Heightened due diligence for garment and footwear manufacturers and buyers operating in Myanmar

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Objective(s) of the session

- Understand how the overall political, legal, and human rights situation in Myanmar affects garment and footwear companies that produce and source in the country;
- Discuss the evolution and current state of industrial relations and working conditions in the garment and footwear sector in Myanmar
- Explore ways in which companies can carry out heighted due diligence in Myanmar to identify and address human rights risks, including financing or exacerbating conditions of conflict.

Background

The garment, footwear, textile and accessories sectors in Myanmar employ over 1 million workers[1] and contribute to approximately 10 percent of the country's export revenue. Garment exports have experienced a sizeable increase in the past decade from USD 349 M in 2010 to USD 4.6 B in 2018. (Thomas, J., 2019). While production is primarily concentrated in Yangon, apparel manufacturing also takes place in other clusters, such as the Thilawa Special Economic Zone south of Yangon. Europe is the most important market for Myanmar apparel, bolstered by duty-free access to EU markets through Everything But Arms which is part of the EU's wider Generalised Scheme of Preferences (GSP). The European Commission has launched a period of 'enhanced engagement' with Myanmar on EBA involving intensified dialogue and monitoring. While Europe is Myanmar's largest market for garment, there is some indication that US sourcing may increase in response to increased tariffs in the US for goods imported from China.

The labour and human rights context in Myanmar

The apparel and footwear sector is exposed to a number of labour, human rights and environmental risks that likewise exist in the Myanmar context. A SOMO report in 2017 pointed to concerns related to restrictions on freedom of association, low wages and unlawful deductions, excessive overtime, child labour and a lack of contracts.[2] For example, during the research, almost half of interviewed workers did

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[1] Invest My Myanmar, Accessed at https://investmyanmar2019.com/garment-industry-cmp/myanmars-garment-industry/

[2] The Myanmar Dilemma, SOMO, August 2017, Accessed at https://www.somo.nl/wp-content/uploads/2017/02/170731-The-Myanmar-Dilemma-update-web-1.pdf

not sign a contract of employment. Indications of child labourers under the age of 15 in six of the 12 factories assessed.

Efforts have been taken to address these labour gaps within Myanmar, including in partnership between manufacturers and buyers. For example, in November 2019, brands, suppliers and trade unions agreed upon and launched the Myanmar Freedom of Association Guidelines which aims to secure constructive relations between employers and workers and to specify the practical application of the principles of Freedom of Association under international labour standards, as well as the timeline for collective bargaining[3].

While a focus on labour rights within the factory walls is extremely important, the broader Myanmar context calls for heightened human rights due diligence. In March 2017, the United Nations Human Rights Council established a Fact-Finding Mission to establish the facts and circumstances of the alleged recent human rights violations by military and security forces, and abuses, in Myanmar. On November 11, Gambia, with the backing of the 57 members of the Organisation for Islamic Cooperation, filed a case with the International Court of Justice (ICJ) alleging that the Myanmar military had violated the Convention on the Prevention and Punishment of the Crime of Genocide in relation to operations targeting the Rohingya group (ICJ, 2019). Proceedings on the case took place on December 10-12 in The Hague. A ruling has not been delivered at the time of writing.

In August 2019, U.N. Independent International Fact-Finding Mission on Myanmar published a second4 report on the economic interests of the Myanmar military. The report notes that “The Tatmadaw’s economic interests enable its conduct” and that such economic interests include businesses and business ties, including Tatmadaw conglomerates, donations from business and joint ventures. The report found that at least 15 foreign firms have joint ventures with the Tatmadaw, while 44 others have some form of commercial ties with Tatmadaw businesses. Within this context, the report by the IIFFM notes that “No business enterprise active in Myanmar or trading with or investing in businesses in Myanmar should enter into or remain in a business relationship of any kind with the security forces of Myanmar…” Therefore, “Businesses buying goods from Myanmar should apply rigorous standards of due diligence to their supply chains, to ensure that none of their products are coming from Tatmadaw-related businesses. Businesses should also make the origins of their products clear, to allow consumers to make informed choices.”

The IFFMM report is also of consequence for the garment and footwear sector in Myanmar. For example, two industrial zones that are owned by the military conglomerate Myanmar Economic Holdings Ltd. (MEHL) include apparel factories, according to the IIFFMM.[5]

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[3] FoA Guidelines, Accessed at http://www.industriall-union.org/garment-workers-suppliers-and-act-brands-launch-freedom-of-association-guideline

[4] The economic interests of the Myanmar military, Accessed at https://www.ohchr.org/Documents/HRBodies/HRCouncil/FFM-Myanmar/EconomicInterestsMyanmarMilitary/A_HRC_42_CRP_3.pdf.

[5] The Fact Finding Mission on Myanmar identified garment factory Myanmar Wise-Pacific Apparel Yangon Co. as a joint venture between MEHL and the South Korean clothing company Pan-Pacific Co.

Enabling responsible sourcing from conflict-affected areas

The OECD and the UN have produced guidance for companies sourcing from conflict-affected areas, although neither is specific to the garment and footwear sector. Within the model policy of the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, the OECD recommends that companies commit to:

- suspending or discontinuing engagement with suppliers where they identify a reasonable risk that they are sourcing form, or linked to, any party committing serious abuses;
- not tolerating any direct or indirect support to non-state armed groups
- immediately suspending or discontinuing engagement with upstream suppliers where it is identified a reasonable risk that the company is sourcing from, or linked to, any party providing direct or indirect support to non-state armed groups.

SOMO and other civil society organisations have likewise worked on the topic of the responsibilities of multinational corporations in conflict-affected areas (see box for further details). A common theme across recommendations is the need for enhanced and tailored due diligence processes when operating in fragile and conflict affected areas[6].

