

National Human Rights Commission of Thailand  
The Government Complex  
120 Chaengwattana Road, Laksi District,  
Bangkok 10210  
Thailand

June 9, 2017

**Subject: Human rights violations connected to Thai companies' operations at the Ban Chaung coal mine in Thanintharyi Region, Myanmar**

Addressed to:

Mr. What Tingsamitr, Chair of the National Human Rights Commission of Thailand

*Copied to Mrs. Tuenjai Deetes, Commissioner*

Dear Chairman What Tingsamitr,

We are writing to you as the Chairman of the National Human Rights Commission of Thailand in order to bring your attention to human rights violations resulting from a coal mine in Thanintharyi Region, southern Myanmar. Since construction commenced, three Thai companies have been associated with the Ban Chaung Coal Mine project. These companies are: *Energy Earth PCL, East Star Company and Thai Asset Mining Company.*

We are 153 representatives of eight villages in the Ban Chaung area of Dawei Township, Tanintharyi Region, Myanmar. Our villages are: Khon Chaung Kyi, Pya Tha Chaung Cin Swe Chuang, Hnin Nga Pik, Paung Daw, Ka Taung Ni, Thabyu Chaung, and Kyauk Htoo. **Due to concerns for our personal security, we request that our identities be kept confidential.** We, and our villages, have been, or are likely to be, adversely affected by the Ban Chaung Coal Mine and associated facilities.

We respectfully request that the National Human Rights Commission of Thailand review this complaint and the attached documents, and investigate the human rights impacts of the activities of the Thai companies connected to the project. We call on the Commission to do everything within its power to ensure that the companies follow applicable domestic Thai and Myanmar laws and regulations as well as international human rights standards in this project and provide remedy for any and all harms that they have already caused.

This complaint provides: background on the project, the role of the companies involved, and a summary of project impacts. We have also attached a human rights analysis prepared by Inclusive Development International, as well as a selection of recent media coverage of the project.

### **Background of the Ban Chaung Coal Mine project**

The Ban Chaung Coal Mine is an open pit coal mine located in the Dawei Township of Tanintharyi Region. The mine is in a former war zone that saw intense fighting between Karen National Union (KNU) forces and the Myanmar military. A preliminary, bilateral

ceasefire was signed in 2012, and the KNU also signed the Nationwide Ceasefire Agreement (NCA) in 2015. Peace negotiations and political dialogue are ongoing, and in the interim, both the Myanmar government and KNU exercise some level of administrative authority over the Ban Chaung area.

The mine and associated infrastructure are developed and operated by a consortium of four companies. In 2010, the Myanmar government granted a 1,500-acre concession for the mine to the local company *Mayflower Mining Enterprise Co., Ltd.* for sites 1, 2 and 3. The company received an additional concession for 600 acres in 2012 for sites 4, 5 and 6.

In 2011, the Thai *East Star Company* became involved in the project and was granted permission by the KNU to mine within the Mayflower concession area. In 2012, East Star entered into a joint operating agreement with *Energy Earth PCL*, a Thai coal mining and distribution company, which finances the project and earns 70% of the profits. We believe that Energy Earth may have since pulled out of the project, but cannot confirm this. Another Thai company, *Thai Asset Mining Company* has been involved in developing transport infrastructure connecting to the mine. Further information about these companies is set out below.

At present, the mine only covers 64 acres of the total 2,100 acre license area. In March 2014, a contract was signed between KNU district officials, East Star and local villagers. In this contract, the company agreed that mine operations would not expand beyond the 60 acres in use at the time. However, the following year, East Star presented a revised map at a community meeting that identified an area for expansion beyond the 60 acres. This expansion area was already occupied by villagers' playground, church, school, betel nut plantations and houses.

In April 2015, Myanmar's Ministry of Mines announced that Mayflower's contract would be revised and that it could now only expand the project to 612 acres of "vacant" land. However, in reality this land is used by villagers for rotational farming. Although the current land laws do not recognize rotational farming, it is central to the traditions of our people.

We have very little information about the mine. Since the project started, villagers have protested the company's activities. Due to protests from local people and negative media coverage, authorities have ordered the company to suspend operations several times – most recently the KNU and the Tanintharyi regional government ordered suspension in March 2017 – but these orders were ignored and the company's activities continued.

### **The companies involved in the Ban Chaung Coal Mine**

Permission to mine in the Ban Chaung area was first granted to the Myanmar company Mayflower Mining. However, all developments in the area have been implemented by Mayflower's Thai partners. Local and international NGOs who are supporting our communities have helped us to find out more about these companies and their role in this project.

