CONFLICT RISK NETWORK

A Project of
UNITED TO END GENOCIDE

NOT OPEN FOR BUSINESS:

DESPITE ELECTIONS, INVESTOR RISK REMAINS HIGH IN BURMA

APRIL 2012

ABOUT CONFLICT RISK NETWORK

CRN is a network of institutional investors, financial service providers and related stakeholders calling upon corporate actors to fulfill their responsibility to respect human rights and to take steps that support peace and stability in areas affected by genocide and mass atrocities. Our goal is to increase such behavior by corporate actors and thereby reduce conflict risk.

CRN has a respected voice in the institutional investment field. It produces unparalleled research on companies operating in Sudan, makes recommendations on how corporations can fulfill their responsibility to respect human rights in areas affected by mass atrocities and genocide, and harnesses the collective weight of over U.S. $3 trillion in assets when leading focused corporate engagement.

Since 2006, CRN's research and engagement have persuaded more than 12 major corporations to adopt recommendations for appropriate conduct in Sudan. Our work has been featured in thousands of news articles in outlets such as CNN, *The Wall Street Journal*, *Financial Times*, *The New York Times*, *Forbes*, *Responsible Investor* and Bloomberg.

CRN's 100 members include pension funds, some of the world's largest asset management firms, government entities, university endowments, foundations, financial service providers, and socially responsible investment firms.

ABOUT UNITED TO END GENOCIDE

CRN is a project of United to End Genocide, the largest activist organization in America dedicated to preventing and ending genocide and mass atrocities worldwide. The United to End Genocide community includes faith leaders, students, artists, investors and genocide survivors, and all those who believe we must fulfill the promise the world made following the Holocaust – "Never Again!"

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ACRONYMS AND TERMS

ADB	Asian Development Bank
AFL-CIO	American Federation of Labor and Congress of Industrial Organizations
BEWG	Burma Environmental Working Group
CNPC	China National Petroleum Corporation
CPI	China Power Investment Corporation
CRN	Conflict Risk Network
EGAT	Electricity Generating Authority of Thailand
EITI	Extractive Industries Transparency Initiative
ERI	EarthRights International
EU	European Union
GMS	Greater Mekong Subregion
ICT	Information and Communications Technology
ILO	International Labor Organization
ITUC	International Trade Union Confederation
JADE Act of 2008	Tom Lantos Block Burmese Junta's Anti-Democratic Efforts Act of 2008
KIA	Kachin Independence Army
KNU	Karen National Union
KOGAS	Korean Gas Corporation
MOGE	Myanmar Oil and Gas Enterprise
ONGC	Oil and Natural Gas Corporation of India
PTTEP Thailand	PTT Exploration and Production Public Company Limited
SEACOP	South East Asia Crude Oil Pipeline
SEAP	South East Asia Pipeline Company Limited
SSA-N	Shan State Army – North
UK	United Kingdom
U.S.-ASEAN Business Council	United States – Association of Southeast Asian Nations Business Council

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DESPITE ELECTIONS, INVESTOR RISK REMAINS HIGH IN BURMA

EXECUTIVE SUMMARY

The April 1 Burmese by-elections are being heralded as a great success both for the people of Burma and for the international community after more than a decade of sanctions. While there is cause to celebrate in the wake of initial reforms by President Thein Sein and the electoral victory of Nobel Laureate Aung San Suu Kyi, high levels of risk for investors – and the people of Burma – remain.

CRN, a project of United to End Genocide, is a network of institutional investors, financial service providers and related stakeholders calling upon corporate actors to fulfill their responsibility to respect human rights and to take steps that support peace and stability in areas affected by genocide and mass atrocities. Our goal is to increase such behavior by corporate actors, and thereby reduce conflict risk. *Not Open for Business* highlights specific industries, projects and corporate activities that have the potential to drive conflict and create or exacerbate an environment conducive to mass atrocities in Burma.

This paper concludes with recommendations to investors regarding their holdings in corporations currently operating in Burma or those seeking to enter the country. These recommendations urge investors to:

• Actively engage with corporations doing business in Burma regarding the appropriate actions required to avoid, cease, or remedy adverse impacts of their operations with clear and time-oriented targets for improved corporate behaviors;

• Discourage any new investment until the conditions outlined by United to End Genocide and its partner organizations are achieved in Burma, or at least until sustained peace and stability are reached in the country;

• Advocate for comprehensive human rights due diligence that includes human rights and environmental impact assessments prior to commencing any operations in the country and throughout the lifespan of their projects; and

• Make a public statement in support of a cautious approach to the relaxation of U.S. and EU sanctions and investment bans, from a business risk perspective.

There are opportunities for corporate actors to make positive contributions to peace and stability in Burma. Corporations currently operating in Burma have the opportunity to engage with Burmese decision makers over the steps the government must take to fulfill its responsibility to protect human rights. Corporations can also contribute directly to the protection of human rights through decisions about their own operations in Burma. Corporations poised to operate in Burma and those already doing so have the potential to create job opportunities, generate revenues that advance economic growth, invest in local communities and to ensure respect for human rights and environmental protection.

However, Burma presents a context where investment can also exacerbate human rights problems and undermine broad-based development. Past cases of extractive sector investments in unstable or conflict-torn areas have shown the potential for companies' activities to worsen conflict and instability. Areas affected by genocide and mass atrocities differ significantly from stable operating environments. In Burma, the most attractive areas for natural resource investment are precisely the areas in which rights violations are ongoing.

Burma has vast oil, gas, hydropower and mineral potential, located mainly in the ethnic minority regions which continue to be areas of conflict. Keen on tapping these resources, the international business community is already a forceful advocate for overturning the sanctions regime and is actively scouting investment prospects. In particular, major oil companies – Chevron, Total and Exxon Mobil – are seeking to further penetrate Burma's market.

While international sanctions have limited investment over the last decade, foreign direct investment has recently increased. Foreign investment from 2010 to 2011 represents nine times the cumulative foreign investment between 2006 and 2010, with a staggering percentage benefiting the energy and extractive industries.

Investors should exercise extreme caution. Burma is a volatile area for investors, without the rule of law and without constitutional assurances that the judiciary will protect property or investments. Despite economic reforms over the past year, the military continues to dominate the Burmese economy. It controls the Union of Myanmar Economic Holdings which manages the gem trade and the banking and construction industries. It also oversees the Myanmar Economic Corporation which controls economic activities as varied as tourism, trading companies and the sale of petroleum and natural gas.

The recent reforms and election results provide reasons for cautious optimism in Burma, but the transition is tenuous and incomplete. Given the integration of the military in all aspects of Burma and its historically poor record of democratization and human rights abuse, the international community must seek to use every avenue of engagement with Burma to ensure the establishment of accountability mechanisms to protect human rights. Such mechanisms may be most important of all in the resource-rich ethnic minority regions.

