FROM EXTRACTIVE TO NON-EXTRACTIVE BASED FOREIGN INVESTMENT:

An Analysis on the Impact of Foreign Direct Investment and Decent Work Conditions in Myanmar

May 2019
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The International Labour Organization (ILO) and the Centre for Economic and Social Development (CESD)

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Any faults in substance or analysis rest with the authors.
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<th>Description</th>
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<td>Asian Development Bank</td>
<td>ADB</td>
</tr>
<tr>
<td>Association of Southeast Asian Nations</td>
<td>ASEAN</td>
</tr>
<tr>
<td>Cambodia, Laos, Myanmar and Vietnam</td>
<td>CLMV countries</td>
</tr>
<tr>
<td>Centre for Economic and Social Development</td>
<td>CESD</td>
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<tr>
<td>China National Textile and Apparel Council</td>
<td>CNTAC</td>
</tr>
<tr>
<td>Confederation of Trade Unions of Myanmar</td>
<td>CTUM</td>
</tr>
<tr>
<td>Corporate Social Responsibility</td>
<td>CSR</td>
</tr>
<tr>
<td>Directorate of Investment and Company Administration</td>
<td>DICA</td>
</tr>
<tr>
<td>European Union</td>
<td>EU</td>
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<tr>
<td>Foreign Direct Investment</td>
<td>FDI</td>
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<td>Foreign Economic Relations Department</td>
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<tr>
<td>free trade agreement</td>
<td>FTA</td>
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<td>Generalized Systems Preferences</td>
<td>GSP</td>
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<td>Government of Myanmar</td>
<td>GoM</td>
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<tr>
<td>Information and Technology</td>
<td>ICT</td>
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<td>International Finance Corporation</td>
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<td>International Labour Organisation</td>
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<tr>
<td>Mergers and Acquisitions</td>
<td>M&amp;A</td>
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<td>Myanmar’s Sustainable Development Plan</td>
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<td>One-Stop Service</td>
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<td>Responsible Business Conduct</td>
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<td>Special Economic Zone</td>
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<td>Sustainable Development Goals</td>
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<td>The Organisation for Economic Co-operation and Development</td>
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<td>UN Guiding Principles for Business and Human Rights</td>
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<td>Union of Myanmar Federation of Chambers of Commerce and Industry</td>
<td>UMFCCI</td>
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1. Introduction

Myanmar has experienced immense political and economic changes following its democratization between 2011 and 2015. As the Final Frontier in Asia, Myanmar’s economy has gained attraction from foreign investors which has resulted in the increased flow of foreign direct investment (FDI). However, as Myanmar becomes part of the global supply chains it is important to create an enabling environment that ensures inclusive growth that provides decent jobs for both women and men as a means of providing secure livelihoods. In the Sustainable Development Goals (SDGs), Goal 8 is Decent Work and Economic Growth which specifically looks at creating decent jobs and maintaining labour standards. This sentiment is also echoed in Myanmar’s Sustainable Development Plan (MSDP) under Goal 3: Job Creation and Private Sector-led Growth which states that efforts need to be made to increase access to decent, safe and quality work particularly for women and other vulnerable groups. Integrating the decent work agenda into the MSDP indicates Myanmar’s commitment to promoting fundamental labour rights and standards.

Having been integrated into the global supply chains, Myanmar has the responsibility to adhere with international labour standards and promote both the Sustainable Development Goals that directly relate to decent work. The European Union (EU) has recognized Myanmar as one of its key trading partners in Asia with imports destined for the EU valued at € 1,549 million which are dominated by manufacturing (31%) and agriculture (2%) (European Commission, 2018). The EU’s role in trade and investment in Myanmar is pivotal which is also seen by its dedication to identify opportunities in Myanmar that will foster responsible supply chain partnerships in various sectors. Therefore, it is also Myanmar’s responsibility to ensure that strategic partnerships are established among local and international partners that will promote responsible supply chains that puts decent work at the centre of the agenda.

Myanmar has made positive strides with setting the Minimum Wage Law (2015), the recent Occupational Safety and Health Law (2019) and other labour laws and regulations which demonstrate the importance of social dialogue with the tripartite consultations to improve labour regulations. Simultaneously, efforts have been made to facilitate the ease of FDI with the enactment of laws and regulations such as the Myanmar Investment Law (2016). Furthermore, FDI helps increase productivity in export-oriented sectors which facilitates better labour standards that then eventually ensures access to decent jobs in Myanmar. However, one of the key challenges in the global economy is the fact that, the employment rate is not at par with the growing labour force thus, which is needed to provide decent work (SDG Fund, 2018). Therefore, as Myanmar continues to strengthen its labour laws and standards and set regulatory frameworks to attract more FDI, it needs to set a culture of providing decent work opportunities to foster more responsible investment and positive partnerships with foreign investors while securing livelihoods.

This research paper primarily uses insight from a range of stakeholders that work directly with foreign investors or have closely observed some of the activities that have shaped the labour market. This paper is divided into two sections that are all geared towards understanding the connection between FDI in Myanmar and its role in advancing responsible business value chains.

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1 Myanmar Sustainable Development Plan (2018-2030) pg. 25
which simultaneously promote the decent work agenda. The first section is an overview of FDI and trade patterns since 2013 and economic growth in Myanmar. This is followed by an analysis on the relevant Myanmar laws and regulations that demonstrate the intrinsic link between fostering a conducive environment for attracting investment and enacting labour laws and policies that protect Myanmar workers and promote decent work. This linkage in turns highlights the relationship between FDI and decent work. Furthermore, the section also provides an overview of how Myanmar is performing in terms of ease of investment and labour standards in comparison to its neighbours within the Association of Southeast Asian Nations (ASEAN).

The second section gives extensive detail on the role of firms in promoting decent work in Myanmar. The methodology is outlined first in order to give a context on how this research study was conducted. Five areas of decent work are presented which include, employment opportunities, skills development and enhancement, equality at the work place, social protection and social dialogue. For each area, substantial findings are presented based off stakeholders’ perspectives and the current initiatives taking place in Myanmar. Lastly, based on all the findings and challenges or gaps raised, the paper shall outline a series of recommendations that can help advance the decent work campaign in Myanmar.

1.1 Trends of FDI and Trade in Myanmar

A new chapter of Myanmar’s role among international communities was opened again in 2011 and in late 2012 fundamental elements (such as unification of exchange rate, duration of land lease period) in creating business environment were adjusted, to make Myanmar more attractive for foreign investors. On the other hand, EU sanctions to Myanmar were lifted in April 2013 because of political and economic reforms. Following the deregulation of FDI, the flow of FDI in Myanmar is predominantly in an increasing and upward trend since then. Historically, China is the most important country for foreign direct investment, but its contribution to total foreign direct investment has reduced in the post 2010 period. The order of the patterns has changed and there are new players in the scene, especially investment flows from the EU since lifting the EU sanctions in 2013. As shown in Figure 1, the approvals have been dominated by investment from Singapore, China, Other ASEAN members, the United Kingdom and the EU. The Myanmar Centre for Responsible Business (MCRB) highlighted the significance of the newly opened EU markets when they stated how, “50 percent of the Chinese-owned garment industry sold its goods to the Western markets”. This shows the glaring importance of EU market in telling the FDI trends in Myanmar.

