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TITLE Environmental Militarism: Burma's Extractive Industries

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AVAILABLE IN *Greener Management International Issue 52*

FORMAT Journal

DATE October 2007

ISSN 0966-9671

PAGES 47-61

MORE DETAILS <http://www.greenleaf-publishing.com/gmi52>

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Environmental Militarism

Burma's Extractive Industries*

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Natural gas projects in Burma have resulted in human rights abuses and environmental degradation, exposed by two high-profile lawsuits brought by ethnic villagers against Unocal Corporation and Total. These cases are important for the future of holding non-state actors accountable for human rights abuses and for the future of corporate social responsibility (CSR), but positive and measurable impacts are not yet evident in Burma. This is due in part to the irresponsible nature of the Asian corporations that are competing for Burma's resources and in part to the unchanged nature of the military junta, which violates human rights while practising what can be called environmental militarism, i.e. strengthening the armed forces *vis-à-vis* exploitation and trade of natural resources. This paper concludes that large-scale extractive projects in Burma should be avoided until appropriate preconditions for responsible investment are in place.

- Burma
- Southeast Asia
- Human rights
- Environmental rights
- Military
- Natural gas
- Pipelines
- Corporate accountability
- Corporate social responsibility

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* Special thanks to Naing Htoo, Marie Soveroski, Rick Herz, Misti Duvall, Adriane Lesser, Ko Wein, Alisa Loveman, Nang Aung, Chana Maung, Oliviero Soldati, Alec Knuerr, Wong Aung, Jockai Khaing, Kim, Soe Lunn, Peter Halford, Amy Alexander, the Shwe Gas Movement, Revenue Watch, TIRI and the Central European University.

IN 1885 PRE-COLONIAL BURMA, THE BURMESE COUNCIL OF STATE UNDER KING Thibaw imposed an historic fine against the Bombay Burmah Trading Corporation, a Scottish company. The company was charged with illegally exporting timber from Upper Burma without paying the necessary royalties. That same year there was also said to be an agreement between Burma and France which involved France supplying arms to Burma in exchange for unfettered access to the country's rich natural resources (Myint-U 2006: 11).

Respectively, these are two early examples of state attention to corporate fiscal accountability and the connection between the arms trade and natural resources, or what we might call environmental militarism: that is, strengthening the armed forces *vis-à-vis* exploitation and trade of natural resources. Today, environmental militarism in the context of Burma runs directly counter to earth rights, which is a concept on the integral connection and nexus between the environment and human rights. According to Earth-Rights International:

Earth rights are those rights that demonstrate the connection between human well-being and a sound environment, and include the right to a healthy environment, the right to speak out and act to protect the environment and the right to participate in development decisions (Greer and Giannini 1999).

This paper considers today's political economy of natural resource extraction in Burma. Part 1 considers the context of environmental militarism and earth rights in Burma and Part 2 illustrates this with a case study of the Yadana gas pipeline and the Shwe gas project. It concludes that large-scale extractive projects in Burma should be avoided until appropriate preconditions for responsible investment are in place.

Part 1. Environmental militarism and earth rights in Burma

The main political actor in Burma is the Tatmadaw or military (Callahan 2001), which constitutes an authoritative, rights-violating regime. The State Peace and Development Council (SPDC) is the state body run by the military. Politically, the country is undemocratic, autocratic and has weak governance; where they exist, state institutions are unstable, corrupt and controlled by the military (Fink 2001). Dissent is met with force by the state, indicated most famously by the junta's 1988 deadly crackdown on pro-democracy activists and the continued house arrest of Daw Aung San Suu Kyi, the Nobel laureate, whose opposition party, the National League for Democracy (NLD), won democratic elections in 1990 that went unrecognised by the military junta. It is a country run by soldiers in a climate of deep fear (Skidmore 2004).

After 1988, the Tatmadaw grew dramatically, turning the country into a more formidable military state. Military personnel jumped from 180,000 in 1988 to over 400,000 in 1996 and that increase was simultaneous with a sharp increase in military expenditure in the hundreds of millions of US dollars, mostly spent on armaments and other hardware (Myint-U 2006: 330-31).

