



Ethical
Trading
Initiative

For workers' rights. For better business.

Responding to the human rights crisis in Myanmar:

a four-point plan for responsible businesses



Introduction

This plan was developed so that businesses can act responsibly in relation to the human rights crisis in Myanmar yet retain a role in providing decent work and fostering respect for human rights. It is intentionally brief and provides broad guidance only, but recommends that brands adopt a human rights due diligence approach in line with the UN Guiding Principles on Business and Human Rights (UNGPs) and the UN-backed International Fact-

Finding Mission on Myanmar. While ETI recognises that the due diligence advised here is challenging (due to the opaque nature of certain industries and the lack of information on the connections between the military and private sector), we consider it an essential step in ensuring brands have a positive impact when operating in or sourcing from Myanmar.

Remaining in or exiting from Myanmar

As a matter of principle, ETI believes that international companies should not undertake operations in a country where there is a clear record of severe, sustained and abusive rights violations, and where the potential for the company to act for the good of the population is outweighed by the need to de-legitimise the abusive regime. Investment and operations risk legitimizing an abusive regime. However, businesses do not always undermine human rights, and sanctions or prohibitions against private sector investment or operations in states with poor human rights records may ultimately damage the human rights of the country's citizens.

Undoubtedly, careful calculation is required by companies operating in or sourcing from Myanmar when evaluating their business footprint and impact across the supply chain. All enterprises active in Myanmar or trading with or investing in businesses in Myanmar should therefore demonstrably ensure that their operations are compliant with the UNGPs by conducting in-depth human rights due diligence. They should respect human rights, avoid infringing on the rights of others and address any adverse human rights impacts with which they are involved through their supply chains.



In line with the UN-backed Fact-Finding Mission, ETI supports efforts to reduce poverty in Myanmar through continued economic engagement and the provision of what the ILO has defined as decent work, provided that the engagement is carefully targeted to avoid any benefits accruing to the Tatmadaw (the military), its leaders or others responsible for serious human rights violations. No business enterprise active in Myanmar should enter into an economic or financial relationship with the security forces of Myanmar, in particular the Tatmadaw, any enterprise owned or controlled by them, their individual members, or businesses known to actively support them, unless they are re-structured and transformed as recommended by the United Nations.

Companies should set out a clear, principled and public position on their corporate strategy and approach to human rights in Myanmar. These strategies should be open to scrutiny by external stakeholders. It is not sufficient to claim to have

done the necessary supply chain mapping and due diligence internally, but not publicly communicate this. Businesses should also be open to and ready to respond to queries about their corporate approach to managing human rights risks in Myanmar given the seriousness of the context.

In addition, companies should seek to build relationships and engage with local stakeholders, as well as other Myanmar-based institutions which can provide information and support on human rights due diligence, and insights into the links between the military, government and private sector. Institutions such as the Myanmar Centre for Responsible Business and SMART Myanmar provide support on social responsibility. Local trade unions and human rights NGOs may be able assist companies in identifying risks in their supply chains. Development partners and diplomatic missions may also be able provide information on the military, government agencies and their connections with the private sector in different industries.

Act with caution but act

It is important to acknowledge the severe restrictions on freedom of expression that exist in Myanmar. Freedom House states that reporters covering sensitive topics risk harassment, physical violence and imprisonment. Two Reuters journalists were imprisoned and charged in December 2017 under the State Secrets Act while covering the conflict in Rakhine State for instance. International NGOs face strict controls on what work they can do. In this context, business should act with extreme caution when conducting human rights due diligence and take care not to put their staff, researchers, business partners or other individuals they work with in any danger.

Nonetheless, despite recognising the challenges of operating in such a high-risk environment, we encourage businesses to work jointly with civil society organizations and the government to combat intolerance and discrimination, and to present a positive vision of Myanmar's future going forward. All businesses operating in or sourcing from the country have an opportunity to play a positive and constructive role in society by promoting an inclusive, pluralistic, democratic Myanmar in which the human rights of all are respected, protected and fulfilled.

"The Mission does not support general economic sanctions on Myanmar. It is concerned that such sanctions in the past may have contributed to the impoverishment of the Myanmar people generally while having little impact on those most responsible for serious human rights violations. The Mission supports continuing efforts to reduce the poverty in which most people in Myanmar live, through increased economic engagement and development assistance, provided that the engagement and assistance is carefully targeted to avoid any benefit to the Tatmadaw generally or to its leaders individually or to others responsible for serious human rights violations."

Report of the detailed findings of the Independent International Fact-Finding Mission on Myanmar (2018).

Four-point plan

1

Assess the extent to which actions — both in connection to core business and beyond — empower the military, government and civil society.

Brands should map their supply chains and seek to identify any connections with businesses linked to the military, its leaders or to others responsible for serious human rights violations. This requires detailed financial and human rights due diligence to explore ownership of companies in supply chains and the land on which factories may be located. Brands should cut ties to businesses linked to the military and those responsible for serious rights violations. This due diligence should encompass assessment of joint enterprise structures and business relationships, as well as corruption and bribery, which can undermine the rule of law as well as civil society groups by diminishing their role in democratic processes.

