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**Annual report of the United Nations High Commissioner
for Human Rights and reports of the Office of
the High Commissioner and the Secretary-General**

Human rights situations that require the Council's attention

Progress made and remaining challenges with regard to the recommendations of the independent international fact- finding mission on Myanmar

Report of the Office of the United Nations High Commissioner for Human Rights*

Summary

Pursuant to Human Rights Council resolution A/HRC/RES/46/21, this report: assesses actions taken by various actors following release of the Independent International Fact-Finding Mission on Myanmar's 2019 conference room paper on the economic interests of the Myanmar military; identifies continuing and emerging challenges; and uses examples to highlight relevant issues.

* The present report was submitted after the deadline in order to include the most recent information.

I. Introduction and methodology

1. In resolution A/HRC/RES/46/21, the Human Rights Council requested the Office of the High Commissioner for Human Rights ('OHCHR') to provide the Council at its fifty-first session a comprehensive report on progress made and challenges remaining with regard to recommendations made by the Independent International Fact-Finding Mission on Myanmar ('FFM') in its 2019 conference room paper on the economic interests of the Myanmar military ('Tatmadaw'), and to provide further recommendations.¹
2. In its paper, the FFM determined that the ability of the military and its leadership to draw on various sources of revenue enabled its conduct, including perpetration of serious international crimes. The FFM investigated five areas of the military's economic interests, came to conclusions, and listed implicated individuals and companies in separate annexes. Its recommendations were targeted at seven groups of actors. Updates and responses to the original paper are publicly available.²
3. This report assesses actions taken by various actors following release of the FFM's paper until 31 July 2022, identifies continuing and emerging challenges, and uses examples to highlight relevant issues.
4. This report was prepared using open-source material collected and subjected to credibility assessments, including Myanmar Extractive Industries Transparency Initiative ('EITI') databases, corporate records, public reports containing first-hand information from credible and reliable sources, and satellite imagery and analysis. In addition to an open call for submissions,³ all named entities (26 States, 41 companies, and 11 institutions) were contacted to the extent possible during the drafting process. All 42 submissions received were duly considered. Remote interviews were also conducted with subject matter experts, civil society actors and journalists. Notes from these confidential meetings are on file. Given the grave security risks that individuals in Myanmar face since the military launched its coup,⁴ OHCHR prioritized the safety of all interlocutors above other considerations.

II. Context

A. Background

5. Myanmar was under a National League for Democracy ('NLD')-led Government when the Human Rights Council appointed the FFM in 2017 and when the latter issued its mandated reports and thematic papers in 2018 and 2019. The NLD-led Government took first steps towards democratisation, good governance, and further economic liberalisation, even as the military maintained its constitutionally guaranteed powers.
6. During this time, the Tatmadaw led a campaign of violence effectuating a third mass exodus of Rohingya into Bangladesh,⁵ which has led to proceedings before the International Court of Justice and the International Criminal Court. Military units had perpetrated similar atrocities against other ethnic minority communities over prior decades.
7. Since launching its coup on 1 February 2021, the Tatmadaw has systematically committed human rights violations impacting Myanmar's people nationwide. These violations span the entire spectrum of civil, political, economic, social and cultural rights.

¹ A/HRC/42/CRP.3 (PDF version).

² <https://www.ohchr.org/en/hr-bodies/hrc/myanmar-ffm/economic-interests-myanmar-military>.

³ <https://www.ohchr.org/en/calls-for-input/2022/call-submissions-report-progress-and-challenges-regarding-recommendations>.

⁴ Myanmar's military launched its coup in February 2021, but has failed to consolidate control of the country.

⁵ Earlier expulsions: 1978 and 1991-1992.

OHCHR found reasonable grounds to believe that some may amount to crimes against humanity and, where relevant, war crimes. These are set out in separate reports.⁶

B. Economic policies and institutions

8. Fashioning itself as “State Administration Council” (‘SAC’) headed by the Commander-in-Chief,⁷ the military has pushed an economy hard-hit by the COVID-19 pandemic into a deepening crisis, with poverty levels estimated to have doubled.⁸ Compared with the last NLD Government annual budget, the SAC’s 2022/23 budget increased defence spending from 10.0 to 12.0 per cent, while reducing allocations to education (8.4 to 7.0 per cent), health (4.2 to 2.8 per cent) and social welfare (0.5 to 0.3 per cent).⁹

9. While Myanmar’s financial sector was initially impacted by bank staff participating in the civil disobedience movement and Internet shutdowns, the coup and subsequent limitations imposed by the Central Bank of Myanmar (‘CBM’) on accessing bank deposits essentially precipitated a run on banks, triggering heightened demand for gold and US dollars (‘USD’) as a hedge against the depreciating Myanmar kyat.

10. Aiming to stabilise the kyat, the CBM initially auctioned off its USD reserves, though the SAC gradually relied on: (i) a fixed exchange rate for the kyat against the USD;¹⁰ (ii) a general ban on foreign currency holdings;¹¹ and (iii) increasing the scope of commodities and goods subject to import and export licenses.¹² Such stringent regulation of foreign exchange flows were aimed at ensuring sufficient reserves to service foreign debt; import certain goods; procure military equipment and supplies; and purchase foreign inputs for military-owned companies;¹³ among other purposes requiring foreign currency payments.

11. Additionally, the SAC has held numerous gems, metals and timber auctions to earn foreign currency.¹⁴ Other sectoral sources of foreign exchange revenue for the SAC include oil and gas, mining, telecommunications, and customs, including from state-owned enterprises (‘SOEs’).¹⁵

12. In response to the SAC’s policies, the National Unity Government (‘NUG’)¹⁶ – which also seeks international recognition as the country’s government – has articulated some policies aimed simultaneously at encouraging responsible business, and limiting financial flows to the SAC. These include: a three-pillar framework guiding responsible investment and continued operations; a socially responsible disengagement policy; non-recognition of, and threat of legal action against, all investment projects approved by the Myanmar Investment Commission after 1 February 2021; and a sanctions policy.

13. In Myanmar, SOEs have monopoly rights on economic activities in 12 sectors, either through joint venture or sole proprietorship.¹⁷ Extractive SOEs play a relatively significant role in the economy, contributing an estimated seven per cent of GDP in 2017.¹⁸ Despite this, most SOEs function as operational departments within line ministries – now under SAC

⁶ A/HRC/48/67; A/HRC/48/CRP.2; A/HRC/49/72. Also: <https://bangkok.ohchr.org/5902-2/>.

⁷ <https://bangkok.ohchr.org/5902-2/>.

⁸ <https://www.worldbank.org/en/country/myanmar/publication/myanmar-economic-monitor-july-2022-reforms-reversed>.

⁹ ER018.

¹⁰ CMB Directive 4/2022; Notification No. 36/2022.

¹¹ CBM Notification No. 12/2022; Directive 5/2022; Letter FE-1/69; Letter FE-1/754.

¹² https://www.vdb-loi.com/mm_publications/an-increasing-number-of-goods-are-now-subject-to-import-licensing/; ပိုမိုသွင်းကုန်ခံယူရန်ပတ်သက်သော သတင်းလွှာ | Commerce.

¹³ Military-owned businesses include MEC, MEHL, and their subsidiaries.

¹⁴ E.g. GNLM 28 April 2022 and 28 June 2021;

<https://www.mte.com.mm/index.php/en/announcements/1433-1152022-02>.

¹⁵ ER002.

¹⁶ A/HRC/48/67, paras.70-72.

¹⁷ State-owned Economic Enterprises Law 1989.

¹⁸ <https://openknowledge.worldbank.org/bitstream/handle/10986/28392/119855-PER-P159067-PUBLIC-v2-main-report-PERSepleanwithnewcover.pdf?sequence=1&isAllowed=y>, p.11.

control – rather than autonomous corporate entities, including the Myanmar Oil and Gas Enterprise (‘MOGE’),¹⁹ the largest SOE contributor to the government budget.²⁰

14. Some of the most important SOEs – including MOGE, Myanmar Timber Enterprise (‘MTE’), and Myanmar Gems Enterprise (‘MGE’) – are net importers of foreign currency,²¹ as commodities are traded on international markets in USD and/or EUR. Therefore, in addition to accounts held at the Myanmar Economic Bank (‘MEB’),²² such SOEs also have offshore accounts with the Myanmar Foreign Trade Bank (‘MFTB’). These MFTB nostro bank accounts are held in over 50 corresponding banks globally.²³ Foreign currency earnings are generally deposited into these offshore accounts at custodian banks, and SOEs’ MEB kyat accounts are correspondingly credited; no foreign currency physically enters Myanmar.²⁴

III. Implementation of recommendations

15. In its 2019 paper, the FFM (i) asserted that the Tatmadaw uses its economic interests to secure financial resources to support its activities and personnel, thereby insulating itself from accountability and civilian oversight; and (ii) outlined roles that other corporate actors play in contributing to or benefiting from the military’s violations and crimes. The FFM called for the Tatmadaw’s economic isolation, issuing recommendations serving as a “road map” targeted at seven groups of actors broadly covering six types of actions, which are discussed in the following sub-sections. These illustrate that, while some progress has been made, there remain significant gaps, which are ever more important following the coup.

