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Human Rights Now

May 24, 2022

To: Investors holding shares in Tokyo Tatemono Co., Ltd. or Daiwa House Industry Co., Ltd.

Call for Engagement with Companies Involved in the Y Complex Project in Myanmar

Mekong Watch
Friends of the Earth Japan
Justice For Myanmar
Network Against Japan Arms Trade (NAJAT)
ayus:Network of Buddhists Volunteers on International Cooperation
Japan International Volunteer Center (JVC)
Pacific Asia Resource Center (PARC)
Human Rights Now

Dear Investor:

We are civil society organizations from Japan and Myanmar that make policy proposals urging Japanese companies to give appropriate consideration to the environment, social impacts, and human rights in their overseas business operations. In particular, we are deeply concerned about the business relationship that Japanese companies have with the Myanmar military. The Myanmar military for decades has committed grave human rights violations and atrocity crimes with total impunity, and on February 1, 2021, overturned a democratic government through an attempted coup. Today we are sending this call for engagement to you as one of 101 major corporate investors holding shares in Tokyo Tatemono Co., Ltd. (hereinafter "Tokyo Tatemono") or Daiwa House Industry Co., Ltd. (hereinafter "Daiwa House"), as land lease payments made by the two companies in connection with a real estate development project in Yangon (commonly known as Y Complex) may become a source of funding for the Myanmar military.

Y Complex is a project undertaken by Y Complex Company Ltd., a Myanmar corporation. It is funded by Yangon Museum Development Pte. Ltd. (YMD), a Singaporean corporation, and Yangon Technical and Trading Company Ltd. (YTT), a Myanmar corporation. YMD was jointly set up by Tokyo Tatemono, Fujita Corporation (a subsidiary of Daiwa House), and Japan Overseas Infrastructure Investment Corporation for Transport and Urban Development (JOIN), a government-funded infrastructure investment corporation.¹

¹ Japan Bank for International Cooperation (JBIC), "Loan for Mixed Use Development Project by Japanese Company in Myanmar," press release, December 18, 2018, at: <https://www.jbic.go.jp/en/information/press/press-2018/1218-011714.html>

For this project, Y Complex Company Ltd. will build and operate commercial facilities, a hotel, and office rental space on “military-owned military museum land.”² The project uses a “Build, Operate, Transfer (B.O.T)” system, meaning that the land including buildings and fixtures will be transferred to the military after the expiry or termination of the B.O.T. agreement.³ According to the land lease agreement (dated October 15, 2013) which has been published, the lessor is “Colonel Aung Min Thein (Officer No. Army 17642), Vice Quarter Master General, Office of the Quarter Master General, Commander-in-Chief (Army).” YTT, the lessee, subleases the land to Y Complex Company (see Figure).⁴

The land lease indicates that rent payments should be made to “Defence Account no. MD 010424.” According to a leaked official document, the rent is about two million USD (about 230 million JPY) per year,⁵ to be paid for at least 50 years from the beginning of the contract period. The Office of the Quarter Master General, the lessor of the land, was sanctioned by the US, UK, and Canada in December 2021.⁶ The UK government has pointed out that “the QMGO [Office of the Quarter Master General] plays a crucial role in procuring equipment for the Myanmar Armed Forces, including ammunition, bombs and jet fuel. This directly enables serious human rights violations, and the repression of the civilian population including peaceful protestors and ethnic minorities.”⁷ In other words, land rent payments to the Office of the Quarter Master General may fund the Myanmar military’s international crimes and grave human rights violations such as the killing of citizens, wrongful arrest, arbitrary detention, sexual violence, forced disappearance, and torture.

