

## Burma/Myanmar's military junta cripples economy

- Since seizing power on 1 February, the illegal military junta's destructive efforts to gain territorial and political control have dragged the economy, already impacted by the COVID-19 pandemic, into a crippling, downward spiral. The junta has:
  - Destabilized the country by escalating conflict. There were 2,458 attacks that targeted or failed to protect civilians during Feb–May, more than double the 1,024 incidents for all of 2020.
  - Paralyzed the banking sector (around 80% of bank branches closed, affecting all 44 banks), imports/exports, and other key sectors.
  - Turned key industrial zones into ghost towns by killing workers and persecuting labor activists. At least 600,000 workers have lost their jobs.
  - Severely undermined the rule of law by gutting prosecutors' offices and the judiciary, instituting amendments and orders that violate human rights, and court-martialing civilians.
  - Severely eroded freedom of information by detaining at least 88 journalists and banning key independent media.
- The junta has been empowered to cripple the domestic economy by the expectation that they will be sustained by foreign exchange revenues from the natural resource sector and other sources.
- Troubling indicators include a 90% decrease in exports, a 92% drop at the Yangon Stock Exchange (YSX), an 88% drop in the number of newly registered companies, and the projection that 48% of the population will be in poverty by 2022.
- If the coup is not reversed, the junta's domination of the economy will result in:
  - The rise of military-controlled monopolies at the expense of SMEs; while the population becomes increasingly vulnerable to forced labor, child labor and human trafficking as a result of land grabs and other threats to human security.
  - Dismantling of institutions and processes necessary for human rights due diligence and compliance with relevant protection frameworks.
  - Reduced political will and competence to fulfil existing state commitments to human rights, development goals, and transparency, including an action plan against money-laundering.

### CONTENTS

- 2 **Five months of economic destruction**
- 2 The banking sector in peril
- 3 Scarcity, inflation
- 3 Domestic boycotts, failed state
- 3 Capital flight
- 4 Junta hits domestic industries hard
- 5 **Economic resilience jeopardized**
- 5 Tatmadaw economic practice
- 6 Junta replaces experts with friends
- 7 Junta intensifies pandemic impacts
- 8 Tatmadaw interfered with COVID-19 response
- 9 COVID-19 under the coup
- 9 **Barriers to conducting business**
- 9 Heightened due diligence required
- 10 Oversight/accountability problems
- 11 Transparency/reporting problems
- 12 Attacks on the rule of law
- 12 **Additional barriers to loans and foreign assistance**
- 12 Legitimacy problems
- 13 Armed resistance against the junta
- 15 Contractual issues
- 16 **Annex 1: Development banks and "de facto governments"**
- 19 **Annex 2: MDB safeguard policies**

In less than five months, the junta has shattered Burma's economy. Ongoing violent crackdowns and disproportionate attacks on the popular resistance and the population will intensify the economy's downward spiral; and the junta has locked itself into a path of destruction that will magnify extreme poverty, decimate prosperity, heighten conflict, and generally deepen economic, social, and political impacts. In the unlikely scenario that the junta gains control, it will regress Burma to the kleptocracy it was before democratic transition began in 2011.

## Five months of economic destruction

### The banking sector in peril

The junta began internet restrictions on 1 February, which became progressively worse. It started nightly (1–9am) internet blackouts on 15 February, cut cellular data from 15 March, and cut public WiFi from 18 March.<sup>1</sup> This has gravely affected digital payment services such as Wave money and KBZ Pay, and Fintech, with e-commerce down 75%.<sup>2</sup> As of 2019, 80% of the population used an app or a cash-transfer firm to move money.<sup>3</sup>

Internet and movement restrictions, as well as staff striking to protest the coup, shut down businesses, including banks, nationwide.<sup>4</sup> Every one of the 31 local banks and 13 foreign banks in Burma closed branches, with a total of almost 2,000 branches closed. In other words, **almost 80% of Burma's 2,473 total bank branches were shuttered.**<sup>5</sup> Banks have struggled to reopen some of these branches.

On 1 March, the Central Bank of Myanmar lowered ATM withdrawal limits for individuals (~USD 1,284/week) and businesses (~USD 12,841/week).<sup>6</sup>

Banks have also capped the number of people who can make withdrawals each day, because the Central Bank will not provide these banks with adequate liquidity. In response, people have started selling their services to wait in line early or procure bank tokens for others. Agents are charging others 20% to withdraw cash from them, and some people now recognize 10% as a reasonable commission.<sup>7</sup>

Facing a weakened kyat, the Central Bank of Myanmar sold USD 18 million in May (as of 19 May), up from USD 6.8 million sold in February. From January 2020 to January 2021, the bank had only *bought* dollars to stabilize its currency.<sup>8</sup>

### Burma's economy in the past decade

**2011** Beginning of market liberalization, modernization, greater transparency, and growth. On the eve of this change, Burma was **one of the most corrupt countries in the world (180/182).**

*"Unification of exchange rates, initial liberalization of product and factor markets, integration into regional markets, and modernization of economic and financial institutions and systems resulted in rapid economic growth (above 7 percent per year) and measurable improvements in social welfare since 2011."*

-World Bank (updated 2 Oct 2020)  
The World Bank in Myanmar: Overview

**2018** Following the Tatmadaw's atrocity crimes against Rohingya people, **new foreign direct investment dropped 67%** to USD 1.291b from USD 4.002b in 2017.

**2020** COVID-19 ravaged economies globally, including Burma's.

*"The economic impact is unprecedented—job losses of 1.2 million to 2.1 million are expected, and the number of the poor is likely to increase by 1.3 million people. More than 25% of manufacturing establishments have already shut down, and more such closures are expected. Since more than 80% of the labor force is employed in the informal sector, 70% of them women, the social impact will be quite severe."*

-Asian Development Bank (Aug 2020)  
Proposed Countercyclical Support Facility Loan

### Feb 2021 TATMAW COUP D'ETAT

- 2021**
- Exodus of foreign investors
  - Attacks on domestic businesses
  - Attacks on the rule of law
  - Overall economic contraction
  - Spike in poverty

<sup>1</sup> NetBlocks (updated 24 Mar 2021) Internet disrupted in Myanmar amid apparent military uprising

<sup>2</sup> Irrawaddy (22 Apr 2021) Myanmar's Economy in Freefall Under Military Regime

<sup>3</sup> Economist (11 Jul 2019) Myanmar's countryside is emptying and its cities bursting

<sup>4</sup> Financial Times (25 Feb 2021) Myanmar protests imperil economy as banking slows

<sup>5</sup> Irrawaddy (22 Apr 2021) Myanmar's Economy in Freefall Under Military Regime; Frontier Myanmar (5 May 2021) As striking staff return to work, Myanmar's banks face a cash crunch; GIZ (Jan 2021) Myanmar's Banking Sector in Stormy Waters Staying on the reform course before and amidst COVID-19 crisis

<sup>6</sup> Straits Times (1 Mar 2021) Myanmar central bank to limit cash withdrawal from banks, ATMs

<sup>7</sup> Frontier Myanmar (6 Jun 2021) Myanmar's post-coup cash crunch creates a shadow money trade

<sup>8</sup> Eleven Myanmar (19 May 2021) CBM sells US\$18 M during May

## Scarcity, inflation

The kyat's decreased value pushed up the price of imported goods such as foodstuffs; and the price of gasoline jumped more than 20%.<sup>9</sup>

Businesses cannot operate due to cash shortages; and importing funding from abroad—which before the coup took a week—is now unpredictable and opaque. Bank closures mean no payroll services, and constrain trading companies' operations because banks cannot issue documents needed to import and export goods.<sup>10</sup>

Industry insiders estimated that exports declined by as much as 90% by mid-March due to shortages of port workers, truck drivers, customs officers, bankers, and others.<sup>11</sup>

By the junta's own account, the value of Burma's maritime trade over the first half (1 Oct–2 Apr) of the current financial year 2020–2021 sank by USD 4.3 billion to USD 10 billion, compared to a year ago; imports fell by USD 2.78 billion to USD 6.116 billion; exports decreased by USD 1.53 billion; cross-border trade dropped by USD 264 million to USD 5.6 billion; and the country's total external trade was USD 15.78 billion, down from USD 20.36 billion a year ago.<sup>12</sup>

## Domestic boycotts, failed state

Domestic boycotts have also had particularly dramatic effects, because Tatmadaw-affiliated companies have significant market share across sectors. Myanmar Beer, which prior to February accounted for over half the country's beer sales, has since seen an 80-90% drop in sales, hundreds of millions of dollars in lost profits, and potentially over USD 1 billion in company value.<sup>13</sup>

On 31 March, UN Special Envoy for Myanmar Christine Schraner Burgener warned that Burma was “on the verge of spiraling into a failed state,” which would place it on par with places like Syria and Yemen.<sup>14</sup> A leaked note from a bank in Burma expressed fear that “Myanmar's name could be added to a list that includes countries from Argentina to Zimbabwe, or Bolivia to Yugoslavia, suffering high or hyperinflation, mass poverty and a currency collapse.”<sup>15</sup>

## Capital flight

On 8 February, coup leader Min Aung Hlaing assured international investors that they were welcome.<sup>16</sup> The junta's State Administration Council (SAC) stated its objective “[t]o shape a stable market-oriented economic system by inviting foreign direct investments (FDIs) and developing the economy of the entire national peoples.”<sup>17</sup> However, its actions have had the opposite effect.

The Tatmadaw's violent tendencies have already scared off international investors. In 2018—the year after its brutal attacks on Rohingya communities—new foreign direct investment in Burma fell 67.74%, from USD 4.002 billion to USD 1.291 billion.<sup>18</sup>

### A run on the banks

Losing confidence in Burma's banks, people nationwide have tried to turn their deposits into safer assets such as gold or US dollars. Bank customers have sold their deposits to other people for cash, though the Central Bank banned the practice.

The Central Bank of Myanmar has tried to entice people to deposit more money. On 27 April, it announced that people should feel confident about doing so; and that people who opened accounts from 3 May onward would not be subject to the withdrawal limits imposed on those with existing accounts.

In early March, the junta warned the Central Bank that it might forcibly transfer accounts from private banks if they did not reopen. Banks opened special counters to process deposits, which remain largely unvisited.

Central Bank of Myanmar (27 Apr 2021) Press Release; Straits Times (1 Mar 2021) Myanmar central bank to limit cash withdrawal from banks, ATMs; Frontier Myanmar (5 May 2021) As striking staff return to work, Myanmar's banks face a cash crunch; Frontier Myanmar (9 May 2021) A crisis of confidence looms over Myanmar's banks

<sup>9</sup> Nikkei Asia (12 Apr 2021) Myanmar's brewing currency crisis causes consumer prices to soar

<sup>10</sup> Irrawaddy (22 Apr 2021) Myanmar's Economy in Freefall Under Military Regime

<sup>11</sup> Frontier Myanmar (12 Mar 2021) 'Nothing is moving': CDM freezes foreign trade, raising fears of shortages

<sup>12</sup> SAC (20 Apr 2021) Maritime trade drops by \$4.3 bln in H1

<sup>13</sup> Frontier Myanmar (17 Apr 2021) Coup hangover: How Myanmar's national brew went stale overnight

<sup>14</sup> AP (1 Apr 2021) UN envoy: Myanmar faces possibility of major civil war

<sup>15</sup> Financial Times (22 Apr 2021) 'Economic collapse amid escalating conflict': is Myanmar becoming a failed state?

