

‘ We Used to Fear Bullets Now We Fear Bulldozers ’

Dirty coal mining by military cronies & Thai companies
Ban Chaung, Dawei District, Myanmar



October 2015



“
If our lands are destroyed
then our way of life will
disappear
”

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About this report

This report was jointly researched and written by three Civil Society Organizations (CSOs) based in Dawei district: Tarkapaw Youth Group, Dawei Development Association (DDA), and the Tenasserim River & Indigenous People Networks (Trip Net).

Thank you to the Dawei Research Association (DRA), Spirit in Education Movement (SEM), and Karen Environmental and Social Action Network (KESAN) for their excellent advice and support. Further thanks to the many individuals who have contributed to this report in various capacities, and especially to the courageous Ban Chaung villagers for sharing their stories.

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Executive Summary

This report was researched and written collaboratively by Dawei Civil Society Organizations and documents the environmental and social impacts of the Ban Chaung coal mining project in Dawei District of Myanmar's Tanintharyi Region. Based on desk research, interviews with villagers, and direct engagement with companies and government, it exposes how the project was pushed ahead despite clear opposition from the local community. It documents the serious harm that has already been done to villagers' health, livelihoods, security, and way of life, and the devastating contamination of local rivers and streams. It calls for the suspension of Mayflower Mining Company's permit and operations at Ban Chaung until this harm is remedied and the project is effectively evaluated, monitored, and regulated in compliance with Myanmar law and international best practice. It advocates that local villagers should be given the opportunity to take ownership of their own path to development.

Formerly mired in conflict, resource-rich Tanintharyi Region is now opened up to foreign investment, and is threatened by a flood of dirty industrial projects including the massive Dawei Special Economic Zone (SEZ) and seven coal-fired power plants. Among these dirty projects is a coal mine in the Ban Chaung area of Dawei District. The project is located in a sensitive recent conflict zone, where administration and territory is contested between the Myanmar government and the ethnic armed resistance organization, the Karen National Union (KNU).

Taking advantage of contested administration and weak governance in this area, Myanmar crony company Mayflower Mining used its high-level connections to begin coal mining operations without proper safeguards to protect human rights and the environment. The project was pushed ahead without an Environmental and Social Impact Assessment (ESIA) and without the Free Prior and Informed Consent (FPIC) of local villagers.

Mayflower Mining Company has a partnership with two companies from Thailand – East Star Company and Thai Asset Mining Company – that are operating on the ground in Ban

Chaung. Thai Asset has nearly completed building a road to transport Ban Chaung coal to the Theyet Chaung on the Tanintharyi coast, but its progress has been stalled due to a protest blockade by villagers. Meanwhile, East Star has already been operating a 60-acre open-pit mine at Khon Chaung Gyi village for more than three years, transporting nearly 500 tons of coal daily during the dry season according to local villagers. East Star has entered into a Joint Operating Agreement with Energy Earth Company, which will finance its mining operations and sell the coal on the market. Mayflower and its Thai partners plan to expand operations to mine for coal on at least 2,100 acres, threatening to take almost all of the local community's agricultural land.

Should it be allowed to expand, Ban Chaung coal mining would severely damage the health and livelihoods of approximately 16,000 villagers in the area, most of whom belong to the Karen ethnic group, and rely on fishing and farming. Indeed, many villagers are already suffering from increased pollution of air and water resources and land confiscations, of once productive agricultural land. East Star Company has dumped mining waste directly into the streams, causing fish to die off and local people to fall sick with troubling skin diseases. Uncontrolled coal fires, spontaneously combusting in waste and storage piles, have caused breathing problems in the community. An influx of outsiders along with the presence of the Myanmar military means local people no longer feel safe in their own villages. The project threatens the entire way of life of the indigenous Karen people of Ban Chaung, who have had their land passed down to them for generations.

Although local people are overwhelmingly opposed to coal mining in their area, they were never given the chance to voice their concerns; only learning about the project once the bulldozers started digging on their land. Now, Ban Chaung villagers have joined together to challenge irresponsible coal mining in their area, and to call for alternative, democratic, and inclusive development in Tanintharyi Region.

Key Recommendations

To the Myanmar Ministry of Mines

Suspend the mining operations at Ban Chaung until a thorough and transparent ESIA is conducted according to the Environmental Conservation Law, Rules and EIA Procedures. The EIA process should be transparent and include meaningful public participation.

To the Myanmar Central Government and Tanintharyi Regional Government

Establish a different development path for Tanintharyi Region, in cooperation with the Karen National Union and through a public participatory process, that will keep the rivers, beaches and seas clean and beautiful, restore and maintain healthy forests and wildlife, and create peaceful, equitable and content communities. Additionally, the Union Government should finalize a just and transparent resource and revenue sharing policy.

To the Karen National Union

Listen to the voice of the local people in Ban Chaung and stop supporting East Star's mining operations until threats to the local indigenous peoples' lands, livelihoods, security, health, and environment are properly resolved.

To Mayflower Mining Company and its Business Partners

Suspend mining operations until a thorough and transparent ESIA is conducted according to the Environmental Conservation Law, Rules and EIA Procedures. The EIA process should be transparent and include meaningful public participation. An environmental management plan should be made public and include a role for citizen monitoring and enforcement.

To Civil Society in Myanmar, Thailand, and the International Community

Conduct research on, raise awareness of, and closely monitor the environmental and social impacts of mining projects, advocate for improved environmental governance throughout Myanmar, and for responsible investment from Thailand and elsewhere.

Methodology

This collaborative report is based on the research and community engagement carried about by local Civil Society Organizations from December 2012 to July 2015. Researchers conducted a detailed review of the company documents and related news articles available online. They also reviewed project documents provided in hard copy by the Myanmar Ministry of Mines, Karen National Union (KNU), and Mayflower Company. Further project information was gathered during meetings with government, company and KNU officials. Through desk research, lawyers analyzed the current legal framework governing large-scale mining in Myanmar, and how it applies to the Ban Chaung project. In order to document the specific concerns of villagers affected by the project, researchers also conducted open-ended interviews and focus group discussions. Baseline data about village population and land ownership were collected through household surveys. Environmental impacts were recorded through photo documentation, and water samples from near the mining site were analyzed by Eurofins Lab in the Netherlands.

