

To: The United States Securities and Exchange Commission

We at the Human Rights Foundation of Monland (HURFOM) are writing to submit our Comment on the Commission's Proposed Rules implementing Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

HURFOM is an ethnic Mon organization that works for the restoration of democracy, human rights, and genuine peace in Burma. Since our founding by students from the 1988 pro-democracy uprising, political activists, and community leaders, HURFOM's staff has monitored and reported 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 campaign organizations, international media, and governments working to bring democratic change to Burma.

The Proposed Rules that have been released for Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act contain provisions that we believe are vital for the empowerment of local communities where resource extraction projects take place. Yet we believe portions of Section 1504 still need to be clarified to further improve the usefulness of payment disclosures for communities impacted by resource extraction projects.

Our over-arching hope is that the rules for Section 1504 maximize the transparency, specificity, and range of payments by all issuers to the Burmese government and all companies, partnerships, and subsidiaries that are connected to it.

A primary example of how payment disclosures would help communities concerns the operation of the Kanbawk to Myaing Kalay gas pipeline in southern Burma. The project was developed as an offshoot of a partnership between Total, Unocal (now Chevron), the Petroleum Authority of Thailand-Exploration & Production ("PTT-EP"), and the Burmese state-owned company, the Myanmar Oil and Gas Enterprise ("MOGE"). As the Kanbawk to Myain Kalay pipeline is the predominant method by which the Burmese government transports gas from Total for domestic use, the area around the pipeline has been significantly militarized to provide security. Due to the presence of these forces, severe human rights abuses have occurred amongst local communities.

Along the pipeline, over 12,000 acres of land have been taken from residents with either nominal or entirely absent compensation. Residents, who don't know the value of payments made to the government for commercial development, are often taxed at rates of almost 50 percent of their monthly income to supposedly cover the military's cost for supporting local battalions. Thousands of residents ranging between the ages of 12 all the way up to 70 have been used as forced labor, without compensation, during construction, repair, and maintenance projects. Moreover, some residents have even been subjected to

arbitrary arrest, torture, rape, or summary execution because of the presence of these security soldiers¹.

These abuses have resulted in a severe increase in poverty and displacement, and the crippling of education and healthcare in areas around the pipeline. However, education and healthcare are also nationwide issues. The Burmese government has one of the lowest budgets in the world for health and education, spending about 1.2% of its GDP in these areas.² Only a quarter of Burmese children complete primary school.³ Burma's infant mortality rate in rural areas, like that around the pipeline, is close to 10% for children under one, and 20% for children under five.⁴

Information that is transparent and specific and covers a wide range of payments would be crucial to educating and empowering communities along the Kanbawk to Myaing Kalay pipeline. Knowledge of the disclosed payments would be critical to building community awareness of the true value of resources extracted from their area. Armed with this information, communities and local organizations could lobby new local leaders for fair compensation, and social and medical support from the government.

We would like to applaud the effort the SEC has taken in developing its Proposed Rules for Section 1504. Our comments, bulleted below, highlight particular successes of these proposed rules that we see as crucial in our effort to maximize transparency, specificity, and range of payments disclosed.

- We are happy to see the SEC's inclusion of payment disclosures for downstream, as well as upstream activities. Such a rule provides the necessary range of disclosures and will give real clarity to communities and organizations on the revenue streams associated with resource development, as the payments that extractive companies make are not limited to upstream development.
- We support the Commission's decision to maintain the distinction between the *de minimis* and "materiality" thresholds. The decision to require disclosure of all payments that are not *de minimis* will give a more accurate illustration of money spent. While many smaller payments may seem insignificant to investors or the extractive companies, such payments are associated with activities like provision of security that are often highly significant to local communities, and the use and payment of this money is important for transparency.
- We support the Commission's decision not to impose a limited definition of "control" with regard to the entities for which an issuer must disclose

¹ For further reading on the abuses surrounding the construction of the Kanbawk to Myaing Kalay gas pipeline, please see HURFOM's 2009 report, *Laid Waste: Human Rights along the Kanbawk to Myaing Kalay gas pipeline*.

² Sean Turnell, *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.

³ Sean Turnell, *Beyond the International Spotlight, Critical Needs in Myanmar Remain Unmet*, 2008.

⁴ Emergency Assistance Team (EAT) and the Center for Public Health and Human Rights at Johns Hopkins Bloomberg School of Public Health, *After the Storm: Voices from the Delta*, March 2009.

payments. This reflects the reality we see in the extraction of resources in Burma, where multinational companies control extractive ventures through contractual arrangements and by holding shares – directly or indirectly – in local enterprises.

