

Justice For Myanmar's rejoinder to Knight Piésold

April 15, 2024

The "Mines Against Humanity" report documents Australian owned and led companies in the Myanmar mining sector that have remained in business after the military's attempted coup. It covers companies engaged in the extraction of minerals, mineral exploration and services for the mining sector. Mining service companies indirectly support the junta by keeping the mining sector open for business, which profits the junta. The junta needs revenue from mining to fund its ongoing attacks across Myanmar, which amount to war crimes and crimes against humanity.

In our report, we accurately identified Knight Piésold (KP) as providing social and environmental services to Myanmar Wanbao Mining for copper mines that operate in partnership with Myanma Economic Holdings Limited (MEHL), a conglomerate sanctioned by Australia, USA, EU, UK and Canada. Wanbao is a subsidiary of NORINCO, a Chinese arms conglomerate that is a major supplier of arms to the Myanmar military.

The Wanbao-run mines are known for grave human rights violations and environmental destruction both before and after the military's coup attempt, and for providing funds to the Myanmar military and its leaders.¹

In his response to the Business and Human Rights Resource Centre, Knight Piésold Pty Ltd Managing Director David Morgan states that "in no manner are [KP's services] capable of assisting the junta nor its personnel." Mr. Morgan denied that the services they provide to the mines support and legitimise the military, and also asked how an ESIA can constitute or support the allegation that the said projects are known for serious human rights violations.

As we wrote in *Mines Against Humanity*, serious and credible concerns have been raised about the conduct of KP's client, Wanbao. In a September 2023 letter to Wanbao which has not received a reply, the UN Special Rapporteur on the situation of human rights in Myanmar; UN

¹ For instance, see <https://www.ohchr.org/en/hr-bodies/hrc/myanmar-fm/economic-interests-myanmar-military>; <https://www.amnesty.org/en/documents/asa16/2969/2020/en/>.

Special Rapporteur on the right to food; UN Special Rapporteur on the human rights of internally displaced persons; and the UN Business and Human Rights Working Group wrote:²

"Wanbao appears to be engaging in the intentional displacement of villagers from their homes and land in a context where rule of law has broken down, humanitarian relief is limited, and there is no due process or protection for villagers... We are deeply concerned that Myanmar military officers involved in security actions connected to Wanbao's operations may be actively committing human rights abuses, including mass displacement of villagers, restricting and violating the right of freedom of movement of the villagers, which may amount to arbitrary detention".

Under Myanmar regulations, instruments for managing environmental impacts are part of the mineral licensing regime. Since the military's coup attempt, the junta has illegally seized control of the Ministry of Natural Resources and Environmental Conservation (MONREC), which is responsible for the social and environmental regulation of mining projects. The junta has continued this regulatory role to greenlight mining projects, although it has no legal basis to do this and no credibility. By assisting the project owners to meet regulatory requirements for an illegal junta, KP is providing legitimacy to the junta's claims that it can provide environmental regulatory functions. KP is also in effect whitewashing the project and its owners, including MEHL by lending its reputation to the Letpadaung and S&K mines.

In February 2024, Myanmar was delisted from the Extractive Industries Transparency Initiative (EITI) "due to ongoing political instability and conflict. The situation in the country has made it unfeasible to uphold key aspects of the EITI, including multi-stakeholder governance and data disclosure."³ The EITI announcement notes the lack of civic space and repression of freedom of speech as a reason for Myanmar's delisting.⁴ This should also call into question how KP can responsibly provide social and environmental services in a context where there is severe repression of civil society, independent media and freedom of speech.

We note that, while Mr Morgan claims that "the mine is closed and no longer operational", the UN experts described a "pause" in production and go on to state, "We are also concerned that

² <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=28383>

³ <https://eiti.org/news/myanmar-delisted-eiti-due-political-instability>

⁴ <https://eiti.org/news/myanmar-delisted-eiti-due-political-instability>

Wanbao apparently intends to resume operations of the copper mine, which is a joint venture with the Myanmar military regime collectively constituting majority shareholders. Once operational, it will provide revenue directly to the Myanmar military, allowing it to purchase arms to further perpetrate gross human rights violations”.⁵

The UN experts also disclosed exports of copper to China since the military’s coup attempt, which generate revenue for both MEHL and the junta. These include 6.82 million kilograms of copper ore and concentrate in 2022, amounting to US\$7.77 million, and 6.86 million kilograms of copper ore and concentrates from January to July 2023, amounting to US\$7.12 million.

Wanbao’s exports and attempts to resume production is evidence both continuing to financially support MEHL and the military junta, and the high risk that KP’s provision of environmental and social consulting services could assist in the resumption of mining through supporting Wanbao to fulfil any regulatory requirements imposed by the illegal junta and by lending its reputation to the project.

KP claims there have been no related payments to any politically exposed person. We accurately published that KP is contracted to perform services, so payments flow to KP. However, it is important to know that these payments to KP come from a politically exposed person, namely Myanmar Wanbao, which is a company controlled by the Chinese government.

When KP first commenced providing services to Myanmar Wanbao in 2013, there was extensive information online regarding the involvement of the Myanmar military and the Myanmar military’s repeated commission of atrocities.⁶ By undertaking an ESIA and providing other services, KP has repeatedly given credibility to the project, despite continued reports of abuses associated with the mine and the mine’s owners, including MEHL.

KP claims that the ESIA it delivered was “consistent with international standards”. However, this view has been refuted by credible sources including Amnesty International, who commissioned a

⁵ <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=28383>

⁶ <https://www.amnesty.org/en/wp-content/uploads/2021/05/ASA1600032015ENGLISH.pdf>; <https://www.theguardian.com/world/2012/nov/29/burma-riot-police-mine-protest>; <https://www.rfa.org/english/news/myanmar/copper-mine-10182012190856.html>;

review of KP's ESIA and summarised:⁷

“An environmental scientist with many years’ experience reviewed the ESIA for Amnesty International and noted several critical shortcomings. Although the Letpadaung mine, S&K mine and the Sulphuric Acid Factory have shared ownership, the ESIA did not assess the cumulative impacts of these three interrelated projects. This is a major omission and is contrary to international standards, with which the ESIA claimed to comply. The assessment of social and health issues is extremely superficial. The weaknesses in the ESIA leave people exposed to serious risks that have never been properly assessed and therefore will not be properly managed. Villages who have refused to relocate for the Letpadaung mine were excluded from discussions on the ESIA.”

While in ordinary circumstances, a professional ESIA should be a positive contribution to human rights and the environment, in the Myanmar context, KP has been merely assisting the owners of the Letpadaung and S&K mines, which include MEHL and a junta-controlled mining enterprise, to operate. Before the military’s coup attempt, this funded MEHL and the very war criminals responsible for genocide. After the coup attempt, this also funds and risk to continue funding an illegal junta which is committing ongoing war crimes and crimes against humanity with impunity.

We continue to urge KP to act in accordance with its international human rights responsibilities under the OECD Guidelines and UN Guiding Principles and responsibly disengage from its business with Wanbao.

⁷ <https://www.amnesty.org/en/wp-content/uploads/2021/05/ASA1600032015ENGLISH.pdf>