



# MILITARY LTD

THE COMPANY FINANCING HUMAN RIGHTS  
ABUSES IN MYANMAR

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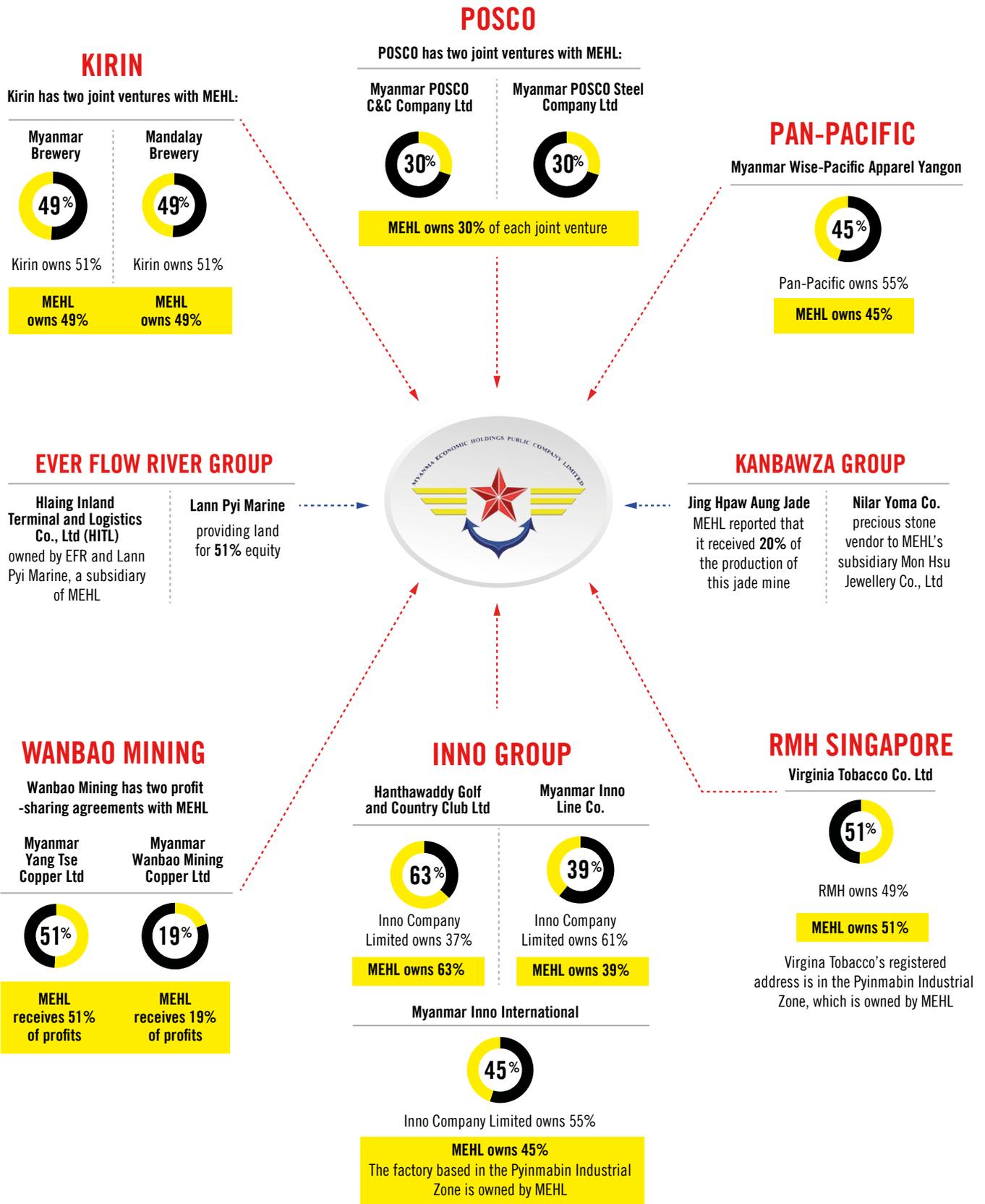


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# MEHL's Business Partners





# EXECUTIVE SUMMARY

For decades, Myanmar's armed forces (the Tatmadaw) have ruled with an iron fist while operating independently of civilian oversight and accountability. A key factor is their ability to access substantial revenue on top of their official budget. At the heart of this phenomenon is Myanmar Economic Holdings Public Company Ltd (MEHL), one of the country's largest conglomerates.

