

# **Destructive Engagement:** **A Decade of Foreign Investment in Burma**

An Issue Paper of EarthRights International's Burma Project

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## **EarthRights International**

*Combining the power of law and the power of people to protect earth rights—those rights that demonstrate the connection between human well-being and a sound environment.*

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## **I. Executive Summary**

Burma is in crisis. 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.

Foreign investment, unfortunately, has only exacerbated the situation. The companies 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. The only apparent beneficiaries of investment are the generals and their closest allies. 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. Investment has also been concentrated in extractive industries—namely logging, gems, and natural gas—resulting in a selling off of Burma's natural resources at alarming rates. The stream of refugees and migrants out of the country—fleeing the human and economic devastation brought about by the regime—is perhaps the clearest indicator that investment and business engagement with Burma are not working.

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, companies 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. Foreign investment in Burma not only hurts people throughout the country by helping to perpetuate the military regime, but it has also led to direct human rights violations for which foreign investors should be held responsible. The largest industrial projects in Burma, the Yadana and Yetagun pipelines, are examples of how foreign investment leads to increased militarization, which in turns leads to human rights and environmental abuses without benefits to the local population.

### Policy Recommendations

The international community should pressure the regime to take steps towards tripartite dialogue with the democratic opposition and ethnic nationalities in an effort to bring the country greater political openness, democracy and respect for human rights and the environment. Given the adverse impacts of investment in Burma, EarthRights International makes the following recommendations:

1. Corporations should not do business with Burma. Corporations should adopt and implement enforceable codes of conduct to respect human rights and the environment.
2. Governments, both national and local, should not do business with Burma. Governments should coordinate their efforts and place multilateral sanctions on Burma that restrict investment in the country.

3. Governments, both national and local, should not do business with corporations that do business with Burma. Local municipalities and states should pass selective purchasing laws that penalize corporations doing business in Burma.

## **II. Investment in Burma—Support for the Military and Not the People**

**“If you investigate the state the country is currently in, then you cannot conclude anything other than that the government is giving nothing to the inhabitants of its country. Power brings luxury. That is one of the reasons why we are opposed to investments in Burma, which merely help the top members of the military to make more and more money.”**

**–Aung San Suu Kyi, Nobel Peace Prize Laureate<sup>1</sup>**

### Recent History

Following its independence in 1948, Burma was poised for economic success. In the 1950s, it was the world’s second largest rice producer, with vast mineral deposits and forests. Its population was also one of the best educated in the region, with a high literacy rate. Its potential was never realized, and Burma took a very different direction starting in 1962 when the military dictator, General Ne Win, took power. From 1962 to 1988, the military rulers followed the Burmese Way to Socialism, nationalizing industry and running a centrally planned economy. By the 1980s, the economy had stagnated, and by 1987, the United Nations recognized Burma as a Least Developed Nation.

### Opening Up to Foreign Investment—A Half-Hearted Experiment in Economic Liberalization

Massive popular uprisings calling for democratic reforms took place in 1988, but were ruthlessly suppressed as thousands of unarmed demonstrators were shot. In September 1988, after Ne Win retired, cosmetic changes in the military leadership led to the assumption of power by the State Law and Order Restoration Council (SLORC). Desperately in need of cash, SLORC quickly reversed the trends of the Burmese Way to Socialism and opened the country up to foreign investment by promulgating a new investment law in November 1988.

The efforts to open up the society were only partial, however. The U.S. Embassy in Rangoon later characterized the regime’s policies actions following 1988 as “partially liberalized economic activity” to encourage foreign trade and investment, but also observed the use of more “coercion [such as forced labor] to increase state-monopolized exports and build export-related infrastructure.”<sup>2</sup> By the mid-1990s, the half-way experiment in economic liberalization had largely stalled as the military regime failed to implement further reforms, made more erratic decisions, and regressed toward central control of the economy again.<sup>3</sup>

### Money for the Generals

**“What [investment] did was to give the military authorities and those connected with them a chance to consolidate their economic position in the same way in which they had consolidated their power base.”**

**–Aung San Suu Kyi<sup>4</sup>**

With SLORC’s open door policy, foreign investment has flowed into the country. To date, annual foreign direct investment peaked in 1992 at US\$248 million, fueled mainly by the oil and gas industries.<sup>5</sup> The vast majority of the people of Burma have not benefited from the

investment, however. In fact quite the opposite is true, with many people's lives worsening because of increases in forced labor, forced relocations, arbitrary taxation, and violent human rights abuses. The beneficiary of the investment money instead has been the ruling junta, with funds going directly to the army in most cases. According to the director of one Dutch company investing in the Yetagun pipeline project in Burma, "the money is of course going to the colonels."<sup>6</sup> The result has been a clear uneven distribution of wealth.<sup>7</sup>

In most situations, the foreign investors' relationships are formalized with the military and money goes directly into their coffers through a state economic enterprise, such as the Myanma Oil and Gas Enterprise (MOGE), or the military's Union of Myanmar Economic Holdings (UMEH). UMEH is 40 percent owned by the Directorate of Defense Procurement that secures the military's arms and imports, and the remaining 60 percent of UMEH is owned by "defense services personnel."<sup>8</sup>

In a telling statement, Aung San Suu Kyi said recently that foreign investment could not improve the situation of the common Burmese citizen under the junta because the government does not explain where money goes; instead, "the profits disappear into the pockets of the members of the government and their families. . . . The majority of Burmese leaders today are extremely rich. Twelve years ago they were not at all well off. Let that be an indication."<sup>9</sup>

### The Sources of Foreign Investment

Most foreign money has come mainly in tourism and natural resources, such as timber, gems, natural gas, oil, and fishing concessions. The selling off of Burma's natural resources has been particularly important for the regime, providing it with hundreds of millions of dollars. Not only are the current investments aiding the government, but future revenues, especially from the Yetagun and Yadana pipelines, could keep this repressive regime in power for years, even decades. This would be an ongoing tragedy for Burma, one in which western companies would be complicit.<sup>10</sup>

In late 1988, the SLORC, desperate for cash, signed more than 40 timber concessions with Thai companies, many with connections to local Thai military interests. Worth US\$112 million a year, the concessions provided a much needed influx of cash for the Burmese regime.<sup>11</sup> In the early 1990s, timber sales approached US\$200 million annually, making the forestry industry a vital source of foreign exchange for the regime.<sup>12</sup> The World Resources Institute recently concluded in a report on Burma that "timber exports . . . helped pay for the regime's arms purchases and a doubling in the size of the army."<sup>13</sup>

In 1989, on the heels of the logging concessions came oil companies to explore oil on-shore. They included Petro-Canada, Royal/Dutch Shell (U.K./the Netherlands), Amoco (U.S.), Broken Hill (Australia), Premier (U.K.), Yukong (South Korea) and Idemitsu (Japan). By 1992-93, most had begun to pull out, for "a combination of factors, including poor discoveries, high operating costs and though never publicly admitted, in at least two cases concern over the poor human rights conditions in Burma."<sup>14</sup>

With on-shore oil showing little promise, the regime turned to selling off-shore natural gas concessions in the early 1990s. The first to sign was Premier Oil (U.K.) in May 1990 for the Yetagun gas field,<sup>15</sup> followed soon thereafter by Total (France) in 1992 for the Yadana gas field.<sup>16</sup> These two gas fields have become the largest foreign investment projects in Burma

by far, Yadana being the larger of the two. Yetagun has a US\$700 million development cost,<sup>17</sup> and Yadana has a price tag of US\$1 billion.<sup>18</sup>

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*.<sup>19</sup> These figures only represent the initial investment stage. Once the projects are up and running, they will provide the military regime with hundreds of millions of dollars each year. Starting within in the next few years, the Yadana project alone is conservatively estimated to give US\$150 million annually to the military regime—*for almost three decades*.<sup>20</sup> This low estimate represents “a sum equivalent . . . to two-thirds of the [government of Burma’s] total revenues in [fiscal year] 1995/96.”<sup>21</sup> Some estimates for Yadana say the regime will receive as much as US\$400 million annually.<sup>22</sup>

### The Militarization of Burma

The ruling generals have used money earned from foreign exchange and investment to tighten their grip on power by expanding and arming their military. The statistics are staggering. According to the U.S. Embassy in Rangoon, since 1988, the military regime has “greatly increased defense spending, apparently to at least half of total central government operating expenditures, in the absence of any evident external military threat, while substantially reducing expenditures for education and health.”<sup>23</sup> According to the United Nations, from 1990-97 the military regime spent 264% more on military spending than it did on health and education *combined*.<sup>24</sup> Only Somalia spends a higher percentage of its government budget on military expenditures.<sup>25</sup> In the decade since the army viciously cracked down on the democracy movement and opened up the country to outside foreign investment, the Burmese military has more than doubled in size from 180,000 troops to over 400,000.<sup>26</sup> Its stated goal is to reach 500,000 by the year 2000.<sup>27</sup> To keep the military supplied and modernized, the military regime has spent vast sums on weaponry—from small arms to planes—much of it coming from China. Though exact numbers are difficult to determine, it is estimated that the Burmese military has spent at least US\$1.2 billion on arms from China alone and possibly as much as US\$2 billion in total.<sup>28</sup>

### Burma Suffers

**“We would like the world to know that economic sanctions do not hurt the common people of Burma. When Burma was opened up to what they called the market economy a decade ago, it did not open the door for the common people of Burma.”**

**–Aung San Suu Kyi<sup>29</sup>**

With investment money flowing to the military elite and being used disproportionately on arms to supply a repressive army bent on controlling the population of the country and suppressing all opposition, an unfortunate but predictable scenario has played out in Burma. Instead of investment bringing good to the country, it has only entrenched the regime and lowered the standards of living for many Burmese. The benefits of investment have not trickled down to the majority of the population. A look at a list of indicators since Burma opened itself to investment reveals the tragic pattern.

