

[Statement] “Overseas aid and investment to Burma (Myanmar) without principles inhibits the democratization and conflict resolution, and thus accelerates the human rights violations of minorities.”

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[October 25, 2012 Burma Statement \(HRN\)](#)

Immediate Release

Burma (Myanmar)

“Overseas aid and investment to Burma (Myanmar) without principle inhibits the democratization and conflict resolution, and thus accelerates the human rights violations of minorities.”

1. On October 11, a meeting, sponsored by the Japanese government, was held in Tokyo to discuss support for Burma, and around 30 creditor nations and international organizations including the World Bank and the Asian Development Bank attended.

At this meeting, the Japanese government expressed that regarding the yen loan, the government would take measures for the elimination of Burma’s overdue debts in January 2013 by debt relief utilizing a bridge loan. At the same time, it was expressed that Japan would reintroduce support of the construction of infrastructure including electricity and roads in Burma, as soon as possible in 2013 by using yen loan. It is reported that the countries concerned have reached an agreement that they would support Burma for the early return to the international community.¹

Human Rights Now (HRN), a Tokyo-based international human rights NGO, thinks that it is too early to expand the investment from Japan as well as the Western countries considering the current situation in Burma, and expresses serious concern that these investments could accelerate human rights violations and make it difficult to solve the issues in Burma.

2. First of all, human rights violations in Burma are still serious. The oppressive laws contradicting the international human rights standard remain, there is no legal

¹ http://www.mof.go.jp/international_policy/convention/other/myanmar_houdou.htm

safeguard to prevent authorities from conducting illegal human rights suppressions, and it cannot be said that freedom of expression and political activities are guaranteed. Also, in some areas like Kachin and North Shan states, fighting has been continued, and a number of armed conflicts and grave human rights violations are reported. Even in the areas where the ceasefire agreement was concluded, certain number of areas including Karen and Shan states is still under armed conflicts.

3. Since the Burmese government prioritizes ceasefire agreement to the inclusive peace agreement which clearly guarantees the rights of ethnic minorities, ethnic minorities are protected no rights after the ceasefire. Therefore, they are put under more vulnerable position, and are persecuted even more severely in many regions.

Even in the regions where the ceasefire was agreed, the Burmese National Army are continuously and increasingly occupying instead of withdrawing. Therefore, residents are forced to work for the construction of army base and the related institutions. Moreover, it is reported that under the name of “development,” ethnic minorities are deprived of their resources and lands, and lose the basis of their life consequently. Similar situations are reported throughout the country of Burma where the development of mine and port is accelerated mainly by the hand of army after the ceasefire, residents living in the planned development area are forced to relocate, and lose their basis of life without any compensation.²

In such a situation, it is too early for the Japanese government to take measures of debt relief in January 2013, and it can send a wrong message that the government is tolerant to human rights violations.

4. If foreign investment and development mainly by Japan and the Western countries will increase in a current situation, where the National Army is expanding its presence in the ethnic minority regions and the rights of ethnic minorities are not guaranteed, human rights violations under the name of “development” will be accelerated even more. This makes it difficult to facilitate a peaceful conflict resolution with guarantees of ethnic minorities’ rights, but could even prevent a whole peaceful conflict resolution process.

² HRN2012 Investigation (Karen People and more). About Shan People: <http://www.shanhumanrights.org/>, Also, see the attached paper.

For these regional developments, it is necessary that the local residents are allowed to participate to the decision-making process; pre-counseling and consent based on the free will of the residents are set to be the prerequisites for development; and that pre-assessment of negative impacts towards environment and human rights are conducted. However, these mechanisms are not established at all in Burma.

Furthermore, it cannot be said that the effective monitoring mechanisms regarding the development projects have been established in the donor states, thus transparency of the implementation of support is lacking.

In particular, it is expected that the agricultural sector, where many ethnic minorities in Burma are engaged, will be most severely affected.

According to Article 37 of the Constitution of Burma in 2008, all lands in Burma is owned by the state and the rights of land are not given to those who have cultivated the lands, thus they are in a very vulnerable situation against land usurpation. The Agricultural Land Law enforced on March 30, 2012 admitted that person over 18-year-old and has been continuously engaged in agriculture could acquire "the agriculture right" of the land to cultivate, and the registration system was also founded. However, such a legal system has not been fully announced to most of farmers, and it is extremely difficult to acquire "the agriculture right", and thus, this law has not become a safeguard to protect the farmland of people.

Furthermore, the appropriate standard about the compensation over the land expropriation is not established, and it is not possibly a situation that a fair judicial system is maintained to legally solve a dispute around the land.