Environmental militarism is a state strategy in Burma today, with the junta procuring arms and signing energy deals at the same table as, among others, India, China and South Korea (see, for example, Fulbrook 2006). But, contrary to King Thibaw's intentions, arms are now amassed not for state protection against external enemies—Burma has none—but for use against its own people, whether that be actual use against the people, as in the ongoing eastern offensive which has displaced at least 30,000 people in the last year, or through the ominous threat which comes with heavy militarisation that 'enables' mass repression.¹ The junta's fundamental conception of political order

1 On the eastern offensive, see Free Burma Rangers 2007.

integrates authoritarianism, natural resources and militarisation. This can be inferred on even the most basic level: Burma is a resource-rich military regime which spends resource revenue largely on military armaments.² A stream of revenue from natural resources is in some resource-rich countries a substitute for taxation of the populace, enabling the government to disregard popular interests (Ross 2001; Moore 2004). In Burma, the junta receives resource revenue, enabling it to disregard the populace, but the junta also arbitrarily taxes its people, doubly disregarding the populace (ERI 2007).

The regime has a history of earth rights violations.³ The rights to freedom of expression, assembly and speech, all recognised as earth rights, are categorically denied to the diverse people of Burma. In 2007, Freedom House ranked Burma as 'Not Free', with a 7 for political rights and a 7 for civil liberties—1 being ideal and 7 being the worst (Freedom House 2007). Large-scale extractive projects threaten to exacerbate the situation. They give a context to the violation of these rights by virtue of the fact that local people have no critical role in resource negotiations, seeking redress from negative impacts, or otherwise participating in development decisions. Any meaningful attempt to assert these rights will in the best case be disregarded and in the worst case be met with violence or imprisonment.

On 4 June 2007, student activists in Arakan State in Western Burma, which is in proximity to the offshore Shwe natural gas project (see below), hung posters in public places that read: 'The Arakan natural gas is for Arakanese people; You can't sell gas without the consent of the Arakanese people; Save our forest; Don't destroy the forest; Keep Arakan green.' The next day a curfew was reportedly imposed by the junta between 9pm and 5am and, on 6 June 2007, three students were arrested for reasons connected to hanging the posters (*Kaladan News* 2007).

Local people in this area are facing arbitrary taxation by local army battalions, forced labour, forced portering and, in some places, farmers are restricted from working their land, resulting in crop failure.⁴ Certain areas of Arakan State are home to armed opposition groups and, when forced to porter military equipment for the army, some locals are being required to wear military uniforms, while soldiers wear civilian clothing in order to protect themselves against an armed attack.⁵

According to one local trader, 'We can't do anything freely. Even when we are doing trading we only get half of the benefits and the other half goes to the soldiers.'⁶

More recently, protests erupted in Burma on 19 August when the junta abruptly raised state-controlled fuel prices, including a 500% increase in the price of natural gas. This caused bus fares and the price of rice and other staples to double, bringing the already precarious daily survival of some to a grinding pace. In response, people have taken to the streets.

Protests began on 19 August in the old capital of Rangoon and have continued to spread, raging as far as the resource-rich state of Arakan in Burma's far west, where on

2 Some estimates suggest the regime spends approximately 40% of its budget on military expenditure, but there is, in reality, no reliable data on exact expenditure or on revenue flows. According to Sean Turnell, a Macquarie University economist, 'however it's measured, Burma's defense spending will likely always be grossly understated' (Fulbrook 2006).

3 For documentation of abuses in Burma, see, for examples among many, EarthRights International (www.earthrights.org 1996–2007), the Free Burma Rangers (www.fbr.org), Human Rights Watch (www.hrw.org 2002–2007), Amnesty International (www.amnesty.org 1997, 2000, 2002, 2003), the Karen Human Rights Group (www.khrg.org), Shan Women's Action Network (www.shanwomen.org), the Shwe Gas Movement (www.shwe.org), the Salween Watch Coalition (www.salweenwatch.org), Chin Human Rights Organisation (www.chro.org); and, for resources, the Online Burma Library (www.burmalibrary.org).

4 EarthRights International and Shwe Gas Movement field interviews (2006–2007) on file with EarthRights International.

5 EarthRights International field interview (2005) on file with EarthRights International.

6 EarthRights International field interview (2005) on file with EarthRights International.

18 September nearly 3,000 ethnic Arakanese and Muslims marched in defiance, following the peaceful lead of Buddhist monks. The military met the protests in Arakan State with tear gas and warning shots (*New York Times* 2007).

In Pakokku, north of Rangoon, soldiers fired warning shots above the heads of monastic leaders and beat protesters in the streets. In angered response, local monks burned and tipped cars, and destroyed the property of government sympathisers. The army, the pro-junta Union Solidarity and Development Association and the paramilitary group Swan Arr Shinn participated in breaking up this protest and others, which included tying three monks to a pole and beating them publicly with rifle butts and bludgeons (*The Irrawaddy* 2007b; *New York Times* 2007; Smith and Htoo 2007).

