



Human Rights Now

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Human Rights Violations in Myanmar and the Involvement and Responsibility of Japanese Companies: The Perspective from the Guiding Principles on Business and Human Rights

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¹ Human Rights Now, “Myanmar no jinkenshingai to nihon kigyuu no kanyo to sekinin”, 05 April 2021, <https://hrn.or.jp/wpHN/wp-content/uploads/2021/04/5b97e04352be2a00be6f498950447e47.pdf> (Japanese).

1. Introduction

Human Rights Now (HRN), a Tokyo-based international human rights NGO, expresses its grave concern at the remaining political influence of the military in Myanmar even after the transition of government from the military to the NLD in 2015, the continued attacks by the military against ethnic minorities including the Rohingya and Kachin in violation of international humanitarian law, and restrictions on citizens' rights to freedom of expression and press.

The 1 February 2021 *coup d'état* by the Myanmar national army has made these concerns a reality. Myanmar's national army claimed that there was electoral fraud in the November 2020 election, which the National League for Democracy (NLD) led by Aung San Suu Kyi, won handily. The military then detained NLD officials, including the democratically elected Aung San Suu Kyi, and declared a one-year "state of emergency". In opposition to the coup, a large number of Myanmar citizens, including young people, have been carrying out the CDM (Civil Disobedience Movement) and calling for democracy throughout Myanmar. The military has been firing live ammunition at citizens acting in a non-violent and peaceful manner, and according to local human rights groups, it has killed 543 people and detained about 2,700 so far.² If the coup is not lifted, there is a high risk that the dictatorial military regime will once again violate the human rights of citizens and impede democracy in the long term.

However, the problems are not limited to the military and political spheres. Since the constitution guarantees the political role of the military, the fact that democratization has not been achieved through the transfer of civilian power and democratic elections and that the military still has a strong political influence have long been problems. In addition, the military has a strong economic influence and effectively controls a major part of the economic activities in Myanmar, with active and retired military officers heading two major military-industrial complexes, the Myanmar Economic Holdings Limited (MEHL) and the Myanmar Economic Corporation (MEC), that jointly operate at least 120 businesses across multiple industries in Myanmar. The military still controls vast tracts of land and self-finances through a vast number of businesses, intermediaries, and agencies. The businesses range from hotels, breweries, banks, tobacco, manufacturing, transportation, agriculture, international trade, mining, jade, and jewelry. It has been pointed out that the civilian government led by National Advisor Aung San Suu Kyi has failed to adequately monitor the funds raised through these projects.³⁴ In the meantime, on 25 March 2021, the U.S. government decided to impose sanctions on MEHL and MHL, including freezing their domestic assets and banning them from trading.⁵

Therefore, under the current military coup, the responsibility of governments and corporations has been heavy. It goes without saying that the aforementioned structural problems in Myanmar should have been fully taken into account when the Japanese government and Japanese companies provided

² AFPBB News, "Myanmar *dan'atsu*, kodomo 40-nin ijo ga gisei ni", 2 April 2021, <https://www.msn.com/ja-ip/news/world/ミヤンマー弾圧-子ども40人以上が犠牲に/ar-BB1ffdaE> (Japanese).

³ UN Human Rights Council, "The economic interests of the Myanmar military", Independent International Fact-Finding Mission on Myanmar, 16 September 2019, <https://www.ohchr.org/EN/HRBodies/HRC/MyanmarFFM/Pages/EconomicInterestsMyanmarMilitary.aspx>.

⁴ Justice for Myanmar, "The luxury Japanese business development secretly funding Myanmar's military", 22 May 2020, <https://www.justiceformyanmar.org/stories/y-complex>.

⁵ U.S. Department of The Treasury, "Treasury Sanctions Military Holdings Companies in Burma", 25 March 2021, <https://home.treasury.gov/news/press-releases/jy0078>.

assistance and investment in Myanmar under such circumstances. Also, they should grasp the current situation properly and take immediate action to contribute to the democratization of Myanmar.

The objectives of this report are threefold. First, it will share information on the current situation of human rights violations in Myanmar and the involvement of Japanese companies in such violations. Despite growing international criticism of the involvement of Japanese companies in human rights abuses in Myanmar, there is little concern for this issue in Japan and few reports on it; so it is difficult to say that the issue is well known. This report describes the relationship between Japanese companies and the human rights violations in Myanmar that have been pointed out in reports and articles by foreign NGOs and the media.

Second, in addition to the human rights violations caused by business activities in Myanmar, it will analyze the commercial ties between Japanese companies and the military and their complicity in human rights violations, as well as the structural problems that cause these violations, and it will discuss the responsibility of the Japanese government and companies to address these issues from the perspective of the UN guiding principles on Business and Human Rights (hereinafter referred to as the UNGP).

Third, it will provide recommendations to the Japanese government and Japanese companies on the actions required to improve the situation of violations of international human rights and humanitarian law in Myanmar from the perspective of the UNGP.

2. Current situation in Myanmar and issues related to business and human rights

Since the transfer to civilian rule in 2011, the lifting of economic sanctions by Western countries,⁶ which have praised Myanmar's democratization efforts, has helped increase investment in Myanmar, which was undergoing a transition from a planned economy under military rule to a market economy, and Myanmar has achieved economic growth. However, the political influence of the military still remains strong constitutionally. Although elections have been held, democracy is far from being established, and the fundamentals of democracy, such as the rule of law and basic human rights, are still being developed.

