interviews with various civil society organisations, February – April 2016 and November 2016.

121 AMRC, “Labour Laws in Myanmar,” May 2014, <http://www.amrc.org.hk/sites/default/files/field/alu-article/files/ALU_per_cent202014_per_cent20_per_cent2383_per_cent20-per_cent20Labour_per_cent20Laws_per_cent20in_per_cent20Myanmar.pdf>

4 What are things really like? Research findings

This research focuses on 12 factories. From February to June 2016, 403 workers at these factories were interviewed: 370 female workers and 33 male workers. This chapter describes the finding from these interviews.

SOMO shared a draft version of this chapter with the 12 factories and all the identified buyers. SOMO received ten responses: one from a factory, Factory 4, as well as nine responses from buying companies: C&A, Deuter, H&M, Gaastra, Muji, New Look, Primark Suitsupply and Takko.

Of the ten companies that responded, five provided information regarding specific research findings, namely Deuter, H&M, New Look, Suitsupply and Takko. These specific reactions concern six factories.¹²²

The companies' responses relating to specific research findings have been integrated in this chapter. General reactions and information provided about corporate policies, programmes and activities in Myanmar have been included in Chapter 5. This chapter starts with a general introduction about the Myanmar garment industry. Subsequently, the research findings are presented, grouped according to labour issues.

4.1 The Myanmar garment industry

Myanmar has a long history of textiles and garment production. The first textile and garment factories were built under British rule (1824-1948). Since 1988, when the military junta first allowed foreign investment, the industry has grown considerably. During the peak period in the early 2000s, there were around 400 factories active in the Myanmar garment industry employing 300,000 employees and generating an export volume of US \$600 million.¹²³ The US accounted for 65 per cent of garment exports at that time.¹²⁴ Growth halted, however, when trade and investment sanctions were imposed on Burma's military government during the 2000s by the US, Canada and the EU, amongst others. The garment industry was hit hard as hundreds of factories had to close their doors. Some 130 factories survived during the sanctions era; they were mainly supplying Korean, Japanese, Taiwanese and Chinese companies.¹²⁵

122 Deuter replied that they are sourcing from XXX, not from Factory 5. XXX and Factory 5t, however, fall under the same management and both factories are located on these same premises. In May 2016, FWF did an audit at both factories.

123 Fukunishi ed., "Dynamics of the Garment Industry in Low-Income Countries: Experience of Asia and Africa (Interim Report). Chousakenkyu Houkokusho, IDE-JETRO, 2012 <http://www.ide.go.jp/English/Publish/Download/Report/2011/pdf/410_ch8.pdf>

124 Fashion United, "Myanmar: apparel exports jump to 1 billion US dollars", 23 November 2016, <<https://fashionunited.com/news/business/myanmar-apparel-exports-jump-to-1-billion-us-dollars/2016112313733>>

125 Based on a conversation with MGMA representative.

After the EU lifted its economic sanctions, production for the European market increased rapidly. Since 2012, Myanmar has been witnessing a turbulent growth of the export-oriented garment industry. Now that the US sanctions have been lifted, it is expected that US brands will start placing orders in Myanmar as well

In 2014, Myanmar's total export value of garments reached US\$ 986 million (€ 720 million), nearly tripling the value of the 2010 garment exports (US\$ 337 million/ €270 million).¹²⁶ According to the Myanmar Garment Manufacturers Association (MGMA), garment exports totalled US \$1.46 billion (€1.32 billion) in 2015, accounting for 10 per cent of the country's export revenues.¹²⁷ The EU is the fastest growing export market for Myanmar garments. In 2015, the EU imported clothing at a value of €423 million from Myanmar, a staggering 80 per cent growth compared to the year 2014.¹²⁸

In 2014, Japan and Korea were Myanmar's major export destinations, accounting for 38 per cent and 31 per cent respectively of its total garment exports while the EU took a 23 per cent share of Myanmar's total garment exports.¹²⁹

The number of garment factories grew from 130 factories during the sanctions era to the current number of over 400 factories. Most garment factories are located in the industrial zones around Yangon. Expansion has now also begun in Bago and Patheingyi. In addition, garment production takes place or is about to take place in Special Economic Zones in Thilawa (Yangon division) and Kyaukpadaung (Rakhine).

New production facilities are being built and old ones are being expanded. Factory buildings that were built in the 1990s are small and are often not properly constructed. Over the years, extra rooms have often been added but often without exits, resulting in factory buildings that look like mazes.¹³⁰ Building safety is a grave concern for workers in these factories.

As of 2016, the rapidly growing garment industry was employing around 350,000 workers of whom 90 per cent are women.¹³¹ The MGMA estimates that the industry will employ around 1.5 million workers by the year 2024.¹³²

126 HKTDC Research, "Myanmar Rising: The Garment Sector Takes Off", 22 June 2016. <<http://economists-pick-research.hktdc.com/business-news/article/Research-Articles/Myanmar-Rising-The-Garment-Sector-Takes-Off/rp/en/1/1X000000/1X0A6IQS.htm>>

127 Textile Excellence, "Myanmar Rises As An Alternative Garment Manufacturing Hub," 11 December 2016, <<http://www.textileexcellence.com/news/details/1651/myanmar-rises-as-an-alternative-garment-manufacturing-hub>>

128 European Commission DG Trade, "European Union, Trade in goods with Myanmar," 4 November 2016, <http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_113423.pdf>

129 HKTDC Research, "Myanmar Rising: The Garment Sector Takes Off", 22 June 2016, <<http://economists-pick-research.hktdc.com/business-news/article/Research-Articles/Myanmar-Rising-The-Garment-Sector-Takes-Off/rp/en/1/1X000000/1X0A6IQS.htm>>

130 Myanmar Garment Manufacturers Association (MGMA), in a meeting with SOMO, 3 May 2016, Yangon, Myanmar.

131 Oxfam, "Made in Myanmar – Entrenched poverty or decent jobs for garment workers?" December 2015, <https://www.oxfam.org/sites/www.oxfam.org/files/file_attachments/bp209-made-in-myanmar-garment-workers-091215-en_0.pdf>

132 Myanmar Garment Manufacturers Association (MGMA), "Myanmar Garment Industry – 10 year strategy 2015 – 2024," August 2015, <<http://www.myanmargarments.org/wp-content/uploads/2015/09/Myanmar-garment-industry-10-year-strategy-Aug-2015.pdf>>

Figure 1 Imports of HS category 61 and 62 from Myanmar



Source: UN Comtrade Database <https://comtrade.un.org/data/>¹³³

133 UN Comtrade Database <<https://comtrade.un.org/data/>> for the period 2011-2015; reporters Japan, Republic of Korea and the EU; partner Myanmar; import of articles covered by HS codes 61 and 62.

Foreign-owned factories

Almost half of the garment factories are foreign-owned or else they are joint ventures between Myanmar and foreign companies. Most foreign-owned factories are in the hands of Chinese, Korean, Taiwanese and Japanese owners.¹³⁴

Foreign manufacturers are setting up production facilities in Myanmar because of the favourable climate, with low production costs being the major attraction. Several factory managers said that they decided to open manufacturing facilities in Myanmar because their Western customers were demanding better prices. One manager of a Chinese-owned garment factory in Yangon, for example, said that one of their European customers asked them to set up a facility in Myanmar. He said that production in China is increasingly difficult as the minimum wage has been increased while clients are constantly exerting pressure for lower prices. One factory manager also mentioned the relative stability and the fact that, compared to Bangladesh, there is less traffic congestion in Myanmar.¹³⁵

Cut-Make-Pack (CMP) manufacturing

The vast majority of Myanmar's garment factories operate under the 'Cut-Make-Pack' (CMP) system. This is a form of contract work where the garment manufacturer carries out the labour-intensive task of cutting the textile fabric, sewing garments together according to design specifications and then packing the garment for export to international markets. Under this model the buying company (clothing brand or retailer or buying house) is responsible for supplying the factory with the necessary inputs (including threads, buttons, zips, labels, linings and most of the packaging) and for shipping the goods to their final destination.

The alternative is the FOB system. This means 'Free on Board' or sometimes 'Freight on Board'. This system is not yet practised very much in Myanmar. Under this approach retailers simply place orders at highly-capable and well-financed factories in overseas markets. The factories are responsible for producing the garments in their entirety and arranging shipments. The buyer is not involved in the production process in this type of manufacturing. CMP manufacturing is less profitable than FOB manufacturing.

The garment industry, like others sectors in Myanmar, is facing infrastructure challenges, lack of land connectivity with neighbouring countries, including unpaved roads, power cuts and an unstable internet.

134 MGMA, "Complete members list, first quarter 2015.

135 SOMO, conversations with factory managers, January to April 2016, Yangon, Myanmar.

4.2 Researched factories

Twelve factories located in different industrial zones in and around Yangon (Dagon Seikkan Industrial Zone, Hlaing Tharyar, Mingaladoen, East Dagon, Insein, Shwe Pauk Kan Industrial Zone and Shwe Pyi Thar), Bago and Patheingyi were investigated. In addition, one factory located in Thilawa Special Economic Zone formed part of the research.

Of the 12 researched factories, three are Myanmar-owned; the other nine factories are foreign-owned. This is in line with the fact that the majority of garment manufacturers in Myanmar are in the hands of foreign entrepreneurs.

Table 2 Ownership of researched factories

Factory	Headquarter
Factory 1	Myanmar
Factory 2	Myanmar
Factory 3	Japan
Factory 4	Taiwan
Factory 5	Taiwan
Factory 6	Taiwan
Factory 7	China
Factory 8	Myanmar (Joint Venture)
Factory 9	China
Factory 10	China
Factory 11	Myanmar
Factory 12	Korea

Under the military regime, industrial zones and Special Economic Zones were generally created from farmlands. Therefore, the land that factories occupy may not have been acquired in line with international practices. This is still an on-going issue, particularly as post-1988 land seizures are a focus of a Myanmar parliamentary committee.¹³⁶

Additionally, current ownership may be questionable, as army and crony involvement is rife in key economic sectors. The military has a stake in nearly all profitable businesses in Myanmar.

136 BSR, "Shaping a Sustainable Garment Sector in Myanmar - Key Opportunities Built on Local Context," June 2014
<http://www.bsr.org/reports/BSR_Shaping_Sustainable_Garment_Sector_Myanmar.pdf>

Factory 7, one of the 12 investigated factories, is located in Thilawa SEZ. There is well-documented evidence that the development of Thilawa is associated with some serious land rights violations.

Uncovering information about land acquisitions or ownership structures is difficult. Often land has switched ownership several times and the current owners may refute any accountability as they claim they acquired the land legally.

Reportedly, it may happen that 'puppet owners' are installed to hide real ownership, especially when the factory owners have links to the army.¹³⁷

Mention is made of a 'black market', referring to Chinese garment companies that are operating illegally in Myanmar, without official registration.¹³⁸ Another problem that was mentioned is the illegal sub-contracting that is taking place: orders placed by foreign buyers at their regular suppliers who then subcontract production to other production facilities where there is less oversight.¹³⁹ These remarks do not directly relate to the 12 factories that are part of this research. Nevertheless, these are important and worrying signals.

Buyers

Through different sources, SOMO, ALR and LRDP have identified a number of garment brands and retailers that are believed to be sourcing from the 12 researched factories.

Table 3 presents the identified linkages between the 12 researched factories and their customers. Sources for this information are the 403 interviewed workers of the 12 factories, supplier lists as published by several brands and retailers, and other public sources, including US customs and shipment data.

It is possible that some of the brands and retailers mentioned here are no longer sourcing from the researched factories. We have found evidence of orders placed at some of the 12 factories, but we cannot be sure about how relationships with these suppliers have developed since.

137 Myanmar labour NGOs, meetings in Yangon, November 2016.

138 Myanmar labour NGOs, meetings in Yangon, November 2016.

139 Myanmar labour NGOs, meetings in Yangon, November 2016.

Table 3 does not give a complete overview of all buyer-supplier relations, as there is only limited information publicly available to establish such links. Only a handful of garment brands and retailers actually disclose their supplier lists and only a few countries make available specified import and export data, including shipment information between exporting and importing companies. In addition, workers often do not know for which clients they are producing goods.

Table 3 Factories and their buyers

Factory	Buyers
Factory 1	I-max and Giorenzo ¹⁴⁰
Factory 2	Lonsdale (Sports Direct) ¹⁴¹
Factory 3	Suitsupply ¹⁴²
Factory 4	H&M ¹⁴³ , Primark ¹⁴⁴ , Muji ¹⁴⁵
Factory 5	Fair Wear Foundation members ¹⁴⁶ , Deuter ¹⁴⁷ , Kawasaki ¹⁴⁸ , Hudy ¹⁴⁸ , Erima ¹⁴⁸ , Henri Lloyd ¹⁴²
Factory 6	Karrimor (Sports Direct) ¹⁴⁸
Factory 7	Pierre Cardin ¹⁴⁸ , Bessshirt ¹⁴⁸ , Arrow ¹⁴⁸
Factory 8	H&M ¹⁴³ , C&A ¹⁴⁹
Factory 9	H&M ¹⁴³ , Muji ¹⁵⁰
Factory 10	Izumifuhaku ¹⁴⁸
Factory 11	New Look ¹⁴⁸ , Takko ¹⁴⁸
Factory 12	K2 ¹⁴⁸ , Gaastra ¹⁴⁸ , LL & S Purchasing Corp (The Levy Group) ¹⁴²

140 Source: interview with workers, February to June 2016.

141 Source: interview with workers, February to June 2016.

142 Source: US import data, January 2016 to August 2016.

143 H&M, "Supplier List," no date, <<http://sustainability.hm.com/en/sustainability/downloads-resources/resources/supplier-list.html>>, (13 December 2016).

144 Source: interviews with workers. Workers mentioned Primark's Cedar Wood brand.

145 Source: Panjiva, shipments of September 2016. .

146 Fair Wear Foundation, "Fair Wear Foundation – Factories Myanmar", December 2016, <<http://www.fairwear.org/wp-content/uploads/2016/10/Supplier-list-Myanmar-update-December-2016.pdf>> The FWF factory list gives names of factories in Myanmar used by FWF member brands, but does not provide the direct link between the factory and specific FWF brands.

147 Source: interviews with workers, February to June 2016. Deuter informed SOMO that they are not sourcing from the investigated unit but from another unit. The two units fall under the same management and are located at the same premises.

148 Source: interviews with workers, February to June 2016.

149 C&A, Supplier List, version of June 2016. C&A informed SOMO that after audits conducted in June and November 2015, production at Factory 8 was suspended due to alarming audit findings.

150 Source: US import data, September to December 2015.

4.3 Workers' background

The combined labour force of the 12 factories amounts to an estimated 17,150 people. The smallest factory employs 300 workers and the largest 3,500 workers.

Regional background

The interviewed workers came from different areas, states and districts in Myanmar, included quite a number of labour migrants (see Table 5).

Table 4 Labour force of researched factories and workers interviewed

Factory	Interviewed workers	Male	Female
Factory 1	33	3	30
Factory 2	32	1	31
Factory 3	39	1	38
Factory 4	33	9	24
Factory 5	33	9	24
Factory 6	36	0	36
Factory 7	34	1	33
Factory 8	33	4	29
Factory 9	33	3	30
Factory 10	32	0	32
Factory 11	32	0	32
Factory 12	33	2	31
Totals	403	33	370

Table 5 Regional origin of the interviewed workers

State or Division	Percentage of interviewed workers
Yangon Division	38%
Irrawaddy	26%
Bago	16%
Magway	7%
Mandalay	6%
Rakhine	3%
Kayin	1%
Shan	1%
Sagaing	1%
Mon	1%



Garment factory workers prepare food in their small dormitory room in Yangon, Myanmar. Lauren DeCicca | MAKMENDE

Living conditions

The majority of the interviewed workers have migrated from rural areas to Yangon city, where they needed to find accommodation close to the factory where they work. Especially in Yangon the lack of affordable decent housing is a huge problem. Rent prices have increased dramatically over the past few years. More than 30 per cent of Yangon's population lives in sub-standard housing, according to the Myanmar Ministry of Construction.¹⁵¹ Many labour migrants end up in the slums of Yangon or live in deplorable conditions in squatter areas, without access to electricity or running water. In addition, there is the risk of eviction. Yangon authorities are accused of routinely cracking down on what are deemed "illegal squatter" areas.¹⁵²

151 ELEVEN, "30% of Yangon lives in slums: ministry," 1 June 2016, <<http://www.elevenmyanmar.com/local/30-yangon-lives-slums-ministry>>

152 Mizzima, "Rapid migration and lack of cheap housing fuels Yangon slum growth," 20 February 2016, <<http://www.mizzima.com/latest-news-news-features/rapid-migration-and-lack-cheap-housing-fuels-yangon-slum-growth#sthash.uBbkWTxW.dpuf>>

Box 1: Living in slums

Hlaing Tharyar is the largest industrial zone in Yangon and many garment factories are located in this area. Over the past few years, many migrant workers have settled in the Hlaing Tharyar slums, which are now home to some 700,000 people.¹⁵³

Thiri and Yadana, both working at Factory 2, are living in a squatter area in Hlaing Tharyar. They are living in small makeshift huts, which they built themselves. There is no electricity or running water. "They call us trespassers", says Thiri. "The upside of living here is that we don't need to spend money on rent which makes it easier to get by".

Thiri and Yadana are not afraid that they will be evicted as they have been living in the same area for many years already.

Private hostels are another common form of accommodation for garment workers, who can hire a room and share facilities with others. Sometimes factories provide hostel accommodation to their labour force. Of the 12 researched factories, Factory 11 and Factory 4 ran hostels for workers. Workers at Factory 11 do not have to pay for the hostel accommodation; they are only charged for electricity and water use.

At Factory 4, 15,000 kyat (€11.31¹⁵⁴) per month was deducted from the salary of those workers who live in the hostel. Workers receive an in-kind allowance of six cups of rice per week. However, Factory 4 informed SOMO that it had stopped offering dormitory service to workers since September 2016.

Factory 1 workers who live in a hostel said they have to pay 24,000 kyat (€18) per month for accommodation and meals. The hostel accommodates some 400 people in total. Bathrooms are shared between ten people. Hostel management is imposing a curfew, demanding that workers are not allowed to enter or leave the hostel after 10pm.

153 Mizzima, "Rapid migration and lack of cheap housing fuels Yangon slum growth," 20 February 2016, <<http://www.mizzima.com/latest-news-news-features/rapid-migration-and-lack-cheap-housing-fuels-yangon-slum-growth#sthash.uBbkWTxW.dpuf>>

154 The currency rate of 15 April 2016 was used for the conversions in this chapter. The currency rate was taken from <<http://www.xe.com>>

Table 6 Workers' housing

Type of housing	Number of interviewed workers
Living in a hostel	125
Living with family members	258
Living on their own/with friends	14
No answer	6
Total	403

4.4 Employment relations

Little over half of the interviewed workers have signed a contract for their employment, but only about one fifth of these workers have also received a copy of their contract. Most of the workers who signed a contract said they do not know what was actually written in the document or even the duration of their employment contract. Workers indicated that they were not given sufficient time to read the contract. Positive cases were Factory 8, where all 33 interviewed workers signed a contract and Factory 11, where only one of 31 interviewed workers did not sign contract.

However, a little less than half of the interviewed workers were not given a contract to sign at all.

At Factory 3, Factory 2, Factory 6, Factory 7, Factory 9 and Factory 1, the vast majority of interviewed workers had not signed a contract, with Factory 3 and Factory 2 scoring the worst record.