INTRODUCTION

In light of recent elections in Burma, the international community is contemplating relaxing the sanctions it has imposed on the military-backed regime beginning in 1988. If sanctions are removed, a wave of new investment in Burma is likely to take place. Geared toward institutional investors, shareholders and financial service providers, *Not Open for Business* highlights specific industries, projects and corporate activities that have the potential to drive conflict and create or exacerbate an environment conducive to mass atrocities in Burma.

Additionally, *Not Open for Business* updates investors on existing Burma-related sanctions, key players lobbying for sanctions to be eased and potential developments in the coming months. It provides an overview of Burma's current legal landscape, including laws and policies related to foreign investment and currency valuation. It also contains recommended conditions for investment to ensure that corporate actors fulfill their responsibility to respect human rights and take the steps necessary to support peace and stability in conflict-affected areas of the country. This paper should be seen as a starting point for investors to discuss with CRN what research and analysis they need as the investment environment in Burma evolves.

BACKGROUND ON CONFLICT AND MASS ATROCITIES IN BURMA

Since 1962, Burma has been governed by an authoritarian military regime dominated by the majority ethnic Burman group. The notoriously repressive and corrupt government has been engaged in decades-long civil wars with at least eight ethnic armed groups that make up 36% of Burma's nearly 56 million people.[1] While elections held in late 2010 were marred by irregularities, gradual movement toward some democratic reform has led to the restoration of international diplomatic ties with the government of President Thein Sein.

Burmese army camp outside Laiza, located between the Shwe pipeline, owned and operated by Daewoo International, and the Myitsone dam, managed by the state-owned CPI. Officials from the KIA have reported that Burma government is massing additional troops north of Laiza, the de facto capital of the KIA, in preparation for what they fear is an upcoming assault. (United to End Genocide photo)

On April 1, 2012, Burma held by-elections, in which the National League for Democracy, led by Nobel Peace Prize winner Aung Sun Suu Kyi, won 43 out of 45 seats.[2] The elections have been generally deemed free and fair. The U.S. has announced it will open an office of the Agency for International Development in the country, send a full ambassador and begin targeted easing of the ban on the export of financial services and investment to Burma.[3] The EU has allowed for investments in Burma of development aid and has relaxed some travel bans against Burmese officials.[4]

Despite numerous ceasefire agreements between the government and the ethnic minority armed groups throughout the country, violence continues. Attacks by the Burmese military in Shan, Karen and Kachin States in 2011 and 2012 have resulted in violence against civilians and human rights abuses such as arbitrary execution and detention, torture, rape, the recruitment of child soldiers, forced labor and forced relocation.[5]

A recent report by Human Rights Watch on the violence in Kachin State documented villagers experiencing intimidation by Burmese army soldiers, including death threats as the soldiers expressed the belief that all persons in Kachin State are part of an ethnic armed group and therefore valid military targets. Civilians in Kachin State reported being tortured through instances of "waterboard[ing]" and violent beatings by state soldiers seeking counterinsurgency information. Civilians, including children, reported being forced to work for the Burmese army as porters on the front lines of conflict. It is common for children as young as 14 to be kidnapped and conscripted as child soldiers by the government and the ethnic armed group, KIA. Undersupplied soldiers pillage ethnic villages, particularly when civilians flee their homes in search of safety from the violence. Landmines are pervasive throughout the country, which has one of the highest landmine casualty rates in the world. Over a two-month span during the height of the recent conflict, the Kachin Women's Association Thailand documented 37 rape cases, including 13 in which the victims were allegedly killed.[6]

THE MILITARY-BUSINESS NEXUS

Burmese natural resources have historically been used by the military-backed government and armed groups as key strategic tools for political, economic and territorial control. In 1988, a bankrupted Burmese government engaged in various ethnic conflicts throughout the country, opened volatile but resource-rich areas to foreign investment. Economic and political support to the Burmese military regime, notably from Thailand, developed in exchange for exclusive business deals.[7] In Burma, the most attractive areas for natural resource investment are precisely the areas in which rights violations are ongoing.[8]

Projects in the energy, hydropower and mining and gems industries have the strongest links to conflict-affected areas and serve as drivers of conflict. Foreign companies operating in these industries are generally required to operate in partnership with a state-owned Burmese firm.[9] This requirement enables the concealment of revenues and impedes transparent disclosures of royalties, profit-sharing, signing bonuses, profits, fees and taxes, creating a deeply corrupt environment among government and corporate actors. There is a high likelihood that revenues from the oil and gas sector – including from the construction of exploration and production equipment and transit pipelines, fund the military-backed regime.

Resource extraction projects have provided extensive opportunities for corruption. Less than 1% of gas revenues generally have entered the government budget.[10] Until recently, the exchange rate was fixed around six Burmese kyat to the U.S. dollar compared to the illegal market rate of 800 per U.S. dollar. By officially recording public revenues at the lower official exchange rate — not the actual market value — military elites in control of the government have been able to siphon off profits to their personal coffers and private offshore accounts.[11] However, the current government is working toward achieving a single market exchange rate which would curtail this practice.[12]

HIGH RISK SECTORS

The potential for foreign investment to fund conflict and corruption has increased as foreign investment has increased. From 2010 to 2011 foreign investment was reported to be nine times that of the period between 2006 and 2010.[13] A staggering percentage of these investments were in the oil, gas, power and mining industries, mainly due to the increase in large-scale projects.[14] Statistics show that investments over the last two decades have followed major political and economic events in and around Burma. The most recent boom reflects increasing commodities prices and China's aggressive search for natural resources internationally. Thailand has more approved investment than any other country in Burma, most of which were tied to the Tasang Dam, which is now being developed by China.[15]

In addition to their role in funding conflict and corruption, the oil, gas, power and mining industries have the potential to be directly tied to conflict and mass atrocities. For example, access roads necessary to construct, expand and operate in these industries are highly militarized and have been acquired through massive land concessions where locals received inadequate compensation. The roads used for these projects provide access for the military to remote and contested areas, heightening the conflicts that have displaced thousands.[16] Dam projects can cause direct displacement at project sites, alter river flows, and damage downstream ecosystems, wetlands and farmlands, all of which can heighten tensions surrounding access to and use of land.[17]

The ICT sector is also high risk, as its potential positive and negative roles are heightened in conflict-affected areas. ICT products and services can support free expression and association but can also be used to infringe upon private citizens' access to information and their right to freedom of association and expression, which creates an environment conducive to government sponsored repression, at times through force and violence.