Daiwa House and Tokyo Tatemono adopted human rights policies in January 2018⁸ and May 2021⁹ respectively, and both have stated publicly that they would strive to fulfill their responsibility to respect human rights and conduct business responsibly based on the UN Guiding Principles on Business and Human Rights. However, according to a news report, the consortium of Japanese entities that include Tokyo

² See, e.g., Human Rights Watch, Mekong Watch, *et al.*, Joint Submission Concerning Japanese Business Entities Operating in Myanmar, February 17, 2021, at: <https://www.hrw.org/news/2021/02/16/joint-submission-concerning-japanese-business-entities-operating-myanmar>

³ See “B.O.T System Land Lease Agreement,” Appendix II, Environmental Impact Assessment Y COMPLEX PROJECT Dagon Township, Yangon, dated July 2019, at: <http://ayeyarhinthar.com/pdf/Environmental%20Impact%20Assessment%20Report%20of%20Y%20Complex%20Project.pdf>

⁴ Statement by Tatsuhiko Takesada, CEO of JOIN to the Committee on Financial Affairs of the House of Representatives on April 20, 2022, at: https://www.shugiin.go.jp/internet/itdb_kaigiroku.nsf/html/kaigiroku/009520420210420012.htm

⁵ Justice For Myanmar, “Land lease payment tie Japanese gov and Investors to Myanmar’s military,” March 24, 2021, at: <https://www.justiceformyanmar.org/stories/land-lease-payments-tie-japanese-gov-and-investors-to-myanmars-military>

⁶ “Treasury Sanctions Perpetrators of Serious Human Rights Abuse on International Human Rights Day,” U.S. Department of the Treasury press release, December 10, 2021 at <https://home.treasury.gov/news/press-releases/jy0526>; “New UK sanctions target human rights violations and abuses in Myanmar and Pakistan,” Foreign, Commonwealth & Development Office press release, December 10, 2021, at: <https://www.gov.uk/government/news/new-uk-sanctions-target-human-rights-violations-and-abuses-in-myanmar-and-pakistan>; “Backgrounder: Additional Myanmar sanctions,” Global Affairs Canada, updated December 10, 2021, at: <https://www.canada.ca/en/global-affairs/news/2021/12/backgrounder-additional-myanmar-sanctions.html>. The US, UK, and Canada also sanctions Myanmar Economic Corporation which is reportedly controlled by the Quarter Master General's Office.

⁷ “The UK Sanctions List,” Foreign, Commonwealth & Development Office, at: <https://www.gov.uk/government/publications/the-uk-sanctions-list>

⁸ Human Rights Policy of Daiwa House Group at: <https://www.daiwahouse.com/English/sustainable/csr/jinken/images/Human%20Rights%20Policy%20of%20Daiwa%20House%20Group.pdf>

⁹ Tokyo Tatemono Group Human Rights Policy at: <https://tatemono.com/csr/english/pdf/HumanRightsPolicy.pdf>

Tatemono and Daiwa House acknowledged that the land rent payments went to Myanmar's Ministry of Defence.¹⁰ However, even before the military's attempted coup, the Ministry of Defence was under direct military control under the 2008 Constitution.¹¹ The fact that Tokyo Tatemono and Daiwa House decided to participate in the Y Complex project without acknowledging the overall system and risks involved, it can only be said that they neglected to conduct proper human rights due diligence.

In response to an inquiry from an NGO, Daiwa House stated that it "has not paid the rent since February 1, 2021, and the funds have not been transferred to the [Office of the Quarter Master General]."¹² Tokyo Tatemono also has emphasized that it has not paid sublease fees since February 1, 2021.¹³ If, as both companies insist, the rent payments do not become funds for the military as long as payments are suspended, once payments resume, such payments will become revenue for the military. Furthermore, as long as Tokyo Tatemono and Daiwa House continue development of the project, they are in effect creating a lucrative future asset that the Myanmar military will be able to use as a source of revenue. At this point, neither Tokyo Tatemono nor Daiwa House has announced its disengagement from the Y Complex project.¹⁴ Tokyo Tatemono and Daiwa House should withdraw from contractual obligations under which rent payments are made to the Office of the Quarter Master General.

Accordingly, we request all holders of shares in Tokyo Tatemono or Daiwa House or both to promptly engage with the companies to urge them to responsibly disengage from the Y Complex project in order to sever their economic relations with the Myanmar military, and to publicly announce that they have so disengaged. If the companies do not take measures even after your engagement, we would like you to consider divestment.

We would very much appreciate it if you could spare time to reply to the contact address listed below by June 30, 2022 to share your course of action for addressing this request and any other views you may have on the matter. We look forward to receiving your feedback. Please refer to the documents attached for information on the serious human rights abuses by the Myanmar military amounting to international crimes as well as details on the points outlined in the letter.