The military regime founded MEHL in 1990, and serving and retired military personnel continue to direct and own it. The conglomerate has built up a vast business empire that includes mining, beer, tobacco, garment manufacturing, banking, hotels, property, shipping and transportation. In many instances MEHL operates through business partnerships with other companies, including foreign ones.

What is not so well known is the specific nature of the relationship between MEHL and the armed forces, and the extent to which its business activities benefit them. Despite being a public company, MEHL is highly secretive about its ownership.

In this report, Amnesty International presents important new information on this matter, exposing the link between MEHL and military units that are implicated in crimes under international law and other serious human rights violations. This information has implications not only for the people and government of Myanmar, but also for MEHL's many foreign and local business partners. By doing business with the conglomerate, they too can be linked to these crimes and violations.

These findings build on a report by the UN Independent International Fact-Finding Mission on Myanmar (UN Fact-Finding Mission) into the military's economic activities, which was published in September 2019. The report concluded that revenue from MEHL "provides financial support for the Tatmadaw's operations with their wide array of international human rights and humanitarian law violations", and called on MEHL's business partners to cut ties with the conglomerate.

## MEHL'S SHAREHOLDERS EXPOSED

The new information on MEHL featured in this report is based on analysis of two sources. The first is a document filed by MEHL with Myanmar's Directorate of Investment and Company Administration (DICA) in January 2020. The document states that MEHL is owned by both 381,636 individual shareholders, who are serving and retired military personnel, and 1,803 "institutional" shareholders comprising "regional commands, divisions, battalions, troops, war veteran associations". The institutional shareholders own about a third of MEHL's shares.

The document names and provides certain details regarding 50 of MEHL's shareholders, representing a tiny fraction of the overall number. These nonetheless reveal significant information. Of the 50, eight are regional commands or units of the armed forces. The remaining 42 are mostly retired military officers and two veteran organizations.

The second source is a copy of a confidential MEHL shareholder report covering 2010-11 shared with Amnesty International exclusively by Justice For Myanmar, an activist group. It provides previously unpublished information about MEHL's shareholders, which appear to include every unit of Myanmar's armed forces (army, navy and air force). It also provides information on the considerable annual dividend payments received by shareholders between 1990 and 2011.

The total dividend payments in this period to all shareholders was nearly 108 billion kyats (107,869,519,830 kyats), equivalent to approximately US\$18 billion at the official exchange rate. Of this, MEHL transferred to military units 95 billion kyats (around US\$16 billion). (N.B. throughout this report, all dollar sums are calculated using what was then the official exchange rate. This was considerably less than the unofficial rate, which was not possible to calculate.)"



The 29<sup>th</sup> Annual General Meeting of MEHL's shareholders, Nay Pyi Taw, 24 July 2019. Source: Website of the Office of the Commander-in-Chief of Defence Services, <https://cincds.gov.mm/node/3644>

Amnesty International wrote to MEHL outlining its findings on two occasions. MEHL acknowledged receipt of the letters but did not challenge their accuracy or answer the questions they raised.

## INVOLVEMENT IN HUMAN RIGHTS VIOLATIONS

The two documents reveal that MEHL's shareholders include military units and high-ranking military officers directly implicated in crimes under international law and other serious human rights violations in Rakhine, Kachin and northern Shan States since 2016, as documented by Amnesty International. These include **Western Command**, the regional military command covering and overseeing operations in Rakhine State.

In August 2017, the military launched a devastating campaign of violence against Rakhine State's predominantly Muslim Rohingya minority population, forcing more than 730,000 women, men and children to flee to neighbouring Bangladesh. The UN Fact-Finding Mission found in its 2018 report on the human rights situation in Myanmar that, in addition to "consistent patterns of serious human rights violations and abuses", the military was also responsible for "serious violations of international humanitarian law".

Among those involved in the violence were battalions from the **33<sup>rd</sup> and 99<sup>th</sup> Light Infantry Divisions (LIDs)**, which were moved to northern Rakhine State in August 2017 by Myanmar's senior military leadership. In late 2016 and early 2017, these divisions had operated in northern Shan State where, according to Amnesty International's findings, they committed war crimes. Amnesty International also documented war crimes and serious human rights violations by soldiers from the 99<sup>th</sup> LID in northern Shan State in 2018 and 2019.

In 2019, Amnesty International documented further human rights violations by the military in Rakhine State involving the **22<sup>nd</sup> and 55<sup>th</sup> LIDs**, as well as battalions from Western Command, particularly some of those that are part of **Military Operation Commands (MOCs) 5, 9 and 15**.

