

# Article

## Energy Security: Security for Whom?

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*In military-ruled Burma, also known as Myanmar, large-scale natural gas projects have directly and indirectly led to violations of basic human rights through the complicity of multinational corporate actors. These abuses are ongoing and there is an unreasonably high risk they will increase as more gas projects are developed. This paper assesses the past, present, and future human rights impacts of large-scale natural gas extraction in Burma, and the implications these impacts have in terms of corporate accountability. The paper provides background information regarding Burma's government, economic policy, and the energy sector and considers past and present human rights abuses connected to the Yadana natural gas project, developed by a consortium including Chevron, Total, PTTEP, and MOGE. The authors argue that the companies are complicit in ongoing human rights abuses in connection to their investment. The paper then describes the threat of future human rights abuses in connection to the country's largest offshore gas deposits, concluding that there is a high risk that current human rights abuses*

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\* The authors would like to thank first and foremost the people from the pipeline region who shared their testimony and perspectives on which this paper is based, and the activists committed to collecting reliable human rights information in military-ruled Burma, often at great personal risk and sacrifice. While several names must be withheld for security purposes, the authors extend special thanks to Ka Hsaw Wa, Marco Simons, Rick Herz, Rachel Morris, Mael Raynaud, and Khun Ko Wein for their various levels of support and helpful comments on earlier drafts, and to Prithika Balakrishnan and the Editors of the Yale Human Rights and Development Law Journal.

*in the proposed project areas will be exacerbated by the new gas production, and that there will likely be abuses directly linked to the Shwe pipeline project. Finally, the authors assess the interests and actors involved in the Southeast Asia regional energy security dynamic as it relates to Burma's fast growing oil and gas sector, human rights, and corporate accountability. They argue that the energy security strategies of China, Thailand, and India—and by association, the national oil corporations under those governments—relying on Burmese resources have paid dangerously inadequate attention to the protection of human rights.*

## I. INTRODUCTION

While the oil and gas industry has performed a remarkable feat in delivering energy to a large percentage of humankind in a relatively short period of time, the benefits of such resource production often evade the least advantaged actors, who bear the brunt of the negative impacts. In military-ruled Burma, also known as Myanmar,<sup>1</sup> large-scale natural gas projects have directly and indirectly led to violations of basic human rights with the complicity of multinational corporate actors.<sup>2</sup> These abuses are ongoing and there is an unreasonably high risk that they will increase as more gas projects are developed. This paper assesses the past, present, and future human rights impacts of large-scale natural gas extraction in Burma, and the implications these impacts have for corporate accountability.

In Part II, we provide background information regarding Burma's government, economic policy, and the energy sector that is necessary to understand the relationship between human rights abuses and energy development in Burma today. Part III considers past and present human rights abuses connected to the *Yadana* natural gas project, developed by Chevron (USA, formerly Unocal), Total (France), PTT (Thailand), and MOGE (Burma). We argue that the companies are complicit in ongoing human rights abuses in connection to their investment. Part IV describes the threat of future human rights abuses in connection to the country's largest offshore gas deposits, which are being developed by Daewoo International (South Korea) and involve ONGC Videsh Ltd. of India, the Gas Authority of India Ltd (GAIL), the Korea Gas Corporation (KOGAS), and potentially PetroChina. We conclude that there is a high risk that current human rights abuses in the proposed project areas will be exacerbated by the new gas production, and that there will likely be abuses directly linked to the *Shwe* pipeline project. In Part V, we assess the interests and actors involved in the Southeast Asia regional energy security dynamic as it relates to Burma's rapidly growing oil and gas sector, human rights, and corporate accountability. We argue that the energy security strategies of China, Thailand, and India—and, by association, the national oil corporations under those governments—converging on Burma provide dangerously inadequate attention to the protection of human rights.

International law accords to the state primary responsibility in the protection of human rights. However, it is also clear that human rights obligations apply to non-state actors.<sup>3</sup> Multinational corporations bear rights and duties under international law, and have a moral and legal obligation to respect, protect, and promote human rights. This paper does not attempt to address the specific human rights obligations of

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1. The country was renamed Myanmar in 1990 by the ruling military without consulting the citizens. While the terms *Bama* and *Myanma* are used interchangeably in Burmese, the use of the term Burma in the English language is generally preferred by the pro-democracy movement.

2. Unless otherwise indicated, the term "gas" is used in this Article to refer to natural gas and not gasoline.

3. See ANDREW CLAPHAM, HUMAN RIGHTS OBLIGATIONS OF NON-STATE ACTORS (2006).

multinational corporations, or the ways in which non-state actors can be held accountable for their actions. However, the basic human rights obligations of corporations are the point of departure here and are the framework with which we consider the plight of local actors in Burma and the natural resource equation of energy security.

## II. BACKGROUND

### A. The Context

Burma is a country of remarkable ethnic and geographic diversity with an abundance of natural resources, including oil, gas, and timber, and minerals such as gold, copper, nickel, gems, and jade. Burma is the largest country in mainland Southeast Asia, with a relatively large western coastline on the Bay of Bengal (1,190 miles), and bordering Bangladesh, India, China, Thailand, and Laos. The country is home to approximately fifty-seven million people who occupy seven divisions and seven states. The ruling elite and the military largely represent the majority Burman ethnicity, while seven major ethnic nationalities—Arakan, Chin, Kachin, Karen, Karenni, Mon, and Shan— together with at least 130 smaller ethnic tribes<sup>4</sup> comprise approximately 40 percent of the population.<sup>5</sup> Burma's divisions are generally occupied by Burmans, while states are generally occupied by ethnic nationalities and tribes, although there is considerable diversity within some areas.<sup>6</sup>

During Burma's relatively brief period of freedom from 1948 to 1962, "the concept of a legal opposition was still new and often resisted,"<sup>7</sup> and the political context was marred by sometimes violent efforts to eliminate the opposition, including the existence of private armies employed by politicians.<sup>8</sup> People at the local level were excluded from welfare planning and therefore lacked commitment to government-led projects. Ethnic minorities were largely disenfranchised and in some cases took up arms against the government for a range of reasons - struggles which continue today.<sup>9</sup>

Military rule in Burma began by coup in 1962 when General Ne Win disbanded Parliament, suspended the Constitution, and began the period of intransigent and repressive rule that continues today. The State Peace and Development Council (SPDC) is the state body run by the *tatmadaw* (military), and the *tatmadaw* is the country's main political actor— in some

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4. Myan. Ministry of Hotels & Tourism, The 8 Major National Ethnic Races in Myanmar, <http://www.myanmar.gov.mn/ministry/hotel/fact/race.htm> (last visited May 11, 2008).

5. Ethnic Nationalities Council (Union of Burma), <http://www.enburma.org>.

6. The Divisions are Irrawaddy, Bago, Magwe, Mandalay, Sagaing, Tennasserim, and Rangoon. The States are Chin, Kachin, Karen, Karenni, Mon, Arakan, and Shan.

7. CHRISTINA FINK, *LIVING SILENCE: BURMA UNDER MILITARY RULE* 26 (2001).

8. *Id.*

9. *Id.* at 26. See also MANNING NASH, *THE GOLDEN ROAD TO MODERNITY: VILLAGE LIFE IN CONTEMPORARY BURMA* (1965).

ways, the only political actor.<sup>10</sup> The country is ruled by Senior General Than Shwe.

After 1988, when the military opened fire on pro-democracy protestors, ultimately killing as many as 3,000 civilians,<sup>11</sup> the *tatmadaw* grew dramatically, turning the country into the formidable military state it is today. Military personnel jumped from 180,000 in 1988 to over 400,000 in 1996, and that increase coincided with a sharp increase in military expenditures valued in the hundreds of millions of dollars, mostly for armaments and other hardware, as well as new naval and air force bases.<sup>12</sup> While Thailand is the regime's largest trading partner by a large margin, most of the junta's military support has come from China and India, countries with an active interest in exploiting Burma's natural resources, particularly in oil and gas.<sup>13</sup>

Politically, the country faces several authoritarian obstacles that are interwoven with the country's extractive industries. On August 15, 2007, the junta made an unexpected and fateful decision to remove state subsidies on natural gas, diesel, and fuels. This led to dramatic price increases. The price of diesel and fuel increased by approximately 100%, and the price of natural gas—the country's core asset and largest source of export revenue for the junta, used domestically for cooking and in automobiles—increased by approximately 500%. This in turn caused an overnight increase in the price of basic commodities. The price of rice and other foods nearly doubled, with marked increases in the prices of beef, fish, milk, eggs, and cooking fuels.<sup>14</sup> Bus fares quickly became unaffordable for the average citizen, and domestic airfares increased by at least 30%.<sup>15</sup> These increases had an immediate and significant economic impact on the daily survival of people across the entire country, the result of which was widespread popular protest led by the country's revered Buddhist monks. It was a historic nationwide uprising, followed by a forceful crackdown, widespread repression, and an unknown and disputed number of killings, some of which were captured on video and broadcast internationally over the internet.<sup>16</sup> Human Rights Watch believes that the

10. MARY P. CALLAHAN, MAKING ENEMIES: WAR AND STATE BUILDING IN BURMA 2 (2005).

11. See HUM. RTS. WATCH, BURMA (1989), available at <http://www.hrw.org/reports/1989/WR89/Burma.htm>.

12. THANT MYINT-U, THE RIVER OF LOST FOOTSTEPS: HISTORIES OF BURMA 330-31 (2006). See also ANDREW SELTH, BURMA'S ARMED FORCES: POWER WITHOUT GLORY (2002) (discussing composition and history of Burma's armed forces); Mary P. Callahan, *Of Kyay-zu and Kyet-su: The Military in 2006*, in MYANMAR: THE STATE, COMMUNITY AND THE ENVIRONMENT 36, 36-53 (Monique Skidmore & Trevor Wilson eds., 2007).

13. This scenario exhibits what Michael Ross has referred to as the "repression effect" of oil, i.e., when governments build up their internal security forces using natural resource revenues in order "to ward off democratic pressures . . ." Michael Ross, *Does Oil Hinder Democracy?* 53 WORLD POLITICS, 325, 356-57 (2001). See also Matthew Smith, *Environmental Militarism: Burma's Extractive Industries*, 52 GREENER MGMT. INT'L 47, 48-55 (2007).

14. Altsean Burma, BURMA BULLETIN, Sept. 2007, available at 14, <http://www.altsean.org>.

15. *Id.*

16. For comprehensive accounts of the protests and the ensuing military crackdown, see NAT'L COAL. GOV'T BURMA HUM. RTS. DOCUMENTATION UNIT, BULLETS IN THE ALMS BOWL: AN ANALYSIS OF THE BRUTAL SPDC SUPPRESSION OF THE SEPTEMBER 2007 SAFFRON REVOLUTION

death toll is “much higher” than the ten deaths originally reported by the regime,<sup>17</sup> and this view has been echoed by others,<sup>18</sup> including the U.N. Special Rapporteur on human rights in Burma, Paulo Sérgio Pinheiro. Pinheiro conducted a brief investigation that he claims was hindered by a lack of cooperation by the Burmese authorities. He found evidence of at least 30 killings in Rangoon alone, stating in his December 2007 report to the Human Rights Council that “several reports of killings indicate that the figure provided by the authorities may greatly underestimate the reality.”<sup>19</sup> Abuses connected to this crackdown are ongoing.<sup>20</sup>

#### B. Economic Policy from 1962-2008: From Centrally Controlled to Pseudo-Free Market

Burma’s economic policy and climate of investment was formed through years of ill-advised military economic policymaking and two noteworthy market reforms. Since 1962, fundamental economic institutions have been dismantled and macroeconomic policymaking has been consistently arbitrary. Inflation has resulted from financing state expenditures by simply printing more currency; rent seeking behavior (which is defined as states seeking economic rents from foreign parties, in this case the state seeking rents associated with the extraction of natural resources) and corruption are endemic, particularly in the natural resource sectors; the formation of human capital is hurt by a lack of investment in health and education; and there is very little investment in the agricultural sector, where most people eke out a living.<sup>21</sup>

Part and parcel of the human rights abuses that were initiated by Ne Win’s takeover in 1962 were economic reforms, dubbed the “Burmese Way to Socialism,” which lasted from 1962-1988 and were ultimately unsuccessful. Ne Win’s regime was built on reforms that were a

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(2008), available at <http://burmalibrary.org/docs4/BulletsInTheAlmsBowl.pdf>; and Human Rights Watch, *Crackdown: Repression of the 2007 Popular Protests in Burma*, 19 HUM. RTS. WATCH REP. 1 (2007), available at

<http://www.hrw.org/reports/2007/burma1207/burma1207web.pdf>.

17. Human Rights Watch, *Burma: Crackdown Bloodier Than Government Admits* (Dec. 7, 2007), available at <http://hrw.org/english/docs/2007/12/07/burma17494.htm>.

18. See *Burma Death Toll Much Higher: Downer*, ABC NEWS, Sept. 29, 2007, available at <http://www.abc.net.au/news/stories/2007/09/29/2046840.htm> (quoting Australian Ambassador to Burma Bob Davis); *UK Fears Burma Toll “Far Higher,”* BBC NEWS, Sept. 28, 2007, available at <http://news.bbc.co.uk/2/hi/asia-pacific/7018920.stm> (quoting British Prime Minister Gordon Brown).

19. U.N. Hum. Rts. Council, *Report of the Special Rapporteur on the Situation of Human Rights in Myanmar*, ¶ 10, U.N. Doc. A/HRC/6/14 (Dec. 7, 2007), available at <http://www2.ohchr.org/english/bodies/hrcouncil/docs/6session/A.HRC.6.14.doc>.

20. See Press Release, Amnesty Int’l, *Myanmar: Arrests Increasing Four Months On* (Jan. 25, 2008), available at <http://www.amnesty.org/en/for-media/press-releases/Myanmar-arrests-increasing-four-months-20080125>; see also Amnesty Int’l, *Myanmar Protesters Sentenced*, <http://www.amnesty.org/en/news-and-updates/news/myanmar-protesters-sentenced> (last visited May 11, 2008); Hum. Rts. Watch *supra* note 16, at 15.

21. Sean Turnell, *Myanmar’s Economy in 2006*, in *MYANMAR: THE STATE, COMMUNITY AND THE ENVIRONMENT* 108, 109-10 (Monique Skidmore & Trevor Wilson eds., 2007).