<sup>16</sup> Al Jazeera (8 Feb 2021) Myanmar military ruler defends coup as protests intensify

<sup>17</sup> Global New Light of Myanmar (24 Feb 2021) Republic of the Union of Myanmar State Administration Council Nine Objectives

<sup>18</sup> World Bank (2019) Foreign direct investment, net inflows (BoP, current US\$) – Myanmar

Confidence in the junta's pro-investor promises have been undermined by its reversal on the other promise made in the 8 February speech: Min Aung Hlaing assured the international community that he would facilitate repatriation of Rohingya people from Bangladesh;<sup>19</sup> however, on 24 February, he said Burma would not repatriate Rohingya people because his junta does not consider them Burmese citizens.<sup>20</sup>

Data from Burma's Directorate of Investment and Company Administration (DICA) shows that the number of new registered companies dropped from 1,373 in January to 188 in February and 163 in March, compared to 1,415, 1,298, and 1,015 for the same months in 2020 (i.e. an 86% drop Feb–Feb and 84% drop Mar–Mar).<sup>21</sup>

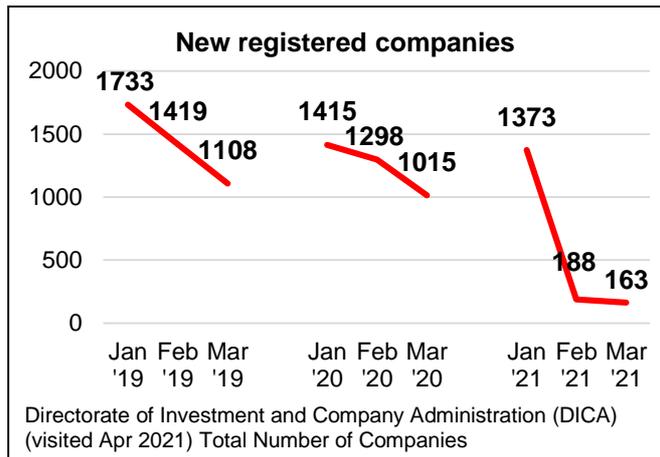
The coup and the regime's attacks on human rights increase reputational, operational, and legal risks for investors in Burma. Trade experts and analysts warned that the coup may further reduce the interest of potential western investors, and may prompt divestment of existing investors.<sup>22</sup>

Local EU, American, British, Italian and French chambers of commerce said they have rejected all invitations to meet with junta representatives, and the Australian chamber of commerce called for a swift return to democratic civilian rule.<sup>23</sup>

### Junta hits domestic industries hard

In the four months following the Tatmadaw's power grab, the junta killed at least 840 civilians, injured thousands more, and detained 5,554 politicians, activists, and others.<sup>24</sup> There were 2,458 attacks that targeted or failed to protect civilians, in every State/Region and Union Territory, more than double the 1,024 attacks during all of 2020.<sup>25</sup>

Security forces have targeted striking workers and labor unions, and have used violent pro-military counter protesters and gangs of hired thugs to break strikes.<sup>26</sup> In March, the SAC declared martial law in six industrial townships of Yangon, issued a list of union leaders to target, and ordered factory owners to disclose names and addresses.<sup>27</sup>



### Un(der)paid soldiers

The Tatmadaw is the 11th-largest military in the world, with an estimated 406,000 soldiers on active duty. Underpaid soldiers have resorted to robbing and looting. These examples are a small fraction of reported cases:

- In March, residents of Twante Township (Yangon Region) said that security forces looted their homes, taking over \$10,000 in personal belongings. They also robbed people at gunpoint and stole from markets.
- In April, security forces in Bago charged families \$85 to recover relatives' bodies.
- In May, soldiers looted homes before burning them down in Mindat (Chin State).

DW (12 Feb 2021) Myanmar's military: a state within a state; Irrawaddy (23 Mar 2021) Myanmar Security Forces Loot, Destroy Civilians' Property Amid Crackdown; CNN (12 Apr 2021) Myanmar's military is charging families \$85 to retrieve bodies of relatives killed in crackdown; Al Jazeera (18 May 2021) 'A humanitarian disaster in the making' in Myanmar's Chin State

<sup>19</sup> Nikkei Asia (8 Feb 2021) Myanmar junta chief Min Aung Hlaing says this coup is 'different'

<sup>20</sup> Radio Free Asia (25 May 2021) Bangladesh Relying on World Community to Press Myanmar Junta on Rohingya Repatriation

<sup>21</sup> Directorate of Investment and Company Administration (DICA) (visited Apr 2021) Total Number of Companies

<sup>22</sup> Reuters (1 Feb 2021) Myanmar coup to dampen U.S. trade, impact footwear companies, experts warn

<sup>23</sup> Asia Times (6 Mar 2021) Business revolt brewing in coup-crippled Myanmar; Nikkei Asia (5 Mar 2021) Asian companies stay quiet as Western peers condemn Myanmar coup

<sup>24</sup> AAPP (31 May 2021) Daily Briefing in Relation to the Military Coup

<sup>25</sup> Armed Conflict Location & Event Data Project (ACLED) (updated 11 Jun 2021) Data Export Tool, available at <https://acleddata.com/data-export-tool/>

<sup>26</sup> 177 Myanmar Civil Society Organizations (12 Feb 2021) An open letter from Myanmar civil society organizations to the UN Security Council

<sup>27</sup> Labor Notes (19 Mar 2021) Military Targets Workers as Repression Escalates in Myanmar

On 26 February, the SAC outlawed 16 labor rights organizations that were not formally registered,<sup>28</sup> forcing members into hiding.

Between February and April, around 200,000 (over a third) of garment industry workers lost their jobs, according to labor unions,<sup>29</sup> as did 300,000–400,000 construction workers, according to the Construction Workers Union.<sup>30</sup> In March, hundreds of employees from Tatmadaw-owned vehicle parts factories went on strike.<sup>31</sup>

Burma earned USD4–6 billion from cut-make-pack exports in 2020, but over 80% of the sector was not operating by late April, following deadly crackdowns in industrial areas.<sup>32</sup>

Security forces have not spared the agricultural sector, either. In Karen State, for example, the Tatmadaw strafed and shelled rice barns, and displaced farmers, preventing them from tending their crops.<sup>33</sup>

### Economic resilience jeopardized

#### Tatmadaw economic practice

Burma's economy benefited greatly, in the past decade, from reforms under more democratic leadership. It is important to revisit what came before that, because the economy was controlled back then by the same military trying to establish control now.

Until a decade ago, Burma's kleptocracy under the junta's previous incarnations as the State Law and Order Restoration Council (SLORC) and the State Peace and Development Council (SPDC) crushed the country's economy and made it one of the most corrupt countries in the world (180/182 in 2011).<sup>34</sup> In the World Bank's Doing Business 2014 Report (the first year it included Burma), Burma ranked 182 of 189 countries globally.<sup>35</sup> It was a repressive command economy, lacking in the rule of law, oversight mechanisms, or access to information. Military monopolies dominated every sector, and there was little room or appetite for SME development.

The junta, while crippling the domestic economy with violent and oppressive crackdowns since 1 February, is relying on revenues from extractive industries and natural resource sales to fund itself.

#### Violence across industrial townships

**Hlaingthaya Township**, in western Yangon, is densely populated and hosts over 850 factories (as of 2019). On 15 March, 30 Chinese factories were burned to the ground, a day after security forces killed at least 67 people. In March, the International Organization for Migration estimated that approximately 100,000 migrants had fled Hlaingthaya to their communities of origin for safety and security. Almost two-thirds of the Township's roughly 700,000 residents were estimated to have left by April.

**Shwepyitha Township**, in northwest Yangon, is another working-class area, home to garment workers and others living hand to mouth even before striking in protest. As of 18 May, security forces had killed 18 people in Shwepyitha, including six on 14 Mar.

**Bago**, the largest city in Bago Region (north of Yangon), is also an up-and-coming industrial area. On 9 April, security forces unleashed extreme violence upon Bago, destroying, robbing, and killing. They attacked four neighborhoods using grenade launchers and machine guns. They killed at least 80 people, and caused around 100,000 residents seeking safety elsewhere.

Frontier Myanmar (6 Nov 2019) Government seeks to tame Hlaing Tharyar, Yangon's wild west; Frontier Myanmar (24 Apr 2021) 'We want democracy back': Despite hardships, Yangon's urban poor vow to fight on; UN (24 Mar 2021) Daily Press Briefing by the Office of the Spokesperson for the Secretary-General; China Labour Bulletin (16 Apr 2021) Yangon garment factory district targeted in bloody military crackdown; AAPP (18 May 2021) Fatality List for May 18, 2021; Radio Free Asia (12 Apr 2021) Tens of Thousands of Residents Flee Bago in Wake of Assault by Myanmar Security Forces; Myanmar Now (11 Apr 2021) Mass murders reported in Bago as troops 'drag away' injured and dead, destroy evidence of crimes; Myanmar Times (25 Jul 2018) Yangon firm "implements" Bago industrial park without known EIA.

<sup>28</sup> SAC (2 Mar 2021) Announcement of illegal organizations: labor organizations that are not registered in line with the Labour Organization Law and are therefore illegal

<sup>29</sup> Irrawaddy (22 Apr 2021) Myanmar's Economy in Freefall Under Military Regime

<sup>30</sup> Irrawaddy (22 Apr 2021) Myanmar's Economy in Freefall Under Military Regime

<sup>31</sup> Myanmar Now (30 Mar 2021) Hundreds of workers go on strike at Ministry of Defence factories making Myanmar military vehicle parts

<sup>32</sup> Irrawaddy (22 Apr 2021) Myanmar's Economy in Freefall Under Military Regime

<sup>33</sup> Financial Times (22 Apr 2021) 'Economic collapse amid escalating conflict': is Myanmar becoming a failed state?