- By insisting that companies address venture projects through a case by case fact based process, we believe the depth and accuracy of payment disclosures will be improved. This broadening of payments disclosed from joint ventures would give communities in eastern Burma access to the payments made by the joint venture with the government that led to the creation of the Kanbaw to Myaing Kalay gas pipeline. The process of inquiry would likely better ensure a more transparent and specific disclosure of payments under Section 1504, giving people access to crucial information on projects being developed in their area.
- We see the inclusion of both royalty payments and production share revenues to governments as a crucial part of the proposed rules. This requirement will increase the range and clarity of payment information available to our communities, as the Burmese government, hemmed in by a tarnished image and tough sanctions, will not be able to hide behind joint ventures or partner roles.
- We also would like to highlight the importance of the commission including production share payments under the Proposed Rule. If it were not for these types of payments the Kanbaw to Myaing Kalay gas pipeline would not exist. The gas that is contained in the Kanbaw to Myaing Kalay pipeline is payment in kind for the government's support and security in the development of the Yadana and Yetagun pipeline's to the south. Contractually, the government is entitled to 20 percent of the output of these pipelines, which is subsequently transported through the Kanbaw to Myaing Kalay pipeline⁵. As a result, including this form of payment disclosure under Section 1504 is a significant asset for communities who live within the pipeline area. By making such payments transparent, communities will be able to learn the value of the gas that passes through their area, and make realistic demands for compensation, or a stake in the resource, due to the suffering they've experienced. Such compensation, or a portion of the resource, could be used for community, social, and medical development, land purchases for displaced families to rebuild, and even as a source of power for electricity in the community.
- We see the decision not to provide exemptions for statutory prohibitions on disclosure or contractual confidentiality clauses as absolutely necessary. It is necessary because opportunities for exemption will provide either companies or the government in Burma a motivation to make prohibitions on disclosure or confidentiality clauses common place. If the effort to take

⁵ *Total in Myanmar: A sustained commitment*, Total 2010.

advantage of an exemption to Section 1504 became widely used, such a shield would undermine the value that disclosure of payments would give to communities in southern Burma, as the available information would be only partial.

Below we have included bulleted comments addressing portions of the proposed rules of Section 1504 that we believe need to be improved to provide the maximum transparency, specificity, and range of payments made in areas like southern Burma.

- One of the most important elements in making information on payments transparent, specific, and wide ranging, is defining the terms of commercial development of oil, natural gas or minerals. For this reason we believe ‘transportation’ should be included in the terminology of commercial development, as the pipeline – a means of transportation – is what causes some of the most significant harms to communities in southern Burma. As explained earlier, the presence of the Kanbawk to Myaing Kalay pipeline in Burma is a keystone cause of abuses against communities. The Kanbawk to Myaing Kalay pipeline transports Total gas to the government. By excluding transportation from the definition of commercial development, the rules for Section 1504 would risk overlooking a key portion of payments that are made to a government, and where the disclosure of such payments would be of prime interest to local communities.
- Under Section 1504 we believe it is important to clarify the definition of ‘control’. The requirement of proportional reporting for all joint ventures in which a company participates would clarify the amount in which each company is committed to a project. From our experience, it is not always the case that the majority stakeholder in a project is the sole body with influence. Proportional disclosure of payments would clarify the sort of financial impact a company has on a project’s development, and thus, impact on a community.
- Also under the definition of ‘control’ it is imperative that payments to companies that are partially owned by governments should not be excluded from Section 1504. The two key reasons we for requiring the disclosure of such payments both hinge on the amount of payment the government receives in participating in such minority ownership companies. The first is that, even a minority stake still ensures payment to the government, which, as we have highlighted previously, is key to people’s understanding of how money is used in supporting the regime. Second, recently as the government prepared for the 2010 election an effort was undertaken to “privatize” many of the country’s most lucrative businesses. However, rather than holding genuine auctions for company ownership, many companies were automatically awarded to members of the military government’s civilian political party, family members of these military leaders, and close friends and allies. As a result, while the government may appear to have only a minority stake on paper, in reality many of the payments that could go to a

company would still benefit the government's control over the country. By making these payments to such companies transparent, citizens of Burma who are more familiar with these close political and family ties will be able to draw conclusions and learn from the disclosures in ways a foreigner cannot anticipate. Therefore, for the purpose of transparency, payments to these companies with a government minority stake, or with a clear relationship to the government, should be included under section 1504.

- One means of effectively ensuring accuracy of payment disclosures under Section 1504 would be to make sure that disclosures will be subject to a private right of action under Section 18 of the Exchange Act. Payment disclosures could be made in 10-K/20-F/40-F reports and in the same year as annual reports. This pressure to ensure accuracy of disclosures is absolutely necessary if the information is to be effective in educating communities and organizations in southern Burma about how much their government has received from resource revenues.
- Lastly, in order to keep Section 1504 a provision that is strong and effective, we believe the SEC should monitor foreign issuers to determine whether the exclusion of ADR Level I companies is hurting the competitiveness of companies under Level II and III, and possibly extend Section 1504 to holders of Level I ADRs if need be.

Section 1504 of 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. This final comment period to clarify strong and weak points of the current Proposed Rules, to maximize the transparency, specificity, and range of payment disclosures, is a critical step in improving the lives of Burmese citizens, who are currently denied crucial information on the value of resources extracted from their country. We appreciate your time in considering our recommendations and we look forward to the publication of your final rules in April.

Sincerely,

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