At the time of writing, the monks are reportedly organising nationwide, refusing the junta's alms and demanding a public apology. At least 189 people have been detained for protesting (APPPB 2007).

Economy

In 1988, Burma made the transition from the unsuccessful 'Burmese Way to Socialism' to an unsuccessful open-market economy, which is also controlled by the military. Three months after the crackdown on the nationwide pro-democracy uprising, the regime passed Law #10/88, which opened Burma's economy to foreign investment in order to promote the 'development of [the] national economy' (Government of the Union of Myanmar 1988). This policy enables the SPDC to control the flow of foreign direct investment (FDI) coming into Burma (Ruland 2001: 151; Holliday 2005: 6) and shareholding capacity has been reserved for the military and their families (Burma Campaign UK 2004).

In 2005, the junta's Ministry of National Planning and Economic Development reported an economic growth rate of 12.6%, which, if correct, would have made Burma the highest-performing economy in the world (Parker 2005). Impartial economists placed Burma's growth rate at a more realistic and more sluggish 1.5%, with an equally dismal forecast (EIU 2005). The junta placed the inflation rate for the 2005 fiscal year at only 10%, compared with the more reliable and much higher figure of 53% that was released by the United Nations Economic and Social Commission for the region. The junta attributes the difference to methods of calculation (*The Irrawaddy* 2006a).

According to official statistics, total foreign investment in Burma since 1988 amounts to over US\$13.8 billion. A controversial US\$7 billion Thai investment in the Tasang Dam⁷ casts a shadow over oil and gas investments, but oil and gas has historically been the most trustworthy source of revenue for the regime and will continue to be so for the foreseeable future, as the country sits atop large natural gas deposits located in the Andaman Sea and the Bay of Bengal. From 1988 to 2005, oil and gas accounted for approximately 34% of all foreign investment in Burma. As of March 2006, FDI in Burma's oil and gas sector reached US\$2.635 billion, or roughly 35% of FDI.⁸

Gas is by far Burma's largest export earner (see Table 1). In 2006 sales of natural gas to Thailand alone accounted for US\$2.16 billion, which represents a 50% increase from the previous year, due to the rising gas and oil prices and not an increase in export volumes.⁹

7 The Tasang Dam on the Salween River is being developed by the Thailand-based MDX Public Company Limited in partnership with the military regime. Recently, over 400 villagers in Shan state, Burma were forced by the junta to attend an official 'celebration' ceremony to launch construction of the dam—a project that will flood their ancestral lands and has allegedly already displaced hundreds of thousands of people. See www.salweenwatch.org and www.earthrights.org.

8 Central Statistical Organisation, Myanmar; Xinhua, February 2007.

9 Central Statistical Organization, Myanmar 2007; Associated Press, June 2007.

	2005	Jan–Jul 2006	% change*
Exports			
Gas	8,098	5,593	–4.7
Teak and other hardwoods	2,776	1,475	–7.6
Pulses	1,495	2,007	106.7
Garments	1,415	949	34.3
Prawns, fish and fish products	1,065	701	25.9
Metals and ores	698	330	–15.2
Maize	111	47	–49.0
Rubber	201	71	–42.3
Rice	227	77	–20.0
Total exports incl. others	21,887	15,322	12.7
Imports			
Machinery and transport equipment	1,616	1,150	–5.9
Refined mineral oil	1,508	262	–65.3
Synthetic and woven fabrics	1,071	694.2	18.2
Base metals and manufactures	1,125	444	–26.5
Electrical machinery	621	227.5	–52.8
Plastics	490	378.5	46.0
Total imports incl. others	11,067	5,975	–9.0
Trade balance	10,821	9,348	–

* January–July 2006 compared with year-earlier period.
(Kt m unless otherwise stated)

Table 1 KEY EXPORTS AND IMPORTS

Source: Central Statistical Organisation, Myanmar, Selected Monthly Economic Indicators

By a large margin, Thailand is Burma's largest trading partner (see Table 2). According to Thai Customs statistics, total trade volume between Thailand and Burma rose to US\$2.22 billion in 2005, from US\$1.96 billion in 2004 (*Bangkok Post* 2006). However, the relationship between the two countries appeared to come under question after the military coup d'état against former Thailand Prime Minister Thaksin Shinawatra. The new Energy Minister Piyasvati Amranand announced that Thailand would no longer rely on Burma for gas supplies or electricity from dam schemes in the next decade. Amranand stated that, beyond 2011, gas would be bought elsewhere (*The Irrawaddy* 2006b). Recently, however, the Petroleum Authority of Thailand has put in bids for new natural gas projects in Burma, in the Bay of Bengal (see below), and is continuing to explore for commercially viable natural gas deposits in Burma's Gulf of Martaban (see PTTEP 2007; M. Smith 2007), calling into question the Thai junta's announcement.

