

Summary of complaint against MSCI Inc., concerning its business relationships with companies linked to the Myanmar military.

On February 12, 2024, Inclusive Development International, Blood Money Campaign Myanmar (BMC) and Alternative ASEAN Network on Burma (ALTSEAN-Burma) submitted a complaint under the OECD Guidelines for Multinational Enterprises to the United States National Contact Point for Responsible Business Conduct.

The complaint outlines breaches of the OECD Guidelines for Multinational Enterprises (OECD Guidelines) by MSCI, Inc. (MSCI), a US-registered and -headquartered company. Specifically, it concerns the failure of MSCI to comply with the OECD Guidelines vis-à-vis its business relationships with at least 22 companies linked to the Myanmar military, which is responsible for the gravest crimes under international law, including genocide and crimes against humanity.¹

On February 1, 2021, Myanmar's military took control of the country in a coup, imprisoning much of the civilian leadership. In response, millions of people took to the streets throughout the country to march in support of democracy, defying threats of a crackdown. While protestors were unified in their opposition to military control, as time wore on, security forces became increasingly violent. As of January 2024, the death toll had surpassed 4,400.² As of November 2023, Myanmar's military and its affiliated groups burned down approximately 77,274 civilian houses.³

Years earlier, beginning in 2016, the military launched a campaign of massacres and ethnic cleansing against the Rohingya people in western Myanmar, sparking global headlines.⁴ Officials from the United Nations⁵ and 57 countries⁶ have labelled the military's actions as genocide, with former UN High Commissioner for Human Rights describing the situation as "a textbook example of ethnic cleansing."⁷ In the wake of the genocide, UN officials and civil society have called upon businesses and investors to cut ties with the military.⁸

In 2019 the UN Independent International Fact-Finding Mission on Myanmar published an investigation into corporations enabling the Myanmar military,⁹ identifying at least 15 foreign firms that have joint ventures with the military and 44 others with commercial ties with military-owned businesses. According to the report, "through such joint venture and commercial relationships, the Mission finds that **any foreign business activity involving the Tatmadaw [...] poses a high risk of contributing to, or**

¹ UN Human Rights Council, Independent International Fact-Finding Mission on Myanmar, The Economic Interests of the Myanmar Military, 5 August 2019. https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/FFM-Myanmar/EconomicInterestsMyanmarMilitary/A_HRC_42_CRP_3.pdf

² Assistance Association for Political Prisoners, <https://aappb.org/>

³ Data for Myanmar, <https://www.facebook.com/data4myanmar>

⁴ New York Times, "Rohingya Recount Atrocities: 'They Threw My Baby Into a Fire,'" October 2017.

<https://www.nytimes.com/2017/10/11/world/asia/rohingya-myanmar-atrocities.html>

⁵ UN OHCHR, "Myanmar: Tatmadaw leaders must be investigated for genocide, crimes against humanity, war crimes," 27 August 2018. <https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=23475&LangID=E>

⁶ ABC News, "57 countries sue Myanmar over reported genocide of Rohingya in historic lawsuit," November 2019.

<https://abcnews.go.com/Politics/57-countries-sue-myanmar-reported-genocide-rohingya-historic/story?id=66893262>

⁷ UN News, "UN human rights chief points to 'textbook example of ethnic cleansing' in Myanmar," September 2017.

<https://news.un.org/en/story/2017/09/564622-un-human-rights-chief-points-textbook-example-ethnic-cleansing-myanmar#:~:text=%E2%80%9CThe%20situation%20seems%20a%20textbook,access%20to%20human%20rights%20investigations>

⁸ UN OHCHR, "UN Fact-Finding Mission on Myanmar exposes military business ties, calls for targeted sanctions and arms embargoes," August 2019. <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24868&LangID=E>; The Washington Post, "The world should hit Myanmar's military where it hurts — in the wallet," August 2019.

<https://www.washingtonpost.com/opinions/2019/08/05/world-should-hit-myanmars-military-where-it-hurts-wallet/>; Human Rights Watch, "Myanmar: Kirin Should Cut Ties to Military," June 2020 <https://www.hrw.org/news/2020/06/18/myanmar-kirin-should-cut-ties-military>;

Amnesty International, "Myanmar: Leaked documents reveal global business ties to military crimes," September 2020 <https://www.amnesty.org/en/latest/news/2020/09/mchl-military-links-to-global-businesses/>.

