



Universal Periodic Review – Myanmar (Burma)
Submission to the Office of the High Commissioner for Human Rights – July 2010

1. EarthRights International (ERI) makes this submission for the Universal Periodic Review of Myanmar (Burma), focusing on the country's human rights abuses related to the oil and gas industry and other development projects. Founded in 1995, ERI is a nonprofit, nongovernmental organization dedicated to the protection of human rights and the environment. Since then, ERI has worked closely both in and out of Myanmar to document human rights abuses related to oil and gas development, including the Yadana and Yetagun gas pipelines and the Shwe gas project. By documenting hundreds of interviews with local villagers, recent refugees from the pipeline region, defected soldiers from the Myanmar Armed Forces (MAF), former expatriate staff on the Yadana project, shareholders and investors in Total and Chevron, and current and former staff of the International Labour Organization (ILO), ERI works to bring these testimonies and the human rights abuses they contain to the attention of the international community.

I. Executive Summary and Recommendations

2. This submission focuses on the human rights abuses that have occurred over the past four years in relation to oil and natural gas development projects in Myanmar, which is under the rule of a military regime known as the State Peace and Development Council (SPDC). Since the early 1990s, the areas around such development projects have been heavily militarized in order to protect the projects and the interests of the companies who finance them. As MAF soldiers flood the area, the local villagers are subjected to severe human rights abuses, including incidences of extrajudicial killings, forced labor, violations of freedom of movement, and land confiscations. As ERI and others have documented, this pattern of abuse has continued over the last four years. Although not the primary focus of this submission, similar abuses have occurred in relation to other development projects in Myanmar as well, such as mines and dams.

3. In addition to endorsing the recommendations of the Special Rapporteur on the situation of human rights in Myanmar, Tomás Ojea Quintana, ERI makes the following specific recommendations to Myanmar:

- **Abide by obligations under international law to respect fundamental human rights** in relation to development projects. Cease committing human rights abuses against the people in the Yadana and Yetagun pipeline region and throughout Myanmar, including an end to extrajudicial killings, torture, arbitrary detentions, and forced labor.
- **Become a party to important international human rights treaties**, such as the 1926 Slavery Convention, the Convention on the Elimination of All Forms of Racial Discrimination (CERD), the International Covenants on Civil and Political Rights (ICCPR) and Economic, Social, and Cultural Rights (ICESCR), the Convention Against Torture (CAT), and the Rome Statute of the International Criminal Court.
- **Require independent, verifiable, third-party human rights monitoring** of existing development projects in Myanmar, and require human rights assessments prior to beginning any new projects as well as during the duration of such projects.
- **Require companies to conduct Environmental Impact Assessments and Social Impact Assessments before the initiation of any oil and gas projects in Myanmar**; include the full and free participation of local people and make the entire assessments publicly available in local languages.

- **Require companies working on development projects to practice full revenue transparency on payments to the SPDC**, by immediately disclosing all revenues received from extractive projects.
- **Move toward adoption of the Extractive Industry Transparency Initiative (EITI)** requiring disclosure of oil, gas, mining, and hydropower contracts and payments. A critical element of EITI is the tripartite cooperation of government, companies and civil society working to strengthen governance and development of natural resource revenue; currently, there is a complete absence of an independent civil society in Burma. The government should modify domestic laws and policies to allow for an independent and robust civil society as required under EITI. This will help ensure better corporate responsibility as well as increase the likelihood that Myanmar's citizens will benefit from the wealth generated from their country's natural resources.
- **Respect and protect the peoples' human right to participate in development decisions** and the right, especially of the indigenous ethnic populations, to free, prior and informed consent. This right needs to be institutionalized; a first step would be to pass a Freedom of Information Act similar to the one in India which allows citizens to access information regarding current and upcoming projects.
- **Allow victims of forced labor to report violations to the ILO**, and facilitate the ILO's request to increase its capacity to work in Burma. Currently, Myanmar only allows two employees of the ILO to work in this country, and this lack of personnel will be a major obstacle to increasing the effective reporting of forced labor violations in all of Myanmar's mining, oil, gas, and hydroelectric development projects. Cease intimidation and punishment of victims of forced labor who file complaints with the ILO.