Sincerely,

¹⁰ "Japan state-funded hotel deal pays rent to Myanmar defence ministry," Reuters, March 24, 2021, at: <https://www.reuters.com/article/us-myanmar-politics-japan-insight-idUSKBN2BG0FF>. Japan Bank for International Cooperation also stated that all of the land lease payments have been received by Myanmar's Ministry of Defence. Minutes of the 75th Japan Ministry of Finance - NGO Regular Dialogue, March 5, 2021, at: http://jacs.org/wp_jp/wp-content/uploads/2021/05/mof75.pdf

¹¹ Under Article 232(b)(ii), Article 232(j)(ii), Article 234(b) through (f), and Article 235(c)(ii) of the Constitution of the Republic of the Union of Myanmar (2008), the Minister of Defence and the Deputy Minister of Defence are chosen from Defence Services personnel nominated by the Commander-in-Chief of the Defence Service, and upon appointment are not required to retire or resign from the Defence Services.

¹² Email response from Daiwa House to Inclusive Development International (IDI), included in a report by IDI published in March 2022 (dated February 1, 2022), at: <https://drive.google.com/drive/folders/1CyjarmV0UmY1e0HXNjtSyJBoIRdUF5cd>

¹³ Email response from Tokyo Tatemono to Inclusive Development International (IDI), included in a report by IDI published in March 2022 (dated February 17, 2022) at: <https://drive.google.com/drive/folders/1CyjarmV0UmY1e0HXNjtSyJBoIRdUF5cd>

¹⁴ Tokyo Tatemono has reported a loss on the project in its financial report submitted on March 29, 2022 but is continuing the project. <https://pdf.irpocket.com/C8804/jQug/pr1X/EUGr.pdf>

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Kanna Mitsuta
Executive Director, Friends of the Earth Japan

Yadanar Maung
Spokesperson, Justice For Myanmar

Koji Sugihara
Representative, Network Against Japan Arms Trade (NAJAT)

Tomokazu Matsumoto
President, ayus:Network of Buddhists Volunteers on International Cooperation

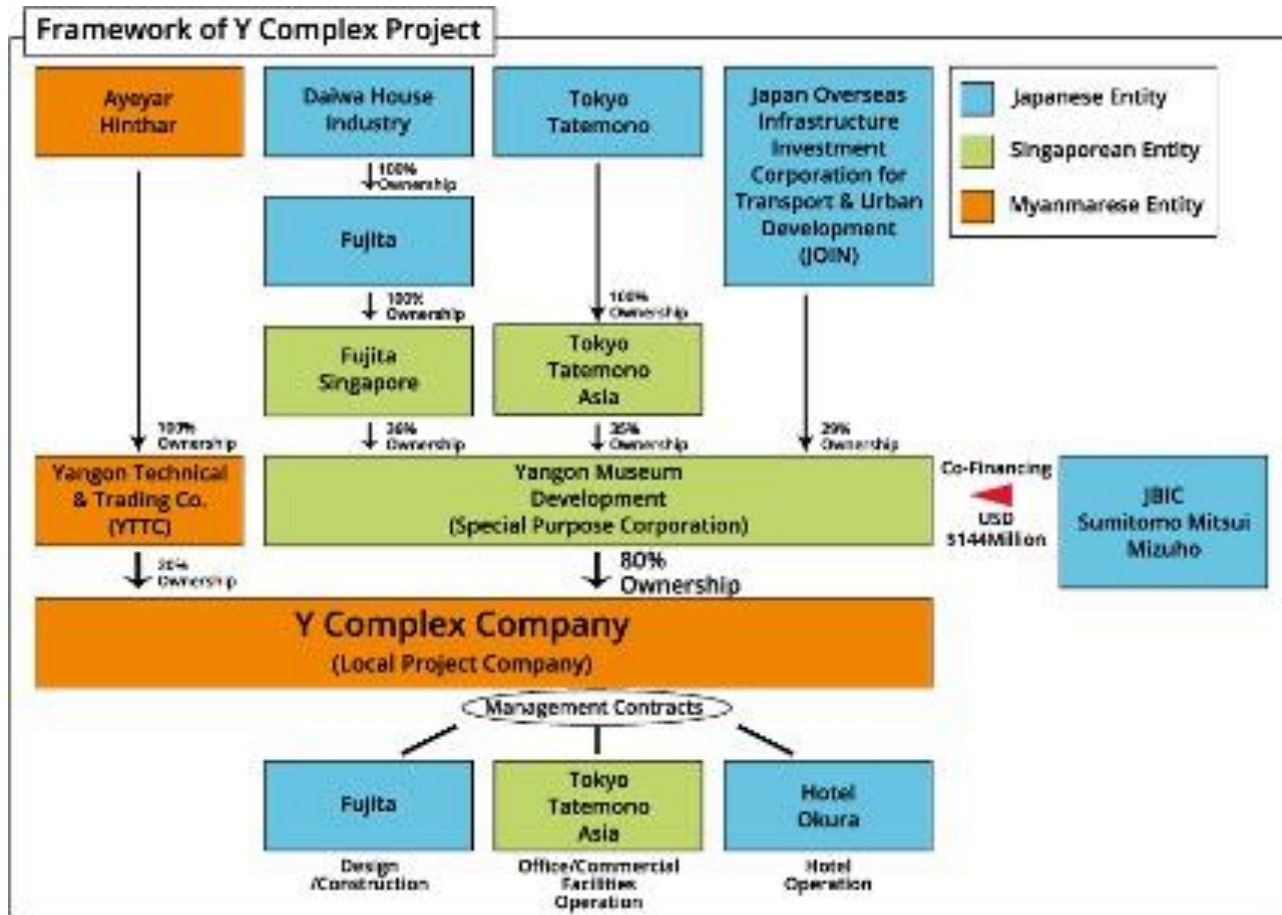
Takaki Imai
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Figure: Framework of Y Complex Project