“mishmash of selected Marxist, Buddhist, and Nationalist principles ... hastily cobbled together” that “owed more to decidedly 20<sup>th</sup> century forms of political repression than to any uniquely Burmese socialist agenda.”<sup>22</sup> Ne Win ruled for twenty-six years. His reforms, the subsequent economic mismanagement of the elite soldiers running the country, and widespread human rights abuses led to forty years of economic underperformance, turning the country into one of the least developed in the world, earning in 1987 the United Nations’ distinction of Least Developed Country (LDC).<sup>23</sup>

In 1988, just three months after the military crushed a nationwide pro-democracy uprising, the junta transitioned Burma from Ne Win’s autarkic economy to a pseudo-free market economy, passing Law #10/88, which opened the country to foreign investment “in order to promote all around development of [the] national economy.”<sup>24</sup> Rather than a positive step toward a free market, this market reform intensified SPDC’s control over the flow of Foreign Direct Investment (FDI) coming into Burma.<sup>25</sup> Shareholding capacity and access to business opportunities was and is prioritized for the Burman military, their families, and close associates. All foreign investors in Burma must negotiate a joint venture agreement with the military, either through the military-controlled Union of Myanmar Economic Holdings (UMEH), or, in the case of oil and gas investments, through the military-controlled Myanmar Oil and Gas Enterprise (MOGE).<sup>26</sup>

### C. The Energy Sector and Extractive Contracts

The military operates the Ministry of Energy, which includes the Energy Planning Department (EPD), the Myanmar Petrochemicals Enterprise (MPE), the Myanmar Petroleum Products Enterprise (MPPE), and MOGE. MOGE is a completely state-owned enterprise responsible for upstream oil and gas exploration and production. By law, any foreign investment in Burma’s extractive industries requires a 50:50 joint venture with MOGE, and oil and gas investments in Burma require production sharing contracts (PSCs). In other developing countries, the advantage of a PSC as compared with other arrangements is that the state retains title to the resources, recognizing that the ownership of the resource “rests with the citizens of that country and not with private parties.”<sup>27</sup> PSCs are

22. MARTIN SMITH, *BURMA: INSURGENCY AND THE POLITICS OF ETHNICITY* 199 (1991).

23. U.N. Office of the High Representative for the Least Developed Countries, List of Least Developed Countries, <http://www.un.org/special-rep/ohrlls/lcdc/list.htm> (last visited May 11, 2008).

24. Myan. Ministry of Energy, Incentives Granted by Union of Myanmar Foreign Investment Law, [http://www.energy.gov.mm/Incentive\\_1.htm](http://www.energy.gov.mm/Incentive_1.htm) (last visited May 11, 2008).

25. Ian Holliday, *Doing Business with Rights Violating Regimes: Corporate Social Responsibility and Myanmar’s Military Junta*, 61 J. BUS. ETHICS 329, 334 (2005).

26. Mary P. Callahan, *Burma: Soldiers as State Builders*, in *COERCION AND GOVERNANCE: THE DECLINING POLITICAL ROLE OF THE MILITARY IN ASIA* 413, 426 (Muthiah Alagappa ed., 2001).

27. Janek Radon, *How to Negotiate an Oil Agreement*, in *ESCAPING THE RESOURCE CURSE* 89, 100 (Macartan Humphreys et al. eds., 2007). See also David Johnston, *How to Evaluate the Fiscal*

intended to protect otherwise vulnerable resource-rich states from the corporate pillage of the country's core assets, its natural resources. In Burma, they effectively place the ownership of resources with the military elite. There is no transparency in revenue flows and expenditures in the extractive industries in Burma, no local participation in decisions regarding development, and generally local people enjoy none of the benefits of resource extraction projects, while being subjected to systematic human rights abuses, aided and abetted by corporate actors.<sup>28</sup>

### III. THE YADANA GAS PROJECT

The *Yadana* natural gas project has set a standard of corporate irresponsibility in the extractive industries. The project is being developed by Chevron Corporation (United States; formerly Unocal), Total (France), and PTTEP (Thailand) in partnership with the wholly state-owned MOGE. *Yadana* officially began in 1992 and involved the construction of the *Yadana* gas pipeline, during which the Burmese military was used to provide pipeline security, a role it still performs today.

In the years 1996, 2000, 2001, and again in 2003, EarthRights International (ERI) released reports with extensive on-the-ground documentation of human rights abuses committed by the military in direct connection to the construction of the pipeline project, including forced labor,<sup>29</sup> rape, torture, and extrajudicial killings.<sup>30</sup> With no access to justice in Burma, fifteen villagers, represented by ERI and a team of lawyers,<sup>31</sup> sued Unocal in U.S. courts under the Alien Tort Claims Act (ATCA)<sup>32</sup> for complicity in human rights abuses connected to the pipeline project. The strength of the case against Unocal was evidence that the company knew about, abetted, and benefited from the abuse, and did nothing to stop it, and evidence that the abuse was directly connected to the pipeline project. Citing this evidence of complicity, a U.S. federal court of appeals ruled that

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*Terms of Oil Contracts*, in ESCAPING THE RESOURCE CURSE 53, 53-58 (Macartan Humphreys et al. eds., 2007).

28. See EarthRights Int'l, THE HUMAN COST OF ENERGY 6 (2008), available at [http://www.earthrights.org/files/Burma%20Project/Yadana/HCoE\\_pages.pdf](http://www.earthrights.org/files/Burma%20Project/Yadana/HCoE_pages.pdf).

29. "The term 'forced or compulsory labor' shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily." Convention Concerning Forced or Compulsory Labour (ILO No. 29), art. 2, June 28, 1930, 39 U.N.T.S. 55, available at <http://www1.umn.edu/humanrts/instreet/n0ilo29.htm>.

30. See EARTHRIGHTS INT'L & SOUTHEAST ASIAN INFORMATION NETWORK, TOTAL DENIAL (2000); EARTHRIGHTS INT'L & SOUTHEAST ASIAN INFORMATION NETWORK, TOTAL DENIAL CONTINUES: EARTH RIGHTS ABUSES ALONG THE YADANA AND YETAGUN PIPELINES IN BURMA (2001); EARTHRIGHTS INT'L, MORE OF THE SAME: FORCED LABOR CONTINUES IN BURMA (2001); EARTHRIGHTS INT'L, TOTAL DENIAL CONTINUES: EARTH RIGHTS ABUSES ALONG THE YADANA AND YETAGUN PIPELINES IN BURMA (2003) [hereinafter TOTAL DENIAL CONTINUES].

31. These lawyers included Dan Stormer, Anne Richardson, Cornelia Dai, and Patrick Dunlevy at Hadsell & Stormer; Paul Hoffman at Schonbrun DeSimone Seplow Harris & Hoffman; Judith Brown Chomsky; and Jennie Green at the Center for Constitutional Rights.

32. 28 U.S.C. § 1350 (2000).

the case should be allowed to proceed to trial.<sup>33</sup> This was followed by an undisclosed out-of-court settlement in March 2005 between the plaintiffs and the company.<sup>34</sup> Shortly thereafter, Chevron announced that it was seeking to acquire Unocal for U.S. \$ 18 billion;<sup>35</sup> the deal was finalized in August 2005.<sup>36</sup>

The landmark lawsuit *Doe v. Unocal Corp.* was important for the future of corporate accountability in that it demonstrated that victims of human rights abuses could achieve some measure of justice even where it was otherwise absent in the victim's home country.<sup>37</sup> However, its overall impact on the ground in Burma today is less evident, due in part to the unchanged brutal nature of the military regime and the pipeline battalions, and in part to the companies' continued failure to promote and protect human rights in their project area. Serious human rights abuses connected to the *Yadana* project continue in connection to the project.

#### A. Project History and Past Human Rights Abuses

In July 1992, Total signed a PSC with MOGE for exploration and production of natural gas in the Andaman Sea. The gas deposit, called *Yadana*, which in Burmese is used to refer to objects of religious veneration and great worth, or treasure, holds approximately 5.3 trillion cubic feet (tcf) of natural gas.<sup>38</sup> It was originally discovered in the early 1980s but lacked financing for the remainder of the decade. After a bidding process around 1991 that included Total, Unocal, PTTEP, and the MOGE, Total signed the 1992 PSC.<sup>39</sup> Unocal—now Chevron—formally joined the consortium in 1993, followed by PTTEP of Thailand. The consortium partners of the *Yadana* project now include Total (31.24%), Chevron (28.26%), PTTEP (25.5%), and MOGE (15%). In February 1995, PTT signed a thirty-year sales agreement to purchase the *Yadana* gas and began to implement ongoing plans, with the consortium, for construction of a pipeline through the

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33. *Doe v. Unocal Corp.*, 395 F.3d 932 (9th Cir. 2002), *vacated by grant of rehearing en banc*, 395 F.3d 978 (9th Cir. 2003).

34. See Daphne Eviatar, *A Big Win for Human Rights*, NATION, May 9, 2005, available at <http://www.thenation.com/doc/20050509/eviatar>.

35. Press Release, Chevron Corp., *ChevronTexaco Announces Agreement to Acquire Unocal* (Apr. 4, 2005), available at <http://www.chevron.com/news/press/Release/?id=2005-04-04>.

36. Justin Blum, *Shareholders Vote in Favor of Unocal Acquisition*, WASH. POST, Aug. 11, 2005, at D01.

37. This case and others like it elicited ongoing and sustained attacks on ATCA and corporate liability from the Bush Administration, which, while wrong and misguided, served to clarify corporate, partisan, and political interests against liability for human rights abuses abroad. See Rick Herz, *The Liberalizing Effects of Tort: How Corporate Complicity Liability Under the Alien Tort Statute Advances Constructive Engagement*, 21 HARV. HUM. RTS. J. (forthcoming 2008).

38. See EARTHRIGHTS INT'L, *ANOTHER YADANA: THE SHWE NATURAL GAS PIPELINE PROJECT* (2004), available at [http://www.earthrights.org/burmareports/another\\_yadana\\_the\\_shwe\\_natural\\_gas\\_pipeline\\_project\\_burma-bangladesh-india.html](http://www.earthrights.org/burmareports/another_yadana_the_shwe_natural_gas_pipeline_project_burma-bangladesh-india.html).

39. See EARTHRIGHTS INT'L, *TOTAL DENIAL CONTINUES*, *supra* note 30, at 169 n.14.

Tennasarim Division in Burma and into Thailand. Official construction of the pipeline took at least three years, occurring between 1995 and 1998, and commercial sales to Thailand began in 2000, following construction of the Thai power plants that were to receive the gas.<sup>40</sup>

The overland pipeline runs through Burma from the Andaman Sea to Ratchaburi, Thailand, which feeds into the Ratchaburi and Wong Noi power plants that supply electricity to the Bangkok metropolitan area. An undersea pipeline was constructed to meet an onshore pipeline that traverses approximately forty miles of farmland, villages, as well as dense, hilly, and rugged jungle terrain, until it meets an overland pipeline on the Thai side. The pipeline on the Burma side was constructed by the consortium, and then picked up by PTT on the Thai side. According to Chevron and Total, the pipeline area in Burma is home to at least 50,351 people as of 2006, and the companies recognize 36,688 people in the twenty-five villages they consider to be within the "pipeline corridor."<sup>41</sup>

The military's preparations for "securing the pipeline corridor" for the oil companies began as early as 1991, when plans for production of the natural gas were in the early stages of development and when the companies were negotiating contracts. At that time, the Burmese military began moving into the pipeline corridor, first sending three Burmese Light Infantry Battalions (LIBs) to build military barracks in an area that previously had no permanent military outposts.<sup>42</sup> The barracks were built with forced labor, and several additional battalions followed, including two battalions referred to by locals and soldiers as "Total Battalions."<sup>43</sup>

There were several direct links between the company, the pipeline, and the human rights abuses, most notably the use of forced labor on pipeline infrastructure, including building helicopter landing pads (helipads) along the pipeline route, building roads, clearing the pipeline route, and portering<sup>44</sup> for pipeline battalions tasked with securing the pipeline and the pipeline area. Despite the military's reputation for serious human rights abuses, the companies allowed the army to "recruit" laborers for the project. Upon learning that forced labor was employed on the project, the company paid some local villagers who had been forced by the military to work—an implicit recognition by the company of forced labor, and one that does not negate the forced nature of the work. In several cases, some local villagers were paid directly by Total staff after they performed forced labor.<sup>45</sup> According to one local villager interviewed by ERI: "The Total

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40. Total Corp., History of a Gas Project, The Pipeline Project, [http://burma.total.com/en/gazier/p\\_2\\_3.htm](http://burma.total.com/en/gazier/p_2_3.htm) (last visited May 11, 2008).

41. Total Corp., The Pipeline Region and Its Inhabitants, [http://burma.total.com/en/contexte/p\\_1\\_4.htm](http://burma.total.com/en/contexte/p_1_4.htm) (last visited Mar. 24, 2008).

42. Interview with Male, EarthRights Int'l Interview #05-2008, KaleinAung Village (Feb. 12, 2008). Interviewee notes that only battalions 25 and 103 would occasionally visit the area prior to the pipeline project, but that there was no permanent military presence. See also EARTHRIGHTS INTERNATIONAL, TOTAL DENIAL CONTINUES, *supra* note 39, at 23.

43. *Id.*

44. Portering involves carrying heavy loads for pipeline battalions as they patrol and move through an area.

45. *Id.* at 88-90.

employees were paying us village by village."<sup>46</sup> In some instances, the military immediately forced the residents to hand over the money they had received from Total after doing forced labor. In another interview conducted by ERI, a villager stated: "The military did not say anything after they took the money. They let us go back home. There was a big pile of money in front of [the major]."<sup>47</sup> This particular villager fled his village soon after. "I realized myself that I was not able to deal with this kind of thing, so in desperation I escaped from them by leaving my village and all my belongings, to come to the border area."<sup>48</sup>

Military deserters routinely noted that their primary function in the area was to provide security for the pipeline and the multinational corporations.<sup>49</sup> Their mandate involved conscripting villagers for portering. Villagers were tied together with rope, forced to porter heavy loads of ammunition, food, and other supplies through the jungle, resulting in numerous deaths.<sup>50</sup>

Soldiers who deserted the military told ERI that Total provided boots, food, medical care, and payments to local pipeline security battalions, who in turn abused local people in the area.<sup>51</sup> The material support from the company to the battalions was generally regarded by soldiers as payment for the duty to "secure" the pipeline area for the junta and its foreign corporate partners. Citing contracts, internal company memos and meeting minutes, a U.S. federal court of appeals in the *Unocal* case found sufficient evidence to raise the issue about whether the companies hired the military to provide these services and whether the companies knew the military was providing security. The same court found that there was some evidence that might show that the companies knew about the abuses and possibly collaborated with the military.<sup>52</sup>

While the abuses were occurring, the companies brazenly espoused corporate social responsibility (CSR) rhetoric. Unocal claimed that "[t]he *Yadana* energy development project is helping to promote peace and prosperity through the Myanmar-Thailand region. We offer this project as a model of corporate responsibility in a developing country . . . our goal at Unocal is to operate as an 'island of integrity' wherever we do business."<sup>53</sup> The reality was far from peaceful. To add insult to injury, when the pipeline construction was completed, the military issued a non-negotiable order that nine villages attend the opening ceremony for the pipeline.

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46. See EARTHRIGHTS INT'L, *TOTAL DENIAL CONTINUES*, *supra* note 39, at 90-92.

