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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 46/21, the present report includes an assessment of actions taken by various actors following the release in 2019 by the independent international fact-finding mission on Myanmar of a conference room paper on the economic interests of the Myanmar military. It also contains an identification of continuing and emerging challenges, using 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 its resolution 46/21, the Human Rights Council requested the Office of the United Nations High Commissioner for Human Rights (OHCHR) to prepare and present to the Council at its fifty-first session a comprehensive report on progress made and remaining challenges with regard to recommendations of the independent international fact-finding mission on Myanmar in its conference room paper on the economic interests of the Myanmar military (the Tatmadaw), and to provide further recommendations in its report.¹

2. In its paper, the mission determined that the ability of the military and its leadership to draw on various sources of revenue enabled its conduct, including the perpetration of serious international crimes. The mission 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. The present report includes an assessment of the actions taken by various actors from the date of release of the mission's paper until 31 July 2022. The report also contains an identification of the continuing and emerging challenges, using examples to highlight relevant issues.

4. The present report was prepared using open-source material collected and subjected to credibility assessments, including Myanmar Extractive Industries Transparency Initiative 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 have faced 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-led Government when the Human Rights Council appointed the mission in 2017 and when the latter issued its mandated reports and thematic papers in 2018 and 2019. The National League for Democracy-led Government took its first steps towards democratization, good governance and further economic liberalization, even as the military maintained its constitutionally guaranteed powers.

6. During this period, the Tatmadaw led a campaign of violence effectuating a third mass exodus of Rohingya into Bangladesh,⁵ leading 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 the people of Myanmar nationwide. These violations span the entire spectrum of civil, political, economic, social and cultural rights.

¹ <https://www.ohchr.org/en/hr-bodies/hrc/myanmar-ffm/economic-interests-myanmar-military>.

² Ibid.

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

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

⁵ Earlier expulsions occurred in 1978 and in 1991–1992.

OHCHR found reasonable grounds to believe that some might 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 the “State Administration Council” headed by the Commander-in-Chief,⁷ the military has pushed an economy hard-hit by the coronavirus disease (COVID-19) pandemic into a deepening crisis, with poverty levels estimated to have doubled since March 2020.⁸ Compared with the last National League for Democracy Government annual budget, the State Administration Council, in its 2022/2023 budget, increased defence spending from 10 to 12 per cent, while reducing allocations to education (8.4 to 7 per cent), health (4.2 to 2.8 per cent) and social welfare (0.5 to 0.3 per cent).

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

10. Aiming to stabilize the kyat, the Central Bank of Myanmar initially auctioned off its reserves of United States dollars, though the State Administration Council gradually relied on a fixed exchange rate for the kyat against the United States dollar;⁹ a general ban on foreign currency holdings;¹⁰ and an increase in the scope of commodities and goods subject to import and export licences.¹¹ Among other purposes, such stringent regulation of foreign exchange flows was 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,¹² all of which require foreign currency payments.

11. Additionally, the State Administration Council has held numerous gem, metal and timber auctions to earn foreign currency.¹³ Other sectoral sources of foreign exchange revenue for the State Administration Council include oil and gas, mining, telecommunications and customs, including from State-owned enterprises.

12. The National Unity Government¹⁴ – which seeks international recognition as the country’s government – has articulated some policies aimed simultaneously at encouraging responsible business and limiting financial flows to the military. 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

⁶ [A/HRC/48/67](#); [A/HRC/49/72](#);

https://www.ohchr.org/sites/default/files/HRBodies/HRC/RegularSessions/Session48/Documents/A_HRC_48_CRP2_EN.pdf.

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

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

⁹ Central Bank of Myanmar directive 4/2022; and notification No. 36/2022.

¹⁰ Central Bank of Myanmar notification No. 12/2022; directive 5/2022; letter FE-1/69; and letter FE-1/754.

¹¹ https://www.vdb-loi.com/mm_publications/an-increasing-number-of-goods-are-now-subject-to-import-licensing/; and

<https://www.commerce.gov.mm/en/category/%E1%80%95%E1%80%AD%E1%80%AF%E1%80%B7%E1%80%80%E1%80%AF%E1%80%94%E1%80%BA%E1%80%9E%E1%80%BD%E1%80%84%E1%80%BA%E1%80%B8%E1%80%80%E1%80%AF%E1%80%94%E1%80%BA%E1%80%94%E1%80%BE%E1%80%84%E1%80%BA%E1%80%B7%E1%80%95%E1%80%90%E1%80%BA%E1%80%9E%E1%80%80%E1%80%BA%E1%80%9E%E1%80%B1%E1%80%AC-%E1%80%9E%E1%80%90%E1%80%84%E1%80%BA%E1%80%B8%E1%80%9C%E1%80%BD%E1%80%BE%E1%80%AC>.

¹² Military-owned businesses include the Myanmar Economic Cooperation and Myanma Economic Holdings Ltd., and their subsidiaries.

¹³ E.g. *Global New Light of Myanmar*, vol. 8, No. 9, 28 April 2021; and vol. 8, No. 70, 28 June 2021; and <https://www.mte.com.mm/index.php/en/announcements/1433-1152022-02>.

¹⁴ [A/HRC/48/67](#), paras. 70–72.

projects approved by the Myanmar Investment Commission after 1 February 2021; and a sanctions policy.

13. In Myanmar, State-owned enterprises have monopoly rights on economic activities in 12 sectors, either through joint venture or sole proprietorship.¹⁵ Extractive State-owned enterprises play a relatively significant role in the economy, contributing an estimated 7 per cent of GDP in 2017. Despite this, most State-owned enterprises function as operational departments within line ministries – now under State Administration Council control – rather than autonomous corporate entities, including Myanmar Oil and Gas Enterprise, the largest State-owned enterprise contributor to the government budget.¹⁶

14. Some of the most important State-owned enterprises – including Myanmar Oil and Gas Enterprise, Myanmar Timber Enterprise and Myanmar Gems Enterprise – are net importers of foreign currency,¹⁷ as commodities are traded on international markets in United States dollars and/or euros. Therefore, in addition to accounts held at Myanmar Economic Bank,¹⁸ such State-owned enterprises also have offshore accounts with Myanmar Foreign Trade Bank.¹⁹ These Myanmar Foreign Trade Bank nostro bank accounts are held in over 50 corresponding banks globally.²⁰ Foreign currency earnings are generally deposited into these offshore accounts at custodian banks, and the kyat accounts of State-owned enterprises at Myanmar Economic Bank are correspondingly credited. No foreign currency physically enters Myanmar.

III. Implementation of recommendations

15. In its 2019 paper, the mission 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. It also outlined roles that other corporate actors play in contributing to or benefiting from the military's violations and crimes. The mission called for the Tatmadaw's economic isolation, issuing recommendations serving as a road map targeted at seven groups of actors and broadly covering six types of actions, which are discussed below. These discussions illustrate that, while some progress has been made, there remain significant gaps, which are ever more important following the coup.

A. Sanctions

16. The mission recommended that the Security Council target financial sanctions against senior Tatmadaw officials responsible for human rights and humanitarian law violations, and against military-owned companies. However, no action has been taken on these recommendations to date. Similar recommendations were made to States on targeted individual sanctions, travel bans and asset freezes against identified perpetrators of violations; owners of military conglomerates and subsidiaries; legal persons contributing or benefitting economically from the military and its operations; and Tatmadaw family members and associates, where they may act as surrogates or proxies to evade sanctions.²¹

17. Several countries, including Australia, Canada and the United States of America, as well as the European Union, previously sanctioned a few individuals in 2018 shortly before or just after the mission issued its first report.²² The United States also sanctioned two

¹⁵ State-owned Economic Enterprises Law, 1989.