### *Health*

Health, education, and basic living standards for many have declined since 1988. Recently, Aung San Suu Kyi stated, “Forty percent of our children are chronically undernourished. The number of children that never goes to school is rising. Deaths among children are also on the increase, and more mothers are dying in childbirth. If you take a look at the statistics, you see that the country is becoming poorer and poorer. Food prices go up every day. The people are eating less and less.”<sup>30</sup> A look at the statistics is revealing. UNICEF’s report, *The State of the World’s Children 1999*, indicates an 8.1% infant mortality rate<sup>31</sup> and an under-5 mortality rate of 11.4%.<sup>32</sup> In 1995, a UNICEF report noted that the prevalence of some health problems—including low birthweight of babies, chronic malnutrition among primary school aged children, and deaths from malaria—was increasing,<sup>33</sup> and noted that “women’s health in [Burma] has not improved at the same rate as in most other countries in the region.”<sup>34</sup> A recent review of health in Burma by David Chandler, a representative of World Vision International, one of the few humanitarian organizations operating in the country, also found that 58% of Burma’s children are malnourished—15.8% severely so—and that between 80% and 100% of Burmese children have some sort of intestinal worms.<sup>35</sup> These statistics are not surprising, however, when one considers that health expenditures (even according to official figures) fell from 7.3% of the central government budget to 6.9% from 1992-1995; spending per person by 1995 was only 62 kyats, which is less than US\$0.50.<sup>36</sup>

Burma reports a relatively low rate of HIV/AIDS infection: as of 1995, about 10,000 HIV-positive individuals and under 600 AIDS patients. At the same time, however, the World Health Organization estimated that Burma had 400-500 thousand HIV-positive individuals. World Vision reports that in several townships of around 100,000, it sees at least one AIDS death every day.<sup>37</sup> Chandler describes the AIDS epidemic in Burma as “a national emergency.”<sup>38</sup> Deaths from some other diseases, such as malaria, have also increased since 1987; Burma’s official figures show malaria deaths increasing from 9.4 per 100,000 in 1987 to 12.6 per 100,000 in 1991, although the rate had gone back down to 10.0 per 100,000 by 1994.<sup>39</sup>

Health care is also unevenly distributed throughout Burma, with Burma’s ethnic minority states receiving far fewer benefits than the Burman-majority divisions. In 1994, according to Chandler, 89 percent of children in the Burman-majority divisions and one ethnic minority state (Mon State) received childhood immunizations, while in the remaining six ethnic minority states, only 23 percent of children were immunized.<sup>40</sup> And, according to the United Nations Development Programme, only 48% of Burmese people have access to the public health system at all, and only 40% have access to safe drinking water.<sup>41</sup>

### *Education*

As UNICEF notes in its most recent review of education in Burma, “[t]he national trend for basic education is also one of decline.”<sup>42</sup> The U.N. agency reported in 1995 that primary school completion rates stood at only 27%, and that 39% of primary school-age children never enroll at all.<sup>43</sup> UNICEF further describes the problems facing primary education in Burma:

Several years of under-funding have led to a number of chronic problems in the education sector and many neighboring countries are surpassing [Burma] in educational attainment. Overcrowded schools, shortages of teaching and learning materials, school closures as well as poorly paid teachers have reduced the capacity of the education system to provide quality education.

There is generally a mismatch between children's cognitive development and primary school curricula, emphasizing the recall of static facts while giving little attention to the promotion of problem solving, analytical skills or creativity.<sup>44</sup>

As of 1999, UNICEF reported that gross secondary school enrollment rates in Burma stood at around 30%,<sup>45</sup> but this figure is probably vastly inflated due to the number of students who fail one or more grades. In 1995, UNICEF noted that Burma's gross primary enrollment rate of 120% was far higher than the estimated net enrollment rate of 72%, because children took an average of over 12 years to complete the five grades of primary school.<sup>46</sup> Both primary and secondary education in Burma also suffer from the fact that children—many of them twelve to fifteen years old—are recruited by the Burmese military.<sup>47</sup> Thousands of children are estimated to serve in Burma's army;<sup>48</sup> many of the soldiers have little or no formal education, and joining the army cuts off their opportunities for further education.<sup>49</sup>

University education, essential for economic development, has been most severely affected by military rule. Due to the government's fears that students will engage in pro-democracy demonstrations, the universities have, since 1988, been open for a total of only 28 months.<sup>50</sup> As of July 1999, over 400,000 students who had passed college entrance exams since 1996 are still waiting for the universities to open so that they can begin their studies—in addition to the hundreds of thousands whose studies have been interrupted by the frequent and prolonged university closures.<sup>51</sup> Most students who finished high school in 1988 still have not, over ten years later, completed their university studies. Those who have obtained university credentials took sporadic, corruption-ridden exams after two-week study sessions covering a year's worth of material. Primary and secondary schools have also been closed on occasion for political reasons; fearing unrest during Burma's admission to ASEAN in July 1997, the schools were closed for over two months.<sup>52</sup> The periodic closures have driven some students to give up on the school system; a student from a Rangoon college said in 1997 that he was “not interested to go back to school,” because “[t]hey will reopen [the schools] but only for a few weeks. There will be exams and they will shut them down again.”<sup>53</sup>

### *Inflation and Living Standards*

The mass popular demonstrations that took place in 1988 were spurred in part by economic suffering by the population at large. In the past decade, however, the economic situation for many has only deteriorated. According to World Vision's Chandler, “the vast majority of the population of Burma faces a daily struggle to meet its basic survival needs,” and even to “provide daily meals” for their families.<sup>54</sup> Chandler continues:

Communities will always seek to preserve the future, until they reach the point of desperation. Then they will, of necessity, sacrifice the future to preserve the present. Much of the population of Burma is at this point of desperation.<sup>55</sup>

The high inflation rate and ongoing devaluation of the kyat similarly exemplify the economic woes in Burma.<sup>56</sup> In 1994, the kyat was valued at over 100 kyat to the dollar.<sup>57</sup> After sharp declines in mid-1996 and mid-1997, the kyat hit more than 350 kyat to the dollar in mid-1998.<sup>58</sup> The woes of the people have only worsened since the economic downturn in Asia. In a recent statement, Aung San Suu Kyi observed that:

The economic recession has hit the man on the street very hard. There has been a vast increase in prices, and the standard of living has dropped. Health care, education, incomes, all this is going downhill. The Burmese people are worse off than ever before. . . . [T]he military regime likes to point out all the new hotels that are springing up everywhere, and the new roads and bridges. But that is of no concern to the people, who are interested in the costs of day-to-day living, their health, and feeding their children.”<sup>59</sup>

### *The Environment*

With the liquidation of natural resources, there has been a corresponding increase in environmental harm.<sup>60</sup> The junta's willingness to open up Burma's natural resources to exploitation has had a devastating impact on the country's ecosystems. Nowhere is this more evident than in the degraded state of Burma's forests. From the 1970s until the mid-1980s, Burma had the lowest deforestation rate in Southeast Asia.<sup>61</sup> After it seized power in 1988, however, the regime granted numerous timber concessions to foreign companies that tripled the amount of forest being logged.<sup>62</sup> These concessions were located along the Thai/Burmese border in areas occupied by ethnic minorities. While these communities traditionally practiced low impact harvesting methods, clear-cutting and overcutting by the foreign companies had a dramatically negative effect on the region's forests.<sup>63</sup> Compounding this destruction has been a significant rise in the quantity of illegal Burmese timber exports.<sup>64</sup> Overall, according to a recent report by World Resources Institute, the rate of deforestation in Burma has more than doubled since 1988.<sup>65</sup> This deforestation “has caused massive soil erosion, sedimentation of rivers, increased flooding, and acute dry season water shortages in some areas.”<sup>66</sup> Burma's woefully meager forestry regulation virtually ensures that logging will continue to proceed at an unsustainable pace.<sup>67</sup>

