MOUNTAIN OF TROUBLE

HUMAN RIGHTS ABUSES CONTINUE AT MYANMAR'S LETPADAUNG MINE

AMNESTY INTERNATIONAL

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1. EXECUTIVE SUMMARY

After nearly half a century of isolation, Myanmar is undergoing a period of political and economic change. The transition from military dictatorship to quasi-civilian rule, which began in 2011, saw the formation in April 2016 of a new government led by Aung San Suu Kyi and the National League for Democracy (NLD). Among other policy initiatives, the government has promised to extend further the economic reforms started by its predecessor and increase foreign investment.

During this same period, and in response to the reform process, western governments have lifted most sanctions and other restrictions on companies wishing to do business in Myanmar. Following a meeting at the White House between Aung San Suu Kyi and President Barack Obama in September 2016, almost all remaining US sanctions were dropped.

One sector to which the government wants to attract new foreign investments is mining. Myanmar has vast mineral wealth but the industry is largely underdeveloped. Investment in the sector has the potential to bring social and economic benefits to Myanmar. However, extractive industries, such as large-scale mining, also carry specific risks for human rights. This is because they often require the expropriation of land and generate harmful waste materials that require careful management. The risks are not theoretical. Since 2014 Amnesty International has documented a range of human rights abuses and illegal activity linked to Myanmar's largest mining project, at Monywa, in Sagaing Region.

The Monywa project consists of the Letpadaung, and the Sabetaung and Kyisintaung (S&K) copper mines, as well as the Moe Gyo sulphuric acid factory. Since 2010, the mines have been operated by China's Wanbao Mining Ltd (Wanbao Mining), in a joint venture with the Union of Myanmar Economic Holdings Limited (UMEHL) and the state-owned company, Mining Enterprise 1 (ME1). UMEHL is owned by Myanmar's military, and was an entity previously on the US sanctions list.

Following a year-long investigation in 2014-15, Amnesty International exposed a range of human rights abuses linked to the Monywa project including forced evictions, poor environmental management which put the health of the local population at risk, and the repression, sometimes brutal, of those who protested against the mines. The research resulted in the February 2015 report, *Open for Business? Corporate Crimes and Abuses at Myanmar Copper Mine* (hereinafter referred to as '*Open for Business?*').[1]

Wanbao Mining operates the Letpadaung Mine through its subsidiary Myanmar Wanbao Mining Copper Limited (Myanmar Wanbao). In May 2016, Myanmar Wanbao announced that the Letpadaung mine had begun producing copper for the first time, sparking new protests by villagers. In June 2016, Amnesty International sent researchers to Monywa again to assess whether anything had improved, or if people remained at risk of human rights abuses. This follow-up investigation found that little has changed and that serious human rights concerns regarding the Letpadaung mine have not been addressed.

Thousands remain at risk of forced evictions

Hundreds of families living in the environs of the mine continue to face forced evictions from their homes and/or their farmland. Myanmar Wanbao says it needs to expand the mine's perimeter by a further two thousand acres. The company claims to have conducted genuine consultations with all affected people, but this is not the case. For example, residents of four villages have been excluded from consultations altogether, even though they are among the worst affected. Against their wishes, they face the loss of their farms and resettlement to a new location.

[1] See Amnesty International, *Open for Business? Corporate crimes and abuses at Myanmar copper mine* (Index: ASA 16/003/2015), available at: https://www.amnesty.org/en/documents/asa16/0003/2015/en/

Ongoing environmental management failures and risks to health and livelihoods

Myanmar Wanbao's failure to undertake an adequate environmental assessment of the Letpadaung mine is putting the safety of the neighbouring communities at risk. The risks are extremely serious as the giant mine is in a region prone to both earthquakes and floods. If either of these strike the mine, they could result in contaminated waste spreading into the surrounding environment. Myanmar Wanbao has acknowledged that this could have a "catastrophic" impact. These risks were underlined when, during heavy flooding in August 2015, flood waters entered the mine area even though it was protected by an embankment. In this instance, Myanmar Wanbao said it was able to prevent any waste material from leaving the site, but it has not provided evidence to support this statement.

Another incident raises further serious questions about the management of the mine. Amnesty International has documented how the company failed to prevent the discharge of potentially hazardous waste material from the mine, starting from November 2015. That was when farmers in Wet Hme village, some 500 meters from the mine, saw that its perimeter drain had overflowed. Despite informing the local authorities and Myanmar Wanbao within ten days of noticing the spill, the liquid continued to run into their land for weeks, one of the farmers told Amnesty International. He described the damage that the spill caused to the wheat and beans that they were growing:

> "*Every crop perished. Everything died. Every place where the water got the crops perished. They perished steadily, taking around ten days. First the crops wilted and then died.*"

In June 2016, Amnesty International researchers took samples of soil from two places where villagers described the spill as happening. These samples were tested at the Greenpeace laboratory at Exeter University, in the UK. The results were then analysed by an environmental scientist, who concluded that it was "highly-probable" that the liquid was contaminated.

> *"The soil samples indicate that the waste water in the drain at the time of the spill had elevated levels of various metals and in particular arsenic, copper and lead. This indicates that contamination of the water with mine – derived contaminants is highly probable."*

Neither the government nor Myanmar Wanbao has explained to the farmers what caused the spill, nor provided them with any information about the contents of the waste water, nor whether it posed any health risks. There has been no clean-up and no compensation for the loss of crops.

Repression of peaceful protests

Many people in the communities surrounding the Monywa project remain deeply unhappy with how the mines are managed. The loss of their lands has placed their agricultural livelihoods, and their futures, at risk. They are fearful of the damage that they believe is being done to the environment and the health of their families. The government has promised to resolve differences between the communities and the mining companies. Yet villagers and activists who are opposed to the Monywa project continue to face arrest and harassment. Myanmar Wanbao and the authorities continue to use Section 144 of the Code of Criminal Procedure. This provision allows magistrates to restrict access to particular designated areas. Research for Amnesty International's 2015 report found that the authorities used it to block access to areas around the two mines and charge villagers who protest against the companies. In 2016, Amnesty International found similar misuse. For example three villagers were convicted of trespass after taking part in a protest outside the main gate of the S&K mine.

Conclusion and recommendations

Amnesty International continues to call on the government of Myanmar to suspend the mine's operations until the human rights and environmental concerns are dealt with and effective processes are put in place to prevent further abuse.

In particular, the government needs to ensure that Myanmar Wanbao does not carry out any more evictions of people from their homes or land until all procedural safeguards required under international human rights law have been put in place. It must require Myanmar Wanbao and its joint venture partners to address the shortcomings in their management of environmental risks, including through sharing final designs of key infrastructure for public scrutiny and undertaking a comprehensive assessment of the environmental, social and human rights impacts in consultation with all affected people.

Wanbao Mining and UMEHL should investigate the cause and impact of the spill of waste liquid at Wet Hme village in 2015, and the impact of the floods of 2015, and make the findings public. The two operating companies should make a public commitment to suspend plans for extending the project area and

construction for the Letpadaung mine until human rights and environmental concerns are resolved in genuine consultation with affected communities.

More broadly, the Myanmar government needs to strengthen the legal framework to improve the regulation of large projects, such as mines, and put in place an adequate framework for land acquisition that is based on international standards on the right to adequate housing and the prohibition of forced evictions. Both the government of Myanmar and Myanmar Wanbao must also ensure an effective remedy for the human rights abuses that people there have already suffered.

The Monywa project is not an isolated case of human rights abuses involving corporations in Myanmar. Activists and NGOs have highlighted other deeply troubling examples which expose both the systemic weaknesses in Myanmar's ability to regulate companies and protect affected communities, as well as foreign corporations' apparent willingness to take advantage of this context.

Foreign corporations doing business, or planning to do business, in Myanmar have a responsibility to ensure that their investments do not cause or contribute to human rights abuses. A critical first step is conducting human rights due diligence on planned business activities in Myanmar in line with international standards on business and human rights. The governments of foreign companies investing in Myanmar, including China, must require their companies to undertake due diligence prior to investing or undertaking business operations in Myanmar.

METHODOLOGY

This briefing is a follow up to a report that Amnesty International published in February 2015, *Open for Business?*

Amnesty International researchers visited Myanmar in June 2016 to investigate what, if any, action had been taken by companies or the Myanmar authorities to address three areas of human rights concern at the Monywa mine project, which were highlighted in *Open for Business*. These were: the ongoing threat of forced evictions; environmental contamination affecting villagers' right to health; and, the ongoing harassment of protesters.

Researchers travelled to Monywa district, in Sagaing Region, where the S&K and Letpadaung copper mines are located. There, researchers interviewed 35 people living in eight villages that are affected by the mining project. In addition, they held four group discussions with a total of approximately 65 people in four of these villages; each group consisted of 10 – 25 people. Those in the group discussions included 28 of the 35 people interviewed individually.

Researchers also interviewed municipal, township and regional-level government officials, members of the Union parliament and activists, lawyers and non-governmental organisation (NGO) workers in Mandalay, Monywa, Naypyitaw and Yangon.

Due to the ongoing risk of arrests by police and harassment of activists and villagers who oppose the mines, none of the interviewees are named in this report.

In relation to the environment, researchers collected soil samples close to Wet Hme village where there was a discharge of liquid from the Letpadaung mine in late 2015. These samples were tested by the Greenpeace Laboratory at the University of Exeter, UK.

Amnesty International also obtained satellite imagery of the Monywa district before and during floods, which occurred in August 2015. The organization shared the results of tests conducted by the Greenpeace Laboratory and the satellite images with an environmental scientist for his expert input.

