

Fair Finance Guide Japan

Human Rights Thematic Case Study



Who is Financing the Myanmar Military?

Tracking Monetary Flows from Japanese Businesses and the Institutions that Finance Them

Fair Finance Guide Japan
In Cooperation with Mekong Watch
15 February 2022



<http://fairfinance.jp>



This material/production has been financed by the Swedish International Development Cooperation Agency, Sida. Responsibility for the content rests entirely with the creator. Sida does not necessarily share the expressed views and interpretations.

Executive Summary¹

Since the coup d'état on 1 February 2021, the brutality of Myanmar's armed forces has drawn international attention and condemnation. In Myanmar itself, labor unions, LGBTQ groups, medical workers, teachers, and private citizens expressed strong opposition to the restoration of military rule. After the first person was shot to death by security forces on 9 February in Myanmar's capital, Nay Pyi Taw, the military intensified its violence against unarmed citizens. As of 2 August, half a year after the coup, 945 people had been killed and 5,474 people arbitrary detained. The death toll includes children and people who were not participating in demonstrations.

While these brutal acts by the Myanmar military committed after the coup have received much international attention, it needs to be understood that crimes against humanity and human rights violations stemming from military and "security" operations started long before the coup.

Although it may seem as though Myanmar was transitioning to civilian government after 2011, the Myanmar military, known as the Tatmadaw, actually maintained a high degree of autonomy from elected civilian administrations. This means that in most of Myanmar (areas controlled by ethnic armies differ), there was a dual structure in which power was held by an unarmed civilian administration and the armed Tatmadaw. In this way, the Tatmadaw has continued to perpetrate human rights abuses in the absence of civilian control.

For example, in August 2017, brutal military operations were conducted against Rohingya Muslims in Rakhine State. Multiple international human rights organizations stated that murder, rape, arbitrary arrests, and mass arson of homes were committed in hundreds of predominantly Rohingya villages in Rakhine State. Regarding this humanitarian crisis, on 11 November 2019, a case was filed against the Myanmar government at the International Court of Justice (ICJ) for violation of the Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention). In March 2017, the UN Human Rights Council established the Independent International Fact-Finding Mission on Myanmar (IIFMM). In 2018, IIFMM criticized the Tatmadaw for its crimes against humanity and stated that the atrocities constitute serious violations of international humanitarian law amounting to war crimes.

¹ This executive summary and report are translations of the Japanese original released in October 2021. This English translation includes some updates, and some sources in the footnotes have been changed to English language sources.

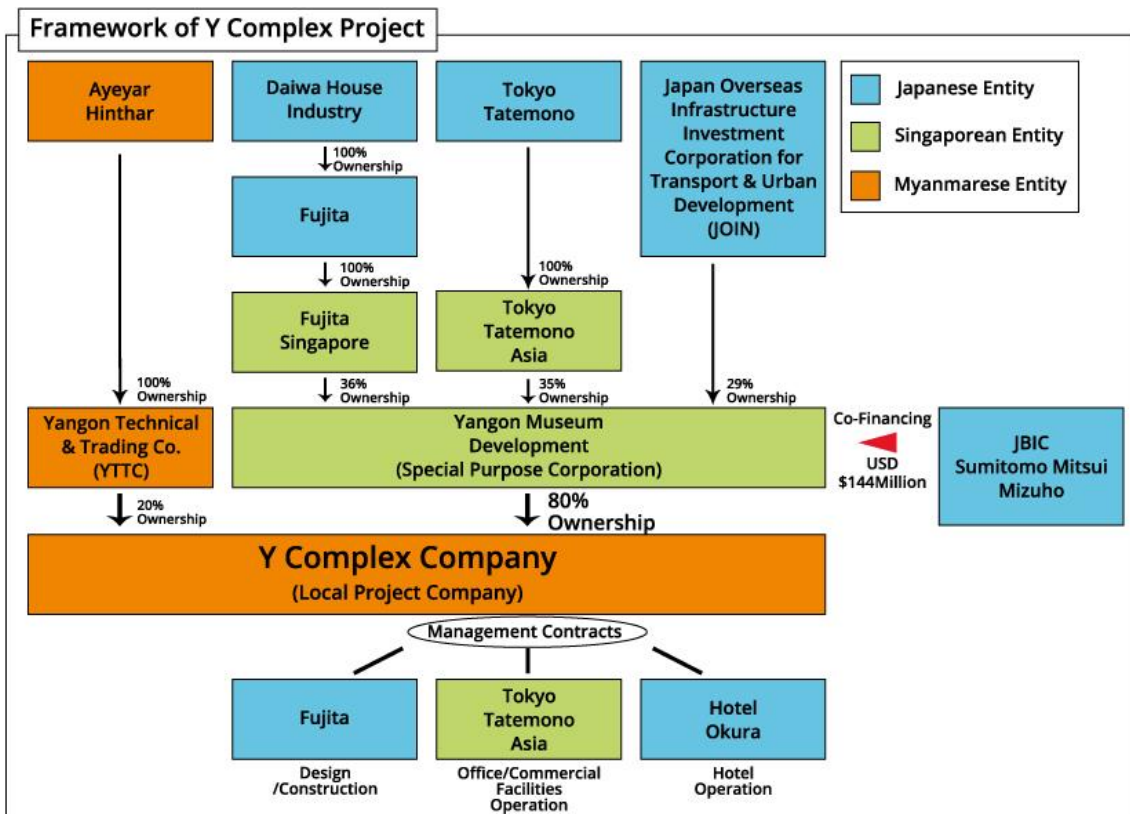
Even while these acts were being committed, however, Myanmar was being called “the last frontier” in reference to economic growth opportunities. The country, whilst experiencing horrific human rights violations, was also seeing investment and loans pour in from overseas. The impacts of these developments went beyond the control of the civilian administration and brought prosperity to the military and companies with close ties to it. IIFFMM concluded that Myanmar Economic Holdings Limited (MEHL) and Myanmar Economic Corporation (MEC) and their subsidiaries generated more revenue than any civilian-owned company in Myanmar. Senior military officials are deeply involved in the operation of MEHL, and all MEHL shares are held by current or former military officers, regiments and units, and former servicemembers. IIFFMM also reported that much of the vast revenue generated by MEHL, MEC and their subsidiaries is not put into the national budget, but is funding the brutal Tatmadaw.

Given this situation, companies conducting business or investing in Myanmar must understand that parallel to the “transition to civilian government,” the Tatmadaw maintained its autonomy and continued to wield power. Anyone doing business in Myanmar needs to be fully aware of who the beneficiaries of the business relationship are, and conduct appropriate human rights due diligence. Failure to do so could lead to becoming indirectly complicit in crimes against humanity.

This is particularly evident in the Y Complex development project, which is led by Tokyo Tatemono Co. Ltd. and Fujita Corporation, a subsidiary of the Daiwa House Group. There is a strong suspicion that US\$2.18 million in annual payments to rent the land for this project site has already been paid to the Office of the Quartermaster General of the Myanmar military. Furthermore, everything developed on the land is to be transferred to the military upon termination or expiry of the land lease. This US\$144 million project is co-financed by Mizuho Bank, Ltd., Sumitomo Mitsui Banking Corporation and the Japan Bank for International Cooperation (JBIC).



Y Complex Project Construction under way (2021)



Another business of concern is the acquisition of two local Myanmar corporations by Kirin Holdings Company, Ltd. Both are both joint ventures with MEHL, which as mentioned, is closely affiliated with the military. In both joint ventures, Kirin holds 51% and MEHL holds 49% of the shares, which means that in a situation where dividends are paid normally, Kirin and MEHL divide profits in half. For Kirin to generate profits through its operations in Myanmar means that a corporation with close ties to the military also profits. NGOs in Japan and internationally have also been raising this issue. Although Kirin responded by conducting human rights due diligence, it was evident that Kirin misunderstood the issues, and the survey it conducted stopped short of addressing profits to MEHL. A second investigation by an external evaluator ended, unable to access relevant evidence.

Fair Finance Guide Japan takes seriously the fact that Japanese public and private banks have financed transactions with clearly foreseeable human rights risks and demands that they further strengthen their due diligence. More specifics are given below:

MUFG Bank: It has been confirmed that MUFG Bank has provided Kirin Holdings with a total of JPY90 billion in securities underwriting and corporate loans. As Kirin’s main bank with influence beyond the normal investment and loan relationship, MUFG

Bank should use its leverage to ensure that Kirin Holdings promptly dissolves the joint ventures with the Tatmadaw-affiliated MEHL.

Mizuho Bank and Sumitomo Mitsui Banking Corporation: It has been confirmed that Mizuho Bank and Sumitomo Mitsui Banking Corporation provided a total of US\$97 million in financing for the Y Complex development project, even though they were in a position to be fully aware of the details of and stakeholders involved in the project. Both banks should make sufficient efforts before and during lending to ensure that projects they are financing do not negatively affect local people and communities, in accordance with the Equator Principles to which they are both signatories. If there is no improvement, they should use humanitarian grounds to cancel lending or demand early repayment.

Sumitomo Mitsui Trust and Norinchukin Bank: It has been confirmed that both Sumitomo Mitsui Trust Holdings and Norinchukin Bank have provided investment and lending to Kirin Holdings. Both banks should reconsider whether such financing is in accordance with their human rights policies. In particular, Sumitomo Mitsui Trust's investment is large. It must remember that until the current joint venture is dissolved, any profits made through Kirin's operations in Myanmar means that a company closely affiliated with the Myanmar military is also profiting.

Japan Bank for International Cooperation (JBIC): It has been confirmed that JBIC provided a loan of US\$47 million for the Y Complex development project as well a loan for a portion of the US\$560 million paid by Kirin Holdings to establish the joint ventures in Myanmar. JBIC has established "Guidelines for Confirmation of Environmental and Social Considerations," which applies to its loans and investments. JBIC's Guidelines state that "derivative and secondary impacts" are to be examined and investigated "to a reasonable extent." Given that an independent investigation by a United Nations body has exposed serious problems, JBIC must recognize those problems as reasonable social risk and respond immediately.

Background: Human Rights and the Humanitarian Crisis in Myanmar

Grave human rights violations continue to be committed by Myanmar's military, known as the Tatmadaw. In recent years, it has been revealed that in addition to the national budget, the Tatmadaw has built its own business network and uses its revenue to fund military operations. Since Myanmar began its "transition to civilian government" in 2011, the Japanese government has provided yen loans to Myanmar totaling more than one-trillion yen. In this context, more than 400 Japanese companies set up operations in Myanmar, and some of these companies have become involved in the Tatmadaw's business network, risking entanglement in the human rights violations perpetrated by the Tatmadaw. This report will introduce two case studies to provide a deeper understanding of the problems of doing business in Myanmar and point out investments that should be avoided.

After the end of World War II, Myanmar (then called Burma) gained independence in 1948, and the Tatmadaw's human rights abuses have continued throughout most of post-independence history.

At independence, like many other countries in Southeast Asia, Myanmar's national borders were determined by the boundaries of its colonizer, and this area included the territories of many diverse ethnic groups. Since the early days of independence, ethnic conflicts arose not only due to differences in culture and customs, but also due to political factors stemming from divisive colonial policies. The British favored and used ethnic minorities to oppress the Burman majority. The Japanese imperial army also exacerbated divisions after invading Burma during WWII, using similar tactics in what is now Rakhine State.²

After independence, Burma's new government was unable to handle various political and military conflicts, and governance was delegated to the military. Basically since then, even when the citizens of Burma, now Myanmar, have called for democracy, the military junta has maintained its dictatorial system through repeated coup d'états and suppression of pro-democracy movements. The military junta continued until it began the "transition to civilian government" in 2011.