Though Singapore shared the highest amount of foreign investment, it is hard to conclude it is the number one investor in Myanmar. This is based on the fact that some of the multi-national enterprises (MNEs) or foreign companies register in Singapore and then come and invest in Myanmar as Singaporean companies. Furthermore, in an interview with MCRB, they explained the misunderstanding surrounding FDI from Singapore and how the increase of investments from Singapore is due to the relocation of MNEs. Singapore is described as a favourable environment because it provides, “tax incentives and favourable marketing schemes”.

Figure 2 shows that the largest percentage of FDI flows are in the manufacturing sector, followed by the real estate and other services sector. This is an important illustration in showing the move away from FDI in extractive to non-extractive sectors, which helps in generating greater employment opportunities.

A higher proportion of foreign MNEs is in the services sector, for example in the Myanmar case, ushered in a large amount of Greenfield investment from 2010 to 2016 (OECD, 2018). The Greenfield investment is a type of FDI where a parent company builds its operations in a foreign country from the ground up, resulting in skills and infrastructure transferability. This kind of investment is seen to be of linear in the volume of investment and the beneficial. Furthermore, Myanmar also exhibits a high number of mergers and acquisitions (M&A) investments in both manufacturing and services sectors from 2010 to 2016 (OECD, 2018). The M&A investment refers to management, financing and strategy involved with buying, selling and combining companies. Even though it is not directly inputting towards the positive spill over from the FDI, it can however, foster the creation of good business environment.
In spite of the influx of FDI in Myanmar, it is not about attracting FDI but rather it is about “[…] managing and sustaining it” (OECD, 2014). This indicates the need to implement policies that will ensure a sustained and conducive environment for attracting foreign investment. The increased investments by EU is a positive implication to FDI environment in Myanmar as MCRB explained that the Western market puts an emphasis on transparency and inclusiveness in its value chains as a whole. As shown in Figure 3, the export destination of apparel and clothing to Europe has gradually increased over the years. As exports to Europe increase, there is a mandate for manufacturers to employ more responsible and sustainable business practices based on the leverage buyers possess. A study by the Centre for Economic and Social Development (CESD) (2018), illustrated that a majority of the firms that exported to the EU were owned by Asians with over half of the firms (56%) under Chinese ownership (see Figure 4). Therefore, a market that is driven by the need to meet compliance standards should be fostered. There have been some sentiments on how firms owned by Chinese or other Asian countries are less likely to foster responsible
practices and compliance standards if they are not exporting to European markets (Law Firm, 2018). However, when they are exporting to European markets and for brand companies they ensure that they follow all the necessary compliance standards. Furthermore, this need to promote decent work standards does not only come from the export destination countries but, the Government of Myanmar (GoM) has also put effort in adjusting existing regulations and attracting foreign investment to boost the economy and create quality employment opportunities.

![Figure 4: EU Export by Firm Ownership](image)

Source: CESD-JJ Garment Firms Survey

### 1.2 Understanding Responsible Business and Decent Work

There are international frameworks that function as mechanisms to promote sustainable and responsible investment. The core frameworks that are widely recognized as guidelines are the United Nations Guiding Principles for Business and Human Rights (UNGP), The Organisation for Economic Co-operation and Development (OECD) Guidelines for MNEs and ILO MNE Declaration. Moreover, there are countries that make initiatives to ensure that their investors comply with responsible business standards. Such include the China National Textile and Apparel Council (CNTAC) that has developed a framework that provides guidance to its Chinese MNEs in the textile and apparel sector in carrying out responsible investment overseas. The European Union has also demonstrated its commitment when it endorsed the UNGP in 2011. Furthermore, its Responsible Business Conduct Working Group (RBC Group) of the EU Parliament presented the *Shadow EU Action Plan on Implementing the UNGP within the EU* as an action oriented plan towards promoting responsible business (EU Responsible Business Conduct Working Group, 2019). The commitment demonstrated by member states or nations ensures that they promote responsible and sustainable investment when abroad.
Responsible supply chain is a cornerstone of responsible business conduct (RBC) (OECD, 2018). Hence, the elaborate and comprehensive responsible investment guidelines for MNEs or foreign investors are a helpful tool in providing support for RBC. Those international standards and guidelines can act as an “external pressure” on foreign investors and MNEs in Myanmar towards the adoption and promotion of RBC norms in Myanmar. International frameworks acting as an external pressure and guideline can positively impact the MNEs and working environment in Myanmar. MCRB (2018) explained the effectiveness of the frameworks as a mechanism stating that, “if you remove the pressure that is mostly from the West and a little from Japan and China, then people will be cutting corners”. Moreover, an interview with the Union of Myanmar Federation of Chambers of Commerce and Industry (2018) also highlights the importance of establishing monitoring mechanisms that provide guidelines for compliance in an environment such as Myanmar where corporate governance is still lacking.

It is said that not all trade liberalisation will positively impact economic growth and development. Rather, there is an alternative perspective to this that, trade alone “is not a universal road to economic growth, let alone to higher employment and decent jobs” (Myant, 2017). In the sense that, the free trade agreement (FTA) efforts would push for less protectionism and non-discrimination in order to lessen tariffs in the exchange of trade between countries. Nevertheless, it is explained that these FTAs are ignored largely and “have no legal enforceability [on] themes as human rights, political dialogue, illicit drugs, money laundering, cultural cooperation and education and training” (Myant, 2017). In essence, it is important to understand that by ushering an influx of FDI and the ease of trade between countries this does not necessarily result in higher standards. Therefore, it is suggested to have frameworks outside FTA in setting higher standards in these areas (Myant, 2017). Such frameworks include the UNGP, the ILO MNE Declaration or the OECD Guidelines for MNEs.

It should be noted that despite the fact that these responsible business frameworks adhere to human rights standards and sustainable business practices, decent work principles are also enshrined within these frameworks. The ILO MNE Declaration explicitly mentions the role MNEs play in promoting both economic and social progress and decent work for all. Decent work encompasses promoting inclusive growth that creates quality jobs, that foster skills development and guarantees social protection and compliance with occupational safety and health standards. Without fostering any of these principles, the flow of FDI would fail to promote both economic and social progress within the country. However, the responsibility of promoting decent work does not entirely fall on the MNEs and investing countries but also on host countries. In this case, Myanmar is also responsible for ensuring that investment and labour laws and regulations in country are directly aligned to decent work principles. The GoM has also acknowledged the significance of promoting investment that fosters responsible business practices as well as promotes decent work in Myanmar. The Investment Policy (2016) states that, “Local and foreign investors shall comply with the principles for responsible investment and business conduct, including environmental and natural resources matters on an equal basis and in a non-discriminatory manner at all times.” This investment policy specifically draws attention to the importance of focusing on all responsibility principles equally and not seeing one as more important than the other. Furthermore, the Myanmar Investment Law (2016) explains how, “To develop responsible investment in the interest of the Union and its citizens which does not harm
the natural or social environment”. Finally, one of the key government policy documents the MSDP (2018) in Strategy 4.5 aims “to support the rights of individuals to freely pursue decent work within an environment free from discrimination and abuse, protected by law.” Therefore, the GoM is equally committed to ensuring the promotion of decent work in Myanmar by holding both local and foreign investors accountable for their actions.

1.3 Myanmar Laws and Regulations

This section focuses on the reforms made by the GoM primarily through both the investment and labour laws and regulations. The purpose of this section is to demonstrate the efforts that have been made to create a conducive environment for sustainable economic growth and development. These reforms also facilitated the flow of investment and provided the means to invest and conduct business in a responsible manner while advocating for the protection of Myanmar workers.