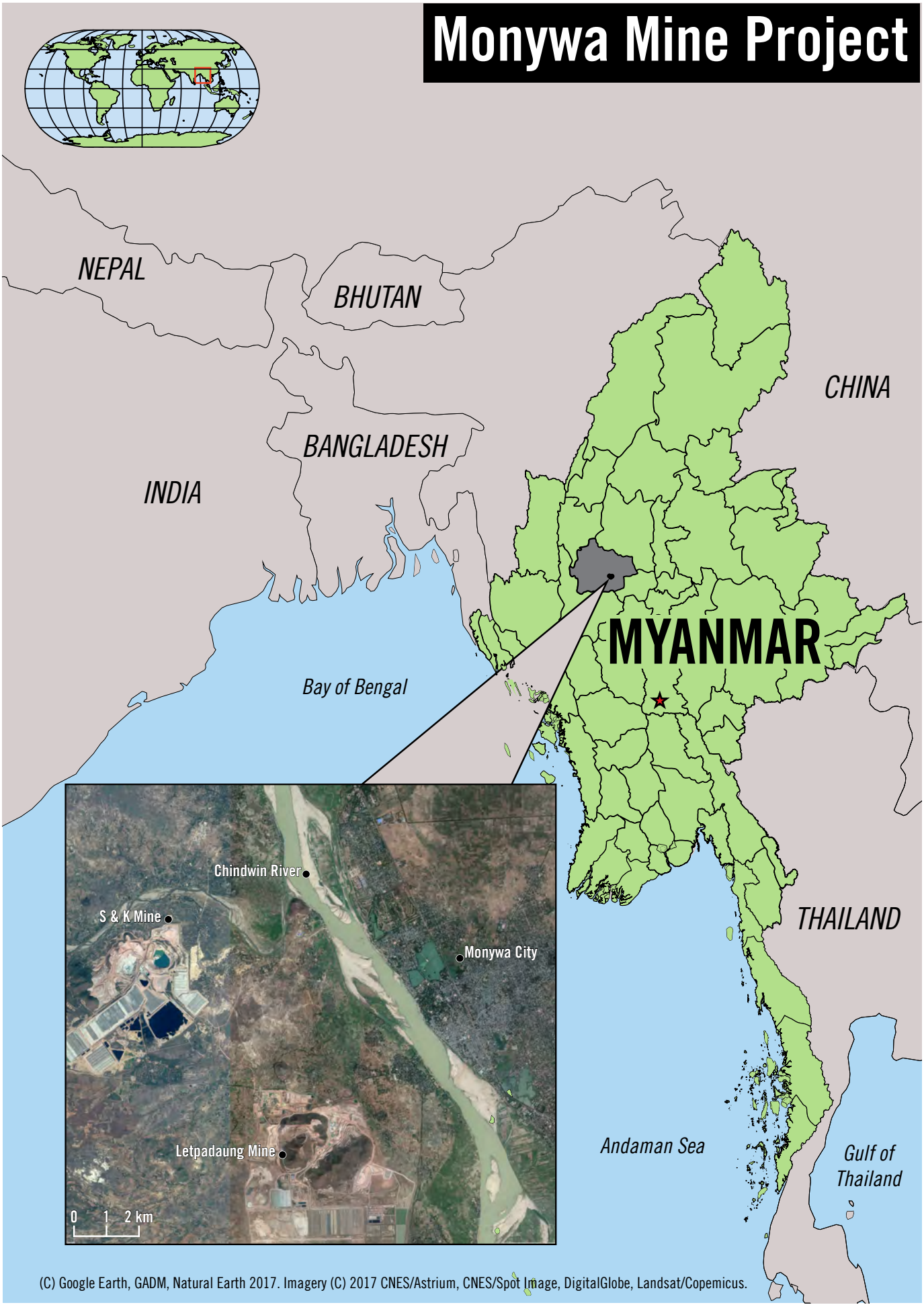
Amnesty International also reviewed documents relating to the management of the mine, which were made publicly available by the operating company, Myanmar Wanbao.

At the time of their mission, researchers requested a meeting with Myanmar Wanbao but did not receive a reply. Amnesty International wrote to its parent company, Wanbao Mining, in April and June 2016 to request information relating to its Final Environmental Social Impact Assessment (ESIA) and the resumption of operations at the Letpadaung mine, and again in January 2017 to present key findings contained in this briefing. Wanbao Mining sent a response to the April letter, but did not respond to the subsequent letters.

Researchers did not seek a meeting in Monywa with UMEHL, the operator of the Moe Gyo sulphuric acid factory, because of a concern that this could jeopardise the safety of local contacts. Amnesty International subsequently wrote to UMEHL requesting information. UMEHL replied and offered to meet the researchers one week later. The researchers are not based in Myanmar and it was not possible for them to travel there at such short notice. Instead, Amnesty International offered to hold a conversation by telephone, but UMEHL did not respond. Any responses sent by the above companies are reflected in this report.[2]

The researchers would like to thank all the people, in Myanmar and elsewhere, who they interviewed or assisted them in other ways, including Dr. Alan Tingay and the staff of the Greenpeace Laboratory.

[2] Wanbao letter dated 2 May, 2016; UMHEL letter dated 5 August 2016.



(C) Google Earth, GADM, Natural Earth 2017. Imagery (C) 2017 CNES/Astrium, CNES/Spot Image, DigitalGlobe, Landsat/Copemicus.

2. BACKGROUND

Myanmar has a vast wealth of oil and gas reserves, mineral resources and precious gems, but its extractive industries are underdeveloped, hampered by a lack of investment and modern technology. That could change as international oil, gas and mining companies increasingly look to enter the country in the wake of political and economic reforms.

Foreign investment in the extractive sector has the potential to bring great social and economic benefits to Myanmar. However, extractive industries can also carry specific risks for human rights, in particular because these industries often require the expropriation of land and generate harmful waste materials that require careful management.

2.1 THE MONYWA PROJECT: KEY FACTS

There are four large deposits of copper in Monywa district, in Sagaing Region, in north western Myanmar. They are situated in hills that rise out of the flood plain of the Chindwin River.[3] These deposits have been developed as two, linked mining operations – the Letpadaung and S&K copper mines. Letpadaung is the largest of the four deposits and accounts for 75% of the total copper reserves. It is expected to produce 100,000 tonnes of cathode copper a year.[4] Work to develop the Letpadaung mine began in 2011, and though the mine is still under construction it produced its first copper in May 2016.[5] The three other deposits are located next to each other and have been developed since 1978 as the S&K mine.[6] There are 26 villages located within five kilometres of the mines, with a population of about 25,000 people. Most people living in these villages rely on agriculture.[7]

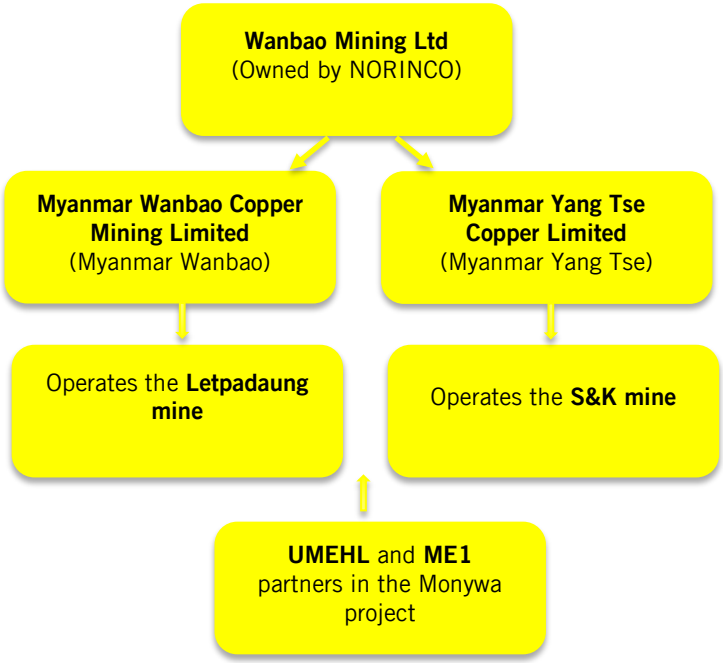
↑ *Thousands of people lost access to their farms when the mine was constructed © Amnesty International 2016*

[3] Knight Piésold Consulting, Myanmar Wanbao Mining Copper Ltd Letpadaung Copper Project: Environmental and Social Impact Assessment (Knight Piésold ESIA), cover reference PE701-00022/13, Rev. 6, January 2015, p 176, available at: available at: http://www.myanmarwanbao.com.mm/our-2014-news/53/135.html
[4] Knight Piésold ESIA, Jan 2015, p. 1-3.
[5] Myanmar Wanbao, *A Message from Mr. Chen Defang, President of Wanbao Mining*, CSR Report 2015-16, 17 May 2016, p7. available at: http://www.myanmarwanbao.com.mm/images/stories/wanbao-pdfs/csr_2016_update.pdf
[6] Ivanhoe Mines Ltd., Renewal Annual Information Form for the year ended December 31, 2002, (20 May 2003), p. 22.
[7] Knight Piésold ESIA, May 2014, pp. 117- 119.

2.2 THE COMPANIES INVOLVED IN THE MONYWA PROJECT

Since 2010, China-based Wanbao Mining Ltd (**Wanbao Mining**) has owned the two copper mines in joint venture with a Myanmar company, the Union of Myanmar Economic Holdings Limited (**UMEHL**), and the state-owned company, Mining Enterprise 1 (ME1).[8] Under the current production sharing contract (modified in July 2013) Wanbao Mining and UMEHL retain 49% of the profits[9] and the remaining 51% goes to the Government of Myanmar, represented by ME1.[10]

Wanbao Mining's wholly-owned subsidiary, Myanmar Wanbao Copper Mining Limited (**Myanmar Wanbao**), operates the Letpadaung mine. Its other subsidiary, Myanmar Yang Tse Copper Limited (**Myanmar Yang Tse**), operates the S&K mine. Wanbao Mining's parent company is NORINCO, a Chinese state-owned conglomerate with interests in arms manufacturing and mining.[11]



UMEHL was formed in 1990 by the military government, which exempted it from paying taxes until 2011 when Myanmar's reforms began.[12] The military government also gave it preferential access to foreign contracts and allowed it to hold a monopoly on sectors such as gems, jade, and cigarettes.[13]

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[8] UMEHL is also known as Myanma Economic Holdings Limited or MEHL. Ministry of Natural Resources and Environmental Conservation: Foreign Joint Ventures, available at http://www.mining.gov.mm/ME-1/1.ME-1/details.asp?submenuID=11&sid=753# (last accessed 9 October 2016.)