Under these circumstances, there have been numerous reports of human rights abuses committed by the Myanmar military in ethnic minority areas, such as large-scale genocide against the Rohingya Muslims in Rakhine State including murder, rape, and arson in violation of international humanitarian law; therefore, some areas remain in a state of conflict.⁷

In January 2020, the International Court of Justice issued a provisional measures order requiring the Myanmar government to prevent genocide and take measures to preserve evidence with respect to the above-mentioned genocidal acts in Rakhine State.⁸ In addition, an international independent commission of inquiry appointed by the UN Human Rights Council issued a report in August 2019

⁶ In November 2012, the U.S. lifted the embargo on Myanmar products except for some jewelry items; in April 2013, the EU; on 7 October 2016, the U.S. lifted the embargo against Myanmar except for the arms embargo. Ministry of Foreign Affairs of Japan, "Republic of the Union of Myanmar *kiso data*", <https://www.mofa.go.jp/mofaj/area/myanmar/data.html> (Japanese).

⁷ UN Human Rights Council, "Report of the independent international fact-finding mission on Myanmar", 12 September 2018, <https://www.hrw.org/ja/news/2020/06/17/375472>.

⁸ International Commission of Jurists, "Myanmar: Implement 'provisional measures' order of the International Court of Justice without delay", 23 January 2020, <https://www.icj.org/myanmar-implement-provisional-measures-order-of-the-international-court-of-justice-without-delay/>.

recommending that foreign companies investing in Myanmar withdraw from businesses linked to the country's military.⁹

In addition to the problems of the Rohingya in the western state Rakhine, the military has also committed human rights violations against other ethnic minorities such as the Kachin in the northern state of Kachin, including attacks in violation of international humanitarian law and the detention of human rights activists.^{10, 11}

Despite these serious human rights violations in Myanmar, many international companies including Japanese companies have not fully considered the impact of business activities on such human rights violations, but they have been overly focused on economic interests by doing business in conflict zones such as Rakhine State and investing and financing the Myanmar military or companies involved with the military. As a result, they have been criticized for promoting and contributing to human rights abuses.

The UNGP on Business and Human Rights, unanimously endorsed by the UN Human Rights Council in 2011, clearly states that business enterprises have a responsibility to respect fundamental international human rights, consisting of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the ILO Core Conventions. While international human rights have evolved around the obligations of states, the UNGP indicate that, in light of the enormous influence that companies have on people and society, companies should not only pursue economic interests, but also identify, prevent and mitigate negative impacts on human rights, i.e., implement human rights due diligence ("HRDD") and call for remedies for human rights violations.

Therefore, companies with significant influence over people and society must follow the UNGP and exercise their influence not only over their own company, but also over their entire supply chain and value chain, including their suppliers and investments, in order to fulfill their responsibility to respect human rights and to remedy human rights violations in collaboration with various stakeholders. However, it is clear from the following cases that the Japanese government and Japanese companies supporting and expanding in Myanmar have significant room for improvement in terms of the UNGP.

3. Examples of human rights violations involving Japanese companies

3.1. Toshiba Corporation

Summary: Around the Upper Yewa Hydroelectric Dam Development Project in northern Mandalay, the ongoing clashes between the Myanmar National Army, which is guarding the project, and the Southern Shan State Army-South ("SSA-S") have led to serious human rights violations, including forced evictions

⁹ OHCHR, "UN Fact-Finding Mission on Myanmar exposes military business ties, calls for targeted sanctions and arms embargoes", 5 August 2019, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24868&LangID=E>.

¹⁰ HRN, "Human Rights Now Calls on Myanmar Authorities to Overturn the Convictions of Three Activists Speaking Out for the Protection of Civilians in the Kachin Conflict", 17 December 2018, <https://hrn.or.jp/eng/news/2019/01/04/kachin-statement/>.

¹¹ Ye Mon, "More Kachin villagers flee as clashes intensify", DBV, 27 April 2018, <http://www.dvb.no/news/kachin-villagers-flee-clashes-intensify/80699>; Chan Thar, "Yangon police charge, release 17 peace protesters", Myanmar Times, 14 May 2018, <https://www.mmtimes.com/news/yangon-police-charge-release-17-peace-protesters.html>.

and extrajudicial killings. Various foreign companies are participating in hydropower dam projects in the region, one of which is Toshiba Corporation ("Toshiba").¹²

3.1.1. Current status of human rights violations

According to the Shan Human Rights Foundation,¹³ on 24 June 2020, when the SSA-S informed the Myanmar Army that it would hold an Anti-Drug Day ceremony in Kyaukme, northern Shan State, the national army guarding the dam construction site prevented the ceremony and sent a combat unit to clash with the SSA-S. Subsequently, the national army injured, shot, forced into portering, and requisitioned vehicles from local residents in the entire town in the southern part of Chaumet near the dam construction site. In addition, more than 600 residents, mostly the elderly, women, and children, were forced to leave due to the fighting.¹⁴

In the first place, infrastructure projects undertaken by companies such as Toshiba had an impact on local residents: tens of thousands of people living in the Myitnge (Nam Tu) River basin strongly opposed the dam development that has been underway since 2008 because the dam's reservoir will stretch 60 kilometers along the river, up to Hsipaw town, submerging large tracts of farmland and centuries-old indigenous communities.¹⁵

Later, in October 2020, another armed clash between the national army and the SSA-S in Chau Mae reportedly injured civilians and forced the evacuation of more than 700 people.¹⁶ In this regard, the Shan Human Rights Foundation has reiterated its call for the withdrawal of foreign companies from the development of this dam.¹⁷

3.1.2. Recommendations that the company received

To ensure that they avoid complicity in the atrocities committed by the national army forces guarding Upper Yewa, Shan Human Rights Foundation has demanded that companies such as Switzerland's Stucky SA, France's PGRB, China's Yunnan Machinery and Equipment Import and Export Co. Export Co. Ltd. and Zhejiang Orient Engineering of China, and Japan's Toshiba and High Tech Concrete Technology Co. Ltd., withdraw from the Upper Yewa hydropower dam project. It stated that all such investment projects should not take place until true peace returns and a devolution of power under a new federal constitution gives the local people the right to protect their land and resources.¹⁸

3.1.3. The Japanese company's response to the current situation

¹² Shan Human Rights Foundation, "Extrajudicial killing, torture by Burma Army during operation against RCSS/SSA near Upper Yeywa dam site in Kyaukme," 9 July 2020, <https://www.shanhumanrights.org/eng/index.php/394-extrajudicial-killing-torture-by-burma-army-during-operation-against-rcs-s-sa-near-upper-yeywa-dam-site-in-kyaukme>.