5. Looking at the past development in Burma, it is obvious that huge development of natural resources took away the precious resources of people in the ethnic minority areas, but brought the unequal result that no benefit was brought to the people in it, and it has been normal condition that extremely serious human rights violations such as a seizure of the land, forced labor, torture, rapes, and killings occurred in the course of development.³ The multinational companies dealing with development while knowing such situation indirectly got strong social criticisms as an accomplice of human rights violations, and asked for a legal responsibility. It must be carefully examined based on a clear index whether such a situation is truly improved, and whether the past and current political.

³ Unocal case <http://www.earthrights.org/legal/doe-v-unocal-case-history>

6. Therefore, if the development business with support and investment from overseas will accelerate in Burma under the current situation of ethnic minorities having no right, there are risks that human rights situation of Burmese people could be more serious, and the environmental disruption and the increase of disputes would occur.

Respect for human rights is set as the foundation of the Western and Japanese aid principles, and it is clearly expressed in the aid implementation principles of the Japanese ODA general rules that ODA will pursue “environment and development coexistence,” the “avoidance of using to promote dispute,” and “pay enough attention to fundamental human rights and the securing of freedom.” As for multinational companies, due diligence obligation that must not be complicit in human rights violations have been established as a clear principle in the United Nations.⁴

Human Rights Now demands that the government and the multinational companies concerned with financial aid and development of Burma, based on these principles, should consider and respect human rights of local people, especially of ethnic minorities as a major premise.

Governments, supporting institutions, and companies are required to carefully reconsider the projects that have risks to infringe the ethnic minorities’ human rights, and should halt the projects as long as there are some risks. The followings are prerequisites for the implementation of the project.

- 1) Comprehensive agreement between ethnic minorities and the army
- 2) The mechanism which enables local residents to participate to the decision-making and prior consultation
- 3) The implementation of prior assessment regarding the negative impacts on human rights and environment
- 4) The foundation of effective monitoring mechanisms to monitor human rights violence, environmental damage, and the proper implementation of support
- 5) The establishment of safeguard policies for local residents not to be victimized by development

Especially regarding the dam construction; large-scale development projects involving natural resource exploitation such as natural gas, oil and mines; and infrastructure construction projects, Human Rights Now requests special attention since these projects have great possibility of causing serious human rights violations.

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⁴ Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework (A/HRC/17/31, 21 March 2011)

Reference: Past and current cases where human rights violations were reported in the course of development

(Based on judicial decisions, coverage, statements of human rights/community organizations)

1. The Case of Monywa Copper Project

In the Letpadaung area of Sagaing Region, located in Northern Burma, a large amount of land is forcibly taken away from people in the course of the **Monywa Copper Project**, the largest copper mining project in Burma.

According to the report, a Chinese mining company Wan Ba along with Economic Holdings Ltd. (supported by the Burmese National Army), confiscated the land of up to 7,800 acres. Consequently, more than 20 regions were affected. For instance, in Wethmay village, the government came to the village in December 2011 and destroyed monastery and grabbed all equipment from the elementary school for the purpose of making residents evict forcibly.

Against these government's actions, residents have protested together, and they could avoid forced eviction. However, 12 people were arrested while conducting peaceful protests. Nine of them were released after one night, but three of them were detained for four days. In addition, the project attracts international attention because there was an instance that Mr. Wai Lu, a land rights activist and a former political prisoner, was arrested again and detained for two weeks in relation to the Monywa Project.

At the same time, media regulation is getting stricter. In March 2013, a private news company called the Voice was sued by the Ministry of Mines when it broadcasted about the issues of corruption between Wan Bao Company and the government of Burma. Furthermore, the project gives significant negative impacts on environment as well. Due to water pollution, residents have to buy bottles of water. Those who cannot afford have to keep using and drinking polluted water.⁵

2. The Case of Shwe Gas Project

In Arakan state in 2000, where Arakan people are living with their unique culture and language, the Shwe Gas Project was launched. The project is the largest scale in Southeast Asia aiming to connect gas pipelines from the Bay of Bengal (the West coast

⁵ Refer to the Statement on October 8, 2012, by Burma Partnership (a networking platform of Asian-Pacific organizations, working on Burma's democratization and human rights issues)

of Arakan state) to Yunnan Province of southern China.

The project officially began in 2010, but in order to secure the route of the pipelines, the large scale of land confiscation, dispatch of troops for security, and forced labor have been observed. For example, in May 2010, 50 acres of land in Kyaukphru Township was seized, without any alternative resettlement residential area or proper compensation. The residents lost their livelihood and children cannot go to school.

