

## **Report of Evidence Regarding Controversies at Letpadaung Hill Copper Mine Project**



**Lawyers Network and Justice Trust (14 February, 2013)**

## DEDICATION:

### Re Borne on Letpadaung Hill

99 monks sitting steadfast in circles,  
One heart beating true for land-loving peoples,  
Channeling the power of powerlessness,  
Flutt'ring on butterfly-wings of compassion,  
Chanting peace sutras under fire-bombs flying,  
Tossed like sticks amidst storms of sacred suff'ring,  
Flames and flesh, blood and water, inter-mingling,  
**Just! – As an all-mighty oceans' ceaseless roar! –**  
Can such devotion ever be defeated?



## EXECUTIVE SUMMARY

This report was prepared by Lawyers Network, an independent association of leading lawyers throughout Myanmar, and Justice Trust, an international group that supports national efforts to advance rule of law and human rights. It concerns recent controversies at a Letpadaung copper mine, a joint venture between Wanbao Mining, a subsidiary of North China Industries Corporation (NORINCO), a Chinese military-owned defense company, and Union of Myanmar Economic Holdings Limited (UMEHL), the largest military-owned holding company in Myanmar.

The purpose of the report is to assist the Government and peoples of Myanmar to determine the truth of what happened and to advance justice in accordance with the rule of law.

The report contains evidence regarding three main issues:

- enforceability of contracts signed by local villagers in April 2011 allowing their farmlands to be used by the copper mine,
- legality of repeated police denials of citizens' right to peaceful assembly, and
- legality of the police action taken to disperse peaceful protesters at the copper mine site on 29 November, 2012.

The report is divided into six sections:

- 1) summary of the current transition towards rule of law and democracy in Myanmar,
- 2) overview of the law of contracts,
- 3) description of the factual circumstances leading the villagers to sign contracts with the Wanbao-UMEHL joint venture,
- 4) overview of the right of peaceful assembly and the principles governing the use of force in law enforcement,
- 5) description of the factual circumstances leading to the police action against protesters, and
- 6) analysis of white phosphorus military munitions used by police against protesters.

The evidence was collected during multiple site visits to Letpadaung and is based on eyewitness testimonies, interviews in hospital with injured protesters, legal documents, and photographs and video footage. In addition, an exploded grenade canister used by police and recovered from the Letpadaung protest site was analyzed at an independent chemical lab to determine its phosphorus content. [Please see Attachment I: ALS Test Report and Analysis.]

### *Overview of Letpadaung joint venture*

The Letpadaung copper mine project, on the west bank of the Chindwin River in Sarlingyi township, Monywa district, Sagaing Region, is a joint venture agreement between Wanbao Mining, UMEHL, and the Government of Myanmar. The deal was signed during Chinese Premier Wen Jiabao's state visit in 2010, when U Thein Sein was serving as prime minister under the previous military regime.

Wanbao is reportedly investing more than \$1 billion in a 60-year contract, and has spent \$5 million to compensate affected communities for confiscating more than 7,000 acres to expand

the mining site.<sup>1</sup> Wanbao reportedly pays all production costs and receives 49% of production, with the largest profit shares reportedly going to UMEHL and the Government.<sup>2</sup>

UMEHL is the largest state-owned enterprise controlled by the Burmese military. It was established as a public company on April 27, 1990 by the Ministry of Defense under the Special Companies Act and exempted from commercial and profit taxes. It is reportedly owned by two military departments; 30-40% of shares are owned by the Ministry of Defense Directorate of Procurement while 60-70% of shares are owned by high-ranking active and veteran military officials. Details of UMEHL’s ownership structure and financial activities are not publicly available.<sup>3</sup>

***Overview of evidence and findings***

The report’s main findings are: 1) local government officials used duress and fraud to compel villagers to sign contracts with the Wanbao/UMEHL joint venture against their will, in violation of the law of contracts, 2) local police officials denied citizens the right to peaceful assembly, in violation of their constitutional and human rights, and 3) riot police deployed military-issue white phosphorus incendiary smoke grenades to disperse peaceful protestors, setting fire to their camps and causing widespread and severe chemical burn injuries.

1. The investigation found that local government authorities, acting on behalf of the joint venture companies, used fraudulent means to coerce villagers to sign contracts against their will, for example:
  - The interests of the Wanbao-UMEHL joint venture were represented by senior-most officials from Sagaing Region and Sarlengyi township, in breach of their duties as civil servants mandated to act in the public interest.
  - These officials misused their powers to punish people who were opposed to selling their land, for example, unlawfully arresting and detaining an outspoken farmer during contract negotiations, and replacing independent village heads with active supporters of the mine.
  - They shut down the local monastery and primary school, refusing to register children in a nearby school unless their parents agreed to sign the contract.

<sup>1</sup> See The Myanmar Times (December 10-16, 2012), p. 1.

<sup>2</sup> “UMEHL negotiates big mining project with locals,” Eleven Media, 29 September 2012, <http://elevenmyanmar.com/business/807-umehl-negotiates-big-mining-project-with-locals> (last accessed on 4/2/13)

<sup>3</sup> Current members of the Board of Directors are not known as UMEHL does not make corporate records available to the public. Wikileaks released a U.S. Embassy cable listing Board members as of June 30, 2008, <https://dazzlepod.com/cable/09RANGOON77/> (last accessed on 4/2/13).

<u>Name</u>	<u>Position</u>
Lt. General Tin Aye	Chairman
Major General Win Than	Managing Director
Major General Hla Shwe	Member .
Lt. General Khin Maung Tun	Member
Major General Thein Htike	Member
Major General Nyan Tun (Navy)	Member
Maj. Gen. Khin Aung Myint (AF)	Member
Major General Tin Ngwe (Rtd.)	Member
Major General Hlaing Myint	Member
Colonel Thein Htay	Member

- They coerced and intimidated villagers by various means to sign the contract without allowing them to read its contents.
  - They misrepresented essential materials terms of the contract by falsely promising villagers that the land would be returned to them in three years, undamaged and in the same condition.
2. The investigation also found that police rejected every application by civil society and community members, including local villagers and monks, for permission to hold peaceful assemblies to voice opposition to the copper mine operation, in violations of the 2008 Constitution article 354 (right of peaceful assembly), article 198 (supremacy of the Constitution), and article 381 (limitation of fundamental rights only in the event of foreign intervention, civil war, or state of emergency). In addition, the police selectively arrested and detained protesters in Monywa, Mandalay, and Yangon for demonstrating without a permit. This pattern of behavior constitutes an abuse of administrative procedures and police powers to punish citizens for seeking to exercise fundamental constitutional and human rights (Universal Declaration, esp. articles 19, 20 and 23).
  3. The investigation also found that local police deployed at Wanbao company compound used excessive unlawful force, causing severe injury to more than 100 peaceful protesters. Interviews with victims in hospitals at Mandalay and Bangkok and photographic evidence indicated the use of white phosphorus munitions, an extremely volatile military munition. Analysis by an independent laboratory of residue from an exploded grenade canister confirmed its phosphorus content. White phosphorus spontaneously ignites in air to produce burning phosphorous pentoxide particles and, when combined with water, super-heated phosphoric acid. It is unheard of, and a gross violation of the rule of law, for police to use incendiary WP munitions against peaceful protestors during a law enforcement operation. This action raises questions of senior-level command responsibility for resulting crimes and violations of people's constitutional and human rights.

### ***Summary description of police action***

In the pre-dawn hours of 29<sup>th</sup> November 2012, contingents of Burmese police in full riot gear, acting under orders of the Union Ministry of Home Affairs, deployed water cannons, white phosphorus military munitions, and baton charges to disperse monks and farmers assembled in peaceful protest against a controversial copper mining project in Letpadaung hills

The police action set ablaze and destroyed six protest camps housing up to 500 monks and 50 farmers; demonstrators were exposed to a burning rain of phosphorous pentoxide and hit by flaming globs of phosphoric acid. Well over 100 protesters suffered deep chemical burns.

During the previous year, senior-most government officials from Sarlingyi Township and Sagaing Region had pressured local villagers to sign contracts against their will, making false promises that their lands would be used only for vehicular access to the mine and returned to them in farmable condition after three years. Community requests for permits to exercise their rights under the 2008 Constitution to free speech and peaceful assembly were rejected 11 times by local police. Villagers began to protest publicly after June 2012, when Wanbao started dumping tons of acid-processed earth and rubble (tailings) on areas under local cultivation.

Hundreds of monks joined the protest after it was discovered on 19 November that the mine had already damaged Lay Di Sayadaw, a revered Buddhist site situated at the top of one of the Letpadaung hills. Thousands of citizens throughout Myanmar joined in public protests to support the villagers and monks.

On 23 November, a Government delegation headed by Union Railways Minister Aung Min, the President's chief advisor on peace negotiations in ethnic areas, visited Letpadaung and exchanged views with protesters at the main camp. Minister Aung Min promised community members that the Government was committed to a non-violent solution.

NLD leader Aung San Suu Kyi announced that she would visit Letpadaung on 29 November to help resolve the controversy. On 28 November, the Union Minister of Home Affairs, Lt Gen Ko Ko, issued a public notice that by midnight police would take action against protesters "in accordance with the law."<sup>4</sup> At about 2:30am, police moved against the six protest camps simultaneously. One demonstrator called this "a welcoming shot for our democracy leader."

The Letpadaung incident shines a spotlight on three simple but critical rule of law tests in Myanmar as the nation progresses along the path of reform:

1. Who defends the law and ensures transparency during a transition from repressive military rule to legitimate democratic governance?
2. How can contract-based investment, whether foreign or domestic, be encouraged whilst also protecting people's fundamental constitutional and human rights, especially poor and disadvantaged groups?
3. How can entrenched past patterns and practices of gross impunity be challenged and changed?