It is said that the Tatmadaw justifies its existence as the force maintaining unity in Myanmar and the same national borders gained upon independence. The Tatmadaw is also said to be the only military in the world that has been in continuous combat for 70 years. It is this military that has suppressed pro-democracy movements and ethnic struggles for independence and

² Uda, Yuzo. *Rohinjya Sabetsu no Shinsou (The Rohingya: Depths of Discrimination in Japanese)*. Koubunken Co., Ltd. 2020.

autonomy. The Myanmar military labels them all as the “enemy” threatening the unity of the State.

In particular, the world knows well that the Tatmadaw violently suppressed demonstrations in 1988 and protests led by monks in 2007, leading to many deaths, injuries and arrests. It is estimated that 3,000 people were massacred in the crackdowns in 1988. Armed conflicts between the Tatmadaw and ethnic armed groups also continue in ethnic minority areas. Countless have suffered from the Tatmadaw’s systematic use of forced labor, forced relocation, sexual violence, and extrajudicial killings conducted as part of its campaign to eliminate ethnic armed groups.³ The Tatmadaw has also used these brutal tactics to advance development projects, such as gas pipelines and hydropower projects.⁴

After the “transition to civilian government” in Myanmar, there was another military operation against the Rohingya Muslim population in Rakhine State in August 2017. International human rights groups say the killing, rape, arbitrary detention, and large-scale arson of homes in hundreds of villages in northern Rakhine State, where Rohingya Muslims make up the majority of the population, amount to crimes against humanity.⁵ As of the end of 2020, there were 980,000 refugees from Myanmar in neighboring countries, and 370,000 people were internally displaced.⁶ The majority of these refugees are people who fled those atrocities.

With regard to the humanitarian crisis in Rakhine State, The Gambia, a Muslim country in western Africa, filed a suit against the Myanmar government on 11 November 2019. The suit was filed with the International Court of Justice (ICJ), the principle judicial organ of the United Nations, for violations of the Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention).⁷ The ICJ issued provisional measures to the government of

³ See for example, “License to Rape.” Published by Shan Human Rights Foundation and Shan Women’s Action Network in May 2002.

https://burmacampaign.org.uk/media/License_to_rape.pdf (Accessed 31 Jan 2022)

⁴ The following are examples of reports on abuses related to development projects:

“Dispossessed: Forced Relocation and Extrajudicial Killings in Shan State.” April 1998. Shan Human Rights Foundation.

“Total Denial Continues: Earth Rights Abuses Along the Yadana and Yetagan Pipelines in Burma.” 2000. EarthRights International.

“Dammed by Burma’s Generals: The Karenni Experience with Hydropower Development From Lawpita to the Salween.” 2006. Karenni Development Research Group.

⁵ Human Rights Watch. “Burma: Widespread Rape of Rohingya Women, Girls.”

<https://www.hrw.org/news/2017/11/16/burma-widespread-rape-rohingya-women-girls> (Accessed 31 Jan 2022)

⁶ <https://reporting.unhcr.org/sites/default/files/Myanmar%20Emergency%20Update-1August2021.pdf>

⁷ Ishizuka, Chisa. “*Kokusaishihousaibansho niokeru Rohingya Mondai*” (“The Rohingya Issue as seen at the International Court of Justice,” in Japanese). 21 June 2020

<https://jsil.jp/archives/expert/2020-12>

Myanmar to take all measures within its power to prevent genocide and to preserve evidence related to the allegations.⁸

Also in relation to Rakhine State, the United Nations Human Rights Council established the International Independent Fact-Finding Mission on Myanmar (IIFMM), and in 2018, it both condemned the crimes against humanity committed by the Tatmadaw and reported that the atrocities were “violations of international humanitarian law amounting to war crimes.”⁹ More of IIFMM’s findings will be introduced later.

While much attention has been paid to the atrocities committed by the Myanmar military since the 2021 coup, it is important to understand that the Tatmadaw has been committing crimes against humanity and human rights violations in its military operations and activities to “maintain law and order” since long before this coup.

After the 2021 Coup d’etat

In the early morning of 1 February 2021, the Tatmadaw declared a state of emergency, citing Article 417 of the Constitution. It detained State Counselor Aung San Suu Kyi, President Win Min and other key government officials, and declared that it had seized full authority of the State. The following day, it established the “State Administration Council,” chaired by Tatmadaw Commander-in-Chief Min Aung Hlaing.

The day of the coup coincided with the first parliamentary session to be convened after the November 2020 elections, so all elected representatives had gathered at the capital of Nay Pyi Taw. Aung San Suu Kyi’s National League for Democracy (NLD) had won the election, while the military-affiliated Union Solidarity and Development Party (USDP) lost seats. The Tatmadaw claimed that there were election irregularities and asked for a postponement of the parliamentary session, but the NLD rejected this. The Tatmadaw claimed that there were grounds for the state of emergency, due to “the use of coercion to attempt to usurp the state.”¹⁰ International observers, including Japan, however, had found the elections to have been conducted fairly, for the most part,

⁸ International Court of Justice, Summary. “Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar).” 23 January 2020. <https://www.icj-cij.org/public/files/case-related/178/178-20200123-SUM-01-00-EN.pdf>

⁹ UN Human Rights Council. “Report of the detailed findings of the Independent International Fact-Finding Mission on Myanmar” 17 September 2018. (A/HRC/39/CRP.2). Pages 381, 382. https://www.ohchr.org/Documents/HRBodies/HRCouncil/FFM-Myanmar/A_HRC_39_CRP.2.pdf (Accessed 28 Jan 2022)

¹⁰ Nakanishi, Yoshihiro. “*Myanma-seihen, Sono Haikei to Kouzou*” (“The Background and Structure of Political Transition in Myanmar,” in Japanese). *Sekai*. Iwanami Shoten, Publishers. Vol 4., 2021.

and the Tatmadaw's claims have not been accepted internationally nor by the citizens of Myanmar.

On 6 February 2021, thousands of people demonstrated in Yangon, Myanmar's largest city, and a diverse array of groups, including labor unions and LGBTQ groups, took to the streets to express their opposition to the restoration of military rule. The young "Generation Z" used social media to effectively record and communicate these demonstrations to the world. A civil disobedience movement (CDM) was also started by health care workers, and was soon joined by many other civil servants, including teachers.¹¹

After a shot fired by security forces in Nay Pyi Taw caused the first death on 9 February 2021, however, the Tatmadaw intensified its violence against unarmed civilians. For example, on National Armed Forces Day on 27 March 2021, 114 people were killed by gunfire and other means.¹² According to an 11 June 2021 statement by the Assistance Association for Political Prisoners (AAPP), at least 22 people had been tortured to death after being detained, and there were reports of outrageous violence, such as junta troops shooting a man and then dragging him onto a burning tire while still alive.¹³ AAPP reports that as of 28 January 2022, one year since the coup, 1,499 have been confirmed killed, a total of 11,810 arrested, and 8,798 people currently detained.¹⁴ Some of those killed included children and people who did not participate in the demonstrations. Arrests of those participating in the CDM also continue.

Since June, Myanmar has seen a sharp increase in deaths due to an increase in the number of people infected with COVID-19. After the coup, many medical personnel joined the CDM, and the Tatmadaw responded by detaining doctors and nurses participating in the movement, or putting them on wanted lists. As a result, many medical personnel have been forced to live in hiding, and the medical system is no longer functioning. Due to this situation, many people with COVID-19 stayed at home, and medical oxygen purchased by individuals or supplied by private charitable organizations became a lifeline. In July 2021, however, the Tatmadaw began restricting sales of medical oxygen and requiring people to obtain recommendation letters from local authorities to purchase it. This caused further delays in supply, and increased concern that

¹¹ Kudo, Toshihiro. "(2020nen Myanma-Sousenkyo) ku-deta-nohaikei—gosan no rensa" ("The 2020 Elections in Myanmar—a chain of miscalculations" in Japanese). Feb 2021. IDE-JETRO. https://www.ide.go.jp/Japanese/IDESquare/Eyes/2021/ISQ202120_008.html?fbclid=IwAR1IWp88zxqnBvg2ftdaGBf4xmWC6td28zd03hMJhgdsVef9_36JrMoEg8 (Accessed 6 Oct 2021)

¹² Myanmar Now. "Cities terrorized as junta escalates lethal violence against public on Armed Forces Day." <https://www.myanmar-now.org/en/news/cities-terrorised-as-junta-escalates-lethal-violence-against-public-on-armed-forces-day>

¹³ Assistance Association for Political Prisoners. 11 June 2021 Press Release, "Torture to Death in Detention." <https://aappb.org/?p=15746>

¹⁴ Daily Briefing in Relation to the Military Coup. 28 January 2022. <https://aappb.org/?p=19897> (Accessed 31 January 2022).

the number of deaths would increase.¹⁵ Many civilians have lost their lives because of the Tatmadaw's failure to respond appropriately to the pandemic, and this is also a human rights violation that cannot be overlooked.

On 1 August, six months after the Tatmadaw declared full control of the country, the Commander-in-Chief declared himself interim prime minister. Citizens of Myanmar, however, show their support for the Committee Representing Pyidaungsu Hluttaw (CRPH), which was formed on 5 February 2021, and the National Unity Government (NUG), which was established in April under CRPH leadership. CRPH and NUG deny the legitimacy of the current military junta, and it has not been accepted by most of Myanmar's citizens or by the international community due to the way it seized power and its subsequent abhorrent violence.

According to reports, it is estimated that about a third of Myanmar's border areas are controlled by about 20 armed groups. Major armed groups include the United Wa State Army, the Karen National Union, the Kachin Independence Army, the Arakan Army, the Ta'ang National Liberation Army, and the Myanmar Nationalities Democratic Alliance Army. Ten armed groups had signed a nationwide ceasefire agreement with the Myanmar government, but fighting continued in some areas, including northern Kachin and Shan States and western Rakhine State.¹⁶ As mentioned previously, these areas have suffered the impacts of armed conflict and human rights abuses perpetuated by the deployment of Tatmadaw forces for decades.

Since the coup, attacks by the Tatmadaw in ethnic minority areas have also intensified, increasing the number of internally displaced people. According to the UNHCR, 22,000 people had moved to neighboring countries as refugees and 206,000 people had become internally displaced in the six months between the coup on 1 Feb 2021 and 1 August 2021.¹⁷

According to a briefing paper issued by the Karen Peace Support Network¹⁸ on 25 May 2021, the Tatmadaw was shelling the northern part of Karen State even before the coup, and by January 2021, more than 5,000 people had been displaced. After the coup, in addition to shelling, airstrikes were carried out for the first time in 25 years, and in Mutraw (Papun) District of Karen

¹⁵ “‘We can’t help patients who are in need’: Deaths continue as regime tightens grip on oxygen.” Frontier Myanmar. 2 August 2021.

<https://www.frontiermyanmar.net/en/we-cant-help-patients-who-are-in-need-deaths-continue-as-regime-tightens-grip-on-oxygen/>

¹⁶ International Crisis Group. “The Cost of the Coup: Myanmar Edges Toward State Collapse.” Briefing No. 167. 1 April 2021.

<https://www.crisisgroup.org/asia/south-east-asia/myanmar/b167-cost-coup-myanmar-edges-toward-state-collapse>

¹⁷ UNHCR RBAP Myanmar Emergency Update as of 01 August 2021.

<https://reporting.unhcr.org/sites/default/files/Myanmar%20Emergency%20Update-1August2021.pdf>

¹⁸ KPSN: Karen Peace Support Network is a civil society network of 30 organizations active in Myanmar and Thailand.