⁹ UN Human Rights Council, Independent International Fact-Finding Mission on Myanmar, The Economic Interests of the Myanmar Military, 5 August 2019. https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/FFM-Myanmar/EconomicInterestsMyanmarMilitary/A_HRC_42_CRP_3.pdf

being linked to, violations of international human rights law and international humanitarian law. At a minimum, these foreign companies are contributing to supporting the Tatmadaw's financial capacity [emphasis added].¹⁰ In addition, civil society organizations track and publish information on corporations enabling the military.¹¹

One year into the military crackdown, in March 2022, Inclusive Development International and ALTSEAN-Burma published an investigation into the military junta's corporate supporters, as identified in the UN Fact-Finding Report¹² and by reputable civil society organizations,¹³ to identify the companies' major investors.¹⁴ Our investigation found that a significant financial backer of these corporations is the "ESG" (Environmental, Social and Governance) investing industry.

ESG funds are a rapidly growing subset of investing that claims to buy shares in environmentally and socially responsible companies. The \$40 trillion ESG industry promotes itself as a way for everyday investors to align their money with their values. ESG's rise has been fuelled by a simple promise, repeated by industry executives and marketing materials aimed at the public. As Henry Fernandez, the CEO of MSCI, has publicly claimed, "Our mission [is] to help investors build better portfolios for a better world."¹⁵

Despite these lofty promises, our 2022 report revealed that at least 344 ESG-labelled funds have funnelled at least \$13.4 billion worth of shares into companies arming, funding and legitimizing the Myanmar military. These companies include arms traders, tech firms serving the military-controlled national police force, and others that direct profits to the military, allowing it to surveil and violently crush dissent.

As a top provider of ESG ratings and index products, MSCI holds immense influence over the direction of ESG-labelled capital. It has played a pivotal role in the decision-making process through which an enormous sum of ESG capital has been invested in companies with documented links to the Myanmar military. According to our updated research,¹⁶ 109 ESG funds that invested in companies with links to the Myanmar military rely upon MSCI's ESG indexes and company ratings to make their investment decisions. At the time of writing, MSCI includes on its ESG indexes 22 companies linked to the Myanmar military. These include, among others:

1. the U.S. tech firm Cloudflare, which provides website hosting services for the military-controlled Ministry of Home Affairs and the national police force;¹⁷
2. arms manufacturers such as the Indian firm Bharat Electronics Limited (BEL), which has supplied arms, radar systems and communications technology to the Myanmar military, before and after the coup;¹⁸

¹⁰ UN Human Rights Council, "Economic Interests of the Myanmar Military," September 2019. <https://www.ohchr.org/en/hr-bodies/hrc/myanmar-ffm/economic-interests-myanmar-military>; UN News, "Myanmar companies bankroll 'brutal operations' of military, independent UN experts claim in new report," August 2019. <https://news.un.org/en/story/2019/08/1043701>

¹¹ Burma Campaign, Dirty List <https://burmacampaign.org.uk/take-action/dirty-list/>; Justice for Myanmar <https://www.justiceformyanmar.org/>.

¹² UN Human Rights Council, Independent International Fact-Finding Mission on Myanmar, The Economic Interests of the Myanmar Military, 5 August 2019. https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/FFM-Myanmar/EconomicInterestsMyanmarMilitary/A_HRC_42_CRP_3.pdf

¹³ Burma Campaign, Dirty List <https://burmacampaign.org.uk/take-action/dirty-list/>; Justice for Myanmar <https://www.justiceformyanmar.org/>.

¹⁴ Inclusive Development International and ALTSEAN-Burma, "Myanmar ESG Files: How 'responsible investment' is enabling a military dictatorship," March 2022. <https://www.inclusivedevelopment.net/myanmaresgfiles/>

¹⁵ MSCI earnings call for the period ending June 30, 2021. <https://www.fool.com/earnings/call-transcripts/2021/07/28/msci-msci-q2-2021-earnings-call-transcript/>

¹⁶ See Annex 1 and [Annex 2](#). We have narrowed the scope of our research for the purposes of this complaint (in comparison to the 2022 investigation).

¹⁷ Burma Campaign UK, "Cloudflare must terminate its services for the Myanmar military," February 2021. <https://burmacampaign.org.uk/cloudflare-must-terminate-its-services-for-the-myanmar-military/>

¹⁸ Justice for Myanmar, "Bharat Electronics Ltd Arms Sales Continue via Myanmar Military Broker Mega Hill General Trading," October 2021. <https://www.justiceformyanmar.org/stories/bharat-electronics-ltd-arms-sales-continue-via-myanmar-military-broker-mega-hill-general-trading>; Justice for Myanmar, "Bharat Electronics Limited supplying technology to Myanmar since

3. communications and technology companies such as Axiata Group of Malaysia, which has a network of mobile towers that are used by the military.¹⁹

See **Annex 1** for a full list of the 22 companies, and **Annex 2** for full data on the ESG investments in each company.