Investment Laws and Policies

There are three instrumental bodies that govern foreign investment in Myanmar which include the Myanmar Investment Commission, the Directorate of Investment and Company Administration as well as the newly formed Ministry of Investment and Foreign Economic Relations. The Myanmar Investment Commission (MIC) is formed under the Myanmar Investment Law (2016) which is responsible for verifying and approving investment proposals and issuing out notifications about sector specific developments. The MIC is made up of representatives and experts from the respective government ministries, departments and governmental and non-governmental bodies. The Directorate of Investment and Company Administration (DICA) is formed under the Ministry of Investment and Foreign Economic Relations which is responsible for company registration for local and foreign businesses. DICA also serves as the secretary to the MIC which is responsible for carrying out administrative activities of the Commission. Coordination efforts between ministries are demonstrated in the approval processes of licenses, whereby two bodies are required for this process both the MIC and a representative of the relevant ministry. Therefore, it is of uttermost importance that the MIC works closely with other ministries. In November 2018, the establishment of the Ministry of Investment and Foreign Economic Relations was approved by the Pyidaungsu Hluttaw (Parliament) as a means to coordinate between the relevant ministries and organizations on both local and international investment (Ministry of Information, 2018). This effort sees the combination of the Foreign Economic Relations Department (FERD) and DICA of the Ministry of Planning and Finance which will focus on improving attractiveness for investments and modernizing the relevant legislative frameworks of various sectors. Respondents expressed how despite the creation of the new ministry, there is still the question of observing how this new ministry would be able to effectively undertake the role of being the facilitator of investment. According to the MIC/DICA (2018), this initiative will allow MIC to have a higher status. In the past it has been really hard to deal with states and regions because they do not recognize the significance of the work being done and the power they possess.

Myanmar Investment Law was enacted in 2016 as a means to attract more foreign investment and facilitate the ease of setting up investments in Myanmar. The Myanmar
Investment Law (MIL) is a combination of the Foreign Investment Law (2012) and the Myanmar Citizens Investment Law (2013). These laws were combined in order to demonstrate the equal treatment of both local and foreign investors. One of the significant changes that has been highlighted by the law and tax advisory firm VDB Loi (2016), is the fact that the MIL “is [now] in sync with international rules…” Among the changes and improvements that have been made to the MIL, there are four key areas (1) synchrony with international laws (2) simplified process (3) tax incentives and (4) capacity building. This demonstrates Myanmar’s commitment to complying with international standards and facilitating the ease of investment.

Myanmar also demonstrates its commitment to holding investors accountable for conducting responsible business as articulated in MIL. It states, “The investor shall abide by applicable laws, rules, procedures and best standards practices internationally for this investment so as not to cause damage, pollution and loss to the natural, social environment and not to cause damage to cultural heritage.” Moreover, MIL also stipulates how investors are required to abide by the labour laws and rules so as to maintain labour standards and manage labour disputes between workers and employees. The commitment towards responsible investment is enshrined in this law and is articulated in the first objective which is, “to develop responsible businesses which do not cause harm to the natural environment and social environment for the interest of the Union and its citizens”. Furthermore, the Investment Policy (2016), states that, “....responsible and mutually beneficial foreign investments are welcomed. Local and foreign investors shall comply with the principles for responsible investment and business conduct, including environmental and natural resources matters on an equal basis and in a non-discriminatory manner at all times”. This demonstrates the efforts made by the Government to ensure responsible investment at a policy level.

MIC has made initiatives to ensure that foreign investors are held accountable for their actions while in country. As a means to facilitate responsible business in Myanmar, the MIC requires investors when submitting their application to meet the responsible investment criteria that is made up of five areas; i) environment ii) labour related issues such as social welfare iii) financial break down iv) fair competition v) regular tax payment (MIC/DICA, 2018). Therefore, if investors demonstrate commitment and initiative related activities in all five areas then they are more likely to conduct responsible business. Most of them are required to submit a report every 6 months. According to MIC, there is a requirement for Annual sustainability reporting for projects with MIC Permits (Rule 196), however, they have initiated the bi-annual rule. Despite this requirement, the report is not available to the public nor is it available at the DICA office. Moreover, it is reported that some of the reports are still in the process of being published on the website.

Despite efforts towards coordinating ministries, the MIC has to battle some of the time consuming processes with other ministries, some negative sentiments on foreign investment and some delays within ministries in providing assistance when foreign investors have challenges. Moreover, the lack of consistency among policies, for example in the cases of issuing licences for tourism related activities, the relevant ministry might issue an approval yet the national government might not because of the gaps with the governing laws. Other efforts made by the
government include the establishment of the “One-Stop Service” (OSS) Centers located throughout the country. The OSS are, as the name suggests, a cluster of different government offices located in one convenient place in order to facilitate various chores of due process involved in setting up investments. For the time being these centres are only available in Yangon. The OSS initiative was of particular help to new investors because it significantly reduced the time and effort that goes into doing regulatory paperwork which is traditionally not a small task in Myanmar. Therefore, these are some of the efforts that have been made by the GoM to strengthen investment policies that would in turn hold foreign investors accountable to promoting responsible and sustainable investment in Myanmar.

The European Union and the Generalized Systems Preferences (GSP)

It is important to consider how the strides Myanmar has made towards fostering economic growth and attracting foreign investment are based on overcoming decades of isolation and international sanctions. However, currently Myanmar faces the potential withdrawal of the Generalized Systems Preferences (GSP) by the EU on the basis of the humanitarian crisis and human rights abuse taking place in Rakhine. Win (2019), explains that during the re-admittance of GSP and the lifting of all sanctions against Myanmar in July 2013 the then EU Trade Commissioner Karel De Gucht said: “This has the potential to make a huge difference to the country’s economic development and to bring real benefits to the people there.” Myanmar used this re-admittance as an opportunity to demonstrate its commitment to labour market reform and promoting decent work conditions. Some of these efforts are demonstrated in Table 1 that illustrates the decent work indicators that Myanmar satisfies through its laws and policies.

A collaboration between UMFCCI, the Confederation of Trade Unions of Myanmar (CTUM) and the Myanmar Industries, Craft and Services, Trade Unions Federation (MICS), culminated in an event in which they advocated for the continuation of the GSP to the EU. The event was titled “Together we succeed, why GSP is Essential for Decent Work and Industrial Peace” and a joint statement was released at the end signifying the union’s commitment to fostering decent work conditions (Kyaw, 2018). Amidst all the information shared and the concern raised over the impact of the GSP withdrawal, one speaker stated how, the EU should not isolate the people of Myanmar. This indicates the perceived impact the GSP withdrawal would have on Myanmar political and economic landscape.

However, one writer argued how, "Nay Pyi Taw, not Brussels has a duty to save the garment sector" which illustrates how some economic and social analysts have stated that too much weight is being put on the GSP regulations whose preferential trade conditions have a clear stance on human rights abuse. It has been estimated how the garment sector is expected to hire 1.5 million workers over the next 10 years who will predominately be young women from Rakhine and Kachin (Chau, 2018). With the GSP looming and the Asian Garment Association predicting the lay off and shut down of some factories, the eminent concern over the GSP withdrawal is evident. Therefore, it is important to consider the impact the withdrawal of the GSP will have on the overall foreign investment climate in Myanmar and how that will eventually jeopardize the impact that FDI has on decent work in Myanmar.