A South Korean company called Daewoo International holds 51% of shares. It began the construction of the pipelines in February 2011, planning to finish in 2013. According to Shwe Movement, the organization raising awareness regarding this project, Daewoo International does not disclose any information about project and negative impacts on residents and environment, thus contradicts to the international guidelines and international standard.

3. Land Confiscation – A Destructive Development in the Residential Area of Ta’ang people-⁶

Ta’ang people (autonym), Palaung people (exonym). Living in Shan State. Ta’ang people has a long history and maintains their own language, alphabet, traditional culture, and territory. They have a self-sufficient lifestyle. Over 90% of them are Buddhists.

1. The reasons of land confiscation

There are multiple reasons such as to construct military camps or for the income-generating project by the Burmese government, however, the main reason is the expansion of Burmese military camps in the Ta’ang people’s neighborhood since 2000.

2. The current situation

In Ta’ang areas, it is reported that 42,940 acres were seized.

Ordinary farmers in Ta’ang areas possess 5 acres of agricultural land on average. If 42,940 acres of land was actually confiscated, it means that more than 8,588 families were deprived of their land, lost their livelihood and, half (or more than half) of them had to leave their homeland.

⁶ Report of Ta’ang Students and Youth Organization (TSYO) in November 2011.

There are various reasons behind the rapid increase of the land confiscation in Ta'ang areas in last nine years, however, the fundamental reason is the large-scale development and the resource-mining project by the Burmese government and China, along Shweli River in northern Shan state.

3. Issues emerged by the land confiscation

- The local residents got any compensation for forced eviction by army. On the contrary, they are forced to work in their land for the army without any reward.
- Since they lost their land, they are suffering from poverty.
- Due to poverty, children cannot go to school but have to work instead.
- Since the residential area is rich with natural resources such as natural gas and oil, mining is conducted which causes forest destruction and negative environmental impacts.

4. Tigyit Village, the Largest Coal Project in Burma

1. The overview of Tigyit coal mine

According to the Burmese government, 20,200,000 tons of brown coal reserve⁷ is recognized⁸ in Tigyit.⁹ The Tigyit coal mine is the largest mine in Burma which produces nearly 2,000 tons of coal daily. It was found in 1989 and the mining-preparation began in 2002.

The coal mine was originally constructed by several companies including China National Heavy Machinery Corporation. Currently, the Tigyit mine is the only coal-fired power station working in Burma. This project brought the residents electricity, however, they lost land, and livelihood. They are even suffering from health problem.

2. The issues occurred by the Coal Project

(1) Forced eviction

⁷ Brown coal: Soft and brown coal. Within 4 kinds of coal, it releases the largest amount of CO₂ per energy unit, thus it pollutes environment most severely. It easily burns spontaneously.

⁸ The list of the Ministry of Mines does not even include information about the large-scale mining projects in progress, therefore, the accuracy of the information is doubtful.

⁹ Tigyit village; Population is around 3000, Shan, Pa-Oh, Taung Yoe, Burman people are living. Most of over-40-year-old people are illiterate. Within 5 miles in radius in Tigyit, there are 25 villages and around 12,000 people are living. It is famous for tea-growing. It also exports potatoes to the neighbourhood towns. There are rivers like Balu (Indein) river, and the surrounding villages are using the rivers for agriculture, transportation, and bath.

Due to the Coal Project, two villages have become a subject of forced eviction. Currently, other villages are also under imminent threat because dumping site of the mine is expanding, and also because nobody knows to what extent the mine itself will encroach on the villages.

(i) Forced Eviction of Taung Pola village

The preparation for the Coal Project began in 2003, and consequently, 24 families were forcibly evicted by local Ya Ya Ka (village State Peace and Development Council). There was no support or resettlement program, and only little compensation was paid. In order to save on resettlement costs, some residents decided to live in the farmland near from the village. Some of them started living in the East hill of their former village, but it seems that they will need to move again since mine waste contamination is getting large and expanding.

(ii) Forced eviction of Lai Khar village

In 2003, Lai Khar village with 200 residents was forced to evict. No resettlement project was provided by the company. Neighborhood villages such as Tigyit and Pyin Thar had to help Lai Khar move to north of the Tigyit monastery.

(2) Land confiscation

Currently, the coal mine and the electric power plant are using more than 500 acres of the local farmland. The company, in cooperation with the local authority, put pressure on farmers and forced them to sell their farmland at a low price. Some lands were seized by the Ministry of Mines. Villagers lost their land, had to sell their cows, and are suffering from hunger.