### *Abuses of Civil and Political Freedoms*

Burma under the military junta has not only suffered a decline in living standards, health, education, and the environment. The regime has also received widespread condemnation from the United Nations, governments, and nongovernmental organizations such as Amnesty International for brutally suppressing the civil and political liberties of its citizens. In 1992, the U.N. Commission on Human Rights appointed a Special Rapporteur for Burma. The reports of the Rapporteur and those of other human rights groups have documented countless abuses committed by the junta: extrajudicial, summary, or arbitrary executions; torture; rape; arbitrary arrests and detention; abuse of women and children; religious discrimination; and oppression of ethnic minorities. Similarly, each year since 1992, resolutions of the U.N. General Assembly and Commission on Human Rights have endorsed the conclusions and recommendations of the Special Rapporteur, condemning Burma's human rights record. In addition, the military regime has refused to recognize the election of 1990 when the party of Aung San Suu Kyi, the National League for Democracy, won an overwhelming majority of both the popular vote and parliamentary seats. The U.N. Commission on Human Rights observes that the lack of “respect for the rights pertaining to democratic governance is at the root of all major violations of human rights” in Burma.<sup>68</sup>

### *Forced Labor and Forced Porterage*

Forced labor has long been used in Burma. Since the early 1990s, however, forced labor has reached epidemic proportions in the country. Much of the work is related to infrastructure

projects, including projects related to promoting tourism. Even by the military regime's own statistics, there was a twenty-five fold increase in "people's contributions"—a euphemism for forced labor—on rural development projects between 1989-90 and 1995-96.<sup>69</sup>

Forced labor in Burma has reached such proportions that the International Labor Organization (ILO) took the unprecedented step of expelling Burma from future ILO meetings in 1999. The ILO had previously launched a similarly rare Commission of Inquiry, and in the final observations of its 1998 report, it referred to:

a saga of untold misery and suffering, oppression and exploitation of large sections of the population inhabiting Myanmar [Burma] by the Government, military and other public officers. It is a story of gross denial of human rights to which the people of Myanmar *have been subjected particularly since 1988* and from which they find no escape except fleeing from the country.<sup>70</sup>

Forced labor is widely performed by women, children and elderly persons.<sup>71</sup> The Commission found pervasive forced labor imposed throughout Burma, including:

portering, the construction, maintenance and servicing of military camps, . . . work on agriculture, logging and other production projects undertaken by the authorities or the military, sometimes for the profit of private individuals, the construction and maintenance of roads, railways and bridges, [and] other infrastructure work.<sup>72</sup>

One particularly notorious method of forced labor is portering in which villagers are forced to carry the ammunition and supplies of the military. In addition to maltreatment by the soldiers, porters often have to act as human minesweepers, and many are killed or injured.<sup>73</sup> Porters who are sick, injured, or cannot carry their heavy loads are often beaten and left behind in the jungle to die. Women porters often have to serve "double duty," carrying the loads during the day and being raped by the soldiers at night.

#### *Forced Relocations and Internally Displaced Persons*

In addition to widespread forced labor, the military regime has also stepped up its campaign of forced relocations—especially in areas where ethnic resistance groups are thought to be active.<sup>74</sup> The relocation numbers are extraordinary, and the situation of the internally displaced populations is alarming. In Shan State, since 1996, an estimated 300,000 people have been forcibly relocated,<sup>75</sup> and in Karenni State, at least another 25-40,000 have been relocated during the past decade in two major relocation operations.<sup>76</sup> Similar relocations have also taken place in other areas throughout Burma; relocations on an unprecedented scale have forced hundreds of thousands to move in urban centers during the early to mid-1990s.<sup>77</sup> The impact of these relocations has been enormous. Those who do not cooperate are subject to torture, rape, arbitrary detention, summary execution, or extrajudicial killing as villagers may be shot on site. Though the numbers of internally displaced are difficult to determine, estimates indicate massive upheaval. For example, according to the Burma Ethnic Research Group (BERG), some 30% of the Karen population of 480,000 in southeastern Burma are currently displaced internally or in Thailand.<sup>78</sup>

#### *Refugees and Migrant Workers*

The exodus of refugees and displaced persons from Burma is perhaps the most visible indication of the problems in Burma. Since 1988, the number of refugees and migrant workers from Burma has increased significantly. The number of refugees on the Thai/Burmese border is today at an all time high with more than 119,000 in camps, and large numbers outside them as well.<sup>79</sup> Refugees continue to flow into Thailand with thousands of new arrivals during the past year.<sup>80</sup> On the western border during 1991-92, approximately 250,000 Rohingyas fled Burma to Bangladesh. Around 200,000 have since returned to Burma, some against their will.<sup>81</sup> Continuing human rights abuses and forced labor caused a new wave of refugees in 1996-97.<sup>82</sup> Since 1988, refugee and displaced person populations have also emerged along Burma's borders with India and China. There are even Burmese refugees in Malaysia.<sup>83</sup> Finally, the numbers of Burmese migrant workers, many of whom could qualify as refugees, has also swelled. In Thailand alone, estimates run between half a million and one million such Burmese.<sup>84</sup> The fact that so many people have left their homes in Burma illustrates the severity of the problems in the country. People do not easily leave their homes behind to become refugees, only doing so when they feel they have no other choice if they are to survive.

The human toll in Burma during the past decade has been enormous, and unfortunately, investment has brought little to the country except more guns, tools of oppression that have been used against the people of Burma. An examination of the largest investment projects in Burma reveals the same horrific impacts.

### **III. The Yetagun and Yadana Pipelines**

In taking a closer look at the Yetagun and Yadana pipelines—the largest direct investment schemes in Burma—the same disturbing patterns emerge, namely militarization with corresponding human rights and environmental abuses without corresponding benefits for the local population. In fact, for these projects, there is a direct link between the foreign companies and human rights abuses. The regime provides security for the pipeline route. Total, one foreign investor, has even made payments to military units in the area, allowed them to use equipment such as bulldozers, and even provided them with food on a regular basis. Unfortunately, with the Burmese military providing security, there has come predictable human suffering for the local population. Perhaps most disturbing is the fact that company officials—like John Imle, the president of Unocal—know about the abuses, and yet these violations continue to the present.<sup>85</sup>

#### Pipeline Investment and Militarization

Like foreign investment generally, there is an unmistakable link between the pipeline investments and the militarization of the pipeline region. Before the project was conceived, there were no permanent Burmese army battalion outposts in the pipeline corridor. Starting in 1991, while Total and Unocal were in negotiations with the regime for the Yadana project,<sup>86</sup> the Burmese military began to militarize the pipeline region.<sup>87</sup> One local villager from near Ohn Bin Gwin said, “Before 1991, we saw Burmese soldiers very seldom. . . . But after 1991, LIBs [Light Infantry Battalion] 408, 409, and 410 . . . started to base their outposts in our area. . . . In 1992, we saw soldiers almost every day.”<sup>88</sup> In 1991, the Burmese army captured Nat-E-Taung from the Karen National Union (KNU), the point that today is the border crossing point for the pair of pipelines into Thailand.

ERI has documented the military build-up that began in 1991 to protect the pipeline investment of the foreign companies.<sup>89</sup> Today, at least five battalion barracks and headquarters are stationed directly in the pipeline corridor, and numerous others in the region also provide support and patrol the area. While stating exact troop counts is difficult, an estimated three to four thousand troops are directly responsible for pipeline security in the region, with thousands of others providing support and patrolling the area at different times. The pipeline itself has soldiers at regular intervals along the route.<sup>90</sup> In all, this makes the pipeline region one of the most militarized areas in all of Burma.