Labour Laws and Policies
During the military regime, the effect of labour law was weakened and trade union movements were prohibited. After decades of authoritarian rule, in 2011 the GoM under U Thein Sein initiated a series of political, economic and labour related reforms which became part of priorities of its broader reform agenda. To demonstrate its commitment to aligning with international and regional standards, the GoM implemented a series of changes. As the first step of reform on labour regulations, the GoM repealed the outdated Trade Union Act (1926), and replaced it with the Labour Organization Law in October 2011, to protect the rights of workers and to strengthen good relations between employers and the workers. Five months later, the Settlement of Labour Dispute Law (2011) was promulgated and the Trade Disputes Act was repealed, to foster a better relationship between employers and workers and to create a peaceful and fair work environment. Under the provision of this law, if there are more than 30 employees, the law requires to establish Workplace Coordinating Committee (dispute resolving mechanism) at factory/enterprise level (consists of employer and employee’ representatives). This is to negotiate and conclude collective agreements between the employer and employees and tripartite arbitrary body/council (consists of government, employer and employee’s representatives and appropriate persons) at Township level, region/state level, to carry out decision making process for justice. Moreover, as shown in Table1, all the labour reforms have contributed towards Myanmar meeting 21 of the decent work indicators.

In addition, the new Minimum wage law replaced the 1949 Minimum wages Acts in 2013 when a tripartite Minimum wage national committee was formed, which consists of the government, worker associations, private sector associations and experts, who set the minimum wage rate. The first ever minimum wage was set in October 2015. In order to cover the social welfare of the workers, GoM enacted the Social Security Law in 2012, which includes coverage of health care and injury insurance scheme, individual/family benefits. The Social Security Board was then established in July 2013 with 28 members (reformed in December 2017 with 20 members), to oversee the implementation of this law. Up to March, 2019, 1,304,855 (which represent 5 per cent of employment populations) social security cards are issued to workers and three workers’ hospitals in Yangon and Mandalay and 157 clinics have been established throughout out the country (MOLIP, 2019). According to the Asian Development Bank (2015), “the role of labor market laws and regulations is to promote an investment friendly environment that enables and supports the creation of formal jobs and productive employment opportunities, while also protecting the basic rights of workers.” Therefore, the purpose of this review is to understand the significance of the major reforms of Myanmar laws and how they have contributed towards the decent work agenda in Myanmar.
### Table 1: Decent Work Indicators

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<th>Decent Work Conditions</th>
<th>Legal Indicators</th>
<th>Myanmar Laws and Policies</th>
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<td>Myanmar Sustainable Development Plan (MSDP)</td>
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<td>L2- Unemployment Insurance</td>
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<td>Social Security Rules (2012)</td>
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<td>Minimum Wage Law (2013)</td>
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<td>L5- Minimum hours of work</td>
<td>Factory Act (1951) Amendment in 2016; Chapter 7</td>
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<td></td>
<td>L6-Paid Annual Leave</td>
<td>Leave and Holiday Act (1951) Amended in 2014; Chapter 4</td>
</tr>
<tr>
<td>Combining work, family and personal life</td>
<td>L7- Maternity Leave</td>
<td>Leave and Holiday Act (1951) Amended in 2014; Chapter 7</td>
</tr>
<tr>
<td></td>
<td>L8-Parental Leave</td>
<td>Social Security Law (2012)</td>
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<td></td>
<td>L10-Forced Labour</td>
<td>GoM and ILO signed agreement for the elimination of forced labour</td>
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<tr>
<td></td>
<td>L12-Equal Opportunity and Treatment</td>
<td>2008 Constitution Section 349 (b) Citizens shall enjoy equal opportunity in carrying out occupation</td>
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<td></td>
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<td></td>
<td></td>
<td>Recent Occupational Safety and Health Law (2019)</td>
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<td>------------------------------------------------------</td>
<td>------------------------------------------------------------------</td>
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<tr>
<td>L16</td>
<td>Old age social security or pension benefits (public/private)</td>
<td>Social Security Law (2012)</td>
</tr>
<tr>
<td>L18</td>
<td>Incapacity for work due to invalidity (income replacement in case of non-occupational invalidity)</td>
<td>Social Security Law (2012)</td>
</tr>
<tr>
<td>L19</td>
<td>Freedom of association and the right to organize</td>
<td>Labour Organization Law (2011); Chapter 5</td>
</tr>
<tr>
<td>L20</td>
<td>Collective bargaining rights</td>
<td>Labour Organization Law (2011); Chapter 5</td>
</tr>
<tr>
<td>L21</td>
<td>Tripartite consultations</td>
<td>The Settlement of Labour Dispute Law (2012); Chapter 6</td>
</tr>
</tbody>
</table>
1.4 Myanmar within the Association of Southeast Asian Nations (ASEAN)

In order to understand how Myanmar is faring in regards to its initiatives in creating an enabling environment for investment and promoting decent work, it is important to make a comparison with its regional neighbours particularly those within the Association of Southeast Asian Nations (ASEAN).

From a regional standpoint, Myanmar’s efforts to reform regulatory frameworks related to FDI are reflected in its gradual improvement in OECD’s FDI Restrictiveness Index. Figure 5 demonstrates that since 2013, Myanmar has gradually improved its regional standing which can be attributed to the various policies and laws that have been implemented to facilitate the ease of foreign investors doing business. Moreover, among other ASEAN countries, Myanmar in 2017 had the fourth highest index (0.177) even among Cambodia, Laos, Myanmar and Vietnam (CLMV) countries. This illustrates the significance that has been placed on improving the investment environment by the GoM while simultaneously building a sense of competitiveness among its neighbours. Myanmar also recognizes the role played by investors in fostering economic growth and social progress.

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5 This index measures the statutory restrictions on FDI which looks at four main types of restriction. The FDI Index gauges the restrictiveness of a country’s FDI rules by looking at the four main types of restrictions on FDI:
- Foreign equity limitations
- Screening or approval mechanisms
- Restrictions on the employment of foreigners as key personnel
- Operational restrictions, e.g. restrictions on branching and on capital repatriation or on land ownership

Source: OECD Database on FDI (2017)

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Source: ILOStat Database (2018)
As shown in Figure 5, Myanmar has a significantly lower nominal monthly earnings of employees in comparison to ASEAN while the annual output per worker in Myanmar ($12,464) is almost half that of ASEAN ($23,000). Figure 7, presents a comparison on decent work indicators between Myanmar and ASEAN and some of the areas in which Myanmar can still improve in. Myanmar is not too behind with some indicators such as the employment to population whereby Myanmar and ASEAN only have a difference of 4.4 percent. Moreover, both Myanmar (61.2) and ASEAN (62.8) have similar levels of labour force participation, which is a good indicator for Myanmar. However, the figure also demonstrates how Myanmar still has a much lower trade union density rate (1%) in comparison to ASEAN (6.4%) which can be explained by the fact that Myanmar only recently liberalized trade unions under the Labour Organization Law (2011). Moreover, Myanmar still has a higher rate of informal employment (80%) unlike ASEAN (72.8%) yet with the promotion of more responsible investment and foreign investment flowing in, the hope is that more jobs are created in the formal sector.

Therefore, based on the evidence provided and a series of comparisons with ASEAN, it is evident how Myanmar has made significant steps to improve both its investment climate and its labour market so as to foster decent work.

