

Enhanced monitoring programme Myanmar – update 2018

1. Context¹

On 8 November 2015, a general election was held – the first free elections in 25 years. The National League for Democracy (NLD), led by Aung San Suu Kyi, won 77% of the votes while the military-aligned Union Solidarity and Development Party (USDP) only won 10% of the votes. Nonetheless, the military continues to exert great power over all domains of society. The military has retained significant political power, with an allocated 25% of seats in parliament. While there is a civilian government, the 2008 Constitution prescribes that the Minister of Home Affairs, the Minister of Defence and the Minister of Border Affairs are to be appointed by the military.

Myanmar is undergoing a transformation in its politics, economics, and civil society. Since 2010, it has started to open up and the elections in 2015 formally ended over 50 years of military rule. As the nation transitions to democracy, there remains much to be done to ensure that fundamental freedoms are fully respected for all in Myanmar, including for minority groups. On a broader level, and despite some recent legislative improvements, concerns remain regarding the real civic space for many people and organisations in Myanmar. There seems to also be a trend of tightening regulation of CSOs and some burdensome authorisation procedures. Specific concern is regarding Article 66(d) of the Telecommunications Act, by which anyone can sue any other entity for defamation. This seems to be increasingly used (6 times during 3 years under the previous government compared over 300 times in 1 year under the current government). There are examples of CSO leaders having been threatened to be sued for defamation by companies and government. This is seen by CSO's as a real threat, leading particularly to self-censorship.

A particularly worrying development is the outbreak of violence in Rakhine state in August 2017, when militants attacked government forces. In response, security forces supported by Buddhist militia launched a military operation that, according to Medecins Sans Frontieres (MSF), has forced more than 647,000 to flee their homes into neighbouring Bangladesh. In addition, MSF reported that at least 6,700 were killed in the month after the violence broke out². On 16 October 2017, the European Council of the EU adopted an [8-point statement on Myanmar](#). Among others, the Council indicates that *“The humanitarian and human rights situation in Rakhine State is extremely serious. There are deeply worrying reports of continuing arson and violence against people and serious human rights violations, including indiscriminate firing of weapons, the presence of landmines and sexual and gender based violence. This is not acceptable and must end immediately. More than 500,000 people, mostly Rohingya, have fled their homes and sought refuge in Bangladesh, as a result of violence and fear. When so many people are displaced so quickly this strongly indicates a deliberate action to expel a minority. Therefore, it is of utmost importance that refugees can return in safety and dignity. Access for humanitarian assistance and the media is severely restricted in Rakhine State. Needs can therefore not be fully assessed nor addressed.”*

Point 6 of the statement indicates: *“In the light of the disproportionate use of force carried out by the security forces, the EU and its Member States will suspend invitations to the Commander-in-chief of the Myanmar/Burma armed forces and other senior military officers and review all practical defence cooperation. The EU confirms the relevance of the current EU restrictive measures which consist of an embargo on arms and on equipment that can be used for internal repression. The Council may consider additional measures if the situation does not*

¹ As this context chapter inevitably risks to be outdated due to new political developments, FWF member companies operating in Myanmar, as part of their due diligence obligations, are expected to keep themselves updated on human rights developments.

² <http://www.msf.org/en/article/myanmarbangladesh-msf-surveys-estimate-least-6700-rohingya-were-killed-during-attacks>

improve but also stands ready to respond accordingly to positive developments.” The United States is taking similar steps and considering a range of actions over Myanmar’s treatment of its Rohingya Muslim minority, including targeted sanctions under its Global Magnitsky law, the State Department said on 23 October 2017. Punitive measures aimed specifically at top generals were among a range of options being discussed in response to the Rohingya crisis.

2. Fair Wear Foundation in Myanmar

In May 2010 the FWF board adopted a formal position on Myanmar to require member companies to phase out production at factories in Myanmar and not start new production. With the military still in power, the country being addressed on several occasions on violation of labour standards, in line with position of ILO and EU, stakeholders advised to do so. In June 2012 the position on Myanmar was revised by the FWF board, following the suspension of economic sanctions by the EU, US and other countries. The board decided to suspend the requirement for new FWF members to phase out production in Myanmar factories for a period of 12 months and re-evaluate in June 2013. In June 2013, a discussion paper was prepared to support the board in the evaluation process, which led to [FWF’s 2013 Position Paper for Myanmar](#).

