

## **ANALYSIS ON THE PRINCIPLES OF RESPONSIBLE BUSINESS CONDUCTS UNDER INTERNATIONAL AND NATIONAL CONTEXT**

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### **Abstract**

This paper attempts to analyze the Principles of Responsible business conducts in international legal framework and the enforcement of the principles in National Law. Responsible business is the business which operates responsibly and efficiently in accordance with Laws and it considers its impact on people and environment. Myanmar is a country which is welcoming the investments of Multinational Enterprises (MNEs) for the economic development of country. It requires to question whether the principles under the international instruments can be enforced effectively and to what extent the MNEs are responsible for the environmental and social impact of their business activities. This paper aims to provide knowledge of the international principles of responsible business and law enforcement for the irresponsible business practices of MNEs. In order to provide the knowledge of the principles of Responsible Business, it studies the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration), United Nations Guiding Principles on Business and Human Rights (UNGPs) and OECD Guidelines for Multinational Enterprises. It examines the leading cases that decides on the extent of responsibility of MNEs for the negative impact of their business practices and of their supply chain businesses. The study concludes that MNEs have responsibility not only for conduct of themselves but also for their supply chain businesses' irresponsible business conducts by means of enforcement the principles at national court.

**Keywords:** responsible business conduct, human rights, environment

### **Introduction**

The concept of responsible business is existed century and there is no consensus for defining on the term 'responsible business conduct'. However, the term commonly refers to the practices of conducting business by doing no harm to people and environment in addition to being a good employer and attempting to make a profit. A strategic concept includes two dimensions. The first dimension is 'how companies make their profits in a responsible way'. The second dimension is 'how they provide benefits to stakeholders through their economic activities'. In other words, the way of managing their economic, social, and environmental impacts, as well as their business relationships in all key spheres of influence. Responsible business covers various areas, such as healthy work conditions for employees, social and environmental responsibility, contributing back to the community or corporate social responsibility (CSR), influencing others, and reducing risk around the workplace.

Nowadays, responsible business conduct becomes more and more important because it relates to the sustainable development goals (SDGs) 2030 adopted in the United Nations on September 25, 2015 by 193 countries as a follow up to the Millennium Development Goals. The SDGs focus to end poverty, protect the planet and ensure prosperity for all, as part of a new sustainable development agenda. A total of 17 goals and 169 targets are set to be achieved by 2030 and the realization of the same calls for a collective effort from the government, the corporates and the civil society organizations. Sustainable Development Goals have been defined as an instrument to maximize value creation and enhance knowledge of the impact of business activities on

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sustainable development. Responsible business conduct principles and standards emphasized the integration of environmental and human rights concerns within core business operations. For instance, a company set its CSR policy for enhancing livelihood. It implements the CSR policy by vocational training women and youths. Then, it achieves some of the goals of SDGs such as Zero Hunger, End Poverty; Quality Education, Gender Equality, and Decent Work. Thus, sustainable development goals can be achieved through the responsible business conduct.

Myanmar is a country in South East Asia and it is welcoming the investments of Multinational Enterprises (MNEs) to enhance the economic development of country. Many countries believe that Foreign Investments provide job opportunities for local people, transfer of skills and technology, and integrate the living standard of people. Achieving these positive impacts, however, depends on the quality of the investment as much as the quantity. Irresponsible business practices erode not only the investment but also business environment. If one MNE operates its business unethically, the violation of human rights can happen. Likewise, if one MNE does not consider the impact of its business on environment that will ruin the environment and people will suffer the negative impact severely.

This paper discusses on Principles of Responsible Business Conducts under Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy adopted by ILO (here in after the MNE Declaration), United Nations Guiding Principles on Business and Human Rights (here in after the UNGPs) and OECD Guidelines for Multinational Enterprises (here in after the OECD Guidelines). It evaluates the current situation of enforcement of the principles in US, UK and in Myanmar. It questions to what extent the MNE is responsible for its direct or indirect impact that cause harm to people or environment. By studying comparatively of the law enforcement in different countries and international business conducts, it will conclude by evaluation of the current situation of responsible business conduct globally and in Myanmar.

