

Section 1504 Dodd Frank Wall Street Reform Act

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We at Ta'ang Students and Youth Organization (TSYO) are writing to submit our comments to inform the Securities and Exchange Commission (SEC) as you draft final Regulations for Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act signed into law on 21 July 2010. Below is a summary of our recommendations to the SEC followed by detailed information from inside Burma demonstrating why strong regulations with few exemptions are important for the people of Burma.

Recommendations to improve draft regulations for implementing Dodd-Frank Act Section 1504:

1. Exemptions for reporting in countries where such disclosures are prohibited or where contracts forbid disclosure. Some resource extraction companies claim that they will violate local law in some countries where they operate by disclosing payments to those countries' governments, and that reporting payments to some governments may violate their own contracts. Therefore, they are asking the SEC to grant exemptions in such cases. If the SEC were to announce that companies will not have to disclose payments to any government that forbids disclosure by law or contract, then all secretive governments – Burma included – would start including such prohibitions in their laws or contracts. Therefore the whole point of the law would be undermined in the very countries where transparency is most important. In addition, the companies have only identified that payments made to the governments' of Qatar, Cameroon, Angola and China may be prohibited.¹
2. Dodd-Frank Act Section 1504 should maintain liability to shareholders for misleading statements. The SEC announced that it believes that resource extraction companies should not be subject to shareholder lawsuits if they release false information in Section 1504 disclosures, and companies have strongly supported that position. We are strongly opposed to this rule, which would significantly weaken Section 1504. Companies should maintain liability to shareholders if they release false information in Section 1504 disclosures. Shareholders cannot make educated socially responsible investments without accurate information regarding payments to governments - including to the Burmese government - which often commits increased human rights violations in areas close to natural resource development projects, such as the Shwe natural gas and the Burma-China crude oil pipelines in the Ta'ang areas in Northern Shan State, Burma.
3. The insistence on project level disclosure rather than country level disclosure. In Section 1504, Congress very clearly required companies to disclose payments to governments at the project level, as opposed to being allowed to lump all their payments to any given government together.

¹ Royal Dutch Shell plc, File Number S7-42-10, Dodd-Frank Wall Street Reform and Consumer Protection Act Section 1504 Comment, May 17, 2011 (Cameroon, China, Qatar), available at <http://sec.gov/comments/s7-42-10/s74210-90.pdf>; ExxonMobil, File Number S7-42-10, Dodd-Frank Wall Street Reform and Consumer Protection Act Section 1504 Comment, March 15, 2011 (Cameroon, China, Qatar, Angola), available at <http://sec.gov/comments/s7-42-10/s74210-73.pdf>.

However, companies have pushed back, suggesting that the SEC define the word “project” to mean all of a company’s operations in a single country, which would undermine the will and clear language of Congress. Some companies claim that requiring “project” level disclosure in the ordinary sense of the term would reveal commercial secrets and place companies at a competitive disadvantage. Some Chinese and Korean companies, as in the case of the Shwe natural gas and the Burma-China crude oil pipeline projects (CNCP, PetroChina Company Limited and Daewoo International Corporation), are each likely to be operating several projects in Burma in the years to come. Therefore, this would be a significant setback for local communities, like our Ta’ang communities in Northern Shan State, Burma. We need to know the amount of money paid to the Burmese government for the privilege of taking natural resources for each project conducted in our area that has direct negative environmental and human rights impacts on our communities. Knowing only the aggregate amount of all payments received by the Burmese government for the many resource development projects conducted throughout the country is not enough to effectively demand responsible revenue management.

4. The SEC should not provide a delayed effective date for the final rules. Section 1504 states that companies will have to begin disclosing payments to governments for the year following the issuance of the final rules. The SEC should not provide a delayed effective date for the final rules. If the SEC had met its original deadline of April 15, 2011, companies’ 2012 annual report filings (filed in 2013) would have been required to include payments for 2012. We suggest that the SEC require companies to include payments made in 2012. Once the Shwe natural gas and the Burma-China crude oil pipeline projects begin commercial production, they will be the largest source of revenue for the Burmese government, so if 2012 payments are excluded it would be an absolute travesty. Disclosure of these 2012 would really help us to understand the Burmese government’s misallocation of funds. After the November 2010 elections, the Burmese government claims to be running a democracy, but continues to work solely for themselves and the military, instead of for the people of Burma and their civil society needs.