[In this Position Paper](#), FWF committed to a number of steps to set up activities in Myanmar to be able to verify improvements in working conditions in factories and to promote social dialogue and effective grievance mechanisms. It was decided to apply the FWF standard verification model including factory audits (including off-site worker interviews), setting up a stakeholder network and a local complaints helpline for workers, which was expected to enable FWF to effectively support its member companies in factory improvement processes, in cooperation with their local suppliers. In addition, FWF member companies that would decide to start production in Myanmar are required to implement additional, country-specific measures.

While Myanmar has demonstrated significant progress on civil and political rights, FWF continues to regard it as a high-risk country, facing specific challenges regarding implementation of labour standards. Serious challenges remain regarding adherence to FWF’s eight labour standards in Myanmar, as well as the rule of law, freedom of expression and access to grievance mechanisms. **Particularly, garment factories in Myanmar face high risks for violations including: low wages, long working hours, repression of union leaders, poor working conditions, child labour, and the lack of a healthy social dialogue between employers and unions.** FWF is deeply concerned about the Rohingya crisis. At present, however, there does not seem to be direct link to the garment sector, as no garment factories are present in Rakhine state and Rohingya refugees are not allowed to work. FWF will monitor closely the situation and any possible additional measures adopted by the EU.

The garment sector in Myanmar is growing quickly. Even-though it is difficult to predict how this will translate to numbers of factories supplying FWF members, the number of brands/factories active in Myanmar is growing in the last two years; a trend which is expected to continue in years to come. In line with this, FWF has seen a slow but steady increase in the number of factories in Myanmar from which FWF members source. At present, 13 FWF members are (actively) sourcing from 22 factories in Myanmar. Supported by the Strategic Partnership of the Dutch Ministry of Foreign Affairs, and following the growth in number of factories producing for FWF member companies, FWF stepped up its operations in 2016. Some of the activities that were implemented since include the following:

Country Study. To build up key knowledge of recent trends in the garment industry in Myanmar, including, particularly, specific risks/challenges regarding compliance with FWF labour standards, FWF has prepared and published a [country study for Myanmar](#) in 2016. The country study provides a clear and concise picture of the industry, labour law, labour conditions and industrial relations within the textile/garment industry. The study is

prepared through gathering information about national laws and local stakeholders' view on labour issues in the garment industry in Myanmar.

The next country study will be published in 2018 and will include a thorough analysis of findings from audits and complaints per labour standard.

Public list of suppliers in Myanmar. FWF maintains a **list of factories where FWF member companies are currently sourcing**, which is **published on the FWF website**. The list would allow public transparency and enables stakeholders to identify suppliers as producing for FWF member companies. The list is also actively shared with some of the stakeholders and is updated every three months.

As of 2018, the list will include all factories that supply or supplied FWF members (including inactive factories). Information will be provided when the reason for suspending or ending sourcing relationships was related to social compliance consideration. The list will also provide additional information about ownership of the supplier and existence of a democratically elected union.

Stakeholder consultation. Since 2016 FWF engages regularly with local stakeholders in Myanmar. Contacts are maintained by the country representative and country manager of FWF during visits as well as via email. FWF will visit and consult with relevant stakeholders to gather information **and build up a stakeholder network**. In addition, meetings will be organised to provide a platform that facilitates dialogue among stakeholders. In this respect the FWF plays a role in the OECD Due Diligence Guidance for the garment and shoe sector on meaningful stakeholder engagement³.

Social Audits. Since 2016 FWF has a fully functional audit team, including local worker interviewer. In 2016, FWF has conducted five audits, while in 2017 ten factories were audited by FWF, one being a re-audit. With additional audits and re-audits being planned for 2018, FWF has audited the vast majority of factories that produce for FWF member companies. As in other countries, worker representatives are to be invited to the exit meeting of the audit. Corrective action plans are (being) followed up by brands and factories.

Audits show **low awareness of workers on their rights**, low wages, restrictions related to Freedom of Association, child labour, frequent excessive overtime, illegal terminations, and (mostly) fire safety concerns. Corrective actions plans are systematically being implemented with the support of the brands leading to real improvement in working conditions.