The headquarters of all these units – as well as their component battalions – are listed in the MEHL 2010-11 shareholder report as having received annual dividend payments amounting to around 186.5 million kyats (US\$31 million). Indeed, the shareholder report states that in total, 95 separate military units under Western Command are MEHL shareholders, and that together they own more than 4.3 million shares and received payments of more than 1.25 billion kyats (US\$208 million) in 2010-11. Western Command is also listed as an MEHL shareholder in the document filed by MEHL with the DICA.

In addition, the report names senior military commanders as shareholders. These include officers who commanded troops involved in crimes under international law in Rakhine State before and since 2016.

They include **Senior General Min Aung Hlaing**, Commander-in-Chief and head of the War Office that has commanded military operations, including those in Kachin, Rakhine and Shan States, since 2016. In 2010-11 he owned 5,000 shares and received a dividend of 1.5 million kyats (US\$250,000).

## **DIVIDEND PAYMENTS CONTRIBUTE TO THE MILITARY'S OPERATIONAL COSTS**

There is no way for outsiders to know how these military units spend the dividends, but considering their size and regularity, it is reasonable to assume that they help finance them by contributing to operational costs.

MEHL says that its purpose is to support the “welfare” of active and retired military personnel. Even if MEHL contributed towards the pensions, or medical or other costs associated with “welfare”, these too can be considered as core operational costs that allow the military to function.

In providing this funding to military units, MEHL has contributed to, and continues to contribute to, human rights violations by the military that have taken place or are ongoing, in Kachin, Rakhine and northern Shan States. Furthermore, it is not simply a case of MEHL unwittingly providing finance to the military. The military created, directs and owns MEHL.

MEHL's board of directors undoubtedly knows how its dividend payments are used. The board consists entirely of serving and retired senior officers. The two most senior members of the military – the Commander-in-Chief and the Deputy Commander-in-Chief – chair MEHL's “patron group” that oversees the board. In their military roles, both have commanded forces that have been repeatedly implicated in serious crimes in recent years across the country.

## **RESPONSIBILITIES OF MEHL'S BUSINESS PARTNERS**

It is not only MEHL that is at fault. Its many business partners – both local and foreign – are linked to crimes under international law and other serious human rights violations by virtue of their business relationship with the conglomerate. MEHL works in collaboration with these business partners in establishing joint ventures or profit-sharing agreements in Myanmar; when profitable, dividends are shared with MEHL as shareholder. MEHL then disburses dividends to its own shareholders.

Amnesty International presented its findings not only to MEHL, but to eight of its significant business partners. Six of these are foreign, two are local. In their replies, three announced that they were reviewing their relationship with MEHL in the wake of Amnesty International's findings and following the publication of the UN Fact-Finding Mission report of 2019, which called for businesses to cut ties with MEHL. Others did not provide such commitments or did not respond at all.

### **Ever Flow River Group**

A Myanmar company with affiliates in various sectors, EFR has invested in a project to develop an inland port complex in Yangon. The joint venture tasked with the project is owned by EFR and a subsidiary of MEHL. EFR said in its communication with Amnesty International that it has not been involved with, or contributed towards, human rights violations, since the port project is yet to commence operations, and will take at least 10 years to be profitable.

### **Kanbawza Group**

Established in 1994, KBZ is another one of the largest conglomerates in Myanmar with businesses in a variety of sectors. MEHL partners with KBZ in jade and ruby mining operations. In its reply to Amnesty International, KBZ claimed that it is in the process of terminating its relationship with MEHL but provided no details.

## **Kirin**

Kirin Holdings is a Japanese beverage company and one of the major international brewers. Through its investments in two joint ventures with MEHL since 2015, Kirin says it controls 80% of Myanmar's growing and highly profitable beer market. Kirin wrote that it has opted to engage with MEHL to discuss the findings of this report and "ascertain whether proceeds for the joint-ventures with MEHL may have been used for military purposes." It also announced that it was "exploring alternative structural options for the ownership of the Myanmar joint-ventures".

## **INNO Group**

Inno Group, incorporated in 1991, is a South Korean company that has been conducting business in Myanmar for the past 14 years. It currently operates 13 companies, three of them partly owned by MEHL. These are a garment factory, a property and transportation project and a golf course and resort.

In its reply, Inno Group claimed that it was not linked to human rights violations since its three joint ventures have not yet paid any dividends to MEHL, as they have not started to generate profits. Inno Group did not provide any information to Amnesty International regarding any due diligence processes that it may have carried out.

## **Pan-Pacific**

Established in 1972, Pan-Pacific is a South Korea-listed company that manufactures clothing and exports its products to major brands around the world. In 2012 Pan-Pacific acquired 55% of a garment manufacturer in Yangon, the rest of which is owned by MEHL.

