

Myanmar enhanced due diligence sectoral assessment

**Findings and
considerations from
the assessment on
business and human
rights for the garment
sector in Myanmar**

Product of
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Design

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Shift



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Terms, acronyms, abbreviations

Terms used in the report

- **Beneficial ownership** – ownership by an entity or person who owns or controls a company or another asset, or who materially benefits from the assets held by a company. [1]
- **Build-operate-transfer (BOT)** – a mechanism in which a government entity grants to a private sector party the right to construct a project according to agreed design specifications and to operate the project for a specified time. The private sector party receives payment from the government entity in exchange for assuming these obligations.
- **Business relationships** – these include relationships with business partners, entities in its supply chain, and any other non-State or State entity directly linked to its business operations, products or services. [2]
- **Buyers** – refers to international brands and retailers in the sector sourcing product from Myanmar for export.
- **Cronyism** – companies with political connections and influence that are favoured, for instance through tax breaks, grants, and other forms of government assistance.
- **Cut-Make-Pack (CMP)** – also known as cut-make-trim, describes the manufacturing process in textile industries where the fabric is cut, sewn together, finished and packed.
- **Due diligence** – the process through which enterprises can identify, prevent, mitigate and account for how they address their actual and potential adverse impacts as an integral part of business decision-making and risk management systems. [3]
- **Human rights cases** – compilation of cases by Due Diligence Design on workers' grievances in the garment sector. *See Section: Introduction - Scope and assessment methodology.*
- **International due diligence instruments** – these include the UN Guiding Principles on Business and Human Rights (UNGPs), the OECD Guidelines for Multinational Enterprises (OECD Guidelines), and the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (ILO MNE Declaration). These international instruments, together with the OECD Due Diligence Guidance for Responsible Business Conduct, set forth common, broadly accepted and authoritative standards for responsible business conduct. [4] This assessment also references the OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector [5] and the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas: Second Edition, which are accompanied by legal instruments for OECD Member States. [6]

- **Western governments** – refers to representatives of Western governments with diplomatic relationships in Myanmar.
- **Military** – term used in this report to refer to the armed forces of Myanmar, also known as the Junta, Tatmadaw, or the State Administration Council. The term is not used to include individual civil servants.
- **Purchasing practices** – the full range of activities associated with a buyer’s process of buying goods. In the garment sector, this may include planning and forecasting, design and development, cost and cost negotiation, sourcing and order placement, payment and terms, and management of the purchasing process. [7]
- **Remedy** – “remediation” and “remedy” refer to both the processes of providing remedy for an adverse impact and to the substantive outcomes (i.e. remedy) that can counteract or “make good” the adverse impact. The remedy should seek to restore the affected person or persons to the situation they would be in had the harm not occurred (where possible) and be proportionate to the significance and scale of the adverse impact. [2]
- **Responsible business conduct** – the expectation that all businesses – regardless of their legal status, size, ownership or sector – avoid and address negative impacts of their operations, while contributing to sustainable development in the countries where they operate. [3]
- **Responsible disengagement** – process of withdrawing from a business relationship in a way that complies with national laws, international labour standards and collective bargaining agreements, and in a manner whereby the impacts of disengagement on the rights of stakeholders are identified, prevented and/or mitigated to the extent possible. [8]
- **Risks** – refers to the risk of harm to individuals, other organisations and communities on matters covered by the OECD Guidelines, including human rights and international labour rights. This assessment does not focus on risks to the business itself. [8]
- **Sector** – refers to the export-oriented garment sector and its value chain, including manufacturing, logistics and service providers, the import of materials and export of finished goods, ancillary and sundry goods, and the full range of owners and businesses involved within these processes.
- **Suppliers** – includes all business relationships that provide a product or service to a buyer, either directly or indirectly. It can refer to manufacturers, textile producers and farmers, but may also include intermediaries such as buying agents, logistics providers, etc. [8]

Acronyms and abbreviations

- Association of Southeast Asian Nations (ASEAN)
- Build-Operate-Transfer (BOT)
- Civil Disobedience Movement (CDM)
- Confederation of Trade Unions, Myanmar (CTUM)
- Cut-Make-Pack (CMP)
- Directorate of Investment and Company Administration (DICA)
- Ethical Trading Initiative (ETI)
- European Union (EU)
- Extractive Industries Transparency Initiative (EITI)
- Gross Domestic Product (GDP)
- Generalized System of Preferences (GSP)
- ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (ILO MNE Declaration)
- Independent International Fact-Finding Mission on Myanmar (Fact-Finding Mission)
- Industrial Workers' Federation of Myanmar (IWFM)
- International Labour Organization (ILO)
- Internally Displaced Persons (IDP)
- International Trade Union Confederation (ITUC)
- International Monetary Fund (IMF)
- Memorandum of Understanding (MOU)
- Ministry of Transport and Communications (MoTC)
- Myanmar Economic Holdings Limited (MEHL)
- Myanmar Economic Corporation (MEC)
- Myanmar Garment Manufacturers Association (MGMA)
- National Unity Government (NUG)
- Non-Governmental Organisation (NGO)
- Office of the United Nations High Commissioner for Human Rights (OHCHR)
- Organisation for Economic Co-operation and Development (OECD)
- OECD Due Diligence Guidance for Responsible Business Conduct (OECD Due Diligence Guidance)
- OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector (OECD Garment and Footwear Due Diligence Guidance)
- OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas: Second Edition (OECD Minerals Guidance)
- People's Defence Force (PDF)
- Responsible Business Conduct (RBC)
- State Administration Council (SAC)
- United Nations Development Programme (UNDP)
- United Nations Guiding Principles on Business and Human Rights (UNGPs)
- United Nations (UN)
- Virtual Private Networks (VPNs)
- Workplace Coordinating Committees (WCCs)
- World Trade Organization (WTO)

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- The Office of the United Nations High Commissioner for Human Rights (OHCHR), which provided expertise on the application of the UN Guiding Principles on Business and Human Rights

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Executive summary of key findings

This report provides the findings of a sectoral assessment of the human rights risks linked to the Myanmar garment sector value chain exporting to Europe and the United Kingdom (UK).

Methodology

- **The assessment covers the period following the military coup d'état, i.e. 1 February 2021 to July 2022.** It focuses on severe human rights and labour rights risks to workers and forms of support to the military linked to the export-oriented garment sector in Myanmar.
- **It also includes implications for sector due diligence based on international due diligence instruments:** the UN Guiding Principles on Business and Human Rights, the OECD Guidelines for Multinational Enterprises, corresponding OECD due diligence guidance and the ILO MNE Declaration.
- **The assessment is a broad sectoral assessment.** This means that it does not include an assessment of individual buyer due diligence processes and outcomes. Implications cannot be drawn concerning the nature, scope or quality of due diligence processes of individual buyers, suppliers or other companies that contributed to and took part in the assessment. This assessment also does not replace individual buyer due diligence.
- **Findings in this report were identified through three key sources:** (i) interviews with 3120 workers from across 70 factories in Myanmar; (ii) interviews with key informants from across intergovernmental organisations, Western governments, business, trade unions, workers' rights organisations and international NGOs; (iii) and desk-based research. Findings were also corroborated against human rights cases collected from a range of institutions.
- **All findings have been triangulated across sources of information,** such as between worker interviews and across key informant interviews. No findings are based on a single source of information. In instances in which information was reported to us but not corroborated, this has been clarified in the report. There were limitations to our research; findings are based on our best possible analysis of the context drawing on the information collected.

Situational human rights context

- **Like all sectors in Myanmar, the sector is operating in a context in which the military has perpetrated probable crimes against humanity and continues to do so. It is important that buyers operating in Myanmar do not view the recent period of violence as isolated and short-term.** The military has a long-standing record of human rights abuses including forced labour, child labour, gender-based violence and potential war crimes.
- **Within 14 days of the coup, the military changed Myanmar's laws to suspend human rights, track and detain dissidents, and enable the harshest possible sentencing.** Together, these laws violate the rights to liberty and security, fair trial, freedom of expression, freedom of association, property, privacy and freedom of movement.
- **The military has also increased its control by declaring a state of emergency. It has imposed martial law, including in areas where economic processing zones (EPZs) are located, and has threatened legal action against workers' rights NGOs, including those working in the garment sector.**
- **Equally important is that buyers recognise the dynamic and unpredictable nature of the conflict in Myanmar.** In the period between finalising this report and going to publication, the military announced an extension to the state of emergency, [9] executed four pro-democracy activists, [10] reportedly instructed garment factories in townships to dismiss workers originating from pro-resistance regions, [11] and brought in a new rule barring political parties from speaking with international organisations or foreigners without its permission. [12]

Leverage with the military

- **In our interviews, there was unambiguous consensus amongst all stakeholder groups operating in Myanmar that the garment sector does not hold leverage with the military.**ⁱ Stakeholders also expressed the view that the sector could not build leverage with the military.
- **All UN agencies, including the ILO, that were previously working with the government have shifted programming to avoid engaging with the de facto authorities, the military.** Western governments have likewise restricted activities in the country and are not engaging with the military except where necessary for administrative purposes. This is unlikely to change unless there is a recognition of the de facto government's legitimacy, which is currently not on the political agenda.
- **The sector's lack of leverage with the military has strong implications for due diligence.** Buyers and suppliers are unable to mitigate against the human rights impacts perpetrated by the military against workers and partners.

ⁱ The topic of sectoral leverage was not discussed with workers' rights organisations.

RBC infrastructure

- **Ultimately, the coup has resulted in an almost total absence of infrastructure to promote and support human rights. This context is unlikely to change in the short to medium term and may deteriorate further.**

Buyer-led due diligence is restricted due to both Covid-19 and the security context. International monitoring organisations reported that they were no longer able to be operational in Myanmar at this time and/or were unable to collect reliable data. Many international NGOs have stopped working in Myanmar entirely or have moved their offices outside Myanmar. We spoke with two international NGOs that were still physically operating in Myanmar on workers' rights.

- **The constraints on the ILO and the security threats facing workers' rights organisations are particularly concerning.** The de facto government has consistently restricted the ILO's ability to operate in Myanmar. Workers' rights organisations are still active in Myanmar. However, these organisations face constant security and legal risks. The military has declared 16 workers' rights NGOs illegal. There is a risk that these organisations could also be deemed "unlawful", which would pose a severe risk to the safety of them and anyone engaging with them.
- **Consequently, responding to and mitigating human rights issues in Myanmar will be extremely challenging for the sector.** Addressing severe harms in the sector, such as the Rana Plaza tragedy, has been dependent upon concerted and coordinated efforts across the industry; has involved the ILO, UN, OECD, governments including the EU, UK, US and national governments, trade unions and civil society; and has been sustained over a lengthy period with independent monitoring and sufficient resources and capacity to function effectively. Everything points to this being extremely difficult in the current context.

Human rights risks

- **Our findings identified that the most severe human rights and labour rights risks currently facing workers in the sector are those related to freedom of association, forced labour and precarious employment conditions.** These risks are compounded by a lack of access to grievance mechanisms and remedy for workers.
- **We have also highlighted risks that we describe as “latent risks” or “sleeper risks”.** These are risks with a high probability of occurrence in the future, given the socio-economic and political conditions in Myanmar and/or risks that could already be occurring but are not yet being widely captured.

FREEDOM OF ASSOCIATION

- **Freedom of association and collective bargaining cannot be safely respected in Myanmar either through trade unions or other democratically elected workers’ organisations.** The military has carried out severe human rights abuses against trade unions and has attacked trade union confederations and trade unions as part of a deliberate approach to dismantle democratic structures. 301 trade union leaders have been arrested and 55 trade union leaders have been killed since the coup began. [14] The military has reportedly issued arrest warrants for 27 trade union executive committee members. [15]

- **We expect to see resumed military violence against workers if there is increased trade union activity or worker organisation.** Given the military’s violent and co-ordinated actions against trade union confederations, we would expect (and at a minimum cannot rule out) similar levels of violence against individual trade unionists if there is increased trade union activity.
- **Due to the threat of violence from the military, there is a ceiling of limitations on what trade unionists can effectively do or achieve.** The security burden on trade unionists is immense. Trade unionists cannot safely coordinate with workers, collect information from workers to document cases, safely strike, bargain with employers regarding workers’ interests, or dialogue with the military on national legislation. As such, we have found that trade union members who are still in factories are largely operating in name only, and at severe risk to their own safety and security.
- **Buyers do not hold any leverage with the military to mitigate these security threats to trade unions and workers’ representatives or those working to support these efforts.**

FORCED LABOUR

- **There is evidence of pervasive forced labour in the garment sector in Myanmar.** The drivers are a confluence of labour rights violations, worker vulnerability and increased production pressures.
- **We found evidence of high rates of forced and excessive overtime combined with financial penalties for refusing work, high rates of harassment and abuse and workers paying for recruitment and jobs.**
- **Excessive overtime leads to increased security concerns for workers.** In interviews with workers, they reported having to return home after curfew or sleep in the factory.
- **Under the OECD Garment and Footwear Due Diligence Guidance, buyers are encouraged to pause orders** if forced labour has been identified until action has been taken to prevent forced labour. [16]
- **To address forced labour in a conflict context, buyers will need to ensure a robust approach that goes far beyond auditing.** Buyers will also need to demonstrate that they can overcome the challenges of addressing forced labour with weakened RBC infrastructure. They will need to ensure that

they are not contributing to forced labour outcomes through their purchasing practices and consider these risks in light of forced labour bans in the EU (forthcoming) and the US.

- **Buyers will need to carry out heightened assessments of any other parts of their value chain in Myanmar.** This includes engaging with logistics and shipping suppliers to ensure that heightened forced labour due diligence is also being carried out on those segments of their supply chain.

ACCESS TO REMEDY

- **Human rights risks are compounded by the severe lack of access to remedy for workers.**
- **Within the workplace, workers are not raising grievances for fear of retaliation.** Only 5.5% (143 of 2606) of workers interviewed reported that they have raised an issue in the workplace.
- **Cases related to key labour rights are largely failing to result in remedy.** This includes cases related to wages, piece-rate targets and excessive overtime, occupational health and safety, sexual harassment and violence, discrimination and freedom of association.

- **Workers have fewer safe and effective avenues to raise grievances since the coup.** The available infrastructure and mechanisms through which workers could raise or escalate grievances safely are diminished. Trade unions cannot operate, workers do not trust the labour office, the ACT on Living Wages Dispute resolution mechanism was closed, and workers' rights organisations that could be engaged as partners on remedy have been declared illegal. There are a few avenues through which cases are being raised; however, they are not currently operating sector-wide.
- **Under the OECD RBC Due Diligence Guidance, buyers need to “when appropriate, provide for or co-operate with legitimate remediation mechanisms through which impacted stakeholders and rights holders can raise complaints and seek to have them addressed with the enterprise”.** [2]
- **Due to the lack of leverage with the military, buyers will not be able to handle and address cases pertaining to severe human rights abuses by the military,** notably arrests and imprisonment of trade unionists or partners.
- **For all other labour and human rights cases, buyers would need to ensure that mechanisms are fit for purpose in a conflict context and do not put workers, service providers or partners at increased risk.**

PRECARIOUS WORK

- **A significant number of workers are working in precarious employment.** 23.8% of workers interviewed reported that they did not have a written contract or offer letter. 16.7% of workers interviewed reported working for a factory but not being formally employed. An additional 9.1% of workers interviewed reported being on short-term or rolling contracts. [17]
- **When workers are on short-term contracts, they do not have access to the benefits that they would have had under a permanent contract and are at risk of exploitation.** Workers who are in precarious work are also more vulnerable to exploitative practices because they are not able to refuse work or raise grievances. This is compounded by the vulnerable situation of workers pertaining to low wages and high debt.
- **It may be more feasible to address and prevent precarious work through the traditional due diligence processes used by the sector.**

LATENT RISKS

- **Finally, our findings also identified latent risks,** which are either not yet fully reported or could emerge as a result of the continued conflict. These include insufficient wages and wage theft, gender-based sexual violence and child labour.

Support for the military through economic linkages

- **Buyers sourcing from Myanmar must comply with sanctions regimes and meet expectations under international due diligence instruments.** Specifically, buyers need to be looking at beneficial ownership and bribery of military officials.
- **While the military does not have direct investments in the garment sector, there are actual and potential economic linkages when the sector's full value chain is considered,** including real estate, logistics and transport and ancillary suppliers.
- **These economic linkages could be a breach of OECD due diligence instruments.** Under the OECD Minerals Guidance, companies and their business relationships should not be directly supporting perpetrators of gross human rights abuses. [18] We interpret this to include the direct provision of funds through beneficial ownership. ⁱⁱ
- **Some linkages are potential breaches of EU, UK and US sanctions.** In particular, we would draw buyers' attention to the European Commission's opinion on sanctions breaches regarding the indirect provision of funds. This may be relevant to buyers sourcing from suppliers that are located on land owned or operated by the military.
- **The nature of economic linkages is often opaque and requires specific due diligence using multiple sources to investigate linkages.** Given the increased cronyism in Myanmar and the expansion of the military's economic interests, buyers need to conduct due diligence frequently to assess for any shifts in beneficial ownership, and across their full value chains.

ⁱⁱ This analysis is based on a clarification from the OECD on the application of the principles of the OECD Minerals Guidance in other conflict contexts.

- **Bribery and corruption are also endemic in Myanmar and these risks have increased under the military, both in opportunity and frequency.** There are potential red flags of bribery in the sector at Tier 1 supplier level and within the wider value chain. These include facilitation payments to military officials in administrative positions (such as township administrators) and payments to military to get through roadblocks. Bribery and corruption are RBC risks covered by the OECD Guidelines for Multinational Enterprises and the OECD Anti-Bribery Convention and 2009 Recommendation. Buyers have a responsibility to seek to prevent and mitigate corruption, including by their business partners, suppliers, agents, etc.
- **As referenced above, under OECD due diligence guidance, companies and their business relationships should not be directly supporting those perpetrating gross human rights abuses, and we understand this to include the payment of bribes to the military.** Under international instruments, individuals can pay bribes and facilitation payments if there are genuine threats to life, limb or liberty.
- **In some cases, bribery is being reported to be occurring between suppliers and the military to influence the outcome of human rights and labour disputes.** Wherever human rights abuses caused or contributed to by the military are linked to buyers' products through their value chain, this engages buyers' responsibility to respect human rights under the UNGPs and OECD Guidelines. This includes situations where bribery is occurring between suppliers and the military to influence the outcome of labour disputes, leading to impacts on workers in buyers' supply chains.

The socio-economic impact of a sectoral withdrawal

- **We have estimated the short- and medium-term economic and social impacts resulting from a withdrawal of European and US buyers in the garment sector from Myanmar.**
The longer-term impacts cannot be determined because of the looming economic crisis and the uncertainty of the military's actions.
- **In the short and medium term, an exit of the European and US garment sector would have limited macroeconomic impact due to the sector's relative economic isolation.**
An exit of European buyers sourcing from the garment sector would result in an estimated 14% drop in Myanmar's total exports. The Cut-Make-Pack model on which the sector operates isolates it macroeconomically from the rest of the economy. Suppliers reported that if their European buyers exit, they will likewise exit as they are unable to replace orders from European buyers with orders from markets and are dependent on EU preferential tariffs.
- **An exit by European buyers would primarily translate to social costs for workers and their dependents, leading to increased poverty, food insecurity, humanitarian consequences in rural areas and worker migration.**
- **An estimated 320,000 workers would lose employment and/or have reduced incomes if European buyers withdrew from Myanmar.** This would affect three key categories: (i) job losses, with about two-thirds temporary and one-third permanent job loss; (ii) a decrease in working hours, especially in overtime hours; and (iii) unemployed workers switching to lower-paid jobs, typically on a self-employed basis. This could also result in an increasing number of workers seeking to migrate to countries with garment manufacturing sectors such as Thailand.
- **An estimated 23,000 people would be at risk of destitution, "falling off the cliff" into poverty with persistently damaged livelihood prospects.** This includes both a sub-set of workers and their dependents.

- **Women’s participation in the export-oriented segment of the garment sector has been a major driver for women’s empowerment and a sectoral exit would be felt most strongly by women. Compounded social costs are also to be expected.** As primary breadwinners or supplemental earners, garment workers support households living with them in urban areas and send a large share of earnings as remittances to relatives in rural households. It is likely that any reduction in remittances would have an impact on child poverty in Myanmar.
- **Importantly, Myanmar’s economy is on a significant downward trend caused by multiple systemic issues, already in effect and unrelated to the garment sector. The situation is unlikely to improve.** Whether buyers and their suppliers stay or go, the economic outlook for Myanmar is dire.

Due diligence implications

- **The sector in Myanmar faces four different categories of severe human rights impacts:** (i) severe impacts that the sector cannot address; (ii) severe impacts that the sector can potentially address; (iii) impacts to which buyers may be contributing and (iv) impacts that will result from a sectoral withdrawal.
- **The first category of impacts is the most significant one for buyers to understand when considering whether to continue operating in Myanmar under international due diligence instruments.**
- **Our findings indicate that the sector is linked to severe human rights impacts that fall under this first category of risks in Myanmar.** We have found that freedom of association and collective bargaining cannot be safely respected in Myanmar either through trade unions or other democratically elected workers' organisations. We expect to see resumed military violence against workers if there is increased trade union activity or worker organisation. Buyers do not hold any leverage with the military to mitigate severe human rights threats to trade unions and workers' representatives.

ⁱⁱⁱ The commentary to UNGP 19 states that: "There are situations in which the enterprise lacks the leverage to prevent or mitigate adverse impacts and is unable to increase its leverage. Here, the enterprise should consider ending the relationship, taking into account credible assessments of potential adverse human rights impacts of doing so."

Forced labour risks would also fall under this category if buyers are unable to effectively overcome the challenges of addressing forced labour with weakened RBC infrastructure. We predict that direct contributions to the military through beneficial ownership and bribery may also fall under this category due to the lack of leverage that buyers have with the military.

- **For this first category of impacts, buyers are expected to consider disengagement, taking into account credible assessments of the potential adverse human rights impacts of doing so and whether the business relationship is crucial.** ⁱⁱⁱ Given the severity of the impacts concerned, this implies that buyers should be expecting to disengage subject to an assessment of the nature and extent of resulting impacts on workers' human rights, and unless the business relationships concerned provide a product or service that is essential to the buyer's business and for which no reasonable alternative is available. See *Annex – Decision tree of UNGP 19, Shift*.