Attachments:

- Background on the Situation in Myanmar
- Responses from Tokyo Tatemono and Daiwa House Industry to Inclusive Development International (IDI), included in a report by IDI published in March 2022

For more information:

[Report] *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)

https://fairfinance.jp/media/497629/ffgj-myanmar_en20220215.pdf

[Press Release] "ESG-labeled funds found to hold shares in corporations linked to the Myanmar military; Japanese companies exposed in report by rights groups" (April 12, 2022)

http://www.mekongwatch.org/PDF/pr_20220412_Eng.pdf

[Email Response from Tokyo Tatemono to Inclusive Development International (IDI), included in a report by IDI published in March 2022] (dated February 17, 2022)

<https://drive.google.com/drive/folders/1CyjarmV0UmY1e0HXNjtSyJBoIRdUF5cd>

[Email Response from Daiwa House to Inclusive Development International (IDI), included in a report by IDI published in March 2022] (dated February 1, 2022)

<https://drive.google.com/drive/folders/1CyjarmV0UmY1e0HXNjtSyJBoIRdUF5cd>

[Joint Statement] "Japanese investors in Y Complex development risk violating US sanctions: Human Rights Now, Japan Volunteer Center, Justice For Myanmar and Mekong Watch demand responsible disengagement" (December 20, 2021)

http://www.mekongwatch.org/PDF/pr_20211220_Ycomplex_E.pdf

[Joint Press Release] "Japan: Stop Real Estate Project in Myanmar; Commercial Dealings with Abusive Military Undermines Rights" (July 15, 2021)

http://www.mekongwatch.org/PDF/rq_20210715_Eng.pdf

[Joint Letter] Submission by Civil Society Organizations concerning Japanese Business Entities Operating in Myanmar (February 17, 2021)

http://www.mekongwatch.org/PDF/YComplex-Joint%20Submission_20210217_Eng.pdf

[Business & Human Rights Resource Centre story] "Myanmar: Japanese cos. allegedly engaged in high-end commercial development on land owned by Burmese military currently facing UN genocide charges" (September 2, 2020)

<https://www.business-humanrights.org/en/latest-news/myanmar-japanese-cos-allegedly-engaged-in-high-end-commercial-development-on-land-owned-by-burmese-military-currently-facing-un-genocide-charges/>

Background on the Situation in Myanmar

In Myanmar, the military (also known as the Tatmadaw) has committed gross human rights violations over the past several decades.¹ Some of the violations committed against civilians in ethnic minority regions are deemed to amount to international crimes.² Since the coup d'etat on February 1, 2021, many citizens have expressed opposition to the resumption of military rule. However, the military has responded with violence, and 1,835 people have been killed and 10,650 were detained as of May 16, 2022.³ In July 2021, the Independent Investigative Mechanism on Myanmar (IIMM) set up by the UN Human Rights Council found that security forces including the military have “committed serious international crimes” since the coup, such as murders, persecution, arbitrary detentions, sexual assaults, forced disappearances, and torture.⁴ According to the IIMM, these crimes may amount to crimes against humanity.