### ***Recommendations***

The Government has committed itself to follow and respect the rule of law as the cornerstone of its transition from military rule to civilian democracy. The rule of law requires that gross violations of people's rights be properly investigated to determine the facts, that wrong-doers be held accountable regardless of their power and seniority, and that victims be given remedies for injuries suffered. As head of Government, President U Thein Sein is responsible for ensuring an independent investigation of facts and effective prosecution of suspected wrong-doers.

On 1 December, President U Thein Sein decreed the formation of the Letpadaung Investigation Commission, chaired by NLD leader Aung San Suu Kyi. On 3 December, the President amended the Commission by reducing its membership from 30 to 16, and eliminating several crucial areas of investigation from its mandate, including:  
“(d) causes of protests that demanded the shutdown of the copper mine project;  
(e) review of measures taken to control the protests and injuries to members of the Sangha;

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<sup>4</sup> Ministry of Home Affairs announcement, *New Light of Myanmar* (28 November, 2012).

(f) whether the copper mine project should continue or the foreign investment should be suspended.”<sup>5</sup>

In light of the findings of this report, the Lawyers Network and Justice Trust make the following recommendations:

1. The President should ensure that the Letpadaung Investigation Commission has all necessary support and powers, including subpoena powers, to undertake an independent and effective investigation, and also establish a new Commission with the mandate to investigate the police action and recommend prosecution for those found responsible for resulting violations.
2. Such investigation should focus not only on local authorities who carried out unlawful actions. It is more important to identify senior-most Government, police, and military officials who gave orders in connection with the police action and therefore have command responsibility.
3. Such investigation should also focus on senior-most officials of Wanbao and UMEHL companies to determine their potential responsibility for the unlawful contract negotiations and unlawful use of force against protesters.
4. Victims of contract fraud and coercion should be entitled to both damages and rescission of the contract. Victims of unlawful assault by police should be entitled to both damages and justice through prosecution of wrong-doers.
5. The future of the Letpadaung copper mine project should be determined peacefully in accordance with the rule of law based on transparent negotiations between all stakeholders – the Government, joint-venture companies, affected communities, and civil society groups.
6. The international community should encourage and assist the Government to ensure that the rule of law is followed and justice is seen to be done in the Letpadaung case.

### ***Issues for further investigation***

The findings of this report pose a challenge to the democratic and reformist path being pursued by the Government and supported by the peoples of Myanmar. The Lawyers Network and Justice Trust believe that the Government and peoples are equal to this challenge.

An important step will be to investigate and address unanswered questions raised in this report:

- On whose authority did local officials pursue contract negotiations with villagers?

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<sup>5</sup> Republic of the Union of Myanmar, President’s Office, Notification No. 92/2012: “Formation of the Investigation Commission” (1 December 2012), and Notification No. 95/2012: “Reconstitution of the Investigation Commission” (3 December 2012).

- Did senior executives at Wanbao or UMEHL advise or authorize local officials to use coercive and fraudulent means to force villagers to sign contracts?
- What was the role and responsibility of senior Government and military officials in these events?
- Who supplied military-grade white phosphorus grenades to local police?
- Who authorized the police to combine water cannons and WP grenades during the law enforcement procedure?
- What remedies are available to the protesters for resulting injuries and damages?
- How can affected communities participate democratically in decisions about the future of the Letpadaung mining project?
- How can this case strengthen the nation's commitment to the rule of law and ensure that foreign (and domestic) investment is democracy-friendly and rights-respecting?



## SECTION I: RULE OF LAW FRAMEWORK

This section discusses the broad political consensus in favor of strengthening rule of law and democratic development as a pillar of the ongoing democratic transition in Myanmar, referring to statements by President U Thein Sein and NLD leader Aung San Suu Kyi.

1. The rule of law is a system of governance in which decisions are made by right rather than might. The supreme authority is a set of laws applied equally and impartially to all, rather than personality-based power that is deployed arbitrarily to benefit some and punish others. The rule of law requires that legal institutions be independent from Government and military authorities, usually by constitutional design. All citizens, regardless of wealth, power or status, must enjoy equal rights and equal access to the protection and benefits of the law, and all must be equally accountable before the law. In terms of procedure, the law must be transparently enacted, publicly known, and predictably applied. In terms of content, the law must be based on well-established human rights principles.<sup>6</sup>
2. It is important to note that an effective rule of law system requires not only just laws and properly functioning institutions, but also a culture and mindset amongst the general public to respect the supremacy of law as the final arbiter for distributing powers and resolving conflicts between and amongst different branches of the government, military and security forces, individual citizens, business entities, and majority and minority groups.
3. Despite a venerable legal tradition and culture dating back more than two thousand years to ancient Hindu and Buddhist codes of law, the legal system in Myanmar today is extremely weak. The primary building blocks of the rule of law –judges, lawyers, courts, law schools, professional associations, and the separate branches of government – have been systematically repressed since direct military rule was established in 1962. Especially since 1988, independent lawyers have been jailed and disbarred, law schools shut down, and judicial independence subordinated to the military chain of command. As a result, the legal system suffers from high levels of corruption, cronyism, and public distrust.
4. At the same time, Myanmar has embarked on an unprecedented transition to a democratic system based on rule of law. The rapid progress of the past two years has been hailed throughout the whole world and strongly supported throughout the country. The list of achievements in such a short time is remarkable, for example: forming a new government, legalizing political parties, holding free and fair parliamentary elections, revoking and revising many laws, pursuing peace talks and cease fires in ethnic conflict areas, releasing thousands of political prisoners, establishing the parliamentary Rule of Law Committee and the national Human

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<sup>6</sup> UN Secretary-General Kofi Annan provided an expansive definition of rule of law in 2004: “The rule of law is a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.” See: <http://www.venice.coe.int/docs/2011/CDL-AD%282011%29003rev-e.pdf> (last accessed on 4/2/13).

Rights Commission, improving diplomatic relations with foreign countries, and liberalizing the economy to encourage foreign investment.<sup>7</sup>

5. President U Thein Sein has repeatedly emphasized the importance of rule of law to sustain the new political opening. In a groundbreaking speech to the UN on 27 September, 2012, he praised NLD Chairperson Aung San Suu Kyi “for her efforts for democracy” and stated: “First, there has to be stability and rule of law in the country. If we manage to do that, we will be able to establish a stable political system, a stable democracy, and I don't think there will be any reversal in the political transition.”<sup>8</sup> Recent addresses to parliament have been titled: “Rule of law should prevail in all political reform”, and “Conservatives who do not have a reformist mindset will be left behind”. The appointment of Aung San Suu Kyi on 7 August, 2012 to head the parliament’s Committee on Rule of Law and Stability was a clear signal of the centrality of rule of law to the new Government.
6. Aung San Suu Kyi is a globally-recognized champion of democracy and rule of law. Announcing her return to electoral politics in a widely-viewed televised speech to the nation on 15 March, 2012, she made clear that strengthening the rule of law would be the top-most priority for her and her party: “The NLD’s three priorities are rule of law, internal peace, and constitutional amendment. In the past rule of law was violated by laws which repressed people and restricted media. Democracy will not flourish unless people have freedom from fear and human rights. The judicial pillar must stand independently and above the executive pillar. Any authorities that breach the law must be brought to justice.”<sup>9</sup>
7. In a series of follow-up speeches, Aung San Suu Kyi emphasized that rule of law is crucial not only to promote justice but also to enable sustainable economic development. She made a special point of urging foreign investors to follow the rule of law and “make sure that all investments in Burma – business, development, humanitarian – are democracy-friendly and human rights-friendly. By this, I mean investment that prioritizes transparency, accountability, workers' rights, and environmental sustainability.”<sup>10</sup>
8. The convergence of leaders from very different political backgrounds around a common commitment to the rule of law is widely seen, domestically and abroad, as a positive sign that Myanmar’s reform process will continue along a democratic path. However, such political consensus is easier to maintain at the rhetorical level than the practical level. The real test is whether this public commitment to rule of law extends to difficult cases in which powerful interests are at stake.

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<sup>7</sup> See New Light Of Myanmar , 31/12/2012 and 2/1/2013, p. 1.

<sup>8</sup> “Burmese President Praises Aung San Suu Kyi,” Voice of America News, 28 September, 2012, see <http://www.voanews.com/content/burma-president-praises-aung-san-suu-kyi/1516496.html> (last accessed on 4/2/13).

<sup>9</sup> This quote is excerpted from an unofficial English translation of the televised campaign speech by Aung San Suu Kyi, 15 March, 2012, see: <http://www.youtube.com/watch?v=T8jZ6domN-4> (last accessed on 4/2/13).

<sup>10</sup> Speech to British parliament, 22 June 2012, see: <http://www.rediff.com/news/column/suu-kyi-recalls-nehru-in-historic-speech-at-uk-parliament/20120622.htm> (last accessed on 4/2/13).

9. The situation at Letpadaung copper mine presents a high-profile controversy that implicates the rights of foreign investors to security of contract and the rights of people to peaceful assembly. It is a complex case involving affected communities, local authorities, military-owned domestic and foreign companies, the national Government, and the international community. To ensure a just resolution based on the rule of law, it is necessary to understand and evenhandedly apply the relevant legal framework of contract and peaceful assembly to the factual circumstances of the Letpadaung case.

## SECTION II: PRINCIPLES OF THE LAW OF CONTRACTS

This section summarizes the established domestic and international legal principles that govern contracts.