- **In interviews with buyers and suppliers, we did not hear that Myanmar was crucial to a buyer's business.** A business relationship is crucial if it provides a product that is essential to the buyer's business and there is no reasonable alternative. For example, a company's business partner might be considered "crucial" if it provides a rare earth mineral critical to the company's core product that is only available from a small group of suppliers operating in a high-risk context.

There are specific factors in Myanmar that make it advantageous for the garment sector to produce there (access to a skilled and available labour market, preferential trade tariffs, inputs and outbound transportation). However, the garment sector could reasonably be said to have access to these factors in other production regions, meaning that Myanmar is not considered crucial to the garment sector. There may be individual exceptions to this.

- **This means that the most important determinant will be evaluating whether a responsible exit is possible in light of the human rights impacts of disengagement.** There will be human rights impacts of a sectoral withdrawal. An estimated 320,000 workers would lose employment and/or have reduced incomes if European buyers withdrew from Myanmar. An estimated 23,000 people would be at

risk of destitution, "falling off the cliff" into poverty with persistently damaged livelihood prospects. This includes both a sub-set of workers and their dependents. At an individual buyer level, the impact of withdrawal will vary depending on a buyer's sourcing footprint.

- **Buyers can expect that if they have significant sourcing from Myanmar, a responsible exit that mitigates the impacts of withdrawal on workers and suppliers to the extent possible will require significant resources.** For example, this may include negotiating compensation for workers with a focus on those who are most vulnerable to mitigate the risk of workers falling into destitution. It may also mean a strong advocacy campaign with governments for humanitarian aid to be given to workers immediately and to workers' rights organisations and NGOs. Determining the full extent of a responsible exit and how best it can be accomplished is outside the scope of this research.

- **If buyers do choose to stay engaged in Myanmar, they will need to be able to demonstrate their ongoing efforts to mitigate human rights impacts and be prepared to accept any consequences – reputational, financial or legal – of the continuing connection.**^{iv} Freedom of association is not feasible in Myanmar. If buyers stay engaged in Myanmar they will need to communicate and justify their decision and approach concerning freedom of association.

For other human rights impacts and relevant economic linkages to the military, buyers will need to be able to demonstrate and justify that they are implementing robust programming to effectively and legally address these risks, that they can do so despite the conflict context and weakened RBC infrastructure, and that they are not putting their own staff, suppliers or workers at further risk to their security.

- **The decision to stay engaged in Myanmar or disengage responsibly will ultimately be the responsibility of each individual board.** Buyers should report formally on how they are addressing severe human rights impacts in Myanmar. Communications should be accessible, provide sufficient information to evaluate the adequacy of their response, and in turn not pose risks to affected stakeholders, personnel or to legitimate requirements of commercial confidentiality.^v

- **Given the worsening economic and security context, if buyers decide to remain engaged in Myanmar, they should be prepared for a responsible exit in the event that they are forced to leave in the future.** If buyers stay, they should recognise that the downward spiral of the economic situation in Myanmar may force them to withdraw in the future. Buyers may be forced into a rapid withdrawal. Boards should be prepared for such a response in order to mitigate impacts on workers to the extent feasible.

^{iv} The commentary to UNGP 19 states that: “In any case, for as long as the abuse continues and the enterprise remains in the relationship, it should be able to demonstrate its own ongoing efforts to mitigate the impact and be prepared to accept any consequences – reputational, financial or legal – of the continuing connection.”

^v UNGP 21 states that: “Business enterprises whose operations or operating contexts pose risks of severe human rights impacts should report formally on how they address them. In all instances, communications should: (a) Be of a form and frequency that reflect an enterprise’s human rights impacts and that are accessible to its intended audiences; (b) Provide information that is sufficient to evaluate the adequacy of an enterprise’s response to the particular human rights impact involved; (c) In turn not pose risks to affected stakeholders, personnel or to legitimate requirements of commercial confidentiality.”

Introduction

Background

Myanmar's military overthrew the democratically elected civilian government via a coup d'état on 1 February 2021, declaring a state of emergency and transferring all executive, legislative and judicial authorities to the State Administration Council (SAC), an authoritarian military-run administrative organisation led by armed forces commander-in-chief Min Aung Hlaing. The military detained key elected civilian leaders and dissolved all national and subnational legislatures. Before then, Myanmar had been operating under a quasi-civilian government since 2011, in which power was shared between elected officials and the military.

Following the coup d'état, protests took place across the country. Many civil servants refused to work, a Civil Disobedience Movement (CDM) was launched, and the National Unity Government (NUG) was formed in exile. The People's Defence Force (PDF) was also formed as the armed wing of the NUG. The military responded to the opposition within the country

with increasingly aggressive tactics to quash any resistance, identify and remove any opposition leaders and impose their rule through excessive use of force.

The United Nations (UN) Special Rapporteur on the situation of human rights in Myanmar reported that the military is waging a war against the people of Myanmar and their fundamental rights. The Special Rapporteur verified violent attacks on civilian populations including extrajudicial killings and detention for opposition to military rule, a campaign to arrest and imprison activists, protesters and other opponents, and the criminalisation of fundamental rights such as freedom of speech and assembly. These attacks amount to probable crimes against humanity and war crimes. [19]

The international community responded with sanctions imposed by the European Union (EU), [20] US [21] and UK. [22] The trade unions IndustriALL Global Union, the International Trade Union Confederation (ITUC) and the Myanmar Labour Alliance have campaigned for comprehensive economic sanctions against Myanmar's military. [23]

Responsible sourcing in conflict-affected and high-risk areas demands enhanced or heightened responsible business conduct (RBC) due diligence that is carried out in line with the UN Guiding Principles on Business and Human Rights (UNGPs), the OECD Guidelines for Multinational Enterprises (OECD Guidelines), and the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (ILO MNE Declaration) recognising the heightened vulnerabilities of workers.

ETI commissioned Due Diligence Design to conduct a sectoral assessment of the context and current situation with respect to responsible business conduct, and specifically human rights, linked to the export-oriented garment sector in Myanmar.

Impactt was commissioned to carry out worker interviews to support the research. Shift was also commissioned to provide expert guidance on the implications of the UNGPs. The assessment provides an input for buyers in the sector to understand the nature of their RBC in Myanmar as required under the above international due diligence instruments.

PRINCIPLES AND STANDARDS OF THE ASSESSMENT

The assessment seeks to answer three key questions:

- To what extent can buyers in the sector monitor, prevent, mitigate and provide access to remedy (where appropriate) on severe human rights impacts in which the sector may be involved in Myanmar in the current and developing context?
- What are the requirements of the UN Guiding Principles on Business and Human Rights (UNGPs) and the OECD Guidelines for buyers when considering whether to continue sourcing or withdraw from Myanmar in the current context?
- What would constitute responsible exit?

Our analysis was based on the UNGPs, the OECD Guidelines and the ILO MNE Declaration. We also refer to the OECD Due Diligence Guidance for Responsible Business Conduct, the OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector (OECD Garment and Footwear Due Diligence Guidance) and the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas: Second Edition (OECD Minerals Guidance).^{vi}

The OECD Garment and Footwear Due Diligence Guidance was not written specifically for a conflict-affected context. While the principles and guidance within it are still relevant to the sector, the guidance does not address the full range of circumstances that arise in a conflict context. For this reason, we have also drawn from the OECD Minerals Guidance to understand the implications for direct linkages to the military alongside the UNGPs. The OECD Minerals Guidance articulates the approach that companies should take when sourcing minerals from conflict-affected areas. As such, it can provide relevant precedent.

^{vi} These due diligence guidance do not create any new responsibilities or recommendations in addition to those in the OECD Guidelines. See: <https://mneguidelines.oecd.org/proactiveagenda.htm>

Scope and assessment methodology

SCOPE

Our assessment covered the period following the military coup d'état, i.e. 1 February 2021 to July 2022.

It focused on severe human rights and labour rights risks to workers and any forms of support to the military. Examples of support include bribes, facilitation payments and provision of information to the military.

Our assessment only covered the garment sector and value chain in Myanmar that exports to Europe and the United Kingdom (UK). This included manufacturing, logistics and service providers, the import of materials and export of finished goods, ancillary and sundry goods, and the full range of owners and businesses involved within these processes. Buyers producing for the domestic market or markets outside Europe and the United Kingdom were not assessed.

The assessment is a broad sectoral assessment. This means that it does not include an assessment of individual buyer due diligence processes and outcomes. Implications cannot be drawn concerning the nature, scope or quality of due diligence processes of individual buyers, suppliers or other companies that contributed to and took part in the assessment.

This assessment does not replace individual buyer due diligence.

ASSESSMENT METHODOLOGY

Our assessment methodology included inputs from desktop research, key informant interviews, worker interviews and human rights cases. Our findings are based on information that has been triangulated across sources, such as between worker interviews and key informant interviews. In some cases, information was reported to us that was not corroborated with worker interviews and vice versa. Where we mention these findings in the report, we have clarified that they were only raised by one source of information and therefore further assessment would be needed. Our primary findings were all validated by more than one source of information and in most cases were confirmed by worker interviews, key informant interviews and human rights cases.

The safety of respondents, the team and contributors was of paramount importance. Due Diligence Design and Impactt followed principles on contributor safety. Most interviews were conducted via telephone and/or virtually. All key informants have been anonymised, unless explicit permission was granted.

Desk-based research – We conducted extensive desktop research from resolutions, reports and case studies including from the European Commission and the United Nations, civil society organisations and databases. Information was further gathered from daily news tracking, including from local and regional news outlets, UN news and social media.

Key informant interviews – We carried out 102 key informant interviews from April to July 2022 with over 60 stakeholders. This involved UN bodies including the ILO, the OHCHR, and the Office of the Special Rapporteur on the situation of human rights in Myanmar, the OECD, global and national trade unions, international NGOs, workers’ rights organisations operating in Myanmar, companies across the value chain including buyers (brands and retailers), suppliers, logistics and shipping companies, industry and trade bodies and subject-matter experts. We also spoke with select governments with embassies in Myanmar and those that have sanctions pertaining to Myanmar.

Collation of human rights cases – Our research included the collation and analysis of 137 specific cases of human rights abuses drawn predominantly from the sector. The cases were collected from initiatives, NGOs, trade unions and local media that have been tracking violations or provide grievance mechanisms for workers. We were not in a position to verify these cases. These cases are referenced as “Human rights cases”

throughout this assessment. We have used the cases to help to provide additional analysis on the possibility of a particular impact. For example, issues that were raised by workers through interviews may also be confirmed through human rights cases.

Worker interviews – Impactt was commissioned to carry out interviews with workers in Myanmar. Impactt conducted semi-structured interviews of 3120 workers from across 70 factories in Myanmar, from April to May 2022. The interviews drew from a sample of 36,891 workers. Further detail on Impactt’s methodology is included in Annex I.

Socio-economic analysis – The socio-economic analysis on the garment sector was conducted by an external economist, Michael Bret of Partitus Consulting. This analysis was based on a range of data collected from public data by international agencies (UN Comtrade, World Trade Organization, World Bank, International Monetary Fund), domestic ministerial sources, peer-reviewed articles and international case studies. Estimates were calculated by assessing the economic impact of the negative shock of demand on the sector, then deriving the impact of business disruptions on workers and their dependents. Further details on the methodology used in the socio-economic analysis are included in Annex I.

Application of international instruments on findings –

The OECD, OHCHR and Shift provided expertise on the findings and the application of the UNGPs and the OECD Guidelines, and corresponding OECD due diligence guidance.

LIMITATIONS

We faced a number of practical limitations due to the nature of this assessment and the urgency with which it needed to be conducted.

- Impactt carried out its interviews with workers in parallel to the key informant interviews by Due Diligence Design. The interview questions with workers were designed around the assessment framework. However, this meant that findings arising from the key informant interviews could not be further confirmed through worker interviews if they had not already been addressed. Likewise, some issues flagged in worker interviews could not be investigated further. For this reason, further rounds of investigation would be required to assess the endemic (systematic) nature of some RBC risks.
- We have noted that some particularly sensitive issues such as sexual violence cannot be easily determined via this form of assessment.

- We were not able to interview workers from ancillary suppliers within the value chain. This includes, for example, workers from packaging and polybag suppliers, suppliers providing embroidery, printing, laundry, etc., where these are not part of the suppliers' vertically integrated services.
- Due to the prevailing COVID-19 and political situations in Myanmar, worker interviews were conducted via telephone and not in person. This increased the risk that workers could be influenced or coerced. To mitigate this risk, Impactt worker interviewers were trained to identify whether workers had been coached or threatened. They identified one factory where worker coaching was present and have removed the worker data from the sample.
- The worker assessments intentionally did not ask workers whether they wanted the garment sector to remain. This was outside the scope and purpose of the assessment.

- Throughout the report, we refer to the number of workers who were able to respond to a specific question, meaning that different sub-sets of worker numbers are referenced. Worker responses to certain questions were due to some workers being asked different questions or a worker's previous answer precluding them from follow-up questions on an issue. For example, 3002 active and former workers were interviewed; 2722 were active workers, and then further sub-sets would follow according to the specific questions to which workers responded. Further information is included in Annex I – Worker interviews.
- In terms of socio-economic findings, data produced by Myanmar suffer from quality and availability issues. Sectoral bodies and commercial counterparts produce the most reliable sources but are not always comparable or consistent. Data on sub-groups of workers are derived from surveys, which makes comparison with historical episodes or experiences in other countries difficult.
- For trade data, the World Trade Organization (WTO) statistics are the most reliable, running through to 2021, although no data for Japan are available for that year. UN Comtrade data are not usable, as structural breaks appear in the time series for the textile and garment sector, particularly with China flows. As a consequence, changes in the relationship between China and Myanmar, and the redefinition of statistical notions, prevent the use of US Comtrade data to understand trends or breaking points.
- In relation to estimates on the macroeconomy and finance, indirect data and estimations produced by international bodies allow for trend analysis. Disruptions after COVID-19 and the military coup reduce the robustness of these estimates to the extent that the World Bank Group has chosen not to issue an estimate of future growth after 2023. [24]

The methodology can be found in Annex I.

Situational human rights context

The findings of this report and a buyer's response should be viewed within the framework of the wider human rights context in Myanmar. This is imperative to understanding the factors that will have an impact on the feasibility of addressing these issues.

Like all sectors in Myanmar, the sector is operating in a context in which the military has perpetrated probable crimes against humanity [19] and continues to do so. This means that workers are affected by gross human rights violations and restrictions on their rights to liberty and security, fair trial, freedom of expression, freedom of association, property, privacy and freedom of movement.

All key stakeholder groups with whom we spoke confirmed that neither they nor the sector hold leverage over the military to mitigate these impacts. Western governments, intergovernmental organisations and businesses are not engaging with the military except where necessary for administrative purposes.

Furthermore, the context is dynamic and unpredictable and affects all aspects of life – including the workplace.

Finally, the coup has resulted in a crumbling infrastructure to promote and support human rights. The constraints on the ILO and the security threats facing workers' rights organisations are particularly concerning.

Five key factors stood out for us in relation to the wider human rights context:

- **The security context**
- **The legal framework**
- **The economic vulnerability of workers**
- **Leverage with the military**
- **RBC infrastructure.**

This is not an exhaustive overview of factors affecting the context in Myanmar. Other contributing factors are likely also relevant.

The security context

The threat of violence from the military is pervasive and constant. It is important to understand the long-standing nature of the human rights abuses and potential war crimes perpetrated by the military and not to see this as an isolated period of violence effected as part of a military coup.

The military has a documented history of pervasive forced labour of civilians. It is currently under investigation through an ILO Commission of Inquiry, for the second time since Myanmar ratified the Forced Labour Convention.

Myanmar ratified the Forced Labour Convention (No. 29) in 1995. In 1996, the government of Myanmar came under pressure from the international community due to allegations of forced labour. The ILO commissioned a Commission of Inquiry from 1997-1998 in which it found that there was “a pervasive use of forced labour imposed on the civilian population throughout Myanmar by the authorities and the military”. [25] The report found evidence of activities such as forced portering, cultivating food for the army, building and infrastructure development such

as work on railroads and canals. Following the publication of the ILO Commission of Inquiry report, the ILO continued to monitor Myanmar’s observance of the Forced Labour Convention and the government’s implementation of the recommendations. Despite progress within the country, there continued to be credible accounts of forced labour taking place. In 2018, the UN fact-finding mission verified a “pattern of systematic use by the Tatmadaw of forced labour”. [26]

Since the February 2021 coup, the UN has continued to document severe cases of forced labour perpetrated by the military. The Special Rapporteur on the human rights situation in Myanmar reported an increase in forced labour by the military, with both adults and children being forced to act as porters, guides and human shields. [19] Reports have also highlighted an increase in forced recruitment and the use of convicted prisoners in armed operations. [27]

In March 2022, the ILO established a Commission of Inquiry into the decline of workers' rights in Myanmar since the military coup. It will investigate Myanmar's non-observance of the Forced Labour Convention (No. 29), as well as the Freedom of Association and Protection of the Right to Organise Convention (No. 87). A Commission of Inquiry is the ILO's highest-level investigative procedure. These inquiries are generally reserved for cases when a member State is accused of committing persistent and serious violations and has repeatedly refused to address them. [30] Myanmar is unique in that it will be the only country to have two separate Commission of Inquiry complaints.

Since the coup, children are at risk of being detained, tortured and killed. The military has a long-standing history of using children as labour. The return to the military regime risks undoing progress against child labour.

From February 2021 to July 2022, the military arbitrarily detained over 1400 children and tortured at least 142 children. As of July 2022, at least 61 children were being held hostage by the military as a means of pressurising family members being sought by the military to turn themselves in, or to extract information from those who are already in military custody. Children have been shot while participating in peaceful protests, some have been executed, and others have been the victims of indiscriminate

attacks by the military. Abuses are being carried out against children under the age of 10, with some children as young as 4 years old. The UN has also documented the use of children as human shields, porters and other forms of forced labour. [31]

Progress on the reduction of child labour had two different trajectories in Myanmar prior to the coup. On the one hand, the former government made significant strides in addressing child labour. In 2013, Myanmar ratified the Worst Forms of Child Labour Convention (No. 182). The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict was further ratified in 2019, and the Minimum Age Convention (No. 138) was ratified in 2020. The government developed a National Action Plan (2018 – 2033) on child labour with the assistance of the ILO. It introduced a National Committee for the Eradication of Child Labour and a new Child Rights Law was enacted in 2019. [32] The military also worked with international organisations to end the recruitment of children for combat roles and implement a policy of releasing child soldiers. [33] In 2020, the percentage of children between the ages of 5-14 working was reportedly only 0.4%, with over 95.3% of 5 to 14-year-olds attending school. [33]

At the same time that Myanmar saw the above policy developments, children continued to be used by the military as labour in non-combat roles as porters, cleaners, cooks and agricultural laborers in conflict areas. The US's 2020 Findings on the Worst Forms of Child Labor reported that 700 children were forced into service by military officials during the reporting period. [33]

The military has systematically used gender-based violence as a tactic of war and terror and continues to use sexual violence as a tool, particularly against political prisoners and in conflict-affected areas.

The military's use of rape and sexual violence as a tool, particularly against political prisoners and in conflict-affected areas, has been documented by international institutions and the media. The UN Fact-Finding Mission found that sexual and gender-based violence was a hallmark of the military's operations during their "clearance operations" of 2016 and 2017. Since February 2021, these tactics have expanded to target political prisoners [34] including children. [19] From 1 February 2021 to 25 July 2022, 214 women have been killed, 3098 women have been arrested, 2347 women are still detained, and 742 have been released. [35]

Since the coup, civilians face increased threats of violence and harm.

The increased presence and power of the military and the overall absence of rule of law mean that citizens face more threats of violence in their daily lives. We heard this from a wide range of individuals and organisations on the ground including suppliers, auditors, trade unions, international NGOs, workers' rights organisations and business organisations.

The physical safety of workers to and from the workplace was consistently a top concern of trade unions, workers' rights organisations and NGOs. Workers face a higher risk of violence and gender-based violence when travelling to and from work due to increased contact with the military and the lack of rule of law. Violence is perpetrated by the military but also by gang members and individuals. One trade union representative reported the rape of a female worker who was travelling home from work late at night after working an overtime shift. The representative of a workers' rights organisation reported a case in which a worker was stopped by the military, beaten up and physically punished by being forced to squat and stand repeatedly.

8.9% (241 of 2722) of workers interviewed reported experiencing and/or witnessing abuse travelling to and from work. This is lower than we anticipated in light of our interviews with key informants and the broader security context. It is our expectation that abuse is being vastly under-reported. Amongst workers who had reported experiencing or witnessing abuse, a majority (70%) reported that abuse had increased since February 2021. [17]

8.7% (237 of 2722) of workers interviewed reported roadblocks as an issue and reported that their phones and identification are sometimes checked by soldiers and police when travelling to and from work, even though the VPN law has not yet been passed. [17]

A supplier reported that there were now military bunkers and constructions with soldiers inside, and that people feel watched, controlled and aware that they could be stopped at any minute for any reason. The same supplier reported that a driver of their worker bus had been stopped several times and had given money to the military to pass through roadblocks.

A representative from a workers' rights organisation reported that they and their organisation are subjected to increased monitoring and surveillance following the coup. A respondent from an international NGO reported that they feel like "anything could happen", including a soldier coming into a factory or apartment at any time and taking a bribe, threatening, harassing or harming a person physically, and called it "the daily grinding fear".

The absence of rule of law means increased security threats beyond the military, including from gangs.

There is an increased level of crime due to the absence of rule of law within the country. A representative from a workers' rights organisation reported that violence, looting and mugging and explosions occurred on a daily basis, and that everyone was at risk. One international NGO reported that people felt a persistent fear, regardless of the time of day.

In worker interviews, workers primarily cited crimes by street criminals including gangs, and reported sexual harassment and theft, including of phones, jewellery and wages. In some cases, workers reported that individuals from gangs were waiting for workers outside factories. [17]

Crimes are not being reported to the police. 92.5% (223 of 241) of workers who had witnessed or experienced abuse whilst travelling to and from work did not report it. Representatives from both workers' rights organisations and civil society reported that workers do not feel comfortable reporting incidents to the police due to the current situation within the country. One international NGO reported that: "Anyone – a police officer, a soldier, even a local civilian administrator – can do anything they want to you without consequence."

Workers are also facing a higher risk of human trafficking. A workers' rights organisation reported that workers in the industrial zones were at greater risk of being targeted by traffickers due to their age or status as internally displaced persons (IDP). They also reported that workers paying for travel to Thailand or Malaysia are at risk of having their ID cards stolen during their travel out of Myanmar.

