



**Submission to the Special Representative on the Issue of  
Human Rights and Transnational Corporations and  
Other Business Enterprises**

**Earth Rights Abuses by Corporations in Burma  
Collective Summary and Recommendations**

**A Collective Summary by EarthRights International  
November 10, 2005**

**[www.earthrights.org](http://www.earthrights.org)**



EarthRights International (ERI) combines the power of law and the power of people in defense of human rights and the environment. We focus our work the intersection of human rights and the environment, which we define as earth rights. We specialize in fact-finding, legal actions against perpetrators of earth rights abuses, training for grassroots and community leaders and advocacy campaigns. Through these strategies, ERI seeks to end earth rights abuses, and to promote and protect earth rights.

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## **I. Introduction**

This submission to the Special Representative on the issue of human rights and transnational corporations and other business enterprises focuses on corporate abuses of human rights and environmental rights in Burma, an area of expertise in our organization, EarthRights International (ERI).

The role and record of corporations in Burma raises two important issues regarding corporations and human rights. The first issue is complicity in serious human rights abuses. When accused of violating human rights, most corporations will note that governmental authorities in fact commit the abuses in question, but that the corporation is merely doing business there. As detailed below, Burma's largest multinational corporate projects, the Yadana and Yetagun pipelines, involved exceedingly close relationships between the corporations and the government. Tragically, pervasive human rights abuses were committed, at least in part with the knowledge and assistance of and for the benefit of the corporations and on their behalf. International law that has been well-established since Nuremburg has prohibited corporations from any complicity in human rights. At a minimum, corporate influence should reduce violations rather than exacerbate them.

The second is the issue of engagement. Since the days of apartheid, "constructive engagement" has been the phrase used to justify business partnerships between private firms and oppressive regimes. The theory is that engagement with western corporations will reduce isolation and lead to democratization. However, there are certain cases – of which South Africa in the 1980's and present-day Burma are the most prominent – where the national democracy movement has specifically asked foreign corporations NOT to deal with the regime in power as such dealings will further empower the oppressive regimes and hinder any democratization process. "Destructive Engagement," is therefore the enrichment of abusive regimes and the spread of their military and police powers within the country due to partnerships with the business sector. Such engagement in certain cases does nothing to reduce isolation or facilitate democratization.

We believe that the corporate record in Burma over the last 15 years demonstrates that any delineation of human rights norms applicable to corporations should explicitly address at the very least the issues of complicity in human rights and environmental violations and destructive engagement.

### **The Yadana and Yetagun Pipelines**

Since the early 1990s, a terrible drama has been unfolding in Burma. A few Western and Asian oil corporations, along with the Thai Electricity Authority—bent on exploiting natural gas, entered partnerships with the brutal Burmese military regime to build the Yadana and Yetagun pipelines. Determined to overcome any obstacle, the regime created a highly militarized pipeline corridor in what had previously been a relatively peaceful area. The results, predictable to anyone familiar with the recent history of Burma, were violent suppression of dissent, environmental destruction, forced labor and portering, forced relocations, torture, rape, and summary executions.

The conditions in the pipeline region have become a focus of the worldwide movement for divestment from Burma, a landmark lawsuit in the United States<sup>1</sup>, and one of the world's most notorious examples of corporate complicity in human rights abuses. Partly as a result of the suffering of some 35,000 villagers in the pipeline region, Burma has become a focal point in the global debate on business' role in human rights and environmental abuses.

The revenue from the oil corporations developing the pipelines keeps the regime afloat. Since 1988, the oil and gas sector has provided by far the largest amount of foreign direct investment for the military regime. In 1995-96, the oil and gas industry invested some 200 million dollars, more than the next five largest sectors of the economy combined. These figures only represent the initial investment stage. Now that the projects are up and running, they are expected to provide the military regime with hundreds of millions of dollars each year. The Yadana project alone is conservatively estimated to give US\$150 million annually to the military regime—for almost three decades. This low estimate represents a sum equivalent to two-thirds of the government of Burma's total revenues in fiscal year 1995/96. Year 2000 estimates for the Yadana project say the regime will receive as much as US\$400 million annually.

We believe that the business relationship between these corporations and the military violates basic standards of respect for human rights because it leads directly to human rights and environmental abuses that these oil and gas, as well as other extractive industry, corporations aid and abet.