Figure 7: Comparison of Decent Work Indicators between Myanmar and ASEAN

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6 Excluded some countries for some indicators as meaningful calculations could not be done or lack of data; (1) Informal employment: excluded Singapore, Malaysia and Lao PDR, (2) Trade Union density rate: excluded Vietnam and Lao PDR and (3) Weekly working hours: excluded Singapore, Vietnam, Brunei and Lao PDR
2. Role of Foreign Firms in Promoting Decent Work in Myanmar

2.1 Methodology of the study

This research paper presents a qualitative phenomenological study conducted with the main purpose of exploring institutions’ perception on the impact of FDI on decent work in Myanmar. A mixed method approach was used whereby questionnaires were sent online and in-person interviews were conducted. The respondents were specifically selected based on the type of work they do and their function which included foreign chambers of commerce, diplomatic institutions, law firms with foreign clients, foreign private enterprises and MNEs, government officials, trade unions and other relevant stakeholders. These were identified based on their activities related to responsible business initiatives and through snowballing sampling after a series of interviews. The sample of the study included 25 institutions that willingly provided information after being approached. Furthermore, a mini survey was conducted on a sample of 52 female workers from the labour intensive industry in Yangon who were asked a series of questions on their perception on FDI and how it has affected their work environment given that they were working for either joint ventures or foreign firms.

For the purpose of this research study, it is important to define specific terms. The term *decent work* is enshrined in the ILO Decent Work Framework\(^7\) which refers to, “opportunities for women and men to obtain decent and productive work in conditions of freedom, equity, security and human dignity.” The findings of this study aim to highlight how decent work in Myanmar is perceived not only in the context of this definition but also in the context of the ILO MNE Declaration. Therefore, the findings will be divided into five areas that address decent work which include, employment opportunities, skills development and enhancement, equality at the workplace, social protection and social dialogue. As previously mentioned, *FDI* will be understood as any form of investment made between 2013-2018 by a foreign firms, including MNES into specific sectors Myanmar. Furthermore, FDI mainly focuses on the formal sector, however, this study did find cases of subcontracting which can sometimes be a mixture between informal and formal sector. Lastly, the term *responsible business* shall be used based on the OECD (2018) which cover, Human Rights, Employment and Industrial Relations, Environment, Combating Bribery, Bribe Solicitation and Extortion, Consumer Interests and Disclosure. Furthermore, it is important to consider how business relationships all across the value chain are also covered by due diligence.\(^8\)

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\(^7\) Decent work is endorsed and was adopted in ILO Declaration on Social Justice for a Fair Globalization (2008) https://www.ilo.org/wcmsp5/groups/public/---dgreports/---cabinet/documents/genericdocument/wcms_371208.pdf

\(^8\) Business relationships covered by due diligence include, all types of business relationships of the enterprise – suppliers, franchisees, licensees, joint ventures, investors, clients, contractors, customers, consultants, financial, legal and other advisers, and any other non-State or State entities linked to its business operations, products or services (OECD, 2018, p.10) https://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf
2.2 Significance of FDI and Decent Work in Myanmar

As previously mentioned, there has been a shift in the form of foreign investment in Myanmar, from resource based sectors such as mining to more non-resource based sectors such as manufacturing and service sectors. One of the benefits of this shift to non-resource based sectors is how non-resource based sectors generate more employment opportunities. As illustrated in Figure 8, natural resources will only generate a smaller proportion of employment opportunities (1 percent) in comparison to manufacturing that will generate more employment (11 percent). As more foreign investment flows into non-resource based sectors, more jobs are created. Thus, more Myanmar workers have the opportunity to increase their livelihoods while benefiting from other benefits that come with responsible investment that align with decent work practices such as, skills development, conditions of work and life, and industrial relations.

In as much as FDI has an impact on decent work, it is important to consider why this intrinsic relationship is especially important for Myanmar. Having recently emerged from a period of isolation and military regime, Myanmar’s re-integration into the global economy is significant to furthering both its economic and social progress. Decent work standards are intertwined into both the foreign investment and labour laws and policies in Myanmar that demonstrate its commitment to protecting its labour force and strengthening its citizens’ capacity.

Foreign investors in Myanmar play an instrumental role in complying with the laws and policies that are geared towards conducting responsible and sustainable business practices. Moreover, foreign investors are capable of influencing other local companies to also comply with responsible standards and to develop initiatives that promote decent work. Compliance is a term that was frequently raised by respondents which refers to firms and companies conforming or adhering to local and international regulations related to labour conditions and conducting responsible business. A representative from SMART Myanmar stated how, “Foreign companies foster a culture of compliance” (2018). One law firm explained how their clients sometimes engage their compliance team. The team is comprised of five to ten people and sometimes assists with the labour inspections for compliance purposes, assisting with labour disputes and terminating workers. Often times it is said that the clients will provide a checklist they use with other countries but then adapt it in accordance to Myanmar laws. This is a common occurrence whereby foreign companies or enterprises will have their own frameworks that they use in their other international branches. However, this becomes problematic when they do not adapt them to the local context. Overall, it is important to recognize that as foreign companies foster a culture of compliance they in turn support decent work standards and have the potential to contribute towards the decent work agenda in Myanmar.
2.3 Employment Opportunities

Research reveals how 17 percent of the work force in OECD countries is in the informal sector, whereas in developing countries, the corresponding figure is much higher at about 60 percent (Ihrig and Moe, 2004; Dessy and Pallage, 2003). According to the Labour Force Survey (2015), the percentage distribution of employed persons by their type of industry sector were 24.1 percent in formal sector, 75.6 percent in informal sector and 0.3 percent in private household. Then by their type of employment status, 15.1 percent were working in formal employment and 84.9 percent were working in informal employment (LFS, 2015). Moreover, a large number of firms are currently unregistered and operating in the informal sector, hampering at least their direct integration into regional economic activities (CESD, 2016). This indicates the persistent economic activities in the informal sector in Myanmar.

However, with increased FDI in specific sectors, it is believed that jobs are created in the formal sector. As mentioned before, between 2010 and 2016 Myanmar exhibited a higher number of mergers and acquisitions investment in both manufacturing and services sectors. Around 60 percent of economic growth in 2015-2016 was dominated by an expansion in the service sector (Myo, 2017). With the growth in such non-resource based sectors, comes the creation of more jobs. Based on a study done by CESD (2017), Figure 9 shows a comparison of the impact of FDI in oil and gas sector in comparison to the sector and the greater opportunities created by the non-extractive industry versus the extractive industry. Unemployment is one of the greatest social risks facing people who depend for their livelihood on the sale of their labour power especially where social welfare benefits are concerned (ILO, 2001). Therefore, FDI in Myanmar plays a pivotal role in alleviating this social risk by creating employment opportunities.

The ILO MNE places an emphasis on MNEs being able to create both employment opportunities and set and maintain high labour standards. A representative from the Ministry of Labour emphasized that, “Since job creation is the third pillar of the MSDP, FDI is seen as not only a way to generate jobs but it is important for it to be responsible job creation.” Another
effort for promoting decent work is seen through efforts made by the Ministry of Labour, who place an emphasis on workers having an employment contract. During the process of obtaining an investment contract both foreign and local companies are required by the Ministry of Labour to have an employment contract\(^9\). However, the only challenge is the lack of awareness from workers who do not know that it is within their right to have an employment contract. Overall this indicates how one of the expected outcomes of FDI is job creation, yet these still need to be decent and safe jobs.