There can be no doubt that these battalions are in the region primarily to protect the pipeline investment and foreigners in the area. Both villagers and defectors from units in the region confirm this, making repeated statements that the military is there specifically to protect the foreigners and the pipelines.<sup>91</sup> LIBs 273 and 282 were specifically formed to protect the companies and their investments. One villager from Kanbauk said that it is common knowledge that LIBs 273 and 282 provided security for the companies; indeed he said, “LIB 273 had no other mission.”<sup>92</sup>

### The Companies and the Military—Working Together

The soldiers in the pipeline region are working very closely with the companies. The companies meet regularly with military officers in the area and coordinate any trips outside their headquarters. Food, medical assistance, the use of company equipment, and even monetary support for the military units *by the companies* further illustrate their close working relationship. Interviews with defectors also confirm that Total is paying some soldiers who are guarding the pipeline. Two defectors stated that LIB 282 soldiers received money each month from Total—the amount depending on rank and ranging from 200 kyat for a private to as much as 500 kyat for a sergeant.<sup>93</sup> Promises were even made of payment in dollars if the pipeline was completed, though there is no evidence of any such payment.<sup>94</sup> Total’s own documents again indicate that they have given medical assistance to local units, stationing doctors in some battalions.<sup>95</sup> Similarly, the documents indicate that Total’s “bull dozer work in the villages” included “[f]inished dozing 273 battalion,” an apparent reference to providing assistance for one of the battalions specifically created to protect the companies and the pipelines.<sup>96</sup>

The working relationship between the companies and the army was so cozy that in spite of the Burmese military’s notorious human rights record and its widespread use of forced labor and portering, the companies nevertheless still entrusted them with recruiting villagers to work. Total’s own documents again confirm that during one six week period between December 1995 and January 1996, Total supplied “payment of money to villagers *hired by the army*” and “food rations to villagers in the battalions.”<sup>97</sup> A U.S. Embassy official was present at the briefing in which these documents were distributed. In his cable to the National Security Council in early 1996, the official observes, “how much [villagers] manage to get and keep, of the money and food that Total says it pays them, is unknown to post.”<sup>98</sup> Interviews with local villagers confirm that the U.S. official’s concerns were well-founded. Villagers are not only forcibly recruited by the military, but when payment is made, it is sometimes stolen immediately by the local military units. It is also critical to note that payment does not negate the forced nature of the work. To the contrary, the legal definition of forced labor has nothing to do with payment, but the manner in which the labor is procured.<sup>99</sup> One villager’s account captures the tragic events of working to clear the pipeline route:

The village headman told all the villagers who had to go and work for the pipeline route that they will get paid by the foreigners who are building the gas pipeline. But he said that he was ordered by the military. That was why, even though we did not care about the payment we had to go. . . . In the work site [the soldiers] guarded us and scolded us. [After being paid by Total employees, the soldiers] robbed all of the money, so it did not make any sense for me to stay in that area. . . . Ten days later I left the village. I was not able to suffer anymore.<sup>100</sup>

Despite such damaging evidence, the companies in the pipeline regions still publicly assert that all labor is procured directly by company personnel, claiming that only the companies—and never the military—obtain labor for their project. These assertions appear specious in light of Total’s own documents and victims’ testimony from the area. Unfortunately, the forced recruitment by the military is just one of the human rights violations occurring as a result of the pipeline project.

### The Pipeline Region Suffers

**“I regret very strongly that a company, the Petroleum Authority of Thailand, which is owned by the government, was part of a deal which bought gas from Burma, and hence opened up the conditions for the suppression of the Karens in the area where the gas pipelines have to pass. So I think that—for better or for worse—we have blood on our hands.”**

**–Sukumbhand Paribatra, Current Deputy Foreign Minister of Thailand<sup>101</sup>**

**“In my view about the pipeline, the plain soldiers and the villagers don’t benefit. . . . The villagers have their own families, and they have to worry for the daily food also, not just work for the soldiers, the pipeline, and the railroad. . . . Nothing profits to the villagers except forced labor. If you ask the people from Burma, “Why are you coming to Thailand?,” they will answer you it is because of porters and forced labor. The people who get the profit from the gas pipeline was the foreigners and the leaders in SLORC.”**

**–Military Defector from Pipeline Region<sup>102</sup>**

There is a direct connection between the pipeline projects and the problems in the region. Whether it is the standard of living in the region or the impact on the environment or the human rights situation, since investment in the pipeline projects began, many people’s lives in the area have worsened. Defectors from battalions securing the pipeline confirm they received orders to commit human rights abuses.<sup>103</sup> Victims and witnesses attest to the same. Total’s documents confirm that the battalions committing the abuses are the same ones they used to “hire” villagers, including LIBs 273, 401, 403, 407, 408 and 409.<sup>104</sup>

The human rights violations associated with the pipeline projects create a long and distressing list of suffering. The Yetagun pipeline is still being constructed and is due for completion later in 1999. Even after the pipes are laid for Yetagun, however, the abuses surrounding the projects will likely continue indefinitely. The Burmese military is still protecting the pipelines which means the region will remain highly militarized and security-related abuses will continue.

Villagers have been forced to clear the route of the pipelines,<sup>105</sup> work on heliports,<sup>106</sup> and build military barracks<sup>107</sup> as well as support the military units in the area with supplies, such as wood, water, and food.<sup>108</sup> Villagers also routinely have had to porter for the military patrolling the pipeline route, and these abuses continue to the present.<sup>109</sup> The military has forcibly relocated villages,<sup>110</sup> or compelled villagers to move from the outskirts to the center of villages to better control them.<sup>111</sup> Villagers' freedom of movement has also been restricted,<sup>112</sup> and farmers often must receive passes to visit their own land.<sup>113</sup> The military also steals food, rice, crops, and livestock from the villagers as well as extorting arbitrary "fees" from them. These fees, known as "forced labor fees" or "porter fees" are the only way to avoid having to serve the military units in the area, and they can drain and deplete local villagers' savings quickly, forcing many to leave the region out of desperation. The military has also forced the villagers to quarter them in the pipeline region.<sup>114</sup>

Violence also accompanies the military presence and efforts to secure the pipelines and ensure the investment projects continue unabated. Porters are routinely beaten and have been killed trying to escape or die from disease or exhaustion during their portering.<sup>115</sup> Rape<sup>116</sup> and other torture of local villagers and even summary executions have occurred in the pipeline region.<sup>117</sup> Testimonies from local witnesses and victims illustrate the extent of the human rights and environmental abuses.

#### *Health, Education, Inflation, and Living Standards*

For many in the pipeline region, the military units in the area have exacted such a toll on them and their families that they could not survive or maintain their traditional livelihoods and felt compelled to leave their life-long homes—for the Thai border or other places in Burma. The companies—Unocal, Total, and Premier—claim their role in the region is positive, having built schools and clinics and undertaken other community development projects. However, interviews with individuals from the area belie the fact that the pipeline has improved the lives of many. The statement of one villager is typical, "From then on, I realized myself that I was not able to deal with this kind of thing, so in desperation I escaped by leaving my village and all my belongings."<sup>118</sup>

For those who remain, militarization of the pipeline region makes it virtually impossible to give a detailed independent assessment of the pipeline's impacts on the health, education, and living standards of the area's inhabitants. However, interviews with individuals who have fled suggest that the quality of many people's lives has deteriorated markedly. The gas projects have provided minimal employment locally, with a large majority of the pipeline-related positions occupied by Burmese going to people from Rangoon.<sup>119</sup> Not surprisingly, many young people are leaving the area in search of employment elsewhere.<sup>120</sup> Inflation has skyrocketed. The price of rice has doubled in some places, while vegetables cost four times the amount they did before the companies' arrival.<sup>121</sup> In the name of pipeline security, the army has curtailed people's hunting and fishing opportunities.<sup>122</sup> As a consequence, poorer villagers have been forced to sell their belongings in order to eat.<sup>123</sup>

In addition, despite the construction of schools subsidized (and touted) by Total and Unocal, fewer people can afford to send their children to school because of inflation.<sup>124</sup> Similarly, notwithstanding the companies' building of medical clinics along the pipeline route, many villagers have difficulties paying to use these facilities.<sup>125</sup> Compounding the problem is a reported increase in the incidence of diseases such as malaria as well as more road accidents since the companies appeared.<sup>126</sup>

The failure of the companies' community development projects is not surprising considering their intent is largely to pacify the local population. In his cable to the National Security Agency, a U.S. official clarified the aim of the community projects:

In Total's January 18[, 1996] briefing, at the Kanbauk Base Camp, of SLORC members, Unocal Management, GOB media representatives and others, the Total spokesperson explicitly stated that the community relations projects that Total plans to undertake at 33 sites near the pipeline route are intended to "contribute to pipeline security" by making local inhabitants "feel that this pipeline is theirs."<sup>127</sup>

### *The Environment*

The ecosystems of the Tenasserim Division, considered by the World Wide Fund for Nature to be one of their 200 globally significant ecosystems,<sup>128</sup> have been seriously affected by the construction of the pipeline. Previously, a continuous rainforest ecosystem—the largest of its kind in Southeast Asia—had extended throughout the length of the Thai/Burmese border in the area.<sup>129</sup> However, construction of the gas pipelines and the paved access road paralleling them has bisected this forest, with potentially devastating effects on the numerous endangered species in the region, including elephants, tigers, and Asian rhinoceroses.<sup>130</sup> The pipeline corridor was further widened—and the forest fragmented—by the construction of the Yetagun pipeline. For undisclosed reasons, the construction of this second parallel pipeline was deemed necessary *only* on the Burma side of the border.<sup>131</sup> The Yetagun gas will thus flow through a separate pipeline until it reaches Thailand at which point it will flow through a single pipe. This second pipeline presents an additional barrier to the wildlife of the region, and may fracture remaining populations.<sup>132</sup>