10. The basis of contract is “a meeting of the minds”. A contract is an agreement, often in writing, entered into freely and voluntarily by two or more parties with the intention to create legal obligations between them. The core elements of a contract are offer and acceptance by competent persons who exchange promises and consideration to create mutuality of obligation based on clear and definite terms.
11. A central role of government is to ensure a functioning legal system capable of adjudicating and enforcing contracts according to the rule of law. Contract law is based on the principle expressed in the Latin phrase *pacta sunt servanda*, which literally means “agreements must be kept”. States and societies that follow the rule of law share a commitment to enforcing contracts in a fair and predictable manner. Effective enforcement of contracts is a foundation that encourages and enables both large-scale business transactions and mutual promises between individuals (such as marriage).
12. Over many centuries, the law has developed not only to uphold and enforce proper contracts, but also to negate and render void those contracts that are based on exploitation and injustice. To ensure that contracts are not abused by the powerful to take advantage of the weak, the law has developed several important exceptions to the general rule that contracts must be enforced. These affirmative legal defenses – including defenses against misrepresentation, fraud, duress, and undue influence – render a contract voidable by the aggrieved party. Courts of law do not automatically treat a voidable contract as void. The aggrieved party is given the choice to either rescind (void) or enforce the contract.
13. A misrepresentation is a statement about something that is not true. A material misrepresentation is a misstatement of fact that induces a reasonable person to enter into a contract. A finding of material misrepresentation renders the contract voidable by the aggrieved party even if the misrepresentation is unintentional. A fraudulent misrepresentation occurs when a party knowingly misstates a fact with the intention of inducing the other party to enter into a contract. A party who relies on a fraudulent misrepresentation has the right to rescind the contract and, depending on circumstances, obtain damages.
14. A contract is also voidable on the grounds of duress or coercion. Duress refers to a situation whereby a person enters into a contract as a result of violence, threat or other

pressure. It is defined as “a threat of harm made to compel a person to do something against his or her will or judgment; esp., a wrongful threat made by one person to compel a manifestation of seeming assent by another person to a transaction without real volition”.<sup>11</sup> Economic duress renders a contract voidable if one party threatens to commit a wrongful act that would put the other party’s property or financial well-being in jeopardy. An aggrieved party wishing to rescind a contract for duress needs to prove only that the threat was a reason for entering into the contract; the burden of proof then shifts to the threatening party to prove that the duress had no effect on the agreement.

15. Undue influence is an equitable doctrine that involves one party taking advantage of a position of power to prevent the other party from freely negotiating the terms of a contract. Undue influence is presumed to exist where the relationship between the two parties is inherently unequal, such as: government/people, parent/child, and doctor/patient. In such cases, the burden of proof lies on the first of said parties (e.g. the government, parent, or doctor) to disprove that undue influence was present in the formation of the contract. If undue influence is proved, the aggrieved party has the remedy of rescission, with potential damages.

### SECTION III: FACTUAL CIRCUMSTANCES OF THE CONTRACT NEGOTIATIONS AT LETPADAUNG

This section and describes key events during contract negotiations between affected villagers and the Wanbao-U Paing joint venture. To ensure accuracy, statements of fact have been corroborated by multiple eyewitnesses and cross-checked against available evidence.

16. On 12 December 2010, residents of Wat Thmey village and surrounding areas affected by the copper mine were called to a meeting at the local primary school by U Khin Maung San, Monywa district governor, and U Zaw Min Han, Sarlgyi township administrator. At the meeting, governor U Khin Maung San informed the villagers that the copper mine was expanding and needed to use an additional 7,600 acres, including most of their village lands. He stated that Wanbao would pay compensation to villagers of about 530,000 kyat per acre for the use of the land for three years, during which time the villagers could not grow crops.
17. Governor U Khin Maung San stressed that the terms were generous and that the villagers had no choice but to accept. They were not given a chance to respond or ask questions during the meeting. Several villagers who tried to speak were ignored and their photos taken as a form of harassment. He warned that China was very powerful and could swallow their country whole if they do not cooperate. He asked the villagers: What if 60 million Chinese decide to come here, what will happen to the women of the area?
18. The villagers were promised that their land would be used only as a pass-through for vehicles working on the mine. In particular, the villagers were given three assurances: a) there will be no excavation or construction of buildings on their lands; b) there will be no dumping of earth and mining by-products on their lands; and c) their lands will be returned in the same condition after three years.

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<sup>11</sup> Black's Law Dictionary, 8th ed. 2004.

19. Many villagers were afraid of losing their livelihoods and being unable to support themselves in the future. As traditional farmers, they lacked the education and skills to find alternative employment. Moreover, they did not trust the promises made by the local authorities. They had a bad experience with another local copper mining operation at Sabai and Kyaysin hills from 1993-2011. Ivanhoe, a Canadian company, had promised villagers that its mine would affect only 40 acres of the two hills, but ended up dumping massive mounds of contaminated earth on more than 1,700 acres without compensation, making the land permanently unsuitable for farming.
20. Five local village leaders, including U Aung Zaw Oo from Wat Thmey, agreed with these concerns. U Aung Zaw Oo reportedly told villagers that they had a free choice under a democracy and did not have to accept the company's offer, regardless of intimidation from local authorities.
21. On 17 December, 2010, governor U Khin Maung San and district officials visited the area and repeated the order that the villagers must accept the compensation and prepare to relocate. U Aung Zaw Oo refused to meet with them and repeated to other villagers that he would not support the deal.
22. On 18 December, the five village leaders opposed to the mining project were notified by letter from U Khin Maung San that they were officially removed from their positions. They were immediately replaced by supporters of the mining project.
23. Over the next few months, U Thein Win, the newly-appointed leader of Wat Thmey village, drove through the area almost every day with a truck and loudspeaker, urging the villagers to cooperate with authorities and accept the compensation and relocation. Opinion was divided; some households were persuaded or intimidated to accept the deal, but many continued to hold out.
24. During the first quarter of 2011, before many villagers had agreed to the deal and in violation of promises that there would be no building on the land, Wanbao started large scale construction projects in the area. Heavy trucks brought in prefabricated office buildings and housing units. A large area was cleared and a grid of more than 100 identical houses for the Chinese mine workers was laid out. Earth-moving equipment was brought in and the mining operation started. This sent a clear message to the villagers that the project was moving forward with or without their agreement.
25. In March, a well-known opponent of the deal, U Thein from Paung Ka village, was ordered to appear at the Sarlingyi township office. He did not return, and his family was unable to get any information about his whereabouts until four days later, when a police clerk informed them that he had been arrested. No reason was given. His arrest caused fear throughout the area that the authorities would crack down on villagers who did not support the deal. He was released without charge after 18 days in detention.
26. In April 2011, all the villagers were called into the land registration office in Sarlingyi township, headed by U Soe Thein. Many reported that they did not want to sign the contract for compensation but were intimidated by the arrest of U Thein and did not believe that they had a choice. They were told again that the mining operation would

use their lands for only three years and would not affect their ability to grow crops in the future.

27. At the land registration office three desks had been set up. At the first desk, villagers showed their ID cards. Each was given a handwritten receipt on five centimeters square piece of paper with two numbers indicating the amounts of land and compensation. At the second desk, they were made to sign (or apply thumbprint) to a regular size piece of paper that looked like a contract. Township officials covered up the written section and did not allow them to read what they were signing. At the third desk they were given the compensation amount indicated on their respective receipts, in bundles of 100,000 kyats. Several reported being short-changed; some notes in the middle of the bundle were for 500 rather than 5,000 kyats.
28. In November 2011, the local primary school was closed down and the teachers moved out. Children were not allowed to attend the neighboring school because they did not have required authorization letter from the township office. They missed more than three months of school; most were not able to sit for graduation exams.
29. On 2 December 2011, U Zaw Min Han ordered residents of four villages to relocate to a nearby area. The houses and lands offered as compensation were considered by many to be inadequate. The new village chief of Wat Thmey, U Thein Win, was the first to agree. Some families agreed to move but many remained reluctant.
30. On 5 December, 11 of the remaining 48 households were ordered by U Zaw Min Han to the Sarlingyi township office to discuss the relocation. It was believed that they would face pressure, and so all 48 households decided to go and support each other. The police tried to chase the others away but they refused to leave. However, only the 11 families were allowed to meet with U Zaw Min Han; the others were kept outside.
31. At the meeting the 11 households were threatened that if they did not move immediately they would get no compensation. They were also warned that the mining project was using dangerous chemicals and that it was not safe for them and their children to stay. They were told that the project is important for China-Burma friendship and will help the nation on the road to democracy. They were told that it is the largest copper mine project in Asia and that they were lucky to get such a high compensation rate. They were advised not to be angry or greedy, to be good Buddhists, to let bygones be bygones, and to stop trying to move a wall with their heads. Finally, they were insulted with rude words indicating that those who did not comply were low class people who harmed the national interest.
32. Despite these threats, many families from the four villages still refused to relocate from their homes.

#### SECTION IV: PRINCIPLES OF THE RIGHT OF PEACEFUL ASSEMBLY

This section describes established principles of the right of peaceful assembly in domestic and international law.

33. It is a human right for people to form groups and to assemble peacefully together with the aim of addressing issues of common concern. Peaceful protest is a vital part of a

democratic society and has a long and respected tradition. There have been countless times in the past when public demonstrations of support for a cause, or opposition to a policy, have changed the course of history. The right to organize and assemble is an important means by which citizens can influence their governments and leaders. Many of the rights and freedoms recognized and enjoyed around the world were gained because people were prepared to go out on the streets and make their voices heard.

