

TotalEnergies Response

Publish what You Pay shared with TotalEnergies a draft of its Policy Brief regarding the Analysis of gas revenues in Myanmar prior to its publication. While we thank its team for taking a few of our comments into account, a number of significant factual points remain inaccurate in the final version, for which our comments (even if shared with PWYP) have not been taken into consideration. The article as published does not give a full and reliable picture of the Yadana operations and of the associated financial flows to MOGE and the conclusion and recommendations are therefore not correct.

Given TotalEnergies' firm resolve to keep acting in a responsible way and to be open and transparent about the situation of its operations in Myanmar, we would like to share with our stakeholders the following factual points, which are of particular concern and that have not been taken into consideration by PWYP:

1. Payments to MOGE are made by the gas buyer PTT. TotalEnergies does not make any cash payment to MOGE nor is it responsible for any payment to MOGE nor does it channel any cash payment to MOGE
P.3, §1 and §2, +chart 2 ; p. 4, §1

As already publicly stated by TotalEnergies, none of the JV partners make any cash payments to MOGE arising from gas sales.

What contractually happens today (and since 2009) is that all payments made to MOGE as the State company or as JV partner are made directly by the export gas buyer PTT, as per the Export Gas Sale Agreement and supplementary agreements provisions. This includes cost gas, profit gas and royalties.

- This also includes what the EITI reporting framework calls "Royalties in cash" ([reproduced in PWYP report on Chart 2, p.3](#)) :
Royalties are provided for in the PSC and must be paid by each Seller (including MOGE as JV partner) to the State represented by MOGE. In practice, and as contractually agreed they are paid by PTT to MOGE from export gas sales proceeds on behalf of all the JV partners.
- There is no cash flowing between TotalEnergies and MOGE nor vice versa with respect to domestic gas deliveries either. Domestic gas is merely delivered to MOGE and recorded as paid in-kind by TotalEnergies. The quantities delivered for the domestic gas are deducted from the gas revenues from gas exports to PTT owed to MOGE for the State share.

The way all these payment flows are presented in reports to EITI is due to the obligatory formatting of information required by the EITI reporting system in Myanmar.

2. TotalEnergies is neither the representative of MOGE in its commercial relations with PTT nor does it designate the MOGE accounts where the payments by PTT must be made.

P4, §2 and 4

As per the Export Gas Sale Contract and the PSC, TotalEnergies does not represent the other JV partners in respect of the gas sales other than providing statements and invoices to PTT, in addition to sending or receiving notices for the joint venture in its capacity as Operator of Yadana JV.

Each JV partner has a direct commercial contractual relationship as seller with the gas buyer PTT, and each JV partner sells its entitlement gas on their own behalf. This commercial relationship is formalized through the Export Gas Sale Agreement and its supplementary agreements.

In addition, it is also inaccurate to claim or imply that TotalEnergies issues instructions to PTT on how to make the payments to each JV partner (including MOGE) or that TotalEnergies designates the bank accounts where the transfer of money must be done. Those details are specified in the individual official notifications made by each seller to the buyer PTT under the agreements in force.

The Export Gas Sale Agreement provisions (as supplemented) establish the way the invoicing is to be prepared. Under the agreements supplementing the EGSA, each seller provides its account details to Buyer. This is a contractual right of each seller under the EGSA as so supplemented but also under the PSC as far as MOGE and the State are concerned. MOGE has elected an account opened by MFTB with an international private commercial bank. This account designation has not changed after February 1st 2021.

This contractual set up, where each JV partner sells its Yadana entitlement gas directly to PTT, does not mandate the operator of the gas production to make or to interfere with the payments deriving from the gas sales to each seller (including MOGE). Such payments are made directly by PTT as the gas buyer.

3. It is incorrect to imply that if TotalEnergies stopped providing an invoice to PTT, the payments from PTT to the JV partners, including MOGE, would necessarily stop.

p.4, §2 and §5

TotalEnergies is under a contractual obligation to issue a statement and an invoice every month for as long as gas is delivered to PTT. PTT is under a contractual obligation to pay for the gas delivered and does so by relying on the document provided by TotalEnergies. **However, even if TotalEnergies does not provide a statement/ invoice, PTT must issue its own invoice (art. 12.4 EGSA).**

As already stated by the CEO of TotalEnergies, the only way to stop the payments by PTT to MOGE would be to stop production and, as a consequence, gas deliveries. This is why TotalEnergies is in a dilemma. This would have dramatic consequences on the population of Yangon (the gas from Yadana is sourcing 50% of the power generation of a city of 5 million inhabitants) and Western Thailand.

Once again, the bank accounts to which PTT must make the payments are formally notified by each seller (MOGE included). For this reason, it is not necessary for PTT to have the accounts detailed in the invoice in order to proceed with the payments.

As a consequence, it is not acceptable to claim in the conclusion of the report that payments collected by MOGE as representative of the State or as a JV Partner are under the responsibility of TotalEnergies. TotalEnergies is not channeling any payment to MOGE.

TotalEnergies continues to act as a responsible operator of the Yadana field, maintaining the production of gas, provided it can be done safely in line with our internal rules and in accordance with applicable laws, so as not to disrupt the electricity supply that is vital to the local populations of Myanmar and Thailand.

TotalEnergies condemns the violence and human rights abuses occurring in Myanmar and reaffirms that it will comply with any decision that may be taken by the relevant authorities, including applicable sanctions issued by the EU or the US authorities.