### **Evidence of Human Rights Abuses Documented in ERI Reports**

From 1992 until the present, thousands of villagers in Burma have been forced to work under brutal conditions in support of these pipelines and related infrastructure, lost their homes due to forced relocation, or were raped, tortured or killed by soldiers hired by the corporations as security for the pipelines. Since 1995, ERI cofounder Ka Hsaw Wa and a team of field staff have been traveling clandestinely on both sides of the border to document the conditions in the pipeline corridor. The evidence gathered from eyewitness testimony has been published in a number of reports prepared by ERI.

In July 1996, ERI and the Southeast Asian Information Network (SAIN) released [Total Denial](#), a report that exposed the human rights and environmental problems associated with the Yadana pipeline.<sup>2</sup> Summary executions, torture, forced labor and forced relocations, were among other gross human rights abuses documented by ERI as a result

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<sup>1</sup> John Doe I, individually and as Administrator of the Estate of his deceased child, Baby Doe I, Jane Doe I, on behalf of herself, as Administratrix of the Estate of her deceased child Baby Doe I, and John Doe II, John Doe III, John Doe V, Jane Doe II, Jane Doe III, John Doe VII. John Doe VIII. John Doe IX, John Doe XI, on behalf of themselves, v. Unocal Corp., a California corporation, Union Oil Company of California, a California Corporation, Total S.A., a foreign corporation, John Imle, an individual. Roger C. Beach, an individual, and Moes 1-500, Case No. CV 96-6959-RAP (BQRx) United States District Court for the Central District of California.

<sup>2</sup> Total Denial, EarthRights International, 1996, <http://www.earthrights.org/docs/TotalDenial96.doc>.

of this natural gas development project. In 2001, ERI published [More of the Same](#), which confirmed that the Burmese military's use of forced labor in the pipeline region and in general had not ceased.<sup>3</sup> A [Supplement](#) to More of the Same specifically documented that pipeline security forces continued to conscript villagers.<sup>4</sup> In 2000 and 2003, ERI published [Total Denial Continues](#), further documenting that the human rights abuses related to the Yadana pipeline originally documented in Total Denial were continuing unabated, among other additional abuses.<sup>5</sup>

Total Denial Continues also documents human rights abuses associated with the construction in the same corridor of the second pipeline, the Yetagun, financed and operated by the British firm Premier Oil. Essentially the same abuses which had occurred in relation to the Yadana pipeline, forced labor, forced relocations, restricted movements, and forced portering, were occurring in relation to the Yetagun pipeline.

Two other reports: [We Are Not Free to Work for Ourselves](#) and [Entrenched](#), further document cases of forced labor by the military in Burma.<sup>6</sup> ERI conducted extensive interviews during the spring of 2002 and the winter of 2002-2003. The villagers and village heads interviewed for these reports describe how forced labor is not practiced in a random or haphazard way, but is rather coordinated at an institutional level by the Burmese military. The widespread and institutionalized use of forced labor documented in these reports clearly shows that at the very least, the corporations operating in Burma and with the services of the Burmese military had reason to know of the abuses committed by them. The [Supplemental Report](#) to Entrenched includes additional interviews conducted in mid-May 2003 that update and document that the forced labor reported in Entrenched, was continuing as of the time of the interviews.<sup>7</sup> The Supplemental Report also updates the situation in the Yadana and Yetagun pipeline region and documents that the forced labor and other human rights abuses documented in Total Denial and Total Denial Continues were still on-going.

All of ERI's reports are based on first-hand testimonies from several hundred victims and witnesses interviewed from the pipeline corridor. ERI field personnel collected and translated hundreds of hours of interviews between 1995 and 2003 to develop these reports. Most of the testimonies come from Karen, Tavoyan, and Mon villagers as well as village heads. Burmese army deserters corroborate their stories in further interviews. Total Denial Continues is also based on company documents never before made public.

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<sup>3</sup> More of the Same, Forced Labor Continues in Burma (October 2000-September 2001), A Report by EarthRights International, October 11, 2001, <http://www.earthrights.org/ilo/moreofthesame.pdf>.

<sup>4</sup> Supplemental Report: Forced Labor along the Yadana and Yetagun Pipelines, EarthRights International, October 2001, <http://www.earthrights.org/burma/supp.pdf>.

<sup>5</sup> Total Denial Continues, a Report by EarthRights International, Second Edition, December 2003, <http://www.earthrights.org/pubs/TotalDenialContinues.pdf>.

<sup>6</sup> We Are Not Free to Work for Ourselves: Forced Labor and Other Human Rights Abuses in Burma (January 2002-May 2002), EarthRights International, June 2002, <http://www.earthrights.org/pubs/FL2002.pdf> and Entrenched, An Investigative Report on the Systematic Use of Forced Labor by the Burmese Army in a Rural Area, EarthRights International, June 2003, <http://www.earthrights.org/pubs/Entrenched.pdf>.