34. The right to freedom of association and assembly is protected in a wide range of international human rights treaties and almost all national constitutions. One of the best known formulations of the right to peaceful assembly is found in the First Amendment to the US Constitution, which states: “Congress shall make no law... abridging the right of the people peaceably to assemble, and to petition the government for a redress of grievances”.
35. Articles 19, 20 and 23 of the Universal Declaration of Human Rights (UDHR) protect the right to freedom of speech, assembly, and association of workers. Article 21 of the International Covenant on Civil and Political Rights (ICCPR) states: “The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.”
36. Article 21 of the 2008 Constitution provides that “every citizen shall enjoy the right of equality, the right of liberty and the right of justice.” Article 354 expressly recognizes the rights of free expression, association and assembly. The Peaceful Demonstrations and Gathering Act, approved by President Thein Sein on 2 December, 2011, allows for the authorization of public protest by the police through an administrative procedure for granting permits.
37. The right to peaceful assembly is not absolute. In limited circumstances, governments may restrict protest and dissent. However, it is well established that the right should not be denied except in genuine situations of national security or public safety, and through the most limited means available.
38. The use of force by law enforcement against protesters must be done by graduated measures in accordance with law. The UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990) provides that police may not interfere with lawful and peaceful assemblies, and prescribes that force deployed to control even violent assemblies must be used in progressive steps proportional to the threat posed, and designed to minimize damage or injury to persons and properties. Deadly force is permissible only in last resort (principles 12, 13, 14).

## SECTION V: FACTUAL CIRCUMSTANCES LEADING TO THE POLICE ACTION AGAINST PROTESTERS

This section describes the circumstances that led locals to protest and culminated in the police action to disperse the protesters and destroy the camps. To ensure accuracy, statements of fact

have been corroborated by multiple eyewitnesses and cross-checked against available evidence.

39. In early 2012, construction was completed on the main Wanbao company compound, and a large housing tract for hundreds of Chinese mine workers. The mining operation went into full operation. Villagers saw that their land would not be returned in farmable condition. They attempted to complain about violations of the promises made by township and company officials, and applied 11 times to the Sarlingyi police for a permit to exercise their constitutional right to peaceful protest. All requests were denied. They appealed the denials to the Sagaing Region police office and were denied again. **[Exhibit 1: copy of police letters rejecting community requests for peaceful assembly]**
40. In May-June 2012, bulldozers started destroying cultivated farmlands, and dumping large mounds of contaminated earth near the villages. In response, villagers increasingly demanded that company and township authorities address their grievances.
41. On 3 June 2012, a temporary agreement was signed by representatives of U Paing, township authorities, the police, and two monasteries. The agreement stated that, pending a permanent solution: 1) dumping of soil would be temporarily halted, 2) additional construction would be temporarily halted, 3) the Wat Thmey village monastery would be re-opened, and 4) the remaining 43 households from Wat Thmey, Sae Dal, and Zee Daw villages would not have to relocate. In addition, U Paing sent a letter to Monywar district authorities confirming this agreement. However, villagers reported that the first three promises were not kept, with construction, excavation and dumping continuing as before. **[Exhibit 2: copies of U Paing no more dumping agreement and letter]**
42. On 15 July 2012, the company put up signs around the compound, at the access road, and in the mine, declaring that these areas were restricted under section 144 of the Criminal Procedure Code. This meant that villagers assembled in the area were subject to arrest for trespass on their lands. Over the next few months, villagers increased their protest activities and met with supporters from across the country.
43. On 8 October 2012, concerned citizens, students, environmental advocates, and community groups in Monywar established the Letpadaung Salvation Committee. The Letpadaung Salvation Committee applied for a permit to demonstrate against the mining project but police denied permission. As an alternative they organized a public meditation event on 18-19 October called “Contemplating Letpadaung Hill”. Several participants were arrested and detained for unlawful assembly. Similarly, a number of protesters in Mandalay, and Yangon were arrested for demonstrating without a permit, after their requests for permits were denied.
44. On 26 October 2012, a group of about 10 villagers and monks went to offer prayers at a pagoda on the highest peak in Letpadaung area, but were prevented access. This news spread throughout the area and caused popular discontent, especially among the monks.



45. On 17 November, a group of about 400 monks and villagers, including protest leaders Ma Thwet Thwet Win, Ma Phyu Phyu Win, and Ma Aye Nat, went to pay respects at the Lay Di Sayadaw site on Letpadaung hill and discovered that several of the historic buildings had been torn down. Later in the day the first protest camp was established outside the Wanbao compound.
46. On 19 November, several villagers went to complain about the destruction of Lay Di Sayadaw site to company representative, U Myint Aung, but were told that he was out of office attending the meeting with US President Obama. No one else at the company would meet with them.
47. News of the damage to Lay Di Sayadaw sparked concern amongst villagers and monks, especially from Pakokku, Monywa, Mandalay and Sagaing monasteries. Many joined the protest, and by 21 November five to six camps were set up around the mining area with up to 500 monks and 50 villagers: one in front of the company compound, one at the entrance to the main access road, and several inside the mining area. **[Exhibit 3: photos of protest camps]**
48. Wanbao put up several large banners near the protest camps in Burmese and English saying: “The rule of law is the air of the environment of investment” and “The rule of law is the key to attract and protect the foreign investors”. **[Exhibit 4: photos of Wanbao banners]**
49. The Letpadaung copper mine protest gained national media attention and public support. On 23 November, Pale township MP Daw Khin San Hlaing (NLD) raised the issue before the national parliament in Nay Pyi Taw and requested an investigation. That same day, a government delegation was sent to Letpadaung, led by U Aung Min, Union Railways Minister, U Hla Maung Shwe, special adviser to the President, and U Than Htike, Sagaing Region Minister of Mines.
50. The delegation met with protestors at the main camp in front of the Wanbao company compound. Minister Aung Min explained that he did not come to tell the people what to do but rather to listen to their views and make a report to President U Thein Sein. He stated that the government would resolve the situation in 7-10 days. He stated that the people should respect China and cooperate with the project. He also stated that China is a benefactor, because when the country was suffering from hardship and hunger in 1988, the Chinese provided food and friendship. He also advised that it is better for people to become wealthy from the country’s natural resources than to leave them in the ground. **[See Exhibit 5: video of Aung Min speaking to protesters]**
51. U Myo Thant, from Generation 88, attended the meeting and requested that the Government promise not take any violent action against the peaceful protesters. Minister Aung Min agreed.
52. Speaking on behalf of the villagers, Ma Thwet Thwet Win said that Wanbao was stealing their land and resources and treating the people unjustly. Many promises had already been broken and the people were concerned about losing their livelihoods. She reported that company officials treated villagers rudely and subjected several women to sexual harassment without any response from local authorities. She said

that the people should not be afraid of China and would continue to protest until their grievances were redressed.

53. Over the next few days, more local monks and people joined the protest camps, and their demonstrations gained widespread national support as the news spread throughout the country.
54. Aung San Suu Kyi announced that she would visit the Letpadaung area on 29 November, 2012 to help find a solution to the controversy. The day before her scheduled visit, national media published a written order from the Ministry of Home Affairs that police would take action to clear the protesters by midnight.<sup>12</sup> At about 3:00am, organized contingents of police used violent means to disperse the peaceful protesters and set their camps on fire. More than 100 monks suffered severe chemical burns. A senior member of the Letpadaung Salvation Committee referred to the incident as “a welcoming shot for our democracy leader.”
55. The police action took place between approximately 2:30-3:15am on the 29<sup>th</sup>. First, fire trucks were deployed next to each of the protest camps, and water cannons were used to thoroughly soak the camps. Then police fired WP smoke grenades into and above the camps. The grenades exploded, illuminating the area in a bright yellow flares, producing clouds of smoke, and releasing a blast radius of sticky burning material which set the camps and protesters on fire. The sticky substance glowed yellow-white for several minutes whilst burning through clothes and skin and flesh. It could not be extinguished by plucking off, dousing in water, or rolling on the ground. After firing the WP grenades, the police units charged the camps with shield raised and beat protestors with batons, arresting some and causing the rest to flee down the road leading to Paung Ka village. By about 3:30 the protesters were able to gather in the village pagoda and coordinate a rescue operation with the Letpadaung Salvation Committee to transport the most severely injured to Monywa for medical treatment.
56. At no point did any local authorities provide any assistance, although, eyewitnesses at the main village jetty used to transport the injured by boat to Monywa reported that plainclothes police were present to observe and take photographs.
57. The following accounts are based on detailed interviews with eyewitnesses from four of the camps. Their stories provide clear evidence that the police action was planned, deliberate, and systematic. The same tactics were used at all of the camps, including: deploying large numbers of police in riot gear, warning protesters with loudspeakers and citing the written order from the Ministry of Home Affairs, spraying camps with water hoses from fire trucks, firing multiple incendiary phosphorus grenades that set the camps and protesters on fire, and conducting baton charges to chase remaining protesters away from the copper mine site. **[Exhibit 6: photos from the police action]**
58. The main camp in front of Wanbao company compound was led by Ma Thwet Thwet Win and had more than 150 monks and 40 villagers. At about 10pm, and again just before midnight, Lt. Col. Twin Ko Ko from Sarlingyi township announced from a loudspeaker that all camps must be evacuated by midnight or the police would deal

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<sup>12</sup> Written order signed by Minister of Home Affairs, published in New Light of Myanmar, 28 November, 2012.

with protestors according to the law under the authority of the Ministry of Home Affairs. Police went to the other camps and read the same announcement over loudspeaker.