Oil and Gas Industry

Burma ranks 41st in the world in natural gas reserves and 79th in oil reserves; however, these reserves have significance for the region.[18] As of January 2012, the government reportedly awarded ten of the 18 onshore oil and gas blocks to eight companies and is expected to invite bids for six to nine offshore blocks, presenting the government with incredible potential earnings.[19] Currently, Burma requires that foreign companies conducting oil and gas exploration be partnered with at least one domestic energy firm, usually the state-owned MOGE.[20] The government will earn U.S. $29 billion over a 30-year period, plus an annual transit fee of U.S. $150 million, from the Shwe Natural Gas pipeline alone.[21]

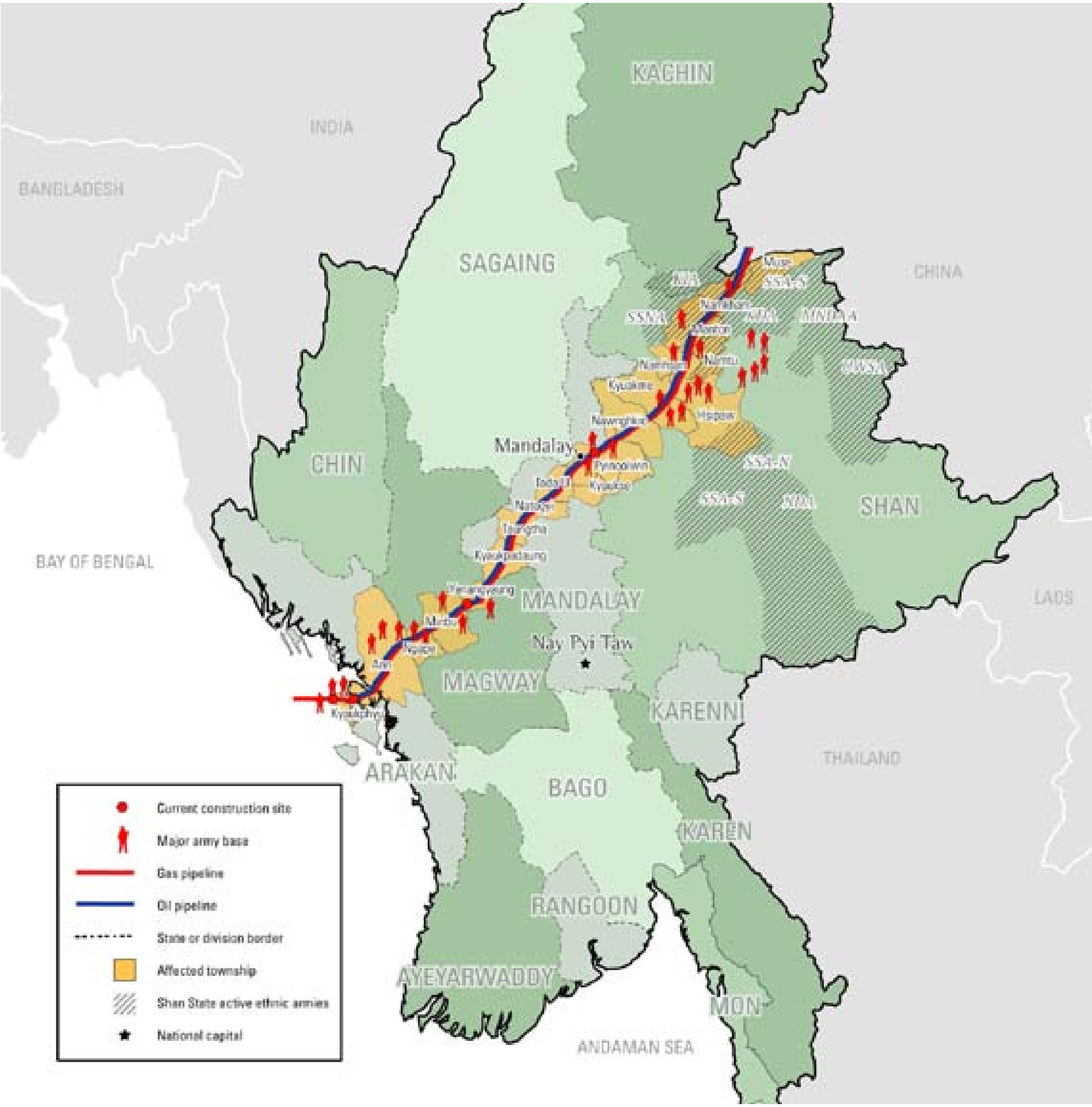
Shwe Natural Gas and Burma-China Oil Transport Projects

The Shwe Natural Gas and Burma-China Oil Transport projects consist of roughly parallel pipelines that will transport gas from Burma's Bay of Bengal to Yunnan province in China and oil acquired by Chinese companies from the Middle East and Africa across Burma to China. Construction of the pipelines is well underway, and they are expected to be completed in the spring of 2013.

China has purchasing rights to the Shwe Natural Gas Field, which contains gas discoveries on the Arakan State coast, wells and extensive offshore production and processing facilities. Daewoo International is the majority owner and operator of the blocks in the field.[22] The project's offshore gas pipeline and production facility, due for completion in 2013, will be operated by the Shwe Offshore Pipeline Joint Venture Company.

Shwe Natural Gas Field Consortium[23]

Company	Country of Origin	Percentage of Investment
Daewoo International	South Korea	51%
ONGC Videsh, Limited	India	17%
MOGE	Burma	15%
KOGAS	South Korea	8%
GAIL Limited	India	9%



The Shwe Pipeline is owned and operated by Daewoo International and will run from the Bay of Bengal in southwest Burma to the China-Burma border. Though not yet built, this pipeline and the Burma-China Oil Transport project are projected to pass through highly militarized and politically contested territory in north Shan State near Kachin State. *(Map courtesy of ERI)*

From the natural gas terminal for the offshore pipeline, a 793 kilometer (493 mile), U.S. $1.04 billion onshore gas pipeline is being constructed along China's Yunnan province's border and will be completed in 2013. The offshore pipeline will run 110 kilometers (68 miles) to the pipeline onshore, where CNPC and its partners will purchase and transport the gas to the Chinese border. This onshore gas pipeline will be constructed and operated by SEAP; a Hong Kong registered entity created by CNPC and its partners. PetroChina, a U.S. publicly traded subsidiary of CNPC, will then distribute Shwe gas in China. Daewoo International will participate with CNPC in the pipeline construction and gas transportation, along with its other partners.[24]

Onshore Natural Gas Pipeline Ownership[25]

Company	Country of Origin	Percentage of Investment
CNPC	China	51%
Daewoo International	South Korea	25%
ONGC Videsh, Limited	India	8%
MOGE	Burma	8%
KOGAS	South Korea	4%
GAIL Limited	India	4%