#### *Mayflower Mining Company*

Mayflower Mining is owned by a Myanmar citizen, Mr. U Kyaw Win, who is reportedly politically connected and one of the country's wealthiest people. Mayflower appears to play

the role of broker in this project. It has no staff or representatives on the ground in Ban Chaung and is not involved in the operation of the project.

#### *East Star Company*

It is very difficult to find information on East Star. We believe that it is owned by members of the Chatchavalnanont family from Thailand and is based in Ratchaburi. East Star was responsible for developing the mine and building the road to the Thai border. The company workers and staff that we see on the ground in Ban Chaung work for East Star.

#### *Thai Asset Mining Company*

It is also very difficult to find information on Thai Asset Mining. We believe it is based in Kanchanaburi. Thai Asset sells coal to customers in Thailand and other countries. Thai Asset was responsible for building a road connecting the mine to the coast. Villagers blocked the construction of this road and the company was unable to finish it. Since then we have not seen anyone from Thai Asset Mining in the area.

#### *Energy Earth PCL*

Energy Earth is a Thai coal company and has mines in several countries. It sells coal to countries including Thailand, China, India and South Korea. It signed an agreement with East Star in 2012. Under this agreement, Energy Earth covers the operating costs of the mine and earns 70% of the profits, while East Star keeps the remaining 30%. Energy Earth is a public company and is listed on the stock exchange of Thailand. We have never met anyone from Energy Earth and we do not see its workers in the project area. We have seen one document that indicates that Energy Earth may have pulled out of the project.

### **Impacts of the project**

The mine has impacted, or will impact upon, the livelihoods, health and way of life of people living in 22 villages. In total, approximately 16,000 people live in these villages. We have been or are likely to be affected by the human rights, social and environmental impacts of the project in the following ways:

- **Burning waste:** The company dumps solid waste products from the mining process in large mounds in Khon Chaung Gyi village. These waste piles burn and smoulder and emit foul smelling smoke. The smoke from the burning waste makes living close to the mine unbearable: the smell is terrible, it burns the nose and throat, and makes people feel dizzy and sick. It is worse after the rain, when the smoke increases. These fires have been burning intermittently since 2014. Every now and then the company responds to complaints from the people or local authorities and throws additional earth on the burning ground, but the fires begin again soon after.
- **Pollution of water sources:** The mine has polluted local water sources that we use for drinking, bathing, cooking and washing clothes. In 2014, NGOs investigating this case tested water in the area around the mine and found that it was very acidic. This water flows into local streams and rivers in the rainy season. Sometimes the company collects wastewater and puts it into containers on trucks, but we do not know where they take it or where it is released.

- **Pollution of villagers' agricultural land:** After the rains, mining pits are full of filthy water. The company pumps the water out of the pits and onto our farmland and streams. The polluted water and sediment from the mine gets onto our orchard areas and our betel nut trees and crops die. We depend on these crops for our livelihoods.
- **Impacts on villagers' health:** We have no idea what the exact health impacts of the mine may be, but we are extremely concerned for our health and our children's health because of the coal fires and the contamination of our water sources.
- **Impacts on people's livelihoods:** Most people in Tanintharyi depend on fishing and farming for their livelihoods. Land in Ban Chaung has been passed down through generations and we farm and manage the land according to our traditional customs. Pollution from the mine is destroying our crops and having serious impact on our livelihoods.
- **Land acquisition:** The developers illegally took people's agricultural land. Some people complained after their land was seized and then received some compensation, while others have not received any compensation at all. The area where the mine is located is a former conflict area, and some refugees and internally displaced people have still not returned to their former properties. Because of the mine, they may never be able to return.
- **Impacts on Karen ethnic minority group:** The majority of the people impacted by the project are from the Karen ethnic group. The project threatens our traditional way of life, our livelihoods and our right to self-determination.
- **Fear of conflict:** The opening of the mine resulted in outsiders coming to the area for work, as well as armed soldiers, who provide protection to the company. After suffering through many years of conflict, we now feel unsafe once again.

The project is still in the first phase of its development, yet people have already suffered significant impacts. If the project continues and is expanded to cover the full concession area, we fear even more serious consequences for our community and the environment. In addition, more villages located downstream could be affected if the river is severely polluted. Further road expansion would also impact on other villages.