In response to a draft version of this report, Suitsupply stated that an FWF audit carried out in December 2016 at factory 3 showed that a majority of workers had signed a contract. However, not all workers had received a copy of their contract. This issue has been taken up with the factory according to Suitsupply. Also, from now on the management of the factory promised to explain to workers about the content of their contracts.¹⁵⁵

In its response to a draft version of this report, Factory 4 wrote that all workers' contracts need to be sent to the local labour department for authorisation. The factory wrote that this takes a great deal of time and this is the reason why workers do not have a copy of their contract. At Factory 4 claimed that currently all workers have signed a contract and have received a copy of their contract.¹⁵⁶

H&M, in response to the findings at Factory 9, writes that – during a visit on 19 December 2016¹⁵⁷ – they “verified that all workers signed contracts within seven days of employment”.¹⁵⁸

155 Suitsupply, “Response to draft version of this report”, 28 December 2016.

156 Factory 4, “Response to draft version of this report”, 5 January 2017.

157 H&M specifically mentioned this was an unannounced visit. However, ALR reported that workers of two H&M suppliers were in the know in advance of the upcoming visit.

158 H&M, “Response to draft version of this report”, 22 December 2016.

Daily labourers

In Myanmar, it is common practice to hire workers on a daily basis. This is also the case for the 12 researched factories. From the interviews, it became clear that daily labourers are among the work force for at Factory 2, Factory 6, Factory 10 and Factory 11.

New Look confirmed that daily labourers are among the workforce at Factory 11.¹⁵⁹

At Factory 2, some of the interviewed workers indicated that, after the minimum wage was introduced, the factory stopped hiring workers on a contractual basis and only engages new workers as daily labourers.

At Factory 10, some interviewed workers described how helpers who were regularly employed were downgraded to daily labourers after the implementation of the minimum wage law. They said that a considerable number of workers are hired on a daily basis. These daily labourers earned 2,000 kyat (€ 1.50) a day. If they reach their daily targets they will get a daily wage of 3,000 kyat (€ 2.26). Helpers perform different tasks; they may help at the cutting or ironing department, for instance. For helpers at the cutting department, it is difficult to achieve the target and therefore they often earn only 2,000 kyat per day, which is below the legally set minimum wage (see Section 4.5 on wages).

In some cases, daily labourers are underage workers (see Section 4.7 on child labour).

Daily labourers do not sign contracts. They only receive the basic daily wage, which may be below the minimum wage of 3,600 kyat (€ 2.71); they are not eligible for bonuses and benefits and they are not covered by the social security system. In addition, daily labourers have very insecure jobs as, in the absence of a formal employment relationship, they can be easily dismissed.

4.5 Wages

Issues around the legal minimum wage

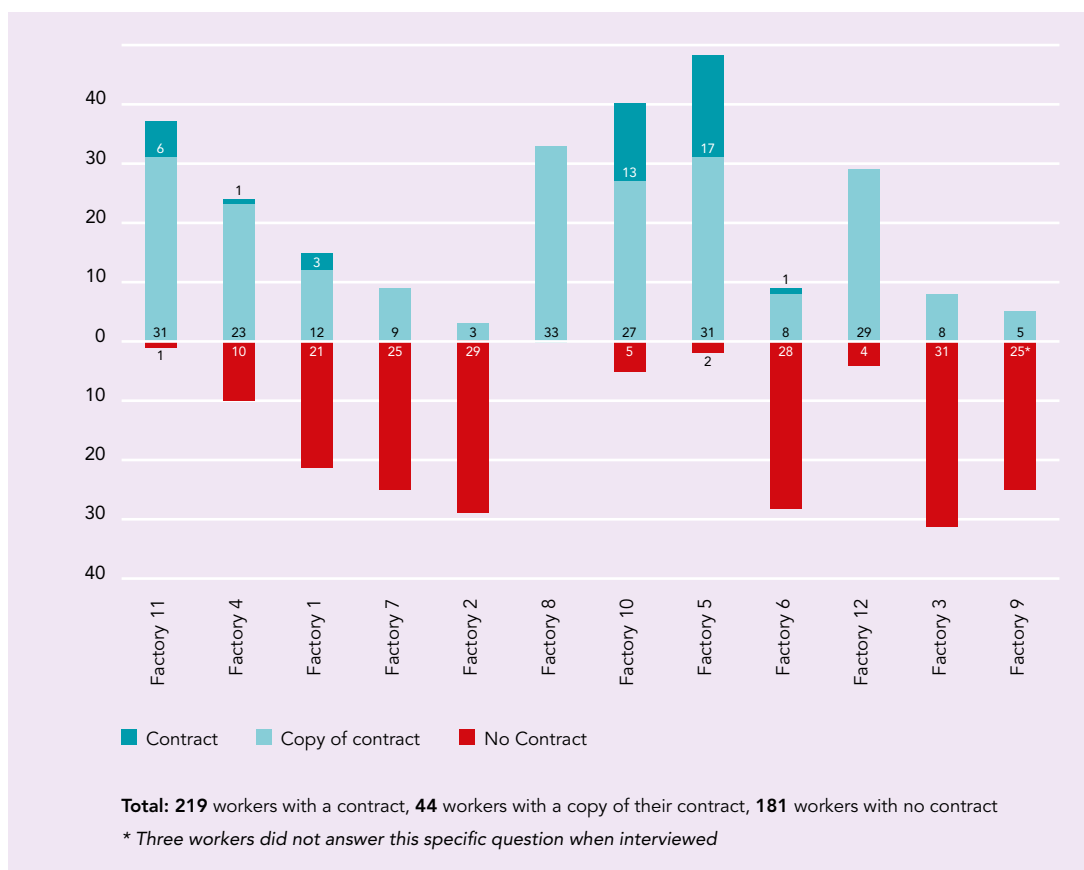
This research shows that there are serious issues around the legal minimum wage. At nine out of 12 of the investigated factories there were workers who earned significantly less than the daily minimum wage of 3,600 kyat (€ 2.71). At four factories – Factory 1, Factory 6, Factory 7 and Factory 9 – the lowest daily wage was 1,800 kyat (€ 1.37) per day for apprentices during the first three months of their employment. This applied to all types of workers and functions, regardless of workers' experience.

In response to the findings at Factory 9, H&M wrote that – during their visit on 19 December 2016 – they interviewed workers, among them some 'trainees', and they all told H&M they received 3,600 kyat per day.¹⁶⁰ Commenting on this, however, research partner ALR stated that workers at the factory only receive 1,800 kyat during their first three months.

159 New Look, "response to draft version of this report", 6 January 2017.

160 H&M, "Response to draft version of this report", 22 December 2016.

Figure 2 Employment relations



At Factory 10, daily labourers merely earned 2,000 kyat (€ 1.51) per day. At Factory 8, Factory 5, Factory 3 and Factory 11, the lowest daily wage was 2,700 kyat (€ 2.03) for workers during their three-month probation period.

New Look confirmed that workers are paid 2,700 kyat during their three-month probation period at Factory 11.¹⁶¹ Likewise, Suitsupply confirmed that the lowest wages at Factory 3 were 2,700 kyat per day. Suitsupply wrote that it will work towards payment of living wages with the factory.¹⁶²

ALR reported that, since the interviews took place, the practice of paying probation wages (75 per cent of the minimum wage) has changed at Factory 8. Currently, all workers receive a daily minimum wage of 3,600 kyat at this factory.

161 New Look, "Response to draft version of this report", 6 January 2017.

162 Suitsupply, "Response to draft version of this report", 28 December 2016.

The law stipulates that new workers do not need to be paid the minimum wage in case they cannot fulfil the standard production targets. New workers are also entitled to receive training. None of the 400-plus interviewed workers in this research, however, mentioned this.

Factories are clearly abusing the apprenticeship and probation provisions of the minimum wage law, as workers who start their employment at a factory are hired at apprentice wages regardless of experience. This makes it very difficult for workers to switch employers, since they will earn below the minimum wage for the first three to six months with any new employer.

A worker at Factory 12 explained: *"I would rather work for another factory but if I change I would have to start as a new worker and I will earn very little money."*

"I had been working at Factory 11 for two years when my mother got sick with cancer. I wanted to take leave to take care of her. Management did not agree and I was dismissed. After two weeks I went back to the factory and asked to be rehired. Luckily, I got my job back but they consider me as a new worker and I am only earning 2,700 kyat per day now."

Worker at Factory 11

Monthly wages

From what workers told the interviewers, it became clear that total take-home salaries varied hugely from factory to factory. Salaries depended on overtime hours. In addition, a complicated system of deductions, bonuses and allowances is in place.

Total take-home salaries ranged from 70,000 kyat (€53) per month at Factory 10 (daily labourer) and Factory 1 (helpers) to 270,000 kyat (€204) for a worker at the packing department at Factory 2 with 11 years of experience at this factory.

Table 7 Wages (in kyat)

	Basic wage without overtime or bonuses	Highest basic wage without overtime or bonuses	Lowest monthly take-home wage taking into account overtime, bonuses and deductions	Highest monthly take-home wage taking into account overtime, bonuses and deductions	Pay slips
Factory 1	1,800 €1.36	3,700 €2.79	70,000 €53	220,000 €166	Yes
Factory 2	3,600 €2.71	3,600 €2.71	100,000 €75	270,000 €204	Yes
Factory 3	2,700 ¹⁶³ €2.03	3,600 €2.71	100,000 €75	220,000 €166	Yes
Factory 4	3,600 €2.71	3,600 €2.71	130,000 €98	260,000 €196	Yes
Factory 5	2,700 €2.03	3,600 €2.71	108,000 €81	185,000 €139	Yes
Factory 6	1,800 €1.36	4,050 €3.05	81,000 €61	180,000 €136	Yes
Factory 7	1,800 €1.36	3,600 €2.71	101,300 €76	174,500 €132	As of April 2016 ¹⁶⁴
Factory 8	3,600 €2.71	3,600 €2.71	150,000 €113	220,000 €166	Yes
Factory 9	1,800 €1.36	3,600 €2.71	120,000 €90	250,000 €186	Yes
Factory 10	2,000 €1.51	3,600 €2.71	70,000 €53	260,000 €196	Yes
Factory 11	2,700 €2.03	3,600 €2.71	108,000 €81	260,000 €196	Yes
Factory 12	3,600 €2.71	3,600 €2.71	165,000 €124	228,000 €172	Yes

Wage deductions/fines

Huge pressure is exerted on workers to complete production targets and not to miss a single day of work. At most factories one day of absence, even due to illness, means part of a worker's wage is deducted. As workers are struggling to make ends meet and cannot afford any wage deductions, they feel forced to continue working even when they are sick.

Workers are not informed about their right to sick leave, annual leave and casual leave and are left in the dark about how they should apply for leave.

163 The 33 interviewed workers at Factory 3 all mentioned receiving 3,600 kyat per day. ALR, however, later spoke with other Factory 3 workers who mentioned they were paid probation wages.

164 Until March 2016, workers at Factory 7 did not receive pay slips. In spring 2016, ALR had a conversation with Factory 7 management about labour issues. The obligation to provide workers with pay slips was discussed. Since April 2016, workers at Factory 7 have been receiving pay slips.



Garment workers eat breakfast at a small stand. Lauren DeCicca | MAKMENDE

Deductions for taking sick leave

At nine of the 12 researched factories, wage deductions are made when workers take leave. Some factories differentiate the amounts for sick leave and other leave, leave without notification and leave with notification. At some factories, the basic daily wage of 3,600 kyat (€2.71) is deducted, while at other factories bonuses are cut or cancelled altogether.

For example, workers at Factory 4 will lose their attendance bonus of 10,000 kyat (€7.54), if more than one day of sick leave is taken. Factory 4 responded by saying that, as of September 2015 its “salary structure does not include attendance bonus anymore”.¹⁶⁵ The factory did not provide further information on wage deductions.

When workers at Factory 11 take sick leave, 3,600 kyat is deducted from their salary for each day of absence. For one day of “leave without notification”, 8,000 kyat (€6) is deducted. The interviewed workers said that management had not explained anything about casual or annual leave or how to apply for leave.

Workers at Factory 7 mentioned that, when they take more than three days of leave, they are automatically fired.

¹⁶⁵ Factory 4, “Response to a draft version of this report”, 5 January 2017.

“Taking leave is very difficult. If we take leave then they cut down the salaries. Also, the supervisor uses rude words in public.”

Worker at Factory 8

“One of my colleagues got an eye injury. The needle broke and got into her eye. She had to take a day of sick leave because of the eye injury. Two days of wages were deducted from her salary.”

Worker at Factory 12

Either way, workers mentioned that they risked considerable loss of income in case of illness or injury. These imposed deductions in fact amount to perverse incentives compelling workers to continue working, even when they are ill or injured. (For more information on work-related injuries and illness, see paragraph on health and safety below).

Doctor’s letter

In order to be eligible for paid sick leave, workers need a doctor’s letter. Such a letter can be obtained only at a so-called ‘social security clinic’. Many of the interviewed workers would need to travel significant distances to reach one of these relatively scarce clinics. For many workers this is a time-consuming and costly effort, which they are obviously reluctant to make. In the end, many workers choose not to go to the clinic when they are sick but accept the pay wage deduction.

The research revealed that, in some cases, interviewed workers were able to get a doctor’s letter and did submit it to their employer but nevertheless suffered wage cuts.

“I had a recommendation letter from the doctor saying that I should get three days of sick leave. Still, the factory deducted 33,000 kyat (€25) from my salary. When I complained to the supervisors he told me ‘no matter what leave you take, money will be deducted.’”

Worker at Factory 12

Other deductions

Interviewed workers also spoke of other deductions. Workers are made to pay for several other services provided by their employers. At Factory 6 and Factory 12, for instance, workers pay 10,000 kyat (€7.54) per month for the transportation services provided by the factory.

Factory regulations/warnings

Strict regulations apply in the researched factories. Interviewed workers mentioned they receive warnings in the following cases:

- ❑ Not achieving the production target (Factory 4, Factory 1, Factory 12, Factory 3, Factory 9)
- ❑ Speaking during work time (Factory 4, Factory 1, Factory 9)
- ❑ When taking leave (Factory 11, Factory 8, Factory 12, Factory 9)
- ❑ Eating during work time (Factory 11)
- ❑ Wearing thanaka¹⁶⁶ (Factory 11)
- ❑ Making mistakes (Factory 11, Factory 12, Factory 3, Factory 5)
- ❑ Wearing flowers in hair (Factory 11)

166 Thanaka is a traditional facial cosmetic product used by both women and men, based on ground bark.



A shuttle bus drops off workers.. Lauren DeCicca | MAKMENDE

- ❑ Being absent (Factory 4, Factory 6, Factory 12)
- ❑ Being late (Factory 8, Factory 6, Factory 9)
- ❑ Talking back to the supervisor (Factory 8)
- ❑ Using mobile phone during working hours (Factory 5)
- ❑ Going to the toilet too often (Factory 5, Factory 3)

Usually, workers get three warnings and, after the third warning, they are dismissed.

In response to a draft version of this report, Takko wrote that an FWF audit conducted at Factory 11 discovered evidence of disciplinary measures.¹⁶⁷

Suitsupply indicated that the FWF audit at Factory 3 revealed that the factory had a very strict warning system when it came to disciplining workers. Suitsupply writes that the factory is currently re-writing its company policy and has dropped all unnecessary strict warnings. Suitsupply is also looking into the possibility of training on cross-cultural communication (by SMART Myanmar) especially designed for foreign factory owners/management.¹⁶⁸

¹⁶⁷ Takko, "Response to a draft version of this report", 5 January 2017.

¹⁶⁸ Suitsupply, "Response to draft version of this report", 28 December 2016.

Fines

At two factories workers also spoke of fines imposed by management for all kinds of infractions.

At Factory 6, for instance, 500 kyat (€0.38) is deducted from a worker's salary each time they arrive late at work. Each time a worker misses more than 30 minutes of work his or her salary is cut by 2,700 kyat (€2.03).

Factory 7 workers mentioned they are fined 500 kyat for the following 'offences': arriving late, not washing their hands, using a phone on the work floor, not wearing shoes, not wearing a complete uniform, not being able to show the obligatory 'toilet card' when using the washroom, etc.

"When the bus arrives late we have to pay 500 kyat even though it is not our fault. Management tells us we have to arrange with the bus driver that he arrives on time."

Worker at Factory 7

Bonuses and work load

According to the interviewed workers, all the researched factories had bonus systems in place, with two exceptions – Factory 8 and Factory 12. Bonuses are reportedly paid for full attendance, skills levels and for reaching production targets.

Factories pay out an attendance bonus if workers manage not to skip a single day of the working month. This bonus ranges from 5,000 kyat (€3.77) a month at Factory 2 to 15,000 kyat (€11.31) a month at Factory 10. This bonus is an important part of the monthly income that workers cannot do without. Workers referred to this as 'a bonus for not taking leave'.

As well as the attendance bonus, at several factories there are bonuses for skills levels and reaching production targets – for example, at Factory 4, Factory 7, Factory 1 and Factory 5.

Factory 5 workers, for instance, may get 10,000 (€7.54) - 25,000 (€18.85) kyat bonus a month for reaching production targets.

At Factory 2, workers are graded 'A', 'B' or 'C' depending on their work experience and get monthly bonuses accordingly: grade 'C' workers get a bonus of 5,000 kyat (€3.77); grade 'B' workers get a bonus of 7,500 kyat (€5.66); and grade 'A' workers may receive a bonus of 10,000 kyat.

Likewise, at Factory 11, there is a grade system, with the pay difference between grade 'A' and grade 'B' amounting to 10,000 kyat per month.

At Factory 6, workers who have been with the factory for more than one year get an annual bonus of 6,000 kyats (€4.52).

Bonuses need to be deserved, however. Or, they are tied to workers' performance. When workers are ill it often means they miss out on the attendance bonus. At Factory 5, workers easily lose out on the "bonus for not taking leave": if a worker arrives ten minutes late at work, the bonus is annulled for the month. At Factory 6, workers only get the attendance bonus if they work overtime hours. Also, the higher grade bonus is tied to a higher production target, which puts a lot of pressure on the workers. If the target is not reached, the bonus is cancelled, which impacts negatively on workers' incomes. This forces workers to work longer hours. In those cases where promotion is linked to higher production targets, workers may feel reluctant to get promoted or upgraded as this will increase stress and harassment.

"My fear is that I will get promoted. I do not want to get promoted. If we get promoted to a higher grade it means we will earn a bit more money but it also means we will have to complete higher production target[s]. The higher the position, the higher the targets. Supervisors and line leaders will pressure us and scold us. If the workers do not reach the targets they tell the workers they are lazy and shout at them. I do not want that verbal abuse, that's why I don't want to get promoted."

Worker (17 years) at Factory 11

Some categories of workers are not entitled to certain bonuses. Factory 10 workers, for example, mentioned that cleaners do not get bonuses or other allowances. Cleaners only get the basic minimum wage of 3,600 kyat a day, even if they work overtime.

Allowances and benefits

What workers earn is determined by their basic salary, deductions and bonuses, as well as any monetary allowances employers may offer. Interviewed workers mentioned allowances for transportation and for 'general support'. The allowance sums varied considerably.

Interviewed Factory 8 workers spoke of an allowance of 20,000 kyat (€ 15) - 30,000 kyat (€ 23) that the employer offers every two months as 'general support'.

Workers at Factory 9 and Factory 2 mentioned transport allowances. At Factory 9 this was 6,600 kyat (€ 5) - 7,800 kyat (€ 5.88) per month. At Factory 2, workers received a daily transportation allowance of 400 kyat (€ 0.30).

In other cases, workers spoke of in-kind allowances provided by the factory. At Factory 1 and Factory 5, workers are provided transport free of charge. Five workers at Factory 4 mentioned that they were using the company's ferry services.