Militarization has also brought threats to the forests and endangered species of the region. Military units brought in for pipeline security have engaged in illegal logging, reportedly operating at one sawmill along the pipeline route,<sup>133</sup> one villager witnessed soldiers shoot and kill a rhinoceros,<sup>134</sup> and another local resident noted that LIB 282, described by a defector as the "Total battalion,"<sup>135</sup> had been trying to capture rare white elephants.<sup>136</sup>

### *Violence*

The story of Jane Doe I, a plaintiff in a lawsuit, *Doe v. Unocal*, brought in the United States for human rights abuses in the pipeline region illustrates the gravity of the situation.<sup>137</sup> It shows the extent to which the Burmese military will go to secure the investment projects. After being forcibly relocated from her village—a village directly in the pipeline corridor where she had spent her entire life—Jane Doe I fled to the jungle and became an internally displaced person. A military patrol securing the pipeline region found her and her family in their home in the jungle. The soldiers approached and started yelling at her and beating and kicking her. Jane Doe I was holding her infant child when one soldier kicked her very hard, knocking her unconscious and throwing her child into a cooking fire. Upon waking, she found her child with severe burns on its head. She and her family abandoned their home in an effort to find medical treatment for the child. After struggling to reach the Thai border, she reached a refugee camp, but there was nothing that could be done, and the child died soon afterwards.<sup>138</sup>

### *Forced Labor and Forced Portering*

There can be no doubt that forced labor and portering in the pipeline region has occurred as a direct result of these pipeline projects. Interviews indicate that villagers are forced to work on infrastructure and as porters. The fact that some people who were forced to work were later paid by the companies in the region only confirms that the labor was related to the pipeline project.<sup>139</sup> Similarly, one company employee said that when work fell behind schedule and the military units supervising the employees needed extra hands, the military forced more than 40 villagers, including a 15-year-old girl and a pregnant woman, to help finish the job.<sup>140</sup>

The situation for porters in the region is often unbearable. A defector observed:

I saw the porters beaten a lot because the weather was too hot and their heavy loads made them tired on the trips. I saw two old guys die. . . . When we met them [on our way to Nat-E-Taung], they looked very, very tired—so tired they could not walk straight. When we met them they were begging us to give them some food and some medicine or an injection. But my captain said we had no time to take care of them, [telling them to wait for other troops] and ask for help. One was about 70, and one was about 60 years old. . . . Three days later when we came [back], we found them already dead.<sup>141</sup>

Another victim explains that for poorer villagers or villagers who have run out of money, they have no choice but to go as porters:

Some people who had money hired people to go for them, but mostly they had to go by themselves because they couldn't hire the people anymore.<sup>142</sup>

The effects on the local population are a direct result of the project. Troops would not be in the vicinity in such numbers or demanding such labor and portering from the villagers if not for the foreign investment in the Yetagun and Yadana projects. A defector concurs:

I really do not think the pipeline brings anything for the local people or the ordinary soldiers like us. It doesn't bring any good things. Above all, this project is really bad for all the villagers because if there was no project, there would be no forced labor.<sup>143</sup>

### *Forced Relocations*

Forced relocations have also occurred in relation to the two pipeline projects. The companies deny that there have been relocations because of the projects, especially since the time the Yadana contract's signing in 1992.<sup>144</sup> The entire village of Michaunglaung that lies directly in the pipeline corridor was relocated in 1991-92. One defector from LIB 407 confirms the events:

In 1991-1992, the order came from above that we had to relocate the villages. . . . [I]f the villagers come and stay closer to the outpost it will be easier for the troops to control the villagers. I mean any time the troops can get the laborers or the porters for the patrolling. We the LIB 407 had to take responsibility to relocate Michaunglaung village, and other battalions had to relocate other

villages in their regions. At the time Michaunglaung village was in our 407 area. When we were moving Michaunglaung village, I was in Kanbawk, but one of the platoons from my company was involved with the relocation of the village.<sup>145</sup>

Though the companies claim this relocation was not related to their projects, it occurred during the negotiations for the Yadana project. Though denying responsibility for it, the companies now accept the relocation of Michaunglaung village as fact. In Premier's own publication about the Yetagun project, it publishes a map that indicates there are indeed two Michaunglaung villages—one labeled "Michaunglaung (new)" and the other "Michaunglaung (old)".<sup>146</sup>

The claim that no villagers were forcibly relocated after 1992, however, is also inaccurate. In 1996, for example, following an attack on Total's base camp, the military units in the area forcibly relocated villagers from the outskirts of Eindayaza to the central part of the village; in addition, the military summarily executed some villagers around this time.<sup>147</sup>

Relocations are often a very violent process with Burmese soldiers entering villages to ensure the relocation takes place. Villagers may be guarded at gunpoint and threatened they will be shot if they do not relocate. The fear of living under the domination of the military also sends people into hiding in the jungle or causes them to flee their life-long homes and become refugees.

### *Forced Appreciation*

There are also indications that the smiles and appreciation that the companies profess they received are in fact forced by the military in the area. One village headman said:

The truth is that the military asked us to smile or be happy or they would scold us. I asked the villagers to smile whenever they saw the foreigners to be safe from the scolding or swearing from the military.<sup>148</sup>

Total and Unocal held an "opening ceremony" for the pipeline on July 1, 1998. Villagers confirm that more than a thousand people from the vicinity were forced by the military to attend the ceremony. A certain number of villagers from each village were ordered by pipeline battalions to attend "without fail", and a forced rehearsal was even held three days before the actual "opening ceremony."<sup>149</sup> A company truck came to pick up the villagers, and after listening to an hour of speeches in English and Thai without a translator, one villager observed, "I did not understand, but at the end of their speeches, we had to clap our hands."<sup>150</sup>

### The Companies Know the Human Rights Abuses are Happening

Despite all their public protestations to the contrary, the companies in the region also know that human rights abuses are occurring in association with their projects. Unocal's President, John Imle, admitted in a deposition before a U.S. court 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. He himself initialed the pages of the testimony, indicating the accuracy of what he said:

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>151</sup>

In the face of Mr. Imle's quote and other acknowledgements such as the relocation of Michaunglaung village,<sup>152</sup> the companies can no longer assert that there are no human rights abuses surrounding their projects or that the military providing security does not use porters. As with the villagers' account above, the fact that Unocal or Total pays these porters only proves that the work is related to the pipeline project. The testimony of local villagers and defectors is unambiguous on the point that such labor was forcibly recruited, thus proving the direct link between human rights abuses and the Yadana and Yetagun investments.

#### IV. Conclusion

**“The success of a market economy is facilitated by a supportive economic environment, rather than by the harshness of the political climate.”**

**–Amartya K. Sen, Nobel Laureate in Economics<sup>153</sup>**

**“[Burma will remain an] economic disaster as long as it continues to repress human rights. Just as democracy fosters prosperity, so repression in Burma has generated economic disaster.”**

**–Madeleine Albright, U.S. Secretary of State<sup>154</sup>**

**“As it became obvious that the military authorities were not interested in bringing democracy to Burma, but simply in strengthening their own position, and using economic means to strengthen their position, we decided that economic sanctions were necessary. . . . [W]e think that economic sanctions are good and necessary for the fast democratization of Burma.”**

**–Aung San Suu Kyi<sup>155</sup>**

Since the ruling military regime opened up the country to foreign investment in 1988, the country's people have yet to see the benefits of the incoming money. The money has been concentrated in capital intensive industries, especially extractive industries such as natural gas, 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. To the contrary, many people's lives have never been worse. Foreign investment, especially the Yetagun and Yadana projects, will remain critical to the Burmese military's hold on power. The pipeline projects will generate hundreds of millions of dollars annually starting in a few years, by far the largest source of legitimate foreign exchange for the regime.<sup>156</sup> Furthermore, these pipelines have resulted in direct human rights abuses and brought little for the local populations. Investors like Unocal, Total, and Premier claim their investments can better the lives of people by creating more wealth. This has not happened in Burma, and cannot happen under this regime. Until the regime is replaced or takes steps towards political openness, democracy, and respect for human rights, the international community must insist that foreign investors withdraw from Burma. Without this withdrawal, the economic, social, and environmental disaster in Burma will continue for the indefinite future.

## Endnotes

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<sup>1</sup> Interview with Aung San Suu Kyi by Marc Helsens. Groot-Bijgaarden de Standard (July 1999)(cited in The BurmaNet News: July 15, 1999 Issue #1215)[hereinafter Aung San Suu Kyi Interview].

<sup>2</sup> U.S. Embassy, Rangoon, Burma. *Foreign Economic Trends* (1996) at ii, 39 [hereinafter *Economic Trends*].