Another Dirty Project in Tanintharyi

The Ban Chaung coal mine is located in Dawei (Tavoy) District of Myanmar's Tanintharyi Region, an area formerly known as Tenasserim and the southernmost region in Myanmar. The region includes the Tanintharyi Mountain Range, which, spanning 1,700 kilometers and covered with lush green forest, forms a natural border between Myanmar and Thailand. Tanintharyi is ethnically diverse, and home to Tavoyan, Karen and Mon peoples. The majority of the local population speaks either the Karen language or Tavoyan dialect of Myanmar language. Most people in Tanintharyi earn their livelihoods through fishing and farming – growing a diverse array of crops including betel nut, rubber, cashew, durian, mangosteen, and rambutan. Some people plant permanent plantations, but many also practice *ku* or *taungya*, a form of rotational cultivation where crops are planted on cleared forest land, and growing sites fallowed regularly to allow the soil fertility of the forest to regenerate. Others in the region earn income from growing irrigated paddy-rice and raising livestock. Until recently, Tanintharyi was a conflict zone, which saw intense fighting between government forces and Karen armed groups along the border with Thailand's Kanchanaburi and Ratchaburi provinces in 1996 and 1997. Conflict in the area continued until a preliminary ceasefire agreement between the Myanmar Government and the Karen National Union (KNU) was signed in 2012. The halt of active conflict in the area has allowed

local communities to start recovering from decades of civil war, but now they are facing a new threat in the form of so-called economic development projects.

Previously, violent conflict prevented outsiders from coming to exploit land and natural resources in Tanintharyi Region, making it one of the few places in the world still rich in forest, minerals, wildlife, healthy rivers, and more. But as Myanmar opens up, Tanintharyi is now open for business, facing a flood of dirty industrial projects, largely financed by Thailand, China and Japan, in the name of “development.” The most infamous of these projects is the Dawei Special Economic Zone (SEZ), which would be one of the largest industrial estates in Southeast Asia, housing a deep seaport, oil refinery, steel mill, fertilizer and petrochemical plant, pulp and paper processing plant, medium and light industry factories, and electricity generation.¹ The Myanmar government also plans seven new coal-fired power plants for Tanintharyi Region. The Ban Chaung Coal Mine is one piece of the Myanmar government’s broader plan for unsustainable development in Tanintharyi, and would possibly provide fuel for the SEZ and power plants.

The Ban Chaung administrative area follows the watershed of the Ban Chaung River, a tributary of the Tanintharyi River (Great Tenasserim River), and includes nine villages. This area is under dual administration by the central Myanmar government and the Karen National Union (KNU), and KNU refers to the area as *Ka Ser Doh* Township. Most villagers living in Ban Chaung belong to the Karen ethnic group, and call the river *Paw Klo* in Karen language. Most of the villagers are Christian, and are largely self-sufficient, practicing *taungya* to produce diverse food and other products for their own needs. They earn additional income by growing, processing, and selling betel nut on permanent plantations. The land in Ban Chaung has been passed down by generation after generation.

Now the livelihoods, health, and way of life of the indigenous Karen people at Ban Chaung are threatened by an irresponsible coal mining project. Mayflower Mining Company, owned by well-known Myanmar crony-capitalist Kyaw Win, has a permit for large-scale coal mining on 2,100 acres, despite the fact that almost all of this area is already in use by local villagers for agriculture. Though Mayflower itself has never been active on the ground in Ban Chaung, its Thai business partners, East Star Company and Thai Asset Company have

¹ For more information on the Dawei SEZ, see Voices from the Ground, Dawei Development Association, September 2014: <http://www.ddamyanmar.com>

begun mining and road-building operations. While mining is currently only active on 60 acres, villagers have already lost their land, seen their streams contaminated with mining waste, and fallen ill from polluted air and water. Worried that these impacts will only worsen should mining operations expand, Ban Chaung villagers are calling for an end to coal mining at Ban Chaung.

“Not only is there no benefit for us from the mine but we are so concerned about the negative impacts from the mine such as water pollution, erosion, and flooding. We have seen these problems in other mines like Heinda and Wa Kone in Dawei.”²



² Interview with Ban Chaung villager, July 2013



Ku or Taungya Rotational Farming area near the mining site at Khon Chaung Gyi Village



Betel Nut Plantation

A Risky Investment in a Contested Area

The governance situation around Ban Chaung is complicated, largely because it is located in a mixed administration area, that until recently was a dangerous conflict zone. This means that the Karen National Union (KNU) and Myanmar government often contest control over territory, natural resources, and development projects.

The KNU is one of the largest Ethnic Armed Groups (EAGs) in Myanmar fighting for self-determination. The KNU has been fighting Myanmar government forces in what has been called the world's longest-running civil war. It launched armed resistance in 1949, just one year after Myanmar gained independence from the British. The armed wing of the KNU is known as the Karen National Liberation Army (KNLA). The KNU serves as the de facto government in many Karen majority areas, providing health, and education services – and also regulating development and extractive projects. KNU areas are divided into seven administrative districts, including Mergui-Tavoy, which covers at least half of what is known as Tanintharyi Region by the Myanmar Government, where the Ban Chaung mine is located.

Since 1949, there have been many armed clashes in Mergui-Tavoy district. In 1997, the Myanmar Military, known as *Tatmadaw*, launched a massive offensive against KNLA 4th Brigade in the area, destroying villages and forcing civilians to flee their homes. Many are still living as refugees across the border in Thailand today. In the Ban Chaung area, villagers were forced to flee their homes and leave their villages completely abandoned in the wake of the 1997 offensive, and either run to Thailand or hide as Internally Displaced People (IDPs) in the forest. They were able to gradually return after 1998 when Myanmar government forces took control of Ban Chaung, but spent a decade living in fear of abuses by the military. They were not allowed to move freely, needing to request permission to tend to their *taungya* agricultural land, and forced to live in a central location within a bamboo fence enclosure. Since 2012, Ban Chaung villagers have been able to live more freely, but the presence of Myanmar military in the area still looms as a constant threat. Decades of armed conflict, displacement, and militarization have made official land registration impossible, leaving villagers vulnerable to land confiscation for mining and other projects.

Now, after Myanmar's transition from a military dictatorship to a quasi-civilian government, the government has signed bilateral, preliminary ceasefire agreements with several Ethnic Armed Groups, including with the KNU in 2012. This ceasefire agreement, combined with the lifting of economic sanctions by the West, has led to a flood of foreign investment in resource-rich Tanintharyi Region. The regulatory gaps that accompany contested administration zones provides ample opportunity for extractive projects to cause serious harm to local communities