The legal framework

Within 14 days of the coup, the military changed Myanmar's laws to suspend human rights, track and detain dissidents, and enable the harshest possible sentencing. Together, these laws violate the rights to liberty and security, fair trial, freedom of expression, freedom of association, property, privacy and freedom of movement.

The Ward or Village Tract Administration Law (2012) was amended on 14 February 2021, giving the military increased power to monitor and track citizens.

The law now requires all residences to report any overnight guests to the relevant authorities and grants authority to the Ward or Village Administrators to inspect private properties for any “unregistered” overnight guests. [36] [37]

The law enables the military to monitor and track the population down to individuals in each ward and village and makes it difficult and dangerous to host activists hiding from the military.

Key informant interviews reported that this law was being implemented by the military to search for political opponents, including trade unionists.

The Law Protecting the Privacy and Security of the Citizens (2017) was amended on 13 February 2021, suspending sections 5, 7 and 8 and enabling the military to enter and search properties and detain citizens at will.

The suspension of this law now means that the military can:

- enter citizens' houses and rooms, etc. without a warrant
- surveil, spy upon or investigate citizens without consideration for their privacy or security
- intercept citizens' communications
- demand or obtain personal communications data from telecommunications operators
- open, search, seize or destroy a person's private correspondence
- seize or destroy a person's property
- detain people for long periods of time without formally accusing them of a crime. [38]

The Penal Code (1861) and the Criminal Procedure Code (1898) were amended on 14 February 2021, meaning that it is now illegal to speak out against the military.

The changes to the Penal Code and the Criminal Procedure Code make it criminal to cause fear, spread false news or agitate against a government employee. These laws also make it high treason to attempt to alter the “organs of the Union”. A law amending the Electronic Transaction Law also adds criminal offences for the spread of fake news. [39] [37] To date, since the coup, most convictions of dissidents – including death penalty sentences – have been under the Penal Code and Criminal Procedure Code. [40]

The Counter-Terrorism Law (2014) was amended on 14 February 2021 and applies to the NUG and the PDF and anyone supporting them.

This law, which had already been criticised in the past for being too broad in its determination of who constitutes a terrorist, [41] now extends jail time from three to seven years for “acts of exhortation, persuasion, propaganda and recruitment of any person to participate in any terrorist group or activities of terrorism”. [42] Both the National Unity Government (NUG) and the People’s Defence Force (PDF) have been declared terrorist organisations by the military. Anyone showing support for these organisations could be sentenced under the new amendment. [43]

The military has released a draft Cyber Security Bill that will give them access to citizens’ data.

On 13 January 2022, the Ministry of Transport and Communications (MoTC) released a revised draft of the Cyber Security Bill for consultation. The bill contains provisions concerning the use of virtual private networks (VPNs), digital platform services, the protection of personal data as well as the prevention of cyber-crimes and cyber-attacks in Myanmar and allows for extensive control of electronic data and information by the Myanmar authorities.

Under the bill, digital platform service providers are required to store their users’ information, such as username, IP address, ID numbers, contact details and other user records for a period of three years at designated government facilities. [44] The bill also allows data to be requested by the “assigned person” or “authorised organisation” at any time [45] and empowers authorities to remove or prevent public access to certain online content. [46]

In the event of a need to act in the “public interest”, the MoTC may, subject to the approval of the military, temporarily control devices related to a digital platform service provider in Myanmar, amongst other actions. *See Annex II for the full overview of amendments to the legal framework and implications.*

The military has increased its control by declaring a state of emergency and imposing martial law and has threatened legal action against NGOs.

The declaration of a state of emergency may suspend the right to freedom of expression and the legal right to form associations and organisations, including trade unions.

In February 2021, the military declared a state of emergency, which may have suspended the rights to freedom of expression and freedom of association. In August 2022, this was extended by the military for a further six months.

Section 354 (a) of the Constitution allows citizens to “express and publish freely their convictions and opinions”, i.e. it allows for the freedom of expression. It also allows citizens to “form associations and organisations”, i.e. freedom of association. However, due to the declaration of the state of emergency, both of these rights may have been suspended since 1 February 2021. [47] [37] This depends on the final interpretation of the law by the authorities but could be interpreted in this way. [47] [37]

The military issued Martial Law in six townships in Yangon, meaning that legal cases in these areas can be tried by military tribunals. This includes areas where export processing zones are located.

Martial law means that administrative and judicial powers are directly operated by the military and military personnel. Martial law enables military tribunals to try designated criminal cases across 23 categories of violations. These include crimes under the Penal Code and Criminal Procedure Code as above.

As a result, in areas under martial law, political activism and speaking out against the military will be tried by military tribunals and, in the case of conviction, shall result in either death, unlimited years of imprisonment with hard labour or the highest punishment designated for that crime. [37] Martial law has been issued in six townships in Yangon, i.e. Hlinethaya, Shwepyitha, Dagon Myothit (South), Dagon Myothit (North), Dagon Myothit (Seikkan) and North Okkalapa. [36]

The military declared as “illegal” 16 workers’ rights NGOs, including grassroots organisations that support workers in the garment sector. There is a risk that these organisations could also be deemed “unlawful”, which would pose a severe risk to their safety and anyone engaging with them.

The Unlawful Association Act (1908) makes it illegal to co-operate with an unlawful association. People can be sentenced to prison for over two years if they engage with unlawful associations in a number of very broad ways, including

- taking part in a meeting of an unlawful association
- contributing, receiving or soliciting contributions from an unlawful association
- managing or assisting in the management of an unlawful association
- promoting a meeting of an unlawful association.

Additionally, any transfer of funds or other support to an unlawful organisation may further violate numerous other laws of Myanmar, including but not limited to anti-money laundering, foreign exchange and tax regulations.

On 26 February 2021, the military declared 16 workers’ rights organisations illegal by the Ministry of Labour, Immigration and Population. See *Annex III*. These organisations have not been officially deemed “unlawful” under the Unlawful Association Act, but there is a significant risk that they could still be considered to be “unlawful” under this law. An organisation can be deemed unlawful under the Act, even before the military issues an order. It is at the discretion of the President of the Union to declare organisations and associations “unlawful”. The legal experts whom we consulted were not currently aware of any official practice to apply the Unlawful Association Act (1908). However, they also noted that due to the broad language and given the current situation in Myanmar, it cannot be ruled out that the military will use the Act for these purposes.

The economic vulnerability of workers

The vulnerability of workers beyond the security context is compounded by two economic factors: a reduction in the number of jobs available in the sector, and the amount of debt that workers have accrued during Covid-19. This creates an environment where workers are fearful of losing their jobs.

Workers have increased debt following the double shocks of the pandemic and the coup.

The pandemic and the coup resulted in spells of unemployment and reduced income for workers. The World Bank reported in July 2022 that poverty has doubled compared with its level in March 2020, and that about 40% of the population are now living below the national poverty line, matching poverty levels of a decade ago. [49]

In worker interviews, workers reported that they are taking out loans on a monthly basis that are near to or exceed the amount of their regular monthly salaries due to rising inflation and

increased living expenses. [17]

- 60.7% (628 of 1034) reported borrowing money from family or friends.
- Workers who reported borrowing money from friends, colleagues and money lenders were experiencing interest rates of 10-20% (mainly reported in the context of monthly payments).
- One worker reported the ongoing necessity of borrowing: “When I am in need of money, I borrow from friends at 20% interest. I pay them back at the end of the month. When I am running out of money, I borrow again. The circle of debt never ends.”

Myanmar is also facing high inflation with increased prices and a weakened currency. 38% (1034 of 2722) of workers interviewed reported that their salary does not meet their basic needs. 70.2% (1830 of 2606) of workers actively working in the sector reported that they are unable to save money. [17]

This is a significant figure and the situation could worsen rapidly given the volatile economic climate in Myanmar.

To reduce expenses, workers reported skipping meals, limiting meat consumption, selling property such as their phones, moving into cheaper accommodation, working extra hours

and having a second job. Similar trends were reported by the World Bank. [49] A very small number of workers interviewed reported engaging in small-scale trading and taking their children out of school. [17]

Coupled with high interest rates, the expansion of indebtedness translates into an increased vulnerability of garment workers to poverty. Consequently, garment sector workers are increasingly exposed to external economic shocks.

Suppliers consistently reported that the number of workers applying for jobs far outweighs the number of jobs available.

The garment sector has now “recovered relatively strongly” from the pandemic and the coup [49] and is operating at 70-80% capacity, according to the Myanmar Garment Manufacturers Association (MGMA). [51] However, despite this bounce back, the number of factories and available jobs is still drastically decreased, meaning that jobs are scarce and competition for jobs is high.

One supplier interviewed reported that they are seeing double the number of job applicants than before. Another supplier told us what this looked like in practical terms, saying: “Currently we are recruiting for 800 jobs, and the recruitment period is open for 10 days and [we are] getting 100 people every day. In 2019, we would have 20 people coming in a day. These are all experienced workers. This shows that working opportunities are reduced dramatically. People are relying on any job they can get at the moment.”

Suppliers also reported lower turnover rates as people are needing to secure their livelihoods and are less likely to resign. A supplier reported that their turnover rate has dropped from 15% to 8-9% per month. Suppliers felt that this reduction in turnover was a result of the reduced job opportunities available. Because of this situation, trade unions and labour rights groups reported that workers are fearful of losing their jobs. Workers’ first priority is to get and keep their job and they will not do anything to jeopardise this. The impacts of this can be seen across the sector, where workers are less likely to report issues within the workplace and are more likely to accept employment on informal or short-term contracts.

Leverage with the military

All key stakeholder groups with whom we spoke confirmed that neither they nor the sector hold leverage over the military. Western governments, intergovernmental organisations and businesses are not engaging with the military except where necessary for administrative purposes.

In our interviews, there was unambiguous consensus amongst all stakeholder groups operating in Myanmar that the garment sector does not hold leverage over the military. ^{vii}

Stakeholders also expressed the view that the sector could not build leverage over the military.

All UN agencies, including the ILO, that were previously working with the government have shifted programming to avoid engaging with the de facto authorities, the military.

The UN published guiding principles on engagement for agencies working in Myanmar. Agencies that are already focused on humanitarian work have continued without any change. Development work and work pertaining to international labour standards can continue but under conditions.

^{vii} The topic of sectoral leverage was not discussed with workers' rights organisations.

The ILO programming that previously focused on policy advice/legal developments or capacity building of the government has been completely stopped based on the UN Country Teams' principle of engagement. This also means that the ILO is not working in a tripartite manner in Myanmar.

Western governments have restricted activities in the country and are not engaging with the military except where necessary for administrative purposes.

A large proportion of Western governments are operating with restricted levels of diplomacy. According to media reports and key informant interviews, several EU Member States and countries have informally agreed not to send ambassadors to their Myanmar missions or have downgraded their diplomatic representation or have not replaced envoys who have finished their terms. This includes countries where international buyers sourcing from Myanmar are headquartered, including the UK, Germany, Ireland and Spain. [31]

Association of Southeast Asian Nations (ASEAN) members also appear to have less leverage than previously envisaged and, along with Western governments, have strongly condemned the military's recent decision in July 2022 to execute four political prisoners. [32] China and Russia may hold leverage.

Implications

- **The sector's lack of leverage over the military has strong implications for due diligence. Buyers and suppliers are unable to mitigate against the human rights impacts perpetrated by the military against workers and partners.**

RBC infrastructure

The coup has resulted in a crumbling infrastructure to promote and support human rights. The constraints on the ILO and the security threats facing workers' rights organisations are particularly concerning.

The severe human rights abuses against trade unions are covered under Section: Human Rights – Freedom of Association

The military has restricted the ILO's ability to operate in Myanmar

- The ILO's current work on Myanmar is focused on supporting ILO social partners including employers and trade unions in monitoring the situation that they are facing, such as the arrest of trade unionists and violation of labour rights, supporting and encouraging employers to comply with labour standards in the workplace and holding Myanmar accountable to the international labour conventions that it has ratified.

- In discussions with the ILO, they noted that the channel of communications between the ILO and social partners, particularly trade unions and workers, has become increasingly difficult because of the security risk faced by workers/trade unionists. Communication so far takes place on a bilateral basis with social partners.
- The military has also consistently restricted the ILO's ability to operate in Myanmar, including by denying international staff's visas, suspending its bank account and introducing different rules and regulations that make operational transactions very difficult. This is unlikely to change unless the ILO recognises the de facto government's legitimacy.
- The ILO Governing Body decided in March 2022 to establish a Commission of Inquiry (COI) to investigate the non-observance of the Freedom of Association and Protection of the Right to Organise Convention (No. 87) and the Forced Labour Convention (No. 29) (ILO, 1998). A Commission of Inquiry is the ILO's highest-level investigative procedure and is generally set up when a Member State is accused of committing persistent and serious labour rights violations and has repeatedly refused to address them. It is a fully independent investigation. However, in discussions with the ILO, they noted that for

the COI to investigate the accusations being made regarding forced labour and freedom of association, the security of the people testifying before the COI would be considered with the utmost protection measures. So far, the military has rejected the COI and has indicated that it will not allow the investigators to enter the country. [52]

- Myanmar is unique in that it will be the only country to have two separate Commission of Inquiry complaints. The first Commission of Inquiry was concluded in 1998. Myanmar did not allow those carrying out the inquiry to enter the country. To date, only 14 Commission of Inquiries have been conducted. [30]
- An OHCHR report on the economic interests of the military is due to be introduced to the UN Human Rights Council in September 2022. See *Section: Economic Linkages to the Military*. The UN Special Rapporteur on the human rights situation in Myanmar is also investigating companies linked to arms manufacture and targeted sanctions on businesses and individuals in the country. Given this heightened attention at the UN and ILO, it is unlikely that international relations at the UN level will improve.

Workers' rights organisations are still active in Myanmar and supporting labour rights. They face constant security and legal risks.

A select group of workers' rights organisations are actively working to support workers in documenting and raising labour abuses to management and buyers. In interviews, these organisations provided context on where they could continue work and where they face significant capacity and security challenges.

- In interviews, one workers' rights group noted that they are providing financial support and edible items to workers who lost their jobs. They are also providing awareness training on labour rights online and in person. They noted that there are fewer civil society organisations operational in Myanmar and that they themselves do not have sufficient reach.
- Two workers' rights groups noted that they are active, but that their efforts have been highly restricted since the coup. For both, a major part of their role was to support workers in bringing cases to labour departments. Now, they note that workers need to bring cases to the labour departments themselves. Labour departments

are viewed as corrupt and workers' cases are not being documented sufficiently to win cases. *See Section: Human Rights – Remedy*

- Another workers' rights group noted that they are able to provide paralegal support to workers. They are also providing labour rights training to workers and trade unions. However, this organisation is facing constant monitoring and security threats from the military.
- We contacted two Myanmar-based organisations that had been working on gender-based violence with workers prior to the coup. One was unable to speak due to security concerns and the other had been forced to flee the country.

Workers' rights organisations are facing persistent security and legal threats. The military has declared 16 workers' rights NGOs illegal. There is a risk that these organisations could also be deemed "unlawful", which would pose a severe risk to the safety of them and anyone engaging with them. The Unlawful Association Act (1908) makes it illegal for anyone – including buyers – to cooperate with an unlawful association. The workers' rights organisations that have been deemed illegal have not been officially deemed "unlawful" under the Unlawful Association Act, but there is a significant risk that they could still be considered to be "unlawful" under this law. An organisation can be deemed unlawful under the Act, even before the military issues an order.

See Section: Human Rights Context – The Legal Framework

It is important to note that in our interviews, workers' rights organisations explicitly referenced the security risk to themselves and clarified that they were willing to take these risks to support labour rights in the country to the extent possible.

**Buyers and potential partners face significant constraints.
Many international NGOs have left the country.**

- **Buyer-led due diligence is restricted** – Most buyers with whom we spoke had limited or no staff on the ground in Myanmar and relied on staff based in China, Hong Kong and other countries in Southeast Asia. Buyers, suppliers and service providers all confirmed that auditing had been restricted first due to the pandemic and then the coup. Some organisations had used remote/virtual audits. Most in-person factory audits only began in the first quarter of 2022 and were standard audits, i.e. not tailored to the conflict context. Some auditors were based in Myanmar while others were travelling from neighbouring countries such as Thailand.
- **International monitoring organisations** – Organisations that monitor corruption and bribery, beneficial ownership and other financial linkages unanimously reported that they were no longer able to operate in Myanmar at this time and/or were unable to collect reliable data.
- **International NGOs** – We contacted a wide range of international NGOs previously working in Myanmar. Many international NGOs have stopped working in Myanmar entirely or have moved their offices outside Myanmar.

Of those with whom we spoke, the organisations that have retained a physical presence in Myanmar are those focusing on humanitarian and emergency relief. There are a few exceptions to this. We spoke with two international NGOs that were still operating in Myanmar, focused on a decent work agenda.

The Western governments that we interviewed with a presence in Myanmar told us that their aid programmes are largely being directed towards emergency relief and humanitarian aid. This means that we may see a shift away from decent work funding for international NGOs in the short term. In the medium to long term, this could be re-assigned. The EU is still continuing to fund decent work in the garment sector.

- **Sector initiatives** – Buyers referenced one in-country programme and we were informed of a second programme through our interviews. We have kept these programmes confidential in this report for security purposes. ACT, the only binding and negotiated agreement on wages and freedom of association, ceased operations in Myanmar in December 2021.

Implications

- **Buyers operating in Myanmar are doing so in an institutional vacuum. Workers' rights organisations are still operating at a severe risk to their safety. There is extremely limited support from international organisations. This context is unlikely to change in the short to medium term and may deteriorate further.**
- **This is an extremely different context to the one in which buyers are used to operating. Severe harms in the sector, such as the Rana Plaza tragedy, have seen concerted and coordinated efforts involving the ILO, UN and OECD, governments including the EU, UK, US and national governments, trade unions and civil society. Everything points to efforts at this scale being highly challenging, and potentially not feasible, in this context.**

Human rights risks

Our findings identified that the most severe human rights and labour rights risks currently facing workers in the sector are those related to the freedom of association, forced labour and precarious employment conditions. These risks are compounded by a lack of access to grievance mechanisms and remedy for workers.

We have also highlighted risks that we describe as “latent risks” or “sleeper risks”. These are risks with a high probability of occurrence in the future, given the socio-economic and political conditions in Myanmar and/or risks that could already be occurring but are not yet being widely captured.

Freedom of association

The military has perpetrated gross human rights abuses against activists, including severe human rights abuses against trade unionists. They have dismantled trade unions and the right to freedom of association cannot be respected in practice or in principle.

The military has dismantled trade unions. This is a deliberate approach to dismantle democratic structures.

The military has used an array of tools to dismantle trade union confederations, trade unions and the right to freedom of association.

- The declaration of a state of emergency may have suspended the right to freedom of expression and the legal right to form associations and organisations, including trade unions. See *Section: Situational context of human rights – The legal framework*
- Martial law and the amendments to the Penal Code and Anti-Terrorism laws make it possible for trade unionists to be tried as traitors and terrorists. See *Section: Situational context of human rights – The legal framework* Many trade unionists have been sentenced under these new laws.

- Directly after the coup, the military reportedly issued an arrest warrant for 27 trade union executive committee members, including from the Confederation of Trade Unions, Myanmar (CTUM) and the Industrial Workers' Federation of Myanmar (IWFM) alongside other trade union associations. The arrest list, including the names of the unionists, is not publicly available, but it reportedly includes Ma Swe Swe Khaing (CTUM), Myo Lay, Wai Yan Shine, Ma Kyi Kyi Tun, Soe Ko Ko Naing, U Myo Myint Saw and U Myo Han, Soe Lay (IWFM), and seven members of the Myanmar Transport Federation (MTF). Further, 11 arrest warrants were issued against national leaders of CTUM. [15]
- The military has arrested and sentenced trade unionists. 301 trade union leaders have been arrested and 55 trade union leaders have been killed. [14] In February and March 2022, the military reportedly arrested union leaders Ma Swe Swe Khaing (CTUM), Thet Mar Soe (AMG Garment Factory Union), Sai Min Theta (Honor Garment Factory Union), Aye Thandar (Popular Garment Factory Union), San Sen (IWFM), Myo Min Win (IWFM), Ei Ei Hlian (Charming Garment Factory Union), Ko Nyi Nyi Su (Myanmar Industry Craft Service), Mi Mi Aung (Hmawbe Brick Factory Union), an affiliate of the Building and Wood Workers Federation of Myanmar (BWFM), and Juty Aung (BWFM). Another 22 unionists were arrested after they

took part in a nationwide strike. [15]

- The military has revoked the passports of a number of trade union leaders, [53] in potential violation of international human rights law and the right to freedom of movement.

The targeting and dismantling of trade unions is a common strategy taken in military coups to stop democratic structures and has previously been used by the military in Myanmar.

Similar actions to repress trade unions by the military have been documented in recent years in Belarus [54] and Sudan and historically in other military dictatorships.

We expect to see resumed military violence against workers if there is increased trade union activity or worker organisation.

In our interview, the representative of an intergovernmental organisation operating in Myanmar raised concerns that an emphasis on unionisation and social dialogue in Myanmar could result in those workers being subjected to violence by the military. To date, the most systematic violence against trade unions – arrest warrants and sentencing, the revoking of passports – has focused on the leadership of trade union confederations. The targeting of lower-level trade union leaders has not been equally systematic. However, we do expect that an increase in trade union activity or worker organisation will result in a significant increase in violence

including against lower-level trade union members. The military has a vested interest in ensuring that workers are not able to organise effectively. In interviews, trade unions reported that in some cases trade unionists operating at a factory level have already been forced into hiding due to threats from the military. Given the military's violent and co-ordinated actions against trade union confederations, we would expect (and at a minimum cannot rule out) similar levels of violence against individual trade unionists if there is increased trade union activity. For example, a scenario (or one similar to it) in which the military carries out mass arrests of trade unions operating in EPZs is plausible.

Due to the threat of violence from the military, there is a ceiling of limitations on what trade unionists can effectively do or achieve. Trade union members who are still in factories are largely operating in name only, and at severe risk to their own safety and security.

Some trade union members (e.g. executive committee members) are still employed and working in factories. In some cases, these members are still engaging in dialogue with management. Our findings indicate that broadly trade unions cannot operate as unions even at a factory level. They are facing a ceiling of limitations due to severe security risks from the military and the lack of confederation support. Trade unionists

therefore cannot carry out the functions of a trade union, which include representing worker interests to management, raising cases of non-compliance, raising interest-based disputes, bargaining for wages and other worker interests.