State, more than 70,000 people, or nearly 90 percent of the population, have been displaced by Myanmar military attacks.¹⁹

In June 2021, the Kachin Women's Association Thailand released a briefing paper on Tatmadaw security forces attacks on civilians in Kachin State and northern Shan State between April and May 2021. According to this briefing paper, in rural areas where fighting between the Myanmar military and the Kachin Independence Army is taking place, the army is torturing civilians, shooting arbitrarily, and deliberately shelling residential areas. In the southeastern part of Kachin State, for example, nine villagers were killed and 15 others, including three children, were injured in artillery attacks on villages. In another township, security forces shot randomly at civilians who were riding motorcycles, buying betelnut, and attending a funeral ceremony; two were killed and three injured.²⁰

When the rainy season began, it became even more difficult to ascertain the exact situation, and it is believed that summaries such as in these above reports are only a small part of the total damage.

Japanese Companies Involved in Funding the Tatmadaw

When former general Prime Minister Thein Sein became president in March 2011, he succeeding General Than Shwe who had been top of the military since 1992. PM Thein Sein began showing unprecedented flexibility in policies, releasing some political prisoners, allowing more freedom of the press, and approaching the NLD, who had long been a target of the military regime's repression. The NLD initially rejected the 2008 constitution put into effect by the military regime, but later softened its stance and participated in the 2012 by- elections, accelerating the democratization process, albeit to a limited extent.

Under President Thein Sein, Myanmar was called "the last frontier," and foreign investment poured in, leading to rapid economic development. In 2015, the NLD won the general election, a new government was formed, and the international community at large thought Myanmar's democratization was making progress.

In this "transition to civilian government," however, there was a major obstacle to true democratization, and that was the autonomy guaranteed to the Tatmadaw under the 2008

¹⁹ Karen Peace Support Network. TERROR FROM THE SKIES: Coup regime's escalated offensives cause mass displacement across Mutraw. 25 May 2021
<https://www.karenpeace.org/report/terror-from-the-skies-coup-regimes-escalated-offensives-cause-mass-displacement-across-mutraw/>

²⁰ Kachin Women's Association Thailand: KWAT. "Deadly reprisals: regime steps up attacks on civilians in retaliation for conflict losses in northern Burma." June 2021.
https://kachinwomen.com/wp-content/uploads/2021/06/Deadly_Reprisals_ENG.pdf

Constitution. The constitution contains several clauses exempting the Tatmadaw from supervision by the elected civilian government.

Article 20 (b) of the 2008 Constitution states, “The national armed forces shall have the authority to independently administer and adjudicate all affairs of the armed forces.”

Article 232 (2) states that “[i]n order to appoint the Union Ministers, the President shall: (ii) obtain a list of suitable Defence Services personnel nominated by the Commander-in-Chief of the Defence Services for Ministries of Defence, Home Affairs and Border Affairs.”²¹

The Constitution places all military affairs under the jurisdiction of the Tatmadaw, and the three ministries with jurisdiction over armed institutions (such as police and security forces) are all under the Commander-in-Chief.

In Myanmar, even after the “transition to civilian government,” the Tatmadaw had independent control of military affairs, so authority in Myanmar was divided into two—a civilian government with no arms, and the Myanmar military, which controls all military affairs and institutions with arms. Furthermore, while 75% of both houses in Parliament is required to amend the constitution, 25% of the seats are reserved for military officers appointed by the Commander-in-Chief. Before the 2010 elections, the NLD and the Tatmadaw could not come to any agreement regarding constitutional amendments, making it extremely unlikely that the constitution could be amended to bring the military under civilian control. It must be remembered that the country’s “transition to civilian government” was based on this dual power structure.

It seems that the Tatmadaw has reaped great financial benefits from primarily two existing army-affiliated businesses during the “transition” after 2011. As mentioned previously, the humanitarian crisis and abuses against Rohingya Muslims brought international attention to the fact that these military-associated businesses were funding the Tatmadaw.

In March 2017, the UN Human Rights Council established the Independent Fact-Finding Mission on Myanmar (IIFMM) to investigate human rights abuses by Tatmadaw military and security forces.²² Its resulting report, “Economic Interests of the Myanmar Military”²³ revealed for the first time in detail how the Tatmadaw uses its own businesses and dealings with foreign companies to support brutal military operations against ethnic minorities. The report points out that the income the Tatmadaw acquires from domestic and international commerce has greatly enhanced its ability to commit serious human rights abuses.

²¹ Constitution of 2008 (English Translation). Myanmar Law Library. <https://myanmar-law-library.org/law-library/laws-and-regulations/constitutions/2008-constitution.html>

²² <https://www.ohchr.org/EN/HRBodies/HRC/MyanmarFFM/Pages/Index.aspx>

²³ The economic interests of the Myanmar military (16 Sep 2019). United Nations Human Rights Council. <https://www.ohchr.org/EN/HRBodies/HRC/MyanmarFFM/Pages/EconomicInterestsMyanmarMilitary.aspx>

According to the report, the Tatmadaw owns and operates two corporations, Myanmar Economic Holdings Limited (MEHL) and Myanmar Economic Corporation (MEC). According to IIFFMM, these two corporations and their subsidiaries generate more revenue than any civilian-owned company in Myanmar.²⁴ In addition, 14 foreign companies have joint ventures with Tatmadaw-related companies, and at least 44 foreign companies have other forms of commercial relationships with them. Senior military officers are also closely involved in MEHL's operations, and all shares are owned by active and retired officers, regiments and military units, and retired military personnel. MEC is fully owned and controlled by the Ministry of Defense, and it is believed that the Quartermaster General Office operates it. The vast majority of the revenue generated by MEHL, MEC and their subsidiaries is not included in the official government budget, but is used to fund the brutal Tatmadaw.

The Annexes in the IIFFMM report include lists of companies affiliated with the Tatmadaw and companies in and outside of Myanmar that contribute to or benefit from the Myanmar military and its activities. Japanese companies or subsidiaries of Japanese companies can be found in the following four categories.

1. List of donors and details of donations solicited by the Tatmadaw in September 2017 (Annex IV). It is believed that these donations were used to support the military's "clearance operations" against the Rohingya population in northern Rakhine State from August 2017.

Kirin Holdings Company Limited

Toyo Thai Power Myanmar

2. Foreign companies who are joint venture partners with MEHL or MEC (Annex V. A).

Japan Myanmar Development Organization Co.

Kirin Holdings Company Limited

3. Foreign companies with contractual or commercial ties to MEHL or MEC (Annex V. B)

Japan Credit Bureau (JCB)

Nisshin (Myanmar) Co Ltd., owned by Nisshin Transportation Co Ltd.

²⁴ The economic interests of the Myanmar military: Independent International Fact-Finding Mission on Myanmar. (A/HRC/42/CRP.3). 5 August 2019. p. 18
https://www.ohchr.org/Documents/HRBodies/HRCouncil/FFM-Myanmar/EconomicInterestsMyanmarMilitary/A_HRC_42_CRP_3.pdf

4. Private companies from which the Tatmadaw procured or sought to procure dual-use goods and technology for military purposes. (Annex VI. B)

Icom Corporation

Nikon Corporation

This IIFFMM report also recommends that companies operating in Myanmar or doing business with or investing in Myanmar companies should not initiate or continue any form of business relationship with Myanmar's security forces, especially the national army, or any companies owned or controlled by them. The report also recommends that investors and businesses should prohibit all contributions, donations, and other funding of the Tatmadaw, whether directly or through business relationships with Myanmar companies. In its Conclusions and Recommendations, the report states, "[t]hrough such joint venture and commercial relationships, the Mission finds that any foreign business activity involving the Tatmadaw and its conglomerates MEHL and MEC poses a high risk of contributing to, or being linked to, violations of international human rights law and international humanitarian law."²⁵

In the next section, the specific projects and Japanese joint ventures that are feared to be benefiting the Myanmar military will be discussed.

²⁵ Ibid, p. 5

Case 1) Project to Redevelop the Defence Services Museum (Y Complex Project)

While not included in the IIFFMM report, “Economic Interests of the Myanmar Military,” there is concern that the Redevelopment of the Defence Services Museum Project (known as Y Complex) will bring significant economic benefits to the Tatmadaw. The project is operated by Japanese companies and involves the construction of a large-scale real estate complex on the site of the former Defence Services Museum in a prime location near the Shwedagon Pagoda, a place of great cultural and historical significance in Yangon.



Figure 1: Near the project site (photo credit: Yuzo Uda)

Tokyo Tatemono Co. Ltd. (hereinafter “Tokyo Tatemono”), Fujita Corporation (a subsidiary of Daiwa House Group and hereinafter “Fujita”), and the Japan Overseas Infrastructure Investment Corporation for Transport & Urban Development (hereinafter “JOIN”) invested through the Singaporean company, Yangon Museum Development Pte. Ltd. (hereafter YMD), which has also been used as a receptacle for more private and public investment from Japan. The investment ratio in YMD is 35% by Tokyo Tatemono, 36% by Fujita, and 29% by JOIN.

Y Complex was the first project under Myanmar’s new investment law (enacted in October 2016), and includes offices, stores, a hotel (261 rooms), serviced apartments (136 rooms),

and parking lots on a site area of 16,007.89m² and a total floor area of 92,627.91m².²⁶ The investment permit was acquired in May 2017, and in July 2018, the construction permit was acquired. Construction began in August of the same year. According to the plan, the building was scheduled to open in 2021²⁷ and Tokyo Tatemono was to operate the offices, Fujita build and construct the building, and Hotel Okura operate the hotel and serviced apartments.



Figure 2: Y Complex under construction (2021. Photo credit: Myanmar Now)

In addition, direct financing (project financing) for the project is being provided by Mizuho Bank, Ltd., Sumitomo Mitsui Banking Corporation, and the Japan Bank for International Cooperation (JBIC). The total amount of financing for the project is US\$144 million, of which JBIC's share is reported to be US\$47 million.²⁸ The details are not clear, but it is believed that Mizuho and Sumitomo Mitsui are each contributing about equal amounts.

Before the Defence Services Museum, there was a building called Jubilee Hall, which was built at the end of the 19th century during the colonial period. After World War II, it gained a special significance for people in Myanmar as the place where General Aung San, Myanmar's

²⁶ Details available under "Project Description" on <https://www.yc-ys.com.mm/> (Accessed 5 Feb 2022)

²⁷ "Tokyo Tatemono Ajia no Yangon niokeru Fudousan Kaihatsu." ("Real Estate Development in Yangon by Tokyo Tatemono Asia" in Japanese). JOIN. March 2019. (Accessed 6 Oct 2021) https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUK Ewif14Gx_OXtAhUF62EKHQzaB6kQFjABegQIAXAC&url=https%3A%2F%2Fwww.joi.or.jp%2Fmodules%2Fdownloads_open%2Findex.php%3Fpage%3Dvisit%26cid%3D25%26lid%3D2480&usg=AOvVaw33i6YOs1_UWIOr5yQVw-dH

²⁸ JBIC FY2018 Press Releases. "Loan for Mixed Use Development Project by Japanese Company in Myanmar." (18 Dec 2018)

<https://www.jbic.go.jp/en/information/press/press-2018/1218-011714.html> (Accessed 27 Jan 2022)

revered founding father, drafted the first constitution and where his funeral was held after his assassination. The military regime dismantled Jubilee Hall in 1985, managed the land, and turned it into the Defence Services Museum in 1994.²⁹



Figure 3: Defence Services Museum (2010. Photo Credit: Yuzo Uda)

Y Complex Implementing Body:

➤ Project Company

- Y Complex Company Limited (registered in Myanmar)

Investors in Y Complex Company Ltd.³⁰

- Yangon Museum Development Pte. Ltd. (YMD) (registered in Singapore) 80%
YMD was jointly established by Tokyo Tatemono Co. Ltd., Fujita Corporation (subsidiary of the Daiwa Housing Group), and Japan Overseas Infrastructure Investment Corporation for Transport & Urban Development (JOIN)³¹
- Yangon Technical and Trading Company Limited (YTT) (registered in Myanmar) 20%