### **Aims and Purposes**

This paper aims to analyze the core principles of responsible business conduct of MNEs in the MNE Declaration, the UNGPs, the OECD Guidelines and the enforcement of those principles in National Law. The purposes of this paper are to provide knowledge of the international principles of responsible business and legal action taken by National government for the irresponsible business practices of MNEs.

### **Methodology**

To achieve the research goals, this paper discusses on the core principles of responsible business conducts mentioned in the MNE Declaration, the UNGPs and the OECD Guidelines. In addition, it uses comparative legal research methods to analyze the provisions of laws from Alien Tort Claim Act of the US, Company Act 2006 of the UK and Myanmar Environmental Conservation Law and related Rules and Procedure. Furthermore, the leading cases are carefully selected from the US, UK and Myanmar to be studied and analyzed which will reflect the enforcement of home countries and of host country.

## **Finding**

Responsible Business Conduct becomes essential part of MNEs' policy and it extends the scope of business liability of enterprises. MNEs are not only responsible for its own conduct but also may be liable for its supply chains' conducts. Although MNEs do not directly incur responsibility under international human rights law and international environmental law, in practice, MNEs are sued before Civil Court for their human rights abuses and doing business harm to environment. In Myanmar, local community still face the challenges of environmental and human rights issues caused by the investment project, especially mining and hydropower projects. Their right to access to remedy is still uncertain and difficult.

## **Discussion**

### **I. Sources of MNEs' Responsible Business Conduct**

The principal sources of MNEs responsible business conduct are the MNE Declaration, the UNGPs and the OECD guidelines for MNEs. All are merely guidelines for governments and MNEs with respect of protection and respecting human rights and environment. They are however, implemented by the States domestic law and voluntary reporting system by the MNEs.

#### **(a) ILO MNE Declaration**

In 1977, the ILO working body adopted the Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy (MNE Declaration) and it was substantially amended in 2017. The MNE Declaration, therefore, provides an authoritative set of expectations of responsible business conduct that is universally applicable in a tripartite way: by governments and representatives of workers' and employers' organizations at the ILO. The principles adopted by the MNE Declaration offer guidelines to multinational enterprises, governments, and employers' and workers' organizations focusing on the areas of employment, training, conditions of work and life, and industrial relations. This guidance is substantially founded on principles laid down in international labor Conventions and Recommendations.<sup>1</sup>

#### **(b) UN Guiding Principles on Business and Human Rights**

The UN Guiding Principles on Business and Human Rights focus on avoiding and addressing adverse business-related human rights impact. They are founded on three pillars: (1) the State duty to protect against human rights abuses by third parties, including business enterprises, (2) the independent responsibility of business enterprises to respect human rights, which means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved and (3) the need for those harmed by business-related activities to have access to effective remedy. These principles were unanimously endorsed in 2011 by the UN Human Rights Council.<sup>2</sup> Both the Office of the UN High

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<sup>1</sup> ILO, (March 2017), Tripartite declaration of principles concerning multinational enterprises and social policy (MNE Declaration), 5<sup>th</sup> ed. available at [https://www.ilo.org/empent/Publications/WCMS\\_094386/lang--en/index.htm](https://www.ilo.org/empent/Publications/WCMS_094386/lang--en/index.htm) (Last accessed on 9.6.2020)

<sup>2</sup> United Nations (2011), Guiding Principles of Business and Human Rights: Implementation of the United Nations Protect, Respect and Remedy Framework. Available at [https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf) (Last accessed on 9.6.2020)

Commissioner for Human Rights (OHCHR) and the UN Working Group on Business and Human Rights (UN Working Group) are charged with promoting the UN Guiding Principles and their implementation, including by unpacking what the principles mean in practice with respect to different human rights issues, sectors and types of actors.<sup>1</sup>