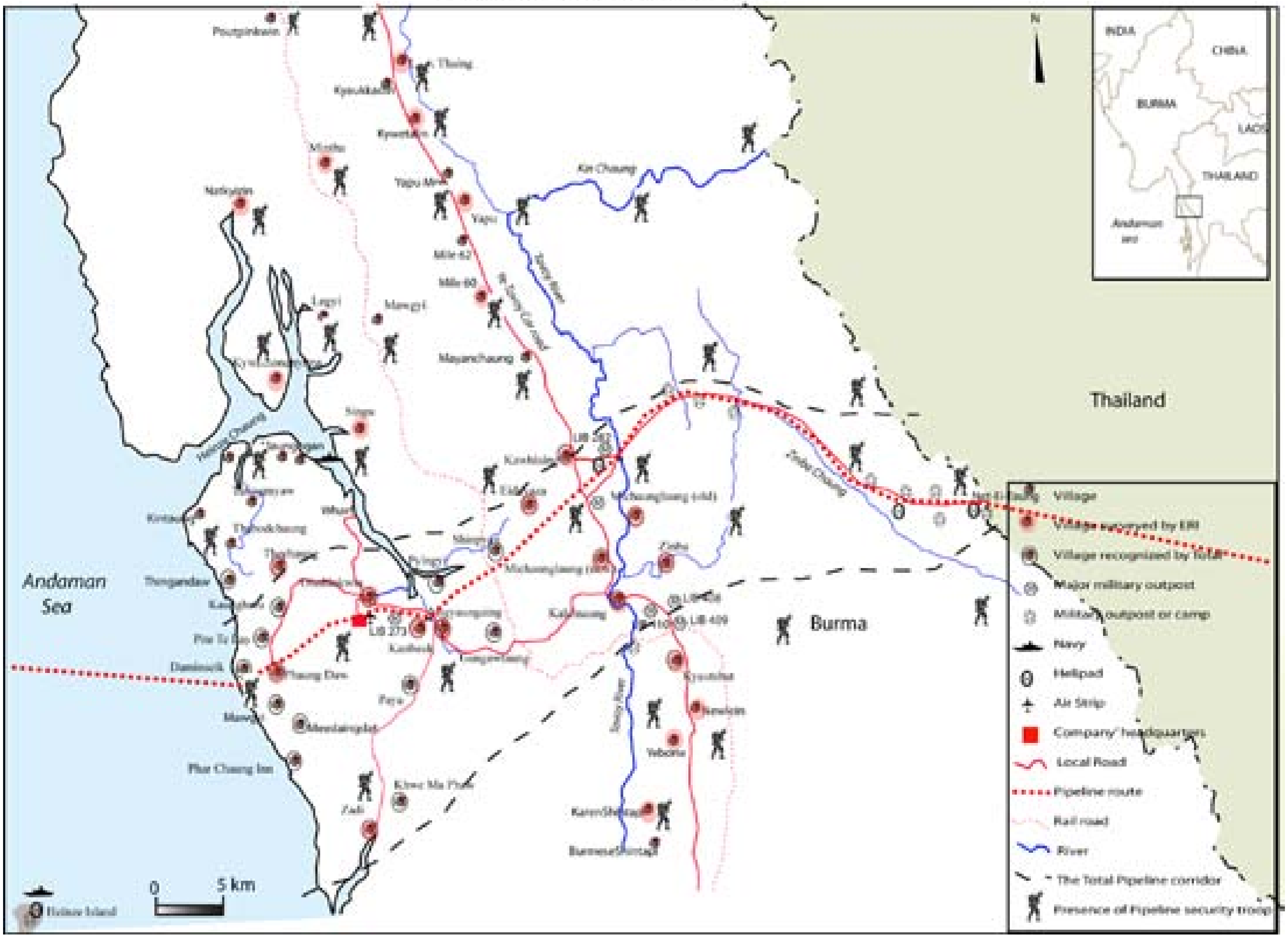
A 1,100 kilometer (684 mile) onshore crude oil pipeline will run nearly parallel to the natural gas pipeline to transport oil from the Middle East and Africa through Burma to southwest China. CNPC's wholly-owned subsidiary SEACOP is responsible for the construction and operation of the pipeline. CNPC owns a 50.9% stake in the onshore crude oil pipeline, while MOGE controls the remaining 49.1%.[26]

Although the controversial pipelines have not yet been constructed, they are projected to pass through highly militarized and politically contested territory in north Shan State, just south of Kachin State, heavily populated by the Kachin people. The area has over 40 militias, various ethnic nationalities and non-state ethnic armies under unstable ceasefire agreements with the Burmese government.[27] According to local sources, Burmese authorities and Chinese businessmen have visited the pipeline areas and have already physically plotted the pipelines' path through this area with red flags.[28]

According to an agreement between CNPC and MOGE, the Burmese army and other state security forces will provide security for the pipeline – occupying and patrolling the area where the pipeline will be constructed, maintained and operated.[29] There are already at least 28 Burmese army battalions stationed near the pipelines' construction path from Arakan State in west Burma to China.[30] Expanding the role of the army, navy and police in clearing the way for new development and securing construction and corporate assets will likely exacerbate existing, or contribute to renewed, conflict.[31] Sources on the ground indicate an escalation in the presence of Burmese troops along the pipeline corridor. Ongoing attacks and the escalation of troops has already caused thousands to flee north into Kachin State and neighboring China. The pipelines can serve as a target for violence in areas where displacement has been substantial among citizens. Sources indicate that the Burmese forces intend to train the ethnic nationalities along the pipeline route as a tactic to control the areas through infighting by destabilizing the armed groups in the Kachin State. Those with military training from the disbanded ethnic armies will then be left to secure the projects and companies for the State.

There have been serious issues of large land concessions and inadequate compensation paid to locals by MOGE, CNPC, Daewoo International and Asia World Co. Ltd. to make way for the pipelines. CNPC conducted a methodologically flawed social impact assessment on portions of the pipelines' route. Corporate representatives were escorted by the government to the areas they assessed and the areas where they were denied access correlate with those that experienced land confiscation and other abuses in connection with the project. In fact, the study focused on determining villagers' perception of the companies and projects and the ways the company could improve socio-economic conditions. In direct contravention of impact assessment best practices, there was no opportunity for villagers to give free, prior and informed consent and the assessment was not used to determine

Map of Yadana Pipeline Region



Map of the Yadana pipeline running from the Bay of Bengal in southwest Burma to the Thai-Burma border. Pervasive security forces remain in the pipeline area and continue to commit abuses, leaving the area volatile. (Map courtesy of ERI)

whether the project should proceed or how it should proceed.[32]

CRN is engaging with CNPC and ONGC on their responsibility to respect human rights in the areas in which they do business in Burma, as well as Sudan.[33]

Yadana and Yetagun Pipelines

The Yadana and Yetagun pipelines transport natural gas from offshore deposits in the Andaman Sea through the Tenasserim division and meet at the Thai border for the Thai market.