²⁹ The Irrawaddy. “Jubilee Hall—From Colonial Social Hub to Hotbed of Myanmar Independence Activity.” 11 March 2020. <https://www.irrawaddy.com/specials/places-in-history/jubilee-hall-colonial-social-hub-hotbed-myanmar-independence-activity.html> (Accessed 6 Oct 2021)

³⁰ Justice for Myanmar. “The Luxury Japanese Business Development Secretly Funding Myanmar’s Military.” 22 May 2020. <https://www.justiceformyanmar.org/stories/y-complex> (Accessed 6 Oct 2021)

³¹ JBIC FY2018 Press Releases. “Loan for Mixed Use Development Project by Japanese Company in Myanmar.” (18 Dec 2018) <https://www.jbic.go.jp/en/information/press/press-2018/1218-011714.html> (Accessed 27 Jan 2022)

A subsidiary of Ayeyar Hinthar, said to be a conglomerate acting as a proxy for the Myanmar military.³²

- Developer and Manager
 - Design and Construction: Fujita Corporation
 - Property Management and Subcontractor: Tokyo Tatemono Asia Pte. Ltd. (registered in Singapore. Overseas subsidiary of Tokyo Tatemono)
 - Hotel and Serviced Apartment Management: Hotel Okura
- Surveyor:³³
 - Environmental Impact Assessment (EIA): E Guard Environmental Services
 - Social Impact Assessment (SIA): REM-UAE Laboratory and Consultant

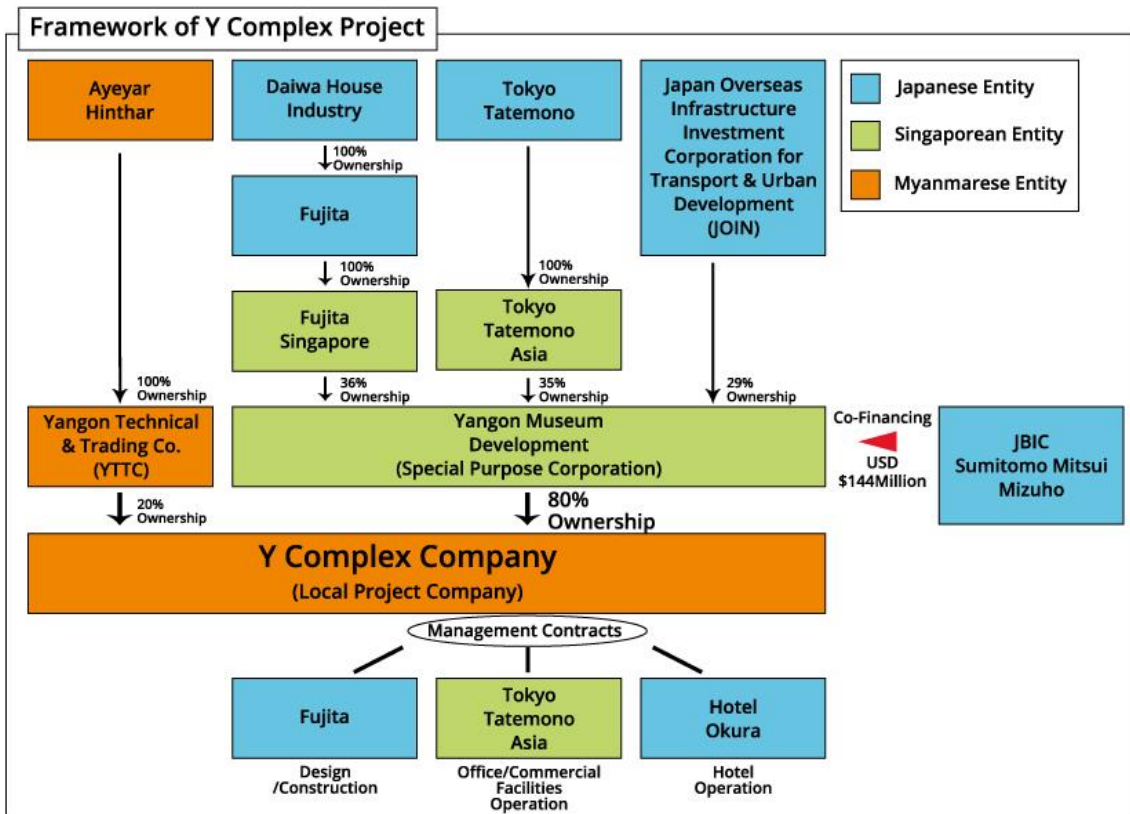


Figure 4: Y Complex Project Framework

³² Justice for Myanmar. 22 May 2020. Op. cit.

³³ “Shwedagon Pagoda kinpen no fukugoukaiatsu purojekuto ga shinten” (“Mixed-use development project near the Shwedagon Pagoda.” In Japanese) <http://sagaasialaw.com/myanmarnews/2955> (this is a Japanese translation of an article published in the Myanmar Times, 9 April 2018. P 6.) (Accessed 6 Oct 2021)

Businesses Involved in Y Complex and Their Relationship to the Tatmadaw

One of the major concerns in regard to the Y Complex Project is that the rent for the land on which the project stands is going to the Tatmadaw and funding its human rights abuses.

In May 2020, Justice for Myanmar (JFM), an activist group that investigates monetary flows to the Myanmar military, raised this issue after obtaining the project's Environmental Assessment Report (EIA). The title of the lease agreement attached to the EIA states that the Myanmar Army owns the project site.³⁴ The lease agreement was signed by Mr. U Ar Yu of YTT and Colonel Aung Min Thein (Officer No. Army 17642), Vice Quarter Master General, Office of the Quartermaster General. In paragraph 5(f) of the lease agreement, payment of rent is to be made to "Defense Account No. MD 010424." JFM pointed out that the content of this lease agreement makes it clear that YTT is paying rent to the Tatmadaw's Office of the Quartermaster General.³⁵ Also according to this agreement, when the BOT contract is terminated or expires, the land will be returned to the Office of the Quartermaster General together with the buildings and any fixtures on the buildings developed by YTT.³⁶

The FY2019 version of this EIA was disclosed by Ayeyar Hinthar Holdings Company Ltd., on its website.³⁷ In Chapter 4 Section 4.1 (Pre-Project Situation) of the EIA, it also states that YTT is renting the land from the Ministry of Defence.³⁸ Furthermore, according to the minutes of an August 2018 stakeholder meeting held during the scoping of the EIA, a reporter from 7days Journal asked whether the army or the state would receive "the 5817.958 million"³⁹ (approximately US\$4.32 million at the median December 2020 exchange rate).⁴⁰ There is no record in the minutes of the company responding to this question.

In a 21 May 2020 article, the online media outlet Myanmar Now reported that someone related to YTT said that the company pays US\$2.18 million a year in rent and was certain that even though it was paid to the Office of the Quartermaster General, it went into the government's

³⁴ Land lease agreement obtained by Justice for Myanmar. "B.O.T. System Military-Owned Military Museum Land (9.028 acres) Lease Agreement Between Office of the Commander-in-Chief (Army) Office of the Quartermaster General & Yangon Technical & Trading Co., Ltd." Dated 15 October 2013. https://uploads-ssl.webflow.com/5e691d0b7de02f1fd6919876/5ec6b2dc075fe31ea6b96843_y-complex-lease-agreement.pdf (Accessed 6 Oct 2021)

³⁵ Ibid.

³⁶ Ibid.

³⁷ Environmental Impact Assessment Y COMPLEX PROJECT Dagon Township. YANGON. July 2019. <http://ayeyarhinthar.com/pdf/Environmental%20Impact%20Assessment%20Report%20of%20Y%20Complex%20Project.pdf>

³⁸ Ibid, p. 74.

³⁹ Ibid, p. 330. The basis for the figure given by the journalist is unknown

⁴⁰ Exchange rate used for calculation 1347 kyat = 1USD.

<https://freecurrencyrates.com/en/exchange-rate-history/USD-MMK/2020>

general budget, not the military's. Myanmar Now reported, however, that they could not find a clear mention of the rent in either the defense budget or the government's general budget for fiscal year 2019.⁴¹ On 22 June 2020, a spokesperson for the Tatmadaw stated at a press conference that "all the money earned from this project is in the Ministry of Defence."⁴²

If Myanmar Now is correct, however, the rent may not even be in the defense budget, but instead be under the direct control of the Tatmadaw. Whether in the defense budget or under direct control of the Tatmadaw, it is a problem of serious concern.

As mentioned previously, the 2008 Constitution puts the Ministry of Defence under the command of the Commander-in-Chief of the Tatmadaw, and there is no civilian control over its budget. On 10 June 2020, Myanmar Now also pointed out that the Ministry of Defence is currently exempt from audit of state accounts.⁴³ Article 39 of The Auditor General of the Union Law stipulates that "[t]he provisions contained in this Law shall not apply to the Ministry of Defence."⁴⁴ In other words, even under the government led by the National League for Democracy (NLD), Myanmar's public auditing body had no authority to audit the defense budget. This law is considered constitutional under Article 20(2) of the Constitution, which states that "the Defence Services has the right to independently administer and adjudicate all affairs of the armed forces." Allowing the defense budget to be constitutionally and legally exempt from audit deviates greatly from international standards.

This situation in Myanmar has already been recognized internationally. The Public Expenditure and Financial Accountability (PEFA) Program, an initiative supported by institutions such as the European Commission and the World Bank, has assessed the Myanmar government's efforts to strengthen governance of public financial management. PEFA's report notes that there are constitutional restrictions on the country's audit institutions that limit access to and auditing of foreign investment information and the Ministry of Defence, and PEFA gives the independence of Myanmar's auditing institution the lowest rating of D.⁴⁵

⁴¹ Myanmar NOW. "Japan-backed luxury hotel and office complex will enrich military, says rights group." 21 May 2020.

<https://myanmar-now.org/en/news/japan-backed-luxury-hotel-and-office-complex-will-enrich-military-says-rights-group> (Accessed 6 Oct 2021)

⁴² Video of Press Conference from 7:21 (in Burmese)

<https://www.facebook.com/watch/live/?v=935042153633335>

⁴³ Myanmar NOW. "Junta-drafted law keeps auditor general from investigating military finances." 10 June 2020.

<https://myanmar-now.org/en/news/junta-drafted-law-keeps-auditor-general-from-investigating-military-finances>

⁴⁴ Auditor General of the Union Law 28 October 2010.

<https://www.mlis.gov.mm/lsScPop.do?lawordSn=9512> (Accessed 6 Oct 2021))

⁴⁵ The Republic of the Union of Myanmar. Public Expenditure and Financial Accountability (PEFA) Assessment Report 2020. <https://www.pefa.org/node/3646> (Accessed 6 Oct 2021)

What this means for the Y Complex Project is that there is a very high possibility that the rent paid for the land, which is essential for the project, either passed through the Ministry of Defence, or went straight to the Tatmadaw without any monitoring by the government or third party. If funds went to the Tatmadaw before the coup d'état, the possibility that those funds were used for military purposes cannot be ruled out, and the possibility that they contributed to the military's human rights violations in ethnic areas cannot be denied. In regard to after the coup, any payments will directly benefit the Tatmadaw, and there is currently no way to monitor how funds are used as the Tatmadaw continues to tighten its grip on power.

Both Tokyo Tatemono and Fujita (and its parent company, Daiwa House Group), which are central to the Y Complex Project, have formulated human rights policies based on the UN Guiding Principles on Business and Human Rights.⁴⁶ It must be pointed out, however, that they have conducted transactions with a partner who has no functioning independent auditor, making them potentially complicit in human rights violations. This fails to respect Paragraph 18 of the UN Guiding Principles on Business and Human Rights, which deals with human rights due diligence.

