Transitional Justice and Corporate Accountability for Human Rights Abuses: What options for Myanmar?
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Abstract
Companies often operate in areas of conflict or repression, and sometimes they are involved either directly or in complicity with governments, in human rights abuses. This has been the case in Myanmar. In the aftermath of a conflict, when a society attempts to come to terms with a legacy of human rights violations, transitional justice offers a series of processes and mechanisms to achieve accountability and justice, establish the truth, provide for reparations and institutional reform, and move towards democracy, reconciliation and peace. But transitional justice processes traditionally deal only with governments’ human rights violations, while corporate abuses are usually not conceptualized as part of such processes.

Mechanisms commonly used, sometimes in combination, to achieve transitional justice include: trials through international, national or hybrid tribunals; truth and reconciliation commissions, and commissions of inquiry. So far, no international criminal tribunal has had jurisdiction to try a company for crimes under international law. Several Truth and Reconciliation Commissions (TRCs) however have addressed the issue. For example, the TRC of South Africa mentioned the role of business to maintain the status quo of the repressive apartheid society. The Liberian TRC found out that corporate actors across different sectors were involved in a number of human rights violations. Regional systems like the Inter-American and the African systems have also dealt with the issue. And addressing past corporate abuses is part of the state duty to protect from human rights violations. In international human rights law, the state duty to protect from human rights violations entails the government bringing into place measures to ensure that rights-holders are protected against violations by others, including corporate actors, and providing remedies for victims. Under the UN Guiding Principles on business and human rights, states are required to take appropriate steps to investigate, punish and redress human rights abuses by corporations.
This paper argues that in a transitional process the state should put in place transitional justice systems able to hold corporations responsible for past human rights abuses as part of its duty to protect. It explores the links between transitional justice and corporate accountability for human rights abuses in Myanmar in the aftermath of the first step towards a democratic transition, the end of western sanctions and the rush of companies investing in the country. What are the transitional justice mechanisms available in the country, and are they suitable for addressing past corporate human rights abuses and preventing future ones? The paper focuses on the idea of redistributive justice, and argues that if combined with a form of corporate accountability, transitional justice in Myanmar can achieve justice and reparations for victims of human rights abuses, with the goal of preventing the recurrence of violations.