

1 February, 2013  
Daw Aung San Suu Kyi, Chairperson  
Letpadaung Investigation Commission

Dear Daw Aung San Suu Kyi,

As chair of the Letpadaung Investigation Commission, please accept this re-submission of evidence (including exhibits) concerning incidents at the Letpadaung copper mine. The information was gathered in December-January through site visits to the area and numerous interviews with affected persons.

The submission consists of a 20-page narrative report with 8 exhibits (photos, videos, legal documents, and background information) and an attached two-page Test Report laboratory analysis and description of the phosphorus content found in the residue of a smoke grenade canister recovered from the main protest camp after the police action on the morning of 29<sup>th</sup> November.

The submission presents relevant laws and facts; it does not draw major legal conclusions or make specific policy recommendations. Its purpose is to provide information that may be useful to the Letpadaung Investigation Commission.

The submission focuses on two issues of law and fact: 1) the validity of the contracts between local villagers and the Wanbao-Upaung joint venture, and 2) the use by security forces of phosphorus grenades against peaceful protestors after soaking them with water hoses.

The apparent use of coercion and fraudulent misrepresentation by local authorities to force villagers to sign contracts without first being allowed to review their contents (see especially paragraphs 16-32) raises serious questions of whether the contracts should be enforced under the rule of law approach currently being adopted by the Government of Myanmar/Burma (see esp. paras. 1-15).

Independent chemical analysis of an exploded canister recovered from the main protest camp shows the presence of oxidized phosphorus consistent with its use in a standard military-issue white phosphorus smoke grenade (see esp. paras. 75-85 and attached ALS Test Results).


Phosphorus ignites spontaneously when exposed to airborne oxygen to produce burning particles of phosphorous pentoxide, and therefore is used by militaries for smokescreens and illumination. When also combined with hydrogen from water, the phosphorus 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 sodium bicarbonate solution. This explains the severity of injuries to monks and villagers hit directly by these munitions. Their use by local police to "disperse" peaceful protesters during a standard law enforcement operation raises issues of liability for senior responsible levels of command and control in the military and Government, and for senior executives at Wanbao and UMEHL companies.

Please do not hesitate to contact us should there any questions or comments concerning this submission.

Sincerely,

Thein Than Oo  
Upper Burma Lawyers Network

U Aung Thane  
Lawyers Network



Roger Normand  
Justice Trust

## **Submission of Evidence to Myanmar Government's Letpadaung Investigation Commission**

### **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 secret suff'ring,  
Flames and flesh, blood and water, inter-mingling,  
**Just! – As an all-mighty oceans' ceaseless roar! –**  
Can such devotion ever be defeated?

**Lawyers Network and Justice Trust**

(submitted on 28 January, 2013, re-submitted with exhibits on 1 February)

## EXECUTIVE SUMMARY

The evidence submitted in this report covers two main issues: 1) the circumstances and validity of contracts signed by local villagers in April 2011 to allow their farmlands to be used by a copper mining joint venture between Wanbao, a Chinese military-owned company, and U Paing, a Burmese military-owned company, and 2) the circumstances and validity of the police action used to disperse peaceful protesters at the copper mine site during the early morning hours of 29 November, 2013.

This submission presents relevant laws and facts concerning the Letpadaung case; it does not draw legal conclusions or make specific policy recommendations.

The evidence indicates that local government authorities, acting on behalf of the joint venture companies, used fraudulent means to coerce villagers to sign contracts against their will, and then refused to allow villagers and monks to exercise their constitutional right to peaceful assembly and protest.

The evidence also indicates that police used military-issue white-phosphorus (WP) grenades (misleadingly termed smoke bombs) combined with water cannons to destroy the protest camps and injure well over 100 monks with severe, deep chemical burns. White phosphorus spontaneously ignites in air to produce burning phosphorous pentoxide particles and, when combined with water, super-heated phosphoric acid.

This evidence was collected during four site visits to Letpadaung and is based on multiple eyewitness testimonies, interviews in hospital with injured protesters, legal documents, and photographs and video footage.<sup>1</sup> In addition, an exploded WP grenade used in the police action was analyzed at an independent chemical lab to determine its chemical content. **[See Attachment I: ALS Test Report and Analysis]**

The purpose of this submission is to provide information that may be useful for the Government's Letpadaung Investigation Commission, established by President U Thein Sein on 1 December, 2012, and amended on 3 December.<sup>2</sup> The Commission is chaired by NLD leader Aung San Suu Kyi.

### *Overview of Joint Venture*

The Letpadaung copper mine project, on the west bank of the Chindwin River in Sar Lin Gyi township, Mon Ywar district, Sagaing Division, is a 2010 joint venture of Wanbao, a mining company subsidiary of China North Industries Corporation, and Union of Myanmar Economic Holdings Limited (UMEHL), a military-run state company also known as U Paing. The agreement between Wanbao, U Paing and the Government of Myanmar was signed

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<sup>1</sup> The investigators visited Mandalay, Mon Ywar, and Letpadaung on 3-5 December, 11-13 December, 25 December, and 9-10 January 2013.