¹⁶ <https://openknowledge.worldbank.org/bitstream/handle/10986/28392/119855-PER-P159067-PUBLIC-v2-main-report-PERSepcleanwithnewcover.pdf?sequence=1&isAllowed=y> (p. 11).

¹⁷ https://resourcegovernance.org/sites/default/files/documents/state-owned-economic-enterprise-reform-in-myanmar_0.pdf (p. 30).

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

¹⁹ https://resourcegovernance.org/sites/default/files/documents/state-owned-economic-enterprise-reform-in-myanmar_0.pdf (p. 30).

²⁰ Ibid.

²¹ <https://www.ohchr.org/en/hr-bodies/hrc/myanmar-ffm/economic-interests-myanmar-military>.

²² [A/HRC/39/64](https://www.ohchr.org/en/hr-bodies/hrc/myanmar-ffm/economic-interests-myanmar-military).

military units, and Canada had some older sanctions in force, notably against the Myanmar Foreign Trade Bank.

18. Since February 2021, Canada, the United Kingdom of Great Britain and Northern Ireland and the United States, as well as States aligned with European Union sanctions, 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, State Administration Council-appointed “ministers” and other officials.

19. Sanctions have also been imposed by those States against military-owned conglomerates (Myanmar Economic Cooperation and Myanmar Economic Holdings Limited), the Myanmar War Veteran’s Organization and some State-owned enterprises, including Myanmar Gems Enterprise and Myanmar Timber Enterprise. Additionally, the European Union has sanctioned No. 1 Mining Enterprise and, significantly, Myanmar Oil and Gas Enterprise.²³ There are some indications that international sanctions against Myanmar Oil and Gas Enterprise have had some impact. Myanmar Oil and Gas Enterprise 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. Myanmar Oil and Gas Enterprise reportedly may be attempting to change its payment instructions to avoid sanctions.

20. Some companies have been sanctioned by one or more jurisdictions for providing financial or other support to the military, including the IGE Group, Wanbao Mining, King Royal Technologies Co. Ltd., Htoo Group and KT Services & Logistics Co. Ltd. The United States additionally sanctioned top executives of the latter two companies. Generally, sanctions automatically apply to businesses that are majority-owned by sanctioned individuals or entities, even if not specifically designated. United States sanctions also apply to most United States dollar transactions as they pass through the United States financial system. Significantly, the United States froze an estimated \$1 billion of Central Bank of Myanmar reserves held in New York.²⁴

21. Interlocutors expressed concern that the impact of sanctions had been blunted by the inaction of neighbouring States and those of the Association of Southeast Asian Nations, especially of regional financial hub Singapore.²⁵ Australia, Japan and the Republic of Korea have condemned the coup, but they have not imposed new financial sanctions, despite recently having done so with respect to other States.

22. Ineffective sanctions enforcement continues to provide the military with revenues. For example, Myanmar teak valuing nearly 19 million euros has entered the European Union²⁶ – notably Italy – since February 2021, despite the fact that since 2018, the European Commission has maintained a position that Myanmar teak could not meet relevant regulations;²⁷ and Myanmar Timber Enterprise (the only entity legally permitted to trade in timber extraction and sales) was sanctioned in June 2021.²⁸ Sixty-five shipments of Myanmar timber have entered the United States since it sanctioned Myanmar Timber Enterprise, with lower amounts reportedly entering Canada, Switzerland and the United Kingdom.²⁹

23. Effective sanctions should target the military’s foreign currency access in particular, while minimizing impacts on the Myanmar population. However, to date, only Canada has sanctioned Myanmar Foreign Trade Bank – despite it being the primary foreign exchange

²³ Albeit with a possible problematic derogation – <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02013R0401-20220423>.

²⁴ <https://home.treasury.gov/system/files/126/14014.pdf>; and <https://www.reuters.com/article/us-myanmar-politics-usa-fed-exclusive-idUSKCN2AW2MD>.

²⁵ 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.

²⁶ https://www.forest-trends.org/wp-content/uploads/2022/03/Forest-Trends_Myanmars-Timber-Trade-One-Year-Since-the-Coup.pdf (p. 12).

²⁷ <https://ec.europa.eu/transparency/expert-groups-register/core/api/front/document/39135/download>.

²⁸ Italy and the European Union noted the issue is being addressed.

²⁹ https://www.forest-trends.org/wp-content/uploads/2022/03/Forest-Trends_Myanmars-Timber-Trade-One-Year-Since-the-Coup.pdf (pp. 13–14).

intermediary – and Myanmar Investment and Commercial Bank, probably to avoid it being used to circumvent Myanmar Foreign Trade Bank sanctions. Credible analyses by economists indicate that the targeted sanctions on Myanmar Foreign Trade Bank and Myanmar Investment and Commercial Bank could deprive the military of \$2 billion a year with limited secondary impacts, with recent precedents for banking-related sanctions on other States. As of July 2022, only the European Union has sanctioned Myanmar Oil and Gas Enterprise – despite it likely earning \$1.5 billion annually from offshore and pipeline projects, and gas revenues accounting for 50 per cent of the country’s foreign exchange earnings.³⁰

B. Arms embargoes and transfers sanctions

24. The mission recommended that States should not authorize arms transfers to Myanmar, considering the overriding risk that such weapons would be used to commit or facilitate crimes or to undermine peace and security.³¹

25. Accordingly, the mission recommended that the Security Council impose a comprehensive arms embargo and that States implement arms transfer sanctions.³² The Security Council has not done so; however, the General Assembly, in its resolution 75/287, called for States to prevent the flow of arms into Myanmar. Forty-two countries have arms embargoes that pre-date the mission report;³³ and, since the coup, Bangladesh, Brazil, Honduras, Israel, Japan, the Republic of Korea and Uzbekistan reported that they do not or will not supply arms.³⁴

26. The findings of the mission indicated that numerous States had allowed arms and arms-related transfers and assistance to Myanmar. It recommended that the United Nations further investigate the issue.³⁵ The Special Rapporteur on the situation of human rights in Myanmar undertook work in that regard. Since the issuance of the mission’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. These States do not appear to have supplied arms since February 2021.³⁶

27. The military continues relying heavily on airpower in attempts to assert control, including conducting indiscriminate attacks, often in populated areas,³⁷ and has used artillery, including against peaceful protestors.³⁸ Transferring arms that facilitate the 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.³⁹ Furthermore, such transfers could entail the responsibility of arms-transferring States for breaching applicable

³⁰ <https://www.pwyp.org/wp-content/uploads/2021/06/Financing-the-Military-in-Myanmar.pdf>.

³¹ [A/HRC/39/64](https://www.ohchr.org/en/hr-bodies/hrc/myanmar-ffm/economic-interests-myanmar-military), para. 114; and <https://www.ohchr.org/en/hr-bodies/hrc/myanmar-ffm/economic-interests-myanmar-military>.

³² <https://www.ohchr.org/en/hr-bodies/hrc/myanmar-ffm/economic-interests-myanmar-military>.

³³ *Ibid.*; and <https://www.ohchr.org/en/documents/thematic-reports/ahrc49crp1-conference-room-paper-special-rapporteur-enabling-atrocities>.

³⁴ <https://www.ohchr.org/en/documents/thematic-reports/ahrc49crp1-conference-room-paper-special-rapporteur-enabling-atrocities>.

³⁵ <https://www.ohchr.org/en/hr-bodies/hrc/myanmar-ffm/economic-interests-myanmar-military>.

³⁶ <https://www.ohchr.org/en/documents/thematic-reports/ahrc49crp1-conference-room-paper-special-rapporteur-enabling-atrocities>.