Table 8 Deductions and bonuses

	Deductions	Bonuses
Factory 1	No wage deductions	Attendance bonus: 10,000 kyat (€7.54) Bonus for reaching production targets: 2,000 kyat (€1.51)
Factory 2	No wage deductions	Skills bonus: depends on your grade. Grades A, B, C (10,000; 7,500; 5,000 kyat / €7.54, €5.65, €3.78) respectively).
Factory 3	No wage deductions	Attendance bonus: 10,000 kyat (€7.54)
Factory 4*	Sick leave (more than one day): attendance bonus (10,000 kyat/ €7.54) is deducted. Accommodation: 15,000 kyat (€11.31) (workers living in the factory hostel)	Attendance bonus: 10,000 kyat (€7.54) There are also bonuses for not taking leave and for reaching production targets. The amounts depend on the workers' grade and may amount to 20,000 kyat (€15.10) in total.
Factory 5	For taking (sick) leave: attendance bonus (10,000 kyat/€7.54) + daily wage + part of the target bonus)	Attendance bonus: 10,000 kyat (€7.54) Reaching production targets: from 10,000 (€7.54) to 25,000 kyat (€18.85)
Factory 6	Taking leave: 12,000/ day Sick leave 10,000/day (€7.54) Transport: 10,000 kyat. For coming late: 500 kyat (€0.38) for 30 minutes. Absence: 2,700 kyat (€2.03).	Annual bonus: 6,000 kyat (€4.52) Attendance bonus: 5,000 (€3.78) -10,000 (5 7.54)
Factory 7	Leave with notification: 5,000 kyat/day Leave without notification: 10,000 kyat/ day (€7.54) Sick leave: 3,600 kyat/day (€2.71) 500 kyat (€0.38) fines for: coming late, not washing hands, using phones, not wearing shoes, not wearing complete uniform, not using 'toilet card'.	Attendance bonus: 15,000 (€11.31)
Factory 8	Taking leave: between 5,000 (€3.78) - 8,000/day (€6)	No bonuses mentioned by the workers
Factory 9	Workers indicated that deductions are made for taking (sick) leave. However, they are not sure about the amounts. The mentioned amounts varied between 6,000 (€4.52) and 10,000 kyat (€7.54) per day.	Attendance bonus: 10,000 (€7.54) Transport allowance: between 6,600 (€4.52) and 7,800 (€5.88) kyat
Factory 10	Sick leave: 3,600/day (€2.71) taking leave without notification: 7,500 kyat/day (€5,65)	Attendance bonus: 15,000 kyat (€11.31)
Factory 11	Leave without notification: 8,000 kyat/ day (€6) Sick leave: 3,600 kyat/day (€2.71) New Look, in its response, wrote that its own investigation did not uncover this issue.	Attendance bonus: 10,000 kyat (€7.54)
Factory 12	For taking leave (including sick leave): 7,200 kyat/day (€5.43) Transport: 10,000/month (€7.54)	There are no bonuses

* Factory 4, in its response to a draft version of this report, said that as of September 2016 they are no longer providing hostel service for the workers. The factory stated that the provide workers with a bag of rice per week to support their families. In addition, the factory said that as of September 2015 its "salary structure does not include attendance bonus anymore". The factory did not provide further information on wage deductions.

Basic needs

Roughly 60 per cent of the interviewed workers indicated that their salary was not enough to cover their basic needs. Workers indicated they had to struggle to make ends meet. They spend their salary on housing, food, medical and health care expenses, education, clothing and footwear, transportation, child care, toiletries and telephone bills. Many workers mentioned they had debts that they need to repay, often with considerable interest rates. In order to cope, workers described several strategies:

- ❑ *Multiple income earners:* On average, the families of the interviewed workers include three income earners, including children. Workers at Factory 10, Factory 1 and Factory 12 even spoke of children below the age of 14 years who are doing paid work to supplement the family income.
- ❑ *Additional jobs after working hours:* Several workers said that after factory working hours they have another job. Some workers mentioned doing production work at home for which they are paid on a piece-rate basis. One example is a Factory 7 worker who as a home worker is engaged in shoe decoration. Others work as taxi drivers.
- ❑ *Cut down on basic expenses:* Workers said they systematically reduce spending on food, clothes and other basic needs.
- ❑ *Urban squatting:* As housing costs are high, many workers cannot but live in squats.
- ❑ *Take on loans:* 153 of the 403 interviewed workers mentioned they have borrowed money to make ends meet. 153 of the 403 interviewed workers mentioned they have borrowed money to make ends meet, often from people in their neighbourhoods. The going interest rate is 20 per cent.

"We all borrow money to get by. The interest rate is 20%. At the end of the month you repay the loan and then you borrow money again. That is how it goes. If you cannot repay the loan, you cannot get another loan from the same person. Then you have to look for other people to borrow money from."

Workers at Factory 10

"My salary is not enough to take care of my family. That's why I also work as a motor taxi driver after working hours. Because I work so many hours my family has no debt. A lot of my colleagues have to take loans to get by. I have no free time but I have to think about my son. He is in school now, in grade 3, and I want him to get a good education."

Worker at Factory 5

4.6 Working hours

At all investigated factories, workers work six days a week and they all reported that they regularly work overtime hours. The number of overtime hours varies from factory to factory and may also vary from week to week, depending on shipment deadlines that need to be met. At a number of the investigated factories problems related to excessive overtime, forced overtime and unpaid overtime were reported.

Excessive overtime

Excessive overtime – working weeks exceeding 60 hours – was reported by workers at Factory 11, Factory 5, Factory 12, Factory 6, Factory 8 and Factory 9.

At Factory 11, half of the interviewed workers reported that they regularly work more than 60 hours per week and that their working weeks may amount to 66 hours per week. New Look, in its reaction to a draft version of this chapter, confirms the findings regarding excessive overtime. In addition, New Look identified the manual recording of working hours as a risk.¹⁶⁹ Likewise, Takko said it found infringements related to overtime work.

- ❑ Some workers at Factory 6 also mentioned they regularly work 66 hours in a week.
- ❑ At Factory 5, some workers mentioned working weeks as long as 68 hours.
- ❑ At Factory 12, four workers mentioned shifts from 8am to 5am, which means they work 21 hours consecutively.
- ❑ At Factory 8, workers often work from 8am to 8pm on weekdays, with two breaks of each half an hour, and an additional 8 hours on Saturday, amounting to working weeks of at least 63 hours. If breaks are counted as working hours, as the law stipulates, the total amounts to 68 hours per week.
- ❑ At Factory 9, 11 workers also reported working weeks that by far exceed the maximum of 60 hours. Two of these workers reported that they have to work until 10pm six or seven times a month. H&M, in response, wrote that regular overtime at Factory 9 is until 7pm and that they were unable to verify if workers are forced to work overtime.

Forced overtime

Forced overtime was reported by workers at Factory 9, Factory 5 and Factory 12. At Factory 5 and Factory 12, two-thirds of the interviewed workers said they are forced to do overtime work. Some workers at Factory 5 said that there are wage cuts if they do not agree to work overtime. At Factory 9 forced overtime practices were reported by seven of the interviewed workers.

¹⁶⁹ New Look, “response to draft version of this report”, 6 January 2017.



A garment factory in Myanmar (this factory was not included in the research). Martje Theuvs | SOMO

Unpaid overtime

At four of the investigated factories, unpaid overtime is an issue. Unpaid overtime was reported by workers at Factory 11, Factory 7, Factory 8 and Factory 3.

At Factory 11, a number of interviewed workers said they cannot achieve the target within eight hours. Therefore, they work an additional two hours each day, from 5pm to 7pm. These extra hours are not paid. Workers only receive overtime payments for hours worked after 7pm.

At Factory 7, interviewed workers reported that each morning between 7.30 and 8am they have to stand in a queue and listen to management's announcements. Before they start work they have to clean the workplace. Likewise, in the evening workers have to clean the workplace and listen to management's announcements. The extra time – 40 minutes each day, adding up to four hours a week – is not compensated.

At Factory 8, workers normally work from 8am to 7pm. Workers are paid for overtime work performed between 5pm and 7pm, but if the work is not finished at 7pm they have to continue until the work is completed, usually they continue until 8pm. After 7pm, overtime hours are not paid, said the interviewed workers. After receiving a draft version of this report, H&M visited the factory and interviewed a number of workers. H&M wrote to SOMO that during this investigation workers had said they work until 7pm. H&M was unable to verify the extra hour of overtime work. H&M wrote it has asked CTUM to further investigate the matter.¹⁷⁰

170 H&M, "Response to draft version of this report", 22 December 2016.

*“The workers have to work 20 hours for free in a month for not reaching the production the target.”
 “There is always threatening about firing workers if we refuse to work overtime.”*

Workers Factory 8

At Factory 3, workers need to complete production targets. Fourteen interviewed workers said that, if they cannot complete the target within eight hours, they need to continue working without getting paid.

Suitsupply wrote that the FWF audit conducted at Factory 3 did not give indications of unpaid overtime. This issue is being further investigated says Suitsupply.¹⁷¹

4.7 Child labour

At all 12 investigated factories workers were interviewed who were younger than 18 years when they started. At six of the 12 factories investigated, strong indications were found that some of the current workers were younger than 15 years old when they started at the factory. These six factories are Factory 2, Factory 5, Factory 6, Factory 9, Factory 11 and Factory 12.

Takko, in response to a draft version of this report, wrote that – following an FWF audit in August 2016 – it was made aware of ‘misconducts’ at Factory 11, including evidence of child/youth employment. Takko claimed to have started working with the factory on improvements. With regard to child/youth employment Takko wrote that currently there are no longer workers under the age of 16 and that Takko has ensured that the young workers, previously employed at the factory, receive full financial support, as well as education, to prepare them for entering the workforce when they reach the working age. Takko says it is carefully monitoring the factory’s compliance with national legislation and international conventions regarding employment for workers below the age of 18 (16 and 17 years old).¹⁷²

At Factory 2, 32 workers were interviewed, half of whom were under 18 years at the start of their employment. Four of them were younger than 15 years old when they began working at Factory 2.

Two of the interviewed workers at Factory 12 explained that they were only 14 years when they were hired. Some of the interviewed workers at Factory 12 said the youngest workers were 13 years old and that the factory does not check the ages of all workers.

At Factory 11, three of the interviewed workers said that they were 14 years old when they started working at the factory. New Look, in its response, wrote that its own investigation did not uncover this issue.¹⁷³ Interviewed workers at Factory 11 mentioned that, in summer time, children aged between 13 and 15 years old were usually appointed as helpers in the factory. Additionally, in 2014, Factory 11 hired a considerable number of young workers. Apparently there was some urgency

171 Suitsupply, “Response to draft version of this report”, 28 December 2016.

172 Takko, “Response to a draft version of this report”, 5 January 2017.

173 New Look, “response to draft version of this report”, 6 January 2017.

involved and age restrictions were not strictly applied. At that time, it was very easy for young workers to get a job using someone else's ID. Interviewed workers added that later on the factory had started applying more strict age requirements.

Seven of the interviewed workers at Factory 5 mentioned that there were workers of 15 years or younger at the facility. ALR said they had seen at least one child of 13-14 years at the factory, at the time of the interviews.

Commenting on the draft report, however, FWF and Deuter expressed surprise about this. During the FWF audit in May 2016 and a training in December 2016 at Factory 5, they did not find such young workers. FWF announced they would launch an immediate investigation.¹⁷⁴

Five of the interviewed workers at Factory 9 said that workers as young as 14 years old worked at the facility. H&M wrote in its reaction that it became aware, in May 2016, that there were two young workers under the age of 16 among the work force. For one of these workers the factory provided funds so that she could pursue her education. H&M writes that during a visit to Factory 9 in November 2016 [after SOMO's research had been completed] it did not find evidence of workers under the age of 14. According to H&M there are several workers under the age of 18 who all have proper documentation and medical certificates.¹⁷⁵

The interviews provide a lot of insights about the occurrence of child labour in the researched factories. However, it is difficult to assess the full extent of the problem. It is very likely that there are many more young workers among the workforce of the 12 factories, including workers younger than the Myanmar legal minimum age and younger than international standards prescribe. Some factors make it difficult to get all the facts and figures out on the table.

The researchers found that young workers are reticent to speak about their working lives. A number of young workers at the twelve factories who were approached for this research did not want to be interviewed and refused to answer to any questions.

Some of the young workers who did agree to be interviewed were unwilling to give their age, for instance at Factory 10. The interviewers concluded that these young workers were likely to be younger than what they had told their employers.

In some cases workers did answer questions about their age but seemed to be making up their age as they were apparently trying to pass for older than they really were. The interviewers had the impression that these workers felt that sharing information about their age and details about the terms of employment could get them into trouble. According to the interviewers, some of these young workers were clearly younger than 13 years and should not be working in the factory at all. Some of them were aged between 13 and 15 years old but clearly were working more than the

174 FWF, "Response to a draft version of this report", 13 January 2017 and Deuter, "Response to a draft version of this report", 4 January 2017.

175 H&M, "Response to draft version of this report", 22 December 2016.

legally allowed maximum of four hours per day. Some of them may have been 16 or 17 years but were unwilling to say so.

When asked about her age, one of the young workers at Factory 11 responded: *“Do you want to know my real age or my age at the factory?”*

New phenomenon: age restrictions

Some employers have recently introduced age restrictions. Newly hired workers should be at least 18 years old. Brands have been stepping up their requirements.

“When buyers come into the factory the child workers are being told not to come to work at the factory.”

Worker at Factory 6

Factory 9 recently dismissed young workers following pressure by their customers. The factory did not pay compensation, however. One young worker was assisted to go to school, with her former employer paying the school fees.

Box 2: Yi Yi’s story

When Yi Yi started working at Factory 11, she was only 15 years old. Two of her friends at the factory were only 14 years old when they were hired. At the time of the interview they were 17 years old. Yi Yi’s mother was also present at the interview; she was quite nervous about what was discussed. The whole family depends on Yi Yi’s wage. At 17 years (and 14 and 15 at the start of their employment), Yi Yi and her friends are too young to work at the factory. The factory supposedly wants workers of 18 years and older. Yi Yi, however, mentioned that she never lied about her age, but that the factory took her on even though she was too young. It has become more difficult for the girls to find jobs at garment factories as they are not yet 18. That is why they do not want to lose their jobs at Factory 11.

Interview with Yi Yi and two co-workers at Factory 11

Identity cards

The research points out that the use of fake National Registration Cards (NRC) or IDs is widespread. Interviewed workers testified that young people frequently use a fake ID in order to get a job at the factory.

“They check the NRCs but some of the workers’ real age is about 14. Those workers use fake NRCs to get the job.”

Worker at Factory 6



Garment factory workers eat dinner in their small home. Lauren DeCicca | MAKMENDE

Most employers willingly turn a blind eye on this practice. Young workers are often hired without having their ID properly checked.

Interviewed workers said that young people are sometimes appointed even when it is clear that they are using fake IDs. In response to this, H&M claimed that, during a visit to the factory on 20 October 2016, all IDs in the HR files were reviewed with the factory's HR managers, but that no fake or unclear IDs were found.¹⁷⁶

Daily labourers

The research showed that many of the young workers were hired as daily labourers. Such workers earn between 2,000-3,000 kyat a day and are not entitled to any bonuses or benefits. Moreover, daily labourers do not have a contract and are easily dismissed.

Interviewed workers mentioned that in Factory 6 daily labourers were employed on quite a considerable scale. ALR staff said that among those daily labourers there were many young workers. Some of these young workers were only 14 or 15 years old. Assessing the number of these 14 and 15 year olds at this factory at the time of the interviews, ALR staff said it could be up to a 100. As some buyer companies are becoming more strict about child labour, factories are becoming more reluctant

176 H&M, "Response to draft version of this report", 22 December 2016.

to offer young workers contracts. Daily workers are at the beck and call of their employers and can be sent home much more easily than regularly contracted workers.

A worker at Factory 10, who was 15 years old when she started there, mentioned she was hired as a daily labourer as she was not able to show an ID. She said that workers who cannot present an ID that proves they are 18 years or older are hired as daily labourers.

Other side of the coin: age discrimination

Interviewed workers explained how employers desire fast-working workers with nimble fingers and good eyesight. Women workers are preferred, especially for sewing as well as for quality control. Workers who get pregnant or who have to spend time looking after infants are seemingly considered a nuisance. Reportedly, women workers are frequently fired for such reasons. For women above 30 years old, it is quite hard to find work in the garment industry.

Some of the interviewed workers mentioned they lie about their age. A 51-year-old worker at Factory 7 said that she told the employer that she was in her early thirties in order to get the job. Subsequently, she has had to hide her glasses, as glasses are seen as an unacceptable sign of old age.

4.8 Health and safety on the work floor

Only 21 per cent of the interviewed workers had received any training on Occupational Health and Safety (OHS). At Factory 1, Factory 8, Factory 2, Factory 10 and Factory 12, none of the interviewed workers had been trained or informed about health and safety aspects of their work. H&M confirmed that health and safety trainings are not provided at Factory 8.

At other factories, occupational health and safety trainings are offered, although sporadically and not to all workers. At Factory 4 and Factory 5, OHS trainings seem to be provided on a somewhat regular basis as two-thirds of the interviewed workers indicated that they had participated in such trainings.

Fire safety trainings are a bit more common: 31 per cent of the interviewed workers said that they had participated in fire safety trainings. At Factory 4, all but one of the interviewed workers had received fire safety training. Factory 1, Factory 8, Factory 3, Factory 10 and Factory 2 performed worst in this regard: in these factories less than five workers had received instructions on fire safety. H&M indicated, in its response, that a fire safety and evacuation training had been held at Factory 8 in July 2016 (this is after the interviews for this research had been conducted). Suitsupply indicated that all workers received fire safety training. However, due to a low level of education, workers have difficulties understanding the content. The factory is currently working on a new training with more visuals that should be easier for workers to understand.¹⁷⁷

177 Suitsupply, "Response to draft version of this report", 28 December 2016.

The use of protective gear is very minimal. Only 20 per cent of the interviewed workers said they were provided with any protective gear. At Factory 11, half of the interviewed workers said they do not use the provided protective gear as they find it uncomfortable to wear. When buyers visit, however, workers are made to wear the protective gear, they added. New Look, in its response, wrote that its own investigation did not uncover this issue.¹⁷⁸ Likewise, workers at Factory 1 who were provided with protective gear said they did not use it as they find it uncomfortable.

At Factory 4 more than two-third of the workers are provided with protective gear. All workers indicated that they use the protective gear. At Factory 5, workers said they are given rubber boots that should protect them from electric shocks caused by the static work floor.

At Factory 8 and Factory 12, workers said they are only given protective gear on days when buyers or other visitors come to the factory. H&M indicated it paid a visit to the factory on 19 December 2016 and found all relevant workers to be using personal protective equipment.¹⁷⁹

Interviewed workers at Factory 10 said that there is not enough protective equipment available at the factory. They said that sometimes they are given a mask while on other days they have to do without. When workers ask for a mask they are told that there are not enough masks to go around. Workers said they are breathing in fabric, which causes respiratory problems, coughs and sore throats.

At Factory 12, workers indicated that they work with fur without being provided with a mask, which causes pain and discomfort.

Medical facilities

At Factory 4 and Factory 2, there is a clinic where workers can go to if they feel sick or if they are injured. At Factory 10, Factory 12 and Factory 6, there is a nurse on site. At Factory 12 and Factory 10, workers complained about the lack of medicines. The workers of one production line therefore collect money to buy medicines together.

At Factory 1, a doctor is available two or three days a week. At Factory 7 there is no medical facility but there are some medicines available at the factory.