A. Sanctions

16. The FFM recommendations that the Security Council (‘UNSC’) target financial sanctions against senior Tatmadaw officials responsible for human rights and humanitarian law violations, and against military-owned companies,²⁵ have not been acted upon. Similar recommendations were made to States on targeted individual sanctions, travel bans and asset freezes against (i) identified perpetrators of violations; (ii) owners of military conglomerates and subsidiaries; (iii) legal persons contributing or benefitting economically from the military and its operations; and (iv) Tatmadaw family members and associates where they may act as surrogates/proxies to evade sanctions.²⁶

17. Several countries, including Australia, Canada, United States, and the European Union, previously sanctioned a few individuals in 2018 shortly before or following the FFM’s first report. The United States also sanctioned two military units, and Canada had some older sanctions in force, notably against MFTB.

18. Since February 2021, Canada, United Kingdom, United States, states aligned with European Union sanctions,²⁷ and the European Union itself, instituted additional, sometimes coordinated, rounds of sanctions. Measures against individuals have predominantly targeted certain high-ranking Tatmadaw members, their families, SAC-appointed “ministers,” and other officials.

19. Sanctions have also been imposed by those States against military-owned conglomerates Myanmar Economic Cooperation (‘MEC’) and Myanmar Economic Holdings Limited (‘MEHL’), the Myanmar War Veteran’s Organization and some SOEs, including

¹⁹ <https://www.moe.gov.mm/en/ignite/page/40>.

²⁰ World Bank, FN20.

²¹ https://resourcegovernance.org/sites/default/files/documents/state-owned-economic-enterprise-reform-in-myanmar_0.pdf, p.30.

²² World Bank, FN20.

²³ Ibid.

²⁴ ER006.

²⁵ A/HRC/42/CRP.3, para.187(a)-(b).

²⁶ A/HRC/42/CRP.3, para.188(a)-(c).

²⁷ Ibid.

MGE and MTE. Additionally, the European Union has sanctioned No. 1 Mining Enterprise ('ME1') and significantly, MOGE.²⁸ There are some indications that international sanctions against MOGE have had impact: MOGE was reportedly informed by a major international bank in February 2022 that it could not make gas payments from the Shwe project, and that the monies would be placed in a protected account. MOGE reportedly may be attempting to change their payment instructions to avoid sanctions.²⁹

20. Some companies have been sanctioned by one or more jurisdictions for providing financial or other support to the military, including IGE, Wanbao Mining, King Royal Technologies, Htoo Group, and KT Services & Logistics Company Limited. The United States additionally sanctioned top executives of the latter two companies. Generally, sanctions automatically apply to business majority-owned by sanctioned individuals or entities, even if not specifically designated. United States sanctions also apply to most USD transactions as they pass through the United States financial system.³⁰ Significantly, the United States froze an estimated USD1 billion of CBM reserves held in New York.³¹

21. Interlocutors expressed concern that the impact of sanctions has been blunted by inaction of neighbouring States and those of the Association of Southeast Asian Nations ('ASEAN'), especially regional financial hub Singapore.³² Australia, Japan and the Republic of Korea have condemned the coup, but not imposed new financial sanctions despite recently doing so with respect to other States.

22. Ineffective sanctions enforcement continues to provide the SAC with revenues. For example, Myanmar teak valuing nearly EUR19 million entered the European Union³³ – notably, Italy – since February 2021 despite an European Commission position since 2018 that Myanmar teak could not meet relevant regulations,³⁴ and MTE (the only entity legally permitted to trade in timber extraction and sales) having been sanctioned in June 2021.³⁵ Sixty-five shipments of Myanmar timber entered the United States since it sanctioned MTE, with lower amounts reportedly entering Canada, Switzerland, and the United Kingdom.³⁶

23. Effective sanctions should particularly target the military's foreign currency access (Section II.B), whilst minimising impacts on the Myanmar population. Yet, to date, only Canada has sanctioned MFTB – despite it being the primary foreign exchange intermediary – and Myanmar Investment and Commercial Bank (MICB), likely to avoid it being used to circumvent MFTB sanctions. Credible analyses by economists indicate that the targeted sanctions on MFTB/MCIB could deprive the SAC of USD2 billion a year with limited secondary impacts, with recent precedents for banking-related sanctions on other States.³⁷ As of July 2022, only the European Union has sanctioned MOGE – despite it likely earning USD1.5 billion annually from offshore and pipeline projects, and gas revenues accounting for 50 per cent of Myanmar's foreign exchange earnings.³⁸

²⁸ Albeit with a possible problematic derogation – see EU Parliament criticism (P9_TA(2022)0079).

²⁹ ER214.

³⁰ ER002.

³¹ <https://home.treasury.gov/system/files/126/14014.pdf>; <https://www.reuters.com/article/us-myanmar-politics-usa-fed-exclusive-idUSKCN2AW2MD>.

³² ER106. Singapore noted it placed financial institutions on heightened alert regarding the situation in Myanmar, including mitigating money laundering risks and prohibiting funds from illicit activities.

³³ https://www.forest-trends.org/wp-content/uploads/2022/03/Forest-Trends_Myanmars-Timber-Trade-One-Year-Since-the-Coup.pdf, p.12.

³⁴ <https://ec.europa.eu/transparency/expert-groups-register/core/api/front/document/39135/download>.

³⁵ Italy and the EU noted the issue is being addressed.

³⁶ ER224; Forest trends, FN41, pp.13-14.

³⁷ ER002; ER 214; ER 217.

³⁸ <https://www.pwyp.org/wp-content/uploads/2021/06/Financing-the-Military-in-Myanmar.pdf>.

B. Arms embargoes and transfers sanctions

24. The FFM recommended that States should not authorize arms transfers to Myanmar, considering States' knowledge that such weapons would be used to commit or facilitate crimes or undermine peace and security.³⁹

25. Accordingly, the FFM recommended the UNSC impose a comprehensive arms embargo,⁴⁰ and States implement arms transfer sanctions.⁴¹ The UNSC has not done so; but the General Assembly called for States to prevent the flow of arms into Myanmar.⁴² Forty-two countries have arms embargoes that pre-date the FFM report;⁴³ and, since the coup, Bangladesh, Brazil, Honduras, Israel, Japan, Republic of Korea, and Uzbekistan reported that they do not or will not supply arms.⁴⁴

26. FFM findings included that numerous States had allowed arms and arms-related transfers and assistance to Myanmar,⁴⁵ and recommended that the United Nations ('UN') further investigate the issue.⁴⁶ The Special Rapporteur on the situation of human rights in Myanmar ('Special Rapporteur') undertook work in that regard.⁴⁷ Since the FFM's paper, several States appear to have halted transfers. However, Israel, reportedly, and the Republic of Korea transferred naval vessels in 2019; Ukraine's supply continued until 2020; and Belarus additionally supplied combat helicopters in 2019.⁴⁸ These states do not appear to have supplied arms since February 2021.⁴⁹

27. The military continues relying heavily on airpower in attempts to assert control, including conducting indiscriminate attacks, often in populated areas,⁵⁰ and used artillery, including against peaceful protestors.⁵¹ Transferring arms which facilitate commission of international law violations could, in certain circumstances, entail the responsibility of arms-supplying States for aiding or assisting in the commission of violations.⁵² Furthermore, such transfers could entail the responsibility of arms-transferring States for breaching applicable treaty obligations under the International Covenant on Civil and Political Rights,⁵³ as well as potentially the Geneva Conventions⁵⁴ and the Arms Trade Treaty.⁵⁵

28. Several States have continued to supply, or facilitate supply of, lethal weaponry to the Myanmar military following the coup. The Russian Federation exported fighter jets, likely transferred armoured vehicles, and announced new arms deals.⁵⁶ On Armed Forces Day in 2021 – when at least 130 people were killed across Myanmar⁵⁷ – the Deputy Minister of Defence of the Russian Federation attended the military's celebration and discussed military

³⁹ A/HRC/39/64, para.105; A/HRC/42/CRP.3, para.147.

⁴⁰ A/HRC/42/CRP.3, para.187(c).

⁴¹ Ibid. para.188(d).