<sup>2</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). The Commission's membership was reduced from 30 to 16 and the mandate narrowed by eliminating several lines of inquiry, 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;
- (f) whether the copper mine project should continue or the foreign investment should be suspended."



during Chinese Premier Wen Jiabao's state visit in 2010, when Mr. 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>3</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>4</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>5</sup>

### *Summary of Evidence*

The report's findings cover two main issues: 1) the use of duress and fraud by local authorities to compel villagers to sign the contract with the Wanbao/U Paing joint venture against their will, and 2) the refusal by local authorities to allow protesters to exercise their constitutional right to peaceful assembly, and the use by police of white phosphorus grenades to disperse protestors, causing widespread and severe chemical burn injuries.

The investigation into the contract negotiations with villagers revealed numerous irregularities:

- The interests of the Wanbao-U Paing joint venture were represented by local government officials from Mon Ywar district and Sar Lin Gyi 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 held out against the deal, for example, unlawfully arresting a villager who refused to sell his land and relocate, and replacing an independent village chief with an active supporter 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>3</sup> See The Myanmar Times (December 10-16, 2012), p. 1.

<sup>4</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>

<sup>5</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, see <https://dazzlepod.com/cable/09RANGOON77/>

<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.

The investigation also found that police rejected repeated requests by protesters, including local villagers and monks, for permission to hold peaceful assemblies to voice opposition to the copper mine operation. Moreover, the police selectively arrested and detained people 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 rights.

Furthermore, it was found that local police deployed at Wanbao company compound used excessive force to disperse the protestors. Interviews with injured protestors in hospitals at Mandalay and Bangkok and photographic evidence suggested the use of white phosphorus munitions, an extremely volatile military-grade incendiary agent. Analysis by an independent laboratory of residue from an exploded grenade canister confirmed its phosphorus. Its primary military use is as a smokescreen for combat operations (during dry weather). To use such weapons deliberately and directly against peaceful protestors in a non-combat situation is unheard of and raises serious questions of senior-level command responsibility.

### ***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 people of Myanmar. The Lawyers Network and Justice Trust believe that the Government and people are equal to this challenge.

An important step will be to investigate and address unanswered questions raised by this submission:

- On whose authority did local officials pursue contract negotiations with villagers?
- Did senior executives at Wanbao or U Paing 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 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 operation?
- What remedies are available to the protestors 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?

### ***Contents of Submission***

This submission of evidence contains four sections: 1) a summary of the current transition towards rule of law and democracy in Myanmar, 2) an overview of the law of contracts, and a description of the factual circumstances leading the villagers to sign contracts with the Wanbao-U Paing joint venture, 3) overviews of the right of peaceful assembly and the principles for use of force during law enforcement, and a description of the factual circumstances leading to the police action against protesters, and 4) a description of white phosphorus munitions used for military purposes, and an analysis of the exploded grenade recovered from the Letpadaung protest camp.



## SECTION I: RULE OF LAW FRAMEWORK

This section discusses the importance of the rule of law 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.

### *Political consensus for strengthening rule of law and democratic development*

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

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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-c.pdf>.



cease fires in ethnic conflict areas, releasing thousands of political prisoners, establishing the parliamentary Rule of Law Committee and the national Human 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.

<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>.

<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>.

<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>



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: THE LAW OF CONTRACTS AND THE FACTUAL CIRCUMSTANCES OF THE CONTRACT NEGOTIATIONS AT LETPADAUNG

This section summarizes the established legal norms that govern contracts 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.

### *Established principles of contract law*

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.

#### *Circumstances behind villagers signing the contract with Wanbao-U Paing project*

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, Mon Ywar district governor, and U Zaw Min Han, Sar Lin Gyi 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 all 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 Sar Lin Gyi 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 Sar Lin Gyi 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 Sar Lin Gyi 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 III: THE RIGHT OF PEACEFUL ASSEMBLY AND THE FACTUAL CIRCUMSTANCES LEADING TO THE POLICE ACTION AGAINST PROTESTERS

This section summarizes the right of peaceful assembly in domestic and international law, and 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.

#### *Established principles of peaceful assembly in domestic and international law*

34. 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.
35. 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".
36. Articles 20 and 23 of the Universal Declaration of Human Rights (UDHR) protect the right to freedom of assembly and association and the right to form and join trade unions. 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."
37. 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.
38. 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.
39. 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).

*Circumstances leading to the police force to disperse peaceful protesters*

40. 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 Sar Lin Gyi police for a permit to exercise their constitutional right to peaceful protest. All requests were denied. **[Exhibit 1: copy of police letter rejecting community requests for peaceful assembly]**
41. 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.
42. 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 Mon Ywar 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]**
43. 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.
44. On 8 October 2012, concerned citizens, students, environmental advocates, and community groups in Mon Ywar 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.
45. 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.

46. 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.
47. 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.
48. News of the damage to Lay Di Sayadaw sparked concern amongst villagers and monks, especially from Pakokku, Mon Ywar, Manday and Sagaing monasteries. Many joined the protest, and by 21 November six camps were set up around the mining area with more than 400 monks and 60 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]**
49. 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]**
50. The Letpadaung copper mine protest continued to 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 Division Minister of Mines.
51. 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]**
52. 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.
53. 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.

54. 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.
55. 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."
56. 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 hoses 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 flash, producing clouds of yellow 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 Mon Ywar for medical treatment.
57. 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 Mon Ywar reported that plainclothes police were present to observe and take photographs.
58. The following accounts are based on detailed interviews with eyewitnesses from four of the six 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]**
59. 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

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

before midnight, Lt. Col. Twin Ko Ko from Sar Lin Gyi township announced from a loudspeaker that all camps must be evacuated by midnight or the police would deal 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.

