

Ms. Meredith Cross
Director, Division of Corporate Finance
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-4628

We at the Human Rights Foundation of Monland (“HURFOM”) are writing to submit our comments during the Securities and Exchange Commission (SEC) public comment period for section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act that was signed into law on July 21, 2010.

The Human Rights Foundation of Monland (HURFOM) is an ethnic Mon organization that works for the restoration of democracy, human rights, and genuine peace in Burma. Founded by students from the 1988 pro-democracy uprising, political activists, and community leaders, our staff monitor and report on the ongoing commission of crimes against humanity by the Burmese military in ethnic Mon territory and areas throughout southern Burma. This information is shared with all campaign organizations, international media, and governments working to bring democratic change to Burma.

Due to our first hand experience in documenting issues of human rights abuse that are caused directly by the presence of foreign investment from international resource extraction companies into the Burmese government, HURFOM is in a key position to comment on the value of improved transparency under Dodd-Frank Act Section 1504. The disclosure of key payments from companies to the Burmese government and its subsidiary bodies is crucial information that will assist HURFOM, other Burma based NGOs, and local communities in understanding the value of the resources extracted from our country. This knowledge gives us an opportunity to pressure the government for fair spending on public development, healthcare and education, and inform possible legal recourse by communities that suffer abuses by government soldiers in resource extraction areas, as just a few examples.

To inform our comments, we use the example of payments made during the development of the Kanbawk to Myaing Kalay gas pipeline project in southern Burma. This project was built by the Burmese government as a direct result of international investment in gas extraction projects in southern Burma.

In 1992 the French oil company, Total, signed an agreement to harvest gas from the Yadana Gas Fields in the Andaman sea. A joint operating agreement was signed between the four investing companies shearing steaks in the project: Total, with 31.2%; a subsidiary of Unocal, now Chevron with 28.3%; the Petroleum Authority of Thailand-Exploration & Production (“PTT-EP”) with 25.5%; and the Myanmar Oil and Gas Enterprise (“MOGE”), with a 15%¹. Contractually, as payment, the MOGE was guaranteed 20% of the gas flow from this Yadana pipeline when it became operation in 2000.

¹ “Total in Myanmar: A sustained commitment,” Total 2010.

In 2000, as a direct result of the Yadana pipeline construction, and payment of Total gas to the Burmese military government, MOGE began construction on the Kanbauk to Myaing Kalay gas pipeline. MOGE continues to operate the gas pipeline today, which takes gas from a junction center in Kanbauk of the Yadana gas pipeline, to a cement factory in Myaing Kalay, with is later routed to a power station in city of Rangoon.

The presence of this pipeline has lead to significant militarization in the surrounding communities, the commission of crimes against humanity and human rights abuses by the Burmese soldiers. 12,000 acres of land were seized, and thousands of familiars were displaced outright or driven into poverty. Wide spread crimes against humanity commuted by the military including thousands of cases of forced labor and arbitrary taxation, 631 cases of torture, 150 cases of rape and sexual harassment and 61 cases of summery execution have resulted from the construction and operation of this project².

The transparency of funding to the military government and its company MOGE would be crucial in the first steps of seeking justice for communities. Often because no information is available communities that have suffered significant abuses, there is little understanding of the value of the gas in their region. By illustrating what a company pays to the government, communities abuses could understand and inform realistic demands regarding reparations and damages if legal action were taken. Even with out legal action, the knowledge of the true value of this gas would give communities a bargaining chip when facing off with demands for their land, labor, and extortion.

Moreover this militarization and abuse is the cause of a sever increase in poverty and displacement since the pipeline was built. As a result education and healthcare are crippled in areas around the pipeline. As a few examples, the government has one of the lowest budgets in the world for health and education, spending about 1.2% of its GDP³. Only a quarter of children complete primary school⁴. Burma's infant mortality rate in rural areas like that around the pipeline are at close to 10% for children under 1 and 20% for children under 5⁵. Knowledge of payments made by resource extractors to the government would give communities and organizations the data on which to base possible pressure on the regime to reinvest in local hospitals, schools, infrastructure and social welfare projects.

The following suggestions are ways HURFOM believes language in the Dodd-Frank Act

² For further reading on the abuses surrounding the construction of the Kanbauk to Myaing Kalay gas pipeline, please see HURFOM's 2009 report "Laid Waste: Human Rights along the Kanbauk to Myaing Kalay gas pipeline."