[9] According to various new reports, UMEHL will receive 19% of the profits and Myanmar Wanbao will receive 30%. For examples see https://www.dvb.no/news/commission-approves-contract-giving-govt-larger-share-of-laptadaung-profits/29945 and http://www.reuters.com/article/2014/05/19/us-mynamar-mine-chinese-idUSBREA4I08420140519

[10] Ministry of Natural Resources and Environmental Conservation: Foreign Joint Ventures, available at http://www.mining.gov.mm/ME-1/1.ME-1/details.asp?submenuID=11&sid=753# (last accessed 9 October 2016.)

[11] A detailed analysis of Norinco, known formally as China North Industries Group Corporation (CNGC), was conducted by the International Peace Information Service (IPIS) and OMEGA Research Foundation in 2014. See '*Working paper on China North Industries Group Corporation (CNGC),*' October 2014, available at https://omegaresearchfoundation.org/sites/default/files/uploads/Publications/Working%20paper%20on%20CNGC,%202014.pdf

[12] Aye Thidar Kyaw, Annual list of top taxpayers shows payments rising, *The Myanmar Times*, 22 March 2016, http://www.mmtimes.com/index.php/business/19586-annual-list-of-top-taxpayers-shows-payments-rising.html (last accessed 22 December 2016)

[13] Aung Min and Toshihiro Kudo, '*Business Conglomerates in the Context of Myanmar's Economic Reform*', H. Lim and Y. Yamada, eds., Myanmar's Integration with Global Economy: Outlook and Opportunities, Bangkok Research Centre Report, Institute of Developing Economies, Japan External Trade Organization, 2014, p. 155, available at: http://www.ide.go.jp/English/Publish/Download/Brc/13.html

Today, UMEHL continues to be one of Myanmar's largest companies, and is involved in many different sectors, including banking, tourism, transport and beer.[14] As well as its interests in the two copper mines, UMEHL also operates the Moe Gyo factory that supplies them with sulphuric acid.[15]

UMEHL has recently become more transparent. While it was widely known to be owned by current and retired military personnel, the company only officially disclosed details of its ownership structure in March 2016, when it announced its wish to be listed on the Yangon Stock Exchange.[16] UMEHL disclosed that it was owned by two types of shareholders: "A Type" shares held by the Ministry of Defence and the Directorate of Defence Procurement and "B Type" shares, held by "military personnel, ex-servicemen, regiments and units, and ex-servicemen-led organisations."[17]

Since 2003, UMEHL was subject to US sanctions, along with other entities and individuals linked to the military. The US government lifted these in October 2016, following the formation of the NLD government.[18] The US government explained it was lifting the sanctions to "support efforts by the civilian government and the people of Burma to continue their process of political reform and broad-based economic growth and prosperity."

THE MONYWA PROJECT – TIMELINE

1978: A Myanmar government-owned enterprise, ME1, started developing the S&K deposits.

1996: The project became a joint venture between ME1 and Ivanhoe Myanmar Holdings Ltd., a subsidiary of the Canadian mining company Ivanhoe Mines Ltd. (Ivanhoe Mines, now renamed Turquoise Hill Resources).

1996-97: The government nationalised farmlands to make way for the S&K mine.

2007: UMEHL constructed the Moe Gyo sulphuric acid factory next to Kankone village to supply acid to the S&K mine.

2010: The Monywa project was taken over by Wanbao Mining and UMEHL.

2011: Work to develop the Letpadaung mine began. Forced evictions spark protests by villagers.

November 2012: Myanmar's president established the Letpadaung Investigation Commission to investigate the impacts of the Monywa project.

March 2013: The Letpadaung Commission issued a report which made a series of recommendations to the government and the companies, regarding the operations of the Monywa project, including that the companies should pay compensation for all the land they took at market value. The Commission also called for greater transparency and discussions with affected people.[19]

May 2016: Myanmar Wanbao began copper production at Letpadaung, prompting peaceful protests by affected community members.

[14] PricewaterhouseCoopers, Myanmar Business Guide, July 2015, p15, available at: http://download.pwc.com/mm/gobig/index.html#featured-insights

[15] Amnesty International has called for the government to order the immediate relocation of the factory from Kankone village for urgent safety reasons. Amnesty International, *Myanmar: Sulphuric acid factory behind health fears must be relocated*, 20 July 2016, https://www.amnesty.org/en/latest/news/2016/07/myanmar-relocate-sulphuric-acid-factory/ See *Open for Business?,* Above the Law: UMEHL's Sulphuric acid factory, p.77.

[16] Clare Hammond, Military-owned MEHL applies to become public company, *The Myanmar Times*, 1 April 2016, available at http://www.mmtimes.com/index.php/business/19799-military-owned-mehl-applies-to-become-public-company.html (last accessed 23 September 2016).

[17] Clare Hammond, Military-owned MEHL applies to become public company, *The Myanmar Times*, 1 April 2016, available at http://www.mmtimes.com/index.php/business/19799-military-owned-mehl-applies-to-become-public-company.html (last accessed 23 September 2016).

[18] The US Treasury Department, Treasury implements termination of Burma Sanctions Program, 7 October, 2016, available at https://www.treasury.gov/resource-center/sanctions/Programs/Documents/burma_fact_sheet_20161007.pdf

[19] Final Report of the Letpadaung Investigation Commission, March 2013, unofficial translation on file with Amnesty International.

2.3 KEY FINDINGS AND RECOMMENDATIONS OF AMNESTY INTERNATIONAL'S 2015 REPORT

Amnesty International's 2015 report, *Open for Business?*, exposed how the Monywa project has been characterised by serious human rights abuses and a lack of transparency since its inception and throughout its various changes in ownership.

The report documented a range of abuses, involving both the government as well as local and foreign companies. Amnesty International found that:

- Thousands of people had been forcibly evicted by the government to make way for the two mines with the knowledge, and in some cases the participation, of foreign companies. Thousands more remained at risk of forced evictions.
- Environmental impacts of the mines and sulfuric acid factory were poorly assessed and managed, with grave long-term implications for local people's livelihoods and health.
- Protests by communities opposing the mine were met with excessive force by police; in 2012 Myanmar violated international law when police officers used incendiary white phosphorus munitions to attack peaceful protesters, causing horrific injuries. The use of white phosphorus munitions amounted to torture. Part of the attack was launched from inside the compound of Myanmar Wanbao.
- Many of the recommendations of the Letpadaung Investigation Commission which examined the impacts of the mines had not been implemented.
- There has been a lack of transparency around how Wanbao Mining and UMEHL acquired the project from the Canadian mining company Ivanhoe Mines Ltd. (now renamed Turquoise Hill Resources). There may have been breaches of sanctions in connection with the sale.[20]

Amnesty International concluded that while the authorities had undertaken some legal reforms related to land acquisition and environmental protection since 2011, these did not go far enough.

People still lacked protection against forced evictions and other human rights violations linked to land acquisition for commercial uses. Amnesty International made a number of recommendations to the government of Myanmar, the companies involved, and other governments.[21]

Amnesty International called on the Myanmar authorities to urgently act to prevent further human rights abuses at the Monywa mines and to provide an effective remedy for the human rights abuses that people had already suffered. Amnesty International concluded that Myanmar needed to halt the development of the Letpadaung copper mine until all human rights and environmental concerns were addressed, in consultation with affected communities. The organization called on foreign businesses entering Myanmar to carry out due diligence in line with international standards on business and human rights, including the UN Guiding Principles on Business and Human Rights.[22] Amnesty International also called on the governments of foreign companies investing in Myanmar to require companies to undertake due diligence prior to investing or undertaking business operations in Myanmar.

[20] See *Open for Business?*, p7. This issue is not further covered in this briefing.
[21] See *Open for Business?*, p126-130.
[22] UN Office of the High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework* (2011) UN Doc HR/PUB/11/04, available at: www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf (UN Guiding Principles).

3. ONGOING RISK OF FORCED EVICTIONS

Amnesty International's 2015 report, *Open for Business?*, detailed the forced evictions that were carried out for the construction of the Letpadaung mine. These led to protests and a breakdown of trust between the local communities and the government and the mine's operating companies, Myanmar Wanbao and UMEHL.

In one instance, the Myanmar government deliberately misled farmers. Villagers told Amnesty International that in December 2010 local officials informed them that machines would be taken across their farmland and that in return they would receive compensation for damage to crops.[23] No mention was made of land acquisition or evictions. The farmers only realised what was happening when, in 2011, Myanmar Wanbao started constructing the mine on their land.

Amnesty International also found that thousands more people continued to be at risk of forced evictions as Myanmar Wanbao developed the mine further. In total, the Letpadaung mine requires the acquisition of 6,785 acres of land from 30 villages, including the complete relocation of four villages: Zeedaw, Saedee, Kandaw and Wet Hme.[24] Following the killing by police of a protester in December 2014, Myanmar Wanbao announced the suspension of its plan to extend the mine's working area, while still needing to take over about 2,000 acres of farmland as well as the four villages.[25]

TIMELINE OF EVICTIONS

2011: The first forced evictions and protests, as Myanmar Wanbao starts acquiring land and work to construct the mine begins.

July - October 2014: In order to improve relations with the communities, Myanmar Wanbao claims to hold consultations in which "*every villager impacted by the project had a direct one-on-one discussion with the Myanmar Wanbao leadership.*"

Dec 2014: Myanmar Wanbao bulldozes crops to extend its working area. During clashes with protesting farmers, the police kills Daw Khin Win of Mokyopin village. Myanmar Wanbao suspends plans to extend the mine area.

May 2016: Myanmar Wanbao announces that it still intends to take control of 2,000 acres of farmland and the homes of 141 households in the four villages, but does not provide a date or other details.