³⁷ [A/HRC/48/67](https://www.ohchr.org/en/hr-bodies/hrc/myanmar-ffm/economic-interests-myanmar-military), paras. 6 and 59; and [A/HRC/49/72](https://www.ohchr.org/en/hr-bodies/hrc/myanmar-ffm/economic-interests-myanmar-military), para. 44.

³⁸ [A/HRC/48/67](https://www.ohchr.org/en/hr-bodies/hrc/myanmar-ffm/economic-interests-myanmar-military), para. 24; and

https://www.ohchr.org/sites/default/files/HRBodies/HRC/RegularSessions/Session48/Documents/A_HRC_48_CRP2_EN.pdf.

³⁹ Articles on the responsibility of States for internationally wrongful acts, art. 16.

treaty obligations under the International Covenant on Civil and Political Rights,⁴⁰ and potentially the Geneva Conventions of 12 August 1949⁴¹ and the Arms Trade Treaty.⁴²

28. Several States have continued to supply, or to facilitate the supply of, lethal weaponry to the Myanmar military following the coup. The Russian Federation has exported fighter jets, has likely transferred armoured vehicles and has announced new arms deals.⁴³ On Armed Forces Day in 2021 – when at least 130 people were killed across Myanmar⁴⁴ – the Deputy Minister of Defence of the Russian Federation attended the military’s celebration and discussed military technology cooperation. In July 2022, the Commander-in-Chief travelled to the Russian Federation and discussed enhancing military, economic and energy-related cooperation.⁴⁵ Since 2020, Serbia has exported rockets and artillery shells, with credible information indicating at least one shipment was sent after the coup.⁴⁶ A State-owned enterprise in India supplied a remote-controlled weapons/air defence station, while China transferred State-owned enterprise-produced fighter jets and military transport planes.⁴⁷ Further, several States have reportedly continued military-to-military cooperation with the Tatmadaw, including the defence programme of the Association of Southeast Asian Nations and the ongoing training programme of Japan.⁴⁸

C. Disengaging from military-owned companies

29. A primary recommendation of the mission was that no business should enter into or remain in any business relationship with entities that are owned or controlled by the military.⁴⁹

30. After the mission issued the paper, some companies indicated they were withdrawing from⁵⁰ or reviewing⁵¹ relationships with military-owned businesses or entities named in the annexes. An additional 38 named companies took no action based on available information.

31. Civil society organizations had already targeted advocacy at some military-linked companies⁵² prior to the issuance of the paper. For instance, Burma Campaign UK re-launched its “Dirty List” in 2018.⁵³ Following the release of the paper, other campaigns that were carried out included the Business and Human Rights Resource Centre, which wrote to

⁴⁰ Relevant parties: Israel, Russian Federation, Serbia and Ukraine. See Human Rights Committee, general comment No. 36 (2018), paras. 22 and 63.

⁴¹ Relevant parties: Belarus, China, India, Israel, Republic of Korea, Russian Federation, Serbia and Ukraine. See common art. 1 to the 1949 Geneva Conventions; and International Committee of the Red Cross, commentary on the Geneva Convention relative to the Treatment of Prisoners of War, art. 1, para. 195.

⁴² Relevant parties: China, Republic of Korea and Serbia. Israel and Ukraine are signatories. See Arms Trade Treaty, arts. 6–7.

⁴³ <https://www.ohchr.org/en/documents/thematic-reports/ahrc49crp1-conference-room-paper-special-rapporteur-enabling-atrocities>.

⁴⁴ https://www.ohchr.org/sites/default/files/HRBodies/HRC/RegularSessions/Session48/Documents/A_HRC_48_CRP2_EN.pdf.

⁴⁵ *Global New Light of Myanmar*, vol. 7, No. 345, 27 March 2021; vol. 7, No. 346, 28 March 2021; and vol. 9, No. 88, 13 July 2022.

⁴⁶ <https://www.ohchr.org/en/documents/thematic-reports/ahrc49crp1-conference-room-paper-special-rapporteur-enabling-atrocities>.

⁴⁷ *Ibid.*

⁴⁸ <https://www.justiceformyanmar.org/stories/aseans-complicity-in-the-myanmar-militarys-atrocity-crimes>; and <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.

⁴⁹ <https://www.ohchr.org/en/hr-bodies/hrc/myanmar-ffm/economic-interests-myanmar-military>.

⁵⁰ Newtec, Esprit, Portia Management Services, Maersk and Western Union.

⁵¹ H & M and Marks and Spencer.

⁵² Entities with any business relationship with a military-owned company.

⁵³ <https://burmacampaign.org.uk/take-action/dirty-list/>.

a number of companies,⁵⁴ and Amnesty International, which wrote to eight business partners of Myanma Economic Holdings Ltd. As a result, some companies announced action.⁵⁵ Civil society organizations also conducted research on companies in business relationships with military-linked entities. For example, Justice for Myanmar identified 101 companies connected to Mytel, a network operator part owned by the Myanmar Economic Cooperation.⁵⁶

32. Some companies have taken action since February 2021. For example, Infosys indicated they no longer work for two military banks, and Adani Ports and Special Economic Zone Ltd. announced it would exit its port construction project on land leased from Myanmar Economic Cooperation, with an expectation that the sale would proceed following customary due diligence.⁵⁷ Posco Steel Co. Ltd. suspended payment of leasehold rent and dividends to Myanma Economic Holdings Ltd. and later announced a planned buyout of the latter's stake, which would likely involve paying Myanma Economic Holdings Ltd. a significant sum. It was reported that Myanma Economic Holdings Ltd. was failing to cooperate with the termination process.⁵⁸

33. Significant boycott movements arose within Myanmar following the coup. Civil society organizations and the National Unity Government released lists of military-linked companies for boycott,⁵⁹ and an application identifying military-linked businesses was downloaded over 100,000 times. Some ethnic armed organizations have announced bans on military-produced products in areas they control.⁶⁰

34. The experience of Kirin Holdings Company Ltd. is an example of the complex dynamics. It had joint ventures with Myanma Economic Holdings Ltd. in Myanmar Brewery since 2015 and Mandalay Brewery since 2017. The mission additionally flagged Myanmar Brewery donations to the military.⁶¹ After Amnesty International raised concerns in 2018, Kirin Holdings Company Ltd. 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 Myanma Economic Holdings Ltd. was unlikely to have a negative human rights impact, noting a clause prohibiting use of Myanmar Brewery funds for military purposes.⁶² Following inclusion in the mission report, Kirin Holdings Company Ltd. appealed to Myanma Economic Holdings Ltd. for improved governance, announced a business review and suspended dividend payments by Myanmar Brewery. The company argued, however, that divesting to another entity that did not share its commitments to human rights would not improve the situation.⁶³ In January 2021, Kirin Holdings Company Ltd. announced that the review results were "inconclusive". Following the coup, the company

⁵⁴ <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/>.

⁵⁵ For example, apparel manufacturer Pan-Pacific Co. Ltd. indicated it was terminating partnerships with Myanma Economic Holdings Limited. See <https://www.amnesty.org/en/wp-content/uploads/2021/05/ASA1629692020ENGLISH.pdf> (p. 8). It is unclear whether it has done so.

⁵⁶ <https://www.justiceformyanmar.org/stories/nodes-of-corruption-lines-of-abuse-how-mytel-viettel-and-a-global-network-of-businesses-support-the-international-crimes-of-the-myanmar-military>.

⁵⁷ <https://burmacampaign.org.uk/infosys/>; and <https://openknowledge.worldbank.org/bitstream/handle/10986/28392/119855-PER-P159067-PUBLIC-v2-main-report-PERSepcleanwithnewcover.pdf?sequence=1&isAllowed=y>.