The Burmese army also provides security for these projects, which significantly contribute to the military regime's single largest source of revenue – the oil and gas sector, accounting for 70% of all foreign exchange reserves, the foreign currency deposits and bonds held by the central bank in Burma.[36] The construction of the pipelines resulted in egregious human rights violations such as forced labor, forced relocations, rape, torture and murder that led to a civil lawsuit in U.S. federal court against Unocal, which is now Chevron.[37] While there were high incidents of forced labor, land confiscation and violent abuses during construction, there has been a reduction of some abuses now that it is in the production phase, but human rights abuses have continued. Pervasive security forces remain in the pipeline area and continue to commit abuses, leaving the area volatile.[38]

Yadana Pipeline Ownership[34]		
Company	Country of Origin	Percentage of Investment
Total SA	France	31.24%
Chevron Corporation	United States	28.26%
PTTEP Thailand	Thailand	25.50%
MOGE	Burma	15.00%
Yetagun Pipeline Ownership[35]		
Petronas	Malaysia	40.91%
MOGE	Burma	20.34%
JX Nippon Oil & Gas	Japan	19.31%
PTTEP Thailand	Thailand	19.31%

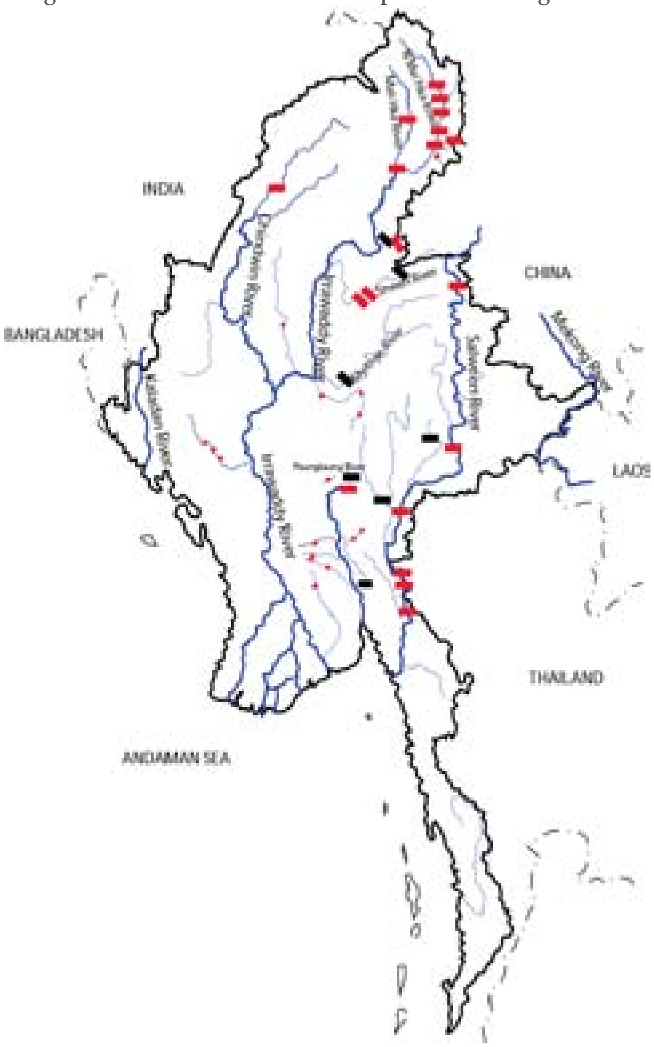
A 2012 shareholder resolution calling on Chevron to disclose its criteria for investing in or withdrawing from high-risk countries, such as Burma, highlights the corporation's equity in the Yadana gas field and pipeline (*see New Investors in Burma, below, for details*).

Hydropower

Hydroelectric projects have the potential to be an important driver of conflict. Controversy over the construction of more than 25 mega-dam projects in Burma has mounted as the power is bound for neighboring countries, while the revenues are going to the military through the Burmese government, which has complete control over the industry. Locals are also upset that there is no process for their participation in project development, for information disclosure concerning the dams, or for the implementation of proper standards for dam building.[39] Dam construction, occurring mainly in ethnic regions along the Irrawaddy and Salween Rivers, has already caused environmental degradation and displaced ethnic minority populations. Military atrocities common around dam construction include the shelling of civilian targets, gang-rapes, and the displacement of thousands of civilians.[40]

Myitsone Dam

The Myitsone Dam on the Irrawaddy River in Kachin State has caused such local outrage that it was suspended in September 2011. While the vast majority of Burmese citizens have no electricity, 90% of the energy generated by the dam, managed by the Chinese state-owned company CPI, was to be exported to China. Local community objections focused on environmental damage, the failure to consider or protect local interests in the proposed construction plans, and the displacement and resettlement of local communities by the government.[41] Lack of transparency poses additional obstacles to accountability for the estimated 15,000 people who would be displaced by the dam, as the terms of the Burmese and Chinese governments' contract are not public. Although the project is suspended, it has not been canceled, and there is speculation that construction may resume.[42] Local groups in Kachin State reportedly received eviction notices in March 2012 with ten days to leave the area. Locals have also reportedly seen increased activity at Chinese dam construction workers' camps. In addition, Chinese trucks and equipment are amassing at the border.[43]



The construction of more than 25 mega-dam projects along the Irrawaddy and Salween Rivers in ethnic regions of Burma has caused environmental degradation and displaced ethnic minority populations. Military atrocities common around dam construction include the shelling of civilian targets, gang-rapes, and the displacement of thousands of civilians. (Map courtesy of BEWG)

To secure the vast amount of foreign investment it stood to receive as a result of the development of this project and six others along the river, the Burmese army began occupying KIA ceasefire territory.[44] KIA officials have historically flagged the projects as a potential catalyst for conflict. Increased military presence in the area to escort Chinese technicians has, in part, prompted several attacks by ethnic militias against company equipment and employees.[45] Considering the current instability in Kachin and Shan States, the possible resumption of construction of the Myitsone Dam creates dangerous conditions for civilians and a very risky business operating environment for the corporate actors associated with this dam.

Hatgyi Dam

Despite a recent ceasefire agreement in Karen State between the KNU and the Burmese government, a violent cat-and-mouse game has been ongoing for months in areas surrounding the Hatgyi Dam. Ignoring a withdrawal order from the Burmese government, army security has increased around the dam and nearby sites being surveyed. The potential for peace has been seriously undermined by the military's presence, and as violence has increased in the region, at least 12 new rape cases have been documented.[46] Villagers fear the abduction of ethnic minority men for forced labor as a result of increased conflict.[47] Sinohydro Corporation (China), EGAT (Thailand), China Southern Power Grid Company and China Three Gorges Project Corporation have been associated with the project.[48]

Tasang Dam

The Tasang Dam will generate energy for export to Thailand and is the largest of five proposed dams on the Salween River in Shan State, a region experiencing active conflict. In March 2011, the Burmese government broke a 22-year long ceasefire with the SSA-N. Sixty-five clashes and egregious human rights abuses were reported in the first three weeks of this ceasefire annulment.[49] The dam is the main power source for the ADB's GMS program, but is not directly funded by ADB. The China Gezhouba Water and Power Group Co. Ltd. and the MDX Group (Thailand) have been directly involved in the project, while EGAT (Thailand), China Three Gorges Corporation, Sinohydro (China), China Southern Power Grid Company and Malcolm Dunstan Associates (England) have been associated with the project.[50]