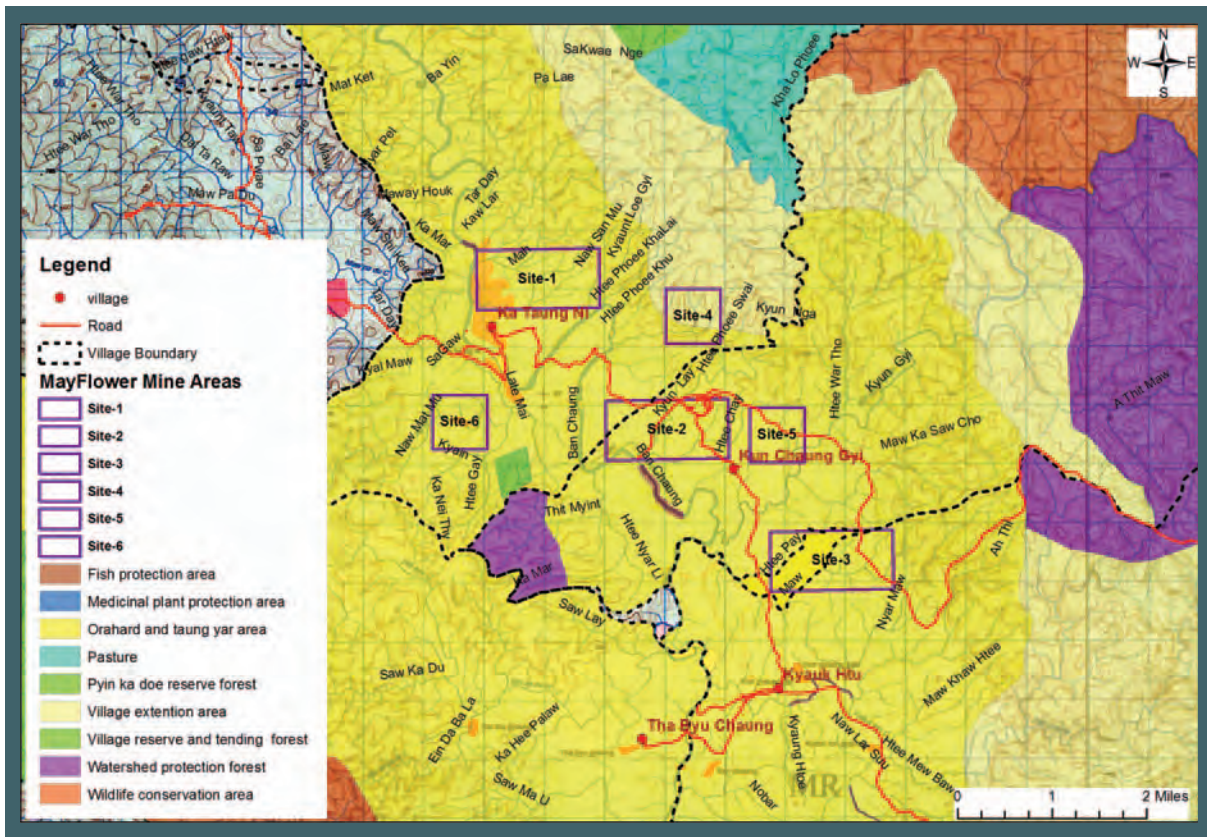
and the environment – as has been the case with the Ban Chaung coal mine.

The issue of who has the *de jure* and *de facto* power to regulate Ban Chaung is a complicated issue, but it is not an excuse for Mayflower and its Thai partners to operate without first acquiring the social license to do so from affected communities. In addition, the Ministry of Mines should not issue permits to mines if it is not able to effectively regulate the activities at the mine site, nor should the KNU permit mining operations if it does not have the expertise and capacity to regulate such activities.

Project Timeline

March 2010	Ministry of Mines grants a permit for Mayflower Company to mine on 1,500 acres in areas 1, 2, and 3 (500 acres each), bypassing the normal permit process.
May 2011	Mergui-Tavoy District KNU grants a certificate to East Star Company to mine those same 1,500 acres in areas 1, 2 and 3 granted to Mayflower.
Late 2011 or Early 2012	East Star Company begins full-scale operations on a 60-acre open-pit mine at site 2 in Khon Chaung Gyi village, on villagers’ agricultural land without their consent.
March 2012	Mayflower Company gets permission from the Ministry of Mines for an additional 600 acres at areas 4, 5, and 6 (200 acres each).
September 2012	Tanintharyi Regional government grants permission for Mayflower company to build the transport road from Ban Chaung to Theyet Chaung on the coast.
November 2012	East Star Company signs a Joint Operating Agreement with Energy Earth Company, who will finance the project and sell the coal.
January 2013	Thai Asset Company begins road construction without permission from KNU.
January 2014	Mergui-Tavoy District KNU First Secretary orders a temporary suspension of East Star Company’s project for evaluation, but operations continue as usual.
March 2014	A contract is signed between KNU Mergui-Tavoy District officials, East Star Company, and local villagers, stating that mine operations cannot expand beyond the currently-used 60 acres.
November 2014	To protest coal mining, villagers blockade the Thai Asset and East Star access roads, but the East Star blockade is removed by KNLA.
January 2015	East Star Company presents a revised map at a community meeting which identifies an area for expansion already occupied by villagers’ playground, church, school, betel nut plantations, and houses, and outside of the previously agreed upon 60 acres.
February 2015	The Myanmar Government’s Ministry of Mines and Land Registration Department visit Ban Chaung together with East Star company in order to investigate the situation.
July 2015	The Ministry of Mines announces they will revise Mayflower Company’s permit, and declare that there are only 612 acres of “vacant” land for the company to expand to. Almost all of this land is not actually “vacant” but in use by villagers as <i>taungya</i> rotational farming land.

This map shows current land use in Tha Byu Chaung, Kyauk Htu, Khon Chaung Gyi, and Ka Taung Ni villages. It clearly shows that nearly all of mining sites 1-6 are located on land currently being used by villagers for orchards or taungya rotational cultivation. Currently, mining operations are only active on 60 out of 500 acres on site 2. If mining were allowed to expand to all 2,100 acres, villagers would lose large amounts of agricultural land, suffering serious harm to their livelihoods, culture, and way of life.



A Dubious Project Unfolds

Many of the problems with the project stem from the fact that it was first implemented during a time of military dictatorship. Indeed, military personnel escorted geologists to conduct the initial surveys of coal reserves at Ban Chaung in 2003, 2006, and 2007. Then the official permit for large-scale mining was granted in March 2010, before Myanmar's reform process began, while the military regime still fully controlled the government. Thanks to close relationships between the company's owner Kyaw Win and high-ranking military and government officials,

Mayflower Company was able to bypass the normal process of acquiring a mining permit. One high-ranking company representative says they never had to go do any field surveys at the coal mining site, but simply received 1,500 acres even though Mayflower Company had not asked for it³. Thus, in classic crony fashion, Mayflower Company was awarded three sites of 500 acres each to extract coal in Ban Chaung (see sites 1, 2, and 3 on the map on page 13). However, Mayflower has never been active on the ground at these sites, and has never received permission from the KNU to operate in the area, which is under its administration.

