

The Myanmar Dilemma

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



SOMO & ALR & LRDP

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Colophon

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Labour Rights Defenders & Promoters

Irdpmyanmar.blogspot.nl/2013/04/labour-rights-defenders-promoters.html



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
Factory 3	Suitsupply
Factory 4	H&M, Primark, Muji
Factory 5	Fair Wear Foundation members, Kawasaki, Hudy, Sports Direct, Erima, Henri Lloyd
Factory 6	Karrimor
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 workers under 18 years old were employed at all 12 investigated factories. 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 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.

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 (UNGPs), 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.

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.