The ADB's role in mobilizing the private sector to finance the GMS project in Burma is alarming because the private sector is not held to the same safeguards that are applicable to the Bank, which require environmental and social impact assessments. In the development of this project and similar projects, the ADB has supported Burmese military generals' participating in regional meetings and workshops but has failed to disclose details of this monetary support. Local civil society has expressed concern over the inclusion of the military in these projects and over the government's increased power as a direct link to their increased suffering.[51]

Mining

Natural resources such as jade, rubies, copper, gold, iron ore, coal and timber are especially plentiful in the conflict-affected Kachin State and northern Shan State. Smuggling, bribery and illicit trade in the "informal" sectors of mining, gems and timber are rampant and are primarily controlled by and fund the Burmese army and ethnic armed groups. Private mining investment related to most natural resources is done through production or profit-sharing contracts that give the Myanmar Ministry of Mines and its subsidiaries roughly 30% of profits in addition to a 10% export tax. From 2010 to 2011, the central government earned U.S. $2.2 billion from taxing the jade industry alone.[52] A large majority of the government's official jade sales originate from the Hpakant jade region in Kachin State, which is currently experiencing heightened instability. Mong Hsu and Mogok ruby mines in the conflicted Shan State and Sagaing Division have also been associated with catalysts of further violence.

Major U.S. jewelry retailers have been sensitive to these issues and investor engagement on the dangerous conditions at the mines, and their connections to the spread of HIV/AIDS and drug trafficking. Institutional investors confirm that retailers such as Walmart, Costco and Tiffany & Co. have made some commitments to ban Burmese gems from their supply chains.

Information & Communications Technology

In early April 2012, senior officials from the U.S. administration indicated, without providing further information, that the telecommunications sector in Burma is one of the first that may benefit from relaxed sanctions.[53] In anticipation of eased sanctions, the Burmese government is reviewing a new communications law, which for the first time creates four new telecommunications licenses for foreign investors.[54] Historically, the Burmese government has not trusted foreign involvement in the sensitive ICT sector.[55] The military-backed government has also been well-known for its repressive tactics of internet control and surveillance.[56] During a brutal crackdown on protests in 2007, Burma became one of the first countries to temporarily shut down its Internet.[57]

A recent report identified Burma as one of 12 states that are "enemies of the Internet" due to internet censorship activities that combine strict access restrictions for citizens with systems that monitor and track usage.[58] A research institute investigating the use of commercial filtering products in countries ruled by repressive regimes discovered a number of devices manufactured by the U.S.-based company Blue Coat Systems that are actively being used by the Burmese government to censor and monitor citizens. Blue Coat's business practices in other nations are also being scrutinized. The U.S. Commerce Department is currently investigating Blue Coat in order to determine whether the company violated U.S. sanctions against Syria by doing business with prior knowledge that its equipment was being used by the Syrian government.[59]

The ICT sector exposes citizens to serious human rights abuses. Violent regimes use products and services provided by companies doing business in the sector to intercept citizens' e-mails and text-messages, monitor Internet activity and locate political targets through cell phone technology. Officials routinely use this information to track, arrest and torture dissidents.[60]

At an Internet freedom conference in December 2011, U.S. Secretary of State Hillary Rodham Clinton called securing peoples' rights in cyberspace an urgent task needed to ensure that "human rights are as respected online as offline."[61] Without proper due diligence, companies doing business in the sector, and particularly in Burma, are at great risk of violating sanctions as well as committing severe human rights abuses, while similarly creating significant risk to investors.

CURRENT SANCTIONS

In 1997, the U.S. banned all new investments in Burma for its nationals or entities. The Burma Freedom and Democracy Act of 2003 banned all imports from Burma, restricted financial transactions and visas and instituted asset freezes on financial institutions in the country and top government officials. U.S. firms were also banned from doing business with Burmese companies. In 2007, similar restrictions were placed on those in Burma involved in human rights abuses and corruption.[62] The JADE Act of 2008 specifically bans the import of Burmese gemstones to the U.S., and establishes asset freezes and visa restrictions upon those dealing in the industry.[63] Congressional sanctions and Executive Orders are expected to be reviewed in the next few months.

In February 2012, U.S. Secretary of State Clinton also signed a partial waiver under the Trafficking Victims Protection Act that will allow assessment missions and limited technical assistance in Burma by international financial institutions such as the World Bank, ADB and International Monetary Fund. The waiver will run through September 2012.[64]

In early April 2012, U.S. Secretary Clinton said the U.S. government recognized and embraced the political progress Burma has made. Since the relatively free and fair by-elections on April 1, 2012, the U.S. government has announced that some sanctions will be eased. The U.S. is in the process of appointing Derek Mitchell as ambassador to Burma; it will establish an office in Burma for the Agency for International Development and support a regular UN Development Program operation in the country. The U.S. also plans to ease travel bans on some Burmese officials, adjust the Executive Order ban on investments[65] and take steps to open the ICT, agriculture and tourism sectors, as well as parts of Burma's banking sector, to foreign banking services.[66]

The EU adopted a Common Position on Burma in 1996, banning the sale or transfer of arms, weapons expertise and any equipment that might be used for internal repression. These restrictive measures are up for review in April 2012, as they are due to expire. The export of equipment and financial or technical support for the timber and gemstone mining industries is prohibited. Aid is not allowed, except under certain specific circumstances. However, the EU has announced a U.S. $197 million two-year development aid package geared toward education, agriculture, healthcare, and persons displaced due to conflict.[67] Additionally, in February 2012, the EU suspended visa restrictions on 87 top Burmese officials as a result of the recent release of political prisoners, although asset freezes remain intact.[68]

EU members Germany and Italy are advocating for a swift relaxation of EU sanctions, while France, the Netherlands, Denmark and Sweden reportedly favor a more gradual approach.[69] The UK has made public statements in support of maintaining targeted economic sanctions as a tool to promote reform, although its sustained resolve has been questioned.[70]

BURMESE INVESTMENT AND CURRENCY VALUATION POLICIES AND LEGISLATION

There have been domestic and international regulatory efforts to increase transparency by corporations currently doing business in or looking to enter the

Burmese market, especially in the extractive industries. As of April 1, 2012, the government has adopted a managed floating exchange rate to begin unifying the numerous currency valuations that have greatly enabled corruption.[71] Less than 1% of gas revenues generally entered the budget, and through the manipulation of multiple exchange rates the regime has been able to funnel the remaining revenues into secret and offshore accounts.[72]