Through an unclear business partnership, Mayflower allows East Star Company to operate on their behalf. East Star is a Thai company with a close relationship to the KNLA 4th brigade. In 2011, East Star received a certificate from Mergui-Tavoy District KNU, granting them permission to extract coal on the 1,500-acres of sites 1, 2, and 3, even though they never received any direct permission from the Myanmar Ministry of Mines. East Star also never received direct permission from KNU central Executive Committee and mining department, which is required by KNU policy. However, the company's close relationship with the KNLA 4th brigade allowed them to start operations in the area, knowing their work would be protected by armed soldiers. Sometime in late 2011 or early 2012 they began full-scale mining operations of a 60-acre open-pit mine at Khon Chaung Gyi village in site 2. Exporting coal overland to Thailand, East Star built a road connecting to the new Dawei Road built by Italian-Thai Development, and crossing the border via the Htee Kee area. Villagers have complained of land confiscation, water and air pollution, and health impacts from the project.

After significant pressure from the community and media coverage of the controversial project, in January 2014 the KNU Secretary for Mergui-Tavoy District issued a temporary suspension of East Star Company's coal mining operation in Ban Chaung in order to evaluate the project. However, East Star Company has totally ignored this suspension, continuing mining operations as normal. During the dry season, they continued to transport an estimated 476 tons of coal from the Khon Chaung Gyi mine to Amalar village near the border with Thailand, where coal is stored, processed, packaged, and prepared for export.⁴ At this rate, East Star Company would quickly exceed the 20,000-ton export limit placed by the Ministry of Mines on Mayflower Company.⁵ This raises serious questions about the real production data from the Ban Chaung mine and the taxes Mayflower and East Star

³ Meeting between Mayflower Company, civil society, and local villagers. October 2014

⁴ According to villagers, East Star has 14 trucks transporting 17 tons of coal each to Amalar village twice per day, which then sell for around 2000 Thai baht per ton.

⁵ According to the Ministry of Mines at a community meeting in October 2014

have agreed to pay to the Ministry of Mines and KNU – highlighting the troubling lack of transparency in this project.

Meanwhile, local people continue to suffer from polluted water, hazardous coal fires, and live in fear of further land confiscation. Although villagers signed a contract with East Star Company in March 2014, prohibiting expansion beyond the currently-active 60 acres, it appears that East Star has plans to violate that contract and expand anyways. At a community meeting in January 2015, East Star Company presented a new project map, indicating they intend expand beyond the original 60 acres agreed to previously, onto agricultural land used by villagers for their playground, church, school, betel nut plantations, and houses.

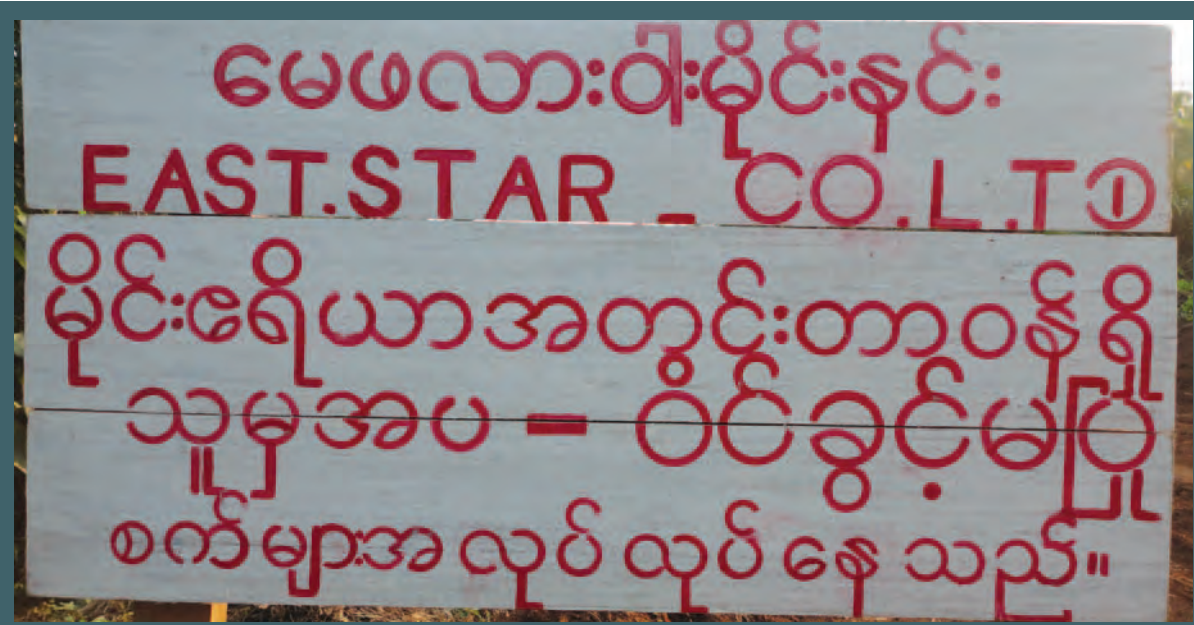
East Star Company is not acting alone, but has backing from larger corporate interests in Thailand. In November 2012 East Star signed a Joint Operating Agreement with Energy Earth Company, a publicly traded Thai coal mining and distribution company, to sell the coal from Ban Chaung. According to the agreement, Energy Earth is paying the operation costs of the coal mine, and will earn 70% of the profits while East Star earns 30%. The agreement also specifies that East Star Company must provide Energy Earth with at least 40 million tons of coal from Ban Chaung and other sites.

While mining operations were underway at site 2, the Ministry of Mines granted a permit for three additional sites of 200 acres each to Mayflower Company in 2012 (see sites 4,5, and 6). Now, Mayflower Company has permits to mine on 2,100 acres of land total (sites 1-6) in the Ban Chaung area. As with sites 1-3, Mayflower has no intention of operating on the ground at sites 4-6, but has formed another unclear business partnership, this time with Thai Asset Mining Company. Unlike East Star, Thai Asset never received permission from the KNU to operate a coal-mining project. Instead, the company has relied on Mayflower's close relationship with the Tanintharyi Regional government. Although Thai Asset has yet to begin coal mining operations, they have focused on construction of a road to transport the coal. While East Star is transporting coal Eastward, over the border to Thailand, Thai Asset appears to be headed West to the coast; building a road from Ka Htaung Ni village in Ban Chaung to Hsi Daw village in Theyet Chaung. They have also started construction on a small seaport, which would allow for transport of coal on the Andaman Sea via the mouth of the Dawei River. Possibly, this would allow Thai Asset to easily supply coal to one of the seven coal-fired power plants planned for the Tanintharyi Region. Despite not having conducted ESIA's, both the road and the seaport are nearly completed, but have been delayed due to the opposition of local villagers.