Principal exports 2005	US\$ m	Principal imports 2005	US\$ m
Gas	1,405.7	Machinery and transport equipment	280.5
Teak and other hardwoods	481.7	Refined mineral oil	261.8
Pulses	259.5	Base metals and manufactures	195.3
Textiles and garments	245.6	Fabrics	185.9
Prawns, fish and fish products	184.9	Electrical machinery	107.8
Main destination of exports 2005	% of total	Main origins of imports 2005	% of total
Thailand	44.5	China	28.4
India	11.9	Thailand	21.5
China	6.8	Singapore	18.1
Japan	5.1	South Korea	5.9
Malaysia	3.2	Malaysia	5.4

Table 2 PRINCIPLE EXPORTS/IMPORTS; DESTINATION OF EXPORTS; ORIGIN OF IMPORTS (2005)

Source: Economist Intelligence Unit; Central Statistical Organization, Myanmar

China, India and South Korea

For the period from 2004–2030, the highest projected demand for energy is from non-Organisation for Economic Cooperation and Development (OECD) countries, most notably non-OECD Asia, which includes China and India; these two countries will account for 65% of the increase in energy use among non-OECD Asia (IEA 2007). China is Burma's largest source of imports, accounting for at least 28% in official terms (EIU 2007). The country is particularly important globally, playing a major role in global energy supply and demand. Burma stands to play an integral role as a source of energy in Southeast Asia.

China is currently Burma's closest ally, indicated politically by its recent veto of a United Nations Security Council (UNSC) resolution that would have resulted in UNSC-supported action in Burma. On 15 January 2007, three days after the veto, China was awarded lucrative exploration contracts by the state-owned Myanmar Oil and Gas Enterprise (MOGE) in Burma (ALTSEAN Burma 2007: 7; *Xhinua* 2007a).

This is consistent with China's unfolding strategy of courting fragile states with untraditional incentives, what has been referred to as China's 'Charm Offensive' (Kurlantzick 2007). China is actively promoting a social and economic development model that is particularly attractive to the military junta in Burma, as China's model includes a large state sector, slow and steady economic reform and uncompromising authoritarian rule. This model has been referred to as the 'Beijing Consensus' (quoted in Kurlantzick 2007: 56). The junta will find this and the Communist Party's policy of 'non-interference' particularly appealing, as it effectively protects against unwanted political transitions and runs counter to Western economic sanctions, which have been imposed on Burma to varying degrees since 1988.¹⁰

¹⁰ The United States imposes the most comprehensive sanctions, prohibiting any new investment in the country, while permitting investments that pre-date the sanctions. In 2004, Washington imposed

In terms of bargaining power, China's willingness to negotiate unorthodox energy deals has effectively crippled any hope for fair and responsible energy auctions in Burma and elsewhere, although it is unclear to what extent other national and private oil companies, including those based in the West, contribute to this competitive climate in Burma and elsewhere. China, South Korea, India, Thailand and Japan are all bidding on the Shwe natural gas deposit in Burma (see below). The junta's decision to open competitive bidding appeared to be an attempt to compensate for its own lack of expertise in negotiating—in other words, 'let the competitors determine the value'. However, recent news reports suggest the bidding war was for naught and the gas will be awarded to China, despite the fact that China is not a part of the consortium developing the project. China's 'charm offensive' has changed the dynamic of competitive auction.

The *Oil and Gas Journal* reports that 10,000 miles of pipelines will be laid on our planet in 2007, 75% of which will be for natural gas. Of all the world's regions, Asia will lead this year in new natural gas pipelines, constructing nearly 3,000 miles' worth (C.E. Smith 2007). China currently has approximately 25,000 miles of oil and gas pipelines and is poised to increase that by 6,200 miles before 2010 to support economic development, according to state-run media sources (*Xinhua* 2007b). In China, there are currently no comprehensive laws governing petroleum, natural gas and nuclear energy industries (*Xinhua* 2007c), so when a Chinese oil and gas corporation invests in Burma it is simply transferring one governance gap to another.

