

To: Mr de Gucht

European Trade Commissioner

Yangon, March 21 2014

Dear Mr De Gucht (cc EU member states' trade ministers )

The undersigned civil society organisations have been informed that the EU and Myanmar will negotiate an investment treaty. Key element in such a treaty is the Investor-State-Dispute-Settlement (ISDS) mechanism. This allows foreign investors to bring a claim against the host-state (Myanmar) in case new regulation impacts on the investment. This happens outside the national court, at an international arbitration tribunal such as ICSID. ISDS is a one way system. It only gives foreign investors the options to sue at these private courts. Communities or governments can not sue investors when their environment or human rights are violated at the same private courts. At these private courts 3 lawyers decide on the case. There is no option to appeal against the decisions taken. Cases are very expensive for developing countries. UNCTAD estimates that an average case costs 8 million USD in legal fees alone. The awards and the legal fees have to be covered by public budgets and often constitute a substantial part of the annual health or education budget of a developing country. The biggest claim so far is from Chevron against Ecuador and is over 3 billion USD.

We are very worried about the potential impact of an EU-Myanmar Investment Agreement for Myanmar given its nascent state of democracy and the need to develop many new policies before Myanmar can embark on an inclusive and sustainable development path. Such a treaty might highly limit future policy making in the public interest. It could also lead to the Myanmar government shying away from the planned policy if this might result in a claim by an investor. It can also make public policy very costly as Indonesia has found out recently when it received a 2 billion USD claim by Churchill Mining. Indonesia is now following South Africa and is cancelling its investment treaties with EU member states.

We call upon the European Union and the Myanmar government to put in place a due process in which different stakeholders in Myanmar (government, members of parliament, CSOs, ethnic stakeholders, business community) can assess the costs and benefits of ISDS in the agreement. Such a process needs time so the signing of the treaty should not be rushed.

Yours sincerely,

1. 88 Generation ( Dawei )
2. ABCD

3. AD 2030 Vision
4. Ann Area Development Foundation
5. Badei Tha Moe Civil Society Organization
6. Beelinn Network
7. Chapter-8 Civil Society Organization
8. Upper Chin Dwin Youth
9. Colorful
10. Comreg
11. Dawei Development Association
12. Dawei Research Youths
13. Equality Myanmar
14. FPPS
15. Green Land
16. Green Movement Resource Development
17. Green Network
18. Green Network (GNSEG)
19. Green Trust (Pyin Oo Lwin)
20. Grow Back for Posterity
21. Guardian Network
22. Alin sae Ta Man
23. iGreen
24. Kachin Legal Aid Network Group
25. Kayar EITI
26. Kayar Phu
27. Kayar Women Affair

28. EFMC ( English For Myanmar Center )
29. Kachin Women Peace Network
30. Kyauk Phyu Social Network
31. Land in Our Hands network
32. Maw Chee Taung Paw Lu Nge Group
33. Myanmar Coalition For Transparency
34. Nadi Chin Dwin Myit Min Tha Lar
35. Myanmar Green Network
36. Mon Social Work
37. MIDO ( Myanmar ICT Development Organization )
38. Human right Defenders and Promoters
39. Pan Nature
40. Pa-Oh Youth Organization
41. Paung Ku
42. Pyi Myanmar
43. Pyoe Pin
44. Pyu Sin Myitta
45. Triangle Women
46. Sar Ka Baw
47. SEUA
48. Sein Lan (Pyin Oo Lwin)
49. Sein Yaung So
50. Sein Yaung So (Aeti)
51. Sein Yaung So (Kyauksel)
52. Socially Engaged Monastic School

53. Shan Literacy
54. Shwe Gas Movement
55. SNk Mining Watch Group
56. Spectrum
57. Tamar Yeik
58. Teasang Institute
59. TFYU
60. Thuriya Sandar
61. Twig Civil Society Organization
62. Union of Karenni State Youth
63. IFI Watch Myanmar
64. Wan Lark Rural Development Foundation
65. Yae Kyi San
66. Youth Forum
67. 88 Peace and Open society ( Tainggyi )
68. Pyoe Khinn Thit Foundation ( maubin )
69. Mon Friendship Organization
70. Shan State New Generation ( Shan State )
71. Myat Dhana Social association
72. Karen Environment and Social Action Network
73. Kachin Peace Network
74. Karen Human Rights Group
75. CSLD ( Community Sustainable Livelihood Development ) Dawei
76. Ka Lone Htar Village Development Committte ( Taninthary )
78. Htee Chiek Network