60. 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.
61. 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 about 15 minutes, until the entire area was soaked thoroughly. The force of the water pressure was so strong that they could not stand up.
62. 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.
63. 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.
64. 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.
65. 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.

66. 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.
67. 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.
68. Another camp in the middle of the mining area, led by Ma Phyu Phyu Win, had about 80 monks and 10 villagers. Sometime after 2:30am, a group of about 80 armed police officers arrived and took positions next to a fire truck. 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. Monks were sitting in the front row, reciting prayers. The entire area was flooded in water. After about ten minutes a bomb was fired at the protestors and exploded in the air over their heads at the height of a coconut tree. They heard a loud explosion and saw many flashes of light spreading out over the camp. Small balls of flaming material fell down on them like rain. Wherever the material touched burst into localized flames that could not be extinguished. The substance kept burning through skin and flesh with a white glow. It 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.
69. Ma Phyu Phyu Win described the aftermath of this initial attack: "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 fall off his body like clothes. 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 body. They continued to burn through my flesh 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 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 Mon Ywar who arranged for transportation and medical treatment for the injured. Those with the worst injuries were taken to Mon Ywar by boat; some were driven in cars that reached the village. Daw Aung San Suu Kyi visited Mon Ywar that afternoon."

70. During the police action, protest leaders were communicating with supporters from the Letpadaung Salvation Committee (LSC) in Mon Ywar. 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 Mon Ywar, 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.
71. The LSC also sent two vehicles to Paung Ka village, about 10 miles from Mon Ywar. 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 Mon Ywar 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]**
72. Many injured villagers chose to stay at home for fear of being arrested in Mon Ywar Hospital; the LRC arranged to send two doctors from the NLD health clinic to treat them in the villages.
73. 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 IV: ANALYSIS OF THE USE OF WHITE PHOSPHORUS 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. **[Exhibit 8: background on WP munitions and medical effects of exposure]**

75. Local villagers 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 the Lawyers Network for scientific analysis to determine whether the spent munition contained phosphorus residue.
76. 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. White phosphorus (P<sub>4</sub>) is a highly energetic (active) and pyrophoric material, that is, it is spontaneously combustible. When exposed to air it produces a rapid oxidizing reaction and the element bursts into a yellow-white flame, producing a hot, dense smoke composed of particles of phosphorus pentoxide (P<sub>2</sub>O<sub>5</sub>), which are converted by moist air into phosphoric acid (H<sub>3</sub>PO<sub>4</sub>). This chemical reaction continues until either all the material is consumed or the element is deprived of oxygen.
77. WP’s primary military use is for signaling, screening, and incendiary purposes. WP creates a smoke screen as it burns. Smokes obscure vision and are used to hide troops, equipment, and areas from detection. It can also be used to destroy the enemy’s equipment, especially vehicles, petroleum, oils and lubricants (POL), ammunition storage areas, and enemy observers. WP becomes luminous in the dark and can also be used as an aid in target location and navigation. It is usually dispersed by explosive munitions. It can be fired with fuze time to obtain an airburst.
78. Smokes and obscurants comprise a category of materials that are not meant to be used militarily as anti-personnel chemical agents. Use of WP weapons is lawful to hold high-priority military targets at risk in a manner consistent with the principles of military necessity, civilian distinction, and proportionality (these principles govern the use of all weapons under existing law). The use of WP primarily as a smokescreen or signaling device therefore is not prohibited by Protocol III of the Certain Conventional Weapons Convention (CCWC), which restricts the use of “any weapon or munition which is primarily designed to set fire to objects or to cause burn injury to persons.”
79. A residue sample from the grenade canister recovered at Letpadaung was examined by ALS Laboratory Group, a leading chemical analysis company. The canister had English letter markings indicating that the weapon was produced in 1996. 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

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<sup>13</sup> Parts of the following description of phosphorus, including its military applications, is taken directly from the website of Global Security, a leading international think tank on military organizations and weapons systems: <http://www.globalsecurity.org/military/systems/munitions/wp.htm>