Paragraph 18: In order to gauge human rights risks, business enterprises should identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships.⁴⁷

⁴⁶ Tokyo Tatemono Group Human Rights Policy.
<https://tatemono.com/csr/english/pdf/HumanRightsPolicy.pdf>
Human Rights Policy of Daiwa Housing Group

<https://www.daiwahouse.com/English/sustainable/csr/jinken/images/Human%20Rights%20Policy%20of%20Daiwa%20House%20Group.pdz>

⁴⁷ Guiding Principles on Business and Human Rights (A/HRC/17/31) <https://undocs.org/A/HRC/17/31>

Case 2) Kirin Holdings and its Beer Business in Myanmar

On 19 August 2015, one of Japan's major beverage manufacturers, Kirin Holdings Company, Ltd., announced that its Southeast Asian subsidiary, Kirin Holdings Singapore Pte. Ltd (hereafter KHSPL) had acquired 55% of all outstanding shares in Myanmar Brewery Limited (hereafter MBL), a company manufacturing beer in Myanmar. This was an acquisition of all shares that had been held by Fraser and Neave, Ltd. The price of the share acquisition was US\$560 million.⁴⁸ At this time, MBL's remaining shares (45%) were held by MEHL, a company in which military officers are deeply involved and shares are owned by military personnel.

In August 2017, Kirin Holdings further announced that KHSPL would take a majority investment in a new joint venture of Mandalay Brewery (MDL), a business belonging to MEHL, and at the same time transfer 4% of its outstanding shares in MBL to MEHL.⁴⁹

As a result, as of September 2021, Kirin Holdings owns 51% in both MBL and MDL beer businesses, with the remainder held by the Tatmadaw-affiliated MEHL.

Donations to the Tatmadaw During Ethnic Cleansing: What Human Rights Groups Say

Amnesty International (hereinafter Amnesty), an international human rights organization, issued a news release on 4 June 2018 entitled "Investigate brewer Kirin over payment to Myanmar military amid ethnic cleansing of Rohingya." In this news release, Amnesty demanded, "Japanese authorities must urgently launch an investigation into payments that a subsidiary of the multinational brewing giant Kirin made to Myanmar's military and authorities at the height of an ethnic cleansing campaign against the Rohingya population in late 2017."⁵⁰

According to Amnesty, "Kirin later confirmed that a donation of \$6,000 was made on that date. Min Aung Hlaing said the donations would in part go towards, 'security personnel and state service personnel', operating in Rakhine State." The press release goes on to say, "It beggars belief that any international investor would make donations to Myanmar's military at a time when those very forces were carrying out ethnic cleansing of the Rohingya population in northern

⁴⁸ Kirin Holdings News Release. "Notice regarding Acquisition of Shares in Myanmar Brewery Limited by Kirin Holdings Singapore Pte. Ltd." (2015/8/19)

https://www.kirinholdings.com/en/newsroom/release/2015/0819_01.html

⁴⁹ Kirin Holdings News Release. "Notice regarding the Acquisition of Mandalay Brewery by Kirin Holdings Singapore and a Transfer of 4% Ownership by Kirin Holdings Singapore in Myanmar Brewery." (2017/2/13) <https://pdf.irpocket.com/C2503/Wc5N/dFnS/rOIW.pdf>

⁵⁰ Amnesty International: Investigate brewer Kirin over payment to Myanmar military amid ethnic cleansing of Rohingya (June 14, 2018)

<https://www.amnesty.org/en/latest/news/2018/06/japan-investigate-brewer-kirin-over-payments-to-myanmar-military-amid-ethnic-cleansing-of-rohingya/>

Rakhine State . . . Not only is there a risk that these donations actually funded the operations of military units involved in crimes against humanity, but the choice to appear in a donation ceremony with Myanmar's top military leaders also sends a worrying message that Myanmar Brewery endorsed the military's actions against the Rohingya population."⁵¹

Kirin Holdings then released a press release with an explanation as follows:

Kirin has been engaging with Amnesty International since March 2018 to address concerns raised in relation to three donations totaling US\$ 30,000 made by Myanmar Brewery, a Kirin joint venture operation in Myanmar. Amnesty International suggests these donations may have been used for purposes other than the humanitarian basis on which the donations were given.

We are undertaking an urgent investigation into the first of these donations of US\$ 6,000 made on 1 September 2017. While this donation was requested and given explicitly for purely humanitarian purposes, Amnesty International alleges that it may have been made to the Myanmar military and authorities.

We wish to clarify and highlight that we have significant reasons for continuing to believe that the two other donations that Amnesty International mentions were not in fact misused or given to the military.

The second donation, made on 23 September 2017, was not a monetary donation, but one of rice and cooking oil, valued at approximately US\$ 2,000. It was given directly to victims from the conflict in Rakhine state. We therefore have no reason to believe that this donation was misused.

The third donation, made on 3 October 2017, was collected by Myanmar Brewery from volunteers within its business network, including a contribution of US\$ 7,200 from Myanmar Brewery. The total of US\$ 22,500 was collected and given, in person, to local civilian volunteers in Sittawe. Myanmar Brewery attended this donation ceremony and witnessed the donation being given directly to the civilian volunteers.

⁵¹ Amnesty International: Investigate brewer Kirin over payment to Myanmar military amid ethnic cleansing of Rohingya (June 14, 2018) <https://www.amnesty.org/en/latest/news/2018/06/japan-investigate-brewer-kirin-over-payments-to-myanmar-military-amid-ethnic-cleansing-of-rohingya/>

This donation ceremony was an entirely civilian affair, and there is no evidence indicating that the volunteers have any connection to the military.

We developed the Kirin Group Human Rights Policy in February 2018 and promote respect for human rights across our business. We take Amnesty International’s allegations very seriously and plan to introduce improvements in the donation process. While our investigations are ongoing, we have halted all new corporate donations in Myanmar with immediate effect.⁵²

This donation is also mentioned in the aforementioned IIFFMM report, “Economic Interests of the Myanmar Armed Forces.”⁵³

Criticism of Doing Business with MEHL

On the following day, 10 September 2020, Amnesty, in collaboration with JFM, announced that it had “seen two documents which expose new details about how MEHL finances the military.”⁵⁴ This report claims that MEHL has 381,638 individual shareholders who are all either serving or retired military personnel, and that there are 1,803 institutional shareholders, which include regional commands, divisions, battalions, troops, and war veteran associations. In the 20 years up to 2011, the total amount of dividend payments made to shareholders was more than 107 billion Myanmar kyat (approx. US\$1.8 billion at the official exchange rate at the time). Of this amount, 95 billion kyat was sent to military units.⁵⁵ In regard to specific human rights violations, the report points out, “the 2010-11 report lists as shareholders 95 separate military units that fall within the Western Command, the regional command covering and overseeing operations in Rakhine State. Together, they owned more than 4.3 million shares and received payments of more than 1.25 billion kyat (208 million USD) in 2010-11.” In the same report, it says, “[t]he headquarters of battalions from the 33rd and 99th Light Infantry Divisions are also listed as shareholders. Amnesty International has documented these divisions’ involvement in crimes against humanity against the Rohingya population, including massacres of women, men, and children, in Rakhine State, and war crimes in Kachin and northern Shan States.”⁵⁶

⁵² Kirin Holdings News Release. “Re: Amnesty International press release dated 14 June on donations made by a Kirin joint venture—Myanmar Brewery Ltd.”
https://www.kirinholdings.com/en/newsroom/release/2018/0615_01.html

⁵³ Economic interests of the Myanmar military (16 Sept 2019). *Op. cit.*, p. 85.

⁵⁴ Amnesty International. “Leaked documents reveal global business ties to military crimes.” (2020/9/10)
<https://www.amnesty.org/en/latest/news/2020/09/mehl-military-links-to-global-businesses/>

⁵⁵ *Ibid.*

⁵⁶ *Ibid.*

Amnesty further concludes that “[w]hile outsiders can’t know how these dividends are spent by military units, the size and regularity of these payments suggests that they cover operational costs” and that “[i]n providing this funding to military units, MEHL is boosting their resources and financing their operations which include crimes against humanity and war crimes.”⁵⁷

JFM said the MBL’s normalized operating profit of 5 billion yen from January 1 to March 31, 2020 was a 28% increase compared to the first quarter of 2019, and its sales volume was up 12.6%. JFM said this coincides with a period of increased war crimes and crimes against humanity in Rakhine and Chin States. JFM strongly criticized Kirin’s partnership with MEHL saying, “it is shocking that Kirin operates a subsidiary with the Myanmar military, despite extensive evidence of the military’s crimes. Kirin’s business partners are literally war criminals and continue to commit genocide and crimes against humanity, fueled by profits from their partnership with Kirin. By continuing to operate Myanmar Brewery, Kirin are criminally complicit in the Myanmar military’s grave human rights violations.”⁵⁸

On 17 June 2020, Human Rights Now, Human Rights Watch, Japan International Volunteer Center, and Shapla Neer also released a press release entitled “Myanmar: Kirin Should Cut Ties to Military”, which points out MEHL’s ties to the Myanmar military, and calls for Kirin Holding’s partnership with MEHL to be terminated.⁵⁹

In August 2020, there were calls for a boycott of Kirin products in the UK and US.⁶⁰ In March 2021, Norway’s Government Pension Fund Global, the world’s largest sovereign wealth fund, funded by petroleum revenues from North Sea oil fields, placed Kirin’s shares on a watch list to consider whether or not to continue holding shares. This is reportedly due to ethical concerns about Kirin’s relationship with the Myanmar military.⁶¹

Kirin Holding’s Response

⁵⁷ Ibid.

⁵⁸ Justice for Myanmar. “Human Rights Activists Respond to Kirin’s Myanmar Sales “Surge”, Which Netted Approximately UDS \$22.77 Million in Q1 2020 Profits for the Myanmar Military.” (2020/12/19) <https://www.justiceformyanmar.org/press-releases/human-rights-activists-respond-to-kirins-myanmar-sales-surge>

⁵⁹ Human Rights Watch. “Myanmar: Kirin Should Cut Ties to Military.” (June 18, 2020) <https://www.hrw.org/news/2020/06/18/myanmar-kirin-should-cut-ties-military>

⁶⁰ Burma Campaign UK. “BOYCOTT KIRIN ICHIBAN LAGER – KIRIN FUNDS GENOCIDE” <https://burmacampaign.org.uk/boycott-kirin-ichiban-lager-kirin-funds-genocide/>

⁶¹ Reuters and Terje Solsvik. “Biggest wealth fund puts Kirin on watch list over Myanmar.” 4/3/2021. <https://www.reuters.com/world/asia-pacific/biggest-wealth-fund-puts-kirin-watch-list-over-myanmar-link-2021-03-03/>

In a news release on 6 February 2020, Kirin Holdings announced that it had met with MEHL's management to discuss the issues raised by the UN Human Rights Council Independent Fact-Finding Mission and asked MEHL to disclose further details about its financial and governance structures.⁶² On 5 June of the same year, Kirin commissioned Deloitte Tohmatsu Financial Advisory LLC (hereinafter Deloitte) to conduct an independent review due to insufficient information from MEHL. However, in a news release on 7 January 2021, Kirin announced that Deloitte was unable to reach any definitive conclusions because it was unable to access sufficient information. Kirin, however, made it clear that payment of dividends from MBL and MDL to both Kirin and MEHL had been suspended since November 2020 (the news release refers to MEHL as MEHPCL).⁶³

Then in light of the coup d'état on 1 February 2021, Kirin announced on 5 February that, “[g]iven the current circumstances, we have no option but to terminate our current joint-venture partnership with Myanmar Economic Holdings Public Company Limited, which provides the service of welfare fund management for the military. We will be taking steps as a matter of urgency to put this termination into effect.”⁶⁴

