

Rebuttal to Frequent Arguments by Oil & Gas Companies Operating in Myanmar

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- 1) The National Unity Government (NUG) of Myanmar recently wrote to and requested that oil and gas companies operating in Myanmar stop the payments to MOGE. However, they are continuing to do business with the military junta and have now effectively become the main financial supporters of the military regime.
- 2) Total and POSCO, running foreign companies operating major offshore gas fields in Myanmar, said they would not suspend operations in Myanmar, as long as the operations remained safe, or unless their respective governments impose restrictions/sanctions.
- 3) Oil and Gas companies have been using the following arguments to defend their position on continuing its operations in Myanmar, despite the coup d'état on February 1, 2021:
 - I. **“Stopping payments will lead to Total's employees in Myanmar at odds with local laws (criminal charges) and affect their safety, as they might risk repercussions from the military junta.”**

Laws enacted by an illegitimate military junta are not legitimate. Civilians, regardless of whether they have broken “laws” or not, are being killed, detained, and abducted every single day, since February 1, 2021. **Several other major companies and projects have stopped co-operation without any repercussions, including Malaysia’s Petronas running another major gas field project, “Yetagun”, Singapore based Puma Energy (supplier of jet fuel to the Military), and Japan’s Kirin International Holdings (Joint Venture with Military’s Economic Holdings (MEHL) producing beer and beverages).** In addition, senior management of Total Myanmar are mostly foreign nationals who are not currently inside Myanmar to face any direct threats to their personal safety.

- II. **“Stopping gas shipments will impact domestic electricity generation and the people of Myanmar.”**

We are not calling to suspend operations or stop the shipments of gas – but rather to withhold sale proceeds to MOGE under an escrow account to prevent the revenues flowing to the military, as MOGE is now under full control of the military. The State Administration Council (SAC) is **not** the legitimate, elected government of Myanmar. Therefore, they have no rights to any state revenue that Myanmar is due to receive under

any contracts. It is only lawful that payments are paused until the democratically elected government has been restored.

Stopping revenue payments to MOGE should not stop the flow of domestic gas to Myanmar. O&G companies can continue to supply domestic gas to MOGE for domestic use even while payments to MOGE are suspended. Supply of domestic oil and gas to Myanmar market is a separate requirement under the Production Sharing Contracts (PSC). The PSCs require MOGE to pay for domestic gas supplied to Myanmar, and even if MOGE (under the military's control) refuses to pay for the domestic gas, O&G contractors can deduct or set-off amounts owing by MOGE for domestic gas from other payments that are due to be paid to MOGE under the PSC. **There is absolutely no need for O&G companies to stop the supply of gas to the Myanmar domestic market, even if payments to MOGE are suspended.**

We also highlight that the domestic supply of gas from the offshore projects is not significant. **Yadana gas project supplies to domestic usage, on average, only 11% of its production and Shwe gas project, only 5% [Source: World Bank report].** Myanmar has multiple sources of electricity generation, namely, hydropower (29%), coal (2%), on shore gas/LNG (13%) and offshore gas (Yadana 23% & Shwe 25%). **In addition, the recent survey conducted by Khit Thit Media shows that Myanmar People support the calls for stopping of money flows to the Military, with an overwhelming majority of over 97%.**

Furthermore, in the call for stopping payments to MOGE/Military regime, NUG has echoed the voice of People of Myanmar stating that People of Myanmar are willing to sacrifice anything, including their lives for their freedom and democratic rights. Oil and gas companies should respect Myanmar People's democratic rights and stop hanging onto the excuse of "interruption of domestic gas supply" that has no factual basis. **Oil and Gas companies cannot and should not decide what is good for Myanmar people, whilst oil and gas revenues are fueling Military's arms purchases and its continued oppression of Myanmar people.** They cannot just simply ignore the fact that, by refusing to comply with Myanmar People's legitimate request, they are now contributing to the crimes against humanity committed by the Myanmar military junta.

III. "Total has humanitarian projects directly helping the Myanmar people and will donate money to these initiatives".

Total stated that it would donate the equivalent of the taxes the group will have to pay to the Myanmar military to associations working towards human rights in the country¹. The

¹ Reuters, "Total says abandoning Myanmar gas fields would hurt workers, cities", April 3, 2021

fact of the matter is oil and gas companies contribute more than just taxes to MOGE and military regime. **MOGE has a 15% share of sales revenues and that combined with “pipeline protection fees”, amount to a staggering revenue of \$1.5 billion per annum, that reaches to the military’s coffers and funds the military’s arms purchases.** It is insulting to Myanmar people for these oil and gas companies to argue that small and insignificant donations will help them, whilst a much larger amount contributed by the oil and gas companies to the Myanmar junta is being used to violently oppress the people of Myanmar.