59. The protestors discussed the situation, communicating between camps by mobile phone, and agreed to stay together in the camps no matter what happened. Each camp had appointed a village leader familiar with the area to coordinate the group's actions. Protestors reported being prepared to face water cannons, tear gas, and baton charge from the police, but none expected to be attacked with war weapons.
60. At about 2:30am, the company gate opened and 50-100 police officers (most witnesses estimated at the upper range) in dark-blue uniforms and riot gear took position in front of a fire truck positioned about less than 5 meters from the first row of protestors. They beat their batons loudly against their shields and chanted: "This is to protect the public!" The protestors were sprayed with water hoses for 10-15 minutes, until the entire area was soaked thoroughly. The force of the water pressure was so strong that they could not stand up.
61. Sometime before 3:00am, the police threw a grenade just in front of the camp, next to the front line of protestors. The device sparked and fizzled like fireworks on the ground for several moments, then exploded with a loud sound and scattered many small white-yellow fireballs. Everything that the fireballs touched instantly burst into flames despite the area being soaked in water. The covering tarps and blankets used by protestors for shelter and protection caught fire. The monks' robes and villagers' clothing also caught fire. The burning was localized to wherever the fireballs hit.
62. The flaming substance burned like sticky liquid plastic and had a very acrid smell stronger than gunpowder. The protestors could not extinguish the flames by smothering them or dousing them in water. When they tried to remove the substance from their clothes and flesh, it stuck to and burned their fingers. The substance continued to burn through clothes, skin, and flesh with a bright white-yellow glow that lasted for several minutes. Those who were burned badly had skin and flesh fall off their bodies. The injured reported suffering intense pain.
63. More firebombs were thrown in the first few minutes of the police action. Two of them exploded in the air, scattering fireballs throughout the camp and causing additional terror amongst the protestors. Most exploded on the ground. The entire area was covered in thick smoke that limited visibility. Eyewitnesses counted at least 10 rounds fired at them. After five to ten minutes, the contingent of armed police advanced on the burning smoke-filled encampment, beating protestors with batons and making some arrests. At this point the protestors ran in a group towards the main road which led to Paung Ka village. All five monks seated in the front row closest to the fire truck were arrested and detained for eight days.
64. Another camp, situated closer to the mine area, led by Ko Kyaw Swa, had about 75 monks and four villagers. At about 2:30am, up to 80 policemen with shields and batons approached to within 6-7 meters of their camp and stood in formation next to a fire truck. Police used a water hose to spray the camp for about 10 minutes. Then the hose seemed to malfunction. After a few more minutes, before 3:00am, they heard a policeman yell, "fire!" They saw another policeman shake his hand and throw

something at the camp. The device rolled on the ground, threw off sparks, and exploded in a bright yellow glare, scattering fireballs. The fire was so sudden, intense and widespread that most of the protestors suffered burn injuries before they knew what was happening. At least three more grenades were thrown at them. After a few minutes, the police started to move towards the protestors with batons raised. All the protestors ran together towards the nearest village.

65. Another camp, along the access road from the company compound to the mining area, led by Ma Aye Nat, had more than 100 protestors, mostly monks from Zawtika monastery. In the evening a fire truck drove up close to the camp. Before midnight, a police officer came and announced by loudspeaker that the protestors had to evacuate the camp immediately. He read the order from a piece of paper. At about 2:30am, a group of about 80 police officers with shields and batons arrived and stood in formation next to the fire truck. The truck started spraying them with water. The monks who were standing up were knocked down by the force of the water. After about 20 minutes, the police fired three bombs at them, one in front of the camp and the others to each side. No warning was given. The bombs hit the ground sparking and smoking like fireworks. Then they exploded in patches of fire that flew throughout the camp and set their clothes on fire. The flame was described as a liquid jelly like a burning plastic bag, and could not be removed from their clothes or bodies. It continued burning through everything with a white-yellow glow, and seemed to burn more intensely in water. After several minutes, the police rushed towards the protestors and beat them with batons. The protestors fled with Ma Aye Nat on a path that led to Paung Ka village. The police ran after them for about 100 yards then stopped.
66. The next day one of the monks from this camp tried to dry a religious book that had been soaked during the incident. When exposed to the sun, the book started to pour smoke and smell bad, and the pages turned black. This led some of the monks to believe that the water from the fire truck was mixed with acid.
67. A camp in the mining area, with 80 monks and 10 villagers, was led by Ma Phyu Phyu Win, a young woman from Wat Thmay village. Sometime after 2:30am, a group of about 80 blue-uniformed police officers armed in riot shields and batons took positions next to a fire truck within 10 meters of the protest camp. An officer yelled at protestors through a loudspeaker that they had five minutes to leave. Immediately the fire truck started to soak them with water cannons. Monks were sitting in the front row of the assembled group, some reciting prayers. The entire camp was flooded in water. After about ten minutes a device was fired at the protestors and exploded directly over their heads at the height of a coconut tree. They heard a loud explosion and saw many flashes of light spreading over the illuminated area. Small balls of flaming sticky material fell down on the camp like burning rain. Wherever the material touched burst into flames that could not be extinguished. The substance kept burning through coverings and bodies with a white-yellow glow and smelled very bad. The attack lasted almost 10 minutes and covered the area in thick clouds of smoke. At least five firebombs were fired at them in this period.
68. Phyu Phyu Win described the attack's aftermath: "After the firebombs, the police charged at us from the north, so we all ran towards the south where there is a road. But the road was blocked by more police with shields and sticks who moved towards

us. I yelled at the monks to stay with me because it was dark and I know the area well. I led them towards the west but the way was blocked by large mounds of earth that had been dumped from the mining operation. The police were throwing stones and charging at us. Another firebomb exploded just in front of us. A young monk was hit very badly right next to me. The burning material covered his body. I saw his skin drop off his body like pieces of clothing. He fell to the ground and cried: 'sister, don't leave me here!' Other monks took turns carrying him. I was also hit by small fireballs on my arms and side. They continued to burn in my body for several minutes. I led the monks on a rough path to the east that skirted the main Letpadaung hill. Some monks panicked and broke away from our group and tried to run up the slope. After 15-20 minutes we were able to link up with the main road to Paung Ka monastery. The chief abbot was very upset about the attack and provided shelter, food, and new robes for the monks. By this time the body of the badly injured monk had turned very cold. Throughout the attack we were in touch by phone with supporters from Monywa, who arranged for transportation and medical treatment for the injured. Those with the worst injuries were taken to Monywa by boat; cars were also sent to the village to rescue protesters. Daw Aung San Suu Kyi visited Monywa that afternoon."

69. During the police action, protest leaders were communicating with supporters from the Letpadaung Salvation Committee (LSC) in Monywa. By 4:00am LSC president, U Chit Khin had helped to arrange vehicles to go to Letpadaung to pick up victims, and for doctors to treat them. Four cars went to a nearby jetty, about two miles from Monywa, where most of the badly injured were taken by boat from the villages. The first group of 16 injured arrived at the jetty before 5:00am. Several eyewitnesses reported that there were plainclothes policemen present at the jetty who watched and took photographs but did not assist the injured.
70. The LSC also sent two vehicles to Paung Ka village, about 10 miles from Monywa. The cars could only transport up to two injured per trip because the burns were severe and the victims had to lie down. Most were taken directly to the house of U Chit Khin and treated there by doctors from a nearby NLD health clinic. More than 100 people, mostly monks, were treated at his house. Many students and community members came to the house to offer assistance to the injured protesters. The most badly injured were then taken to Monywa Hospital. A senior monk, venerable Htay Ka Nyana, was taken directly by car to Mandalay Hospital. He had been hit directly by two phosphorus grenades; his burns were so deep and severe it was feared that he would die without proper treatment. **[Exhibit 7: photos of injured protesters]**
71. Many injured villagers chose to stay at home for fear of being arrested in Monywa Hospital; the LRC arranged to send two doctors from the NLD health clinic to treat them in the villages.
72. Throughout this incident, no assistance was provided by local authorities. The entire rescue effort was arranged by civil society and concerned citizens acting on their own initiative.

## SECTION VI: ANALYSIS OF THE USE OF WHITE PHOSPHORUS (WP) GRENADES

This section describes the characteristics and use of white phosphorus (WP) as a weapon, and explains the results of chemical analysis of a grenade used at Letpadaung.

73. Local farmers and members of the Letpadaung Salvation Committee collected evidence from the sites of the police action, including exploded grenade canisters. One of the canisters was put into a sealed plastic bag to prevent contamination and entrusted to the research team of Justice Trust and the Lawyers Network for scientific analysis to determine whether the spent munition contained phosphorus residue.
74. Phosphorus is an element, its name derived from the Greek word “phosphoros” meaning “light-bearing”.<sup>13</sup> Ordinary phosphorus is a colorless to yellow translucent wax-like substance with a pungent, garlic-like smell; when pure it is colorless and transparent. It is insoluble in water.
75. White phosphorus (P<sub>4</sub>) is a highly energetic and pyrophoric material. It spontaneously combusts with oxygen when exposed to air. As the chemical reaction occurs under catastrophic conditions, most of the phosphorus is oxidized into phosphorous pentoxide (P<sub>2</sub>O<sub>5</sub>), producing yellow flames, illumination, heat blast, and dense plumes of hot smoke. Should water be present in the form of moist air or wet skin, WP and phosphorous pentoxide react with hydrogen to produce a heat blast up to 800 degrees Fahrenheit. The hydrolysis reaction yields corrosive species, the most abundant of them being phosphoric acid (H<sub>3</sub>PO<sub>4</sub>). This rapid and volatile chain reaction continues until the compound is deprived of oxygen.
76. WP’s primary military use is for signaling, screening, and incendiary purposes. WP smokes obscure vision and are used to hide troops, equipment, and areas from detection. WP munitions can also be used in armed conflict to destroy enemy equipment, especially vehicles, petroleum, oils and lubricants (POL), and ammunition storage areas. WP flares produce illumination and can be used as an aid in target location and navigation. WP is usually dispersed by explosive munitions, which can be fired with fuze time to obtain airburst.
77. WP smokes and obscurants comprise a category of dual use materials that are not lawful for use as anti-personnel chemical agents. They can be used to hold priority military targets at risk in a manner consistent with the principles of military necessity, civilian distinction, and proportionality (meant to govern the lawful use of all methods and weapons). The use of WPmunitions during an armed conflict primarily for smokescreen or signaling is therefore not prohibited by Protocol III of the Certain Conventional Weapons Convention (CCWC), which prohibits the use of “any weapon or munition which is primarily designed to set fire to objects or to cause burn injury to persons.” **[Exhibit 8: background on WP munitions and medical effects of exposure]**

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<sup>13</sup> The following description of phosphorus, including its military applications, was excerpted from the website of Global Security, a leading international think tank on military organizations and weapons systems, see: <http://www.globalsecurity.org/military/systems/munitions/wp.htm> (last accessed on 4/2/13).