(3) Threat of the electric conveyer to the community

Coal from the mine is brought to the electric power plant by a belt conveyer of 1.5 miles. According to the local authority, if the conveyer is damaged by cows or buffalos, the owner will be sued. A roof is set to the conveyer for coal, but not to the one for mine waste. Moreover, since the conveyers are set alongside the community road, it is dangerous for residents including children as well as for animals.

(4) Threat to cultivation

Coal is mined from the underground tunnel under tea plantation. Since there are four-foot-square holes and tunnels underground, villagers are under a threat of land collapse.

At the same time, the mined coal is piled beside the farmland until it is transported to the electric power plant, therefore, it contaminates soil, and prevents water from coming into the cultivation. Drainage water and ash are disposed near the stream of water, and polluted water also contaminates soil.

(5) Increase of unemployed people

The villagers from six villages were deprived of land and thus have to find a new livelihood. The company insists that the Coal Project is providing a new opportunity for employment. However, 1,000 villagers lost their farmland whereas the Project hired only 500 people in total. Most of the people who are working at the mine and the electric power plant are not the local people.

The villagers lost their livelihood and cannot let children go to school. In order to support family, children have to work with their parents, take care of siblings, and do housework.

(6) Threat to health due to air pollution

Trucks transport coal every day and pollute air. Air is filled with dust, and the dust is attached to the streams, houses and vegetable fields that results in health hazard of the villagers. The children in Taung Pola village have to walk through the mine area every day to go to school in Tigyit. Children have to walk in a cloud of dust, and a muddy path during the rainy season.

The mine waste is disposed in the east side of the power plant, between Pyin Thar village and Taung Pola village. Fly ash is also a threat to health. At the same time, the coal in the power plant sometimes burns spontaneously while releasing toxic gas. Furthermore, it is known that the electric power plant, using coal for operation, releases extremely toxic elements for human body and environment into air, such as mercury and selenium.

Since last year, some people living in the surrounding area of the power plant have a symptom of rash, and currently, 50% of people have the symptom. The company does not provide any support to them.

There are many vegetable fields around the mine and the plant, but they are covered by coal dust.

(7) Other issues

- Acid rain caused by fume from the power plant
- Water pollution and water shortage
- Noise
- Destruction of cultural architectures

5. The Unocal Case (The Yadana Gas Project)

1. Overview of the Yadana Gas Project

The Yadana Gas Project began in the early 1990s aiming to transport natural gas from Andaman Sea

of Burma to Thailand.

The Burmese government under military dictatorship founded a national oil company called Myanmar Oil and Gas Enterprise (Myanmar Oil), and started production and sales of oil and gas by the government.

In 1992, a French oil company Total SA gained a license of refinement, transportation and distribution of natural gas in the Yadana field in the coast area of southern Burma. In the same year, Unocal gained 28% shares of the license and founded a 100% subsidiary company for the oil refinery and sale. The Project was run by several company including: Total (France), Unocal (USA, became a subsidiary of Chevron in 2005), PTTEP (Thailand) and Myanmar Oil (Burma).

However, in the course of the Project, the military-ruled government forced residents and families who had been living near the pipeline route to evict without any compensation. The government confiscated their land and forced the residents to work for the infrastructure building for the pipeline construction. If people do not obey, serious human rights violations including imprisonment, execution, rape and torture, were conducted to them.¹⁰

2. The Unocal Case (Doe v. Unocal)

The residents who had been affected by these human rights violations brought a damage suit against Unocal to the US federal district court based on the Alien Tort Statue/Alien Tort Claim Act.

The court concluded that Unocal was aware that the Burmese army was deployed for maintaining security related to the Project and that the army committed to human rights violations. Consequently, the court determined that Unocal indirectly gained benefit from the actions of army. However, the court was in a position that Unocal cannot be responsible because it did not directly control the army.

The plaintiffs, dissatisfied with the decision, appealed to the US Court of Appeals for the Ninth Circuit. On September 18, 2002, the appeal court reversed the district court's decision and recognized jurisdiction. The appeal court concluded that although Unocal did not actively commit to the human rights violations by the army, it was aware that grave human rights violations such as torture, murder, forced labor, and labor, which contradict to jus cogens, were conducted by the army. Therefore, it was concluded that Unocal was responsible for aiding and abetting these human rights violations by pressing on the Project.