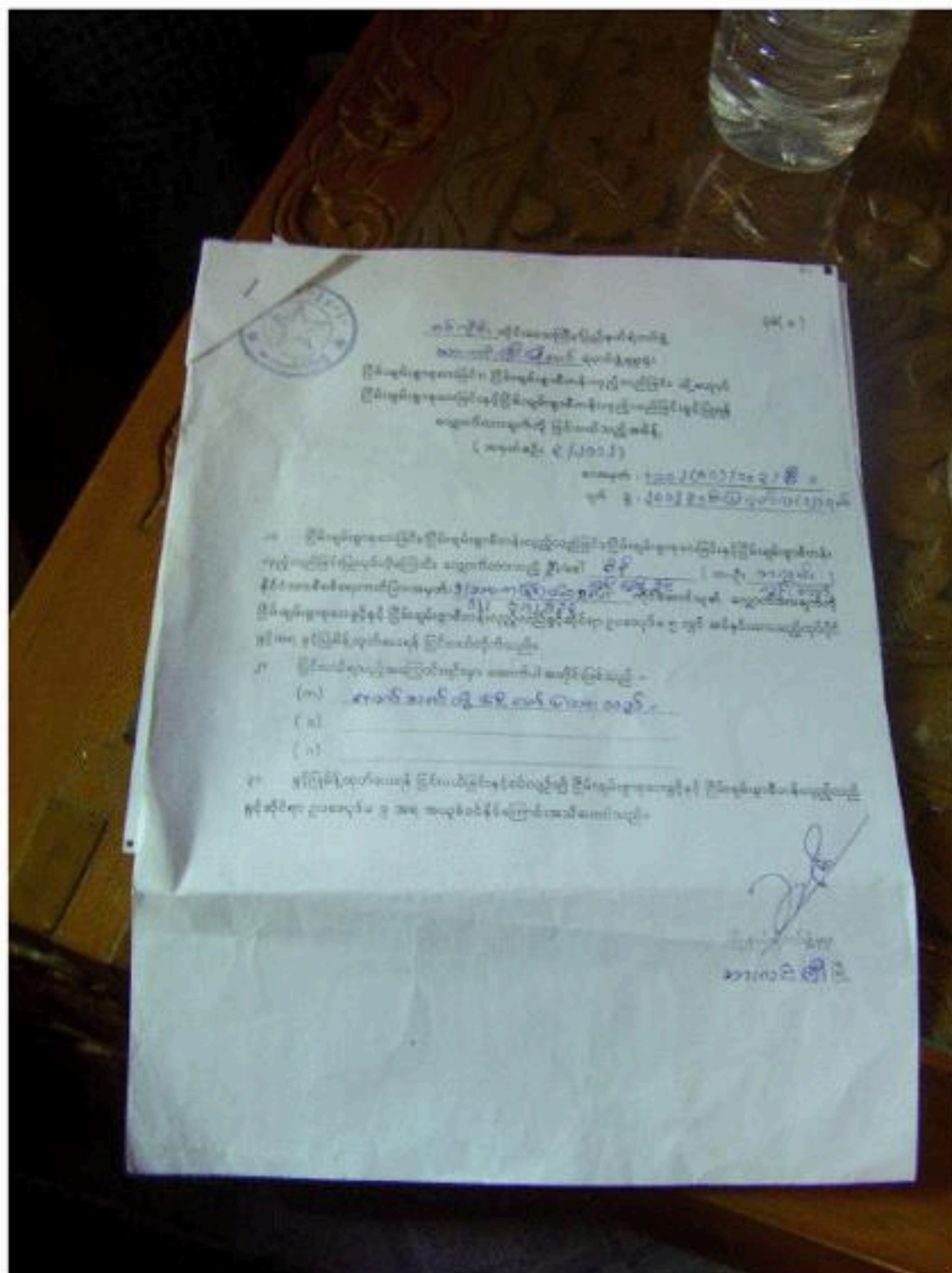
weight of 110grs/mol which corresponds to a theoretical elemental phosphorus content of 27.2%. Similarly, phosphoric acid ( $H_3PO_4$ ), formed by hydrolysis of phosphorous pentoxide, has a molecular weight of 82grs/mol which corresponds to a theoretical elemental phosphorus content of 18.3%. Analysis of the dry residue indicates a phosphorus content of 25.5% which is consistent with a complex mixture of phosphorus-based compounds resulting from oxidation of phosphorus.

80. White phosphorus spontaneously reacts with oxygen when exposed to air. As the chemical reaction occurs under catastrophic conditions, most of the phosphorus is oxidized into phosphorous pentoxide, producing heat blast, illumination, and thick smoke. Should water be present as moist atmospheric air, phosphorous pentoxide immediately bonds with hydrogen to create a second reaction, hydrolysis, which releases a large amount of heat. The decomposition of phosphorous pentoxide in water also yields corrosive species, the most abundant of them being phosphoric acid.
81. These results are consistent with testimonies of multiple eyewitnesses at the protest camps. They described the grenades exploding with bright yellow flares and smokes (caused by rapid oxidation of phosphorus into a burning mist of phosphorous pentoxide particles). The description of small fireballs is consistent with the reaction of phosphorous pentoxide with water, which creates a powerful heat blast and forms phosphoric acid. A phosphorus smoke grenade exploding with great force in the middle of a wet crowd would release burning gelid globs of super-heated phosphoric acid. The chemical reaction would intensify when the fireballs hit exposed flesh (skin being 70% water). The burning substance cannot be extinguished except in a cold sodium bicarbonate solution. It will continue to burn for minutes until the phosphorus particles have oxidized.
82. The conclusion that police used white phosphorus munitions against peaceful protesters is further confirmed by the nature of the injuries they suffered. Victims at Mandalay Hospital showed a characteristic patchwork of deep burns sprayed across their bodies, with skin and flesh eaten away. 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 garlicky smell of the burning substance, is indicative of white phosphorus.
83. WP is highly lipid soluble and has rapid dermal penetration once particles are embedded under the skin. Used illegally as an anti-personnel chemical weapon, WP munitions produce widespread, painful injuries. Because of the rapid ignition and highly lipophilic properties, WP burns frequently are second and third degree; the combination of phosphorous pentoxide and phosphoric acid is capable of corroding flesh to the bone. Resultant burns are usually 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 air-burst weapons.
84. It should be noted that the sequence of steps taken by the police – using fire trucks 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 and damage to the protesters.