⁴² A/RES/75/287.

⁴³ A/HRC/42/CRP.3, para.148; A/HRC/49/CRP.1, Appendix 1; A/HRC/49/CRP.1, para.123.

⁴⁴ A/HRC/49/CRP.1, paras.129, 105 and 124.

⁴⁵ A/HRC/42/CRP.3, para.167.

⁴⁶ A/HRC/42/CRP.3, para.192(c)(vii).

⁴⁷ A/HRC/49/CRP.1.

⁴⁸ A/HRC/49/CRP.1, paras.106-110 (noting Israel "may" have transferred in 2019), paras.112-117, paras.88-92.

⁴⁹ A/HRC/49/CRP.1, para.46.

⁵⁰ A/HRC/48/67, paras.6 and 59; A/HRC/49/72, para.44.

⁵¹ A/HRC/48/67, para.24; A/HRC/48/CRP.2, para.12.

⁵² Compare International Law Commission, Articles on the Responsibility of States for Internationally Wrongful Acts (2001), Art.16.

⁵³ Relevant parties: Israel, Russia, Serbia, Ukraine. See Human Rights Committee, General Comment no. 36 (2018), paras.22 and 63.

⁵⁴ Relevant parties: Belarus, China, India, Israel, Republic of Korea, Russia, Serbia, Ukraine. See Common Article 1 to the 1949 Geneva Conventions; ICRC, Commentary on GC III, Article 1, para.195.

⁵⁵ Relevant parties: China, Republic of Korea, Serbia. Israel and Ukraine are signatories. See: Arms Trade Treaty, Articles 6 and 7.

⁵⁶ A/HRC/49/CRP.1, paras.54-66.

⁵⁷ A/HRC/48/CRP.2.

technology cooperation; in July 2022 the Commander-in-Chief travelled to Russia and discussed enhancing military, economic and energy cooperation.⁵⁸ Since 2020, Serbia has exported rockets and artillery shells, with credible information indicating at least one shipment was sent after the coup.⁵⁹ An Indian SOE supplied a remote-controlled weapons/air defence station;⁶⁰ while China transferred SOE-produced fighter jets and military transport planes.⁶¹ Further, several States have reportedly continued military-to-military cooperation with the Tatmadaw, including ASEAN's defence program and Japan's ongoing training program.⁶²

C. Disengaging from military-owned companies

29. A primary FFM recommendation was that no business should enter into or remain in any business relationship with military-owned or -controlled entities.⁶³

30. After the FFM paper, some companies indicated they were withdrawing from⁶⁴ or reviewing⁶⁵ relationships with military-owned businesses or entities named in the annexes; while 38 named companies took no action based on available information.

31. CSOs had already targeted advocacy at some military-linked companies⁶⁶ prior to the FFM's paper, for instance, Burma Campaign UK re-launched its 'Dirty List' in 2018.⁶⁷ Following the paper, other campaigns included the Business and Human Rights Resource Centre ('BHRRC') writing to companies in Annex VI⁶⁸ and Amnesty International ('AI') writing to eight business partners of MEHL, after which some companies announced action.⁶⁹ CSOs also conducted research on companies in business relationships with military-linked entities. For example, Justice for Myanmar ('JFM') identified 101 companies connected to Mytel, a network operator part owned by MEC.⁷⁰

32. Some companies took action since February 2021. For example, Infosys indicated they no longer work for two military banks, and Adani Ports and SEZ Ltd. announced it will exit its port construction project on MEC-leased land with expectation of the sale proceeding following due diligence.⁷¹ Posco Steel Co., Ltd suspended payment of leasehold rent and dividends to MEHL and later announced a planned buy-out of MEHL's stake, which would likely involve paying MEHL a significant sum. MEHL is reportedly currently failing to cooperate with the termination process.⁷²

⁵⁸ GNLM, 27 March 2021, 28 March 2021 and 13 July 2022.

⁵⁹ A/HRC/49/CRP.1, paras.67-74.

⁶⁰ Ibid. paras.75-80.

⁶¹ A/HRC/49/CRP.1, paras.47-53.

⁶² <https://www.justiceformyanmar.org/stories/aseans-complicity-in-the-myanmar-militarys-atrocity-crimes>; <https://www.hrw.org/news/2022/05/23/myanmar-japan-trained-officer-among-abusive-forces>.

Japan maintains this is an education programme, including on international humanitarian law.

⁶³ A/HRC/42/CRP.3, para.189(a).

⁶⁴ Newtec, Esprit, Portia Management Services, Maersk, Western Union.

⁶⁵ H&M, Marks&Spencer.

⁶⁶ Entities with any business relationship with a military-owned company.

⁶⁷ <https://burmacampaign.org.uk/take-action/dirty-list/>; ER225.

⁶⁸ <https://www.business-humanrights.org/de/latest-news/myanmar-fact-finding-mission-identifies-businesses-linked-to-the-military-that-is-accused-of-serious-rights-violations-some-companies-respond/>.

⁶⁹ E.g. Apparel manufacturer Pan-Pacific Co. Ltd. indicated it was terminating partnerships with MEHL – <https://www.amnesty.org/en/wp-content/uploads/2021/05/ASA1629692020ENGLISH.pdf>, pp.7-8. It is unclear whether it has done so.

⁷⁰ https://jfm-files.s3.us-east-2.amazonaws.com/public/JFM_Nodes_of_Corruption_high_res.pdf.

⁷¹ <https://burmacampaign.org.uk/infosys/>; <https://www.reuters.com/world/india/indias-adani-ports-says-it-will-exit-myanmar-investment-2021-10-27/>; ER401.

⁷² <https://www.posco.co.kr/homepage/docs/eng6/jsp/irinfo/irdata/s91b60000731.jsp?schidx=379>; <https://www.reuters.com/business/skoreas-posco-cc-says-end-myanmar-military-backed-joint-venture-2021-04-16/>; ER415.

33. Significant boycott movements arose within Myanmar following the coup. CSOs and the NUG released lists of military-linked companies for boycott,⁷³ and an application identifying military-linked businesses was downloaded over 100,000 times. Some ethnic armed organisations have announced bans on military-produced products in areas they control.⁷⁴

34. The experience of Kirin Holdings Company Ltd. ('Kirin') is an example of the complex dynamics. It had joint ventures with MEHL in Myanmar Brewery since 2015 and Mandalay Brewery since 2017. The FFM additionally flagged Myanmar Brewery donations to the military.⁷⁵ After AI raised concerns in 2018, Kirin indicated it had reviewed its donation processes and was commissioning human rights impact assessments, but that it had conducted due diligence in 2015 and found the relationship with MEHL was "unlikely to have a negative human rights impact," noting a clause prohibiting use of Myanmar Brewery funds for military purposes.⁷⁶ Following inclusion in the FFM report, Kirin appealed to MEHL for improved governance, announced a business review, and suspended dividend payments by Myanmar Brewery, arguing however that divesting to another entity that did not share Kirin's commitments to human rights would not improve the situation.⁷⁷ In January 2021, Kirin announced that the review results were "inconclusive." Following the coup, Kirin indicated that it would seek to terminate the joint ventures⁷⁸ and a preference to buy out MEHL's shares in the Breweries. After negotiations and MEHL-initiated legal proceedings, Kirin announced in February 2022 that it would exit Myanmar before July 2022,⁷⁹ eventually stating it would sell its stake to Myanmar Breweries,⁸⁰ handing MEHL full control. The breweries continued to make significant profit for MEHL, until dividends were suspended from 2020. A boycott, amongst other factors, led sales to fall 40 per cent in 2021.⁸¹ The reduction in profits from Myanmar Breweries may have been a factor in MEHL failing to pay its own 2021 dividends to its military shareholders.⁸²

35. There have also been physical attacks on perceived military business interests.⁸³ In response, the military reportedly placed mines along oil pipelines to deter attacks⁸⁴ and stationed troops inside Letpadaung copper mine compound,⁸⁵ around which they reportedly raided several villages and killed nine people.⁸⁶

D. Human rights due diligence ('HRDD')

36. The FFM called for heightened due diligence with respect to (i) companies owned or controlled by Tatmadaw family members; (ii) operations in conflict-affected areas; and (iii)

⁷³ <https://mopfi.nugmyanmar.org/boycott-list/>.

⁷⁴ E.g. <https://www.bnionline.net/en/news/junta-beer-eliminated-kio-controlled-areas-kachin-state;> <https://myanmar-now.org/en/news/taang-national-liberation-army-bans-sale-of-goods-from-military-companies-in-its-territory>.

⁷⁵ A/HRC/42/CRP.3, para. 117.