47. *Id.*

48. *Id.*

49. *Id.* at 82-99.

50. See *TOTAL DENIAL CONTINUES*, *supra* note 39 at 58 ("There were so many way[s] that the porters died, some suicides, sickness, exhaustion, stepping on land mines, trees falling on them, and being killed.").

51. *Id.* at 82-99.

52. *Doe v. Unocal Corp.*, 395 F.3d 932 (9th Cir. 2002), *vacated by grant of rehearing en banc*, 395 F.3d 978 (9th Cir. 2003). See also EARTHRIGHTS INT'L, *TOTAL DENIAL CONTINUES*, *supra* note 39, at 90-92 (citing statements by corporate executives of Unocal and Total recognizing the use of forced labor in the pipeline area).

53. See *TOTAL DENIAL CONTINUES*, *supra* note 39 at 122.

Villagers were ordered to “smile and be happy.”<sup>54</sup>

## B. The Pipeline Area Today and Ongoing Human Rights Abuses

Over the years, Unocal, Chevron, and Total have faced a firestorm of criticism both for investing in Burma and for the direct impacts of the construction of their project, with a noteworthy lack of pressure placed on PTTEP in Thailand. Chevron and Total have consistently denied any wrongdoing and continue to defend their investment as a benefit to the people living in the pipeline corridor and to society at large. Today, human rights abuses connected to the project are continuing in the area, and Burma as a whole is experiencing one of the most repressive and brutal periods since military rule began in 1962.

From 2003-2008, ERI interviewed residents, recent refugees, and former soldiers from fourteen villages in the area of the *Yadana* Pipeline. This includes five of the twenty-five villages that Chevron and Total regard as “pipeline villages,”<sup>55</sup> and nine nearby villages which the companies do not recognize as “pipeline villages.”<sup>56</sup> ERI recognizes these villages as relevant due to their relative proximity to the *Yadana* pipeline and due to the fact that abuses in these villages are being committed by pipeline security battalions.

The ongoing abuses in the pipeline region committed by pipeline security battalions from 2003 to the present day include a variety of forced labor connected to the pipeline project, as well as land confiscation, extortion, and violence. These abuses—explained in more detail below—clearly indicate that the companies have not fulfilled their moral or legal obligations under international law to respect, protect, and promote human rights, and that the people in the area are suffering severe human rights abuses directly linked to the *Yadana* pipeline project.

### 1. Militarization in the Pipeline Region

Since 1994, ERI has documented the presence of at least fourteen infantry battalions that have regularly performed security directly connected to the pipeline.<sup>57</sup> A full-strength Burmese army battalion comprises approximately 800 soldiers. According to ERI sources, the pipeline-related battalions comprise approximately 400 to 500 soldiers per battalion, totaling about 5,600 to 7,000 soldiers in 14 battalions whose

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54. *Id.* at 125.

55. These villages are Michaunglaung, Zinba, Eindayaza, Kanbauk, and Kaleinaung.

56. These villages are Lawther, Kawlaing, Mayanchaung, Yapu, Ahlersekan, Chaungzone, Shintabi, Natkyizin, and Kywetalin.

57. These are battalion numbers: 25, 104, 273, 282, 401, 402, 403, 404, 405, 406, 407, 408, 409, and 410. Battalions 273 and 282 in particular have been widely known as “Total battalions.” Several other battalions have also operated in the pipeline region, although whether they perform pipeline security functions has not been established. Interview with Male, age 50, EarthRights Int’l Interview #100, Kaleinaung Village (Feb. 12, 2008) [hereinafter ERI interview #100].

mandate is, or at one time has been, pipeline security. Battalions 273, 282, 408, 409, and 410 are permanently stationed on the pipeline route, comprising approximately 2,000-2,500 soldiers.<sup>58</sup> Soldiers were not present in the area prior to the pipeline project and there were no permanent bases, with the exception of the occasional visit by soldiers from Infantry Battalions 25 and 104.<sup>59</sup> As of 2003, the militarization in the *Yadana* pipeline area alone included at least thirty-nine military outposts, camps, barracks, or bases.<sup>60</sup> One villager in the pipeline corridor told ERI, “[a]fter the foreigners came, the soldiers increased a lot...we the villagers had to work for the soldiers, so I am sure that must be the foreigners who caused our problems.”<sup>61</sup>

The pipeline is located in an area that has been home to an ongoing ethnic conflict that has lasted approximately sixty years. According to defected soldiers, the primary task of the pipeline battalions since the project's inception has been to provide security for the pipeline itself and for the foreign multinationals. The security mandate of the specific battalions in the pipeline region was thus created by and for the pipeline and the multinational corporations.

A defector from pipeline security Battalion 273, interviewed by ERI in 2008, describes his mandate as follows:

When I first arrived to the camp the commander told us that we are here to protect the foreigners who are working on this project. [We were told] it was a 30 years long project and the country got half and foreigner got half amount of the benefit. And after 30 years the foreigner will leave and we will have all these supplies and we will continue to have all of this. So it was important for us that we are working for our country by taking security for these foreigners who work on this project.<sup>62</sup>

This particular soldier volunteered for the military at age thirteen, enduring brutal treatment through his training. He describes a systematic and violent training process that was clearly designed to produce hardened soldiers whom the SPDC deems fit to secure projects like *Yadana* and to control ethnic populations:

During our stay there they are also treating us very badly, like for

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58. See EARTHRIGHTS INT’L, TOTAL DENIAL CONTINUES, *supra* note 39 at 23; See also U.S. DEPT. OF LABOR, BUREAU OF INT’L LABOR AFFAIRS, REPORT ON LABOR PRACTICES IN BURMA 48-49(1998), available at <http://www.dol.gov/ILAB/media/reports/ofr/burma1998/main.htm> (listing 10 different battalions active in the pipeline region at one time or another; basing conclusions on a U.S. Embassy officer’s 1996 report and a journalist who visited the region and took a photograph of a map identifying the active battalions in the region in 1998).

59. ERI Interview #100, *supra* note 57.

60. EARTHRIGHTS INT’L, TOTAL DENIAL CONTINUES, *supra* note 39, at 20-21.

61. *Id.* at 69.

62. Interview with Defected Soldier, age 29, EarthRights Int’l Interview #06-2008, on Thai-Burma border (Feb. 8, 2008) [hereinafter ERI Interview #06-2008].

food they would give us morning glory that grew behind the toilet and they would feed it to us. They also badly hit and punished those who tried to escape from the camp. During my time there I also learnt that some people joined by their will and some were forced to join.<sup>63</sup>

Another soldier interviewed prior to 2003 described the primary mandate of securing the pipeline, which included violations of the right to be free from slavery. He stated that “[w]hen we were patrolling for the safety of the pipeline, we always used the villagers as porters. In one company, we separated into many groups and split up all over the area . . . to take responsibility for securing the project. Therefore, we needed the villagers to be porters. Each separate group took six or seven porters.”<sup>64</sup>

## 2. Forced Labor in Connection with the *Yadana* Pipeline

Since 1991, villagers in Burma have been forced to work for the benefit of the *Yadana* pipeline project, including portering for pipeline security battalions in order to secure the project and the area for the junta and its corporate partners. This involves being forced, under highly abusive conditions and threats of death, to carry heavy loads for pipeline battalions as they patrol the area, sometimes in dangerous or even mine-filled areas. According to testimony gathered from 2003 to February 2008, these abuses are continuing.

The use of forced labor in the pipeline area villages is systematic and uniform. An order detailing the forced labor is usually issued from the battalion to the village headman, who in turn communicates the order to the villagers. Typically, one laborer from each household is required to perform the forced labor according to each order, indiscriminate of age or gender, except in the recruitment of forced porters for pipeline security, in which case the soldiers reportedly prefer males. If a household or individual is unable to work, they have the option to hire a replacement at their own expense. However, given the poverty in the area, most villagers opt instead to perform the forced labor. According to one villager from the pipeline village of Kanbauk, “[w]e cannot refuse to go with them.”<sup>65</sup>

“Going with them” often entails being forced to porter for pipeline battalions as they secure the pipeline corridor, carrying heavy equipment and ammunition, as well as food and other supplies. Villagers receive no pay and often face violence inflicted by soldiers, which has consistently been the case since the beginning of the project. One defector alluded to the abuse, “We ask these people to carry shell ammunition, food and supplies . . . During the portering the soldiers treat porters not so good. I don’t want to mention about these bad things so much since I myself I have done it to

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63. *Id.*

64. EARTHRIGHTS INT’L, TOTAL DENIAL CONTINUES, *supra* note 39, at 54.

65. Interview with Forced Laborer, EarthRights Int’l Interview #043, Kanbauk Village (June 30, 2005) [hereinafter ERI Interview #043].

these people as well at that time.”<sup>66</sup>

A villager in Michaunglaung interviewed by ERI in 2007 described portering ammunition at least ten times per year for pipeline security battalions: “Villagers had to go by rotation and had to carry food and ammunition for them. The distance was two days and one night.”<sup>67</sup> A villager from Kanbawk, another pipeline village, describes the frequency and common economic impact of being forced to neglect his own survival by instead portering for the military. “We have to go porter for them whenever they arrive in the village. We do not have many villagers in the village, so we have to go with them very often. We have no time to work on our job. We have to go with them by rotation and the village head arranges it.”<sup>68</sup>

Another related type of forced labor involves escorting battalions from village to village or through the jungle to “secure” the area. According to a villager in the pipeline village of Michaunglaung, “[i]n 2006, I had to escort LIB 408, 409, 410 and 282 several times and the soldiers always got food from the villagers. The villagers also have to provide bamboo, leaves, and clear the camp at the order of the battalions.”<sup>69</sup>

### 3. Forced Security in the Pipeline Area: “I Just Pray to be Free From This.”

Villagers in the pipeline area are not only forced to porter for pipeline security battalions, but they themselves are also forced to provide security for the pipeline. Villagers in the pipeline corridor are forced to train for and join civilian militias to provide security for the pipeline and the pipeline region.<sup>70</sup> This has occurred since at least 2001 through the present day. Typically one member from each household is required to attend the trainings, indiscriminate of age or gender. The trainings are between three to four weeks long, and villagers are required to provide for themselves at their own expense. Depending on the village, there are usually fifty to eighty people in attendance at each of the trainings, including children. “There were a lot of children under 18 years old and elders. About 50 people attended this training.”<sup>71</sup>

These trainings place a very difficult economic and mental burden on

66. Interview with Defected Soldier, age 29, EarthRights Int’l Interview #06-2008, on Thai-Burma border (Feb 8, 2008) [hereinafter ERI Interview #06-2008].

67. Interview with Forced Laborer, EarthRights Int’l Interview #024, Michaunglaung Village (Nov. 18, 2007) [hereinafter ERI Interview #024].

68. Interview with Forced Laborer, EarthRights Int’l Interview #045, Kanbawk Village (June 26, 2005) [hereinafter ERI Interview #045].

69. Interview with Forced Laborer, EarthRights Int’l Interview #025, Michaunglaung Village (Nov. 18, 2007) [hereinafter ERI Interview #025].

70. While conscription of adults to a civilian militia is not necessarily a violation of international law nor necessarily a human rights abuse, conscription of children, which is occurring in the pipeline villages, is unlawful, and forced security for the pipeline has occurred by individuals who have not been trained for the militia, making it forced labor.

71. EarthRights Int’l Interview #053, Kanbawk Village (Mar. 7, 2005) [hereinafter ERI Interview #053].

local people. In 2005, the chief of a pipeline security battalion visited Kanbawk village and spoke about security, after which the village head was ordered to enlist one member from each household in a militia training. One local villager from Kanbawk village, who ekes out a living logging with a manual saw, described the stress accompanying the difficult decision to send his nineteen-year-old son to the training: "I could not attend this training by myself," he says, "due to my responsibility toward my family."<sup>72</sup> He and his wife had to prepare enough food and water in advance for his son to take to the month long training. "We had to bring everything from our house because they had no food to feed us in the training. That was a big problem for us because we live hand-to-mouth . . . in the village."<sup>73</sup> Sending his son to the month-long militia training meant he had to hire someone in his son's place at 2000 kyat per day. The mental stress further affected his livelihood:

When my son was in the soldier training, I could not sleep well at nighttime because of fear and anxiety. It distressed my state of mind very much. When he finished attending the training, [after] one month, another section was forced to attend the training again, and so on . . . I did not want anyone from my family to attend this training, but after giving our name to the village head, we had to attend. We could not leave. If we did, this battalion would punish the relatives of our family.<sup>74</sup>

Adding to the burden, the villages are also required to provide monthly financial support to the soldiers for the militias.<sup>75</sup>

Violence and beatings at the trainings are common. In the village of Lawther, a village headman described being beaten by a soldier from a pipeline security battalion after he was late in arriving for the militia training. He and another villager were beaten in front of the other forced participants in the militia training. "Because we had to travel so far, we were late by about less than an hour, and he was angry at me and he beat me several times. He also beat my villager who was there for the training too."<sup>76</sup>

These and other reasons have led many families to flee their village for the Thai-Burma border, which is the clearest indication that life in the "pipeline villages" has not improved, as the companies claim.<sup>77</sup> According to a villager from Ahlersekan:

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72. ERI Interview #043, *supra* note 65.

73. *Id.*

74. *Id.*

75. EarthRights Int'l Interview #044, Kanbawk Village (June 25, 2005) [hereinafter ERI Interview #044].

76. EarthRights Int'l Interview #016, Lawther Village (2007) [hereinafter ERI Interview #016].

77. For Chevron's claims that its operations benefit local people in the pipeline corridor, see Press Release, Chevron Corp., Update to Chevron Statement on Myanmar (Oct. 18, 2008), available at <http://www.chevron.com/news/press/Release/?id=2007-10-18a>.

We also heard that villagers from our village will . . . be forced to attend soldier trainings like other villages . . . This news horrifies the villagers very much. And some of them moved to other villages and some are sneaking into Thailand; it makes the village complicated. I do not know what is going to happen to our village because we are under their control and they can do as they wish. The people from other villages said that they had to spend three weeks in the soldiers' training, and they also have to pay money to the trainer of the school. I just pray to be free from this.<sup>78</sup>

After the training segment is complete, villagers then begin rotational duty providing security in the area for the junta and its corporate partners. According to a villager from the pipeline village Zinba, while most people are subject to security duty, sometimes guard duty can be avoided by performing other types of forced labor:

The people militia duty [in our village] started [in 2003] and continues. Now three people from the village have to go every three days to be a guard. We rotate, so it takes about two months before it is your turn again. As for my house, we don't have to do it because we have a bullock cart. Instead, we have to work on other projects.<sup>79</sup>

One form of security duty is providing twenty-four hour sentry duty in huts located near the pipeline on a road that runs along the pipeline. Similar to forced portering, this is labor that is in part a service to secure the pipeline area for the junta and its corporate partners. Villagers fulfill their duty in sentry huts that, according to interviews, were constructed with forced labor around 2003 and are positioned along the road near the *Yadana* pipeline. According to a villager from Yapu:

We had to do it on a rotational basis and each time 10 persons had to go . . . Each time took one day and I had to go almost 10 times to finish [building the huts and fences]. We had to clean the ground, build a small hut, then around the hut we had to build two fences next to each other. Between them we had to build the ground as high as about 4-5 feet. And outside the fence we had to dig a communication line around the fence from outside. We had to build another fence, outside the first fence, with a bamboo trap and it was about 10-20 yards away from the inside fence. It took more

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78. EarthRights Int'l Interview #054, Ahlersekan Village (June 30, 2005) [hereinafter ERI Interview #054].