### (c) OECD Guidelines

The OECD Guidelines for Multinational Enterprises are recommendations from governments to businesses on how to act responsibly. They cover all areas of business responsibility, including labour and human rights issues, environment, disclosure, bribery, consumer interests, science and technology, competition, and taxation. The Guidelines were adopted in 1976 and last updated in 2011 to include a chapter on human rights aligned with the UN Guiding Principles. The chapter on Employment and Industrial Relations is aligned with ILO Labor standards. The Guidelines also include a unique non-judicial grievance mechanism: National Contact Points (NCPs). The OECD Working Party on Responsible Business Conduct brings together the governments that have adhered to the Guidelines,<sup>2</sup> whose mandate is to promote the implementation of the OECD, MNE Guidelines and Responsible Business Conduct (RBC) policies.

## II. Core Principles of Responsible Business Conduct

Responsible business conduct core principles laid down in the international instruments are divided into four categories:

- (a) Human rights,
- (b) Labour rights,
- (c) Environmental rights and sustainable development, and
- (d) Anti-corruption.

### (a) Human Rights

The UNGPs principle 11-15 laid down the duties of MNEs to respect human rights refer to the international Bills of Human Rights. The Human rights principles that MNEs must observe are (1) Businesses should support and respect the protection of internationally proclaimed human rights; and (2) Making sure that they are not complicit in human rights abuses.<sup>3</sup> Regarding the human rights principles, the OECD Guidelines expressly states that MNEs are required to have a policy commitment to respect human rights and act accordingly.<sup>4</sup>

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<sup>1</sup> United Nations (2011), Guiding Principles of Business and Human Rights: Implementation of the United Nations Protect, Respect and Remedy Framework. Available at [https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf) (Last accessed on 9.6.2020)

<sup>2</sup> United Nation (2011), Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework, OHCHR, New York, pp.13-16.  
[https://www.ohchr.org/documents/publications/guidingprinciplesbusinessshr\\_en.pdf](https://www.ohchr.org/documents/publications/guidingprinciplesbusinessshr_en.pdf) (Last accessed on 9.6.2020)

<sup>3</sup> *Ibid.*

<sup>4</sup> OECD (2011), OECD Guidelines for Multinational Enterprises, OECD Publishing, p 34.  
<http://dx.doi.org/10.1787/9789264115415-en> (Last accessed on 9.6.2020)

Human right principles define the scope of the responsibility of MNEs to support and respect international human rights law. Theoretically, States are primarily subject of the international law and must observe the human principles laid down in international instruments. However, it is no doubt that without the cooperation of the powerful MNEs, states alone cannot perform these duties successfully, especially for developing and least developed countries. According to the human rights principles, , MNEs are responsible not only for supporting and respecting human rights but also for not involving and having relationship with the business partner that abuse human rights and making sure for effective remedies under principle 24 of the UNGPs.<sup>1</sup>

### **(b) Labor Rights**

Both OECD Guidelines and the UNGPs focus on six core labor principles stated in MNE declarations of ILO. These are (1) freedom of association and effective recognition of the right to collective bargaining; (2) elimination of all forms of forced or compulsory labor; (3) effective abolition of child labor; (4) elimination of discrimination in respect of employment; (5) encouragement of human capital formation; and (6) observance of effective health and safety regulations.<sup>2</sup>

MNEs those operating businesses in development countries usually face the challenges of labour issues as the governments of those countries themselves abuse human rights. Poverty is one of the causes that create child labour market. Forced labor, freedom of association and rights of collective bargaining issues occurred in countries that governed by oppressive government. Therefore, MNEs shall caution on labour issues by avoiding violation of labor rights and operating their business while observing the ILO labor standard.