<sup>3</sup> See, e.g., *Economic Trends*, at 1, 3, 40 (at 3, the report states that “the pace of economic liberalization has slowed, and in some sectors, such as agriculture, has been reversed. In particular, none of the many large state economic enterprises has been privatized, and no such privatizations are known to be imminent.”); see also, e.g., William Barnes, “Burma Goes Underground,” *South China Morning Post*, 25 June, 1999 (“The mini-boom which followed tentative reforms in the early 1990s had already stalled by early 1996—as the International Monetary Fund noted—by the failure to deliver further reforms. . . . Investors only discovered the debilitating reality in the second half of the decade: rampant corruption, a bureaucracy paralyzed by fear and a regime with an almost pathological desire to retain control of virtually all economic activity. The foreign business community may have halved in the past 12 months. One would-be textile manufacturer found that even US\$8 a month wage rates could not keep him afloat: ‘I waited two years for a decision—that’s long enough.’”); see also U.S. Department of State, *Country Commercial Guides: FY 1999: Burma*, at

<[http://www.state.gov/www/about\\_state/business/com\\_guides/1999/eastasia/burma99.html](http://www.state.gov/www/about_state/business/com_guides/1999/eastasia/burma99.html)> (“Despite some new laws in the 1990’s to open the economy and encourage foreign trade and investment, Burma remains a largely closed and non-transparent business environment. Regulations affecting foreign business are subject to frequent amendment, leading to considerable confusion. A series of new regulations restricting import/export trade were imposed in FY 1997/98, further dampening trade prospects. . . . [T]here is little about the current business climate to recommend. . . . [B]usiness should be aware that given severe foreign exchange shortages combined with restrictive trade policies, the current business climate in Burma is poor.”); see also Mark Mason, “Foreign Direct Investment in Burma: Trends, Determinants, and Prospects” in *Burma: Prospects for a Democratic Future* (Robert I. Rotberg, ed.)(1988), at 221-22 [hereinafter “Foreign Direct Investment”].

<sup>4</sup> World Voice Campaign and Burma Campaign UK, “Statement by NLD Secretary General Aung San Suu Kyi: For Us, Every Day is a Special Day for Democracy,” (September 1999)(on file with authors)[hereinafter Aung San Suu Kyi Statement].

<sup>5</sup> *Economic Trends*, at 5; *Frontier Forests*, at 13.

<sup>6</sup> Tom Kramer, “Oil Companies Investing in Burma Under Fire in Europe”, *Irrawaddy* (June 1999) at 15.

<sup>7</sup> *Economic Trends*, at ii, 1-2 (“Economic growth has been unevenly distributed. . . . The real incomes of many urban Burmese, including government employees, have declined, contributing to a widely alleged increase in official corruption. In the countryside, real farm incomes have risen since 1989 in most of Burma, but have declined in areas where the GOB [Government of Burma] has imposed inappropriate new agricultural technologies or raised in-kind taxes on marginally productive land, and in border areas targeted by GOB military operations. Meanwhile, the amount of uncompensated labor ‘contributions’ [forced labor] exacted from the rural population to build transportation and irrigation infrastructure appears to have increased sharply. Throughout Burma, the perception is widespread, that the benefits of recent growth have accrued disproportionately to military officers and to a small commercial elite, although the lack of data about income distribution makes it difficult to ascertain the validity of these subjective perceptions.”).

<sup>8</sup> *Economic Trends*, at 48 (“UMEH is a specially privileged holding company formed in February 1990. As stipulated in its charter, 40% of its equity is owned by the Directorate of Defense Procurement, a Defense Ministry agency that supplies the GOB’s military imports; the remaining 60% is owned by ‘defense service personnel,’ notably senior military officers including SLORC members, and by ‘military regiments and war veterans (organizations or individually).’ UMEH, as stipulated by its charter, operates ‘under the guidance of the Directorate of Procurement,’ with which it is co-located across the street from the Defense Services Museum in Rangoon.”); see also *id.* at fn. 31 (The charter is “GOB Ministry of Trade Notification No. 7/90, Rangoon. 19 February 1990, entitled ‘Formation of the Union of Myanmar Economic Holdings, Limited.’ At that time, Col. David Abel, who signed this notification, was both Minister of Trade and Director of Defense Procurement, as well as Minister of Finance. He is now . . . a brigadier general.”).

<sup>9</sup> Aung San Suu Kyi Interview.

<sup>10</sup> See footnotes 15-22 and accompanying text.

<sup>11</sup> Martin Smith, Article XIX, *Paradise Lost? The Suppression of Environmental Rights and Freedom of Expression in Burma* (1994) at 13 [hereinafter *Paradise Lost*]; see also, Jake Brunner, Kirk Talbott, Chantal Elkin, World Resources Institute (WRI), *Logging Burma’s Frontier Forests: Resources and the Regime* (1998) at 17 [hereinafter *Frontier Forests*]. Teak sales in 1995 alone earned the regime US\$150 million, some ten percent of the country’s Gross Domestic Product, making it the single largest foreign exchange earner. *Frontier Forests*, at 13.

<sup>12</sup> *Paradise Lost*, at 13.

<sup>13</sup> *Frontier Forests*, at vii.

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<sup>14</sup> See, e.g., *Paradise Lost*, at 16.

<sup>15</sup> Premier Oil, *Our Global Responsibilities* (No Date) at 7. Premier was joined by Texaco (U.S.)(50%) and Nippon Oil (Japan)(20%) in 1991. *Id.* Texaco sold its shares and withdrew from Burma in September 1997. Premier is currently the operator of the project. The consortium currently consists of Premier (32%), Petronas (Malaysia)(37%), Nippon (17%) and Thailand's state petroleum exploration company, PTTEP (14%). The Mynama Oil and Gas Enterprise (MOGE) has a 15% option. *Id.*

<sup>16</sup> Unocal, *Unocal in Myanmar (Burma): The Yadana Project* (March 1997) at 3 [hereinafter *Unocal in Myanmar*]. Unocal (U.S) joined the Yadana consortium in early 1993, and the partners currently are Total (31%), Unocal (28%), PTTEP (26%), and MOGE (15%). Total is the operator of the project. See Total, *The Yadana Gas Development Project* (July 1997) at 11.

<sup>17</sup> *Our Global Responsibilities*, at 5.

<sup>18</sup> *Unocal in Myanmar*, at 4.

<sup>19</sup> Open Society Institute Burma Project, *Burma: Country in Crisis* (1998) at 20.

<sup>20</sup> *Unocal in Myanmar*, at 5; see also Department of State Unclassified Cable from Rangoon, No. 0220. January 22, 1996, para. 7 [hereinafter State Department Cable].

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*; see also U.S. Department of Labor Bureau of International Affairs. *Report on Labor Practices in Burma* (September 1998), at 50 ("The uncertainty about the [regime's] total revenues from the project stem from secrecy surrounding its contractual terms."). *The New Light of Myanmar* estimated that revenue from the gas sales alone at US\$164 million per year. *Id.* (citing "Yadana Natural Gas Project," *The New Light of Myanmar*, September 13, 1995, at 3 ("Myanmar will earn 4900 million US dollars in thirty years for the sale of gas and this is about 450,000 US dollars a day.")).

<sup>23</sup> *Economic Trends*, at ii; see also *id.* at 101 ("[T]he undemocratic form of government contributes greatly to Burma's macroeconomic instability and retards development of a healthy and educated workforce. The government's reliance on armed force rather than popular support is directly related to its disproportionately high levels of defense spending."); *id.* at 103 (Similarly, in 1995, "the U.S. Secretary of State . . . stated that 'Burma is clearly a country where there is a substantial political risk of investment,' and . . . [there is] 'the strong possibility that a successor government could cancel an arrangement made with the current Burmese government.'").

<sup>24</sup> Carol Bellamy, United Nations Children's Fund (UNICEF), *The State of the World's Children 1999* (1999) at 116.

<sup>25</sup> *Id.* at 114-117. This figure is the latest available for Somalia, which currently has no functioning government.

<sup>26</sup> United Nations Development Programme, *Human Development Report 1999* (1999), at 190 (estimating total armed forces at 429,000 in 1997); see also *Burma: Country in Crisis*, at 9 (estimating troop strength of over 400,000 in 1997, citing Stockholm International Peace Research Institute, *Jane's Defense Weekly*, and *Far Eastern Economic Review*); *Economic Trends*, at 21 (estimating troop strength of 175,000 in 1988-89 and 325,000 in 1994-95).

<sup>27</sup> *Economic Trends*, at 21; Andrew Selth, "The Armed Forces and Military Rule in Burma," in *Burma: Prospects for a Democratic Future* (Robert I. Rotberg ed., 1998) at 88.

<sup>28</sup> *Paradise Lost*, at 6 (discussing US\$1.2 billion arms contract with China); *Burma: Country in Crisis*, at 9 (estimating US\$2 billion); see also *Economic Trends*, at 22 (citing U.S. Arms Control and Disarmament Agency (ACDA)'s 1993-94 edition of *World Military Expenditures and Arms Transfers* that shows the increase in military imports as the Burmese regime had an influx in hard currency in the late 1980s and early 1990s; military imports in 1988 at US\$20 million; 1989 at US\$20 million; 1990 at US\$110 million; 1991 at US\$390 million; 1992 at US\$140 million; and 1993 at US\$120 million).