¹⁰ Earthrights International "The Yadana Pipeline," <http://www.earthrights.org/campaigns/yadana-pipeline>

In March 2005, the plaintiffs and Unocal came to a settlement and subsequently, a large amount of compensation was paid to the victims. Also, though the detail is not clear, fund was provided for the improvement of victims' lives, health management and education.¹¹

6. The Case of the Irrawaddy Myitsone Dam Project

The Irrawaddy Myitsone Dam Project is the project by the Burmese government and the government-managed China Power Investment Corporation (CPIC) to build one dam in the main stream, and six dams in the tributaries of the Irrawaddy river, located in the north Burma of Kachin state. The Mitsone Dam, planned to be built in a main stream of the river was going to be one of the highest dams in the world, and most of the produced electricity was planned to be exported to China. Regarding this project, various issues have been reported and international criticisms were raised. First of all, 15,000 residents in 47 villages became the subject of relocation, and it is reported that as of December 2012, 6 villages were forced to move out.¹² The relocation sites do not have farm land, thus the residents lost their livelihood. Also, there is no enough drinking water or basic infrastructure such as hospitals and schools. Furthermore, due to the 766 square kilometers of huge dam reservoir, people lost their farmland and fisheries, and environment was severely damaged.¹³

This project attracted strong criticisms from home and abroad including Aung San Suu Kyi. Consequently, on September 30, 2011, President Thein Sein ordered to halt the construction of the dams temporarily during his term until 2015.¹⁴ However, over 2,000 people who had been forcibly evicted have not been allowed to return, and it is reported the residents from Tang Hpre village tried to return to their village, but prevented by the army. In addition, there is information that 200 employees out of 2,000 of the CPIC are still staying around the planned construction site even after the President order, and within China, some people think that the order would be cancelled near future.¹⁵ Therefore, careful observation of the development of the situation is required.

¹¹ Earthrights International, "Final Settlement Reached in Doe v. Unocal,"

<http://www.earthrights.org/legal/final-settlement-reached-doe-v-unocal>

¹² Mekong Watch "The Irrawaddy Myitsone Dam Project"

<http://www.mekongwatch.org/report/burma/irrawaddy.html>

¹³ *ibid.*

¹⁴ Democratic Voice of Burma, "China-backed Myitsone dam 'Suspended'," 30 September 2011,

<http://www.dvb.no/news/china-backed-myitsone-dam-%E2%80%98suspended%E2%80%99/17887>

¹⁵ Kachinnews, "200 Workers still at Myitsone Dam Site, Chinese Expert Suspension to be lifted,"

<http://www.kachinnews.com/news/2265-200-workers-still-at-myitsone-dam-site-chinese-expert-suspension-to-be-lifted.html>

7. The case of the Baluchaung/ Lawpita No.2 Hydropower Plant

The Baluchaung/ Lawpita No.2 Hydropower Plant was the first major hydropower plant project in Karenni State and was established by using reparations from Japan to Burma after the second world war.

Karenni state is located in the east edge of Burma, and several ethnic minorities represented by Kayah people were living by rice cropping, hunting, fishing and gathering. However, because of the project, it is reported that 12,000 people have been forced to evict, but no compensation for the eviction was paid.¹⁶ In addition, thousands of Burmese armies are collected for security, and forced labor, sexual violence, extrajudicial killings by the army are reported. Moreover, it is estimated that up to 18,000 landmines were buried around the hydropower plant, which are not only preventing residents from returning to the village, but also causing many casualties.

Since the water use for the hydropower plant is prioritized, residents in the surrounding area are suffering from water shortage. Also, the dam caused a large scale of flooding. In particular, at the occasion of heavy rain in September 2011, disastrous flooding damage was caused to the downstream houses and farmland, because the army opened the dam without prior notice. Regardless of these huge costs, 80% of the surrounding residents still have no access to electricity because most of the produced electricity is sent to the central part of Burma.

Despite the current situation of serious human rights violations against people living around the dam, the Japanese Ministry of Foreign Affairs, on October 21, 2011, expressed its position that Burma was moving towards democracy, and published that the Japanese government was ready for providing ODA for maintenance and repair of the Baluchaung/ Lawpita No.2 Hydropower Plant. The Karenni state's civil organizations network called "Burma Rivers Network" and "Karreni Development Research Group" criticized that the Baluchaung/ Lawpita No.2 Hydropower Plant Project not only provides no benefit to local population, but also causes serious human rights violations, and requested the Japanese government to precisely investigate the human rights situations regarding the hydropower plant project prior to the resurgence of ODA.¹⁷

¹⁶ Burma Rivers Network, "Dammed by Burma's Generals,"

<http://www.burmariversnetwork.org/images/stories/publications/english/dammed-english.pdf>

¹⁷ Burma Rivers Network, "Japan Should Investigate Abuses at Burma Hydropower Project before Considering New Support," 2 November 2011,

<http://www.burmariversnetwork.org/actions/press-releases/23-press-releases/736-japan-should-investigate-abuses-at-burma-hydropower-project-before-considering-new-support.html>