¹³ Organization's website: <https://www.shanhumanrights.org>.

¹⁴ Shan Human Rights Foundation, *supra*, note 11

¹⁵ *Id.*

¹⁶ Sai Hseng Hlaing, "Civilian Injured By Shrapnel, Hundreds Displaced By Clashes Between Tatmadaw and RCSS/SSA", Shan News, 7 October 2020, <https://english.shannews.org/archives/21892>.

¹⁷ Shan Human Rights Foundation "Indiscriminate shelling, torture, looting by Burma Army during large-scale offensive against RCSS/SSA in southern Kyaukme", 19 October 2020, <https://www.shanhumanrights.org/eng/index.php/399-indiscriminate-shelling-torture-looting-by-burma-army-during-large-scale-offensive-against-rcss-ssa-in-southern-kyaukme>.

¹⁸ *Id.*

When the Business and Human Rights Resource Center¹⁹ asked Toshiba to respond to the concerns outlined in a report compiled by Shan Human Rights Foundation, the response was as follows:²⁰

- We shared the information with Zhejiang Orient Engineering, with which we have a business contract, and requested them to confirm the current situation. After confirming the situation, if deemed necessary, we will ask Zhejiang Orient Engineering to respond to the Myanmar Electricity Authority.
- Toshiba Group is a member of the United Nations Global Compact, and their policy on human rights is set forth in the Toshiba Group Code of Conduct. We recognize that we have a responsibility to respect the human rights of all stakeholders involved in our business activities.

3.2. Komatsu Ltd.

Summary: There are concerns about environmental destruction and human rights violations related to jade mining, and it has been pointed out that Komatsu Ltd. (“Komatsu”), a supplier of mining equipment, lacks adequate safety standards for labor.²¹

3.2.1. Current status of human rights violations

According to Swedwatch’s report in 2020, Kachin State in northern Myanmar, which produces 90% of the world’s jade with an industrial value of billions of dollars, has long been the scene of a civil war between the national army and the Kachin Independence Army. The supply of equipment by mining equipment companies has long contributed to clashes between the national army and ethnic armed groups, as well as to land degradation, water pollution, and landslides. In 2016, more than 10,000 mining machines were used for jade extraction, and many of those machines were manufactured and sold by world-renowned companies like Caterpillar Inc., Komatsu, and Volvo Construction Equipment. In this context, it is argued that the activities undertaken by the three companies are contrary to the UNGP,²² which state that the responsibility of businesses to respect human rights should cover the negative impacts on human rights that they cause or promote through their business activities or that are directly related to their business, products or services through their business relationships.²³

Swedwatch re-examined the situation in 2018 and found that the human rights violations in the Hpakant region had gotten worse.²⁴ According to the 2020 report, at least 210 people have died in mine landslides since mid-2018. While the situation in Kachin State is well documented, there is no indication that the three companies conducted HRDD, an internationally responsible business standard, in 2018,²⁵ and only Volvo has indicated that it has taken any action since then.²⁶

3.2.2. Recommendations that the company received

¹⁹ Business and Human Rights Resource Centre, “Toshiba’s response concerning Upper Yeywa”, 7 August 2020, <https://www.business-humanrights.org/en/latest-news/toshibas-response-2/>.

²⁰ Id.

²¹ Swedwatch, “Mining machinery sales in Myanmar may be aggravating human rights abuses,” 4 August 2020, <https://swedwatch.org/publication/report/mining-machinery-sales-in-myanmar-may-be-aggravating-human-rights-abuses/>.

²² See the UNGP on Business and Human Rights 13 and 17 (Ministry of Foreign Affairs, provisional translation), <https://www.mofa.go.jp/mofaj/files/000062491.pdf>.

²³ Swedwatch, *supra*, note 20.

²⁴ Swedwatch, “Machinery Providers Fail to Recognise Human Rights Risks in Myanmar’s Jade Mines”, 20 June 2018, <https://swedwatch.org/publication/report/machinery-providers-fail-recognize-human-rights-risks-myanmars-jade-mines/>.

²⁵ Id.

²⁶ Swedwatch, *supra*, note 20.

After Swedwatch brought environmental and human rights issues related to irresponsible jade mining in Myanmar into the spotlight in 2018, a new report in 2020 again called on the three companies to meet international human rights standards, as the major mining equipment supplier still lacked adequate safety standards. Swedwatch and Act Church of Sweden believe that the lack of global mining equipment companies' safeguards for human rights in line with the UNGP is a matter of grave urgency, and they called on machinery providers for Myanmar's jade mining industry and the state to urgently conduct HRDD to stop human rights abuses and environmental destruction.²⁷

3.3 Kirin Holdings Company Limited

Summary: The United Nations Fact-Finding Mission on Myanmar released a report, "Economic interests of the Myanmar military" (the "UN 2019 Report") in September 2019, and it had been concerned that Kirin Holdings Company Limited ("Kirin") continued to be closely linked to MEHL, a military-affiliated company, which has long been considered to suppress ethnic minorities.²⁸ In response to the coup, Kirin announced that it would dissolve the partnership.²⁹