79. EarthRights Int'l Interview #009, Zinba (Apr. 27, 2003) [hereinafter ERI Interview #009].

than a week to finish one camp.<sup>80</sup>

The same villager recounts the intimidation, fear, and work involved with providing forced labor to the Burmese soldiers:

While we were building the camp, the soldiers are around and watching us. About four soldiers including two police officers are settled in each sentry. We had to work from 6 A.M. until 5 P.M. During that time we could not take a rest, otherwise the soldier would shout at us, swear, or sometimes they even scared us by firing their guns . . . After we finished building the sentry post we also had to stand guard with the soldier . . . In the night time we have to be a guard.<sup>81</sup>

Typically, three people are assigned to a hut in which they must stay for a full 24-hour period. They must provide their own food and sometimes their own weapons, they are not allowed to sleep, and they theoretically must devote undivided attention to sentry duty.

In 2007, one villager from the pipeline village of Kanbawk told ERI, "if we were caught sleeping by the patrol soldier, we would surely be beaten or scolded . . . If we'd like to sleep, one or two people had to keep watch for the patrol soldier. We began working in March [2005] until the present time. We couldn't refuse to go for this." As with the militia trainings, "there are many elders over 60 years old and children under 18 years old that are forced to work on this kind of forced labor."<sup>82</sup>

Another type of forced labor in the area in service of pipeline battalions consists of work on military barracks in the pipeline corridor. According to those interviewed by ERI, this type of forced labor is quite common, and after the initial construction of military barracks like the one in Michaunglaung, villagers are systematically forced to work on barrack maintenance, including gathering bamboo and leaves. According to one villager from Michaulaung, who recently arrived at the Thai border, "I had to work for the military camp at leas[t] 4 times per month [since 1999] and I had to build the roof of the barrack, build bunkers, trenches, provide bamboo and leaves for the military camps."<sup>83</sup>

Another common type of forced labor in connection to the pipeline project involves forced roadwork on the road used by pipeline security and oil company staff. Chevron takes credit for "[i]mprovements to local roads,"<sup>84</sup> and according to Total, one of these is the road to Zinba village, in

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80. Interview with Forced Laborer, EarthRights Int'l Interview #040, Michaunglaung Village (July, 2003) [hereinafter ERI Interview #040].

81. *Id.*

82. ERI Interview #043, *supra* note 65.

83. ERI Interview #024, *supra* note 67.

84. Chevron Press Release, *supra* note 77.

close proximity to the pipeline route.<sup>85</sup> While the companies facilitated construction of this road, forced labor is regularly conscripted to maintain it. This is most common before the rainy season to prepare the road for the rain, and after the rainy season to repair the road from damage caused by the rains. "Every year we have to repair the road built between Kaleinaung and our village Zinba. It was about 2-3 miles in distance. We have to repair one part [in Zinba] and Kaleinaung village had to repair the other part . . . Each time about 50 villagers had to go. It included women and children . . . The road is used by villagers as well as the Total company."<sup>86</sup> Another villager from Zinba claims:

In our village, we have one road that links to Kaleinaung village, which is about a mile and a half away. Foreigners constructed it a few years ago and the road is level with pieces of rock. Now we have to maintain the condition of the road. Two of my friends and I are in charge of looking after the road. The village head told us to do this. We do not get any payment; we have to do it free, but by doing this we don't have to go for other forced labor work.<sup>87</sup>

This and other types of forced labor continue in full view of the expatriate employees of the oil companies. The companies claim that since fieldwork commenced in the 1990s they have "always monitored the Army's actions very closely to prevent forced labor."<sup>88</sup> A villager from the pipeline village of Michaunglaung, however, explains that he has to do forced labor regularly for pipeline security battalions, and that this is often in plain view of the expatriate staff of the oil companies. Moreover, he claims that when foreigners come to the village inquiring about forced labor, fear prevents the truth from coming out:

Our village is one of the 13 villages under the Total company's development zone, but we still have to work on forced labor. The foreigners saw what we have to do but they don't say anything to us. They pass by in their truck while we are building sentry posts and cleaning bushes along the road. But they don't stop to ask us anything. A few times I heard foreigners come to the village and ask whether or not we have to do forced labor. But no one dares say anything about it when they ask because people are afraid of the consequences.<sup>89</sup>

Another villager from the pipeline village of Eindayaza, which is an

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85. Total Corp., Infrastructure, [http://burma.total.com/en/engagement/p\\_3\\_3\\_4.htm](http://burma.total.com/en/engagement/p_3_3_4.htm) (last visited May 7, 2008).

86. ERI Interview #024, *supra* note 67.

87. ERI Interview #009, *supra* note 79.

88. Total Corp., The Allegations and Total's Response, [http://burma.total.com/en/controverse/p\\_4\\_1.htm](http://burma.total.com/en/controverse/p_4_1.htm) (last visited Feb. 21, 2008).

89. ERI Interview #040, *supra* note 80.

ethnically Karen village close to Total's local headquarters, likewise explains to ERI that forced labor continues in plain view of foreign oil company staff. He claims the foreigners have come to the village inquiring about forced labor, but even the village head is not allowed to speak directly to the foreigners, but rather through a translator, and the local villagers do not know nor trust what the translator is saying to the foreigners.<sup>90</sup>

These accounts do not easily correspond with the companies' claims to have fostered a close relationship with local people based on trust, nor is it consistent with the companies' claims regarding the benefits of the project and their commitment to protecting and promoting human rights in the pipeline area.

Nonetheless, the companies continue to claim that the pipeline project is benefiting the people in the region and improving their lives. After the junta's violent crackdown on the monk-led pro-democracy protests from August to October 2007, the world's attention was briefly focused on the plight of the people in Burma and the companies faced a firestorm of negative criticism for their partnerships with the regime. In response, Total claimed: "[w]e are convinced that through our presence we are helping to improve the daily lives of tens of thousands of people who benefit from our social and economic initiatives."<sup>91</sup> Likewise, Chevron claimed, "[o]ur community development programs also help improve the lives of the people they touch and thereby communicate our values, including respect for human rights."<sup>92</sup> And, not to be left out, Thailand's PTTEP claimed, "[w]e have invested in Burma over the past decade. Despite the political conflict, the benefits from the projects will go to people of both countries."<sup>93</sup>

#### 4. Livelihood in the Pipeline Area

John Keane writes of fear generated by violence as "profoundly anti-democratic," claiming it "eats the souls of civilians . . . It erodes or destroys their capacity to make judgments and to act in solidarity with, and against, other civilians."<sup>94</sup> This is the demonstrated strategy of the Burmese junta in the resource-rich ethnic areas of Burma—divide and conquer—including the area of the *Yadana* pipeline, where civilians are subjected to brutal violence by pipeline security battalions on behalf of the companies and the *Yadana* project.

One villager from Lawther recently told ERI about his experience collecting logs for pipeline security battalions. The soldiers arrived to take the logs but also attempted to take logs that were intended for a local

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90. Interview with Forced Laborer, EarthRights Int'l Interview #007, Kanbawk Village (Jan. 2004) [hereinafter ERI Interview #007].

91. HUM. RTS. WATCH, BURMA: FOREIGN OIL AND GAS INVESTORS SHORE UP JUNTA, Select Company Statements at 4 (Nov. 2007), [http://hrw.org/campaigns/burma/drilling/Burma\\_companystatements.pdf](http://hrw.org/campaigns/burma/drilling/Burma_companystatements.pdf).

92. *Id.* at 1.

93. *Id.* at 4.

94. JOHN KEANE, VIOLENCE AND DEMOCRACY 122-23 (2004).

school. His attempts to prevent the soldiers from taking the school's logs were met with violence. "They didn't listen to me but instead the officer ... turned to me and he slapped my face twice, then he punched my stomach and when I tried to cover it he kicked my groin. I fell on the ground ... I had to wait for a while to be able to walk."<sup>95</sup> The man later fled to the Thai-Burma border for medical treatment in a refugee camp after finding inadequate medical attention in his village. According to his wife, "We don't have enough money to go to the hospital so we decided to come to the border."<sup>96</sup>

Violence is sometimes intentionally perpetrated by pipeline security battalions in front of large groups of villagers—a classic and common tactic to instill fear and control the population mentally and physically. These violent displays of power are not simply in service to the SPDC's continued rule, but also to its corporate partners, ensuring the protection of the pipeline project through physical violence. At a village meeting in Lawther called by pipeline security battalion, four villagers were beaten in front of the entire village to set an example after the captain of one of the battalions said he suspected the village of feeding troops from an armed government-opposition group. When the display of power was deemed complete, villagers were then selected and forced to porter for the pipeline security soldiers. "No one wanted to go but people cannot do anything because they were captured and forced to go."<sup>97</sup>

In the late 1990s the War Office of the SPDC declared a policy of self-reliance for local units of the enormous Burmese *tatmadaw*, largely out of necessity because of the SPDC's poor management of the rapid growth in size of the military.<sup>98</sup> Military units dispersed throughout the country were tasked with generating their own operating revenue from the local economy. To this end, human rights abuses were evidently not discouraged, especially in ethnic areas such as the *Yadana* pipeline corridor; an area of primary concern to central command and economically crucial to the regime's survival.

Nearly every villager and recent refugee interviewed by ERI from 2003 to 2008 described arbitrary taxation and systematic extortion by pipeline security soldiers. Several of the pipeline villages do not host a permanent barrack, but soldiers are constantly present, often staying in the houses of local people who have no option but to accommodate the soldiers, lest they face violence or some other form of punishment. One village headman noted, "It becomes a habit of welcoming the Burmese soldiers."<sup>99</sup>

Typically, villagers are required to pay pipeline security battalions when they enter the village, as well as provide food, drink, and

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95. ERI Interview #016, *supra* note 76.

96. EarthRights Int'l Interview #017, Lawther Village (2007) [hereinafter ERI Interview #017]. Contrary to the testimony of local villagers gathered by ERI, Chevron and Total claim that 50,000 people in the pipeline region have access to free healthcare due to the company's socio-economic program. See Chevron Press Release, *supra* note 77.

97. EarthRights Int'l Interview #031, Lawther Village (June 2003).

98. CALLAHAN, *supra* note 12, at 46.

99. ERI Interview #043, *supra* note 65.

accommodation. According to one villager interviewed in 2005, “We can not say ‘no’ to them because we would suffer in saying this word. They don’t care whether we are rich or poor, women or children, widow or elders. We all have to pay them, as they demand.”<sup>100</sup>

Low to high-level soldiers from pipeline security battalions routinely confiscate goods from the local shops in the pipeline area villages. “They take whatever they want from the village shops and the village head has to pay the shop owner later.”<sup>101</sup> When the pipeline soldiers leave the village, it is the headman’s responsibility to restore the economic balance and find a way to compensate local people for their losses. This is usually achieved by further contributions of villagers, who already are living under severe poverty and food insecurity, in some cases due to land confiscation by the military.

Residents in the pipeline area also describe being forced to make payments to soldiers for thinly veiled schemes designed as community programs. According to a villager living in Lawther, interviewed in 2007:

Almost once or twice a month, soldiers come into our village to sell us tickets for the military fund. They title them with many things, sometimes for a mother and children’s fund, sometimes just for the military fund. Similarly, they would organize a food festival in Kaleinaung and they would come and sell tickets to us in Lawther. We were forced to buy the tickets but no one really could go and eat as we would have to travel almost a half-day to eat just one bowl of noodles.<sup>102</sup>

Villagers in the pipeline area are also being forced by soldiers to plant *jatropha*—also referred to as the castor plant or physic nut—as part of a nationwide bio-fuel program aimed at building an alternative source of energy for the country, as well as a new export. The junta’s commitment to this program has been described as “fanaticism;” the generals have set a quota of 500,000 acres for each of the fourteen states and divisions, aiming to blanket the country with seven million acres of the plant,<sup>103</sup> creating a climate of competition between regional commanders to meet the quota. In February 2006, in the *New Light of Myanmar*, Brigadier General Hla Htay Win, Yangon Regional Commander, claimed that “[p]hysic nut oil can be used to meet the fuel needs of the nation to some extent and it will be useful for the people in the long run and it is necessary to grow the plant widely throughout our country.”<sup>104</sup> In 2007, a senior Energy Ministry official was quoted in Singapore as saying to oil industry executives that

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100. ERI Interview #045, *supra* note 68.

101. ERI Interview #053, *supra* note 71.

102. ERI Interview #016, *supra* note 76.

103. Vicky Bowman, *The Political Situation in Myanmar*, in MYANMAR, THE STATE, COMMUNITY AND THE ENVIRONMENT 1, 10 (Monique Skidmore & Trevor Wilson eds., 2007).

104. Mary Callahan, *Of Kyay-Zu and Kyet-in*, Skidmore & Wilson, *supra* note 12 at 49.

the jatropha plantations would be ready by mid-year.<sup>105</sup> To date, Burma lacks the capacity to process physic nuts into biodiesel fuel, as no processing plants have been constructed.<sup>106</sup>

The planting of jatropha in Burma is not encouraged, it is forced. Villagers are forced to buy seeds from the township authority, clear land, and plant the seeds. According to ERI interviews, this program began in the pipeline region in 2006, followed by another forced planting in 2007. According to a villager from the pipeline village of Eindayaza, “[We] have to buy the seeds and plant this for the SPDC. The SPDC does not pay any wages. We had to plant it last year and this year. My husband had to clear the plantation place . . . so we could plant it. One time it took two weeks to finish planting.”<sup>107</sup>

Overall, the *Yadana* project is one of the world’s worst development projects in terms of impacts on local people and corporate complicity in human rights abuses. Abuses connected to the project, committed in the name of energy security, began in the 1990s and are continuing today. As described above, the project led to a rapid increase in militarization in an area that previously had no permanent military presence, and local people have continued to face a range of human rights abuses committed by military battalions tasked with securing the pipeline and surrounding areas. Residents continue to suffer forced labor related to the project, they are forced to provide security for the pipeline, and their livelihoods are, in their own words, worse off than before the project began, as they face regular extortion and the forced planting of jatropha. Despite these abuses, and the companies’ well-documented complicity, Chevron and Total continue to push the boundaries of corporate whitewash by claiming the *Yadana* project benefits local people.