From the outset of the project, local people have not been properly consulted about the project. The first we knew about it was when the company bulldozers arrived. East Star was given permission by the district KNU to extract coal within the license area, but it did not receive direct permission from the Myanmar Ministry of Mines, as required under the mining law. According to the 1994 Mines Law, an environmental conservation plan must be prepared for all large-scale mines, but as far as we know no such plan has been developed for the Ban Chaung mine. The same law also forbids harming water resources that local people rely on.

Because of community protests and negative coverage in the media, in January 2014 the district KNU ordered a temporary suspension of mining. However, East Star ignored this order. Once again in March 2017 a chief minister from the regional government wrote a letter ordering suspension of mining until the company had stopped all coal fires and developed an acceptable Environmental Management Plan. The KNU also ordered the company to respect

this suspension. However, just two days after the order we went to the mine site and could see the company loading coal into white bags and putting it onto trucks.

We believe that the project is violating our fundamental human rights. The mine violates the rights of indigenous Karen people. We have a deep connection to our land and resources, and our traditional practices for managing them. These traditions and these lands have been passed down from generation to generation. The Ban Chaung mine not only threatens our health and livelihoods, it threatens our survival. The project does not recognize our right to Free Prior and Informed Consent (FPIC), and fails to respect our culture, traditions and livelihoods. Myanmar voted in favour of adopting the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), which protects our rights to our traditional lands, health, environment, and to self-determination, all of which have been violated by this project.

The impacts discussed here have resulted in violations of our fundamental human rights. This includes our rights to self-determination, as we have had no choice in the way our lands will be developed. The mine has harmed our right to family life as it has broken up families, as people have sent their children to live with relatives in safer areas. It has harmed our right to an adequate standard of living by harming our health, polluting our water, killing our crops, and confiscating our lands.

The project has been investigated and documented in reports published by the NGOs Tarkapaw Youth Group and Inclusive Development International. You can find their publications attached to this complaint and online at the links below. We encourage you to read these reports, which contain more information on the impacts that we have suffered:

- Tarkapaw Youth Group, Dawei Development Association and Tenasserim River & Indigenous People Networks, [\*We Used to Fear Bullets, Now We Fear Bulldozers: Dirty coal mining by military cronies & Thai companies: Ban Chaung, Dawei District, Myanmar\*](#), October 2015.
- Inclusive Development International, [\*Reckless Development: The IFC's Dodgy Deals in Southeast Asia\*](#), March 2017.

## **Conclusion**

Based on the information contained here, and in the attached reports, we believe there are adequate grounds for the National Human Rights Commission of Thailand to launch an investigation into the conduct of the Thai companies connected to this project and its impacts on the health, livelihoods and human rights of people in the surrounding areas. Our quality of life is deteriorating rapidly, and we fear further harms and human rights violations if the project expands. We therefore respectfully request that the Commission investigate this case as soon as possible.

We have no reliable access to email or postal systems. Therefore, we request that you direct all correspondence to our advisors, Tarkapaw Youth Group and Inclusive Development International. They will make sure that the information reaches us. Our advisors have submitted this complaint on our behalf, and we have authorized them to facilitate communication with you.

We thank you in advance for reviewing our complaint, and look forward to hearing from you soon on this matter.

Yours sincerely,

Village members of Khon Chaung Kyi, Pya Tha Chaung, Cin Swe Chaung, Hnin Nga Pik, Paung Daw, Ka Taung Ni, Thabyu Chaung, and Kyauk Htoo (a full list of signatories is attached to this letter).

## **Annex 1: Human rights analysis of the impacts of the Ban Chaung coal mine and associated infrastructure, Thanintharyi Region, Myanmar**

Inclusive Development International (IDI) is a human rights organization working to make the international economic system more just and inclusive.

IDI has prepared this human rights analysis of the impacts of the Ban Chaung coal mine and associated infrastructure for submission to the National Human Rights Commission of Thailand. The mine is located in Ban Chaung area of Dawai township, Tanintharyi region, Myanmar. Three companies registered in Thailand have been associated with the mine. These companies are *East Star Company*, *Thai Asset Mining Company* and *Energy Earth PCL*. There is some indication from company documents that Energy Earth is no longer involved in the project.<sup>1</sup> The mine has impacted or is likely to impact the human rights of some 16,000 people living in 22 villages in the Ban Chaung area.

