



Fair Wear's policy on business in Myanmar

October 2022

Introduction

Concerns of large-scale human rights abuses in Myanmar have been roaming since the coup d'état in February 2021. Recent reports and events evolving have demonstrated a further deterioration of human and labour rights. This has sharpened the debate on whether businesses can continue in Myanmar while respecting international standards and guidelines. Advocates for staying engaged refer to the crucial role that sustained sourcing relationships play in ensuring workers' employment, upon which many livelihoods depend. However, in the absence of rule of law, along with the severe restrictions on labour rights and non-governmental organisations' activities, mechanisms for workers' access to remedy rarely exist. With freedom of association not respected, addressing labour rights violations seems nearly impossible.

Given this context, space for proper human rights due diligence is limited to the point where garment brands must reconsider their position in the country.

Under UNGP Principle 19, companies will have to consider the severity of the adverse impact on human rights: "the more severe the abuse, the more quickly the enterprise will need to see change before it takes a decision on whether it should end the relationship". Therefore, where companies fail to demonstrate considerable progress towards Principle 23, they must reconsider their presence in the country.

While companies may be hesitant to end relationships with suppliers and the garment workers, recent calls to divest are intensifying. Concurrently, we see conflicting trends in industry sourcing: from brands who have started disengagement, to an increase of business presence of brands either continuing orders or even considering starting new business relationships in Myanmar.

The regime is not recognised by the UN institutions; it is also not to be expected that the regime will invest in the garment sector to realise improvements, and the garment sector does not hold leverage over the military. With this in mind, the state of the country can no longer be considered a temporary situation and calls for urgent informed decision making.

The new policy presented hereafter is meant to clarify what position Fair Wear takes and what is expected of Fair Wear member brands in these challenging circumstances. While the current political situation is negatively affecting the human and labour rights of the vast majority of the population, specific risks faced by women and other vulnerable groups have been included in this policy.

Sectoral due diligence assessment

With our support, Fair Wear partner Ethical Trade Initiative (ETI UK), commissioned consultancy group Due Diligence Design to conduct an independent evidence-based assessment, with support from SHIFT and IMPACTT, on the context of human rights and responsible business conduct within Myanmar. This has come with the following conclusions (summarised, for the full report, [see here](#). The conclusions corroborate with other sources (see annex) and the findings from Fair Wear's multi-stakeholder consultation process):

- Buyer-led due diligence to monitor, prevent, mitigate and provide access to remedy on severe human rights violations is extremely restricted.
- The ETI base code (similar to the Fair Wear Code of Labour Practices) cannot be met. In particular, there is no respect for freedom of association.
- Gender-based discrimination and violence against women and other marginalised/minority groups (e.g., Rohingya, ethnic groups in northern Myanmar, migrant workers and transgender people) have escalated. Violence against women has been linked to the military, with reports of gender-based violence, abusive language, sexual harassment, rapes and killings.
- Audit/monitoring/grievance mechanisms are not sufficiently adapted to the current Myanmar context. This means the findings/outcomes of these mechanisms can be regarded as unreliable or even meaningless.
- The assessment makes clear that the state cannot or will not take appropriate steps to ensure effective remedy; through judicial, administrative, legislative, or other appropriate means. In practice, these mechanisms have been co-opted by the military to maintain its hold on power. Local partners/unions/Labour Rights Organisations (LROs) who would be the ones addressing labour rights violations are non-existing, banned or not independent.
- Unions are not able to function, and trade union leaders and even TU members are faced with violence, or are detained. Any parallel means will put workers, who are often in precarious work, at risk.
- Mandatory overtime and forced labour are said to be pervasive in the garment industry. Myanmar is currently under investigation through an ILO Commission of Inquiry, for the second time since Myanmar ratified the Forced Labour Convention. A Commission of Inquiry is the ILO's highest level investigative procedure, reserved for persistent and serious violations of the conventions.

Expectations for Fair Wear member brands

Fair Wear recognises that sustained sourcing relationships in the country play a crucial role in ensuring workers' employment, upon which many livelihoods depend. However, the above considerations coupled with the UN Guiding Principles on Business and Human Rights (UNGPs) and OECD Due Diligence guidelines lead to the conclusion that, in general, regular human rights due diligence – let alone the heightened due diligence that the situation in Myanmar demands – is not possible. Equally, it is impossible for member brands to live up to the Fair Wear Code of Labour Practices to which they have committed.

For the above reasons, Fair Wear's general requirements for brands sourcing in Myanmar will be adapted to include the expectation that member brands start disengagement from Myanmar.

Disengaging must be done responsibly (in line with our responsible exit policies and specific exit guidance for Myanmar developed by Fair Wear), which includes consultation with social partners, details of which should be shared with Fair Wear. The impact of exiting Myanmar on workers and their families must be a clear focus in this consultation.

Fair Wear member brands that nevertheless choose to stay engaged must submit to Fair Wear:

- 1** A fully transparent explanation of the rationale for continuing – making the case for exceptional circumstances. From the application of the UN Guiding Principles in the mineral sector, there are two known scenarios when companies can stay engaged in conflict areas when heightened due diligence is no longer sufficient:
 - When it is not possible to end a relationship due to contractual obligations, or
 - When the supplier is a crucial business relationship (e.g., when a rare material is crucial to a core product and is only available from a small group of suppliers operating in a high-risk context).
- 2** A compelling demonstration of how they plan to adequately respect human rights by conducting human rights due diligence. Special and additional measures will have to be taken

to ensure this, specific to the context of Myanmar. Member brands must ensure and be able to demonstrate that their suppliers go beyond minimal compliance. Furthermore, each case should include details on how to address Freedom of Association, including the risk of workers who are members of a trade union or workers facing threats of arrest by the military regime. Lastly, brands should demonstrate that they have good relations and enough resources, leverage and onsite presence to be kept sufficiently and credibly informed of the workers' situations, and the impact of staying on them and their families.