#### IV. THE SHWE GAS PROJECT

The overland portion of the *Yadana* pipeline in Burma is approximately thirty-nine miles long and has led to thousands of human rights abuses beginning in 1991 and continuing today, seventeen years later. Tragically, a similar scenario is just beginning. Plans between MOGE and PetroChina are reportedly underway to construct a new 1,479 mile overland gas pipeline from Arakan State on the west coast of Burma to Kunming, Yunnan Province, China. If constructed, this pipeline will traverse at least twenty-four townships in Burma, through Arakan State, Magwe Division, Mandalay Division, and Shan State. It will be nearly forty times as long as the *Yadana* pipeline.

Since the *Yadana* pipeline was completed, it has been the largest source

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105. Ed Cropley, *Myanmar Biofuel Effort Raises Doubts*, INT’L HERALD TRIB., Mar. 12, 2008, available at <http://www.iht.com/articles/2008/03/12/business/biofuel.php>.

106. *Id.*

107. EarthRights Int’l Interview #021, Eindayaza Village (Nov. 18, 2007) [hereinafter ERI Interview #021].

of revenue for the Burmese military regime.<sup>108</sup> But the *Shwe* project, named for the Burmese word for gold, surpasses *Yadana* in its income-generating potential for the junta and would also be a considerable source of revenue for gas companies who obtain PSCs. At 5.7-10 tcf of gas, the deposits will earn the junta an estimated U.S. \$ 12-17 billion, according to Shwe Gas Movement (SGM), and they will earn Daewoo approximately U.S. \$ 90 million per year for the estimated twenty year life of the project.<sup>109</sup>

Given the history of natural gas production in Burma and the unchanged nature of the military regime, a project of this magnitude at this time will undoubtedly lead to serious human rights abuses. It is being actively opposed by the SGM, an international movement coordinated by activists from Arakan State, Burma.<sup>110</sup>

### A. Project History

The Shwe project is currently in the exploration phase, but it was conceived on August 4, 2000, when Daewoo entered into a production sharing contract with MOGE to explore and exploit natural gas in block A-1, an offshore block in Burma's Bay of Bengal.<sup>111</sup> On December 26, 2001, the company sold a ten percent stake to the state-owned Korea Gas Corporation (KOGAS),<sup>112</sup> and approximately one month later the company rounded out the consortium by announcing that it would sell a twenty percent stake to ONGC Videsh and a ten percent stake to the Gas Authority of India Ltd. (GAIL), both state-owned Indian companies.<sup>113</sup> Daewoo reportedly received financing for the *Shwe* project from the Korean government through the government's Special Account Law for energy and resource businesses, which was enacted in 1994 and has since been

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108. ERI's calculations, based on statements from the companies and documents released in the partial trial of *Doe v. Unocal*, suggest that at the end of 2007 the *Yadana* Project was taking in over U.S. \$ 3.5 million daily, or nearly U.S. \$ 1.3 billion annually. Nearly 75% of this income goes to the military regime—\$969 million annually, based on fuel prices at the end of 2007, and conceivably much more if these prices continue to rise. See EARTHRIGHTS INT'L, THE HUMAN COST OF ENERGY 21 (2008), available at [http://www.earthrights.org/files/Burma%20Project/Yadana/HCoE\\_pages.pdf](http://www.earthrights.org/files/Burma%20Project/Yadana/HCoE_pages.pdf).

109. See SHWE GAS MOVEMENT, SUPPLY AND COMMAND 2, 51 (2006), available at <http://www.shwe.org>.

110. See The Shwe Gas Movement, Campaign Goals, [http://www.shwe.org/the\\_shwe\\_gas\\_movement/campaign-goals](http://www.shwe.org/the_shwe_gas_movement/campaign-goals) (last visited Mar. 26, 2008).

111. *South Korea's Daewoo urged to pull out of Burma gas deal*, BBC WORLDWIDE MONITORING, Oct. 17, 2005. See also SUPPLY AND COMMAND, *supra* note 109, at 1.

112. Daewoo Int'l Corp., Daewoo International Sells Stake in Myanmar field to KOGAS (Dec. 27, 2001),

[http://www.daewoo.com/english/publicity/news.jsp?work=read&u\\_id=280&now\\_page=1&keyword=Daewoo%20International%20sells%20stake%20in%20Myanmar%20field%20to%20KOGAS&keytype=subject&nav=null](http://www.daewoo.com/english/publicity/news.jsp?work=read&u_id=280&now_page=1&keyword=Daewoo%20International%20sells%20stake%20in%20Myanmar%20field%20to%20KOGAS&keytype=subject&nav=null).

113. Daewoo Int'l Corp., Daewoo Sells Gas Project in Myanmar (Jan. 29, 2002), available at [http://www.daewoo.com/english/publicity/news.jsp?work=read&u\\_id=289&now\\_page=1&keyword=Daewoo%20Sells%20Gas%20Project%20in%20Myanmar&keytype=subject&nav=null](http://www.daewoo.com/english/publicity/news.jsp?work=read&u_id=289&now_page=1&keyword=Daewoo%20Sells%20Gas%20Project%20in%20Myanmar&keytype=subject&nav=null).

revised nine times. Daewoo reportedly receives approximately U.S. \$ 22.52 million from this fund.<sup>114</sup>

The offshore blocks had reportedly been explored by foreign and local companies since 1947, with no positive results.<sup>115</sup> On November 21, 2003 Daewoo began test drilling block A-1, and on December 26, 2003 discovered a “world-class commercial-scale gas deposit.”<sup>116</sup> The military junta then gave Daewoo the rights to explore neighboring block A-3, and the company finalized a U.S. \$90 million budget for drilling exploration.<sup>117</sup> Estimates of the total combined reserves in blocks A-1 and A-3 have varied over time; they could hold between 4.5 and 7.7 tcf of recoverable reserves<sup>118</sup> or as much 10tcf,<sup>119</sup> compared with *Yadana’s* 5.3 tcf.

Local people have not been involved in any decisions regarding the project nor have they been consulted regarding options for the gas project; they are largely unaware of it. Furthermore, the companies have not publicly discussed the current or potential impacts of their project on society, nor have they conducted environmental or human rights impact assessments.

## B. China Pipeline

The destination of the *Shwe* gas was for years subject to a fierce bidding war between India, South Korea, Thailand, and China. The likeliest end-user was thought to be India, via pipeline, and there were four potential pipeline routes under consideration to transport the gas to India.<sup>120</sup> South Korea’s proposal was less economical, involving construction of a liquefied natural gas (LNG) plant in Sittwe in order to ship LNG overseas to Korea. Thailand hoped to pipe the gas to Thailand, and China likewise hoped to pipe the gas to Kunming Province. In August 2007, reports emerged that the Burmese military confirmed that the natural gas from the *Shwe* gas project will be sold to China,<sup>121</sup> and in a November 27, 2007 interview with the *Korea Economic Daily*, Daewoo’s Chief Executive Kang Young Won claimed that the company is in talks to sell Burma’s gas to PetroChina,

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114. See *Foreign Oil Development Support Amount at US\$191 Million*, SEOUL ECON. NEWSPAPER, Oct. 6, 2005 (in Korean language).

115. Kyaw Thu, *Daewoo’s Massive Gas Strike Puts Rakhine Region in Spotlight*, MYAN. TIMES, Aug. 20, 2007, available at <http://www.mmtimes.com/feature/energy/017.htm>.

116. Embassy Newsletter, *World-Class Commercial Scale Gas Deposit Found at Offshore Rakhine Coast* (Feb. 2004), [http://www.mewashingtoncd/ISSUE\\_No\\_2\\_FEB2004\\_TEXT.htm](http://www.mewashingtoncd/ISSUE_No_2_FEB2004_TEXT.htm).

117. Daewoo Int’l Corp., *Daewoo International Myanmar Gas Mine* (Apr. 20, 2004), [http://www.daewoo.com/english/publicity/news.jsp?work=read&u\\_id=1272&now\\_page=1&keyword=90%20million&keytype=content&nav=null](http://www.daewoo.com/english/publicity/news.jsp?work=read&u_id=1272&now_page=1&keyword=90%20million&keytype=content&nav=null).

118. See Int’l Hum. Rts. Clinic, *Hum. Rts Prog.*, Harvard Law School, Request for Policy Recommendations and Investigation, *A Petition to the National Human Rights Commission of Korea*, Apr. 17, 2008, at 2; see also Ko Kyoung Tae, *Daewoo verifies Myanmar gas find*, KOREAN HERALD, Aug. 23, 2007.

119. SUPPLY AND COMMAND, *supra* note 109, at 11-12.

120. EARTHRIGHTS INT’L, *ANOTHER YADANA*, *supra* note 38.

121. *Myanmar Selects PetroChina for Gas Sale*, REUTERS, Aug. 14, 2007, available at <http://www.dawn.com/2007/08/15/ebr8.htm>.

which will involve construction of the aforementioned overland gas pipeline from Arakan State, Burma to Kunming in Yunnan Province, China.<sup>122</sup> The decision to sell the gas to China, however, is widely thought to have been made by the junta, not the consortium developing the project, despite China's offer of a less competitive price for the gas. Analysts agree that China was most likely awarded the gas because it can offer the junta something its competitors cannot: protection at the United Nations.<sup>123</sup>

A pipeline through Burma to Kunming, China will very likely result in serious human rights abuses. Abuses in Arakan State are already common, including forced labor for the construction of military barracks, roads, and other infrastructure, forced portering, forced security, land confiscation and forced displacement, extortion, and violence.<sup>124</sup> There are several ongoing development projects in Shan State that have had serious human rights impacts, including forced displacement in connection with the proposed Tasang Dam and the Shweli Dam, and numerous large and small scale mining projects with a considerable impact on local communities and the environment. The proposed China pipeline will most likely cross the border near the Chinese border town of Ruili, not far from the Shweli dam site. The Shweli dam is being developed by several Chinese companies and the Asia World Corporation, and it began with the establishment of a permanent battalion in 2000, followed by systematic human rights abuses, including forced labor and land confiscation.<sup>125</sup> The first hydropower turbine is schedule to produce electricity by the end of 2008, and the electricity is intended not for the local people but for three local large-scale mines—namely the Namtu Copper mine, the Monywa Copper Project<sup>126</sup> and the Thabeik Kyinn mine—each of which produce a considerable amount of revenue for the junta.

### C. Future Pipelines to India

The proposed *Shwe* pipeline to India is unlikely in light of reports that the regime is in talks with CNPC/PetroChina, but future pipelines to India are likely to simply come from other gas deposits. During the recent pro-

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122. Sungwoo Park & Manash Goswami, *Chinese Bidder Wins Myanmar Natural Gas Rights*, INT'L HERALD TRIB., Dec. 5, 2008, available at <http://www.iht.com/articles/2007/12/05/bloomberg/sxchigas.php>.

123. Sean Turnell, *Gas Attack*, WALL STREET J. ONLINE, Sept. 04, 2007, available at [http://www.burmalibrary.org/docs4/Gas\\_Attack-Sean\\_Turnell.pdf](http://www.burmalibrary.org/docs4/Gas_Attack-Sean_Turnell.pdf).

124. See SUPPLY AND COMMAND, *supra* note 109.

125. PALAUNG YOUTH NETWORK GROUP, UNDER THE BOOT 22 (2007), available at <http://www.salween.org/downloads/UndertheBootEnglish.pdf>.

126. The Monywa Copper Project was being developed by the Canadian company Ivanhoe Mines in joint partnership with the Myanmar Ministry of Mines. As a result of pressure from Río Tinto—Ivanhoe's partner in a large copper-gold mine in Mongolia—the company transferred its assets in Burma to an independent trust tasked with selling Ivanhoe's stake in the mine. Prospective buyers of the Monywa Copper Project include a Korean consortium led by Daewoo International. See Matthew Smith, *The Environmental Governance of Mining in Burma* 218, in MYANMAR: THE STATE, COMMUNITY AND THE ENVIRONMENT 218, 232 (Monique Skidmore & Trevor Wilson eds., 2007).

democracy protests in Burma, India's Petroleum Minister Murli Deora traveled to Burma with executives of the national oil company ONGC Videsh and signed a new PSC for natural gas exploration and production of three deep-water exploration blocks.<sup>127</sup> Likewise, India's Essar Oil, a privately owned firm, recently began test drilling an onshore natural gas block in Sittwe, which was originally agreed upon in PSCs signed in 2005.

A pipeline to India would very likely run along the Kaladan River, where approximately one million people live in townships along the river.<sup>128</sup> Barring underwater passage from the Bay of Bengal to India, any overland pipeline to India would traverse Arakan and Chin states, where human rights abuses are ongoing and militarization is increasing. After 1988, the number of battalions in the Western Command (including areas of Arakan and Chin States) increased dramatically, from three to forty-three Infantry Battalions.<sup>129</sup> The military presence has likewise increased the number of human rights abuses, including forced labor on military barracks, roads and other infrastructure, forced portering, land confiscation, extortion, and violence.

#### D. EIA/HRIA

According to Tun Myint, "[e]nvironmental governance is an inherently political process."<sup>130</sup> Many writers note that environmental permitting, meaning the decision to proceed with a project that will have an environmental footprint, is a political choice resulting from societal values and expectations.<sup>131</sup> Today's best practices in the extractive industries prescribe that this political choice include local and possibly dissenting voices through the implementation of fair and efficient Environmental Impact Assessments (EIAs) and Human Rights Impact Assessments (HRIAs), each of which are imbued with democratic values and require active public participation. EIAs are meant to maximize the potential for environmentally sound and sustainable development by integrating environmental issues into development planning,<sup>132</sup> and HRIAs are meant

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127. *Murli Deora Witnesses Signing of PSCs by OVL for 3 Myanmar Deepwater Blocks*, ONGC VIDESH NEWS, Sept. 24, 2007, available at

[http://www.ongcvidesh.com/display1.asp?fol\\_name=news&file\\_name=news139&get\\_pic=&p\\_title=NEWS](http://www.ongcvidesh.com/display1.asp?fol_name=news&file_name=news139&get_pic=&p_title=NEWS). See also *Myanmar Activists Protest Murli Deora's Visit*, REUTERS, Sept. 24, 2007, available at <http://in.reuters.com/article/topNews/idINIndia-29693820070924> [hereinafter *Myanmar Activists Protest*]; Brian McCartan, *Myanmar Deal Right Neighborly of India*, ASIA TIMES, Jan. 11, 2008.

128. SUPPLY AND COMMAND, *supra* note 90, at 15.

129. *Id.* at 22.

130. Myint, Tun, *Democracy in Global Environmental Governance: Issues, Interests, and Actors in the Mekong and the Rhine*, 10 IND. J. GLOBAL LEGAL STUD. 287, 292.