### **(c) Environmental Rights and Sustainable Development**

The environmental rights and sustainable development principles derived from the UN Rio Declaration on Environment and Development. These are (1) Businesses should support a precautionary approach to environmental challenges (2) undertake initiatives to promote greater environmental responsibility; and (3) encourage the development and diffusion of environmentally friendly technologies.<sup>3</sup>

The OECD guidelines stress the duties of MNEs regarding to the environment and sustainable development as ‘taking due account of the need to protect the environment, public health and safety, and generally to conduct their activities in a manner contributing to the wider goal of sustainable development’.<sup>4</sup> It also expresses that MNEs must make sure their activities are compatible with the science and technology policies and plans of the host countries and as appropriate contribute to the development of local and national innovative capacity.<sup>5</sup>

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<sup>1</sup> United Nation (2011), Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework, OHCHR, New York, p.24.

[https://www.ohchr.org/documents/publications/guidingprinciplesbusinessshr\\_en.pdf](https://www.ohchr.org/documents/publications/guidingprinciplesbusinessshr_en.pdf)(Last accessed on 9.6.2020)

<sup>2</sup> OECD Guidelines for Multinational Enterprises; ILO’s MNEs Declaration; UNGPs Principle 12, [https://www.ohchr.org/documents/publications/guidingprinciplesbusinessshr\\_en.pdf](https://www.ohchr.org/documents/publications/guidingprinciplesbusinessshr_en.pdf)(Last accessed on 9.6.2020)

<sup>3</sup> Principles 9 & 10 of Rio Declaration on Environment and Development, 1992.

<sup>4</sup> OECD (2005), Environment and the OECD Guidelines for Multinational Enterprises: Corporate Tools and Approaches, OECD publishing, p21.

<sup>5</sup> *Ibid* at p 93-95, 113-115.

Since environmental concerns due to the impact of industrialization alarm the climate change, the responsibility to protect environment is not only a burden of states but also on the MNEs those operating business which can harm environment severely. It is not sufficient for MNEs to precaution the environmental challenges. It required the MNEs to initiate the promotion of environmental responsibility and to develop the environmental-friendly technology. According to the OECD guidelines, MNEs must conduct business activities aiming for sustainable development goals by protecting environment, public health and safety.

#### **(d) Anti-Corruption**

The anti-corruption core principle is founded on the United Nations Convention against Corruption, which play a crucial role in business practice to achieve sustainable development goals. It states as ‘Businesses should work against corruption in all its forms, including extortion and bribery’.<sup>1</sup>

The OECD guidelines set the principles for MNEs to avoid in all forms of corruption by means of avoiding, directly or indirectly, offer, promise, give, or demand a bribe or other undue advantage to obtain or retain business or other improper advantage.<sup>2</sup>

Corruption is an unethical business practice of corporate citizenship and the most hindrance of sustainable development goals. OECD expressly states all possible form of corruption and MNEs shall avoid all forms of those corruption.<sup>3</sup>

### **III. Scope of Business Responsibility**

#### **(a) Primary responsibility**

According to General Policies stated in the OECD Guidelines, the enterprise is primarily responsible to avoid causing or contributing to adverse impacts on matters covered by the Guidelines, through their own activities. Besides the enterprises is responsible to address such impacts when they occur.<sup>4</sup> The activities that causing or contributing to adverse impacts on matters covered by the Guidelines through their own activities includes their activities in the supply chain, for example, franchising, licensing or subcontracting because their supply chain businesses are often multinational enterprises themselves and , those operating in or from the countries adhering to the Declaration shall be covered by the Guidelines.<sup>5</sup>

#### **(b) Joint responsibility and Business Relationships**

The enterprise is responsible to prevent, mitigate or adverse even though the impact is indirectly linked to its operations, products or services.<sup>6</sup> The OECD Guidelines recognize that there are practical limitations to the ability of enterprises to influence the conduct of their business partners. The extent of these limitations depends on various factors from types of business to product characteristics such as the number of suppliers or other business partners, the structure and

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<sup>1</sup> OECD (2011), OECD Guidelines for Multinational Enterprises, OECD publishing, p.47-50.  
Available at <http://www.oecd.org/daf/inv/mne/48004323.pdf> (Last accessed on 9.6.2020)

<sup>2</sup> *Ibid.*

<sup>3</sup> *Ibid.*

<sup>4</sup> Para 11 of General Policy of OECD Guidelines for Multinational Enterprises.