As sourcing in Myanmar is considered to carry additional risks FWF has decided to allocate two full working days for the on-site factory audit for each factory, *irrespective of the size of the factory*. This would allow additional time to review worker's personnel files, visual factory inspection and worker interviews to mitigate against the risk for child labour.

Complaints helpline. The complaints helpline is active since 2016. It provides a safety network for workers, or their representatives, in garment factories supplying FWF member companies to help seek remedy for violations of their rights and the way the code is implemented.

Worker information cards with information for workers with the complaints handlers telephone number in the local language are disseminated through off-site worker interviews and during WEP training, which contributes to an increased awareness of FWFs complaints procedure among workers.

The helpline is used extensively with calls coming in on a weekly basis. So far complaints have come in from workers in 14 factories, the majority related to arbitrary/illegal terminations, freedom of association, and problems related to wages/remuneration. With the support/encouragement of the brands, complaints are **effectively** being remediated or are in process of remediation.

³ OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector . February 2017, p27 <https://mneguidelines.oecd.org/responsible-supply-chains-textile-garment-sector.htm>

Training for suppliers. Starting end of 2016, FWF has been implementing *Workplace Education Programme Basic module* in Myanmar. It has since been implemented in 11 factories in Myanmar thus far. The training contributes **effectively** to increasing awareness among management, supervisors and workers on the FWF COLP and the complaints helpline.

FWF will also start the FWF *Workplace Education Programme Communication module* in Myanmar, which has been specifically designed to assist factory managers and workers to engage in a safe and constructive dialogue, so that the production process and working conditions improve. The new module is being customized by the local training team and first pilots have started by the end of 2017. The focus in Myanmar will be on factories that have active unions (currently about one-third of the factories producing for FWF member companies) and the training will **seek to establish better social dialogue** between unions and factory management through training and facilitated dialogue.

To mitigate the risk of child labour, FWF developed a practical guide that aims to help garment factories in Myanmar establish a more robust *age verification system*. The guide outlines six steps factories could implement to set up a more robust age verification system and effectively mitigate the risk of child labour. Based on FWF's guidance note on age verification, FWF has organized a first training in November 2017 for suppliers, which is then to be repeated on an annual basis. The training will provide a platform for participants to exchange concrete ideas, tools and mechanisms on how to establish a more robust age verification system.

3. Why is Myanmar a high-risk country that requires additional measures?

While Myanmar has demonstrated progress on civil and political rights, FWF continues to regard it as a high-risk country regarding to implementation of labour standards. Therefore, sourcing from Myanmar requires additional specific measures from FWF member companies, in addition to what FWF requires of its member companies in other high-risk production countries.

Myanmar lacks proper **systems and infrastructure to ensure effective monitoring** of working conditions and channels to remedy violations. It is widely recognized that the Factories and General Labour Laws Inspection Department (FGLLID) lacks the capacities and resources to effectively conduct inspections and monitor/enforce compliance with national legislation. In addition, there is **a lack of meaningful and mature social dialogue** between employer's organizations and unions to successfully conclude Collective Bargaining Agreements.

There is also **a risk of (illegal) subcontracting**. This is common for production processes that the first-tier suppliers (mostly CMT facilities) do not have in-house, such as washing, printing or embroidery, but it could also occur for CMT work, especially when factories face high production pressure and tight delivery deadlines.

Though there has been considerable progress in the promulgation of new legislation, progress in terms of the **actual application of new laws and regulations is less positive. High degree of corruption, cronyism and lack of capacity of the national labour inspectorate**, hampers effective enforcement of newly development legislation.

Under the military regime, the military and former military officials have amassed important positions and interests in the economy, including in the textiles and garment industry. There are known cases of garment factories linked to the military that are implicated in labour violations and/or built on land where ownership may have been acquired through land grabbing practices. There are also concerns about the Special Economic Zones in Dawei, Kyauk Phyu and Thilawa. The legal framework for SEZs in Myanmar does not establish clear procedures and lines of responsibility and accountability. Reportedly, this has contributed to human rights violations and abuses at Myanmar's three SEZ sites, and constraints workers' access to grievance mechanisms.