<sup>34</sup> Transparency International (viewed 28 Feb 2021) Corruption Perceptions Index

<sup>35</sup> World Bank and International Finance Corporation (2013) Doing Business 2014: Understanding Regulations for Small and Medium-Size Enterprises

*Under the SPDC, infrastructure development and consumer goods was left to a small elite of crony businessmen. [...] Sanctions barred foreign companies from competing with inferior local products, which was fine as far as the cronies were concerned.*

*Conglomerates [...] turned over billions in profits on everything from logging to highway construction and transport while the population eked out a living in abject poverty. The main complaint from the upper-elite was that they had to maintain multiple sets of books to evade taxes, and endure occasional “shakedowns” from army officers or [...] conglomerates.*

*While the cronies handled domestic projects, military conglomerates like Myanmar Economic Holdings Limited, Myanmar Economic Corporation, and the Myanmar Timber Enterprise (MTE) were responsible for earning foreign exchange. [...]*

*Holding the system together was a vast, bloated security state. The junta’s secret police, which had received training from Romania and East Germany, pervaded all walks of life and enforced strict press censorship. The internet was effectively banned.*

-Diplomat (3 May 2021) Myanmar’s Generals Aren’t Going Anywhere

On 21 May, the Environmental Investigation Agency reported that the junta was seeking to gain hard and fast cash by selling off thousands of tons of illegal timber to international markets.<sup>36</sup> In late May, Myanmar Timber Enterprise (MTE)—now run by the junta—held three auctions and sold almost 10,300 tons of timber for around USD 5 million, with plans to auction off another 14,181 tons on 23–24 June. The wood reportedly came from a stockpile of 200,000 tons previously confiscated by the NLD government.<sup>37</sup>

It was reported on 7 May that the junta approved a \$2.8 billion investment via the Myanmar Investment Commission: 15 projects have been approved, including a liquefied natural gas power plant that will cost \$2.5 billion. Investors’ names have not been released.<sup>38</sup>

In June, the junta banned the import of soap, detergent, and toothpaste, after banning the import of coffee, soda, and condensed milk from Thailand in April.<sup>39</sup> A move to stop overland imports may indicate the junta’s desire to control sectors of a failing economy or strengthen domestic monopolies rejected by the public, as the Tatmadaw did prior to 2011.

### **Junta replaces experts with friends**

On 1 February, the Tatmadaw detained key players from Burma’s financial system. The junta detained at least three deputy governors of the Central Bank of Myanmar, including Bo Bo Nge, who remains in detention;<sup>40</sup> and Australian Sean Turnell, an economic advisor to Aung San Suu Kyi.<sup>41</sup> It replaced the Minister for Planning, Finance and Industry,<sup>42</sup> and three deputy ministers;<sup>43</sup> and detained two of the terminated deputy ministers.<sup>44</sup> The junta’s State Administration Council (SAC) appointed a new Union Auditor-General,<sup>45</sup> Governor of the Central Bank of Myanmar,<sup>46</sup> two Deputy Governors of Central Bank of Myanmar,<sup>47</sup> and two other members of the Central Bank.<sup>48</sup>

---

<sup>36</sup> Environmental Investigation Agency (21 May 2021) Myanmar junta looks to line its pockets and fund the coup with massive auction of illegal timber

<sup>37</sup> Irrawaddy (8 Jun 2021) Myanmar Junta to Sell More Timber in Search for Hard Currency

<sup>38</sup> Reuters (9 May 2021) Myanmar’s junta approves \$2.8 bln investment, including gas power plant

<sup>39</sup> Irrawaddy (7 Jun 2021) Myanmar Regime’s Ban on Imported Soap and Toothpaste Criticized for Aiming to Boost Military Profits

<sup>40</sup> The Irrawaddy (10 Feb 2021) Central Bank of Myanmar Staff Join Anti-Coup Protests

<sup>41</sup> The Irrawaddy (9 Feb 2021) Deputy Bank Governor’s Location Unknown Since Military Detention: Wife

<sup>42</sup> Republic of the Union of Myanmar, Office of Commander-in-Chief of Defense Services (1 Feb 2021) Order No. 6/2021: Appointment and Duty Assignment of Union Ministers

<sup>43</sup> Republic of the Union of Myanmar, Office of Commander-in-Chief of Defense Services (1 Feb 2021) Order No. 5/2021: Duty Termination from Deputy Ministers; State Administration Council (SAC) (4 Feb 2021) Order No 27/2021 Appointment and Duty Assignment of Deputy Ministers; SAC (11 Mar 2021) Order No 103/2021 Appointment and Duty Assignments of Deputy Ministers

<sup>44</sup> The Irrawaddy (9 Feb 2021) Deputy Bank Governor’s Location Unknown Since Military Detention: Wife

<sup>45</sup> SAC (2 Feb 2021) Order No 2/2021 Appointment and Assignment of Union Auditor-General

<sup>46</sup> SAC (2 Feb 2021) Order No 8/2021 Appointment and Assignment of Governor of the Central Bank

<sup>47</sup> SAC (4 Feb 2021) Order No 26/2021 Appointment and Duty Assignment of Deputy Governors of Central Bank of Myanmar

<sup>48</sup> SAC (18 Feb 2021) Order No 73/2021 Appointment of Central Bank Members

It also replaced Union Ministers and Deputy Ministers for Commerce, Investment and Foreign Economic Relations, Hotels and Tourism, Natural Resources and Environmental Conservation, Construction, Livestock and Irrigation, Electricity and Energy, Labour, Immigration and Population, Social Welfare, Relief and Resettlement, Transport and Communications, and International Cooperation, among others.<sup>49</sup>

It was reported on 18 May that the junta had reorganized three infrastructure and investment committees key to implementing China's Belt and Road Initiative. The junta replaced all civilian government members of the China Myanmar Economic Corridor (CMEC) Joint Committee, restructured the central committee for the implementation of the Myanmar-China Cross-Border Economic Cooperation Zones (CBECZ), and replaced all civilian members of the CBECZ working group committee.<sup>50</sup>

### Junta intensifies pandemic impacts

The COVID-19 pandemic, and the government's response to it, deepened existing inequalities and pushed vulnerable populations into even more precarious situations. In April 2020, 16% of firms closed and 54% of households' main worker was not working; 99% of surveyed farmers reported decreased income, and the majority reported a decrease of 40-50% in household income.<sup>51</sup>

By December 2020, poor clarity and administration hindered assistance. Households with moderate to severe food insecurity increased from 12% to 25%, and the poverty rate trended toward five percentage points higher by 2022–2023.<sup>52</sup>

Women have suffered disproportionately. There was already a large gender gap in the labor force, with 47.7% of women (vs. 77.3% of men) represented in 2018;<sup>53</sup> and women comprised 60% of all workers in vulnerable employment, including 88% of the garment industry, 69% of the retail/trade industry, and 23% of the tourism industry.<sup>54</sup>

### Junta now controls main sources of revenue

For FY 2017/18, in which the state budget was ~USD 12.5 billion, the main sources of foreign exchange were:

- Oil and gas (~USD 1 billion)
- The mining sector (~USD 470 million)
- The gems sector (~USD 300 million)
- The forestry sector (USD 138 million)

In addition, military-owned and affiliated companies continue to profit enormously:

- Myanmar Economic Holdings Company, Ltd (MEHL)-owned jade, gemstone and mining interests earn USD 100-500 million/year
- Military income from travel and tourism earn USD 5-40 million/year
- Land rents and port joint ventures earn USD 50-300 million/year

### Corporate response

On 12 May, Moattama Gas Transportation Company Limited (MGTC) announced it would suspend cash distributions to shareholders—notably Total, Chevron, Thailand's PTT Exploration and Production Public Company Limited, and Myanma Oil and Gas Enterprise (MOGE)—effective retroactively from 1 April. Total said it will maintain the production of gas, to avoid disrupting the electricity supply to Burma and Thailand. However, Human Rights Watch pointed out the decision affected less than 5% of the natural gas revenue the Myanmar junta would receive. On 25 May, it was reported that PTT will partner with junta-linked companies to expand its engagement in Burma, adding to the half billion USD that PTT already pays to junta-controlled energy enterprises.

Independent Economists for Myanmar (26 Apr 2021) Overview of Myanmar Military Finances; Irrawaddy (22 Oct 2019) Tracking the Myanmar Gov't's Income Sources and Spending; Yahoo Finance (26 May 2021) Myanmar: TOTAL: Shareholders of Moattama Gas Transportation Company Limited Vote to Suspend All Cash Distributions; Total (26 May 2021) Myanmar Shareholders of Moattama Gas Transportation Company Limited Vote to Suspend All Cash Distributions; Energy Voice (31 May 2021) Total Energies hindered by legal framework on more Myanmar action; Human Rights watch (25 May 2021) Myanmar: Thai State-Owned Company Funds Junta

<sup>49</sup> Office of Commander-in-Chief of Defense Services (1 Feb 2021) Order No 6/2021 Appointment and Duty Assignment of Union Ministers; SAC (2 Feb 2021) Order No 9/2021 Appointment and Assignment of Union Ministers; SAC (4 Feb 2021) Order No 25/2021 Appointment and Duty Assignment of Union Minister; SAC (16 Feb 2021) Order No 66/2021 Appointment of Union Minister; SAC (11 Mar 2021) Order No 103/2021 Appointment and Duty Assignments of Deputy Ministers; SAC (2 Feb 2021) Order No 6/2021 Appointment and Duty Assignment of Deputy Minister; Office of Commander-in-Chief of Defense Services (1 Feb 2021) Order No 5/2021 Duty Termination from Deputy Ministers

<sup>50</sup> Irrawaddy (18 May 2021) Myanmar Regime Reorganizes Committees to Press Ahead With BRI Projects

<sup>51</sup> UN Myanmar (Dec 2020) Monthly Digest No. 6, December 2020: Socio-Economic Impact of COVID-19 in Myanmar

<sup>52</sup> Frontier Myanmar (24 Dec 2020) 'We're really struggling': desperate families seek COVID cash handout

<sup>53</sup> UNDP (2019) Human Development Report 2019: Inequalities in Human Development in the 21st Century

<sup>54</sup> UN Myanmar (Jun 2020) A UN framework for the immediate socio-economic response to COVID-19 in Myanmar

UN Myanmar asserted that the pandemic threatens to move women back to unpaid domestic work and increase the gender pay gap (24% less per hour as of 2017).<sup>55</sup>

During March–October 2020, at least 186,719 migrant workers returned to Burma through official channels. Just during 15 Jun–10 Sep 2020, Authorities arrested 4,895 people trying to cross illegally between Thailand and Burma.<sup>56</sup>

Pre-pandemic, 19.5% of Burma households relied on remittances from migrant worker family members; and remittances accounted for 8.5% of household income. Women-headed households were 64.2% more likely than male-headed ones to rely on remittances. Remittances were a 60.1% larger share of income in rural households than urban ones.<sup>57</sup>

### **Tatmadaw interfered with COVID-19 response**

In January 2020, the Committee for Preventing, Containing and Treating COVID-19 was formed, involving the State Counsellor, union cabinet ministers, and permanent secretaries. On 30 March, the Coronavirus Disease 2019 Containment and Emergency Response Committee was formed in parallel, led by Vice President Myint Swe (a military appointee and former general). The latter included representatives from the Ministry of Defense, Ministry of Home Affairs, Ministry of Border Affairs (three Tatmadaw-led ministries), and Office of the Commander-in-Chief; it had no representative from MoHS.<sup>58</sup> The existence of these two committees undermined consistency of COVID-19-related guidance and efficiency of state response generally.