The Commission is vested with powers to examine the extra-territorial actions of Thai private sector actors and has in the past exercised these powers.<sup>2</sup> These powers are consistent with international human rights norms, including those set out in the Maastricht Principles on Extra-Territorial Obligations in the Area of Economic, Social and Cultural Rights and the United Nations Guiding Principles on Business and Human Rights.<sup>3</sup>

The Maastricht Principles affirm that States must take necessary measures to ensure that non-State actors that they are in a position to regulate, including transnational corporations and other business enterprises that are registered in the State concerned, do not nullify or impair the enjoyment of economic, social and cultural rights.<sup>4</sup> In the event that a State Party fails to abide by Covenant rights extra-territorially, the Principles affirm that access to justice, including accountability mechanisms and effective remedies, must be provided.<sup>5</sup> The Commission is contributing to the fulfillment of this obligation on behalf of Thailand.

The United Nations Guiding Principles on Business and Human Rights set out the human rights responsibilities of business enterprises. As owners and operators of the mine, the three companies all bear responsibility for its human rights impacts and are required to address adverse impacts that occur, including through remediation.<sup>6</sup>

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<sup>1</sup> See, Energy Earth 2014 Annual Report, page 13, describing the company's involvement in the mine. <<http://earth.listedcompany.com/misc/AR/20150327-earth-ar2014-en.pdf>> See, Energy Earth 2015 AGM, page 11, indicating that the company pulled out of the project. <<http://earth.listedcompany.com/misc/ShareholderMTG/AGM2015/20150513-earth-agm2015-minutes-en.pdf>>.

<sup>2</sup> For example, in the case of a complaint regarding business activities of Mitr Phol Sugar Corporation in Cambodia.

<sup>3</sup> The Maastricht Principles are a restatement of law based on existing conventional and customary international law. They were adopted by leading experts from around the world, including a former member of the Human Rights Committee and members and former members of other treaty bodies. Drawn from international law, the Maastricht Principles clarify the content of extra-territorial State obligations to realize economic, social and cultural rights but also explicitly apply to the full spectrum of civil, cultural, economic, political and social rights.

<sup>4</sup> *Id.* at Principle 24 and 25.

<sup>5</sup> *Id.* at Principle 37.

<sup>6</sup> UN Guiding Principles on Business and Human Rights, Principle 11.

The companies had -- and continue to have -- a responsibility to conduct human rights due diligence with regard to their involvement in the Ban Chaung mine. This process should include assessing actual and potential human rights impacts of the mine, acting upon the findings and communicating how impacts are addressed.<sup>7</sup> In order to gauge human rights risks, the companies should have drawn on human rights expertise and, crucially, undertaken a process of meaningful consultation with potentially affected groups and other relevant stakeholders.<sup>8</sup>

Despite the significant human rights risks of coal mines, and the additional high risk of developing a mining project in a region that is recovering from recent conflict and remains unstable and fragile, the companies completely failed in their duty to carry out human rights due diligence. They have not consulted affected people; they have not provided them with information about the mine in order to seek their views. The companies continue to fail in their responsibilities to consult affected groups despite the very serious human rights risks and impacts of the mine and its expected expansion. It is highly likely that none of the companies carried out any type of human rights due diligence at all for the project. Accordingly, they have taken few, if any actions to prevent or avoid infringing on the human rights of local people.

Unsurprisingly, as a result the companies are complicit on the violation of a number of human rights. These infringements of human rights are set out below.

### **The right of self-determination**

The right of peoples to self-determination and to pursue their own economic, social and cultural development is recognized in identical first articles of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).<sup>9</sup> The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) affirms that the right of self-determination is a foundational right of indigenous peoples, from which other collective procedural and substantive rights are derived.<sup>10</sup>

An integral component of the right of self-determination is the freedom of a people to dispose of their natural wealth and resources.<sup>11</sup> Relatedly, a people must not be deprived of its own means of subsistence.<sup>12</sup> The collective exercise of self-determination by a people therefore implies a high degree of autonomy to govern the use, management and development of their territory and productive resources. The UNDRIP recognizes the right of indigenous peoples to “own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.”<sup>13</sup>

The collective right of indigenous peoples to participate in decision-making in matters that affect their rights, and to give or withhold their free prior and informed consent (FPIC) for any project affecting their lands, territories or other resources, is thus essential to the exercise

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<sup>7</sup> *Id.* at Principle 17.

<sup>8</sup> *Id.* at Principle 18.

<sup>9</sup> ICCPR and ICESCR, article 1.

<sup>10</sup> UNDRIP, *chapeau* articles 3, 4.

<sup>11</sup> ICCPR and ICESCR, article 1(1).