For several decades, trade union activities in Myanmar were not permitted. Trade unions only became legal in Myanmar in 2012. Before then, they were only marginally effective, and most worked from abroad. For a few years unions are legally allowed and union federations are actively working to establish factory level unions. As local factories' management is not accustomed to this, or management often originates from countries (e.g. China, Taiwan, Korea) that do not have a free, independent union movement, this has often led to conflicts in factories.

Nonetheless, the presence and increased confidence of local unions is seen as encouraging and therefore supports effective stakeholder consultation. Important to note in this is the official registration by the Government of the Confederation of Trade Unions of Myanmar (CTUM). The CTUM is founded from the Federation of Trade Unions – Burma (FTUB), which was run from Thailand by exiled unionists in order to foster a union movement in Myanmar. CTUM is also represented in tri-partite discussions, e.g. the National Minimum Wage Board. Tripartite negotiations have also led to an agreement on the new Employment Contract template. In addition, several factory based labour unions are affiliated to and supported by other union federations active in the garment industry, such as MICS and STUM, and labour rights organisations such as Action Labor Rights and Future Light Center.

Despite some positive signs, developments are extremely volatile and need to be monitored carefully. There remains a high degree of hostility towards union activity. There is a widespread lack of trust between factories and NGOs or unions in the country. In addition, there are several cases in which union leaders were fired from factories because of trade union activities. This also discourages workers from joining unions. There are also indications that the government is making the process to register basic factory unions more difficult, e.g. there are indications that labour offices, as part of the registration process, have started to require basic unions to provide ID Card numbers for all union members (which sometimes proves difficult as (especially migrant) workers often do not have their ID card readily available) and a letter in which the factory management is to endorse the union registration. In addition, the existence of a Worker Coordination Committee (WCC) sometimes hampers the effective functioning of a union, as management often favours a WCC as the sole channel of communication with workers. This problem is especially pertinent when the WCC is not established democratically and in accordance with the law. Finally, the recently adopted⁴ Peaceful Assembly and Procession Law Amendment Bill undermines the right to strike as well as the right to freedom of expression as laid down in the Constitution. The Bill provides authorities an instrument to declare protests and strikes illegal on ambiguous grounds even when these protests and strikes are peaceful according to international standards. Already there are reports that workers are dismissed after having participated in a strike.

In June 2015, after a year of consultation with unions and employers, the Myanmar government proposed a legal minimum wage of 3,600 MMK a day (\$ 2.6), which adds up to MMK 108,000 per month (US\$ 80) based on a 30-day working month. The figure is based on an eight-hour working day and has national coverage. The new legal minimum wage entered into force in September 2015.

However, when the minimum wage was introduced there was numerous reports of factories that responded negatively. There were reports of mass-dismissals, factories setting higher production targets and cutting OT payments and bonuses. In addition, according to national minimum wage law, factories are legally allowed to pay trainee workers 50% of the legal minimum wage during their first 3 months of employment and workers in their probation period 75% of the minimum wage level. This would effectively lead to payment of workers below the minimum wage level.

At the end of December in 2017, the Ministry of Labour communicated that the next legal minimum wage level would be set at 4,800 MMK per day (\$ 3.6). This is an increase of 33% on the current minimum wage rate. A 60-day period for public comment ensued before it is to take effect. However, no public announcement has been

4 As of 7 March 2018

made yet. As such, workers in factories must be paid the new minimum effective from the beginning of March 2018. This increase is on the lower end of the range anticipated by industry analysts and observers. It is much lower than the 55% increase advocated by several unions, who consider that the new legal minimum wage level is far from a living wage; something FWF agrees with.

In recent years Myanmar's legal framework has been significantly improved, though challenges remain. Wage implementation and Freedom of Association are covered by the Labour Organization Law and the Settlement of Labour Dispute Law, both adopted in 2012. In addition, new laws with regard to labour passed by Parliament include the Employment and Skill Development Law (2013), the Social Security Law (2012), and the Minimum Wage Act, 2013. Other laws are believed to be in draft form or in the process of being drafted, including the Shops and Enterprises Act, 2013, the Occupational Health and Safety Act and the Factories Act Amendment Bill, 2013.