<sup>7</sup> EarthRights International, Burma Project, Report on Forced Labor in Burma, June 4, 2003, <http://www.earthrights.org/pubs/supplementalreport.pdf>.

Despite the dangers of visiting the region, enough evidence of crimes against humanity has emerged to inform anyone who wants to know.

However, some of the most compelling testimonials are not included in these reports as they are the stories of the plaintiffs in the U.S. federal court case, [John Doe I v. Unocal](#), and are part of the sealed record in that case.<sup>8</sup> However, the federal complaint details the allegations of abuses made by the plaintiffs.<sup>9</sup> While many stories have been told in *Total Denial*, *More of the Same*, *We Are Not Free*, and *Entrenched*, as well as the accompanying Supplemental Reports, and in confidential federal testimony, still others remain untold, silenced by the terror and brutality that characterizes the Yadana and Yetagun pipeline region. The fear, the violence, the forced labor, the theft and their combined result—utter poverty—have forced people off their land and into exile. Those who do not or cannot flee live in what is, in effect, an occupied country—but the occupying force is Burma’s own army, supported by Western oil corporations. Many people’s lives have become simply unbearable.

### **Evidence of Environmental Abuses Documented in ERI Reports**

Reports by ERI also analyze the environmental impact of the Yadana and Yetagun pipelines and foreign investment in general in Burma<sup>10</sup>. In the pipeline corridor, the severe ecological harms that will be measured for generations to come began with a complete lack of transparency and unwillingness to allow public participation by all consortium partners. This is perhaps best exemplified by the corporations’ refusal to release their own environmental impact assessments to the public.

*Total Denial Continues* exposes the detrimental impacts of the pipelines on the pristine and sensitive ecosystems of the project area, including the rich forests and endangered wildlife species that inhabit them. [Destructive Engagement](#) provides insights into the conditions where foreign investment compels local communities to participate in the unsustainable exploitation of their own local resources, even though they know they are destroying the very ecosystems they depend upon to maintain their way of life.<sup>11</sup> The other alternative—to stand aside and let outsiders do it and then be left with nothing—is equally unpalatable.

A report by ERI and the Karen Environmental and Social Action Network, [Capitalizing on Conflict](#), focuses on two conflict zones where logging and mining are both widespread and the damage from these activities is severe.<sup>12</sup> *Capitalizing on Conflict* analyzes how State-owned enterprises and, in particular, private sector actors have capitalized on cease-fire arrangements by moving into former war zones and negotiating logging and mining

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<sup>8</sup> Attorneys from ERI were co-counsel in this lawsuit settled in January 2005.

<sup>9</sup> See the Doe v. Unocal Federal Complaint at <http://earthrights.org/unocal/fedcomplaint.shtml>.

<sup>10</sup> See *Total Denial Continues*, *Destructive Engagement*, and *Capitalizing on Conflict*.

<sup>11</sup> *Destructive Engagement: A Decade of Foreign Investment in Burma*, An Issue Paper of EarthRights International’s Burma Project, October 1999, <http://www.earthrights.org/pubs/destructive.doc>.

<sup>12</sup> *Capitalizing on Conflict, How Logging and Mining Contribute to Environmental Destruction in Burma*, A report by EarthRights International with Karen Environmental and Social Action Network, October 2003, <http://www.earthrights.org/pubs/capitalizing.pdf>.



concessions with local military commanders. Capitalizing on Conflict also explores the various ways the extraction and sale of tropical hardwoods, rubies, and gold help finance local war economies in Burma.

One of the regions investigated in Capitalizing on Conflict contains the largest, relatively intact bloc of tropical and sub-tropical moist broadleaf forests remaining in the Indochinese eco-region. The World Wildlife Fund has classified this region as a “Global 200 Eco-region” due to its extremely high levels of biodiversity. Although parts of this area have been heavily logged for decades, it was not until the mid-1990s that private sector actors were able to expand dramatically their operations. Logging and the conversion of cleared areas to agriculture pose the most significant threats to this area, as does soil erosion from large-scale clear-cutting.<sup>13</sup>

The second Capitalizing on Conflict case study investigates two mining regions where until the late 1980s mining enterprises were relatively small-scale and caused limited damage to the surrounding environment. Since 1989, a major shift towards large-scale mining operations transformed the industry. The rapid rise of non-local actors, capital, and equipment accelerated the ecological devastation of that region. In the process, local businessmen and miners have been displaced by increased competition, inflation, and corruption. Some now work as poorly paid laborers for outside business interests, while others have left in search of opportunities elsewhere.