China's growing influence in the region is often cited as the reason why India abandoned its previous support for Burma's democracy movement and instead opted for engaging the military regime in Burma through trade, natural resource extraction projects and overt and heavy military support.¹¹ A recent report by Amnesty International and other EU non-governmental organisations (NGOs) alleges that India's transfer of a particular military helicopter to Burma threatens to undermine the EU arms embargo against Burma, as the helicopter relies on vital components from EU Member States (Amnesty 2007).

Transparency International ranks Burma the world's second most corrupt country and ranks India and China as the two countries most likely to pay bribes to clinch overseas contracts (Pepper 2006: 39; Transparency International 2006). This raises obvious questions of corruption, but if the deals involve arms sales it also raises questions of complicity when considering where, how and against whom the military hardware is used in Burma.

Not all countries are providing unbridled military support. In December 2006, after at least four months of investigation, the authorities in South Korea announced the indictment of 14 high-level Korean executives, including Daewoo International President Lee Tae-Yong, for illegally exporting to Burma military hardware worth US\$133.38 million, intended for an arms factory outside of Prome, Pegu Division, in Central Burma. At the time of writing, a verdict in Seoul is pending. It is not known whether Daewoo's involvement in this arms factory was directly connected to its natural gas deals with the junta (see Shwe project below), but, given the trends in unorthodox negotiating, a strategic package in exchange for exploration and drilling contracts is not unlikely. As one industry executive noted, negotiating energy deals in the age of China's 'peace-

stricter sanctions, restricting Burmese imports into the US and prohibiting payments into the country (US State Department 2004; Myint-U 2006: 343). Calls have been made in the UN to put pressure on the regime to reform and the European Union has recently extended diplomatic and economic sanctions on Burma, although these sanctions are comparatively weaker than US sanctions.

11 India supplies the junta in Burma field guns, mortars, surveillance aircraft, helicopters, tanks and other hardware. See, for example, *The Irrawaddy* 2006c.

ful rise' is 'no longer about apples for apples'.¹² Even so, Burma's oil and gas industry does have certain requirements.

Extractive contracts and state title in Burma

By law, any foreign investment in Burma requires a 50:50 joint venture with the military regime. According to Jenik Radon, 'joint ventures (JVs) defy ready explanation because there is no commonly accepted definition anywhere in the world' (Radon 2007). These agreements are a partnership, in this case between the military junta and the extractive corporation, and everything about them is subject to negotiation. They raise numerous questions between the negotiating parties in terms of responsibilities and contributions, decision-making power and process, and length of the partnership, i.e. when does the agreement end? As a result, 'JVs take a notoriously long time to negotiate' (Radon 2007).

The joint ventures in Burma's extractive industries require either a profit-sharing contract or a production-sharing contract (PSC), also known as a production-sharing agreement (PSA). Oil and gas investments in Burma require PSAs. PSAs resulted from a backlash to years of colonialism and their conception dates back to Venezuela in the mid 1960s. The first PSA was signed in Indonesia in 1966 between the Independent Indonesian American Petroleum Company (IIAPCO) and Permina, Indonesia's National Oil Company (Johnston 2007). This agreement heavily favoured Permina, with title to the hydrocarbons and management control retained by the state, not to mention other points that were beneficial to the state that are now common to PSAs, although these types of agreements vary widely.

The point of a PSA as opposed to other arrangements is that the state retains title to the resources. Generally, a PSA recognises that the ownership of the resource 'rests with the public, the nation, the citizens and not with private parties' (Radon 2007; see also Johnston 2007). In the case of Burma, a PSA would recognise that the ownership of the resource is retained narrowly by the state, i.e. the junta, as it cannot be said that the junta represents the people in any traditional sense. It is widely considered that, in the absence of sound laws and regulations in the host country, the negotiation of PSAs and JVs are even more significant than they would otherwise be, essentially becoming a 'self-contained law unto itself' (Radon 2007).

Further to retaining state title of resources, Burma's Gemstone Law dictates that any gem found on or under the soil are deemed to be owned by the state (Article 7, Myanmar Gemstone Law). Moreover, Chapter V, Article 15 of the Myanmar Mines Law 1994 not only mandates that the state owns the resources, but that the state has legal right to acquire the land above the minerals. In human rights terms, in the absence of provisions for resettlement, compensation, or free, prior and informed consent, the law mandates the junta's standard practice of land confiscation,¹³ citing 'the interest of the state':

If, in the interest of the State, it is necessary to acquire the land where mineral production could be undertaken on commercial scale, the Ministry shall co-ordinate with the relevant Ministry for the acquisition of such land in accordance with the existing Law (Myanmar Mines Law 1994, Chapter V, Article 15).