Initially, villagers were supportive of Thai Asset's road construction when it began in 2013. The company gave no indication that the road was meant to transport coal from the Ban Chaung mine, but rather led villagers to believe it was for their own benefit. Once villagers learned the road would allow for more coal mining, and as the controversy surrounding the 60-acre site at Khon Chaung Gyi village heated up, Ban Chaung villagers united to oppose coal mining and road building in the area. In November 2014, local community members blockaded both Thai Asset's and East Star's access roads. Although KNLA quickly removed the roadblock so East Star could resume mining operations, the other roadblock remains in place as of August 2015, effectively preventing Thai Asset from completing road construction. Both the Tanintharyi Regional Government and Mayflower Company have pressured the KNU to deal with local villagers, remove the blockade, and allow Thai Asset to finish road construction.

Under pressure from community complaints, the Ministry of Mines began an investigation of the entirety of Mayflower Company's project in February 2015. In July 2015, they announced they would revise Mayflower's contract, noting that mining sites 1-6 only contain 612 acres of "vacant" land on which the company can expand, significantly less than the 2,100 acres originally planned. However, in reality almost all of this land is not "vacant" but used by villagers for *taungya* rotational farming. Though not recognized by the Myanmar government, this *taungya* land is recognized by the KNU, and local villagers are in the process of obtaining KNU land certificates. Meanwhile, villagers are calling for the entirety of Mayflower's project to be cancelled.

As it unfolds, the Ban Chaung case has become a tangled web of corporate abuse, with Mayflower Company at the center. Never operating directly on the ground, Mayflower used its name, Myanmar legal status, and lucrative relationships in order for East Star and Thai Asset to do business. As such, Mayflower is nothing but a shell company in the Ban Chaung case, taking advantage of the weak governance in a militarized and contested area to carry out a dubious coal mining project with its Thai partners. Indeed, Mayflower Mining appears to have no operations staff on the ground in Ban Chaung, but only dispatches Dr. S Moses, the Managing Director, to occasionally deal with public meetings and villager complaints. Mayflower's irresponsible approach, made possible by the weak governance of a contested area, paved the way for serious environmental and health impacts detailed in this report.

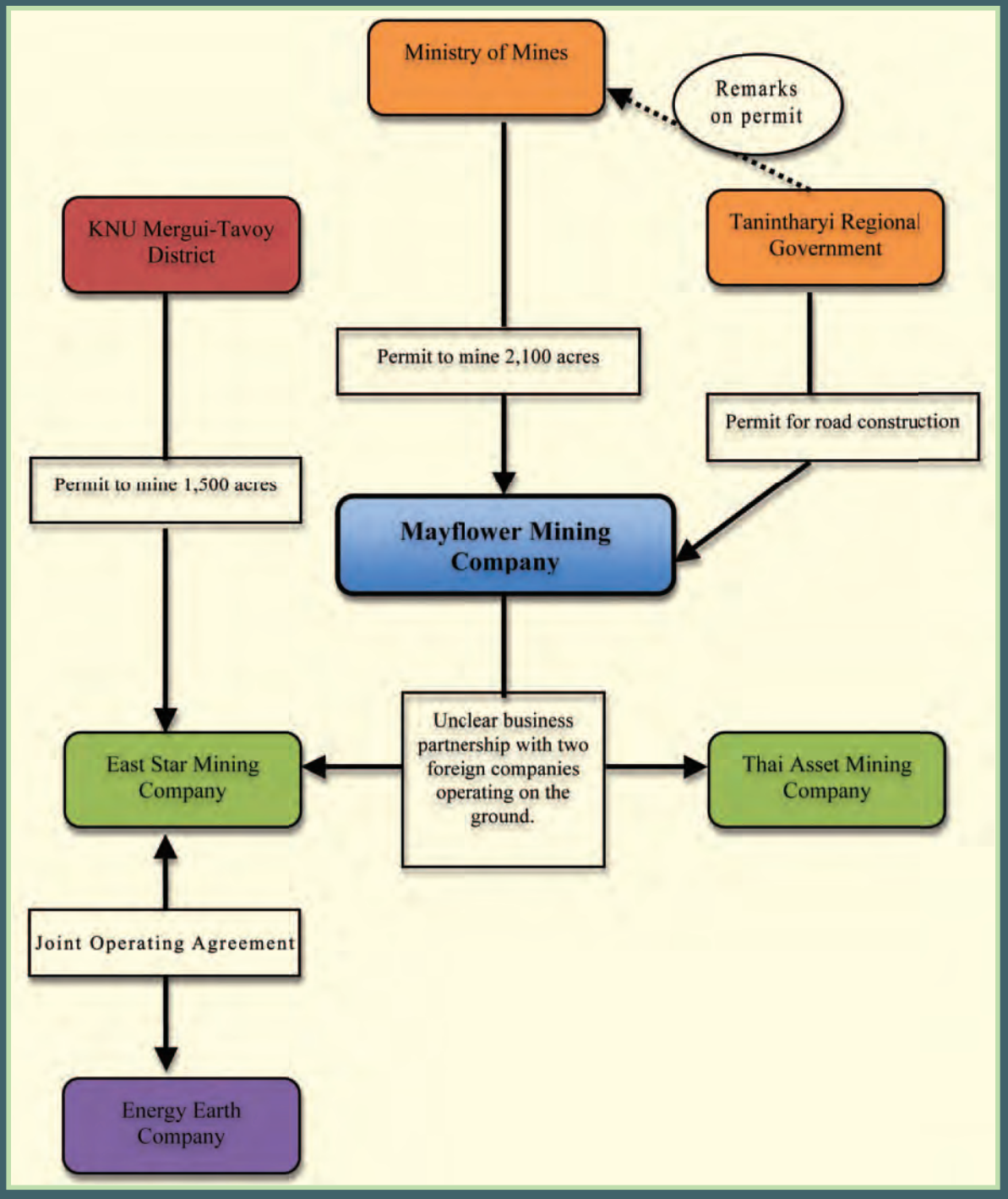


Signboard at Khon Chaung Gyi that says: "Mayflower and East Star Mining Area - No Unauthorized Entry"



Villagers sign a contract with East Star Company limiting their operations to 60 acres

Web of Corporate Abuse



Company Profiles

Mayflower Mining Enterprise Company Limited

Mayflower Mining is a Myanmar company that holds the official permit for coal mining in Ban Chaung. Through an unclear business partnership, operations on the ground are carried out by two Thai companies. Mayflower was registered in 2010 and is based in Bangkok and Yangon. U Kyaw Win is the company's owner. He is one of the wealthiest tycoons in Myanmar, involved in mining, timber, banking, and air-travel. He chaired the now-defunct Myanmar Mayflower Bank, which was accused by the US State Department of money laundering and links to drug trafficking groups. He has lucrative connections top-ranking government and military officials. His other business interests include, Chin-Su Company, Chin-Su Mayflower Plywood Industry, TN Resources (Singapore), Pathum Thani Saw Mill (Thailand), and Yangon Airways.⁶

East Star Company Limited

East Star Company has implemented coal mining operations on 60 acres of land at Ban Chaung, with KNU district-level approval. The Thai company was founded in 1983, with the Chatchavalnanont family as major shareholders and directors. East Star first began coal mining projects in 2007, operating in Lamphun Province of Northern Thailand.