## **II. Corporate Complicity**

Most of ERI’s reports make the connection between corporate investments and human rights and environment abuses. Total Denial Continues in particular examines the questionable deals that led to the Yetagun and Yadana pipeline consortiums, providing the projects’ background and identifying the players. The report shows just how closely the Western corporations and Burmese army worked together and provides devastating evidence linking the corporations—especially Total and Unocal—directly to human rights abuses. It reveals that the Burmese military—rather than the corporations—chose the pipeline corridor, a decision based on cost and security, not social or environmental concerns.

Total Denial Continues goes on to describe the complete militarization and occupation of the pipeline region beginning in 1991, the brutality associated with the efforts to secure the area for the investment schemes, and the forced labor and forced relocations both north and south of the pipeline route to create the pipeline corridor. The human rights abuses documented in these reports are a direct result of Western corporations’ investments. The military acted as security agents for both the Yadana and Yetagun

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<sup>13</sup> Due to ongoing conflicts, a significant but unknown number of internally displaced persons have to engage in environmentally destructive agricultural practices, such as “slash and burn” cultivation methods, instead of their traditionally more sustainable rotational techniques in order to grow food to feed themselves and their families. Many of these same people have to harvest timber (e.g. hardwoods and charcoal) and/or non-timber forest products (e.g. bamboo and rattan) at unsustainable rates in order to earn enough money to purchase food and other necessities. These factors have contributed to large-scale clear cutting in many areas and a range of other environmental problems that stem from this practice.

consortiums' executives and foreign personnel. The report takes a close look at the abuses perpetrated by two battalions, which actually protect both the Yadana and Yetagun projects, and were created solely for the security of these investments. Total Denial documents situations where villagers were forced to carry or porter ammunition and supplies for local troops securing the pipeline corridor. The Yadana project supported military units despite knowledge of their modus operandi. The report describes the unbearable conditions that local villagers were forced to endure or flee as a result of the pipeline projects.

Destructive Engagement also illustrates the close relationship between the soldiers in the pipeline region and the corporations. Despite all their public protestations to the contrary, the corporations in the region knew, from their own consultants, that human rights abuses were occurring in association with their projects, yet they continued their involvement. In particular, the Supplement to Entrenched documents evidence of Total's knowledge or complicity in these forced labor practices. The Yadana consortium entrusted the military with recruiting local villagers to work on the project and supervising them. This delegation of responsibility resulted in widespread forced portering and forced work on pipeline infrastructure, including helipads all along the routes of both pipelines. The reports provide "smoking-gun" evidence that Total paid people who were forced to work against their will—linking forced labor directly to the Yadana consortium. These human rights abuses have occurred and recurred with the knowledge of the corporate investors, Total and Unocal. Total Denial Continues shows that the Yetagun pipeline is as much a problem as the Yadana project, and Premier has surely benefited as much from these crimes as have Total and Unocal.

The Doe v. Unocal case provides more compelling evidence of corporate complicity in human rights abuses. Unocal knew that the Burmese military had a record of committing human rights abuses. According to a U.S. federal court, the plaintiffs in the Doe v. Unocal case presented evidence that "before joining the Project, Unocal knew that the military had a record of committing human rights abuses; that the Project hired the military to provide security for the Project, a military that forced villagers to work and entire villages to relocate for the benefit of the Project; that the military, while forcing villagers to work and relocate, committed numerous acts of violence; and that Unocal knew or should have known that the military did commit, was committing, and would continue to commit these tortuous acts."<sup>14</sup>

According to a U.S. federal court, the evidence of egregious human rights abuses committed on the Yadana pipeline, included evidence of murder, torture, rape, forced labor and forced relocation.<sup>15</sup> Indeed, Unocal's President, John Imle, admitted in a deposition that he knew that porters were taken in connection with their project and moreover, that they were forced to carry for the military units in the area.

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<sup>14</sup> See Order Granting Defendants Motion for Summary Judgment, Doe v. Unocal, Case No. CV 96-6959 RSWL (BQRx), Case No. CV 96-6112 RSWL (BQRx), United States District Court for the Central District of California, 2000 U.S. Dist. Lexis 13327 (August 31, 2000), pages 39-40, at <http://www.earthrights.org/unocal/lew.rtf>.

<sup>15</sup> Id.