MSCI offers two types of products and services, in particular, that link it to these companies and give it an enormous amount of influence over the flow of ESG-labelled capital from investors to companies: 1) MSCI creates and maintains **ESG indexes**, which form the basis of many ESG-labelled funds that invest in the companies; and 2) MSCI produces **ESG ratings** of these companies, which determine whether a company performs well enough on ESG-related criteria to be included on an ESG index.²⁰ Due to a high degree of consolidation within the ESG data industry, MSCI and a handful of other industry actors offer both of these products and services.

MSCI, like its industry peers FTSE Russell and S&P Dow Jones Indices, construct lists—known as indexes—of companies that have rated highly on ESG factors, which greenlights them for ESG investment. Investment firms then use these indexes to create ESG funds that buy shares in companies that have been endorsed as “responsible.” These funds, which carry the ESG stamp of approval, are then made available to investors.

When members of the public invest in these ESG funds, they are led to believe that they are investing in companies that are environmentally and socially responsible, as the label and marketing suggest.²¹ However, our research indicates that MSCI’s ratings and indexes systematically fail to accurately capture and reflect companies’ human rights track records.²² In the context of Myanmar, 12 of the companies identified in our research as enabling the military saw their MSCI ESG rating improve after the Rohingya genocide and/or coup.²³

As explained further in Section IV, MSCI has a business relationship with the companies that it rates and includes on indexes, and therefore has due diligence responsibilities, including the responsibility to take action where it identifies that these companies are contributing to adverse human rights impacts. The Complainants assert that MSCI has failed to address human rights risks and impacts by not exercising the considerable leverage it holds over these companies.

In general, index creators like MSCI exercise a significant amount of influence over investment flows—particularly, but not limited to, in the context of passively managed²⁴ investment. As former US Securities and Exchange Commission (SEC) chairman Robert Jackson said: “Fundamentally, millions of American families don’t choose what they invest in, an index provider chooses what they invest in.”²⁵ According to one industry commentator at the media outlet Responsible Investor, index providers are “the de facto

attempted military coup,” June 2021. <https://www.justiceformyanmar.org/stories/bharat-electronics-limited-supplying-military-technology-to-myanmar-since-attempted-coup>

¹⁹ Burma Campaign UK, Exatia/Edotco Group <https://burmacampaign.org.uk/take-action/exatia-edotco/>; Justice for Myanmar, “Nodes of corruption, lines of abuse,” December 2020. <https://www.justiceformyanmar.org/stories/nodes-of-corruption-lines-of-abuse-how-mytel-viettel-and-a-global-network-of-businesses-support-the-international-crimes-of-the-myanmar-military>

²⁰ See Section IV.C.2 and Annex 2 for further background information on ESG indexes.

²¹ For example, the Acorns app describes ESG as an opportunity for individuals to “invest for good.” <https://www.acorns.com/esg-investing/>. Vanguard similarly markets its ESG funds as a means for individuals to invest in “funds that reflect what matters most to you,” including based on factors like “ethical business practices” and “local community impact.” Vanguard explicitly conflates the concepts of “socially responsible investing (SRI)” with ESG. <https://investor.vanguard.com/investment-products/esg>

²² IDI Submission to the UN Working Group on Business and Human Rights, October 2023. <https://www.inclusivedevelopment.net/wp-content/uploads/2023/10/IDI-Submission-to-UN-Working-Group-Call-for-Input.pdf>

²³ These include: Axiata Group, Chevron, Cloudflare, COSCO Shipping Holdings, Elbit Systems, Evergreen Marine Corp Taiwan, Kirin Holdings, Larsen & Toubro, Marubeni, PTT Exploration and Production, Sinotruk (Hong Kong), and Toshiba.

²⁴ Investopedia, Passive Investing. <https://www.investopedia.com/terms/p/passiveinvesting.asp>

²⁵ MarketWatch, “The SEC’s next regulatory target could be index providers,” January 2022. <https://www.marketwatch.com/story/the-secs-next-regulatory-target-could-be-index-providers-11642177134>

gatekeepers of trillions of dollars in global capital.”²⁶ Thus, firms like MSCI that are responsible for creating and maintaining investment indexes hold immense leverage over the flow of capital.