As previously mentioned, Myanmar’s FDI flows are shifting from extractive to more non-extractive based investments. The impact of FDI on decent work can be seen through the lens of the following sectors; oil and gas, garment sector, tourism and telecommunications. Despite the fact that oil and gas represent a smaller proportion of FDI they have made significant strides in advancing labour standards in Myanmar. Based on the safety issues and technical standards, it is important to recognize how companies in this sector set a precedence for decent work conditions. This was re-iterated by a respondent from the oil and gas sector who explained how oil companies play a significant role in promoting safe working standards that actually abide by the international regulations, thus promoting decent work conditions in Myanmar. Furthermore, when engaging sub-contractors the players in this sector have been known for ensuring that they pass down the good practice of maintaining labour regulations (MCRB, 2018). This is an example of positive supply chain influence. According to OECD (2008), foreign firms may collaborate with domestic suppliers to ensure that the quality standards are met and that labour standards correspond with their codes of conduct.

**Figure 9: Average Number of People Employed in Oil and Gas Sector versus Garment Sector**

<table>
<thead>
<tr>
<th>Firm type</th>
<th>Average number of employees per firm last year</th>
<th>Average number of employees per firm in the current year</th>
</tr>
</thead>
<tbody>
<tr>
<td>Foreign-owned</td>
<td>850</td>
<td>750</td>
</tr>
<tr>
<td>Joint Venture</td>
<td>500</td>
<td>600</td>
</tr>
<tr>
<td>Domestic-owned</td>
<td>450</td>
<td>550</td>
</tr>
</tbody>
</table>

Source: Garment Firms Survey (CESD-IDRC 2017)

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\(^9\) There is a template for the employment contract that was an effort to integrate workers into a more formalized form of employment
Secondly, the garment sector in Myanmar heavily depends on the market it supplies such that if the buyers are European or American then they will be more conscious and have more pressure from its consumers at home to address labour conditions and responsible business. However, if buyers are from other Asian countries they are less likely to put labour conditions at the forefront of their business operations. Research findings indicated how 70 percent of manufacturing exports is produced by MIC permitted enterprises which indicates the role this sector plays in Myanmar’s development (MIC/DICA, 2018). The tourism sector on the other hand, is characterized by mostly domestic investment but there are cases of foreign management like Accord or the Hilton who explicitly define the importance of maintaining labour conditions. Lastly, telecommunications have been a significant employer especially in the construction sector whereby they even subcontract, three or four levels out. The labour conditions however are all dependent on whether the operator checks on the ground to assess what the situation is like. One of the most vocal and active telecommunications companies currently doing that is Telenor who are known to be one of the only companies that publish any cases of death in the construction of their towers. Another perspective came from a local logistics company that stated that without FDI, they would not have the international shipments they have and thus they would not be able to generate the job opportunities they do now.

2.4 Skills Development and Enhancement

Countries need to reform and re-orient national training policies and systems because the impact of education and training on productivity depends on their quality and relevance to labour market needs and their accessibility to all workers (ILO, 2011). Education and skills are a means to promote decent work and labour productivity enhancement.

The proportion of working age population that has completed high school is only 6.5 percent and the proportion of the working age population with graduate education and above is only 5.8 percent (Myo, 2017). Moreover, Figure 9 demonstrates the proportion of labour force that has completed both secondary and tertiary levels of education. This indicates the low levels of education within Myanmar’s labour force and the need to bolster the education and skills levels. As Myanmar continues to develop and its labour force in different sectors grows, it is important to place an emphasis on skills development. Efforts by the Government have been made through the enactment of the Employment and Skills Development Law (2013) by the Ministry of Labour that allows the private sector to organize skills training. Under this law, the National Skills Standards Authority (NSSA) was set up to issue skills certificate and create a benchmark for skills. A representative from CTUM encouraged foreign firms to recognize the NSSA skills certificate in order to generate more opportunities for workers. The OECD (2008) expressed how FDI has the potential to build workers skills through skills and knowledge transfer. Moreover, as workers move from a foreign owned firm to a domestic firm this may contribute towards the transfer of knowledge of modern production and management practices to their new employers (OECD, 2008). Therefore, creating a knowledge and skills transfer model that directly impacts the skills development of Myanmar’s labour force is important.

There is the general belief that foreign investment is beneficial in the sense that foreign
enterprises and investors facilitate capacity building so as to build a skilled labour force in Myanmar. In demonstrating their commitment to the decent work campaign one diplomatic mission states how, “We support European Union’s projects like SMART that help facilitate trainings in the manufacturing sector which we believe is an indication of our commitment to decent work agenda.” Another example that was given was how, “In the Special Economic Zone (SEZ) in Thilwa there is an increased capacity building of work related to technology and technical training courses.” H&M and Coca Cola also have skills and development initiatives whereby they train their staff and suppliers on good practices (see Box 1). However, in some cases, capacity building isn’t always possible. One case study was given whereby a Japanese construction company had resorted to bringing in house resources rather than sub-contracting because the quality control and safety standards were inadequate (MCRB, 2018). Ideally, it would be good if they dedicated their efforts to internal training however, their business model does not allow them to do so. Therefore, it is important to realize how not every foreign investor is capable of having a capacity building business model.

Figure 10: Labour Force Participation by Education, Gender and Rural-Urban


Figure 11: On Job Training By Firm Ownership

Source: Garment Firm Survey (CESD-JJ2018)
Skills development and training is a critical part of labour productivity enhancement and based on a survey conducted in the garment sector in Myanmar, only 15 percent had access to on-the-job training and 3 percent was outside the office training (CESD, 2018). Despite the fact that this sample was specific to the garment sector, it is important to recognize the low levels of training. Moreover, it was reported that at a national level, only 0.7 percent of working age population had undergone trainings in the last year (Myo, 2017). This indicates how firms or businesses are not always going to provide training or skills development activities for its workers. A success case study is seen in how a Total oil rig functioned for an entire two week shift with only Myanmar staff on board. It is cases like these that illustrate the potential impact FDI can have on fostering not only decent work but a sense of sustainable development. In another study conducted by CESD (2018) through the Just Jobs imitative, findings indicated the level of training offered by foreign firms. More on the job training was done by foreign firms (86%) under the ownership of the following countries, China, Taiwan, Hong Kong, South Korea, Malaysia and Belgium (Figure 11) in comparison to domestic firms (67%). Furthermore, workers at foreign firms reported receiving targeted training by the firm. Therefore, evidently FDI can create a conducive environment for skills transfer and exchange however, the underlying issue is the need to build an educated and skilled labour force in Myanmar which needs to be a collaborative effort between the Government and the private sector.

10 Sample size was 21 firms and 149 workers. The initial JJ dataset was larger 60 firms and 202 workers, however this particular dataset only shows the workers and firms match in order to come to any conclusion regarding the efforts of specific firms and their workers working conditions.
2.5 Equality at the Workplace

When analysing the importance of equality at the workplace, it is important to recognize how there are social norms, societal practices or legal barriers that impede the full participation of marginalized groups (MCRB, 2017). MCRB in collaboration with foreign companies and foreign entities such as Nestle, Chevron, and the International Finance Corporation (IFC) and DaNa Facility highlighted how business are capable of fostering diversity and promoting a culture of respect and equality at the workplace (MCRB, 2019). This event also highlighted four examples of foreign companies making initiatives on how to promote equality at the work place. For example, the IFC initiates a program titled, ‘Respectful Workplaces’ which explores the costs of bullying and sexual harassment to business in Myanmar who believe that a respectful workplace is appealing to employees and good for business. H&M who was mentioned before for their efforts in promoting skills transfer are also pivotal in supporting equality at the workplace. This is done through their support with the ILO and the Swedish International Development Agency (SIDA) for the gender equality assessment. Another foreign company making strides in equality at the workplace in Myanmar is Total E& P who have a ‘Practical Guide to Dealing with Religious Questions’ to deal with questions of religious expressions and cultural practices in the workplace given the fact that they have a diverse workforce. This illustrates an effort to be respectful and accommodating to each employee’s religious background. Lastly, Heineken Myanmar through its ‘Social Media Policy’ aims to hold employees accountable for what they post online, encouraging them to refrain from posting discriminatory comments. Therefore, this demonstrates how foreign companies and entities can positively contribute towards promoting decent work in Myanmar by implementing policies that promote equality at the workplace.