[23] Amnesty International interviews, Myanmar, 19 March 2014.
[24] *Open for Business?,* p21.
[25] Myanmar Wanbao, *Corporate Social Responsibility (CSR) Report 2015-16,* 17 May 2016, p4, available at: http://www.myanmarwanbao.com.mm/images/stories/wanbao-pdfs/csr_2016_update.pdf

On 20 February 2016, imagery shows the Letpadaung Copper Mine. The yellow lines delineate the mine perimeter on 20 February 2016 and the orange polygons highlight the areas of planned mine expansion, based on information provided in the ESIA. At the time of the image, the mine is approximately 21 square kilometres in area and will expand by approximately 9 square kilometres. This expansion will require the relocation of four villages located within the final boundary.

On the basis of these findings Amnesty International recommended that Myanmar Wanbao and UMEHL make a public commitment that no further evictions of people from their homes or farm lands be carried out until adequate safeguards were put in place, including a genuine process of consultation with all affected people on the evictions, resettlements and compensation.[26]

In the final version of its ESIA released in June 2015, Myanmar Wanbao claimed that the company had carried out further consultations which addressed the affected communities' concerns.[27] Myanmar Wanbao

[26] *Open for Business?,* p21.
[27] Myanmar Wanbao published this information in the final version of the ESIA, which it released in June 2015, available at http://www.myanmarwanbao.com.mm/en/year-2015/53-june-2015/135-final-version-of-esia-report.html, its CSR report, available at:

said that these consultations, in the second half of 2014, had consisted of "an unprecedented process of 'door-to-door' consultations," which were led by senior company managers. It explained that:

> *"To be able to effectively target and consult with all impacted villagers, big group village meetings… would not suffice alone. What was needed was face-to-face thorough door-to-door community consultations. This meant that every villager impacted by the project had a direct one-on-one discussion with the Myanmar Wanbao leadership."*[28]

As a result of these consultations, Myanmar Wanbao said that it devised a "*contribution plan*," in which villagers who lost land would receive compensation in the form of a monthly payment (in place of jobs at the mine, which the company was unable to offer to all affected households).[29] According to Myanmar Wanbao, the majority of people (83% from 35 communities) who lost, or stood to lose, land had accepted this compensation by May 2016.[30]

The company said that this should be taken as proof of improved relations with the communities, earning the company, "*our social license.*"[31] Meanwhile, the "*small minority*" of villagers who remain opposed to the project had rejected "*our offers of real dialogue.*"[32]

Amnesty International has examined these claims by reviewing documents released by the company and by conducting interviews with affected community members.

"Our conclusion is that the company's claims are false, and that far from reaching all affected people, the consultations excluded many people affected by the land acquisition."

Those excluded include landowners who face the loss of their farmlands, landless people who work on farms, and people living in the four villages marked for complete relocation. In May 2016, Myanmar Wanbao said that there were 141 households still living in these four villages.[33]

Even Myanmar Wanbao's own documents reveal that the company did not hold consultations with all affected people. According to its January 2015 ESIA, Myanmar Wanbao said it had organised door-to-door meetings with people in 27 villages in 2014, but not in eight other villages, where they held village meetings instead. This is despite the fact that the company itself accepted that "*big group village meetings… would not suffice alone.*"[34] The ESIA did not explain why door-to-door meetings did not take place in these eight villages.[35]

In the same ESIA report Myanmar Wanbao said that during the 2014 consultations, a total of only 1,032 people were consulted, either in the "door-to-door" or the village level meetings, and that these people were all landowners. Yet, this is a fraction of those who were adversely affected by land acquisition that had already taken place, or which was planned by the company. According to a census conducted by UMEHL and the regional authorities the overall number of people who will be affected when the project is complete is 16,694.[36] Many of these are not landowners, but are affected because they work as farm labourers or rely on access to common land for grazing and other resources.

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http://www.myanmarwanbao.com.mm/images/stories/wanbao-pdfs/csr_2016_update.pdf which was released in May 2016, and a letter to Amnesty International, sent in May 2016.

[28] Myanmar Wanbao, *CSR Report 2015-16*, 17 May 2016, p19.

[29] These payments range from between US$ 70 to US$ 160 per month depending on the amount of land that was taken. The company says it will pay these amounts for the lifetime of the project, estimated to be thirty years, or until jobs become available at the mine. Myanmar Wanbao, *CSR Report 2015-16,* 17 May 2016, p13.

[30] Myanmar Wanbao, *CSR Report 2015-16*, 17 May 2016, p13.

[31] Myanmar Wanbao, Press Statement, 10 May, 2016, available at http://www.myanmarwanbao.com.mm/en/our-latest-news.html

[32] Myanmar Wanbao, Press Statement, 10 May, 2016, available at http://www.myanmarwanbao.com.mm/en/our-latest-news.html

[33] Myanmar Wanbao, CSR Report 2015-16, 17 May 2016, p9, available at: http://www.myanmarwanbao.com.mm/images/stories/wanbao-pdfs/csr_2016_update.pdf

[34] Myanmar Wanbao, *CSR Report 2015-16*, 17 May 2016, p19.

[35] Knight Piésold ESIA, January 2015, p221-3.

[36] Knight Piésold ESIA, May 2014, Appendix T, p. 11.

In addition, some villages have been excluded from Myanmar Wanbao's consultations altogether. There is no record in the ESIA of the villagers from Kandaw, Saedee, Wet Hme, and Zeedaw, being included in either these door-to-door meetings or the village level meetings.[37] This is backed up by interviews that Amnesty International conducted in the region in 2016. Amnesty International researchers visited three of these villages, Saedee, Wet Hme, and Zeedaw, where they spoke to 37 people, including one group interview with 24 people. The residents of these villages face losing their homes as well as the farmland that they own, so are among the people worst affected by the mine. Their exclusion from consultations shows that Myanmar Wanbao's claim that "*every villager impacted by the project had a direct one-on-one discussion with the Myanmar Wanbao leadership*" is patently false.[38]

One man in Zeedaw explained that in 2014 a group of foreigners did visit the village, but they said they were not representatives of Myanmar Wanbao, and did not say who they worked for.[39] They came twice to Zeedaw, and held talks in the village monastery with people who were around at the time – in both cases a group of about ten men and women. He explained that the foreigners offered to negotiate between the community and Myanmar Wanbao. He said:

> "*They asked about the problems and difficulties of the community and said they would arrange a meeting with the people of Wanbao. They came here twice but it's like they just came here to get information from the village."* [40]

Two people in Wet Hme village who have followed developments around the mine for several years told researchers that a representative of the company had visited the village in 2014.[41] They said he arrived without prior notice, and called a village meeting. He addressed most of the villagers for over an hour, trying to persuade them to leave the village, the two residents remembered. He did not hold one-to-one meetings with the villagers.[42]

According to Myanmar Wanbao, the "contribution" scheme, referred to above, was developed specifically following consultations with people in Saedee, one of the villages facing complete relocation.[43] Amnesty International researchers held a meeting with twenty four villagers in Saedee and also conducted individual interviews with five people. All of the villagers to whom researchers spoke said that no-one from Myanmar Wanbao or its consultants had ever visited the village or invited them to meetings.[44] One villager explained that Myanmar Wanbao treated three former residents, who had already agreed to leave the village and be relocated, as representatives of the whole village and did not speak to other people:

> *"If the project wants to deal with the village they should come to the village and deal with us. But really they only want to talk to the people that they have appointed."* A second man said: *"we had no meeting here with the company. No government, no [U]MEHL, no Wanbao ever came here."*[45]

Amnesty International asked Myanmar Wanbao to explain how it can claim to have spoken to "every villager" when its own ESIA shows that it did not do so, when four villages where people face relocation are not even mentioned in the ESIA, and when people interviewed in these villages confirm no "door-to-door" meetings took place. The company did not respond. Amnesty International also asked Myanmar Wanbao if they knew of the identity of the people who visited Wet Hme in 2014 but the company did not answer on this point either.

By its own admission, Myanmar Wanbao has made no further efforts to hold consultations with the communities since the end of 2014. This is despite the fact that they failed, as Amnesty International's research shows, to include hundreds of people who face the loss of their homes and land. Yet, in May 2016, the company announced that it still intended to take over the remaining land, including the site of the four villages. [46] But it has provided no further details, and the people of Saedee, Wet Hme and Zeedaw villages

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[37] The spellings of these villages' names in English vary. The report will use these ones unless quoting a source which spells the names differently.
[38] Myanmar Wanbao, *CSR Report 2015-16*, 17 May 2016, p19.
[39] It is likely that these foreigners worked for a consultancy hired by Myanmar Wanbao, but they did not leave any business cards or documents with the villagers to identify who they were.
[40] Amnesty International interviewed 10 people in Zeedaw in total and all of them confirmed that no one-on-one interviews were done by Myanmar Wanbao in the village. Interviews conducted on 13 June 2016.
[41] They could not agree on the number of times these meetings were held. One said there was one meeting, the other said there were three meetings. They said the visitor was a Chinese man, with a name like "Law Son" who was the "most powerful man" in Myanmar Wanbao.
[42] Myanmar Wanbao, *CSR Report 2015-16*, 17 May 2016, p19.
[43] Letter on file with Amnesty International.
[44] Amnesty International researchers held a meeting with 24 adult villagers in Saedee and also conducted individual interviews with five of them, 13 June 2016.
[45] Amnesty International interviews, Myanmar, 13 June 2016.
[46] Myanmar Wanbao, *CSR Report 2015-16*, 17 May 2016, p4.

who spoke to Amnesty International explained that they have no idea when that will happen, or what their future will be like.

International human rights law requires that people are provided information about evictions from homes and farmlands that could result from land acquisition. It requires that, prior to any evictions, all feasible alternatives are explored in genuine consultation with all affected persons.[47] Yet these requirements have been met in the four villages – and likely in many others given Myanmar Wanbao's claims about consultation are, at best, misleading. People who face the loss of the lands and or homes have not been adequately consulted by Myanmar Wanbao. They have not given accurate information about the land acquisition process, leaving them at risk of forced eviction when the company carries out its plan to extend its boundary and take control of their property.[48]

COERCED TO ACCEPT COMPENSATION?