<sup>29</sup> Aung San Suu Kyi Statement.

<sup>30</sup> Aung San Suu Kyi Interview.

<sup>31</sup> *The State of the World's Children 1999*, at 96.

<sup>32</sup> *Id.*, at 93.

<sup>33</sup> UNICEF, *Children and Women in Burma: A Situation Analysis* (1995), at 44, 53, 70 [hereinafter *Children and Women in Burma*].

<sup>34</sup> *Id.* at 24.

<sup>35</sup> David A. Chandler, "Health in Burma: An Interpretive Review," in *Burma: Prospects for a Democratic Future* (Robert I. Rotberg ed.)(1998) at 250 [hereinafter "Health in Burma"].

<sup>36</sup> *Id.* at 252.

<sup>37</sup> *Id.* at 254; see also Chris Beyrer, *War in the Blood: Sex, Politics, and AIDS in Southeast Asia* (1998); The Southeast Asian Information Network (SAIN), *Out of Control: The HIV/AIDS Epidemic in Burma* (December 1995).

<sup>38</sup> "Health in Burma," at 255.

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<sup>39</sup> *Id.* at 256.

<sup>40</sup> *Id.* at 261.

<sup>41</sup> *Human Development Report 1999*, at 147.

<sup>42</sup> UNICEF Myanmar, *The Situation of Myanmar Women and Children (Part II of IV)*.

<sup>43</sup> *Children and Women in Burma*, at 60.

<sup>44</sup> *The Situation of Myanmar Women and Children (Part II of IV)*.

<sup>45</sup> *The State of the World's Children 1999*, at 108.

<sup>46</sup> *Children and Women in Burma*, at 60.

<sup>47</sup> See, e.g., Betsy Apple, EarthRights International, *School for Rape* (1998) at 55.

<sup>48</sup> Images Asia, *No Childhood at All* (1997) at 62.

<sup>49</sup> *School for Rape*, at 56.

<sup>50</sup> BurmaNet Editor, *The BurmaNet News*, July 27, 1999.

<sup>51</sup> “Thousands join queue for closed Myanmar colleges,” *Reuters*, July 26, 1999.

<sup>52</sup> “Burma reopens schools, but not all universities,” *Reuters*, August 12, 1997.

<sup>53</sup> Aung Zaw, “Idle Burmese students dream of lighter pursuits,” *The Nation*, July 7, 1997.

<sup>54</sup> “Health in Burma,” at 263 (also stating “the average family income for an urban poor family will barely cover the daily living expenses. If rent is charged; taxes are levied; a family member gets sick; clothes must be purchased; or school fees are required, then there is little or no margin with which to cover any emergency or additional expenses.”).

<sup>55</sup> *Id.*

<sup>56</sup> The official exchange rate is roughly six kyat to one U.S. dollar. The market rate is, however, much higher and has deteriorated significantly under inflationary pressures. For purposes of the above discussion, the values discussed represent the market rate—not the official exchange rate.

<sup>57</sup> See *Paradise Lost*, at 5.

<sup>58</sup> See “Foreign Direct Investment,” at 221; *Frontier Forests*, at 31; personal observation of author.

<sup>59</sup> Aung San Suu Kyi Interview.

<sup>60</sup> See generally, *Paradise Lost*.

<sup>61</sup> *Frontier Forests*, at 13.

<sup>62</sup> *Id.* at 17.

<sup>63</sup> *Id.*

<sup>64</sup> *Id.* at 14-15, 17.

<sup>65</sup> *Id.* at vii.

<sup>66</sup> *Id.*

<sup>67</sup> Similarly, Burma does not have remotely sufficient institutional capacity to safeguard the country's wealth of biological diversity that includes 251 known mammal species, 867 breeding bird species, 203 types of reptiles, and 7000 different flowering plants. *Id.* at 7. A mere one percent of Burma's land area is under protection in the form of national parks or wildlife sanctuaries. Even once large and robust protected areas have suffered enormous damage under the junta's rule. For example, a combination of clearing for military purposes, forced relocations, and illegal logging have ruined the 200,000 hectare Pindaung Wildlife Sanctuary in Kachin State. The rate of net forest loss for 1989-96 was 50 percent higher than for 1978-89. *Id.* at 22.

<sup>68</sup> Situation of human rights in Myanmar, Commission on Human Rights, 54<sup>th</sup> session, 15 January 1998, E/CN.4/1998/70, at 15 <<http://www.unhchr.ch/html/menu4/chrrep/98chr70.htm>>.

<sup>69</sup> U.S. Department of Labor, Bureau of International Labor Affairs, *Report on Labor Practices in Burma* (September 1998) at 40 [hereinafter DOL Report].

<sup>70</sup> *Forced Labour in Myanmar (Burma)*, Report of the Commission of Inquiry appointed under article 26 of the Constitution of the International Labour Organization to examine the observance by Myanmar of the Forced Labour Convention, 1930 (No. 29), Geneva (July 2, 1998) at 160, para. 543 (emphasis added)[hereinafter ILO Report].

<sup>71</sup> *Id.* at 156, para. 531.

<sup>72</sup> *Id.* at 155, para. 528.

<sup>73</sup> *Id.* at 157, para. 535.

<sup>74</sup> See, e.g., DOL Report, at 5 (“The practice of forcibly relocating villages in Burma started before 1988, but appears to have escalated significantly since then.”).

<sup>75</sup> See generally Shan Human Rights Foundation, *Dispossessed* (April 1998)(documenting the relocation of 1,400 villages throughout 7,000 square miles in central Shan State); see also Amnesty International, *Myanmar: Update on the Shan State* (June 1999)(AI Index: ASA 16/13/99) at 1 [hereinafter *Shan State*].

<sup>76</sup> A major relocation took place in 1992 when approximately 8,000 from 57 villages were forced to move; another occurred in 1996 when some 20-30,000 villagers from 98 villages received forced relocation orders. Amnesty International, *Myanmar Aftermath: Three Years of Dislocation in the Kayah State* (June 1999)(AI

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Index: ASA 16/14/99) at 1-3 [hereinafter *Kayah State*]. Karenni State only has a population of 250,000. Thus, the 1996 relocations represented about 10% of the population in the state. *Id.*

<sup>77</sup> See generally Burma Ethnic Research Group (BERG), *Internal Displacement in Myanmar* (July 1999).

Between 1988-94, new satellite settlements were established, and according to one study, in 1989-90, some 1.5 million people (four percent of the entire population) were relocated or settled in Burma. *Id.* at 2.

<sup>78</sup> Burma Ethnic Research Group and Friedrich Naumann Foundation, *Forgotten Victims of a Hidden War: Internally Displaced Karen in Burma* (April 1998) at 4.

<sup>79</sup> See, e.g., *Kayah State*, at 2; see also *Shan State*, at 2 (stating since 1996, 100,000 Shan have fled to Thailand but have not been permitted to establish refugee camps). The official number of refugees swelled in 1997 following a Burmese military offensive against the Karen. See, e.g., Burma Border Consortium Camp Numbers (September 1999). In 1988, there were roughly 20,000 refugees in camps. Burma Border Consortium Camp Number (1988). In 1994, the number of refugees in camps was roughly 75,000. See *Paradise Lost*, at 6.

<sup>80</sup> See, e.g., *Kayah State*, at 3 (stating 1,200 Karenni new arrivals); *Shan State*, at 2 (discussing 5,000 Shan new arrivals at one border crossing alone during the first four months of 1999). Some estimates of new arrivals in 1999 place the numbers at more than 10,000. While exact numbers are hard to determine, it is clear that refugees continue to flow into Thailand though the official numbers in the camps have remained roughly the same since 1997. Thai officials have refused to allow most new arrivals to enter the camps, claiming they must be “fleeing fighting” and taking a very narrow view of what defines “fighting.”

<sup>81</sup> Concerns about returning to Burma were at least in part due to demands from the military for forced labor. UNHCR negotiated a reduction in “compulsory labor to a maximum of four days of work per family per month.” UNHCR, *Bulletin* (June 1995). Local observers “indicate that the four days per family, per month was less a limit than a floor.” See DOL Report, at 38.

<sup>82</sup> See DOL Report, at 15.

<sup>83</sup> See *Kayah State*, at 1-2 (stating there are 10,000 Kachin refugees in China and 10,000 Rohingya in Malaysia); see also *Country in Crisis*, at 12 (estimating 110,000 refugees in India).

<sup>84</sup> See, e.g., DOL Report, at 16 (estimating 850,000 illegal Burmese migrant workers in Thailand, citing Archavanitkul, Jarusomboon and Warangarat, *The Complexities and Confusion of Cross-Border Migration into Thailand*, Institute of Population and Social Research, Mahidol University, Nakon Pathom, Thailand (1997) at 16). In 1994, there were only an estimated 350,000 Burmese in Thailand. See *Paradise Lost*, at 6.