131. See S.A. JOYCE & MAGNUS MACFARLANE, *SOCIAL IMPACT ASSESSMENT IN THE MINING INDUSTRY: CURRENT SITUATION AND FUTURE DIRECTIONS 4* (2001), available at [http://www.iied.org/mmsd/mmsd\\_pdfs/social\\_impact\\_assessment.pdf](http://www.iied.org/mmsd/mmsd_pdfs/social_impact_assessment.pdf).

132. See DAVID HUNTER ET AL., *INTERNATIONAL ENVIRONMENTAL LAW AND POLICY* (1998); John Knox, *The Myth and Reality of Transboundary Environmental Impact Assessment*, 96 AM. J. INT'L L. 291 (2002); Jon M. Van Dyke, *Sea Shipment of Japanese Plutonium Under International*

to assess the immediate and wider impact a project could have on the human rights situation in the country.

Daewoo International has been in Burma for the *Shwe* project since 2000 and has yet to publicly discuss human rights or other social and environmental concerns in any serious way, let alone conduct objective third party impact assessments. On the contrary, in reference to the *Shwe* gas project, Daewoo stated on July 11, 2006 that human rights issues are not a relevant conversation until the project is at the production stage. "Our position is that it's not the right time to discuss a human rights abuse issue because we are still at a stage of exploring the gas field and have yet to begin development."<sup>133</sup> The statement denies a fundamental principle of impact assessments, namely that they occur "before significant activity begins,"<sup>134</sup> not during or after a project.

GAIL has likewise expressed similar disregard for the potential human rights impacts of its presence in Burma. When the *Shwe* pipeline was still intended for India, GAIL told *Fortune Magazine*: "as far as we're concerned, we will implement the pipeline inside India."<sup>135</sup> Regarding human rights abuses potentially connected to the project, GAIL claimed, "What they do there is their business. We hope they proceed by international laws, ethics, and norms."<sup>136</sup>

On November 16, 2006, ERI and the Korean Federation for Environmental Movement issued letters to Daewoo and KOGAS calling on the companies to conduct an EIA in compliance with international law, as well as an HRIA.<sup>137</sup> The letters outline the international law and Korean law requirements for conducting EIAs, both of which are being neglected in the *Shwe* project, as well as the major concerns regarding the *Shwe* gas project. The companies have not acknowledged or responded to the letters.

### E. Guns for Gas

In May 2002, Lee Tae-yong and representatives from six other South Korean corporations signed a U.S. \$ 133.8 million contract with the Burmese military regime to secretly provide materials to help the junta manufacture six types of artillery shells at a state-owned weapons factory

*Law*, 24 OCEAN DEV. & INTL L. 399 (1993); Nicholas Robinson, *International Trends in Environmental Impact Assessment*, 19 B. C. ENVTL. AFF. L. REV. 591 (1992).

133. N. Wong-Anan, *Korean, Indian firms urged to withdraw from Myanmar*, REUTERS, July 11, 2006.

134. Special Representative of the Secretary-General, *Report on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises*, delivered to the General Assembly (Feb. 9, 2007) U.N. Doc. A/HRC/4/035.

135. Daniel Pepper, *Myanmar: In Harm's Way*, FORTUNE, Nov. 20, 2006, at 36-37.

136. *Id.*

137. Korean Federation for Environmental Movement et. al, *The Joint Statement of Korea for the Third International Action Day Against Korea's Involvement in Shwe Gas Development Project in Burma* (Nov. 15, 2006), available at [http://www.earthrights.org/files/Documents/daewoo\\_letter\\_0611\\_english.pdf](http://www.earthrights.org/files/Documents/daewoo_letter_0611_english.pdf).

in Pyay, Burma.<sup>138</sup> Between October 2002 and October 2006, nearly 480 pieces of equipment and parts were exported from Korea for this factory. Korean law prohibits the unauthorized export of strategic materials to Burma. In December 2006, fourteen high level executives from a total of seven firms, including former Daewoo President and Chief Executive Lee Tae-yong, were indicted for violating trade restrictions and faced trial in Seoul. On November 15, 2007, all fourteen executives were found guilty and were given sentences that met with international criticism for their leniency.<sup>139</sup> While unrelated to natural gas production, the situation reveals Daewoo International's questionable regard for corporate responsibility generally and in Burma.

## V. ENERGY SECURITY AND BURMA

Energy security—sustainable access to relatively affordable energy for the foreseeable future—is, in a certain sense, a contradiction in terms. Because it involves the extraction of non-renewable natural resources, namely oil and gas, it is inherently unsustainable beyond a certain time horizon. It is also directly connected to human rights abuses, making it inherently insecure, at least where human safety is concerned.

The precise meaning of energy security for policy purposes varies according to context. For some governments, like the United States, energy security means relying less on foreign energy sources. For others, like India, China, and Thailand, it means relying more on foreign sources, which for those countries is a break from previous policies of self-sufficiency.<sup>140</sup> For resource-rich states that rely on oil and gas export revenues, like military-ruled Burma, energy security can involve maintaining a steady demand,<sup>141</sup> using resources as diplomatic leverage,<sup>142</sup> or negotiating with foreign companies for a favorable share of the

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138. 14 South Koreans convicted of illegally exporting weapons technology, equipment to Myanmar, INT'L HERALD TRIB., Nov. 15, 2007, available at <http://www.iht.com/articles/ap/2007/11/15/asia/AS-GEN-SKorea-Myanmar-Arms-Export.php>.

139. *Id.* See also Shwe Gas Movement, Activists Outraged At Lenient Sentencing Of Daewoo International Executives for Arms Export to Burma, [http://www.earthrights.org/burmafeature/activists\\_outraged\\_at\\_lenient\\_sentencing\\_of\\_daewoo\\_executives\\_for\\_arms\\_export\\_to\\_burma.html](http://www.earthrights.org/burmafeature/activists_outraged_at_lenient_sentencing_of_daewoo_executives_for_arms_export_to_burma.html) (last visited June 6, 2008).

140. See Daniel Yergin, *Ensuring Energy Security*, FOREIGN AFF., Mar.-Apr. 2006, at 69; See also Sebastian Mallaby, *What 'Energy Security' Really Means*, WASH. POST, July 3, 2006, available at <http://www.washingtonpost.com/wp-dyn/content/article/2006/07/02/AR2006070200675.html>.

141. Yergin, *supra* note 140, at 69.

142. The Burmese junta, for example, is criticized for giving preferential treatment to Chinese multinationals that are bidding for its natural resource in exchange for protection at the U.N. level. On January 12, 2007 China vetoed a United Nations Security Council resolution that would have resulted in UNSC-supported action in Burma. On 15 January 2007, three days after the veto, China was awarded lucrative exploration contracts by MOGE. CNPC to Explore Oil, Gas In Three Myanmar Offshore Areas, XINHUA NEWS AGENCY, Jan. 15, 2007.

revenue.<sup>143</sup> Despite these differences in interpretation, the common denominator is universally inadequate attention of states and corporations to the human rights impacts of resource extraction in their energy planning.

This Part briefly explores the regional and international energy security dynamic converging on Burma as it pertains to natural gas exploration and production and human rights. A complete treatment of the history and roles of the most relevant actors in this particular resource equation – governments and corporations from India, China, South Korea, Thailand, the United States, and France – is beyond this paper, but we do touch on a few key issues regarding the energy security dynamic that is unfolding in Burma.

### A. A Concept is Born

Energy security as we know it today is a widely applied concept but it is actually a term born in Burma under the British flag. The concept is widely attributed to Winston Churchill in 1912, just prior to World War I, when he decided to transition from coal to oil to give British combat ships an advantage over the slower, coal-powered ships of adversaries.<sup>144</sup> This required securing the delivery of oil, which was not part of Britain's natural heritage. But the concept took shape at least a few years prior to this. In the early twentieth century, Burma was still under British colonial rule, and its oil fields were the British Empire's only major source of crude oil, a source they sought to strategically monopolize.<sup>145</sup> These assets were largely controlled by the Burmah Oil Company Limited, a private British company which in 1886 took over the assets of the Rangoon Oil Company, modernized Burma's oil production, and later went on to become the multinational corporation known today as Castrol.<sup>146</sup>

In 1905, years before Churchill's historic military decision, the British Admiralty and the Burmah Oil Company signed in Burma what was arguably the first contract motivated by energy security interests, as we understand the phrase today. Up until that point, Burmah Oil had been

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143. PAUL COLLIER, *THE BOTTOM BILLION: WHY THE POOREST COUNTRIES ARE FAILING AND WHAT CAN BE DONE ABOUT IT* (2007); Radon, *supra* note 27; Joseph E. Stiglitz, *What is the Role of the State?*, in *ESCAPING THE RESOURCE CURSE* 23, 24 (Macartan Humphreys et al. eds., 2007).

144. GEOFFREY JONES, *THE STATE AND THE EMERGENCE OF THE BRITISH OIL INDUSTRY* 9-31 (1981); MICHAEL KLARE, *RESOURCE WARS: THE NEW LANDSCAPE OF GLOBAL CONFLICT* 30 (2001); DANIEL YERGIN, *THE PRIZE: THE EPIC QUEST FOR OIL, MONEY & POWER* 155 (1993).

145. MARILYN V. LONGMUIR, *OIL IN BURMA: THE EXTRACTION OF "EARTH OIL" TO 1914*, at 200, 203-209, 211, 215, 216, 267 (2001) [hereinafter *EARTH OIL*].

146. Castrol is the world's preeminent supplier of automobile and motorcycle lubricants, including transmission and brake fluids, as well as engine oil. Society of Petroleum Engineers Int'l, *The Coloured History of the Burmah Oil Company*, 19 MYAN. TIMES, Aug. 20-26, 2007, available at <http://www.mmtimes.com/feature/energy/01.htm>. See also LONGMUIR, *supra* note 145.

selling kerosene exclusively to India,<sup>147</sup> also a British colony. The 1905 contract stipulated that India reject any further oil concessions to foreign companies or even to British companies with foreign shareholders, a move which “protected the fields from unwarranted intrusion, but also reduced [the] pressure of competition on Burmah Oil.”<sup>148</sup> In the stroke of a colonial pen, Burma was positioned squarely at the origins of what would become one of today’s most pregnant and political catchphrases: energy security.

## B. Burma’s Growing Natural Gas Sector

Today, over 100 years later, the people of Burma enjoy neither energy nor security. Despite this fact, Burma has the fastest growing oil and gas industry in Southeast Asia, with at least twenty-seven companies from thirteen countries invested,<sup>149</sup> and several other new investments being actively pursued. Overall foreign investment in fiscal year 2006-07 was U.S. \$ 752.3 million, according to official statistics, and foreign investment in oil and gas was U.S. \$ 471.5 million, up from just U.S. \$ 35 million the previous year.<sup>150</sup> This noteworthy jump in foreign investment was coupled with the largest yet revenues from natural gas sales: approximately U.S. \$ 2.16 billion in exports to Thailand in 2006, which was up by 50 percent from the previous year.<sup>151</sup> In the 2007 fiscal year overall exports rose to U.S. \$ 5.9 billion, with natural gas exports amounting to U.S. \$ 2.7 billion. Imports were at U.S. \$ 2.8 billion, making a trade surplus of U.S. \$ 3.1 billion for the same period.<sup>152</sup> This unprecedented activity in Burma occurred simultaneously with one of the country’s worst years for human rights in almost sixty years of military rule.

According to Rick Herz, “Corporations . . . may prefer the stability of

147. Many of today’s multinational oil companies were started in the early nineteenth century to provide kerosene to urban markets in North America and Europe. This includes today’s Exxon-Mobil and Royal Dutch/Shell. KLARE, *supra* note 144, at 30.

148. EARTH OIL, *supra* note 145, at 267. On the eve of World War One, Churchill was quoted as saying, “[s]afety and certainty in oil lie in variety and variety alone.” Yergin, *supra* note 140, at 69. This was perhaps the earliest public articulation of the energy security strategy of diversifying sources of natural resources, which is currently being employed most notably by China and India.

149. Press Release, Human Rights Watch, Burma: Targeted Sanctions Needed on Petroleum Industry (Nov. 19, 2007), available at <http://www.hrw.org/english/docs/2007/11/16/burma17356.htm>.

150. *Myanmar Gas Industry Attracts Record Investments - Official Data*, AGENCE FRANCE-PRESS, Nov 29, 2007. See also Central Statistical Org. of Myan., Ministry of Nat’l Planning & Econ Dev., <http://www.csostat.gov.mm/s06MA0206.asp> (last visited June 6, 2008). According to U Zaw Win Maung, “The Central Statistical Organization is the only authoritative organization in Myanmar that has the mandate to collect, process, organize and supply data for the use of planners, policy-makers and other users in the country as well as international bodies.” U Zaw Win Maung, ASEAN Statistical Classification Workshop, presentation in Hanoi, Vietnam (June 10-14, 2002).

151. Ye Lwin & Kyaw Thu, *Government Dominates Foreign Trade as Gas Sales Pump Up Exports*, MYAN. TIMES, June 4-10, 2007; See also Central Statistical Org. of Myanmar, *supra* note 125.

152. *Myanmar Gas Exports to Thailand Earn 2.7 Billion Dollars in 2007*, EARTH TIMES, Apr. 8, 2008.

their existing partnership with autocratic regimes over the uncertainty of democratization."<sup>153</sup> Herz argues that companies may have a reluctant or empty commitment to promote democracy and human rights when their interests are better served by autocracy. In other words, when the fundamental interest of multinational corporations is to maximize profit and ensure the stability of their investment, the reality is that those interests may be better served by a perverse *status quo*; that is, by the violation of human rights rather than the protection and promotion of human rights.

In Burma, repressive social engineering has been the chosen pastime of a string of military juntas since 1962. Aside from the threat of lethal force, there are laws against organizing in groups larger than five.<sup>154</sup> This climate is favorable to foreign investment by oil companies in that it effectively curtails against any democratic dissent that may derail, postpone, or otherwise complicate an oil and gas project, and it eliminates the costs associated with the equitable treatment of local people. These characteristics are objectively economical according to the interests of a multinational corporation, and they undoubtedly factor into a company's political risk assessment. They are also wholly inconsistent with the protection of human rights.

While the stability generated by this climate of repression may help to explain why oil companies may prefer military-ruled Burma to any democratic alternative in the country, it does not account for the rapid growth in the oil and gas sector in recent years. Instead, we attribute the growing foreign investment in Burma's oil and gas to at least five sources, each described in greater detail below. They are: Burma's plentiful resources; increasing demand for resources in Asia, specifically by Burma's immediate neighbors India, China, and Thailand; increased commercial interest in natural gas; the evolution of the oil industry beyond traditional western oil dominance; and a large gas discovery in Burma's Bay of Bengal by South Korea's Daewoo International in late 2003. The purpose in laying out these characteristics of the energy security dynamic in Burma is to demonstrate the general lack of attention to human rights.