Even before the coup, armed conflict had continued for decades in ethnic minority regions, and many civilians have become victims of forced labor, forced relocation, sexual violence, extrajudicial killing committed by the military as part of its clearance operations against ethnic armed organizations.⁵ At times such operations are carried out to pursue development projects.⁶ In 2017, the military attacked villages of Rohingya Muslims in Rakhine State and committed killings, rapes, arbitrary arrests, and mass arson of civilian homes. The independent international fact-finding mission on Myanmar (IIFMM) established by the UN Human Rights Council found that during this operation the military committed crimes against humanity as well as violations of international humanitarian law amounting to war crimes.⁷ Further, Gambia filed a case at the International Court of Justice against Myanmar for alleged genocide committed during these attacks, and the case is ongoing. After the coup, armed conflict in ethnic minority regions have continued, intensified, or reignited.⁸ According to the UN High Commissioner for Refugees, as of May 2022, there are an estimated 590,000 internally displaced people in Myanmar due to conflict and unrest since the coup.⁹

The military has built its own network of companies to finance its activities. In its 2019 report,¹⁰ the IIFMM detailed how the military utilized its business relationships with its holding companies and foreign corporations to support its operations against ethnic minorities. Further, because “the revenues the military earns from domestic and foreign business deals substantially enhances its ability to carry out gross violations of human rights,” the IIFMM recommended that “no business enterprise active in Myanmar or trading with or investing in businesses in Myanmar should enter into or remain in a business relationship of any kind with the security forces of Myanmar, in particular the Tatmadaw, or any enterprise owned or controlled by them.”¹¹ Some of the more than 400 Japanese companies conducting business in Myanmar may well be contributing to human rights violations through the military’s network of businesses.

¹ See, e.g., Written updates of the Office of the United Nations High Commissioner for Human Rights (UNHCHR) on the situation of human rights in Myanmar, September 16, 2021, p.2.

² *Ibid.*

³ Assistance Association for Political Prisoners, Daily Briefing in Relation to the Military Coup, May 16, 2022.

⁴ Report of the Independent Investigative Mechanism for Myanmar, July 5, 2021, p.9.

⁵ See, e.g., The Shan Human Rights Foundation & The Shan Women’s Action Network, *License to Rape: The Burmese military regime’s use of sexual violence in the ongoing war in Shan State*, (May 2002); Shan Human Rights Foundation, *Dispossessed: Forced Relocation and Extrajudicial Killings in Shan State*, April 1998.

⁶ See, e.g., EarthRights International, *Total Denial Continues: Earth Rights Abuses Along the Yadana and Yetagun Pipelines in Burma* (2000); Karenni Development Research Group, *Dammed by Burma’s Generals: The Karenni Experience with Hydropower Development From Lawpita to the Salween*, 2006.

⁷ Report of the independent international fact-finding mission on Myanmar, September 17, 2018, pp. 374, 376.

⁸ UNHCHR, *supra* note 1, pp. 9, 11.

⁹ UNHCR, Myanmar Emergency Update as of 4 May 2022.

¹⁰ Independent International Fact-Finding Mission on Myanmar, *Economic interests of the Myanmar military*, August 5, 2019.

¹¹ *Ibid.*, p.66.



Annie Burns-Pieper <annie@inclusivedevelopment.net>

Re: Forthcoming publication on human rights performance of ESG rating firms and index providers

dh.ir.communications <dh.ir.communications@daiwahouse.jp>

Tue, Feb 1, 2022 at 6:54 PM

To: Annie Burns-Pieper <annie@inclusivedevelopment.net>

Cc: Dustin Roasa <dustin@inclusivedevelopment.net>, "dh.ir.communications" <dh.ir.communications@daiwahouse.jp>

Dear Ms. Annie Burns-Pieper

Thank you for your email.