<sup>5</sup> Para 17 of the Commentary on General Policies of OECD Guidelines for Multinational Enterprises.

<sup>6</sup> Para 12, 13 &14 of General Policy of OECD Guidelines for Multinational Enterprises.

complexity of the supply chain. The market position of the enterprise vice versa its suppliers or other business partners are also required to be considered as relevant factors.<sup>1</sup>

#### IV. Enforcement of the International Principles

Since MNEs are not subject of international law,<sup>2</sup> they have no direct responsibility imposed by international law and there is no enforcement mechanism under international law as well.<sup>3</sup> However, according to the UNGPs, state is obliged to protect human rights and to make sure the victims are enabling to access to remedy.<sup>4</sup> Therefore, in the national level, MNEs have been sued for human rights abuses or for environmental harm. The first successful lawsuit against MNE for ethical wrong was *Doe v Unocal (1997)*<sup>5</sup> filed under the Alien Tort Claims Act, which was enacted in 1789. The Act provides district courts with jurisdiction *ratione materiae* for ‘any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States’<sup>6</sup>.

In the Unocal case, Union Oil Company of California invested in “Yadana Field” (a natural gas field) in Myanmar. Before deciding to invest in the Yadana Field, Unocal hire consulting firm to evaluate the risk position, The Unocal was ignoring a major problem of Military government violate human rights stated in the report, it decided to invest in ‘Yadana Field’. Unocal knew that army used forced labor and brutalized the Karen population to provide workers and security for Unocal to build the gas pipeline and Unocal however contributed to economic and social environments in Myanmar. In 1996, a group of Villagers filed a lawsuit against Unocal in US federal court, alleged that Unocal worked with State Law and Order Restoration Council (SLORC) and Myanmar Oils and Gas Enterprise (MOGE) pursuant to the Yadana gas pipeline agreement and were aware of and benefited from the alleged human rights violations.

The legal issue of this case was ‘What is the legal standards of which a company can be held liable for human rights abuses committed by a partner military regime on the company’s project.’ Regarding the matter of Unocal’s liability under the ATCA, the court analogized allegations of forced labor to slave trading, which give rise to a violation of international law capable of being perpetrated by private individuals. The court reasoned that since Unocal paid SLORC to provide labor and security for the Yadana project, it accepted and approved the use of slave labor. Therefore, the court recognized jurisdiction against the private defendants under the ATCA. In this case, the parties reached an out-of-court settlement and the case was closed on 13 April 2005. The out- of- court settlement was accepted by the court that agreed to compensate

<sup>1</sup> Para 14 of the Commentary on General Policies of OECD Guidelines; OECD (2011), OECD Guidelines for Multinational Enterprises, OECD Publishing, p 19.

<sup>2</sup> José "E." Alvarez, (2011) “Are Corporations “Subjects” of International Law?” *Santa Clara Journal of International Law*, Vol.9. No.1, pp. 1-36. Available at [https://www.law.nyu.edu/sites/default/files/ECM\\_PRO\\_069097.pdf](https://www.law.nyu.edu/sites/default/files/ECM_PRO_069097.pdf) (Last accessed on 9.6.2020)

<sup>3</sup> Jan Wouters and Anna-Luise Chané, multinational Corporation in international Law, *in SSRN Electronic Journal*, January 2013, p 21.DOI: 10.2139/ssrn.2371216

<sup>4</sup> *Infra* note 2 at p 5.

