

ETI's recommendations on responsible business in the garment sector in Myanmar

Myanmar has been in political turmoil since the army's coup d'état against the civilian government in February 2021. Violent crackdowns on protests and widespread human rights abuses have provoked global condemnation.

There has been a debate about whether businesses can continue in Myanmar while meeting international standards and responsible business guidelines. To inform these discussions, ETI commissioned the consultancy, Due Diligence Design, to conduct an [independent evidence-based assessment](#), with expert support from SHIFT and IMPACTT, on human rights and responsible business conduct within Myanmar. Looking at this assessment in line with the United Nations Guiding Principles on Business and Human Rights (UNGPs), ETI concludes:

ETI's Base Code standards are not being met

The ETI Base Code is a set of workers' rights standards that are a global reference for responsible business practice. In normal circumstances, ETI expects business to work towards these standards through a human rights due diligence approach. The assessment provides evidence that these standards are not being met in Myanmar's garment sector and that it is not possible for businesses to apply normal human rights due diligence.

The report provides credible evidence of forced labour and exploitation at a sector level, with evidence of workers facing long hours, low wages, unpaid overtime, and harassment. In addition workers are unable to exercise their right to freedom of association in a way that is aligned with international

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labour standards. The obstruction of this right is deeply concerning, particularly given its role in facilitating workers' access to grievance mechanisms and their ability to negotiate with their employers.

Alongside this, the assessment finds a significant number of workers in precarious employment, as well as instances of sexual violence and reports suggesting child labour. Military action has placed substantial limitations on civic freedom, preventing civil society, and the international organisations upon which responsible business can usually rely, from operating as normal. These constraints make acting on behalf of workers or providing access to effective grievance mechanisms and/or remedy, highly risky for the individuals involved.

Implementing the UNGPs and the 'Respect, Protect and Remedy' Framework is extremely challenging:

I. The state's duty to protect human rights is not being met

The findings demonstrate that the Myanmar military junta is failing in its duty to protect human rights. Instead, there is a strong indication that the state's military apparatus has perpetrated violence, abused human rights and persecutes those who attempt to defend them. There are widespread concerns that a high level of corruption prevails, with reports that the military have been capturing resources through beneficial ownership and bribery in the wider economy. A fundamental pillar of the UNGPs 'Protect, Respect and Remedy' Framework is therefore not being fulfilled.

II. The corporate responsibility to respect human rights is significantly restricted

In the face of widespread state sponsored violence and corruption, there is evidence that a culture of fear pervades normal life and extends into the workplace. This translates to an environment of precarious work, fear of speaking up or engaging with those who would normally represent and defend workers' rights. Trade unions report being unable to operate normally, even at factory-level and many civil society organisations have been declared "unlawful", with potentially severe implications for those who work with them.

The ability of business to affect the wider policy and political environment is extremely limited in these conditions. Even within supplier factories, normal engagement is severely affected by a culture of fear and by practical considerations, such as the role of the military in running local authorities and providing industrial "security".

Companies are therefore unlikely to be able to meaningfully consult with workers or their representatives, whilst their suppliers are subjected to demands which threaten the rights of their employees and counter efforts towards openness. In this environment, we conclude that brands will find it nearly impossible to conduct normal human rights due diligence, let alone the enhanced due diligence that the present situation in Myanmar demands.

The UNGPs provide for this situation:

“Where the domestic context renders it impossible to meet this responsibility fully, [the responsibility to respect human rights wherever they operate] business enterprises are expected to respect the principles of internationally recognised human rights to the greatest extent possible in the circumstances and to be able to demonstrate their efforts in this regard.” (UNGPs, 23.)

In simple terms, where the ability to operate normal human rights due diligence is absent, the onus is on the business to demonstrate the extent to which it can respect the principles of human rights.

III. Access to remedy is severely constrained

The assessment makes clear that the state cannot or will not take appropriate steps to ensure effective remedy through judicial, administrative, legislative, or other means. In practice, these mechanisms have been co-opted by the military, to maintain their hold on power. Given the prevalence of state violence, non-state actors, such as institutional or civil society actors, are also unable to safely fulfil this role, with several organisations now deemed unlawful. Furthermore, the international agencies that normally underpin such processes, such as the ILO, report constraints on their ability to operate. As such, evidence indicates that remediation in compliance with the UNGPs cannot be met to any meaningful degree.

ETI recommendations

Based on these conclusions, we urge companies involved in garment manufacture for export to reassess their presence in Myanmar in line with the following recommendations, recognising that there will be a significant impact on workers whatever action is taken and steps to mitigate such impacts must be one of the prime considerations.

1. Under UNGP Principle 19, companies will have to consider the severity of the adverse impact on human rights: “the more severe the abuse, the more quickly the enterprise will need to see change before it takes a decision on whether it should end the relationship.” Therefore, where companies fail to demonstrate considerable progress in line with Principle 23, they must reconsider their presence in the country. During this period, business must refrain from making any additional investments in Myanmar.

2. Should companies choose to remain under UNGP Principle 23, they must respect the principles of internationally recognised human rights. This includes meeting the elements of the ETI Base Code in all supplier factories to the greatest extent possible and a transparent demonstration of how they are doing so, including the measures they have put in place to ensure these standards are being met on an ongoing basis.

3. Should companies choose to exit Myanmar they must do so responsibly, and in consultation with social partners. The impact of exiting Myanmar on workers and their families, needs to be a clear focus in this consultation.

The report clearly indicates that there is evidence of gross human rights abuses in the garment manufacturing sector in Myanmar. However the scope of this report did not cover every factory. Furthermore the report did not indicate that the sector is a critical one either financially or politically for the military. Lastly the report was clear that in the absence of the employment provided in garment factories, significant numbers of workers would be much worse off and some will be made destitute. This latter reality must be taken into account in any action taken by business.

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