



for Human Rights, Democracy
& Development in Burma

Aurélien Hamelle
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14th December 2021

Dear Aurélien Hamelle

Thank you for your response, dated 13 October 2021, to our letter about TotalEnergies' operations in Myanmar. As you note, Burma Campaign UK's Dirty List is for companies that are linked to human rights violations in Burma/Myanmar, including those that do business with junta-controlled entities and whose investments provide financial benefits for the junta.

We would like to request the following clarifications.

1. Junta revenues – As you mentioned, Burma Campaign UK will place companies on its Dirty List “unless that company can demonstrate that the military receives no financial or other form of benefit.” Each month, TotalEnergies issues orders directing millions of dollars in revenue generated by the Yadana project into specific bank accounts.

Please confirm whether TotalEnergies considers these accounts to be under the control of or accessible to the Myanmar junta. If not, please clarify who you do consider to control them.

2. Domestic and international law obligations – Your letter notes that “not paying taxes is a crime under local law” and refers to domestic and international law obligations as well as that TotalEnergies “considered putting the monthly taxes into an escrow account instead of paying them to the Government.” Myanmar has two parties claiming to be the government, namely the military junta and the National Unity Government (NUG). The former is committing ongoing atrocity crimes in Myanmar and the latter is a body with the support of Myanmar lawmakers that were elected in 2020. Neither has been widely recognized by the international community .

Please confirm whether TotalEnergies considers that making payments due to the government to accounts under the control of or accessible by an unrecognized junta accused of atrocity crimes, rather than a recognized government, could be a crime under both local and international law. Have you taken legal advice on this issue?

Patrons: The Rt Hon Gordon Brown, Sinead Cusack, The Rt Hon Lord Howard of Lympne QC, Baroness Helena Kennedy QC, Baroness Glenys Kinnock, Maureen Lipman CBE, Roger Lyons, The Rt Hon Lord Steel of Aikwood

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3. MOGE – Your letter also states that since 1 February 2021, TotalEnergies has continued conducting business with its stakeholders and “has not altered this course since the coup happened.” It adds that “MOGE has been created by the laws of Myanmar” and refers to it as “Myanmar’s national oil company.” A report by the Natural Resource Governance Institute sets out that the Myanmar Oil and Gas Enterprise (MOGE) is effectively a government department answerable to the Ministry of Electricity and Energy (MOEE). Prior to 1 February 2021, an elected civilian government appointed MOEE Ministers who in turn can appoint civil servants to operate MOGE. The military junta has now appointed a head of MOEE.

Please confirm:

- *Does TotalEnergies consider MOGE to be a government department/agency or a company with legal personality?*
- *If TotalEnergies considers MOGE to be a company, please provide registration documents from Myanmar’s Directorate of Investment and Company Administration.*
- *Does TotalEnergies consider that civil servants assigned to MOGE are now answerable to junta, and if not, please provide further details to help us understand your position. In particular, TotalEnergies considers its staff are at risk of forced labour – please confirm whether this applies also to MOGE staff.*

4. Payment - Your letter states that a Thai company, PTT, purchases the gas from the Yadana project. Every month, TotalEnergies submits payment orders to PTT, obliging PTT to transfer sums to junta-controlled bank accounts.

Please confirm whether or not:

- *Some of these payment are for gas sold by TotalEnergies and Chevron to PTT; and*
- *TotalEnergies and Chevron request PTT to transfer payments due to them instead to the Myanmar state in order to meet your liabilities to make Royalty payments.*

5. Invoicing TotalEnergies has also publicly stated that “even if TotalEnergies does not provide a statement/ invoice, PTT must issue its own invoice (art. 12.4 EGSA).” Unless it has been amended, article 12.4 of the Export Gas Sales Agreement states that PTT may render an annual invoice only if by 28 February each year TotalEnergies, as Operator, has not done so.

Please confirm whether it appears that:

- *Article 12.4 does not apply to monthly invoices.*
- *It enables PTT to issue an annual invoice only if TotalEnergies has not done so.*
- *In such circumstances, PTT may issue an invoice, but does not have to do so.*
- *If TotalEnergies issues monthly and annual invoices requiring payments to a trust account for the benefit of the Myanmar state: 1) TotalEnergies could refer a dispute to arbitration under the Export Gas Sales Agreement if PTT ignored such orders. 2) Any dispute with the junta over payments to a trust account could also be referred to arbitration.*

6. Thai energy – TotalEnergies has stated that Myanmar gas must be exported to Thailand “so as not to disrupt the electricity supply that is vital” to Thailand’s population. Analysis has, however, shown that Myanmar gas is not vital to Thai energy security.

How has TotalEnergies concluded that Myanmar gas is vital to Thai energy security?

7. Myanmar energy - Your letter notes that the importance of Myanmar gas as a source of energy in Myanmar. Myanmar’s elected politicians, National Unity Government, civil society organisations and general public have all stated that the priority is to cut revenues rather than maintain electricity.

How has TotalEnergies decided that all Myanmar stakeholders are incorrect and that electricity should be prioritised?

8. Staff security (livelihood support) – TotalEnergies’s staff have called for revenues to be cut off as a priority. Others report being forced to resign if they want to join the civil disobedience movement. Total’s national staff would not be at risk of forced labour if they are technically unable to operate Total’s Yadana gas project. Instead, it appears that TotalEnergies’s technical support for the junta is what is creating the conditions that force national staff to keep working.

Please confirm whether TotalEnergies’s national, in-country staff have the capability to operate Yadana, including drilling of infill wells, without the support of international staff and resources.

9. Drilling - We note that drilling for the A6 permit area and infill wells in Yadana “has allegedly stopped.” Your CEO Patrick Pouyanné was also quoted stated "Faced with such a situation, no need to think that we want to invest more for the future."

The new Arakan Oil Watch report states drilling to expand and prolong the life of the Yadana field has continued. Total’s Yadana consortium partner, PTT Exploration and Production (PTTEP), completed drilling of two production wells in May and a third well in August, 2021 (14). As the Yadana operator, Total approved and contributed towards these drilling costs, and stands to gain from the increased production."

<https://www.oilwatcharakan.org/wp-content/uploads/2021/11/Fanning-the-flames-report-in-Eng.pdf>

Please confirm that it has not and will not restart until a democratic government is in power, and explain the apparent inconsistencies.

We look forward to your response.

Yours sincerely

Mark Farmaner

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