Furthermore, a sector wide impact assessment conducted by the MCRB (2017) shed light on gender equality issues in Myanmar specifically in the oil and gas, tourism, information and technology (ICT), mining and oil palm sectors. The findings reflected the assumed gender roles among respondents on which jobs women are traditionally meant to do in comparison to men. There was a low percentage of women in the extractive sector and managers in the tourism sector purposely included clauses in women’s contracts that would dissuade women from getting married and starting families so as to avoid paying maternity leave. A suggestion that was raised in the course of this study by MCRB was the need to have a draft of the Anti-Violence against Women Law, which would legally address the protection of women.

The garment sector is made up of over 80 percent of women and it is estimated that this workforce will grow to one million by 2020 (ILO, 2018b). In this study, the International Labour Organisation (ILO) (2018b) found that women were disadvantaged in learning new skills and had limited opportunities for promotion. Moreover, with the shift towards automation and artificial intelligence in the global garment industry, women will be affected the most especially if they do not acquire competitive skills. Managers in the garment sector admitted to not considering how women in this sector can better manage motherhood and employment. Thus, having higher management consider this would be one of the first steps of improving the workplace conditions for women. Lastly, both the MCRB (2017) and ILO (2018a) studies pointed out the lack of grievances mechanisms to report cases of sexual harassment, as there were cases of both verbal and physical abuse at the workplace and when traveling to and from work. The need to promote gender equality and protection in the workplace both among foreign
and local firms is essential in achieving the full potential women have to contributing to the economic development of Myanmar.

2.5 Social Protection

For economies in transition, to ensure a smooth economic transformation and the development of democracy, it was vital to strengthen social protection (ILO, 2001). This indicates the role that social protection can potentially play in Myanmar’s economic transition. In a survey conducted by CESD (2018), it was found that 64 per cent of the surveyed firms were foreign owned and 11 percent were joint venture and out of the sample, 82 per cent of the employees were members of the Social Security Board and 67 percent had a valid social security scheme. This illustrates the current implementation of the social security in the garment factories in Yangon and the potential foreign investors have to positively influence the conditions of work and life for workers. According to a representative from the Ministry of Labour, social security has dramatically improved from covering about 700,000 workers in 2013 to now covering over a million workers. This gradual improvement is illustrated in Figure 12. Despite covering one million workers, one has to recognize that the total labour force in Myanmar is 22 million workers, therefore there is still a lot that needs to be done particularly in covering those in the informal sector. Improving occupational safety and health through the new OSH Law (2019) is needed in many sectors and there’s a need for awareness raising and challenges for implementation. This can only be achieved if all stakeholders work collectively (MOLIP, 2018). Moreover, the recent enactment of the Occupational Safety and Health Law (OSH) demonstrates the country’s commitment to improving workers’ social protection. The representative from the Ministry of Labour also stated how, “Foreign firms are known to protect workers’ rights, giving them overtime wages and paying them double when they work during the weekends.” Being paid double is however an initiative on the side of the GoM and is double that of its regional neighbour Bangladesh which goes above the international standards. A representative from CTUM suggested that social security be its own independent body and have private enterprises operating them. Thus, workers are treated in accordance to international standards gaining access to social protection services because they are working for foreign entities.

![Figure 12: Number of Insured Workers in Myanmar](source: MOLIP (2018))
2.6 Social Dialogue & Industrial Relations

The ILO MNE (2017) emphasize how it is important for MNEs to respect workers’ right to freedom of association and the right to organize and collective bargain. As more foreign investments started flowing in, the Government demonstrated its commitment to protecting its workers by working towards aligning its labour laws and policies with international frameworks. Industrial relations refer to the relation of management and employees in any productive work. Under industrial relations one should consider three areas, unionization, working conditions, and dispute settlement mechanism.

After the re-enactment of the Labor Organization Law (2011), there was a resurgence/formation of basic trade unions, which had been banned by the previous military regimes. As demonstrated in Figure 13, the highest cases of labour disputes in Yangon were related to termination (53%) followed by other (22%) and related to wages (21%). The figure also demonstrates the amount of labour disputes by the sector and the garment sector had the highest number of disputes followed by other and the lowest cases were in the food processing industry. Lastly, between 2015 and 2018 there has been a significant decline of labour disputes in Yangon indicating some form of improvement in legislature and in the management of dispute mechanisms. However, this research study found that foreign companies are facing challenges such as increased strikes and a break down in the labour disputes mechanism. A recent joint study by CESD and London School of Economic (LSE) noticed that there is correlation between worker disputes and foreign ownership in garment sector (Min et al. 2019).

A previous study shows that 56 percent of garment manufacturing enterprises have an established worker association (CESD, 2015). According to a report by CESD (2018) only 41 percent of workers have a labour union in their factories and only 20 percent are union members while 74 percent have never been a union member. Some of the reasons that they listed for not being a trade union member was the absence of a union where they worked as well as the attitude of management towards the union members. When asked the reason behind why workers went on strike, 69 percent stated it is because of low wages, 4 percent stated payment delay, another 4 percent stated it was because of extended working hours and 2 percent was because of abusive employers (CESD, 2018). Therefore, it is important to consider how MNEs and foreign investors address social dialogue issues in their firms and work places. One of the most echoed responses collected on industrial relations was how foreign companies are facing challenges such as increased strikes and a break down in the labour disputes mechanism. Most foreign investors believe that the Township Conciliation Board11 at times is not as effective as it is meant to in resolving labour disputes or making fair judgments. This then creates a frustrating circumstance whereby foreign investors at times wonder why they need to comply if they do not get fair results because compliance also costs money (Law Firm, 2018). Furthermore, the challenges raised regarding compliance are also then linked to transparency issues. In order to address some of the labour disputes that are related to miscommunication and cultural awareness, DICA/MIC (2018) expressed that they are going to produce a Dos and Don’ts Guideline for foreign investor in collaboration with other government ministries and MCRB.

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2.7 On-going Initiatives by Respective Stakeholders

Other than some of the initiatives mentioned that help foster the relationship between FDI and decent work, it is important to look at other examples. At the local level, there is the National Tripartite Dialogue Forum (Government, Private sectors and Unions), facilitated by ILO in which the decent work agenda is discussed among all three stakeholders. Then UMFCCI has regular meetings with foreign chamber of commerce such as American Chamber of Commerce and European Chamber of Commerce however, their conversations are not centre on responsible business but more on other rules and regulations. This is however, a potential area that can be leveraged with receiving updates on responsible initiatives. Since 2017, the UMFCCI has the Employer Award which is awarded to both local and foreign companies which is a way of incentivizing companies to comply with the rules and regulation. Thus, fostering a focus on responsible business.

As cited before, there is also the dialogue between Myanmar Investment...
Commission (MIC) and international companies at the Responsible Business Seminar facilitated by MCRB. Furthermore, according to the requirements by the MIC when foreign companies apply for a permit, they need a Social Welfare Plan/Corporate Social Responsibility (CSR) program.