⁷⁶ Kirin – reply to AI 22 May 2018, <https://app.box.com/s/1zxkmaey5oi3hmy3z133cldtuh7j03y9/file/296610226111>.

⁷⁷ Kirin – reply to AI 2 June 2020, <https://www.amnesty.org/en/documents/asa16/2969/2020/en/>.

⁷⁸ https://www.kirinholdings.com/en/newsroom/release/2021/0204_01.html.

⁷⁹ <https://pdf.irpocket.com/C2503/OMfg/VvCP/LpVE.pdf>; <https://www.reuters.com/business/japan-brewer-kirin-exit-myanmar-operations-nikkei-2022-02-14/>.

⁸⁰ <https://pdf.irpocket.com/C2503/efCi/kzVe/oCjp.pdf>.

⁸¹ ER410.

⁸² <https://www.irrawaddy.com/news/burma/military-owned-corporation-fails-to-pay-dividends-to-myanmar-troops.html>; Also: <https://www.myanmar-responsiblebusiness.org/pwint-thit-sa/2020.html>, pp.51-52.

⁸³ E.g. against Mytel phone towers, A/HRC/49/72, para 54.

⁸⁴ <https://shanhumanrights.org/villagers-security-threatened-by-burma-army-landmines-along-chinese-pipelines-in-hsipaw-northern-shan-state/>.

⁸⁵ Wanbao Mining Ltd., a Chinese SOE subsidiary, remains in a profit-sharing agreement with MEHL and MEI for the mine. Mining reportedly currently paused.

⁸⁶ <https://www.rfa.org/english/news/myanmar/raids-0629202215758.html>.

purchase of natural resources from Myanmar.⁸⁷ The FFM also recommended States should ensure businesses in their jurisdictions act consistently with their human rights obligations.⁸⁸

37. Some States require certain companies to conduct HRDD, including when operating in Myanmar.⁸⁹ Draft European Union legislation would mandate this for some companies,⁹⁰ while sector-specific regulations on timber⁹¹ and conflict minerals⁹² also require due diligence. Canada, United Kingdom, and United States advise due diligence in Myanmar-specific 2021 business advisories.⁹³ There are, however, several States with large investments in Myanmar that, while generally encouraging HRDD, do not legally require it.⁹⁴ Some foreign SOEs also continue relationships with military-owned businesses (Section III.B).

38. Following the FFM paper, some businesses began exploring HRDD or changed policies. For example, some brands conducted HRDD to better understand MEHL-associations to industrial zones housing garment factories, triggering disengagement from some factories.⁹⁵ Additionally the FFM highlighted company donations to the government's Enterprise for Humanitarian Assistance, Resettlement and Development in Rakhine and to the military following its violent 2017 campaign in northern Rakhine, and recommended businesses prohibit all funding of the Tatmadaw.⁹⁶ One company, KBZ, later indicated a review of how donations are handled.⁹⁷ An annual benchmarking of Myanmar enterprises' transparency on corporate governance and sustainability by the Myanmar Centre for Responsible Business ('MCRB') added a criterion on donations/philanthropy policy.⁹⁸ This issue remains relevant as the military reportedly still solicits donations from businesses, albeit without publicising requests.⁹⁹

39. Despite the coup and increased risks, many companies operating in or sourcing from Myanmar reportedly still do not conduct adequate HRDD.¹⁰⁰ For example, Global Witness ('GW') contacted 30 international jewellers, auction houses and retailers and found that most did not have adequate due diligence measures in place to meet the Organisation for Economic Co-operation and Development ('OECD') Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas.¹⁰¹

⁸⁷ A/HRC/42/CRP.3, para.189(a), (c)-(d).

⁸⁸ A/HRC/42/CRP.3, para.188(e)-(f).

⁸⁹ <https://www.business-humanrights.org/en/latest-news/national-regional-movements-for-mandatory-human-rights-environmental-due-diligence-in-europe/>.

⁹⁰ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022PC0071>.

⁹¹ <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32010R0995>.

⁹² <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32017R0821>.

⁹³ Canada: https://www.trade commissioner.gc.ca/countries-pays/myanmar/GAC_advisory_Myanmar-AMC_affaires_Myanmar.aspx?lang=eng; UK:

<https://www.gov.uk/government/publications/overseas-business-risk-myanmar-burma/overseas-business-risk-myanmar-burma#:~:text=The%20UK%20Government%20expects%20businesses,do%20not%20meet%20such%20standards>; US: <https://www.state.gov/risks-and-considerations-for-businesses-and-individuals-with-exposure-to-entities-responsible-for-undermining-democratic-processes-facilitating-corruption-and-committing-human-rights-abuses-in-burma/>.

⁹⁴ See: 2022-2023, https://www.dica.gov.mm/sites/default/files/document-files/yearly_bycountry.pdf. Singapore noted that it does not in principle interfere in companies' commercial decisions, and that Singapore companies are expected to conduct transactions ethically and in compliance with United Nations sanctions regimes.

⁹⁵ https://eurocham-myanmar.org/wp-content/uploads/2022/01/Myanmar-Garment-Sector-Factsheet_January-2022.pdf.

⁹⁶ A/HRC/42/CRP.3, para.189(b).

⁹⁷ <https://www.amnesty.org/en/documents/asa16/2969/2020/en/>, p. 65.

⁹⁸ See: FN90.

⁹⁹ ER203.

¹⁰⁰ ER213; ER215.

¹⁰¹ <https://www.globalwitness.org/en/campaigns/natural-resource-governance/conflict-rubies-how-luxury-jewellers-risk-funding-military-abuses-myanmar/>, p.8.

40. HRDD assessments and their outcomes are rarely made public.¹⁰² One interlocutor noted that “transparency on due diligence in Myanmar often becomes reduced to a paragraph in the sustainability report.”¹⁰³ This makes it difficult to evaluate whether these assessments have sufficiently identified and considered all relevant issues and led to concrete operational changes, or were instead more nominal exercises. Given most of Myanmar is now experiencing violence, all companies operating in or sourcing from Myanmar should carry out heightened HRDD.

41. Investors can be important in pushing companies to conduct HRDD. For example, Domini Impact Investments asked Japanese companies operating in Myanmar how they evaluate risks of human rights violations and their remediation processes.¹⁰⁴ Other initiatives post-February 2021 include the Investor Alliance for Human Rights developing an “Investor Statement on Human Rights and Business Activities in Myanmar”¹⁰⁵ calling for enhanced due diligence. Some pension funds have reportedly excluded Myanmar sovereign bonds.¹⁰⁶ The EIRIS Conflict Risk Network listed publicly traded foreign investors operating in Myanmar and assessed compliance with international standards relevant in conflict situations.¹⁰⁷ However, investments in military-linked companies reportedly continue. Particularly concerning are reports that environmental, social, and governance labelled funds continue to hold such investments, including some in companies that reportedly supplied weapons or dual use goods to the military.¹⁰⁸

E. Humanitarian aid, development financing and programming

42. After February 2021, the United Nations Country Team (‘UNCT’) developed engagement principles on interactions with the SAC, and launched a full programme review. The review paused all activities involving technical or advisory assistance to government institutions except needs-based humanitarian assistance, protection services and COVID-19 response programming. Review of key risks, including HRDD considerations on military-linked interests, was an integral part of the exercise.

43. Some CSOs, however, raised concerns that the United Nations reportedly continued to use a state-owned bank.¹⁰⁹ One United Nations entity indicated that it undertook HRDD on several projects following the coup, screened all engagements with businesses and business networks, prompting its disengagement from one partnership,¹¹⁰ and recognised capacity needs in this area.

44. In 2020, the World Bank Group committed to conducting an internal audit of the International Finance Corporation (‘IFC’) portfolio for military connections.¹¹¹ IFC has since indicated that no direct investments are owned or controlled by the military, senior generals or their immediate family members as part of its ongoing due diligence for Myanmar.¹¹² CSOs have highlighted indirect links, including that the World Bank Group leases office

¹⁰² Although exceptions exist – e.g. Kirin published a summary and update.

¹⁰³ ER223.

¹⁰⁴ <https://domini.com/insights/can-japanese-companies-help-uphold-human-dignity-in-burma/>

¹⁰⁵ <https://investorsforhumanrights.org/sites/default/files/attachments/2021-07/Investor%20Statement%20on%20Human%20Rights%20in%20Myanmar%2016%20July%202021.pdf>

¹⁰⁶ <https://www.responsible-investor.com/industriens-pension-sells-myanmar-and-belarus-govvies-as-pension-funds-continue-human-rights-push/>

¹⁰⁷ <https://eiriscn.net/burma-myanmarcompanylist/>

¹⁰⁸ <https://www.inclusivedevelopment.net/myanmaresgfiles/>

¹⁰⁹ ER201; ER204.