As in the colonial days of the Burmah Oil Company, there are still thousands of traditional oil workers in Burma and multinationals are currently moving in to exploit this resource, but now nearly all of the foreign investment in Burma is in natural gas, Burma's core asset. The country has three main offshore oil and gas fields, and nineteen onshore, with a proved natural gas reserve of 19 tcf.<sup>155</sup> These plentiful resources are

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153. Herz, *supra* note 37.

154. Article 141 prohibits unlawful assembly. Section #141, Chapter VIII, Myanmar Penal Code, available at <http://www.blc-burma.org/html/Myanmar%20Penal%20Code/mpc.html>. Regarding the invocation of Article 141 by the SPDC during the 2007 protests, see also HUM. RTS. WATCH, BULLETS IN THE ALMS BOWL: AN ANALYSIS OF THE BRUTAL SPDC SUPPRESSION OF THE SEPTEMBER 2007 SAFFRON REVOLUTION 56 (2008); HUM. RTS. WATCH, CRACKDOWN: REPRESSION OF THE 2007 POPULAR PROTESTS IN BURMA 68, 67 n.97 (2007).

155. BRITISH PETROLEUM, BP STATISTICAL REVIEW OF WORLD ENERGY 2007, available at [http://www.bp.com/liveassets/bp\\_internet/globalbp/globalbp\\_uk\\_english/reports\\_and\\_p](http://www.bp.com/liveassets/bp_internet/globalbp/globalbp_uk_english/reports_and_p)

a major source of the growing foreign direct investment in Burma.

Second, production and consumption in Asia are on an unprecedented rise. The emerging Asian economies are expanding and will require more natural resources. For the period from 2004-2030, the highest projected demand for energy is from non-OECD countries,<sup>156</sup> and during this period, production increases in non-OECD countries will account for more than ninety percent of the world's total growth in natural gas production.<sup>157</sup> Of non-OECD countries, the highest projected demand comes from non-OECD Asia, which includes China and India and currently comprises fifty-three percent of the world's population. Likewise, sixty percent of the increase in energy use among non-OECD countries will come from non-OECD Asia.<sup>158</sup> According to the economist Jeffrey Sachs, "Asia's fate is truly the world's fate."<sup>159</sup>

With the exception of South Korea and Japan, the world's top two importers of liquefied natural gas (LNG), most of Asia will handle natural gas through pipelines, the most economical form of transport. The *Oil & Gas Journal* reported that 10,000 miles of pipelines were planned to be laid on our planet in 2007, 75% for natural gas. Of all the world's regions, Asia led in new natural gas pipelines in 2007, constructing nearly 3,000 miles.<sup>160</sup> China currently has approximately 25,000 miles of oil and gas pipelines, and is poised to increase that by 6,200 miles before 2010 to support economic development, according to state-run media sources.<sup>161</sup>

Beyond the increasing demand and production, a third factor in Burma's fast-growing natural gas sector is that natural gas is increasingly regarded as a commercially and environmentally viable alternative to oil. As more governments and corporations plan to reduce carbon dioxide emissions, they will increasingly turn to natural gas, and the world's industrial sector already accounts for nearly half of the world's natural gas

ublications/statistical\_energy\_review\_2007/STAGING/local\_assets/downloads/pdf/natural\_gas\_section\_2007.pdf. See also Siddharth Srivastava, *India Cuts to the Chase with Myanmar*, ASIATIMES, Oct. 5, 2007, available at [http://www.atimes.com/South\\_asia/IJ05Df02.html](http://www.atimes.com/South_asia/IJ05Df02.html).

156. The OECD is the Organisation for Economic Co-operation and Development, an international organization with thirty member governments "committed to democracy and the market economy." The mission of the OECD is to "assist sound economic expansion in other countries and to contribute to growth in world trade on a multilateral, non-discriminatory basis." OECD, History, [http://www.oecd.org/pages/0,3417,en\\_36734052\\_36761863\\_1\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/pages/0,3417,en_36734052_36761863_1_1_1_1_1,00.html) (last visited Mar. 26, 2008).

157. ENERGY INFO. ADMIN., OFFICE OF INTEGRATED ANALYSIS AND FORECASTING, U.S. Dept. of Energy, INTERNATIONAL ENERGY OUTLOOK 39 (2007), available at <http://www.eia.doe.gov/oiarf/ieo/index.html>.

158. *Id.* at 6.

159. JEFFREY SACHS, THE END OF POVERTY: ECONOMIC POSSIBILITIES FOR OUR TIME 142 (2006).

160. C.E. Smith, *2007 Construction Lags 2006, But More Projects Lie Ahead*, OIL & GAS J., Feb. 19, 2007, at 48.

161. Xinhua News Agency, *China to add 25,000 km of oil and gas pipelines by 2010*, PEOPLE'S DAILY ONLINE, Feb. 23, 2007, available at [http://English.peopledaily.com.cn/200702/23/eng20070223\\_351994.html](http://English.peopledaily.com.cn/200702/23/eng20070223_351994.html).

use.<sup>162</sup> Moreover, the unprecedented rising price of oil will lead consumers in the industrial and power sectors to substitute natural gas, ushering in more commercial interest in natural gas.<sup>163</sup>

Globally, the corporate make-up of the oil and gas industry is changing in non-trivial ways, and this is the fourth reason we identify for the rapid growth in Burma's oil and gas sector. For much of the twentieth century, the oil industry was controlled by what the Italian politician Enrico Mattei famously referred to as the "seven sisters," the seven western multinationals that dominated the industry throughout the twentieth century.<sup>164</sup> After various mergers, only four sisters remain: ExxonMobil, Royal Dutch Shell, Chevron, and BP. These companies are now grouped alongside Total S.A. and ConocoPhillips and referred to collectively as the "supermajors." While the supermajors still enjoy far-reaching economic power and influence, they are in this regard comparatively less super than they used to be. In recent years, a multitude of national oil companies (NOCs) have appeared on the international scene, cooperating abroad to develop resources beyond their borders; they are not necessarily prioritizing the protection of human rights. These NOCs operate commercially like "big oil" but with political backing from their home governments that private corporations may lack. Approximately seventy-seven percent of the world's oil reserves are now held by national oil companies with no private equity.<sup>165</sup> In its own assessment, the *Financial Times* has recently named "The New Seven Sisters."<sup>166</sup> These "sisters" are non-OECD rivals of traditional "Big Oil"; and they are increasingly powerful national oil companies that are overwhelmingly state-owned: Saudi Aramco (Saudi Arabia), JSC Gazprom (Russia), CNPC (China), NIOC (Iran), PDVSA (Venezuela), Petrobras (Brazil), and Petronas (Malaysia). Of the twenty-seven foreign companies involved in oil and gas exploration and production in Burma, at least ten are wholly or partially owned by national governments, including companies from China, India, Korea, Thailand, Japan, and Malaysia.

Finally, a more obvious reason for Burma's growing oil and gas industry was simply Daewoo International's discovery of the *Shwe* deposits in late 2003. It was in part Daewoo's prospect for commercial success in Burma that evidently provided other oil companies the necessary confidence they needed to invest in Burma. According to Uu Zaw Minn, general manager of Oil Service Company Ltd., a Burmese company, after Daewoo's discovery "other oil and gas companies began to think that there

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162. According to the International Energy Organization, the industrial sector accounted for 44 percent of world natural gas consumption in 2004 and is projected to account for 43 percent in 2030. ENERGY INFO. ADMIN., *supra* note 157.

163. Jit Yang Lim, *Decoupling of Oil and Gas Prices?*, ENERGY TRIB., Dec. 2007, at 25-27, available at <http://www.energytribune.com/articles.cfm?aid=730>.

164. Carola Hoyos, *The New Seven Sisters*, FIN. TIMES, Mar. 11, 2007, available at <http://www.ft.com/cms/s/2/471ae1b8-d001-11db-94cb-000b5df10621.html>.

165. Tina Rosenberg, *The Perils of Petrocracy*, N.Y. TIMES, Nov. 4, 2007, available at <http://www.nytimes.com/2007/11/04/magazine/04oil-t.html>.

166. Hoyos, *supra* note 164.

might be more in the region, so they started coming to Myanmar [Burma] to explore."<sup>167</sup>

While these reasons explain part of the increased corporate activity in Burma's oil and gas sector, they do not take into account the policies of the governments involved, especially the Burmese regime and the host governments of the NOCs. Predicated on energy security, these policies have also contributed to the increased interest in Burma's oil and gas, at the expense of human rights.

### C. The Junta, The Peaceful Rise, Neighbor Engagement, and the Look East Policy

The most significant energy policy in terms of its potential to affect poor human rights outcomes in Burma is the policy of the junta itself, which is quickly expanding exploration and production of oil and gas while concurrently extending its repressive rule. The regime's energy policy cannot really be understood in terms of energy security in the sense of ensuring that Burma itself has a sufficient supply of energy resources; instead, the junta's actions are almost entirely focused on ensuring that the junta has a sufficient supply of cash to keep it in power despite being widely unpopular.<sup>168</sup>

Human rights abuses are a necessary part of this strategy. Residents of Arakan State in western Burma, for example, the location of Burma's vast natural gas deposits, are largely unaware of corporate and state plans to extract the resources in their State,<sup>169</sup> and they also enjoy little to no access to electricity. Over ninety percent of the people in Arakan and Chin States use candles for light and firewood as their primary source of cooking fuel,<sup>170</sup> and Arakan State, Tenasserim Division, and Chin State have the lowest energy consumption of all of Burma's states/divisions, in terms of megawatts per person.<sup>171</sup>

All of this occurs in the context of extreme vanity spending by the military, as the regime made unconscionable expenditures on constructing an entirely new and modern capital city from the ground up in Naypidaw,

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167. Kaw Thu, *Daewoo's Massive Gas Strike Puts Rakhine Region in Spotlight*, 19 MYAN. TIMES, Aug. 20-26, 2007, available at <http://www.mmtimes.com/feature/energy/017.htm>.

168. The *Yadana* natural gas project began to provide revenue for the junta at a time when it was upon financial collapse. EARTHRIGHTS INT'L, *THE HUMAN COST OF ENERGY 21* (2008), available at [http://www.earthrights.org/files/Burma%20Project/Yadana/HCoE\\_pages.pdf](http://www.earthrights.org/files/Burma%20Project/Yadana/HCoE_pages.pdf). Prior to the *Yadana* project, one reporter noted that the junta "was short of cash," and its foreign exchange reserves "shrank to less than the foreign-currency deposits they are supposed to cover." Bertil Lintner, *Paper Tiger*, FAR E. ECON. REV., Aug. 7, 1997.

169. SUPPLY AND COMMAND, *supra* note 109, at 41.

170. The lack of electricity in Arakan State is of course easily observable to the naked eye. According one local, "There is no electricity in our village—only the richest man has a generator that he used for his TV. We use paraffin light—candles are too expensive. We use firewood for cooking. Our family used to make charcoal, but the government said that the forest is owned by the government and if we make charcoal too many trees will be cut, so now we don't use charcoal. Rich people still use it though." SUPPLY AND COMMAND, *supra* note 109, at 18, 41.

171. SUPPLY AND COMMAND, *supra* note 109, at 19.

which in Burmese means “seat of kings.” It is also occurring in the context of the national biofuel program mentioned above, which is predicated on the forced planting of jatropha.

#### D. China’s Peaceful Rise and Human Rights in Burma

The second most influential energy policy in terms of human rights in Burma is arguably China’s *heping jueqi*, or “Peaceful Rise.” The term was first used by Zheng Bijian, a senior advisor to the Chinese leadership, and it quickly caught on with officials and scholars, although some in China have opted instead for the term “Peaceful Development,” as “rise” was thought by some to sound menacing.<sup>172</sup> The central idea of the peaceful rise is that China’s development will not pose a threat to any other country, but instead will be mutually beneficial and sustainable. According to Prime Minister Wen Jiabao, this development “will not come at the cost of any other country, will not stand in the way of any other country, nor pose a threat to any other country.”<sup>173</sup>

China’s strict policy of non-interference in the internal affairs of other countries is related to its energy security policy, which is widely criticized as incoherent. China’s “conditions-free” lending, military and political support, and investments in oil and gas in rogue states such as Burma is often interpreted as direct involvement in the internal affairs of these countries, to the detriment of human rights. China’s political support of the regime in Burma, for example, was indicated by its recent veto of a United Nations Security Council resolution that would have resulted in UNSC-supported action in Burma prior to the country’s brutal crackdown on monks and pro-democracy activists.<sup>174</sup> On January 15, 2007, three days after the veto, China was awarded lucrative exploration contracts by the state-owned Myanmar Oil and Gas Enterprise (MOGE) in Burma.<sup>175</sup>

In June 2005, China convened a high level interagency group called the Energy Leading Group, led by Premier Wen Jiabao and tasked with, among other things, monitoring the status of energy security and determining policy.<sup>176</sup> The group’s agenda includes “[e]nergy strategy and major policies, the development and conservation of energy resources, energy security and emergency responses as well as energy cooperation with foreign parties.”<sup>177</sup> Since 2005, the government has also been busy

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172. JOSHUA KURLANTZICK, CHARM OFFENSIVE: HOW CHINA’S SOFT POWER IS TRANSFORMING THE WORLD 37-38 (2007).

173. *Id.* at 38.

174. Alternative ASEAN Network on Burma, *Economy*, BURMA BULLETIN, Jan. 2007, at 1-2, available at <http://www.altsean.org>.

175. Alternative ASEAN Network on Burma, *Key story*, BURMA BULLETIN, Jan. 2007, at 7, available at <http://www.altsean.org>; Xinhua News Agency, *Chinese Company to explore oil, gas in three Myanmar offshore areas*, PEOPLE’S DAILY ONLINE, Jan. 16, 2007, available at [http://english.peopledaily.com.cn/200701/16/eng20070116\\_341436.html](http://english.peopledaily.com.cn/200701/16/eng20070116_341436.html).

176. *China Sets Up National Energy Leading Group*, PEOPLE’S DAILY ONLINE, June 4, 2005, available at [http://english.peopledaily.com.cn/200506/04/eng20050604\\_188432.html](http://english.peopledaily.com.cn/200506/04/eng20050604_188432.html).