<sup>85</sup> See footnote 151 and accompanying text.

<sup>86</sup> See DOL Report, at 48-49.

<sup>87</sup> ERI's field staff has continued to interview hundreds of victims and witnesses of human rights abuses associated with the pipeline. In addition, ERI has been able to interview a number of army defectors from pipeline security forces. EarthRights International and Southeast Asian Information Network. *Total Denial* (July 1996) at 14.

<sup>88</sup> *Total Denial*, at 14.

<sup>89</sup> *Id.* at 13-15; ERI Field Data (documenting the presence of battalions providing security for the pipeline, including LIBs 25, 104, 273, 282, 401, 402, 403, 404, 405, 406, 407, 408, 409, and 410)(on file with authors); see also DOL Report, at 54-55 (listing ten different battalions active in the pipeline region at one time or another: LIBs 273, 282, 401, 403, 404, 406, 407, 408, 409, and 410; the reports rely on an 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.)

<sup>90</sup> See, e.g., ERI Interview #87 (on file with authors).

<sup>91</sup> See, e.g., ERI Interviews #4, 39, 40, 52, 82, 83, 86 (on file with authors).

<sup>92</sup> ERI Interview #83; see also ERI Interviews #40, 43 (defectors stating that the LIB 282 was “created for gas pipeline security.”)(on file with authors).

<sup>93</sup> ERI Interview #40, 43 (on file with authors).

<sup>94</sup> ERI Interview #40 (on file with authors).

<sup>95</sup> Total Briefing Materials—January 18, 1996 (on file with authors)[hereinafter Total Briefing Materials].

<sup>96</sup> *Id.*, see also ERI Interview #82 (eye-witnesses testimony of LIB 273 using Total construction vehicles to clear an outpost at Kanbauk)(on file with authors).

<sup>97</sup> Total Briefing Materials (emphasis added).

<sup>98</sup> State Department Cable, para. 27.

<sup>99</sup> “. . . the term ‘forced or compulsory labour’ 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.” Article 2(1), Convention Concerning Forced or Compulsory Labour, ILO (No. 29), adopted June 28, 1930, 39 U.N.T.S. 55 (entered into force May 1, 1932).

<sup>100</sup> ERI Interviews #29 (on file with authors).

<sup>101</sup> “Bordering on Tyranny: Thailand's Dilemma,” Options 2000 (1997)(video). At the time Mr. Sukumbhand

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made the statement, he was a member of the parliament's House Foreign Affairs and Human Rights Committee.

<sup>102</sup> ERI Interview #40 (on file with authors).

<sup>103</sup> See, e.g., ERI Interviews #39, 40 (on file with authors).

<sup>104</sup> Total Briefing Materials.

<sup>105</sup> See ERI Interviews #4 (discussing clearing the route itself), 40 (discussing the building of bunkers and trenches for pipeline security), and 83 (discussing the clearing of a road along the pipeline route)(on file with authors).

<sup>106</sup> See, e.g., ERI Field Documents #37, 38, 47.

<sup>107</sup> See, e.g., ERI Interview #40 (defector stating, "I do not know exactly how many villagers were working at the outpost, but I saw lots of them.")(on file with authors).

<sup>108</sup> See, e.g., ERI Interviews #4, 84 (on file with authors).

<sup>109</sup> See, e.g., ERI Interview #2, 4, 5, 13, 27, 28, 31, 32, 33, 35, 48, 57, 59; see also, ERI Interview #40 (defector stating that although the Yadana pipeline was completed, the LIB he was in still had porters to help them with their security duties for the projects)(on file with authors).

<sup>110</sup> See, e.g., ERI Interview #4 (relocation of Michaunglaung).

<sup>111</sup> See, e.g., ERI Interview #4 (relocation of villagers from outskirts of Eindayaza to the central part of the village in 1996).

<sup>112</sup> See, e.g., ERI Interviews #82, 83 (discussing the curfew placed on their village)(on file with authors).

<sup>113</sup> See, e.g., John Doe V, *Doe v. Unocal* Complaint; see also ERI Field Document #39; ERI Interview #82 (discussing how the military has restricted villagers from hunting in the jungle, a traditional method of food gathering)(on file with authors).

<sup>114</sup> See, e.g., ERI Interview #4 (on file with authors).

<sup>115</sup> See, e.g., ERI Interviews #4, 39, 40 (on file with authors).

<sup>116</sup> See, e.g., Jane Doe II and Jane Doe III, *Doe v. Unocal* Complaint; see also ERI Field Documents #40, 47.

<sup>117</sup> See, e.g., *Total Denial*, at 16-17.

<sup>118</sup> ERI Interview #29 (on file with authors).

<sup>119</sup> See, e.g., ERI Interviews #83, 85 (both discussing that 80 percent of jobs go to people from Rangoon)(on file with authors).

<sup>120</sup> See, e.g., ERI Interview #83 (on file with authors).

<sup>121</sup> See, e.g., ERI Interviews #82, 83 (on file with authors).

<sup>122</sup> See, e.g., ERI Interviews #82, 84 (on file with authors).

<sup>123</sup> See, e.g., ERI Interview #82 (on file with authors).

<sup>124</sup> *Id.*

<sup>125</sup> See, e.g., ERI Interview #83 (on file with authors).

<sup>126</sup> See, e.g., ERI Interviews #82, 83, 85 (on file with authors).

<sup>127</sup> State Department Cable, para. 19.

<sup>128</sup> David M. Olson and Eric Dinerstein, "The Global 200: a representation approach to conserving the Earth's distinctive ecoregions" (Draft manuscript of the Conservation Science Program, World Wildlife Fund-US, 1998) at 72.

<sup>129</sup> *Id.*

<sup>130</sup> For maps of the pipeline route and acknowledgement of the "paved access/maintenance road" along the route, see, e.g., *Unocal in Myanmar*. For independent confirmation of the fact that the route passes through rainforest and is accompanied by a paved road, see attached Exhibit 2.

<sup>131</sup> See, e.g., *Our Global Responsibilities* at 8, 11.

<sup>132</sup> EarthRights International, *Total Denial II* (forthcoming 1999) (manuscript, Chapter 4 at 24-25, on file with authors).

<sup>133</sup> ERI Interview #82 (on file with authors).

<sup>134</sup> ERI Interview #83 (on file with authors).

<sup>135</sup> ERI Interview #43 (on file with authors).

<sup>136</sup> ERI Interview #33 (on file with authors).

<sup>137</sup> Attorneys from ERI are co-counsel in *Doe v. Unocal* and represent Jane Doe I in her claims against Unocal.

<sup>138</sup> Jane Doe I, *Doe v. Unocal* Complaint.

<sup>139</sup> See, e.g., ERI Interview #29 (on file with authors); see also footnote 100 and accompanying text.

<sup>140</sup> EarthRights International, *EarthRights News*, Vol. 1, No. 4 (October 1996) at 5.

<sup>141</sup> See ERI Interview #39 (on file with authors).

<sup>142</sup> ERI Field Document #38.

<sup>143</sup> ERI Interview #40 (on file with authors).

<sup>144</sup> See *Unocal in Myanmar*, at 3; see also State Department Cable, para. 20.

<sup>145</sup> ERI Interview #42 (on file with authors).

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<sup>146</sup> *Our Global Responsibilities*, at 11 (map).

<sup>147</sup> ERI Interview #4 (on file with authors); *see also Total Denial*, at 16-17.

<sup>148</sup> ERI Interview #3 (on file with authors)

<sup>149</sup> ERI Field Document #1 (on file with authors).

<sup>150</sup> ERI Interview #7 (on file with authors).

<sup>151</sup> Deposition of John Imle, August 14-15, 1997, *John Doe, et al. v. Unocal, et al.* (emphasis added).

<sup>152</sup> *See* footnote 146 and accompanying text.

<sup>153</sup> P.S. Suryanarayana. "Democracy Vital for Economic Well Being," *The Hindu*, July 14, 1999 (cited in *The BurmaNet News*: July 15, 1999, Issue #1215).

<sup>154</sup> "Burma told it will remain a disaster," *The Nation*, July 28, 1999.

<sup>155</sup> Aung San Suu Kyi Statement.

<sup>156</sup> *See* footnotes 15-22 and accompanying text; *see also* Letter by J.J. van Aartsen (Minister of Foreign Affairs) and E.L. Herfkens (Minister for Development Cooperation) to the Chair of the Commission on Foreign Affairs of the Parliament (October 16, 1998/DAO/ZO-327/98/6/6 pages, 1 annex, letter on Burma)(Unofficial translation by Burma Centre Netherlands)("In 1997 more than 60 % of the foreign investments in Burma came from the EU. These investments are concentrated in the oil and gas industry of which the profits are a important pillar of support of the regime.").