During April–June 2020, the Tatmadaw destroyed or ordered the shutdown of seven Karen National Union (KNU) health screening posts, despite the KNU being a party to the Nationwide Ceasefire Agreement (NCA).<sup>59</sup> In June, the Tatmadaw burned down at least one Kachin Independence Organization health screening post, despite having declared a ceasefire in Kachin State.<sup>60</sup> A Rakhine State COVID-19 checkpoint was burned down, shelling and restrictions on movement and information in Rakhine and Chin States prevented basic safety measures,<sup>61</sup> and Tatmadaw undermined humanitarian aid corridors and attacked health workers.<sup>62</sup>

For more, see ALTSEAN-Burma (8 Feb 2021) [Burma/Myanmar: Continued militarization undermining COVID-19 response](#).

### **Worrisome indicators and forecasts:**

- Myanmar Kyat (MMK) value against US Dollar (USD) dropped over 20% from 31 Jan (USD1=MMK1,329) to 10 May 2021 (USD1=MMK1,685)
- Value of shares traded on Yangon Stock Exchange (YSX) reached all-time low in March 2021 (MMK 110 million), down 92% from March 2020 (MMK 1.426 billion); Feb and Apr 2021 values were 70% and 69% lower than the same months in 2020, respectively
- World Bank projects 10% economic contraction for 2021; Fitch Solutions conservatively projects 20% contraction for 2020–2021 fiscal year
- World Food Program says 3.4 million people in Burma could go hungry in 2021
- UNDP says 48% of Burma's population—or 25 million people—could be living in poverty by 2022. (roughly double the rate from 2017, and a regression to 2005)

Nikkei Asia (10 May 2021) Myanmar currency hits record low as economy fails to normalize; Yangon Stock Exchange (visited May 2021) Monthly report, <https://ysx-mm.com/main-board/mktdata/historicaldata/monthly-report/?cbomonthyear=2021>; Irrawaddy (22 Apr 2021) Myanmar's Economy in Freefall Under Military Regime; Business Standard (13 Apr 2021) Myanmar economy likely to contract up to 20% as crisis looms: Analysts; Irrawaddy (22 Apr 2021) World Food Program Warns of Widespread Hunger in Myanmar; CNN (30 Apr 2021) Double crises of coup and Covid could push half of Myanmar's population into poverty, UN warns

<sup>55</sup> UN Myanmar (Jun 2020) A UN framework for the immediate socio-economic response to COVID-19 in Myanmar

<sup>56</sup> International Organization for Migration (IOM) Myanmar (26 Oct 2020) COVID-19 Response: Situation Report 12

<sup>57</sup> World Bank (Feb 2020) Myanmar Living Conditions Survey 2017 Report 04: Socio-Economic Report

<sup>58</sup> Progressive Voice (Jun 2020) A Nation Left Behind: Myanmar's Weaponization of COVID-19

<sup>59</sup> Karen Peace Support Network (Jun 2020) Virus Warfare: Burma Army destruction of Karen community defences against Covid-19

<sup>60</sup> Kachin News Group (24 Jun 2020) Burma Army Destroys KIO COVID-19 Screening Point

<sup>61</sup> Arakan Rohingya National Organisation (1 May 2020) "Leaving no one behind" amidst genocide: the Myanmar government's response to Covid-19 in Rakhine State

<sup>62</sup> Fortify Rights (30 Aug 2018) They Block Everything: Avoidable Deprivations in Humanitarian Aid to Ethnic Civilians Displaced by War in Kachin State, Myanmar; Myanmar Now (11 Aug 2020) Tatmadaw Detains Healthcare Workers near Rakhine's Ann Township; Irrawaddy (28 Oct 2020) One Killed, Three Hurt as Myanmar Navy Sinks Boat Carrying ICRC Relief Goods in Rakhine State

## COVID-19 under the coup

The coup has thrown pandemic response and the state's prior vaccination rollout into disarray. Civilians have refused to get vaccinated if it means submitting to the junta, and doctors who already received a first dose have refused to get a second, for fear that the junta will force them to serve. The junta is no longer prioritizing vulnerable (e.g. elderly) populations, and has barred private hospitals from administering it. Health professionals fear that many of the doses currently in the junta's possession will expire before they can be administered.<sup>63</sup>

Protesters in the street and doctors say their fear of the junta outweighs their fear of the virus. As one Burma resident explained, "You can protect yourself from infection, and not every case results in death. But with this dictatorship, you're not even safe in your own home."<sup>64</sup>

The junta has persistently targeted health workers. On 10 June the junta arrested Htar Htar Lin, the former director of Burma's COVID-19 vaccination program, and charged with treason, which carries the death penalty; she was charged along with 26 other doctors.<sup>65</sup> On 3 March, security forces in Yangon viciously beat four volunteers from a Mon Myat Seik Htar Elderly Care Charity vehicle at gunpoint, killing one. On 5 March, security forces stormed the Tachileik District People's Hospital (Shan State) and raided every room in the hospital.<sup>66</sup>

## Barriers to conducting business

### Heightened due diligence required

*Because the risk of gross human rights violations has greatly increased in Myanmar, action by States and human rights due diligence by business, and investors, should be rapidly and proportionately heightened.*

-Surya Deva, Vice-Chair of the Working Group on Business and Human Rights<sup>67</sup>

Businesses must carry out human rights due diligence in order to identify, prevent, mitigate and account for how they address their adverse human rights impacts. These adverse impacts

## US, EU, UK Sanctions

Many foreign governments and bodies have enacted financial sanctions on people and entities within Burma.

The US has sanctioned the SAC; 32 members of the Tatmadaw, junta, security forces, or relatives; conglomerates Myanmar Economic Corporation (MEC), MEHL, MTE, Myanma Gems Enterprise (MGE), Myanmar Pearl Enterprise (MPE); nine other companies owned or operated by sanctioned individuals; and Light Infantry Divisions 33 and 77, in light of their human rights abuses.

The EU has sanctioned 43 individuals, MEC, MEHL, MGE, MTE, and the Myanmar War Veterans Organization.

The UK has sanctioned the SAC, 23 individuals, MGE, MPE, MTE.

The funds and assets of sanction targets are frozen, meaning that no person or entity based in the sanctioning country may change the sanction target's funds/assets, use the target's funds/assets, or make funds/assets available to the target. Persons or entities based in the sanctioning country may not transact with the sanction targets. No transactions with targets may be made in the sanctioning country.

In addition to named individuals and entities, these sanctions apply presumptively apply to any other entities owned or controlled by the sanction targets, and the funds/assets of these entities. Control of an entity can be presumed, for example, if a sanction target has the right to appoint or remove a majority of members of the entity's administrative, management, or supervisory body.

**Based on these rules, US-, EU-, and UK-based companies that conduct business with (or financially aid) sanctioned individuals/entities or those controlled by sanctioned individuals/entities are likely to violate sanctions.**

U.S. Department of State (updated 17 May 2021) Burma Sanctions; Office of Financial Sanctions Implementation, HM Treasury (updated 21 Jun 2021) Consolidated List of Financial Sanctions Targets in the UK: Regime: Myanmar; EU Sanctions Map (visited 25 Jun 2021) <https://www.sanctionsmap.eu>; European Commission (11 May 2021) Commission Guidance Note on the Implementation of Certain Provisions of Council Regulation (EU) No 401/2013

<sup>63</sup> Frontier Myanmar (25 Mar 2021) 'More dangerous than COVID-19': Anti-military fury leaves SAC pandemic response in shambles; Frontier Myanmar (7 Apr 2021) Anti-military defiance slows COVID-19 vaccination to a trickle

<sup>64</sup> Myanmar Now (19 May 2021) How the coup has complicated Myanmar's Covid-19 response

<sup>65</sup> SAC (14 Jun 2021) Dr Htar Htar Lin, Dr Maung Maung Nyein Tun, Dr Swe Zin Oo under arrest for involving in CDM, assisting terrorist organization NUG; (Irrawaddy (13 Jun 2021) Striking Myanmar Medics Face up to Six Years in Jail

<sup>66</sup> Assistance Association for Political Prisoners (5 Mar 2021) 5 March 2021 Daily Briefing, Detention and Fatality Lists in Relation to Military Coup

<sup>67</sup> UN Human Rights, Office of the High Commissioner (12 May 2021) Myanmar: Time for business to take a stand against human rights violations - UN experts

include both: (a) those the business may cause or contribute to; and (b) those directly linked to its operations, products or services by its business relationships.<sup>68</sup>

Complexity of human rights due diligence will vary with the size of the business enterprise, risk of severe human rights impacts, and nature and context of its operations.<sup>69</sup> Heightened due diligence is important when a state demonstrates a serious risk of atrocity crimes—which Burma does—under the UN Framework of Analysis for the Prevention of Atrocity Crimes.<sup>70</sup>

Human rights due diligence should be ongoing, as risks may change over time as the business enterprise's operations and operating context evolve.<sup>71</sup> This is particularly important in conflict-affected contexts, since the impact of operations will influence conflict dynamics.<sup>72</sup>

Businesses may need to completely disengage from activities in or linked to a conflict-affected context if they cannot address human rights impacts for continued operations. Responsible disengagement requires a business to provide reasonable notice to partners and communities, **ensure that staff continue to receive income despite suspension of operations**, and ensure the security of staff who cannot be evacuated.<sup>73</sup>

### Oversight/accountability problems

The junta continues to erode domestic accountability mechanisms. This poses a problem for the regular reporting that businesses and investors require.

The junta appointed a new Chief of Myanmar Police Force;<sup>74</sup> Chairman and members of the Union Election Commission (UEC);<sup>75</sup> Union Auditor-General;<sup>76</sup> Chairman of the Nay Pyi Taw Council;<sup>77</sup> Chairman of the Administration Council for each State/Region/Self-Administered Zone (except Yangon and Ayeyarwaddy);<sup>78</sup> Union Attorney-General and Deputy Attorney-General;<sup>79</sup> State Attorney-General for each State, and Region Attorney-General for each Region;<sup>80</sup> and Chief Justices or Judges from six State/Region High Courts.<sup>81</sup>

### Enhanced human rights due diligence

The urgency of this requirement has been illustrated repeatedly since 1 February:

On 16 March, for example, the owner of a shoe factory in Hlaingthaya Township (Yangon) called the police and military after a wage dispute with employees. These security forces killed six employees and arrested around 70 others. The event occurred just days after security forces killed over 60 civilians in this largely industrial area.

A responsibly evolving due diligence process would have made clear that calling in security forces in this context could have serious human rights and other legal implications.