¹¹⁰ ER105.

¹¹¹ https://financialservices.house.gov/uploadedfiles/malpass_ltr_mnuchin_3202020.pdf

¹¹² ER104; ER103.

space in the privately managed Sule Square complex, which is built on military-owned land.¹¹³

45. Due diligence conducted by the Asian Infrastructure Investment Bank on its previous projects in Myanmar was determined to be aligned with its policies and strategies.¹¹⁴ Likewise, the Asian Development Bank has strengthened its global procurement controls including for conflicts of interest and sanctions compliance frameworks.¹¹⁵ Shortly before the coup, the International Monetary Fund disbursed USD372 million to the CBM and has since acknowledged it cannot ascertain whether the military is using the funds as intended.¹¹⁶ Since February 2021, all IFIs have suspended new projects/investments in Myanmar.¹¹⁷

46. States should also ensure their humanitarian and development assistance programmes do not benefit the SAC or military-owned companies. Following the coup, several governments have suspended direct budgetary support to Myanmar ministries.¹¹⁸ The United Kingdom also requested partners review supply chains to ensure aid money was not being used to purchase goods and services from military-owned businesses.¹¹⁹ CSOs highlighted a JICA-funded construction project which used MEC in its supply chain¹²⁰ and raised concerns about other projects with links to Japanese public funds and businesses.¹²¹

F. Domestic reforms

47. The FFM made a series of recommendations to the Government to reduce the military's economic reach;¹²² it took significant steps forward in some areas, whereas others saw little progress.

48. Some attempts were made by the NLD-led Government to increase civilian oversight of the military. In early 2019, it moved the powerful General Administration Department from the military-controlled Ministry of Home Affairs into the civilian-controlled Ministry of the Union Government.¹²³ In 2019-2020, the NLD-led Government initiated a constitutional amendment process. Due, however, to the de facto veto held by military members of parliament, almost all proposals, including amendments reducing the military role in government, were rejected.¹²⁴ No attempts appear to have been made towards restructuring of the military itself and directly prohibiting it from engaging in economic activity.

49. The NLD-led Government focused on making large infrastructure projects more transparent, important given historical cronyism and granting of licences without fair competition. In 2020, it launched a "Project Bank"¹²⁵ – an open, public system for managing large investment projects, with a screening tool for effectiveness, sustainability and compliance with the Myanmar Sustainable Development Plan.

¹¹³ <https://www.justiceformyanmar.org/stories/shangri-la-financing-crimes-against-humanity>. The World Bank indicated it maintains office space in Yangon under a lease signed some years prior, based on globally applied Group procurement policies for real estate space.

¹¹⁴ ER102.

¹¹⁵ ER101.

¹¹⁶ <https://www.imf.org/en/Countries/MMR/FAQ>,

<https://www.imf.org/en/News/Articles/2021/09/16/tr091621-transcript-of-imf-press-briefing>.

¹¹⁷ ER102; ER103; <https://www.adb.org/news/adb-statement-new-developments-myanmar>;

<https://www.imf.org/en/Countries/MMR/FAQ#q10>;

<https://www.worldbank.org/en/news/statement/2021/02/01/developments-in-myanmar>.

¹¹⁸ E.g. the EU in March 2021 – <https://www.bangkokpost.com/world/2078279/eu-suspends-development-funds-for-myanmar>.

¹¹⁹ <https://questions-statements.parliament.uk/written-questions/detail/2019-10-04/294694>.

¹²⁰ <https://www.hrw.org/news/2021/04/27/japan-suspend-aid-benefitting-myanmar-junta>. Construction reportedly currently paused.

¹²¹ www.mekongwatch.org/PDF/rq_20210601_Eng.pdf.

¹²² A/HRC/42/CRP.3, para.186.

¹²³ SAC reversed this in May 2021.

¹²⁴ 2008 Constitution, Article 436; A/HRC/45/5, para.51.

¹²⁵ President's Office, Notification No. 2/2018.

50. The FFM identified the extractives industries as a sector from which the military benefitted, at significant human cost,¹²⁶ and recommended that the Government develop robust frameworks in line with its commitments under the EITI.¹²⁷ In October 2019, the international EITI Board found Myanmar had made “meaningful progress” in some areas and gave until April 2021 to take corrective actions in 12 others.¹²⁸ The Government took several important steps in this regard.

51. Presidential Notification 104/2019 required extractive industries companies to disclose beneficial ownership and identify whether owners were “politically exposed persons,” based on strong definitions.¹²⁹ The Directorate of Investment and Company Administration (‘DICA’) later developed a public database on such information.¹³⁰ A Mineral and Gemstone Cadastre, due to be completed in March 2021, would have instituted a transparent and streamlined permit application process, minimising bribery and corruption risks.¹³¹ In January 2021, a new requirement of the revised EITI standard came into force, requiring Myanmar to publish new and amended extractives contracts and licences.¹³²

52. There remained several shortcomings and challenges in implementing EITI standards, which appeared indicative of the military’s attempts to safeguard their economic interests. For example, while MEHL and some subsidiaries submitted beneficial ownership information, it had serious limitations. MEC provided no information at all.¹³³ A draft union-level Gemstones Policy, initially developed through a lengthy participatory process, contained transparency and EITI-complaint provisions. However, these were removed in later drafts, reportedly following lobbying from military-associated government representatives and gemstone companies with alleged military links.¹³⁴ In June 2019, the Government announced that SOE “other accounts,” some of which apparently held significant balances and had been used for patronage purposes,¹³⁵ would be closed.¹³⁶ However, the status of these accounts, including whether they had actually been closed and where the funds were sent, remained unclear at the time of the coup.¹³⁷

53. Despite continuing challenges, the progress made could have been a vital basis for further transparency efforts, including in relation to military-owned businesses. Unfortunately, many of these gains have now been reversed. The “Project Bank” website is inaccessible,¹³⁸ and EITI has suspended Myanmar’s membership.¹³⁹ CSOs who previously monitored extractive industries are in hiding, and at least 21 environmental defenders have reportedly been arrested.¹⁴⁰

IV. Continuing and emerging challenges

54. There remain considerable challenges in implementing the FFM’s recommendations, especially given the significantly changed context. Events since February 2021 suggest a return to economic governance characterised by increased non-market interventions and

¹²⁶ A/HRC/42/CRP.3, para.83.

¹²⁷ Ibid, para.186(d). EITI is a global standard for good governance of extractive industries. Myanmar became a candidate country in 2014.

¹²⁸ <https://eiti.org/board-decision/2019-58>.

¹²⁹ <https://www.globalwitness.org/en/campaigns/myanmar/out-of-the-shadows/>, p.5.

¹³⁰ <https://bo.dica.gov.mm/>.

¹³¹ ER001.

¹³² <https://eiti.org/contract-transparency>.

¹³³ MCRB, FN90, pp.51-52. See: <https://myanmar-eiti.org/en/publication/review-first-meiti-beneficial-ownership-disclosure>, and GW, FN109 p.22.

¹³⁴ ER207.

¹³⁵ ER001.

¹³⁶ ER001; GNLM 18 June 2019.

¹³⁷ ER001.

¹³⁸ <https://projectbank.gov.mm/en/>. Accessed 7 June 2022.

¹³⁹ <https://eiti.org/articles/myanmar-suspended-due-political-instability>.

¹⁴⁰ <https://www.frontiermyanmar.net/en/losing-the-freedom-to-protect-the-shattered-dreams-of-environment-defenders/>.

controls, as well as greater emphasis on relationships to facilitate economic exchange.¹⁴¹ The FFM itself highlighted such concerning links between the Tatmadaw's economic activity and military strategy, including in jade and ruby mining. Trade restrictions of the type instituted by the SAC – like economic policies of past juntas¹⁴² – will likely decrease living standards.¹⁴³ There are significant concerns that SAC policies since the coup will likely induce additional rent-seeking behaviour and corruption: retention of monopolies, control of trade and investment licenses, and imposition of arbitrary regulations as a deliberate means to create and distribute economic rents among certain groups of businesses, thereby co-opting business elites' loyalty and further entrenching the SAC's economic and political control (section IV.A).¹⁴⁴

55. Furthermore, the coup and ensuing violations and crimes perpetrated by the Tatmadaw have prompted companies to consider disengagement from Myanmar (section IV.B).