⁵⁸ <https://www.posco.co.kr/homepage/docs/eng6/jsp/irinfo/irdata/s91b60000731.jsp?schidx=379>; and <https://www.reuters.com/business/skoreas-posco-cc-says-end-myanmar-military-backed-joint-venture-2021-04-16/>.

⁵⁹ <https://mopfi.nugmyanmar.org/boycott-list/>.

⁶⁰ See e.g. <https://www.bnionline.net/en/news/junta-beer-eliminated-kio-controlled-areas-kachin-state>; and <https://myanmar-now.org/en/news/taang-national-liberation-army-bans-sale-of-goods-from-military-companies-in-its-territory>.

⁶¹ <https://www.ohchr.org/en/hr-bodies/hrc/myanmar-ffm/economic-interests-myanmar-military>.

⁶² Kirin Holdings Company Ltd. reply to Amnesty International, 22 May 2018, available at <https://app.box.com/s/1zxkmaey5oi3hmy3z133cldtuh7j03y9/file/296610226111>.

⁶³ Kirin Holdings Company Ltd. reply to Amnesty International, 2 June 2020. See <https://www.amnesty.org/en/documents/asa16/2969/2020/en/>.

indicated that it would seek to terminate the joint ventures⁶⁴ and a preference to buy out Myanma Economic Holdings Ltd.'s shares in the breweries. After negotiations and Myanma Economic Holdings Ltd.-initiated legal proceedings, Kirin Holdings Company Ltd. announced in February 2022 that it would exit Myanmar before July 2022,⁶⁵ eventually stating it would sell its stake to Myanmar Brewery Ltd.,⁶⁶ handing Myanma Economic Holdings Ltd. full control. The breweries continued to make a significant profit for Myanma Economic Holdings Ltd., until dividends were suspended starting in 2020. A boycott, among other factors, led sales to fall 40 per cent in 2021. The reduction in profits from Myanmar Brewery Ltd. may have been a factor in Myanma Economic Holdings Ltd. failing to pay its own 2021 dividends to its military shareholders.⁶⁷

35. There have also been physical attacks on perceived military business interests.⁶⁸ In response, the military reportedly placed mines along oil pipelines to deter attacks⁶⁹ and stationed troops inside Letpadaung copper mine compound,⁷⁰ around which they reportedly raided several villages and killed nine people.⁷¹

D. Human rights due diligence

36. The mission called for heightened due diligence with respect to companies owned or controlled by Tatmadaw family members; operations in conflict-affected areas; and the purchase of natural resources from Myanmar. It also recommended that States should ensure businesses in their jurisdictions act consistently with their human rights obligations.⁷²

37. Some States require certain companies to conduct human rights due diligence, including when operating in Myanmar.⁷³ Draft European Union legislation would mandate this for some companies,⁷⁴ while sector-specific regulations on timber⁷⁵ and conflict minerals⁷⁶ also require due diligence. Canada, the United Kingdom and the United States advise due diligence in Myanmar-specific 2021 business advisories.⁷⁷ There are, however, several States with large investments in Myanmar that, while generally encouraging human rights due diligence, do not legally require it.⁷⁸ Some foreign State-owned enterprises also continue relationships with military-owned businesses (see para. 28 above).

⁶⁴ https://www.kirinholdings.com/en/newsroom/release/2021/0204_01.html.

⁶⁵ <https://pdf.irpocket.com/C2503/OMfg/VvCP/LpVE.pdf>; and <https://www.reuters.com/business/japan-brewer-kirin-exit-myanmar-operations-nikkei-2022-02-14/>.

⁶⁶ <https://pdf.irpocket.com/C2503/efCi/kzVe/oCjp.pdf>.

⁶⁷ <https://www.irrawaddy.com/news/burma/military-owned-corporation-fails-to-pay-dividends-to-myanmar-troops.html>; and <https://www.myanmar-responsiblebusiness.org/pwint-thit-sa/2020.html> (pp. 51–52).

⁶⁸ For example, against Mytel phone towers. See [A/HRC/49/72](#), para. 54.

⁶⁹ <https://shanhumanrights.org/villagers-security-threatened-by-burma-army-landmines-along-chinese-pipelines-in-hsipaw-northern-shan-state/>.

⁷⁰ Wanbao Mining Ltd., a Chinese State-owned enterprise subsidiary, remains in a profit-sharing agreement with Myanma Economic Holdings Limited and No. 1 Mining Enterprise for the mine. Mining has reportedly been paused.

⁷¹ <https://www.rfa.org/english/news/myanmar/raids-0629202215758.html>.

⁷² <https://www.ohchr.org/en/hr-bodies/hrc/myanmar-ffm/economic-interests-myanmar-military>.

⁷³ <https://www.business-humanrights.org/en/latest-news/national-regional-movements-for-mandatory-human-rights-environmental-due-diligence-in-europe/>.

⁷⁴ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022PC0071>.

⁷⁵ <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32010R0995>.

⁷⁶ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32017R0821>.

⁷⁷ See https://www.tradecommissioner.gc.ca/countries-pays/myanmar/GAC_advisory_Myanmar-AMC_affaires_Myanmar.aspx?lang=eng; <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>; and <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/>.

⁷⁸ https://www.dica.gov.mm/sites/default/files/document-files/bcy_2.pdf.

38. Following the issuance of the mission's paper, some businesses began exploring human rights due diligence or changed policies. For example, some brands conducted human rights due diligence to better understand associations of Myanmar Economic Holdings Ltd. to industrial zones that housed garment factories, triggering disengagement from some factories.⁷⁹ Additionally, the mission 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. It recommended that businesses prohibit all funding of the Tatmadaw.⁸⁰ One company, the Kanbawza Group of Companies, later indicated a review of how donations were handled.⁸¹ An annual benchmarking of Myanmar enterprises' transparency on corporate governance and sustainability by the Myanmar Centre for Responsible Business added a criterion on donations and philanthropy policy.⁸² This issue remains relevant as the military reportedly still solicits donations from businesses, albeit without publicizing those requests.

39. Despite the coup and increased risks, many companies operating in or sourcing from Myanmar reportedly still do not conduct adequate human rights due diligence. For example, Global Witness contacted 30 international jewellers, auction houses and retailers and found that most did not have adequate due diligence measures in place to operate in line with the Organisation for Economic Co-operation and Development Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas.⁸³

40. Human rights due diligence assessments and their outcomes are rarely made public.⁸⁴ One interlocutor noted that transparency on due diligence in Myanmar was often reduced to a paragraph in the sustainability report. This makes it difficult to evaluate whether these assessments have sufficiently identified and considered all relevant issues and led to concrete operational changes, or whether they were instead more nominal exercises. Given that most of Myanmar is now experiencing violence, all companies operating in or sourcing from Myanmar should carry out heightened human rights due diligence.

41. Investors can be important in pushing companies to conduct human rights due diligence. For example, Domini Impact Investments asked Japanese companies operating in Myanmar how they evaluate risks of human rights violations and their remediation processes.⁸⁵ Other initiatives after February 2021 include the development by the Investor Alliance for Human Rights of an investor statement on human rights and business activities in Myanmar⁸⁶ calling for enhanced due diligence. Some pension funds have reportedly excluded Myanmar sovereign bonds.⁸⁷ The EIRIS Conflict Risk Network listed publicly traded foreign investors operating in Myanmar and assessed compliance with international standards relevant in conflict situations.⁸⁸ However, investment in military-linked companies reportedly continued. Particularly concerning were reports that environmental, social and governance-labelled funds continued to hold such investments, including some in companies that reportedly supplied weapons or dual-use goods to the military.⁸⁹

⁷⁹ https://eurocham-myanmar.org/wp-content/uploads/2022/01/Myanmar-Garment-Sector-Factsheet_January-2022.pdf.