Thai Asset Mining Company Limited

Thai Asset sells coal, mostly from Indonesia, to customers in Thailand and other countries. The company sells to the cement, paper, dyeing, and food industries, mostly in Thailand's Eastern provinces such as Chonburi and Rayong. Thai Asset also sells to major power plants in China and India, and plans to start exporting coal to South Korea, Taiwan, and Japan. In addition to selling directly to industries, Thai Asset sells coal to middlemen trading groups located abroad.

Energy Earth Public Company Limited

Energy Earth was founded in 2007, and primarily sources coal from Kalimantan, Indonesia through the mines of its subsidiary, PT. TRI TUNGAL PITRIATI (TPP). It exports to customers in Thailand, China, India, and South Korea through another subsidiary, Energy Perfect Company Limited (EPCL). Energy Earth's expansion into Myanmar appears to be strategy to mitigate the risk of only sourcing from Indonesia, and is aligned with its "5 Years, 5 Mines, 5 Markets" goal to establish new mines and expand sales to the Philippines, Hong Kong, and Taiwan. Energy Earth is the only publicly held company involved in coal mining at Ban Chaung, and is traded on the Stock Exchange of Thailand as "EARTH."⁷

⁶ http://www2.irrawaddy.org/article.php?art_id=1924

⁷ Energy Earth Annual Report 2014



Soccer Field at Khon Chaung Gyi Village that East Star Company intends to take over for mining operations



Villagers blockade the mining companies' access roads to protest the project

EITI in Myanmar

In December 2012, the Myanmar Government announced its intention to implement the Extractive Industries Transparency Initiative, EITI. Myanmar became a candidate country in July 2014 and the Multi-Stakeholder Group (MSG) is preparing to submit its first EITI report at the end of January 2016. As Myanmar is in the process of implementing EITI, the government made a commitment to follow all the requirements of the 2013 EITI Standard for transparency and accountability for the whole value chain. In order to fulfill these requirements, project information – related to licenses, contracts, and beneficial ownership among others – should be made publicly available.

Under standard requirement 3.9, EITI countries must maintain a public register of extractive industry licenses. Furthermore, EITI countries must publicly disclose all license allocations (3.10). Specifically, information must be made public about the recipients of licenses, including consortium members. Under EITI requirement 3.11 it is recommended that implementing countries also maintain a public register of the identity of beneficial owners of all companies that bid for, operate, or invest in extractive assets. According to requirement 3.12, EITI countries are also strongly encouraged to publicly disclose contracts with extractive companies.

There has been no clear information sharing process for the coal mining project at Ban Chaung. The project's lack of transparency and accountability throughout the process violates EITI requirements. As Myanmar is now an EITI candidate country, and attempting to become a compliant country, both the Myanmar government and extractive companies should serve as a good model by sharing all the above information and disseminating the data publicly. However, the government has failed to disclose the required information relating to the Ban Chaung coal mine, and when it has responded to requests, provided only unclear information.

Potential Legal Implications

The Ban Chaung coal mining project violates the indigenous Karen community's internationally recognized right to Free Prior and Informed Consent (FPIC), and fails to meet other international standards and best practices for socially and environmentally responsible projects. However, holding projects accountable to international standards is difficult in Myanmar. The legal framework governing large-scale mining in Myanmar is opaque and inconsistent. However according to the 1994 Mines Law and Rules a large-scale mine with foreign investment must prepare an environmental conservation plan (Rule 24), which the Ban Chaung mine has never done. Additionally, Mines rule 79 forbids compromising water resources that other people rely on.

Since Ministry of Mines issued the first permit to Mayflower in 2010, Myanmar has promulgated a new Environmental Conservation Law (ECL) in 2012 and Rules in 2014. Additionally, forthcoming EIA Procedures clarify the requirements for EIAs and environmental management plans for large-scale mining projects. Under the ECL and Rules, the Ban Chaung project, as a pre-existing project, must at the least complete an environmental management plan and submit it for approval to Ministry of Environmental Conservation and Forestry (MoECAF). Upon MoECAF's approval the mine would receive an environmental compliance certificate, which should be available to the public. Without an environmental compliance certificate the project should cease operation.

A strong argument can also be made that in consideration of the sensitive cultural and environmental location of the Ban Chaung Mine an ESIA should be conducted in accord with the EIA Procedures. Such an argument is especially strong for any expansion of the mine beyond the existing 60-acres. This report recommends that all mining operations be suspended while an ESIA is conducted in order to avoid further harm to the local community and environment and to facilitate improved decision-making and regulation.

Potential for Massive Damage

At least 23 villages, home to approximately 16,000 people are likely to suffer serious harm to their health, livelihoods, and way of life should Ban Chaung coal mining operations be allowed to continue and expand. Nine of these villages are located along the Ban Chaung River, where residents are gravely concerned about toxic contamination of the river and

its tributary streams from mining operations. Based on village surveys carried out by the research team, it is estimated that 6,750 villagers would be directly affected by pollution of the Ban Chaung River, as they rely on it for drinking water, transport, fishing, and irrigation. Another eight villages are likely to suffer impacts downstream from the coal mining site, along the Tanintharyi River, affecting an additional estimated 3,000 people. Lastly, six villages would be impacted by road construction by Thai Asset Company to transport coal from the mining site, affecting roughly 6,000 people.

Villages that will be impacted



Villagers are Already Suffering

Coal mining, no matter how well it is managed, is one of the dirtiest industrial activities. In Ban Chaung, villagers are already suffering severe illnesses as a result of air and water pollution from mining activities. Pollution is also causing fish and crops – the main source of the villagers’ self-sufficient livelihood – to die off. Land has been confiscated for road building and mining, and community members have been denied their right to free, prior and informed consent, only learning about the coal mining project once the bulldozers began digging. As outsiders enter the previously isolated Ban Chaung community, villagers must face new threats to their security and culture. These negative impacts will only worsen should the mining project be allowed to expand as planned, threatening the entire way of life of the Ban Chaung community.

Stolen Land

Most mining and development projects in Myanmar are built on confiscated land, and the Ban Chaung Coal Mine is no exception. In late 2011 or early 2012, East Star Company started coal mining operations on villagers’ farmland without their knowledge, consent or compensation, destroying 60 acres of seasonal cardamom plantation at Khon Chaung Gyi village. After complaining to the KNU, four villagers who lost their land were offered compensation by East Star Company, but only *after* their land was already taken, when they had no other option but to accept. Although these villagers were pleased to receive payment, an unlikely event in Myanmar, they would rather have kept their land in the first place.