Our analysis is based on the following ceiling of limitations.

- **The security burden on trade unionists is immense.**
When trade unionists appear on the military's radar, they risk imprisonment or are forced to flee, lose their job and go into hiding. Their family's safety is also at risk. There are numerous reported cases of trade unionists operating at a factory level who were forced into hiding.
- **Trade unionists cannot safely co-ordinate with workers.**
Their text messages, Facebook and other social media can be searched at any time by the military. *See Section: Situational context of human rights – The legal framework*
- **Trade unionists cannot collect information from workers to document cases.** The trade union leaders left in factories are isolated and often must operate as individuals rather than as teams. Documenting cases pertaining to thousands of workers – such as unpaid overtime or excessive working hours – requires significant organisation.
- **Trade unions cannot safely organise strikes.**
While in the past year there have been a limited number of

worker strikes in the country, the military was present at these strikes. It is our analysis that the military could and will turn violent against workers at any time. As such, strikes pose a significant risk to worker safety.

- **Trade unions cannot bargain with employers on the issues important to workers** (i.e. wages, overtime, piece-rate, dismissal) because they do not hold leverage in negotiations and lack technical support from the higher-level trade union confederations.
- **Social dialogue with the government is not possible.**
There is no tripartite dialogue.

The above information was reported across interviews with three trade union confederations (including outside the garment sector) and intergovernmental organisations with expertise in freedom of association in Myanmar and was independently reported in worker interviews. Elements were also confirmed by more than one independent auditing company interviewed.

Our findings do not align with perspectives of all stakeholders. Almost all buyers and Western governments shared a common perspective that trade unionists can still operate in factories if they are not affiliated with a trade union confederation and if they do not engage in pro-democracy movements.

All the workers' rights organisations with whom we spoke reported the significant constraints facing trade unionists, including the security threats and abovementioned operational challenges. However, it is important to note that not all workers' rights organisations agree that trade unionists cannot operate. In interviews, two workers' rights groups did note that there are instances in which management is favourable to trade unions and willing to engage in dialogue with the latter. All the workers' rights organisations interviewed noted the importance of trade unionists continuing to have access to legal support, awareness raising on labour rights and a channel to raise grievances to brands so that they have the tools to be effective.

There may be exceptional circumstances in which trade unions can engage in dialogue with management and resolve cases. However, ultimately based on the evidence provided by trade unions, intergovernmental organisations, workers' rights organisations and workers themselves, we do not see that trade unionists are able to carry out their functions due to the severe threats against them and this ceiling of limitations.

Employers looking to dismantle the trade unions that still exist in factories are freer to do so under military rule.

Industrial relations between employers and trade unions were in early development prior to the coup. Trade unions and employers had made strides in defining how the right to freedom of association should be respected in practice in Myanmar through the Myanmar Freedom of Association Guideline. [55] However, union-busting practices were still prevalent in the country. [56]

The coup has given a licence for union-busting practices amongst employers that want to further weaken trade unionists. In interviews, workers in 5 of 17 factories that were unionised before the coup reported the unfair dismissal and blacklisting of trade union members. Workers in non-unionised factories also reported threats of dismissal if workers formed a trade union. One worker reported: "There is no trade union in the factory and the factory doesn't allow one to be organised. The factory said that if workers organise a trade union, they will fire us all."

Worker interviews were supported by evidence from human rights cases. 43% of cases gathered related to union busting. Cases include the reported firing of trade union members, non-rehiring of union members after factory closures or threats to workers if they join trade unions, and existing collective bargaining agreements no longer being recognised by suppliers.

Stakeholders reported that in select incidents employers proactively reported trade unionists to the military or threatened to do so. We do not have sufficient information or evidence to know whether these were isolated incidents.

Trade unions and workers' rights organisations reported incidents in which employers provided information to the military or threatened to do so because of trade union activities.

Example cases shared in interviews include the following.

- In September 2021, factory management reportedly threatened trade union organisers, who were collecting names of potential members, that they viewed the information as being collected for the People's Defence Force (PDF). The PDF has been designated a terrorist organisation by the military and any association with them can result in imprisonment.
- In October 2021, the general manager of a factory threatened the workers and called the military to intervene in a strike over pay cuts and reductions in benefits. They reported that five military trucks and a police car came to the factory and raided it. No one was arrested but the military took pictures of the protesters.
- In March 2022, a union representative gathered workers and requested that the employer address unfair labour practices. The factory allegedly reported the union representative to the

military, which forced her to flee her work and home.

Other stakeholders interviewed, including representatives from intergovernmental organisations, buyers, suppliers and international NGOs, had heard of cases, but were not aware of those cases first-hand. One supplier interviewed noted that he had heard of cases in which employers had handed over information on trade unionists to the military or police and believed these cases to be true. An international NGO operating in Myanmar told us that it had been informed of instances in which factory management was put under pressure to disclose information on workers participating in protests in February 2022, for the anniversary of the coup.

There is not sufficient information to determine how widespread such threats and action are. Worker interviews did not ask whether workers had been threatened with military action by their employer. The perception across most stakeholders interviewed is that some employers are threatening to involve the military as a way of suppressing trade union activity, but that these are isolated incidents.

For more information on linkages between employers and the military see Section: Economic linkages to the military – Bribery and corruption.

There is a reported rise in employer-supported structures rather than democratically elected trade unions.

Worker interviews reported that the military coup has led to “yellow unions”. These are employer-supported structures rather than democratically elected workers’ representatives aligned with international labour standards. Trade unions also raised concerns of yellow unions. Yellow unions can put workers at risk of exploitation. In one human rights case in June 2022, workers reported that members of a democratically elected union were not being issued a gate pass. A gate pass is needed to leave the secure compound where the factory is based.

Workplace Coordinating Committees (WCC) are not a replacement for trade unions.

In our interviews, some buyers and Western governments shared that Workplace Coordinating Committees (WCCs) could be strengthened in Myanmar as an avenue for respecting freedom of association. WCCs are a formal mechanism for worker representatives and management to discuss workplace-related matters in Myanmar. WCCs include employer and worker representatives. [57]

In interviews with intergovernmental organisations, we found that a focus on WCCs will not lead to respect for freedom of association in Myanmar. WCCs in Myanmar were not well developed prior to the coup. One intergovernmental organisation noted that it does not expect WCCs to be able to work properly in the current context given the issues that these committees were already facing prior to the coup. The representative noted that they do not view WCCs as a feasible avenue for respecting the principles of freedom of association in Myanmar outside trade union structures. Democratically elected workers’ representatives in Myanmar will face the same ceiling of limitations as trade unionists.

Implications

- **The principles of freedom of association and collective bargaining cannot be safely respected in Myanmar either through trade unions or other democratically elected workers' organisations.**
 - **Trade unions and democratically elected workers' organisations face a ceiling of limitations. Effective worker organisation and freedom of association are threats to the military and place workers at risk of severe human rights abuses, including imprisonment. Buyers do not hold any leverage over the military to mitigate these severe threats to trade unionists and democratically elected workers' representatives.**
 - **Under the UNGPs [58] and OECD Guidelines, [59] where there are severe impacts that buyers cannot prevent or mitigate, and where there is no real prospect of being able to do so, buyers need to consider disengaging, taking into account any potential adverse human rights impacts of doing so, and the extent to which the relationship is "crucial" to its business. See Section: Due Diligence Implications**
- **The OECD Garment and Footwear Due Diligence Guidance is explicit in stating that companies should use their leverage to prevent anti-union practices in their supply chain. If a supplier "does not show measurable improvement after a reasonable amount of time (e.g. 6-9 months), the enterprise is encouraged to suspend orders until the supplier has demonstrated improvement".**
 - **In addition to the above, existing trade union members in factories also face risks of being reported to the military or illegal dismissal. We do not have enough information on when this risk is occurring or how it is playing out. EPZs in areas under martial law raise a particular red flag for this risk. We also lack information on the extent to which suppliers themselves are being asked for information from the military and may be under threat of harm themselves.**

Forced labour

There is evidence of pervasive forced labour in the garment sector in Myanmar. The drivers are a confluence of labour rights violations, worker vulnerability and increased production pressures.

The ILO has identified 11 indicators that cover the main possible elements of a forced labour situation. The presence of a single indicator may in some cases mean forced labour. In other cases, several indicators taken into consideration together point to forced labour. [60] We see evidence that this is the case in Myanmar. The consistency with which indicators were reported by workers leads us to believe that forced labour is a pervasive risk throughout the sector.

Excessive overtime was among the most frequently reported issues in worker interviews, trade unions, labour rights' groups and auditors.

Our interviews with workers found that:

- 15.4% (401 of 2606) of workers had worked over 10 hours per day on average for the past three months
- 20% (521 of 2606) of workers had worked 13 days or more without a day off, including instances of up to 35 days
- 18.4% (481 of 2606) of workers reported that average working hours had increased since 2021. [17]

This was also corroborated by human rights cases, where 49 out of 137 (35.7%) of the cases related to excessive overtime.

Excessive overtime is a result of an increase in production targets.

Worker interviews and human rights cases both reported increased production targets. Both independently cited an increase in production targets from 45 pieces per hour in 2021 to 60 pieces per hour in 2022. The increase in production pressures corresponds to reports from suppliers and buyers regarding production trends, and the relative recovery of the sector. In 2021, the sector faced a host of production pressures due to factory closures. China's closing of its borders as a COVID-19 response meant that suppliers could not import fabrics and materials, which also delayed production. This indicates that there would be pressure to "catch up" on lost time. See *Section: Socio-economic impacts of a sector withdrawal*

Workers face threats and financial penalties for refusing overtime.

Worker interviews consistently reported penalties and threats, including of demotion and dismissal, if workers refused overtime. This was also corroborated by human rights cases. In interviews, workers reported penalties to be between 10,000 and 50,000 Kyat for one day of absence. This is equivalent to 1-5 days of work or up to 20% of a worker's monthly salary.

In interviews with workers, they also reported that they could not turn down overtime because daily production targets were calculated into the overtime. [17] Workers also reported financial penalties for missing work due to sick days or holiday.

Human rights cases and some auditors reported workers not being paid for overtime hours. We do not have sufficient data on this risk.

Under the law, workers should receive double pay for overtime hours in Myanmar. In 21 (43.75%) human rights cases, workers reported not receiving any compensation at all for overtime work. In our interviews, auditors also reported that they were seeing non-payment of overtime hours. In our interviews with workers, workers were not explicitly asked if they were receiving overtime payments. As such, we do not have sufficient data to understand how systematic this risk is. Some anecdotal evidence from workers did support this finding. For example, one worker reported that: "Sometimes supervisors asked workers to work until midnight without paying anything after 7 p.m. because workers did not reach the daily target...".

Excessive overtime leads to increased security concerns for workers. In interviews with workers, they reported having to return home after curfew or sleep in the factory.

Two security threats were reported by workers in our interviews as a result of excessive overtime (i) workers are required to return home after curfew (ii) workers are sleeping in factories.

In interviews, workers, workers' rights organisations and trade unions all reported increased security threats facing workers when workers are required to return home from work after curfew. One trade union representative reported the rape of a female worker who was travelling home from work late at night after working an overtime shift. One workers' rights organisation reported a case in which a worker returning home from work after curfew was stopped by the military, beaten up and physically punished by being forced to squat and stand repeatedly. See *Section: Situational Context – The security context.*

In interviews, workers reported that they were sleeping in their chairs in the factory to avoid walking home from work after curfew. For example, one worker said: "Sometimes, workers are forced to work from 7.30 a.m. until midnight or 2 a.m. on Saturdays. At that time, there are no transport arrangements and workers have to stay in the factory without proper sleep."

Another worker reported: "They do not arrange a ferry after working to midnight, so workers have to spend the night on a chair or bench in the factory. Then, we have to continue to work the next day. In the last month, I got sick because of sleepless nights every two days working in the factory." [17]

Consistent experiences were also reported in human rights cases. Workers sleeping in factories presents significant risks. It indicates a lack of freedom of movement for workers. It also presents a severe fire and safety risk. A factory fire when workers are sleeping in the factories could result in catastrophic outcomes on human lives.

**Harassment within the factory is pervasive.
Physical violence was also reported.**

In worker interviews, workers in 65 out of 70 factories reported verbal, physical or sexual harassment in the workplace. 614 workers reported either experiencing and/or witnessing abuse at their workplace. This included 21.9% (539 of 2465) of female workers and 29.6% (75 of 253) of male workers interviewed. There is evidence that abuse was already widespread prior to the coup and has increased since. 32.8% (192 of 586) of workers who felt comfortable responding to the question reported an increase in abuse since February 2021.

Workers reported both physical and verbal harassment. Workers reported being hit, beaten, having objects thrown at them, shouting, scolding, and derogatory gender-based language. The findings from interviews align closely with worker accounts raised in human rights cases. Of the 137 cases we collected and reviewed, 41 (29.9%) cited workplace abuse.

Workers interviewed reported that this abuse most frequently comes from supervisors. 66.4% (358 of 539) of female and 62.7% (47 of 75) of male workers who had experienced or witnessed abuse reported that the abuser was a supervisor. Management was cited by 15% (81 of 539) of female workers

and 24% (18 of 75) of male workers. A few workers noted that they had experienced or witnessed abuse from colleagues and worker representatives. [17]

There is some evidence that ethnic minorities might experience higher rates of workplace abuse, although this is not conclusive. Across the worker interviews, 19% (15 of 78) of sampled Karen women experienced workplace abuse, which is somewhat higher than the experience of Barma women (9.7%). Further in-depth, sensitive research would be required to demonstrate this point more conclusively.

Workers are paying recruitment fees for jobs.

In interviews, workers reported multiple payments were being made in order to secure a job.

Over 90% (2523 of 2722 workers) of workers interviewed reported requiring recruitment recommendation letters as part of the recruitment process. These are typically obtained by making facilitation payments to local officials (ward administrators, military, police). Other payments are required for labour cards or to simply “get a job”. Payments ranged from 200 – 300,000 Kyat, with a median payment of 6500 Kyat. The industry average wage is 250,000 Kyat. One worker reported: “The resident recommendation cost me 1000 Kyat, the police recommendation and labour card cost me 500 Kyat each when I applied for the job. I heard that the police recommendation has increased to 3000 Kyat. We just pay what they ask us. No argument made.” [17]

A very small number of workers (less than 1%) report making payments to factory human resources departments where departments “offered” a service of providing workers with all the necessary recommendation letters and documents. Payments in this case ranged from 2500 – 10,000 Kyat, with the median payment being 4000 Kyat. See *Section: Economic Linkages to the Military – Bribery and Corruption*

The potential for forced labour risks in other parts of the value chain, notably shipping, is also high.

A trade union representative of transport workers reported that forced labour is pervasive in container and freight shipping, and that the risk had increased for workers from Myanmar since the coup. The representative referenced a case from May 2022 in which Burmese workers on a container ship had not been paid in three months, were only paid half the salary owed, were over contract, and had been kept on the ship for over a year. Workers were reportedly threatened by an agent in Myanmar that they would be blacklisted, money would be taken back from them and their certifications revoked if they raised a complaint to the global trade union confederation.

We were not able to interview workers from other parts of the value chain in Myanmar. Given the pervasive nature of forced labour in the sector and the context at large, it would be important for buyers to carry out due diligence on other segments of the value chain for forced labour.

How forced labour is manifested in the sector



- **15.4%** (401 of 2606) of workers had worked over 10 hours per day on average for the past three months
- **20%** (521 of 2606) of workers had worked 13 days or more without an off day, including instances of up to 35 days
- **18.4%** (481 of 2606) of workers reported that average working hours had increased since 2021
- Workers and cases consistently reported financial penalties, threat of dismissal and demotion for refusing to work overtime
- Excessive overtime is a result of an increase in production targets
- Human rights cases reported that workers are not being paid for overtime hours
- Workers that travel home from work after curfew are at risk of violence from the military & gangs
- Alternatively, workers cannot leave the factory and report sleeping on chairs for numerous nights
- Workers in **65 out of 70** factories reported verbal, physical or sexual harassment in the workplace
- Harassment was reported by **21.9%** of female workers and **29.6%** of male workers
- Workers reported being hit, beaten and having objects thrown at them. Workers reported shouting, scolding, and derogatory gender-based language.
- Almost **93%** (2523 of 2722 workers) of workers interviewed reported requiring recruitment recommendation letters as part of the recruitment process
- Fees are paid to the police, public officials and the factory. Payments were reported between 200 and 300,000 Kyat
- Cases of forced labour were reported on shipping vessels coming from Myanmar. These were linked to extortion and threats of being reported to the military.

Implications

- **There is evidence of pervasive forced labour in the sector. This is due to a range of systemic factors coming together to create conditions of forced labour. Buyers may also be contributing to forced labour through their purchasing practices.**
- **Under the OECD Garment and Footwear Due Diligence Guidance, buyers are encouraged to pause orders if forced labour has been identified until action has been taken to prevent forced labour. [16]**
- **Traditional methods of preventing and mitigating forced labour will not be appropriate in a conflict context. Buyers would need to implement a more robust approach that goes far beyond auditing. This will require buyers to demonstrate that they can overcome the challenges of operating in a conflict context with weakened RBC infrastructure.**
- **Buyers will also need to ensure that they are not contributing to forced labour outcomes through their purchasing practices. If buyers are contributing to forced labour, this triggers a responsibility to provide remedy to workers or co-operate in the remedy for workers (e.g. compensation, etc.). [61] This also potentially increases a company's legal risk under forthcoming EU due diligence legislation.**
- **Buyers will need to carry out heightened assessments of any other parts of their value chain in Myanmar. This includes engaging with logistics and shipping suppliers to ensure that heightened forced labour due diligence is also being carried out on those segments of their supply chain.**
- **Under forthcoming EU legislation and trade instruments, buyers will need to be able to account for how they have addressed this severe risk.**

Access to remedy

The ability for workers to raise grievances is extremely curtailed. The available infrastructure and mechanisms that existed pre-coup are diminished. Workers, trade unions and workers' rights organisations all report that they are now unable to raise any grievances related to severe labour rights abuses. Workers have fewer safe and effective avenues to raise grievances since the coup. Where cases are still raised, these increasingly rely on informal networks and social media. Organisations raising issues may be themselves be at risk.

Within the workplace, workers are not raising grievances for fear of retaliation. Only 5.5% (143 of 2606) of workers interviewed reported that they have raised an issue in the workplace. Additionally, 91.1% of workers who witnessed or experienced abuse in the workplace did not report the abuse. [17]

In interviews, workers reported fear of retaliation and noted the risk of being fired for entering into labour disputes with management, being scolded for raising issues, and management or supervisors responding that they should leave their job if they have a problem. [17] Workers also reported that human resources departments were unresponsive when issues were raised.

Trade unions and workers' rights organisations also reported that workers fear losing their jobs. One representative noted that because of the shift to short-term contracts, the priority for workers is to get and keep their job and that workers will not jeopardise this. This aligns with the economic situation in the garment sector, where workers are more vulnerable due to reduced job opportunities as a result of the socio-economic crisis. *See Section: Socio-economic impacts of a sectoral withdrawal.*

Accessing remedy on issues pertaining to key labour rights is limited. Successful outcomes are rare.

Trade unions, workers' rights organisations and workers in interviews all independently reported that cases related to key labour rights are failing to result in remedy. This includes cases related to wages, piece-rate targets and excessive overtime, occupational health and safety, sexual harassment and violence, discrimination and freedom of association.

Workers reported that they could speak to a supervisor when it was a work-related issue such as how to complete a task. They were not, however, able to raise issues such as work pressure and labour rights without fear of retaliation. In interviews, workers reported that they would not raise more serious issues with supervisors and management who, as a group, were often the perpetrators of abuse. One worker said, "We do not talk about our rights as we do not know who to rely on." [17]

Trade unions and workers' rights organisations consistently noted constraints in accessing remedy on cases that require financial compensation or investment from employers. In interviews, one trade union confederation noted that in 2022 they received 52 cases from workers. Of these, 19 were solved and the remaining cases would not be able to be solved.

This has become more challenging post-coup. They noted that while in the past these discussions were always difficult, there were means of negotiating with employers. One trade union confederation noted, "The main problem is that there is no official way to handle the issues."

The remedy infrastructure has deteriorated since the coup.

- **Trade unions cannot operate** – Trade union leaders are largely in hiding, have fled the country and/or are being pursued by the military. Trade unionists in factories do not have the capacity, leverage or security to raise serious labour rights violations on behalf of workers. *See Section: Human Rights – Freedom of Association*
- **According to workers' rights organisations, workers do not trust the labour offices and lack support to bring cases** – Workers' rights organisations reported that workers are bringing fewer cases to the labour office due to fear of bribery and collusion between employers and labour officers. Workers also lack the support on which they previously relied from trade unions and workers' rights organisations, which would help to document and submit the cases. Without this support, workers' cases are more easily dismissed.

- **Workplace Coordinating Committees (WCCs) generally do not lead to remedy on their own** – WCCs in Myanmar are a formal mechanism for workers’ representatives and management to discuss workplace-related matters. WCCs include employer and worker representatives. WCCs are intended to be an avenue for handling grievances; however, WCCs rarely handle cases themselves. Complaints raised to the WCC have to be settled within five days, and if they cannot be solved they are taken to conciliation and then arbitration. [57] As such, a representative from an intergovernmental organisation with expertise on WCCs in Myanmar noted that in practice WCCs are rarely effective channels for remedy within the factory. Cases are not currently being raised and handled under conciliation and arbitration, as was the case before the coup. The Arbitration Council is still operating but, according to interviews with workers’ rights organisations, it is not effective.
- **The ACT on Living Wages Dispute resolution mechanism was ended** – ACT on Living Wages hosted a dispute resolution mechanism between suppliers, employers and trade unions on violations of freedom of association in Myanmar. Following the coup in February 2021, ACT negotiated a fast-track dispute resolution mechanism concerning the broader respect of workers’ rights in Myanmar. In December 2021, ACT ceased its operations in Myanmar as IndustriALL’s local trade union affiliate IWFM was no longer able to operate. [62]
- **Workers’ rights organisations have been deemed illegal by the military** – These include organisations that operate in the garment sector and are raising grievances on behalf of workers directly with buyers. There is a risk that these organisations could also be deemed “unlawful”, which would pose a severe risk to the safety of them and anyone engaging with them, as the Unlawful Association Act (1908) makes it illegal to co-operate with an unlawful association. It is important to note that, in our interviews, workers’ rights organisations explicitly referenced the security risk to themselves and clarified that they were willing to take these risks to support labour rights in the country to the extent possible. *See Section: Situational Context – The legal framework.*

- **Fair Wear Foundation (Fair Wear) which runs a grievance mechanism in Myanmar in 23 factories reported a drop in cases from 28 cases in 2020 to 14 cases in 2021.** As of July 2022, nine cases have been raised. According to Fair Wear, this decrease was linked to a lack of awareness on the available channels for reporting linked to a high turnover rate. Currently, Fair Wear is reconnecting with the workers through virtual assessment and worker information cards are being disseminated to the supplier factories which results in an increase in the number of calls since March 2022. In discussions with Fair Wear, they noted that they are able to find solutions for the labour rights cases with the exception of one case related to the right to freedom of association. In 2021, there was one case of union busting that occurred in one of the supplier factories. For this case, they were able to help workers access severance payments but not to be rehired within the factory or reinstall a union. Discussions are ongoing on how to facilitate workers can raise a collective voice.
- **In some limited cases, global trade unions and workers' rights organisations are continuing to raise grievances with buyers sourcing from Myanmar.** Their ability to do so is now severely restricted. They face difficulties in accessing information, documenting cases and keeping workers and

members safe. As a result, some workers are able to raise cases with trade unions and workers' rights organisations, but not all of those cases make it through to being raised with the buyer. We are aware that some cases have resulted in remedy for victims due to buyer leverage over suppliers.