⁸⁰ <https://www.ohchr.org/en/hr-bodies/hrc/myanmar-ffm/economic-interests-myanmar-military>.

⁸¹ <https://www.amnesty.org/en/documents/asa16/2969/2020/en/> (p. 65).

⁸² <https://www.myanmar-responsiblebusiness.org/pwint-thit-sa/2020.html>.

⁸³ <https://www.globalwitness.org/en/campaigns/natural-resource-governance/conflict-rubies-how-luxury-jewellers-risk-funding-military-abuses-myanmar/> (p. 8).

⁸⁴ Although exceptions exist – e.g. Kirin Holdings Company Ltd. published a summary and update.

⁸⁵ <https://domini.com/insights/can-japanese-companies-help-uphold-human-dignity-in-burma/>

⁸⁶ <https://investorsforhumanrights.org/sites/default/files/attachments/2021-07/Investor%20Statement%20on%20Human%20Rights%20in%20Myanmar%2016%20July%202021.pdf>.

⁸⁷ <https://www.responsible-investor.com/industriens-pension-sells-myanmar-and-belarus-govvies-as-pension-funds-continue-human-rights-push/>.

⁸⁸ <https://eiriscrn.net/burma-myanmarcompanylist/>.

⁸⁹ <https://www.inclusivedevelopment.net/myanmaresgfiles/>.

E. Humanitarian aid, development financing and programming

42. After February 2021, the United Nations country team developed engagement principles on interactions with the State Administration Council, 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 human rights due diligence considerations on military-linked interests, was an integral part of the exercise.

43. Some civil society organizations, however, raised concerns that the United Nations reportedly continued to use a State-owned bank. One United Nations entity indicated that it had undertaken human rights due diligence on several projects following the coup; screened all engagements with businesses and business networks, prompting its disengagement from one partnership; and recognized capacity needs in this area.

44. In 2020, the World Bank Group committed to conducting an internal audit of the International Finance Corporation portfolio for military connections.⁹⁰ The International Finance Corporation 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 efforts related to Myanmar. Civil society organizations have highlighted indirect links, including that the World Bank Group leases office space in the privately managed Sule Square complex, which is built on military-owned land.⁹¹

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. Likewise, the Asian Development Bank has strengthened its global procurement controls, including for conflicts of interest and sanctions compliance frameworks. Shortly before the coup, the International Monetary Fund disbursed \$372 million to the Central Bank of Myanmar and has since acknowledged it cannot ascertain whether the military is using the funds as intended.⁹² Since February 2021, all international financial institutions have suspended new projects and investments in Myanmar.⁹³

46. States should also ensure their humanitarian and development assistance programmes do not benefit the military or military-owned companies. Following the coup, several governments have suspended direct budgetary support to Myanmar ministries.⁹⁴ The United Kingdom also requested that partners review supply chains to ensure that aid money was not being used to purchase goods and services from military-owned businesses.⁹⁵ Civil society organizations highlighted a construction project funded by the Japan International Cooperation Agency that used Myanmar Economic Cooperation in its supply chain⁹⁶ and raised concerns about other projects with links to Japanese public funds and businesses.⁹⁷

⁹⁰ https://financialservices.house.gov/uploadedfiles/malpass_ltr_mnuchin_3202020.pdf.

⁹¹ <https://www.justiceformyanmar.org/stories/shangri-la-financing-crimes-against-humanity>. The World Bank indicated that it maintained office space in Yangon under a lease signed some years prior, based on its globally applied procurement policies.

⁹² <https://www.imf.org/en/Countries/MMR/FAQ>; and <https://www.imf.org/en/News/Articles/2021/09/16/tr091621-transcript-of-imf-press-briefing>.

⁹³ <https://www.adb.org/news/adb-statement-new-developments-myanmar>; <https://www.imf.org/en/Countries/MMR/FAQ#q10>; and <https://www.worldbank.org/en/news/statement/2021/02/01/developments-in-myanmar>.

⁹⁴ For example, the European Union in March 2021. See <https://www.bangkokpost.com/world/2078279/eu-suspends-development-funds-for-myanmar>.

⁹⁵ <https://questions-statements.parliament.uk/written-questions/detail/2019-10-04/294694>.

⁹⁶ <https://www.hrw.org/news/2021/04/27/japan-suspend-aid-benefitting-myanmar-junta>. Construction has reportedly been paused.

⁹⁷ www.mekongwatch.org/PDF/rq_20210601_Eng.pdf.

F. Domestic reforms

47. The mission made a series of recommendations to the Government to reduce the military's economic reach.⁹⁸ The Government took significant steps forward in some areas, whereas others saw little progress.

48. Some attempts were made by the National League for Democracy-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.⁹⁹ The National League for Democracy-led Government initiated a constitutional amendment process. Owing to the de facto veto held by military members of parliament, however, almost all proposals, including amendments reducing the military role in government, were rejected in 2020.¹⁰⁰ No attempts appear to have been made towards restructuring of the military itself and directly prohibiting it from engaging in economic activity.

49. The National League for Democracy-led Government focused on making infrastructure projects more transparent, which was important, given historical cronyism and granting of licences without fair competition. In 2020, it launched a "Project Bank"¹⁰¹ – an open, public system for managing large investment projects, with a tool for screening the effectiveness, sustainability and compliance of projects with the Myanmar Sustainable Development Plan.

50. The mission identified the extractives industries as a sector from which the military benefited, at significant human cost, and recommended that the Government develop robust frameworks in line with its commitments under the Extractive Industries Transparency Initiative.¹⁰² In October 2019, the international Extractive Industries Transparency Initiative Board found that Myanmar had made meaningful progress in some areas and gave the country until April 2021 to take corrective actions in 12 others.¹⁰³ The Government took several important steps in this regard.

51. Presidential notification No. 104/2019 required extractive industry companies to disclose beneficial ownership and identify whether owners were "politically exposed persons", based on strict definitions.¹⁰⁴ The Directorate of Investment and Company Administration later developed a public database of such information.¹⁰⁵ A mineral and gemstone cadastre, which was due to be completed in March 2021, would have instituted a transparent and streamlined permit application process, minimizing bribery and corruption risks. In January 2021, a new requirement of the revised Extractive Industries Transparency Initiative standard came into force, requiring Myanmar to publish new and amended extractive sector contracts and licences.¹⁰⁶

52. There remained several shortcomings and challenges in implementing Extractive Industries Transparency Initiative standards, which appeared indicative of the military's attempts to safeguard their economic interests. For example, while Myanma Economic Holdings Ltd. and some subsidiaries submitted beneficial ownership information, it had serious limitations. Myanmar Economic Cooperation provided no information at all.¹⁰⁷ A draft union-level gemstones policy, initially developed through a lengthy participatory process, contained transparency and Extractive Industries Transparency Initiative-compliant provisions. However, these were removed in later drafts, reportedly following lobbying from

⁹⁸ <https://www.ohchr.org/en/hr-bodies/hrc/myanmar-ffm/economic-interests-myanmar-military>.

⁹⁹ The State Administration Council reversed this in May 2021.

¹⁰⁰ 2008 Constitution, art. 436; and [A/HRC/45/5](#), para. 51.

¹⁰¹ President's Office, notification No. 2/2018.

¹⁰² <https://www.ohchr.org/en/hr-bodies/hrc/myanmar-ffm/economic-interests-myanmar-military>.

¹⁰³ <https://eiti.org/board-decision/2019-58>.

¹⁰⁴ <https://www.globalwitness.org/en/campaigns/myanmar/out-of-the-shadows/> (p. 3).

¹⁰⁵ <https://bo.dica.gov.mm/>.

¹⁰⁶ <https://eiti.org/contract-transparency>.