Myanmar now (17 Mar 2021) At least six killed after factory owner calls in military in Hlaing Tharyar

<sup>68</sup> UN Human Rights, Office of the High Commissioner (2011) Guiding Principles on Business and Human Rights

<sup>69</sup> UN Human Rights, Office of the High Commissioner (2011) Guiding Principles on Business and Human Rights

<sup>70</sup> UN General Assembly (21 Jul 2020) Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises, A/75/212

<sup>71</sup> UN Human Rights, Office of the High Commissioner (2011) Guiding Principles on Business and Human Rights

<sup>72</sup> UN General Assembly (21 Jul 2020) Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises, A/75/212

<sup>73</sup> UN General Assembly (21 Jul 2020) Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises, A/75/212

<sup>74</sup> SAC (2 Feb 2021) Order No 6/2021 Appointment and Duty Assignment of Deputy Minister

<sup>75</sup> SAC (2 Feb 2021) Order No 7/2021 Appointment and Assignment of Chairman of UEC and members; SAC (9 Feb 2021) Order No 43/2021 Appointment and Duty Assignment of the Union Election Commission members

<sup>76</sup> SAC (2 Feb 2021) Order No 2/2021 Appointment and Assignment of Union Auditor-General

<sup>77</sup> SAC (2 Feb 2021) Order No 12/2021 Appointment and Assignment of Chairman of Nay Pyi Taw Council

<sup>78</sup> SAC (2 Feb 2021) Order No 10/2021 Appointment and Assignment of Chairmen of State/Region Administration Council ; SAC (2 Feb 2021) Order No 11/2021 Appointment and Assignment of Chairmen of Self-Administered Divisions and Zones

<sup>79</sup> SAC (2 Feb 2021) Order No 1/2021 Appointment and Assignment of Union Attorney-General; SAC (2 Feb 2021) Order No 3/2021 Duty Termination from Deputy Attorney-General; SAC (4 Mar 2021) Order No 101/2021 Appointment and Duty Assignment of Deputy Attorney-General

<sup>80</sup> SAC (4 Mar 2021) Order No 102/2021 Appointment and Duty Assignment of States/Regions Attorney-Generals

<sup>81</sup> SAC (4 Feb 2021) Order No 23/2021 Appointment and Duty Assignment of Justices for Supreme Court of the Union; SAC (4 Feb 2021) Order No 24/2021 Duty Terminations from Justices of Supreme Court of the Union; SAC (1 Mar 2021) Order No 95/2021 Appointment of Chief Justices of State High Court; SAC (1 Mar 2021) Order No 96/2021 Appointment of Judges of Region/State High Court

It assigned the incumbent Union Chief Justice and Supreme Court Justices; the incumbent members of the Anti-Corruption Commission; and the incumbent members of Myanmar National Human Rights Commission to continue their duties.<sup>82</sup>

### Transparency/reporting problems

The junta has taken measures to disrupt communications, free speech, and access to information. This poses problems for businesses and investors, who are responsible for monitoring not only operations linked to them but also human rights impacts of these activities.

Immediately after seizing power, the Tatmadaw ordered soldiers to break into data centers and slash internet cables. Where employees resisted, soldiers forced them at gunpoint. The junta also ordered telecom firms to block the phone numbers of activists, junta opponents and human rights lawyers, providing the firms with lists.<sup>83</sup>

In addition to the internet shutdown, security forces have also forced people to take down their residential satellite dishes, to further limit their access to information.<sup>84</sup>

In February the junta proposed a Cyber Security Law that, among other things, threatens “[a]ny person who is convicted of creating misinformation and disinformation with the intent of causing public panic, loss of trust or social division on [sic] a cyber space” with a fine or three years’ imprisonment.<sup>85</sup>

On 15 February, nine foreign chambers of commerce in Burma criticized the law, and expressed serious concerns about the law’s provisions on “data localization,” meaning data would need to be stored in junta-determined locations, which would unduly interfere with businesses’ operations.<sup>86</sup>

Security forces have targeted journalists for their efforts to report on the current crisis. On 8 March, the junta banned national media agencies Mizzima, DVB, Khit Thit Media, Myanmar Now, and 7 Day;<sup>87</sup> and the next day security forces raided the office of independent news outlet Myanmar Now.<sup>88</sup> In February, eleven members of the Myanmar Press Council and more than 12 Myanmar Times staff left their jobs after the junta issued directives not to use the word “regime” or “junta,” or otherwise report in a way it views as “instigating public unrest.”<sup>89</sup>

### Spyware for monitoring dissidents

*During 1963–2011, activists and journalists were often wiretapped and smartphones were scarce. As Myanmar opened up, it became a telecoms success story with a thriving, if nascent, digital economy. Mobile phone penetration, in 2011 the second-lowest in the world after North Korea at 6.9%, soared to stand at 126% in 2020.*

Prior to the coup, the government ordered telecom and internet service providers (ISPs) to install intercept spyware that would allow the military to listen in on calls, view text messages and web traffic including emails, and track user locations without the help of telecoms and ISPs.

This spyware now enables the junta’s bulk collection of content and phone metadata. This is particularly significant because Burma lacks legal or regulatory safeguards to provide a check on such privacy invasions.

The junta now traces SIM cards and intercepts calls, and is allegedly already using this spyware to prosecute political dissidents. Civil servants working with the CRPH and NUG said they must often change SIM cards.

Operators are required by law to comply with junta demands, and to provide the junta with user information. Telecoms companies said if they do not comply, security forces will simply cut their lines and remove their licenses.

Reuters (20 May 2021) How Myanmar’s military moved in on the telecoms sector to spy on citizens

<sup>82</sup> Office of Commander-in-Chief of Defense Services (1 Feb 2021) Order No 1/2021 Appointment and Duty Assignment of Union Chief Justice and Supreme Court Justices; Office of Commander-in-Chief of Defense Services (1 Feb 2021) Order No 3/2021 Appointment and Duty Assignment of Members of Anti-Corruption Commission; Office of Commander-in-Chief of Defense Services (1 Feb 2021) Order No 4/2021 Appointment and Duty Assignment of Chairman, Vice-Chairman and members of Myanmar National Human Rights Commission

<sup>83</sup> Reuters (20 May 2021) How Myanmar’s military moved in on the telecoms sector to spy on citizens

<sup>84</sup> Radio Free Asia (12 Apr 2021) Tens of Thousands of Residents Flee Bago in Wake of Assault by Myanmar Security Forces

<sup>85</sup> Republic of the Union of Myanmar, State Administration Council (6 Feb 2021) Cyber Security Law (draft)

<sup>86</sup> EuroCham Myanmar et al. (15 Feb 2021) Joint Statement on Draft Cyber Security Law; Myanmar Centre for Responsible Business (12 Feb 2021) Myanmar’s Legal Framework For Cybersecurity Needs To Be Built To International Standards

<sup>87</sup> SAC (10 Mar 2021) Mol bans five media agencies from publishing

<sup>88</sup> Guardian (9 Mar 2021) Myanmar: second NLD official dies in custody as junta cracks down on media

<sup>89</sup> Irrawaddy (18 Feb 2021) Myanmar Journalists Leave Jobs in Face of Military Regime Restrictions on Media Freedom

As of 17 June, security forces had detained at least 88 journalists, in 12 of 15 States/Regions/Union Territory.<sup>90</sup> In the words of Myanmar Now co-founder Swe Win, “[w]e are very concerned that Myanmar will become North Korea. They will crush any form of information gathering and sharing.”<sup>91</sup>

### **Attacks on the rule of law**

The junta’s actions also demonstrate a willingness to undercut the rule of law and basic operating principles that provide a foundation for responsible business practice.

On 8-9 February, the SAC used Code of Criminal Procedure Section 144 to prohibit “unlawful assembly, talks, using vehicles or in persons in marching around, protests, destroying and violent acts [...] assembly of five or more than five persons [...] and [the 8pm – 4am curfew]” in 44 of 45 Yangon Region townships, and 85 townships across 12 of Burma’s 15 States/Regions/Union Territory.<sup>92</sup>

On 15 March, the SAC put six Yangon townships under martial law, and on 16 March listed 23 causes of action that could be prosecuted against civilians in these townships by military tribunal. Decisions by military court-martial are final, and punishment can include death or life in prison with labor.<sup>93</sup> On 13 May, the SAC extended this list to include Mindat Township (Chin State).<sup>94</sup>

The SAC has sought to punish its political rivals. On 7 May, it designated the Committee Representing Pyidaungsu Hluttaw (CRPH), National Unity Government (NUG), and NUG’s People’s Defense Force (PDF) as terrorist organizations, meaning that anybody suspected of affiliation with the groups could face life in prison.<sup>95</sup> It had already declared that the CRPH and its local administrative bodies face imprisonment of up to 22 years or death for high treason, and that those who communicate with these bodies could face up to seven years;<sup>96</sup> charged two CRPH representatives, including the Interim Vice President, with high treason under Penal Code Section 122;<sup>97</sup> declared CRPH and NUG as unlawful associations;<sup>98</sup> and issued arrest warrants for 26 people, mainly NUG members.<sup>99</sup>

### **Additional barriers to loans and foreign assistance**

#### **Legitimacy problems**

On 4 February, 378 MPs-elect circumvented military restrictions and swore themselves in, in compliance with parliamentary procedure, at the hostel where they were confined.<sup>100</sup> This means that they represented at least 76% of the 498 democratically-elected members of Burma’s parliament. On 8 February, the CRPH publicly announced its formation, recognized the Civil Disobedience Movement (CDM) and their common goal of a federal union, and pledged to fulfil this goal.<sup>101</sup> On 16 April, the CRPH announced the formation of a National Unity Government (NUG),<sup>102</sup> with ministers representing diverse ethnic minorities and political parties.

The NUG has received support and endorsement from diverse ethnic groups and other organizations: the Karen National Union, Rvwang Development Association, Kachin Alliance, Lisu National Organization, Kachin Political Interim Coordination Team, Ta’ang Political Consultative Committee, Union Level Committee of CSOs Peace Forum, Mon National Network, Zomi Re-unification

---

<sup>90</sup> Reporting ASEAN (updated 17 Jun 2021) IN NUMBERS: Arrests of Journalists and Media Staff in Myanmar

<sup>91</sup> New York Times (1 Apr 2021) Myanmar Soldiers, Aiming to Silence Protests, Target Journalists

<sup>92</sup> SAC (10 Feb 2021) Section 144 imposed in Yangon Region; SAC (10 Feb 2021) Section 144 of the Criminal Procedure imposed in Nay Pyi Taw territory and townships in states/regions

<sup>93</sup> SAC (15 Mar 2021) Martial Law Order 2/2021; SAC (15 Mar 2021) Martial Law Order 3/2021; SAC (16 Mar 2021) Crimes to be heard by Court-Martial

<sup>94</sup> SAC (13 May 2021) Martial Law Order 4/2021; SAC (13 May 2021) Martial Law Order 5/2021

<sup>95</sup> Irrawaddy (10 May 2021) Myanmar Junta Declares National Unity Government, CRPH, Defense Forces as ‘Terrorist’ Groups

<sup>96</sup> SAC (5 Mar 2021) Announcement for CRPH that commits high treason and its organizations

<sup>97</sup> SAC (17 Mar 2021) Lawsuit filed against Dr Sasa and arrest warrant issued; SAC (18 Mar 2021) Legal action charged against U Mahn Win Khine Than

<sup>98</sup> SAC (21 Mar 2021) Order 2/2021 Declaration of Unlawful Association; SAC (21 Apr 2021) Ministry of Home Affairs Press Release

<sup>99</sup> Jakarta Post (23 Apr 2021) Junta issues arrest warrants for 26, mostly members of Myanmar parallel government

<sup>100</sup> Committee Representing Pyidaungsu Hluttaw (CRPH) (5 Feb 2021) Over 300 elected representatives convened Emergency Union Parliament Meeting

<sup>101</sup> CRPH (8 Feb 2021) Announcement 1/2021

<sup>102</sup> CRPH (16 Apr 2021) Announcement 23/2021 Formation of the National Unity Government; CRPH (16 Apr 2021) Announcement 24/2021 Formation of the National Unity Government

Organization, Karenni State Consultative Council, National League for Democracy, and Myanmar Teachers' Federation.<sup>103</sup>

The SAC, by contrast, violated Burma's 2008 Constitution—which it drafted—when it grabbed power.<sup>104</sup> The basic conditions for a state of emergency did not exist, so it was unconstitutional for Vice President Myint Swe to declare one and transfer power. Furthermore, his declaration of a state of emergency did not follow proper procedure: he signed it himself as “Pro Tem (President),”<sup>105</sup> while the legitimate-elected President of Myanmar was (illegally) detained by the Tatmadaw.<sup>106</sup> It follows that the SAC has no power to issue legislation, orders, or directives.