We do not know of any mechanisms through which whistle-blowers can raise cases of collusion between employers and the military, including information sharing and bribery and corruption.

There is a high risk of bribery and collusion between employers and the military, for example when military officials are installed as Ward and District Administrators and in areas under martial law. Currently we are not aware of any mechanisms to support whistle-blowers raising issues of bribery and corruption within the sector despite the high and pervasive risk. *See Section: Economic linkages to the military – Bribery and corruption*

Implications

- **Workers have fewer safe and effective avenues to raise grievances since the coup.**
- **Trade unions are no longer able to operate. Workers' rights organisations that could be engaged as partners on remedy have been declared illegal.**
- **Workers are not raising grievances within the workplace for fear of losing their jobs.**
- **Under the OECD RBC Due Diligence Guidance, buyers will need to “when appropriate, provide for or co-operate with legitimate remediation mechanisms through which impacted stakeholders and rights holders can raise complaints and seek to have them addressed with the enterprise”. [63]**
- **Due to the lack of leverage over the military, buyers will not be able to handle and address cases pertaining to severe human rights abuses by the military, notably arrests and imprisonment of trade unionists or partners.**
- **For all other labour and human rights cases, buyers would need to ensure that such mechanisms are fit for purpose in a conflict context and do not put workers, service providers**

or other partners at increased risk. Key criteria that mechanisms would need to meet include – but certainly are not limited to – the following:

- **Are designed through engagement with workers [64] [65]**
- **Mitigate the heightened security risks to workers, for example if grievances are raised via text messaging or email. Those hosting the mechanism can also be asked to turn over all data by the military. See Section: Situational context of human rights – The legal framework**
- **Cover a broader scope of issues to also include context-specific human rights abuses (e.g. bribery and corruption and collusion with the military, security and sexual harassment and violence to and from work, extortion and recruitment fees)**
- **Ensure that workers have support to bring and document cases [65]**
- **Are able to investigate cases fully and safely**
- **Provide an avenue for workers to access remedy if there has been a violation and not merely operate as a hotline for raising complaints. [65]**

Precarious work **A significant number of workers are in precarious employment.**

In our interviews with workers, 23.8% of workers interviewed reported that they did not have a written contract or offer letter. 16.7% workers interviewed reported working for a factory but not being formally employed. An additional 9.1% of workers interviewed reported being on short-term or rolling contracts. [17]

In addition, 31.1% of non-contracted workers interviewed reported that they do not receive social security benefits compared to 19.9% of workers on long-term contracts. In addition to worker interviews, trade union representatives and workers' rights organisations both independently reported that workers are being placed on day worker contracts.

When workers are on short-term contracts, they do not have access to the benefits that they would have had under a permanent contract. Employers are not required to register daily workers with the Social Security Fund. Furthermore, only employees working at least 20 days per month are entitled to earned annual leave. In practice, part-time workers and daily workers are therefore not entitled to leave. [15]

Furthermore, other benefits (e.g. medical leave, maternity and paternity leave) are only granted to employees who have rendered six months of service. [15]

Precarious work is a risk in and of itself and it increases the risks to workers of a host of other labour rights abuses. A wide body of research by the ILO has demonstrated that workers in precarious or informal work are more vulnerable to exploitation, including extortion, harassment and violence. [66] Workers that are in precarious work are more vulnerable because they are not in a position to refuse work or raise grievances.

Implications

- **A significant number of workers are in precarious employment. This is a risk in and of itself and is also linked to other risks, such as potentially forced labour. Workers that are in precarious work are more vulnerable to exploitative practices because they are not able to refuse work or raise grievances.**
- **It is more feasible to address and prevent precarious work through the traditional due diligence processes used by the sector. We see this as being within the purview of an ongoing audit and monitoring programme where buyers could ensure suppliers are hiring workers on permanent contracts with the full range of benefits to which they are legally entitled.**

Latent risks

Alongside the severe risks of freedom of association and forced labour, our findings also pointed to risks that we describe as “latent risks” or “sleeper risks”. These are risks with a high probability of occurrence in the future, given the social, economic and political conditions in Myanmar and/or risks that could already be occurring but are not yet being systematically captured.

CHILD LABOUR

Interviews with workers did not indicate wide-scale risks of child labour, although some cases were raised by workers and trade unions. An on-site assessment would be needed to assess for the risk of child labour. Buyers should also be aware that certain emerging conditions could precipitate a spike in child labour in the sector.

1.8% (47 of 2606) of workers interviewed indicated that the youngest worker in their workplace is under 18 years old. Of these, 89.4% (42 of 47) of the workers reported that the youngest worker “did the same work as me” and 66.0% (31 of 47) of workers report that they “did the same hours as me”. 0.7% (18 of 2606) of workers interviewed reported that the youngest worker in their workplace is aged 15 or under, including as young as 13 years old. 5.6% of workers (82 out of 1455) reported that they had a child or children in work. [17]

Taken together, these data flag to us that there may be instances of child labour. However, we cannot determine the scale of the issue within the factories. An on-site assessment would be required to assess for this risk more effectively. It should also be considered that if child labour emerges, there is a risk of worst forms of child labour due to the prevalence of forced labour in the sector. *See Section: Human Rights – Forced Labour.*

In some respects, we would have expected to see higher rates of child labour given the prevailing conditions and what we know of other conflict-affected and high-risk areas. The incidence of child labour in countries affected by armed conflict is 77% higher than the global average, for example. [66] Myanmar also has a very high percentage of children not in education. Approximately 50% of Myanmar's school-aged children were estimated to be out of school as of June 2022 [67] and, as of May 2021, 125,000 of the country's 430,000 basic education teachers had been fired because of their participation in the Civil Disobedience Movement. [31] At the same time, we know that there are more people looking for jobs than jobs available. As such, this may be dampening the risk of child labour.

Two factors stand out that could precipitate a spike in child labour within the sector in the future. Both relate to conditions that would reduce the available adult workforce and shift the current employment situation where workers are more vulnerable due to few job opportunities as a result of the socio-economic crisis.

- Increased violence and economic instability could lead more workers to migrate, particularly to neighbouring Thailand, and a shortage of workers in Myanmar could lead to an increase in child labour in the sector.

- In July 2022, the military reported its plan to restart the practice of compulsory military service, not seen in a decade. [28] This could also reduce the available workforce in the sector. The 2010 People's Military Service Law requires both men (18 – 35 years of age) and women (18 – 27 years of age) to do up to three years of service, extended to five in the event of a national emergency. [68]

Our findings are based on interviews with workers in export-oriented factories for the garment sector. We therefore cannot exclude higher figures of child labour in other parts of the value chain that are less monitored.

SEXUAL VIOLENCE

Specific cases of sexual violence reported by workers, trade unions and civil society linked to the garment sector were extremely low. This seemed atypical to us, given the context of gender-based violence in Myanmar pre-coup and the conflict context. The most likely conclusion to be drawn is that it is under-reported and that the real figures are much higher.

The broader context of violence perpetrated by the military combined with a decreased rule of law significantly increases the risk of sexual violence in all aspects of life in Myanmar, including in the work setting and to and from work. The military's use of rape and sexual violence as a tool, particularly against political prisoners and in conflict-affected areas, has already been documented by international institutions and media. *See Section: Situational context of human rights.* The OHCHR has found that gender-based violence typically spikes in conflict-affected contexts due to a general breakdown in the rule of law. [69]

We also know that levels of abuse in factories are high. Workers in 65 out of 70 factories reported some form of verbal, physical or sexual harassment in the workplace [17], but specific cases of sexual violence were low both through worker surveys and cases reported directly to us. *See Section: Human Rights - Forced Labour*

It is likely that cases of sexual violence are under-reported. Even prior to the coup, sexual and gender-based violence was often under-reported in Myanmar, [70] and the country ranked 147th out of 189 countries in the United Nations' Gender Inequality Index in data gathered prior to the coup in 2019. [71] One NGO representative working on sexual violence in Myanmar, including in the garment sector, noted that there are no longer any channels or authorities to which to report sexual violence. Further investigations on sexual violence, conducted with extreme sensitivity, would be needed to understand this issue in more depth.

WAGES

Some workers reported that wages are not sufficient to meet their basic daily needs. This needs to be seen in the context of workers having accrued significant debts following periods of unemployment in the pandemic and the volatility of Myanmar's economy. Further economic impacts could push workers into more debt and increased risk of poverty. The wage-setting mechanism in the country is no longer operational.

Over a third of workers (38%) reported that they are not being paid enough to meet their basic needs. This is already a significant figure and could worsen rapidly given the volatile economic climate in Myanmar. Over 60% of workers have debts and are borrowing money at 10-20% monthly interest rates from friends, colleagues and money lenders. Workers did not report that this included from supervisors or management at work. *See Section: Situational context of human rights.*

The wage-setting mechanism in Myanmar is not functional. Under the Minimum Wage Law (2013), the National Committee on Minimum Wage should meet and determine the minimum wage at least every two years, to be announced by a notification issued by the Labour Department. The National Committee holds tripartite talks with representatives of employers,

employees and the government in accordance with sec. 10 (d) of Minimum Wage Law (2013). While this process has not been updated/changed since February 2021, trade unions are not engaging in tripartite dialogue. Consequently, in effect there is no real bargaining on minimum wages. The Labour Department issued a notification on 27 December 2021, confirming that the minimum wage will remain unchanged at MMK 4800 per day (determined at a rate of MMK 600 per hour for an eight (8)-hour day). [15]

Without trade unions bargaining on workers' behalf and without the ability to strike safely, insufficient minimum wages are a significant risk.

Implications

- **Child labour was not found to be a wide-scale risk based on interviews with workers, although workers did raise some instances of child labour. An on-site assessment would be needed to assess for the risk of child labour. The ILO is expected to publish updated data on child labour in Myanmar in 2022.**
- **The conflict context points to an increased risk of child labour in the future. If child labour emerges, there is a risk of worst forms of child labour due to the prevalence of forced labour in the sector. See *Section: Human Rights - Forced Labour*.**
- **Buyers should be aware of the risk of child labour and will need to be able to monitor for it and carry out enhanced assessments on other parts of the value chain that could be at higher risk of child labour.**
- **Very few instances of sexual violence were reported during the assessment. However, the context of gender-based violence in Myanmar and the lack of rule of law would point to a significantly heightened risk of sexual violence. The most likely conclusion is that violence is under-reported and that the real figures are much higher.**
- **Buyers would need to take proactive measures to prevent and mitigate violence and sexual violence towards workers in the workplace as well as to and from the workplace, even where conclusive evidence of sexual violence has not yet been reported. Under the OECD Garment and Footwear Due Diligence Guidance, “In the context of sexual harassment, enterprises should make the assumption that if sexual harassment is a high risk in a particular sourcing location, it is a high risk within the workplace.” [8]**
- **Some workers reported that wages are not sufficient to meet their basic daily needs. This needs to be seen in the context of workers having accrued significant debts following periods of unemployment in the pandemic and the volatility of Myanmar’s economy.**
- **If buyers decide to continue sourcing from Myanmar, we would advise them to take active measures in partnership with their suppliers to increase wages. The OECD Garment and Footwear Due Diligence Guidance states that: “The scope of due diligence on wages should include both wage compliance with national law and alignment with the OECD Guidelines that wages satisfy the basic needs of workers and their families.” [72] This is particularly**

important in Myanmar where collective bargaining on wages is not feasible and the national wage mechanism is not functional.

- **Interviewees from intergovernmental organisations also remarked that if buyers are in Myanmar and part of their rationale is to protect livelihoods and maintain employment for workers, then those same jobs should pay a decent wage. These are additional reputational and ethical aspects for buyers to consider.**

Economic linkages to the military

There is little evidence that the military has investment and direct participation in the garment sector in relation to garment manufacturing and the production of fabrics and textiles. There are actual and potential linkages when the sector's full value chain is considered, such as real estate, logistics and transport and ancillary suppliers.

The nature of these linkages is often opaque and requires specific due diligence using multiple sources to investigate the

linkages. Some linkages are potential breaches of EU, UK and US sanctions.

Bribery and corruption are endemic in Myanmar. These risks have increased under the military, both in opportunity and frequency. There are potential red flags of bribery in the sector at Tier 1 supplier level and within the wider value chain. In some cases, bribery is being used to influence the outcome of labour rights and human rights disputes.

Beneficial ownership

The military runs the country's economy and there are touchpoints in the value chain between the military and the sector.

The military is embedded in Myanmar's economy with linkages that span multiple industries and sectors.

The economic interests of the Myanmar military are well-documented by the UN and campaign and research groups. The UN Independent International Fact-Finding Mission on Myanmar (Fact-Finding Mission) 2019 report on the economic interests of the Myanmar military identified 106 military businesses fully owned by the military and a further 27 that were affiliated with Myanmar Economic Corporation (MEC) and Myanmar Economic Holdings Limited (MEHL) through their corporate structures. A further report on the economic interests of the military will be introduced to the UN Human Rights Council in September 2022. Campaign organisations Burma Campaign and Justice for Myanmar provide regular updates and collectively have identified over 400 companies with alleged economic linkages to the military.

The two military-run conglomerates, MEC and MEHL, own or have commercial interests and influence in hundreds of companies across Myanmar's economy. MEHL was established following the 1988 military coup and operates as a holding company with a portfolio of companies across multiple sectors including gem production, banking, tourism and transport. [73] MEC was established in 1997 and also operates as a holding company with a portfolio of companies across mining, manufacturing, telecommunications, natural resources, manufacturing and banking. [73]

In addition to the subsidiaries owned or controlled by these conglomerates, the military has private sector linkages to crony companies, other conglomerates, and joint ventures with foreign-owned companies. These cover banking, real estate, tourism, mining, timber, manufacturing, construction, transport and logistics, and telecommunications.

The economic interests of the military have increased post-coup and cronyism is increasing to circumvent sanctions.

The landscape is changing post-coup as the military asserts wider state economic control over Myanmar.

According to Justice for Myanmar, there are now over 30 state-owned enterprises formerly under civilian oversight that have become military-controlled businesses since the coup. This includes electricity supply corporations, railways, post and telecommunications, national airlines, shipyards, port authorities, banks and insurance providers. [74] Activities previously viewed as not viable under the previous government, such as the state-owned steel factories and oil refineries, have been encouraged to restart. [75] The recent crises in Ukraine and Sri Lanka have also prompted the military to prioritise the security of food and energy supplies and develop domestic measures to substitute imports, such as cooking oil. [76] The World Bank has pointed to increased evidence that “a more interventionist and inward-looking approach is being taken to economic management more generally”. [75]

The military has increased involvement in the private sector, particularly in industries where it has existing economic interests such as oil and gas and mining. For example, in June 2022, it was reported that the son of Senior General Min Aung

Hlaing was forming a new company to import and distribute fuel from Russia with several other prominent businessmen, which would “monopolise the market” for fuel. [77] Also connected to this company is Shwe Byain Phyu, which acquired 80% of the business previously run by Telenor, along with Lebanese investment firm M1, which owns 20%. [78]

The Fact-Finding Mission documented an extensive network of “crony companies” by the military, privatisation of state-owned companies and other economic reforms in recent years that have allegedly benefited family members and associates of military and government officials. [73] Since the coup, there has been an increase in new and emerging crony companies, as the military and their family members look to crony companies as a way of circumventing international sanctions. This was reported by the governments to whom we spoke and legal experts. The children of high-ranking military leaders have also allegedly attempted to use their connections to secure lucrative supply contracts and other kickbacks. [79]

There are actual and potential linkages between the military and the sector when the sector's full value chain is considered.

Despite the socio-economic importance of the garment sector, the export-oriented industry has not been an attractive sector for the interests of the military. It also largely escapes crony capitalism, because of very low margins and exposure to compliance scrutiny. [80]

There is little evidence that the military has investment and direct participation in the garment sector in relation to Tier 1 manufacturing or the development of fabrics and textiles. EuroCham estimates that the military interest in the export garment sector is less than 0.1% of the approximately 750 apparel, shoes and luggage factories and that the garment sector contributes very little to state revenues through taxation. [80] Since the outset of the two crises (COVID-19 and the coup), the redirection of military-related investments has focused on strategic investments, and foreign direct investments have prioritised transport and communication, extraction and energy infrastructure. [81]

Nonetheless, the sector is not isolated from the rest of the economy and indirect interests exist. When the sector is viewed from the perspective of the full value chain, there are multiple

touchpoints and indirect economic linkages with the military. For example, logistics and transport, ancillary suppliers of components and services, and land and construction.

We do not conclude that the sector is vital to the financial gain of the military – the military's revenues are clearly extremely high in other more lucrative and less transparent sectors. However, we cannot conclude that the garment sector operates in an economic bubble, isolated from the military. The military runs the country's economy and infrastructure. Some of these potential linkages are highlighted below.

- **Real estate**

Suppliers may be located on land or within properties owned by the military. The military owns Pyinmabin and Inndagaw industrial complexes. The military is also the zone developer and runs the Ngwe Pin Lae industrial complex, where it provides maintenance, waste management and security. Several international buyers are listed as sourcing from factories located on these sites. [82] The military owns commercial real estate, which could be a potential risk for buyers in the sector with offices and headquarters in Myanmar.

Respondents from business and government indicated that land ownership information was particularly opaque. The U.S. Department of State's Business Advisory for Burma noted that "U.S. businesses maintaining a physical presence in Burma, including leasing or purchasing facilities for corporate offices, retail, wholesale, warehousing, and related physical infrastructure, should investigate as appropriate to determine whether payments are benefiting designated entities, and should take appropriate measures to ensure their compliance with applicable requirements related to U.S. sanctions and money laundering controls. U.S. businesses maintaining a physical presence are also

encouraged to conduct heightened due diligence around land tenure to identify, mitigate, and redress issues regarding possible land seizures." [83]

- **Manufacturing**

The military owns a cotton ginning mill most likely used for domestic cotton production and has commercial partnerships with foreign companies engaged in manufacturing. These include garment factories such as the Korean companies Pan-Pacific Co. Ltd and Inno Co. Ltd. There is no evidence that they are producing for European buyers in Myanmar. [73]

Of the buyers that we interviewed, none was using any fabrics and textiles produced in Myanmar. Most of the suppliers we interviewed confirmed that fabrics were all imported mainly overland from China.

A potential risk is where suppliers are purchasing sundries and components produced domestically by factories with economic linkages to the military. This includes factories that produce boxes and cartons for packaging and provide printing services.

- **Transport and logistics**

Transport and logistics raise a significant red flag. The involvement of the military across Myanmar’s transport and logistics network including ports, trucks, rail and logistics is extensive. Suppliers may be using military-linked transport and logistics at multiple stages in their value chain. This includes port terminals owned by the military, companies operating port terminals on land lease through build-operate-transfer (BOT) agreements from the military, and shipping and logistics companies with economic linkages to the military.

Transport and infrastructure experts in Myanmar told us that it would be extremely difficult to ensure that there were no linkages to the military through transport and logistics providers in international value chains. We were told that it would be difficult “to identify a single port that wouldn’t have some sort of state involvement, or involvement with any crony companies”.

There are 43 ports and port terminals currently operating in Myanmar and a further 26 in development. Several are publicly documented as being linked to the military. For example, the military owns Ahlone International Port Terminal 1 and owns businesses operating in or

around the Myanmar Industrial Port, Hteedan Port and Thilawa. [74] Thilawa Port, which is frequently used by international exporters, was viewed by experts as the “cleanest”. However, they stressed that this opinion was not conclusive and further research on the land ownership and lease status of the port terminal and the land around it would be required.

- **Financial services**

Buyers and their suppliers may be using banks linked to the military for their domestic and international banking. The military owns two of Myanmar's largest private banks. Myawaddy Bank Limited, owned by MEHL, and Innwa Bank Ltd., owned by MEC. Since the coup, the military has taken control of five banks and one insurance company that were state-owned prior to the coup. These are Myanma Economic Bank, Myanma Investment and Commercial Bank, Myanmar Foreign Trade Bank, Myanmar Agricultural Development Bank, Central Bank of Myanmar and Myanma Insurance Enterprise. [74]

The military owns a mobile banking and financial service provider. Since the coup, Myanmar citizens have increasingly turned to mobile banking services to bypass the country's cash shortage.

- **Construction and building**

In addition to real estate interests, the military has interests in construction companies and building materials such as cement and steel. We have included this as a potential red flag for the sector, as most suppliers in Myanmar are operating out of purpose-built factories and construction of new factories is continuing, either as part of expansion plans or to replace factories that were damaged or destroyed during the coup protests. Approximately 30 factories were burnt down during the protests following the coup, of which more than 50% were completely destroyed.

Understanding where these economic linkages are is both easy and difficult. Easy in that the military reach is pervasive and across all industries, and difficult as information on linkages is intentionally opaque.

The law on beneficial ownership was changed in 2019. This required mandatory disclosure of information related to beneficial ownership specifically and only within the extractives sector as required under Myanmar's membership of the Extractive Industries Transparency Initiative (EITI). [84]

In order to tackle money laundering and tax evasion more broadly, Myanmar subsequently introduced mandatory disclosure for all companies in 2020.