In most democratic countries, state title of minerals and hydrocarbons is arguably desirable, as the state represents the people, at least theoretically, and thus should indeed 'own' the natural resources, especially when those resources are the country's core

¹² Confidential conversation notes on file with author, 9 July 2007.

¹³ For documentation of land confiscation in Burma, see EarthRights International 2003, 2007.

assets, as in Burma.¹⁴ 'State title' can protect host countries against the actual or perceived proverbial corporate pillage of a poor nation's assets. This is to say nothing of the complexities that a well-intentioned government faces in actually using resource revenue and state title wisely and efficiently, which history has shown to be rare, thus giving rise to a wide body of research inquiring into the link between 'the curse of natural resources' and poor governance (Auty and Gelb 2001; Beblawi and Luciani 1987; Collier 2007; Karl 1997; Krause 1995; Moore 2004; Ross 2001; Rosser 2006; Vandewalle 1998).

In Burma, 'state title' affords the junta stability in securing natural resource revenues; in terms of human rights, it is important to know the flow of revenues and where the junta's revenues are spent. This is especially important for the junta's corporate partners, who risk complicity in the actions of the junta simply by virtue of 'doing business'.¹⁵ There is a complete lack of fiscal transparency in Burma,¹⁶ and, while some estimates suggest the regime spends approximately 40% of its budget on military expenditures, there is in reality no reliable data on exact expenditures or on revenue flows. However, we infer that military expenditures are relatively high from the size of the military, double that of Thailand, four times the size of Britain's, for example, and the United Nations Development Programme (UNDP)'s documentation of the junta's comparatively low expenditures on health and education, which ranks the country last in the world.¹⁷

Part 2. The Yadana Pipeline and the Shwe Gas Project

The Yadana Pipeline

In the early 1990s, two multinational oil and gas corporations, Total of France and the US-based Unocal Corporation partnered with the state-owned MOGE in Burma to develop a natural gas deposit in the Andaman Sea. The project involved the construction of the Yadana overland gas pipeline to neighbouring Thailand, which directly resulted in severely negative impacts to local people and the environment, including well-documented human rights abuses such as forced labour and portering, forced displacement and land confiscation, rape, torture and extrajudicial killings (ERI 2003).

With no access to justice in Burma, the companies were subsequently sued in their respective jurisdictions, Unocal in the US on behalf of 15 ethnic villagers, Total in France on behalf of eight ethnic villagers. The strength of the Unocal case, for which Earth-Rights International served as co-counsel, was evidence that the company knew about and benefited from the abuses and did nothing to stop them and evidence that the abuses were directly connected to the pipeline project. A Court of Appeals in the USA found suf-

14 A unique example of the governance of resource revenue is the state of Alaska, where state residents receive a yearly payment of 25% of oil revenues from a Permanent Fund. See Humphreys and Sandbu 2007.

15 According to Janik Radon, 'Oil companies do need to be concerned about how the compensation paid to host governments pursuant to an energy agreement is in fact spent; or they may well (unwittingly) be accused of complicity in the actions of the host government and will, accordingly, not only have failed to manage future rising expectations but may well have been complicit in a human rights violation' (2007, 2005).

16 There is reasonable suspicion that the junta does not keep an accurate account of its natural resource revenue flows and expenditures, which is sometimes an intentional or unintentional problem for developing countries of all sorts.

17 There is, however, reliable data on the junta's human rights abuses. See *supra* note 3.



VILLAGERS DISPLACED IN THE YADANA PIPELINE REGION, 1997

Photo credit: EarthRights International

ficient evidence of complicity to warrant judicial consideration.¹⁸ This was followed by an undisclosed out-of-court settlement between the plaintiffs and the company (Eviatar 2006).

Before, during and after the Yadana tragedy, the companies brazenly espoused corporate social responsibility (CSR) rhetoric:

The Yadana energy development project is helping to promote peace and prosperity through the Myanmar–Thailand region. We offer this project as a model of corporate responsibility in a developing country . . . our goal at Unocal is to operate as an ‘island of integrity’ wherever we do business (ERI 2003: 122).