Additionally, with the military’s brutal crackdown on all civilian supported charities and humanitarian aid initiatives, how will Total guarantee that their “donations” reach and benefit the people of Myanmar?

IV. “POSCO further claimed that Chinese or other foreign players might replace the company were it to pull out of Myanmar, saying that will only benefit the junta while inflicting damage to Korea”.

First, we would like to respond to this statement with an analogy: “If oil and gas companies were invested in Nazi Germany, would they continue just to prevent an Italian company taking their place?”

A dollar provided to MOGE is a dollar donated to the Myanmar military, regardless of who makes the payment. We are asking all payments to MOGE to be stopped, without regard to the nationality of the operator.

The Shwe field generated revenues of \$623 million last year, accounting for 86% of POSCO International’s revenues in Myanmar. The company’s operating profits from the project — which is undergoing expansion to bring on stream more gas resources — totaled \$276 million in 2020. **It is obvious that when profit motives clash with ESG commitments, oil and gas companies usually chose the multi-million profits, instead of 54 million people of Myanmar who has been suffering under the atrocities of Military regime.**

In all four of the major gas projects, Chinese and Thailand companies are the buyers of the gas, not operators. It will not be easy to seek out replacements, let alone Chinese replacements as gas project operators require high technology capabilities. It is not practically or technically feasible for a new O&G operator to take over the operations of an ongoing large scale offshore project at short notice. Offshore projects have significant technical and environmental risks that must be managed and cannot be handed over easily, without extensive long-term preparations.

V. **“Oil and gas companies make payments to MOGE, not to the Military Regime”.**

MOGE does not operate independently from the government. MOGE is not formally incorporated under the Myanmar Companies Law 2017 or the Special Companies Act 1950 as a state-owned company with separate legal status. It is simply an agency under the direct control of Ministry of Energy and Electricity (MOEE). SAC now has de facto control over the functions of MOEE in Naypyitaw which also gives it direct control over MOGE and access to all records and accounts of MOGE. MOGE is a party to the PSCs, not in its own legal capacity, but only on behalf of the sovereign state of Myanmar. All payments due to MOGE under the PSCs are payments due to the state of Myanmar, on behalf of the people of Myanmar. Therefore, any payments made to MOGE by O&G companies while it is under the illegitimate control of the military do not constitute payments to the State of Myanmar. They are only payments to an illegitimate military regime and will not be recognized as payments to the State by the legitimate government of Myanmar. NUG states that all legal avenues will be used to recover all such payments on behalf of the legitimate government of Myanmar when it assumes power.

Oil and Gas companies had been operating in Myanmar for decades and in bed with successive military regimes in the past, who approved such investments. **The managing director of MOGE is usually an ex-military person, appointed by Military Junta, even during the democratic government era (2016-2020).** Under the direction of the previous military regimes, MOGE used various offshore trust accounts to conceal its revenues from the civilian government. These malpractices were found out by the previous civilian government that instructed the military to unwind these undeclared funds stashed away by the military. This civilian oversight was seen as threat by the military, which subsequently planned and staged another coup in February 2021.

Post-coup, all state-owned enterprises and their export revenues from various sectors – oil and gas, gems and mining and timber, are fully under the control of military regime. MOGE is under the guns of military junta and it is ludicrous to argue to us Myanmar People that money paid to MOGE has nothing to do with the military regime.

- 4) In addition, Chevron is also arguing against efforts to restrict its involvement in Yadana Gas Field², echoing the arguments of Total.
- 5) The lobbyist for the military junta, an enigmatic Montreal-based former arms dealer named Ari Ben-Menashe, representing the Military State Administration Council (SAC) said

² New York Times, “Chevron Lobbies to Head Off New Sanctions on Myanmar”, May 6, 2021

“Chevron’s lobbying against prospective sanctions aligns with the interests of the Myanmar government and its state-owned oil and gas company”. **It is eye-opening, telling, and concerning that Total and Chevron’s views and stance on this matter are aligned with that of the SAC’s lobbyist, making it clear that oil companies’ interest and military regime’s interest are complementing one another.**

- 6) We are disappointed to see that oil and gas companies settle for low ESG standards to pursue profits from Myanmar at the expense of the Myanmar people’s freedom and democracy, and then using the above weak and misleading arguments to conceal their true profit motives.

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About Free Myanmar

Free Myanmar is the movement of concerned people from all walks of life and across the continents that, for reasons both personal and compassionate, have come together to unify voices and non-violent activities outside Myanmar in coordination with movements inside Myanmar to end military dictatorship and support Myanmar’s transition to a truly democratic federal union that protects and provides equal opportunities for all regardless of race, religion, gender and background.