“Our orchards are gifts from our ancestors from generation to generation. I felt really bad selling them. I had no other choice but to sell my orchard. The money I got from selling it can be spent easily, but our gardens can provide for us from generation to generation.”⁸

⁸ Interview 3, Ban Chaung Area, July 2013

East Star Company has also confiscated villagers' land in nearby Kyaut Htoo village, where they have based their main operations camp near a Myanmar military base. In February 2011, the company took four acres of agricultural land without villagers' knowledge or consent. Two villagers had recently planted cardamom and betel nut on this land, but the company destroyed everything without offering compensation, falsely claiming that the land was vacant. Because of the presence of the military base nearby, the affected villagers were too afraid to complain publicly.

Dashed hope for refugee return

East Star Company has also confiscated land from two households for its coal storage, packing, and transport operations at Amalar village near the border with Thailand. Much of the land in Amalar belongs to refugees and IDPs, who have a right to return to their village and reclaim their land. The KNU and Karen Refugee Committee have officially designated Amalar as a potential refugee and IDP return site, but this would be impossible with East Star's operations in the area. One villager interviewed fled from his home in Amalar village in 1997, running for his life in the wake of violent conflict. He lived in a refugee camp in Thailand for 15 years, finally venturing to return home in 2012. However, when he arrived in Amalar village, he found that East Star Company had taken his four acres of land. Because he was living in the refugee camp, he was never aware of the company's plans, and never offered any compensation. Previously, he had his house on this land, and a vegetable plantation where he grew bananas, chili, and other crops. Now he is forced to start planting again from scratch, on a much smaller piece of land.

Mining Dust

Villagers have also complained about air pollution from mining activities. Some are suffering from respiratory infections, likely caused by inhaling dust from the mining, big trucks carrying coal, or stockpiles. This dust has also settled on villagers' gardens, damaging betel nut trees, and drastically reducing their production.



“I do not dare to keep my children in the village since the smell from the coal fires is too bad. I keep them outside the village where I have my orchard”⁹

Coal Fires

The Ban Chaung community is especially concerned about several recurring coal fires that have been burning on and off in waste piles at Khon Chaung Gyi village since April 2015 and in storage piles at Amalar village since May 2015. The properties of coal make it especially prone to spontaneous combustion, where fires start on their own when air enters a coal pile. Coal fires are extremely difficult to put out, and are known to release arsenic, mercury, selenium and other toxic elements. These could be inhaled by nearby villagers, damage crops and vegetation, or be taken up by fish and livestock – posing serious health risks. Coal fires also release large amounts of carbon into the atmosphere, contributing to climate change. East Star Company has only responded by throwing dirt on the coal fires, a temporary and inadequate solution for villagers who fear for their health.

Acid Mine Drainage

Contamination of ground and surface water is one of the most common problems caused by mining. Mining operations use a variety of toxic chemicals which if not managed properly can leach into the surrounding water sources. The coal itself also contains impurities which, when mined and released can lead to serious environmental impacts. One problem is known as acid mine drainage, which causes water around the mining site to become acidic. To check for this, the Ban Chaung research team analyzed water samples in December 2014, and found that drainage water in the mining site was very acidic, with a pH of 3.2. Water should have a neutral pH of around 7, and this level of acidity can be very dangerous for the environment. There is nothing to prevent this acidic water from flowing into the nearby streams and rivers during the rainy season. Many aquatic organisms cannot survive at a pH below 5, and Karen News reported that fish are dying in the Khon Chaung Kalay Stream (Thabalue Poe Klo in Karen language) which flows into the Ban Chaung River.¹⁰ Acid mine drainage also threatens to destroy traditional fish conservation ponds downstream of the mining site.

⁹ Interview, Amalar Village

¹⁰ <http://karennews.org/2013/03/villagers-protest-at-coalmine-want-knu-to-revoke-permission.html/>

Waste Dumping

Villagers have reported that East Star Company is dumping waste from its mining operations directly into the stream, possibly contaminating it with toxic heavy metals. In one instance, a transport truck crashed, spilling coal directly into the stream. There have been complaints from villagers suffering skin irritation and small tumors, which are likely caused by contact with contaminated water.¹¹ Villagers have also noticed that their betel nut and durian trees near the mining site are wilting and failing to produce fruit, possibly due to groundwater contamination.

No choice but to use contaminated water

A 50-year old man lives within one mile of the coal mining site at Khon Chaung Gyi village. He and his family rely on the Khon Chaung Kalay stream for everything, as hard rock makes it impossible to dig wells on their land. During the rainy season of 2013, the mining pit filled with water, so East Star Company drained the pit, pumping the now-contaminated water directly into the Khon Chaung Kalay stream. He had no choice but to use the stream water for drinking and daily usage, and soon became sick. His stomach, hands, and face are all severely swollen, and he suffers an itchy skin rash. Because of this illness, he has been unable to tend to his orchard, and he has no money to pay for a visit to a specialist physician. The man's wife has now started to show similar symptoms.

New threats to security

Coal mining operations also pose a serious security risk for the Ban Chaung villagers, as it marks the first time outsiders have entered their community. It is no longer safe for villagers to travel to their gardens, because of the constant traffic of coal trucks along the road. In one troubling incident, East Star Company called on the Myanmar Army to help them search for six stolen batteries. Innocent villagers, threatened by armed soldiers, were forced to pay the company to replace the batteries.

Cultural impacts

East Star has brought workers from Thailand to work on the project, which has impacted the tight-knit and previously isolated Ban Chaung community. Some of these workers constructed a large spirit statue on the mountain near the mining site. The local villagers, unfamiliar with this custom, are afraid of the spirit.