The reality of course was far from peaceful and there is evidence the companies became clearly aware of that (ERI 2003). The project began with an increase in militarisation to secure the pipeline area. Villagers had the option to either flee to the jungle or relocate to a military-designated location, where they were used as a forced-labour pool. Villagers were forced to carry heavy loads through the jungle (portering), provide food and shelter to military personnel under an already precarious food security and build a helicopter landing pad and other project infrastructure. The battalions brought brutal violence to otherwise relatively peaceable villages. To add insult to injury, when the pipeline construction was completed, the military issued a non-negotiable order that nine villages attend the opening ceremony for the pipeline. What’s more, villagers were ordered to ‘smile or be happy’ (ERI 2003: 125).¹⁹

Today, the pipelines are pumping gas to Thailand. Total still operates in Burma. Chevron bought Unocal in 2005 and, likewise, continues to operate in Burma. Environmental abuses and degradation connected to the project were unfortunately less pub-

¹⁸ *John Doe I, et al. v. Unocal Corp, et al.*, 963 F. Supp. 880 (C. Cal. 1997) found there was sufficient evidence to go to trial and that corporations may also be tried under the Alien Tort Claims Act, which was later reaffirmed in *John Doe I v. Unocal Corp.*, 395 F.3d 932 (9th Cir. 2002).

¹⁹ See *supra* note 7.

licised and not part of the respective litigation, but the human rights abuses were exposed to the world through international campaigns and the two high-profile lawsuits in the Western courts mentioned above. These cases are generally important for the future of holding non-state actors accountable for human rights abuses and for the future of CSR in Burma and elsewhere, but currently the positive and measurable impacts are not evident in Burma.

A case in point is the natural gas project known publicly as Shwe, meaning 'gold' in Burmese, currently unfolding in Western Burma. It is being developed by a South Korean and India consortium, led by South Korea-based Daewoo International. To date, seven years after Daewoo International began exploring for natural gas in Burma, human rights have not been discussed publicly by the Korean and Indian companies nor by the military regime in Burma regarding the Shwe gas project.

The Shwe Gas Project in Burma

In August of 2000, Daewoo International became contractual partners with MOGE in order to explore for natural gas in the Bay of Bengal off the west coast of Burma. This contract gave Daewoo the rights to explore and potentially develop gas deposits in the A-1 and A-3 offshore blocks, located just off Burma's Arakan coast in the Bay of Bengal. Four years later, in early 2004, Daewoo International announced the discovery of a 'world class commercial scale gas deposit', which has since been valued at between US\$37 and 52 billion (SGM 2006: 51). This project is being developed by Daewoo International, the Korea Gas Corporation, the Oil and Natural Gas Corporation (ONGC) of India and the Gas Authority of India (GAIL), in joint venture with MOGE and the SPDC in Burma. It is unclear whether Daewoo International or the junta selected the consortium that joined Daewoo.

The project is scheduled to go into production phase in 2008 and potential end-users are currently bidding on the gas. These include the governments of India, Thailand, China, South Korea and Japan. There are at least four possibilities for transporting the gas to potential end-users: a pipeline through India's north-east to Bihar; a pipeline across approximately 24 townships through central Burma to Kunming, China; a pipeline across Burma to Thailand; or a Liquid Natural Gas plant (LNG) for overseas export to Japan and/or South Korea.

There are numerous concerns with this project, in terms of direct human rights and environmental impacts and enabling the regime to continue rights abuses. In terms of profits, it is estimated that the junta stands to make between US\$12 and 17 billion over the estimated 20-year life of the project (SGM 2006; HRW 2007). There is concern about where these profits will be spent. Regarding direct impacts of the project, thousands of people will necessarily be displaced, most likely by force and without adequate compensation. An increase in forced labour and portering, as well as land confiscation, is likely and an increase in violence, which has accompanied an increase in militarisation in every part of Burma, is also likely.

Environmental concerns are less publicised but equally serious, especially due to the very weak environmental governance in Burma (ERI 2007; Global Witness 2006; KDNG 2007; LND0 2006). The proposed pipeline to India will traverse sensitive ecoregions, most notably the Naga-Manupuri-Chin Hills, which is listed as a Global 200 Ecoregion due to its extremely high biological diversity.²⁰ A pipeline through this region will have a direct impact on habitat, as well as open the area up to illegal hunting and wildlife

20 The Global 200 is the list of ecoregions identified by WWF as priorities for conservation. For details, see WWF, 'Kayah-Karen montane rain forests (IM0119)', www.worldwildlife.org/wildworld/profiles/terrestrial/im/im0119_full.html (accessed 1 April 2007).