Myanmar Wanbao said that following its meetings with community members in 2014 it developed a generous compensation package for households that had lost land. These payments range from between US$ 70 to US$ 160 per month depending on the amount of land that was taken. The company says it will pay these amounts for the lifetime of the project, estimated to be thirty years, or until jobs become available at the mine.[49]

Myanmar Wanbao made the claim that the fact that the majority of people have agreed to receive this compensation (which it calls its Contribution Plan) is evidence that it has won the support of the affected communities.[50]

Yet regardless of the possible merits of the compensation package, it is wrong to equate people's acceptance of compensation with their overall support for the project. People who have lost their lands may have agreed to accept income support to help sustain their families, but this should not be taken to mean that they support the existence of the mine. On the contrary, compensation is the minimum corrective action that a company should take after forcibly evicting people from their lands and taking away their source of livelihood, such as their fields.

Also, the company itself admitted that for a period it actually put pressure on families to accept the compensation plan. A given community would only receive the money if 70% of the villagers agreed to accept it. The company wrote:

> "*We placed a condition that for a village to be considered to have accepted the Contribution Plan, then at least 70% of impacted villagers within that village need to agree to take the contribution payment. Even though this condition was relaxed later, this served as a catalyst in encouraging village empowerment and discussions.*"[51]

It is a serious concern that people were told that they could not receive this assistance unless the majority of those affected agreed to the payment plan. This could lead to enormous pressure on those who did not wish to agree.

[47] Committee on Economic, Social and Cultural Rights, *General Comment 7: Forced Evictions*, (Sixteenth session, 1997), paras 14 and 16.
[48] Myanmar Wanbao, *CSR Report 2015-16*, 17 May 2016, p4.
[49] Myanmar Wanbao, *CSR Report 2015-16*, 17 May 2016, p13.
[50] According to Myanmar Wanbao, the majority of people (83% from 35 communities) who lost land had accepted this compensation by May 2016. Myanmar Wanbao, *CSR Report 2015-16*, 17 May 2016, p13.
[51] Myanmar Wanbao, *CSR Report 2015-16*, 17 May 2016, p20.

4. SERIOUS ENVIRONMENTAL AND SAFETY CONCERNS

All mining operations can have negative human rights impacts if environmental risks are not properly managed. In the case of the Letpadaung mine, the Myanmar government failed to regulate the companies involved. As a result, there are serious gaps in the design and management plan of the mine.

In 2015, an environmental expert, Dr. Alan Tingay, analysed Myanmar Wanbao's draft ESIA for Amnesty International and noted many critical shortcomings, which are detailed in the *Open for Business?* report.[52] The environmental risks are serious. Acid and heavy metals discharged from the mining operations have the potential to severely impact groundwater and the streams and rivers that local communities rely on. There is no buffer zone between the Letpadaung mine and the neighbouring communities. Monywa is a region prone to both earthquakes[53] and floods, either of which could have a devastating impact, by damaging mine infrastructure and spreading contaminated waste material.

In June 2015, several months after Amnesty International's report was published, Myanmar Wanbao posted on its website a copy of the final version of its ESIA.[54] Myanmar Wanbao also wrote to Amnesty International to defend the ESIA: *"The ESIA…is the first of its kind in Myanmar, and it was approved by Myanmar government in March 2015 after around 18 months of deliberations and reviews by government officials and environmental experts in Myanmar. We don't understand how you arrive at the conclusion that 'the ESIA for the project still contains serious gaps and weaknesses.'"* [55]

In 2016, Amnesty International asked Dr. Alan Tingay to review the final version of the ESIA. He found that it did not address the deficiencies which Amnesty International had identified in the previous draft version. A detailed analysis of these deficiencies was again shared with Myanmar Wanbao in June 2016, but the company did not respond.

Amnesty International research has identified two recent incidents which highlight the serious flaws in Myanmar Wanbao's approach to environmental risks. These are floods in August 2015 and the leak of contaminated waste water from the mine in late 2015 – early 2016. Amnesty International visited the affected areas in June 2016 to assess the company's response to these incidents and their impact on human rights.

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[52] *Open for Business?*, p.86.

[53] Monywa is also, as mentioned above, an earthquake prone region. A search of the USGS database earthquake lists 406 earthquakes within 200 km of the Letpadaung site that have been recorded between 1973 and 2013, including one M7.0 and one M6.8, and 44 events at magnitudes between M5.0 and M5.9. On 20 July 2013, an M4.7 event occurred about 70 km south-west from Letpadaung. The closest earthquakes in proximity of the site were a M4.0 event that occurred approximately 3.6 km from the site and a M4.1 that was approximately 9.1 km of the site.

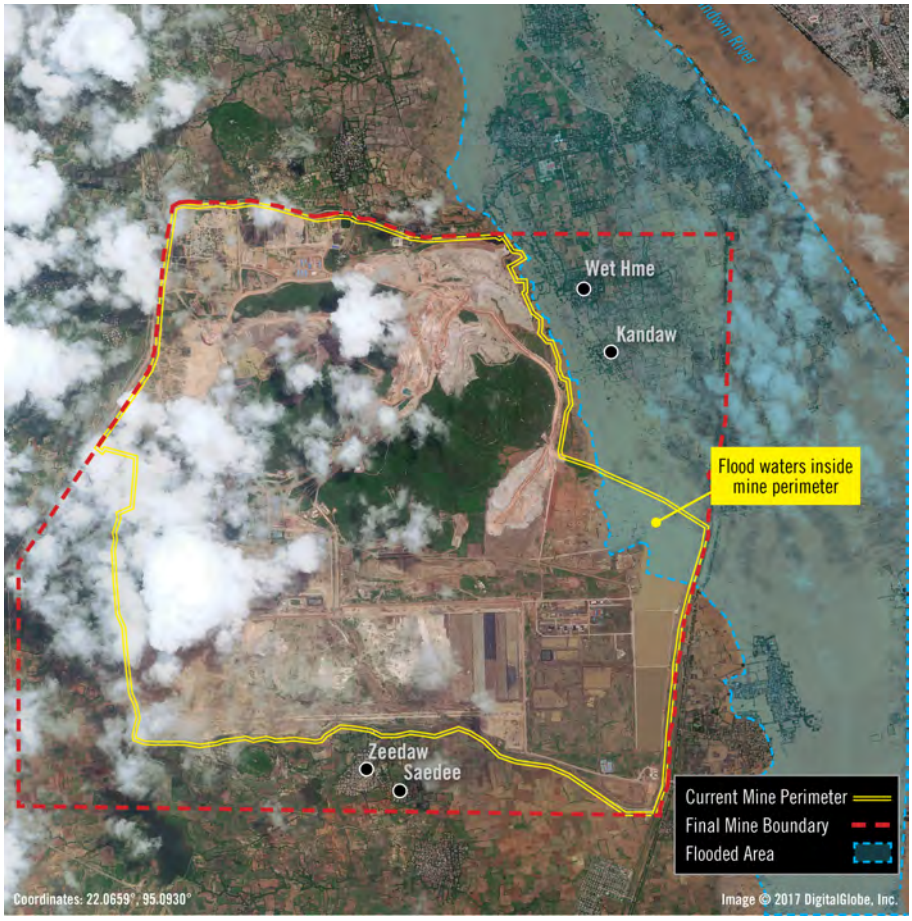
[54] Knight Piésold ESIA, January 2015.

[55] Myanmar Wanbao sent two letters to Amnesty International. The most recent dated 2 May 2016 is included in the Annex of this report. The first, dated 29 January 2016 is available on p 60 of *Open for Business?*.

4.1 2015 FLOODS

The eastern edge of the Letpadaung mine sits on the flood plain of the Chindwin River.[56] Myanmar Wanbao has recognised the risks of locating extremely large waste rock dumps (WRDs)[57] and other mine-related infrastructure such as heap leach pads (HLPs) [58] close to inhabited areas and in an area prone to floods. These risks are twofold. To begin with, if flood waters enter the mine, they could spread contaminated material.[59] Secondly, the mine's flood defences such as a dam or "bund" could cause a "bottle neck" of the Chindwin River that increases the "frequency and severity" of floods.[60]

This risk became apparent during 2015, when monsoon rains from late July onwards resulted in severe flooding across Myanmar, including of the Chindwin River at Monywa. Amnesty International commissioned an analysis of satellite imagery of the mining area from DigitalGlobe. It compared images from 6 August 2015 with images from 23 September 2012, when there were no floods.[61] The satellite images clearly show an extensive sheet of water in the area of the mine's waste water ponds and extending north-west onto an area that is the proposed site of Waste Dumps and the future mine pit. Several villages located between the river and the mine were flooded.



Monsoon rains in 2015 resulted in large-scale flooding across much of Myanmar. On 6 August 2015, imagery shows the Chindwin River overflowed, flooding the area between the mine and the river. A small section, within the current mine perimeter, was also submerged by flood waters. Two flooded villages, Wet Hme and Kandaw, are located within the planned final mine boundary.

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[56] Knight Piésold ESIA, January 2015, p 176.
[57] The Letpadaung Project will generate an estimated 30 million tons of waste rock each year. This equates to approximately 1 billion tons of waste over the 30 year predicted life of the mine. See Knight Piésold ESIA, January 2015, p. i (executive summary).
[58] The ESIA details the basic design features for two heap leach pads, HLP1 and HLP2. Each will have basal areas of 3.46km² (total 6.92km²) and completed heights of 84m. The dimensions of a third heap leach pad, HLP3, which will be commissioned after 14 years of operation, are not specified. The basal areas are very large by global standards and may possibly be some of the largest in the world. As a result, one of the challenges will be managing and storing the run-off of large volumes of water from the heaps after storms or heavy rain. See Knight Piésold, ESIA, January 2015, p. 166.
[59] Knight Piésold ESIA, January 2015, p 226.
[60] Knight Piésold ESIA, January 2015, p 219.
[61] DigitalGlobe, Current assessment of flooding near the Letpadaung Copper Mine, 20 August 2015.