¹¹ Video Interview 1, Ban Chaung Area, 2012



Massive mining trucks used in Ban Chaung cause traffic accidents and harmful dust pollution



Mining waste is simply dumped in large piles at Khon Chaung Gyi mining site



The Khon Chaung Kalay Stream (Thabalue Poe Klo) flows downstream of the mining site



Coal fires burning at the storage piles in Amalar village



Skin disease on a child's hand after they played near the mining waste piles



Villagers travel by boat to a betel nut processing site at Ka Htaung Ni village

A Violation of Indigenous Rights

Myanmar voted in favor of adopting the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2007. However, there is very little understanding in the country about the internationally recognized concept of indigenous peoples, and there is no recognition of indigenous rights under Myanmar law. Instead, the government recognizes eight broad ethnic categories, and 135 ethnic groups or ethnic nationalities. These categories are viewed as highly divisive and controversial, and do not reflect the rich diversity of Myanmar's indigenous peoples. Many ethnic communities, including the Karen, are increasingly using an indigenous rights framework based on the international concept, using the criteria of non-dominance in the national context, historical continuity, ancestral territories, and self-identification.¹²

The Ban Chaung Mining project is in clear violation of the rights of the indigenous Karen communities in the area, particularly the right to Free, Prior and Informed Consent (FPIC) enshrined in Article 10 of UNDRIP. Ban Chaung residents were never *free* to give their consent for the mining project, as many feared the influence of Myanmar military and KNLA. Villagers who have lost their farmland to the mining project were never given any *prior* notice about the project, only finding out once their land had already been taken and crops destroyed. They were never *informed* adequately about the potential impacts of the Ban Chaung coal mine, which has been largely secret and has bypassed the normal permit process which requires public participation and information transparency. Hence, the Ban Chaung mining project has violated all the three criteria for FPIC. Project proponents must respect the Karen communities "right to say no" to the continuation and expansion of coal mining at Ban Chaung, rather than practice empty consultation as a rubber-stamp process, where the project will inevitably continue.

Ban Chaung coal mining also violates several other indigenous rights. Local villagers have not been given an opportunity to define their own path to development, which violates their collective right to determine their own priorities and strategies for development, as outlined in UNDRIP Article 23. The mining companies' pollution of the air, soil, and water in Ban Chaung violates the Karen peoples' right to enjoy the highest attainable health standards (article 24), and to conserve and protect their local environment (article 29). Specifically, the storage of mining waste on traditional Karen land in Ban Chaung violates Article 29 of the UNDRIP.¹³

¹² For more information on the state of indigenous rights in Myanmar, see the joint submission to the 23rd session of the UN Universal Periodic Review, by the Coalition of Indigenous Peoples in Myanmar/Burma, March 2015.

¹³ UNDRIP Article 29: "States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent."

The Karen people of Ban Chaung have a deep traditional connection to their lands and resources. For generations, they have practiced rotational agriculture, managed fish conservation ponds and forest-use according to customary, communal traditions, and have preserved and promoted traditional herbal medicine - maintaining a unique way of life in line with their cultural heritage. Ban Chaung is one of only two areas in Dawei District that still practice these indigenous cultural traditions. In this way, Ban Chaung coal mining does not just undermine the livelihood security of local villagers, but it violates their right to maintain a distinctive spiritual relationship with traditionally owned land (article 24) and to maintain, control, protect, and develop their cultural heritage and cultural knowledge (article 31) – threatening to destroy their entire culture and way of life.



Children help with the Betel Nut harvest



A villager carries betel nuts to sell

Conclusion and Recommendations

Coal mining at Ban Chaung is a prime example of the kind of destructive development threatening the environment and local communities in Dawei. Taking advantage of weak governance in a sensitive recent conflict area, Mayflower Mining Company and its business partners have used their crony connections to implement an irresponsible project, against the will of the local indigenous people. Mining and road-building activities have already seriously damaged villagers' health, livelihoods, and safety, which will only grow worse should these activities be allowed to continue and expand. Especially concerning is the contamination of the Ban Chaung and Tanintharyi rivers, which has the potential to destroy the main water supply of more than 10,000 people and to devastate diverse fish populations. This irresponsible project severely harms the community and environment, provides no tangible benefit for local villagers, and threatens to destroy the entire way of life of the Karen people of Ban Chaung. Harm that has already been done to villagers' health, livelihoods, environment, security, and way of life must be remedied. Mayflower Mining Company's permit and operations at Ban Chaung must be suspended until the project is effectively evaluated, monitored, and regulated in compliance with Myanmar law and international best practice. Local villagers should be given the opportunity to take ownership of their own path to development.

“This mine will destroy our village, our environment, and our lives. I say lives, because everyone here depends on the land and the natural environment for their livelihoods. This is our way of life. Our culture and our ways are tied to our lands. Our garden land provides all that we need to thrive and if our lands are destroyed then our way of life will disappear.”¹⁴



¹⁴ Interview 1, Ban Chaung Area, July 2013

This report makes the following recommendations:

To the Ministry of Mines

- **Suspend the mining operations at Ban Chaung** until a thorough and transparent ESIA is conducted according to the Environmental Conservation Law, Rules and EIA Procedures, The EIA process should be transparent and include meaningful public participation.
- **Monitor and effectively regulate** Mayflower Mining Company and its partners, together with an EITI representative, to ensure compliance with laws and an environmental management plan.
- **Provide project information to affected communities and civil society** related to: contract details, expansion plans, export and domestic use of the mine products, planned production volumes, size of the coal deposit, royalty and tax payments, and required and planned pollution control measures.
- **Stop permitting large-scale mining operations before ESIA's are conducted and** environmental management plans are in place.

To the Myanmar Central Government and Tanintharyi Regional Government

- **Establish a different development path for Tanintharyi Region**, in cooperation with the Karen National Union and through a public participatory process, that will keep the rivers, beaches and seas clean and beautiful, restore and maintain healthy forests and wildlife, and create peaceful, equitable and content communities. Additionally, the Union Government should finalize a just and transparent resource and revenue sharing policy.
- **Review and revise development policies**, especially those relating to the energy and mining sectors, towards genuine sustainability and equality.
- **Stop giving permission for mining in ethnic areas** where there is no chance for potentially affected community stakeholders to give their free, prior and informed consent. Wait to grant new permits until a durable peace is achieved and effective monitoring and enforcement of mining projects is possible.

To the Karen National Union

- **Listen to the voice of the local people** in Ban Chaung and stop supporting East Star's mining operations until threats to the local indigenous peoples' lands, livelihoods, security, health, and environment are properly resolved.
- **Follow the principles** of the KNU Economic Policy to: do no harm to the livelihoods of local people, to the environment, and to the security of KNU and KNLA.

To Mayflower Mining Company and its Business Partners

- **Suspend mining operations** until a thorough and transparent ESIA is conducted according to the Environmental Conservation Law, Rules and EIA Procedures. The EIA process should be transparent and include meaningful public participation. An environmental management plan should be made public and include a role for citizen monitoring and enforcement.
- **Take full responsibility** for the harm already done to villagers and provide fair and full compensation to those impacted, including sustained medical and livelihood assistance to those suffering health problems as a result of pollution.
- **Explain the measures** the company and its business partners will take to prevent further contamination, and to restore and heal the land both during and after its mining operations
- **Refrain** from land grabbing, causing contamination and contributing to conflict in the lands of ethnic communities.
- **Provide information** related to benefit sharing with the government and its business partners.

To Civil Society in Myanmar, Thailand, and the International Community

- **Conduct research on, raise awareness of, and closely monitor** the environmental and social impacts of mining projects, advocate for improved environmental governance throughout Myanmar, and for responsible investment from Thailand and elsewhere.



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