Despite these new laws, identifying and monitoring economic linkages is difficult. The Fact-Finding Mission acknowledged the difficulties in mapping the military's business linkages and stated that: "The Mission is certain that it has not been successful in identifying all MEHL and MEC subsidiaries". [73].

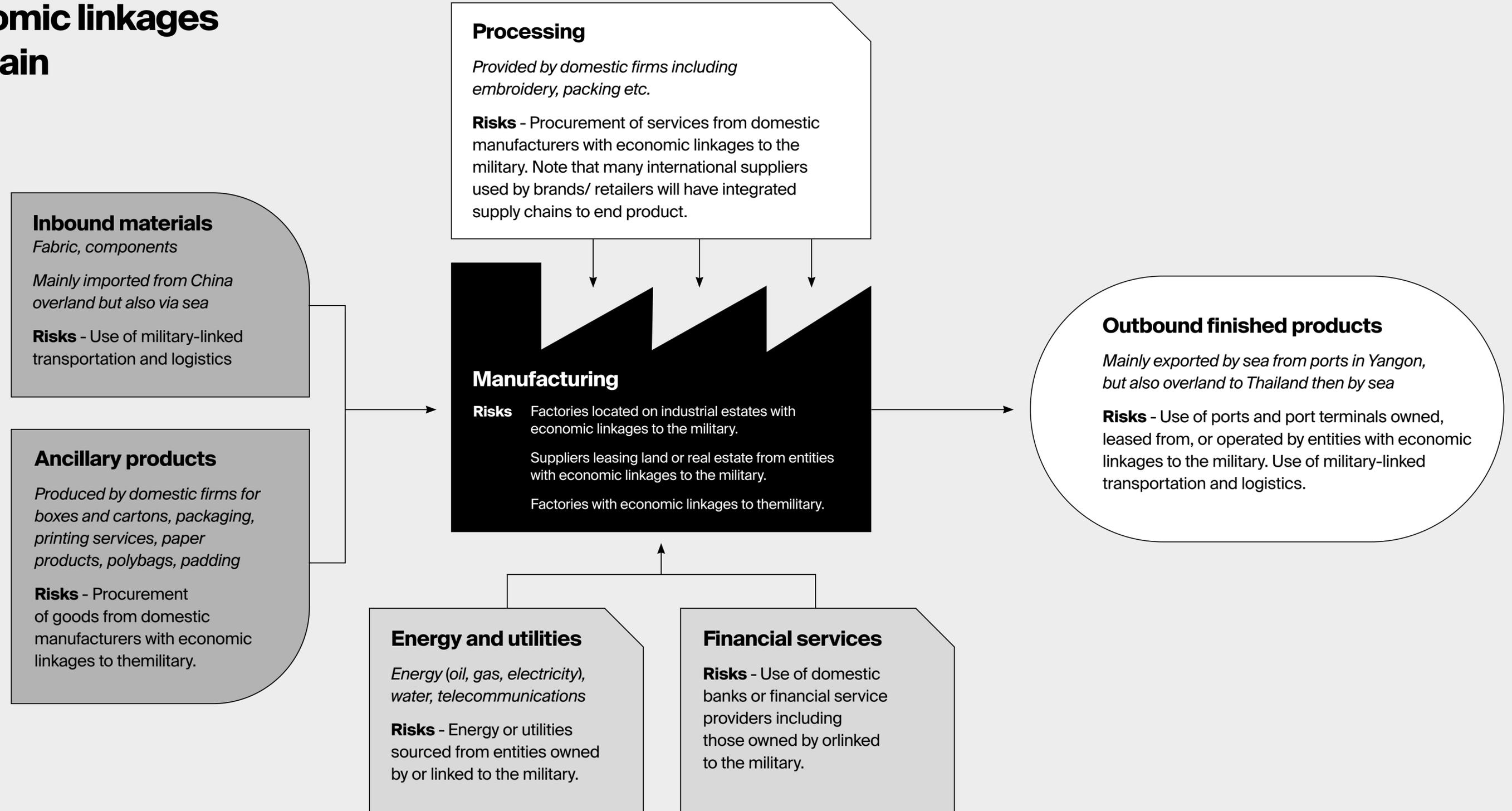
Buyers, companies in other sectors, industry bodies and governments consistently reported that due diligence on ownership was challenging. Information is sometimes unavailable and/or intentionally opaque. The Directorate of Investment and Company Administration (DICA) is the government agency, regulator and registrar of company information. The DICA MyCO website provides a company profile, company type, activity, whether the company is foreign/foreign-invested and company officers. While respondents found the company information on DICA to be generally transparent, with one interviewee having established military linkages through the listed data in the past, they were also aware of ways that information can be shielded on the website through the use of proxies. The information available on DICA also has its limitations. Not all business operations are listed on DICA; for example, there are numerous MEC

subsidiaries that are not searchable on the website. Interviewees reported the need to supplement company documentation with additional information from business networks and information from research and campaign organisations.

An interview with an international watchdog reported that much of the information related to beneficial owners within the extractives sector has since been taken down in the aftermath of the coup. A strategy seen in the extractives sector, one of the most intensively investigated, was to increase the number of associated companies while decreasing the number of directors in each company. This meant that a corporate network would have fewer overlapping company officers and would therefore be more difficult to piece together. [85]

Given the potential impact of economic sanctions, it seems unlikely that disclosure of beneficial ownership will improve or increase under the military, as it would not be in its own economic interests to do so.

Risks of economic linkages in the value chain



Sanctions regime

The EU, UK and US already had sanctions in place against certain Myanmar persons and organisations and expanded these in response to the 2021 coup. These are “smart sanctions” designed to target specific persons, groups and entities linked to the perpetration of human rights abuses in Myanmar. [37]

So far, comprehensive economic sanctions or trade embargoes have not been introduced. The governments with whom we spoke indicated that there is currently no intention to look at widespread sanctions or trade embargoes. The UN Security Council has also not issued international sanctions.

UK, EU and US sanctions

In total, across UK, US and EU sanctions, 210 individuals and 49 entities had been sanctioned at the time of this report. EU and UK sanctions can be updated as needed at any time, and in the case of Myanmar are being updated three to four times a year. US sanctions are updated at least once a month.

Financial sanctions include an obligation to freeze all the targets' funds and economic resources. Generally, an asset freeze imposes an across-the-board prohibition for the person in possession or control of the designated person's assets on transfers or dealings of any kind with regard to these assets.

The EU and UK sanctions also extend to a ban on making funds and economic resources available to a designated person. The broad term “economic resources” comprises any tangible or intangible, movable or immovable assets that are not funds but may be used to obtain funds, goods or services. The asset freeze measures may also extend to the provision of labour or services to a designated person (or entity that is “owned” or “controlled” by a designated person) if the provision of such services may enable the designated person to obtain funds, goods or services. [37]

The US sanctions go further and extend to a broader prohibition on any transactions or dealings involving a designated person (or any entity “owned” by such a person). This may also affect the winding-up of business relations with designated persons, which may require express authorisation by the US government. Sanctions may also apply beyond nationalities and place of incorporation (for example, US restrictions also apply to non-US persons with US nexus) and employees may be exposed due to nationality or place of residence. [37]

Following discussions with the European Commission, we would particularly draw buyers’ focus to the Commission’s position regarding the indirect provision of funds. This may be relevant to buyers sourcing from suppliers that are located on land owned or operated by the military. Buyers are recommended to consult the position set out by the Commission regarding the indirect provision of funds and particularly the opinion related to Ukraine. [86] [87]

We also recommend that buyers monitor the changing political environment regarding sanctions. In May 2022, the European Council published a proposal to add violations of EU sanctions to the list of “EU crimes”. The violation of EU sanctions will now be listed alongside other crimes such as terrorism, human trafficking, arms trafficking, corruption, money laundering, etc.

If this proposal is adopted, this could allow for the EU to set minimum standards for the interpretation of, and penalties for, violations of EU sanctions, which would have implications for buyers operating within Member States that are sourcing from sanction-linked entities. [88]

Sanctions breaches

The EU and UK take a risk-based approach to ensuring compliance with sanctions and allow for a due diligence defence. This means that EU and UK investors may not be held liable if they had appropriate risk management controls in place but did not know or had no reasonable cause to suspect that their actions violated sanction laws. [37]

This is broadly in line with what would be considered a due diligence defence under the OECD due diligence guidance, where a company can show that it was aware of a risk (either through its own investigations or because a risk is deemed “foreseeable”) and took appropriate measures to mitigate that risk on an ongoing basis [89]. In contrast, US sanctions apply on a strict liability basis, meaning that investors subject to US sanction obligations may be liable even if they did not know or had no reason to know they were in breach. [37]

UN international sanctions

The UN Security Council can take action to maintain or restore international peace and security under Chapter VII of the United Nations Charter. Sanctions measures, under Article 41, can range from comprehensive economic and trade sanctions to more targeted measures such as arms embargoes, travel bans, and financial or commodity restrictions. [37]

Since 1966, the Security Council has established 30 sanctions regimes in Southern Rhodesia, South Africa, the former Yugoslavia (2), Haiti, Iraq (2), Angola, Rwanda, Sierra Leone, Somalia and Eritrea, Eritrea and Ethiopia, Liberia (3), DRC, Côte d'Ivoire, Sudan, Lebanon, DPRK, Iran, Libya (2), Guinea-Bissau, CAR, Yemen, South Sudan and Mali, ISIL (Da'esh), Al-Qaida and the Taliban. [90]

In order for the UN Security Council to impose sanctions in Myanmar, it would have to pass a resolution under Chapter VII of the UN Charter. China and Russia, both close economic allies of Myanmar, are permanent members of the UN Security Council and could veto any sanctions resolution for Myanmar.

The spread of the military's economic interest

The following is a high-level list of where the military has economic interests across multiple industries and sectors, some of which raise potential red flags of linkages with the garment sector value chain.

They are denoted with an *.

Extractive and natural resources

- Metals and mining
- Agriculture, forestry and fishing

Real estate

- Real estate*
- Building and construction projects*
- Building materials*

Manufacturing

- Apparel and textiles*
- Paper products*
- Other manufacturing (including chemicals, heavy machinery, etc.)

Energy and utilities

- Water*
- Oil, gas, energy

Financial services

- Banking and finance*
- Insurance*

Information and technology

- Telecommunications*
- Media

Transport and logistics

- Ports and shipping*
- Logistics including warehouses*
- Transportation*

Other

- Food and beverages
- Consumer goods
- Trading
- Automotive
- Healthcare and pharmaceuticals
- Hotel and leisure

Bribery and corruption

Bribery and corruption are endemic in Myanmar and have increased under the military, both in opportunity and frequency. There are potential red flags in the sector both at supplier level and within the wider value chain.

Buyers in Myanmar are operating within a context where bribery and corruption are extremely high and extremely common. These risks are well documented and evidenced, [91] and systemic across both public and private sectors. Myanmar ranked in the bottom quartile of all countries [140/180] in 2020 along with countries such as Mauritania and Uzbekistan. [92]

Corruption, including bribery, generates approximately 63% of the estimated \$15 billion in annual criminal illicit proceedings in the country. [83] Facilitation payments, including those to low-level public officials, referred to as “tea money” or “table money”, are common and made to expedite or facilitate a procedure or process to which the user is already entitled.

There are no aggregate data available on cases of bribery and corruption in the sector, which is a limiting factor in being able

to address bribery and corruption as well as monitor shifts and common hotspots. Where data do exist, they are held by individual buyers collected through their own company compliance processes.

Pressure points for bribery and corruption have increased since the coup and facilitation payments to public officials could now constitute payments to the military.

All buyers operating in Myanmar can expect to see an increase in bribery and corruption under the military at both an institutional and individual level, driven by the military’s increased power, the country’s economic decline and the impact of sanctions.

The military governs all legislative, executive and judicial powers. It has appointed military personnel in key posts including District and Township and Ward Administrators, who oversee and administer the governance of a local area. Most local governance services are under the Township Administration, which executes functions on behalf of the government, now the military. [93] The Martial Law declared by the military in six townships in Yangon, which include export processing zones, means that further administrative and judicial powers have been transferred to the military. *See Section: Situational context of human rights.*

The military is also reported to have been unable to pay dividends to military personnel including its battalions, which we would expect to result in increased rent-seeking opportunities. [94]

These all give rise to increased pressure points for bribery and corruption. For example:

- Increased restrictions imposed by the military on businesses, such as import permits and clearance to access foreign currencies, can result in increased potential opportunities for public officials and the military to extort bribes.
- Companies paying for operational licences, construction permits and access to services must now engage with military-appointed officials. Facilitation payments – including those to low-level military officials – could now constitute payments to the military.
- Military and police roadblocks and checkpoints have increased and individuals passing through roadblocks may be expected to pay bribes in order to pass. Companies, service providers, civil society and workers reported having to pay to get through roadblocks to and from the workplace.

Industries or sectors with a high risk of corruption

The specific sectors below have been extensively investigated and documented as having extremely high and systemic levels of bribery and corruption. We would expect to see this based on the heavy involvement of state and military entities and the high transactional value in these sectors. [95] However, all sectors operating in Myanmar can expect to experience bribery and corruption given the endemic and systemic nature of these risks.

- Metals and mining
- Oil, gas, energy
- Timber
- Real estate (see above for further details)
- Transport and logistics (see above for further details)
- Arms and military equipment

Public services with a high risk of corruption

- Police
- Judicial system
- Public services
- Land administration
- Tax administration
- Customs administration

The threat of military violence means that people are more afraid to push back on attempted bribery and corruption

International NGOs reported that, under the previous government, employees from international companies had received training on anti-bribery and corruption and in some cases were able to push back on attempted bribery. This was now felt to be dangerous, with the NGO stating: “It doesn’t work as well anymore when someone is standing with a gun.” Another said, “There is a fear that you can’t push back. It’s a much more unpredictable environment, and you want to minimise your interaction as much as possible with the government.”

Under international instruments, individuals can pay bribes and facilitation payments if there are genuine threats to life, limb or liberty. [96]

The prevailing laws on bribery and corruption have not been changed by the military. Enforcement is weak, apart from when it is used as a political tool by the military.

The legal framework concerning bribery, extortion and facilitation payments has not changed under the military. The Penal Code (186) as amended (2016) and the Anti-Corruption Law (2013) as amended (2018) are the main laws governing anti-bribery and anti-corruption laws in Myanmar. Although facilitation payments are not specifically defined by the Penal Code or the Anti-Corruption Law, payments for facilitation could be interpreted as gratification under the Penal Code and the broad definition of corruption under the Anti-Corruption Law. [37]

Combatting bribery and corruption was a priority for the previous government. Anti-corruption efforts were gaining traction within the country, in spite of the fact that the government only began ramping up the fight against corruption in 2018. [97] Since the coup, the Anti-Corruption Law has been used against members of the previous government, including Aung San Suu Kyi and several former ministers, and against the private sector, including business tycoon U Chit Khine, Chairman of the conglomerate Eden Group of Companies.

Key bribery and corruption linkages to the garment sector

Our research identified potential risks where bribery is reported to be occurring between suppliers and the military. In some cases, this is linked to labour and human rights abuses.

Suppliers did not report bribery taking place and likewise all the buyers that we asked reported that they were not aware of any bribery taking place at supplier level. There were examples and instances of bribery and corruption in the sector that were raised through interviews with other stakeholders and through worker surveys and human rights cases.

- Interviewees from service providers and business organisations reported that corruption was a significant issue between suppliers and local government and that facilitation payments were common. When asked who in the factory would have this relationship with the military or administration, workers' rights organisations said this would normally be the Human Resources manager, or where factories have recruited former and retired civil servants or officials to engage on their behalf. While not employed by the factory, these brokers were seen as playing a key role, having personal connections to be able to "grease the wheels" and know how the system works. Brokers are also common in the jade sector, one of Myanmar's most corrupt sectors. [85]

- Business and service providers reported having to pay to get through roadblocks to and from the workplace in interviews with us.
- Suppliers were alleged to have made payments to the military to be able to bypass military rules. For example, payments made for suppliers to operate factories during curfew and then for workers to be able to travel home during curfew at the end of a shift. Often this means that workers' safety is at risk when leaving the factory, and workers have reported staying in the factory overnight to avoid having to go home during the curfew. Workers who complained to the factory about overtime were told to "complain to whomever they want" as the factory "had given money to a military officer".
- Suppliers were alleged to have made payments to the military in order to threaten workers and influence the outcomes of labour disputes, signifying deeper collusion between the military and suppliers.
- In human rights cases, workers reported that salaries equivalent to two days' wages were cut in order to cover the costs of a factory having to pay bribes to the military, shortly after the military had visited a factory.

Workers are also experiencing bribery and corruption inside and outside the workplace.

- Almost 93% (2523 of 2722 workers) of workers interviewed reported requiring recruitment recommendation letters as part of the recruitment process. These are typically obtained by making facilitation payments to local officials (ward administrators, military, police). Other payments are required for labour cards or to simply “get a job”. Payments ranged from 200 – 300,000 Kyat, with a median payment of 6500 Kyat. The industry average wage is 250,000 Kyat. One worker reported: “The resident recommendation cost me 1000 Kyat, the police recommendation and labour card cost me 500 Kyat each when I applied for the job. I heard that the police recommendation has increased to 3000 Kyat. We just pay what they ask us. No argument made.”
- A very small number of workers (less than 1%) report making payments to factory human resources departments where departments “offered” a service of providing workers with all the necessary recommendation letters and documents. Payments ranged from 2500 – 10,000 Kyat, with a median payment of 4000 Kyat. A very small number of payments (less than 1%) were made in the factory to secure a promotion at work. Payments ranged from 500 – 100,000 Kyat, with a median payment of 27,500 Kyat.
- 94% (624 of 661) of workers interviewed reported paying in cash. In a few cases, workers reported that payments were not cash but gifts. Workers did not provide further information on what these gifts were.
- Often workers do not view these facilitation payments as bribery and corruption – a much lower number of workers (22% or 661 of 3002 workers) reported witnessing and experiencing bribery and corruption, indicating that facilitation payments are viewed as business as usual and customary practices and not as illicit and illegal behaviour.
- Workers did not report having to pay the military to get through roadblocks or checkpoints to and from the workplace. More often phones and ID were checked. Drivers of ferries (buses to and from the workplace) were reported by suppliers to have paid cash to the military to get through.
- Within the wider value chain, trade unions told us that crew on international shipping lines out of Myanmar have to pay recruitment fees to brokers on top of those already paid by their employer.

Within the wider value chain of the garment sector, our findings pointed to significant levels of bribery and corruption in two key areas: real estate and construction, and transport and logistics.

Real estate and construction

- Real estate and building and construction projects have been identified as a primary industry of economic interest for the military. [83]
- In Myanmar, property rights are unprotected and often disputed, and historically there have been widespread military expropriations and land grabs, forced evictions and the displacement of people within the country. These risks are likely to increase with the return of the military regime, as the military has a vast portfolio within the real estate sector as an owner, lessor and seller of properties within the country. [83]
- Myanmar also lacks government regulation and oversight, as well as a strong banking and financial sector to adequately monitor for money laundering risks in the real

estate, development and building and construction sectors. [83]

- Interviews conducted with stakeholders did not produce any findings related to bribery and corruption within real estate and building and construction. However, we cannot exclude the risk that bribery and corruption occur when suppliers are leasing land, gaining operating licences or construction permits, and constructing or rebuilding factories. The risk of corruption is considered to be high in these areas. [91]

Transport and logistics

- The sector in Myanmar relies heavily on the import of fabrics and components and the export of finished goods. Imports are mainly overland, through established routes from China. Exports are mainly by shipping containers from ports located in Yangon, with some suppliers also using overland routes to Thailand and then shipping overseas from Thai ports. Air freight is rarely used.

- The interviewees to whom we spoke from within the transport and logistics industry all acknowledged the high risk of bribery and corruption that they faced. Corruption within shipping can take the form of routine corruption to expedite or facilitate a process or procedure, fraudulent corruption to bypass a procedure entirely, and criminal corruption to smuggle illegal substances into a country. [98] A freight forwarder reported that they had implemented measures to address bribery and corruption including requiring employees to report incidents of attempted bribery. These were more common for new vessels and new captains. Refusals to pay bribes could result in delays to shipments. One interviewee, a former ship captain, reported that customs and port authorities had requested facilitation payment in drums of diesel rather than cash. In their experience, bribery and corruption was more common for inbound goods than export, which would also tally with the higher amount of revenue from trade misinvoicing gained through illicit inflows compared to outflows.
- Transport and logistics experts in Myanmar reported that risks of bribery and corruption exist in both sea trade and overland routes. However, the risks in sea trade are more “institutionalised” and “predictable in terms of who you have to pay, and how much you have to pay”. Overland routes are much more unpredictable. There are multiple actors involved, ranging from the military, border armed forces, the PDF and ethnic armed groups, operating official and unofficial roadblocks and checkpoints. This is an area that is difficult to research and extremely fluid and dynamic. An expert on illicit trade in Myanmar reported the use of unofficial trade routes that are often used for smuggling goods across the border.
- Customs administration is a red flag for bribery and corruption both in overland and oversea routes. Bribery can include facilitation payments to get an import licence, avoid paying customs duties and avoid regulations, and practices such as trade misinvoicing. Trade misinvoicing is a method for moving money illicitly across borders that involves the deliberate falsification of the value, volume and/or type of commodity. Figures up to 2013 show that trade misinvoicing made up 89.2% of illicit inflows and 59.6% of total illicit outflows. Outflows and inflows of this

magnitude are very high compared to those to and from most other developing countries. [99] An expert on anti-money laundering and illicit trade flows working on Myanmar told us that Myanmar was experiencing a “perfect storm” for corruption due to the coup, the pandemic and infrastructure projects opening up new trade routes, including the Mekong Economic Corridor and the Belt and Road Initiative.

- In ports, facilitation payments to port officials such as the Harbour Master may also be required to enter a port, usually before inspection of cargo, and piloting, where personnel bring a ship into port safely. Ports are largely controlled by the government and are administered by a single port authority (the Myanmar Port Authority). [100] This includes those that are owned and operated by the military, operated by private companies affiliated with the military, or operated by private companies.