78. Used illegally as an anti-personnel chemical weapon, WP munitions produce widespread, painful injuries. Phosphorous pentoxide and phosphoric acid are highly lipid soluble, have rapid dermal penetration once embedded under the skin, and are capable of eating away flesh to the bone. Resultant burns are usually second and third degree, multiple, deep, and variable in size, appearing as necrotic areas with yellowish color and characteristic garlic-like odor. A firm eschar is produced and surrounded by vesiculation. Burns tend to be concentrated in areas of exposed skin, such as upper extremities and head in the case of airburst munitions.
79. The spent grenade canister recovered from the Letpadaung protest site appears similar to white phosphorus smoke grenades with time-delayed detonating fuse. This type of grenade was mass produced by the United States through Korean War, and also produced and distributed in Asia. It is thrown by hand and bursts after time delay. The canister has English letter markings: HAND SMOKE 01/12/96.
80. A residue sample from the canister was examined by ALS Laboratory Group, a leading chemical analysis company. Analysis showed that the residue had a 25.5% content of phosphorus, of which 58.3% was in the form phosphorous pentoxide (P<sub>2</sub>O<sub>5</sub>). Phosphorous pentoxide has a molecular weight of 110grs/mol which corresponds to a theoretical elemental phosphorus content of 27.2%. Similarly, phosphoric acid (H<sub>3</sub>PO<sub>4</sub>), formed by hydrolysis of phosphorous pentoxide, has a molecular weight of 82grs/mol which corresponds to a theoretical elemental phosphorus content of 18.3%.
81. These results are consistent with a WP munitions residue consisting of a complex mixture of phosphorus-based compounds resulting from oxidation of phosphorus.
82. A phosphorus smoke grenade fired at a wet crowded camp would explode and release a flaming spray of phosphorous pentoxide and hot globs of phosphoric acid. The heating and burning reactions would intensify on contact with wet clothes and skin (being 70% water). The substance would continue to burn until the phosphorus element was fully oxidized.
83. The results are also consistent with multiple eyewitness testimonies from the protest camps. They described bombs exploding with bright yellow flames and thick smokes. They used the term “fireballs” to describe the rain of sticky, foul-smelling substance that set fire to everything it hit. Victims reported being unable to extinguish the painful burning wounds by wrapping them in blankets or rolling on the ground; many suffered deep second and third degree chemical burns.
84. The conclusion that police used WP munitions against peaceful protesters is further confirmed by the nature of the injuries they suffered. Victims at Monywa, Mandalay, and Bangkok hospitals showed a characteristic patchwork of deep localized burns across their bodies. The monks’ robes also showed a characteristic pattern of scattered, circular burn marks. The nature of their deep, yellowish burns, and the widely-reported acrid smell of the flaming substance, is indicative of white phosphorus.
85. It should be noted that the sequence of steps taken by the police – using water cannons to soak the tightly-packed groups of protesters before firing incendiary WP

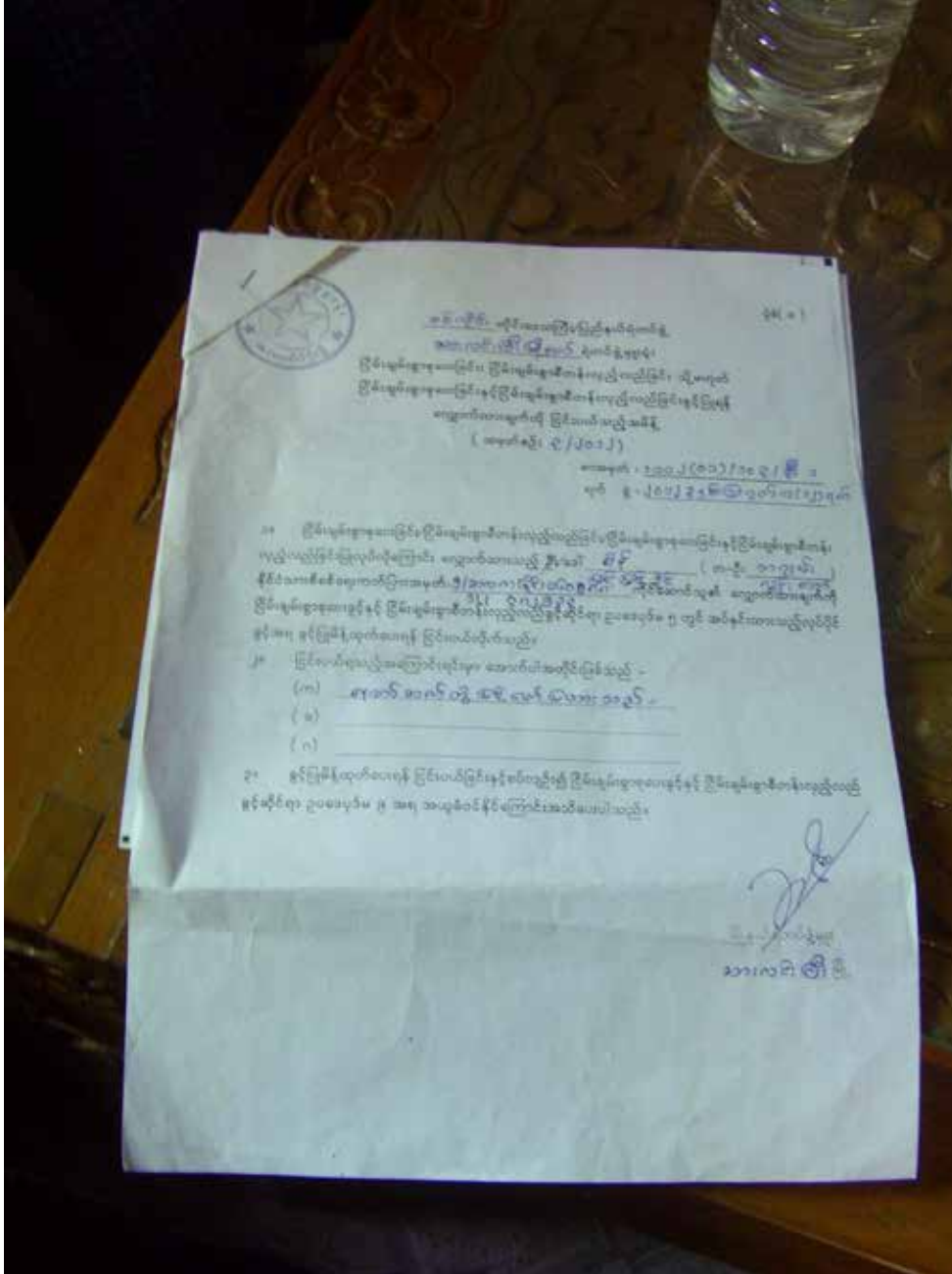
grenades directly into their midst – had the foreseeable effect of causing severe chemical burn injuries to the protesters.

86. In summary: white phosphorus ignites in spontaneous, catastrophic reaction when exposed to airborne oxygen to produce burning particles of phosphorous pentoxide, and is used by militaries for smokescreens and illumination. When combined with hydrogen from water, the element reacts violently to produce heat blast and phosphoric acid, a water-insoluble corrosive that can burn through metals. Phosphorus particles continue burning unless deprived of oxygen or extinguished in oil or sodium bicarbonate solution. Resultant burns are deep and painful. This explains the severity of injuries to monks and villagers hit by WP munitions. The use of inherently dangerous military arms to disperse peaceful protesters, apparently by local police during a standard law enforcement procedure, is clearly unlawful and raises issues of liability for those directly involved and for senior responsible levels of command and control in the military and Government, and for senior executives/ military officers at Wanbao and UMEHL companies.