Workers at Factory 11 and Factory 8 said that there is a clinic at the factory but that it is not working. It is only there for show, workers say. In its response H&M stated that it visited Factory 8 on 19 December 2016 and found that there was a nurse attending the clinic.¹⁸⁰

At Factory 5, there is no medical facility. Workers said they have to buy medicines themselves. Here also, some workers collect money with the entire production line and buy medicines that are used by the workers of that line.

178 New Look, "response to draft version of this report", 6 January 2017.

179 H&M, "Response to draft version of this report", 22 December 2016.

180 H&M, "Response to draft version of this report", 22 December 2016.

“There is a clinic and a nurse but just for show. Normally it is locked. It is only open when buyers visit. We cannot use the medicines so we go to a private clinic.”

Workers at Factory 11

Fire and building safety

Fire safety is an issue of concern. Bad wiring leads to fire risks. Lack of exits, poorly constructed and poorly expanded buildings, overcrowded factories, blocked and locked exits and the absence of proper fire drills exacerbate the risks.¹⁸¹

Some of the interviewed workers at Factory 11 referred to a deadly accident that took place in 2015. It was summer and therefore very hot. As there were insufficient fans at the factory, a worker tried to open a door to ease the heat. The door broke loose and fell on the worker who unfortunately did not survive the accident. The factory management paid 600,000 kyat in compensation to the family of the victim.

At Factory 10, Factory 9, Factory 6 and Factory 12, workers reported electrical shocks and wire shocks. Boiler accidents were mentioned by workers at Factory 10 and Factory 12. At Factory 10 a boiler exploded and caused injuries to one of the workers.

At Factory 6, workers said they fear a fire will break out. *“I have to stay alert, I am afraid a fire might break out”*, said one of the workers. At Factory 12 there were workers who feared they would not be able to get out of the building in time if something were to happen. A worker explained:

“Sometimes I worry about my safety. The exit is very small. It takes a long time for all the workers to get outside. Last month there was an accident. At the end of the day all the workers were rushing towards the exit as they don’t want to miss the ferry. In the chaos, one girl fell and broke her leg. There are three exit doors but the opening is very small. It is not enough.”

Worker at Factory 12

New Look, in its reaction to a draft version of this report, wrote that its own investigation had uncovered additional safety issues at Factory 11: New Look wrote that secondary exits are locked and there are narrow aisles, which may hinder workers leaving the factory in time during emergency evacuations.¹⁸²

Health impacts

Long working hours may have adverse impacts on workers’ health and well-being. Workers at Factory 7 and Factory 6 said they regularly skip lunch in order to complete their daily targets. Five workers at Factory 6 said they suffer from stomach-aches and gastric problems because they often skip lunch. Also at Factory 10 there were workers who said they skip breaks and avoid going to the toilet in order to complete their targets. A worker at Factory 10 explained:

181 SOMO, interviews with SMART and MGMA, July 2015 and April 2016, Yangon, Myanmar.

182 New Look, “Response to draft version of this report”, 6 January 2017.

“Production targets are hard to reach. In order to reach the target we don’t take breaks and we don’t go to the toilet. I try not to go to the toilet more than once per day.”

Workers told the interviewers that they feel exhausted because of the long working hours and the constant pressure to achieve production targets. One of the interviewed workers at Factory 9 said: *“When we have to work overtime for so long I get dizzy.”*

Temperatures in factories can get extremely high, especially in the hot season (March to May) when temperatures easily reach 40 degrees Celsius. Many factories have poor ventilation. Workers report that uncomfortably hot temperatures give them headaches, and make them sweat or even faint. New Look, in its response to SOMO, identified high temperatures in the cutting unit as a concern.¹⁸³

At Factory 5 several workers have fainted due to the heat and stress. Interviewed workers said that, in the months preceding the interviews, three workers had fainted.

One of the Factory 5 workers explained how he tried to help his colleagues who fell ill during working time:

“I have a motorbike and sometimes when co-workers are sick I bring them to the clinic or take them home. Otherwise, they have to stay at the factory because management will not arrange transport for them. Workers get dizzy, they get stomach-aches or sometimes they even faint. Management gives them some water and medicines but workers would rather go home. Each time I bring home one of my sick colleagues 18,000 kyat is deducted from my salary. Also for the sick workers this amount is deducted. I am at risk of losing my job because they already gave me three warnings for leaving work.”

Worker at Factory 5

Additionally, in some factories insufficient or dirty drinking water is a major concern, especially during the hot season when workers sweat a lot and need to drink enough to stay hydrated.

At Factory 5 workers say that the water provided by the factory is not clean. They say only office staff is provided with purified water and that the water for the other workers is smelly and cannot be used as drinking water. One worker said that the factory fills empty bottles of purified water with non-purified water and gives these bottles to the workers. In its response to a draft version of this report, FWF wrote that information gathered through an FWF audit (May 2016) and a training session in December 2016 did not substantiate these findings. FWF is investigating the matter further.¹⁸⁴

At Factory 8, workers also complained about the lack of drinking water:

“It is too hot in the factory; the ventilation is not good. There is not enough purified water so sometimes we get very thirsty. When the buyer comes, the workers get a bottle of water and a cup but normally they don’t get this.”

Workers at Factory 8

183 Ibid.

184 FWF, “Response to a draft version of this report”, 13 January 2017



A woman washes her hair outside of her home in a squatter village where many garment factory workers live.

Lauren DeCicca | MAKMENDE

H&M stated that, during their visit of 19 December, they found that workers were provided with drinking water. H&M also wrote that Factory 8 management confirmed that in summer it was too hot in the factory and that during the hot season fans were provided. This last statement could not be verified by H&M.

Insufficient toilet facilities were also reported, as well as restrictions in making use of the toilet. Consequently, workers do not drink any water in order to avoid having to go to the toilet. At Factory 5, some of the interviewed workers said they are not permitted to go to the toilet whenever they need to. If they go to the toilet too often, wages are cut. At Factory 8, interviewed workers said that there are not enough toilets and that because of the workload there is no time for workers to go to the toilet. Workers at Factory 8 also said that the toilets are dirty and that they are only cleaned when buyers visit the factory. H&M responded that, during their December visit, they found sufficient and clean toilets.

"They take note if the workers go to the toilet often and they also record how much time we spend on the toilet. They tell us that they will cut down the salary for going to the toilet very often."

Worker at Factory 5

4.9 Social security

Workers in the private sector should be covered by a contributory social security scheme, as well as being provided with medical care and five types of cash benefits for sickness, maternity/paternity, death (funeral grant), and work injury.¹⁸⁵

At most factories, interviewed workers reported that part of their wage is deducted for social security contributions (usually 2,160 kyat (€ 1.63) per month). Workers at Factory 7 did not know if social security contributions were made in their names as, at the time of the interviews, they did not receive pay slips and could thus not verify whether these deductions were made. At Factory 4, the majority of interviewed workers said that no social security fees were deducted from their salaries. Factory 4 indicated that the issuance of social security cards by the social security board is a very slow process and that they have contacted the social security board several times in an effort to expedite the process. Factory 4 also wrote that awaiting the issuance of social security cards, "some workers were provided with temporary cards".¹⁸⁶

At Factory 3, some workers said social security deductions were made while others said no social security deductions were made.

Daily labourers are not covered by social security schemes, however.

While most workers are entitled to social security benefits, as they are making contributions to the social security fund, they are not benefiting from the scheme in practice. Many workers were not given a social security card, or 'smart card'. Workers need such a card in order to make use of the facilities of the social security clinics.

At Factory 11, interviewed workers said that only those in higher ranks, like supervisors and line managers, were offered a social security card. At Factory 10, interviewed workers said that around half of the workers received a social security card. They suspected that the factory did not want workers to take sick leave and therefore did not provide the workers with social security cards. Likewise, at Factory 8, most workers did not have a social security card. Workers at Factory 3 said that only workers who have stayed with the factory for more than one year were provided with a social security card.¹⁸⁷

"I do not have a social security card. Some of my friends at the hostel were given a social security card after three or four months. I also need a social security card but I do not have enough courage to ask. I am sure that when I ask they would not give it to me."

Worker at Factory 12

185 The World Bank Group, "Building Resilience, Equity and Opportunity in Myanmar: The Role of Social Protection," September 2015, <http://www-wds.worldbank.org/external/default/WDSContentServer/WDSContentServer/IB/2015/07/09/090224b082fe36a6/1_0/Rendered/PDF/Strengthening00provision0in0Myanmar.pdf>

186 Factory 4, "Response to a draft version of this report", 5 January 2017.

187 ALR comments that the Ministry of Labour has not issued enough social security cards.

4.10 Labour unions and complaint mechanisms

From the interviews with workers, it became clear that there is a great lack of awareness among workers about their right to form and join trade unions and about the roles and functions of trade unions. More than two-thirds of the interviewed workers (310 out of 403 interviewed workers) said they do not know what a trade union is. At four factories (Factory 1, Factory 10, Factory 7 and Factory 12) not one of the interviewed workers had any knowledge about trade unions. On the upside, at three of the twelve investigated factories more than half of the interviewed workers were familiar with trade unions: Factory 4, Factory 2 and Factory 5.

At the time the interviews were conducted there was only one factory where a trade union was active. At Factory 2, there is a trade union called Factory 2 Labour Union. Seven of the interviewed workers are members of this trade union. The Factory 2 Labour Union was formed by the workers after they organised a protest for higher wages in December 2015. The workers succeeded in negotiating a pay rise. The wage for daily labourers increased from 1,600 kyat (€ 1.20) to 2,700 kyat (€ 2.03). It has also become easier for workers to take the leave they are legally entitled to.

Workers commented that they used to organise a protest each year to demand better working conditions but that this year they do not intend to go on protest as they feel they have accomplished a lot in the previous year. At the time of the interviews, one of the issues that was being discussed between the factory management and the trade union was the use of daily labourers. The Factory 2 Labour Union would like to see the factory phasing out the use of daily labourers and hiring workers on a permanent basis instead. Interviewed workers said that the labour union provides them with information about leave and that the union negotiates with management about working hours. If there are complaints, the labour union talks with the management. Interviewed workers who are not members of the Factory 2 Labour Union cited the following reasons: no time to attend meetings as they have other responsibilities at home or being afraid of the supervisor's reaction if they joined the union.

At Factory 3, a union was formed but, according to the interviewed workers, it was effectively broken down by the management following a protest organised by the newly formed union. In 2013, union leaders organised a protest, demanding a salary increase. Three workers who were involved in organising the protest were dismissed. The other union members chose to resign. As a result, workers do not dare to join the union as they fear they might lose their jobs.

At Factory 5, more than half of the interviewed workers were aware about trade union rights, as they had been in contact with ALR on different occasions. Some of the interviewed workers said they were interested in forming a trade union.

Workers from Factory 8, after being informed about the role of a trade union, said that it would be impossible to form a union at their factory. They believed that workers would be dismissed if they tried to organise a union. In its response, H&M said it could not verify this finding and that they had asked CTUM to investigate this further.¹⁸⁸

188 H&M, "Response to draft version of this report", 22 December 2016.



A garment factory in Myanmar (this factory was not included in the research). Martje Theuvs | SOMO

At Factory 4, interviewed workers commented that there is a union active at the factory that was formed by the factory management. Factory 4 reacted to this statement saying that the union was formed free of obstruction from foreign management and that the union representatives were elected by the workers.¹⁸⁹

Complaints

When asked about where workers should go if they have a complaint about employment or working conditions, the vast majority of the interviewed workers said that they were instructed to go to the supervisor. Few workers were familiar with formal complaint procedures.

Some workers (five) at Factory 11 knew about the township labour office and that they could go there in case of problems. New Look, in its response to SOMO, wrote that it had identified the lack of a grievance mechanism at Factory 11 as a concern.¹⁹⁰

189 Factory 4, "Response to a draft version of this report", 5 January 2017.

190 New Look, "response to draft version of this report", 6 January 2017.

At Factory 2, six workers indicated that complaints could be dealt with by the labour union. Some workers said they did not know whom to go to with complaints while others said that raising complaints was impossible. They mentioned that they could lose their job if they raised complaints. One worker at Factory 8 even reported blacklisting practices:

“Management threatens workers that if they complain to the labour office they will not find jobs at other factories.”

Worker at Factory 8

“If you complain, you will be dismissed.”

Worker at Factory 5

4.11 Concluding remarks

Less than half of the notified buyers reacted to SOMO’s review request and only one of the 12 investigated factories. Five companies provided reactions to specific research findings. These specific reactions concern five factories, namely Factory 4, Factory 9, Factory 8, Factory 11 and Factory 5. Some of the findings presented by SOMO were confirmed, in particular findings related to non-payment of minimum wages to apprentices and workers on probation, and the risk of child labour in the factories. SOMO’s concerns about the lack of freedom of association were not fully recognised. Alarming, in relation to the 12 investigated factories, none of the responding companies recognised the issues with grievance mechanisms as described in the report. Only H&M and New Look, in general terms referred to the lack of functioning structures within the workplace through which workers can bring complaints to their management.

Some companies said that they had not been able to verify certain outcomes presented by SOMO. A number of companies announced to conduct further research. Some companies already conducted investigations, stirred by SOMO’s draft report. In some cases this allegedly led to corrective actions. At this point SOMO and its research partners are not able to verify companies’ claims of improvements implemented during the past months.

5 Buyer policies and supply chain initiatives

This chapter presents corporate information about the policies and practices of buying companies, that is brands and retailers, with regard to Myanmar.

This chapter also provides information about the Myanmar labour movement, with information on local labour unions and labour groups and their activities and the role of IndustriALL Global Union in Myanmar. The chapter ends with a description of relevant industry and multi-stakeholder supply chain initiatives including ACT, BSR, ETI, FLA, FWF and SMART.

5.1 Buying companies' policies and practices

The below paragraphs describe policies and activities of a number of brands and retailers that started sourcing from Myanmar in recent years and that were identified as clients of one or more of the 12 investigated factories. This chapter is based on the responses SOMO received to a draft version of this report and a set of additional questions. This information is complemented with publicly available information. Certainly, companies that did share information with SOMO get more critical attention than those companies that do not share any information. In a way, this is the flip side of transparency.

5.1.1 C&A¹⁹¹

Sourcing from Myanmar since: 2014.

Reason for starting production in Myanmar: According to C&A, some of their long-term suppliers in China, Hong Kong, Korea and Indonesia – amongst others – started setting up production facilities in Myanmar. The country is attractive to suppliers due to its tariff-free status compared to some of the other supplier countries in Asia.¹⁹² According to C&A, these suppliers proposed to move production of C&A orders to Myanmar. In a separate conversation with SOMO, the manager of a current C&A supplier factory in Yangon told SOMO that C&A had encouraged them to set up shop in Myanmar, with the promise of placing orders for a least a year.¹⁹³

Number of suppliers in Myanmar: In 2016, C&A released their first public supplier list, naming 15 suppliers in Myanmar. C&A's current supplier list, released in December 2016, names 11 factories in Myanmar. C&A informed SOMO that they intend to increase the overall volume sourced from Myanmar, the number of factories, as well as the types of products produced. The June 2016

191 Based on C&A's reaction to a draft version of this report, 30 December 2016.

192 C&A in an e-mail to SOMO, 13 January 2017.

193 Meeting between SOMO and C&A, March 2016, Yangon, Myanmar.



Garment factory workers travel by boat to work in the morning from a small village across the canal. Lauren DeCicca | MAKMENDE

supplier list mentioned a number of factory names that no longer appear on the December 2016 version. According to C&A, one of the factories could not meet C&A's delivery deadlines. At two other factories, production was suspended due to poor audit results.

The company shared the names and locations of its Myanmar suppliers with SOMO: Yes (public supplier list). In addition, C&A invited SOMO to visit four of C&A's supplier factories in Myanmar: Chinadawn Garment Myanmar, Mingalar Sumbiri Garment, Myue & Sue and Tristate Myanmar (these factories are not part of this research).

Due diligence procedures: C&A claims to exclusively source from long-term, established and trusted suppliers. In practice this means that in Myanmar C&A only sources from foreign-owned factories. For C&A this is the answer to the many challenges in Myanmar.

C&A mentioned that, very recently, a first discussion took place involving C&A, IndustriALL Global Union and their local affiliates, the Myanmar Garment Manufacturers Association (MGMA), the ILO, and the Myanmar government. The aim of this meeting was to identify country specific requirements for effectively improving working conditions.¹⁹⁴ Up until this point, engagement with local stake-

¹⁹⁴ 2C&A, "letter to SOMO in response to a draft version of this report", 30 December 2016.

holders had been very limited as the company said that they first needed to decide if they will invest in Myanmar as a production country before they 'put resources in it'.¹⁹⁵

In addition, in December 2016, C&A announced that an office will be opened in Myanmar over the coming months with nine staff members. According to C&A, this will help the company to better understand the local situation and enable the company to work closely with local factories to address key issues.

Monitoring of workplace conditions: At the time of writing, C&A has no staff in Myanmar. So far, social compliance audits at C&A's suppliers in Myanmar have been carried out by the Bangladesh audit team. Audits entailed factory visits and worker interviews inside the factories. These interviews are conducted by the Bangladesh auditing team with the assistance of an interpreter.

Key issues identified in Myanmar: C&A informed SOMO that the focus for improvements in Myanmar lies on building safety and occupational health and safety. These two areas are seen as the low-hanging fruit. Additionally, C&A will want to focus on freedom of association and collective bargaining, wages and working hours. These areas are qualified as the broader challenges that C&A needs to address. C&A is looking to collaborate with local and international stakeholders such as other retailers, ILO or IndustriALL. C&A said it had pushed ACT to incorporate Myanmar as the *second* country to implement the ACT programme on living wages. C&A also added that action around purchasing practices should be taken as soon as possible.¹⁹⁶

Reaction to factory findings: Factory 8 featured on C&A's June 2016 supplier list but was no longer included in the December 2016 update of C&A's supplier list. C&A wrote that two audits carried out at Factory 8 in November 2015 revealed unsatisfactory conditions and that the factory was consequently suspended. According to C&A, production has been ceased until corrective actions are completed and confirmed. C&A wrote that Factory 8 will build a new factory to improve standards in a new location. As C&A will restart production at Factory 8 once audits confirm that issues have been resolved, the factory has been removed from the supplier list. C&A did not provide further information regarding the infringements found at Factory 8 or at the other suspended factory.

C&A announced that, in the first quarter of 2017, a joint programme with H&M, ILO and the Swedish Development Cooperation (SIDA) will start. The aim is to reduce poverty, empower female workers and improve labour relations and social dialogue (for more information, see Section 5.2.7).

195 Meeting between SOMO and C&A, March 2016, Yangon, Myanmar.

196 C&A in an e-mail to SOMO, 13 January 2017.

5.1.2 Deuter¹⁹⁷

Sourcing from Myanmar since: 2015.

Reason for starting production in Myanmar: Deuter only works with two suppliers – a Vietnamese supplier and a Taiwanese supplier. Deuter’s Taiwanese supplier – with whom Deuter has been working for 12 years – set up two production facilities in Myanmar in 2015 and Deuter subsequently decided to move part of its sleeping bag production to Myanmar.

Number of suppliers in Myanmar: One.

The company shared the names and locations of its Myanmar suppliers with SOMO: Yes.

Due diligence procedures: Deuter writes that it is committed to long-term supplier relationships and that, whenever possible, the company tries to work exclusively with its suppliers. For more than a decade, Deuter has been working with the same two suppliers. Deuter says this commitment is a crucial part of its due diligence process. In addition, Deuter’s product management team, quality and CR managers and top management visit the supplier factories regularly. Also, the factories’ management teams visit the Deuter headquarters in Germany annually to discuss all issues at a top management level. Deuter conducts independent audits with FWF audit teams, follows up in the corrective action plans and encourages capacity building of suppliers through workers and management trainings with country specific content.