Brands sourcing from Myanmar should support suppliers in conducting their own human rights due diligence, with a clear focus on identifying links between the military and the private sector further down the supply chain. Brands should work with suppliers in this endeavour and engage with local stakeholders who possess relevant knowledge and expertise. When selecting new suppliers or business partners, this requirement for due diligence and divesting from businesses linked to the military should be clearly communicated.

2

Do not legitimise the undermining of human rights by appearing complacent in the face of ongoing violations.

Brands must mitigate against any legitimacy they might lend to oppressive government agencies by being transparent throughout their operations. This entails three specific actions:

- Disassociate from operations linked to the Myanmar military, its leaders or to others in government responsible for serious human rights

violations. A brand may be indirectly connected to the military or government through its sourcing strategy, and therefore a transparent policy is needed, acknowledging the state's recent human rights record. This does not necessarily require direct condemnation of the regime (which could put business operations and workers in a difficult position). Instead, recognise that the UN, EU and US have found a consistent pattern of ethnic cleansing/widespread rights abuses, and show that particular care is being taken to ensure that your operations comply with human rights standards, the findings of the UN-backed Fact-Finding Mission, and the general welfare of the population. Due to the lack of information on the connections between the government, military and private sector, brands should collaborate and share information on supply chains, on any specific links discovered, and on where decisions are taken to dissociate from certain businesses or supply chain partners.

- Acknowledge more direct connections to rights violations occurring, i.e. the continued lack of freedom of association. Publicly recognise where rights are severely restricted, and acknowledge that the brand may not be able to fully comply with the right in the present circumstances. Set out your brand's special procedures for preventing and mitigating any adverse impacts stemming from operations or relationships in light of the current context.
- Ensure transparency around brand presence and strategy in the country. Publish a corporate strategy for Myanmar, setting out the decision to remain and engage, as well as a commitment to taking responsibility for workers in the supply chain, to providing 'decent work' as set out by the ILO and to being a positive force in society. Detail the extent of the due diligence conducted; and detail wider ethical trade work designed to mitigate harm and support workers' rights. Publish information on your supply chain such as factory lists.

3

Ensure that workers have access to effective grievance mechanisms and that remedy is provided where harm has occurred.

The rule of law in Myanmar is severely undermined by a lack of accountability for perpetrators of rights violations; lack of access to remedies and reparation for victims; and persistent challenges to the independence of the justice system. The UN has reported that the state has exerted control over independent journalism across the country, and the International Trade Union Confederation (ITUC) has reported systematic violations of labour rights. In the context where protection of rights by the state is limited, impunity is rife and freedom of association severely curtailed, brands should ensure that workers have access to independent and genuinely effective grievance mechanisms, that these mechanisms are well-resourced, supported and monitored, and that appropriate remedy is provided where harm has occurred.

As with many other sourcing markets, women account for 90% of the workforce in Myanmar's garment industry. Grievance mechanisms that address gender equality are therefore central to ensuring that women workers can raise concerns safely and confidentially. Brands should assess the specific barriers faced by women and girls in terms of access to effective remedy through judicial and non-judicial mechanisms. Suppliers should disclose operational protocols and communicate the successful resolution of complaints to their employees as well as brands.

4

Engage collectively with the Myanmar government, national trade associations and other relevant parties to underline that increased investment and a continued presence in Myanmar is dependent on an enabling environment and the rule of law.

Brands should make it clear to the government that an enabling environment is not currently in place, and that this undermines their sourcing strategy, which is reliant on the government's ability to effectively protect the human rights of its citizens. Engagement on this issue and the use of collective leverage is critical. While public or private engagement or advocacy should be determined on a case-by-case basis, brands should also be clear that specific time bound changes are needed to ensure the right environment for responsible businesses to succeed, and that failure to improve could result in withdrawal. Engagement with the EU and US on making their trade preference schemes (Generalised Scheme/ System of Preferences (GSP)) work is likewise critical – that means doing everything feasible to ensure that the labour and human rights conventions contained in GSP agreements are implemented.

Furthermore, brands should:

- Actively support trade unions and civil society groups in promoting freedom of association and freedom of expression; and engage with the ILO and other inter-governmental and multilateral agencies to ensure government and business approaches on implementation of labour and human rights standards are aligned and consistent.
- Promote diversity, inclusiveness, gender empowerment and equality, and engage with and support local civil society groups involved in this work.
- Foster inclusive development and social harmony beyond just providing employment.

Supported by



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The Ethical Trading Initiative (ETI) is a leading alliance of companies, trade unions and NGOs that promotes respect for workers' rights around the globe. Our vision is a world where all workers are free from exploitation and discrimination, and enjoy conditions of freedom, security and equity.

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