Implications

- **Buyers sourcing from Myanmar must comply with sanctions regimes and meet expectations under international due diligence instruments. Specifically, buyers need to be looking at beneficial ownership and bribery of military officials.**
- **Under the OECD Minerals Guidance, [18] companies and their business relationships should not be directly supporting perpetrators of gross human rights abuses. We interpret this to include the direct provision of funds through beneficial ownership. We have outlined the challenges associated with conducting due diligence on beneficial ownership and the recommendation is that buyers utilise the full range of resources available to them. Buyers should also note the dynamic nature of shifts in company ownership in Myanmar and conduct their due diligence on a regular and continual basis and ensure that their due diligence covers the full value chain.**
- **Sanctions risks would need to be determined through specific legal guidance and guidance from the relevant national authority responsible for implementation of the national sanctions. In the EU, this would be the national competent authority at Member State level. Following discussions with the European Commission, we would particularly draw buyers' focus to the Commission's position regarding the indirect provision of funds. This may be relevant to buyers sourcing from suppliers that are located on land owned or operated by the military. Buyers are recommended to consult the position set out by the Commission regarding the indirect provision of funds and particularly the opinion related to Ukraine. [86] [87]**

- **Buyers should monitor the changing political environment regarding sanctions. In May 2022, the European Council published a proposal to add violations of EU sanctions to the list of “EU crimes”. The violation of EU sanctions will now be listed alongside other crimes such as terrorism, human trafficking, arms trafficking, corruption, money laundering, etc. If this proposal is adopted, this could allow for the EU to set minimum standards for the interpretation of, and penalties for, violations of EU sanctions, which would have implications for buyers operating within Member States that are sourcing from sanction-linked entities. [88]**
- **The risk of bribery and corruption is endemic and foreseeable. This risk is heightened because bribes and facilitation payments are being paid directly to the military. Bribery and corruption is an RBC risk covered by the OECD Guidelines for Multinational Enterprises and the OECD Anti-Bribery Convention and 2009 Recommendation. Buyers have a responsibility to seek to prevent and mitigate corruption, including by their business partners, suppliers, agents, etc. Buyers can defer to extensive technical guidance on how to address bribery and corruption in global supply chains, including by the OECD.**
- **As noted above, companies and their business relationships should not be directly supporting the military, and we see this as including the payment of bribes to the military.**
- **Wherever human rights abuses caused or contributed to by the military are linked to buyers’ products through their value chain, this engages buyers’ responsibility to respect human rights under the UNGPs and OECD Guidelines. This includes situations where bribery is occurring between suppliers and the military to influence the outcome of labour disputes, leading to impacts on workers in buyers’ supply chains.**

Socio-economic impacts of a sector withdrawal

We have estimated the short- and medium-term economic and social impacts resulting from a withdrawal of European and US buyers in the garment sector from Myanmar. The longer-term impacts cannot be determined because of the looming economic crisis and the uncertainty of the military's actions.

In the short and medium term, we anticipate that an exit of the European and US garment sector will have limited macroeconomic impact due to the sector's relative economic isolation. However, there would be impacts on workers, with 320,000 workers losing employment and/or seeing a reduction in their incomes.

We estimate that 23,000 people would be at risk of destitution. This would include both a sub-set of workers and their dependents.

Myanmar's economy is on a strong downward trend. This is due to deep systemic economic issues that exceed the scope of the garment sector. Myanmar's economy will not be dramatically changed by the garment sector's exit or mitigated if the garment sector stays.

Macro-economic impacts

An exit of the European and US buyers from Myanmar's garment sector will have limited macroeconomic impact. The Cut-Make-Pack model on which the sector operates isolates it macroeconomically from the rest of the economy. This means that an exit of the sector would not have cumulative macroeconomic shocks in Myanmar.

Sectoral background

In 2021 there were an estimated 750 factories, around 600 of which were members of the Myanmar Garment Manufacturers Association (MGMA). [80]

The sector overwhelmingly relies on the Cut-Make-Pack (CMP) business model. All raw material is imported, mainly overland from China. Myanmar is the world's largest importer of Heavy Synthetic Cotton Fabrics such as polyester and cotton blends. [101] Garment exports made up 20.2% of all exports from Myanmar in 2020. [102] Factories producing for European buyers are predominantly large factories that operate either through joint venture agreements between local and foreign companies or factories that are wholly owned by foreign companies.

Myanmar's garment sector was heavily impacted by the double shocks of the pandemic and the coup. It has shown signs of recovery and is estimated to be operating at 70-80% capacity according to MGMA. [51] It has been less impacted by the imposition of recent trade licence restrictions, which have not applied to CMP imported inputs, and has benefitted from the kyat depreciations throughout 2021 and 2022. [49] However, the number of factories and available jobs has drastically decreased, meaning that jobs are scarce and competition for jobs is high.

In 2019, the garment sector employed over 700,000 workers across over 700 factories, many of which are concentrated around Yangon. An estimated 150,000 - 200,000 jobs have been lost in the sector since 2020, [50] largely due to the COVID-19 pandemic and the global supply chain crisis, followed by the coup and the economic impact and uncertainty this has created.

Despite the severe downturn of the last two years, the garment industry still employed around 480,000 workers in September 2021. ^{viii} [80] It remains a source of opportunity for formal employment particularly for rural-to-urban migrant women with incomplete secondary education.

An exit of European buyers sourcing from the garment sector would result in an estimated 14% drop in Myanmar's total exports but would have limited macroeconomic impact.

We estimate that if European buyers stop sourcing garments from Myanmar, then the value of Myanmar's exports would experience a permanent drop of about 14% from its current level in the first half of 2022. If the movement gains traction with some US buyers, we estimate that this figure could rise to 18%.The

latest UN Comtrade^{ix} estimates show that Western countries accounted for over 65% of Myanmar's total garment exports in 2020, more than two thirds of which were from European buyers. [102] Korea and Japan represented a further 30%. [102] These figures date from 2020 and may no longer be accurate due to shifts resulting from COVID-19 and the current political instability. Comprehensive and time-consistent data are lacking but partial data suggest that the share of European partners has already decreased during the partial recovery.

The sector in Myanmar overwhelmingly relies on the Cut-Make-Pack (CMP) business model. This means that the domestic supply of intermediary goods and services is minimal and related mainly to the sector's ancillary needs. Consequently, ripple effects from what happens in the garment sector are much more limited than might be suggested by the size and strategic importance of garments as a share of GDP and exports.

^{viii} This refers to the garment sector as a sub-sector of the garment and textile sector. Footwear is not in scope.

^{ix} The UN Comtrade is a repository of official international trade statistics and relevant analytical tables.

Financially, European buyers exiting Myanmar would have a limited impact on the military's access to sources of foreign currency. As the sector relies on imports of raw materials to re-export assembled garments, the net reduction in foreign currency would only be the difference between the value of exports and corresponding imports. In 2020, imports of textiles (mainly from China) represented US\$ 2.1 billion, more than a third of the corresponding value of re-exported garments (US\$ 5.6 billion). [102]

The downturn in garment exports would impact GDP growth and exports. However, the cumulative macroeconomic shock would probably remain limited at most to the garment sector without major cumulative ripple effects.

Suppliers reported that if their European buyers exit, they will likewise exit. Suppliers are unable to replace orders from European buyers with orders from other non-European markets.

Economically and financially, the punitive impact of buyers exiting Myanmar would mainly be concentrated on factories specialised in exports to Western clients.

All the suppliers that we interviewed told us that they would not be able to replace orders from European buyers with those from other regions and countries, e.g. Korea and Japan.

Regional markets are markedly different and in Myanmar these markets are already served by established suppliers. Suppliers told us that they would not be able to pivot from serving one key market to another.

Most suppliers said that they would therefore exit Myanmar if there were a significant exit of European buyers. In some limited cases, suppliers would stay, but this would require them to shrink and scale down operations. Suppliers also reported that they would leave if the EU's Everything But Arms preferential trade scheme were rescinded, although the EU has indicated that it is not seeking to do this at this time.

The downward trend in the Myanmar economy will not be determined by a potential exit of European buyers but by stronger systemic issues, already in effect.

Myanmar's economy is on a downward trajectory, driven by inefficient allocation of capital and a fall in private investment. Current and future trends are determined by stronger systemic economic risks than a potential exit by European buyers.

The economy has contracted sharply since early 2021 and instability throughout 2021 and 2022 has significantly impeded recovery from this contraction. The World Bank Group has refused to publish GDP growth projections for 2022 and 2023. [103] According to the World Bank's latest statistics, 2021 saw an 18% contraction in GDP with only 3% recovery in 2022, leaving the country's GDP per capita still 15% below the level of 2019. [49]

Among the main factors for the poor growth performance are recurrent disruptions in electricity supply, logistics and finance, a sharp rise in the price of imported products, political instability and violence, recurrent outbreaks of COVID-19, import restrictions, currency depreciation, actions taken by the Central Bank to restrict the use of US dollars by companies and state bodies, and deterioration of public accounts. [104] More fundamentally, and beyond these short-term economic risks,

the country's long-term growth is significantly constrained by other factors including a fall in private investments, freezes in infrastructure projects and a highly inefficient allocation of capital.

An exit by European buyers sourcing garments from Myanmar would play a limited role in defining the overall national economic trajectory, even taking into account the cumulative macroeconomic shock driven by a 14% decrease in national exports.

In short, Myanmar's economy is declining rapidly and whether European buyers stay or go will not change this trajectory.

Social impacts

An exit by European buyers would primarily translate to social costs for workers and their dependents, leading to increased poverty, food insecurity, humanitarian consequences in rural areas and migration.

An estimated 320,000 workers would lose employment and/or have reduced incomes if European buyers withdrew from Myanmar.

We estimate that 320,000 workers would be directly impacted, translating to decreased incomes at all levels of workers. This is in line with the observed impacts during the recent economic shocks following the pandemic and the coup. According to our calculations, three channels are expected to be predominant, as they were during the COVID-19 crisis:

- Job losses, with about 2/3 temporary and 1/3 permanent ^x
- A decrease in working hours, especially in overtime hours
- Unemployed workers switching to lower-paid jobs, typically on a self-employed basis.

An estimated 23,000 people would be at risk of destitution, “falling off the cliff” into poverty with persistently damaged livelihood prospects.

The COVID-19 crisis has already tested the resilience of garment sector workers to long or repeated spells of unemployment. With an exit of European buyers, an estimated 23,000 people would be at risk of destitution, “falling off the cliff” into poverty with long-term effects

^x This is based on a comprehensive analysis of past examples in other countries, such as socio-economic case studies, past examples during the COVID-19 crisis, relative poverty rates, indebtedness, etc.

persistently damaging their livelihood prospects. This includes a portion of the 320,000 workers who would lose employment and/or have reduced incomes, as well as family members and dependents. Of these 23,000 people, we estimate that about two thirds are situated in the Yangon region and a third in rural areas.

The social impacts of the loss of jobs and income would translate to increased poverty, lost opportunities mainly for young women, revenue loss for dependent rural areas and increased pressure on workers to migrate.

Compounded social costs are to be expected, as an estimated two million people are directly supported by garment workers' income. As primary breadwinners or supplemental earners, garment workers support households living with them in urban areas. They also send a large share of earnings as remittances to relatives in rural households. A survey by the ILO found that the vast majority of workers (86%) sent a very large part of their income to relatives before the COVID-19 crisis, equating to at least 50% of their earnings. [105]

According to an EU-CESD textile and garment worker survey (2020), remittances by internal migrants who were still employed declined by 35%, while remittances by respondents who were still unemployed during the survey declined by 51%

between March and August 2020, compared to the same period in 2019. [106]

The consequences for dependent relatives are particularly strong for children, both when they are members of the worker's household in Yangon [107] and when they are part of the extended family in the region of origin. Increased exposure to poverty translates notably into nutrition insecurity, children dropping out of school and being forced into labour or early marriage. [108] It is likely that any reduction in remittances would have an impact on child poverty in Myanmar. Children's exposure to poverty goes beyond issues of consumption and income. Such consequences are long-lasting with developmental, cognitive, emotional and health dimensions.

There would be limited opportunities for unemployed workers from the garment sector to enter a different sector.

During the crisis of 2021, workers who lost their jobs in the garment sector continued to seek new opportunities within the sector for an extended period of time. Only a fraction of workers chose to return to rural areas after losing a job and only 7% of workers found a job in another sector. [50] [109]

This was the result of several factors:

- Workers in the garment sector have specific skills that are not directly transferrable to another sector
- Young female workers had migrated domestically to industrial zones in the Yangon region where most factories are situated and were geographically constrained as to where they could find work
- Earning prospects in other manufacturing sectors are lower.

An exit of European buyers could push workers to migrate internationally to countries with garment manufacturing sectors.

There is a long history of economic migration from Myanmar to neighbouring countries including Thailand, Malaysia, China and Singapore. Figures from the ILO show that most migrants continued to use irregular migration channels, rather than formal processes. [110]

Thailand's bilateral MoU with Myanmar reportedly aims to place 150,000 workers from Myanmar to address its labour shortage in sectors including the garment and footwear industry. The corridor is a common route for irregular migration using brokers and traffickers. [111]

Women's participation in the export-oriented segment of the garment sector has been a major driver for women's empowerment and an exit of European buyers would be felt most strongly by women.

The garment industry provides important opportunities in a national context where historically inequalities in gender roles and relations have long contributed to poverty traps for underprivileged households. [112] Women's disempowerment is pervasive nationally and the situation is deteriorating. The country's rank in the UN's Gender Equality Index fell from 80 in 2015 to 118 in 2020, out of 189 countries. [71]

Although at present workers in the sector are not among the most vulnerable, the typical profile of women migrants coming to Yangon to work in the garment industry precisely fits the demographics of the most disempowered women in Myanmar: [113] rural, poor and with lower education attainment. [114] About 90% of employees in the sector are female, and it is expected that the impact of an exit would be felt most strongly by women in this demographic. Export-orientated factories in the garment sector represent a rare opportunity for women with an incomplete education to access formal employment, relative job stability, skills acquisition and benefits associated with formal employment.

It was outside the scope of this assessment to determine the impact on labour rights risks, e.g. forced labour and precarious work, in the sector if there is a sectoral withdrawal.

In interviews, suppliers indicated that if European buyers exit, they will likewise exit. Suppliers are unable to replace orders from European buyers with other non-European markets. Consequently, an exit of European buyers would not result in capacity going to other buyers with lower human rights standards within the same factories in the medium term.

Beyond this, we cannot anticipate whether there would be any implications on the labour and human rights conditions in the domestic market or sector exporting to non-European buyers. This was outside the scope of the assessment.

Due diligence implications

The sector is operating in an unprecedented context in Myanmar. The conflict context makes effective due diligence on severe human rights impacts very difficult, and impossible for freedom of association.

For the remaining human rights risks, there are major challenges that buyers would need to be able to account for in order to carry out due diligence that is effective and legal.

The following conclusions do not provide an ultimate “stay” or “go” judgement. They provide considerations in light of international due diligence instruments.

Ultimately the decision to stay engaged in Myanmar or disengage responsibly will be the responsibility of each individual board. Boards need to be able to justify their decision within the framework of OECD and UNGP due diligence expectations.

The sector in Myanmar faces four different categories of severe human rights impacts: (i) severe impacts that the sector cannot address; (ii) severe impacts that the sector can potentially address; (iii) impacts that buyers may be contributing to^{xi} and (iv) impacts that will result from a sectoral withdrawal.

The first category of severe impacts, and the international due diligence instruments relating thereto, is the most significant one for buyers to understand when considering whether to continue operating in Myanmar.

Our findings indicate that the sector is linked to severe human rights impacts that fall under this first category of impacts in Myanmar.

We have found that freedom of association and collective bargaining cannot be safely respected in Myanmar either through trade unions or other democratically elected workers' organisations. We expect to see resumed military violence against workers if there is increased trade union activity or worker organisation. Buyers do not hold any leverage over the military to mitigate severe human rights threats to trade unions and workers' representatives.

^{xi} Impacts that a buyer may be contributing to could also fall under categories i or ii.

^{xii} The commentary to UNGP 19 states that: "There are situations in which the enterprise lacks the leverage to prevent or mitigate adverse impacts and is unable to increase its leverage. Here, the enterprise should consider ending the relationship, taking into account credible assessments

Forced labour risks would also fall under this category if buyers are unable to effectively overcome the challenges of addressing forced labour with weakened RBC infrastructure. We predict that direct contributions to the military through beneficial ownership and bribery may also fall under this category due to the lack of leverage that buyers have over the military.

For this first category of impacts, buyers are expected to consider disengagement, taking into account credible assessments of the potential adverse human rights impacts of doing so and whether the business relationship is crucial.^{xii}

Given the severity of the impacts concerned, this implies that buyers should disengage unless they cannot do so responsibly or unless the relationship is crucial to their business. See *Annex IV – Leverage decision tree, Shift*.

The UNGPs also state that the more severe the abuse, the more quickly the buyer will need to see change before it takes a decision on whether it should end the relationship. [58] This assessment has only looked at severe human rights impacts and so we would consider all findings to be within this scope.

In interviews with buyers and suppliers, we did not hear that Myanmar was crucial to a buyer's business.

A business relationship is crucial if it provides a product that is essential to the buyer's business and there is no reasonable alternative. [58] For example, a company's business partner might be considered "crucial" if it provides a rare earth mineral critical to the company's core product that is only available from a small group of suppliers operating in a high-risk context. [115]

There are specific factors in Myanmar that make it advantageous for the garment sector to produce there (e.g. access to a skilled and available labour market and preferential trade tariffs). However, the garment sector could reasonably be said to have access to these factors in other production regions, meaning that Myanmar is not considered crucial to the garment sector. There may be individual exceptions to this.

This means that the most important determinant for buyers will be evaluating whether a responsible exit is possible in light of the human rights impacts of disengagement.

There will be human rights impacts of a sectoral withdrawal. An estimated 320,000 workers would lose employment and/or have reduced incomes if European buyers withdrew from Myanmar. An estimated 23,000 people would be at risk of destitution,

"falling off the cliff" into poverty with persistently damaged livelihood prospects. This includes both a sub-set of workers and their dependents. At an individual buyer level, the impact of withdrawal will vary depending on a buyer's sourcing footprint.

A responsible exit would require buyers to seek to mitigate the impact of withdrawal on workers and suppliers to the extent possible.

For example, this may include negotiating compensation for workers with a focus on those who are most vulnerable to mitigate the risk of workers falling into destitution. It may also mean a strong advocacy campaign with the EU, UK and other Western governments for humanitarian aid to be given to workers immediately and to workers' rights organisations and NGOs.

The OECD Garment and Footwear Due Diligence Guidance includes some guidance on what should be considered in a responsible exit, including that buyers should:

- "Comply with national laws, international labour standards and the terms of collective bargaining agreements
- Provide detailed information supporting the business decision to management and to the union, where one exists
- Give the supplier sufficient notice of the ending of the business relationship." [116]

It was outside the scope of this research to determine the full scope of a responsible exit and how best it can be accomplished. We would strongly advise that if buyers disengage, they should negotiate with trade unions and suppliers on what constitutes a responsible exit. This includes mitigating the impacts on workers and suppliers.

If buyers do choose to stay engaged in Myanmar, they will need to be able to demonstrate their ongoing efforts to mitigate human rights impacts, to ensure that they are not contributing to harms and be prepared to accept any consequences – reputational, financial or legal – of the continuing connection. ^{xiii} [58]

Freedom of association is not feasible in Myanmar. If buyers stay engaged in Myanmar they will need to communicate and justify their decision and approach concerning freedom of association.

For other human rights impacts and relevant economic linkages to the military, buyers will need to be able to demonstrate and justify that they are implementing robust programming to effectively and legally address these risks, that they can do so despite the conflict context and weakened RBC infrastructure, and that they are not putting their own staff, suppliers or workers at further risk to their security.

Buyers will also need to ensure that their purchasing practices are not contributing to forced labour outcomes.

The decision to stay engaged in Myanmar or disengage responsibly will ultimately be the responsibility of each individual board.

Buyers should report formally on how they are addressing severe human rights impacts in Myanmar. Communications should be accessible, provide sufficient information to evaluate the adequacy of their response, and in turn not pose risks to affected stakeholders, personnel or to legitimate requirements of commercial confidentiality. ^{xiv}

Given the worsening economic and security context, if buyers decide to remain engaged in Myanmar, they should be prepared for a responsible exit in the event that they are forced to leave in the future.

Myanmar’s economy is on a strong downward trend. This is due to deep systemic economic issues that are broader than the scope of the garment sector. If buyers stay, they should recognise that this downward spiral and/or the security context may force them to withdraw in the future. Boards should be prepared for such a response in order to mitigate impacts on workers and suppliers to the extent feasible.

^{xiii} The commentary to UNGP 19 states that: “In any case, for as long as the abuse continues and the enterprise remains in the relationship, it should be able to demonstrate its own ongoing efforts to mitigate the impact and be prepared to accept any consequences – reputational, financial or legal – of the continuing connection.”

^{xiv} UNGP 21 states that: “Business enterprises whose operations or operating contexts pose risks of severe human rights impacts should report formally on how they address them. In all instances, communications should: (a) Be of a form and frequency that reflect an enterprise’s human rights impacts and that are accessible to its intended audiences; (b) Provide information that is sufficient to evaluate the adequacy of an enterprise’s response to the particular human rights impact involved; (c) In turn not pose risks to affected stakeholders, personnel or to legitimate requirements of commercial confidentiality.”

Annex

I. Methodology

Socio-economic analysis

Socio-economic analysis on the garment sector was conducted by an external expert. It considered the current contribution of the export-oriented garment sector in Myanmar and the impact specifically on workers within the sector and their dependents if buyers from the UK, EU and US withdraw from Myanmar.

General approach

Estimates were calculated by first assessing the economic impact of the negative shock of demand on the sector, responses from the factories in the relevant markets (respectively: garment exported to EU buyers, garment exported to Western buyers, and export-oriented garment), then deriving the impact of business disruptions on workers and their dependents, allowing for behavioural response on their part (e.g. adjusting expenses, looking for another job, migrating).

Estimates were first calibrated on the basis of the best available data and observed impacts of similar historical experiences, both national (during US sanctions in the 2000s, during disruptions due to the first waves of the COVID-19 pandemic, and in the first rounds of reactions in the months following the coup) and international (negative demand shocks over recent years in the export-oriented garment sectors in Asian and African countries).

Then, estimates were refined by adjusting for a series of modifying factors: macroeconomic (e.g. trends in GDP, inflation, indebtedness), sectoral (composition of demand and supply, tension on the local labour market and the international market for garment sourcing), as well as social and demographic (composition of workforce, situation of their dependents, their financial status and other factors influencing their behavioural response).

Economic feedback loops were considered, including wage adjustments, impact on public expenses, renegotiations of contracts between international clients and local factories.