85. In summary: white phosphorus ignites spontaneously when exposed to airborne oxygen to produce burning particles of phosphorous pentoxide (and therefore is used by militaries for smokescreens and illumination). When combined with hydrogen from water, it 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 cold sodium bicarbonate solution. This explains the severity of injuries to monks and villagers hit directly by WP munitions in wet conditions. The apparent use of these munitions by local police to “disperse” peaceful protesters during a standard law enforcement operation raises issues of liability for senior responsible levels of command and control in the military and Government, and for senior executives at Wanbao and UMEHL companies.

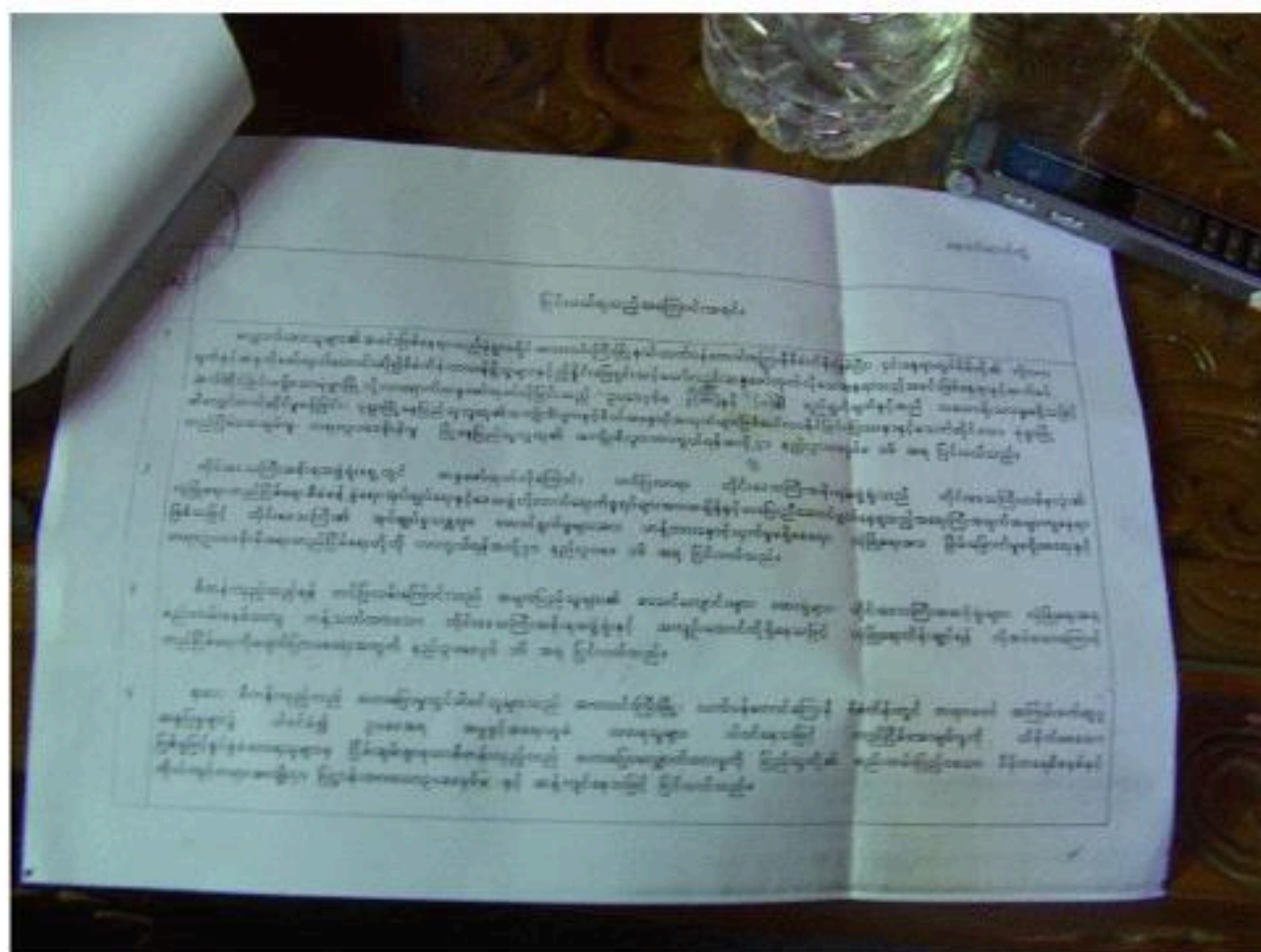
EXHIBIT 1: copy of police letter rejecting community requests for peaceful assembly