³ Turnell, Sean. "Burma's Economy 2008: Current Situation and Prospects for Reform," Burma Economic Watch, Macquarie University, Australia, May 2008. See also, The Gathering Storm: Infectious Diseases and Human Rights in Burma, the University of California Berkeley and John Hopkins University, July 2007.

⁴ Turnell, "Beyond the International Spotlight, Critical Needs in Myanmar Remain Unmet," 2008.

⁵ "After the Storm: Voices from the Delta," Emergency Assistance Team (EAT) and the Center for Public Health and Human Rights at Johns Hopkins Bloomberg School of Public Health, March 2009.

Section 1504 could be strengthened to improve the transparency of payments such as those described above:

- I. Kanbauk to Myaing Kalay gas pipeline project is the result of a joint venture formed by a variety of parent companies from around the globe. We believe that to increase transparency of payments, the language of this law must specify the nature of companies that are covered by the SEC to include all companies controlled by the target company, as well as majority and minority owned stakes by that company company, international joint ventures, and subsidiaries.
- II. As indicated by our documentation, payments by TOTAL and the other partners are payments in kind, meaning that the Burmese government is paid through MOGE in Total gas from the Yadana gas pipeline. HUFOM hopes that this bill adopts language that ensure that “payment” include not just cash or money transactions, but payments in-kind through gas, oil, minerals, material support (i.e. vehicles, buildings, machinery, etc.), services (labor, security, construction, etc.), and economic concessions or exchanges.
- III. The MOGE, as one of the working interests in the joint agreement for Yandana, and as the operator of the Kanbauk-Myaing Kalay gas pipeline, is the government owned and operated company that receives payments from foreign investors in these projects. While companies such as those doing business in this case may argue that MOGE is not the military government, it is important to establish in how clear the ownership and control is over a company by a government, their family members, and close associates. In this case, MOGE is headed by Major General Lun Thee, and in a tri-country pipeline negotiation vice-senior general Maung Aye, vice chairman of the Burmese regime, negotiated on behalf of MOGE.
- IV. To improve the transparency of payments by resource extraction companies, more areas of payment should be made clear. HUFOM believes that Section 1504 should contain language that includes a companies payments related to a companies upstream (oil extraction, mining, etc.) and downstream (refining, processing, and marketing) activities, as well as payments concerning ‘services’ and ‘good will’ payments. Services would be payments in money or kind, for security operations. Good will payments would include payments to communities impacted by the project, payment for development of community resources such as medical facilities, schools, agricultural facilities, transportation, infrastructure, etc.
- V. The transparency of payments by resource extraction companies is crucial as is allows communities and organizations to see the full breadth of payments made to governments and their companies, and thus the full value placed on extracted resources. The payments for services and payments in kind that are disclosed should be designated separately. This would clarify how much a company paid for services in support of resource extraction, and how much communities paid to

assist communities that often face significant negative when subjected to resource extraction projects.

- VI. For many organizations based in areas in Burma where resource extraction projects occur, access to, and format of, information important to the decision making process of local communities and organizations is extremely important. Without compromising the detail of the information published, HURFOM believes that this bill should include language that ensures information is made available in a simple universal format. This information should be useable and searchable in an intuitive way. One way could be on a clear user friendly website. Distribution of this information could also include an opportunity for person to sign up on a mailing list so reports or links to reports on company payments would automatically delivered via email.

The Dodd-Frank Wall Street Reform and Consumer Protection Act will be a crucial tool in addressing the concerns of our communities and organizations in southern Burma where resource extraction is prevalent. The clarification of terms to strengthen transparency requirements for companies is the first step in improving the lives of every citizen of Burma that currently is denied crucial information on the value of resources in their country. We appreciate your time in considering our recommendations and we look forward to the publication of your formal rule proposal in late December.

Human Rights Foundation of Monland (HURFOM)
P.O. Box 35
Sangkhlaburi, Kanchanaburi Province,
Thailand
71240

Please Cc: this posting to the following recipients:

Ms. Paula Dubberly
Deputy Director Division of Corporation Finance
Securities and Exchange Commission

Mr. Wayne Carnall
Chief Accountant
Division of Corporation Finance
Securities and Exchange Commission

Mr. Paul Dudek
Chief
Office of International Corporate Finance
Division of Corporation Finance

Securities and Exchange Commission

Ms. Tamara M. Brightwell
Senior Special Counsel to the Director
Division of Corporation Finance
Securities and Exchange Commission

Mr. Roger Schwall
Assistant Director
Division of Corporation Finance
Securities and Exchange Commission

Mr. Elliot B. Staffin
Special Counsel
Office of International Corporate Finance
Securities and Exchange Commission