According to Myanmar Wanbao, the flood waters were higher than expected, overflowing the temporary bund it had constructed to protect the mine site.[62] It claimed that it was then able to prevent the release of this flood water from the mine back into the surrounding farmland, in compliance with its "Zero Discharge Policy." The company said it was therefore able to prevent any contamination of areas outside the mine. Amnesty International wrote to Myanmar Wanbao to request information that supports this claim, but did not receive a reply.

As noted above, the company's ESIA also identified as a risk that the mine's flood defences could worsen the impact of flooding. Myanmar Wanbao has so far only constructed a temporary bund, which is lower than the final one is planned to be.[63] In places, it was too low to prevent water from entering the mine, however there is a risk that it still worsened the impact of the flood. This is the widespread view of the local communities, although they did not have scientific data to support their claims. For example, one elderly man in Wet Hme village said that:

> *"I never saw floods like this before. This was because soil was dumped and made into a wall about six feet high. This prevented the water from flowing out. Instead, the water was pushed into the villages."*[64]

Amnesty International asked Myanmar Wanbao whether it had assessed if the construction of the mine's flood defences had a negative impact on the floods but at the time of publication had not received a response.[65]

4.2 SPILL OF CONTAMINATED WASTE WATER IN 2015-2016

Around the perimeter of the Letpadaung mine, Myanmar Wanbao has dug a trench, approximately two metres deep. The purpose of this drain is to "*prevent any water or solution flowing out from the project lease area, complying with the Zero Discharge Policy.*"[66] The need for such a drain is clear. The ESIA stated that once the mine was operational, the impact of "dirty water run-off and effluent from camp, plant area, pit, waste rock and HLP area," could be "catastrophic."[67]

↑ *The perimeter drain, and behind it, the bund, that surround the Letpadaung mine. This is the point where farmers said the spill occurred. ©Amnesty International 2016*

[62] Myanmar Wanbao, *CSR Report 2015-16*, 17 May 2016, p77.
[63] Myanmar Wanbao, *CSR Report 2015-16*, 17 May 2016, p77.
[64] Amnesty International interview, Myanmar, 12 June 2016.
[65] Amnesty International letter to Myanmar Wanbao, 15 June 2016.
[66] Myanmar Wanbao, *CSR Report: 2015 – 16*, p. 76.
[67] Knight Piésold, ESIA, January 2015, Table 7.5, p.224-6.

In November 2015, farmers in Wet Hme village saw that the drain had overflowed. Despite them informing the local authorities and Myanmar Wanbao within ten days of noticing the spill, the liquid continued to run into their land for weeks, one of the farmers told Amnesty.[68] The earliest date that publically available satellite images on Google Earth show the spill is 14 November 2015, and the last is 11 January 2016. The spill is not visible in the next available image, dated 20 February 2016.

Satellite image taken on 11 January 2016 shows liquid filling the perimeter drain and then overflowing and running in the direction of Wet Hme village ©Google earth and Digital Globe.

The farmers have photographs which they say they took at this time, showing the liquid from the drain running into cultivated land. One of the farmers described the damage that the spill caused to the wheat and beans that they were growing. He said that fields of five farmers were affected:

> "*Every crop perished. Everything died. Every place where the water got the crops perished. They perished steadily, taking around ten days. First the crops wilted and then died.*"[69]

Photo of the spill of liquid taken by a farmer in November 2015. It shows overflow from the perimeter drain.

[68] Amnesty International interview, Myanmar, 12 June 2016.
[69] Amnesty International interview, Myanmar, 12 June 2016.

In June 2016, Amnesty International researchers took samples of soil from two places villagers said the spill liquid had affected.[70] They also took a sample from an unaffected area close by for comparative purposes. These samples were tested at the Greenpeace laboratory at Exeter University, in the UK. The results were then analysed by environmental scientist, Dr. Alan Tingay. Dr. Tingay concluded that it was "highly-probable" that the spill liquid was contaminated:

> "*The soil samples indicate that the waste water in the drain at the time of the spill had elevated levels of various metals and in particular arsenic, copper and lead. This indicates that contamination of the water with mine – derived contaminants is highly probable.*"[71]

The farmers had not stored any of the damaged crops so researchers were not able to collect samples, and the soil sample results do not confirm what impact the waste water may have had on them, but Dr. Tingay noted that, "*Soil contaminants may affect plant growth and destroy crops and therefore the welfare of farmers in contaminated areas. The perception that crops may be contaminated similarly may affect a farmer's ability to sell a crop. The impact on individuals may be significant.*"[72]

Dr. Tingay noted that the drain terminates at, and follows the length of the bund that was built to protect the mine from floods. Photographs suggest that this was made in part of waste rock. In this case, this waste rock could potentially be a source of metal contamination from rain water run-off. The rock should be tested for metal content before being used in the bund, Dr. Tingay concluded.

Amnesty has written to Myanmar Wanbao requesting information about the spill, but had not received a response at the time of publication.

4.3 LACK OF INFORMATION AND REMEDY FOR AFFECTED FARMERS

The ESIA provides no information on how Myanmar Wanbao should respond to such an incident. As a mitigation step, the ESIA states that *"no effluent is to be released into the environment,"* but is silent on what the company planned to do if a spill actually does occur.[73] Considering the risks posed to the neighbouring communities, this is a serious omission.

The responsibility to respect human rights requires that all companies, *"avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur."*[74] In order to meet this responsibility, companies should put in place, *"processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute."*[75] Yet Myanmar Wanbao's failure to provide information in advance of how it would respond to such an incident has been compounded by its response to the spill.

Amnesty International interviewed one of the five farmers who said his land was affected by the spill. He said that after he and the other farmers reported it to Myanmar Wanbao in November 2015, the company sent staff to the area.[76] The farmer said that they measured the area of the spill, calculated the amount of damaged crops, and promised to compensate the farmers for their losses.

In January 2016, the five affected famers then wrote to the local and national authorities, describing the incident.[77] In April 2016, a local government body (the township-level farmland management committee) visited the area. Since then, the farmers say they have had no contact with either the government or the company, and received no compensation.

Neither the government nor Myanmar Wanbao has explained to them what caused the spill, nor provided them with any information about the contents of the waste water, nor whether it posed any health risks. There has been no clean-up and no compensation for the loss of crops. Myanmar Wanbao's 2015 Corporate Social Responsibility (CSR) report does not mention the spill.

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[70] These samples were soil taken from the inside the drain at the point where the spill occurred and about 200m away.
[71] Comments by Dr. Alan Tingay, 19 August 2016.
[72] Comments by Dr Alan Tingay, 19 August 2016.
[73] Knight Piésold ESIA, January 2015, p. 219.
[74] UN Guiding Principles on Business and Human Rights, Principle 13 (a).
[75] UN Guiding Principles on Business and Human Rights, Principle 15.
[76] Amnesty International interview, Myanmar, 12 June 2016
[77] The letter was sent to the district level general administrator, the Sagaing Region Chief Minister and the President of Myanmar, 27 January, 2016. On file with Amnesty International.

The spill raises a number of serious questions and issues about the management of the mine and the subsequent response of the companies and the government. Firstly, why did it happen? Was it an accident or systemic problem? What was contained in the liquid and what were the health risks, if any? Why was the spill not investigated by authorities and why was the content of the liquid not disclosed?

While it may be the case that the liquid was not harmful to health, there is no reason to assume this, and the evidence that it resulted in the death of crops is worrying and should be investigated.

The spill also exposes a weakness in the ESIA, in particular the failure to spell out how Myanmar Wanbao will address incidents of pollution, share information with local communities if pollution occurs and what people can expect in terms of clean up and compensation for any damage to their lands or crops. Finally, the spill also exposes weaknesses in the local government's ability to monitor and regulate the mine's operations.

Amnesty International concludes that Myanmar Wanbao's failure to undertake an adequate environmental assessment of the Letpadaung mine is putting the safety of the neighbouring communities at risk. This is a flood and earthquake prone region, yet there is no buffer zone between villagers and mine infrastructure that handles acidic waste. The company itself has acknowledged that a discharge of contaminated material from the mine could have "catastrophic" impacts.[78]

Since Amnesty International's report was published in 2015, Myanmar Wanbao has had ample time to review its ESIA and begin addressing the weaknesses we identified. Yet it has made no suggestion in public, or in letters to Amnesty International, that it has done so. Indeed, it has rejected Amnesty International's findings, and continues to insist that its ESIA meets international standards. Considering the gravity of the risks these weaknesses must be urgently addressed by Myanmar Wanbao, UMEHL and the government.

[78] U.S. Department of Health and Human Services, Agency for Toxic Substances and Disease Registry, Toxicological Profile for Sulfur Trioxide and Sulfuric Acid, December 1998, p. 5.

MOE GYO SULPHURIC ACID FACTORY

Amnesty's 2015 report also included evidence of serious environmental concerns relating to other components of the Monywa project. One of these is the Moe Gyo sulphuric acid factory, which supplies the two copper mines. The factory is owned by UMEHL. It is located on the edge of Kankone village, about 50 metres from the local school. It is surrounded by farm lands. International best practice calls for a buffer zone between a facility manufacturing hazardous chemicals and people. Exposure to sulphuric acid can cause harmful effects on the skin, eyes, respiratory and gastrointestinal tracts.[79]

In 2014 and 2016, residents complained to Amnesty International about how they suffered from living so close to the factory. For example, they said that foul smelling fumes coming from the factory makes them cough and their eyes water. Village residents also complain that emissions from the factory have damaged crops in the fields close to the factory.[80] The villagers have repeatedly called for the factory to be relocated, and they have been supported by the local authorities, which in May 2016 refused to issue a new license to the factory, pending an assessment by non-governmental experts of its health and environmental impacts.[81] Despite this, the factory continues to operate on the basis of a separate license issued by a higher authority, the Ministry of Industry. The ministry renewed this license in October 2016.[82]

On 4 July 2016, Amnesty International wrote to UMEHL outlining the organization's concerns, and subsequently called for the Myanmar government to immediately order the relocation of the factory. On 5 August 2016, UMEHL's managing director replied to challenge Amnesty International's research and stated that the factory operated to international standards.[83] He stated that the factory had received its *ISO 14001 certificate*.