The European-Chamber of Commerce Myanmar recently launched the Responsible Business Initiative (EMRBI) where members share best practices for responsible business. Finally, as mentioned before, a new international framework is being developed by the China National Textile and Apparel Council (CNTAC) to provide guidance to its Chinese MNE in carrying out responsible investment overseas. Trainings were provided to Chinese managers last year. Therefore, this demonstrates the efforts made by both local and foreign stakeholders to foster decent working conditions in Myanmar in related to foreign investment.

3. Conclusion and Recommendations

This research paper set out to investigate to what extent the flow of FDI into Myanmar has impacted the labour conditions and responsible business post-2010. In order to get a holistic perspective, it was important to survey a range of stakeholders to understand first-hand how FDI is perceived and whether it is seen as a catalyst for promoting decent work. However, it is important to note that in the course of the research it was at times difficult to determine whether certain improvements within the labour market were exclusively related to the flow of FDI.

The key findings highlighted the Government of Myanmar’s efforts to reforming regulatory frameworks, the linkage between FDI and decent work and the current situation and challenges that exist. The deregulation of foreign investment has resulted in the increased flow of investment within the manufacturing and service sectors. This has led to the creation of job opportunities particularly in the formal sector, sometimes associated with higher pay. In addition, FDI plays an important role in promoting export growth of the country. Moreover, the requirement of export market matters in perusing investors for compliance of decent work standards as well as the working environment of their sub-contractor. Economic upgrading is considered as a pull factor for social upgrading. However, this logic is not always linear and does not occur automatically. The question whether FDI promotes improvement in workers’ employment conditions, such as training, working hours and job security are complex. However, the bottom line is that overall effects of inward FDI on Myanmar are positive, but it is unclear whether it has spill over effects to overall labour market, especially because the existing evidence is unclear due to the lack of data. Most respondents did highlight that MNEs provide better working environment and skill development to their workers. On the other hand, labour disputes rarely occurred among the MNEs and yet it is unclear whether this is the same for small and medium size foreign firms, especially in labour intensive manufacturing sector.

An area of reform that has sought to align with international standards is the investment and labour laws and regulations. One of the key changes made in terms of regulatory frameworks is the enactment of the Myanmar Investment Law (2016) which sought to make both local and
foreign investors equal and ensure that both are held accountable for investing responsibly. Notably, a series of laws have been enacted to ensure that labour standards are maintained and that Myanmar workers’ rights are protected in the workplace. Lastly, the Government has demonstrated its commitment to promoting responsible business and decent work in practice. However, its achievement still stands behind on average ASEAN in many areas.

The lack of monitoring and reporting systems and limited inspections done to check whether foreign companies comply with what is stated in their investment proposal/CSR plans is another challenge that was raised. Thus, resulting in poor information dissemination, which could lead misunderstanding and unconfident on development of foreign investment.

Respondents in the study stated how foreign firms have an advantage in that they have prior knowledge of compliance in sectors like manufacturing than locals. Thus, local firms are constantly trying to learn from foreign firms (MGMA, 2018). Furthermore, the imminent decision over the EU GSP is expected to affect the momentum of decent work agenda of Myanmar mostly affecting women and the youth.

Some of the existing challenges raised in the course of the research study included the lack of formal information sharing mechanisms on decent work between MIC and Ministry of Labour, Immigration and Population (MoLIP). This is not only at the government level but even workers/unions have limited knowledge and awareness on what decent work standards are (MoLIP, 2018). In addition, private sector has limited understanding on domestic decent work agenda as well as ILO’s MNE declaration about decent work for all. This indicates the need to raise more awareness on the concept of decent work and strength the existing institutes to implement decent work agenda effectively that go beyond on average ASEAN.

**Recommendations**

The following are some of the recommendations that were drawn from the findings of this research study based on the macro and micro levels.

**Improving coordination among Ministries and enforcement:** A significant number of respondents mentioned the need to improve the coordination between Ministries and how laws and policies need to be consistent throughout. Moreover, even though there are rules and regulations there is still the challenge of actually enforcing them and ensuring firms comply. MIC highlighted its challenge in the process of issuing a permit and the need to have more information sharing mechanisms. In accordance to the Myanmar Investment Rules, investor is required to submit an annual report to MIC that include information about conducting business and summary of those information is required to publish for public awareness. Thus, it is recommended to enforce these exiting rules, by publishing information on efforts made towards promoting decent work.
Strengthening and aligning with the existing international instruments and raising awareness: When respondents were asked about their knowledge or promotion of the ILO MNE Declaration, most domestic stakeholders are not aware on the principles of declaration. In addition, a majority of foreign stakeholders stated that they did not explicitly use it for promoting decent work conditions however, they did use other resources such as the UN Guiding Principles on Business and Human Rights, the Business Social Compliance Initiative (BSCI), IFC Performance standards, the Sustainability and EHS Guidelines on construction, fishing and off-shore oil (also the Government has been using it for its EIA guidelines). Then others have resorted to consulting with law firms or institutions like the Myanmar Responsible Business Centre (MRBC). Thus, strategies need to be made to see what it would be effective to integrate ILO MNE principles into the business model of foreign investors that operate in Myanmar. The regular meetings between UMFCCI and the foreign chambers and national tripartite dialogue forum can be used as a means to share various initiatives being conducted by MNEs and address any issues of conducting responsible business. These efforts will also be geared towards encouraging MNEs and foreign investors to consider its entire supply chain when engaging in business with local partners and how to ensure they comply with their code of conduct. The awareness of ILO MNE for decent work in Myanmar is still early and there is a great need to educate government agencies, private sector associations and unions on its benefits and procedures. In this regards, MoLIP, UMFCCI, Foreign chambers of commerce, NGOs/Think tanks concentrated on labour affairs can play an important role in this respect.

Improving Social Dialogue: Industrial relations and social dialogue is an essential element of decent work and without it workers’ rights are seriously compromised. Most importantly, more efforts need to be made geared towards raising awareness on labour laws specifically knowing they should demand a contract, minimum wage and social security benefits. Therefore, more efforts should be geared towards de-escalating disputes as a result of miscommunication before actions like strikes occur. It would be a good idea to try and include MNEs in some of the tripartite meetings in order for them to gain a better understanding on how Myanmar is committed to promoting the decent work agenda and what their role is.
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List of Appendices

Annex 1: Name of the Participants and Organizations

<table>
<thead>
<tr>
<th>Name of Organization</th>
<th>Organization</th>
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<tbody>
<tr>
<td>The Directorate of Investment and Company Administration (DICA)/ Myanmar Investment Commission (MIC)</td>
<td>EU-Chamber of Commerce</td>
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<tr>
<td>Ministry of Labour, Immigration and Population (Department of Labour)</td>
<td>US Chamber of Commerce</td>
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<tr>
<td>Ministry of Commerce</td>
<td>H&amp;M</td>
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<td>Myanmar Responsible Business Centre</td>
<td>British-American Tobacco</td>
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<td>Union of Myanmar Federation of Chambers of Commerce and Industry (UMFCCI)</td>
<td>Heineken</td>
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<td>Confederation of Trade Unions of Myanmar (CTUM)</td>
<td>Myanmar-Japan Tobacco Company</td>
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<td>Myanmar Garment Manufactures Association (MGMA)</td>
<td>DIAGEO</td>
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<td>Archer Daniels Midland Company (ADM)</td>
<td>Thanliwn Legal</td>
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<td>DHL</td>
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<td>US ICT Council for Myanmar</td>
<td>Joint Peace Fund</td>
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<td>Embassy of Spain</td>
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**all the stakeholders were contacted however not all responded**