You have contacted us with the following article, but please correct (2) and (3) because they contain incorrect information.

Since February 1, 2021, there has been no payment of land rent and there is no recognition that funds are flowing to the Quartermaster General's office. In addition, the promotion of construction projects has been suspended since the same day. Therefore, please correct the article as shown in red.

"Daiwa House Industry Co. is a Japanese company traded on the Tokyo Stock Exchange (1). In May 2020 Justice For Myanmar reported that Fujita Corporation, a subsidiary of Daiwa House, was responsible for the engineering and construction of the Y Complex. (2) However, the promotion of projects such as construction has been suspended since February 1, 2021. According to Justice for Myanmar land rent from the Y complex flows to the Quartermaster General's office via a proxy company, but the company has not paid the rent since February 1, 2021, and the funds have not been transferred to the office. (3)"

(Reference) Notice Released on July 26, 2021

Statement regarding the business in Yangon, Myanmar

<https://www.fujita.com/news-releases/Statement%20regarding%20the%20business%20in%20Yangon%2C%20Myanmar.pdf>

Thank you for your understanding.

Sincerely,

Seki

IR Department

Daiwa House Industry Co., Ltd.

Contact: dh.ir.communications@daiwahouse.jp

"

[Quoted text hidden]

[Quoted text hidden]

[Quoted text hidden]

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[Redacted signature]

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Senior Researcher

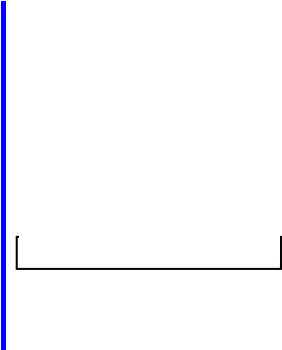
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[



Annie Burns-Pieper <annie@inclusivedevelopment.net>

[Tokyo Tatemono Aisa] Thank you for your Inquiry

Info Tokyo Tatemono Asia <info@tatemonoasia.com>
To: Annie Burns-Pieper <annie@inclusivedevelopment.net>
Cc: Dustin Roasa <dustin@inclusivedevelopment.net>

Thu, Feb 17, 2022 at 2:06 AM

Dear Annie

Thank you for giving us an opportunity to respond to your inquiry. We would like to send you our comments, including answers to your questions.

Tokyo Tatemono Co., Ltd. ("Tokyo Tatemono" or "We") engages in corporate activities in a manner that respects human rights; in May 2021, Tokyo Tatemono established the "Tokyo Tatemono Group Human Rights Policy" in line with the UN Guiding Principles on Business and Human Rights. In addition, We joined the UN Global Compact in August 2021. We keenly recognize the importance of respecting the human rights of all stakeholders involved in our business, and all persons around the world.

Since 2017, we engaged in a large-scale commercial complex development project in the center of Yangon (the "Project") as a member of a Japanese consortium by establishing an called Yangon Museum Development ("YMD"), but not as the entity that is in charge of the design and architecture of the Project.

YMD is not the entity that entered into a lease for the land underlying the project (the "Subject Land"). The entity that entered into a lease for that land is Y Complex Company Limited (the "Project Company"), which is a local Myanmar registered company established by these Japanese consortia through YMD, together with Myanmar's local partner YANGON TECHNICAL AND TRADING CO, LTD. (the "Local Partner"). The Project Company sublet the Subject Land from the Local Partner. We also understand, based on our previous due diligence, that the Local Partner is neither a proxy company for the Myanmar military nor a military-owned company.

Under the lease, the Project Company pays rent to the Local Partner, not directly to the Government of Myanmar. We recognize that the ultimate beneficiary of the paid rent is the Government of Myanmar and we do not believe that the paid rent to the Local Partner has been a source of funds for the Myanmar military. However, please note that no sublease fees have been paid since February 1, 2021.

In addition, we have suspended the operation of the Project entirely since February 1, 2021.

We long to contribute to the democratic development of Myanmar through the Project, and continue to engage in dialogues with relevant stakeholders based on our human rights policy, as well as continue to examine the circumstances through further consideration in order to harmonize this Project with the will and interests of the people of Myanmar.

[Quoted text hidden]