The idea that companies need more time to comply with Section 1504 makes little sense. Many oil, gas and mining companies already voluntarily publish at least some information Section 1504 will require. Some resource extraction companies, like Chevron and Rio Tinto, have promoted project-level disclosures in Indonesia and Australia, arguing that this is exactly how they already keep track of government payments. At most, companies will have to make small adjustments to their accounting and reporting systems – nothing that would logically require a whole extra year to comply.

TSYO believes it is crucial for the SEC to issue strong final rules governing Section 1504, because it is unlikely that Burma will join the Extractive Industries Transparency Initiative (EITI), which is a voluntary effort and requires independent civil society partners, currently impossible inside Burma. It has been confirmed through sources engaged with Burma’s Energy Minister Lun Thi that the Minister appears unfamiliar with EITI and is unlikely to advance it.² Furthermore, Burma is extremely corrupt – ranked 176 out of 178 on Transparency International’s 2010 Corruption Perceptions Index, and therefore

² EarthRights International, *The Burma-China Pipelines: Human Rights Violations, Applicable Law, and Revenue Secrecy*, at 21, Mar. 2011, available at <http://www.earthrights.org/publication/burma-china-pipelines> (citing, EarthRights International communication with confidential source from an international financial institution, 2011).

unlikely to voluntarily join EITI.³ Section 1504 should protect those who are most vulnerable by using clear language that demands transparency of payments from resource extraction companies to governments, like the Burmese government, so citizens can hold their governments accountable for the misallocation of payments. If the SEC creates exemptions or weakens the project level reporting requirements, the very purpose of 1504 may be defeated.

Background on Ta'ang Students and Youth Organization

Ta'ang Students and Youth Organization is an ethnic Ta'ang organization from Burma that works for peace, justice and equality to build a democratic country and to improve the lives of our students, youth and all Ta'ang people. TSYO was founded in 1998 and has seven working departments, which try to improve the lives of Ta'ang people and defend their human rights, health and the environment. There are over 1 million Ta'ang ethnic people living in Northern Shan State. The main source of income for the Ta'ang people is through tea farming and the production of tea, which is famous throughout Burma.

TSYO is in a prime position to comment on the significance of increased transparency under Section 1504. The disclosure of payments from companies to the Burmese government and its subsidiary bodies is crucial knowledge that will support TSYO, other NGO's and local communities in understanding the value of resources extracted from our country. This information gives us an opportunity to pressure the Burmese government for just and fairer spending on public development, social welfare, education and healthcare, and to inform communities of possible legal options that they could explore for abuses suffered at the hands of the Burmese government's soldiers in resource rich areas. Government spending on healthcare and education in Burma is easily the lowest in the region⁴ accounting for merely 1.31% and 4.57% of the budget⁵ while the generals and their friends make billions of dollars from sales of natural gas, minerals and other resources that rightly belong to the people of Burma.

TSYO's Environmental and Human Rights Documentation departments have conducted fact-finding research over the past eight years on a number of massive resource development projects funded by international resource extraction companies in collaboration with the Burmese government. These resource development projects are taking place in our Ta'ang area in Northern Shan State, close to the Burma-China border. Our research documents the direct impacts of these projects on the environment and on the human rights of the local Ta'ang communities.

Payment Transparency in Burma Case Study: The Shwe natural gas and the Burma-China crude oil pipeline projects

A relevant case is the Shwe natural gas and Burma-China crude oil pipeline projects currently under construction in Burma, scheduled for completion in 2013. The Shwe natural gas and Burma-China crude oil pipeline projects are large-scale energy projects that will span the breadth of the country as they transport natural gas and crude oil from Burma's western coast on the Bay of Bengal to Ruili in China's Yunnan Province. The two massive pipelines will pass through Burma's Arakan State, Magway Division,

³ Transparency International, *Corruption Perceptions Index 2010*, at 3, Oct. 2010, available at http://www.transparency.org/policy_research/surveys_indices/cpi/2010/results (Burma is tied with Afghanistan for 176, and followed only by Somalia).

⁴ Tomás Ojea Quintana, Progress Report of the Special Rapporteur on the situation of human rights in Myanmar, ¶198, delivered to Human Rights Council, U.N. Doc. A/HRC/16/59 (Mar. 7, 2011), available at <http://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A-HRC-16-59.pdf> ("Myanmar is now the poorest country in the region in terms of social and economic development").

⁵ Htet Aung, *Military Security Trumps Human Security in Burma's Budget*, The Irrawaddy, Mar. 9, 2011, available at http://www.irrawaddy.org/article.php?art_id=20901 (citing, "The Expenditure of the Union Ministries and Union Level Organizations," Myanmar State Gazette (listing expenditures for Burma's 2011-2012 fiscal year budget)).