People overwhelmingly support the civilian government (now CRPH and NUG) rather than the junta. They demonstrated this in the November 2020 elections, in which the civilian NLD won 82% of contested seats, while the Tatmadaw-affiliated USDP won just 6%.<sup>107</sup> Since 1 February, millions have protested the coup, by publicly demonstrating or refusing to work. Ethnic armed organizations (EAOs) and other groups have recognized the NUG and opposition to the coup.

### Armed resistance against the junta

For decades, EAOs have opposed the Tatmadaw. Since 1 February, these conflicts have merged with popular resistance against the junta. Civilian protesters from urban areas have taken shelter in EAO areas, and the Tatmadaw has stepped up attacks on these areas.

Locals have mounted armed resistance to security forces' incursions into their communities, mainly arming themselves with traditional black-powder “Tumi Guns,” normally used for hunting. In Kale (Sagaing Region), locals built barricades in the center of town,<sup>108</sup> and held off the Tatmadaw until it began using heavy weapons on 7 April.<sup>109</sup>

### CDM, CRPH, and NUG

On 2 February, health workers and civil society actors across the country formed the CDM in response to the coup, joining nationwide protests representing diverse ethnic nationalities, LGBTIQ people, and religious leaders from all denominations. The CDM has included millions of people, including doctors, bank employees, teachers, civil servants, some police, and others who seek to challenge the coup by striking. It resists the junta through public protests and refusal to work for the junta, and public servants have joined the strike in 307 of 330 townships (in all States/Regions).

CDM members seek a return to civilian power, scrapping the 2008 Constitution, and establishment of a federal democracy.

The CRPH's political visions, “to build a ‘federal democratic republic’ for the people, of the people and by the people” are:

- 1) To end military dictatorship;
- 2) To ensure the unconditional release of all unlawful detainees including President U Win Myint and State Counsellor Daw Aung San Suu Kyi;
- 3) To achieve full-fledged democracy; and
- 4) To rescind the 2008 Constitution and write a new Constitution based on the federal system.

On 16 April, the CRPH announced the formation of the NUG as Burma's government, while the CRPH is the parliament. Since this time, the NUG has taken measures to introduce a new constitution, a federal army, and a federal education system.

Irrawaddy (2 Feb 2021) Myanmar Medics Prepare Civil Disobedience Against Military Rule; Civil Disobedience Myanmar (visited 25 Feb 2021) Home; Diplomat (27 Mar 2021) Myanmar's Ethnic Groups Join Together to Reject Military Rule; Frontier Myanmar (4 Mar 2021) How the CDM can win; CRPH (5 Mar 2021) CRPH (Union Parliament) Political Visions; CRPH (16 Apr 2021) News Statement 11; NUG (5 May 2021) Notification 1/2021: Announcement on the Establishment of People's Defence Force, [tinyurl.com/326k59wx](https://tinyurl.com/326k59wx); NUG (21 May 2021) Ministry of Education Statement 13/2021, [tinyurl.com/44ncz7dx](https://tinyurl.com/44ncz7dx)

<sup>103</sup> NUG (via Facebook) (19 Apr 2021) <https://www.facebook.com/NUGmyanmar/posts/107842168103090>; NUG (via Facebook) (19 Apr 2021) <https://www.facebook.com/NUGmyanmar/posts/108882704665703>

<sup>104</sup> Melissa Crouch (10 Feb 2021) “Why section 144 orders are unconstitutional”

<sup>105</sup> Republic of the Union of Myanmar (1 Feb 2021) Order 1/2021

<sup>106</sup> Myanmar Times (4 Feb 2021) Myanmar State Counsellor and President Charged, Detained for 2 more weeks

<sup>107</sup> Asia Foundation (10 Nov 2020) 2020 General Election: State and Region Hluttaws

<sup>108</sup> Myanmar Now (6 Apr 2021) Greatly outgunned but determined to defend themselves, Kalay protesters manage to even the score

<sup>109</sup> AP (7 Apr 2021) Myanmar security forces attack town that resisted with arms

On 1 April, in Tamu (Sagaing Region), a police officer defected and led local defense forces in a grenade attack on a police station, killing five police.<sup>110</sup> These forces also killed four junta soldiers in a 4 April grenade attack,<sup>111</sup> and three more in a 10 April ambush with Tumi guns.<sup>112</sup>

In Mindat (Chin State), the Mindat Defense Force killed at least 20 Tatmadaw soldiers, before retreating under Tatmadaw air strikes and artillery. Resistance spokesmen said their forces would “come back to attack soon.”<sup>113</sup>

Since 1 February, the junta has installed ward administrators (in cities) and village tract administrators (in rural areas), roles the military historically used to monitor communities. At least eight administrators had been killed by 14 May;<sup>114</sup> and at least 17 administrators’ offices set on fire.<sup>115</sup> New administrators require Tatmadaw protection, and many have not been appointed yet for safety reasons, as a Tabayin Township (Sagaing Region) man explained: “There are 63 village tracts in Tabayin. These protection groups are active and robust in about 50 of them. [...] If the junta announced its picks [of administrators], these groups would attack them.”<sup>116</sup>

Burma’s energy sector is facing problems with striking staff and end users refusing to pay their bills. Civil servants from the Ministry of Electricity and Energy have been among the most likely to strike, with up to 80% refusing to work. One consequence is that the Ministry did not have the staff needed to check meters, issue bills, or process payments. Also, Burma residents are increasingly refusing to pay past and/or forthcoming bills, which they believe would benefit the junta.<sup>117</sup>

This poses a large financial problem for the junta, which is locked into paying electricity companies regardless of depressed usage. Even before the Tatmadaw’s power grab, the government was at a net loss in power consumption, paying out MMK 1.9 trillion and recovering only MMK 1.2 trillion during the 2017–2018 fiscal year; the 2020 – 2021 national budget called for the Ministry to pay out MMK 9.4 trillion and recoup only MMK 8.9 trillion. Furthermore, the contracts call for the government (or junta) to pay in dollars, but users’ bills are still calculated and paid in kyat.<sup>118</sup>

### **De facto authority—what is it, and who has it in Burma?**

*De facto*, or practical, authority for a national governing role is a complicated question of power and control. This encompasses economic, military, and political power and control. Typically *de facto* authority is a phrase reserved for those without *de jure* authority, which is why some claim the junta has *de facto* authority.

Many countries have refused to recognize the junta, diminishing its international political power.

Nationwide protests against the junta, refusal of civil servants to operate under it, and the existence of the NUG have severely eroded the junta’s domestic political control.

The Tatmadaw’s military power is its strongest asset, since it is by far the largest and best-equipped military in Burma. However, it has not been able to defeat EAOs around the country, which are increasingly banding together, and increasing numbers of civilians are attempting to fight it directly.

The junta has lost control of the economy, due to general strikes protesting the coup, the junta’s own widespread destructive reactions to resistance, a severe loss of investor confidence, and a range of sanctions.

These interacting and spiraling factors have seriously undermined the Tatmadaw’s previous economic might.

*It is thus not clear that the junta has de facto authority.*

**In a 20 May media interview, coup leader Min Aung Hlaing conceded that the junta did not have control of the country.**

Irrawaddy (4 Jun 2021) Myanmar Coup Leader Admits Not in Full Control of Country

<sup>110</sup> Myanmar Now (3 Apr 2021) Attack on Tamu police outpost ends with six officers dead

<sup>111</sup> Irrawaddy (5 Apr 2021) Four Myanmar Soldiers Killed in Grenade Attack in Sagaing Region

<sup>112</sup> Myanmar Now (10 Apr 2021) Tamu locals ambush junta convoy, killing three soldiers

<sup>113</sup> Irrawaddy (15 May 2021) Myanmar Junta’s Troops Use Civilians as Human Shields in Assault on Mindat; Diplomat (17 May 2021) Myanmar Seizes Western Town After Heated Battle with Civilian Militia

<sup>114</sup> Frontier Myanmar (14 May 2021) Communities defy junta’s attempts to rule wards and villages

<sup>115</sup> Armed Conflict Location & Event Data Project (ACLED) (updated 7 May 2021) Data Export Tool, available at <https://acleddata.com/data-export-tool/>

<sup>116</sup> Frontier Myanmar (14 May 2021) Communities defy junta’s attempts to rule wards and villages

<sup>117</sup> Frontier Myanmar (15 May 2021) Unpaid power bills put junta finances on the line

<sup>118</sup> Frontier Myanmar (15 May 2021) Unpaid power bills put junta finances on the line

## Barriers to making and fulfilling contracts

The junta will have both legal difficulties in entering into or benefitting from contracts made by the civilian government, including loans and grants, and logistical challenges in making or fulfilling them.

Without legal authority, the junta will have difficulty showing that it can fill the shoes of the government that contracted with banks and others preceding the coup. Banks have been reticent in similar past situations: in 2020, the International Monetary Fund said it could not consider Nicolas Maduro's request for funding to Venezuela because his regime was not recognized by the international community.<sup>119</sup>

Furthermore, the junta's top leadership is composed of people sanctioned by the EU, UK, US, and other countries, posing complications for dealing with them. Under EU laws, for example, a person may not make funds or economic resources available to an entity that is controlled by a sanctioned person if it would benefit that person.<sup>120</sup> Likewise, the US has made clear that entities in the US cannot contract with sanctioned individuals, *even in their capacities as leaders of non-sanctioned entities*.<sup>121</sup>

The junta's judiciary overhaul also threatens the enforcement of contracts to which Burma is a party.