1.1: page 1, signed notice of rejection



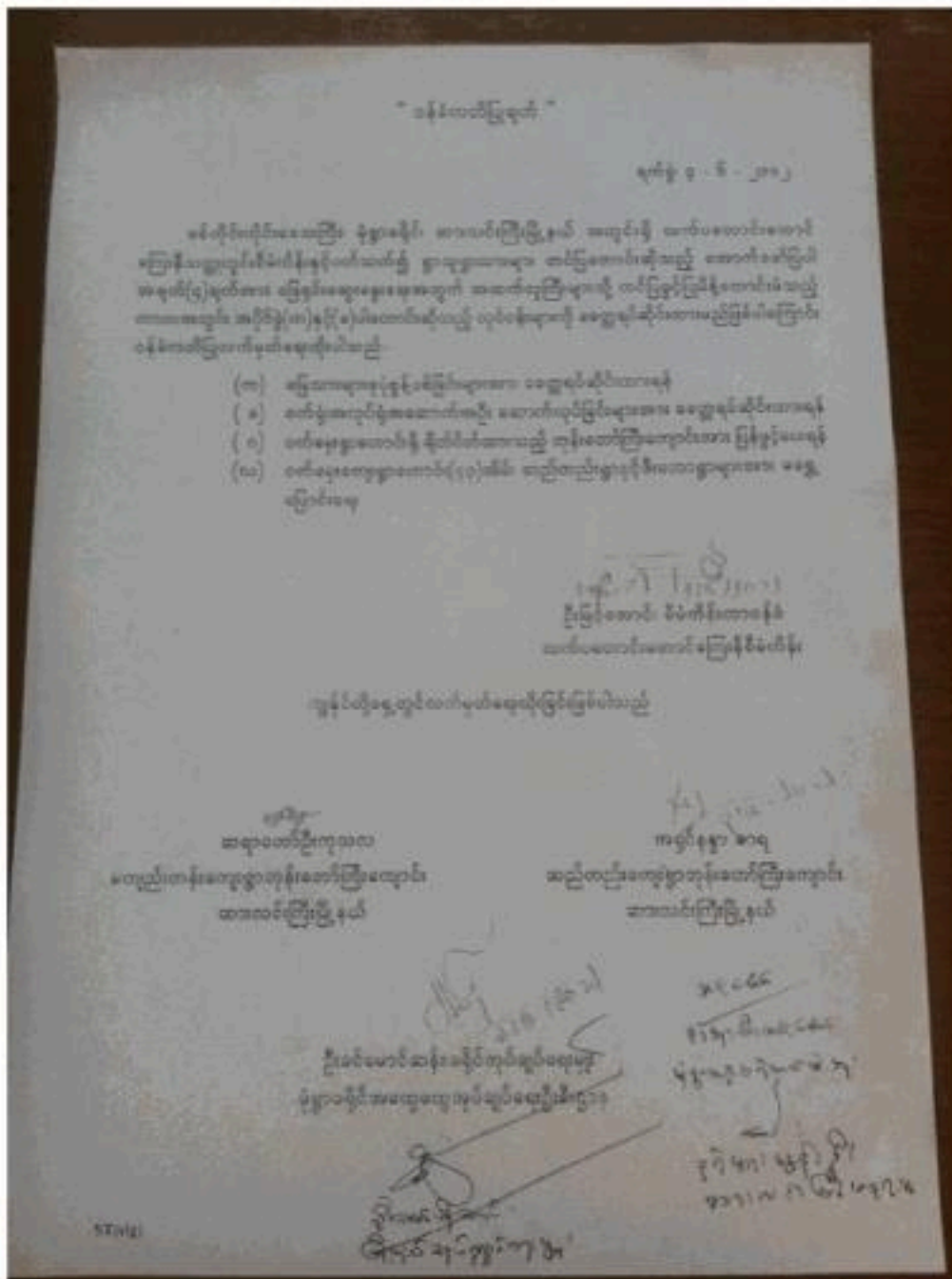


1.2: page 2, reasons for rejection



## EXHIBIT 2: U Paing no-more dumping agreements

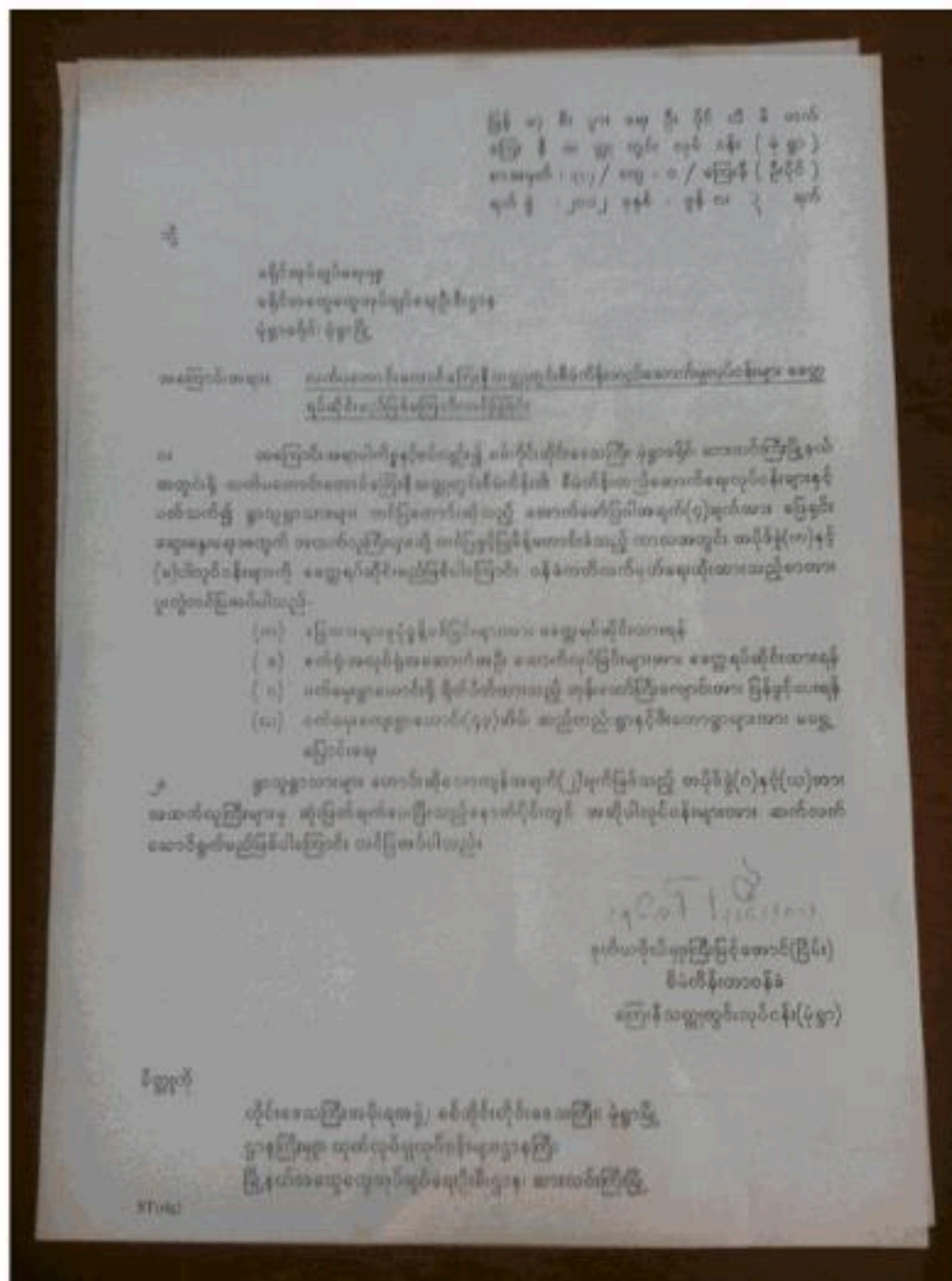
### 2.1: temporary agreement by U Paing to stop dumping (3 June, 2012)



#### Signatories:

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

2.2: U Paing letter to Sar Lin Gyi township confirming agreement (3 June, 2012)





**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 Mon Ywar Hospital



### 7.2: monk with burns to head





7.3: monk with burns on legs



7.4: Daw Aung San Suu Kyi, NLD leader and Chair of Letpadaung Investigation Commission, consoles with Ma Thwet Thwet Win, injured protest leader from Wat Thmey village