In its letter, Pan-Pacific said that MEHL received an average of US\$75,000 a year as dividends for the past three years, in addition to the fees paid by Pan-Pacific to lease the land owned by MEHL where its facilities operate. Pan-Pacific said that it has decided to terminate its relationship with MEHL, after it had tried and failed to receive information from the company about measures, "to ensure ethical responsibility." It said that by September 2020, it will have taken over MEHL's share in their joint venture. At the time of writing this had not yet happened.

## **POSCO**

Founded in 1968 in South Korea, POSCO is one of the world's largest steelmakers. POSCO has two joint ventures in Myanmar with MEHL. In its first response to Amnesty International, POSCO stated that "there is no way for companies to monitor and verify the use of dividends paid out to the shareholders." In a subsequent communication, POSCO clarified that "[Myanmar POSCO C&C Company Ltd] has never paid any dividends to MEHL since its incorporation in 2013 and no other dividend payment has been made by [Myanmar POSCO Steel Company Ltd] to MEHL since the last dividend payment made for the business performance of 2017." It also said that it had contacted MEHL in August 2020 asking "MEHL to confirm that the dividend payments in the past were used for MEHL's original business objectives." POSCO wrote that it had not yet received a response.

## **RMH Singapore**

RMH Singapore Pte. is a fund with a registered address in Singapore. Jointly with MEHL, it owns Virginia Tobacco Co. Ltd, established in 1993 and previously known as Rothmans Myanmar Holdings Private Ltd. This brand was previously owned by the UK multinational British American Tobacco until it withdrew from Myanmar in 2006. RMH Singapore's ultimate owners are hidden by a network of investment funds in Singapore and the British Virgin Islands. It did not reply to Amnesty International.

## **Wanbao Mining**

Wanbao Mining is a Chinese metal mining company. Since 2011, it has had business ties with MEHL through two subsidiaries: Myanmar Yang Tse Cooper Ltd and Myanmar Wanbao Mining Copper Ltd. Through these it owns the Sabetaung and Kyisintaung (S&K) and Letpadaung copper mines. The latter is Myanmar's largest mine. Wanbao Mining has a profit-sharing agreement with MEHL for both of these. Wanbao Mining did not reply to Amnesty International.



## **FAILURE TO CONDUCT DUE DILIGENCE**

Companies have a responsibility to respect all human rights wherever they operate in the world. This responsibility is laid out in the UN Guiding Principles on Business and Human Rights, an internationally endorsed standard of expected conduct.

This responsibility requires companies to avoid causing or contributing to human rights abuses through their own business activities and to address impacts with which they are involved, including by remediating any actual impacts. It also requires them to seek to prevent or mitigate adverse human rights impacts directly linked to their operations or services by their business relationships, even if they have not contributed to those impacts.

The responsibility to respect human rights requires that companies, such as MEHL's foreign and local business partners, seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations through their business relationships. Human rights due diligence is one important way for companies to identify these impacts.

In this case, any due diligence procedures – conducted before the start of, and throughout, their business relationships – should have necessarily included a close review of MEHL's shareholders. This is particularly relevant given the amount of existing public information on the ties between MEHL and the Myanmar military, and the military's well-known involvement in human rights violations in various parts of the country.

Of the six companies that replied to Amnesty International, only Kirin and Pan-Pacific made any reference to having conducted due diligence procedures, although the extent and nature of these was not provided in detail.



## **FAILURE TO EXERCISE LEVERAGE**

After a company identifies a human rights impact linked to its business operations, it must consider taking appropriate action to mitigate the impact, including by exercising its existing leverage – or by increasing it – vis-à-vis its business partner. In this case the impact is clear: profits derived from the operations of the joint ventures – when generated – were provided to MEHL, which then distributed dividends to its shareholders, many of which are responsible for human rights violations.

It seems that only three companies attempted to assert their leverage over MEHL. In all cases, this was to get information from MEHL, but the companies reported that these efforts were largely unsuccessful.

Pan-Pacific noted that it was “quite difficult... to detect” the “economic relations” between MEHL and the military given limited information provided by its business partner. Similarly, Kirin wrote that it had made “repeated requests to MEHL for proper documentation as the information initially provided was insufficient. Unfortunately, we have not received further updates or documentation from MEHL on this matter.”



## **FAILURE TO END RELATIONSHIP WITH MEHL**

When a company is unable to prevent or mitigate the human rights impact identified then the company should consider disengagement with the business relationship, taking into account credible assessments of potential social, economic and human rights adverse impact. MEHL has demonstrated an unwillingness or inability to engage with its business partners on this issue, leaving them with little choice.