II. Background and Framework

A. Domestic laws

4. Myanmar has few domestic laws specifically aimed at protecting human rights. Most notably, Order 1/99 bans the practice of forced labor and requires military and civilian officials to refrain from using civilians as unpaid laborers. While other abuses, such as torture, may be illegal under Myanmar law, there generally has been no effort at domestic enforcement, and aside from banning forced labor Myanmar's treaty obligations do not appear to have been specifically implemented in domestic law.

B. International obligations

5. Myanmar has a dismal record regarding multinational human rights treaties; it is not a party to the ICCPR or ICESCR, CERD, CAT, the Rome Statute, or even the 1926 Slavery Convention.

6. However, Myanmar did vote in favor of the Universal Declaration of Human Rights (UDHR), the Declaration on the Right to Development, and the Declaration on the Rights of Indigenous Peoples. As a party to the United Nations Charter, Myanmar is committed to "promoting and encouraging respect for human rights and for fundamental freedoms." (Art. I(3).) Myanmar is also a party to the first three Geneva Conventions of 1949, the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC), the Convention on the Prevention and Punishment of the Crime of Genocide, and the ILO's Forced Labour Convention (No. 29) (June 28, 1930). Myanmar is also subject to binding norms of customary international law, which encompasses many major human rights protections. (*See, e.g.*, Restatement (Third) of Foreign Relations Law of the United States § 702.)

7. Myanmar's binding obligations and voluntary commitments thus extend to, among other

things, the **prohibition on crimes against humanity**, including widespread or systematic murder, torture, enslavement, population transfer, arbitrary detention, and persecution (*see, e.g., Report of the Secretary General pursuant to paragraph 2 of Security Council resolution 808, U.N. Doc. S/25704 (1993)*); the **prohibition on genocide** (Genocide Convention art. 1; Restatement § 702(a)); **prohibitions on summary executions and torture** in internal armed conflicts (Geneva Conventions, art. 3); the **right to security of person** and prohibition on **torture** (UDHR art. 3, art. 5; Restatement § 702(d)); the **right to life** and the **prohibition on summary execution and disappearance** (UDHR art. 3; Restatement § 702(c)); the **prohibition on forced labor** (Forced Labour Convention art. 1(1)); Restatement § 702(b); as a crime against humanity, *see* International Criminal Court, *Elements of Crimes*, at 6 & n.11.); the **right to freedom of movement** and the **prohibition on arbitrary forced relocation** (UDHR art. 13.1; *see* Marco Simons, *The Emergence of a Norm Against Arbitrary Forced Relocation*, Colum. Hum. Rts. L. Rev. 95, 124-129); the **prohibition on arbitrary detention** (UDHR art. 9; Restatement § 702(e)); the **right to property** (UDHR art. 17(2)); the **right of children to adequate nutrition, clothing, and housing**, which forbids actions that deprive their families of the ability to earn a livelihood (CRC art. 27); the **protection of children from sexual abuse** (CRC art. 34(1)); the **prohibition on child soldiers** under age 15 (CRC art. 38); the **rights of indigenous peoples to free, prior, and informed consent** before removal from their lands and in development decisions (Declaration on the Rights of Indigenous Peoples art. 10, art. 20); the **right to participation in development** (Declaration on the Right to Development, art. 2); and the **right to health** of children (CRC art. 24).

III. Promotion and Protection of Human Rights on the Ground

8. Myanmar has failed to protect human rights on the ground in relation to oil and gas development projects as required by its international and domestic obligations. ERI has extensively documented abuses in the pipeline region of Southern Myanmar, in which the Yadana and Yetagun natural gas pipelines flow; this submission summarizes documentation from ERI's reports *Energy Insecurity* (2010), *Total Impact* (2009), and *The Human Cost of Energy* (2008), all attached in the Annex. The Shwe Gas Movement has similarly documented abuses associated with the ongoing Shwe Gas Project in Western Myanmar, in reports such as *Corridor of Power* (2009) (*available at* <http://www.shwe.org/Attachments/CorridorofPower.pdf>), and Arakan Oil Watch has done the same for oil and gas projects in Myanmar's Rakhine (Arakan) State, in reports such as *Blocking Freedom* (2008) (*available at* <http://www.arakanoilwatch.org/images/report/Blocking%20Freedom.pdf>). A massive new pipeline across Myanmar to China is now underway for the Shwe Gas Project, accompanied by an oil transshipment pipeline. The abuses documented thus far indicate that these new pipelines will contribute to serious human rights abuses.