EXHIBIT 1: copy of police letter rejecting community requests for peaceful assembly

1.1: page 1, signed notice of rejection



1.2: page 2, reasons for rejection

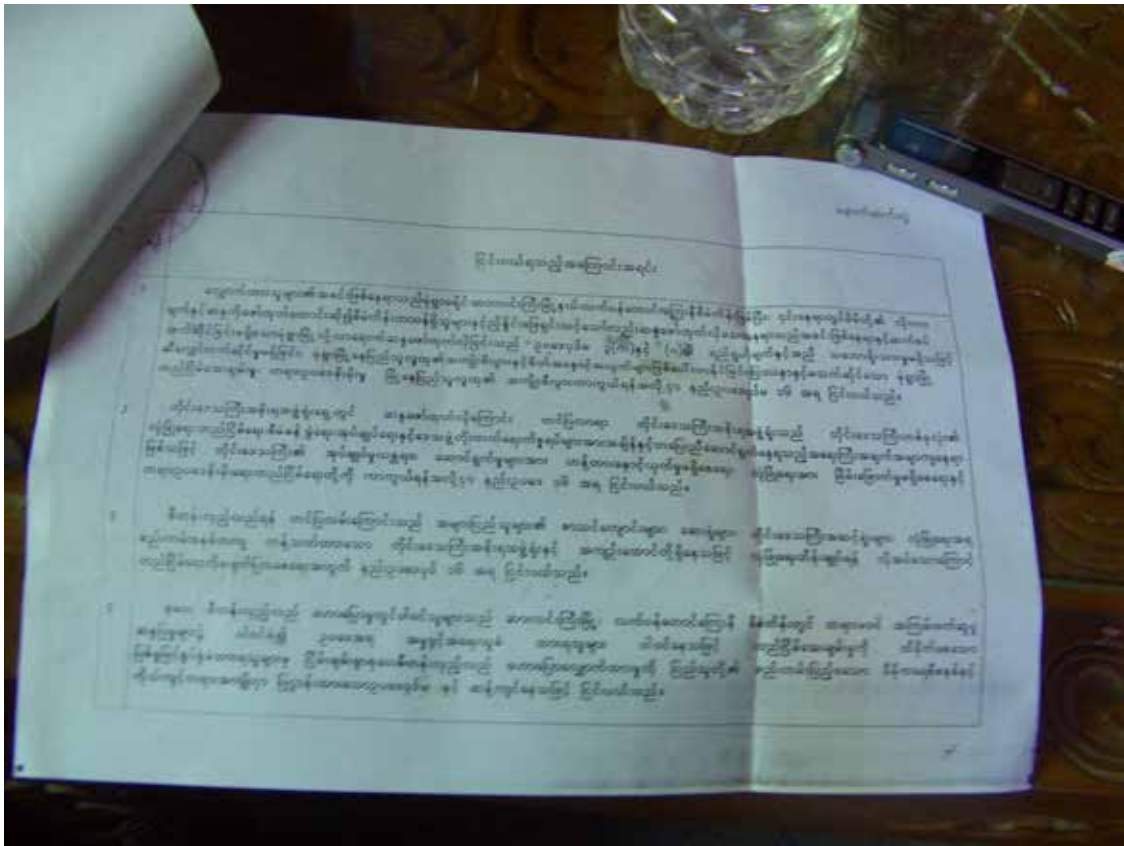
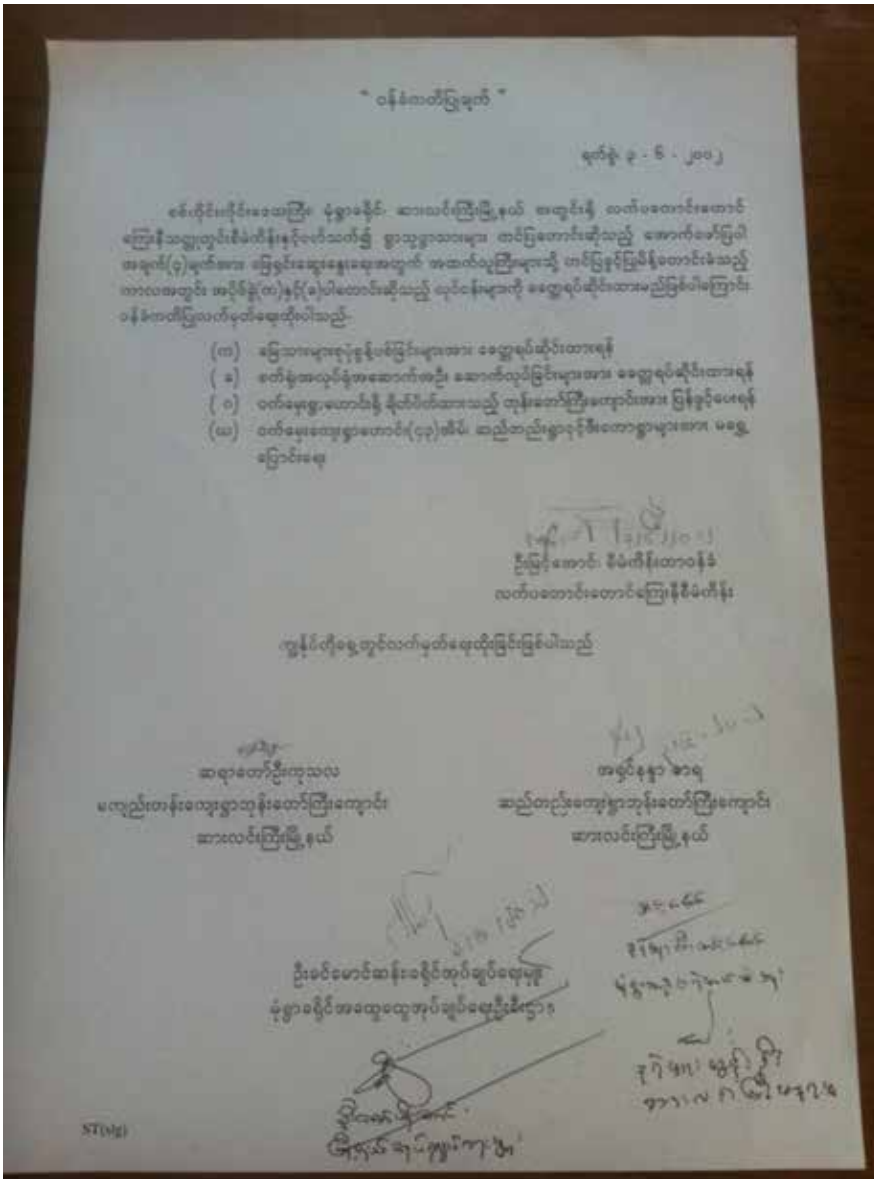


EXHIBIT 2: U Paing no-more dumping agreements

2.1: temporary agreement by U Paing to stop dumping (3 June, 2012)



Signatories:

1. U Myint Aung – U Paing authorized person for Letpadaung Copper mine project
2. Ven. U Ku Thala - Head monk for Ma Kye Tan Village Monastery, Sarlingyi Township
3. Ven. Nanda Sarya - Sal Tal Monastery, Sarlingyi Township
4. U Khin Maung San - District Governor, Monywa District General Administrative Department
5. Tint Aung - Deputy Police Chief, Monywa district police department
6. Tun Oo - Deputy Police Chief, Sarlingyi Township

2.2: U Paing letter to Sarlingyi township confirming agreement (3 June, 2012)

ပြန် ၁၇ ဝါ မှာ မေ့ ဦး ပိုင် ဝါ ၆ ဘက်  
ခံပြား ၆ = ဤ တွင်း လုပ် ဝန်း ( ပုံစွာ )  
စာအမှတ် : ၀၂ / ဝေ့ - ၀ / ခြေခုံ ( ဦးပိုင် )  
ရက် နံ : ၂၀၁၂ ခုနှစ် : ၅ နံ ဝါ ၃ ရက်

၁။  
ခရိုင်အုပ်ချုပ်ရေးအဖွဲ့  
ခရိုင်စာရေးအဖွဲ့အုပ်ချုပ်ရေးဦးစီးဌာန  
မုံရွာခရိုင်၊ မုံရွာမြို့။

အကြောင်းအရာ။ လက်ပံပေးပေးရန်အတွက်အသိပေးအကြောင်းအရာ  
ဆိုင်ဆိုင်ပိုင်ဆိုင်မှုအကြောင်းအရာ

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ရေးအဖွဲ့အဖွဲ့အတွက် အထက်ဖော်ပြပါအချက်အလက်အပေါ် အကြံပြုအကြံပြုရန်အတွက် တာဝန်အတွင်း အပိုင်(က)နှင့်  
(ခ)ပါလုပ်ငန်းအား ခေတ္တရပ်ဆိုင်းပစ်ပယ်ခြင်း၊ ဝန်ခံကတိတတ်ပေးပေးထားသည့်အား  
ပူးတွဲထပ်ပြအပ်ပါသည်။

- (ဂ) ပြည်သူ့အဖွဲ့နှင့် ပူးပေါင်းဆောင်ရွက် ဆောင်ရွက်ရန်
- (ခ) ဝတ်မှုအလုပ်နှင့်အဆောက်အအုံ အောက်ဖော်ပြပါအချက်အား ခေတ္တရပ်ဆိုင်းထားရန်
- (ဂ) ဝတ်မှုအဖွဲ့အဖွဲ့အား နှိပ်စက်ထားသည့် အဖွဲ့အစည်းအဖွဲ့အား ပြန်စွင့်ပေးရန်
- (ဃ) ဝတ်မှုအဖွဲ့အဖွဲ့အား (၅၃) နှစ် အကြားအကြားအဖွဲ့အဖွဲ့အား မဝေခွဲ  
ပြောင်းမမှ

၃။ ရွာလူရွာသားများ အား အသိပေးရန်အတွက် (၂) ချက်ဖြင့် အပိုင်(ဂ)နှင့် (ဃ) အား  
အထက်ဖော်ပြပါအချက်အလက်အပေါ် အကြံပြုအကြံပြုရန် အောက်ဖော်ပြပါအချက် အပိုင်လုပ်ငန်းအား အထက်  
အောက်ဖော်ပြပါအကြောင်း အကြံပြုအပ်ပါသည်။

(ရက်စွဲ) ၂၀၁၂ ခုနှစ်  
စုစီယာရိုက်အဖွဲ့အကြီးအမှူးအဖွဲ့ဝင်(ဦးပိုင်)  
စီမံကိန်းအဖွဲ့  
ခြေခုံသတ္တုတွင်းလုပ်ငန်း(မုံရွာ)

