



Urging International Enterprises, Multinational Companies, and Conglomerates Regarding Investments in Burma/Myanmar from the Aspects of the Rule of Law, the Rule of International and National Laws

Statement No. 2: Requirement of A Proper National Action Plan Concerning Ground Situations in Burma

Both international and national enterprises should be aware of the current conflicts in Burma from the perspective of international humanitarian law. To enhance business enterprises and promote human rights simultaneously, a government or state should have a national action plan on business and human rights in line with the United Nations Guiding Principles on Business and Human Rights (UNGPs).¹ As of 2024, 34 states including the United States of America and the United Kingdom have produced a national action plan on business and human rights.²

The baseline of the Guiding Principles is international human rights law, upon which is built their three-pillar framework:

- (i) the state's duty to protect human rights;
- (ii) the corporate responsibility to respect human rights; and
- (iii) access to remedy for victims of corporate human rights abuses.³

First, in terms of drawing a national action plan, the legitimacy of the state or government in Burma is currently a contentious issue, thus business enterprises should take this factor into account. Second, the Independent International Fact-Finding Mission on Myanmar (IIFMM) reminded that the domestic and foreign companies engaging with the military should apply relevant international human rights principles and safeguards as a matter of corporate responsibility to respect human rights in the report.⁴ Although a state must ensure that any person

¹ UN HRC, 'Report of the Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises' (5 May 2014) UN Doc A/HRC/26/25, 11.

<<https://documents.un.org/doc/undoc/gen/g14/141/00/pdf/g1414100.pdf>> accessed 13 Nov 2024.

² OHCHR, Working Group on Business and Human Rights, 'National action plans on business and human rights', <<https://www.ohchr.org/en/special-procedures/wg-business/national-action-plans-business-and-human-rights>> accessed 13 Nov 2024.

³ UN HRC, 'Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie' (21 March 2011) UN Doc A/HRC/17/31. <https://www.ohchr.org/sites/default/files/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf> accessed 13 Nov 2024.

⁴ UN HRC, 'The Economic Interests of the Myanmar Military', The Independent International Fact-Finding Mission on Myanmar (IIFMM), (5 August 2019) UN Doc A/HRC/42/CRP.3.

<https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/FFM-Myanmar/EconomicInterestsMyanmarMilitary/A_HRC_42_CRP_3.pdf> accessed 13 Nov 2024.

whose rights or freedoms are violated through the activities of businesses has an effective remedy, the right to remedy of victims of corporate human rights abuses, including those of aerial bombardments has been denied.⁵

Most importantly, the national action plan on business and human rights must be associated with the national rights claiming system. Unfortunately, for Burma, it has not been the case as both the NUG and the SAC are far from adoption and implementation of such a plan, with the absence of a proper national rights system. Thus, the foreign and national enterprises seem to be running their business without heeding to the stated principles, raising serious concerns regarding human rights abuses.

Especially, the foreign investments under the SAC regime led by the military coup leader Min Aung Hlaing will not be fully guaranteed for protection of their businesses due to the lack of the national action plan underpinned by the national rights system. Regarding this, for instance, the Mandalay Brewery, a joint venture company between Yaung Chi Oo Trading Pte.Ltd. (YCO), a company registered in Singapore, and Myanmar Foodstuff Industries (MFI) was completely expropriated by the then military led by General Than Shwe on December 17, 1997.⁶

International enterprises should, therefore, be aware of potential risks and challenges under the SAC regime at any circumstances. Simultaneously, an arrest warrant application recently submitted by the ICC Prosecutor⁷ for Min Aung Hlaing before Pre-trial Chamber I of the ICC is also a strong warning to individuals in both international and national enterprises. By dealing business with the Min Aung Hlaing regime, companies risk being accused of complicit in the gravest crimes committed by the regime.

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18 December 2024

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⁵ Ibid.

⁶ ASEAN Arbitral Tribunal: Yaung Chi Oo Trading Pte Ltd. Vs Government of the Union of Myanmar (Award)” (March 31, 2003) +Cite as 42 ILM 540 (2003) +. <file:///C:/Users/User/Downloads/Yaung_Chi_Oo_v_Myanmar-pdf.pdf> accessed 13 Nov 2024.

⁷ ICC, ‘Statement of ICC Prosecutor Karim A.A. Khan KC: Application for an arrest warrant in the situation in Bangladesh/Myanmar’ (27 November 2024) <<https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-kc-application-arrest-warrant-situation-bangladesh>> accessed 14 Nov 2024.