9. Although the abuses associated with oil and gas development projects are similar to those experienced throughout Myanmar, such projects typically result in an increased military presence and an increase in abuses. (*Total Impact* at 34-35; *Blocking Freedom* at 5.) As the Shwe Gas Movement notes, "Incidents of increased deployment of troops for infrastructure projects are well-documented in Burma [Myanmar]." (*Corridor of Power* at 20.)

10. Work by ERI and others indicates that similar abuses are also associated with mining and dam projects in Myanmar. This has been documented in ERI's reports such as *Turning Treasure Into Tears: Mining, Dams and Deforestation in Shwegyin Township, Pegu Division, Burma* (2007) (*available at* <http://www.earthrights.org/sites/default/files/publications/Turning-Treasure-into-Tears.pdf>) and in parts of *Gaining Ground: Earth Rights Abused in Burma Exposed* (2008)

(available at <http://www.earthrights.org/sites/default/files/publications/Gaining-Ground-ERSB-2008.pdf>) and *From Grassroots to Global: Voices from Burma on Earth Rights Abuses* (2009) (available at <http://www.earthrights.org/sites/default/files/publications/from-grassroots-to-global.pdf>).

11. Extrajudicial Killings and Violations of the Right to Life: People living in the vicinity of oil and gas projects have repeatedly suffered severe abuses at the hands of the MAF soldiers providing security for the projects, including extrajudicial killings. Infantry battalions providing security for the Yadana and Yetagun pipeline projects continue to murder local villagers in the pipeline region. In 2007, a boy from Shin Ta Pi village, within the pipeline security corridor, was killed by soldiers from infantry battalion 408. (*The Human Cost of Energy* at 32.) The same year, seven villagers from Ya Pu and Law Ther were detained by infantry battalion 273; one of them was killed after questioning at a military camp. (*Total Impact* at 33.) In March 2009, a soldier from infantry battalion 406 killed an ethnic Mon villager in Kyauk Sha Gwin village. (*Id.* at 32.) Most recently, in February 2010, soldiers from infantry battalion 282 killed two ethnic Mon villagers from Ahlersekan village who were suspected of sympathizing with opposition groups. (*Energy Insecurity* at 10.) These experiences with gas pipeline security suggest that similar abuses will inevitably be associated with the Shwe gas pipeline project and a planned Myanmar-China oil pipeline project. As the Shwe Gas Movement reports, activists in Rakhine State have already been forced to flee the area. (*Corridor of Power* at 20.) Oil and gas projects also put human lives at risk through their environmental impacts, including the release of toxic pollution; according to Arakan Oil Watch, waste from an oil drilling site at Renandaung has also killed fish and sickened local villagers. (*Blocking Freedom* at 20.)

12. Torture and Arbitrary Detention: MAF soldiers protecting oil and gas projects routinely detain and torture local villagers. Numerous people in the vicinity of the Yadana and Yetagun pipelines have described how they have been beaten by pipeline security soldiers. (*Total Impact* at 33.) In one 2009 incident, a villager who encountered soldiers was beaten repeatedly with a stick by an army officer. (*Id.*) In 2008, a resident of Eindayaza village told ERI that a family member had been detained for almost a year and subjected to hard labor simply for traveling to the Thailand-Myanmar border. (*Total Impact* at 30.) In Rakhine State, as the Shwe Gas Movement reports, people who have been critical of the Shwe project have been arrested. (*Corridor of Power* at 20.)