ခံပြားကို  
တိုင်းဒေသကြီးအစိုးရအဖွဲ့၊ စစ်ကိုင်းတိုင်းဒေသကြီး၊ မုံရွာမြို့၊  
ရွာအကြီးအမှူး အထက်လုပ်ချုပ်ရေးအဖွဲ့အကြီး  
မြို့နယ်စာရေးအဖွဲ့အုပ်ချုပ်ရေးဦးစီးဌာန၊ အားလက်ကြီးမြို့။

ST(၁၅)

EXHIBIT 3: photos of Wanbao banners hung around the main protest camp in Burmese and English

- 3.1: “The rule of law is the air of the environment of investment”  
“The rule of law is the key to attract and protect the foreign investors”



3.2: more banners



EXHIBIT 4: photos of Letpadaung protests

4.1: villagers protest with Letpadaung hill in background



4.2: monks and villagers protest



4.3: protesters sleep at camp near Wanbao compound



4.4: monks at main protest camp in front of Wanbao gates



EXHIBIT 5: video of Union Minister Aung Min addressing main protest camp at Letpadaung (23 November), see web-link at: <http://www.dvb.no/dvb-tv/crackdown-at-the-latpadaung-mine/25050>



EXHIBIT 6: photos and video from the police action on 28-29 November

6.1-6:2: police in riot gear near Wanbao company on 28 November



6.3-6.5: protest camps on fire early morning of 29 November





6.6: web-link to video of police action on 29 November, shown on BBC and DVB: <http://www.dvb.no/dvb-tv/crackdown-at-the-latpadaung-mine/25050>

EXHIBIT 7: phosphorus burn injuries suffered by monks

7.1: monks being treated at Monywa Hospital



7.2: monk with burns to head



7.3: monk with burns on legs



## EXHIBIT 8: background on WP munitions and medical effects of exposure

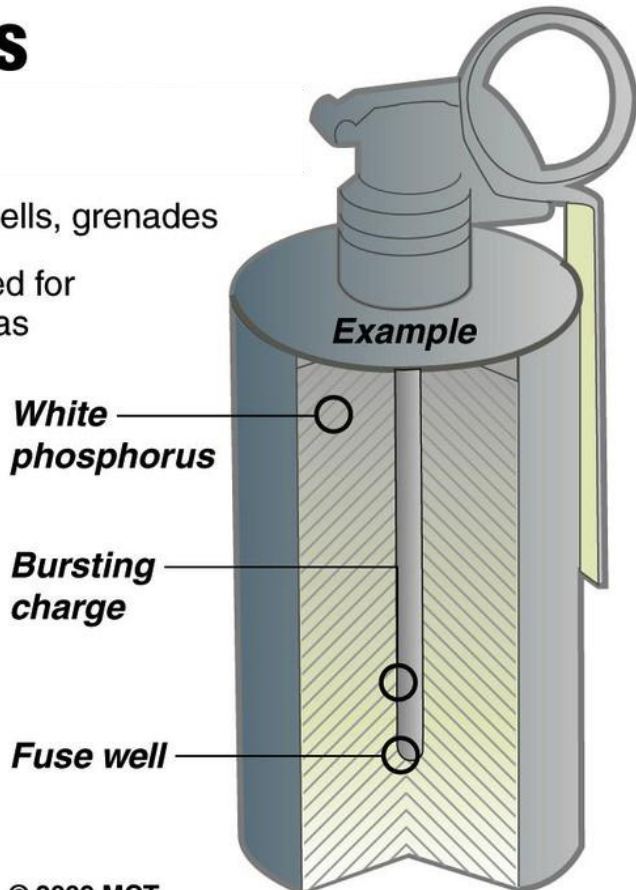
### 8.1: characteristics of WP weapons

# White phosphorus

- **Weapons** Mortar and artillery shells, grenades
- **Geneva Treaty of 1980** Prohibited for attacking civilians; no ban on use as smokescreen or for illumination
- **Looks** Colorless to yellow translucent wax-like substance
- **Bursts into yellow flame** when exposed to oxygen, producing thick white smoke
- **Phosphorus burns** are mostly second- or third-degree; particles do not stop burning on contact with skin

Source: Global Security, Times of London  
Graphic: Jutta Scheibe, Eeli Polli

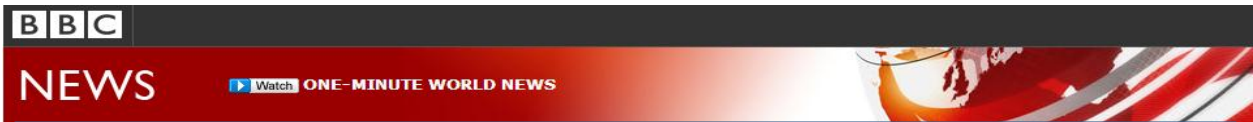
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8.2: Comparison of US-made M15 WP smoke grenade and canister recovered from Letpadaung



### 8.3 Health effects of WP munitions



**BBC** NEWS [▶ Watch](#) ONE-MINUTE WORLD NEWS

**What are the effects on the body?**  
If particles of white phosphorus land on the body, they burn through clothing and stick to the skin, scorching through layer after layer of tissue until their supply of oxygen is cut off. Even when it is not burning, the chemical effects of **phosphorus** can be absorbed deeper into the body causing multiple organ failure.

**How do doctors treat these burns?**  
Alan Kay, a military burns specialist for the British Association of Aesthetic Plastic Surgeons says the main thing is to keep the burn site wet. "You keep the wound wet, keeping oxygen away from it. But it not only causes very dangerous heat burns, it also causes chemical problems. The key is to surgically remove all the phosphorous particles. To see even the ones not visible to the naked eye you use ultraviolet light which makes the phosphorus glow. Some of the chemical effects induced by the phosphorus cause a derangement of the normal physiology of the patient which can have lethal consequences." He said patients who survive are treated like victims of normal burns. They are given skin grafts and intense monitoring of their heart and the levels of certain chemicals in their blood.

## MailOnline

It causes skin to melt away from the bone and can break down a victim's jawbone, but white phosphorus - known in Vietnam as Willie Pete - is still used by sections of the world's military. Similar to Napalm, the chemical substance is used in shells and grenades, igniting spontaneously at around 30C to produce an intense heat and thick pillars of smoke. Weapons experts warn that when used as an incendiary, it can result in painful chemical burns - injuries which can often prove fatal. Further problems are caused because the substance can stick to clothing or on the skin and continues to burn unchecked as particles are exposed to air. Witness accounts of combat in Fallujah, where a significant civilian population were living, claim the injured affected by phosphorus suffered horrendous burns. It is feared there was widespread use of the weapon, not just to target insurgent positions but in raids on houses and buildings. Experts at US military information service GlobalSecurity.org that that skin injuries caused by the substance usually are multiple, deep, and variable in size. The solid in the eye produces severe injury. The particles continue to burn unless deprived of atmospheric oxygen. These weapons are particularly nasty because white phosphorus continues to burn until it disappears. If service members are hit by pieces of white phosphorus, it could burn right down to the bone."



### 8.3: WP munitions in international humanitarian law (laws of war)

While the use of WP is not specifically banned when used as a smokescreen or flare, it is covered by **Protocol III of the 1980 Convention on Conventional Weapons**, which prohibits use of the substance as an incendiary weapon against civilian populations and in air attacks against military forces in civilian areas. Though the UK and 80 other countries are signatories to protocol III, the United States is not. American forces have admitted using phosphorus as a weapon for illumination and to produce a smokescreen to mask troop movement during combat in Fallujah.

#### **Article 1: Definitions**

1. For the purpose of this Protocol: "Incendiary weapon" means any weapon or munition which is primarily designed to set fire to objects or to cause burn injury to persons through the action of flame, heat, or combination thereof, produced by a chemical reaction of a substance delivered on the target.

(a) Incendiary weapons can take the form of, for example, flame throwers, fougasses, shells, rockets, grenades, mines, bombs and other containers of incendiary substances.

(b) Incendiary weapons do not include:

(i) Munitions which may have incidental incendiary effects, such as illuminants, tracers, smoke or signaling systems;

(ii) Munitions designed to combine penetration, blast or fragmentation effects with an additional incendiary effect, such as armour-piercing projectiles, fragmentation shells, explosive bombs and similar combined-effects munitions in which the incendiary effect is not specifically designed to cause burn injury to persons, but to be used against military objectives, such as armoured vehicles, aircraft and installations or facilities.

2. "Concentration of civilians" means any concentration of civilians, be it permanent or temporary, such as in inhabited parts of cities, or inhabited towns or villages, or as in camps or columns of refugees or evacuees, or groups of nomads.

3. "Military objective" means, so far as objects are concerned, any object which by its nature, location, purpose or use makes an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.

4. "Civilian objects" are all objects which are not military objectives as defined in para 3.

5. "Feasible precautions" are those precautions which are practicable or practically possible taking into account all circumstances ruling at the time, including humanitarian and military considerations.

#### **Article 2: Protection of civilians and civilian objects**

6. It is prohibited in all circumstances to make the civilian population as such, individual civilians or civilian objects the object of attack by incendiary weapons.

7. It is prohibited in all circumstances to make any military objective located within a concentration of civilians the object of attack by air-delivered incendiary weapons.

8. It is further prohibited to make any military objective located within a concentration of civilians the object of attack by means of incendiary weapons other than air-delivered incendiary weapons, except when such military objective is clearly separated from the concentration of civilians and all feasible precautions are taken with a view to limiting the incendiary effects to the military objective and to avoiding, and in any event to minimizing, incidental loss of civilian life, injury to civilians and damage to civilian objects.

9. It is prohibited to make forests or other kinds of plant cover the object of attack by incendiary weapons except when such natural elements are used to cover, conceal or camouflage combatants or other military objectives, or are themselves military objectives.