177. *Id.*

drafting laws pertaining to energy security, including principles of energy saving, cleaner and more efficient use of energy, mostly relevant to domestic energy use and security.<sup>178</sup>

In a government white paper entitled "China's Energy Conditions and Policies," China recognized that "[e]nergy security is a global issue," and recommended three areas for international community focus: strengthening dialogue between energy consuming states and energy producing states; popularizing energy conservation technology and improve energy efficiency; and maintaining stability in energy producing states.<sup>179</sup> Regarding the latter, the white paper maintains that "safeguarding world peace and regional stability is the prerequisite for global energy security."<sup>180</sup> The paper fails to mention the role of corporate accountability in safeguarding peace and stability, but instead goes on to issue a pregnant warning: "energy issues should not be politicized."<sup>181</sup>

China is currently one of the Burmese junta's closest allies, providing financial support in the form of conditions-free loans,<sup>182</sup> political support,<sup>183</sup> and military armaments,<sup>184</sup> while also investing heavily in Burma's natural resources.<sup>185</sup> EarthRights International researchers recently found more than twenty-six Chinese multinational corporations (MNCs) involved in more than sixty-two hydropower, oil, gas, and mining projects in Burma.<sup>186</sup> Chinese multinationals are currently involved in at least seventeen onshore and offshore oil and gas projects in Burma, with investment from at least seven companies, including the three major Chinese oil and gas companies Sinopec, China National Petroleum Corporation (CNPC), and China National Offshore Oil Corporation (CNOOC). In 2006 and again in 2007, the wholly state-owned CNPC and its eighty-eight percent-owned subsidiary PetroChina signed MOUs with MOGE for five offshore blocks off the coast of Arakan State in western Burma.<sup>187</sup>

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178. *New Law to Strengthen Energy Security*, CHINA DAILY, Oct. 22, 2005, available at [http://english.gov.cn/2005-10/22/content\\_81506.htm](http://english.gov.cn/2005-10/22/content_81506.htm).

179. INFO. OFFICE, STATE COUNCIL, PEOPLE'S REP. OF CHINA, *Strengthening International Cooperation in the Field of Energy*, in CHINA'S ENERGY CONDITIONS AND POLICIES (2007), available at [http://www.chinadaily.com.cn/energy/2007-12/26/content\\_6375773\\_9.htm](http://www.chinadaily.com.cn/energy/2007-12/26/content_6375773_9.htm).

180. *Id.*

181. *Id.*

182. *China to Provide Myanmar With US\$200 Loan*, ASSOCIATED PRESS, June 11, 2006, available at [http://www.chinadaily.com.cn/china/2006-06/11/content\\_613786.htm](http://www.chinadaily.com.cn/china/2006-06/11/content_613786.htm).

183. United Nations News Service, *China and Russia Veto US/UK-backed Security Council Draft Resolution on Myanmar*, Jan. 12, 2007, available at <http://www.un.org/apps/news/story.asp?NewsID=21228&Cr=myanmar&Cr1>.

184. AMNESTY INT'L, PEOPLE'S REPUBLIC OF CHINA: SUSTAINING CONFLICT AND HUMAN RIGHTS ABUSES (2006), available at <http://web.amnesty.org/library/index/engasa170302006>.

185. See EARTHRIGHTS INT'L, CHINA IN BURMA 1 (2007), available at <http://www.earthrights.org/files/Reports/BACKGROUNDER%20China%20in%20Burma.pdf>.

186. *Id.* at 1. These figures, restricted to investment of Chinese multinationals, exclude the timber industry and the many small-scale Chinese mining companies currently mining for gold, jade, and precious gems in Burma.

187. *Id.* at 3.

In August 2007, reports emerged that the Burmese military confirmed the sale to PetroChina of natural gas from the *Shwe* gas project, which will also run parallel to a proposed oil pipeline.<sup>188</sup> In November 2007, PetroChina's parent company CNPC signed an agreement with provincial authorities in Yunnan to construct an oil refining base.<sup>189</sup> This deal is part of a larger development plan that involves the construction of an oil pipeline to run through Burma to Kunming, parallel to the aforementioned gas pipeline. This proposed oil pipeline is intended to provide an alternative to shipping through the narrow Strait of Malacca, which is currently the main link between the Indian and Pacific Oceans. For China, the pipeline means a cheaper and more secure way to deliver oil from the Middle East, South America, and Africa, and it means delivering oil to the landlocked Yunnan Province. Like the gas pipeline, it also means constructing a pipeline that will traverse at least twenty-four townships in military-ruled Burma, crossing the entire width of the country from the far west to the northeast border with China.

#### E. Thailand's "Neighbor Engagement" and Human Rights in Burma

China's "peaceful rise" will unarguably leave the largest footprint on Burma in the future, but Thailand has had a comparable effect over the last twenty years, before and after former Prime Minister Thaksin Shinawatra developed in 2001 the policy of "forward engagement." According to Dr. Surakiart Sathirathai, former Foreign Minister under Thaksin's government:

Thailand's forward engagement foreign policy is graduating Thailand from a recipient country into a donor country status. This forward engagement foreign policy advocates the principle of self-help and partnership. It aims at turning international diversity and differences into a force for strength and harmony. It believes in creating regional partnership for global multilateralism.<sup>190</sup>

Contrary to assumptions that India and China are Burma's largest economic partners, Thailand is actually Burma's largest trading partner, ranking as the country's leading destination of exports in 2005 (at 45% of all exports), followed by India (11.9%) and China (6.8%); and ranking second in terms of origins of imports (21.5%) just behind China (28.4%).<sup>191</sup>

188. *Myanmar Selects PetroChina for Gas Sale*, REUTERS, Aug. 14, 2007.

189. *CNPC to Build Refineries in Shandong and Yunnan*, CHINA DAILY, Dec. 25, 2007.

190. Dr. Surakiart Sathirathai, Thai Foreign Minister, Speech at Asia Society, Thailand: The Path Forward (Sept. 30, 2004), available at <http://www.asiasociety.org/speeches/sathirathai04ny.html> (last visited Apr. 9, 2008).

191. ECONOMIST INTELLIGENCE UNIT, MYANMAR (BURMA) COUNTRY REPORT 5, (2007), available at [http://portal.eiu.com/index.asp?layout=issues&publication\\_type\\_id=50000205&eiu\\_publication\\_id=1190000919&eiu\\_geograph\\_id=1080000308&rf=0](http://portal.eiu.com/index.asp?layout=issues&publication_type_id=50000205&eiu_publication_id=1190000919&eiu_geograph_id=1080000308&rf=0).

Thailand derives most of its electricity from natural gas. In terms of oil and gas in Burma, Thailand's policy has been consistent with China's: explore, produce, and purchase. In 2006, the junta collected U.S. \$ 2.16 billion in sales of natural gas to Thailand, which represents a fifty percent increase from the previous year, due to the rising cost of gas and oil but not an increase in exports.<sup>192</sup> This includes gas transported through the *Yadana* pipeline. In 2007, PTTEP—a wholly owned subsidiary of the state-controlled company PTT<sup>193</sup>—put in bids for new natural gas projects in Burma, including the *Shwe* project in the Bay of Bengal<sup>194</sup> and the country is continuing to explore for commercially viable natural gas deposits in Burma's Gulf of Martaban.<sup>195</sup>

Thai-Burma relations appeared to be in peril after the September 19, 2006 military coup deposing then-Prime Minister Thaksin Shinawatra. Under the Thai junta, the acting Energy Minister Piyasvasti Amranand announced that Thailand would no longer rely on Burma for gas supplies or electricity from dam schemes in the next decade.<sup>196</sup> Amranand stated that beyond 2011, gas would be bought elsewhere.<sup>197</sup> Not long after this, however, PTTEP announced its plans to invest U.S. \$ 1 billion to develop new gas deposits in the Gulf of Martaban.<sup>198</sup> More recently, Thailand's new Foreign Minister Noppadon Pattama under the recently elected government claimed that Thailand would prioritize national economic interests over human rights in Burma out of economic necessity.<sup>199</sup> "In the past, we had constructive engagement and flexible engagement, but they never took us anywhere. Now we will adopt another approach, neighbor engagement."<sup>200</sup> This puts to rest any speculation that Thailand will adopt a policy of disengagement with the Burmese junta based on respect for the human rights.

#### F. India's "Look East Policy" and Human Rights in Burma

India's "Look East Policy" is an economic strategy developed under the administration of Narasimha Rao in the 1990s that prioritizes expanding and strengthening India's economic and political relationship with its neighbors in the Association of South East Asian Nations

192. Lwin & Thu, *supra* note 151.

193. PTT is two-thirds owned by Thailand's Ministry of Finance, with 52.32 percent owned by the ministry, and 15.54 percent owned by the ministry's investment fund.

194. William Boot, *Burma to Lose Out in Thai Energy Industry Shake-Up*, IRRAWADDY, Nov. 10, 2006, available at <http://www.shwe.org/docs/burma-to-lose-out-in-thai-energy-industry-shake-up>.

195. Matthew Smith, *First as Tragedy, Second as Farce*, BANGKOK POST, May 22, 2007.

196. Boot, *supra* note 194.

197. *Id.*

198. *Thailand's PTTEP to Invest 1 Billion Dollars in Myanmar Gas Project*, AFX, Nov. 13, 2007, available at <http://www.forbes.com/markets/feeds/afx/2007/11/13/afx4331512.html>.

199. Achara Ashayagachat, *New Approach to Burma, Says Noppadon*, BANGKOK POST, Feb. 26, 2008, available at <http://www.shwemedia.org/news/News.html>.

200. *Id.*

(ASEAN), including Burma.<sup>201</sup> According to Professor Sanjib Baruah, “[a]ll subsequent governments have supported the policy and have built on it.”<sup>202</sup> The most noteworthy feature of the Look East Policy in regards to Burma is that it marked a break from India’s previous support for Burma’s pro-democracy movement, instead opting to engage the junta on several fronts, including an increase in investments in oil and gas, financing hydropower projects, and increasing trade relations and the sale of military weapons. Analysts note that India’s shift in policy towards Burma is in part to gain strategic geopolitical influence where China clearly had the upper hand. The Indian Ministry of External Affairs (MEA) in 2008 referred to India’s relationship with the junta as “close and friendly.”<sup>203</sup>

India’s economic and political relationship with the generals is also closely linked to joint-counter insurgency efforts along the Indo-Burma border, where several armed groups from India’s Northeast States take refuge in their ongoing struggle for rights and political recognition against India’s central government. India’s Chief of Army Staff, General Deepak Kapoor has claimed that India has good relations with the junta and that it “should maintain these” to ensure the success of counter-insurgency efforts in the Northeast.<sup>204</sup>

Despite this, India’s strategy probably has much less to do with counter-insurgency operations than with strengthening economic ties and extracting natural resources. In September 2007, while hundreds of thousands of protestors marched the streets of cities across Burma after the junta raised the price of fuels—demanding a decrease in prices, the release of political prisoners, and a transition to democracy—India’s Petroleum Minister Murli Deora traveled to Burma with executives of ONGC Videsh and signed a new PSC for natural gas exploration and production of 3 deep-water exploration blocks in Burma’s Bay of Bengal.<sup>205</sup> More recently, India’s Essar Oil, a privately owned firm, began test drilling an onshore natural gas block in Sittwe, which was originally agreed upon in PSCs signed in 2005.<sup>206</sup>

The government of India is also in the process of connecting Northeast India with sea routes via the Kaladan River through Burma, which flows to the Bay of Bengal through Mizoram State in India and Chin and Arakan

201. ASEAN member countries are Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Burma, Philippines, Singapore, Thailand, and Viet Nam.

202. SANJIB BARUAH, *DURABLE DISORDER: UNDERSTANDING THE POLITICS OF NORTHEAST INDIA* 222 (2005).

203. Ministry of External Affairs, Briefing By Official Spokesperson On Visit of Foreign Minister of Myanmar (Jan. 2, 2008), available at <http://mea.gov.in/cgi-bin/db2www/meaxpsite/coverpage.d2w/coverpg?sec=pb&filename=pressbriefing/2008/01/02pb02.htm>.

204. Praful Bidwai, *Failing the Foreign Policy Test*, FRONTLINE, Oct. 6-19, 2007, available at <http://www.thehindu.com/thehindu/fline/fl2420/stories/20071019509111400.htm>.

205. See Murli Deora Witnesses Signing, *supra* note 127; see also *Myanmar Activists Protest Murli Deora’s Visit*, *supra* note 127.

206. Bi Mingxin, *Indian Company to Explore Gas in Myanmar Inland Block*, CHINA VIEW, Feb. 20, 2008, available at [http://news.xinhuanet.com/english/2008-02/20/content\\_7637820.htm](http://news.xinhuanet.com/english/2008-02/20/content_7637820.htm).

States in Burma. Dubbed the Kaladan Project, the India government has agreed to invest U.S. \$ 120 million to develop the Arakan capital of Sittwe as an economic center, enabling seafaring cargo ships direct access to the otherwise landlocked Northeast States. It will also include the development of a road that will connect Kalewa in Chin State to India's national highway system in Mizoram.<sup>207</sup> Conceived by the Indian Foreign Ministry in 2003, the potential human rights impacts of the Kaladan Project or the new oil and gas exploration have not been discussed publicly, despite both projects posing serious threats to the human rights of local residents.

## VI. CONCLUSION

Oil and gas production in Burma is plagued by serious human rights abuses. The governments and corporations involved in the extraction of Burma's resources continue to pay a dangerously inadequate amount of attention to human rights in Burma. Human rights abuses connected to the *Yadana* gas project began around 1991, and these abuses are continuing today with the complicity of Chevron, Total, and PTTEP. Information collected by ERI between 2003-2008 indicates that not only are human rights abuses continuing in connection to the project, but that the companies are aware of the abuses, and their socio-economic program, which they promote as a beacon of corporate responsibility, is in fact grossly inadequate relative to the companies' claims.

The Daewoo-led *Shwe* gas project, like *Yadana* before it, stands to have the same human rights impacts as *Yadana* but on a larger scale. Daewoo International, KOGAS, ONGC Videsh, and GAIL are demonstrating a dangerous disregard for the potential human rights impact of the project.

Likewise, the energy security strategies of the governments of China, Thailand, and India very clearly prioritize economic development, while ignoring human rights abroad. Each country has outlined broad strategies of what they refer to as energy security, resulting in a narrow type of engagement with the Burmese regime that fails to promote, protect, and defend human rights, despite the serious human rights impacts of natural resource extraction in Burma. This basic and avoidable failure at the highest levels of government sets the stage for corporate-level complicity in human rights abuses on the ground. These concerns apply likewise to alternative energy security strategies, as serious and massive human rights impacts also accompany alternative sources of energy, such as the construction of hydropower dams<sup>208</sup> and the cultivation of biofuels.

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207. *Indo-Burma Agreement Expected on Kaladan Project*, NARINJARA NEWS, Jan. 11, 2008, available at <http://www.indoburmanews.net/archives-1/2008/january-2008/indo-burma-agreement-expected-on-kaladan-project>.

208. For human rights impacts of hydropower dams in Burma, see The Salween Watch Coalition Homepage, <http://www.salweenwatch.org> (last visited Apr. 22, 2008).

In light of these concerns, all governments should enact and strengthen legal and regulatory mechanisms that allow for corporate liability and accountability for complicity in abuses abroad, and enable access to justice for survivors of abuses abroad. Our globalized, energy-hungry world merits nothing less. Civil society organizations and citizens should advocate for legislation in their home countries to create such mechanisms, in the name of human rights and energy security.