<sup>5</sup> *Doe I v Unocal Corp.* 963 F Supp 880 (CD Cal 1997), dismissed in part, 110 F Supp 2d 1294 (CD Cal 2000), aff’d in part, rev’d in part, 395 F3d 932 (9th Cir 2002), vacated, reh’g en banc granted, 395 F3d 978 (9th Cir 2003), dismissed, 403 F3d 708 (9th Cir 2005). Available at <https://www.leagle.com/decision/20021327395f3d93211223> (Last accessed on 9.6.2020)

<sup>6</sup> 28 USC § 1350.

the plaintiffs, to provide funds for programmes in Myanmar to improve living conditions and protect the rights of people from the pipeline region.<sup>1</sup>

Although the court could not set the precedent for the future case because of out- court settlement, the Unocal case point out that MNEs is ethically wrong for enriching itself by violation of human rights and cannot use activities as allegations to defend companies' unethical decisions.

Another lawsuit filed in UK Court in 2015 extent the scope of responsibility of parent company for the activities of its subsidiary company. In *Vedanta Resources PLC and another v Lungowe and others*,<sup>2</sup> the Zambian farmers sued a U.K.-based mining company Vedanta Resources Plc., (Parent) and Konkola Copper Mines Plc (subsidiary), claim that the water pollution from the Nchanga Copper Mine damaged their lands and livelihoods. In this case, two legal issues to be answer are whether English Court has jurisdiction over the case in Zambia and whether a parent company can be liable for the operations of its subsidiary. Regarding the jurisdiction of English court, the Supreme Court ruled that the Zambian villagers' case against Vedanta Resources can be heard in English courts. For the second issue of whether a parent company can be liable for the operations of its subsidiary the Supreme Court answered that 'under certain circumstances, a parent company could owe a legal duty of care to employees of its subsidiaries.'<sup>3</sup> Although parent company and subsidiary are separate legal entity, the Parent company cannot avoid the irresponsible business practise of its subsidiary for violation of human rights and environmental law. This case highlights the development of concept of business liability of company and the scope of responsibility of business entity.

Myanmar is a country of where foreign Investments operate in the sector of mining and hydro power projects, there are many issues relating to the environmental damages. In order to tackle the environmental issues, Myanmar enacted Environmental Conservation Law 2012, and Rule 2014 and Myanmar Investment Law 2016. The aim to develop responsible investment businesses which do not cause harm to the natural and social environment is stated in section 3 (a) of the Myanmar Investment Law. Besides, according to section 7 of Environmental Conservation Law, the Ministry of Environmental Conservation and Forestry has the power to develop and implement a system of environmental impact assessment (EIA) and social impact assessment (SIA). In addition, it can enforce penalty on polluters for environmental impacts which is called administrative punishments.<sup>4</sup> Environmental impact can be the probable effects or consequence on the natural and built environment, and people and communities including occupational, social, cultural, socio-economical, public and community health, and safety issues.<sup>5</sup> Social impacts include Involuntary Resettlement of local people and relating to Indigenous People'.<sup>6</sup> Further action which the Ministry can take on Projects which continue to be non-compliant with this Procedure after the imposition of administrative punishment by contemplating criminal punishment provided for under Article 32 of the Law, and informing the relevant government

<sup>1</sup> Earth Rights International, Final Settlement Reached in Doe v. Unocal, <http://earthrights.org/news/unocalsettlefinal.shtml> (May 10, 2005); Unocal News Release Archive, Settlement Reached in Yadana Pipeline Lawsuit, <http://www.unocal.com/uclnews/2005news/032105.htm> (March 21, 2005).

<sup>2</sup> *Vedanta Resources PLC and another v Lungowe and others* [2017] EWCA Civ 1528; [2019] UKSC 20. Available at <https://www.bailii.org/uk/cases/UKSC/2019/20.html>

<sup>3</sup> *Vedanta Resources PLC and another v Lungowe and others* [2019] UKSC [55].