In the U.S., Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act will require companies like Total and Chevron to disclose their exact contributions for the Yadana and Yetagun projects. Similar laws are being debated in the EU and South Korea. However, the reporting requirements of Section 1504 would only apply to three of the 27 oil and gas companies operating in Burma. If South Korea's legislation is enacted, KOGAS and Daewoo International would also be required to report. Yet, that is still a very small number of companies operating in Burma and the dearth of meaningful disclosure by the major operators in the country, specifically Chinese firms such as CNPC, remains significant.[73]

NEW INVESTORS IN BURMA

Corporations based in the U.S. and EU are seriously scouting investment opportunities to do business in Burma as soon as sanctions are eased. Staff from the major Western oil corporations – Chevron, Total and Exxon Mobil – have expressed positive expectations for business prospects in the country. Shell is reportedly a potential partner of Thailand's PPT in the Burmese gas industry.[74] The U.S.-based construction equipment manufacturer Caterpillar has met with Burmese government officials to discuss facilitating gas exploration.[75] From Europe's point of view, the biggest and most immediate opportunities are expected to be in oil and gas, with companies such as BP, ENI and Statoil positioning themselves before barriers come down.[76] Europe's largest construction equipment company, J.C. Bamford, has expressed interest in entering the Burmese market by mid-2012.[77]

The UK bank Standard Charter and Germany's Commerzbank AB are also interested in opportunities in Burma.[78] Japanese conglomerates focused on trading, automotive, telecommunications systems and network systems, among others, are also aggressively making plans to enter the market.[79] The hospitality, manufacturing and telecommunications industries are particularly ripe for foreign investment with Siemens, Bouygues and Asian Honda Motor Co. expressing interest.[80]

Corporate pressure to lift sanctions — especially by the oil industry — is mounting. The U.S.-ASEAN Business Council finds that "times have changed from the days when companies were stigmatized for working [in Burma]."[81] In late February 2012, a lobby group representing companies in 35 countries, Business Europe, held meetings with European officials to push for the relaxation of sanctions.[82]

One U.S. oil corporation with an interest in Burma, Chevron, had 41 registered U.S. federal lobbyists and reported spending U.S. $9.5 million to lobby Congress in 2011.[83] The corporation's lobbying disclosure forms included 23 references to Burma — second only to Halliburton, which had 29.[84] Chevron is a powerhouse in Washington, DC: in the 2009-2010 federal election cycle, the oil giant reported spending U.S. $35 million to influence federal policy.[85]

However, not all investors support the corporate rush into Burma. For example, Chevron shareholders have put forth a proposal asking the corporation to disclose

Authority of Thailand, and the Myanmar Oil and Gas Enterprise through southeast Burma in the mid to late 1990s. The security services the Burmese Army provides for these projects have been the military regime's single largest source of revenue. (Photo courtesy of ERI) its criteria for investing in or withdrawing from high-risk countries such as Burma, to be considered at the corporation's 2012 annual meeting.[86] The International Brotherhood of Teamsters and other proponents of the resolution argue that it is unclear how Chevron determines whether to invest in or withdraw from countries where the government has engaged in ongoing, systematic human rights violations. The corporation faces the threat of government sanctions, negative publicity and consumer boycotts. Chevron opposed

the resolution in 2011, claiming that the current policies and processes allow it to "identify, analyze and manage security, social, environmental, health and safety issues incident to its operations and major capital projects, reinforce the company's commitment to respect human rights, and set strict compliance policies for foreign corrupt practices and anticorruption laws."[87]

CRN has joined other investors in engaging Chevron in dialogue over the issues raised in the resolution.[88]

CONCLUSION AND RECOMMENDATIONS

Conditions for Lifting Sanctions and for Investment in Burma

As a result of all these concerns, experts on Burma have called for an incremental, targeted lifting of sanctions that reflects evidence-based progress. One of the most critical conditions for the EU and U.S. is finding that the April 1 by-elections were free and fair. Yet successful elections are just one step toward true reform. The EU has set other key conditions before all sanctions will be lifted – the release of political prisoners and the end of conflict.[89] In reviewing U.S. sanctions, the government will attempt to identify those most impeding reforms. Derek Mitchell, the soon-to-be U.S. Ambassador to Burma, warns that there is no one change that will magically lead to relaxed sanctions. U.S. Congressional members generally reflect this sentiment.[90]

United to End Genocide, CRN's host organization, supports conditions established by international and domestic civil society organizations and trade unions with expertise in Burma.[91] See the Appendix for United to End Genocide's set of conditions that the U.S. government should adopt in order to gradually remove sanctions against Burma.

[Do not lift sanctions] "unless and until we have a good law… environmental law, social impact assessment and corporate social responsibility.

Wait and see. Because all those [sic] investment will be the nature resource extraction and we don't have, yet, a very good system on these laws."

Burma Activist from Kachin State
UEG interview. Burma, April 2012

Recommendations to Investors

As governments reconsider sanctions, corporations and investors have an obligation to develop their own criteria for investment and operation in Burma. If – despite the efforts of civil society organizations within and outside Burma – Western governments move too fast in lifting sanctions, investment in Burma may be legally permissible before it is financially wise. A business rush into Burma could then provide the military and other repressive leaders within the regime a new infusion of funds – and the power to block and roll back reforms. In such a scenario, premature investment could inhibit rather than facilitate the protection of human rights and the improvement of the lives of the country's people, especially ethnic minority communities.

BEWG, an alliance of grassroots-based organizations working in and around Burma, recently issued its five *Benchmarks for [Corporate] Investment in Burma's Energy, Extractive and Land Sectors* to guide responsible business investment.[92] First and foremost, the group calls on corporations already doing business in Burma to do no harm. In the absence of legally required social and environmental impact assessments in Burma, corporations must meet international or home country standards while incorporating principles of free, prior and informed consent. The group also calls on corporations to operate free of corruption and with full revenue and contract transparency, to support civil society in fulfilling its role without threat of repression or abuse, and to empower communities by addressing grievances in existing and proposed investments. The group expects that adherence to these principles will increase the likelihood that corporate investment in sectors that have been historically linked to human rights and environmental abuses will benefit Burmese citizens as opposed to undermining their political, social and environmental progress.[93]

The Guiding Principles on Business and Human Rights endorsed by the United Nations Human Rights Council acknowledge the heightened risk of gross human rights abuses in conflict-affected areas. The Guiding Principles outline a four-step due diligence process for corporations to carry out the responsibility to respect human rights:

• Develop a human rights policy to guide corporate conduct;

• Assess actual and potential impacts on human rights;

• Integrate human rights policies and practices into operating procedures; and

• Track and report performance.[94]

• Burma highlights the limitations of and potential gaps in this due diligence process. To fulfill their responsibility to respect human rights in this conflict-torn, military-dominated, natural resource-rich context, corporations must go beyond simply checking the boxes.