Surrounding the question of porters for the military and their payment was the issue of whether they were conscripted or volunteer workers. The consensus—although very hard to verify this—but the consensus was that it was mixed. *Some porters were conscripted.*<sup>16</sup>

The US District Court stated that the evidence presented in the case suggested “that Unocal knew that forced labor was being utilized and that the Joint Venturers benefited from the practice.”<sup>17</sup>

A U.S. Appellate Court subsequently found it “undisputed that the Myanmar military provided security and other services for the Project and that Unocal knew about this.”<sup>18</sup> The Court also found evidence that the Project hired the Myanmar military to provide these services and that Unocal knew about this, and that the Project *directed* the Myanmar military in these activities at least to a degree and that Unocal was involved in this.<sup>19</sup> In short, the Court found evidence that Unocal knowingly provided assistance to the Burmese military that had a substantial effect on the perpetration of human rights abuses—the standard for aiding and abetting liability under international law.

Unocal has settled this case and has agreed to compensate Burmese villagers who sued the firm for complicity in forced labor, rape and murder.<sup>20</sup>

### **III. Corporate Whitewash and Destructive Engagement**

Under the ruling military regime that took power in 1988, a pervasive lack of basic freedoms and good governance has paralyzed the development and economic well-being of the people of Burma. The results have been devastating in sector after sector. Education has stagnated and declined. Health has deteriorated. Inflation and poverty have increased. Environmental protection is nonexistent. Basic freedoms are absent and human rights violations abound, many in the name of the regime’s so-called “development” policies. Destructive Engagement describes how foreign investment, unfortunately, has only exacerbated the situation.

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<sup>16</sup> Deposition of John Imle, August 14-15, 1997, *John Doe, et al. v. Unocal, et al.* (emphasis added).

<sup>17</sup> U.S. District Court decision at 53.

<sup>18</sup> See Appeal from the United States District Court for the Central District of California, *Doe v. Unocal*, United State Court of Appeals for the Ninth Circuit (September 18, 2002), [http://www.ca9.uscourts.gov/ca9/newopinions.nsf/3D534390583B882F88256C380004FE18/\\$file/0056603.pdf?openelement](http://www.ca9.uscourts.gov/ca9/newopinions.nsf/3D534390583B882F88256C380004FE18/$file/0056603.pdf?openelement), page 14195.

<sup>19</sup> *Id.* at 14195-98.

<sup>20</sup> The Doe v. Unocal Legal Team has jointly issued the following statement:

The fifteen individuals who brought these cases suffered horribly at the hands of the Burmese military, with the complicity of Unocal. They risked their lives for the last eight years seeking justice through these suits. These villagers, ethnic minorities from a remote region, living under a brutal dictatorship, took on a major US multinational oil company in court - and won. We are thrilled for our clients and gratified that the settlement will provide funds benefiting other victims of the Yadana pipeline.

More generally, this is a historic victory for human rights and for the corporate accountability movement. Corporations can no longer fool themselves into thinking they can get away with human rights violations. This case will reverberate in corporate boardrooms around the world and will have a deterrent effect on the worst forms of corporate behavior.

Since 1988, when the military opened the country up to investment after a generation of isolation, the country has seen no improvement on a whole range of indicators—such as education, health, and poverty—that investment is supposed to help improve. Instead, investment has brought a doubling in the size of the country’s army and major arms purchases that have in turn furthered the repression. The corporations claim their engagement is positive for the country, but the reality is the last decade of foreign investment in Burma has been a classic case of destructive engagement.<sup>21</sup>

One of the most important reasons to tell these stories is that despite the clear pleas of the victims, a few Western corporations remain unmoved. Through callousness or greed, they justify their presence with claims that they are helping the Burmese people. Investors like Unocal, Total, and Premier claim their investments can better the lives of people by creating more wealth. These corporations put the Universal Declaration of Human Rights on their websites; they speak of multi-party stakeholder processes; and they attempt to join the international humanitarian community. Pro-investment lobbies argue that their efforts are hindered by restrictions on investment and that with more and more investment the social and economic indicators will improve. However, corporations operate within the political context of military rule, with its lack of transparency and restrictions on the regular checks on business activity that guard against exploitation. Meanwhile, their business partners in the Burmese military torture villagers to force them to build helipads and pipeline infrastructure, Total Denial Continues exposes the corporate whitewashing in the pipeline region for what it is—an effort to deflect international attention from the military and its explicit role in the projects.

Joint-ventures, concessions, and other types of arrangements described in ERI reports help to undermine people’s livelihoods in various ways.