Even though the factory manufactures hazardous chemicals it was built close to the homes of hundreds of people and less than fifty metres from the village high school. ©Google Earth and Digital Globe 2015.

The ISO 14001 standard is a voluntary standard, which requires an organization to adopt an overall environmental management system. It does not monitor the actual environmental performance of the organization. The fact that UMEHL obtained the certification does not mean that it has adequate systems – in practice – to prevent and manage environmental pollution. UMEHL continues to abuse the right to health of people of Kankone village by operating a factory producing hazardous chemicals, which poses severe risks to people's health and the local environment. The government of Myanmar must order the immediate relocation of the factory.

[79] U.S. Department of Health and Human Services, Agency for Toxic Substances and Disease Registry, Toxicological Profile for Sulfur Trioxide and Sulfuric Acid, December 1998, p. 5.
[80] Amnesty International interviews, Myanmar, 26 March 2014
[81] Amnesty International interview with U Ko Ko Naing, chair of the Salingyi township development committee, Myanmar, 11 June 2016.
[82] Letter on file with Amnesty International.
[83] Letter from UMEHL, 5 August 2016, see Annex.

5. CONTINUED HARASSMENT OF THOSE OPPOSING THE MINE

As detailed in Amnesty International's *Open for Business?* report, human rights activists and communities around the Letpadaung and S&K mines have long protested the forced evictions and loss of livelihoods caused by the mines. Peaceful protests have in some cases been met with excessive use of force by the police, and by the arrest and prosecution of protesters.[84]

Amnesty International's recent findings highlight that harassment of those opposed to the mines continues. Meanwhile the excessive use of force by the police, which Amnesty International documented in *Open for Business?* remains unpunished.

THE USE OF SECTION 144 OF THE CODE OF CRIMINAL PROCEDURE

Research for Amnesty International's 2015 report found that the Myanmar authorities used the application of Section 144 of the Code of Criminal Procedure to restrict access to areas around the two mines. For example, the authorities used it to forcibly evict farmers from their land to make way for the Letpadaung mine, as well as to charge villagers who tried to plough their farmlands or take part in protests.[85]

Section 144 of the Code of Criminal Procedure allows magistrates to restrict access to all persons, unless they have authorisation, to particular designated areas. Orders under Section 144 have to be renewed every two months to remain in effect. Anyone who fails to comply can be prosecuted, often as an offence under Section 188 (failure to comply with the order of a lawfully empowered public servant), Sections 141 and 143 (unlawful assembly), and Section 447 (trespass) of the Penal Code.[86]

[84] *Open for Business?,* p.41 and p.56.
[85] *Open for Business?*, p.17 and p.56.
[86] See for example, *Open for Business*?, p.17; and *Letter from the Permanent Mission of the Republic of the Union of Myanmar to the United Nations Office and other Intergovernmental Organizations in Geneva*, 16 August 2013, responding to Urgent Actions issued by five UN Special Rapporteurs on continuous targeting of human rights activists, including peaceful demonstrators, defending and promoting economic and social rights in Myanmar, available at https://spdb.ohchr.org/hrdb/24th/Myanmar_16.08.13_(10.2013).pdf

5.1 PROSECUTION OF PEACEFUL PROTESTERS

> **"I was targeted because I have been asking for compensation for six years now."**
>
> Daw Mar Cho, Thone village.[87]

On 6 June 2016, two members of Thone village received a letter from the Salingyi Township Court stating that they had been charged under Sections 427 (mischief causing damage) and 500 (defamation) of the Penal Code.[88] The two women, Daw Mar Cho and Daw Ma Sanda, had both taken part, a month earlier, in a march involving some 200 villagers who were opposed to the start of copper production at the Letpadaung mine. According to Daw Mar Cho the villagers were protesting what they considered to be inadequate compensation for the land they lost.[89] She said that the police blocked the protesters about 400 metres from the front gate of the mine. According to Daw Mar Cho the march was peaceful and no company property was damaged, and Amnesty International did not find any evidence to contradict this claim.

The basis for the charges is not clear and the summons letter does not provide any details.[90] The two women could face a maximum of four years imprisonment if convicted of the charges. At the time of publication, the two women had received no further information.

Villagers demanding compensation for land taken to make way for the S&K mine also continue to face prosecution.[91] Following a protest of about 50 people near the main gate of the S&K mine in May 2015, the operating company, Myanmar Yang Tse (a subsidiary of Wanbao Mining), filed a complaint against three men, Moe Khaing Oo, Tint Aung So and Thawdar Aung.[92] It accused them of trespassing on an area restricted by Section 144 of the Code of Criminal Procedure and blocking the mine's main entrance gate.[93] The men included two of the protest organisers and a local member of staff of Myanmar Yang Tse. They denied blocking the main gate or trespassing on company property.

The men told Amnesty International that they did not enter the actual mine area, but said they stayed outside the fenced area, in a place where villagers are normally free to enter. There is a car park and water pump where they collect water, they said. The three men claim that they were not aware that any restrictions were in place, and there were no signs warning them. One of them, Moe Khaing Oo, of Kankone village, said:

> "*We only found out it was an area under Section 144 when we got to the court. No police or anyone had warned us.*"[94]

The lack of information about Section 144 of the Code of Criminal Procedure was confirmed at the villagers' trial by U Zaw Htay, the Swepankhaing village administrator. He testified that he had not received a letter informing him that the area where they held the protest was restricted. He told the court that: "*For three years that I have been serving as administrator, I have never received any letter informing that Section 144 has been announced in that area until today. I only know about it now in court.*" [95]

On 1 June 2016, the three men were each found guilty by the Salingyi Township Court under Sections 447 (trespass), 143 (being a member of an unlawful assembly), and 341 (wrongful restraint) of the Penal Code.[96] The court sentenced them to either serve 52 days in prison or pay a fine of 15,000 kyats (around 12 USD).

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[87] Amnesty International interview, Myanmar, 11 June 2016.
[88] Amnesty International interview, Myanmar, 11 June 2016.
[89] Amnesty International interviews, Myanmar, 11 June 2016.
[90] Letter from Salingyi Township Court, 6 June 2016, on file with Amnesty International.
[91] For background see *Open for Business?*, p.15.
[92] Amnesty International interviewed all three men, 10 June, 2016.
[93] Salingyi Township Court, Judgement in Criminal Case No. 422, 2015, 1 June 2016, unofficial translation on file with Amnesty International.
[94] Amnesty International interviews, Myanmar, 10 June 2016.
[95] U Zaw Htay Witness Statement, Salingyi Township Court, 25 March 2016.
[96] Salingyi Township Court, Judgement in Criminal Case No. 422, 2015, 1 June 2016, unofficial translation on file with Amnesty International.

The men have appealed against the verdict.[97] Myanmar Yang Tse also ordered one of them, Thawdar Aung, who worked at the mine, be suspended without pay since June 2016, he told Amnesty International.[98]

In addition to these two recent cases, an unknown number of people also face criminal charges for the involvement in previous protests. The total number is impossible to establish. Many people from different villages who Amnesty International talked to in June 2016 were uncertain as to whether they have been charged or not, due to their participation in earlier protests, or whether charges pending against them have been dropped.

For example, a resident of Saedee village said:

> "*We have all had charges against us but never received summons. I used to have over 20 with my husband. I never appeared in court. They just charge anyone whose name they know.*"[99]

This uncertainty as to whether someone has been charged or not has been identified by Amnesty International as a broader pattern used in politically motivated cases in Myanmar.[100] Under international human rights law all people charged with criminal offences have the right to be promptly informed in detail of the nature and cause of the charges against them.[101] Information about charges should be provided in writing, and if provided orally, should be confirmed in writing.[102]

Meanwhile, the surveillance of villagers known to be leading opposition to the mines continues. For instance, one leading activist from a village close to the Letpadaung mine reported that after individuals from an international NGO visited her in May 2016, the police Special Branch visited her every day for a week, asking who the visitors were.[103] The officers told her that they have to record and report details of every person who visited Letpadaung. The Special Branch police also went to a village after Amnesty International delegates visited in June 2016, asking locals who the foreigners were and why they were in the area.

5.2 LACK OF ACCOUNTABILITY FOR STATE SECURITY VIOLENCE

Amnesty International's 2015 report described how largely peaceful protests against the mine were met with excessive use of force by the police. On 22 December 2014, Daw Khin Win, a woman villager, was shot and killed by the police while taking part in a protest against the forced evictions on land close to the mine. In November 2012, the police attacked protesters, who included many monks, using grenades containing white phosphorous. More than 100 people were injured, some suffering horrific burns and lifelong disability. This use of white phosphorous by the security forces against the protesters constituted torture – a crime under international law.[104]

To date, no official who was involved either in the death of Daw Khin Win, or in the attack using white phosphorous has been prosecuted or sanctioned in any way for their role.[105] Acts of torture are crimes under international law, and the Myanmar authorities have an obligation to investigate allegations of such acts and prosecute those reasonably suspected of being responsible. Victims of the attack have also not received any remedy or reparations. Under international human rights law, States must ensure that any person whose rights or freedoms are violated has access to redress and effective remedy.

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[97] The men paid the fine then launched an appeal. This was rejected by the districted court in July 2016. In December 2016, the Sagaing State Court reduced the fine they needed to pay but also rejected their appeal.
[98] Amnesty International interview, Myanmar, 10 June, 2016.
[99] Amnesty International interview, Myanmar, 12 June 2016.
[100] See Amnesty International, *New expression meets old repression: Ending Myanmar's cycle of political arrests and imprisonment*, (Index: ASA 16/3430/2016), 24 March 2016, p.28.
[101] International Covenant on Civil and Political Rights (ICCPR) Article 14(3)(a).
[102] UN Human Rights Committee, *General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial*, UN Doc. CCPR/C/GC/32 (2007).
[103] Amnesty International interview, Myanmar, June 2016.
[104] *Open for Business?,* p.41
[105] Interview with the lawyer representing the relatives of Daw Khin Win, 22 December 2016.