A. Illicit economies, rent-seeking, and patronage

1. Rare earths mining

56. Some of the clearest manifestations of Tatmadaw-engineered rent-seeking behaviour occur in Kachin State. Besides jade,¹⁴⁵ the Tatmadaw has also permitted rare earths – vital for production of green technologies – to be mined in Chipwi Township in areas controlled by the former New Democratic Army-Kachin ('NDA-K').¹⁴⁶

57. In 2009, the NDA-K became a military-controlled Border Guard Force ('BGF').¹⁴⁷ its three battalions reconstituted into BGF battalions No. 1001, 1002 and 1003 with Tatmadaw soldiers integrated into each unit.¹⁴⁸ These battalions are within the military's command structure; receive arms, supplies and other financial support;¹⁴⁹ and are reportedly part of the military's national defense plans,¹⁵⁰ fighting alongside the Tatmadaw.¹⁵¹

58. Former NDA-K members have interests in mining. Myanmar EITI 2016-17 records show that former leader, Zakhung Ting Ying, and his sons are directors of at least two registered companies – Myanmar Mya Ko Ko Medical Instrument Company Limited¹⁵² and San Lin International Export and Import Company Limited¹⁵³ – that held 17 licenses (all now officially expired) to mine iron, lead and zinc in the area. Two unregistered companies, Chain Yein Taung Mining and San Lin International, hold the only unexpired licenses to mine marble and iron, respectively. According to latest available EITI records,¹⁵⁴ no company

¹⁴¹ ER011.

¹⁴² <https://fulcrum.sg/myanmar-returns-to-import-substitution-primed-to-fail/>.

¹⁴³ World Bank, FN10.

¹⁴⁴ https://www.burmalibrary.org/sites/burmalibrary.org/files/obl/2013_The_Political_Economy_of_Myanmar_s_Transsition-en-red.pdf, p.150.

¹⁴⁵ A/HRC/42/CRP.3.

¹⁴⁶ <https://www.irrawaddy.com/news/burma/illegal-rare-earth-mines-china-border-multiply-since-myanmars-coup.html>; <https://www.frontiermyanmar.net/en/weapons-power-and-money-how-rare-earth-mining-in-kachin-enriches-a-tatmadaw-ally/>; <https://www.mekongeye.com/2022/05/23/myanmars-environment-hit-by-rare-earth-mining-boom/>.

¹⁴⁷ <https://www.bnionline.net/en/kachin-news-group/item/7388-nda-k-changes-to-burma-juntas-bgf.html>; <https://asiafoundation.org/wp-content/uploads/2016/07/Militias-in-Myanmar.pdf>, p.13.

¹⁴⁸ GNLM 13 Aug 2011.

¹⁴⁹ Ibid.

¹⁵⁰ The Asia Foundation, FN155, p.24.

¹⁵¹ <https://www.irrawaddy.com/news/burma/kachin-rebels-clash-with-burma-army-and-govt-backed-militia.html>; <https://www.bnionline.net/en/news/kachin-state/item/1503-kia-clashes-with-pro-government-militia-in-poppy-growing-area-of-kachin-state.html>.

¹⁵² <https://www.myco.dica.gov.mm/Corp/EntityProfile.aspx?id=c5e0cdea-6620-4cb0-81b0-3bf158e62a3f>.

¹⁵³ <https://www.myco.dica.gov.mm/Corp/EntityProfile.aspx?id=e98834a4-ae6e-4812-adc9-2d15b0679319>.

¹⁵⁴ <https://datatools.myanmar-eiti.org/tools/licenses/>.

holds any license to mine rare earths; and most companies that held licenses to mine other commodities in the area are not registered with DICA.

59. A resident of Chipwi Township stated that rare earths mining takes place in areas controlled by BGF No. 1002, and that since the coup testing of soil samples has significantly increased, encroaching northwards towards Chipwi.¹⁵⁵ Satellite imagery of a central valley in the mining area shows around a 50 per cent increase in mining activity between shortly before the coup and November 2021.

60. Another credible source explained that representatives of Chinese businesses investing in rare earths mining seek out former NDA-K leaders and family members to set up local companies in which the latter reportedly receive revenue shares. These companies then engage in exploration, mining and transportation of rare earths abroad.¹⁵⁶ Given that foreign investment in small and medium scale mineral production such as rare earths is prohibited,¹⁵⁷ and that there is no information on issuance of licenses to any registered company, ongoing activities are likely unlawful. As mining activities take place in a geographical area with an ongoing non-international armed conflict,¹⁵⁸ there are concerns as to the war crime of pillaging, which warrants further investigation.

61. Interlocutors highlighted consequential environmental damage from rare earths mining, including water contamination and flooding, as well as social, health and livelihood impacts on surrounding communities.¹⁵⁹ Adequate air and water standards to avoid such ecological damage are not in place in Myanmar. It is imperative that the rights to health and water of the population in Myanmar are ensured during any process of rare earths mining, including by third States in upholding their obligations under the International Covenant on Economic, Social and Cultural Rights regarding the activities of its citizens subject to its jurisdiction.¹⁶⁰

2. Telecommunications

62. Since 1 February 2021, the military moved swiftly to restrict the right to freedom of expression, blocking social media platforms; criminalising online activity; and curbing Internet access through shutdowns and suspensions of data services. Eventually, it reinstated Internet access, but only for specific websites or applications.¹⁶¹ Over time, areas that suffered the most violence again experienced Internet shutdowns; some also had fixed and mobile phone lines suspended, thereby obstructing effective delivery of humanitarian assistance and preventing dissemination of information about violations.¹⁶²

63. Between December 2021 and January 2022, the SAC doubled the cost of mobile data; instituted MMK20,000 tax per SIM card; and 15 per cent income tax on all Internet service providers¹⁶³ – sharply hiking internet access costs, and simultaneously increasing its revenues. It has further demonstrated its determination to exert control over users and the telecommunications industry through interference in the sale of Telenor.

¹⁵⁵ ER222; ER019.

¹⁵⁶ ER219; ER222;

https://www.globalwitness.org/documents/20381/Heavy_rare_earths_supply_chain_risks_EN_-_August_2022.pdf.

¹⁵⁷ <https://www.dica.gov.mm/sites/dica.gov.mm/files/document-files/notification26englishversion.pdf>.

¹⁵⁸ A/HRC/49/72, para.15.

¹⁵⁹ FN164.

¹⁶⁰ See, e.g., Committee on Economic, Social and Cultural Rights, General Comment no. 14 (para.39) and 15 (para.33); see also: Chinese Due Diligence Guidelines for Mineral Supply Chain (2.0), April 2021,

<https://www.shuzih.com/pub/828c6c3612f75ee3c231d093700d0fe7/99be7d05238b42c79c1fd932ae2c9890.pdf>.

¹⁶¹ A/HRC/48/67.

¹⁶² A/HRC/49/72.

¹⁶³ GNLM 7 Jan 2022; <https://www.myanmar-now.org/en/news/junta-says-hefty-new-telecoms-taxes-will-curb-extreme-use-of-internet-services>; <https://www.irrawaddy.com/news/burma/myanmar-junta-raises-sim-and-internet-taxes-to-silence-opposition.html>.

64. At its last Sustainability Briefing in December 2020, Telenor warned of increasing authority requests for users' personal data, internet shutdowns, website blockages, and implementation of blanket interception.¹⁶⁴ It also hinted that their engagement with the government advocating for a rights-respecting law and policy framework for cybersecurity and privacy led to warnings not to question existing directives or else risk being penalized. Following the coup, Telenor publicised the SAC's requests to suspend and restrict access to information, until it was no longer possible for the company to do so.¹⁶⁵

65. After a 2021 first quarter NOK6.5 billion write-off,¹⁶⁶ Telenor disclosed in July 2021 that it was selling its entire Myanmar operation to M1 Group ('M1') for USD105 million.¹⁶⁷ This transaction was initially rejected by the SAC, and only approved when M1 included a local partner, Shwe Byain Phyu ('SBP'), as majority shareholder.¹⁶⁸

66. SBP group reportedly has long-standing links with the military and MEHL,¹⁶⁹ including partnership in the import of petroleum.¹⁷⁰ It also reportedly has interests in jade and gems mining in Kachin State,¹⁷¹ and reportedly operates in the timber industry.¹⁷² SBP group's extensive and growing interests in various sectors may indicate that the SAC perceives the group's economic interests as being aligned with its own and/or that it feels sufficiently assured of loyalty.

67. With SBP/M1 in Telenor's place, three out of the four network operators in Myanmar will have significant links to the military,¹⁷³ greatly increasing the SAC's ability to influence companies to effect restrictions on freedom of expression and to undertake surveillance.