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

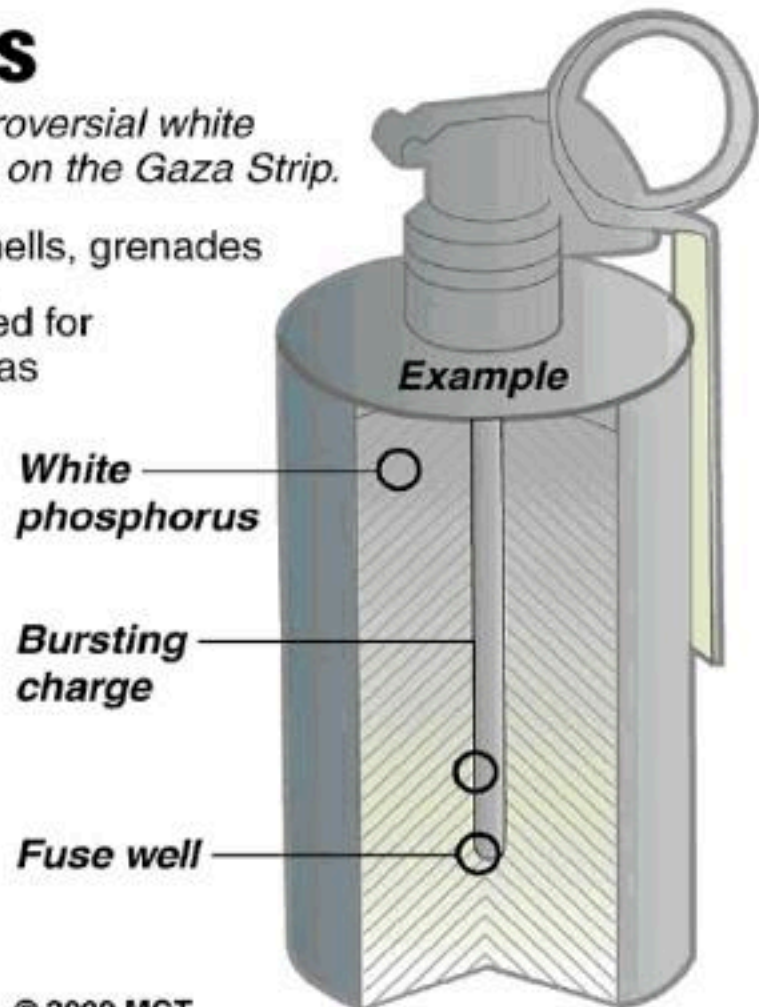
### 8.1: characteristics of WP weapons

# White phosphorus

*Israel is believed to be using controversial white phosphorus to screen its assaults on the Gaza Strip.*

- **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



© 2009 MCT



## 8.2: health effects of WP munitions

**BBC**  
**NEWS** Watch ONE-MINUTE WORLD NEWS

### Q&A: White phosphorus injuries

There has been concern that Israel has been using controversial white phosphorus shells during its offensive in Gaza. Doctors in Gaza have reported treating dozens of patients with unusually deadly burns. White phosphorus can have serious, long-term effects on health.