3.3.1. Current status of human rights violations

Myanmar's military has committed crimes against humanity against Rohingyas in Rakhine State since 2017, including killings, sexual violence, and forced displacements. In response to these atrocities, a fact-finding mission set up by the UN reported in 2018 that atrocities committed by the military "have reached the level of war crimes and crimes against humanity."³⁰

Kirin owns a majority stake in Myanmar Breweries Limited (MBL) and Mandalay Breweries Limited (MDL) under their Myanmar Economic Holdings Limited (MEHL) alliance, which has ties to the country's military. In 2015, the company transferred 4% of their 55% stake in the acquired MBL to MEHL through a joint venture partnership with MEHL. Also, Kirin acquired a 51% stake in MDL in another business in 2017.³¹

Amnesty International also reported that MBL donated at least \$30,000 to the Myanmar National Army and the Rakhine State government between September and October of 2017.³² This was around the time when the military's ethnic cleansing campaign against the Rohingyas was at its peak.

A 2019 report by a fact-finding mission set up by the UN concluded that the operations of foreign companies operating in Myanmar carry the risk of violating international humanitarian law and committing human rights abuses and that foreign companies are supporting the financial capacity of the Myanmar Armed Forces.³³

3.3.2. Recommendations that the company received

²⁷ Id.

²⁸ Human Rights Watch, "Myanmar: Kirin wa gun to kankei wo tatsu beki", <https://www.hrw.org/ja/news/2020/06/17/375472> (Japanese).

²⁹ Kirin Holdings, "Statement on the situation in Myanmar", 5 February 2021, https://www.kirinholdings.co.jp/english/news/2021/0204_01.html.

³⁰ UNHRCouncil, *supra*, note 6.

³¹ HRW, *supra*, note 27.

³² Amnesty International, "Japan: Kirin beer no Myanmar gun e no kennkin no chosa wo", 15 June 2018, https://www.amnesty.or.jp/news/2018/0615_7454.html (Japanese).

³³ UNHRCouncil, *supra*, note 2.

HRN issued a joint statement with Human Rights Watch, an international human rights NGO, the Japan International Volunteer Center, and Shapla Neer, a certified NPO, that Kirin should cut ties with the national army and military-affiliated companies to demonstrate its concern for human rights violations, and it should immediately terminate its partnership with MEHL and work to prevent its subsidiaries from further cooperation with or donations to the Myanmar National Army.³⁴

Takatoshi Hasebe, Executive Director of the Japan International Volunteer Center (JIVC), argued that "Kirin should take the fact-finding mission's report seriously and immediately cut ties with the military-affiliated company" because "Kirin has not fully explained why their subsidiary donated the equivalent of tens of thousands of U.S. dollars to the Myanmar military and authorities, which were systematically killing, raping and persecuting Rohingya and setting fire to Rohingya villages."³⁵

Kazuko Ito, HRN Secretary General, pointed out that "it has been more than half a year since the fact-finding mission's report called for the financial isolation of the *Thammadaw* (Burmese National Army), yet Kirin still has an alliance with MEHL."³⁶

Toyoaki Komatsu, Secretary General of the NPO Shapla Neer-Citizens for Overseas Cooperation, said, "Kirin should cut ties with a military-affiliated company run by the Myanmar national army to show its commitment to its own human rights policy. Such responsible action would show the persecuted Rohingya and other minorities in Myanmar that seeking justice and accountability can produce results."³⁷

3.3.3. The Japanese company's response to the current situation

Kirin, which is affiliated with MEHL, provided the following response to the letter by the four organizations on 12 June 2020:^{38, 39}

- We will ascertain whether proceeds for the joint-ventures with MEHL may have been used for military purposes.
- We have formally commenced the process of exploring alternative structural options for the ownership of our Myanmar businesses together with external advisors.
- We are committed to addressing the concerns raised by the international community regarding our business operations in Myanmar and are therefore considering all actions and options available to us.

The company also responded to Amnesty International's report on the matter released on 10 September 2020, as follows:⁴⁰

³⁴ Human Rights Now, "Joint Statement - Myanmar: Kirin wa gun to kankei wo tatu beki", 18 June 2020, <https://hrn.or.jp/activity/17991/> (Japanese).

³⁵ Human Rights Watch, "Myanmar: Kirin wa gun to kankei wo tatu beki", 17 June 2020, <https://www.hrw.org/ja/news/2020/06/17/375472> (Japanese).

³⁶ Id.

³⁷ Id.

³⁸ Human Rights Now, et al, "Myanmar ni okeru onsha no jigyo tenkai ni tsuite", 22 May 2020, https://www.hrw.org/sites/default/files/media_2020/06/キリンホールディングス株式会社様宛てNGO共同書簡v2_0.pdf (Japanese).

³⁹ Kirin Holdings, "Kirin group no Myanmar jigyo ni kanshite", 12 June 2020, https://www.hrw.org/sites/default/files/media_2020/06/キリンホールディングス株式会社様の回答書簡.pdf (Japanese).

⁴⁰ Amnesty International "Military LTD The company financing human rights abuses in Myanmar", 2020, <https://www.amnesty.org/download/Documents/ASA1629692020ENGLISH.PDF>.

- We have appointed Deloitte Tohmatsu Financial Advisory LLC to conduct an independent review of MEHL's financial and governance structures to determine the destination of proceeds from the joint-venture businesses.
- We will take all necessary actions once the assessment is complete.

The company later reported on its website on 7 January 2021 that it was unable to reach a definitive conclusion from the independent investigation to determine the use of funds from the MBL and MDL because Deloitte Tohmatsu Financial Advisory LLC, which it had commissioned as an external advisor, was unable to obtain sufficient information to make a firm decision.⁴¹

In response to the coup that occurred on February 1 of the same year, the following statement was published on its website.⁴²

Kirin Holdings Company, Limited (President and CEO: Yoshinori Isozaki) is deeply concerned by the recent actions of the military in Myanmar, which are against our standards and Human Rights Policy.