B. Corporate dilemma: stay or leave?

68. The FFM called for the Tatmadaw's economic isolation to impede the latter's ability to perpetrate serious international crimes. This involves, first, disengaging from commercial or financial relationships with the Tatmadaw, including companies owned or controlled by its members; and second, supporting the growth and development of non-Tatmadaw economic actors.¹⁷⁴

69. Since the coup, there has been renewed focus on dislodging the military from the economy and starving the SAC of income. Stakeholders have made numerous, and sometimes contradictory, demands on businesses engaging in an already complex and challenging operational environment. Such calls principally include disengaging from military-owned, -affiliated and -linked business, and suspending payments to the SAC. They also include carrying out heightened HRDD; ensuring respect for workers' rights, especially on safety and social security; addressing companies' role in supporting employment; assessing the need for responsible divestment, including relevant human rights impacts and remediation actions; and transparency with HRDD and stakeholder engagement. They ask for corporate actors to adopt a strong, ethical stance in their obligation to respect human rights, and to implement corporate actions that best serve Myanmar and its people by

¹⁶⁴ <https://youtu.be/oWJ85wgZAS4> at 53:08.

¹⁶⁵ <https://www.telenor.com/sustainability/responsible-business/human-rights/human-rights-in-myanmar/directives-from-authorities-in-myanmar-february-2021/>.

¹⁶⁶ <https://www.telenor.com/media/press-release/steady-performance-in-the-first-quarter/>.

¹⁶⁷ <https://www.telenor.com/media/newsroom/telenor-group-sells-telenor-myanmar-to-m1-group/>.

¹⁶⁸ <https://www.telenor.com/media/newsroom/press-releases/sale-of-telenor-myanmar-approved-by-myanmar-authorities/>.

¹⁶⁹ <https://www.irrawaddy.com/news/burma/meet-myanmar-military-linked-crony-taking-stake-in-telenor-sale.html>; <https://www.myanmar-now.org/en/news/the-crony-who-will-control-telenor-myanmars-customer-data>; <https://www.justiceformyanmar.org/stories/shwe-byain-phyus-military-links-exposed>.

¹⁷⁰ <https://www.fwpresearch.com/en/portfolio/thein-win-zaw/>.

¹⁷¹ Ibid.; <https://www.justiceformyanmar.org/stories/shwe-byain-phyus-military-links-exposed>.

¹⁷² <https://www.justiceformyanmar.org/stories/shwe-byain-phyus-military-links-exposed>.

¹⁷³ Mytel is part-owned by MEC; MPT is an SOE. In July 2022, Ooredoo was reportedly in discussions to withdraw from Myanmar.

¹⁷⁴ A/HRC/42/CRP.3, paras.2 & 9.

removing the Tatmadaw from the country's economic and political life, and in emerging from a deepening economic crisis. These calls predominantly do not include demands for automatic and immediate divestment from Myanmar,¹⁷⁵ and instead prompt companies to assess the need for responsible divestment. Case studies discussed below highlight challenges faced by companies in three different sectors of the economy.

1. Telecommunications

70. In announcing its decision to exit Myanmar, Telenor stated it would not voluntarily activate intercept equipment,¹⁷⁶ and could not operate under a regime that involved violating its values, international law and human rights principles.¹⁷⁷ This decision was denounced by several CSOs, leading to one complaint filed at the Norwegian National Contact Point for the OECD,¹⁷⁸ alleging Telenor's failure to comply with OECD Guidelines in the sale of Telenor Myanmar, and another before the Norwegian Data Protection Authority,¹⁷⁹ seeking to halt transfer of user data as part of its sale. The complaints alleged that Telenor:

- (i) did not conduct appropriate due diligence regarding the sale of its Myanmar operations as it would have revealed (a) severe human rights impacts on its customers and their contacts – thereby rendering the company in breach of its obligations under the European Union's General Data Protection Regulation ('GDPR'); and (b) that M1 is implicated as a military-linked company in the FFM report;
- (ii) failed to carry out meaningful engagement with all relevant stakeholders; and
- (iii) was un-transparent in its decision to divest from Myanmar.

71. Telenor contends that it conducted thorough assessments on available alternatives, and that its decision to sell was a last resort, least detrimental option as it maintained connectivity for its 18 million customers and ensured staff employment. It also asserts that the GDPR did not apply, and that it has been communicating with all stakeholders, and was prohibited by stock exchange rules from publicly discussing sale plans.

72. Separately, JFM has raised concerns of the compatibility of the transfer of intercept equipment as part of the sale by Telenor with Norwegian, United Kingdom, and European Union, sanctions.¹⁸⁰

2. Oil and gas

73. Myanmar's oil and gas industry – the country's largest source of foreign revenue – has been the target of CSO campaigning to halt payments to the SAC. Each of the four major offshore gas projects involve gas extraction and transportation, and are structured as joint ventures with an operator, other partners, and with MOGE playing several roles including non-operational partner and revenue collector for State royalties, profit share and bonuses.¹⁸¹

¹⁷⁵ With exceptions, e.g. the Myanmar Labor Alliance called for comprehensive economic sanctions:

https://www.facebook.com/permalink.php?story_fbid=546648550010451&id=109901467018497.

¹⁷⁶ <https://www.telenor.com/media/newsroom/continued-presence-in-myanmar-not-possible-for-telenor/>.

¹⁷⁷ <https://www.telenor.com/media/newsroom/announcement/we-cannot-make-our-employees-in-myanmar-delete-data-and-break-the-law-update-by-jorgen-c-arentz-rostrup-evp-and-head-of-telenor-asia/>.

¹⁷⁸ <https://www.responsiblebusiness.no/somo-on-behalf-of-474-csos-in-myanmar-vs-telenor-asa/>. There is ongoing dialogue between Telenor and the complainants.

¹⁷⁹ <https://www.somo.nl/myanmar-citizen-files-data-protection-complaint-against-telenor-for-dangerous-breach-of-privacy/>.

¹⁸⁰ <https://www.justiceformyanmar.org/press-releases/telenor-group-violating-sanctions-through-installation-and-imminent-transfer-of-german-lawful-intercept-gateway>;
<https://www.justiceformyanmar.org/press-releases/telenor-group-is-aiding-and-abetting-m1-group-to-violate-myanmar-sanctions>.

¹⁸¹ PWYP, FN46; <https://s3.amazonaws.com/rgidocuments/d5f1ab1d7c21630846423e0a69b987591505a310.pdf>.

Following the coup, operators of two projects have divested; though all projects are continuing operations.

74. *Yetagun project*: In April 2021, Petronas subsidiary PC Myanmar (Hong Kong) Limited declared force majeure on the field, which it had been operating since 2003, stating depletion of gas production.¹⁸² A year later, it announced its withdrawal from the project following a “techno-commercial review”.¹⁸³ Other major project partners, PTTEP and Eneos subsidiary JX Nippon Oil & Gas Exploration Corporation (‘JX’), similarly announced their intention to withdraw.¹⁸⁴ While PTTEP has assigned no commercial value to its shares which will be allocated proportionately to the remaining shareholders,¹⁸⁵ it is unclear how the revised shareholding will be structured or how decommissioning will be dealt with if extraction ends. JX was the only actor to publicly acknowledge “the country’s current situation”; Petronas and PTTEP referred to their respective portfolio management strategies.

75. JFM reported that leaked documents show the highest levels of the SAC inquiring about resumption of the project’s exports, resulting payments, and possible actions should payments not be received.¹⁸⁶ Documents seen by OHCHR show that revenues from the project – estimated to be USD22.4 million between October 2021 and March 2022 – were paid into an MFTB nostro account at a Singapore branch of Malaysian bank CIMB.¹⁸⁷

76. CSOs have called on the firms that have profited from the project to exit in a responsible manner, particularly in the decommissioning of the gas field and to remediate any negative social and environmental impacts.¹⁸⁸

77. *Yadanar project*: In January 2022, TotalEnergies and Chevron separately announced their intention to withdraw from the project.^{189,190} In accordance with project agreements, TotalEnergies set a six-month deadline to depart as operator and shareholder, with its shares allocated proportionately among the remaining partners at no commercial value, thereby increasing all remaining partners’, including MOGE’s, shareholding.¹⁹¹ Chevron, did not provide further details regarding its exit, and PTTEP has taken over as operator.¹⁹²

78. Certain CSOs were critical of TotalEnergies,¹⁹³ and further called on TotalEnergies and Chevron to initiate international arbitration proceedings to obtain a decision as to which party – SAC or NUG – constitutes the proper contractual counterparty.¹⁹⁴

¹⁸² <https://www.petronas.com/media/press-release/petronas-upstream-operations-myanmar-declares-force-majeure-its-yetagan-field>.

¹⁸³ <https://www.petronas.com/media/press-release/petronas-withdraws-yetagan-field-offshore-myanmar>.