In fact, Pan-Pacific has already arrived at this conclusion. In its letter to Amnesty International, the company said it had recognized the “serious impact of adverse human right[s]”, and did not “expect any significant measure and progress in effect by MEHL so far to ensure ethical responsibility despite [Pan-Pacific’s] continued approach”. It therefore concluded that it had to terminate its business relationship with MEHL.

Kirin said that it has started to explore alternative structural options for the ownership of its Myanmar joint ventures.

KBZ wrote to explain that it was withdrawing from its current business relationship with MEHL but did not provide further details.

In its letter, POSCO stated that it would consider revisiting its business relationship with MEHL in the event that “violations and suspected illegalities” linked to any use by MEHL of future dividend payments are considered “serious”.

Inno Group and EFR did not provide any indication that they will end (or even reconsider) their current business relationship with MEHL. The lack of response from RMH Singapore and Wanbao Mining suggest that these companies will likely also continue to partner with MEHL.

## **CONCLUSIONS AND KEY RECOMMENDATIONS**

The new information presented in this report provides significant detail regarding the connections between MEHL’s shareholders and the Myanmar military as well as the link between these shareholders and its many profitable partnerships with other companies. These shareholders include military units behind past and continuing crimes under international law and other serious human rights violations across the country. MEHL contributes to these violations by knowingly providing funds to these units through the regular payment of dividends.

MEHL’s “patron group” includes the very officers who have led the military during this period. The UN Fact-Finding Mission called for senior military officials, including members of the “patron group”, to be investigated and prosecuted for crimes against humanity and war crimes in Kachin, Rakhine and Shan States, and for genocide against the Rohingya population in Rakhine State.

MEHL cannot be trusted to reform itself. The Myanmar government must therefore intervene to break the link between the armed forces and the economy. Part of this must be a thorough reform of the ownership and management of MEHL, concluding with the dismantling or sale of its constituent parts to the state under parliamentary oversight or to civilians unrelated to the military.

In the meantime, MEHL’s business partners must immediately and thoroughly assess their current business relationship with the conglomerate.

MEHL has shown no willingness to engage transparently with its business partners to demonstrate that it can reform its structure. Therefore, and until it does so, these business partners have little choice but to disengage, responsibly, from MEHL.

## **KEY RECOMMENDATIONS :**

### **TO THE GOVERNMENT OF MYANMAR**

- Institute constitutional and other legal and policy reforms to place the military under civilian control and to ensure that parliament approves all military spending.
- Prohibit the military from engaging in any form of economic activity and ban the military's direct or indirect ownership of business conglomerates such as MEHL.
- Establish an independent commission, under parliamentary oversight, to investigate the role of military businesses and their shareholders in human rights violations and make the findings public.
- Remove and prohibit any serving or retired military officers or institutional shareholders linked to the military from serving as an MEHL director or senior manager.
- Ensure that MEHL is owned by the state under parliamentary oversight or by civilians; and that neither military units nor high-ranking serving or retired officers (individually or jointly) hold a controlling interest in MEHL.
- Ensure that Justice For Myanmar, its members, partners and associates, as well as any other party who shares information on MEHL, are not subject to reprisals, intimidation or any other form of harassment.

### **TO LOCAL AND FOREIGN COMPANIES PARTNERING WITH MEHL**

- End business relationships with MEHL, its subsidiaries and joint ventures, taking steps to ensure that disengagement is done responsibly, in accordance with the UN Guiding Principles.
- When considering options to disengage from MEHL, carefully assess potential adverse impacts, including heightened risks to workers' rights or measures that might strengthen the Myanmar military, such as the transfer of assets or funds to the military.

### **TO THE HOME STATES OF COMPANIES PARTNERING WITH MEHL, OPERATING IN MYANMAR OR CONSIDERING INVESTING IN MYANMAR**

- Ensure that multinational corporations domiciled in their countries are required to act responsibly and are held liable for their negative human rights impacts. They must require by law that these companies undertake human rights due diligence measures in respect of their global operations.
- Support the Myanmar government to remove the military from the country's economic life.

### **TO THE UNITED NATIONS**

- Ensure implementation of the UN Fact-Finding Mission's 2019 report on the economic interests of the Myanmar military (A/HRC/42/CRP.3), including through further investigations and reporting by the Office of the United Nations High Commissioner for Human Rights (OHCHR) and/or the Special Rapporteur on the situation of human rights in Myanmar.