But MSCI holds an exceptional level of leverage over the companies that they rate and include on their ESG indexes, which is far greater than their leverage in a conventional index. Because MSCI produces the ESG ratings (and designs the ratings methodology) that underlie the ESG indexes they create, the firm has significant discretion over which firms are included, and therefore significant leverage over the companies that want to be added to or remain on the ESG index. The leverage is derived not only from the ability to facilitate or restrict investment in those companies, but also from the ability to bestow reputational benefit upon the companies that are included in an ESG index. In a meeting between the Complainants and MSCI staff in December 2021, a senior representative acknowledged that the firm holds leverage over companies on its ESG indexes, stating, “Companies often come to us asking what they need to do to stay on an ESG index.”

A research paper on this topic, published by ESG index firm FTSE Russell, describes how passive investors can “outsource to index providers the work involved in setting [ESG] standards and ensuring that they are met by investee companies.”²⁷ The paper goes on to say, “by developing indexes with clear and transparent rules on sustainability issues, and engaging broadly with investee companies to ensure compliance, index providers can do much of the heavy lifting of engagement on behalf of passive index investors,” and that index providers can “reward or penalize companies,” by removal from the index or through index over and under-weighting.²⁸ The paper details how the firms responsible for ESG index design and calculation can effectively engage with investee companies and use their leverage to incentivize companies to “achieve real world improvements in corporate sustainability performance.” FTSE cites academic research which found that engagement by an ESG index firm (FTSE) and threat of expulsion from an ESG index doubled the probability that a firm failing to meet environmental criteria for inclusion on the index would comply within a three-year period.²⁹ Another study found that companies adjusted their behaviour in response to ESG index criteria.³⁰ These studies demonstrate the considerable leverage held by ESG index firms, like MSCI.

Our own research, which forms the basis of this complaint, also reveals the significant influence wielded by the firms that create and maintain indexes. [Annex 2](#) of this complaint presents a comprehensive set of data showing that MSCI and its industry peers, FTSE Russell and S&P Dow Jones Indices, have collectively put 23 military-linked companies on their ESG indexes—thus greenlighting them for inclusion in ESG-labelled funds. In total, ESG indices managed by MSCI, FTSE Russell and S&P Dow Jones Indices have directed \$13.7 billion in equity investments in the 23 companies doing business with the military. These investments come via 136 unique ESG funds managed by top asset managers BlackRock, Deutsche Bank, Northern Trust, State Street and Vanguard. A thorough review of these ESG funds’ factsheets and filings revealed that each fund relied substantially on the index for investment decisions and portfolio construction. Any fund that fell short of that threshold, and had limited reliance on the index, was removed from our data set. Thus, MSCI, FTSE Russell and S&P Dow Jones Indices hold a substantial level of influence over the level of investment flows into these 23 companies.

The Complainants have alerted MSCI to these issues, including by detailing its exposure to companies implicated in serious human rights abuses in Myanmar, multiple times over the course of three years.³¹ In our engagement with MSCI, we included the following request: “We would like to learn what steps MSCI is taking to fulfil its responsibilities under the UN Guiding Principles and the OECD Guidelines, particularly with respect to companies doing business with the Myanmar military. Specifically, we would

²⁶ Responsible Investor, “New Year Resolutions: Index firms can no longer ignore gross human rights abuses in mainstream indices,” January 2020. <https://www.responsible-investor.com/articles/index-firms-can-no-longer-ignore-gross-human-rights-abuses-in-mainstream-indices>

²⁷ FTSE Russell, “Achieving scale in active ownership and engagement through index investing,” April 2021. https://content.ftserussell.com/sites/default/files/achieving_scale_in_active_ownership_and_engagement_through_index_investing_final.pdf?_ga=2.58682530.948067829.1639060060-781965199.1634204423

²⁸ Ibid., page 7.

²⁹ Ibid., page 9.

³⁰ Ibid.

³¹ See Annex 4 for the Complainants’ full correspondence with MSCI.

like to discuss MSCI's approach to identifying human rights impacts it may be directly linked to through its operations and products and its approach to addressing those impacts. We believe that MSCI can use its leverage to help prevent human rights abuses with respect to the companies listed on its indexes that have links to the Myanmar military." There is no indication that MSCI has taken any action to address the issues we raised.

Therefore, we have turned to the US National Contact Point office to consider this issue and offer to facilitate a dialogue regarding the human rights responsibilities of MSCI under the OECD Guidelines.