Monitoring of workplace conditions: Deuter’s monitoring, auditing and remediation processes are based on FWF’s verification system.

Key issues identified in Myanmar: Deuter writes that it is aware that garment factories in Myanmar face high risks for human rights violations. Deuter highlights the following issues:

- ❑ Long working hours
- ❑ Repression of union members and strike leaders
- ❑ Poor working conditions
- ❑ Child labour
- ❑ Verbal abuse
- ❑ Low health and safety standards in the factories
- ❑ Lack of a healthy social dialogue among both employers and unions.

¹⁹⁷ Based on Deuter’s response to a draft version of this report, 4 January 2017.



Garment factory workers walk to the factory in the early morning before work. Lauren DeCicca | MAKMENDE

Reaction to factory findings: Deuter wrote to SOMO that it does not source from Factory 5 but from another unit. This unit and Factory 5 are part of the same company. The two factories are located at the same premises and fall under another unit of the same company. Both factories have been audited by FWF in May 2016. Deuter wrote that the results of the May 2016 FWF audit did not substantiate the working conditions as described by SOMO. Deuter wrote that the SOMO's findings regarding the employment of young workers were not confirmed by the audit. The youngest worker found during the audit was 18 years old. In its Social Report 2015 (reporting period July 2015-June 2016), Deuter summarised the results of the audit.

5.1.3 Gaastra¹⁹⁸

Sourcing from Myanmar since: No information provided by the company.

Reason for starting production in Myanmar: No information provided by the company.

Number of suppliers in Myanmar: No information provided by the company.

The company shared the names and locations of its Myanmar suppliers with SOMO: No.

¹⁹⁸ Based on Gaastra's response to a draft version of this report, 16 December 2016.

Due diligence procedures: No information provided by the company.

Monitoring of workplace conditions: Gaastra is member of the Business Social Compliance Initiative (BSCI). The company writes that, in line with BSCI's approach, third party audits are being made by SGS at the company's request. There are regular follow-ups in the case of irregularities in order to ensure necessary improvement, according to Gaastra.

Key issues identified in Myanmar: No information provided by the company.

Reaction to factory findings: Gaastra (part of Doniger Fashion Group) confirmed sourcing from Factory 12. The company indicated that, through its audits, it is aware that there is "room for improvement" at Factory 12 and that measures are being taken to address issues. However, the company declined to respond to the specific findings as it is "only accountable to BSCI". Gaastra wrote that it appreciated SOMO sending the report to the factory as it would contribute to the company's efforts.

5.1.4 H&M¹⁹⁹

Sourcing from Myanmar since: 2013

Reason for starting production in Myanmar: H&M is an expansive company and is always looking for new potential sourcing markets. Myanmar has a long history of producing garments so there are good skills there for certain products, according to H&M.

Number of suppliers in Myanmar: 26 manufacturing factories and 12 processing factories according to H&M's public supplier list.²⁰⁰

The company shared the names and locations of its Myanmar suppliers with SOMO: Yes (public supplier list).

Due diligence procedures: H&M conducts a risk analysis to assess both business and sustainability conditions before deciding to source from a particular market. For Myanmar, the analysis included: meeting with local civil society, government and industry leaders, visiting factories to gain a better understanding of the working conditions in Myanmar and conducting a thorough internal analysis of opportunities and challenges. In addition to the regular requirement for suppliers to sign and comply with H&M's Sustainability Commitment and Code of Ethics, in Myanmar H&M applies an entry level that includes extra requirements for land rights due diligence, among a few other topics. H&M informed SOMO that it will not work with factories located in Special Economic Zones in Myanmar, as the development of SEZs is associated with land rights issues.²⁰¹

199 Based on H&M's response to a draft version of this report, 22 December 2016.

200 H&M, "Supplier List", no date, <<http://sustainability.hm.com/en/sustainability/downloads-resources/resources/supplier-list.html>> (13 January 2017).

201 Conversation between SOMO and H&M, September 2016.

Monitoring of workplace conditions: H&M has a local sustainability team in Myanmar. According to H&M, each facility is visited four times a year. Quarterly meetings are held in the H&M office with factory management from key suppliers to provide support and follow up on their sustainability performance and competence. H&M writes that it is in regular contact with trade unions and local NGOs, to ensure that workers' voices are heard.

Key issues identified in Myanmar: There is weak social dialogue between workers and factory management and protection of young workers is an issue of concern. H&M works with the Center for Child Rights and Corporate Social Responsibility (CCRCR), a consultancy firm from China, to provide trainings and to make assessments for every facility in Myanmar. H&M wrote that it recognises HR Management needs training and support to ensure young workers are protected and to ensure workers with valid IDs are hired.

As a common challenge in the garment industry, H&M mentions the payment of a fair living wage. H&M writes that, in 2017, it plans to implement the Fair Wage Method in ten units in Myanmar and for all strategic suppliers in Myanmar in 2018. H&M indicated that it expects all its suppliers in Myanmar to pay at least the minimum daily wage of 3,600 kyat (€2.48 at the time of writing). The company does not agree with suppliers paying apprenticeship or probation wages.²⁰²

Reaction to factory findings: After having received a draft version of this report, H&M visited Factory 9 and Factory 8 on 19 December 2016. Workers and management were interviewed and documents were checked. H&M's response to specific findings is included in Chapter 4.

H&M also conducted its own assessment during the months of October and November 2016; at that time, HR records for every worker in every factory were examined. H&M did not share the results of this assessment with SOMO but wrote that it is working with the factories to provide workers with the opportunity to obtain valid IDs if they do not have them.

5.1.5 Muji²⁰³

Sourcing from Myanmar since: 2015.

Reason for starting production in Myanmar: The company decided to start producing in Myanmar because it has a large labour population and because "the local average wage matches the quality of work". In addition, preferential tariffs are applicable, even when Chinese fabrics are used. Lastly, Muji writes that one of the reasons to start sourcing in Myanmar is because it is "a Buddhist country with social stability and security".

Number of suppliers in Myanmar: Six.

The company shared the names and locations of its Myanmar suppliers with SOMO: Yes.

202 Conversation between SOMO and H&M, September 2016.

203 Based on Muji's response to a draft version of this report, 30 December 2016.

Due diligence procedures: “Once a year we ask all existing factories to answer the environmental, labour and safety management questionnaire in order to confirm and share the level of improvement.”

Monitoring of workplace conditions: Workplace conditions are monitored through periodic visits and inspections by Muji’s business partners; periodic ‘round tours’ (every three months) by Muji’s quality management staff and inspections (every six months) by Muji staff in charge of merchandising.

Key issues identified in Myanmar: Due to the increased interest of foreign buyers Muji foresees a risk of labour shortage in the future.

Reaction to factory findings: Muji confirms sourcing from Factory 4 and Factory 9. However, the company said it does not have any direct contact with the factories in Myanmar as they work through a trading company. Muji declined to comment on the findings related to these two factories.

5.1.6 New Look²⁰⁴

Sourcing from Myanmar since: 2014.

Reason for starting production in Myanmar: The company plans to increase sourced volumes from Myanmar and cites low production costs, favourable duties and opportunities to grow with factories over a number of years as factors.

Number of suppliers in Myanmar: Eight.

The company shared the names and locations of its Myanmar suppliers with SOMO: Yes.

Due diligence procedures: New Look describes its due diligence procedures as follows: as a first step, suppliers are asked to submit third party audits. In order to promote transparency and reduce duplication of efforts, New Look’s preferred audit format is SMETA (Sedex Members Ethical Trade Audits). Based on the audit results, remediation plans are developed. New Look wrote that it aims to collaborate with suppliers to solve problems together as remediation and collaboration are essential to drive improvements. To address root causes, more must be done than just monitoring and policing, the company added.

Monitoring of workplace conditions: New Look has set up helplines in strategic sourcing countries. Workers can use the helplines to raise concerns. In addition, New Look conducts factory visits and worker interviews.

204 Based on New Look’s reaction to a draft version of this report, 6 January 2017.

Key issues identified in Myanmar:

- ❑ Occupational health and safety risks (lack of eye or needle guards, lack of proper use of personal protective equipment), poor health and safety standards and lack of knowledge/ training.
- ❑ Employment of young workers. Due to a lack of robust age verification system there is a risk of child labour.
- ❑ Overtime working hours.
- ❑ Risks related to the payment of minimum wages. Minimum wage payments could not be verified due to a lack of workers' contracts and the absence of accurate wage and working hour records.
- ❑ Unauthorised subcontracting.
- ❑ Communication problems due to the fact that the majority of factories in Myanmar are foreign-owned. The management of these factories do not speak the local language.

Reaction to factory findings: New Look confirmed sourcing from Factory 11. It visited the factory in December 2016. During this investigation, 21 workers were interviewed by New Look's team. The third party audit that was conducted earlier had revealed health and safety concerns. However, both SOMO's research and New Look's own investigations revealed a number of other issues as well. New Look's own investigation identified a number of concerns that are also highlighted by SOMO. In addition, New Look identified a number of additional concerns that were not uncovered through SOMO's research. New Look shared these additional findings with SOMO (see Chapter 4 for more information).

5.1.7 Primark²⁰⁵

Sourcing from Myanmar since: 2012.

Reason for starting production in Myanmar: No information provided by the company.

Number of suppliers in Myanmar: No information provided by the company.

The company shared the names and locations of its Myanmar suppliers with SOMO: No.

Due diligence procedures: Primark writes that it has aligned its human rights due diligence process with the UNGP and the OECD Due Diligence Guidance. Primark is a member of the Advisory Group for OECD Due Diligence. For Myanmar, Primark's due diligence process included desk-based research and stakeholder mapping. Based on these analyses, Primark held a series of stakeholder meetings in Myanmar in September 2016.

²⁰⁵ Based on Primark's response to a draft version of this report, 3 January 2017.



A garment factory in Myanmar (this factory was not included in the research). Martje Theuvs | SOMO

Primark announced that, from the beginning of 2017, it will run consultative sessions with workers, facilitated by an NGO from Myanmar. Feedback from these sessions will be used to inform Primark's final assessment on Myanmar and priority areas to address. Primark informed SOMO that its team on the ground is addressing the issues highlighted in the SOMO report and that, for the time being, the company is not placing new orders at these factories.

Monitoring of workplace conditions: Workplace conditions are monitored through audits conducted by Primark's Ethical Team as well as by approved third party auditors. Each site is audited prior to production. Where due diligence has shown increased risks, unannounced audits are carried out. If issues are raised about Primark's supply chain, unannounced 'spot checks' or discussions with workers may take place. Any issues that present a severe and imminent threat to workers' lives or safety – including forced, trafficked, compulsory or prison labour – are prioritised for immediate remediation. Factories where such issues occur are immediately suspended until the issue has been fully and appropriately remediated.

Key issues identified in Myanmar: Primark wrote that, through its own audits and wider due diligence process, it is aware of many of the risks highlighted in SOMO's report. Primark did not further specify which risks it had identified through its audits and due diligence procedures.

Reaction to factory findings: Primark informed SOMO that its team on the ground is addressing the issues highlighted in the SOMO report and that, for the time being, the company is not placing new orders at these factories.

5.1.8 Suitsupply²⁰⁶

Sourcing from Myanmar since: 2015.

Number of suppliers in Myanmar: One (Suitsupply expects to expand production at this factory in the future).

Reason for starting production in Myanmar: Established suit making industries and logistic benefits.

The company shared the names and locations of its Myanmar suppliers with SOMO: Yes.

Due diligence procedures: Suitsupply's due diligence starts with visiting the country and different production sites to get an overall feel and idea about the local industry. Relevant country studies are consulted to get a feel of the opportunities and risks in general. Risk analyses are carried out and serve as a guideline for sourcing managers. Factories are informed about Suitsupply's policies and its FWF membership.

Previous audit reports are requested and evaluated and an audit is carried out. Normally, this all takes place before production starts.

Suitsupply indicates that it seeks long-term strategic partnerships with all its suppliers. According to Suitsupply, more than half of its purchase volume comes from four key suppliers where the company has substantial leverage. In some cases Suitsupply is the only customer.

Monitoring of workplace conditions: Every 4-6 weeks, factories are visited by sourcing and buying managers. They are trained by the Corporate Social Responsibility (CSR) department to check factories for overall conditions and occupational health and safety issues. During each visit, a checklist is filled and pictures are taken. The results are reported back to the CSR department. The CSR manager is always present during audits and makes (unannounced) visits to production sites to monitor progress and to provide help and guidance.

Key issues identified in Myanmar: (Ethnic) discrimination, child labour, the influence of the hybrid governmental regime, gender inequality.

Country-specific measures: To reduce the risk of child labour, Suitsupply works with a factory where there is an age restriction; employees should be 18 years or older.

²⁰⁶ Based on Suitsupply's response to a draft version of this report, 5 January 2017.

Reaction to factory findings: Normally, Suitsupply audits a factory before production starts. In the case of Factory 3, sourcing started in 2015 but the first audit took place in December 2016 as FWF (of which Suitsupply is a member) was still setting up in Myanmar.

As the first audit was only carried out recently, Suitsupply has not yet received the audit report and corrective action plan. Results were discussed in a meeting between Suitsupply and the FWF audit team and Suitsupply has started to work with Factory 3 to implement changes towards better working conditions. A re-audit has been planned for 2017.

The FWF audit of December 2016 confirmed some of the findings of SOMO's research while other issues were not confirmed by the audit. Suitsupply's response to the specific findings is included in Chapter 4.

5.1.9 Takko²⁰⁷

Sourcing from Myanmar since: Takko has been placing orders in Myanmar since sanctions against the country were lifted.

Reason for starting production in Myanmar: No information provided by the company.

Number of suppliers in Myanmar: Four²⁰⁸.

The company shared the names and locations of its Myanmar suppliers with SOMO: No.

Due diligence procedures: The company did not answer this question but it is a member of FWF and therefore it is required to implement FWF's additional country-specific requirements (see paragraph 5.3.5)

Monitoring of workplace conditions: The company did not answer this question. As it is a member of FWF, FWF audits are conducted.

Key issues identified in Myanmar: No information provided by the company.

Reaction to factory findings: Takko wrote to SOMO that it is aware of "misconducts" at Factory 11. In August 2016, FWF conducted an audit at the factory and discovered evidence of child/youth employment, overtime work and disciplinary measures.

Takko managers and a team of Takko auditors flew to Myanmar to ensure compliance. Takko wrote that training is provided for the factory management. In addition, Takko informed SOMO that it reviewed and optimised its auditing methodology, including inspecting factories more frequently

207 Based on Takkos' response to a draft version of this report, 5 January 2017.

208 Takko, "Sourcing Report 2014/2015," <http://demandware.edgesuite.net/abbh_prd/on/demandware.static/-/Library-Sites-Library-Takko/default/dw35fda398/company-page/Takko_SR2014_150915_DS_Zusammen_EN.pdf>

and also conducting unannounced inspections. Takko took the findings at Factory 11 as an impetus to also investigate the other six factories in Myanmar where Takko sources products.

Takko wrote that it found the Factory 11 management showed openness, regret and willingness to cooperate and that considerable progress has been made with regard to working conditions at Factory 11. Takko said it has initiated a number of measures to improve work safety and to establish better working conditions in general. Takko's response to specific findings is included in Chapter 4.

5.2 The Myanmar labour movement

5.2.1 Myanmar labour unions

The trade union field is very much in motion. Trade union organisations that operated underground or in exile during the years of military dictatorship are establishing as formal organisations and are increasing their membership base. New union organisations continue to emerge²⁰⁹.

Several trade union umbrella organisations focus on workers in the garment industry:

Confederation of Trade Unions of Myanmar (CTUM)

CTUM was formed in 1991 as the Federation of Trade Unions of Burma (FTUB) and was later renamed as the Federation of Trade Unions of Myanmar (FTUM). In November 2014, during its second congress, FTUM transformed into the CTUM. CTUM leaders lived in exile in nearby countries during the years of military dictatorship. During these years they defended the rights of Burmese migrant workers in Bangladesh, Thailand and India and built a network inside and outside Burma for a democratic union movement. In 2012, CTUM leaders were allowed to return to Myanmar and in July 2015, CTUM received its official registration as a trade union confederation from the Myanmar Ministry of Labour, Employment and Social Security. CTUM has strong backing from large international labour organisations and is the primary local partner through which these organisations engage with Myanmar's labour movement. CTUM is affiliated to the International Trade Union Confederation (ITUC). As of December 2016, 745 basic unions are affiliated with CTUM with a combined paid membership of over 61.000²¹⁰. CTUM covers the following sectors: agriculture, industrial, mining, transport, wood workers, education and aquaculture.

Industrial Workers Federation of Myanmar (IWFM)

Affiliated to CTUM covers workers in the manufacturing industries (garments, shoes and food processing). It brings together more than 40 affiliated unions and some 10,000 members in total²¹¹. IWFM is affiliated to IndustriALL.

209 A lot of the information presented in this paragraph was gathered by SOMO in the context of an assignment for Mondiaal FNV, in March 2016. This document has not been published.

210 CTUM, overview of affiliates, 29 July 2016 (by email).

211 CTUM, overview of affiliates, 29 July 2016 (by email).

Myanmar Industries Craft & Services Trade Unions Federation (MICS)

MICS was founded as the Myanmar Trade Union Federation (MTUF), then renamed as Myanmar Industrial Trade Unions (MITU). During the years of repression, MICS operated 'underground' and some of the organisation's key people spent years in prison. The process of registration took a long time but in May 2016, MICS was finally granted formal registration. In March 2016, MICS had 70-75 affiliated unions and a combined membership of more than 10.000 members²¹²; in January 2017 this figure will have grown. At township level they have eight affiliated unions. MICS covers the following sectors: commodity goods production; lead, steel and iron, food and drink, services (hotels and restaurants), construction, fishery, loading, garment, textiles and leather, oil and gas, mining, cement. Most members are from the textile, garment and leather industry.

Solidarity for Trade Union Myanmar (STUM)

Was recently set up by a former MICS leader. STUM is not yet registered but plans to register as a federation. STUM covers transport, the industrial sector (garments, construction) and agriculture. It brings together six basic unions and two township level unions. The total membership is around 1,740 workers as of July 2016.

5.2.2 IndustriALL

There are two IndustriALL affiliates in Myanmar: Industrial Workers Federation of Myanmar (IWFM) and the Mining Workers Federation of Myanmar (MWFM). IndustriALL's work in Myanmar focuses on strengthening these two affiliates.

Global Framework Agreement with H&M

In November 2015, H&M and IndustriALL Global Union signed a Global Framework Agreement (GFA). The GFA aims to strengthen industrial relations and protection of labour rights, and promote peaceful conflict resolution.²¹³ The agreement includes setting up national monitoring committees to safeguard the implementation of the agreement from the factory floor upwards, and to facilitate a dialogue between the parties on the labour market²¹⁴. A Myanmar NMC, comprised of H&M staff and local trade union representatives was set up in the beginning of 2016. The GFA was recently renewed for an indefinite period.

5.2.3 Myanmar labour groups (selection)

The most active labour groups include 88 Generation Peace & Open Society, Action Labor Rights (ALR), Burmese Women's Union (BWU), Cooperative Committee of Trade Unions (CCTU), Let's Help Each Other (LHEO), Labour Rights Defenders and Promoters (LRDP), and Young Chi Oo Workers' Association (YCO).

212 SOMO, interview with MICS, 1 March 2016, Yangon, Myanmar.

213 H&M, " response to draft version of this report", 23 December 2016.

214 IndustriALL website, 'IndustriALL Global Union and H&M sign global framework agreement', 3 November 2015
<<http://www.industriall-union.org/industriall-global-union-and-hm-sign-global-framework-agreement>>

88 Generation, ALR, LRDP, CCTU and LHEO have engaged in research activities, training (on labour rights and union formation), and (paralegal) support for workers. 88 Generation, ALR, CCTU and LRDP also jointly lobby the Myanmar Government, issuing letters and statements. 88 Generation, ALR, CCTU and LRDP were research partners in Oxfam's 'Made in Myanmar' study²¹⁵.