<sup>4</sup> Section 125 of Environmental Impact Assessment Procedure issued by Notification No. 616 / 2015 of Ministry of Environmental Conservation and Forestry on the date of 29-12-2015.

<sup>5</sup> Section 1(h) of Environmental Impact Assessment Procedure.

<sup>6</sup> *Ibid.*



departments and organizations having authority to issue licenses, permits or registrations, to take necessary action.<sup>1</sup> The payment of penalties does not bar claimant by third parties with respect to damage incurred and/or injury suffered arising out of the Project's performance or any breaches or performance defects by the Project.<sup>2</sup>

Some environmental claims before Myanmar Courts have been studied and it is rare case that the local people win the lawsuit against MNEs in Myanmar,<sup>3</sup> many remain unsolved issues like Myitsone Dam project.<sup>4</sup> Others still protested by local community against the operating business of MNEs.<sup>5</sup> Among the cases, unusually, the court favoured the plaintiffs who filed a civil suit against the mining companies (Myanmar Pongpipat Company and Eastern Mining Company), which operate mines in Dawei Township. In this case, Saw Dah Shwe, who is a villager from Kin Baung Chaung, filed a civil suit at the Dawei District Court in 2015. The plaintiff claimed compensation for flooding from the firm's mine that destroyed and caused damages of 882 of his betel nut trees. The court ruled in his favour awarding him 114,800,000 Kyats for damages caused by the activities mining companies.<sup>6</sup> The defendant appealed to the High Courts of the Thaninthari Region for question of facts and that the suit was instituted after the limitation period. However, the Court of Appeal upheld the District Court's decree and dismissed the appeal.<sup>7</sup> Thus, the court decisions pointed that business entities can no longer avoid the responsibilities of violation of human rights and causing environmental harm.

## Conclusion

The principles of responsible business conducts for MNEs to be obliged are principally set in UNGPs, OECD Guidelines for Multinational Enterprises and ILO MNE Declarations. UNGPs imposed the obligations of the states and MNEs which are founded on three pillars of Respect of Human Rights, Protect of Human Rights and Access to Remedy. Responsible Business Conduct becomes essential part of MNEs' policy and it extends the scope of business liability of enterprises. MNEs are not only responsible for its own conduct but also may liable for its supply chains' conducts. Based on the case study, although MNEs do not directly incur responsibility under international human rights law and environmental law, in practice, MNEs can be sued before the Court for their human rights abuses and doing business harm to environment. In Myanmar, local community still face the challenges of environmental and human rights issues caused by the investment project, especially mining and hydropower projects. Their right to access to justice is still uncertain and difficult.

<sup>1</sup> Section 131 of Environmental Impact Assessment Procedure.

<sup>2</sup> Section 128 of Environmental Impact Assessment Procedure.

<sup>3</sup> **Saw Yan Naing, Villagers to sue companies over Destructive effects of Heinda Tin Mining Project on livelihood and Environment, The Irrawaddy (Myanmar) issued on 22 Dec 2016.**

<sup>4</sup> Tom Fortrop, Myanmar Myitsone Dam Dilemma, *The Diplomat*, 11 Mar 2019. Available at <https://thediplomat.com/2019/03/myanmars-myitsone-dam-dilemma/> (Last accessed on 9.6.2020)

<sup>5</sup> Joun Liu, Groups reject Tigyt power plant's EIA report, demand suspension, *Myanmar Times*, issued on 20 Nov 2019, available at <https://www.mmtimes.com/news/groups-reject-tigyit-power-plants-eia-report-demand-suspension.html> (Last accessed on 9.6.2020)

<sup>6</sup> Saw Dah Shwe v Myanmar Pongpipat Co.Ltd, Dawei Civil regular Suit 50/2015.

<sup>7</sup> Myanmar Pongpipat Co.Ltd v Saw Dah Shwe, Taninthari Civil First Appeal 2/2020.

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