We decided to invest in Myanmar in 2015, believing that, through our business, we could contribute positively to the people and the economy of the country as it entered an important period of democratization. Our aspiration was and remains to create a positive impact on Myanmar's economy and society through our operations at Myanmar Brewery Limited and Mandalay Brewery Limited.

Given the current circumstances, we have no option but to terminate our current joint-venture partnership with Myanma Economic Holdings Public Company Limited, which provides the service of welfare fund management for the military. We will be taking steps as a matter of urgency to put this termination into effect.

We will aim to provide updates as soon as practicably possible.

In the wake of the coup, they announced that they would consider dissolving the alliance, and this should be done as soon as possible with the cooperation of the Japanese government.

3.4. Tasaki & Co., Ltd.

Summary: Tasaki & Co., Ltd. ("Tasaki") has entered into a business partnership with the Myanmar Pearl Enterprise ("MPE") to become the largest pearl producer in Myanmar, and it is assumed that this partnership will be extended. There are also concerns that the project includes plans to build a production site, which will lead to pressure on the livelihoods of the Moken engaged in squid fishing.⁴³

3.4.1. Current status of human rights violations

⁴¹ Kirin Holdings, "Tosha Myanmar jugyo ni kannsuru sinpo hokoku", 7 January 2021, https://www.kirinholdings.co.jp/news/2021/0107_02.html (Japanese).

⁴² Kirin Holdings, *supra*, note 28.

⁴³ Frontier, "Moken fear a sea grab in the Myeik Archipelago", 29 December 2019, <https://www.frontiermyanmar.net/en/moken-fear-a-sea-grab-in-the-myeik-archipelago/>.

The joint venture between Tasaki and MPE is the largest pearl production operation in the Tanintharyi region, producing 220,000 pearls per year. The Moken, who depend on the squid fishery in this area, have long been treated poorly by the MPE, and there are reports that the squid obtained by the Moken were seized, and that some Moken were arrested and detained for several days.⁴⁴

Tasaki signed an agreement on pearl production with the military government in 2001. The agreement expires in 2020, and the company, which has so far invested more than \$8 million in the venture, submitted a five-year extension request in 2018. The proposal includes a plan to build three new 17,000-acre production sites on Sisters Islands, including Langan. This plan could cause the Moken to lose access to fishing, which could make their lives even more difficult. Regarding Tasaki's contract extension, the people of Langan wrote to the Tanintharyi regional government to demand that Tasaki leave the Sisters Islands untouched.⁴⁵

3.5. Y Complex Project

Summary: A number of Japanese companies, such as Japan Bank for International Cooperation ("JBIC"), Tokyo Tatemono Co., Ltd. ("Tokyo Tatemono"), Sumitomo Mitsui Banking Corporation ("SMBC"), Overseas Transport and Urban Development Projects Support Organization ("JOIN") and Fujita Corporation ("Fujita"), participated in the Y Complex Project, a large-scale real estate complex development and operation project in Myanmar.⁴⁶ However, the project will be developed on land owned by Myanmar's national army which is persecuting ethnic minorities such as the Rohingya and the Kachin. Justice Myanmar⁴⁷ pointed out that the project could lead to Japanese companies indirectly supporting human rights abuses.⁴⁸

3.5.1. Current status of human rights violations

The Y Complex, which was scheduled to open in 2020, is an upscale commercial complex under construction in downtown Yangon that will include shopping and office space. The project is funded by major Japanese financial institutions and real estate companies and is supported by public and private funds.

The Y-Complex has been financed by JBIC, Mizuho, and SMBC. In addition, Okura, Tokyo Tatemono, and Fujita are involved in the development of the project. Tokyo Tatemono is also in charge of design and architecture, and Fujita is in charge of design and construction. Also, these two companies and JOIN have established a special project company in Singapore called "Yangon Museum Development". Yangon Museum Development has signed a contract with a subsidiary of Ayeyar Hinthar

⁴⁴ Id.

⁴⁵ Frontier, *supra*, note 42

⁴⁶ JBIC, "Myanmar rempo kyowakoku ni oite nihon-kigyo ga jisshi suru fukugo-fudosan no kaihatu, unei-jigyo ni taisuru yushi", 18 December 2018, <https://www.ibic.go.jp/ja/information/press/press-2018/1218-011714.html> (Japanese); Okura Nikko Hotel Management, "'Okura pre stage Yangon' (karisho) 2020-nen ni kaigyō", 28 July 2017, https://www.okura-nikko.com/ja/press/20170728_okura-prestige-yangon/ (Japanese).

⁴⁷ Organization's website: <https://www.justiceformyanmar.org>.

⁴⁸ Justice for Myanmar "The luxury Japanese business development secretly funding Myanmar's military", 22 May 2020, <https://www.justiceformyanmar.org/stories/y-complex>; Danny Fenster "Japan-backed luxury hotel and office complex will enrich military, says rights group", 21 May 2020, <https://www.myanmar-now.org/en/news/japan-backed-luxury-hotel-and-office-complex-will-enrich-military-says-rights-group>.