Mandalay Division and into Shan State, and cross dense mountain ranges, arid plains, rivers, jungles, and many villages and towns populated by a variety of different ethnic groups like our Ta'ang people located in the Northern Shan State.

Although it is called the Shwe natural gas project, in reality it has three components: the Shwe offshore natural gas project (deposits, wells, and drilling platforms), the Shwe offshore natural gas pipeline and the Shwe onshore natural gas pipeline.

- The Shwe offshore natural gas project will exploit natural gas from blocks A-1 and A-3 in the Bay of Bengal, and is operated by Daewoo International Corporation⁶ (South Korea, 51%) in partnership with ONGC Videsh Ltd (India, 17%), GAIL (India) Ltd (India, 8.50%), Korea Gas Corporation (KOGAS) (South Korea, 8.50%) and Burma's state-owned Myanma Oil and Gas Enterprise (MOGE) (Burma, 15%).⁷ Along-side offshore drilling platforms, this consortium is developing an onshore gas terminal, which is currently under construction in Kyaukphyu, Arakan State, Burma.
- The Shwe offshore natural gas pipeline, scheduled for completion by March 2013, is being developed by the Shwe Offshore Pipeline Joint Venture Company, with participating interests held by Daewoo (60%), ONGC Videsh Ltd (20%), GAIL (10%) and KOGAS (10%).⁸ On February 23, 2010, Daewoo International Corporation signed a \$1.4 billion contract with South Korea's Hyundai Heavy Industries for the construction of the 110km Shwe offshore natural gas pipeline, as well as much of the offshore natural gas production facilities.⁹
- The gas will then be transported through the Shwe onshore natural gas pipeline being developed by Onshore Pipeline Company, registered in Hong Kong, with participating interests held by CNCP South-East Asia Pipeline Company Limited, China (50.90%), Daewoo (25.04%), ONGC Videsh Ltd (8.35%), MOGE (7.37%), GAIL (4.18%) and KOGAS (4.18%).¹⁰ The gas will then be distributed in China by CNPC's subsidiary PetroChina.¹¹ It is estimated that the Burmese government's profits will be at least US\$29 billion over 30 years; however the exact figures are not known and if recent increases in oil and gas prices continue, the figure could be considerably higher.¹²

Alongside the Shwe onshore natural gas pipeline, a separate 771-kilometer long Burma-China onshore crude oil pipeline is also being built by CNPC (50.90%) and MOGE (49.10%).¹³ The crude oil pipeline will

⁶ Daewoo International Corporation is a 66.91 % owned subsidiary of the South Korean conglomerate POSCO (CIK: 0000889132). See POSCO, Quarterly Report (From Jan. 1, 2011 to Mar. 31, 2011), Form 20-F, filed on June 16, 2011, at 26, available at <http://www.sec.gov/Archives/edgar/data/889132/000095012311059302/0000950123-11-059302-index.htm>. POSCO files annual reports on Form 20-F with the Commission. See POSCO, Business Report (From Jan. 1, 2010 to Dec. 31, 2010), Form 20-F, filed on Apr. 6, 2011, available at <http://www.sec.gov/Archives/edgar/data/889132/000095012311033207/0000950123-11-033207-index.htm>.

⁷ ONGC Videsh, *Assets*, available at <http://www.ongcvidesh.com/Assets.aspx>.

⁸ ONGC Videsh, *Assets*, available at <http://www.ongcvidesh.com/Assets.aspx> (The Burmese government also holds a participation right of 15%).

⁹ Hyundai Heavy Industries Co., Ltd., *Hyundai Heave Signs US\$1.4 Billion Myanmar Gas Plant Deal, Feb. 23, 2010*, available at http://english.hhi.co.kr/press/news_view.asp?id=531.

¹⁰ ONGC Videsh, *Assets*, available at <http://www.ongcvidesh.com/Assets.aspx>.

¹¹ CNPC is the controlling shareholder of PetroChina Company Limited (CIK: 0001108329), which files annual reports on Form 20-F with the Commission. See, PetroChina Company Limited, 2010 Annual Report, Form 20-F, filed on Apr. 8, 2011, at 14, available at <http://www.sec.gov/Archives/edgar/data/1108329/000095012311033965/0000950123-11-033965-index.htm>.

¹² BankTrack, *Shwe Gas and Pipelines Projects – Myanmar, Basics*, available at http://www.banktrack.org/show/dodgydeals/shwe_gas_and_pipelines_projects.