Following the death of Daw Khin Win, the Myanmar National Human Rights Commission (MNHRC) formed an inquiry team, the findings of which were released on 15 January 2015.[106] The MNHRC concluded that the police's failure to use non-lethal ways to disperse villagers resulted in injuries. The MNHRC also concluded that Daw Khin Win's death resulted from the shooting and that it should be investigated by the police. Finally the MNHRC recommended that "*the implementation of the security activities regarding the Letpadaung Copper Project should be thoroughly reviewed to prevent loss and damages of this kind from occurring again*." There has been no meaningful progress on these recommendations, according to the MNHRC.[107]

These two cases are illustrative of a broader and persistent culture of impunity for human rights violations committed by the Myanmar security forces. Most perpetrators of past and current human rights violations, including crimes under international law, have not been brought to justice. Failure to investigate human rights violations and hold those suspected to be responsible to account sends a worrying message that such violations can continue to go unpunished. It also denies victims and their families their rights to truth, justice and effective remedies, robbing them a second time of their rights.

Peaceful protests have been driven by the villagers' justifiable concerns over the land acquisition process and the environmental impact of the Letpadaung mine. Yet rather than respond to these concerns by conducting a genuine process of consultation that meets international standards and ensuring right of people to not be forcibly evicted, the company and authorities appear to continue to rely on law enforcement responses rather than dialogue.

[106] Myanmar National Human Rights Commission (MNHRC), Press statement on the inquiry of riots of 22nd December 2014 at Latpadaungtaung Copper Mine Project in Salingyi Township Statement No.(1/2015), available at: http://www.mnhrc.org.mm/en/2015/01/myanmar-national-human-rights-commission-press-statement-on-the-inquiry-of-riots-of-22nd-december-2014-at-latpadaungtaung-copper-mine-project-in-salingyi-township/

[107] The MNHRC posted an update on the Daw Khin Win case in August 2016 http://www.mnhrc.org.mm/en/activity-no-3-2016-protection-daw-khin-win/. In an email to Amnesty International on 1 February 2017, the MNHRC said that the Ministry of Home Affairs had informed it that it had "taken action" to discipline police officers involved in the shooting, but provided no further information.

6. CONCLUSION AND RECOMMENDATIONS

Amnesty International's latest research shows that hundreds of people close to the giant Letpadaung mine continue to face the risk of forced eviction from their farmland, and in the case of four villages, from their homes as well. In addition, thousands of people living in the area are at risk from Myanmar Wanbao's inadequate management of environmental risk at the Letpadaung mine, which is situated in a flood and earthquake-prone area. The ESIA for the mine contains fundamental gaps and weaknesses, which Myanmar Wanbao has still not addressed.

In 2015, Amnesty International concluded that the Myanmar government must halt the development of the Letpadaung mine until the human rights and environmental concerns were addressed. In May 2016 the mine began producing copper, but those human rights and environmental concerns have still not been addressed. Amnesty International is repeating its call therefore for the mine's operations to be suspended, while these concerns are dealt with.

Amnesty International is also repeating its call for the government of Myanmar to urgently act to prevent human rights abuses at the Letpadaung and S&K mines and provide effective remedy for the human rights abuses that people there have already suffered. The authorities must stop using draconian laws to charge and harass villagers participating in peaceful protests against the mine project.

More broadly, the Myanmar government needs to strengthen the legal framework, to improve the regulation of large projects, such as mines, and put in place an adequate framework for land acquisition that is based on international standards on the right to adequate housing and the prohibition of forced evictions. Both the government of Myanmar and Myanmar Wanbao must also ensure an effective remedy for the human rights abuses that people there have already suffered.

Foreign corporations doing business, or planning to do business, in Myanmar have a responsibility to ensure that their investments do not result in human rights abuses. All foreign corporations should conduct human rights due diligence on their planned business activities in Myanmar in line with international standards. The home state governments of companies investing in Myanmar, including China, which is the home state of Myanmar Wanbao, must ensure that their companies conduct human rights due diligence.

RECOMMENDATIONS TO THE GOVERNMENT OF MYANMAR

The recommendations below require action by several ministries and by Parliament, and in some cases, recommendations will require cross-ministerial action.

- Immediately halt further construction of the Letpadaung mine and suspend the project until the environmental and human rights concerns about the project are resolved in genuine consultation with all affected people;
- End forced evictions and ensure that no evictions are undertaken unless all procedural safeguards required under international human rights law have been put in place;
- Revoke Section 144 orders that are currently operational in the mining areas;

- Require Myanmar Wanbao and its joint venture partners to address the shortcomings in the Letpadaung ESIA, including through sharing final designs of key infrastructure for public scrutiny and to undertake a comprehensive assessment of the environmental, social and human rights impacts in consultation with all affected people;
- Require Myanmar Yang Tse to undertake a full assessment of existing pollution at the S&K mine site and clean it up. The process should be transparent, subject to independent monitoring and accomplished as fast as is technically feasible. Ensure that any negative impacts caused by the S&K mine are addressed before proceeding with the Letpadaung mine;
- Require UMEHL to move, as a matter of urgency, the Moe Gyo Sulphuric Acid Factory to a location where it is at a minimum safe distance from inhabited areas and with full disclosure of all safety measures to be taken prior to, during and post the move. In the interim, stop the operations of the factory as a precaution;
- Investigate and prosecute, in accordance with international standards for fair trials, any officials who were involved in the use of incendiary white phosphorus munitions against peaceful protesters on 29 November 2012, and anyone else who provided assistance to the police;
- Undertake a comprehensive, independent, impartial investigation into all reports of excessive use of force by the police against peaceful protesters and prosecute, in accordance with international standards for fair trials, those responsible. Instruct the Chief of the Myanmar National Police to initiate a thorough review of police tactics and the use of force and firearms during arrest and during public order policing, with a view to ensuring that they meet international standards;
- Immediately drop all charges brought against persons for organizing or participating in peaceful protests, demonstrations and assemblies and release all persons who have been imprisoned solely for the peaceful exercise of their human rights;
- Ensure that all victims have access to effective remedies and reparation. Reparation may include, amongst other things, compensation for people whose homes and farms have been damaged and who suffered injuries inflicted by the police, medical rehabilitation for those who require it, clean-up of pollution, and adequate relocation;
- Adopt and enforce legislation prohibiting forced evictions and which sets down safeguards which must be complied with prior to any eviction being undertaken, in conformity with international human rights standards, including the UN Basic Principles and Guidelines on Development-Based Evictions and Displacement;
- Urgently strengthen environmental safeguards to ensure that people are protected against pollution of water, air and soil by extractive and manufacturing industries. Increase the technical capacity of the Ministry of Natural Resources and Environmental Conservation, seeking international cooperation and assistance as necessary, to independently assess and monitor environmental impacts;
- Repeal or review and amend all laws that violate the rights to freedom of expression, peaceful assembly and association, including but not limited to provisions of the Penal Code and the Peaceful Assembly and Peaceful Procession Act to ensure these and other laws comply with international human rights standards. Ensure that, pending the amendment of these laws in line with international standards, no one is arrested or detained under these provisions;
- Ensure that human rights defenders and peaceful activists are free from harassment, discrimination, and the threat of criminalization through the application of repressive laws; and that they are able to conduct their important and legitimate work in a safe environment; and
- Become a party to the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the related Optional Protocols.

RECOMMENDATIONS TO THE COMPANIES

- Wanbao Mining and its joint venture partners, UMEHL and ME1, should make a public commitment to suspend plans for extending the project area and construction for the Letpadaung mine until human rights and environmental concerns are resolved in genuine consultation with affected communities;

- Wanbao Mining should address the shortcomings in the ESIA, including through sharing final designs of key infrastructure and undertaking a comprehensive assessment of environmental, social and human rights impacts in consultation with all affected people;
- Wanbao Mining should investigate the impact of the 2015 floods and the cause and impact of the 2015 spill of waste liquid at Wet Hme village, and make the findings public;
- Myanmar Yang Tse should remediate any negative impacts caused by current and past operations at the S&K site in consultation with affected communities; and
- All the companies should ensure that they have put in place processes to ensure human rights due diligence, in line with the UN Guiding Principles on Business and Human Rights.

RECOMMENDATIONS TO THE GOVERNMENT OF CHINA

- Immediately engage with Wanbao Mining and call on it to ensure remedies and reparation for human rights abuses that its subsidiaries are involved in related to the Monywa project; and
- Institute legal and policy reforms to require companies domiciled or headquartered in China to carry out adequate human rights due diligence throughout their global operations. Set out mandatory requirements for enhanced due diligence prior to a company undertaking any investment or operations in Myanmar.

AMNESTY INTERNATIONAL IS A GLOBAL MOVEMENT FOR HUMAN RIGHTS. WHEN INJUSTICE HAPPENS TO ONE PERSON, IT MATTERS TO US ALL.

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MOUNTAIN OF TROUBLE

HUMAN RIGHTS ABUSES CONTINUE AT MYANMAR'S LETPADAUNG MINE

In May 2016, Myanmar's largest copper mine started production for the first time. The announcement immediately sparked protests by local community members.

This briefing examines the current human rights situation at the Letpadaung mine. The operating company, a subsidiary of China's Wanbao Mining, intends to extend the mine's perimeter, putting hundreds of people at risk of forced eviction from their homes and farmland. The company has also failed to undertake an adequate environmental assessment of the mine, putting the safety of the neighbouring communities at risk. The risks are extremely serious as the giant mine is in a region prone to both earthquakes and floods. If either of these strike the mine, they could result in contaminated waste spreading into the surrounding environment with catastrophic results.

In addition, the Myanmar authorities continue to use repressive laws to harass villagers who protest against Letpadaung and the nearby S&K mine.

The briefing is a follow up to Amnesty International's 2015 report, 'Open for Business? Corporate Crimes and Abuses at Myanmar Copper Mine.' It calls on the Myanmar government to suspend operations at the mine until all human rights concerns are met.

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