**How does white phosphorus cause harm?**

In its solid form, white phosphorus burns on contact with oxygen and can reach temperatures of 800C.

As a gas, phosphorus smoke can react with water to form a powerful acid.



Sticks of white phosphorus have to be kept submerged to prevent them igniting

#### 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. Different patients react in different ways - some will die from a small burn others will survive. Doctors in Gaza have said patients with 15% burns have surprised them by dying.

#### How do doctors treat these burns?

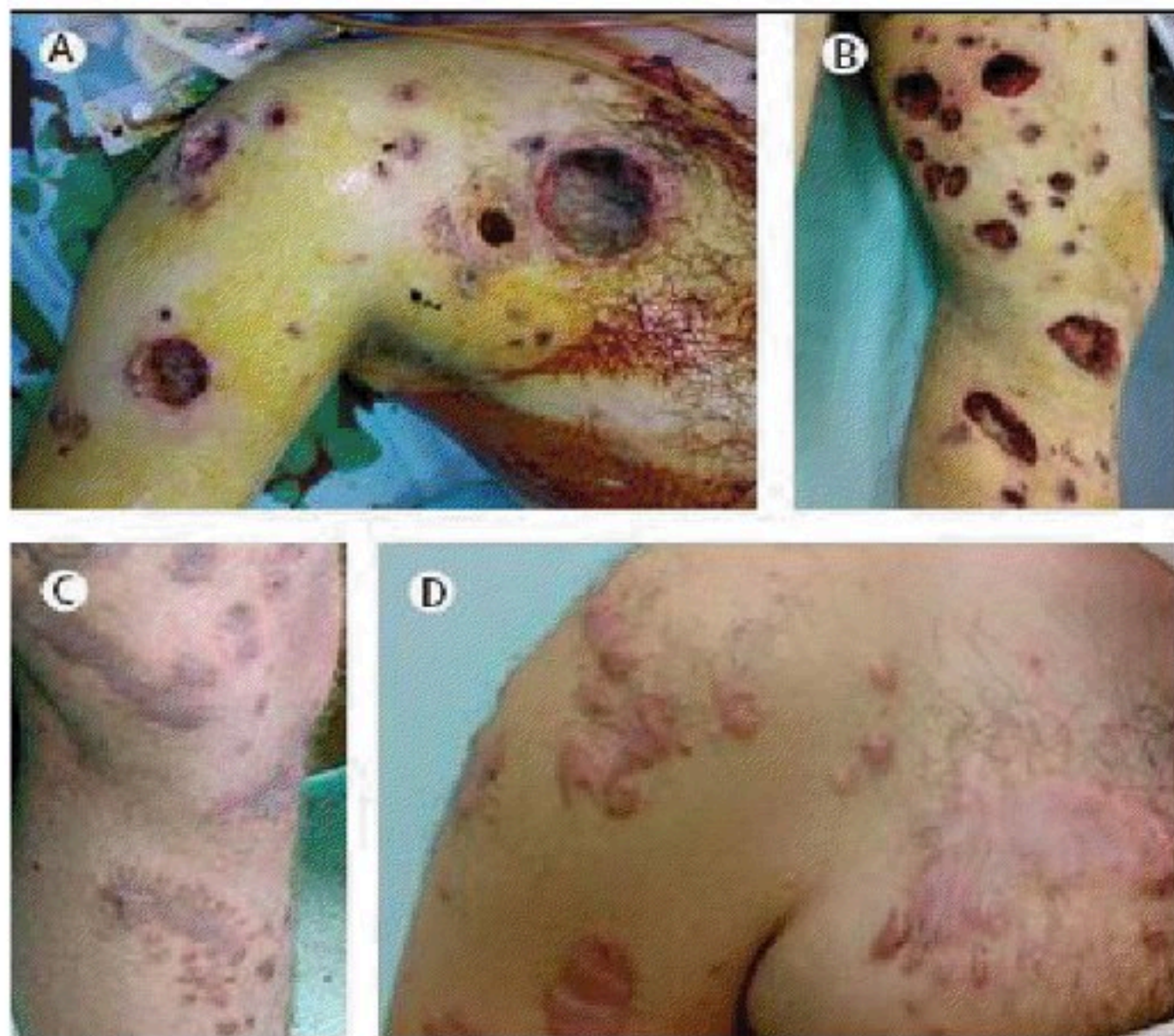
Alan Kay, a military burns specialist for the British Association of Aesthetic Plastic Surgeons says the main thing is to keep the burn site wet. "You keep the wound wet, keeping oxygen away from it. But it not only causes very dangerous heat burns, it also causes chemical problems. The key is to surgically 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."

Burns initially appear as multiple lesions, with severe underlying destruction and necrosis in the right shoulder (A) and left leg (B). Burns as they appear after 16 months of follow-up (C, D). Al Barqouni et al, 2010.





### 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.

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