## Investor due diligence

Investors, like other businesses, should comply with responsible business practices. As clarified in OECD's *Responsible business conduct for institutional investors: Key considerations for due diligence under the OECD Guidelines for Multinational Enterprises*, investors are expected to conduct due diligence by "identifying actual and potential adverse impacts within investment portfolios and potential investments" and "using leverage to influence investee companies causing an adverse impact to prevent or mitigate that impact." This includes assessment of socio-economic factors of the context in which investees operate and the governance context in which investees operate. Under the UN's Guiding Principles on Business and Human Rights, investors should conduct ongoing due diligence on actual and potential human rights impacts in their value chains, and act accordingly.

Investors must consult with local communities and develop appropriate tools for screening business partners, and recognize that in many cases "it will hardly be possible to invest in a way that is compliant with international standards."

OECD (2017) *Responsible business conduct for institutional investors: Key considerations for due diligence under the OECD Guidelines for Multinational Enterprises*; UN Human Rights, Office of the High Commissioner (2011) *Guiding Principles on Business and Human Rights*; UN General Assembly (21 Jul 2020) *Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises, A/75/212*

<sup>119</sup> Bloomberg (18 Mar 2020) IMF Won't Lend to Venezuela Because Maduro Lacks Recognition

<sup>120</sup> European Court of Justice (5 May 2015) *Melli Bank v Council*, EU:C:2012:137

<sup>121</sup> Gibson Dunn (16 Feb 2021) *New U.S. Sanctions and Export Controls Target Military Behind Coup in Myanmar*

## Annex 1: Multilateral development banks (MDBs) and “de facto governments”

### Responses to the current situation in Burma

On 19 February, the World Bank announced it had temporarily put a hold on disbursements for its operations in Myanmar.<sup>122</sup> It further clarified that it would not be processing withdrawal requests received on or after 1 February, but would continue making payments to suppliers, contractors, and consultants for withdrawal applications received prior to 1 February.<sup>123</sup> Likewise on 10 March, the Asian Development Bank (ADB) announced it had put a hold on sovereign disbursements and new contracts effective 1 February. Each of these followed an earlier, less committal statement in response to the coup.<sup>124</sup> However, in both instances it is unclear whether their private project loans, loans through financial intermediaries, and other financial instruments and guarantees will continue.<sup>125</sup>

The Asian Infrastructure Investment Bank (AIIB) has not published any statement on Myanmar. It was reported on 2 June that the Bank would not halt funding in Burma, and could possibly even consider new financing proposals, despite the current situation. AIIB Vice President Joachim von Amsberg said that the bank does “not take a view on the form of government,” but would go through its checklist on dealing with de facto governments, which includes whether the “de facto government” has effective control of territory, the state’s recognition of other financial obligations, the position taken by neighboring (and other) countries and international organizations, and the financial risk of new funding.<sup>126</sup>

The IMF has said that its engagement with Burma, including any new obligations, has to be determined on an ongoing basis by its membership; there is not standard policy. Communication director Gerry Rice said in a May 2021 press conference: “the Fund is not currently engaging with the regime and effective control in Myanmar, and we will follow the guidance of our membership regarding engagement going forward.”<sup>127</sup>

The other MDBs have remained silent.

Without thorough examination of their portfolios, MDBs also risk continuing to assist the junta through indirect support, such as through financial intermediaries. The extent of this is obscured by the difficulty of tracing these relationships. For example, activist group Justice for Myanmar revealed in June 2021 that both the AIIB and the World Bank Group’s Multilateral Investment Guarantee Agency (MIGA) are supporting financing to the Myanmar Fiber Optic Communication Network (MFOCN), which does business with the junta, through their investments in financial intermediaries.<sup>128</sup>

### Bank policies on “de facto governments”

According to the World Bank Operational Policy 7.30, a “de facto government” is one that comes into power by means not provided for in the state’s constitution. In such a case, the Bank’s continued disbursements and/or new funding requires that all parties will be able to take all actions necessary to carry out their obligations under their agreements with the Bank (including repayment), the obligations will be valid and binding, and a proper legal framework exists to ensure these things.<sup>129</sup> Furthermore, the Bank must ascertain:

“(a) whether a new loan or guarantee would expose the Bank to additional legal or political risks associated with the country’s financial obligations and obligations to carry out the project, given the government’s de facto nature;

---

<sup>122</sup> World Bank (updated 19 Feb 2021) Developments in Myanmar

<sup>123</sup> Reuters (26 Feb 2021) World Bank halts payment requests on Myanmar projects made after Feb 1 coup

<sup>124</sup> World Bank (updated 19 Feb 2021) Developments in Myanmar; Asian Development Bank (2 Feb 2021) ADB Statement on Developments in Myanmar

<sup>125</sup> Asian Development Bank (10 Mar 2021) ADB Statement on New Developments in Myanmar

<sup>126</sup> Financial Times (2 Jun 2021) China-backed AIIB leaves door open to lending to Myanmar’s junta; Asian Infrastructure Investment Bank (21 Mar 2017) Operational Policy on International Relations

<sup>127</sup> International Monetary Fund (6 May 2021) Transcript of IMF Press Briefing

<sup>128</sup> Justice for Myanmar (21 Jun 2021) AIIB and World Bank Group Financially Exposed to Myanmar Military Business

<sup>129</sup> World Bank (Jul 2001) OP 7.30 - Dealings with De Facto Governments

- (b) whether the government is in effective control of the country and enjoys a reasonable degree of stability and public acceptance;
- (c) whether the government generally recognizes the country's past international obligations, in particular any past obligations to the Bank (in this regard, the Bank examines the country's record; one indicator is whether past governments have generally recognized the obligations incurred by the de facto governments that have preceded them);
- (d) the number of countries (particularly neighboring) that have recognized the government or dealt with it as the government of the country; and
- (e) the position of other international organizations toward the government.”<sup>130</sup>

The AIIB defines a “de facto government” similarly, and when dealing with a “de facto government” must ascertain that:

- “(a) a proper legal framework exists: (i) to secure approval of any new Financing and any undertakings of the Member; (ii) to permit the Project to be carried out and allow its objectives to be achieved; and (iii) to allow any required payments to the Bank under the Financing to be made; and
- (b) (i) all parties to the Legal Agreements relating to the Project have taken or will be able to take all actions necessary to carry out their respective obligations under their respective Legal Agreements; and (ii) these obligations are or will be legally binding in accordance with their terms.”<sup>131</sup>

While the AIIB Policy is relatively new, it is substantially similar to the World Bank Policy, which has been criticized for a lack of transparency and consistency from country to country.<sup>132</sup>

Neither ADB nor the International Monetary Fund (IMF) have a comparable policy, leading to concerns about consistency of their approach and factors driving their lending decisions in novel situations. The May IMF statement built upon its initial reaction in February, saying that based on precedent it was refraining from engagement until achieving clarity on its members’ views, and that only low-level engagement such as fact finding was taking place.<sup>133</sup> The IMF’s reference to precedent seems to confirm that its board will dictate scope and terms of engagement on an ad hoc basis, as when it re-admitted Somalia and Sudan.

### **Problems raised by the current situation in Burma**

MDB financing decisions are inherently political, even if banks assert that they cannot interfere in political affairs and are apolitical by virtue of their Articles of Association. For one thing “any development intervention has a potential political impact since it can empower or disempower the incumbent political authority or its challengers.”<sup>134</sup> As well, human rights concerns can undermine development objectives.

In any case, MDBs must consider a state’s political reality when it affects the state’s economic reality. This helps to explain why they engage with judicial reform and governance issues, recognizing links between governance, corruption, growth, and poverty reduction.<sup>135</sup> As stated in the World Bank’s OP 2.30, “The Bank recognizes that economic and social stability and human security are pre-conditions for sustainable development.”<sup>136</sup>

<sup>130</sup> World Bank (Jul 2001) OP 7.30 - Dealings with De Facto Governments

<sup>131</sup> Asian Infrastructure Investment Bank (21 Mar 2017) Operational Policy on International Relations

<sup>132</sup> Michael Nesbitt (2006–2007) The World Bank and De Facto Governments: A Call for Transparency in the Bank’s Operational Policy

<sup>133</sup> International Monetary Fund (11 Mar 2021) Transcript of IMF Press Briefing

<sup>134</sup> Alastair McKechnie (2017) Multilateral development bank support to country-led transitions from fragility and conflict to resilience, *from* Overseas Development Institute (2017) Six recommendations for reforming multilateral development banks

<sup>135</sup> World Bank Group (28 Sep 2007) Implementation Plan for Strengthening World Bank Group Engagement on Governance and Anticorruption; Hassane Cisse (2012) Should the Political Prohibition in Charters of International Financial Institutions Be Revisited? The Case of the World Bank, *from* World Bank (2012) The World Bank Legal Review, Volume 3: International Financial Institutions and Global Legal Governance

<sup>136</sup> World Bank (revised 1 Jul 2014) OP 2.30 – Development Cooperation and Conflict

As Ibrahim Shihata explains, the World Bank “may even take political human rights violations into account if they are so pervasive and repugnant as to clearly affect the country’s investment climate and its economic performance,” and it “may not pursue the financing of a project if the freedom of speech and assembly required” for the purposes of “consultation with the local NGOs and participation of affected people in the design of many projects to be financed by the Bank” is lacking.<sup>137</sup>

This helps to account for the World Bank’s consideration of Greece’s military government, civil rights deficiencies, and “political uncertainties” in the 1960s; its halt to lending to Portugal and South Africa in the 1960s in light of UN censure; its concern following US legislation allowing the Bank’s US Executive Director to oppose loans to a country with a consistent pattern of gross human rights violations; and its reduction in lending to India and Pakistan after 1998 nuclear weapons tests.<sup>138</sup>

Likewise, these considerations may explain the World Bank’s decision to suspend its lending to Cambodia after reports that the project was connected to forced evictions, inadequate compensation, and lack of due process for affected landowners;<sup>139</sup> and its decision to suspend a USD 90 million loan to Uganda after the country’s president signed a law creating harsh penalties for homosexuality.<sup>140</sup>

While these banks are independent international institutions, they are responsible for abiding by international sanctions. For example, the World Bank must pay due regard to the UN Security Council’s decisions under UN Charter Chapter VII and members’ obligations to comply with those decisions.<sup>141</sup>

Furthermore, MDBs financing decisions are bound by their shareholders. Explained succinctly, “MDB charters contain clauses precluding activities to which the member countries object.”<sup>142</sup>

MDB shareholders may in turn be bound by the sanctions imposed by their countries. Multiple foreign governments—which are shareholders in MDBs—have sanctioned entities and individuals in Burma. For example, the US—the largest shareholder in the World Bank Group and sharing the top position with Japan in the ADB—has sanctioned the junta. European shareholders, as a bloc, represent 23% of shareholder power in AIIB—second only to China—and many have adopted sanctions against the junta.