trade, as has happened previously in Burma (ERI 2003). The region is particularly famous for the number of bird species and provides important habitat for dozens of other highly endangered species, such as hoolock gibbons, gaurs, bear macaques, Fea's muntjak, tigers, elephants and rhinoceroses (WWF 2007; SGM 2006).²¹ The Bay of Bengal is home to the endangered dugong, also known as the manatee (Win and Tun 2006). Whether exploration and drilling in the bay has had an immediate or long-term significant impact on the local dugong populations is a question that has not been considered publicly by the companies. In the absence of a transparent third-party environmental impact assessment (EIA), these questions and many others are simply unanswered. As Robert Goodland has noted, 'inadequate impact assessment almost guarantees massive human and environmental damage' (Goodland 2005: 4).²²

Daewoo International has been conducting this project in Burma since 2000. Since then, there have been no public discussions of human rights or other social and environmental concerns by Daewoo or the other companies involved. On the contrary, Daewoo has stated that human rights issues are not a relevant conversation at this time. On 11 July 2006, Daewoo International asserted the following regarding the Shwe project: 'Our position is that it's not the right time to discuss a human rights abuse issue because we are still at a stage of exploring the gas field and have yet to begin development' (Wong-Anan 2006).

The statement denies the core principle underpinning the methodology of all impact assessments, an indicator of CSR, namely that they occur prior to a project beginning. Furthermore, this statement presupposes two important things relevant to CSR. (1) The company is either unaware or does not consider the exploration phase, which involves a large footprint with impacts on local people, as a time when there might be human rights impacts, to say nothing of the serious environmental impacts of exploring for natural gas. (2) While the statement expresses the opinion that now is not the right time to discuss human rights, it does presuppose that the company thinks there will be an appropriate time to publicly discuss human rights issues in the future, although the company has not indicated when that time will be, the type of discussion the company envisions or with whom the company intends to discuss.

In the same month Daewoo made the statement (July 2006), John Ruggie, the UN Representative on Business and Human Rights, posted online a discussion paper on human rights impact assessments (HRIAs), which posits that HRIAs are supposed to occur 'before significant activity begins', prior to a project's implementation, not during or after (Ruggie 2007: 4). HRIAs are meant to assess the broad and specific impacts a project will have on the human rights situation in society. To wait until the 'development' phase will be to have disregarded this emerging and reasonable norm.

The GAIL has also made public statements regarding its investment in the Shwe project, which cause concern. Speaking to *Fortune* magazine, GAIL claimed 'As far as we're concerned, we will implement the pipeline inside India.' Regarding human rights abuses potentially connected to the project, GAIL claimed, 'What they do there is their business. We hope they proceed by international laws, ethics and norms' (Pepper 2006: 36-37).

GAIL is one of the four stakeholders in the consortium developing the project in Burma. The company is financing and developing the Shwe project and is under the mistaken impression that, although the project is transnational, its responsibility is not. GAIL calls for MOGE and the junta to proceed by international law, ethics and norms, but

21 See WWF, 'Naga-Manupuri-China Hills Moist Forests (34)', www.worldwildlife.org/wildworld/images/profiles/g200/g034.html (accessed 1 April 2007).

22 Adequate impact assessments are imbued with democratic values, to say nothing of the human right to participation, which makes conducting them in Burma currently impossible.

the company's very statement suggests that it does not intend to do the same and that it does not intend to accept responsibility for the impacts of its investment in Burma, let alone try to mitigate them.

Conclusion

Responsible investment in Burma would require a complete overhaul in how these projects proceed and a complete change in attitude and practice of the corporations investing in Burma and the military regime. This would require a well-intentioned, institutionally sound and genuine democratic government that could demonstrate a real commitment to human rights, the environment, transparency and development. Burma's extractive industries would require new laws, particularly laws requiring third-party environmental, social and human rights impact assessments (EIA, SIA, HRIA) for projects that will have significant impacts (see Goodland 2005; Ruggie 2007). These laws would proceed from a sound constitution, which is any state's 'most fundamental law' (Radon 2007; ALTSEAN Burma 2007; *The Irrawaddy* 2007).²³

These are long-term issues. Until these conditions and others begin to be met, large-scale extractive projects in Burma should be avoided. Furthermore, emphasis should be given to the many grassroots non-governmental organisations (NGOs) working for positive change in Burma.²⁴ This unquestioningly includes the exiled communities as well as the broader democracy movement, as their voice is intact, responsible and undeniably representative.

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23 The SPDC in Burma is poised to resume a National Constitutional Convention, which has been disregarded by ethnic leaders who formerly took part in the process on the grounds it is not representative, controlled by the military and will deliver a document that will not deliver promised democratic reforms nor protect minority groups.

24 Two representative examples of coalitions of local NGOs are the Shwe Gas Movement (www.shwe.org) and the Salween Watch Coalition (www.salweenwatch.org).

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