5.3 Supply chain and other initiatives in Myanmar

5.3.1 Action, Collaboration, Transformation

Action, Collaboration, Transformation (ACT) was set up in 2015 and brings together brands, retailers, manufacturers and trade unions to address the issue of living wages in the textile and garment supply chain. ACT aims to improve wages in the industry by establishing industry collective bargaining in key garment and textile sourcing countries, supported by responsible purchasing practices.²¹⁶

ACT describes industry collective bargaining as a mechanism that brings together national representatives of manufacturers and workers (employer associations and trade unions) to negotiate and agree wages and conditions that will apply to a whole industry sector within that country. The collective agreements are legally binding and enforceable. ACT set out to develop mechanisms to support and enable manufacturers to provide workers with a living wage and good working conditions, but no concrete definition of a living wage or any implementation steps have yet been made known or disclosed.²¹⁷

IndustriALL Global Union has signed a Memorandum of Understanding (MoU) with each of the brands involved in the ACT process. The MoU is explicit in identifying the development of industry bargaining in garment-producing countries as essential to achieving living wages and the need for effective recognition of workers' rights to freedom of association and collective bargaining in order for this to be realised.²¹⁸

Primark and C&A informed SOMO that the ACT initiative has pinpointed Myanmar as the second country where the ACT programme will be implemented.

Currently there are 18 companies participating in ACT: Arcadia, Asos, C&A, Coles, Debenhams, Esprit, H&M, Inditex, Kmart, N Brown Group, New Look, Next, Pentland, Primark, Target, Tchibo, Tesco and Topshop.²¹⁹

215 Oxfam, Oxfam, "Made in Myanmar – Entrenched poverty or decent jobs for garment workers?" December 2015, <https://www.oxfam.org/sites/www.oxfam.org/files/file_attachments/bp209-made-in-myanmar-garment-workers-091215-en_0.pdf>

216 ACT, "Fact Sheet", no date, <<http://www.hiil.org/data/sitemanagement/media/ACT%20Factsheet.pdf>> (27 October 2016).

217 Ibid.

218 IndustriALL website, "Industry bargaining for living wages," 18 August 2015, <<http://www.industriall-union.org/industry-bargaining-for-living-wages>>

219 ACT, "fact sheet", no date, <<http://www.hiil.org/data/sitemanagement/media/ACT%20Factsheet.pdf>> (6 January 2017).

5.3.2 Business for Social Responsibility

Business for Social Responsibility (BSR) works with its network of more than 250 member companies and other partners and aims to catalyse change within business by integrating sustainability into strategy and operations, and to promote collaboration among companies and their stakeholders for systemic progress toward a just and sustainable world.²²⁰

In July 2014, BSR launched the Principles of Responsible Sourcing in Myanmar. BSR has identified four priority areas in Myanmar: strengthening industrial relations, developing modern human resources practice, eradicating child labour and securing land rights.²²¹

BSR published guidance briefings on the issues of child labour and land rights in Myanmar and has installed a Myanmar Responsible Sourcing Group. H&M, Gap, Marks & Spencer and N Brown Group are members of the BSR Myanmar Responsible Sourcing Group.²²² According to the BSR website, group members collaborate with BSR and local and international stakeholders to advance sustainability in Myanmar's supply chains by translating the four tenets of the principles of responsible sourcing into action: sustainability leadership; enhanced due diligence; stakeholder engagement; and transparency and accountability.²²³

5.3.3 Ethical Trading Initiative

The Ethical Trading Initiative (ETI) is a UK-based alliance of companies, trade unions and NGOs that promotes respect for workers' rights around the globe.²²⁴

In July 2015, ETI sent a letter to the Myanmar government on behalf of ETI member companies that were then sourcing from Myanmar, or considering investing in the country. The letter was a reaction to the Myanmar employers' vote against the proposed minimum wage of 3,600 kyat.

In the letter, ETI countered the claims of the Myanmar's garment manufacturers and employers' associations that higher wages would dissuade foreign investors.²²⁵ According to ETI, various stakeholders indicated that the letter was influential in persuading the Myanmar government to reject calls for exemption from the employers' side.²²⁶

220 BSR website, "About us," no date, <<https://www.bsr.org/en/about>>

221 BSR, "Principles of Responsible Sourcing for Myanmar's Garment Sector," July 2014, <<https://www.bsr.org/en/our-insights/blog-view/principles-of-responsible-sourcing-for-myanmars-garment-sector>>

222 BSR website, "Myanmar Responsible Sourcing," no date, <<https://www.bsr.org/collaboration/groups/myanmar-responsible-sourcing>> (6 January 2017).

223 BSR website, "Myanmar Responsible Sourcing", no date, <<https://www.bsr.org/collaboration/groups/myanmar-responsible-sourcing>> (6 January 2017).

224 ETI website, "About," <<http://www.ethicaltrade.org/about-eti>>

225 ETI, "ETI supports calls for new Myanmar minimum wage to apply to garment sector," 15 July 2015, <<http://www.ethicaltrade.org/blog/eti-supports-calls-new-myanmar-minimum-wage-apply-garment-sector>>

226 ETI, "email to SOMO," 26 November 2016.

ETI has asked its members that source from Myanmar to share updates on their approaches to monitoring and to ensure that workers are paid in line with the new minimum wage. ETI informed SOMO that all members sourcing from Myanmar have stated they check compliance with minimum wages before placing orders with factories and that many brands stated they have provided additional training and support to suppliers. In addition, several brands mentioned engagement with local unions and stakeholders. However, ETI did not provide specific information as to which level of workers at factories supplying ETI members are paid in line with the minimum wage.

When ETI became aware of the fact that employers were using loopholes (such as hiring workers on apprenticeship and probationary contracts) to avoid paying the minimum wage, it facilitated discussions with the Myanmar Working Group and drafted a joint communication (see Box 3) emphasising that, whatever contractual terms workers are hired on, they should be paid the minimum wage [of 3,600 kyat]. ETI has asked members sourcing from Myanmar to take a common position when communicating directly with suppliers.²²⁷

In September 2015, members of the ETI secretariat met a variety of key stakeholders in Myanmar, including CTUM, Solidarity Centre, Oxfam, the UK Department for International Development (DFID), Myanmar Centre for Responsible Business and other CSO groups to assess the level of interest in and the need for some form of ETI activity or intervention. ETI indicates that these conversations led to the conclusions that there were already a number of initiatives involving brands and unions and other players and that it was too early to determine what contribution ETI could make.

ETI further explains that the opinion of the trade unions was critical to them and that trade union leaders said that, whilst they appreciated international support and solidarity, as nascent organisations they needed the space, time and opportunity to develop and 'find their feet' and too much outside interference would be a barrier for them to develop their own strategies and relationships.²²⁸

Through its Hong Kong office, ETI maintains contact with various stakeholders in Myanmar and continues to monitor developments. There is a Myanmar Working Group and Distribution list within ETI, which is used primarily for sharing updates and invites to events and meetings in Myanmar.

227 ETI, "email to SOMO," 8 December 2016.

228 ETI, "email to SOMO," 26 November 2016.

Box 3: JOINT-STATEMENT ETI-Brands Sourcing from Myanmar

29 October 2015

Attention: Suppliers to ETI companies sourcing from Myanmar

Dear XXXX,

ETI member companies who are sourcing from Myanmar were pleased to see the official minimum wage for Myanmar of 3,600 Kyats per day has come into effect on 1 September 2015. We are writing to you express concern regarding the practice of issuing new contracts to workers on probationary or apprenticeship terms which mean that these workers do not need to paid minimum wages.

As clearly expressed in our July letter in support of the proposed minimum wage, ETI member brands will support the new minimum wages through our business relationships with suppliers and we expect suppliers to therefore pay minimum wages to all workers regardless of their contractual status. We regard attempts to avoid responsibilities to pay minimum wage through differing contractual relations as against the spirit of our support for the minimum wage.

You are reminded that as suppliers to (name of company) you are expected to comply with our company code of conduct and the ETI Base Code <http://www.ethicaltrade.org/eti-base-code>.

Please see below our clarification on the calculations for your better understanding:

- 108,000 Kyats /month for normal working hours guaranteed to all workers, Overtime should be compensated correctly based on the defined minimum wage
- Minimum hourly wage = 108,000 kyat / 30 days / 8 hours = 450 kyat
- OT compensation should not be lower than 2 times of min hourly wage

Normal working hours: the MGMA recently has communicated that normal working hours could be calculated as 48 hours/week. In the 1951 Factories Act, normal working hours is 44 hours/week, we remind you that we are guided by what it states in the law.

Furthermore, we expect all suppliers to be transparent with us about workers' wages and how they are calculated and we wish to remind you of our zero tolerance stance to undisclosed outsourcing.

Our ethical trading teams and auditors will be working with you to ensure that the minimum wage is applied to all workers in the Myanmar garment industry.

Please let us know if you need any further clarification and any support from us.

According to ETI, there are still a relatively small number of brands sourcing from Myanmar – mainly larger brands that have the resources and capacity to conduct thorough due diligence and can invest in developing robust social compliance systems.²²⁹

The following ETI members have confirmed they are placing orders in Myanmar: NEXT, Bestseller, C&A, H&M, Gap, Marks & Spencer, N Brown, Orsay, Primark, Regatta and Tchibo.

ETI does not require its members to share their full supplier lists. Within particular programmes, ETI may ask members to share supply chain data for a particular country but it has not done so for Myanmar as, as of yet, no specific ETI programmes or activities are focused on Myanmar.²³⁰

5.3.4 Fair Labor Association

The Fair Labor Association (FLA) is a coalition of universities, CSOs and companies aimed at improving workers' rights and based in the US. In July 2015, FLA and 17 of its affiliates sent a letter to the Myanmar government.²³¹ The letter was a response to efforts by trade associations in Myanmar to lobby the government for an exemption to the 3,600 kyat per day minimum wage. The letter specifically disputes the suggestion made by trade associations that a higher minimum wage for garment workers in Myanmar will discourage international investment, pointing out that brands committed to paying living wages in their supply chain would be encouraged to source from Myanmar, rather than being deterred.

The 17 corporate signatories include companies sourcing from Myanmar, those considering investing in Myanmar, and other concerned companies. These companies are: adidas Group; Best Promotions, Chenfeng Group, ChicoBag, College Kids, Kathmandu, Kranos Corporation, Mountain Equipment Co-op, National Memory Project, New Balance, Outerknown, Patagonia, Public Identity, Santa's Workshop, SEAsTra/SE Asia Trade, Top of the World, and Widget Wah.²³²

5.3.5 Fair Wear Foundation

Fair Wear Foundation (FWF), based in the Netherlands, works with brands, factories, trade unions, NGOs and sometimes governments to verify and improve workplace conditions in the garment industry. Once a brand becomes a FWF member, it commits to step-by-step implementation of better labour conditions in the factories where their clothes are being made.²³³

229 ETI, "email to SOMO," 26 November 2016.

230 ETI, "Email to SOMO," 8 December 2016.

231 FLA, "Letter to the Myanmar government," 14 July 2015, <http://www.fairlabor.org/sites/default/files/documents/reports/letter_on_minimum_wage_exemptions_in_myanmar_july_2015.pdf>

232 FLA website, "17 FLA Affiliates Oppose Unfair Minimum Wage Exemption for Myanmar Garment Workers," 15 July 2015, <<http://www.fairlabor.org/report/17-fla-affiliates-oppose-unfair-minimum-wage-exemption-myanmar-garment-workers>>

233 FWF website, "About," <<https://www.fairwear.org/about/>>



A garment factory worker hangs clothes out to dry at her dormitory in Yangon, Myanmar. Lauren DeCicca | MAKMENDE

In May 2010, FWF adopted a formal position on Myanmar. At that time FWF was of the opinion that the situation in Myanmar was such that there was insufficient foundation for a credible process that could lead to improvements in working conditions in factories and that there was no credible structure for strengthening social dialogue between local stakeholders. Consequently, FWF required members and prospective members to phase out production at factories in Myanmar.²³⁴

In June 2012, FWF revised its position on Myanmar. Following the suspension of economic sanctions by the EU, the US and other Western countries the board of FWF decided to suspend the requirement for new companies to phase out production in Myanmar factories.²³⁵

FWF considers Myanmar as a high-risk country and therefore requires that its members implement the following additional country-specific requirements:²³⁶

234 FWF, "Burma – FWF guidance paper", April 2012,
<<http://www.fairwear.org/ul/cms/fck-uploaded/documents/countrystudies/guidancepaperBurma-April2012.pdf>>

235 FWF, "Position paper on order placements in Myanmar/Burma", 2012,
<<http://www.fairwear.org/ul/cms/fck-uploaded/documents/countrystudies/othercountries/burma/FWFpositionBurma-Sep12.pdf>>

236 FWF, "FWF Position paper on Myanmar", update December 2013,
<<http://www.fairwear.org/wp-content/uploads/2016/06/MyanmarpositionupdateDec2013.pdf>>

- Avoid production at factories linked to the military and/or implicated in known cases of forced labour and/or built on land where ownership may be implicated in land grabbing practices.
 - FWF members are required to submit annual supplier registers. Based on this information, FWF publishes an aggregate list of factories.
 - FWF members (that consider) placing orders in Myanmar must share in full their due diligence process.

- FWF members sourcing from Myanmar must describe in a work plan the reasons for moving production into Myanmar and commit to a responsible exit strategy with existing suppliers in other countries if their orders are diverted to Myanmar.

- In an annual work plan, members sourcing from Myanmar must specify how conditions for each of the FWF labour standards will be improved in Myanmar. In particular, members should describe how practices of ethnic discrimination in factories in Myanmar are monitored and remediated. Members should report on these issues in their social reports.

- Members sourcing from Myanmar should promote processes that enhance social dialogue in each factory and should preferably select unionised factories. Members are required to enrol their suppliers for trainings and or other activities geared towards promoting social dialogue at the factory level.

- FWF members sourcing in Myanmar are required to develop and publish wage ladders for each factory where production takes place.

At the time of writing 11 FWF members are sourcing from a total number of 20 factories in Myanmar.²³⁷ The following FWF members source from Myanmar: Deuter, Engelbert Strauss, Fond of Bags, Jack Wolfskin, Mammüt, OberAlp (Salewa), Odlo Sports, Outdoor Sports, Suitsupply, Takko and Vaude. FWF has published a list with the 20 factories that supply their members on its website.²³⁸

In 2016, FWF published a country study for Myanmar, with input from SOMO. FWF is currently in the process of establishing its standard verification model and a local complaints helpline for workers in Myanmar. In 2016, FWF also started piloting its customised Workplace Education Programme in Myanmar.²³⁹

237 FWF website, "Myanmar", no date, <<http://www.fairwear.org/country/myanmar/>> (5 January 2017).

238 FWF website, "Factories in Myanmar supplying FWF members," January 2017, <<http://www.fairwear.org/wp-content/uploads/2016/10/Supplier-list-Myanmar-update-January-2017.pdf>>

239 FWF website, "Myanmar", no date, <<http://www.fairwear.org/country/myanmar/>> (5 January 2017).

5.3.6 International Labour Organization (ILO)

The International Labour Organization's Myanmar office is one of the biggest ILO offices in the world. The ILO in Myanmar focuses on the promotion of fundamental principles and rights at work (with specific focus on the elimination of the systemic use of forced labour, sustained and deepened progress on freedom of association, and improved policies and frameworks for reduction of child labour, particularly its worst forms); contributions to enhanced employment opportunities and social protection through strengthened labour market information systems, skills development systems, entrepreneurship development and extending social protection; and strengthening the capacity of representative employers' and workers' organisations to influence economic, social and governance policies.²⁴⁰

SOMO was told about a joint project involving the ILO, H&M and C&A, which will get co-funding from the Swedish Embassy. The project title is "Improving labour relations for decent work and sustainable development in the Myanmar garment industry". The project aims to contribute to the reduction of poverty in Myanmar – creating more and better jobs, especially for youth; the empowerment of women, including women's health and active participation and representation – by improving labour relations, social dialogue and gender equality in the garment industry. A key expected result is to contribute to strong and representative employers and workers organisations, and the empowerment of women workers in the garment sector, according to the involved brands. Factory level activities will start in spring 2017. The project will run until September 2019.²⁴¹

5.3.7 SMART Myanmar

SMART (SMEs for Environmental Accountability, Responsibility and Transparency) Myanmar is a four-year project funded by the EU. SMART assists small- and medium-sized enterprises (SME) garment manufacturers in the areas of productivity, social compliance and energy reduction. MGMA, ADFIAP (the Association of Development Financing Institutions in Asia and the Pacific), AVE (Foreign Trade Association of German Retail Trade) and Made-by are partners in the SMART project.²⁴²

Over the coming years, SMART aims to train 100 factories in its 'social compliance academy'. This is a six-month module that includes on-site consultancy, workshops, social compliance assessments and corrective action plans.²⁴³ SMART also provides auditing and advisory services.

240 ILO Myanmar website, 'Areas of Work', no date, <<http://www.ilo.org/yanmar/areas/lang--en/index.htm>>

241 H&M, "response to draft version of this report", 23 December 2016 and C&A, "response to draft version of this report", 30 December 2016.

242 SMART Myanmar website, "About", no date, <<http://www.smartmyanmar.org/about/>>

243 SOMO, meetings with SMART, June 2015 and May 2016, Yangon, Myanmar.

5.4 Concluding remarks

In this chapter information is presented that SOMO gathered through direct conversations with companies and initiatives during the course of the review process and from publicly available sources.

Information provided by companies was generally quite unspecific. This is true for publicly available information, such as information on their Myanmar policies and activities found on corporate websites and in reports, as well as for information provided in response to the draft report and questions by SOMO. H&M, for instance, told SOMO that it had undertaken an assessment in relation to its young workers, but chose not to share the results.

Some buyers and supply chain initiatives presented plans and projects that they are envisaging and that sound good on paper. For instance, the Swedish co-funded project involving the ILO, H&M and C&A: it sounds good, but details were not shared.

So, for SOMO, these are mere announcements. With so few details shared it is quite impossible to truly assess the quality of such projects and resolutions and what the results may be. As such these initiatives do not offer comfort.

Brands sourcing from the 12 factories that SOMO researched recognised and acknowledged that there are serious labour rights and human rights risks involved in operating in Myanmar. Nevertheless, these brands are happily placing orders and even expanding their supplier base. The identified risks apparently do not warrant a slowdown of this expansion. And they are not the only ones: besides the brands identified as buyers of the 12 factories, there are plenty of European, US and Asian brands that are currently placing orders at garment factories in Myanmar.

6 Conclusions and recommendations

At the heart of this research, there are a number of fundamental questions. First and foremost, SOMO, ALR and LRDP wanted to investigate the current human rights and labour rights and actual violations of labour rights in the export-oriented garment industry in Myanmar. But there is also a broader issue at play: namely, whether it's possible for the ever-growing Western demand for cheap garments can to help create better employment and labour conditions in Myanmar. In a fragile democracy like Myanmar that is just opening up to the global economy, what impact are big companies likely to have on people, the environment and the local economy?

With this in mind, this final chapter presents concluding remarks and a series of recommendations addressing companies and government actors, in line with the UN Guiding Principles on Business and Human Rights (UNGPR). 'Companies' includes both garment factories and buying companies while 'governments' includes both the Myanmar government as well as the governments of the countries that are host to foreign-owned factories in Myanmar and to buying companies that are sourcing from Myanmar.