Shareholders may also be bound by domestic legislation. The US, for example, has the “Pelosi Amendment,” which “requires U.S. Executive Directors at the World Bank and all the regional multilateral development banks (MDBs) to abstain or vote against any proposed action with significant environmental effects if it has not received an appropriate environmental assessment, or if the assessment has not been available to the Executive Directors and the public for 120 days before a vote.”<sup>143</sup>

---

<sup>137</sup> Ibrahim F. I. Shihata (2000) *The Dynamic Evolution of International Organizations: The Case of the World Bank*

<sup>138</sup> Hassane Cisse (2012) *Should the Political Prohibition in Charters of International Financial Institutions Be Revisited? The Case of the World Bank*, from World Bank (2012) *The World Bank Legal Review*, Volume 3: International Financial Institutions and Global Legal Governance

<sup>139</sup> Guardian (10 Aug 2011) *World Bank suspends new lending to Cambodia over eviction of landowners*

<sup>140</sup> Al Jazeera (28 Feb 2014) *World Bank freezes aid to Uganda over gay law*

<sup>141</sup> UN (1948) *Agreement between the United Nations and the International Bank for Reconstruction and Development*

<sup>142</sup> Alastair McKechnie (2017) *Multilateral development bank support to country-led transitions from fragility and conflict to resilience*, from Overseas Development Institute (2017) *Six recommendations for reforming multilateral development banks*

<sup>143</sup> Jonathan Sanford (12 Feb 1998) *Multilateral Development Banks’ Environmental Assessment and Information Policies: Impact of the Pelosi Amendment*

## Annex 2: MDB safeguard policies

### World Bank

The World Bank requires due diligence regarding “potential significance of the environmental and social risks and impacts related to the project,” including environmental and social risks and impacts (Standard 1), labor and working conditions (Standard 2), community health and safety (Standard 4), land acquisition and involuntary resettlement (Standard 5), threats to human safety through conflict or violence, and disproportionate impacts on vulnerable groups.<sup>144</sup>

“The World Bank Group has set two goals that we are helping the world achieve by 2030: Ending extreme poverty and Promoting shared prosperity. [...] We will help achieve them in three ways. First, by promoting sustainable and inclusive economic growth, especially through creating jobs and boosting private investment in infrastructure. Second, by investing in human capital, including childhood development, skills for jobs, and equal opportunities in education, health, and training that can make the biggest differences in countries’ ability to grow sustainably over the long term and become economically competitive. And third, by fostering resilience to global shocks and threats: this means ramping up efforts to tackle global challenges that threaten to roll back development gains, supporting resilience infrastructure, investing in disaster risk preparedness, and supporting the humanitarian-development-peace nexus.”<sup>145</sup>

The World Bank’s ESF applies to new investment project financing (excluding development policy lending and programs for results) as of October 2018, whereas prior-initiated projects are governed by the Bank’s Safeguard Policies.

### World Bank’s International Finance Corporation (IFC) & Multilateral Investment Guarantee Agency (MIGA)

The IFC Performance Standards apply to the World Bank Group’s private sector and guarantee arms: IFC and MIGA. These cover environmental and social risks and impacts (PS1), labor conditions (PS2), community health, safety, and security (PS4), land acquisition and involuntary resettlement (PS5), indigenous peoples (PS7), and cultural heritage (PS8). They include the following language:<sup>146</sup>

“Performance Standard 1 underscores the importance of managing environmental and social performance throughout the life of a project. An effective Environmental and Social Management System (ESMS) is a dynamic and continuous process initiated and supported by management, and involves engagement between the client, its workers, local communities directly affected by the project (the Affected Communities) and, where appropriate, other stakeholders. [...] Business should respect human rights, which means to avoid infringing on the human rights of others and address adverse human rights impacts business may cause or contribute to. Each of the Performance Standards has elements related to human rights dimensions that a project may face in the course of its operations.” (Performance Standard 1, paras. 1–3).

“Performance Standard 4 recognizes that project activities, equipment, and infrastructure can increase community exposure to risks and impacts. In addition, communities that are already subjected to impacts from climate change may also experience an acceleration and/or intensification of impacts due to project activities. [...] In conflict and post-conflict areas, the level of risks and impacts described in this Performance Standard may be greater. The risks that a project could exacerbate an already sensitive local situation and stress scarce local resources should not be overlooked as it may lead to further conflict.” (Performance Standard 4, paras. 1–2).

---

<sup>144</sup> World Bank (2017) Environmental and Social Framework

<sup>145</sup> World Bank Group (2019) The 2030 Sustainable Development Agenda and the World Bank Group: Closing the SDGs Financing Gap (2019 update)

<sup>146</sup> International Finance Corporation (1 Jan 2012) Performance Standards on Environmental and Social Sustainability

## **Asian Development Bank (ADB)**

The ADB has safeguard policies on involuntary resettlement, indigenous peoples, and the environment, which seek to avoid, minimize, or mitigate adverse environmental and social impacts, including protecting the rights of those likely to be affected or marginalized by the development process. Its policies also include the following:<sup>147</sup>

“ADB is responsible for screening projects to specify ADB’s safeguard requirements; undertaking due diligence; and reviewing the borrower’s/client’s social and environmental assessments and plans to ensure that safeguard measures are in place to avoid, wherever possible, and minimize, mitigate, and compensate for adverse social and environmental impacts in compliance with ADB’s safeguard policy principles and Safeguard Requirements 1–4; determining the feasibility of ADB financing; helping the borrower/client in building capacity to deliver the safeguards; and monitoring and supervising the borrower’s/client’s social and environmental performance throughout the project cycle.” (para. 71).

“If a borrower/client fails to comply with legal agreements on safeguard requirements, including those described in the safeguard plans and frameworks, ADB will seek corrective measures and work with the borrower/client to bring it back into compliance. If the borrower/client fails to reestablish compliance, then ADB may exercise legal remedies, including suspension, cancellation, or acceleration of maturity, that are available under ADB legal agreements. Before resorting to such measures, ADB uses other available means to rectify the situation satisfactory to all parties to the legal agreements, including initiating dialogue with the parties concerned to achieve compliance with legal agreements.” (para. 72).

## **Asian Infrastructure Investment Bank (AIIB)**

The AIIB Environmental and Social Framework includes the following:<sup>148</sup>

“The Bank supports infrastructure and interconnectivity to promote economic growth and improve the lives of people in Asia. Consistent with the Sustainable Development Goals (SDGs), the Bank recognizes the need to address the three dimensions of sustainable development – economic, social and environmental – in a balanced and integrated manner.” (para. 7).

“For the Bank, inclusion means empowering people to participate in, and benefit from, the development process in a manner consistent with local conditions. Inclusion encompasses policies to promote equity of opportunity and non-discrimination, by improving the access of poor, disadvantaged and disabled people to education, health, social protection, housing, environmental quality, infrastructure, affordable energy, water and sanitation, employment, financial services and productive assets. It also embraces action to remove barriers against vulnerable groups, who are often excluded from the development process, and to ensure that their voices can be heard.” (para. 8).

“For the principles of environmental and social sustainability to be effectively integrated into policies and Projects, the Bank believes that they should become part of routine decision-making processes and that environmental and social risks and impacts should receive full consideration in the identification, preparation, implementation and evaluation of all Projects.” (para. 9).

“The Bank aims to work in a cooperative manner – by providing expert advice and oversight from its staff, supplemented by specialized consultants – to support its Clients in integrating consideration of environmental and social risks and impacts into their Projects.” (para. 10).

The Bank will not knowingly finance Projects involving: forced labor or harmful or exploitative forms of child labor; production or trade in weapons and munitions, alcoholic beverages (excl. beer and wine), or tobacco; gambling, casinos, and related; production or trade of something illegal under national or international laws; commercial logging in tropical or old-growth forests; production or trade in wood or forestry products (excl. sustainably managed forests); or harmful fishing practices. (Environmental and Social Exclusion List).

---

<sup>147</sup> Asian Development Bank (Jun 2009) Safeguard Policy Statement

<sup>148</sup> Asian Infrastructure Investment Bank (amended Feb 2019) Environmental and Social Framework. A revised ESF will come into effect October 2021.

## International Monetary Fund (IMF)

The IMF Safeguards Assessment Policy was introduced to provide reasonable assurances that central banks of countries using IMF (“Fund”) resources have control, accounting, reporting and auditing systems in place to manage resources, which are adequate to ensure the integrity of operations. If an assessment concludes that the ELRIC (external audit, legal, financial reporting, internal audit and control mechanisms) framework is inadequate, the central bank must agree on recommendations to alleviate confirmed weaknesses, and implementation is monitored in the context of the member’s financing arrangement with the Fund.<sup>149</sup>

The safeguards policy serves as a complement to the Fund’s other safeguards, which include limits on access, conditionality and program design, measures to address misreporting, and post-program monitoring.

The IMF also has key concepts for social safeguards in low-income countries:<sup>150</sup>

- Inclusive growth versus pro-poor growth. While there is no universally agreed definition of the concept of inclusive growth, it generally refers to circumstances where growth is robust and broad-based across sectors, and the benefits are widely shared. Growth is said to be pro-poor in relative terms if and only if the incomes of poor people grow faster than those of the population as a whole.
- Pro-poor growth can be the result of direct income redistribution schemes, whereas fostering inclusive growth requires effort to boost productivity and measures to mitigate growth-inequality tradeoffs (see *What Is Inclusive Growth*, World Bank; and *Fostering Inclusive Growth*, IMF).
- Social protection consists of social safety nets and social insurance policies:
  - Social safety nets (or social assistance) are defined as “noncontributory measures designed to provide regular and predictable support to poor and vulnerable people.” They can include measures such as cash transfers, school meals, in-kind transfers (such as targeted food assistance), public work programs, and fee waivers (The State of Social Safety Nets, World Bank 2018).
  - Social insurance policies are typically financed by contributions and can include old age and disability pensions, maternity, unemployment, and health insurance.
- Other priority spending usually includes certain infrastructure spending that can be a development priority but may provide limited or no benefits to the vulnerable in the short term. Due to the country-specific nature of such spending, this note focuses more on social spending. Country teams, in close consultation with the authorities, need to exercise judgment when deciding on whether to incorporate other priority spending into program design.

The IMF’s 2020–2021 COVID-19-related disbursements to Burma of USD 728.9 million were part of a Rapid Financing Instrument/Rapid Credit Facility (RFI/RCF). Obligations relating to these “minimal conditionality” loans include that Burma publish online: (1) all quarterly reports on COVID-related expenditures; (2) results of a targeted audit of COVID-related expenditures by Burma’s Office of the Auditor General; and (3) information on procurement contracts on COVID-related expenditures.<sup>151</sup>

---

<sup>149</sup> International Monetary Fund (1 Jul 2010) Safeguards Assessments—Review of Experience

<sup>150</sup> International Monetary Fund (Jul 2018) Guidance Note on IMF Engagement on Social Safeguards in Low-Income Countries

<sup>151</sup> International Monetary Fund (updated 25 Feb 2021) Questions and Answers on Myanmar