¹³ CNPC, *Rights and obligation agreement signed of Myanmar-China Crude Pipeline, Dec. 21, 2009*, available at <http://www.cnpc.com.cn/en/press/newsreleases/2009/210a7949-5718-4248-a913-697f672b67a1.htm> (CNPC controls its 50.90% interest in the Burma-China crude oil pipeline through its wholly owned subsidiary Southeast Asia Crude Pipeline Company Ltd. (SEACOP)).

allow CNPC to ship oil from Africa and the Middle East to China bypassing the Straits of Malacca. The estimated construction costs are US\$1.5 billion for the crude oil pipeline and between US\$1.04 and 1.95 billion for the gas pipeline. Additionally, CNPC may pay an annual transit fee of US\$ 150 million per year to the Burmese government for the use of the crude oil pipeline in Burma. The pipeline contract is expected to run 20-30 years, with CNPC paying as much as US\$4.5 billion in transit fees to the Burmese government.¹⁴

Construction of the Shwe natural gas and Burma-China crude oil pipeline projects began in the Ta'ang areas in Northern Shan State, Burma in November 2010. According to TSYO research, the pipelines will go through nearly 20 villages in Namtu Township alone each village has an average of 100 households. As a result of this in Pyin Oo Lwin, Kyaukme, Hsiphaw, Namtu, Maiwee, Mantong and Namkham Townships, Ta'ang communities have already, and continue to be, forcibly relocated and experience land confiscation from the Burmese military in the area of the construction of the dual pipelines. Furthermore none of the local communities in the Ta'ang areas have received any information about the projects, and they do not know if they will receive any compensation for the confiscation of their homes, land and property. Many have lost their livelihoods due to this forced eviction and have to live and scrounge for food in the jungle and forest as their families' only means of survival.

Military presence started to increase in February-March 2010 in Ta'ang areas, due to construction of the pipelines. The 60 existing military battalions are dramatically increasing in size by adding soldiers in pipeline construction areas. This increased military presence has inevitably led to local people suffering more human rights violations. TSYO has documented cases of forced labor, rape, torture, forced eviction, forced relocation and loss of livelihood, in an area where people are already subjected to appalling poverty, lack of any public infrastructure, healthcare or access to education. The transparency of funds obtained by the Burmese government and Burma's state-owned Myanma Oil and Gas Enterprise (MOGE) would assist immensely in the fight for justice and accountability of the Burmese government to the people of Burma.

This is not the first time that many of these Ta'ang communities are experiencing negative impacts of natural resource development projects. Yunnan Joint Power Development (China) (YJPD) completed construction of Shweli dam site 1 and hydropower transmission lines running to Mandalay, Burma and Ruili, Yunnan Province, China in 2008. YJPD is currently building Shweli dam sites 2 and 3, which will connect to the same transmission lines. The Shweli project located in Namkham and Mantong Townships. A Swiss company, Colenco Power Engineering (CPE) signed a MoU with the Burmese Government in 2010 and workers from Chinese Companies have already started work in construction of the Dam 3 project. The dam 3 site is being built in vicinity of Moemit Township. This has caused widespread forced labor, forced relocation and land confiscation; and the Burmese government has not shared any revenue information with these affected communities. Members of the Burmese Army are the only ones receiving economic benefit and access to electricity from the Shweli project. Even if local communities could access the electricity, they could not afford it. Now, the Shwe natural gas and Burma-China crude oil pipelines will follow the same route as the transmission lines from the Shweli dams, meaning that many Ta'ang communities are going to suffer human rights violations and negative environmental impacts for a second time.¹⁵

¹⁴ BankTrack, *Shwe Gas and Pipelines Projects – Myanmar, Basics*, available at http://www.banktrack.org/show/dodgydeals/shwe_gas_and_pipelines_projects.

¹⁵ TSYO fact-finding research for Land Confiscation Report (2008 to May 2011) (Report due for release in August 2011). TSYO Website: www.palaungland.org (in Burmese language Ta'ang people are called Palaung, Ta'ang is how they refer to themselves in their own language)

The Dodd-Frank Wall Street Reform and Consumer Protection Act will be a pivotal tool in addressing the concerns of our Ta'ang communities and organizations in Northern Shan State, Burma where the extraction of natural resources is rampant. The clarification of terms to strengthen transparency requirements for companies is an important step in improving the lives of every citizen in Burma. We thank you for your time in considering our suggestions and recommendations and we look forward to the publication of the final rules in the very near future.

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