First, the shift from small-scale to large-scale extractive industries economically displaces many individuals and local businessmen primarily through increased levels of competition, inflation, and corruption. As a result, many local actors find themselves “priced” out of the market, leaving them a difficult choice: either leave or become a poorly paid laborer for these outside interests. Total Denial Continues chronicles the

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<sup>21</sup> See also Halliburton’s Destructive Engagement, How Dick Cheney and US-Engage Subvert Democracy at Home and Abroad, A Report by EarthRights International, October 2000, <http://www.earthrights.org/halliburton/report.pdf>, for more evidence of corporate involvement in the two controversial gas pipelines in Burma, the Yadana and the Yetagun. Halliburton does business in many other controversial places: Dick Cheney lobbied to remove congressional sanctions against aid to Azerbaijan, sanctions imposed because of concerns about ethnic cleansing; One of Halliburton’s contracts in Indonesia was cancelled by the government during a purging of corruptly awarded contracts and Indonesia Corruption Watch named Kellogg Brown & Root (Halliburton’s engineering division) among 59 corporations using collusive, corruptive and nepotistic practices with former president Suharto’s family; Dick Cheney has lobbied against the Iran – Libya Sanctions Act, yet even with the Act in place, Halliburton has continued to operate in Iran; Since the war, Halliburton-related have corporations helped to reconstruct Iraq’s oil industry; After sanctions on Libya were imposed, Halliburton continued doing business there throughout Cheney’s tenure; Halliburton has been accused of complicity in the shooting of a protestor by Nigeria’s Mobile Police Unit, playing a similar role to Shell and Chevron in the mobilization of this ‘kill and go’ unit to protect company property.

economic inflation in the region resulting from the pipeline projects, and exposes the lack of jobs, and the broken promises of the corporations. Ironically, the corporations have created a situation in which the local people—who were once self-sufficient—now need the social programs that the corporations boast to the outside world. The stream of refugees and migrants out of the country—fleeing the human and economic devastation brought about by the military regime—is perhaps the clearest indicator that investment and business engagement with Burma are not working.

Second, there is considerable evidence that the expansion of these industries has not noticeably reduced the frequency and type of human rights abuses regularly associated with the military regime and its proxies. Foreign investment in Burma not only hurts people throughout the country by helping to perpetuate the military regime, but has also led to direct human rights violations for which foreign investors should be held responsible. For ERI, the connection between development and forced labor is of particular concern. In the past fifteen years, large infrastructure projects have led to massive labor violations in Burma. Forced labor remains widespread in the areas discussed in ERI's studies and is in many instances, directly related to resource extraction. Local sources report that they are regularly required to porter, construct roads and buildings, deliver messages, serve on village militias, and so on. Land seizures, especially in mining areas, are widespread. The forced payment of fees is also commonplace. Villagers regularly have to contribute money in order to avoid having to provide forced labor, carry out everyday activities, and/or harvest timber and non-timber products that were previously freely available. Incidents of violent assault, rape, torture and extra-legal forms of military conscription connected to these abuses have also been reported.

The largest industrial projects in Burma, the Yadana and Yetagun pipelines, are clear examples of how foreign investment leads to increased militarization, which in turn leads to human rights and environmental abuses without benefits to the local population. The pipeline projects benefit the Burmese military rulers and their corporate partners almost exclusively. The only apparent beneficiaries of investment are the generals and their closest allies. The money going into Burma has been concentrated in capital-intensive industries, especially extractive industries such as natural gas, logging and gems, resulting in little for the general population but providing essential hard currency for the military. The military has in turn used the money mostly for arms, and virtually nothing has trickled down to the majority of people.

Third, the expansion of intensive forms of resource extraction is, in most cases, unsustainable. Logging and mining activities occur in a context where there is no regulatory oversight. As a result, actors involved in both of these sectors can operate with little fear of facing fines or other penalties for the damage caused by clear-cutting, indiscriminate road-building, hydraulic mining, “deep trenching,” explosives, and other highly destructive techniques. Without laws that would permit a Burmese citizen whose health and/or livelihood have been harmed by such activities to file lawsuits to stop them and/or seek compensation for their injuries, there is little incentive for anyone to change their behavior. More centrally, given Burma's poverty rates, especially in the country's

border regions, most people have little choice. Simply, people in these parts of Burma are caught between powerful military and business interests. With few viable alternatives, many communities feel compelled to participate in the unsustainable exploitation of their own local natural resources even though they know they are destroying the very ecosystems they need for their own survival. The other alternative—to stand aside and let outsiders exhaust the resources while leaving the villagers with nothing in return—is not an attractive one. In addition, this extractive industry investment has resulted in a selling off of Burma’s natural resources at alarming rates. [Capitalizing on Conflict](#) presents information illustrating how trade in timber, gems, and gold finances violent conflict, including widespread and gross human rights abuses. Although trade in these “conflict goods” accounts for a small percentage of the total global trade, it severely compromises human security and undermines socio-economic development, not only in Burma, but also throughout the region.