13. Forced Labor: ERI has documented that local villagers in Myanmar have been systematically and repeatedly subject to forced labor by MAF battalions tasked with providing security for oil and gas projects. Battalions protecting the Yadana and Yetagun gas pipelines have been engaging in this practice for many years, including in recent years. These battalions issue mandatory demands to village leaders requiring them to provide a certain amount of workers to perform labor. In the past four years, over 40 villages in the pipeline corridor have been subjected to forced labor as their inhabitants are made to provide regular security for the pipeline projects and to build sentry outposts against their will. (*The Human Cost of Energy* at 34-37; *Total Impact* at 25-27.) Villagers are also forced to construct military barracks for pipeline security forces and maintain pipeline roads (*Total Impact* at 20-23; *Energy Insecurity* at 12), as well as performing the dangerous work of portering goods for soldiers as they patrol (*The Human Cost of Energy* at 39-40). Villagers are often threatened to work with displays of physical violence against others (*Id.* at 33-34.) On the Shwe project, the Shwe Gas Movement has documented how local traders have been forced to carry the military to offshore drilling sites; if they refuse they are likely to be arrested or blocked from trading (*Corridor of Power* at 6). These

instances are exemplary of the larger, disturbing trend of villagers being forced to labor for development projects, including oil and gas projects.

14. Violations of Freedom of Movement and the Right to Livelihood: Where oil and gas development takes place, villagers are often restricted from leaving their village at certain times or for certain purposes, as the MAF battalions guarding the projects overtly threaten or imply that villagers are not to leave. ERI has documented such abuses in the Yadana and Yetagun pipeline area; as noted above, one villager was apparently detained for a year simply for traveling to the border. Restrictions against leaving are often placed so that villagers in the pipeline area cannot contact foreigners or opposition groups. (*Total Impact* at 30.) In July 2009, the entire population of Yebone was confined to their village for several days by infantry battalion 410, who accused the village of providing support to an armed opposition group. (*Id.* at 29.) Such restrictions also affect peoples' livelihoods, as they are prevented from staying overnight at their farms to tend to their fields or hunt for food. Similar abuses have occurred in oil drilling areas in Rakhine State; many drilling sites are restricted areas, and locals are prohibited from entering their own properties. (*Blocking Freedom* at 17.) The restrictions on the Shwe reserve have also caused tremendous hardships for local fishermen, who no longer have access to the surrounding fishing areas upon which they had relied on for their livelihood. (*Corridor of Power* at 6.)

15. Violations of the Right to Property: MAF soldiers tasked with guarding oil and gas projects often violate the right to property by directly stealing from people, and the government additionally violates this right by taking land for such projects without adequate process or compensation. ERI has documented how soldiers guarding the Yadana and Yetagun pipelines have stolen items from village shops, appropriated carts and motorbikes, and demanded money from villagers without any sort of compensation. (*Total Impact* at 30-32.) Land has also been confiscated for the gas development project, with villagers even being forced at gunpoint to sign documents claiming that they donated their land and thus forfeit compensation. (*Id.*) Most recently, ERI has documented how, in 2009, villagers also had land confiscated for questionable conservation programs funded by the gas project companies (*Energy Insecurity* at 12-13), and in 2010 soldiers forced villagers to provide them bamboo and other construction materials (*id.* at 12). In Rakhine State, Arakan Oil Watch reports that companies have seized an estimated 300 local hand-dug wells and over 200 acres of farmland. (*Blocking Freedom* at 15.) Traditional oil drillers and farmers report that oil companies have bulldozed their land and taken their wells, giving them little to no compensation in return. (*Id.* at 16-19.)

16. Violations of the Right to Participate in Development Decisions: The people of Myanmar generally have no formal ability to participate in development decisions that affect them, nor any legal right to benefit from the income from development projects. This is the case even for indigenous communities in Myanmar, which are not given the right of free, prior, and informed consent. This lack of participation also affects other rights, such as the right to health, because despite the substantial income generated by such projects (ERI estimates that the Yadana project alone has generated more than \$3.6 billion for the SPDC (*Energy Insecurity* at 24)), the SPDC's public health expenditures are only 0.3% of GDP (*Total Impact* at 45). While some private companies involved in oil and gas projects have made efforts to solicit community input, there is no legal requirement that they do so, and local communities have no legal right to object to such projects. Moreover, given the climate of fear in Myanmar and the fact that opponents of oil and gas projects are routinely arrested (*Corridor of Power* at 20), private attempts to engage in community consultation cannot realistically succeed without legal protections.