Conflict-affected and high-risk areas

Conflict-affected and high-risk areas are identified by the presence of armed conflict, widespread violence or other risks of harm to people. Armed conflict may take a variety of forms, such as a conflict of international or non-international character, which may involve two or more states, or may consist of wars of liberation, or insurgencies, civil wars, etc. High-risk areas may include areas of political instability or repression, institutional weakness, insecurity, collapse of civil infrastructure and widespread violence. Such areas are often characterised by widespread human rights abuses and violation of national or international law.

Source: OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas.

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[6] SOMO, Fragile! Handle with Care: Multinationals and Conflict Lessons from SOMO's Multinational Corporations in Conflict-Affected Areas programme, (15 November 2016), https://www.somo.nl/wp-content/uploads/2016/11/Report-Fragile.pdf.

SOMO recommendations for companies operating in conflict-affected regions

1. Fragility leads to a lack of corporate accountability. Fragility enables companies to operate without being held accountable, while it allows them to profit from the government's weak bargaining position. The resulting vicious circle contributes to the already fragile situation, and can lead to renewed conflict because of grievances among often traumatised populations that were expecting to benefit from peace. This is compounded by an almost complete lack of access to remedy for victims when human rights abuses take place in conflict-affected areas.
2. Companies influence the conflict dynamics and need to be more aware of this. Multinational companies in conflict-affected areas influence conflict dynamics – intentionally or unintentionally – and need to be aware of their role in the conflict. This is especially relevant in the case of large-scale acquisition or misappropriation of land by multinational companies, or in the case of financial or material support to security forces or other armed groups involved in human rights violations. MNCs in conflict settings overlook the impact of their operations not only on the conflict situation in general, but also the gender dimension of operating in conflict settings.
3. Some companies operating in fragile and conflict-affected situations adapt their business strategy to benefit from the fragility and the governance gap. This is contradicting the widespread belief that private sector development has a predominantly positive influence on peace building and economic reconstruction.
4. The business strategies of so-called "hit and run" companies operating in fragile and conflict-affected settings share a number of characteristics, namely that they are mostly short term and high risk; enable rapid growth of the business; involve frequent changes in ownership and management; often use tax havens to minimise or avoid paying taxes; exaggerate claims; and make empty promises. Despite claims that private sector development automatically leads to peace and development, these companies are very unlikely to make a sustainable contribution to peace building and economic reconstruction in the post-conflict phase, and instead tend to create new – or exacerbate existing – conflict. In addition, the absence of proper exit strategies on the part of extractive MNCs often leaves local communities worse off than before the companies arrived.
5. There is a lack of implementation of laws, principles and guidelines in fragile and conflict-affected situations, as well as a lack of "enhanced" due diligence processes. Despite the emergence of a multitude of principles and guidelines aimed at improving business practices in conflict-affected areas, these principles and guidelines are often not implemented. Also, companies do not apply proper due diligence processes, let alone "enhanced" due diligence, as recommended in international guidelines. This leads to increased risks of exacerbating the conflict and creates adverse impacts on local communities.
6. Civil society organisations working in fragile and conflict-affected situations face multiple challenges, making it more difficult to hold companies accountable. The occurrence of unexpected crises makes it very challenging for civil society organisations to do research on business-related human rights abuses, thus limiting their ability to hold private sector actors to account. Also, the space for civil society to hold the private sector accountable and to call on the government through judicial or non-judicial means in case of business-related human rights violations is often limited, and is increasingly shrinking.

For more information

- Independent International Fact-Finding Mission on Myanmar, https://www.ohchr.org/en/hrbodies/hrc/myanmarffm/pages/index.aspx.
- Business and Human Rights Resource Centre, *UN Fact-Finding Mission on Myanmar exposes military business ties, calls for targeted sanctions & arms embargoes*, https://www.business-humanrights.org/en/un-fact-finding-mission-on-myanmar-exposes-military-business-ties-calls-for-targeted-sanctions-arms-embargoes#c194047
- SOMO, *The Myanmar Dilemma. Can the garment industry deliver decent jobs for workers in Myanmar?*, (August 2017), https://www.somo.nl/wp-content/uploads/2017/02/170731-The-Myanmar-Dilemma-update-web-1.pdf.
- SOMO, *Fragile! Handle with Care: Multinationals and Conflict Lessons from SOMO's Multinational Corporations in Conflict-Affected Areas programme, (15 November 2016),* https://www.somo.nl/wp-content/uploads/2016/11/Report-Fragile.pdf.
- Ethical Trading Initiative (ETI), *Responding to the human rights crisis in Myanmar: a four-point plan for responsible businesses*, (January 2019), https://www.ethicaltrade.org/sites/default/files/shared_resources/Human%20rights%20crisis%2C%20Myanmar_0.pdf.
- Shaun Turton and Yuichi Nitta, Nikkei Asian Review, *Fashion brands rethink Myanmar position after report on military ties*, (26 August 2019), https://asia.nikkei.com/Business/Business-trends/Fashion-brands-rethink-Myanmar-position-after-report-on-military-ties.

About SOMO

SOMO is a critical, independent, not-for-profit knowledge centre on multinationals. Since 1973, we have investigated multinational corporations and the impact of their activities on people and the environment. We provide custom-made services (research, consulting and training) to non-profit organisations and the public sector. We strengthen collaboration between civil society organisations through our worldwide network. In these three ways, we contribute to social, environmental and economic sustainability[7].

Contacts at SOMO

Pauline Overeem, senior researcher, p.overeem@somo.nl

Esther de Haan, senior researcher, e.de.haan@somo.nl

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[7] www.somo.nl.