Child labour is widespread in Myanmar. Verisk Maplecroft's Child Labour Index (2010) ranked Myanmar among the countries where the problem of child labour is greatest. This index evaluates the frequency and severity of reported child labour incidents, as well as the performance of governments in preventing child labour and ensuring the accountability of perpetrators. Extreme poverty, caused by low wages and high rate of unemployment among adult workers, combined with the fact that compulsory schooling only lasts five years, and many children thus leave school at the age of 11 or 12, creates a huge pool of potential underage workers. The Factories Act (1951, amended in 2016) sets the minimum age for employment at 14 years (before the amendment, it was 13). Children aged 14-15 may work for a maximum of four hours a day and are not permitted to work between 6pm and 6am.

The prevalence of counterfeit or borrowed identity documents and lack of comprehensive national IDs make it difficult to determine worker age with certainty. Research revealed that both children and employers use fake ID cards and fake doctor's attestations to hide child labour. When labour inspections or audits were conducted at the workplace, child workers are often hidden. Even though there are restrictions regarding working hours and type of work for workers under the age of 18, young workers often work the same hours as adults. This is also confirmed during FWF audits, where child workers aged 14 and 15 were encountered at several factories. All the child workers worked full time and conducted overtime same as adult workers.

For more information, on the status of compliance vis-à-vis FWF Code of Labour Practices, please refer to the [FWF country study for Myanmar](#).

4. Requirements for FWF member companies working with factories in Myanmar

FWF member companies that are active⁵ in Myanmar are required to implement additional, country-specific measures. These country specific requirements for Myanmar are an addition to FWF's general requirements for its member companies. A specific indicator (2.7) has been included in the brand performance check system in which the brand's performance vis-à-vis FWF's enhanced monitoring framework for Myanmar is assessed. Detailed information on FWF's general requirements can be found in the FWF performance benchmarking guide, and in policy documents on the FWF labour standards.

Building on [FWF's 2013 Position Paper for Myanmar](#), and based on FWF's recent experience and stakeholder consultations, FWF has elaborated the below requirements for member companies with production in Myanmar. Some of the 2013 requirements are maintained while a number of new requirements are adopted to better

⁵ Including companies that consider to start production, have test orders, or already have full production in Myanmar

mitigate against the specific risks in Myanmar of labour violations. FWF will continue to investigate topics covered by the enhanced framework and make information and analysis available to member companies.

1. Transparency

FWF member companies are required to maintain an updated list of suppliers being used in Myanmar in FWF's database. Using this information, FWF will publish an aggregate list of factories to make transparent which suppliers are being used by FWF member companies, which could effectively enable local stakeholders to identify suppliers as producing for FWF member brands. The list, which will be updated every three months, will be complemented with ownership information and presence/absence of (a) democratically elected factory union(s). The list will continue to list all factories that supply or supplied FWF members, including inactive factories, with information on whether the reasons to stop sourcing were related to social compliance considerations. In this list factory names will not be linked to brand names.

FWF member companies are required to share their due diligence process in their annual social report, which includes an adequate assessment of the specific risks for sourcing in Myanmar at their suppliers as elaborated in this document.

Also, in their annual social report, FWF member companies are required to report, at an aggregated level, the status of the labour conditions at their supplier factories, and the remediation that has taken place since. Information should include audits that have been conducted at suppliers and/or existing complaints.

2. Due diligence

With reference to the OECD guideline for due diligence, FWF member companies that (consider to) place orders in Myanmar are required to conduct proper due diligence to ensure an adequate risk assessment of suppliers before commencing new business relations. This risk assessment should also include (known and unknown) subcontractors of member brand's first tier suppliers.

Member companies are required to pay specific attention to risks related to child labour, workplace harassment, freedom of association and low wages (including payment below legal minimum wage). To get a good picture of the way workers are given possibilities to voice their concerns, brands should ascertain whether there is an active and democratically elected Workplace Coordination Committee and union.

As part of the due diligence process, brands should request (potential) new suppliers to share existing recent audit reports and ask questions about the status of remediation of the corrective actions.

In addition, brands should ensure that factories not only commit to the FWF Code of Labour Practices and to work on improvement of labour conditions, but also to the specific conditions as set out in this Enhanced Monitoring Framework.

Brands are encouraged to consult the list of suppliers that already produce for FWF member brands (see point 1) when considering starting a business relation with a new supplier. This could facilitate better brand cooperation and increase leverage.