Holding Co., Ltd. called Yangon Technical and Trading Co. Ltd. (YTT), which has a lease agreement on land owned by a munitions officer of the national army, and they are investing in the Y complex.⁴⁹

The Y complex has been condemned by the UN because it is being built on land owned by the Myanmar military, which has committed genocide against the Rohingya people and crimes against humanity against other minorities including the Kachin. In 2020, Justice for Myanmar had found the evidence in the Lease Agreement between YTT and the vice quartermaster general. The agreement also shows that land rents are flowing directly to a military bank account named “Defence Account”. It is unclear how the money is spent from here, but it has been pointed out that the offices of the Myanmar army’s quartermaster and commander-in-chief handle the financial transactions behind the purchase of weapons and military equipment that are being used to commit human rights abuses against the Rohingya and other minorities.⁵⁰

On 26 June 2020, Mekong Watch made an inquiry to JBIC asking for the details about The Y-Complex project, including whether the rent is being paid to the national army. On 13 July 2020, JBIC refused to answer via phone, on the ground of protection of commercial secrets. On August 25, Mekong Watch sent an explanation request to which JBIC has not replied yet at the time of this writing. On 4 February 2021, at a meeting with a member of Japan’s parliament and Mekong Watch, JBIC admitted that it had confirmed with Y Complex Company Limited that the rent payments are being made to the Defence Account as indicated in the lease agreement contained in the Environmental Impact Assessment.⁵¹

3.5.2. Recommendations that companies received

A UN fact-finding mission has recommended that companies cut off financial ties with Myanmar's military conglomerates.⁵² On February 17, HRN, Human Rights Watch, Mekong Watch, Japan Volunteer Center (JVC) and Justice For Myanmar requested that the UN Working Group on Human Rights and Transnational Corporations and Other Business Enterprises undertake an inquiry into the business operations of Japanese business entities involved in the Y Complex project.⁵³

3.5.3. Japanese companies' response to the current situation

Business and Human Rights Resource Centre asked the above companies to respond to the concerns raised in the report by Justice for Myanmar. The responses from each company are as follows.⁵⁴

	Company name	Reply date	Contents
1	Tokyo Tatemono	31 August 2020	<ul style="list-style-type: none"> We obtained an investment approval under the Myanmar New Investment Law and are

⁴⁹ Id.

⁵⁰ Justice for Myanmar, *supra*, note 47

⁵¹ Human Rights Watch, “Myanmar de katsudo suru nihon kigyo oyobi kankeisho-kan ni tsuite no simin-shakai-dantai kara no yoseisho”, 17 February 2021, <https://www.hrw.org/ja/news/2021/02/17/377899> (Japanese).

⁵² UNHRCouncil, *supra*, note 2.

⁵³ Human Rights Now, “Kyodo-teishutsu - Myanmar gun ni rieki wo motarasu kanosei ga takai nihon-seifu oyobi nihon-kigyo ga kanyo suru moshitate”, 17 February 2021, <https://hrn.or.jp/activity/19371/> (Japanese).

⁵⁴ Business and Human Rights Resource Centre, “Myanmar: genzai, kokuren no tairyo-gyakusatu-zai ni chokumen siteiru Burma-gun ga shoyu suru tochi de high-end no shogyo-kaihatsu wo susumeru nihon-kigyo (kigyo-kaito ari)”, 2 September 2020, <https://www.business-humanrights.org/ja/%E6%9C%80%E6%96%B0%E3%83%8B%E3%83%A5%E3%83%BC%E3%82%B9/myanmar-japanese-cos-allegedly-engaged-in-high-end-commercial-development-on-land-owned-by-burmese-military-currently-facilitating-un-genocide-charges/> (Japanese).

			<p>conducting the project in compliance with local laws, regulations, and the guidance of the relevant authorities.</p> <ul style="list-style-type: none"> • We are currently developing our human rights policy, which is based on the UNGP on Business and Human Rights.
2	Okura	31 August 2020	<ul style="list-style-type: none"> • We obtained an investment approval under the Myanmar New Investment Law and are conducting the project in compliance with local laws, regulations, and the guidance of the relevant authorities. • We will keep a close eye on the points raised.
3	Mizuho	31 August 2020	Withholding comment
4	SMBC	31 August 2020	Withholding comment
5	JOIN	8 September 2020	<ul style="list-style-type: none"> • We obtained an investment approval under the Myanmar New Investment Law and are conducting the project in compliance with local laws, regulations, and the guidance of the relevant authorities. • We will be mindful of environmental and social considerations in the future.
6	Fujita	31 August 2020	<ul style="list-style-type: none"> • We obtained an investment approval under the Myanmar New Investment Law and are conducting the project in compliance with local laws, regulations, and the guidance of the relevant authorities. • We will keep a close eye on the points raised.

3.6. KDDI Corporation and Sumitomo Corporation⁵⁵

Summary: Myanmar Posts and Telecommunications (“MPT”) has been a major player in the development of Myanmar's telecommunications industry for more than 130 years, providing fixed-line and cell phone services to individuals and businesses. MPT has been accused of being complicit in government censorship. KDDI Corporation (“KDDI”) and Sumitomo Corporation (“Sumitomo”) are believed to have formed a business alliance with this company. Together, they set up KDDI Summit Global Myanmar Co., Ltd. (KSGM) which concluded a partnership with MPT on joint business operations in July 2014. MPT’s participation in the government censorship has been a problem since before the *coup d’état*. The military's online censorship campaign after the coup being held responsible for violating

⁵⁵ MPT, “MPT forms global partnership with KDDI and Sumitomo,” 3 September 2014, <https://www.mpt.com.mm/en/mpt-forms-global-partnership-with-kddi-and-sumitomo/>.

basic human rights including freedom of expression brings into question the corporate responsibility of KSGM.⁵⁶

3.6.1. Current status of human rights violations

The Myanmar government's censorship before the *coup d'état*

The Myanmar government ordered telecommunication companies to block 221 web pages in March 2020. The government has neither made the directive public nor published a list of which sites have been targeted. On March 26 and 27, Myanmar Now and Frontier announced that four telecommunications companies received the same directive March 21;⁵⁷ and on the 30th, Telenor Myanmar announced that it had blocked 221 websites in accordance with the directive of the Ministry of Transport and Communications.⁵⁸ International Media Support (IMS) is concerned that these actions by the government lack a legal basis, violate international human rights law, and lead to censorship of legitimate information and restrictions on freedom of expression.⁵⁹