Given these conditions, it is not surprising that many local people have adopted a fatalistic attitude. As one Karen villager put it:

“We live in their hands. If they kill us we will die.  
If they keep us alive, we will live.”

There are hopeful signs that the era of impunity for crimes against humanity is ending. From the spotlight of the Internet to the dockets of U.S. federal courts, there are countless efforts to hold the mighty—whether they are dictators or giant corporations—accountable for their actions. We hope that ERI’s reports will help to end the cover-ups, the excuses, the whitewashing of corporate complicity in crimes against humanity and finally, the murderous partnerships in Burma. The corporations’ deliberate “see no evil, hear no evil, speak no evil” policy enables them to ignore the violence in the region and its direct link to their projects, but it cannot diminish their responsibility for the abuses, or their role in their commission.

#### **IV. Recommendations**

Given the adverse impacts of investment in Burma, ERI recommends that corporations should not do business with Burma. This is based not only on the record of abuses committed by the Burmese regime, but also based on the call by Aung San Suu Kyi, the Nobel Peace laureate who leads the pro-democracy opposition in Burma, not to invest in Burma.

However, this report is submitted to the Special Representative on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises not only to affect corporate investments and human rights abuses in Burma, but the world over. ERI is also involved in cases in the Amazon Region and Nigeria, among others. We are therefore concerned with the general state of corporate accountability for human rights and environmental violations.

Although States have the primary responsibility to promote, respect, protect and fulfill human rights, corporations are also responsible for promoting and securing human rights. Corporations should recognize their particular responsibility to not commit nor be complicit in human rights abuses and to protect human rights where the State in whose territory they are conducting activities is unwilling or unable to do so.

In fulfilling his mandate, we are confident that the Special Representative understands the importance of consulting with civil society, not only NGOs, but local communities who are affected by corporate activities. In addition, as emphasized in this report, case studies are the most straightforward means of understanding the implications of corporate activities on human rights and the environment.

As the mandate of the Special Representative calls for the identification and clarification of standards of corporate responsibility and accountability for transnational corporations with regard to human rights, EarthRights International respectfully submits the following recommendations for the Special Representative to take into account in fulfilling his mandate:

**Establish universal and binding standards of corporate accountability**

- The responsible operation of corporations can contribute to the promotion of respect for human rights and assist in channeling the benefits of business towards this goal. In order to ensure the responsible operation of corporations, the development of standards of corporate responsibility and accountability with regard to human rights is necessary. To this end, binding codes of conduct regarding respect for human rights and the environment should be developed for adoption and implementation by the international community, individual governments and corporations.
- Existing voluntary codes are non-binding, lack independent oversight and have proven to be ineffective in curbing the abuses they were intended to address. In addition, corporations often design these voluntary codes merely to serve public relations purposes or to avoid independent regulation.
- In developing such an enforceable code of conduct, the Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, which was adopted by the Sub-Commission on Human Rights, should play a central role. The Norms fill an existing gap by pulling together into one single document the key existing international human rights laws, standards and practices applying to all businesses. However, the Norms are not yet complete. Any further development of rules for corporate responsibility for the protection of human rights should build on this work.

**Identify an appropriate international enforcement mechanism**

- More important than the existence of such codes of conduct is the institutionalization of a mechanism in which to enforce violations of such rules.
- Since corporations operate across boundaries in ways that exceed the regulatory capacities of any one State, the enforceable code of conduct should be internationally enforceable.

- The activities of corporations should ordinarily be governed by the State on whose territory they pursue their activities. However, where the territorial State is unable or unwilling to hold corporations in its territory accountable for violations of human rights, the State of incorporation, or any other State in which the corporation has a presence, should have the jurisdiction and the obligation to enforce human rights norms and codes of conduct. A right to a remedy for human rights abuses should exist in both the host and home state of a corporation.
- In the absence of action by either the territorial State or the home State, or where national courts and domestic mechanisms fail to provide a remedy for corporate violations of human rights abuses, the existence of an international mechanism would be useful. A provision of the standards to be developed would allow corporations to submit to the jurisdiction of an international arbitration tribunal or court. An international mechanism should be used to enforce these universal norms regardless of where a corporation is headquartered.