¹⁰⁷ https://www.myanmar-responsiblebusiness.org/pdf/TiME/2020-Pwint-Thit-Sa_en.pdf (pp. 51–52); <https://myanmareiti.org/en/publication/review-first-meiti-beneficial-ownership-disclosure>; and <https://www.globalwitness.org/en/campaigns/myanmar/out-of-the-shadows/> (p. 7).

military-associated government representatives and individuals. In June 2019, the Government announced that State-owned enterprise “other accounts”, some of which apparently held significant balances and had been used for patronage purposes, would be closed.¹⁰⁸ 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.

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,¹⁰⁹ and the Extractive Industries Transparency Initiative has suspended the membership of Myanmar.¹¹⁰ Civil society organizations that previously monitored extractive industries are in hiding, and at least 21 environmental defenders have reportedly been arrested.¹¹¹

IV. Continuing and emerging challenges

54. There remain considerable challenges in implementing the recommendations of the mission, especially given the significantly changed context. Events that have occurred since February 2021 suggest a return to economic governance characterized by increased non-market interventions and controls, as well as greater emphasis on relationships to facilitate economic exchange. The mission 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 State Administration Council – like economic policies of past juntas¹¹² – will likely decrease living standards.¹¹³ There are significant concerns that State Administration Council policies since the coup will likely induce additional rent-seeking behaviour and corruption: retention of monopolies; control of trade and investment licences; and imposition of arbitrary regulations as a deliberate means of creating and distributing economic rents among certain groups of businesses, thereby co-opting business elites’ loyalty and further entrenching the military’s economic and political control.¹¹⁴

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

A. Illicit economies, rent-seeking and patronage

1. Rare earth mining

56. Some of the clearest manifestations of Tatmadaw-engineered rent-seeking behaviour occur in Kachin State. Besides jade,¹¹⁵ the Tatmadaw has also permitted rare earth – vital for the production of green technologies – to be mined in Chipwi Township in areas controlled by the former New Democratic Army–Kachin.¹¹⁶

¹⁰⁸ *Global New Light of Myanmar*, vol. 6, No. 62, 18 June 2019.

¹⁰⁹ <https://projectbank.gov.mm/en/>. Accessed 7 June 2022.

¹¹⁰ <https://eiti.org/articles/myanmar-suspended-due-political-instability>.

¹¹¹ <https://www.frontiermyanmar.net/en/losing-the-freedom-to-protect-the-shattered-dreams-of-environment-defenders/>.

¹¹² <https://fulcrum.sg/myanmar-returns-to-import-substitution-primed-to-fail/>.

¹¹³ <https://openknowledge.worldbank.org/bitstream/handle/10986/28392/119855-PER-P159067-PUBLIC-v2-main-report-PERSeptcleanwithnewcover.pdf?sequence=1&isAllowed=y>.

¹¹⁴ https://www.burmalibrary.org/sites/burmalibrary.org/files/obl/2013_The_Political_Economy_of_Myanmar_s_Transsition-en-red.pdf.

¹¹⁵ <https://www.ohchr.org/en/hr-bodies/hrc/myanmar-ffm/economic-interests-myanmar-military>.

¹¹⁶ <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/>; and <https://www.mekongeye.com/2022/05/23/myanmars-environment-hit-by-rare-earth-mining-boom/>.

57. In 2009, the New Democratic Army–Kachin became a military-controlled Border Guard Force:¹¹⁷ its three battalions reconstituted into Border Guard Force battalions No. 1001, 1002 and 1003 with Tatmadaw soldiers integrated into each unit. These battalions are within the military’s command structure; receive arms, supplies and other financial support;¹¹⁸ and are reportedly part of the military’s national defence plans,¹¹⁹ fighting alongside the Tatmadaw.¹²⁰

58. Former New Democratic Army–Kachin members have interests in mining. Myanmar Extractive Industries Transparency Initiative 2016–2017 records show that former leader, Zakhung Ting Ying, and his sons are directors of at least two registered companies – Myanmar Myo Ko Ko Medical Instrument Company Ltd. and San Lin International Export and Import Company Ltd. – that held 17 licences, all of which are 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 licences to mine marble and iron, respectively. According to latest available records,¹²¹ no company holds a licence to mine rare earth, and most companies that held licences to mine other commodities in the area were not registered with the Directorate of Investment and Company Administration.

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

60. Another credible source explained that representatives of Chinese businesses investing in rare earth mining seek out former New Democratic Army–Kachin 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 earth abroad.¹²² Given that foreign investment in small- and medium-scale mineral production such as rare earth is prohibited,¹²³ and that there is no information on the issuance of licences 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,¹²⁴ there are concerns as to the war crime of pillaging, which warrants further investigation.

61. Interlocutors highlighted consequential environmental damage from rare earth mining, including water contamination and flooding, as well as social, health and livelihood impacts on surrounding communities. Adequate air and water standards necessary 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 be ensured during any process of rare earth mining, including by third States, in order to uphold their obligations under the International Covenant on Economic, Social and Cultural Rights regarding the activities of their citizens subject to their jurisdiction.¹²⁵

¹¹⁷ <https://www.bnionline.net/en/kachin-news-group/item/7388-nda-k-changes-to-burma-juntas-bgf.html>; and <https://asiafoundation.org/wp-content/uploads/2016/07/Militias-in-Myanmar.pdf> (p. 13).

¹¹⁸ *New Light of Myanmar*, vol. 19, No. 114, 13 August 2011.

¹¹⁹ <https://asiafoundation.org/wp-content/uploads/2016/07/Militias-in-Myanmar.pdf> (p. 24).

¹²⁰ <https://www.irrawaddy.com/news/burma/kachin-rebels-clash-with-burma-army-and-govt-backed-militia.html>; and <https://www.bnionline.net/en/news/kachin-state/item/1503-kia-clashes-with-pro-government-militia-in-poppy-growing-area-of-kachin-state.html>.

¹²¹ <https://datatools.myanmareiti.org/tools/licenses/>.

¹²² https://www.globalwitness.org/documents/20381/Heavy_rare_earths_supply_chain_risks_EN_-_August_2022.pdf.

¹²³ <https://www.dica.gov.mm/sites/dica.gov.mm/files/document-files/notification26englishversion.pdf>.

¹²⁴ *A/HRC/49/72*, para. 15.

¹²⁵ See e.g. Committee on Economic, Social and Cultural Rights, general comments No. 14, para. 39, and No. 15, para. 33; and <https://www.shuzih.com/pub/828c6c3612f75ee3c231d093700d0fe7/99be7d05238b42c79c1fd932ae2c9890.pdf>.

2. Telecommunications

62. Since 1 February 2021, the military moved swiftly to restrict freedom of expression, blocking social media platforms; criminalizing 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.¹²⁶ 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.¹²⁷

63. Between December 2021 and January 2022, the State Administration Council doubled the cost of mobile data; instituted a tax of 20,000 Myanmar kyat per SIM card; and imposed a 15 per cent income tax on all Internet service providers,¹²⁸ resulting in sharp increases in Internet access costs, and simultaneously increasing the State Administration Council's revenues. It has further demonstrated its determination to exert control over users and the telecommunications industry through interference in the sale of Telenor.

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.¹²⁹ 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 publicized the State Administration Council's requests to suspend and restrict access to information, until it was no longer possible for the company to do so.¹³⁰

65. After a 2021 first quarter write-off totalling 6.5 billion Norwegian kroner,¹³¹ Telenor disclosed in July 2021 that it was selling its entire Myanmar operation to the M1 Group for \$105 million.¹³² This transaction was initially rejected by the State Administration Council, and only approved when the M1 Group included a local partner, the Shwe Byain Phyu Group, as majority shareholder.¹³³

66. The Shwe Byain Phyu Group reportedly has long-standing links with the military and Myanma Economic Holdings Ltd.,¹³⁴ including partnership in the import of petroleum.¹³⁵ It is also reported to have interests in jade and gem mining in Kachin State¹³⁶ and to operate in the timber industry.¹³⁷ The Shwe Byain Phyu Group's extensive and growing interests in various sectors may indicate that the military perceives the Group's economic interests as being aligned with its own and/or that the military feels sufficiently assured of the Group's loyalty.