As per UN Human Rights Committee General Comment No. 34,⁶⁰ the blocking of the website does not comply with the three-part test prescribed in article 19(3) of the ICCPR: 1) blocking must be clearly defined in the law; 2) blocking must be for a legitimate aim; 3) blocking must be necessary and proportionate to achieve that aim. In General Comment 34 of International Covenant on Civil and Political Rights (ICCPR), it clearly states that mandatorily blocking the access of people to an entire website is an extreme and harsh measure.⁶¹

The Myanmar Government's order to block communication after the *coup d'état*

After the coup, internet service providers received a directive from the Myanmar Ministry of Transport and Communications (MoTC) to temporarily block social media services such as Facebook on February 3, and Twitter and Instagram on February 5.⁶² From February 6 to 7, the internet was fully shut down for two full days.⁶³ On February 15, another internet shutdown was ordered between 01:00 to 09:00, and it still continues now. After martial law was imposed on March 14, telecom providers have

⁵⁶ Mekong Watch, "Press Release - 'Kokugun no shadan-meirei ni kogi wo' Myanmar shimin dantai ga tsushin-kakusha ni yobikake tsushin-jigyo ni kanyo sitekita nihon no kanmin wa jinken-shingai-kaihi ni muketa taio wo", 8 February 2021, http://www.mekongwatch.org/PDF/pr_20210208.pdf (Japanese).

⁵⁷ IMS, "Joint Statement Calling the Myanmar Government to end Censorship", March 2020, <https://www.mediasupport.org/publication/joint-statement-calling-the-myanmar-government-to-end-censorship/>.

⁵⁸ Telenor, "Press Release – Blocking of websites in Myanmar (updated 9 September 2020)", 9 September 2020, <https://www.telenor.com.mm/en/article/blocking-websites-myanmar-updated-9-september-2020>.

⁵⁹ BNI, "Gov't Blocks Ethnic Media Groups From Mobile Networks", 1 April 2020, <https://www.bnionline.net/en/news/govt-blocks-ethnic-media-groups-mobile-networks>.

⁶⁰ "General Comment 34 on the Covenant on Civil Liberties", provisional translation by the Japan Federation of Bar Associations, https://www.nichibenren.or.jp/library/ja/kokusai/humanrights_library/treaty/data/HRC_GC_34j.pdf.

⁶¹ Id.

⁶² Telenor, "Directive to block social media service", 3 February 2021, <https://www.telenor.com/directive-to-block-social-media-service/>.

⁶³ NNA ASIA, "Facebook ya Twitter nado, seigen-keizoku", 9 February 2021, <https://www.nna.jp/news/result/2150722#%E3%83%9F%E3%83%A3%E3%83%B3%E3%83%9E%E3%83%BC%E3%80%80> (Japanese).

blocked mobile internet services throughout Myanmar since March 15, public wi-fi has been largely shut off since March 18, and currently only fiber optic lines are in operation.^{64, 65}

3.6.2. Japanese companies' response to the current situation

The responses from each company to the Business and Human Rights Resource Centre are as follows.⁶⁶

- KDDI's response (15 February 2021)
Thank you for providing KDDI with an opportunity to respond to your questions. We will handle the situation by closely following the developments on the ground and by gathering information with respect for human rights, and by ensuring the safety of relevant personnel and our colleagues in Myanmar.
- Sumitomo Corporation's response (15 February 2021)
Thank you for contacting us regarding this matter. We, Sumitomo Corporation, put in the first priority to ensure the safety of our colleagues in Myanmar. With respect for human rights, we continue to collect information and to take actions including discussion with our partners. Sincerely yours.

4. State and corporate responsibility based on structural factors and the UNGP

4.1. Risk of structural human rights violations in business activities in Myanmar

Since the transfer to civilian rule in 2011, economic sanctions imposed by Western countries have been lifted, and Myanmar has become an attractive investment destination for developed countries, which in turn have encouraged Myanmar's economic growth. On the other hand, the financial ties between the national military and military-affiliated companies in Myanmar remained strong even after the NLD was elected, and economic growth has been preceded by a lack of legal infrastructure and normative awareness in the areas of human rights and the environment. In other words, a dual structure exists at the root of the problem: (1) institutional, legal, and normative deficiencies in the operation of the market that are incomplete domestically; (2) international companies in developed countries enriching Myanmar's military and military-affiliated companies despite this situation.

4.2. Economic activities of companies covered by the UNGP on Business and Human Rights

In light of the coup that has occurred under these circumstances, the responsibility of companies, including Japanese companies, that are complicit in human rights abuses through their business operations in Myanmar is being questioned. It cannot be denied that the neglect of companies' participation in development projects in areas where there are military conflicts, lack of safety standards

⁶⁴ NNA ASIA, "Yangon no 6-gunku de keigenrei danatsu-kyoka, mobile-tsushin mo shadan", 16 March 2021, <https://www.nna.jp/news/result/2164539#%E3%83%9F%E3%83%A3%E3%83%B3%E3%83%9E%E3%83%BC%E3%80%80> (Japanese).

⁶⁵ NNA ASIA "Netto-shadan no hani kakudai, su-jikan mae ni mainichi tsuchi", 23 March 2021, <https://www.nna.jp/news/result/2167478#%E3%83%9F%E3%83%A3%E3%83%B3%E3%83%9E%E3%83%BC%E3%80%80> (Japanese).