**Include a standard that corporations shall not participate in activities that lead to human rights abuses**

- Corporations shall refrain from any activity that supports, solicits, or encourages States or any other entities to abuse human rights. Had multinational corporations followed international law which prohibits aiding and abetting and that has been well-established since Nuremburg, prior to foreign investment in the Yadana and Yetagun pipelines, corporate involvement with the Burmese military and human rights abuses associated with these projects would have been severely curtailed or the corporations would have acted to ensure abuses did not occur. As the standard for aiding and abetting is already clearly an international norm, it should be included in the development of these universal standards.
- International corporations should make clear that funding is not available for projects unless minimum international labor standards are assured. These development projects and the concomitant human rights abuses do not occur without foreign investment by corporations. Where funding is contingent on compliance with human rights standards, the Burmese military or any participating regime would have to change its abusive practices in order to attract corporate investment, or the projects that engender abuses would not occur at all.
- In countries that have been identified as employing forced or slave labor on a widespread or systematic basis, corporations should refrain from engaging in projects that may contribute to the continuation of forced labor until verifiable evidence is available that labor abuses are no longer widespread or systematic.
- Corporations should ensure that their security arrangements are consistent with international human rights norms. Any forces, whether public or private, providing security for a corporation's project, whether formally or informally, should observe all international standards regarding the use of force. This norm would have prevented the corporations in Burma from relying on abusive military forces for their project security.



**Include a standard that requires corporations to recognize their complicity in activities that lead to human rights abuses**

- Corporations should also recognize their complicity when employing the services of regimes or States with a history of abuses.
- The Special Representative should further clarify the concept of “complicity.”
- To this end, the Special Representative should adopt at a minimum the standard enshrined in international jurisprudence dating back to the Nuremburg Tribunals and repeatedly reiterated by the International Criminal Tribunals for the Former Yugoslavia and Rwanda. This standard states that aiding and abetting abuses—i.e. knowingly providing practical assistance, encouragement or moral support that has a substantial effect on the perpetration of the crime—violates customary international law.

**Include a standard that corporations shall not benefit from human rights abuses**

- Corporations and other business enterprises shall not engage in nor benefit from crimes against humanity, torture, forced labor, summary executions, other violations of humanitarian law and other international crimes against the human person as defined by international law, in particular human rights and humanitarian law.
- The corporations in the ERI reports with investments in Burma have benefited from human rights violations. The commission of these human rights abuses by the Burmese military in their services to the corporations, inter alia, providing security, and building infrastructure, directly benefited the corporations. The forced labor used to build military camps and feed the soldiers also benefited the corporations.

**Include a standard that corporations shall recognize their respective sphere of influence**

- Within their respective spheres of activity and influence, transnational corporations and other business enterprises have the obligation to promote, secure the fulfillment of, respect, ensure respect of and protect human rights recognized in international as well as national law.
- The international community should recognize the influence corporations have on their business partners, particularly military regimes of developing countries and develop standards for these relationships.
- To this end, the Special Representative should further clarify the definition of “sphere of influence.”

**Include participation of civil society as a standard**

- Civil society participation is essential to ensure that development projects will not lead to human rights abuses. Prior to undertaking a development project which may lead to abuses of human rights, corporations should ensure an opportunity for local communities to present their concerns.
- Corporate planning processes should be carried out in an open and transparent way and include all stakeholders.

- The development of a mandatory consultation period or a compliance mechanism allowing access to individuals, communities and organizations would help achieve this goal.

**Include a standard that corporations shall assess the impact of their projects on the local communities**

- Corporations can and should contribute to the enjoyment of human rights, *inter alia* through development, investment, technological improvement, employment creation and the stimulation of economic growth. The existence of standards or benchmarks to determine whether corporate investment is actually having these effects would greatly improve the situation of destructive engagement and move it towards true constructive engagement.
- Corporations also have the capacity to cause harmful impacts on the human rights and lives of individuals through their business operations, including employment practices, environmental policies, and relationships with local businesses and Governments. Therefore each of these areas and others should be assessed for their impacts on the human rights and environment of local communities.
- An independent body should undertake such assessment.
- The development of a human rights impact assessment methodology may contribute to this determination.

**Include a standard that corporations shall address environmental impacts that lead to human rights abuses**

- Finally, the environmental impact of corporate development projects should not be ignored. While it is true that there are other initiatives addressing corporate responsibility for environmental abuses, such responsibility should also be addressed here, particularly where such environmental abuses lead to human rights abuses or where environmental abuses lead to human rights abuses. In other words, where there is an intersection of human rights and environmental protection concerns, the development of rules for the responsibility of corporations should address both.
- Consideration should be given to UN Special Rapporteur Ksentini's recognition of the connections between human rights and the environment and that environmental abuses can lead to, or constitute, human rights abuses.
- Corporations should recognize local control over natural resources.

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