As a means of testing robustness, several approaches were followed in parallel, based on various past experiences taken as reference points and using or combining alternative sources of data.

The various estimates obtained were coherent, of the same order of magnitude and in compatible ranges. The results presented are the maximum likelihood point estimates, where we found the highest level of robustness and confidence.

Data sources

Quantitative estimates were based on primary data collected through a commissioned survey as well as various secondary data collected either by desk research or during interviews with international and local stakeholders.

Public data used derived from international agencies (UN Comtrade, WTO, World Bank, IMF), domestic ministerial sources, peer-reviewed articles about domestic and international case studies and assessments of past experiences. Non-public data derived from various surveys conducted in the sector by local stakeholders and international actors. Anecdotal evidence derived from interviews has been used as little as possible.

The scarcity of data and their frequent lack of quality, comprehensiveness and comparability represented a major challenge, which we have overcome as much as possible by cross-referencing sources and combining data of different types (economic, financial, social) and in various ways.

There are limitations to socio-economic analysis

Labour and economic activity: Data produced by Myanmar suffer from quality and availability issues. Sectoral bodies and commercial counterparts produce the most reliable sources but suffer from issues of comparability and consistency. Data on sub-groups of workers are derived from surveys, which makes comparison with historical episodes or experiences in other countries difficult.

Trade: WTO statistics are the most reliable, running through to 2021, although no data for Japan are available for that year. UN Comtrade data are not usable, as structural breaks appear in the time series for the garment sector, especially with China flows.

Macroeconomy and finance: Indirect data and estimations produced by international bodies allow for trend analysis. Disruptions after COVID-19 and the military coup reduce the robustness of such estimates.

Worker interviews

Due Diligence Design's findings were complemented by worker interviews conducted by Impactt. Impactt's research was broken into phrases (i) initial scoping, (ii) tool development and worker interviewer training, (iii) stakeholder engagement and fieldwork (pilot and roll-out).

Scoping, tool development and training

Impactt reviewed the research framework questions set out in the initial fact-finding to identify relevant questions where workers could provide testimony. On the basis of the questions identified, Impactt designed 105 questions for the semi-structured questionnaire. As part of Impactt's risk assessment, the questions were vetted by Impactt's worker interviewers to confirm that the questionnaire did not include any questions that would raise a security concern. The questionnaire was also vetted by Shift and Due Diligence Design to ensure that the question framing covered the research framework objectives.

Impactt worked with a Myanmar-based survey company that conducted the semi-structured questionnaire, while Impactt's own team of associates asked the more in-depth qualitative questions to a smaller sample.

Impactt delivered a two-day technical training course to the survey partner and Impactt associates, covering international labour standards (including forced labour indicators), escalation procedures and questionnaire positioning.

Data set

Workers were identified by two main routes:

- From buyers introducing Impactt to factories from which they source
- From an existing and vetted database of workers (Note that workers had already provided consent to be contacted).

Prioritising the safety of informants in Myanmar

The safety of workers was a top priority. Impactt outlined the procedures in place to ensure worker safety, including vetting any factories put forward to double check that there could be no risk of engaging with factories with potential connections to the Myanmar military. In addition, Impactt worked closely with the supporting buyers to ensure that the factories understood that this was not an audit or investigation and to make sure that the factories did not feel the need to coach or intimidate workers. One known instance of coaching was identified. The data from this instance were not included in the assessment.

Procedures for accessing the brand data set

All the factories engaged were vetted against:

- United States of America’s Specially Designated Nationals (SDN) list
- European Union’s Sanctions List
- United Kingdom’s Sanctions List
- 2019 Human Rights Council report on the Independent International Fact-Finding Mission on Myanmar – the economic interests of Myanmar’s military.

This was to ensure that Impactt was not knowingly contacting a factory that had any kind of military ownership and would raise an alert to the authorities.

Impactt team members in Myanmar reached out to the factories to ask them to inform workers that their contact details would be shared with Impactt for the purposes of the survey. Factories then shared the worker information with Impactt and these contact details were put into the overall sample.

Security procedures to protect workers

For both data sets, the following security procedures were used:

Data security and anonymity

- Impactt randomly selected a representative sample of workers. Worker data were stored on a secure network with access given solely to Impactt project team members working on the project. Each respondent was given a unique identifier known only to Impactt project team members, which meant that only Impactt’s team would know the name, contact details and factory of a particular worker. The survey company and the broader Impactt

Myanmar team did not have access to this information.

- Sampling was based on the principle of safety in numbers. For example, in the case of smaller sites, Impactt sampled up to 60% of the workforce, whereas in larger sites this was reduced to 20%-30%.
- The exact location of factories was removed from reporting to ensure the anonymity of worker responses and mitigate against retaliation from employers or security forces.
- Only Impactt's UK team held the full lists of names and contact details. These were kept in a secure, password-protected location accessible only to the team working on this project.
- All personal data were destroyed on completion of the data collection process.
- Impactt's survey partner has extensive experience of undertaking similar sensitive surveys in Myanmar. It was able to provide UN-approved protocols to guarantee the safety of its own interviewers and the workers being interviewed and ensure data security.

Nature of questioning

- Impactt interviewed participants individually off-site, by telephone and not in a group setting.
- Interviews were voluntary and all workers gave consent prior to being interviewed.
- Questions were asked in a way that ensured that workers would not endanger themselves by responding in a politically insensitive way.
- Interviewers did not ask any questions that were politically sensitive, but if respondents raised these issues, interviewers would ask for clarification. This was to ensure that workers were not put in a position where they had to comment on politically sensitive issues.
- Interviewers did not ask workers direct questions about trade union membership or questions that could be perceived as politically risky.
- The sample included factories with a known active trade union presence but, to ensure that safety considerations were maintained, questions were formulated around the channels available to workers and workers' views on the channels in the factory.

Fieldwork

The worker interview questions were piloted over a two-week period in April 2022 to test the question positioning and operational delivery. During this period, 139 workers were interviewed (112 female, 27 male). Following the pilot, Impactt reviewed and amended the pilot questions in order to define active and former workers and job roles to ensure that only workers were interviewed.

Worker interviewers were trained to identify worker coaching or factory interference. Impactt found worker coaching at one site, calling into question the integrity of these data. These data points were therefore removed from the sample, reducing the total number of workers to 3002 interviewed during the interview roll-out phase.

Over a five-week period (April to May 2022), Impactt and a team of 29 worker interviewers interviewed 3120 workers from 70 factories based in Myanmar (11% of the factories were based outside Yangon and 89% based in Yangon). The sample frame was drawn from a sample of 36,891 workers.

Impactt's sample frame included:

- Location (Yangon and Outside Yangon)
- Ethnic groups
- Trade union (presence/non-presence)
- Gender
- Active/Formers workers

While 3120 workers were interviewed, 118 were removed due to identified instances of worker coaching, bringing the total to 3002. Of that 3002, 2722 were active workers and could respond to questions directly regarding the workplace. 280 respondents were former workers who could comment on current socio-economic issues in Myanmar, issues around crime and access to information. Throughout the report, where 2722 is indicated, this refers to the workers currently working in factories. 2606 is a sub-set of this active worker group where most data was provided.

Reflecting the political sensitivity of the research, Impactt did not actively request suppliers to confirm if there were trade unions at the site. However, within the sample frame, factories were selected where Impactt was aware of a known trade union presence. To supplement worker testimonies concerning more politically sensitive issues and gain further understanding of the

contextual information, Impactt interviewed five Myanmar-based labour experts and former garment workers to ascertain the impact of the coup on labour rights within Myanmar.

Limitations

Due to the current COVID-19 and political situations in Myanmar, Impactt's interviews were conducted via telephone and not in person, which increases the risk that workers could be influenced or coerced. To mitigate this risk, Impactt worker interviewers are trained to identify whether workers have been coached or threatened.

Table 1. Summary of factory location, gender and active/former workers

Gender	Active			Former		Grand Total
	Female	Male	Transgender	Female	Male	
Yangon (62 factories)	2112	212	4	229	27	2584
Outside of Yangon (8 factories)	353	41	–	23	1	418
Grand Total	2465	253	4	252	28	3002

Table 2. Breakdown of worker data after the discredited data were removed, based on active/former workers

Active or Former workers	N	% Of total sample
Active	2722	90.7%
Former	280	9.3%
Grand Total	3002	100.0%

Table 3. Breakdown of worker data after the discredited data were removed, based on gender

Gender	N	% Of total sample
Female	2717	90.5%
Male	281	9.4%
Transgender	4	0.1%
Grand Total	3002	100.0%

Table 4. Breakdown of worker data after the discredited data were removed, based on active/former workers and gender

Gender	Active workers in the garment sector		Former workers in the garment sector		Total
	N	% Of total sample	N	% Of total sample	
Female	2465	82.1%	252	8.4%	2717
Male	253	8.4%	28	0.9%	281
Transgender	4	0.1%	0	0.0%	4
Grand Total	2722	90.7%	280	9.3%	3002

Table 5. Breakdown of worker data after the discredited data were removed, based on ethnicity

Ethnicity	Female		Male		Transgender		Total
	N	% Of total sample	N	% Of total sample	N	% Of total sample	
Bamar	2481	82.6%	267	8.9%	3	0.1%	2751
Rakhine	105	3.5%	5	0.2%	1	0.0%	111
Karen / Kayin	99	3.3%	6	0.2%	0	0.0%	105
Burmese Indian	10	0.3%	0	0.0%	0	0.0%	10
Chin	8	0.3%	1	0.0%	0	0.0%	9
Mon	5	0.2%	0	0.0%	0	0.0%	5
Karen / Kayin & Myanmar	3	0.1%	0	0.0%	0	0.0%	3
Shan	2	0.1%	1	0.0%	0	0.0%	3
Kachin	1	0.0%	1	0.0%	0	0.0%	2
Karen / Kayin & Bamar	1	0.0%	0	0.0%	0	0.0%	1

Table 6. Breakdown of worker data after the discredited data were removed, based on age

Gender	Active						Former				Total count (N)	% Of Total sample
	Female		Male		Transgender		Female		Male			
Age	N	% Of Total sample	N	% Of Total sample	N	% Of Total sample	N	% Of Total sample	N	% Of Total sample		
16-17	1	0.0%	1	0.0%	0	0.0%	0	0.0%	0	0.0%	2	0.1%
18-30	1959	65.3%	222	7.4%	4	0.1%	199	6.6%	26	0.9%	2410	80.3%
31-40	448	14.9%	29	1.0%	0	0.0%	44	1.5%	1	0.0%	522	17.4%
41-50	49	1.6%	1	0.0%	0	0.0%	8	0.3%	1	0.0%	59	2.0%
51-60	8	0.3%	0	0.0%	0	0.0%	1	0.0%	0	0.0%	9	0.3%
Grand Total	2465	82.1%	253	8.4%	4	0.1%	252	8.4%	28	0.9%	3002	100.0%

Annex

II. Amendments to the legal framework in Myanmar and implications

Human Right	Laws amended	Legal amendments	Implications
Freedom of Movement	Amendment of Ward or Village Tract Administration Law (2012)	Requires residences to report any overnight guests from other towns to the relevant authorities.	Activists will be unable to reside in another town without being reported to the authorities.
Right to Privacy	Amendment of Ward or Village Tract Administration Law (2012)	Requires residences to report any overnight guests from other towns to the relevant authorities. Military forces have the right to inspect homes for “unregistered” guests.	Activists hiding from the military forces can be more easily tracked and arrested.
	Suspension of Sections 5 and 8(a)-(e) of the Law Protecting the Privacy and Security of the Citizens (2017)	<p>Authorities can, without a warrant or witnesses:</p> <ul style="list-style-type: none"> • put at risk the privacy and security of a citizen • enter their residence for the purpose of search, seizure or arrest • surveil, spy upon or investigate citizens, disturbing their privacy • intercept or disturb citizens’ communications • demand or obtain personal communications data from telecommunication operators • open, search, seize or destroy another person’s private correspondence 	<p>The military can enter people’s private residences without permission by a court and without ensuring the privacy and security of the person.</p> <p>Military forces now have legal access to people’s texts, conversations or correspondence. This means that activists or victims of abuse will be at risk when communicating through their telephones.</p>

Human Right	Laws amended	Legal amendments	Implications
Right to Privacy (continued)	Cyber Security Bill	<p>Any person wanting to access or connect to a network using a VPN is required to apply for a specific licence from the Ministry of Transport and Communications.</p> <hr/> <p>Digital platform services are required to:</p> <ul style="list-style-type: none"> • store user information • share these data with authorised persons when requested • allow the Ministry of Transport and Communications to temporarily control devices related to the platform. 	<p>The government can track those who try to get access to a VPN. See also freedom of expression.</p> <hr/> <p>Citizens' online activities will be saved and potentially shared with the military.</p>
Right to Property	Suspension of Sections 8(f)-(g) of the Law Protecting the Privacy and Security of the Citizens (2017)	Authorities can, without a warrant, interfere with a citizen's personal or family matters, even if this harms their reputation, and seize or destroy a citizen's property.	Military forces will be able to destroy a person's property without interference from the law or the need to respect that person's reputation.
Freedom of Association	Suspension of Section 354(c) of the Constitution	Suspension of Section 354(c) of the Constitution	Citizens may no longer be allowed to form associations and organisations due to the state of emergency declared in times of war.

Human Right	Laws amended	Legal amendments	Implications
<p>Freedom of Expression</p>	<p>Amendment of the Penal Code (1869)</p>	<p>It is now illegal to make statements or incite people to rebel against or disrupt the work of the military or government employees. It is illegal to spread “fake news” about a government employee. It is high treason to attempt to alter the structure of the government.</p>	<p>People cannot protest against or criticise the government and military.</p>
	<p>Amendment of the Counter-Terrorism Law (2014)</p>	<p>Anyone who exhorts, persuades, spreads propaganda or recruits people to participate in a terrorist group or their activities can be jailed for up to seven years.</p>	<p>Activists, particularly journalists and the media, can be jailed for showing support for the NUG and the PDF, which have been declared terrorist organisations.</p>
	<p>Suspension of Section 354(a) of the Constitution</p>	<p>Citizens are no longer allowed to freely express and publish their convictions and opinions due to the state of emergency declared in times of war.</p>	<p>Activists and citizens in general cannot express their opinions (including about the military) freely.</p>
	<p>Section 505-A added to State Administrative Council Law No. 5/2021</p>	<p>Acts against government employees are punishable with imprisonment and fines when these cause or intend to cause fear, spread false news or incite criminal activity against the employee.</p>	<p>Citizens criticising the military or government are at risk of being imprisoned or fined.</p>

Human Right	Laws amended	Legal amendments	Implications
<p>Freedom of Expression (continued)</p>	<p>Revised Cyber Security Bill</p>	<p>Any person wanting to access or connect to a network using a VPN is required to apply for a specific licence from the Ministry of Transport and Communications.</p> <p>Authorities, including the Ministry of Transport and Communications, can:</p> <ul style="list-style-type: none"> order digital platforms to destroy or prevent public access to online content temporarily or permanently prohibit any digital platform services provided. 	<p>The government can restrict access to a VPN, i.e. internet access. See also right to privacy.</p> <p>Online content and access to social media can be restricted by the military.</p>
<p>Right to Liberty and Security</p>	<p>Suspension of Section 7 of the Law Protecting the Privacy and Security of the Citizens (2017)</p>	<p>Authorises the military to detain a person for more than 24 hours without permission from a court.</p>	<p>People can be detained for long periods of time without being formally accused of a crime.</p>
<p>Right to Fair Trial</p>	<p>Martial Order 3/2021</p>	<p>Military tribunals can try criminal cases for 23 categories of violations. Convictions shall result in either death, unlimited years of imprisonment with hard labour, or the highest punishment for that crime.</p>	<p>Citizens will be tried under military rather than civil tribunals. This means that the interests of the military will take priority. The crimes covered include those prohibiting criticism of the government.</p>

Annex

III. List of organisations declared illegal by the military

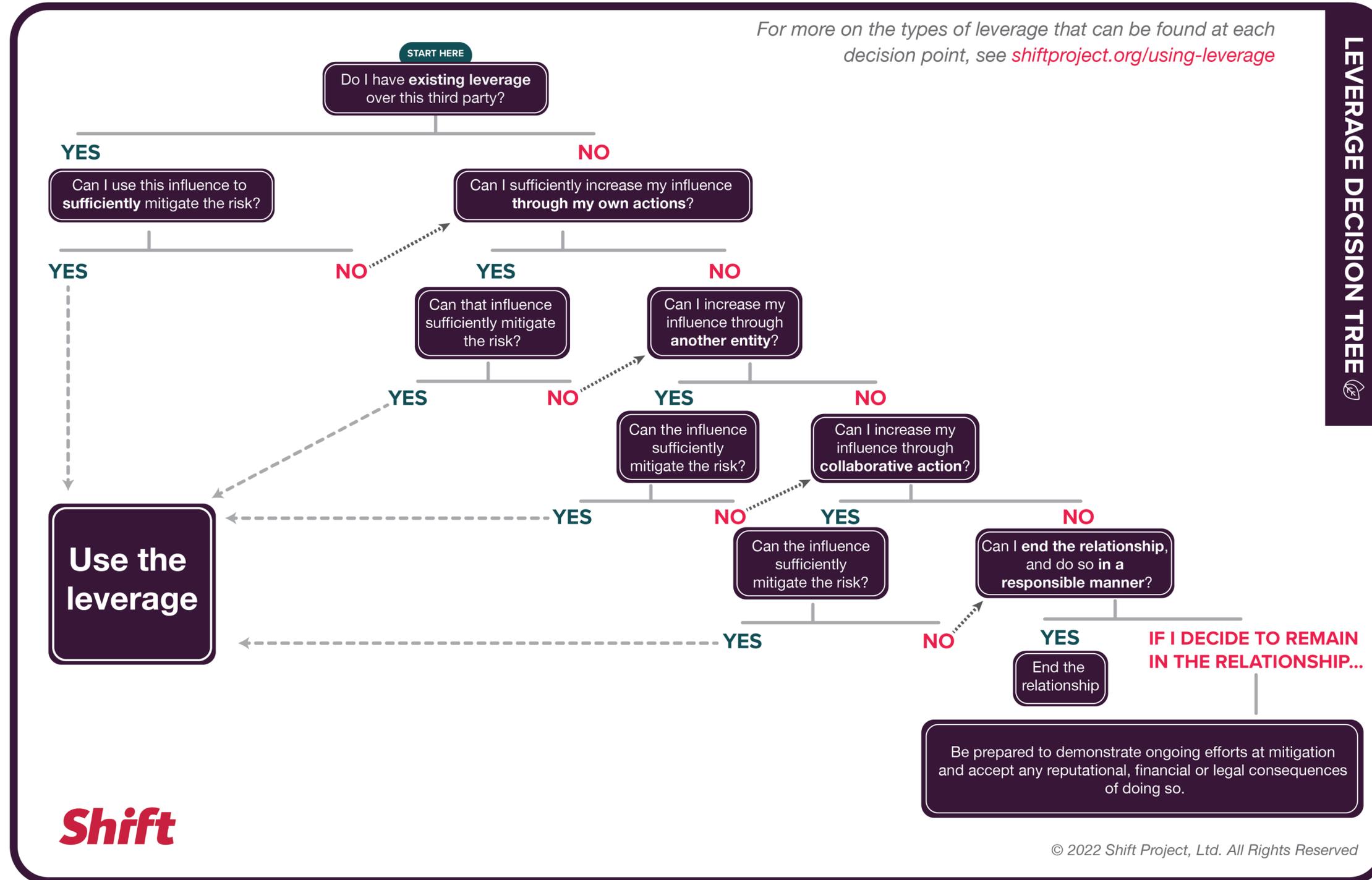
- (a) All Burma Federation of Trade Unions
- (b) Let's Help Each Other
- (c) Future Light Centre
- (d) Action Labour Right
- (e) All Myanmar Trade Unions Network
- (f) Agriculture Freedom of Myanmar
- (g) Association for Labour Development (ALD)
- (h) Federation of Garment Workers Myanmar
- (i) Freedom and Labour Action Group
- (j) Labour Power Group
- (k) We Generation Network
- (l) Yaung Chi Oo Workers' Association
- (m) Solidarity Trade Union of Myanmar (STUM)
- (n) Cooperation Committee of Trade Unions (CCTU)
- (o) All Myanmar Oil Workers' Union
- (p) Industrial Women Workers Organization (IWWO)

<https://www.gnfm.com.mm/announcement-of-illegal-organizations/>

Annex

IV. Leverage decision tree - Shift

Graphic courtesy of Shift Project, Ltd



Annex

V. Key human and labour rights conventions and their ratification status in Myanmar

Table 7. Human and labour rights conventions' ratification status

International Convention on the Elimination of All Forms of Racial Discrimination (1965)	Not ratified
International Covenant on Civil and Political Rights (1966)	Not ratified
International Covenant on Economic, Social and Cultural Rights (1966)	Ratified 6 October 2017
Convention on the Elimination of All Forms of Discrimination against Women (1979)	Ratified 22 July 1997
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)	Not ratified
Convention on the Rights of the Child (1989)	Ratified 15 July 1991
International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990)	Not ratified
International Convention for the Protection of all Persons from Enforced Disappearance (2010)	Not ratified
Convention on the Rights of Persons with Disabilities (2006)	Ratified 7 December 2011
ILO Convention No. 29 Concerning Forced or Compulsory Labour (1930)	Ratified 4 March 1955
ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organise (1948)	Ratified 4 March 1955
ILO Convention No. 95 on Protection of Wages (1949)	Not ratified
ILO Convention No. 105 concerning the Abolition of Forced Labour (1957)	Not ratified
ILO Convention No. 131 on Minimum Wage Fixing (1970)	Not ratified
ILO Convention No. 138 on Minimum Age (1973)	Ratified 8 June 2020
ILO Convention No. 152 on Occupational Safety and Health (Dock Work) (1979)	Not ratified
ILO Convention No. 155 on Occupational Safety and Health (1981)	Not ratified
ILO Convention No. 161 on Occupational Health Services (1985)	Not ratified
ILO Convention No. 170 on Chemicals (1990)	Not ratified
ILO Convention No. 173 on Protection of Workers' Claims (Employer's Insolvency) (1992)	Not ratified
ILO Convention No. 182 on the Worst Forms of Child Labour	Ratified 18 December 2013
ILO Convention No. 187 on Promotional Framework for Occupational Safety and Health (2006)	Not ratified

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