⁶⁶ Business & Human Rights Resource Centre, "Myanmar: Groups call on more companies allegedly linked to military to sever ties", 16 February 2021, <https://www.business-humanrights.org/en/latest-news/myanmar-groups-call-on-more-companies-allegedly-linked-to-military-to-sever-ties/>.

for suppliers, and investments in and business linkages with Myanmar's military, which is repressing ethnic minorities, may have contributed to the coup, knowing that Myanmar does not have domestic laws that meet international human rights standards, and that the military and companies are committing human rights abuses. As mentioned above, the UNGP call for companies, in view of the great influence they have on people and society, not only to pursue economic interests, but also to identify, prevent, and mitigate negative impacts on human rights, i.e., to implement human rights DD, and to address and remedy human rights violations. The scope of human rights DD is not limited to the company itself, but it extends to the entirety of its business activities, i.e., the entire supply chain and value chain.⁶⁷ In principle, business enterprises are responsible for preventing or mitigating adverse human rights impacts through their activities, including both actions and omissions, and their business relationships, including those with business partners, entities in its value chain, and any other non-state or state entity directly linked to its business operations, products, or services.

On the other hand, the UNGP also require states to set clear expectations for corporate implementation of human rights DD and to support it.

Although the UNGP themselves are soft law that do not have legally binding force, since their enactment, each state has been establishing a National Action Plan (NAP) that provides a roadmap for states to meet their obligations. The Japanese government also declared in 2016 that it would formulate a NAP, and it released the draft NAP for public comment in February 2020. In response to the public comments, the final version was released on 16 October 2020. While the NAP is criticized for its ineffectiveness as it fails to analyze the gaps between current policies and laws and international human rights standards, and it only describes existing policies, it certainly is an important policy document which further advances business and human rights initiatives.

In countries around the world, however, in addition to NAPs, there is a growing movement to also legislate corporate Guiding Principle responsibilities, including the UK's Modern Slavery Act (2015), France's Human Rights Due Diligence Act (2017), and Australia's Modern Slavery Act (2018). Furthermore, in April 2020, the EU Commissioner for Legal Affairs explicitly stated that the EU would begin consideration of enacting mandatory human rights and environmental due diligence legislation in the EU by the end of 2021, and on March 10, the European Parliament voted by an overwhelming majority for the adoption of a binding EU law, and The European Commission will present its legislative proposal.⁶⁸

Corporate responsibility for international human rights is also very relevant to the 2030 Agenda for Sustainable Development (SDGs) by the UN and to the growing interest in ESG investment. In the body of the SDGs, the participation of companies in solving the challenges of SDGs is expected, and the premise that companies will adhere to the UNGP is stated (paragraph 67). For ESG investment, the "S" or "society" in ESG includes human rights issues, and focusing on ESG means proactively addressing human rights issues, which is also in line with the UNGP.

5. Recommendations

⁶⁷ See the UNGP 13 and 17, https://www.unic.or.jp/texts_audiovisual/resolutions_reports/hr_council/ga_regular_session/3404/.

⁶⁸ Reuters "EU Needs Due Diligence Law on Environment and Human Rights, Lawmakers Say", 10 March 2021, <https://www.usnews.com/news/world/articles/2021-03-10/eu-needs-due-diligence-law-on-environment-and-human-rights-law-makers-say>.

In light of the current situation in Myanmar, the obligations of the state, and the responsibilities of businesses as outlined in the UNGP, we make the following recommendations for the Japanese government and Japanese businesses.

5.1. Recommendations for the Japanese government

We call on the Japanese government to take the following actions.

The Japanese government should:

- 1) Consider a legal system that requires companies to address human rights risks in their supply chains, business alliances, and investments in accordance with the UNGP. In addition, as stated in the NAP, at the very least, introduce policies which contribute to corporations meeting expectations by preparing guidelines on human rights DD required of corporations in accordance with the UNGP.
- 2) Actively investigate human rights violations involving its own companies and take action (including administrative and criminal action) according to the case as part of effective remedies for human rights issues.
- 3) Develop human rights guidelines for engagement with armed groups violating human rights under the auspices of the UN and other international processes.
- 4) Provide sufficient information on human rights risks in countries and regions where the international community has identified particularly high human rights risks to its own companies that are involved in business there.
- 5) Actively cooperate with the processes proposed by international organizations and groups dealing with peace and security issues for companies to respect human rights, and encourage them to promote respect for human rights in business.
- 6) Implement effective policies, including laws and regulations, to ensure that its own companies, regardless of country or region, are not complicit in human rights abuses in the course of their business operations.

5.2. Recommendations for Japanese companies

Japanese companies doing business in Myanmar must be aware of the following points.

Japanese companies should:

- 1) Under the current situation, in order not to cause, promote or contribute to human rights abuses, formulate and implement standards and guidelines that ensure adequate safety and protection of the rights of workers in the value chain; and improve the human rights awareness of workers and management, in line with international legal standards, to ensure that there are no human rights violations in relation to business development in Myanmar. In addition, an independent third-party organization should conduct neutral investigations and audits in this process.
- 2) Conduct human rights DD immediately to make the relationship between the military and local companies and the money flow visible, and identify human rights risks.

3) Conduct human rights DD on a regular basis after business development. If a risk of human rights abuses or human rights violations in the value chain is identified during the process, they should disclose the information and thoroughly improve the situation that could lead to human rights abuses through a transparent process, including dialogue with stakeholders, in order to avoid human rights risks and avoid encouraging human rights abuses. In cases where this is not possible, it should be ensured that human rights risks are avoided and that human rights violations are not encouraged. If this is not possible, the business should be withdrawn. Especially if a connection between the military and local companies is identified and there is any chance of the profit produced by their connection benefits the military, call off business development entirely.