¹²⁶ [A/HRC/48/67](#).

¹²⁷ [A/HRC/49/72](#).

¹²⁸ *Global New Light of Myanmar*, vol. 8, No. 263, 7 January 2022; <https://www.myanmar-now.org/en/news/junta-says-hefty-new-telecoms-taxes-will-curb-extreme-use-of-internet-services>; and <https://www.irrawaddy.com/news/burma/myanmar-junta-raises-sim-and-internet-taxes-to-silence-opposition.html>.

¹²⁹ <https://youtu.be/oWJ85wgZAS4> at 53:08.

¹³⁰ <https://www.telenor.com/sustainability/responsible-business/human-rights/human-rights-in-myanmar/directives-from-authorities-in-myanmar-february-2021/>.

¹³¹ <https://www.reuters.com/business/media-telecom/telenor-posts-q1-loss-after-writing-off-myanmar-business-following-coup-2021-05-04/>.

¹³² <https://www.telenor.com/media/newsroom/telenor-group-sells-telenor-myanmar-to-m1-group/>.

¹³³ <https://www.telenor.com/media/newsroom/press-releases/sale-of-telenor-myanmar-approved-by-myanmar-authorities/>.

¹³⁴ <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>; and <https://www.justiceformyanmar.org/stories/shwe-byain-phyus-military-links-exposed>.

¹³⁵ <https://www.fwpresearch.com/en/portfolio/thein-win-zaw/>.

¹³⁶ *Ibid.*; and <https://www.justiceformyanmar.org/stories/shwe-byain-phyus-military-links-exposed>.

¹³⁷ <https://www.justiceformyanmar.org/stories/shwe-byain-phyus-military-links-exposed>.

67. With Shwe Byain Phyu and the M1 Group in Telenor's place, three out of the four network operators in Myanmar will have significant links to the military,¹³⁸ greatly increasing its ability to influence companies to effect restrictions on freedom of expression and to undertake surveillance.

B. Corporate dilemma: stay or leave?

68. The mission called for the Tatmadaw's economic isolation in order to impede the latter's ability to perpetrate serious international crimes. This involves disengaging from commercial or financial relationships with the Tatmadaw, including companies owned or controlled by its members, and supporting the growth and development of non-Tatmadaw economic actors.¹³⁹

69. Since the coup, there has been renewed focus on dislodging the military from the economy and starving the State Administration Council 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 businesses that are owned by, affiliated with or linked with the military, and suspending payments to the State Administration Council. They also include carrying out heightened human rights due diligence; ensuring respect for workers' rights, especially on safety and social security; addressing companies' roles in supporting employment; assessing the need for responsible divestment, including relevant human rights impacts and remediation actions; and ensuring transparency with human rights due diligence 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 removing the Tatmadaw from the country's economic and political life, and that also help the country in emerging from a deepening economic crisis. These calls predominantly do not include demands for automatic and immediate divestment from Myanmar,¹⁴⁰ 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,¹⁴¹ and could not operate under a regime that involved violating its values, international law and human rights principles.¹⁴² This decision was denounced by several civil society organizations, leading to one complaint filed at the Norwegian National Contact Point for the Organisation for Economic Co-operation and Development,¹⁴³ alleging Telenor's failure to comply with Organisation for Economic Co-operation and Development Guidelines in the sale of Telenor Myanmar, and another before the Norwegian Data Protection Authority,¹⁴⁴ seeking to halt transfer of user data as part of its sale. The complaints alleged that Telenor had not conducted appropriate due diligence regarding the sale of its Myanmar operations as it would have revealed severe human rights impacts on its customers and their contacts, thereby rendering the company in breach of its obligations under the

¹³⁸ Mytel is part-owned by the Myanmar Economic Cooperation; Myanma Posts and Telecommunications is a State-owned enterprise. In July 2022, Ooredoo was reportedly in discussions to withdraw from Myanmar.

¹³⁹ <https://www.ohchr.org/en/hr-bodies/hrc/myanmar-ffm/economic-interests-myanmar-military>.

¹⁴⁰ With exceptions, e.g., the Myanmar Labor Alliance called for comprehensive economic sanctions: https://www.facebook.com/permalink.php?story_fbid=546648550010451&id=109901467018497.

¹⁴¹ <https://www.telenor.com/media/newsroom/continued-presence-in-myanmar-not-possible-for-telenor/>.

¹⁴² <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/>.

¹⁴³ <https://www.responsiblebusiness.no/somo-on-behalf-of-474-csos-in-myanmar-vs-telenor-asa/>. There is ongoing dialogue between Telenor and the complainants.

¹⁴⁴ <https://www.somo.nl/myanmar-citizen-files-data-protection-complaint-against-telenor-for-dangerous-breach-of-privacy/>.

European Union’s General Data Protection Regulation; and that the M1 Group was implicated as a military-linked company in the report of the mission. In addition, the complaints alleged that Telenor had failed to carry out meaningful engagement with all relevant stakeholders, and that it had not been 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 European Union’s General Data Protection Regulation 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, Justice for Myanmar has raised concerns of the compatibility of the transfer of intercept equipment, as part of the sale by Telenor, with sanctions of Norway and the United Kingdom, as well as of the European Union.¹⁴⁵

2. Oil and gas

73. The oil and gas industry of Myanmar, which is the country’s largest source of foreign revenue, has been the target of civil society organization campaigns to halt payments to the State Administration Council. Each of the four major offshore gas projects involve gas extraction and transportation, and are structured as joint ventures with an operator and other partners, with the Myanma Oil and Gas Enterprise playing several roles, including non-operational partner and revenue collector for State royalties, profit sharing and bonuses.¹⁴⁶ Following the coup, operators of two projects have divested, though all projects are continuing operations.

74. Regarding the Yetagun project, in April 2021, Petronas subsidiary PC Myanmar (Hong Kong) Ltd. declared force majeure on the field that it had been operating since 2003, stating depletion of gas production.¹⁴⁷ A year later, it announced its withdrawal from the project following a “techno-commercial review”.¹⁴⁸ Other major project partners, PTTEP and ENEOS subsidiary JX Nippon Oil & Gas Exploration Corporation, similarly announced their intention to withdraw.¹⁴⁹ While PTTEP has assigned no commercial value to its shares, which will be allocated proportionately to the remaining shareholders,¹⁵⁰ it is unclear how the revised shareholding will be structured or how decommissioning will be dealt with if extraction ends. JX Nippon Oil & Gas Exploration Corporation was the only actor to publicly acknowledge “the country’s current situation”; Petronas and PTTEP referred to their respective portfolio management strategies.

75. Justice for Myanmar reported that leaked documents provide evidence that the military inquired about resumption of the project’s exports and resulting payments, and possible actions should payments not be received.¹⁵¹ Documents seen by OHCHR show that revenues from the project – estimated to be \$22.4 million between October 2021 and March

¹⁴⁵ <https://www.justiceformyanmar.org/press-releases/telenor-group-violating-sanctions-through-installation-and-imminent-transfer-of-german-lawful-intercept-gateway>; and <https://www.justiceformyanmar.org/press-releases/telenor-group-is-aiding-and-abetting-m1-group-to-violate-myanmar-sanctions>.