Few companies responded quickly to the coup, and people in Myanmar showed that they welcomed Kirin's response on social media and elsewhere. While Kirin's news release stated that action would be taken as a matter of urgency and that updates would be forthcoming, as of February 1st 2022, one year after the Coup, the partnership has not been terminated. According to media on 10 August, the political instability in Myanmar led Kirin Holdings to suffer an impairment loss of 21.4 billion yen in the second quarter in relation to MBL. While Kirin's talks with MEHL on the dissolution of the joint venture are ongoing, Kirin denied that they would withdraw business from Myanmar completely, saying, “Our stance that we can contribute to the country and our customers in Myanmar through our business has not changed. We are not currently thinking of withdrawing.”⁶⁵ The next day, Kirin's share price hit its lowest

⁶² Kirin Holdings News Release. “Progress Report Regarding Kirin's Operations in Myanmar.” (2020/2/6)

https://www.kirinholdings.com/en/newsroom/release/2020/0206_01.html

⁶³ Kirin Holdings News Release. “Progress Report Regarding Kirin's Operations in Myanmar.” (2021/1/7)

https://www.kirinholdings.com/en/newsroom/release/2021/0107_02.html

⁶⁴ Kirin Holdings News Release. “Statement on the situation in Myanmar.” (2021/2/5)

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

⁶⁵ Reuters. “*KirinHD, Myanmar-Kanren de 214okuen no genzonkeijyou Jigyoutettai ha hitei.*” (“Kirin Holdings, 21.4 billion yen impairment losses related to Myanmar. Denys they will withdraw.” In Japanese). 10/08/2021 <https://jp.reuters.com/article/kirin-results-idJPKBN2FB0LR>

since the start of the year, reportedly due primarily to the uncertain prospects for its business in Myanmar.⁶⁶

Kirin announced on its website that it formulated a human rights policy in line with the UN Guiding Principles on Business and Human Rights,⁶⁷ and also disclosed the results of human rights due diligence on its business in Myanmar in 2018 and 2019.⁶⁸ However, the risks identified in the due diligence report are limited to six areas, namely (1) occupational health and safety; (2) labor rights; (3) forced labor; (4) child labor; (5) supply chain, and (6) surrounding communities.⁶⁹

These are areas of human rights due diligence that involve Kirin Holding's local operators, and the company might argue that this due diligence is in line with the scope of Paragraph 17 of the Guiding Principles. However, the Guiding Principles also include Paragraph 18, introduced previously, which says adverse impacts resulting from business relationships should also be assessed.

The issue that human rights groups have been raising is in regard to Kirin Holding's financial ties to the Tatmadaw, which is not included in the 6 areas covered by Kirin's human rights due diligence report. As explained previously, Myanmar's defense budget is overseen by the Tatmadaw and not subject to third-party monitoring, and money flows from military-affiliated companies are benefiting the Tatmadaw without transparency or accountability. Considering that this had been explained to Kirin, they should have conducted human rights due diligence in regard to Paragraph 18.

The military regime has been in power for decades, and as mentioned earlier, numerous reports exist regarding the severe human rights abuses and crimes against humanity perpetrated by the Tatmadaw, whose autonomy from civilian control is protected by the constitution. Any activity that could profit the Myanmar military should be identified and evaluated for the possibility of leading to further human rights risks.

⁶⁶ Nihon Keizai Shinbun. "Kirin HD, Nenshoraiyasune Myanma-jigyou no Genson-iyaki" ("Kirin Holdings slumps to new record low; Impact of impairment losses in Myanmar" in Japanese) (Accessed 11 Aug 2021)

<https://www.nikkei.com/article/DGXZQOUB115UH011082021000000/?unlock=1> (in Japanese)

⁶⁷ Kirin Group's Human Rights Policy.

https://www.kirinholdings.com/en/impact/human_rights/policies/ (Accessed 23 Jan 2022)

⁶⁸ Kirin Holdings. "Human rights impact assessment in Myanmar"

https://www.kirinholdings.com/en/impact/files/pdf/myanmar_en.pdf

And "Human rights impact assessment in Myanmar, 2019 Progress Update"

https://www.kirinholdings.com/en/impact/files/pdf/myanmar2019_en.pdf

⁶⁹ Ibid.

Kirin Holdings has operations in many countries, but it made a point of making its operations in Myanmar subject to human rights due diligence. This indicates that upon being contacted by Amnesty and other NGOs, Kirin itself recognized that there were indeed risks. In actually conducting human rights due diligence, however, the scope of the risks that were identified and assessed was limited and completely missed the point being raised by human rights groups.

In light of Kirin's responses to NGOs, its prompt dissemination of information after the coup, its formulation of a human rights policy respecting the UN Guiding Principles on Business and Human Rights, and disclosure of the results of due diligence on its operations in Myanmar, it may appear that Kirin has fulfilled the minimum international standard for due diligence by a multinational corporation doing business in a country with a poor human rights record. The scope of due diligence, however, was very limited. As JFM points out, it is impossible to avoid criticism of being complicit in human rights violations considering how Kirin contributed considerably to MEHL's profits at a time when the humanitarian crisis in Rakhine State and elsewhere was intensifying. After that, Kirin commissioned Deloitte to conduct an investigation and stopped paying dividends to military-affiliated companies, but until Kirin identifies and evaluates the potential negative human rights impacts that could arise from actions that would indirectly profit the Myanmar military in the future and take concrete measures in this regard, it cannot be said that they are complying with their own human rights policy. Six months have passed since the coup and the initial phase of responses from Kirin has passed, but it has yet to announce a concrete roadmap for dissolving the joint venture. This raises questions about how much importance Kirin Holdings is giving to this situation.

Companies Subject to this Financial Investigation

In conducting these case studies, Fair Finance Guide Japan investigated investment and lending by financial institutions to the three companies below:

■Tokyo Tatemono Co., Ltd.

Founded in 1896. It is listed on the first section of the Tokyo Stock Exchange and has capital of 92.4 billion yen. It is a major real estate developer, engaged in development, leasing, and management of office buildings and commercial facilities. Tokyo Tatemono is one of the major stakeholders in the Y Complex Project, as it indirectly owns 28% of Y Complex Co., Ltd.,

the main project proponent. After the completion of the facility, it is to be responsible for office management through its subsidiary in Singapore.

■ Fujita Corporation

Founded in 1910. Fujita is a well-established company with capital of 14 billion yen. Its main operations are in construction contracting, planning, design, supervision and consulting services. It joined the Daiwa House Group in 2008, delisted in 2015, and is now a complete subsidiary of Daiwa House Group. Fujita is one of the main stakeholders in the Y Complex Project, indirectly owning 28.8% of Y Complex Co., Ltd. It is responsible for the design and construction of the facilities.

For this investigation, because the company's stock is no longer listed on the stock exchange, the amount invested in Fujita Corporation was calculated by taking its total assets of the last fiscal year just prior to joining Daiwa House Group (5.5731 billion yen) and calculating the ratio to the Daiwa House Group's current total assets (approx. 5.053 trillion yen).

■ Kirin Holdings Co., Ltd.

Founded in 1907. Kirin Holdings is listed on the first section of the Tokyo Stock Exchange with share capital exceeding 102 billion yen. It is a group company, and beverages are its core business, and beer is its main product. In developing business in Myanmar through Myanmar Breweries Ltd and Mandalay Breweries Ltd, Kirin is the sole majority stakeholder and the only private company operating these joint ventures with MEHL, a Tatmadaw-affiliated corporation.

There are companies other than the aforementioned three that are also considered to be directly or indirectly complicit in the Myanmar military's human rights violations. These include companies recognized by the UN Human Rights Council as having involvement in the Myanmar military (such as companies who have donated to or had other transactions with the military), and Hotel Okura, which will be in charge of hotel management at the Y Complex after its construction is complete. The degree of their involvement is relatively small in comparison to the three companies listed above, so for the purposes of this report, they are mentioned here but have been excluded from financial investigation.

In addition, JOIN, which indirectly owns 23.2% of Y Complex, is also heavily involved with the Myanmar military. It has been excluded from this financial investigation, however, because it is funded mainly by Japanese public funds.

List of Investment and Lending by Japan's Major Private Financial Institutions to the Companies Subject to this Investigation

Fair Finance Guide Japan commissioned the Dutch thinktank Profundo to gather data from the Thomson Reuter Eikon and Bloomberg datasets on the investment and lending by four financial institutions to the three companies subject to this financial investigation. Data from 2018-May 2021 was collected and is summarized in the following table.

Table 1. Loans and Underwriting between Jan 2018 to March 2021, and investment as of 31 March 2021

		(unit: million yen)					
		Lending			Investments		
		Corporate Loans	Securities Underwriting	Subtotal	Shares	Corporate Bonds	Subtotal
Mitsubishi UFJ	Tokyo Tatemono	—	—	0	14,161	—	14,161
	Fujita	5,000	—	5,000	556	—	556
	Kirin	25,000	65,000	90,000	85,892	—	85,892
Mizuho	Tokyo Tatemono	65,500	91,000	156,500	22,920	295	23,215
	Fujita	5,000	—	5,000	974	2	976
	Kirin	1,250	8,200	9,450	4,240	189	4,429
Sumitomo Mitsui	Tokyo Tatemono	58,500	20,700	79,200	10,683	—	10,683
	Fujita	7,300	—	7,300	508	—	508
	Kirin	—	12,000	12,000	43,794	—	43,794
Sumitomo Mitsui Trust	Tokyo Tatemono	—	—	0	25,063	100	25,163
	Fujita	5,000	—	5,000	1,867	2	1,869
	Kirin	—	—	0	141,516	24	141,540

Source: Thomson Reuter Eikon and Bloomberg (researched by Profundo)

In addition to the investment and lending information confirmed in this table, Tokyo Tatemono and Kirin Holding's Convocation Notices of the Ordinary General Meeting of Shareholders also provide information. As of the end of 2020, Tokyo Tatemono owed 56,014 million yen to Mitsubishi UFJ, 153,570 million yen to Mizuho, and 86,866 million yen to Sumitomo Mitsui.⁷⁰

Kirin Holdings had borrowed 59,781 million yen from Mitsubishi UFJ alone, and a total of 103,506 million yen from multiple syndicated loans managed by Mitsubishi UFJ, Mizuho and Norinchukin Bank.⁷¹

⁷⁰ Tokyo Tatemono Co., Ltd. Notice of the 203rd Ordinary General Meeting of Stakeholders https://tatemono.com/ir/stock/pdf/203rinjihokoku_210224_1.pdf (in Japanese)

⁷¹ Kirin Holdings Co., Ltd. Convocation Notice of the 182nd Ordinary General Meeting of Shareholders https://www.kirinholdings.com/en/investors/files/pdf/182nd_notice.pdf

The concern is not limited to direct investment and loans to companies whose profits may be benefiting the Tatmadaw. In regard to the Y Complex Project, there is also project financing for the Yangon Museum Development Co., Ltd., the Singaporean joint venture between Tokyo Tatemono (35%), Fujita (36%), and JOIN (28%). While the individual amounts are not known, JBIC, Sumitomo Mitsui Banking Corporation, and Mizuho Bank, Ltd. co-financed a loan totaling US\$144 million. More on JBIC's role will be explained later, but JBIC's portion of this loan is reported to be US\$47 million,⁷² and it is believed that Sumitomo Mitsui and Mizuho are each investing about the same amount.

How Private Financial Institutions Should Respond

For companies doing business internationally, having a human rights policy in line with the UN Guiding Principles on Business and Human Rights has become a matter of course. All three companies subject to this investigation, as well as the financial institutions that finance them, have human rights policies in place.