Identified buying companies that stand out are C&A, H&M and Primark. Their presence in Myanmar and their position as well-known brands and retailers in Europe and globally warrant this attention. The research finds that the efforts of multi-stakeholder initiatives have not yet delivered the promised impact on labour conditions.

As well as the Myanmar government, these recommendations address a number of OECD member countries in particular, including Sweden, the UK, the Netherlands, Germany, Japan and South Korea. The National Contact Points (NCP) for the OECD Guidelines for Multinational Enterprises of these countries should take on a more active role when it comes to keeping an eye on garment companies operating in Myanmar – in line with the new OECD due diligence guidance for responsible supply chains in the garment and footwear sector.

The most important message this report wants to convey is one of urgency. Actors in the garment industry and involved governments urgently need to rethink their policies and practices with regard to Myanmar. The development of the export-oriented garment industry has taken off at a high pace, but basic prerequisites are not yet in place. There is still an opportunity to make sure that Myanmar is not going to be the next Cambodia or the next Bangladesh, low-wage garment-exporting countries where working conditions are notoriously hard and unsafe. This report describes the most pressing problems and aims to offer constructive ways forward to head off a crisis before it escalates.

Contributing to peace and a pro-poor sustainable economy in Myanmar is a huge challenge. Improving working conditions in the Myanmar garment industry is a piece of this puzzle. Clearly this demands multiple interventions from diverse actors. The heaviest burden falls, of course, on the Myanmar government. However, the industry is also a powerful player. Labour unions, labour groups and other civil society organisations should be enabled to play their designated roles, with the



Exterior of a dormitory for garment factory workers. Lauren DeCicca | MAKMENDE

understanding that the Myanmar labour movement and civil society is in full development; unions and labour NGOs are being established as we speak.

Each individual company – manufacturers and buyers alike – has a clear responsibility to act without delay if the situation requires action. However, companies should also seek collaboration with others, preferably in a multi-stakeholder setting. An industry-wide approach requires companies to join forces in risk analysis, share findings of social audits and investigations, jointly address non-compliances at shared suppliers, in close cooperation with local stakeholders. Business enterprises should communicate how they are addressing their human rights impacts, for the benefit of other corporate actors as well as for the benefit of affected workers, and communities and their organisations.

Another point that needs to be made here is the need for further research into labour and economic issues. These include, for instance, the relationship between ethnic conflict and land grabbing and loss of livelihood as a result of climate change in the country and the influx of job-seekers into Yangon; as well as the relationship between low adult wages and child labour.

6.1 Most pressing labour issues

6.1.1 Inadequacies in the current Myanmar labour law

The current labour laws still have many shortcomings. This is partly explained by the fact that the laws were often introduced without a process of social consensus or open discussion. There are inconsistencies between various laws. Labour laws contain obstacles to join and form unions and engage in collective actions. They do not adequately provide for collective bargaining beyond dispute resolution. In other laws essential clauses are simply missing. Then, in some cases, legal clauses are open to multiple interpretations. These deficiencies need to be addressed.

6.1.2 Freedom of association and collective bargaining

At the time of the research, an independent union was found to be active in just one factory. Many workers have no idea about freedom of association and the right to collective bargaining. Some of the better informed workers indicated that forming a union was out of the question at their factory.

Next steps towards respecting enabling rights

The right for workers to freely form and join a union of their choice and to bargain collectively are key enabling rights. As such, these rights are at the core of responsible business conduct. Good relations between workers and employers are crucial. Government, labour unions, employers and employer organisations should work towards mature industrial relations.

Industrial relations need constant investment and attention from both employers and workers. The government has an important enabling role to play here. International organisations, including the ILO, have an active part to play too. There should be a clear focus on these enabling rights.

Internationally funded programmes focused on economic development should be designed and implemented in collaboration with labour unions and labour NGOs. These should include a focus on developing mature industrial relations, freedom of association and collective bargaining.

Workers have the right to form and join labour unions of their choice.

Dismissal, demotion, transfer or other reprisals against factory union leaders and organisers is unacceptable at any stage during the establishment of a union. Especially in the phase when names of union officers are disclosed but when official registration has not yet been completed. Manufacturers and buyers have a clear responsibility here.

Any ambiguities in the law on this point should be addressed by the Myanmar authorities.

Unions should be able to operate without hindrance, in all factories and zones, including industrial zones and special economic zones. Union busting should not be tolerated.

Labour unions, labour groups and CSOs should have access to factories, compounds, industrial zones and SEZs to inform workers about their rights and to organise workers.

Both government and businesses have a crucial facilitating role to play. Factories and buyer companies should only accept democratically elected unions that are independent from employers or the government as partners for collective bargaining and other forms of negotiations and consultations. More than one union can be active in a factory, but “yellow unions” – unions set up and/or controlled by the employer to prevent the establishment of genuine labour unions – should not be accepted. Employers and buyers should inform themselves about the difference between unions and Workplace Coordination Committees (WCC). Employers should follow the law and ensure such WCCs are established and functioning. A WCC should, however, not to be mistaken for union.

Manufacturers and buyers should contribute to creating an environment of trust between workers and employer. They should pro-actively support organising and union activities with concrete measures. Unions should be given their own premises. Union leaders should get time off for union work. Workers and union members should not be the victim of discrimination of individual or collective punishment.

All actors involved, with business as a starting point, should make a positive choice for a pluralistic labour movement.

Companies should recognise workers’ rights to organise and to bargain collectively. Collective bargaining can play a very important role in preventing disputes and building mature industrial relations. Collective bargaining should be carried out voluntarily, freely and in good faith. The parties should be free to engage in bargaining and there should be no interference from the authorities in their decisions to do so. The principle of good faith implies that the parties make every effort to reach an agreement, conduct genuine and constructive negotiations, avoid unjustified delays in negotiations, respect agreements concluded and applied in good faith, and give sufficient time to discuss and settle collective disputes. In the case of multinational enterprises, such companies should not threaten to transfer the whole or part of an operating unit from the country concerned in order to unfairly influence negotiations.²⁴⁴

6.1.3 Wages

A living wage is a human right. However, the majority of the workers interviewed for this research cannot sustain themselves and their families with the wages they earn in the garment industry. Many workers are in debt. The legal minimum wage of 3,600 kyat per day does not come close to a living wage. To make matters worse, a considerable number of workers do not even earn the minimum wage, as factories avoid paying the minimum wage by abusing the apprenticeship and probation provisions of the minimum wage law.

244 ILO. <http://www.ilo.org/empent/areas/business-helpdesk/faqs/WCMS_DOC_ENT_HLP_CB_FAQ_EN/lang--en/index.htm#Q6>

The research has found cases where workers are obliged to work overtime hours in order to earn the minimum wage or keep their jobs. The report further documents cases where the worker's vulnerability is exploited by imposing work under the menace of a penalty. Huge pressure is exerted on workers to complete production targets, without missing a single day of work. At most factories, one day of absence, even due to illness, means part of the wage is deducted. These imposed deductions in fact amount to perverse incentives, compelling workers to continue working even when they are ill or injured. In line with the ILO definition of forced labour (see chapter 3), it can be argued that this situation may qualify as forced labour.

Next steps in addressing wage issues

Workers are entitled to receive a decent wage for a regular working week without overtime. The current legal minimum wage is 3,600kyat/day. Already back in 2015, when the minimum wage was negotiated, labour unions and labour NGOs asked for 4,600 kyat/day. Now, labour NGOs suggest that a daily wage of 6,000-10,000 kyat would be reasonable.

The legal minimum wage should not be seen as a maximum wage but as a floor wage. There is no reason to stay at the level of the minimum wage. In any case, the inflation rate should be taken into account.

There is a need for a regional floor wage, to stop the garment industry's wage race to the bottom. To this end, the Myanmar government should collaborate with garment producing countries in the Association of Southeast Asian Nations (ASEAN) region, in particular Thailand, Bangladesh and Cambodia.

All workers should receive at least the minimum wage from their first day of work. The exploitation of apprentices by paying less than the legal minimum wage should not be tolerated. Employers should pay at least the legal minimum wage, which should not be seen as a maximum wage, but as a floor wage. Employers should not make unlawful wage deductions, for example, for sick leave. Buyers should keep a strict eye on this. Linking remuneration to production targets should not be tolerated.

The legal minimum wage should be reviewed annually instead of every two years only. Besides the formal tripartite wage review process, consultation with the wider field of labour unions and labour NGOs should take place.

Employers should allow for workers in factory level labour unions and higher level labour unions to negotiate higher wages than the legal minimum.

Workers should receive detailed pay slips. This is particularly important as wages are paid in cash. Management should ensure cash wage payment is done properly, without cheating or stealing. Buyers should pay attention to this. Double bookkeeping for working hours and wages and benefits is not to be accepted. Buyers should keep an eye on this.

Both the 'SEZ Law' (article 20a) and 'Minimum Wage Law', Article 28a) have clauses on wages. These laws need to be brought in line.

6.1.4 Child labour

Child labour is widespread in Myanmar. Poverty is the main driver for children to be engaged in work.²⁴⁵ Extreme poverty combined with the fact that many children leave school at a very young age (there are only five years of compulsory education in Myanmar) creates a huge pool of potential underage workers.

This research found that at all 12 investigated factories workers were interviewed who were younger than 18 years when they started. At six of the 12 factories investigated, strong indications were found that some of the current workers were younger than 15 years old when they started at the factory. It seems that these young workers were performing the same demanding work as their adult colleagues. This is a violation of both Myanmar legislation and international labour standards with regard to child labour. In addition, this research found that a number of factories are hiring young workers as daily labourers who are easily dispatched during inspection days.

The full extent of the problem is, however, difficult to assess; young workers are reluctant to speak about their working lives as they are afraid of losing their jobs. The use of fake IDs is widespread. To make matters worse, many workers do not even have the necessary documents.

It is highly problematic that many actors – workers, employers as well as government staff – are uninformed of child rights and often misunderstand the causes of child labour. Awareness raising and information on all fronts is needed.

Next steps in combating child labour

Age, working hours and schooling

Workers younger than 15 years old should by no means be accepted in the garment industry. Child workers of 15 years old can only work for four hours per day and should have the possibility of going to vocational school for the remaining part of the day. Young workers aged 15 to 18 years old should be exempt from dangerous work. Employers should make sure that young workers aged 16 to 18 years old, who are in the possession of a valid National Registration Card (NRC) and Certificate of Fitness (CoF), do not work overtime or night shifts and are paid according to the work they do. Employers should provide transportation to/from the factory to young workers who work under other schedules than adult workers. Young workers should be entitled to bonuses and benefits in the same way as regular adult workers.

Age checks and required documentation

Garment factories in Myanmar – both Myanmar-owned and foreign-owned – should verify whether there are under-age workers among their current labour force.

245 UNICEF website, "World Day Against Child Labour," 12 June 2014, <http://www.unicef.org/myanmar/reallives_22662.html>



A woman irons clothes in her home. Lauren DeCicca | MAKMENDE

Employers should, as a standard practice, conduct thorough age checks when hiring workers by checking their documents (NRC, township registration or birth certificate) and requiring a medical check. Young workers of 16-18 years old can only be employed with a valid CoF. Employers should be aware of unqualified medical bodies issuing forged certificates and NRCs. The employer should cover costs of CoF examinations. Buying companies, in turn, should be aware of their suppliers' administration and records being peppered with falsified documents.

Living wage and responsible purchasing practices

Although there are multiple causes, child labour is also inherently linked with low adult wages. In order to combat 'indirect child labour', a robust living wage strategy is essential.

Buying companies should assess the impact of current purchasing practices, pricing strategies and cost structures, wages and working conditions in their supply chain and the effects on the rights of children. Furthermore, buying companies should ensure that purchasing practices are in line with policies to work towards living wages and policies to address excessive working hours and ensure that purchasing practices – including pricing policies and lead times – do not put pressure on suppliers to implement extreme cost-cutting measures that will lead to consequences like poverty wages, excessive overtime and child labour. Moreover, buying companies should develop and implement a strategy (including pricing strategies and cost structures) towards implementing a living wage. Where possible this can be done within multi-stakeholder and/or sector initiatives and through

working together with suppliers and other stakeholders to ensure workers in their supply chain are paid a living wage.

Out of work and into school

It is of the utmost importance that companies do not limit their efforts to seeing to it that children are removed from the workplace. On top of that, they should facilitate the children's transition to formal education, full time or part time, depending on their age. Employer and buyer companies should agree on paying school fees and compensate for missed out wages until the worker reaches the legal working age. It is recommended that employers and buying companies engage with local CSOs specialised in child rights to provide oversight and to ensure child workers receive the compensatory wage and do indeed go to vocational school.

Former child workers may also need health care, adequate adult support, temporary financial support or other services.

Specific roles of the Myanmar government in combating child labour

- ❑ Ratify ILO Conventions 138 and translate the content into national legislation
- ❑ Align different laws with regard to child labour
- ❑ Conduct proper workplace inspections
- ❑ Ensure that the process to obtain registration cards is made easier. Internal migrants should not have to travel back to their home towns to obtain their NRC
- ❑ Improve the education quality and infrastructure and make sure that all children of school-going age, with specific focus on those from lower-income and migrant families, receive full-time quality education without charging fees or paying (hidden) education-related costs. Moreover, in addition to enrolment, efforts should be made to increase attendance as well as school completion within the standard timeframe
- ❑ Facilitate the reintegration of working children into the formal schooling system through transitional education, including bridge courses and classes, as well as counseling of children and parents.

6.1.5 Employment relations

Almost half of the interviewed workers did not sign a contract of employment. Of the workers who did sign a contract, only a fifth received a copy of their contract. Without contracts, workers lack information about their entitlements.

Daily labourers were found to be among the workforce at four of the 12 investigated factories. Daily labourers do not sign contracts; they only receive the basic daily wage, which may be below the minimum wage of 3,600 kyat per day; they are not eligible for bonuses and benefits; and they are not covered by the social security system. In addition, daily labourers have very insecure jobs as in the absence of a formal employment relationship they are easily dismissed.

Next steps to address issues around employment

All workers should sign employment contracts, regardless of the nature of their employment. Regular workers, apprentices as well as regular workers are entitled to contracts. All workers should know and understand the terms of their employment contracts. Employment contracts should be written in a language that the worker understands. Clauses on deductions and benefits should be unambiguous. Employment contracts should not contain irrelevant or abusive clauses. Employers have a clear responsibility here.

All workers should also receive copies of their employment contracts. Both employers and local authorities have to make sure this happens.

The government should make haste with relaxing procedures to obtain a NRC and speed up the process of issuing social security cards. Employers should help workers to obtain an NRC and social security registration cards. This is especially relevant for workers coming from other states and regions.

6.2 Post-conflict setting requires conflict-sensitive policies and practices

Myanmar is emerging from decades of military rule. An inclusive and sustainable peace is yet to be found. The army is still a very powerful force in society, with strong positions in the government, the parliament, and the economy. Armed conflict and excessive use of violence by the army and police are still rife. Ethnic armed groups also use violence. The civilian population in ethnic regions pays the price: facing violence, insecurity and poverty. The creation of industrial zones and Special Economic Zones goes hand in hand with land grabbing and forced eviction. The national unitary government is contested by ethnic groups. It is not exaggerated to define Myanmar as fragile. Given the escalation in armed conflict over the past two years and in particular the past few months in Shan State and Kachin State and other regions, the country is becoming more entrenched in armed conflict. The parliamentary government is still very inexperienced. Ethnic groups are underrepresented in the administration. The rule of law is not sufficiently upheld and legal and societal checks and balances are inadequate. Overall there is limited space for civil society, in particular for ethnic civil society. The labour movement is still in a start-up stage.

Next steps

Companies operating in this environment have a greater responsibility than usual. These companies must apply due diligence and act with much greater care in situations of fragility and conflict, beyond usual corporate compliance.

It is advised that garment companies should develop or improve policies and strategies on how to deal with (post-) conflict settings, in line with international standards and guidelines, to prevent contributing to new or existing conflicts. This should include conflict sensitivity and 'do no harm' policies. For a company to 'do good' it needs, for a start, to thoroughly determine its impact on conflict and peace.

Companies should respect community rights and customary land rights, by applying the principle of Free Prior and Informed Consent (FPIC), especially in relation to existing and developing industrial areas and Special Economic Zones (for instance the Kyaukphyu SEZ in Rakhine State). Duped villagers of Thilawa and other zones are entitled to receive compensation. Companies should investigate their roles and responsibilities in this respect.

Companies should refrain from engaging in land speculation. The Myanmar government should act against land speculators, in order to control land prices.

As part of their due diligence companies should investigate factory and land ownership and possible involvement of (former) members of the army and cronies.

6.3 The state duty to protect human rights

The state of Myanmar has an overall obligation to respect, protect and fulfil human rights and fundamental freedoms.

6.3.1 Rule of law

The newly installed NLD-led government of Myanmar has a clear and urgent responsibility to maintain the rule of law. The four following principles, as formulated by the World Justice Project, should be upheld:

1. The government and its officials and agents, as well as individuals and private entities, are accountable under the law.
2. The laws are clear, publicised, stable and just; are applied evenly; and protect fundamental rights, including the security of people and property and certain core human rights.
3. The process by which the laws are enacted, administered and enforced is accessible, fair, and efficient.
4. Justice is delivered in a timely way by competent, ethical and independent representatives and neutrals who are of sufficient number, have adequate resources, and reflect the makeup of the communities they serve.²⁴⁶

246 What is the rule of law?, <<http://worldjusticeproject.org/what-rule-law>>

6.3.2 Legislation and ratification of ILO conventions

The government of Myanmar should amend, develop and uphold progressive pro-labour laws that are in line with the highest international standards. The broader labour movement in Myanmar should be included in consultations on law and policy reform with regard to labour, land and human rights from the design to implementation of these laws. Existing laws that need urgent amendment include: the Settlement of Labour Dispute Law, the Forced Labour Law, the Peaceful Assembly Law, the Social Security Law, Labour Organization Law and the Minimum Wage Law.

In the area of labour practices, the primary normative foundation is defined by the ILO. The ILO core conventions that have been qualified as 'fundamental' are binding upon every member country of the ILO, regardless of ratification. Myanmar has to abide by the ILO core conventions.

The Myanmar government should urgently ratify a number of ILO conventions, in particular the Minimum Age Convention (C138); the Right to Organise and Collective Bargaining Convention (C98); the Equal Remuneration Convention (C100); the Discrimination Convention (C111); and the Abolition of Forced Labour Convention (C105). Ratified ILO conventions should be enshrined in local labour law.

The UNGP stipulate that states have the duty to protect against human rights abuses by third parties including business enterprises, through appropriate polices, regulation and adjudication.

6.3.3 Other states' responsibilities

The UN Guiding Principles also apply to states hosting the mother companies of foreign-owned garment factories operating in Myanmar and to states hosting brands, retailers, buying houses and agents that source from and trade with Myanmar. According to the UNGP, these states should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction should respect human rights throughout their operations. It is recommended that home states should take steps to prevent abuse abroad by business enterprises within their jurisdiction.²⁴⁷

Such steps should include:

- ❑ Enacting legislation or regulations to require international apparel buyers domiciled in the country to periodically disclose information about their supply chain – including the names of their suppliers and subcontractors – and about their due diligence procedures. To ensure a level playing field, such measures should be taken at the national and European level.
- ❑ Taking measures to ensure that companies domiciled in their territory/jurisdiction respect human rights throughout their supply chains. This includes mainstreaming corporate accountability requirements into existing governmental instruments that provide support to companies.