As part of their due diligence, FWF member companies are required to consult local stakeholders to learn whether the stakeholders have specific information on current and potential new suppliers related to labour standards, existence or formation of unions and links to the military. To enable local stakeholders to provide this information, FWF members should share the names of current and potential new suppliers and relevant concerns derived from audits or complaint cases, particularly related to key risk areas. FWF can facilitate contact with local stakeholders when needed.

For the time being, member brands are to refrain from sourcing from factories in the three Special Economic Zones Dawei, Kyauk Phyu and Thilawa, as the legal framework is considered not to provide adequate protection of workers' rights including proper access to grievance mechanisms. Furthermore, the development of the SEZ's

is often associated with land grabbing and forced evictions. Furthermore, in order not to provide (indirect) support to the military, member brands are required to refrain from sourcing from companies with known direct links to the military, including in particular with companies that fall under the economic conglomerates owned by the army, i.e. the Myanmar Economic Corporation (MEC) and the Union of Myanmar Economic Holdings (UMEH)⁶.

Based on stakeholder consultations, FWF will periodically review whether the legal framework in SEZs has improved to allow a change in the aforementioned requirement.

3. Auditing suppliers in Myanmar

Member companies are required to audit all suppliers in Myanmar within the first year following the first bulk order, even if the supplier is in the tail of the member company's supply chain. Member companies can make use of FWF audits or own audits and external audits that meet FWF's quality requirements.

In case of critical audit findings that require immediate follow-up (e.g. union busting, child labour), the member brand is required to report to their case manager on the status of remediation in the timeframe set in the corrective action plan. When needed, the member company may request the audit team (or part thereof) to conduct a monitoring visit to verify remediation.

4. Promote processes to ensure Freedom of Association and enhance social dialogue at suppliers

Preferably member companies are to source from factories that have democratically elected unions.

Member companies are to ensure with its suppliers (and thus request proof) that worker representatives of Worker Coordination Committees (WCC) are elected democratically and are not nominated by factory management. Brands may suggest that an external party witnesses the election process. If a union is active in the factory, the union should be entitled to nominate one or more of the worker representatives of the WCC in accordance with relevant legislation.

Member companies should act against any form of discrimination or unlawful dismissals of union leaders, irrespective of whether the union is formally registered, and actively convey this message to their suppliers. In case of FOA violations, member companies should actively support remediation.

FWF member companies are encouraged to contribute to processes that strengthen social dialogue in factories. This means discussing and raising the importance of proper social dialogue with the suppliers and the importance of regular meetings between union and factory management. In addition, FWF member companies sourcing from Myanmar should enrol their suppliers, during the year following the first bulk order, in training on labour standards, grievance mechanism and/or social dialogue at the factory level (e.g. WEP basic/communication).

FWF member companies are to ensure that factory management does not hinder the registration of factory unions, but rather supports the union formation and registration process as needed.

5. Payment of at least the legal minimum and work towards the payment of a living wage.

FWF member companies must proactively engage with their suppliers to discuss and revisit their price levels when the new legal minimum wage level enters into force in March 2018.

FWF member companies must work with their suppliers and establish reasonable timeframes to ensure that all workers earn at least minimum wage. This means taking appropriate action when suppliers pay workers below the legal minimum wage, which may be legally allowed under the national legislation (for trainee and probation level wages), but is considered to be a violation of the FWF Code of Labour Practices.

⁶ This was also advised by experts of Human Rights Watch during a public FLA webinar.

As in other countries, existing wage levels must be cross-checked by the member company against available living wage benchmarks. Member companies are expected to work towards payment of living wages at supplier factories.

6. Child labour

Member companies should familiarise themselves with FWF's guidance on age verification. Based on this, member companies are required to discuss the risk of child labour with its suppliers and ascertain what policies the suppliers have in place related to child/young workers.

Member companies are required to enrol factories in FWF's training on age verification. The training will be arranged by FWF on an annual basis and is (for the moment) free of charge.

Member companies are required to work with their suppliers to ensure suppliers follow FWF's guidance on age verification in Myanmar and ensure appropriate measures are taken in case child work is found.

When member companies conduct own or third-party audits, they are required to ensure that auditors are allocated sufficient time to verify properly for the risk of child labour.