<sup>12</sup> ICCPR and ICESCR, article 1(2).

<sup>13</sup> UNDRIP, article 26(2).

of self-determination.<sup>14</sup> The confiscation or deliberate destruction without consent of a people's lands and resources by the State or a third party is a violation of the right of self-determination.

The communities affected by the mine are indigenous Karen. They have a deep connection to their ancestral land and natural resources, and practice traditional use and management of their territory. The communities were denied their right to give or withhold their free prior and informed consent to the coal-mining project, which is having a serious impact on their ancestral land and resources. The communities have not been provided with information about the project and how it will impact them, and they have not been properly consulted, either before the companies commenced operations or since that time.

### **The right to an adequate standard of living**

The right of everyone to an adequate standard of living, including adequate food, is recognized in article 11 of the ICESCR and article 27 of the Convention on the Rights of the Child (CRC). The ICESCR recognizes a right to the continuous improvement of living conditions, which requires adequate livelihood opportunities for all households. According to the UN Special Rapporteur on the Right to Food, States are acting in violation of the human right to food if, by leasing land to investors, they are depriving the local populations from access to productive resources indispensable to their livelihoods.<sup>15</sup>

People's agricultural land has been seized for the Ban Chaung mine. In addition, the mine has polluted crops and water sources used for fishing. Small-scale agriculture and fishing are an essential source of food and livelihoods for the community. The responsible companies are therefore infringing people's right to food and an adequate standard of living.

### **The right to health**

The right to the enjoyment of the highest attainable standard of physical and mental health is recognized in article 12 of the ICESCR and article 24 of the CRC. The right to health is closely related to and dependent upon the realization of the right to an adequate standard of living as well as other human rights. It is also intimately connected to the natural environment, especially for people who derive their food and water directly from their natural surroundings.

The burning of toxic waste from the mining process has had health impacts in local villages, including causing dizziness and headaches. The pollution of water sources and agricultural land used by the villagers is affecting access to safe drinking water and nourishment. The companies are therefore impinging on the affected people's right to the enjoyment of the highest attainable standard of health.

### **The right to an effective remedy**

The right to an effective remedy of any person whose human rights are violated is enshrined in article 2(3) of the ICCPR. States party to the Covenant undertake to ensure that any person claiming a remedy for violation for their human rights can access a competent judicial,

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<sup>14</sup> Ibid, article 18, 19 and 32.

<sup>15</sup> Report of the Special Rapporteur on the right to food, Olivier De Schutter, 2009, A/HRC/13/33.Add.2, para 15.

administrative or legislative authority to adjudicate their claim and that competent authorities enforce remedies when granted.<sup>16</sup>

Access to remedy is a pillar of the UN Guiding Principles on Business and Human Rights (2011). According to the Guiding Principles, while States bear the primary obligation for ensuring effective remedies for human rights violations, business enterprises should provide for or cooperate in the remediation of human rights violations through legitimate processes.<sup>17</sup>

As such, the Thai companies have a responsibility to ensure the full remediation of the human rights violations suffered by affected people, in addition to their responsibility to prevent any future violations caused by the development, operation or expansion of the Ban Chaung coal mine.

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<sup>16</sup> ICCPR, article 2(3).

<sup>17</sup> UN Guiding Principles on Business and Human Rights, Principle 22.

## **Annex 2: Selected coverage of the case in local and regional media**

The project has received coverage in domestic media, several of which can be read below:

Karen News, [\*Villagers Protest at Coalmine – Want KNU to Revoke Permission\*](#), 11 March 2013.

Karen News, [\*KNU Stops Coal Mine After Villagers Protest\*](#), 24 October 2013.

The Nation, [\*Dawei residents up in arms over coal-mining project\*](#), 20 October 2014.

Karen News, [\*Tanintharyi Villagers Meet With Companies And Authorities To Discuss Problems Caused By Coal Mining\*](#), 10 January 2015.

The Irrawady, [\*No Response, No Accountability for Tenasserim Coal Mine Damage\*](#), 30 October 2015.

The Nation, [\*Locals want coal mining in Dawei halted\*](#), 2 November 2015.

Myanmar Times, [\*Activists accuse Thai firm of ‘stealing’ coal\*](#), 3 November 2015

Myanmar Business Today, [\*Dawei Coal Mine Endangers Lives of Villagers: Group\*](#), 23 November 2015.

The Irrawady, [\*World Bank Financing Arm Under Fire Over Burmese Coal Mine Link\*](#), 30 March 2017.