Fair Finance Guide Japan scores financial institutions in regard to various social and environmental themes. It has given a certain number of points to the financial groups Mitsubishi UFJ, Mizuho, Sumitomo Mitsui and Sumitomo Mitsui Trust on the theme of "human rights" because they have human rights policies and have signed the Equator Principles, actions which are in line with the UN Guiding Principles mentioned above. The Norinchukin Bank was given additional points because it clearly states in its investment and loan policy that it applies the OECD Guidelines for Multinational Enterprises, the UN Global Compact, and the Guiding Principles on Business and Human Rights.

This investigation revealed that in regard to risky transaction partners, however, there was insufficient due diligence when conducting project planning and financing, as well as financing for M&As and acquisition of local companies.

As Kirin Holding's main bank, Mitsubishi UFJ has provided the largest number of corporate loans to the company, and it should have used its status as leverage to push Kirin to take immediate action. After human rights groups initially pointed out the issues related to Kirin's operations in Myanmar, only limited due diligence was exercised over several years, and it was not until after the coup on 1 February 2021 that Kirin declared that it was moving to dissolve the

⁷²JBIC Press Release. 18 December 2018. "Loan for Mixed Use Development Project by Japanese Company in Myanmar." <https://www.jbic.go.jp/en/information/press/press-2018/1218-011714.html> (Accessed 29 Jan 2022)

joint venture. To date, however, no information has been disclosed to indicate that it has actually dissolved the relationship with military-affiliated MEHL. Going forward, Mitsubishi UFJ should urge companies in which it invests or provides loans to carry out appropriate due diligence in line with its own human rights policy statement.

In spite of signing the Equator Principles, both Mizuho and Sumitomo Mitsui are providing project financing for the joint venture company established for the Y Complex Project. It is impossible to say that this project has “avoided where possible” negative impacts on communities, considering that there are serious concerns it is benefiting the Tatmadaw, which is unrestricted by the Constitution and acts with impunity. In accordance with the Equator Principles to which these two financial institutions are signatories, they should make sufficient pre- and in-process efforts to ensure that the projects they are financing do not negatively impact people or the environment, and if there is no improvement, they should withdraw the loans or seek early repayment from a humanitarian perspective.

Sumitomo Mitsui Trust Holdings has been confirmed to have invested in the companies in question mainly through shareholding. Since the Equator Principles are limited in scope, investments in these companies through share ownership are not covered by the Principles. However, Sumitomo Mitsui’s human rights policy clearly states that they “respect international standards on human rights, such as The Universal Declaration of Human Rights and corporate codes of conduct based on the United Nations Global Compact.”⁷³ They should reconsider whether their large investment in Kirin Holdings, which has tried to consolidate its local business by forming a joint venture with a conglomerate closely affiliated to a military notorious for its brutality, is in line with its human rights policy.

As for the Norinchukin Bank, although Thomson Reuters Eikon and Bloomberg data sets did not show any investments or loans to the companies in question, information disclosed by Kirin confirms that Norinchukin is among those managing syndicated loans to Kirin Holdings.⁷⁴ It is not clear when these loans were made, but even if it was before Kirin’s M&A of Myanmar Brewery, Norinchukin should have begun reconsidering lending as soon as Kirin Holding’s problematic corporate behavior was discovered.

⁷³ Sumitomo Mitsui Trust Holdings Human Rights Policy.
https://www.smth.jp/en/csr/management/human_rights_policy/index.html (Accessed 28 Jan 2022)

⁷⁴ Kirin Holdings Co., Ltd. Convocation Notice. *Op. cit.*, p. 55.
https://www.kirinholdings.com/en/investors/files/pdf/182nd_notice.pdf

Involvement and Responsibility of Japan's Public Finance in the Case Study Projects

<Y Complex Project>

Y Complex's total project cost is expected to be about US\$332.5 million, of which about 80% will be financed by not only the Japanese private sector, but also with Japanese public funds.⁷⁵ On 18 December 2018, the Japan Bank for International Cooperation (JBIC) signed a loan agreement for up to approximately US\$47 million with Yangon Museum Development Pte. Ltd. (YMD), the Singaporean company jointly owned by Tokyo Tatemono, Fujita, and JOIN.⁷⁶

In addition, on 28 July 2017, the Ministry of Land, Infrastructure, Transport and Tourism (MLIT) had given approval for JOIN's decision to invest approximately US\$49.4 million and provide debt guarantee of approximately US\$41.8 million in YMD.⁷⁷ Public funds finance JBIC and JOIN projects.

JBIC is a special company wholly owned by the Japanese government and is a Japanese export credit agency established under the Japan Bank for International Cooperation Act. JBIC's role is to supply risk capital, and while complementing the operations of private financial institutions, contribute to:

- promoting the overseas development and securement of resources which are important for Japan
- maintaining and improving the international competitiveness of Japanese industries
- promoting overseas business having the purpose of preserving the global environment, such as preventing global warming, and
- preventing disruptions to the international financial order or taking appropriate measures with respect to damages caused by such disruptions.⁷⁸

The organization has undergone many changes. Its predecessor was the Export-Import Bank of Japan, which merged with the Overseas Economic Cooperation Fund in 1999 to become the former Japan Bank for International Cooperation. In 2008, it was merged into the Japan Finance Corporation (JFC), and in April 2012, it was separated from JFC to become the current JBIC. The

⁷⁵ Myanmar Japon Online. “*Nihon Kigyō no gijyūtsu ga kesshū suru chuūmoku purojekuto Y Complex (kashō) no zenbō*” (“Japanese Corporate Skills come together and gain attention with the Y Complex.” In Japanese). <https://myanmarjapon.com/sf/2001/2.html> (Accessed 6 Oct 2021)

⁷⁶ JBIC Press Release 18 December 2018. Op. cit.

⁷⁷ JOIN Supports the Urban Development Project—Redevelopment of the Defence Services Museum site—in Yangon, Myanmar. https://www.join-future.co.jp/english/news/index.php?c=topics_en_view&id=20170728-1 (Accessed 28 Jan 2022)

⁷⁸ <https://www.jbic.go.jp/ja/about/role-function/images/jbic-brochure-english.pdf>

former JBIC was in charge of Official Development Assistance (ODA) loans, but as of 2008, that role has been transferred to the Japan International Cooperation Agency (JICA).⁷⁹

JBIC now finances its operations “through various sources, including borrowing from the Fiscal Investment and Loan Program (FILP) Fiscal Loan, Government-guaranteed Foreign Bond issuance, Government-guaranteed Longterm Loans in Foreign Currency, FILP Agency Bond issuance, capital contributions from FILP Industrial Investment, and borrowings from the Foreign Exchange Fund Special Account.”⁸⁰ In order to borrow from FILP Fiscal Loan, Government-guaranteed Foreign Bonds, Government-guaranteed Long-term Loans in Foreign Currency, and Capital Contributions from FILP Industrial Investment, etc., requests are submitted to the Diet for approval together with JBIC’s operating budget. Once approved, the requests are included in the national budget, either as an item in the General Account budget or the Special Account budget.⁸¹

Although there are annual fluctuations, government-guaranteed foreign bond issuance is the main source of funds.

Table 2. JBIC’s Actual and Planned Funding Sources

Funding Sources: Actual and Planned

(Unit: billions of yen)

	FY2016 Actual	FY2017 Actual	FY2018 Actual	FY2019 Actual	FY2020 Planned
Capital Contribution from FILP Industrial Investment	142.0	82.2	20.1	98.5	80.0
Borrowing from FILP Fiscal Loan	530.5	209.5	109.6	43.7	281.0
Borrowing from Foreign Exchange Fund Special Account	1,142.7	854.4	654.9	422.9	—
Government-guaranteed Long-term Loans in Foreign Currency	—	—	—	—	40.0
Government-guaranteed Foreign Bonds*	1,106.2	1,629.7	724.2	849.4	2,902.5
FILP Agency Bonds*	—	60.0	—	—	20.0
Other Sources of Funds, Including Repayments	(721.0)	(1,108.9)	(57.4)	289.5	76.5
Total	2,200.4	1,726.9	1,451.3	1,704.1	3,400.0

* Figures for bonds are indicated at face value.

Source: JBIC Annual Report (2020)

⁷⁹ https://www.jbic.go.jp/wp-content/uploads/press_en/2012/04/7405/news240401a.pdf

⁸⁰ https://www.jbic.go.jp/en/information/annual-report/pdf/2020E_m00_full.pdf. P.25

⁸¹ Ibid.

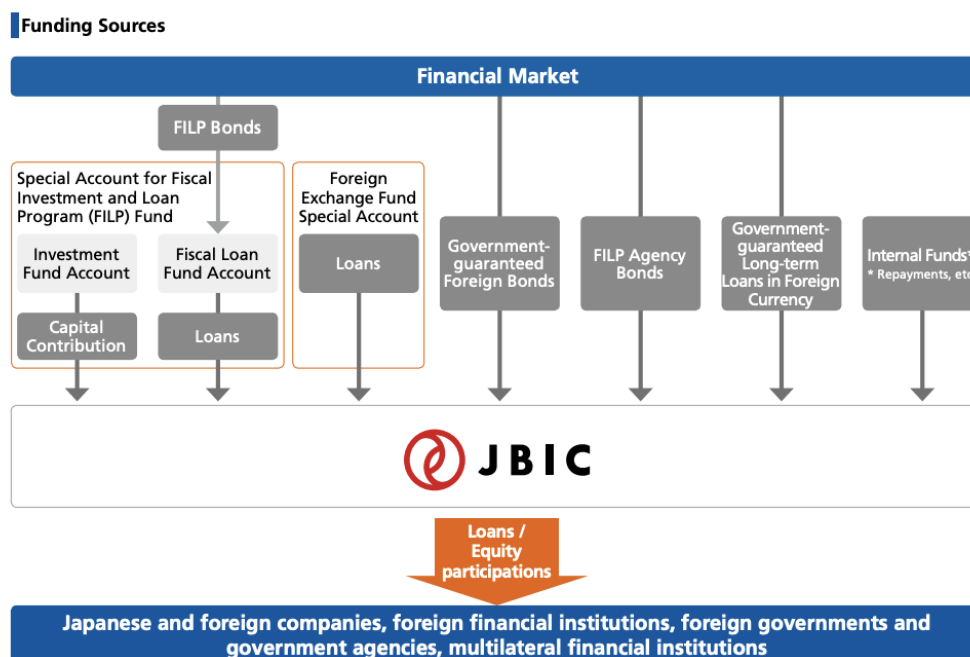


Figure 5. JBIC’s Funding Sources.
 Source JBIC’s Annual Report (2020)

As shown above, FILP bonds, Government-guaranteed foreign bonds, FILP agency bonds, and Long-term Loans in Foreign Currency come from the financial market.