CRN makes the following recommendations to investors:

With holdings in corporations doing business in Burma:

• Actively engage with corporations doing business in Burma regarding the appropriate actions required to avoid, cease, or remedy adverse impacts of their operations with clear and time-oriented targets for improved corporate behaviors;[95]

• Call for the full integration of the findings of corporate human rights and environmental impact assessments across their internal policies and procedures, with tracking and reporting on performance;

• Advocate for credible and publicly disclosed human rights and environmental impact assessments and monitoring through inclusive community engagement, and the adoption of revenue transparency initiatives[96] and voluntary security and human rights principles[97];[98]

• Actively engage with corporations concerning remediation efforts through legitimate processes in instances where they have caused or contributed to adverse human rights and environmental impacts;

• Actively engage corporate actors over the steps they are taking to ensure that they do not aid and abet criminal and/or corrupt activities or exacerbate conflict;

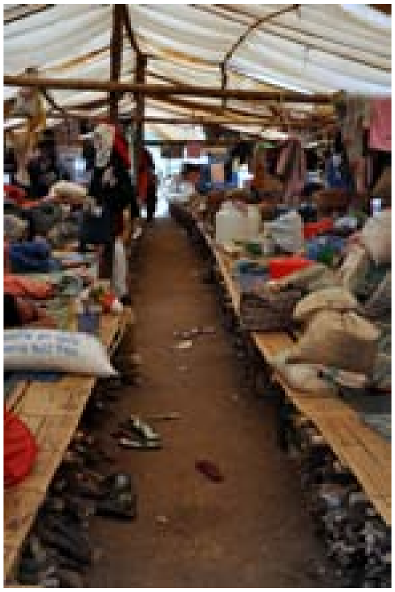
• Encourage corporations to pressure the Burmese government on issues of effective ceasefire agreements in and around their operations, human rights, transparency and community engagement;

• Discourage new investment in industries discussed in this paper that are associated with conflict-affected areas in Burma and any other industries whose ties to conflict may emerge or become apparent;

• Support shareholder resolutions that promote corporate policies and procedures concerning human rights, environmental safeguards and transparency;[99] and

• Promote the goals and objectives of the Publish What You Pay[100] campaign and EITI.[101]

With holdings in corporations actively seeking to enter Burma as soon as sanctions are lifted:



Inside a shelter for displaced families in Seng Ma Pa, an IDP camp in Mai Ja Yang. (United to End Genocide photo)

• Discourage any new investment until the conditions outlined by United to End Genocide and its partner organizations are achieved in Burma, or at least until sustained peace and stability are reached in the country;

• Advocate for comprehensive human rights due diligence that includes human rights and environmental impact assessments prior to commencing any operations in the country and throughout the lifespan of their projects; and

• Call for the full integration of the findings of corporate human rights and environmental impact assessments across their internal policies and procedures, with tracking and reporting on performance.

On the relaxation of EU and U.S. sanctions:

• Make a public statement in support of a cautious approach to the relaxation of U.S. and EU sanctions and investment bans, from a business risk perspective;

• Engage the business community, U.S. and EU legislative and executive bodies over due diligence and conditions for renewed investment in Burma; and

• Publicly endorse the conditions called for by international human rights organizations, including United to End Genocide, Physicians for Human Rights, Human Rights Watch and the International Trade Union Confederation.

Areas affected by genocide and mass atrocities differ significantly from stable operating environments. They exhibit instability, unpredictable conditions and contexts in which rights violations are ongoing. Companies are faced with greater challenges in ensuring they do not infringe on human rights or cause other harms in such settings. Furthermore, the failure to adhere to responsible corporate best practices carries the potential for heightened impacts on communities, companies and investors.

As corporations move into Burma, investors should leverage the business case to hold those actors accountable to their responsibility to respect human rights. Active engagement that maximizes investors' leverage with corporations currently operating or doing business in Burma or that are poised to enter the country, is essential to verifying that these actors fulfill their responsibility to respect human rights.

When companies and investors are able to understand what drives conflict and how to address it, they can not only mitigate the risks and negative impacts posed to and by their investments, but put themselves in a position to play an important role in supporting peace and stability. There are a number of opportunities for corporate actors to make positive contributions in Burma. Corporations poised to operate in Burma and those already doing so have the potential to create job opportunities, generate revenues that advance economic growth, invest in local communities and ensure respect for human rights and environmental protection. Together, investors and civil society advocates can make sure this high road is taken.

In the coming months, corporations and investors will need more guidance regarding the risks of investment in particular sectors in Burma, as well as a source of reliable information on investment criteria and whether particular corporations are meeting them. CRN stands ready to work with partners in the investment community and civil society to advocate for the highest possible standard on investment in Burma and to ensure that it is implemented.

APPENDIX: UNITED TO END GENOCIDE'S CONDITIONS FOR CONSIDERATION FOR THE REMOVAL OF BURMA SANCTIONS

Before any U.S. consideration of the removal of existing sanctions on Burma, United to End Genocide believes the Burmese government must undertake the following:

1. Demonstrate progress towards an end to gross violations of international human rights law and humanitarian law, including an end to attacks on civilians in all regions, and provide meaningful access for international human rights monitors;

2. Enter meaningful nationwide negotiations that lead to a political settlement with minority groups; this should include negotiations over the grievances of ethnic minorities including demands for constitutional decentralization/federalism, power-sharing, a fair federal fiscal system, and the rights of individual minorities including religious, cultural and linguistic rights;

3. Implement constitutional changes that enable a civilian government to hold the military accountable, including reform of the judicial system and enabling the provision of legal mechanisms to hold perpetrators of human rights violations accountable;

4. Drawing upon public participation and civil society input, establish institutional reforms that will effectively hold perpetrators of human rights violations accountable for their crimes according to all relevant international legal standards;

5. Allow humanitarian access to people in areas of conflict, including unhindered access for humanitarian agencies;

6. Unconditionally release all remaining political prisoners, and repeal laws that prohibit basic freedom including freedoms of assembly, speech, and press;

7. Establish the rule of law, including the creation of an independent judiciary with the proper training to fairly and transparently adjudicate cases;

8. Ensure transparency of revenues from taxation and natural resources sector;

9. Implement fully the direction of the ILO Commission of Inquiry to end forced labor;

10. Decrease military spending and engage in meaningful consultation with national stakeholders to develop an appropriate national budget, including sufficient expenditures on essential social services and other basic needs of the population.

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For more information, contact:
Kathy Mulvey
Director, Conflict Risk Network
A project of United to End Genocide
1025 Connecticut Ave. NW
Suite 310
Washington, DC 20036
KMulvey@endgenocide.org
crn.genocideintervention.net
endgenocide.org
202.556.2123

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NETWORK

A Project of

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GENOCIDE

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1025 Connecticut Ave. NW
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Washington, DC 20036
202.556.2100
crn.genocideintervention.net
endgenocide.org