¹⁴⁶ <https://www.pwyp.org/wp-content/uploads/2021/06/Financing-the-Military-in-Myanmar.pdf>; and https://resourcegovernance.org/sites/default/files/documents/nrgi_myanmar-state-owned-enterprises_full-report.pdf.

¹⁴⁷ <https://www.petronas.com/media/press-release/petronas-upstream-operations-myanmar-declares-force-majeure-its-yetagan-field>.

¹⁴⁸ <https://www.petronas.com/media/press-release/petronas-withdraws-yetagan-field-offshore-myanmar>.

¹⁴⁹ <https://www.pttep.com/en/Newsandnmedia/Mediacorner/Pressreleases/Pttep-With-Draws-From-Yetagan-Project-In-Myanmar.aspx>; and https://www.hd.eneos.co.jp/english/newsrelease/upload_pdf/20220502_01_02_0960492.pdf.

¹⁵⁰ <https://www.pttep.com/en/Newsandnmedia/Mediacorner/Pressreleases/Pttep-With-Draws-From-Yetagan-Project-In-Myanmar.aspx>.

¹⁵¹ <https://www.justiceformyanmar.org/stories/leaked-documents-show-min-aung-hlaing-personally-concerned-over-oil-and-gas-payments>.

2022 – were paid into a Myanmar Foreign Trade Bank nostro account at a Singapore branch of Malaysian bank CIMB.

76. Civil society organizations have called upon the firms that have profited from the project to exit in a responsible manner, particularly in the decommissioning of the gas field and in remediating any negative social and environmental impacts.¹⁵²

77. In January 2022, TotalEnergies and Chevron separately announced their intention to withdraw from the Yadana project.¹⁵³ 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 the shareholding of all remaining partners, including Myanmar Oil and Gas Enterprise.¹⁵⁴ Chevron did not provide further details regarding its exit, and PTTEP has taken over as operator.¹⁵⁵

78. Certain civil society organizations were critical of TotalEnergies,¹⁵⁶ and called upon TotalEnergies and Chevron to initiate international arbitration proceedings to obtain a decision as to which party – the State Administration Council or the National Unity Government – constituted the proper contractual counterparty.¹⁵⁷

3. Garments

79. In contrast to the telecommunications and oil and gas industries, the garments sector has limited direct ties to the military. In January 2022, the Garment Advocacy Group of the European Chamber of Commerce in Myanmar assessed five specific factors relevant to the sector: insignificant fiscal contributions to State revenue; relatively limited foreign exchange earnings; minimal garment factory links to the military; relatively low risk of factory operations in industrial zones; and the availability of ports that were not owned by the military. It concluded that it was entirely possible to operate without interacting with military-owned conglomerates.¹⁵⁸

80. The European Chamber of Commerce in Myanmar 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.¹⁵⁹

V. Conclusions and recommendations

81. **While the State Administration Council has seized control of State organs, it has failed to govern in meaningful and sustainable ways, instead continuing to repress and terrorize the people of Myanmar. Local State Administration Council 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.¹⁶⁰ The military has been unable to resolve a profound financial**

¹⁵² <https://www.justiceformyanmar.org/press-releases/ngos-cautiously-welcome-eneos-withdrawal-from-myanmar-call-for-responsible-disengagement-and-decommissioning-of-yetagan-gas-project>.

¹⁵³ <https://totalenergies.com/media/news/press-releases/totalenergies-withdraws-myanmar>; and <https://www.chevron.com/stories/chevrons-view-on-myanmar>. In May 2021, shareholders of the gas transportation project suspended monthly dividend payments to Myanmar Oil and Gas Enterprise.

¹⁵⁴ <https://totalenergies.com/media/news/press-releases/totalenergies-withdraws-myanmar>.

¹⁵⁵ <https://www.pttep.com/en/Newsandnmedia/News/Changeofoperatorintheyadanaprojectinmyanmar.aspx>.

¹⁵⁶ <https://globalmayday.net/wp-content/uploads/2022/03/Explainer-TotalEnergies-Chevron-Exit.pdf>; and <https://globalmayday.net/wp-content/uploads/2022/03/GMSRxBMC-EU-Sanctions-on-MOGE-Explainer-Final.pdf>.

¹⁵⁷ https://earthrights.org/wp-content/uploads/Responsible-Divestment-from-Myanmar-Briefer-March-2022.FINAL_.pdf. TotalEnergies withdrew completely from Myanmar effective 20 July 2022.

¹⁵⁸ https://eurocham-myanmar.org/wp-content/uploads/2022/01/Myanmar-Garment-Sector-Factsheet_January-2022.pdf.

¹⁵⁹ https://www.business-humanrights.org/documents/37865/2022_Myanmar_garment_sector_EN.pdf.

¹⁶⁰ <https://reliefweb.int/report/myanmar/myanmar-humanitarian-update-no-19-28-june-2022>.

sector crisis, and domestic revenue collection is well below pre-2021 levels. Overall, the proportion of the population of Myanmar 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 military. These include public sector workers going on strike at the cost of jobs, salaries and housing; parents refusing to send their children to school; and households refusing to pay electricity bills despite threats of being cut off. Civil society organizations in Myanmar and the National Unity Government have welcomed and continue to call for targeted sanctions that restrict the State Administration Council's ability to access foreign currency exchange, including on certain State-owned enterprises and State-owned banks.**¹⁶¹

83. **The present 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 people of Myanmar 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 minimize pre-emptive evasive actions. For any steps taken, significant efforts must be made to mitigate any foreseeable socioeconomic impacts on the people, while recognizing 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 the democratic movement, including the National Unity Government and ethnic organizations, is vitally important.**

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 people of Myanmar.**¹⁶²

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

- (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 Myanma Foreign Trade Bank, Myanma Investment and Commercial Bank and Myanma Oil and Gas Enterprise, while respecting human rights and mitigating adverse socioeconomic impacts of sanctions, including through licencing scheme exemptions for international organizations and civil society organizations;**
- (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 that sufficient resources are dedicated to enforcement;**
- (d) **In consultation with civil society organizations, explore additional actions that could reduce State Administration Council revenues;**
- (e) **Consider instituting a robust and effective mandatory human rights due diligence regime for all business activities taking place, in whole or in part, within their territories or under their jurisdictions following wide consultation with affected stakeholders;**
- (f) **Integrate heightened human rights due diligence into the operations of State-owned enterprises and agencies that promote trade and investment in Myanmar**

¹⁶¹ <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/>.

¹⁶² A/HRC/49/72, para. 74.

and ensure that these entities do not enter into or maintain business relationships with military-owned or -controlled companies.

87. OHCHR recommends that investors and businesses do the following:

(a) All 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 those considering doing business in Myanmar, should systematically carry out heightened human rights due diligence that:

(i) Is thorough, informed by meaningful stakeholder engagement and aimed at assessing actual or potential human rights impacts, and should avoid business relationships with the military;

(ii) Integrates findings into relevant processes and track effectiveness of measures taken;

(iii) Is transparent about the management of potential and actual impacts, ideally publishing the assessments;

(iv) Is ongoing and reviewed periodically to assess effectiveness and to consider any newly available credible information;

(c) Businesses active in Myanmar should publish what they pay, such as concession and licensing fees, to contribute to greater transparency and good governance;

(d) In some circumstances, heightened human rights due diligence 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;

(e) Investors should avoid investing in military-owned or -linked companies and should require heightened human rights due diligence by the companies in which they invest.

88. OHCHR recommends that 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 benefiting the military;

(b) Ensure continuous engagement with civil society organizations and relevant stakeholders with regard to any future activities.

89. OHCHR recommends that 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 or post, in order 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 mission in paragraph 191 (c) of its paper on the economic interests of the Myanmar military;
 - (ii) Possible instances of the war crime of pillaging in Myanmar.
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