As of 31 March 2021, JBIC’s outstanding loans and equity participation came to about 13,906.5 billion yen, and its outstanding guarantees were about 1,838.3 billion yen, totaling about 15,744.8 billion yen.⁸²

JOIN, on the other hand, was established in Japan in October 2014 as a Japanese government-private sponsored infrastructure investment fund. Its aim is “to encourage Japanese companies to utilize their accumulated knowledge, technology, and experience in the field of infrastructure to expand overseas,” and its stated role is to “provide financial support and share investment risks”; “act as a coordinator to relevant ministries and government institutions such as JICA, JBIC and NEXI”; and to “provide ‘Hands-On’ support such as seconding a board member to the project company, or supporting negotiation with government of host countries.”⁸³

JOIN is called a public-private fund, but in reality, about 96% of its funds are from the Special Account for Fiscal Investment and Loan (investment account), which is a special account

⁸² <https://www.jbic.go.jp/en/information/press/press-2021/0607-014817.html>

⁸³ <https://www.join-future.co.jp/english/about/company/>

and funded by national taxes.⁸⁴ JOIN is governed by Japan's Ministry of Land, Infrastructure, Transport and Tourism (MLIT) in consultation with the Ministry of Foreign Affairs (MOFA), the Ministry of Finance (MOF), and the Ministry of Economy, Trade and Industry.⁸⁵

JBIC and JOIN's Responsibilities in Regard to the Y Complex Project

On 26 June 2020, Mekong Watch inquired to JBIC about the Y Complex Project in line with issues raised by JFM. JBIC refused to disclose who was paying and receiving the rent for the project site, citing commercial confidentiality of the companies involved. The same answer was given during a periodic consultation between the Ministry of Finance and NGOs held in November of the same year.⁸⁶

After Mekong Watch's inquiry, a member for the Japanese Diet also inquired and met with MOF and JBIC officials.⁸⁷ The EIA was then disclosed by Ayeyar Hinthar Holdings Co., Ltd. on its website, and it contained the same leasing contract that had been obtained by JFM. After this, JBIC discussed the matter with relevant companies and finally stated publicly that rent was being paid to the Defence Account, as written in the EIA.⁸⁸

To prevent negative environmental and social impacts of its investment and lending activities, JBIC has the "JBIC Guidelines for Confirmation of Environmental and Social Considerations." In regard to the scope of impacts to be considered, the Guidelines say, "[i]n addition to the direct and immediate impact of projects, derivative, secondary, and cumulative impact and impact of associated facilities are also to be examined and investigated to a reasonable extent."⁸⁹ In light of this provision and the serious risks posed by this project, JBIC should have confirmed this lease agreement and the impacts of rent being paid into a Defence Account. The lease agreement clearly shows how funds would flow to the military; it is internationally known that the Tatmadaw maintained autonomy from civilian control, even after the "transition to civilian government"; and the Myanmar military continues to have a horrific human rights record. If funds generated by the commercial activities of this project's operators were incorporated into Myanmar's national defense budget, JBIC could be complicit in the severe human rights

⁸⁴ JOIN Website. <https://www.join-future.co.jp/english/about/shareholders/>

On the Japanese site, it states that the Japanese government's investment comes from the Fiscal Investment and Loan Special Account (investment account). Japanese site:

⁸⁵ Audit Board of Japan. <https://report.jbaudit.go.jp/org/h29/ZUIJ13/2017-h29-Z3009-0.htm#ZUHYO2-2> (in Japanese)

⁸⁶ MOF-NGO Periodic Consultation, 5 November 2020.

http://jacses.org/wp_jp/wp-content/uploads/2021/02/mof74.pdf (Meeting minutes in Japanese)

⁸⁷ Online meeting between HE Michihiro Ishibashi, MOF and JBIC on 4 Feb 2021.

⁸⁸ MOF-NGO Periodic Consultation, 5 March 2021 meeting minutes (in Japanese)

http://jacses.org/wp_jp/wp-content/uploads/2021/05/mof75.pdf (Accessed 6 Oct 2021))

⁸⁹ https://www.jbic.go.jp/wp-content/uploads/page/2013/08/36442/Environmenttal_Guidelines2015.pdf

violations committed by the Myanmar military. As of now, however, both JBIC and its governing agency, the Ministry of Finance, insist that payment of rent based on the lease agreement is not subject to JBIC's Guidelines.⁹⁰

Based on the fundamental principle of information disclosure as stipulated in JBIC's Guidelines, however, JBIC had a responsibility to publicly explain the project's money flows. Another issue from the perspective of compliance with JBIC's Guidelines is the fact that Japan could not expect to receive any explanation from the Myanmar government (or military) regarding the suspicion that Japanese public funds would support the Tatmadaw's military activities.

The Japanese government's Development Cooperation Charter⁹¹ also states that in regard to Japanese Official Development Assistance (ODA), Japan will "comply with the principle of avoiding any use of development cooperation for military purposes or for aggravation of international conflicts, in proactively contributing to securing peace, stability and prosperity of the international community." This principle should be upheld in regard to JBIC's Other Official Flows (OOF), which are governmental funds other than ODA that are used for economic cooperation with developing countries.

In particular, JBIC and MOF made the decision to provide public funds to this Y Complex Project at the end of 2018, after the humanitarian crisis in Rakhine State erupted in August 2017 and Myanmar was being criticized internationally. Their decision to fund a project highly likely to benefit the Tatmadaw even in such circumstances demonstrates a severe lack of consideration for the protection of human rights.

JOIN's involvement could also be argued to be an investment that is contrary to the Development Cooperation Charter. For example, see the excerpt below:

Development Cooperation Charter

III. Implementation

(1) Implementation Principles

B. Principles for securing the appropriateness of development cooperation

So as to secure the appropriateness of its development cooperation policies and individual programs/projects and to give consideration to the various impacts of such cooperation on the recipient countries and societies, Japan's development

⁹⁰ MOF-NGO Periodic Consultation, 5 March 2021. Op. cit.

⁹¹ Japan's Development Cooperation Charter
<https://www.mofa.go.jp/mofaj/gaiko/oda/files/000067701.pdf>

cooperation will be provided in accordance with the principles described below, and by comprehensively taking into account developing countries' development needs and socio-economic conditions, as well as Japan's bilateral relations with each recipient country.

(a) Situation regarding consolidation of democratization, the rule of law and the protection of basic human rights Japan will pay adequate attention to the situation in the recipient countries regarding the process of democratization, the rule of law and the protection of basic human rights, with a view to promoting the consolidation of democratization, the rule of law and the respect for basic human rights.

(b) Avoidance of any use of development cooperation for military purposes or for aggravation of international conflicts Japan will avoid any use of development cooperation for military purposes or for aggravation of international conflicts. In case the armed forces or members of the armed forces in 11 recipient countries are involved in development cooperation for non-military purposes such as public welfare or disaster-relief purposes, such cases will be considered on a case-by-case basis in light of their substantive relevance.”⁹²

JOIN should have taken this principle into consideration before investing. In the interest of establishing democracy in Myanmar and promoting respect for basic human rights, JOIN should have confirmed in advance whether it would be possible to ensure that rent would not be passed on to the Ministry of Defence or to the Myanmar military. Considering this project's scheme, it is nearly impossible for it to comply with “avoidance of any use of development cooperation for military purposes or for aggravation of international conflicts,” because the project site is owned by the Ministry of Defence, which is under the jurisdiction of the Tatmadaw. If it were to be argued that JBIC and JOIN are outside the framework of the Development Cooperation Charter, it would mean that Japanese public funds, which come from national taxes, could be diverted to military use, and this would be a major problem.

JOIN is particularly problematic in the sense that although it is involved in sensitive projects that require consideration of environmental and social impacts, no guidelines or standards to do so have been made public. Neither JOIN nor its governing ministry, the Ministry of Land, Infrastructure, Transport and Tourism, have ever publicly responded to requests from NGOs, including Mekong Watch, to sever the relationship between the Y Complex Project and the Myanmar military.⁹³ In spite of the fact that JOIN uses Japanese public funds, their attitude

⁹² Japan's Development Cooperation Charter. Op. cit., pp 9-10.

⁹³ Joint Petition: Japan Must Review All Economic Cooperation Projects in Myanmar. 1 June 2021.

continues to demonstrate a severe lack in accountability to Japanese citizens and the international community.

<Kirin Holdings and the Beer Business in Myanmar>

When Kirin Holdings entered the beer business in Myanmar in 2015, it purchased a 55% stake in Myanmar Brewery Co. from Fraser & Neave, a Singapore-based company that owned the joint venture with MEHL at the time. Kirin itself announced that the funds for this share acquisition would be “allocated through external purchases,” and this included some funds from JBIC.

In November 2015, JBIC’s press release announced that it had signed a loan agreement to provide Kirin with a portion of the funds required to acquire Myanmar Brewery (total acquisition amount US\$560 million), in line with supporting overseas business deployment of Japanese companies. JBIC said, “By providing long-term foreign currency funds necessary for overseas M&As by Japanese companies, JBIC will support the expansion of Japanese companies’ business and new business development overseas, thereby contributing to the maintenance and improvement of the international competitiveness of Japanese industries.”⁹⁴ The amount of the loan and the co-financing partners were not disclosed.

JBIC has not responded publicly during this period, in spite of it having funded Kirin’s M&A of MBL.

Amnesty points out that the Japanese government has a responsibility to ensure that Japanese companies operating in Myanmar neither exacerbate nor perpetrate human rights abuses, and that the responsible agencies should require Japanese companies to conduct due diligence before investing or doing business in Myanmar. Much of this responsibility should be fulfilled during JBIC’s loan screening and subsequent business monitoring.

In 2016, the Japanese government announced its plan to formulate the National Action Plan (NAP) on Business and Human Rights and completed it in 2020. In regard to JBIC, the NAP contains a general statement that MOF and MOFA will continue “enhancing effectiveness

http://www.mekongwatch.org/PDF/rq_20210601_Eng.pdf

⁹⁴ Financing for Kirin Holdings Co. Ltd. to acquire a subsidiary in Myanmar

<https://www.jbic.go.jp/ja/information/press/press-2015/1125-44174.html> (in Japanese)

through operational improvement,”⁹⁵ but it contains nothing that would lead to concrete initiatives to address human rights violations in Myanmar involving Kirin Holdings. The Japanese government is strongly urged to respect the UN Guiding Principles on Business and Human Rights and to take immediate action in regard to the violence by the Tatmadaw.

It is also necessary to take action in line with the article in the Guiding Principles on “supporting business respect for human rights in conflict-affected areas,” as seen below:

Guiding Principles on Business and Human Rights, Article 7
Supporting Business Respect for Human Rights in Conflict-Affected Areas

Because the risk of gross human rights abuses is heightened in conflict-affected areas, States should help ensure that business enterprises operating in those contexts are not involved with such abuses, including by:

- a. Engaging at the earliest stage possible with business enterprises to help them identify, prevent and mitigate the human rights-related risks of their activities and business relationships;
- b. Providing adequate assistance to business enterprises to assess and address the heightened risks of abuses, paying special attention to both gender-based and sexual violence;
- c. Denying access to public support and services for a business enterprise that is involved with gross human rights abuses and refuses to cooperate in addressing the situation;
- d. Ensuring that their current policies, legislation, regulations and enforcement measures are effective in addressing the risk of business involvement in gross human rights abuses.⁹⁶

And excerpt from the commentary on Article 7 states the following:

States should warn business enterprises of the heightened risk of being involved with gross abuses of human rights in conflict-affected areas. They should review whether their policies, legislation, regulations and enforcement measures effectively address this heightened risk, including through provisions for human rights due diligence by business. Where they

⁹⁵ Japan National Action Plan on Business and Human Rights 2020-2025.

<https://globalnaps.org/wp-content/uploads/2021/05/japanese-bhr-nap-english.pdf>

⁹⁶ Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework. Op. cit., pp 8-9

https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

identify gaps, States should take appropriate steps to address them. This may include exploring civil, administrative or criminal liability for enterprises domiciled or operating in their territory and/or jurisdiction that commit or contribute to gross human rights abuses. Moreover, States should consider multilateral approaches to prevent and address such acts, as well as support effective collective initiatives.⁹⁷

Considering that many ethnic minority areas in Myanmar have suffered the impacts of armed conflict even prior to the 2021 coup, and that the Tatmadaw is the main actor perpetrating war crimes and human rights abuses in those areas, the Japanese government must also be held responsible for neglecting its responsibility to warn businesses and review their policies.

⁹⁷ Ibid., p 10.

Edited by: Pacific Asia Resource Center (PARC)

With cooperation from: Mekong Watch

English Translation by: Madoka Onizuka

Published by: Fair Finance Guide Japan

Cover Photo Credit: Yuzo Uda

For inquiries regarding this report

Pacific Asia Resource Center (PARC). Attn: Tanaka

Toyo Bldg 3F, 1-7-11 Awajicho, Kanda, Chiyoda-ku, Tokyo, JAPAN 101-0063

+81-3-5209-3455 / office@parc-jp.org