The UNGP principle 23:

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

Ultimately, the decision to disengage or remain engaged is the responsibility of the individual member brands' company management.

Member brands that are currently not active in Myanmar should, with no exception, refrain from starting business relationships in Myanmar (this is in line with the guidance we issued directly after the coup). This includes business relationships through foreign owners that outsource to Myanmar.

Fair Wear's role and support for member brands

Fair Wear and its international stakeholders will be available to guide member brands in the process of responsible disengagement. Remaining services and guidance that support phasing out will be provided, taking specific supply chain situations into account.

Fair Wear will also review cases submitted by member brands that choose to continue engagement with suppliers in Myanmar.

All local services for the purpose of assessing labour rights will be halted, except for the complaints helpline. In the process of phasing out, Fair Wear will continue to engage with workers and stakeholders, and assist in the resolution of complaints.

Considering the nature and the urgency of the situation, non-compliance with this policy has direct effects on the credibility and good name of Fair Wear. Non-compliant member brands may face the strictest possible consequences within the membership agreement.

Annex 1: relevant reports and resources

- 1) [UN Guiding Principle on Business and Human Rights](#)
- 2) [UN Gender dimension of the Guiding Principles on Business and Human Rights. This document builds on the UN Guiding Principles on Business and Human Rights by adding a gender lens.](#)
- 3) [OECD Due Diligence Guidance for Responsible Supply Chains in the Garment & Footwear Sector](#)

- 4) [UNDP Heightened Human Rights Due Diligence for Business in Conflict Affected context:](#)

This guide aims to provide the business community, governments, civil society, and other stakeholders with a better understanding of the practical measures that should be taken to ensure responsible engagement from business in conflict-affected areas. The Guide provides parameters for business to design and implement effective due diligence measures in contexts affected by armed conflicts and other situations of widespread violence. This Guide is based on the United Nations Guiding Principles on Business and Human Rights (UNGPs), the authoritative, global framework guiding States and companies in preventing and addressing adverse business-related human rights impacts.

- 5) Myanmar [Due Diligence sectoral assessment](#) – Due Diligence Design
- 6) [ILO brief on 1st of August](#); “a recent ILO report estimates that the incidence of child labour in countries affected by armed conflict was 77 per cent higher than the global average, and the incidence of hazardous work was 50 per cent higher. The absence of democracy and consequent impact on social dialogue to address labour market issues remains a key threat to advancing decent work. In the garment sector, mounting evidence reveals deterioration in working conditions for garment workers, including reduced take-home pay, overtime and attendance bonuses, increased use of casual or daily labour, irregularity of working hours, and hiring under piece-rate pay arrangements. Increasing reports show workers in precarious employment, including casual or daily labour, irregular working hours and workers receiving lower pay. Entitlements such as severance pay when workers are laid-off are often not granted.”
- 7) [BHRRC briefed](#) on 26th July that at least 55 trade union activists have been killed and 301 union leaders and members of the labour movement have been arrested. According to the Myanmar allegations tracker, which has so far captured over **100 cases** of alleged labour and human rights abuse perpetrated against at least **60,800 garment workers**, revealing widespread and

systemic mistreatment of garment workers in international brands' supply chains. These workers are employed at **70 factories** producing for at least **32 global fashion brands and retailers**, including Adidas, Bestseller, C&A, Inditex (Zara and Bershka), Fast Retailing (GU), GUESS, H&M, Lidl, Next, Matalan and Primark. The data highlights the scale and scope of abuse in the 18 months since the military seized power and the widespread impunity enjoyed by perpetrators. It raises serious questions for apparel brands and their investors regarding their ability to source responsibly, conduct human rights due diligence and protect workers in their supply chain. Wage theft, inhumane work rates and mandatory overtime, and attacks on freedom of association are the most frequently recorded types of abuses.

- 8) [Corporate Accountability Myanmar \(CAM\)](#) – an anonymous group of local researchers – inquires how global brands are responding to mounting [labour rights abuses](#) in their supply chains and how they intervene/mediate those disputes to help protect labour rights within this context. CAM research found that global garment brands are unable to safeguard labour rights in post-coup Myanmar. Wider stakeholders' interviews and desk review reveal that even prior to the coup, brands' intervention in their supply chain to protect against labour rights abuses had limitations.
- 9) [Regressing gender equality in Myanmar: Women living under the pandemic and the military rule](#) (report) – advanced edition – UN Women – April 2022. This data-driven report was conducted by UNDP and UN Women to assess the impact of Covid-19 and the military coup on women. It provides with unique insights on the current living conditions of women in the country.
- 10) [Gender Sensitive Indicators for Situation Analysis](#) developed by the 'International Civil Society Action Network. The questions that can be found in this document serve as a guide to conduct a gender analysis in conflict areas. Nonetheless, specific adaptations shall be made given the context in which one operates.