¹⁸⁴ <https://www.pttep.com/en/Newsandnmedia/Mediacorner/Pressreleases/Pttep-With-Draws-From-Yetagan-Project-In-Myanmar.aspx>;

https://www.hd.eneos.co.jp/english/newsrelease/upload_pdf/20220502_01_02_0960492.pdf.

¹⁸⁵ <https://www.pttep.com/en/Newsandnmedia/Mediacorner/Pressreleases/Pttep-With-Draws-From-Yetagan-Project-In-Myanmar.aspx>.

¹⁸⁶ <https://www.justiceformyanmar.org/stories/leaked-documents-show-min-aung-hlaing-personally-concerned-over-oil-and-gas-payments>.

¹⁸⁷ ER022.

¹⁸⁸ <https://www.justiceformyanmar.org/press-releases/ngos-cautiously-welcome-eneos-withdrawal-from-myanmar-call-for-responsible-disengagement-and-decommissioning-of-yetagan-gas-project>.

¹⁸⁹ <https://totalenergies.com/media/news/press-releases/totalenergies-withdraws-myanmar>;

<https://www.chevron.com/stories/chevrons-view-on-myanmar>.

¹⁹⁰ In May 2021, shareholders of the gas transportation project suspended monthly dividend payments to MOGE.

¹⁹¹ <https://totalenergies.com/media/news/press-releases/totalenergies-withdraws-myanmar>.

¹⁹² <https://www.pttep.com/en/Newsandnmedia/News/Changeofoperatorintheyadanaprojectinmyanmar.aspx>.

¹⁹³ <https://globalmayday.net/wp-content/uploads/2022/03/Explainer-TotalEnergies-Chevron-Exit.pdf>;
<https://globalmayday.net/wp-content/uploads/2022/03/GMSRxBMC-EU-Sanctions-on-MOGE-Explainer-Final.pdf>.

¹⁹⁴ https://earthrights.org/wp-content/uploads/Responsible-Divestment-from-Myanmar-Briefer-March-2022.FINAL_.pdf. TotalEnergies withdrew completely from Myanmar effective 20 July 2022.

3. Garments

79. In contrast to the telecommunications and oil and gas industries, the garments sector has limited direct ties to the SAC. In January 2022, the European Chamber of Commerce in Myanmar's ('EuroCham') Garment Advocacy Group assessed five specific factors relevant to the sector – (i) insignificant fiscal contributions to State revenue; (ii) relatively limited foreign exchange earnings; (iii) minimal garment factory links to the military; (iv) relatively low risk of factory operations in industrial zones; and (v) availability of non-military-owned ports – and concluded that it is entirely possible to operate without interacting with military-owned conglomerates.¹⁹⁵

80. EuroCham further noted anecdotal evidence that when European buyers exit, factories look to attract new buyers from other markets, where there may be lesser levels of respect for workers' rights. It emphasized that those who source from Myanmar focus on ensuring decent work and freedom of association for all workers, including women who constitute the vast majority.¹⁹⁶

V. Conclusions and recommendations

81. Whilst the SAC has seized control of State organs, it has failed to govern in meaningful and sustainable ways; instead continuing to repress and terrorize the Myanmar people. Local SAC administration has collapsed in many areas nationwide, the public health system has effectively broken down, and more than half of all school-aged children have not accessed education for two academic years.¹⁹⁷ The SAC has been unable to resolve a profound financial sector crisis, and domestic revenue collection is well below pre-2021 levels. Overall, the proportion of Myanmar's population living in poverty will likely rise in 2022.

82. Public distrust and rejection of military rule is widespread and clear. Many Myanmar people continue to demonstrate immense willingness to make individual and collective sacrifices to weaken the SAC – public sector workers going on strike at the cost of jobs, salaries and housing; parents refusing to send their children to schools; households refusing to pay electricity bills despite threats of being cut off. Myanmar CSOs and the NUG have welcomed and continue to call for targeted sanctions that restrict the SAC's ability to access foreign exchange, including on certain SOEs and state-owned banks.¹⁹⁸

83. This report has documented that, although some progress has been made towards the Tatmadaw's economic isolation, much more remains to be done, particularly since February 2021, to stop the military's continuous assault on the Myanmar people and to hold it accountable for international crimes.

84. The international community should take all steps within its power to support the people of Myanmar and to answer calls for the military's financial isolation. Prompt coordinated action should be considered to minimise pre-emptive evasive actions. For any steps taken, significant efforts must be made to mitigate any foreseeable socio-economic impacts on the people, while recognising the harm of the military continuing to have access to foreign currency reserves and perpetrating international crimes. Consultation on these issues with civil society and democratic movement, including the NUG and ethnic organisations, is vitally important.

¹⁹⁵ FN103.

¹⁹⁶ Also: https://www.business-humanrights.org/documents/37865/2022_Myanmar_garment_sector_EN.pdf.

¹⁹⁷ <https://reliefweb.int/report/myanmar/myanmar-humanitarian-update-no-19-28-june-2022>.

¹⁹⁸ ER020; <https://progressivevoicemyanmar.org/2022/05/07/626-myanmar-international-civil-society-organizations-and-over-220-000-people-call-on-the-us-to-sanction-myanmars-oil-and-gas-revenues-and-stop-the-bankrolling-of-the-genocidal-military-ju/>.

85. In the light of the above findings and the current situation, OHCHR reiterates previous recommendations of the High Commissioner to the military authorities, including immediately ceasing all attacks directed against the Myanmar people.¹⁹⁹

86. Further, OHCHR recommends that Member States, and relevant regional and international intergovernmental organisations:

- (a) Implement arms transfer sanctions if not already in place;
- (b) Implement additional targeted sanctions against entities that allow or could allow the Tatmadaw continued foreign currency access including MFTB, MICB, and MOGE, while respecting human rights and mitigating adverse socio-economic impacts of sanctions including through licencing schemes exemptions for international organisations and CSOs;
- (c) Ensure effective implementation of existing targeted sanctions that are consistent with international human rights standards, including by enforcing compliance against sanctions violators as appropriate and by ensuring sufficient resources are dedicated to enforcement;
- (d) In consultation with CSOs, explore additional actions that could reduce SAC revenues;
- (e) Consider instituting a robust and effective mandatory HRDD regime for all business activities taking place in whole or in part within their territory or under their jurisdiction following wide consultation with affected stakeholders;
- (f) Integrate heightened HRDD into the operations of SOEs and agencies that promote trade and investment in Myanmar and ensure these entities do not enter into or maintain business relationships with military-owned or -controlled companies;

87. To investors and businesses:

- (a) Business enterprises active in Myanmar or trading with or investing in businesses in Myanmar, including supply chain operations, should undertake due diligence to ensure they do not enter into or remain in a business relationship of any kind with the Tatmadaw, or any enterprise owned or controlled by them (including subsidiaries) or their individual members;
- (b) All businesses active in Myanmar or trading with or investing in businesses in Myanmar, including supply chain operations, or considering doing so should systematically carry out heightened HRDD which;
- (c) is thorough, informed by meaningful stakeholder engagement and aim to assess actual or potential human rights impacts and to avoid business relationships with the military;
 - (i) integrates findings into relevant processes and track effectiveness of measures taken;
 - (ii) is transparent about the management of potential and actual impacts, ideally publishing the assessments;
 - (iii) is ongoing and reviewed periodically to assess effectiveness and to consider any newly available credible information;
- (d) Businesses active in Myanmar should publish what they pay, such as concession and licensing fees, to contribute to greater transparency and good governance;
- (e) In some circumstances, heightened HRDD and identified remedial actions may not be sufficient to mitigate the risks and no human rights compliant operations by businesses are possible. In such circumstances, responsible withdrawals should be considered;

¹⁹⁹ A/HRC/49/72, para.74.

(f) Investors should avoid investing in military-owned or -linked companies and require heightened HRDD by the companies in which they invest.

88. To international financial institutions:

(a) Explore ways to support the non-Tatmadaw sector of the economy, particularly businesses that commit to international standards of responsible business conduct, without benefitting the military;

(b) Ensure continuous engagement with CSOs and relevant stakeholders on any future activities.

89. To the United Nations, including its funds, programmes and agencies:

(a) Improve the capacity of the United Nations to identify its exposure to military-owned businesses and products through due diligence processes, including through the creation of a dedicated focal point/post to keep abreast of the most up-to-date information available, track responses and provide guidance;

(b) Consider issuing further guidance to businesses and investors on what constitutes responsible operation and divestment in the Myanmar context;

(c) Undertake further investigations into the following areas with the assistance of relevant experts including on financial investigations;

(i) Issues identified by the FFM in paragraph 191(c) of the paper A/HRC/42/CRP.3;

(ii) Possible instances of the war crime of pillaging in Myanmar.