247 United Nations, "Guiding Principles on Business and Human Rights - Implementing the United Nations "Protect, Respect and Remedy" Framework", 2011, <http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf>

- Introducing legislation that holds companies domiciled in their territory/jurisdiction accountable for human rights violations throughout their supply chains.
- Raising concerns on human rights and labour rights violations in bilateral contacts with the Myanmar government and supporting efforts by the Myanmar government to address those.
- Ensuring that other laws and policies governing the creation and on-going operation of business enterprises, such as corporate law, do not constrain but enable business respect for human rights.²⁴⁸
- Providing effective guidance to businesses on how to respect human rights throughout their operations.²⁴⁹

6.4 The corporate responsibility to respect human rights

In the absence of a global enforceable legal framework on business and human rights, national legislation and international labour rights and human rights standards offer guidance. The highest international labour standards should prevail over national labour legislation. It should be noted that such national and international standards provide a minimum standard; corporate actors, employers and buying companies may well choose to go beyond that bar.

It has been demonstrated that voluntary corporate approaches have not achieved respect for labour rights. SOMO joins the call for enforceable agreements between companies and relevant civil society stakeholders, local labour unions in the first place.²⁵⁰

In line with the UNGP, all businesses operating in and sourcing from Myanmar have the responsibility to identify, prevent and mitigate risks and remediate negative impacts on human rights that occur through their own activities – or as a result of their business relationships with other parties – including in their supply chains. Supply chain partners include first and further tier suppliers, as well as sub-contractors. Unauthorised sub-contractors and homeworkers should also be taken into account. The group of businesses operating in Myanmar includes Myanmar-owned and foreign-owned factories (suppliers), as well as brands, retailers, buying houses, agents, etc. (buyers).

Garment companies that wish to operate in Myanmar should apply due diligence. Given the post-conflict situation in the Myanmar garment industry and the broad range of human rights risks, foreign-owned manufacturers and buying companies should develop and implement rigorous and country-specific due diligence procedures. Supply chain initiatives should also develop such policies. International Framework Agreements (IFA) between Global Union Federations (GUF) and multinational corporations should include additional Myanmar specific requirements. Country-specific focus areas

248 United Nations, “Guiding Principles on Business and Human Rights – Implementing the United Nations “Protect, Respect and Remedy” Framework, 2011 <http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf>

249 Ibid.

250 Clean Clothes Campaign “Position Paper on Human Rights Due Diligence”, March 2016, <<https://cleanclothes.org/resources/publications/position-paper-on-human-rights-due-diligence/view>>



Squatter area for garment factory workers. Lauren DeCicca | MAKMENDE

include risks related to land grabbing, questionable ownership and military influence, the powerful presence of foreign-owned garment factories, child labour and the position of ethnic workers.

As a first step, a thorough risk assessment of human rights and labour rights violations is required before business is started up in a particular state, region or production facility. Companies should make an effort to fully understand the socio-economic environment in which they will be operating. When assessing risks, companies should consult local labour unions and labour NGOs, as well as relevant international CSOs. This is true for foreign-owned garment factories and buyer companies alike.

Buying companies should develop and adhere to strict selection criteria to identify suppliers in compliance with international standards, local labour law and their own corporate code, before they start placing orders. Indicators include a good labour rights record, safe working conditions, presence of a democratically elected functioning union, etc.

If risks cannot be mitigated, companies should refrain from starting up businesses or starting placing orders.

Monitoring, remediation and improvement

Once manufacturers or buyers have become active in Myanmar, continuous monitoring of human rights and working conditions and remediation of violations is required. On top of this, companies should strive for continuous improvement. There is no easy approach to this. Corporate codes of

conduct and social auditing as a means of verifying the implementation of such codes have been widely criticised.²⁵¹ The root of the problem is that these tools are voluntary. Additionally, social auditing does not encourage host state governments to take responsibility for labour inspection and workplace health and safety systems. On the contrary, social audits have limited validity as to the real status of working conditions and are even prone to incorrect representation of the reality in factories.²⁵² Social auditing most times only extends to first-tier suppliers. Further tier suppliers, subcontractors and illegal subcontracting are not covered. It is imperative that brands do not fall into the old pitfalls with regard to social auditing in Myanmar.

Monitoring, remediation and improvement activities should take into account the following principles:

- ❑ Truly independent verification of labour conditions
- ❑ Prominent involvement of workers, labour unions and labour NGOs in monitoring and improvement, from design to implementation
- ❑ Monitoring and improvement beyond first-tier suppliers: Brands and retailers should accept a broad definition of supply chain responsibility beyond the Cut-Make-Trim (CMT) or Cut-Make-Pack (CMP) phase, to include not only the end assembly phase but also preceding steps. Consequently, monitoring and improvement should not be limited to the end-manufacturing units, but need to be extended up the supply chain, including the spinning and weaving phases

Buyers should be able to keep a close watch on the working conditions at their supplier factories. Practically, in the Myanmar context, this means installing a representative or an office in the country, instead of relying on staff and/or auditors that are flown in incidentally. Buying companies should refrain from working through agents or buying houses.

Garment companies often operate in a multi-buyer and multi-actor setting. Companies should demonstrate the will and openness to work together and lead, rather than waiting for others to make the first move.

Garment companies should support the development of progressive labour laws and policies. This should be done in line with the agenda of the broader labour movement. Such corporate lobby efforts should be undertaken in all openness.

251 Friedrich Ebert Stiftung (FES), "Liability of Social Auditors in the Textile Industry," Carolijn Terwindt and Miriam Saage-Maass, December 2016, <<http://library.fes.de/pdf-files/iez/13041.pdf>>

252 Ibid.

6.5 Access to remedy

All parties involved in labour disputes should respect the formal legal dispute settlement procedures and escalation processes that are in place in Myanmar.

Individual workers, as well as groups of workers or factory unions, should be able to get legal recourse, without hindrance, threat or sanctions from their employers.

Manufacturers and buyers alike have a responsibility to ensure that the formal dispute settlement system does not get clogged, by pro-actively and collaboratively seeking solutions, rather than passively waiting for AC decisions.

The arbitration system should be truly tripartite. This is not the case now. Government and employers are collaborating, but workers/unions have not much of a voice.

Arbitration Councils should in their decisions not merely require compensation for workers who are dismissed for having engaged in union activities, but should rather demand reinstatement of those workers.

Factories/management should respect the decisions of the Arbitration Council.

Mother companies of foreign-owned garment manufacturers, buying companies sourcing from Myanmar should stand up against garment factories that fail to respect Arbitration Council decisions.

Garment companies, both manufacturers and buyers, should provide access to remedy for individuals, workers and/or communities that may be impacted by their activities. They should do so by establishing a credible grievance mechanism. The pro-labour calibre of a corporate grievance mechanism is defined by a number of qualities, including legitimacy, accessibility, predictability, equitability, transparency and rights compatibility. Moreover, a grievance mechanism should be a source of continuous learning, based on engagement and dialogue, and should be available in relevant languages.²⁵³

Victims of human rights violations need to be actively involved in deciding appropriate remediation.

6.6 Transparency

The garment industry is not very transparent. Information about buyer-supplier relations is not easily found. Sometimes, even basic and essential data such as corporate contact details are not easily accessible. Concrete information about the scope and impact of due diligence procedures is not shared by companies.

253 United Nations, "Guiding Principles on Business and Human Rights – Implementing the United Nations "Protect, Respect and Remedy" Framework, 2011 <http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf>

In recent years, a growing group of brands and retailers has made an important step towards greater transparency by publishing supplier lists. Of the companies mentioned in this report, the following publicly disclose information on their suppliers, in varying detail: C&A, Deuter and H&M. Upon request, the following companies shared a list of suppliers in Myanmar: New Look, Muji, Suitsupply. Additionally, Factory 4 shared the names of its customers with SOMO. FWF publishes an aggregated Myanmar factories' list. This list includes the names of all manufacturers in Myanmar. FWF members work with, but do not give details about, one-on-one relationships.

The following companies did not share information about their Myanmar supplier base: Primark, Gaastra, Takko.

The following companies did not respond at all: Lonsdale (Sports Direct), Kawasaki, Hudy, Erima, Henri Lloyd, Karrimor (Sports Direct), Pierre Cardin, Arrow, Bessshirt, Izumifuhaku, K2 and LL & S Purchasing Corp. (The Levy Group).

Additionally, 11 out of the 12 researched factories did not respond.

6.6.1 Arguments for greater corporate transparency²⁵⁴

Workers need to know who their legal employer is and the precise terms of their employment, in order to be able to knock on the right door if they have issues at work. Workers also need information about the customers of the factory where they work. In cases where workers come away empty-handed when calling upon their employer, they may need to contact buying companies to push claims for redress or compensation. Local labour unions and labour NGOs need this information in order to fulfil their designated roles of supporting workers effectively. Local and international CSOs need detailed supply chain information, including corporate auditing results, in order to independently verify claims about labour conditions made by the industry. Without this information, CSOs cannot effectively assume their role as a countervailing power.

Consumers are entitled to know the origin and the conditions under which garments are made so that they can make informed purchasing decisions. Investors and public authorities need detailed information about various sustainability aspects for responsible investment and procurement decisions. This includes supply chain information. Last but not least, transparency is good for companies, as it enhances the quality of management and ultimately the company's value. If a company is able to generate information with regard to the possible impacts of corporate actions on society, management will be better positioned to value and address risks.

254 SOMO and ICN, "Time for transparency - The case of the Tamil Nadu textile and garment industry", March 2013
<<https://www.somo.nl/time-for-transparency-in-the-garment-industry/>>

6.6.2 Next steps towards greater corporate transparency

Transparency is an important notion in relation to responsible business conduct. States should drive corporate transparency. Businesses should operate as transparently as possible.

Garment companies, both manufacturers and buyer companies, should practice full corporate transparency. Transparency is not a means in itself, but should be understood as an important building block of corporate accountability. Public disclosure of detailed information regarding corporate structure, suppliers' base, employment relations, work force and due diligence processes, among others, helps the different actors along the supply chain to address the adverse effects of corporate activities effectively. Workers, communities, labour unions, CSOs, academics and other stakeholders need information to be able to push for improvement, redress, or compensation, both on a local and an international level. Business relations and investors also have an interest. Transparency is a continuous process that demands on-going efforts from companies.

Ideally, companies should publicly share up-to-date and detailed information about:

- ❑ corporate structure and governance
- ❑ name and location of parent company (if applicable)
- ❑ names and locations of all production facilities and units, including possible alternative factory names
- ❑ names and locations of all first and further tier suppliers, including sub-contractors, down to the informal sector. Supplier lists need to include a clear definition of what is considered a supplier, with explanatory details about test or scoping orders, suppliers that are suspended or being phased out. Differences between older and updated supplier lists should be made explicit
- ❑ from the point of view of the buying company: whether suppliers are strategic suppliers, and information about the duration of the supplier relationship
- ❑ from the point of view of the supplier: whether buyers are strategic buyers, and information about the duration of the relationship
- ❑ type of products produced or sourced
- ❑ number of workers at each site, subdivided by gender, age category, and type of contract
- ❑ wages paid
- ❑ union(s) that may be active at production facilities
- ❑ audits procedures, audit findings, corrective action plans and progress in action

- participation in projects and programmes focused on improving working conditions, alone or in collaboration with other companies
- due diligence procedures of the company. Communication on due diligence procedures should provide enough information to assess the adequacy of the steps taken by the enterprise.

Corporate and supply chain information should be made available in accessible formats and relevant languages. External corporate communications should appear in a form and with a frequency that is in tune with the social impact of the business activities.²⁵⁵

Business initiatives, multi-stakeholder initiatives and trade associations should also push for further supply chain transparency in the global garment sector. Brands, retailers and manufacturers must develop a positive and pro-active view on inter-sector sharing of business-related information.

In contracts with suppliers, companies should, as a standard procedure, include a clause that emphasises the importance of transparency and disclosure with regard to the business relationship rather than demanding strict non-disclosure of such information.

6.6.3 States should drive corporate transparency

States should require companies – in particular larger multinational ones – to report publicly on their social and environmental performance worldwide. By requiring such reporting, states can drive transparency and enable official and public scrutiny of a company's performance.

Governments – for the purpose of this report these are the Myanmar government and the host governments of companies operating in and/or sourcing from Myanmar – should develop, adopt and implement legally binding rules on corporate and supply chain transparency.

The Myanmar government should provide full, detailed public transparency on garment exports (via ports).

Garment importing countries in Europe, including the Netherlands, should provide full, detailed public transparency on garment imports (via harbours, airports, other border posts).

255 United Nations, "Guiding Principles on Business and Human Rights – Implementing the United Nations "Protect, Respect and Remedy" Framework, 2011 <http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf>

6.7 Sustainable economic development and decent jobs

The road to inclusive and sustainable peace in Myanmar is long. In overcoming poverty and economic isolation, the Myanmar government is faced with a huge challenge to drive sustainable pro-poor economic development. Corporate activities, trade treaties and investment agreements are not necessarily benefitting the common people, including workers and their communities. The Myanmar-EU IPA is widely contested. Myanmar and international CSOs have emphasised the importance of Myanmar maintaining full policy space to harness foreign investment for its own development objectives. The new members of parliament in Myanmar need time to acquaint themselves with the latest state of the international debate on investment protection agreements and to properly inform themselves about the possible impacts and wider implications of the proposed IPA.

The garment industry is part of the rapidly developing and expanding economy of Myanmar. The country is desperately poor – it is important that the growth of the garment industry benefits the people, not only the foreign brands that source from Myanmar or the factory owners. Employment needs to be created, but not at all costs. There is a need for decent employment, rather than precarious jobs. Economic development should put people at the very centre.

Next steps

The Myanmar government should develop and uphold strict rules for foreign investors and see to it that foreign-owned companies, including garment manufacturers, formally register with the Ministry of Labour to counter illegal operations of such economic operators.²⁵⁶

The EU should oblige EU businesses to disclose their activities and investments, including supply chain relations, in Myanmar. Reporting requirement need to be developed in close consultation with relevant stakeholders in Europe and Myanmar. Individual EU member states should do the same.

The garment industry can contribute to economic development and poverty reduction by creating employment. However, corporate actors have a responsibility to create not just jobs, but decent work. According to the ILO, 'decent work' is productive and delivers a fair income, security in the workplace and social protection for families, better prospects for personal development and social integration, as well as freedom for people to express their concerns, organise and participate in the decisions that affect their lives and equality of opportunity and treatment for all women and men.²⁵⁷

Workers have a right to decent basic facilities, including housing, health care, education and social security. Both the government and employers should invest in decent and affordable housing for workers. This could be in the form of workers' villages or dormitories.²⁵⁸

Foreign buyers prefer foreign-owned factories, in particular Chinese and Korean-owned factories. This is not in the interest of Myanmar entrepreneurs. It is advisable that companies, both manu-

256 Point brought forward by labour NGOs in conversation with SOMO, November 2016, Yangon, Myanmar.

257 ILO Decent work, <<http://www.ilo.org/global/topics/decent-work/lang--en/index.htm>>

258 Point brought forward by labour NGO in conversation with SOMO, November 2016, Yangon, Myanmar.

facturers and buying companies, should develop a diverse supplier base, including Myanmar-owned factories (alongside foreign-owned factories); small- and medium-sized factories, factories owned and managed by ethnic entrepreneurs, and factories outside Yangon. When selecting supplier factories, however, buyers should shun factories with military or former military ownership. Also, buying companies should be aware of foreign-owned manufacturers that install puppet Myanmar owners.

Buying companies should support Myanmar-owned factories that operate under a Cut-Make-Pack (CMP) system to develop a fully-fledged FOB-system, which means 'free-on-board' or sometimes 'freight-on-board'. Under this approach retailers simply place orders at highly-capable and well-financed factories in overseas markets. The factories are responsible for producing the garments in their entirety and arranging shipments. The buyer is not involved in the production process in this type of manufacturing.

Employers should aim to offer stable employment to their workforce. This should be taken into account when decisions about opening or relocating factories within a city, a country or between countries are made.

6.8 Sustainable business relations and responsible purchasing practices

The relationship between business partners (in particular between buyers and suppliers) should be collaborative rather than punitive, long-term and focused on continuous improvement. Buyers may reward suppliers with a preferential status for respecting labour rights beyond standard compliance.

Once business relationships are formed, companies should refrain from easily discontinuing relations with business partners. Labour rights violations are not a reason in itself to break up a business relationship. To 'cut and run' is not an effective way of impressing upon business partners that they should improve labour conditions. Companies should address risks and/or actual violations, either as an individual company or, if necessary, together with other companies.

The responsibility of buying companies does not end with the termination of business contracts with their suppliers. In the case of ending a relationship, a buyer should develop a phase-out plan to make sure workers get the salaries and benefits they are entitled to. To prevent job losses from occurring, buyers should prioritise that affected workers are rehired by other factories. In general, the termination of business relationships should only be used as a last resort.

Purchasing practices should enable – and not inhibit – respect for human and labour rights. These practices should be aligned with corporate commitments to improved social performance.

Aligning purchasing practices with human rights requirements means:

- ❑ Building long-term, stable buyer-supplier relationships. Buyers that maintain long-term relationships with their suppliers send a clear signal to these manufacturers that they are willing to invest in them. In turn, suppliers are more likely to invest in the improvements.
- ❑ Good production planning, including reasonable supply lead times, predictability of orders and minimising last-minute changes. Plan well and realistically, so suppliers do not need to attract ever cheaper labour. With 'collaborative planning', buyers can share their calendar with the factory and encourage the supplier to do the same.
- ❑ Adapt the volume of orders to the total production capacity of suppliers.
- ❑ Developing a pricing policy that takes the social and environmental quality of sourced products into account.

6.9 Awareness raising and capacity building

Next steps

Companies should make sure that workers are informed of relevant policies and codes as well as of grievance procedures, projects, programmes and initiatives focusing on improving working conditions that their employer or the customers of their employer may be part of. All such information should be made available in accessible formats and in relevant languages.

Workers are at the heart of the garment industry. It is most important that workers are well informed of their rights. The social mobilisation of the labour force should be fostered, encouraged and promoted.

It is important that government staff on all levels, as well as company management, should be informed and trained on national labour law, international labour standards and instruments (including the UNGP). They should be aware of the responsibility of companies to respect human rights, as well as of risks of labour rights abuses and actual labour rights violations in the garment industry.

Labour unions and labour NGOs have an important role to play here in providing independent information and analysis.

The labour inspectorate and labour offices that fall under the Ministry of Labour, Immigration and Population should be reinforced, well-staffed, well-trained and with sufficient resources. Inspections of garment factories should be carried out unannounced and unhindered. International donors should make funds available to support this.

Management, supervisors, and other staff of garment factories need to inform themselves about local labour law and international labour standards and instruments, including the ILO Conventions, UNGP, and the OECD Guidelines for multinational enterprises.

The Myanmar Dilemma

Can the garment industry deliver decent jobs for workers in Myanmar?

This report asks whether, and how, Western garment brands can operate fairly in the fledgling democracy of Myanmar. The garment industry is one of the most labour-intensive manufacturing industries in the world. Clothing companies are constantly on the look-out for production locations that can make clothes more quickly and at lower costs. Over the past few years, Myanmar has rapidly become a popular sourcing destination for the garment industry – due to a huge pool of cheap labour and favourable trading conditions. However, conditions for workers in this industry are far from acceptable. Labour rights abuses are rife. Land rights have been violated in the development of industrial zones. Workers who are brave enough sometimes file complaints or resort to open protests, news of which occasionally finds its way into the international media. More often, however, workers toil on in silence. This report describes the most pressing problems facing garment workers in Myanmar. The authors – SOMO, ALR and LRDP – also offer suggestions for constructive ways forward to head off a crisis before it escalates. They highlight the importance of strict country-specific diligence procedures, including carrying out thorough risk assessments before operations are launched and orders are placed.

